

## MINUTES

Commission on Courts of Limited Jurisdiction  
Room 328, Helena, Montana  
March 20, 2009

Chairman Johnny Seiffert called the meeting to order at 8:30 a.m.

**Members Present were:** Hon. Johnny Seiffert, Hon. Larry Carver, Chris Kiser, Shaun Donovan, David Nielsen and Hon. Perry Miller. Hon. Mary Jane Knisley and Hon. David Ortley (via video-conferencing). Hon. Gayle Stahl (via telephone) Judge Harkin and Peggy Tonon both tried to attend via telephone, but staff was unable to get the connection.

**Members Absent:** Supreme Court Liaison Justice Jim Nelson.

**Staff Present:** Karen Sedlock and Beth McLaughlin

**PUBLIC COMMENT:** None

**MINUTES:** The minutes from the January 16, 2009 meeting were reviewed. One amendment was made, David Nielsen's name was misspelled. A motion was made by Hon. David Ortley and seconded by David Nielsen, that the minutes be approved as amended. The motion passed unanimously.

**WELCOME:** Chairman Seiffert welcomed the David Nielsen, as a new Commission member.

### **OLD BUSINESS:**

**Retention and Disposition of Bench Warrants:** Judge Miller brought the Request for Change in Records Schedule form to the Commission for review. Judge Seiffert was concerned that the words "BENCH WARRANTS" were still being used, when the language in the statute states "ARREST WARRANTS". The Commission agreed that since so many of the courts in the state are still using the language, it was decided to leave it in and not change it. A motion was made by Judge Miller and seconded by Shaun Donovan that the form be accepted as written, then signed by Judge Seiffert and submitted to Kay Johnson, the Chairman of the Local Government Records Committee for their consideration. Judge Miller stated he would be responsible for getting it to Ms. Johnson.

**Orders of Protection:** Judge Carver reported on the final order of protection forms that were reviewed at the Automation Committee meeting on March 19<sup>th</sup>. Judge Ortley made a few additional suggestions that were incorporated into the final forms. The comment period has closed. The Automation Committee has completed their work on the forms and they have been approved by the Attorney General's Office and are now ready for testing. These same forms will be used in the district court.

Judge Stahl suggested that the Commission provide the limited court judges with training on the forms when they are distributed. Judge Carver agreed and stated this would be done in the near future.

David Nielsen stated some concerns he had about the forms. Judge Carver suggested that since the forms have already been approved, Mr. Nielsen and any other commission members should email their concerns to him so they can be addressed as training issues.

**Replacement for Judge Wyckman on the Automation Committee:** The Commission discussed a replacement for Judge Scott Wyckman on the Automation Committee. A motion was made by Judge Carver and seconded by Judge Miller that Chris Kiser, President of the COLJ Clerks' Association and Hon. Heidi Ulbricht, Municipal Judge from Kalispell be appointed. Barbara Pepos from Sidney will also remain on the committee.

**Bench Book:** Karen Sedlock reported that Judge Duehr has agreed to rewrite the COLJ Bench Book for a flat fee of \$2500. He will begin working on it as soon as possible.

Chris Kiser asked about updating the Clerks' Manual. It is the Clerks' responsibility to rewrite the manual and have it approved by the Commission. Beth reported once it is approved, the OCA will have it printed.

## **NEW BUSINESS**

**Report on new Judges:** Currently there are five new judges that need to take the certification test. Karen Sedlock will be administering the test to Judge Nicole Brown from Baker on April 3<sup>rd</sup>. Judges Vaughn Farnstrom from Conrad, Judge Jay Sheffield from Libby, Hon. Wanda Drusch from Bozeman and Hon. Deb Winburn from Hardin will take the test on Monday, April 27<sup>th</sup>. Judge Carver reported it is the mission of the Training Judges to contact new judges within their first 30 days in office and complete their training.

Judge Carver asked if there is a policy for training judges to follow if they find an ethical violation while training a new judge and also asked if they are mandatory reporters. The Commission discussed the duty of a training and mentor judge. Their role is to train new judges and get them on the right track to make sure they are not violating the rules of ethics. This is part of their training duties.

Judge Carver stated he is confused as to what the duties are for a training judge vs. a mentor judge. Judge Knisely drafted a letter that mentor judges use, which outlines their duties. Judge Carver has not seen this letter.

**TO DO:** Karen Sedlock was directed to send Judge Carver a copy of the mentor letter.

**Affidavit Certifying that Judges Watch Training Tapes:** Karen Sedlock reported there is no form for judges that receive a training waiver certifying that they have watched the video tapes. It was suggested that a paragraph be added to the letter when the tapes are sent out certifying that they watched the tape.

**Judge Ortley reports on visit with Tom Clancy:** Judge Ortley was in Oxford, Mississippi at a training conference and spoke with Tom Clancy on training points for the upcoming Spring School. Mr. Clancy will be dividing his presentation into four sections. Some of the topics he will cover are: the 4<sup>th</sup> Amendment, Right to Privacy, Search & Seizure, Digital Evidence & Cell Phones and Recent Case Updates.

**Judge Ortley's report on his visit with Judge Smith:** Judge Ortley traveled to Bozeman to meet with Judge Smith to discuss whether limited courts must cap awards in landlord tenant cases at \$7,000. There are different practices around the state and each court may be doing this differently. Judge Ortley will visit with Klaus Sitte.

**TO DO: This item will be placed on the COCOLJ Agenda for the April meeting and Judge Ortley will report on his response from Mr. Sitte.**

**Visit to Miles City:** Judge Seiffert and Judge Stahl reported on their visit with the City Judge in Miles City. They reviewed the physical setup of the office and looked over his paperwork. The area he is conducting court in is very small and crowded. They observed a few problems in the court that were addressed and suggested he utilize the council chambers next door to conduct court business. They also visited with him extensively to make sure he has his paperwork organized and legible. Since the visit, Judge Seiffert has called to do a follow-up, but has been unable to reach the judge.

**TO DO: Judge Seiffert will make a follow-up call to the city judge.**

Judge Ortley stated the concerns expressed were training issues and would like to see a course on Judicial Administration 101 be part of the curriculum at the next certification school. He suggested contacting the Department of Administration and asking one of their trainers to present a course on issues that are unique to the limited courts. He also thought it would be good to have a course during the fall 2009 conference on how to interact with your employees in the office; to make sure the judge is in control his judicial obligations.

**TO DO: Staff will put these suggested courses on the agenda for the curriculum committee to consider.**

**Drummond City Court:** On February 2, 2009, Judge Sam Brown resigned as City Judge for the Town of Drummond. Shortly thereafter, Attorney Bryon Boggs called Judge Seiffert stating he believed they do not need a judge for the town of Drummond, but wanted to continue to collect on the outstanding fines. Judge Seiffert stated all duties of the court stopped once the judge resigned and there could be no further judicial action until another city judge is appointed.

Mr. Boggs is unhappy that the state removed the computer equipment when Judge Brown resigned. In order to avoid confusion with other courts, Mr. Nielsen suggested that the OCA's IT division develop a forms acknowledgement and procedures that courts must follow when installing their equipment.

**TO DO: David Nielsen will contact Alec Hansen, the Executive Director of the Montana League of City and Towns, and let him know of the controversy with the town of Drummond.**

**Bulletin Board:** Beth reported that the company that sponsored the bulletin board has disappeared. Their phone has been disconnected and the IT division has been unable to contact them. Beth asked the commission if they wanted the IT division to look for a new vendor. Commission members agreed it was a helpful tool and requested that a new vendor be found.

**TO DO: Beth will ask Lisa Mader to find a new vendor for the bulletin board.**

**Judicial Ethics Issue:** Judge Kober shared her letter from the Judicial Standards Commission dated February 3, 2009 and asked for the Commission's response. Because Judge Kober was unable to provide follow-up letters for this meeting, the matter shall be tabled and placed on the April agenda.

**TO DO: Staff will place this item on the April agenda.**

**Courts Withholding Names of MIP's:** Hon. Ed Williamson, JP from Dawson County sent a letter to the Commission asking if limited courts should be withholding names of MIP's from the local high schools and if the entire MIP procedure should be held in closed court? This is an issue that needs further research. Dave Nielsen and Shaun Donovan will do further research and report their findings at the next meeting.

**TO DO: Staff will place this issue on the agenda for the April meeting.**

**Madison County Court Watch:** Judge Mary Ann O'Malley forwarded a DUI/MIP Madison County Court Watch Program information sheet to Beth for the Commission's review. Judge O'Malley asked if this program exists in other counties. The information sheet gives their Mission State, Objectives and Priorities. Judge Ortley reported he had them in his court one day, but none of the other members reported knowing about it.

**TO DO: Staff will respond to Judge O'Malley's inquiry.**

**Judge Not Afraid Running for Tribal Office:** It was brought to the attention of the COLJ Commission that Judge Leroy Not Afraid is running for Chairman of the Crow Tribe. The Commission was concerned that it may be a violation of Canon 4 of the Judicial Ethics Code and Article 10 in the Constitution, which states that a judge forfeits his office upon the filing of any public office. Commission members discussed the

matter and agreed it is not a training issue but likely belongs with the Judicial Standards Commission. The Commission will wait to see if the Judicial Standards Commission takes any action.

**Nuts and Bolts Training:** Karen Sedlock reported as of January, there were 21 limited court judges that did not have their Notification and Certification of Appointment or Election filed with the Court Administrator's Office. Karen recently had a call from a county attorney stating that a defendant may challenge his felony drug conviction because the judge did not have her Notification and Certification of Appointment or Election filed with the Clerk and Recorder. Although this issue has been addressed many times at the training conferences, Judge Ortley will again stress the importance of filing this paper work to the judges at the Spring Conference.

**TO DO: Judge Ortley will put this on his topics to discuss during the Nuts and Bolts session of the Spring Conference.**

**Issues for Fall Conferences:** There were several requests for items to be placed on the Fall Training agenda.

**TO DO: Staff will forward these items to the curriculum committee for their review when they discuss the fall agenda.**

**Request for Data Base Information:** Judge McKenney received a letter dated March 18, 2009 from First Advantage SafeRent requesting all information in their data base regarding criminal and civil evictions as well as regular updates.

Judge Carver stated that the judges are not equipped to provide this type of information. It was suggested that Karen Nelson draft a letter to respond to this company and copy the letter to all limited court judges and to Chris Kiser, President of the Limited Court Clerk's Association. The letter can be distributed to the judges at the spring conference.

**TO DO: Judge Carver will ask Karen Nelson to draft a response letter.**

**Review of the Montana Public Defender System:** Last summer, Jim Taylor, then Chairman of the Montana Public Defender Commission requested the BJA Criminal Courts Technical Assistance Project to conduct an assessment of the Montana Public Defender System's initial period of operation. In response, they assembled a three-person consultant team with national experience and have been conducting site work in Montana. Their study team met with Randi Hood and several others involved with the program in Helena to develop preliminary background on the system, conducted site visits to the public defender offices in Billings, Helena, Butte and Missoula, and attended the October public defender training, and have talked by phone with a number of attorneys and others from other locales who have been involved with the system.

Their goal has been to try to cover a cross section of offices and geographical areas across the state within the resources available for the assessment. The focus of their review has been to address issues that were identified for study in Jim Taylor's technical

assistance request: caseloads, management structure, supervision and quality control mechanisms for staff attorneys and assigned counsel, process for determining indigency and fee recoupment practices, adherence to performance standards that have been developed, and office resources (staffing and other).

Judge Seiffert received an email from Caroline Cooper, Research Professor and Associate Director of the BJA Criminal Courts Technical Assistance Project asking that he talk with their study team. Judge Seiffert spent about 45 minutes on the phone explaining what the limited court jurisdiction is and expressing his concerns regarding the Public Defender System in Montana. Judge Seiffert asked if anyone has information they want to share with the consultant team, they should let him know so he can provide them with contact information.

**Violations on E-Bay:** Judge Miller asked, "If there are violations on E-Bay, who is the responsible party? Who is licensed to operate in Montana? Judge Miller had an individual in his court that purchased an item on E-Bay, they paid the asking fee and the merchandise was never delivered. Who do they file suit against and in what court?"

Judge Ortleby stated this was a good Nuts & Bolts question and if Judge Miller would put it in writing, he and Judge Orzech will do some research and address it during their Nuts & Bolts session in April.

**Ensuring Access to Justice in Tough Economic Times:** Judge Ortleby provided an article written by Frank Broccolina and Richard Zorza on Ensuring Access to Justice in Tough Economic Times. The article appeared in the November-December 2008 JUDICATURE Volume 92, Number 3.

**Next Curriculum Committee Meeting:** Judge Seiffert announced that the next COLJ Curriculum Committee meeting will be Monday, April 27<sup>th</sup> from 9:30 am to 11:30 am at Grouse Mountain Lodge in Whitefish.

**Next COCOLJ Meeting:** The next Commission meeting will be held on Monday, April 27<sup>th</sup> from noon to 3:00 p.m. at the Grouse Mountain Lodge in Whitefish. Lunch will be provided.

The Commission will decide at that time if there will be a May 15, 2009 Commission meeting.

**Adjournment:** The meeting adjourned at approximately 11:35 a.m.