

MEETING MINUTES

Commission on Technology

March 24, 2022

MEMBERS PRESENT

Justice Shea, Chair

Peg Allison, Flathead Clerk of District Court

Judge Audrey Barger, COLJ Automation Chair (Hill County Justice Court Judge)

Judge Stacey Nerison, Dawson County Justice Court Judge

Judge Randal Spaulding, 14th JD District Court Judge

Mars Scott, Public Member

John Mudd, Executive Director State Bar of Montana

Representative Ken Holmlund, Member of Legislature

Beth McLaughlin, Supreme Court Administrator

Bowen Greenwood, Clerk of the Supreme Court

Christine Mandiloff, State Law Librarian

Lisa Mader, IT Division Director

Tim Kosena, IT Security Officer

Kyle Schmauch, Senate Aide to Leadership (Public Member)

Justice Shea called the meeting to order, and the committee reviewed the July 14, 2021 meeting minutes.

Motion

Judge Barger made a motion to approve the minutes as amended, changing the word Claim in the MEMBERS PRESENT list to Christine Mandiloff, State Law Librarian. Bowen Greenwood seconded the motion. Motion passed unanimously.

PROJECT UPDATES

Lisa provided updates for the FullCourt Enterprise and Electronic Filing projects. Representative Holmlund asked how and where the Asbestos Court work is done. Beth explained that 600 plus cases from exposure to asbestos in Lincoln County have been dormant for nearly 15 years because of bankruptcies. There is a statute, passed in the 2001 legislature, that allows for the creation of an Asbestos Court but because there was no funding provided, the court was setup with internal judicial resources. Beth and Justice Shea explained that District Court Judge Eddy manages all her 11th JD caseload, as well as all administration of the asbestos cases to get them ready for trial in the Asbestos Court. There are 7 rotating district court judges that will hear these cases. The first trial finished up about 3 weeks ago in Cascade County and resulted in a substantial settlement.

SECURITY PROGRAM UPDATE

Tim Kosena provided a brief update regarding the branch's security program activities. He explained that the branch experienced two phishing incidents recently where multiple users in a single office interacted with the bad actor. These users have had some additional security counselling, supplemental material have been provided and they have been assigned additional security awareness training.

Tim explained that the Security Awareness Training continues with 83% of state employees completing the training and 77% of county users completing the training. He explained that the Judicial Branch leads the Executive and Legislative branches in campaign completeness.

PUBLIC ACCESS TO COURT RECORDS

Beth McLaughlin explained that the code for Montana's multi-tenant public access portal was delivered to IT the week before this meeting. IT will be working with the vendor to get the development and production environments stood up and functional. Beth explained that the purpose of these rules are not intended to address the official court record available through the clerks offices but are intended to address the web based search that will be made available through the portal.

Beth stepped through the changes made to the rules since the July 14, 2021 meeting, specifically Representative Holmlund's comments; 1) format of written requests for correction to court records; and 2) reasonable time to respond to written request for access to information.

Peg Allison commented that she didn't feel it was necessary to dictate the format of a response for a written information request. Christine Mandiloff commented that she would be in favor of a format for these type of requests as pro se litigants are often at a loss as to how to make the requests. Christine stated she would be willing to talk to the Self Represented Litigants Committee about this form and report back to the COT at the next meeting. Judge Barger commented that she would take any format for this type of request but understands a format could be easier for pro se litigants. Mars Scott commented that it would be a good idea to have a form available but a disclaimer that indicates it is not required to be used. Justice Shea commented that the form should help facilitate the process but not be an obstacle. Mars Scott noted that the statement of ".....shall be no longer than two pages in length" should be removed as it's arbitrary. Beth will remove that statement from the rules.

Peg Allison stated that it seemed prudent to put a deadline on a request for information, i.e. 15 days or 30 days and stated she would prefer it be 30 days. Judge Nerison agreed that a reasonable deadline was a good idea and would support a 30 day deadline, particularly for the larger busy courts. Judge Barger commented that a 30 day deadline would be preferable as it will take time to research whether the issue is a clerical error or a party misunderstanding. The research may take some consultation with county attorney, law enforcement, etc.

A link to the change form will be added to the landing page.

Lisa Mader walked the committee through the Public Portal disclaimers. Judge Barger requested a change to the NOTE portion of the disclaimers. The statement currently reads – NOTE: public records not available through the public access portal are available at each individual county courthouse. It will now read NOTE: public records not available through the public access portal may be available at each individual county courthouse.

Beth explained that we would make these changes, get the environment set up and then send a link to the COT members to examine and suggest additional changes to the landing and disclaimers page.

Next Steps – Revisions to the Rules for Public Access to Court Records will be on the April 5, 2022 Montana Supreme Court Public Meeting.

RECORDS MANAGEMENT POLICY / REVISED EMAIL RETENTION POLICY

Beth McLaughlin reviewed the new records management policy, explaining that it's the framework for records retention and disposal pursuant to federal and state guidelines. She pointed out that the policy does not apply to case files and court records kept by the clerk. She also noted that the exclusion of the Clerk of the Water Court was an oversight and will be added to the policy.

Beth then reviewed the revised Judicial Branch email policy. She noted the first change is around personal devices that aren't up to date or compliant with state requirements, the branch will not be able to provide access to email on these devices. The next change is specifically around retention of email and dovetails with the records retention policy. The last portion of changes speaks specifically to what happens to an email box when an employee terminates. She also made it clear that these policy changes do not apply to the city/county judicial branch users, only judicial branch state employees.

Next Steps – the records retention and revised email retention policies will go before the court for approval during the April 5, 2022 Montana Supreme Court Public Meeting.

HB0091 EXPUNGE CONVICTIONS / FAILURE TO REGISTER AS SEX OFFENDER

Peg Allison explained that there are a couple of questions because HB91 and the direction in statute are not quite clear. Peg explained that violent offenders who were convicted of failing to register or keep registration current, after having successfully registered for 10 years, and whose conviction occurred before October 1, 2021 must have their conviction vacated. The statute then goes on to say that within one year of that effective date, the Department of Justice shall provide notice to the appropriate district court for each conviction as described. Upon receiving the notification from DOJ, the district court shall, on its own motion, vacate the offender's conviction for failing to register. By December 2021 Peg started receiving calls and questions about the definition of a court proceeding and expunge in relation to this new statute.

Committee discussion. Judge Barger provided the definition of expunge under the 46-18-1103 but noted that the statute specifically points to the Department of Justice systems. Judge Spaulding asked whether anybody

had contacted the bill sponsor with regard to the intent of the legislation and wonders if it would be best to request some clarifying legislation during the next session. Justice Shea commented that these kinds of things will get resolved in one of two ways, either bringing it before the legislature for amendments or through a court challenge. Representative Holmlund stated that it was stressed heavily during the last two sessions to make legislative intent as clear as possible but this one clearly slipped through the cracks. He also agreed that bringing it back to the legislature may be the best process to make it clearer for judges and clerks.

Peg explained that in FullCourt Enterprise a criminal finding of expunged has already been created but wondered if the idea of a case status of expunged should be discussed with the District Court Council (DCC) as it would be a change to the Uniform Case Filing Rules. Beth agreed that it could be brought before the DCC.

Peg further explained that the DC Automation Committee would submit a request for a new case sub-type of "Expunged" to the criminal (DC) case type. The expunged sub-type would be sealed and not enabled in e-filing so there would be no problem with expunged records being viewable by counsel.

CRIMINAL JUSTICE DATA COLLECTION

Beth explained that the legislature passed a study bill to look at the collection of criminal justice data and how it could be centrally collected for planning purposes. Beth shared the three proposed bills that came out of the study. The bills were received from the Law and Justice Interim Committee (LJIC). The LJIC is specifically asking for feedback from the Judicial Branch. Some of the items that they're asking for directly affect the folks that gather and input the information, such as the city and county partners. Beth's intent for bringing this to the COT is to provide her thoughts on responding to the request and to get the Commission's blessing.

Beth explained that the first bill draft requires the county partners to collect a significant amount of data and transfer it to some central location. In an ideal world we'd have all that data in FullCourt Enterprise and could share it with the central criminal justice entity. The simple reality is that much of what the legislature is interested in receiving, the clerks do not get or FCE doesn't store. So, there are some significant challenges with this piece of legislation and the clerks would not be able to comply with the requirements.

Beth believes the second draft is a great piece of legislation. It creates a committee across the different branches to develop a process for delivering, collecting, and managing the data. She would like to respond that we support the second draft and would be happy to be involved.

The third draft bill suffers from some of the same problems as the first, meaning the local government entities would be expected to provide information that they don't collect and don't have the ability to transfer in a machine-readable way. It would put a lot of pressure on the collecting entities and the courts.

Beth asked the committee for a general stamp of approval to respond and say that we really like HJ 31-2 and think it's a good direction to attaining solid system wide criminal justice data, but that HJ31-1 and HJ31-3 are a bit premature and will create significant compliance problems for the local government entities. She also

wants to be clear that the court system is not a criminal justice agency, that criminal filings only make up about 20% of all court related business.

Committee Discussion. Peg Allison thanked Beth for the explanation and indicated that she completely agreed with Beth's thoughts. She further stated that whether it's a good piece of legislation or not it's quite overwhelming and would create serious problems for the clerks of court. Judge Nerison agreed that it was quite overwhelming. Judge Barger commented that she agrees it is quite overwhelming and believes that some of the information that is being requested of law enforcement or county attorney offices simply isn't there. She'd hate to see a traffic stop taking such an extraordinary amount of time to collect all the data required, particularly when it's a \$20 traffic ticket. She also felt that some of the information being requested is subjective and is concerned that information getting reported would not be accurate as there is no way to verify it.

Beth felt that the commission had provided the feedback necessary and the blessing to say HJ31-1 is not attainable and the courts would not be able to comply; HJ31-2 is a great piece of legislation and we'd be happy to be involved; and HJ31-3 creates an expectation to provide information that the courts either don't collect or could not transmit in a machine reachable way.

2023 STRATEGIC PLAN REFRESH

Lisa Mader reviewed the DRAFT Information Technology Strategic Plan 2023 Refresh and explained that little had changed from the 2021 Strategic Plan because of the modification of the planning cycle. The time between the 2021 and the new 2023 planning cycle did not allow for significant changes to the objectives and goals of the 2021 plan. She noted that Page 2 of the 2023 refresh explains the reasoning behind the little change to the plan and also identifies the 3 specific priority areas for the next biennium: 1) Continued Rollout of FullCourt Enterprise (Goal 2, Objectives 3a, 3b ~ Page 11); 2) Continued Rollout of Montana Courts Electronic Filing (Goal 2, Objectives 3d, 3e ~ Page 11); and 3) Courtroom Technology Improvements – HB10 2023 Legislative Proposal (Goal 3, Objectives 1a, 1c, 1d ~ Page 12).

Motion

Judge Spaulding made a motion to approve the Information Technology Strategic Plan 2023 Refresh. Judge Nerison seconded the motion. Motion passed unanimously.

HB10 COURTROOM TECHNOLOGY 2023 LEGISLATIVE PROPOSAL

Beth explained that we've learned a lot about video and interactive technology, specifically due to the quick pivot we were forced to undertake during Covid. We have found that the judges really like the ability to provide remote appearance options. Currently, we are somewhat limited because of the camera and audio structures installed in many of the courtroom across the state. The HB10 proposal will be to upgrade the video conferencing systems to more robust, multi-camera systems. She further explained that the branch is having increased difficulty in recruiting court reporters, but court can't be held without a court reporter so having a robust video and audio system in the courtrooms will allow for more remote court reporting and provide

coverage to courtrooms in parts of the state from different locations. The reasons for the proposal; expanded availability of remote hearings, attorneys, judges, and litigants appreciate the option, it's cost effective and meets the long-term obligation, given the court report discussion. In addition, Beth explained that she had a discussion with the Budget Director who is supportive of one-time proposals that would provide efficiencies across the state.

Representative Holmlund commented that it's critical that the bill sponsor for the proposal has highly detailed information about the proposal when the bringing it forward during the 2023 session.

Lisa displayed a map of the 2023 HB10 Courtroom Technology proposal. She explained the representation of the 3 different colors on the map: Light blue color are counties that either have video systems in place or will be getting video systems in the next several months. This equipment was purchased through a 2015 HB10 proposal which was the branch's first refresh of aging courtroom technology equipment. Lisa further explained that the counties in light green and the counties in dark blue are the equipment purchases proposed for the 2023 HB10 proposal. The counties in light green are counties that don't require such a robust system but that could see an efficiency with a simple, updated video system. The solution is really based on the size of the courtroom and the caseload in those counties. The dark blue color are the 9 counties (35 courtrooms) that make up 75% of the caseload in the state of Montana. In these courtrooms the proposal is for a multi-camera, multi-television video conferencing solution. One camera would be pointed at the judge and witness, one at the jury, and one at the counsel table, with multiple cameras throughout the courtroom so all angles can be seen. Multiple cameras will also provide a more "in-person" like experience for those appearing remotely. The total proposal is \$850,000.

Lisa further explained that a highly detailed spreadsheet of the proposed purchases will be submitted with the HB10 proposal and in support of the sponsor carrying the bill.

Motion

Judge Barger made a motion to support the 2023 HB10 Courtroom Technology Legislative Proposal. John Mudd seconded the motion. The motion passed unanimously.

NEXT MEETING

The next meeting will include a demonstration of the Montana Public Access Portals, as well as additional topics that arise between now and then. Lisa will send out a meeting poll for the next COT meeting to be in late September/October 2022.

The meeting adjourned at 11:44 a.m. on March 24, 2022.