

MINUTES

Commission on Courts of Limited Jurisdiction
301 S Park Ave, Room 328, Helena, Montana
October 20, 2006

Chairman, the Hon. Johnny Seiffert, called the meeting to order at about 8:45 a.m.

Members Present: Hon. Johnny Seiffert, Prof. Margaret Tonon, Hon. Scott Wyckman, Paul Luwe, Hon. David Ortley, Hon. Mary Jane Knisley, Hon. Gayle Stahl, and Hon. Perry Miller.

Members Present by Videoconference: Sharon Skaggs.

Member Present by Tele-Conference: Hon. Doug Harkin.

Members unable to attend were: Justice Jim Nelson and M. Shaun Donovan.

Staff Present: Karen Sedlock and Beth McLaughlin.

Guest: Hon. Larry Carver

PUBLIC COMMENT: None.

MINUTES: A motion was made by Hon. Dave Ortley that the minutes of the September 15, 2006 meeting be adopted as written. Hon. Mary Jane Knisley asked that an amendment be made to the section entitled **Diversions Program** by adding the following sentence: This mandatory minimum jail time cannot be served on house arrest but can be served at an alternative Department of Corrections approved facility. (ie. pre-release center, community corrections facility). The amended motion was seconded by Paul Luwe and passed unanimously.

OLD BUSINESS:

New Judges Training

Judge Seiffert obtained a course outline of the new judges basic training agenda and distributed to all commission members. The training will begin Saturday, November 11th at 12:00 noon and go until 6:00 p.m. Then resume on Sunday, November 12th at 12:00 noon and finish around 6:00 p.m. All COLJ judges on the bench one year or less must attend basic training.

Holding Defendant's in Jail for Nonpayment of Surcharges

The Commission received a letter dated September 6, 2006 to Judge Beckham from Sgt. Alan James of the Rosebud County Sheriff's Office asking the Judge how long someone can be held in jail based on inability to pay surcharges. The commission reviewed the letter and decided the topic would be a good training issue for next spring.

The Commission reviewed a letter that Judge Beckham wrote to the Commission; Judge Seiffert also contacted her to discuss the issue. Karen Sedlock notified Sgt. James that a Commission member will be discussing the issue with Judge Beckham and that the topic would be placed on the Spring COCOLJ 2007 Conference Agenda.

TO DO: Staff will place this issue on the agenda for the Spring Training Conference.

When is a Child Allowed to Drive after License is Seized by the Court for MIP?

At the September 15, 2006 COCOLJ meeting, Peggy Tonon brought a Memo to the Court from Deputy Missoula City Attorney, Gary Henricks, concerning problems in a court's policy allowing parents to decide when a child may or may not drive after their license is seized by the court for a MIP. He states the Municipal Court's present practice of allowing the parents to determine when the child may drive violates the provisions of the law. Judge Ortley will review the memo and applicable statutes applicable and report his findings back to the Commission at their November, 2006 meeting.

TO DO: Judge Ortley will review the applicable statutes and report to the Commission at the November 2006 meeting.

Calculating Convictions for MIP's

Judge Ortley researched the issue of MIP's that pre-date the offenders 18th birthday being counted when calculating the number of prior convictions for an offense occurring after the offender's 18th birthday. He reports under the provisions of the Youth Court Act, records of informal dispositions, and formal adjudications, for offenses committed prior to the juvenile's 18th birthday are to be sealed or destroyed. Absent a narrow exception, and an order of the district court, the records are confidential, **and convictions are not to be counted as prior offenses** for purposes of charging or sentencing on subsequent offenses committed as an adult.

Members suggested that this information be shared with the judges at the fall school. Paul Luwe found an Attorney General's Opinion that addresses this issue. Judge Ortley will review the Opinion and have a telephone conference call with Shaun Donovan and Paul Luwe and report back to Karen Sedlock whether this should be included in the material to be distributed in the Judges' workbook or if it is an issue that can be address by Shaun Donovan in his Juvenile Offenses presentation.

Judge Seiffert would also like to see law enforcement notified of how MIP's are calculated prior to age 18.

TO DO: Judge Ortley will review the AG's Opinion and have a telephone conference call with Shaun Donovan and Paul Luwe, then let Karen know how they want the material distributed.

Diversion Program

Judge Seiffert received a call from Judge Odlin regarding whether he can give a diversion program such as House Arrest or work release for a DUI conviction. The commission members state that statute mandates jail time unless there are medical reasons that prohibit it. This mandatory minimum jail time cannot be served on house arrest but can be served at an alternative Department of Corrections approved facility. (ie. pre-release center, community corrections facility).

Judge Seiffert discussed the issue with Judge Odlin and asked him to put his concerns in writing. The Commission will take no further action unless a letter is received.

Public Defender Taking Cases of Persons not Facing Jail Time

At the September meeting Judge Seiffert reported to the Commission that the Public Defender's Office is taking cases of persons not facing jail time, because it is in the "best interest of justice".

Paul Luwe discussed this issue with regional district lawyers and was told by Randi Hood that the Public Defender's Office is in the process of developing standards, which can be viewed on their web-site. Her office is seeking public input prior to the rules being adopted and his would be a good vehicle to address concerns and make recommendations.

Peggy Tonon talked to Jim Taylor and Mr. Taylor would like the judges to articulate the problems that they see in their courts and he will pass on the information to the Public Defender's Commission at the next meeting.

Shaun Donovan received information from Ed Sheehy, but it was received after the meeting adjourned, so it will be shared with the Commission members and placed on the agenda for discussion at the meeting in November.

Judge Knisley stated this is a training issue and needs to be addressed by the Public Defender's Office.

TO DO: Peggy will pass along the information she obtained from the judges to Mr. Taylor. Staff will place Ed Sheehy's response on the agenda for the November meeting.

Case Bonds on Defendants

Judge Seiffert received a letter from Ben Thielen of AA Bail Bonds in Butte, Montana. Mr. Thielen is concerned that Judge Lee is asking defendants to post cash bonds and not allow them to post a commercial Surety Bond. This has happened 5 times in the past two weeks and he is asking the Commission to explore these practices.

The commission finds that the statute is clear that a judge cannot prohibit a defendant from getting a commercial Surety Bond. Judge Wyckman was asked to contact Jude Lee regarding this issue. Judge Wyckman reports that he and Judge Lee kept missing each other.

TO DO: Judge Wyckman will contact Judge Lee again regarding his procedures.

Notice of Bond Forfeiture

Judge Seiffert brought a letter to the Commission dated August 10, 2006 from Judge Bailey and Judge Chute. The letter informs the Bondsman, Mr. Earl Rowe that he has 90 days to produce the defendant for appearance or forfeit the bond; if you do not bring this defendant before the court in that amount of time, Ravalli County Justice Court will not longer accept Surety Bonds from your company. Judge Seiffert discussed the issue with both parties and the matter has been resolved.

Municipal Courts and Mental Health Cases

Judge Knisley stated there is no statute giving direction to Municipal Courts who deal with mental health commitments. She is concerned because the state district court program assumes these costs for district courts but not for municipal courts. She would like the state to assume these costs. She also discussed a bill draft that DPHHS has to alleviate some of these costs. Beth will forward it to Paul Luwe at his request.

TO DO: Beth will forward the draft bill to Paul Luwe for his review.

Automation Issues

At the September 15, 2006 Commission meeting, Michele Snowberger expressed concern regarding the way overdue processing is currently being handled by the Sub-Committee and stated there is limited communications with the limited court judges by the Automation Sub-Committee.

Judge Seiffert contacted Judge Carver, Chairman of the Automation Sub-Committee and asked that he appear before the Commission and explain the chain of events that occurred with respect to Judge Snowberger.

Judge Carver gave the Commission a detailed report of how the Automation Sub-Committee dealt with Judge Snowberger's concerns. He stated there is a sub-committee meeting scheduled December 18, 2006 in Helena, which will allow open discussion of the Rules.

At the request of the Commission, a list of the Automation Sub-Committee members will be placed in the limited court judges' workbook as well as the clerks' workbook at the Fall Conference so people needing to ask questions will have a person to contact.

TO DO: Staff will place a list of the Automation Sub-Committee members in the limited court judges' workbook as well as the clerks' workbook at the Fall Conference.

NEW BUSINESS

Filing Fees

Judge Knisley is unsure what fees a municipal court should be charging for civil case filings? Is it \$35 or \$95? Judge Knisely will provide Paul Luwe with more information and web-sites addresses and he agreed to report back at the next commission meeting.

TO DO: Paul Luwe will report his findings on Filing Fees for civil cases in the Municipal Courts.

Montana Coalition Against Domestic and Sexual Violence (MCADSV)

Beth McLaughlin reported MCADSV is developing a volunteer-based Courtwatch program. The volunteers go into the courtrooms to monitor the proceedings and are mainly focused on the courts of limited jurisdiction. Jennifer Hill-Hart with the Americorps *VISTA has been hired to create a Courtwatch manual and would like to conduct a survey of judges about Courtwatch. She would like to hear thoughts on the survey and the best way to approach the COLJ judges for feedback.

Beth will invite her to the January meeting of the Commission. Beth will also provide the Commission with a website from the Minneapolis based Courtwatch Program. It is <http://www.watchmn.org/>

Judge Ortleby stated Courtroom Management in Handling Advocacy Groups, might be an interesting topic for the Spring COLJ School.

TO DO: Beth will invite Jennifer Hill-Hart to the January 2007 COLJ meeting. Staff should keep the Courtroom Management topic on the agenda for consideration at the Spring COLJ School.

Public Defender vs. Sam Harris

A Supreme Court Opinion dated October 5, 2006 was brought to the attention of the Commission. It was the State Public Defender vs. Sam Harris. The decision has to do with a court's ability to question the finding of indigency in the appointment of counsel. Judge Ortleby suggested that this be another issue to address with Randy Hood.

Memo from Chief Justice RE: Judicial Education

The September 25, 2006 memo from the Chief Justice regarding Judicial Education was reviewed by the Commission. The Chief provided each commission member with the latest issued of the *Judicature* magazine and encouraged the COCOLJ educational committee to place the topic of "Providing Help for Judges in Distress" on their future agenda. The matter

will be taken under advisement and will be placed on the January agenda for consideration at the Spring School.

TO DO: Staff will place this topic on the January agenda for consideration at the Spring School.

Justice Court Statute Revisions

On September 6, 2006, the Commission received a letter from Attorney David Hull regarding Justice Court Statute Revisions. During the summer, Mr. Hull had an opportunity to meet with several other attorneys who practice regularly in Justice Courts throughout Montana. They identified problems with the present statutes and their interpretations, as well as local rules and varying inconsistencies. These attorneys attempted to address several issues and hope to get these matters before the upcoming legislature. They itemized the key points and asked for input and comments and, if appropriate, the Commission's support for the proposed changes.

The Commission will review the information and email comments and concerns to Karen and each other.

NCIC Protection Order Audit

Mr. David Blade, Compliance Auditor with the Department of Justice wrote Beth an e-mail advising that he has seen significant improvement in the quality of records in the past three years, but is still identifying cases that may indicate a need for additional training. He provided a NCIC Protection Order Audit from one of the justice courts. The Commission reviewed the audit and stated they would still suggest the same recommendation: That Mr. Blade's agency notify the judge in writing when problems are discovered and cc the commission so a follow-up training with the judges can be arranged, if necessary.

Ali Bovingdon will be presenting on Orders of Protection at the Fall Conference. Sharon Skaggs suggested including Ms. Bovingdon's training to the Clerks in their "Nuts and Bolts" session this fall.

TO DO: Beth will notify Mr. Blade of the Commissions decision to continue the same process as in the past. Karen will check the Clerks' schedule and see if it will be possible to get Ms. Bovingdon to address the Brady issue during the Clerks' Nuts and Bolts session at their fall school.

Court Financials

Beth stated there is a concern from the IT training staff that some of the smaller jurisdiction courts do not have clerks, and the judge is attempting to enter the monthly financials and complete a month-end report to balance the books. This is not going well in some jurisdictions and it may be a training issue for the judge. Judge Ortley suggested asking the

limited court judges at the November training, how many are having trouble with this issue and need help?

Judge Carver will put this on the agenda for the Automation Sub-committee, as they may have suggestions, comments or resources that might be of help.

The Commission suggested that the trainers identify what judges need help and it may be possible that one-on-one training be done. Possibly asking other judges to become mentors or set up a special training just for judges if there are several identified.

TO DO: Beth will ask the trainers to identify what judges they feel need additional help.

Commercial Driver's License Program

Judge Ortley and Judge Stahl attended the faculty development program for Commercial Driver's Licenses in Reno. 5% of highway dollars are lost if the state is not in compliance with the Federal Regulation. Judge Stahl suggested looking at Montana's audit report to see what affect this is having on Montana. Sharon Skaggs has been in contact with Greg Noose and suggested he may have a copy of the recent audit report. Judge Wyckman serves on the Repository Commission and they are working on strict time-frames for posting convictions. This will help improve compliance.

Judge Ortley suggested this issue be placed on the agenda for the Spring School. He would like to see a two-hour slot devoted to the subject and volunteered to present the program.

TO DO: Judge Ortley will contact Greg Noose to see if he can obtain a copy of the recent audit report. Staff will put this on the training agenda for the Spring School.

Certification Test Information

Beth prepared a notice for all judges regarding the upcoming Certification Test and suggested it be placed in the front of the training book. The Commission reviewed the information sheet and questioned if the test would be open book. Staff was directed to review prior minutes and notify the Commission as to what constitutes open book.

TO DO: Staff will review prior minutes and notify the Commission of the findings. If limited court judges are to bring specific books, then staff will send out the information sheet and remind them of what books they need to bring.

Truancy Bill

Beth informed the Commission that a truancy bill has been drafted. It originated from a group of educators in Great Falls area. The bill revises truancy laws; provides for suspension or delay in driving privileges for habitual truancy; prohibits the issuance of a probationary driver's license; imposes criminal fines against parents, guardians, or person responsible for care of a child who fails to comply with compulsory attendance laws.

TO DO: Beth will email the web site to all Commission members.

Next Meeting Date

The next meeting will be held at the Heritage Inn, 1700 Fox Farm Road, Great Falls on Sunday, November 12, 2006 beginning at 3:00 p.m.

Adjournment

The meeting adjourned at approximately 11:30 a.m.