

MINUTES

Commission on Courts of Limited Jurisdiction (COCOLJ) Helena, MT – via Virtual Meeting Room/Telephone April 24, 2020

Members Present: None

Members Participating Via Telephone or Video: Hon. Perry Miller, Hon. Steve Bolstad, Hon. Steve Fagenstrom, Hon. Holly Frederickson, Peter Ohman, Mary Ann Ries, Hon. Heidi Ulbricht, Hon. Jim Rice, Hon. Kelly Mantooth, Tina Reinicke, Hon. Jessie Connolly, and Peggy Tonon.

Members Absent: Charlie Harball

Staff Present: Shauna Ryan

Guests: Beth McLaughlin and Lisa Mader (via telephone)

Judge Miller called the meeting to order at 8:35 a.m.

PUBLIC COMMENT: None.

OLD BUSINESS:

Minutes

The minutes from the meeting on March 20, 2020, were reviewed. Judge Mantooth moved that the minutes be approved. Judge Frederickson seconded the motion and it carried unanimously.

NEW BUSINESS:

Coronavirus, Courts and Reopening

Judge Miller said one of the primary items on the list serv are questions about how we handle the first phase of reopening of the courts and maintain social distancing. His understanding from both the Governor's and Chief Justice's directive is that we still have to practice social distancing, not more than ten people in a group, etc. and what he sees on the list serv is there are a number of things being presented out there that are good, but he's curious whether the Commission as the educational body needs to give more direction. Beth McLaughlin thought it was pretty clear from the memo that came out from the Chief on April 22nd that even though we are gradually reopening things the emphasis should still be on physical distancing and making sure you are limiting the number of people who are coming to court and in the court space. In terms of PPE, that has been complicated. There are a lot of recommendations from public health officials that we should have hand sanitizer throughout the public spaces and hand sanitizer available for judges and staff. That is hard to come by right now, so in working with Disaster and Emergency Services we found there are several distilleries that are making FDA approved hand sanitizer and shipping it. One is Headframes Distillery in Butte who the Supreme Court has utilized to provide hand sanitizer to the district courts and youth courts. There is another distillery in Kalispell or Big Fork, and they have helped provide sanitizer to the district courts and youth courts in the northwest corner of the state. The easiest option for the courts is to lean into the distilleries who have

repurposed their business to provide this essential service. The direction from the DES people is to make sure you are buying something that is using the FDA approved recipe – so to speak – or you may end up with something that could be harmful. The products can be used as a cleaning spray on surfaces as well. The second thing, and one with very clear direction from the CDC, is the use of non-medical masks when people are out in public spaces. Folks can spread this illness before they are symptomatic so it will prevent people from spreading illness if they are asymptomatic or in the early stages of the illness. The direction from the DES is because the courts are an essential service, the courts should be in contact with their county DES person to secure masks, both for court staff and jurors or others. Instead of doing statewide ordering they are running all of that through their local county DES office who then are managing non-medical mask orders for those essential services within the county. The Court Administrators office has tested this out with the district courts both on the hand sanitizer front and then yesterday sent out the mask information to the district courts. Judges will want to talk to their local finance folks, but Beth's understanding is that there is a 75/25 split in the cost of the PPE and that FEMA funding will pick up 75 percent of the costs while the local entity will be responsible for 25 percent. The whole issue of calling a jury is tricky due to the need to physically distance people. Judges must handle it on location by location basis because the courtroom environments differ so much. The Court Administrator's office is talking with the Governor's budget office about whether they will be able to support local county health departments in providing health screenings during jury trials in both the district court and the courts of limited jurisdiction. Generally what the CDC and the state health people are saying is you should assess people when they come in and there should be temperature screening, although there are people that say that's not helpful because someone could take Tylenol and not have a temperature. The courts are not going to be doing the screenings themselves which is why we are trying to get a commitment from the Governor's budget office for some of those federal dollars to support local public health departments who may then assist the courts in taking on this task. The other key component to this is discussions with the public defender and county attorney about how to proceed in those matters. The most complicated issue that has been floating around with the district court judges is how to manage voir dire. Do they bring in jurors in a group of ten and physically socially distance them in the courtroom when the jury is seated, do you put the jury in the audience and close the courtroom to the public – those are all things we can provide some guidance on but it's going to be different because everybody's courtroom is different. The National Center for State Courts hosted a webinar recently on reopening, but it was not terribly helpful. Nobody is as far ahead as Montana as far as managing the number of cases and moving toward reopening. A lot of the discussion in the webinar was from states that are still 4-6 weeks away from getting jury trials back in place. Beth asked Lisa Mader to talk a bit about Zoom. Lisa Mader indicated that what their office has been doing is going through a substantial security analysis of Zoom. The problem in the IT department is they do not have the budget or the resources to provide webcams and speakers for every desktop. They are in the process of putting together a bulk order for webcams and speakers and from the limited court perspective we are going to purchase those for each of the judge's computers and the courtroom computer. They will then send out instruction on how to log into the state secure enterprise portal for Zoom. The judges will be on a platform that is secure. The one thing that we do not want folks doing is using the free, basic, personal Zoom license because it is not in a secure cloud. The State of Montana enterprise is in a secure cloud. They just started putting numbers together to get the webcams and speakers for the judge's desktop and courtroom judge desktop. Due to the pandemic however, the webcams are not readily available. It could take 3-4 weeks before we get them. They will be drop shipping the equipment to the judges directly. They are not putting this out to every limited court PC – only the judges PC and the judge's courtroom PC. Beth said the division of responsibilities makes things complicated here. Obviously within the Supreme Court Administrator's Office there are 300 employees statewide, most of whom work in the Youth Court Offices. Then the district courts all have a court reporter, judicial assistant, and a law clerk. One of the things as an employer we had to take care of first was making sure that folks could work remotely. That responsibility is a little bit different from what we have with all of the courts of limited jurisdiction – where we are not the employer so we can't provide direction to people about work at home options and what the employer is comfortable with, so that has caused some confusion. We are the employer of some of the branch employees, but the vast majority of branch folks work for a city or county government. The ability to set up work at home options for city and county employees is really challenging because of the technical issues associated with the

case management systems that we use and the lack of availability of laptops. There are no laptops on the market right now even if we had the money. The Court Administrator's office is not trying to ignore the needs of city and county employees in terms of work at home options - it's just not something we can easily manage and it's something we're not even sure we should step into because we are not the employer in that case. Tina Reinicke asked if the cameras would go to all courts of limited jurisdiction or just the ones with a state bridge to IT. Lisa Mader responded that for the judges that have a "c" number to log into the computer - those licenses are covered under the Zoom licensing. Tina works in a municipal court that has its own IT department, with no state bridge. Lisa will investigate that and get back to Tina with an answer. When judges log in with a "c" number and password, Zoom will be on the computer and because the judge is authenticated to the state network, it will automatically authenticate the judge into the Zoom licensing. Tina asked about the webcam. Lisa said the approach they are taking is to count from the active directory the judge and courtroom desktop for the limited courts. Lisa wanted to confirm that for the courts that have their own IT department, that they could still log into that portal. Lisa will look at the equipment side and make sure those courts are included in the count and look at the licensing side and hopefully let the Commission know by the end of the day. Judge Ulbricht asked if you could use Zoom if you were tied into the FTR system. Lisa was unsure but will find out and let the judge know. Beth reiterated that the courts are obligated to provide masks to the jurors if they do not arrive with one of their own. Judge Fagenstrom asked what courts do with those who refuse to wear a mask? Beth felt that was a legal question and not one she could give a definitive answer to. Beth asked Judge Miller if he wanted her to put something on the list serv or if the Commission wanted to send something out. Judge Mantooth felt the Court Administrator's office should send the information out to the courts. The other commission members concurred. Beth agreed to prepare and send an email to all the limited court judges once Lisa has answers to several of the IT questions. Judge Miller asked Peter Ohman to discuss his thoughts on how things might work with reopening. Are the public defenders and the prosecutors networking about how things will move forward, and do they have any suggestions for the courts? Peter said he was in the same boat as the rest as there is a big question mark about how the courts will each go about it. It will be different in every courtroom. It is likely that it will be closer to June before jury pools can be called. Mary Ann Ries said that as far as the county attorneys are concerned, they are taking a lot of direction from the district court judges which will also apply to courts of limited jurisdiction. Mary Ann is in a county with a lot of space and fortunately will be able to manage it, but she also took the original order from Chief Justice McGrath telling her to consider resolving cases very seriously and she has been able to resolve most of her cases. Peter asked for clarification of paragraph two of the Chief's recent memo "physical distancing in courthouses must be maintained. A minimum of 6 feet between individuals must be maintained with no more than 10 people in a group". Beth clarified that the real intent is not to bring in the usual herd of potential jurors that would come in in groups larger than 10 and seat them together in a big lump in the courtroom; instead try to limit your initial gathering of jurors to 10 and space them 6 feet apart. As far as excusing jurors, Justice Rice thinks they all need to use their best powers to make it clear this is an essential right and we have to move forward and we need to have jurors and we're asking everyone to come in and serve under these new conditions. Judge Bolstad asked Peter and Mary Ann if the prosecutors and the defense were given encouragement from the Chief Justice to settle cases. Mary Ann responded that in the Chief's initial order he very much encouraged the parties to work together to settle a case. Judge Bolstad asked if that went out to the city attorneys as well. Beth McLaughlin said that it did go out through Kelly Lynch at Montana League of Cities and Towns - she has a list serv of all the city attorneys. All of the orders have gone out through her. Judge Mantooth added that the State Bar has been sending out the orders from the Chief to the attorneys as well.

2019 Law Enforcement Reference Guides

Judge Connolly asked about distribution of the Law Enforcement Reference Guides. The books were published later than usual last fall and were finally delivered to Shauna Ryan in early January. The plan was to hand them out at the Spring Conference. Due to cancellation of the conference, however, the Court Administrator's office

will consider other options for distributing the books. Shauna Ryan will discuss it more with Beth McLaughlin and report back to the Commission.

Request for Temporary Certificate and Waiver of Training for New Judge

Hon. John Lesofski (WSS JP) – Judge Lesofski’s original Request for Temporary Certificate and Waiver was approved with the requirement that he take the certification test by March 31, 2020. Due to COVID-19 and the shelter-in-place order, the Judicial Education Coordinator was required to postpone his March 30 test date. Peggy Tonon, on behalf of the Waiver Committee, recommended his temporary waiver be extended through May 15, 2020. The Commission concurred with the waiver committee’s recommendation.

Adjourned: The meeting adjourned at 10:00 a.m.

Next Meeting Date: The next meeting will be Friday, May 15, 2020, at 8:30 a.m. in Helena.

May 23, 2022