

MINUTES

Commission on Courts of Limited Jurisdiction
301 S Park Ave, Room 328, Helena, Montana
February 17, 2006

Chairman, the Hon. Johnny Seiffert, called the meeting to order at 8:35 a.m.

Members Present: Hon. Johnny Seiffert, Hon. Mary Jane Knisely, Hon. David Ortley, Prof. Margaret Tonon, and Sharon Skaggs were present via video. Paul Luwe, Hon. Doug Harkin, Hon. Gayle Stahl, and Hon. Perry Miller attended via conference call.

Member Absent was: Justice Jim Nelson, Hon. Scott Wyckman and M. Shaun Donovan.

Staff Present: Beth McLaughlin

Guest: Hon. Gail Beckham via video, Karen Nelson, IT director and Brenda Nordlund, Assistant Attorney General.

PUBLIC COMMENT: No public comment

MINUTES: A motion was made by Prof. Tonon and seconded by Mr. Luwe that the minutes of the January 20, 2006 meeting be adopted as written. The motion passed unanimously.

OLD BUSINESS:

On-line Training: Judge Harkin stated he has been working on his Evidence web/based course. Judge Harkin will do more work on the project and give an update at the next meeting.

TO DO: Judge Harkin will provide an update on his WebEx course on Evidence at the next meeting. Staff will put this on the agenda for March.

Report on Access Procedures of the Bulletin Board:

The Commission considered a proposed access procedure for the limited court judges and clerks' bulletin boards. Judge Knisely presented information she gathered about public access. The Commission discussed potential concerns about board access. The Commission discussed the need to limit the access to judicial officials only as judges may be asking for advice on issues that may affect opinions or judicial work product. Prof. Tonon made a motion to approve the access policies with the suggested changes; Judge Knisely seconded the motion. The motion passed unanimously.

TO DO: Staff will update the access procedures as directed by the Commission. Procedures will be distributed to judges at the spring school. Staff will add the new disclosures to the bulletin board site.

New Judges' School - November: Judge Seiffert asked if the Commission could pay for the trainers' to attend the new judges portion of the certification school in the fall. The Commission agreed to pay weekend hotel costs and per diem for training judges at the new judges' school. The Commission will determine the number of trainers later in the year. The Commission also decided that all newly elected judges would be required to attend the weekend session and that any new judges appointed within the past year would be invited but not required to attend.

TO DO: Staff will make weekend training rooms available and will coordinate hotel room costs. Staff will notify judges of the mandatory attendance shortly after the election. Judges will one year or less on the bench will also be invited to attend.

Issue from Hon. Gail Beckham: Judge Beckham joined the Commission via video. She wanted advice about how the two JP courts in Rosebud County could manage the current active cases in FullCourt when the courts merged in January 2007. Judge Beckham indicated that her preference would be to merge the two dockets. Karen Nelson stated that doing this would likely be expensive. Commission members had several suggestions, which Ms. Nelson agreed to research. She will provide information directly to Judge Beckham and the Commission.

TO DO: Staff shall place the item on the March agenda for report from Karen Nelson.

Jury Status Report: Karen Nelson notified the Commission of a possible problem with the jury lists. She was notified by the Secretary of State's office that the voter system operated by the clerk and recorders in the counties would not have functionality to pull a jury list. Under the current statute, some limited courts get their jury lists from the clerk and recorder. Some get the lists from the clerk of district court, which uses a different system. Ms. Nelson wanted advice from the Commission on how to handle this situation. The Commission recommended that Ms. Nelson send a letter to the limited court judges recommending that they talk with the district court clerk in their county and ask him/her to provide the jury list. Judge Ortlely noted that he would cover the issue during nuts and bolts.

TO DO: Karen Nelson will prepare and send a letter to judges advising them of the potential problem with jury lists from the clerk and recorders.

Certification Conference and Testing: Judge Harkin reviewed the testing committee's meeting and proposals for the Commission. He reviewed a position paper with information about the test questions and advice for speakers. Commission members requested that the information he prepared about test questions be forwarded to all speakers. Test questions are due back by June 2006. The testing committee will evaluate all questions and approve a scoring system during the summer. Staff was asked to determine if it's possible to develop a scoring overlay or computerized scoring system to make scoring the tests easier. The testing committee will decide whether to use random numbers or names on the tests when they work on the scoring system.

The Commission debated at-length the issue of whether the test should be open book or not. Commission members agreed that it was important for judges to learn to use tools that they need to use on the bench. To that end, the Commission approved the use of evidence books and the law enforcement reference guides during the test.

TO DO: Staff will send the question guidelines to speakers along with a reminder that questions are due in June. Judges will be notified in the spring and again before the fall school that they need to bring the Law Enforcement Reference Guide and Rule of Evidence books to the fall school to use during the test. (Books will be provided for newly elected judges.) Judges will also receive the tips for taking the test from Judge Harkin's handout.

Resource Room for New Judges: Beth reported that several newly appointed judges are interested in having a resource room available at the spring school. Judge Seiffert suggested that staff ask Judge Carol Anderson if the training judges would be able to staff the room on several evenings.

TO DO: Staff will ask Hon. Carol Anderson to provide training support to a resource room at the spring school.

Leadership Institute: The institute has not provided dates yet.

TO DO: Staff will place this on the March agenda.

Sentencing Orders: Judge Harkin reported that he talked with the Missoula judge about sentencing orders and clarified the issue with Catherine Truman, Assistant Attorney General. Judge Ortley will also address the issue at Nuts and Bolts in the spring. Judge Knisely will provide sample sentencing orders for the conference book.

Statutory Conflict: Judge Knisely brought a concern that she had to the Commission regarding statutory conflict on jail day credit against fines. She noted there are three different rates and is uncertain how to apply them? Three different statutes provide three different directions. Commission members agreed that the statutes don't mesh. Judge Knisely made a motion to request that Mr. Luwe request an attorney general's opinion. Judge Harkin seconded the motion, which passed unanimously.

TO DO: Mr. Luwe will request an AGs opinion about the conflicting statutes governing credit for time served.

Accounting Manual: Judge Herman wrote a letter to the commission expressing his concern that he is reluctant to share a trust account with any other judge without some authority from the Supreme Court. Because of the statutory liability placed upon each judge to account for all funds received by that judge, questions arise whether two or more judges can share the same trust account. Under the uniform accounting system each judge must maintain a separate trust account into which fines and fees are deposited. Ms. Skaggs reported that the issue was resolved and said that no further discussion was necessary.

NEW BUSINESS:

USA v Scott: Staff was asked to bring the case to the Commission for review, as it might be a training issue for judges. The case involves whether pretrial drug testing and drug searches are permissible. The Commission recommended that the case be noted during Nuts and Bolts and that a copy be provided to judges.

TO DO: Staff will put a copy of the case in the conference binder.

State V Mizenko: Commission members also asked that this case be noted during Nuts and Bolts.

Flathead County JP: Judge Ortleby reported that Flathead County would have two full-time JP courts of record starting in January 2007. He said that the County Commission adopted a resolution requiring that the judges must be attorneys. He understood they would be rescinding that requirement based on complaints from local people.

Judge Richardson Certification: Staff reported that Judge Sharon Richardson, the new St. Ignatius city court judge, requested that she not be required to take the certification test. At the time of the last certification test (November 2002), Judge Richardson was the Lake County Justice of Peace. She took and passed the test at the time. She was then off the bench until January 2006. The Commission discussed the issue at length. Members were concerned that she had not retained her certification, as she had not attended classes as a sitting judge for three years. Certification is an on-going process requiring updating every six months. Absent that, she needs to demonstrate her knowledge of necessary topics and must retake the certification.

TO DO: Staff will draft a letter for Judge Harkin, waiver committee chairman, notifying Judge Richardson that she is required to take the certification test within six months of her appointment.

City of Billings v Gonzales: Brenda Nordlund, Assistant AG, appeared at the request of the Commission to discuss this case, which involves driver's license suspension for a defendant without a valid driver's license. Ms. Nordlund said they would not be petitioning for rehearing but would address the issue in the 2007 Legislature. She said that they are taking the position that it only applies to 61-5-212, MCA although defense attorneys may make different arguments in court. She believes the limited courts will see the initial challenges first.

TO DO: Commission members recommended that this be added to Nuts and Bolts.

Bail Upon Appeal: Ms. Skaggs brought an issue from the Gallatin County Justice Court regarding bail upon an appeal. The Commission wanted time to review the information so it will be placed on the next meeting agenda.

TO DO: Staff will place bail issue on March agenda.

Next Meeting Date: The next Commission meeting will be Friday, March 17, 2006 in Room 328 of the Court Administrator's Office, at 301 S Park Ave, in Helena, Montana. The meeting will begin at 8:30 a.m.

Adjournment: The meeting adjourned at approximately 11:55 a.m.