

MINUTES

Commission on Courts of Limited Jurisdiction (COCOLJ) Helena, MT – via Virtual Meeting Room/Telephone May 15, 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. Jim Rice, Hon. Kelly Mantooth, Tina Reinicke, Charlie Harball, and Hon. Jessie Connolly.

Members Absent: Peggy Tonon and Judge Ulbricht

Staff Present: Shauna Ryan

Guests: None

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

PUBLIC COMMENT: None.

OLD BUSINESS:

Minutes

The minutes from the meeting on April 24, 2020, were reviewed. Judge Connolly moved that the minutes be approved. Judge Fagenstrom seconded the motion and it carried unanimously.

NEW BUSINESS:

Coronavirus, Courts and Reopening

Judge Miller said Beth McLaughlin had done a good job of sending out her letter to the folks about what entities were paying for what however there needed to be a bit of clarity. He gave kudos to Judge Mantooth as he comprised an email that shut down most of the concerns on the list serv – each of the local governments would spring for any PPE and any other expenses. If they couldn't get what they needed through their local governments, they could prepare a writ of mandamus to the district court.

Judge Fagenstrom said his biggest problem is that the lawyers are starting to use this as a tool to try and negotiate settlements and threatening to hold trials to strong arm some sort of a plea. Peter Ohman did not agree with the assessment. If attorneys want to exercise their rights they can certainly do so. Judge Fagenstrom indicated that he cannot have a trial and do it the way it is currently mandated – he doesn't have the room, the facilities, no one will be checking anyone at the courthouse door. It is impossible under the current constraints. They currently have a dog-at-large case going to jury trial. Peter Ohman agreed and said he thinks there should be some sort of directive or guidance that the only trial we should be holding right now are for defendants who are in custody and want to proceed to trial. As we see speedy trial questions, Judge Fagenstrom is not clear whether he should go with the statutory six months – institutional delay is still not charged against the

defendant. He is going to start receiving motions to dismiss for lack of a speedy trial. Peter said his position is that the rule does not apply right now. There is an exception and it's delay for good cause.

Tina said calling a jury is proving to be a real challenge for Missoula. They were able to reach agreement with their city council and mayor that they would be taking over council chambers for jury trials. Their first jury trial is scheduled for July 16th and then they will continue every week after depending on how everything plays out. She said the challenge for them is they extended everything out 60 days on March 4th. Everything they scheduled out then is hitting now. It's a whole lot of work and whole lot of interdepartmental cooperation. It has been challenging maintaining the staffing needs due to the federal laws and folks at home too. Judge Miller asked if her judges had received waivers of speedy trial and if staff is still working split shifts in their department to limit exposure to staff. Tina responded that she has not heard much about getting a lot of speedy trial waivers – her sense was that those were fine. In terms of the staffing, they never had split shifts. They had staff continuing to work from home and then of course those that cannot work at all due to other conditions. We do have to maintain social distancing and since March 15th have required masks in the court. City hall remains closed to most everyone except court people.

Justice Rice indicated that the court is going to take the cases that are appealed on a case by case basis and the individual facts and circumstances that arise in each case. He agreed with Peter that there will be a leaning towards finding of good cause in any delay that was legitimately associated with COVID-19. The court will take them one by one.

Judge Miller said that he is not yet seeing a mass rush to settle as much more of a negotiation and sit down and figure out the best course of action in each case. He asked Mary Ann Ries what her prosecutor thought process is with those. Mary Ann responded that they are taking it day by day. She's had several hearings in justice court and the public defender indicated that she would not be filing any speedy trial motions because of the delay caused by COVID-19. Her situation is probably different then some of the other locations. Their district judge has encouraged them to take that tact and so far the attorneys she has worked with are doing that.

Charlie Harball said they have sat down and put together a method of triage for those cases. They are more willing to enter plea bargains currently just for the sake of moving things along.

Tina Reinicke said that one thing they talk about frequently is the inability to issue a warrant for people failing to appear. That is what is causing the courts to have to continue and continue and continue and it's an endless cycle of work. Who knows what it will lead to based on what we're talking about with speedy trial.

Judge Miller said he did hold off on issuing warrants unless it was something egregious. However, he started issuing warrants on everything again on May 4th, primarily so officers have the option to arrest a defendant or inform them they need to report to the court. Tina Reinicke said they are operating under the belief that they still can not issue warrants, so she appreciated that information. Judge Miller asked Peter Ohman what the view of defense counsel is as it pertains to warrants. Peter Ohman said that in visiting with one of the regional PD's she was saying that some courts – if a defendant shows up in person – the public defender is getting chewed out because they are saying we told defendant's to show up in person where we hadn't even been appointed yet. Other courts are still not allowing defendants to appear in person. The process is all over the map around the state. It would be nice to have some uniform guidelines around the state whether it be on jury trials or personal appearances or written motions for continuance or change of pleas as opposed to appearing in person. Peter mentioned four attorneys yesterday who were threatened to be held in contempt because there were doing oral motions at omnibus hearings that changed pleas or for continuances where the judge had said he/she didn't want oral motions but they didn't have a choice because that's what they tell their clients. He doesn't understand why some public defenders are being threatened with contempt while we're just coming back from this lockdown and everybody is scrambling trying to figure things out. Judge Miller said it is so important that folks show some latitude – both to prosecution and to defense counsel as far as appearances and oral motions and

things along those lines simply because of the current situation. We need to treat everyone fairly and be flexible. Judge Fagenstrom said he is working with everyone in Cascade County and are all working towards the same goal which is to move product as fast as we can, while also being fair. Judge Miller thought someone from the Commission should put a reminder on the list serv for judges to be flexible and show temperance and patience as we work through reopening the system. Judge Mantooth suggested that the lower courts familiarize themselves with the April 27th memo from the Supreme Court. It has a lot of good directives as far as what courts should be doing. Judge Miller suggested that Judge Mantooth post that memo again on the judges list serv. In addition, maybe several of the Commission members can work together to draft something to put on the list serv to address some of the issues raised today. The courts can function, and function wholly and there needs to be some latitude given to all the attorneys involved in order to conduct the process. Tina Reinicke indicated that Missoula County Justice Courts just issued new standing orders and there may be some good information for the Commission to reference as far as moving forward. Justice Rice reiterated that this whole thing is a moving target and we are trying to move it along and there will be some right and wrong choices made. Everyone needs to be flexible and courts need to give people the ability to do their jobs under new conditions. The Court is strict about contempt anyway. If a court chooses to go that route, there needs to be due process and it needs to be done correctly, as they've said in their cases. Judge Miller added that contempt authority is an absolute last resort. Tina said she would forward the standing orders from Missoula County Justice Court to the Commission members. The judge members will work together to formulate some type of directive to put out on the list serv addressing the concerns raised today. Justice Rice did add that the Court recently reversed a district court's holding of a defense attorney in contempt there - Supreme Court OP 20-0184. Folks may want to look at it as far as procedure is concerned.

Adjourned: The meeting adjourned at 9:30 a.m.

Next Meeting Date: The next meeting will be Friday, June 19, 2020, at 8:30 a.m. in Helena (in person!).

May 23, 2022