

# **MINUTES**

## **Commission on Courts of Limited Jurisdiction (COCOLJ) Helena, MT – via ZOOM and In-Person September 27, 2021**

**Members Participating In-person, Via Telephone or Video:** Hon. Holly Frederickson, Hon. Perry Miller, Peggy Tonon, Hon. Steve Bolstad, Hon. Kelly Mantooth, Tina Reinicke, Hon. Jessie Connolly, Hon. Steve Fagenstrom, Hon. Heidi Ulbricht, Scott Twito, and Brian Smith.

**Members Absent:** Justice Rice and Charlie Harball.

**Staff Present:** Shauna Ryan

**Guests:** None

Judge Frederickson called the meeting to order at 1:05 p.m.

### **OLD BUSINESS:**

#### **Minutes**

The minutes from the meeting on August 20, 2021, were reviewed. Brian Smith moved that the minutes be approved. Judge Mantooth seconded the motion and it carried unanimously.

### **NEW BUSINESS:**

#### **Request for Waiver of Training for Fall 2021 COLJ Conference**

Hon. Jeanne Walker, Hon. Holly Happe, Hon. Larry Jensen, Hon. Erin Fink, Hon. Jim Seykora, Hon. Steve Andersen, Hon. Robbee Pennock, Hon. Ethan Lerman, Hon. Paul Sullivan, Hon. Kaylan Minor, Hon. Sheila Kolar, Hon. Bryan Adams, Hon. Ray Trumpower, Hon. Kathleen Jenks, Hon. Cody Shaw, Hon. Perry Miller, and Hon. Rebecca McEuen – On behalf of the waiver committee, Peggy Tonon recommended that the waivers be approved. The Commission concurred with recommendation.

#### **Request for Temporary Certificate and Waiver of Training for New Judge**

Hon. David Phillips (Cascade Co. JP), Hon. G. Larry Jent (West Yellowstone City), Hon. Michael Reardon (Hamilton City) – now moot, and Hon. Royce McCarty (Hamilton City) – On behalf of the waiver committee, Peggy Tonon recommended the temporary waivers be approved. Peggy did have a concern with the request from Judge Reardon, but the issue has now resolved itself due to the subsequent appointment of Judge McCarty. The Commission concurred with the waiver committee's recommendations, except for the waiver for Judge Reardon. The commission did not concur with the waiver committee's recommendation to approve Judge Reardon's temporary waiver and would not have approved it. Hamilton no longer had a judge under which

Judge Reardon could serve as substitute judge. Brian Smith abstained from voting. Judge Frederickson will coordinate with the other training judges about training for the new judges.

### **Personal Attendance at Conferences**

Judge Bolstad reviewed the resolution drawn up at the last meeting and made the suggested changes. The Commission now needs to review the updated draft and either approve or reject it. Brian Smith wondered if it might be better to request the Supreme Court to modify its Order from 2003. The Commission could petition the Court to modify the rules to make it more clear. Several commission members commented that the training requirements are in statute and not just defined by a Supreme Court Order. The definition of attendance is that you are physically present unless determined otherwise. Brian Smith does not think attendance means in person, in terms of training. Judge Fagenstrom disagreed; he does not think attendance applies to a virtual presentation – you are not attending anything. You may be viewing it but you’re not attending it. Peggy Tonon asked if the problem could be solved by taking a position that unless we get approval from the Supreme Court for exigent circumstances, we are not going to offer virtual training. Judge Miller added that when the Commission asked the Court liaison, Justice Rice, he clarified that we could implement the rule without verification from the Court. If attendance didn’t mean in-person, then why would anyone need to submit a waiver of attendance request to the waiver committee? The fact that the education we present in person to our judges has been the cornerstone of successfully maintaining our 3-tiered judiciary wherein non-attorney, lay people can sit as a judge. This resolution is simply to resolve that attendance at the biannual training for the courts of limited jurisdiction is mandatory in person. Judge Fagenstrom would liken our training not so much like a CLE that lawyers attend but more actually in tune with the actual law school that the students attend. We are training folks to be judges. He was not aware of anyone who gets a virtual law school degree. As far as the training, he thinks these judges are learning what a lawyer would learn in law school, as opposed to a refresher course. Judge Bolstad asked Brian Smith if he thinks all judges should be treated as attorneys or just attorney judges treated as attorneys? Brian Smith responded that he does not think attendance necessarily means in-person. Judge Fagenstrom made a motion that the resolution as currently drafted be adopted by the Commission. Judge Mantooth seconded the motion and the motion carried. Brian Smith and Tina Reinicke opposed the motion. The resolution was approved as drafted.

### **Concern from Access to Justice Commission about some courts requiring a background check and payment of filing fee to file an action**

Justice Rice forwarded an email from Justice Baker – on behalf of the Access to Justice Commission – to Judge Frederickson. Alison Paul, Montana Legal Services, advised that one of her homeless clients in Great Falls was told that to find out his case number in a justice court matter he would need to complete a “background check” form and pay \$10. The request would then take 7-10 days for processing. Judge Fagenstrom commented that this is a third hand confused story that’s hard to comprehend. Further, no one has ever brought this to his attention before now and it’s the first he’s heard of it. He said this is not how his clerks are trained to handle the situation and he doubts this particular scenario occurred. There could’ve been a miscommunication, plain and simple. Judge Frederickson will respond to Justice Rice and advise him that Judge Fagenstrom does not think this happened, his court works to ensure this doesn’t happen, and that his court has a process where anyone can access information without paying a fee with an appropriate fee waiver request in place. In the future, the Commission hopes that if someone is made aware of an issue in a court that they bring it to the attention of the judge involved to address.

### **Fall 2021 Conference – Agenda Update**

Shauna Ryan reported presenters were all in place and good to go. Judge Frederickson will facilitate introductions during the conference.

**Adjourned:** The meeting adjourned at 2:40 p.m.

**Next Meeting Date:** The next meeting will be Friday, November 19, 2021, at 8:30 a.m. in Helena.

May 23, 2022