

MINUTES

Commission on Courts of Limited Jurisdiction (COCOLJ)

Helena, MT

January 20, 2012

Members Present: Hon. Gary Olsen, Hon. Steven Fagenstrom, Kelly Addy and Bernie Cassidy

Members Participating Via Video or Telephone: Hon. Perry Miller, Hon. Larry Carver, Hon. Don Neese, Hon. Doug Harkin, Hon. Marie Andersen, Jennifer Boschee and Peggy Tonon

Members Absent: Randi Hood

Staff Present: Shauna Ryan

Guests: None

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

PUBLIC COMMENT: None

MINUTES: The minutes from the November 18, 2011 meeting were reviewed. A motion was made by Kelly Addy and seconded by Peggy Tonon that the minutes be approved as written. The motion passed unanimously.

OLD BUSINESS:

Waivers for the COLJ Schools – Policy on repeat requests for waivers: Peggy Tonon reported that she and Judge Harkin came up with some suggestions for handling repeated requests for waivers at the COLJ conferences. 1) Initially, an informal visitor, likely a Commission member, will follow up personally with a judge who frequently requests a waiver during the course of a conference. 2) If requests are made to be excused during the course of the conference, members of the waiver committee have agreed to be accessible by cell phone during the course of the conference. 3) With the exception of an emergency, anyone wanting to leave a session during the school must fill out a written waiver form and have it approved by the waiver committee in advance; and 4) A form will be drafted for those with approved waivers who must later watch the video of the sessions missed, wherein they swear and sign that they have indeed watched the video. Judge Harkin stressed that the Commission needs to be sure not to make false assumptions or conclusions. Judge Harkin will work with Ms. Tonon to draft the forms. If a waiver is denied, the requestor would have an opportunity to appeal to the whole Commission to explain why they felt the waiver committee was in error. Judge Olson suggested that the waiver committee continue its work on these policies and report back to the Commission at the next meeting. Judge Harkin indicated that he and Peggy would get together and work on the changes to the waiver policy and report back to the Commission in February.

The Commission also discussed the issue of how best to gather the judges back into the conference room after breaks. The judicial education coordinator will ring a bell three minutes

prior to the commencement of each session, and close the door one minute prior to commencement.

TO DO: Judge Harkin agreed to draft the policy and send it to Peggy Tonon for her review and comments.

Spring 2012 Agenda: Shauna Ryan gave an update on the status of the conference agenda.

TO DO: Peggy Tonon agreed to contact Sam Panarella from the Law School regarding whether he would be willing to present on contract case law at the conference. Shauna Ryan agreed to notify Mr. Sitte and let him know the Commission would like part of his presentation on contract case law to also address lot rent removal in mobile home parks and the sale of storage unit content. Judge Carver agreed to contact Judge Muth regarding the direction of his presentation on contempt.

Contempt Handout by Judge Muth: Shauna Ryan agreed to forward the draft to Judge Harkin and Peggy Tonon for their review and consideration. The handout will be presented to all of the judges at spring conference.

TO DO: Shauna Ryan will forward the draft to Judge Harkin and Peggy Tonon.

Establishment of an Access to Justice Commission: January 5, 2012, the Supreme Court ordered that public comments would be accepted on the Equal Justice Task Force's "Petition to Create [an Access to Justice] Commission and Formalize Structure" for a period of sixty (60) days. Comments shall be filed in writing.

NEW BUSINESS:

Aggravated DUI: Erin Inman appeared and addressed the numerous issues surrounding the new Aggravated DUI statute.

Judge Fagenstrom requested that Ms. Inman address blood draw warrants and who has the authority to do what. Ms. Inman is encouraging every jurisdiction to have a restraint chair. Officers are allowed to use force as long as it's an amount reasonable and necessary to execute the warrant. The use of a taser is not encouraged. Options available are: 1) ensure that there are enough officers on hand to get a defendant into the restraint chair; 2) charging a resistant defendant with obstruction of justice; and 3) charging a resistant defendant with tampering with evidence.

Judge Carver indicated that he had fielded several questions on jurisdiction of the sitting judge in small jurisdictions to issue the search warrant. Judges are confused about jurisdiction when county lines are crossed. They may have subject jurisdiction over the crime but do not have jurisdiction over the search warrant. Ms. Inman indicated that she would research the issue and follow up with Judge Carver.

Ms. Inman gave a brief summary of the history of the Aggravated DUI bill. There was an interim DUI committee two years prior to the last legislative session. One of the issues recognized was the second and third time offenders, often times referred to as hard core drinkers

and drivers, are the ones most likely to recidivate and also the ones that are harder to “cure”. The committee wanted to figure out a way to address those hard core drinkers and drivers, without making second or third offenses a felony. Near the end of the interim session, Yellowstone County came forward with a proposal for an Aggravated DUI bill, which was somewhat modeled after Arizona’s Aggravated DUI statute. Senator Jent sponsored the bill. The original Aggravated DUI bill had some pretty severe consequences for those second and third time offenders. They included up to two years of probation with the intention in the sentencing provisions to give the judges more authority to keep the offenders in DUI court for a longer period of time or under supervision in general. The bill made it out of the senate as drafted, but when it got to the house the sentencing provisions were gutted. The issues with the bill as it now stands are: 1) Is Aggravated DUI a standalone offense? It was always intended to be a standalone offense, not an enhancement. It’s a third type of DUI offense in Montana (DUI, Per Se, and Aggravated DUI). It’s a charge that would count towards a felony DUI. 2) Is double jeopardy triggered if a county attorney charges a defendant with both DUI and Aggravated DUI? It has to be determined by the judge whether or not double jeopardy is triggered. Right now it is permissible for a prosecutor to take a stance that double jeopardy is not triggered and therefore they do not have to charge in the alternative. DUI and/or Per Se are required in order to convict a person with Aggravated DUI. Ms. Inman indicated that the prosecutors she’s dealt with are not seeking two separate convictions if the individual is charged with two DUI offenses. 3) Are drivers’ licenses suspended as a result of aggravated DUI convictions? Records and Driver Control Bureau Chief Greg Noose’s position is that licenses should be and are being suspended as a result of an aggravated DUI conviction. Ms. Inman agreed to forward a copy of the letter Mr. Noose sent to a city judge in response to the question. Judge Carver will then forward the letter to all of the courts of limited jurisdiction. 4) Other consequences (ACT, ignition interlock)? Judges have general sentencing authority to sentence individuals to anything rationally related to the underlying offense.

Ms. Inman is working with Judge Knisely and David Carter, who is the author of the bill, to provide a webinar for any interested judges. The intent is to conduct the webinar prior to the spring COLJ conference.

Storage Units and Selling of Personal Property: Judge Fagenstrom referred Judge Neese to MCA, §30-7-209 and 30-7-210, the statutes regarding liens for warehouse stored goods and how to foreclose on those liens.

Reducing Notarization: Kelly Addy advised that his office was recently made aware that the requirement that everything be notarized in filing a criminal case was relaxed during the last legislature. Notarization is not necessary, as long as the person who swears to the charges acknowledges the penalty for perjury. Judge Carver clarified that under MCA, §1-6-105 (3), it states “This section does not apply to writings requiring an acknowledgement, deposition, oath of office, or oath required to be taken before a special official other than a notary public.” This law applies more to the notary publics. Kelly Addy suggested it did, however, dispense of the need to have a notary with a signature on an Information filed over the signature of a sworn officer, prosecutor or a fact witness.

Judicial Ethics: Judge Miller indicated that the commission had recently fielded a number of questions and concerns related to judicial ethics. Peggy Tonon suggested that it be an ongoing topic for discussion at the COLJ schools. Judge Miller refers those with ethical concerns to the Judicial Standards Commission. It may be beneficial to have one of the Supreme Court Justices

do a short presentation on the issue at the next conference, possibly Justice Cotter or Justice Wheat.

TO DO: Shauna Ryan will contact Justice Cotter or Justice Wheat to see if one of them would be willing to present on the topic at the spring conference.

Civil Procedure: Judge Miller reported that there are a number of judges who inject themselves into the process and want to become a part of the action. In civil process, without a motion or request from the plaintiff or respondent, the judge should not take the initiative to inject himself into the proceeding.

Requirement under 3-1-1502, MCA – Filing of Certificates of Training by COLJ: Judge Miller reported that the only certification that must be filed with the clerk and recorder is the certification at the beginning of the judge's term of office and after each general election. (Rule 4(5) of the Rules for Courts of Limited Jurisdiction Training and Certification of Judges)

Inquiry by Judge Barger: Is it a conflict to use a representative or senator as a substitute judge? After discussion amongst the Commission it was the unanimous decision that it would be a conflict of interest to have a current legislator serve in the capacity as a substitute judge. Judge Barger is referred to the Constitution of the State of Montana, Art. V, §Section 9.

Next Meeting Date: The next meeting will be February 17, 2012, at 8:30 a.m. in Helena.

Meeting Adjourned: The meeting adjourned at 12:00 p.m.

July 5, 2012