

## MINUTES

Commission on Courts of Limited Jurisdiction  
Helena, MT  
**August 21, 2009**

**Members Present were:** Hon. Johnny Seiffert, Hon. Larry Carver, Hon. Doug Harkin (via phone), Hon. Perry Miller (via phone), Hon. Mary Jane Knisley, Hon. David Ortley, David Nielsen (via phone), Peggy Tonon, Hon. Gayle Stahl, Randi Hood, and Jennifer Boschee.

**Members Absent:** Shaun Donovan and Supreme Court Liaison Justice Jim Nelson.

**Guests:** Hon. Richard Motta

**Staff Present:** Karen Sedlock

Chairman Johnny Seiffert called the meeting to order at 8:35 a.m. He welcomed new member Randi Hood, Chief Public Defender

**PUBLIC COMMENT:** None

**MINUTES:** The minutes from the June 19, 2009 meeting were reviewed. A motion was made by Peggy Tonon to approve the minutes and Judge Knisely seconded the motion. It passed unanimously.

### **OLD BUSINESS:**

**Status of Judge Frame:** Judge Frame resigned his position as City Judge of Ronan and Judge Doug Olson was appointed to fill his position until December 31, 2009. The Commission suggested that a card be sent to Judge Frame thanking him for his many years of service to the judiciary.

**TO DO: Judge Seiffert will contact Judge Jean Kerr and ask her to distribute a card for signatures at the fall school and send it to Judge Frame.**

**Fall Agenda:** Pursuant to HB0536, *if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device.* A representative from SCRAM contacted Judge Knisely asking if they could be on the agenda for the fall conference. Because of the judicial mandate shown above, several commission members expressed the importance to train the judges on this issue.

A motion was made by Judge Stahl and seconded by Judge Ortley that time be made available on the fall agenda for the SCRAM people to inform and educate the judges about their electronic device. The motion passed unanimously. Judge Knisely and Judge Harkin were both willing to give some of their time on the agenda to accommodate the SCRAM presentation.

**TO DO: Staff will coordinate the length and time of the presentation with Judge Knisely and Judge Harkin.**

**Rule 4 (Filing of Certificate):** This issue was continued until the September meeting.  
**TO DO: Staff will review the history of the Rule and bring the information to the September meeting.**

**NEW BUSINESS:**

**Jurisdiction Issues in Granite County:** Public Comment was again opened to allow Hon. Richard Motta, JP from Philipsburg, to explain his request that the Commission to clarify whether or not the county has the right to appoint a City Judge.

The Commission reviewed the 1980 Attorney General's Opinion that Judge Motta provided, and stated that the laws have changed since this Opinion was written. The current statute is specific and clear. Judge Ortley suggested that Judge Motta write a letter to the Attorney General expressing his concerns and ask for an Opinion.

Judge Motta stated that all court files are on the same computer and had several questions regarding the handling and distribution of monies prior to him being appointed as JP. The Commission stated that Judge Motta need only be concerned about money that has been received since he has taken office. If there are unresolved issues regarding previous funds, the Commission recommended that Judge Motta write a letter to the County Commissioners and request an audit of the books.

Currently Judge Motta is depositing all funds with the County Treasurer. Since this is a training issue, Judge Carver will visit with Judge Mohr, the training judge, and he will schedule another training visit with Judge Motta in the near future.

**TO DO: Judge Carver will contact Judge Mohr and arrange to send a training judge to visit Judge Motta.**

**Data Collection of Public Records:** Karen Perry, with the LexisNexis Data and Analytics Group has been denied access to public records in Ravalli County. She wrote a letter to the Commission asking that they review the circumstances and provide her with direction as to future success in accessing the public judicial records in Ravalli County. Commission members agreed that the records are public.

**TO DO: Judge Ortley will contact Judge Clute and Judge Bailey to discuss the issue and he will also include the topic in his fall Nuts & Bolts session. Staff will place this item on the agenda for a report from Judge Ortley at the September meeting.**

**Rehabilitation Programs for Misdemeanors:** Jeffrey Scott, the President of Western Corrections, Inc. wrote a letter to the Commission asking for an opinion that might assist in Limited Court Judges using their courses for Misdemeanor crimes. Judge Seiffert stated that Limited Court Judges are trained to follow the statutes. All judges have complete authority and discretion in their sentencing.

**TO DO: Judge Seiffert will contact Judge Jewell, as he has used their program in the past, and inquire as to why he quit using it. Then Judge Seiffert will call Mr. Scott with an explanation of the Commissions findings.**

**OP 09-0282, Gregory E. Harris v. City of Kalispell Municipal Court:** The Official Opinion addressed the disqualification of a judge and the authority to call in a substitute judge. Judge Harkin reviewed the case and stated this is a training issue.

**TO DO: Judge Ortley will include this topic at the Nuts and Bolts Session this fall.**

**Cash Bonds:** Judge Ortley stated that there is a problem in his area regarding officers misleading defendants about cash bonds. If a Cash or Surety bond has been posted, the defendant must appear within 10 working days of the date in which they were released from custody upon posting of the bond. If the person fails to appear the Bond will be forfeited to the County and an Arrest Warrant will be issued.

**Do Judges that plan to retire Dec 31<sup>st</sup> have to attend the fall conference?** The Commission unanimously agreed that the retiring judge must attend the fall school.

**Letter from Jessie Harris RE: Qualification of Substitute JP:** Staff provided verification that Mr. Burlingame was authorized to serve as a Substitute JP for Judge Beitz from January 30, 2003 to December 31, 2006. Mr. Harris was notified of this by both the OCA and the Judicial Standards Commission. There is nothing further to do in this matter.

**Desk Book:** Peggy Tonon received a call from Judge Duehr that he has about 70 pages updated on the desk book. He is concerned about time frames and getting the current statutes in the revision.

**TO DO: Peggy will call Judge Duehr and tell him (1) he does not have a deadline of the fall school to get the Desk Book rewritten, and (2) to incorporate the 2009 statutes.**

Judge Seiffert asked if the entire Desk Book would be reprinted and not just the revision? Karen Sedlock stated it depends upon the cost of the book and if there will be enough money in the budget.

**TO DO: Judge Knisely will contact MBCC and staff will contact DOT to see if either one has grants or funding available.**

**46-11-110. Filing Complaint:** When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the sworn complaint or any affidavits, if filed, to determine whether probable cause exists to allow the filing of a charge. Judge Seiffert stated this statute is being challenged.

**TO DO: Judge Ortley will train on this issue during Nuts and Bolts at the fall school.**

**MANS Form:** There still seems to be some questions regarding the MANS Form. These forms are not required for traffic violations.

**TO DO: Judge Ortley will cover this in the Nuts and Bolts session at the fall school.**

**Surcharges:** Pursuant to Section 46-18-251, MCA, all fees are collected before fines are collected. The question remains, "Who get paid first?" The automation commission voted

to leave it the way it is for now. The Yellowstone County Attorney plans to seek an AG's Opinion and the COCOLJ will ask Shaun Donovan to join in.

**TO DO:** Staff will contact Shaun Donovan and ask him to visit with the Yellowstone County Attorney regarding this issue, and if he agrees, join in on the request for an AG's Opinion. Judge Knisely wrote a memo regarding this and she will send it to Shaun Donovan for his review.

**Automation Committee Update:** Judge Carver reported that Highway Patrol Officers did a demonstration on E-Filing in Yellowstone County. The Yellowstone JP court will do this on a trial basis. All tickets are scanned and the ticket is destroyed. The information would then be imported to the Court and a payment module would be added. Commission members were concerned if this would be in compliance with Section 3-1-115, MCA.

*Update: COMMENT FROM David Nielsen - On the discussion concerning the MHP using scanned electronic records rather than original paper, I think 30-18-111(4), MCA, may provide the answer. I read it as saying electronic versions are acceptable as original provided the electronic copy meets the criteria of that subsection (1). Please pass this information on to the other members. This may resolve the Yellowstone County question and obviate the need for a Supreme Court rule.*

**Fish and Game:** HB 222 requires that the Courts notify Fish and Game when a person has complied with their sentence so they can get their privileges back. There is a concern that 50% of their Wardens are new and they would like a judge to attend their conference. The Commission agreed it would be beneficial to the Wardens.

*Update: COMMENT FROM David Nielsen - On the issue that FWP officers do not go to the academy for training. I asked the Ass't Chief of Police if that was true and he was under the same impression that I was that all sworn officers do the academy training, which would include FWP wardens. If we are both wrong, I will let you know. Nonetheless, the prosecutors should assist officers in courtroom decorum, not the judiciary. I agree with the comments.*

**Thank you:** Judge Seiffert and the other Commission members thanked Judge Carver for his hard work and dedication to the various committees he serves on. His work is much appreciated.

**Order of Protection Forms:** Judge Carver stated that the Orders of Protection forms are done. They will be available on the web-site, and the web address will be given to the Limited Court Judges at their school.

**Next COCOLJ Meeting:** The next meeting will be held on September 28, 2009 in Big Sky beginning at 12:00 noon.

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