

MINUTES

Commission on Courts of Limited Jurisdiction (COCOLJ)

Helena, MT

November 17, 2023

Members Participating: Hon. Kelly Mantooth, Hon. Steve Fagenstrom, Hon. Steve Bolstad, Hon. David Grubich, Peggy Tonon, Melissa Rosaaen, Hon. Kerry Burman, Brian Smith, Hon. Jessie Connolly, Greg Sullivan, Hon. Perry Miller, and Jeanne Torske.

Members Absent: Hon. Jim Rice

Staff Present: Shauna Ryan

Guests: Hon. Jake Coolidge (Missola Municipal Court)

Judge Mantooth called the meeting to order at 8:30 a.m.

Public Comment:

Judge Coolidge wanted to discuss two items with the Commission. The first issue is the Supreme Court Order from roughly twenty years ago and what he is doing with that – he wants to be transparent. At the last conference, having read the municipal court training statute, Shauna Ryan gave him a copy of the Montana Supreme Court Order amending the statute and requiring municipal court judges to appear at these conferences. He was curious as to what led to that order being filed. So far, he found that the Clerk of the Supreme Court does not have any proof of the order or any procedural posture behind it. What he found in his research is that it was done under the guise of Article 9, Section 2 – the general supervisory control of the Montana Supreme Court, but there is a specific delegation of authority in Article 7, Section 9 that says the legislature shall determine the qualifications of other judges – municipal courts being one. He is curious where the Supreme Court is getting the authority to amend that statute. He is digging in further to that procedural posture because frankly he does not know that the 2003 order was necessarily done lawfully. The reason he is doing that is because he is concerned with municipal court participation in the courts of limited jurisdiction training because he is concerned that they are becoming behind in their CLE requirements which is specifically what is required by the statute - the continuing legal education requirements. It says the Montana Supreme Court can add to that number of hours but that's what it requires. The challenge and the conflict between municipal court requirements and the other courts of limited jurisdiction requirements is that the municipal court one specifically requires CLE but none of the trainings to his knowledge that they've attended are CLE certified. That order is also creating a conflict and making it hard for the municipal court judges to basically satisfy their continuing legal education requirements without taking a bunch of additional time off. When we have these high-volume courts, taking two weeks off can be like moving mountains to get sub judges to cover; and taking two weeks off to satisfy the CLE requirements, in addition to any personal time we might take off, becomes untenable. Shauna Ryan wanted Judge Coolidge to be aware that if a judge attends both conferences, the judges are getting 31-32 CLE credits per year. We typically try to incorporate close to 2 ethics credits per year as well, to help fulfill that requirement for judges who still practice law part-time. Judge Grubich added that it's his understanding with the judicial exemption through the Bar, you don't have to meet the CLE requirements. He encouraged Judge Coolidge to contact the Bar for clarification. Judge Grubich would appreciate receiving Judge Coolidge's concerns in writing. Judge Coolidge intends to follow up with something in writing. Peggy Tonon asked Judge Coolidge if he claimed the CLE credits from the COLJ conferences. Judge Coolidge

indicated that he has not filled out paperwork or been aware of that process. He was under an assumption that a lot of the training would not be CLE certified. He would be shocked if the State Bar CLE would approve the courses that were held in September. Shauna Ryan responded that the Commission always requests accreditation for the COLJ conferences from the State Bar. The conference agendas are sent with the form to the State Bar in advance of the trainings. Judge Coolidge asked if the Court Security session was CLE certified. Shauna responded that the Court Security session was certified. Shauna added that the State Bar has approved the conferences since prior to 2011 and it's never been an issue. Brian Smith added that they don't approve all the substance – much beyond the description and the material of the presenter – so there are probably times that things get approved that maybe after the fact shouldn't have been approved. Brian Smith asked what the goal was of the trainings – what are we teaching? If the COCOLJ is teaching to meet all the CLE credit requirements for the attorney judges – which is likely not the goal – but if they are and they are saying you are getting CLE credits for these courses, then Brian thinks there are some issues there. Judge Mantooth advised Judge Coolidge that the Commission will stick by the Supreme Court Orders. We are guided by them as the Commission on training but if Judge Coolidge has issues, the Commission welcomes any written comments or concerns via the Montana Supreme Court and appreciates his input. The Commission goes through the Survey Monkey and reviews recommendations for the training – we try to accommodate those recommendations. As with any training there are going to be some things one judge likes and another does not. We have a broad range of judges – qualifications of judges, locations of judges – across the state. We have a very broad experience base – we have judges who have been on the bench for decades and some that have been on for months. The whole idea of the Commission is to come up with a broad base of training. Judge Coolidge wanted to address his second concern. He understands the challenges that the Commission faces with the variety of judges, perspectives, of people they represent, of education level and legal experience. He shared his concerns from the last training on Survey Monkey. He thinks it's important to adhere to the broader purpose of the Commission – and when you look back at cases such as the 2016 Davis case, so much of this training is rooted in maintaining defendant's due process rights and making sure those are maintained in a state that allows for non-lawyer judges. A lot of the training needs to be rooted in making sure we establish basic legal principles that are rooted in due process. He thinks moving forward in terms of curriculum and ideas for sessions – his concern was that the courtroom security presentation provided nothing that was valuable to helping people protect others' due process rights – and that was a six-hour session. He wanted to echo what Brian referenced and that is making sure that we are focusing on what your/our mission is to make sure that non-lawyer judges understand basic tenets of due process – a lot of that is in constitutional law, evidentiary law and not things that are lower rooted in what he would say are historically law enforcement type positions. Judge Mantooth asked Judge Coolidge where he was getting his information on what he thinks the tenets of the Commission trainings should be. Judge Coolidge said he was basing it on what he was reading in Supreme Court case law that interprets the importance of this training in maintaining the integrity of the non-lawyer judges – it's always attached to due process claims.

OLD BUSINESS:

Minutes

The minutes from the meeting on September 25, 2023, were reviewed. Brian Smith moved that the minutes be approved. Judge Fagenstrom seconded the motion and it carried unanimously.

NEW BUSINESS:

Email from Judge Larson (Polson City) re: separation of power issues between city manager and court

The Commission went into executive session to investigate this email and closed the meeting to the public during this discussion. Subsequently they determined it was not a training issue for the Commission and there was nothing in the email that required the Commission to go into executive session.

Judge Mantooth started by asking if this was a training issue or a personnel issue. Shauna Ryan received an email from Judge Larson basically claiming a separation of powers conflict between the court and city manager. Shauna forwarded the email to several members of the Commission for their input. The members requested additional information and more detail as to the function of the committee referenced by Judge Larson and to find out more on why it was created. Judge Larson never followed up with any more information for the Commission. It appears, based on the information received thus far, that this is not a training issue for the Commission. It seems more like an internal HR issue as there seems to be a dysfunctional work relationship between the judge, his staff, and the city. A separation of powers issue is also apparent but there's not much the Commission can do other than point the judge towards the statutes. The Commission does intend to provide some more training on the separation of powers at a future conference. The Commission will prepare a letter in response to Judge Larson advising him that we cannot provide legal advice and to contact and work with his city HR department on any personnel issues. If there's a separation of powers issue, he should talk to an attorney or someone at MMIA for some guidance too. Greg Sullivan indicated that they have some similar issues in Bozeman. He thinks if the Commission can provide some training to help the courts understand the needs of city management and vice versa to help city management understand the needs of the court that would be a service across the state. It's a great topic to discuss. Judge Connolly concurred with need for the separation of powers training and added that it's nothing new. She also thinks the Commission needs to respond to the email saying, "no legal advice from us and encourage them to communicate with his own HR". Regarding the comment about the judges obtaining legal assistance through the MMIA, Greg Sullivan commented that if there's a claim that is filed against the judge and tendered to the MMIA, if it's covered under the MMIA's memorandum of liability coverage then MMIA can assign an attorney to assist. Whether MMIA would do that pre-emptively upfront that is a question between the judge and Steve Wade, general counsel for MMIA. He thinks there is nothing that would prevent a judge from seeking legal counsel separate and apart from the city in their own individual capacity. The Commission would like more information from Judge Larson before taking any action on this matter. On its face, it appears to be an HR/personnel issue and not a training issue at this point. Shauna will work with Judge Grubich and Peggy Tonon to draft a response email to Judge Larson.

Hon. Perry Miller to resign from the Commission on 12/31/23

Judge Miller serves as the small city judge representative on the Commission. The Commission will send an email soliciting interest from a judge in a small city to fill the vacancy. The Commission needs more representation from the western side of the state. Shauna Ryan will send an email out to all COLJ judges. Letters of interest need to be received by December 15th.

Request for Temporary Certificate and Waiver of Training for New Judge

Hon. Mark Dunn (Great Falls Municipal), Hon. Bill Knox (Dillon City), Hon. Katie Heller (Billings Municipal), and Hon. Karolina Tierney (Bozeman Municipal) – Shauna Ryan added these names to the agenda in anticipation of receiving the Notification of Election and waiver of training forms by the meeting. However, none of the forms have been received yet. These judges were just elected on November 7, 2023. This matter will be continued until the next meeting.

Survey Monkey results from Fall 2023 Conference

There was a lengthy discussion around the comments from the Survey Monkey and amongst the Commission on the fall conference. The mock trials are always well received. Brian Smith thinks it's important to have adequate representation from both the prosecutor and defense attorney during the hearings. The training on tribal issues and the courts should continue. We should focus more on jurisdictional issues and issues that arise when handling a case involving tribal members. Peggy Tonon suggested Maylinn Smith from the Law School for future training. Secondary trauma is a very important topic and should be touched on periodically in the future. It's important to have neutral presenters, however we need information from all sides. The hope is that everyone takes away something useful from the training. In reviewing the session on courtroom security, the statistics overall were good. Shauna Ryan advised that the Court Administrator's Office was in the process of hiring a court security specialist. This person will be auditing the courts statewide. The primary critique that stood out to Peggy Tonon was that the session may have been a bit too long. Folks also wanted more concrete suggestions surrounding safety. Judge Mantooth couldn't think of a better qualified person to teach than someone that is involved in day-to-day courtroom security - that is not the judge - that oversees security of the courtroom. Brian Smith thought the US Marshall would do a good job and felt they would give a neutral presentation on court security. Jeanne Torske suggested Tim Hornung, a deputy US Marshall, for future training and felt he would be great. In reviewing the statistics from the Survey Monkey, most judges gave the presenters good to excellent ratings.

Draft Curriculum for Spring 2024

The Commission drafted an agenda for the spring conference in Bozeman. Shauna Ryan will begin contacting presenters and provide an update at the January meeting.

Adjourned: The meeting adjourned at 12:30 p.m.

Next Meeting Date: The next meeting will be Friday, January 19, 2023, at 8:30 a.m. in Helena.

February 7, 2024