

## MINUTES

Commission on Courts of Limited Jurisdiction  
Room 328, Helena, Montana  
January 16, 2009

Chairman Johnny Seiffert called the meeting to order at 8:33 a.m.

**Members Present were:** Hon. Johnny Seiffert (via video conferencing) Hon. Larry Carver, Hon. Mary Jane Knisley, Peggy Tonon, Hon. David Ortley, Shaun Donovan, Hon. Doug Harkin (via telephone) and Chris Kiser.

**Members Absent:** Supreme Court Liaison Justice Jim Nelson, Judge Miller, and Judge Stahl .

**Guests:** David Neilson and Hon. Sam Brown (via telephone)

**Staff Present:** Karen Sedlock

**PUBLIC COMMENT:** None

**MINUTES:** The minutes from the November 21, 2008 meeting were reviewed. One amendment was made; second page, last paragraph should have referred to Title 40 not Title 48. A motion was made by Hon. David Ortley and seconded by Prof. Tonon, that the minutes be approved as amended. The motion passed unanimously.

**WELCOME:** Chairman Seiffert welcomed the David Neilson. He has been recommended by the Commission to become a new member of the Courts of Limited Jurisdiction Commission.

### **OLD BUSINESS:**

**Retention and Disposition of Bench Warrants:** Judge Miller reported to Ms. Sedlock that he will visit with Kay Johnson, the Chairman of the Local Government Records Committee, and have a copy of the amended bench warrant language ready for Judge Seifferts' signature by the February COLJ meeting.

**Replacement for Judge Wyckman:** The Commission considered appointing a replacement for Judge Scott Wyckman on the Court Technology Sub-Committee. However, this item was tabled until a new JP is appointed in Bozeman.

**Mentor Judge:** The Hon. Deb Winburn is the new city judge in Hardin replacing Judge Janice Heath. Judge Carol Anderson did an initial training visit on behalf of the MMA and conducted a basic inventory. The Commission suggested asking Judge Anderson to be the mentor judge as well.

**TO DO:** Karen Sedlock will contact Judge Carol Anderson and ask if she is willing to be the mentor for Judge Winburn.

**Orders of Protection:** Judge Carver reported that the Automation Committee met with the Attorney General's Office and again reviewed the Order of Protection Forms. The main issue of contention was placing the full name of minor children on the forms.

Judge Carver has a meeting scheduled January 22, 2009 with Allison Paul, the Director of the Department of Legal Services. He also spoke to Corbin Howard, who is proposing a legislative bill to clarify the privacy rules.

Shaun Donovan suggested sending a letter to the new Attorney General, and give him an opportunity to look over the Memorandum that was issued to the COCOLJ Automation Advisory Committee by Stuart Segrest, Assistant Attorney General, on December 4, 2008.

**TO DO: Judge Carver, Judge Ortley and Shaun Donovan will work together to draft a letter to send to the new Attorney General. They will ask Karen Nelson to help if necessary.**

**Suggestions on Search and Seizure Topics for Spring School:** Judge Carver suggested having Mr. Clancy talk about cell phones and electronic evidence. Judge Knisley suggested one hour on general search and seizure, and make sure he knows the Montana exceptions. Judge Ortley stated he will be going to Oxford, MS the end of February and will be happy to visit with Mr. Clancy at that time.

**TO DO: Judge Ortley will visit with Mr. Clancy on talking points for his presentation in April.**

## **NEW BUSINESS**

**Drummond City Court:** Judge Sam Brown joined the Commission via telephone to discuss the issue of the Granite County Board of Commissioners removing the city court from their building. The town of Philipsburg is now moving its' town court operations to a new location. Concerns that Judge Brown was double-dipping by serving as both JP and City Judge was cleared up by a letter from the Montana Attorney General's Office stating there was nothing illegal about him serving both position.

Judge Brown reported that the town of Drummond wants to close their city court office and no longer have a city court or a facility in which to conduct court business. He is questioning how he should conduct city business that is currently pending in Drummond. He stated that he was reappointed City Judge in November of 2006, to begin serving his term January 1, 2007

Judge Carver and Judge Ortley, along with David Neilson, reviewed the applicable statutes and it is clear that the city is required to have a court and judge and they cannot just decide to eliminate the court.

Mr. Donovan suggested that Judge Brown ask for a copy of the minutes appointing him as judge. If they exist, then he must conduct business and pursuant to 3-11-206, MCA, the City Commissioners must provide him with a place to hold court. If they do not, he could resign his position. If no minutes exist of his appointment, then he is not officially the City Judge and has no jurisdiction.

**Added Pressure on Judges:** Judge Ortley asked if the judges are experiencing added pressure to assess or collect fines in light of the economy? This is an issue that they might want to address in the Nuts and Bolts portion of the upcoming conference. Judge Ortley has obtained a copy of an article that was written to help judges with these issues.

**TO DO: Judge Ortley will send the article to Karen Sedlock for her to distribute to the other Commission members.**

**Can JP Court Obtain Judgments in Excess of \$7,000:** A letter was written to the Commission by Rhett Nemelka, Attorney at Law from Bozeman, stating that for the past six years, their law firm has been practicing law in Gallatin county specializing in landlord/tenant issues, as well as other civil matter in the District and Justice Courts. Of of December 22, 2008, Justice of the Peace, Gordon Smith, will no longer enter judgments in excess of \$7,000. Mr. Nemelka is asking that a training judge be available for Judge Smith in order to resolve the jurisdictional limit issue.

The Commission reviewed the Statutes and pursuant to Sec. 3-10-302, MCA, justice of the peace courts have concurrent jurisdiction with district courts, therefore judgments in landlord/tenant cases can be issued in excess of \$7,000.

**TO DO: Judge Ortley will be in Bozeman Jan 17<sup>th</sup> and plans to discuss the issue with Judge Smith. Prof. Tonon will call Rhett Nemelka and let him know it is a training issue and the Commission has addressed it and will also cover it during their Nuts and Bolts session at the spring school.**

**When Does DUI Suspension Begin?** Judge Carver reported that is a controversy over the exact date a DUI suspension begins. Several judges around the state are giving varying beginning dates. Judge Carver spoke to Greg Noose about this and was informed that a bill is being drafted to deal with this exact issue.

**TO DO: The Commission will watch as the bill progresses through the legislature and if there is a change, it will be addressed at the Nuts and Bolts session at the next school.**

**Updates for the Bench Book, Desk Book and DUI Manual:** Beth McLaughlin suggested that the Commission consider having the Bench Book, Desk Book and DUI Manual updated. The last update of the Bench Book was 2004 by Judge John Duehr.

The Commission wants to be sure the updates from the 2009 legislative session are included. They also recommended, if the books are to be updated with replacement pages, that one hour be set aside at the fall school, that each judge be instructed to bring their bench book to the school, and the updates be placed in the books at that time.

**TO DO: Staff contact Judge Duehr and see if he was interested in updating the Bench Book, and contact Judge Greg Mohr to see if he would be interested in updating the DUI Manual.**

**Ignition Interlock Devices:** Cindy Larsen, the Project Coordinator from the Montana Community Change Project, wrote a letter to Judge Seiffert, January 13, 2009, asking if they could be on the agenda of an upcoming Commission on Courts of limited Jurisdiction meeting. Her letter states, "In Montana, the law allows judicial discretion to either seize the offender's vehicle(s) or require the vehicle(s) to be equipped with an ignition interlock device." Judge Knisely didn't think many of the judges are doing this, therefore it may be a training issue. David Neilson reported that Judge Honzel wrote an opinion addressing the ignition interlock device that has been a good reference.

The Commission was suggested that a panel be put together consisting of a representative from the Montana Community Change Project and David Neilson, giving them 30 minutes to discuss the issue. This could possible be done at the spring school.

Judge Knisely stated that the DOT has three programs that they would like 15 minutes during the Spring COLJ School to briefly explain each program; (1) Alive @ 25; (2) Child Passenger Safety Restraints; and (3) Let's Control It [responsible alcohol sales]. They also have pamphlets that they could hand out.

Prof. Tonon stated that she spoke with Prof. Andrew King-Ries and he is concerned that he has two hours to talk about Sentencing and Compliance with Sentence Conditions. She would be happy to visit with him and see if he would like to give up one hour of his time. If so, the panel could be given 30 minutes and DOT could be given 20 minutes.

**TO DO: Prof. Tonon will contact Prof. King-Ries to see if he is willing to give up one hour of his presentation time. If he is, she will contact OCA staff and they will place this on the spring agenda. Otherwise, it will be placed on the fall agenda.**

**Next Meeting Date:** The next meeting will be held Friday, February 20, 2009, beginning at 8:30 am in Helena at the Court Administrator's Office.

**Adjournment:** The meeting adjourned at approximately 11:05 a.m.