

## MINUTES

Commission on Courts of Limited Jurisdiction  
Jury Room A of the Law and Justice Building, Bozeman, Montana  
September 15, 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, M. Shaun Donovan, Paul Luwe, Hon. David Ortley.

**Members Present by Videoconference:** Hon. Mary Jane Knisley

**Member Present by Tele-Conference:** Hon. Doug Harkin, Gayle Stahl and Hon. Perry Miller.

**Members unable to attend were:** Justice Jim Nelson and Sharon Skaggs.

**Staff Present:** Karen Sedlock.

**Guest:** Hon. Michele Snowberger and Hon. Karl Seel.

**PUBLIC COMMENT:** Michele Snowberger wrote two memos that were presented to the Commission for review. The first one was written comment on Proposed Rules for Public Access to Court Records and the second one was a Memo to Hon. Larry Carver regarding Automation Issues. Judge Snowberger expressed concern regarding the way overdue processing is currently being handled by the Sub-Committee and itemized several concerns she addressed in her memo. It is Judge Snowberger's opinion, that communication with the limited court judges by the Automation Sub-Committee is limited.

Judge Wyckman acknowledged Judge Snowberger's concerns and stated those issues will be addressed at the December meeting by the Sub-Committee. Judge Seiffert is chairman of the Commission and invited Judge Snowberger to become an active member. She accepted and will attend the next meeting.

Paul Luwe suggesting sending a mailing to each limited court judge prior to the December meeting, asking for comments about the proposed Rules and give them a timeline in which to comment. Peggy Tonon stated the proposed standards were updated last week and she wanted to make sure the most up-to-date version was being used.

Judge Seiffert suggested that the Automation Commission suspend further installations until the comment period is complete.

**TO DO: Judge Seiffert will talk to the IT staff and find out how difficult it would be to put further installs on hold until after the comment period.**

**MINUTES:** A motion was made by Peggy Tonon and seconded by Paul Luwe that the minutes of the June 24, 2006 meeting be adopted as written. The motion passed unanimously.

## **OLD BUSINESS:**

**On-line Training:** Judge Harkin reported he has looked at every judicial training website, both in American and abroad, and has narrowed it down to two of interest.

New Mexico has a good program for Magistrate Judges but is in the process of adding classes and don't have any that could be used right now. The California site has links that can be updated as needed as cases are decided that impact the course-such as new requirements for search warrants, fee increases, reporting requirements for fines collected, and so forth. Judge Harkin asked the Commission members if they liked either site. Judge Ortlely stated he preferred the California site as it gives instant feedback and can be consistently updated. However, he is concerned about the number of judges that will actually use the site. Peggy Tonon suggested that Judge Harkin put together a trial on-line session, notify the limited judges of its presence and look at how many hits it gets, which will determine its usefulness.

Judge Ortlely thanked Judge Harkin for the numerous hours he has spent in research and development of this project. Peggy Tonon says the Law School has a similar program entitled "Trial Director" and she will send the link to Judge Harkin for his review.

**TO DO: Judge Harkin will put together a trial session for on-line training. Staff will ask IT to help get it loaded and notify the Limited Court Judges of it's presence. Peggy Tonon will provide Judge Harkin with the Trial Director link.**

Judge Harkin then presented a summary of the Evidence course he is developing. An examination of the Montana Rules of Evidence will guide a trial judge through the Montana Rules of Evidence and help make judging a lot easier. The general format for the instruction will be how the Montana Rules of Evidence address the issues raised by trial objections.

## **Conflicting Statutes Governing Credit for Time Served**

At the January 20, 2006 COCOLJ meeting, 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?

At the February 17, 2006 COCOLJ meeting, Commission members agreed that the statutes don't mesh. A motion was made and passed that Mr. Luwe request an attorney general's opinion and report his findings back to the Commission.

Mr. Luwe contacted the Attorney General's Office and was told that their office would decline making a formal opinion on this issue because (1) this could be considered a constitutional issue and (2) this issue may be raised in the courts and would have to be ruled on by the Court.

Commission members agreed this is a huge training issue and there are many ways this can be handled. Therefore it should be placed on the Spring 2007 agenda.

**TO DO: Staff will place "statutory conflict on jail day credit against fines" on the Spring COLJ Conference agenda.**

### **Assigning Mentor Judges**

Currently there are three new judges that need to be assigned Mentors. They are Tom Pouliot in East Helena; Michael Reardon in Hamilton and Judge Stormy Langston in Eureka. The Commission assigned Hon. Wally Jewell to mentor Hon. Tom Pouliot; Hon. Karen Orzech to mentor Hon. Michael Reardon and Judge Greg Mohr to mentor Judge Stormy Langston.

**TO DO: Karen Sedlock will notify the proposed mentors to ensure they will agree to do the job. Then Karen will notify Judge Carol Anderson of the new judges and will ask that the MMA assigned training judges.**

Judge Seiffert notified the Commission that Judge Jerry Lord from Livingston has resigned as City Judge. As soon as a replacement is assigned, Michele Snowberger agreed to be the mentoring judge.

**TO DO: Staff will also notify Judge Carol Anderson of the need for a training judge in Livingston as soon as the new city judge is appointed.**

Judge Seiffert spoke to Judge Anderson about the New Judges' Training that will be available to all new judges at the Fall Conference. Judge Anderson has an agenda for Saturday, November 11th and Sunday, November 12. Judge Seiffert encouraged commission members to assist, if they are available, and stated that the training will not be limited to new judges, but will be available for any judge interested in attending.

**TO DO: Judge Seiffert will obtain the course outline from Judge Anderson and distribute it to the Commission members for the October meeting.**

### **Letter to Judicial Candidates**

The Court Administrator's office requested permission to write a letter to all limited court judge judicial candidates notifying them of the mandatory training that will take place just four days after the general election. This will enable them to clear their calendars should they become an elected judge. Discussion of the issue commenced and it was decided that staff should draft a letter for the Commission's review.

**TO DO: Staff will draft a generic letter, for consideration by COCOLJ, to be sent to all limited court judicial candidates notifying them of the mandatory training that will take place beginning on Saturday November 11, 2006.**

## **Collection of Fees**

Judge JoAnne Welch, Justice of the Peace from Anaconda, wrote a letter asking if Collection of Fines could be a subject for training because she is finding disparity in how judges are collecting fines. The idea was well received by Commission members and it will be placed on the agenda as an entire session for the Spring School.

**TO DO: Karen Sedlock will notify Judge Welch that the commission reviewed her letter and that the matter will be placed on the Spring 2007 Agenda. Staff will place Collection of Fines on the Spring Training Agenda.**

## **State VS. Rensvold**

A June 2006 opinion was rendered by the Montana Supreme Court entitled State vs. Rensvold. It was an appeal from the Twentieth Judicial District on whether the District Court erred in dismissing the charge against Rensvold and the State's appeal of the Lake County Justice Court order. The limited judge dismissed the charge without prejudice because the state failed to show for trial. The County Attorney made no attempt to re-file the charge in Justice Court, but instead filed an appeal in District Court. The District Court dismissed the State's appeal and dismissed the charge against the defendant.

The commission reviewed the Opinion and suggested it be placed on the Spring 2007 agenda.

**TO DO: This matter will be placed on the Spring COLJ Agenda and will be handled either under the Nuts and Bolts section or by a staff member from the Attorney General's Office.**

## **Traffic Court Training**

An ABA Judicial Division Traffic Court Seminar will be held October 10-13, 2006 in Charleston, South Carolina. If anyone is interested in attending Beth McLaughlin will try to find funding through the Department of Transportation. Judge Seiffert and Judge Knisley both expressed an interest.

**TO DO: Karen Sedlock will ask Beth McLaughlin to pursue finding for this seminar through DOT and notify those interested if funds are still available.**

Public Comment: Judge Snowberger stated every limited court judge should have the opportunity to attend training conferences, not just commission members. Paul Luwe suggested creating a video library for all limited judges to access.

Judge Snowberger reminded the Commission that there is still a \$500 scholarship available through the Montana Magistrates Association that could be used if anyone is interested in attending this conference.

### **Holding Defendant's in Jail for Nonpayment of Surcharges**

The Commission received a copy of 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 can someone be held in jail based on his inability to pay surcharges. The commission reviewed the letter and it was decided that this should be a training issued for next spring.

**TO DO: Judge Seiffert will contact Judge Beckham to discuss the issue and Karen Sedlock will notify Sgt. James that a commission members will be discussing the issue with Judge Beckham and will also be placed on next Springs 2007 Conference Agenda.**

### **NEW BUSINESS**

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

Peggy Tonon brought the Commission a Memo to the Court from Deputy Missoula City Attorney, Gary Henricks, concerning problems in 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.

**TO DO: Judge Ortley will review the memo and statutes applicable and report his findings back to the Commission at their October meeting.**

#### **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).

**TO DO: Judge Seiffert will contact Judge Odlin and ask him to put his concerns or questions in writing. The Commission will take no further action until a letter is received.**

#### **Public Defender Taking Cases of Persons not Facing Jail Time**

It has been brought to the attention of Judge Seiffert that the Public Defender's Office is taking cases of persons not facing jail time, because it is in the "best interest of justice".

The Commission is concerned that the additional cases will cause an inflated request for additional funding by the Public Defender's Office at the next legislative session.

**TO DO: Paul Luwe will contact Randy Hood for her interpretation of Who the Public Defender's Office will represent and report back to the Commission in October; Peggy Tonon will talk to Jim Taylor at the Law School for his interpretation. Mr. Taylor is the**

**Chairman for the Public Defender's Commission; and Shaun Donovan will visit with Ed Sheehy, who is the Director for Region II.**

**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 allowing 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.

**TO DO: Judge Wyckman will contact Judge Lee regarding his procedures. Judge Seiffert will notify Mr. Thielen that the Commission has taken action.**

**Notice of Bond Forfeiture**

Judge Seiffert brought a letter to the Commission dated August 10, 2006 from Judge Bailey and Judge Chute The Bondsman, Earl Rowe. The letter informs Mr. 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.

**TO DO: Judge Seiffert will contact Judge Bailey to find out what his intent is. Then Judge Seiffert will call Mr. Rowe and let him know what he finds out.**

**Municipal Courts and Mental Health Cases**

Judge Knisley asked that Municipal Courts and Mental Health Cases be placed on the agenda in October for discussion.

**TO DO: Staff will place Municipal Courts and Mental Health Cases on the agenda for the October COCOLJ meeting.**

**Next Meeting Date**

The next meeting will be held in Helena at the Court Administrator's Office, 301 S Park Ave, Room on October 20, 2006 beginning at 8:30 a.m.

**Adjournment**

The meeting adjourned at approximately 11:00 a.m.