

## MINUTES

### **Commission on Courts of Limited Jurisdiction (COCOLJ) Helena, MT – in person and via ZOOM/Telephone September 21, 2020**

**Members Participating Via Telephone or Video:** Hon. Perry Miller, Hon. Steve Bolstad, Hon. Steve Fagenstrom, Hon. Holly Frederickson, Peter Ohman, Peggy Tonon, Hon. Kelly Mantooth, Tina Reinicke, Scott Twito, Hon. Jessie Connolly, and Hon. Jim Rice.

**Members Absent:** Hon. Heidi Ulbricht and Charlie Harball

**Staff Present:** Shauna Ryan

**Guests:** Kevin Cook and Nolan Harris

Judge Miller called the meeting to order at 1:00 p.m. He began by welcoming newly appointed member, Scott Twito.

**PUBLIC COMMENT:** Judge Fagenstrom wanted to make a comment for the record. He said it was with a great deal of apprehension that he was participating in the school this week. He prefaced his comments by saying he had absolutely no intention of being critical and no intention of directing or making anything personal towards any person. He equated the school this week to the one of the earliest atomic bombs. As an explosive device, the atomic weapons were a huge success. There was not a more successful explosion than an atomic weapon. But in hindsight, I think it would be largely argued that it was more harmful than good. He understands that we are living in a unique time and nothing like this has occurred in his lifetime. However, he thinks we are about to lose, or stand the chance of losing, one of the most important aspects of the judiciary, which is the collegiality that the limited courts enjoy. He is not a particularly social person and doesn't tend to do well in large groups of people. When he first became a judge he attended his first training sessions and sat quietly on a couch and listened as people walked in trying to figure out who he was or where he was because they had all heard that he had unseated the previous judge. It was his first experience with judges of limited jurisdiction. He was one of the judges who – early on in his judgeship – went shopping a couple of times instead of attending afternoon classes; a couple of times a hangover kept him from showing up on time in some of the early morning sessions; and a couple of times he was sick. It wasn't until it was made very clear to him that this stuff is mandatory, you don't get that choice, that he gained a new respect for the importance of attending the sessions every judge is required to attend. It took him a long time before he was comfortable associating with his fellow judges. In hindsight, and after fourteen years on the bench, he would say that some of his best friends are now judges (and he doesn't make friends easily). Of the friendships he has made, all of those are the result of attending the judge schools in person. He does not believe we can do that if we do not require personal presence at the training sessions. He views us as the equivalent of standing at the top of a hill with a snowball in our hands and we are about to take that snowball and start it down the hill. We have no idea how big that snowball is going to get when it reaches the bottom or where it's going to stop or what it's going to hit when it gets there. If we lose the comradery and collegiality that he has come to know and cherish, we are going to be doing irreparable harm to the judiciary of the small courts. He doesn't think if we did a televised or internet program that he would know the presenters or the other judges. He certainly would not reach out to them if he weren't sitting next to them at a conference. He would not know those people if he didn't have lunch with them and force himself to sit with them at the tables. He would not know those people if they didn't gather together and if he wasn't drug along to some of the dinners afterwards kicking and screaming. He would not have joined this Commission or sought out information or volunteered information like he does. Of particular

concern to Judge Fagenstrom is the order from the Supreme Court authorizing this next program which said that there is nothing in the statute that mandates personal presence at these conferences. That statement now stands as a reason for people to try to get out of attending these conferences. For a long time, people having harping about not wanting to travel, not wanting to do it twice a year, everybody and their neighbor is trying to weasel out of these things, without realizing what they are going to lose. In addition, he is paying his own way for being at the conference in person this week. When they were told they did not have to attend the conference, he was then told that he wouldn't get paid to attend in person. He is footing his own bill because it is not authorized travel from his county commissioners. He really does value the training that much and the personal interaction that occurs. He thinks if the penny pinchers get the idea that they don't have to foot the bill to send people to these conferences, they will stop paying that bill. He hopes they are not starting down a path that is going to diminish everything that we are as courts of limited jurisdiction. It comes down to the people we interact with and those we get to know.

Judge Miller wanted Judge Fagenstrom to know that every comment made was a concern of the Commission before we asked for a one-time exception. He's not fond of the line in the order that our training is not mandated in statute that it be in person, however, subsequent to that, in the statute it says that the government will pay for training and travel. Judge Fagenstrom said maybe we need a statute change that says absent an order from the supreme court, our training will be in person.

Peggy Tonon commented that she agrees that in-person training is better. As a presenter, she relies heavily on feedback from the judges and by watching their body language. Online training does not allow that same interaction.

Judge Miller did not think there was any way for the Commission to meet its statutory obligation as to accountability and the presence of each judge when utilizing online/remote training.

### **OLD BUSINESS:**

#### **Minutes**

The minutes from the meeting on August 21, 2020, were reviewed. Judge Fagenstrom moved that the minutes be approved. Judge Connolly seconded the motion and it carried unanimously.

### **NEW BUSINESS:**

#### **Fall COLJ Conference Agenda – Update**

Shauna Ryan reported that Kevin Cook and herself were able to do some practice test runs with the presenters who were interested. We were able to test some of the features available in the webinar and decide what may or may not work. The practice was well received and relieved a bit of angst among the presenters as well as the moderators. Kevin Cook will be available the duration of the conference to offer technical help when needed.

Shauna drafted and sent an Acknowledgment of Training form to Peggy Tonon to review. At the completion of the conference, those acknowledgment forms will be sent to the judges and they will be required to sign, date, and return them. Shauna will check the forms with the zoom attendance reports and ensure everyone is in compliance.

#### **Request for Waiver of Training for Fall COLJ Conference**

Hon. Mike Swingley, Hon. Andy Breuner, Hon. Kerry Burman, and Hon. Jim Bailey – On behalf of the waiver committee, Peggy Tonon recommended the waiver requests be approved. The Commission concurred.

**Adjourned:** The meeting adjourned at 2:20 p.m.

**Next Meeting Date:** The next meeting will be Friday, November 20, 2020, at 8:30 a.m. in Helena.

May 23, 2022