

MINUTES

Commission on Courts of Limited Jurisdiction
Helena, Montana
November 20, 2009

Members Present were: Hon. Larry Carver, Hon. Doug Harkin, Hon. Perry Miller, Hon. Mary Jane Knisley, Hon. David Ortley, Peggy Tonon, Hon. Gayle Stahl, Randi Hood, David Nielsen, Shaun Donovan, Hon. Greg Mohr and Jennifer Boschee.

Members Absent: Supreme Court Liaison Justice Jim Nelson.

Staff Present: Karen Sedlock and Beth McLaughlin

Vice Chairman Judge Mary Jane Knisely called the meeting to order at 8:35 am

PUBLIC COMMENT: None

ELECTION OF CHAIRMAN: A motion was made by Judge Perry Miller that **Judge Mary Jane Knisley be elected Chairman of the Commission on Courts of Limited Jurisdiction.** The motion was seconded by Peggy Tonon and passed unanimously.

A motion was made by Judge Ortley and seconded by Judge Greg Mohr that **Judge Perry Miller be elected Vice Chairman of the Commission on Courts of Limited Jurisdiction.** The motion passed unanimously.

MINUTES: The minutes from the September 28, 2009 meeting were reviewed. A motion was made by Judge David Ortley and seconded by Judge Greg Mohr that the minutes be approved as written. The motion passed unanimously.

OLD BUSINESS:

Surcharges: Pursuant to Section 46-18-251, MCA, all fees are collected before fines are collected. The question remains, "Who get paid first?" At a previous meeting the automation commission voted to leave it the way it is for now. The COCOLJ discussed the statutes looking at 46-18-251, 46-18-236 and 46-18-232. Shaun Donovan agreed to talk to the Yellowstone County Attorney and see if they want to pursue an Attorney General's Opinion. **A motion was made by Judge David Ortley to accept the automation commission's vote to leave the accounting for FullCourt the way it is. The motion was seconded by Judge Carver and passed unanimously.**

TO DO: Shaun Donovan will call the Yellowstone County Attorney's Office and ask if they are considering requesting an Attorney General's Opinion.

Certification Update: Karen Sedlock reported that Judge Richard Motta took and passed the certification test. Judge Vose is scheduled to take her test on December 2, 2009.

Review Evaluations from the Fall 2009 School: There appeared to be a comment throughout the evaluations from a judge that could not hear the speakers. It was suggested

that special accommodations be made at future schools for judges that need to be near the front of the room.

TO DO: Staff will add a "special accommodations" spot on the registration form for judges that have a difficult time hearing or seeing. Staff will assign special seats or provide assistive devices to those individuals requesting them.

Review of Waivers from Fall 2009 School: The waivers were reviewed and all but one was agreed upon. The Waiver from Judge Johnson, stated he had a small family emergency.

TO DO: Judge Harkin will contact Judge Johnson and inquire about the nature of the family emergency.

NEW BUSINESS:

Review Fee for Upcoming COLJ Judges' and Clerks' School: Beth McLaughlin explained that last fiscal year, the judicial branch did not have spending authority from the legislature to pay for the Spring 2009 COLJ School, therefore, the school was paid for with General Fund money. At this time, it leaves a surplus in the Courts of Limited Jurisdiction Training account. In reviewing the amount of money it takes to put on a school, it is apparent there is not enough money being generated from the registration fees to pay for the cost of the schools, especially with the certification school coming up next fall. At the present time, the judges are paying a registration fee of \$250. With that amount being collected, there was a deficit of \$4,192.78 from the last school. **A motion was made by Judge Ortleby that the registration fee be raised to \$300 for the judges. The motion was seconded by Judge Stahl and passed unanimously. Effective Fall 2010.**

TO DO: Staff will notify all judges in the spring registration packet of the increase in registration fee that will take place for the fall school.

The Commission then reviewed the expenditures of the Clerks. At the present time the Clerks are paying a \$200 registration fee. They are receiving the same amount of meals as the judges and they do not have a surplus of money to cover their expenditures. At the fall school, there was a deficit of \$1,626.19. The clerks can either cut back their training time, or consider raising their registration costs. A motion was made by Jennifer Boschee to keep the amount of training days and increase the Clerks registration fee to \$300, the same amount as the judges pay. The motion was seconded by Judge Stahl. Discussion followed. David Nielsen was opposed to the increase. He felt a \$100 increase in these difficult times would be too much for small cities and counties to absorb. **He made an amended motion to increase the clerks' registration to \$250. The motion was seconded by Judge Carver and passed unanimously.** Jennifer Boschee withdrew her original motion.

Beth McLaughlin stated that the Clerks training time will be as much as the \$250 registration fee will cover. If there is a deficit for the clerks in the future, the money will have to come out of the judges' training account.

There was discussion of having a joint session for Judges and Clerks. The education committee should consider this for a future conference.

TO DO: In the Spring, a Commission member or a clerk, should give a 10 to 15 minute presentation to the judges about the importance of sending their clerks to school. The clerks will be notified of the increase in registration fee.

Review Agenda for Spring 2010 Conference The DUI Mock Trial was discussed in detail. The agenda will be changed to accommodate the mock trial.

TO DO: The mock trial will focus on Second Offense, DUI Jury Trial. Peggy Tonon agreed to prepare the script for the trial. Judge Harkin will work with Peggy on the script and contact Prof. Beth Brennan to make sure the judicial writing findings will address the motion to suppress. Judge Knisley will be in charge of the Trial and agreed to have the mock trial in her court room. Judge Knisley will find people to fill the parts and Randi Hood, Peggy Tonon, Judge Harkin and Judge Ortley will assist.

Do Retiring Judges have to attend the Certification School and take the Test?

The judges that are retiring do not have to take the certification test. Judge Harkin will develop a waiver form that will be sent to all retiring judges. All newly elected judges must attend the fall school and must take the certification test.

TO DO: Staff will send Judge Harkin language from prior certification schools.

State vs. Dewey: An opinion written by Judge Blair Jones, District Court Judge from Columbus, was reviewed by the Commission. The Commission was in disagreement with Judge Jones' order, however, since the decision has not been appealed to a higher court, the precedent is only set in Stillwater County. No further action will be taken.

Email from Gary Henricks, Deputy Missoula City Attorney: Mr. Henricks brought to the attention of the Commission the fact that a limited court in Missoula regularly waives the statutory surcharge on offenses without any type of procedure to determine if a person is unable to pay the surcharge; and the court regularly takes it upon itself to retroactively reinstate a person's license on its own accord. Mr. Henricks concerns were addressed by the Commission and it was their findings that this was not a training issue.

Mr. Henricks also stated that the same Missoula court judge is frequently turning off the recorder in the courtroom when various proceedings are taking place. SB 263 addresses that very issue and **Judge Ortley agreed that it should be discussed at the next school during the Nuts and Bolts session.**

TO DO: Staff will contact Mr. Henricks and let him know the surcharge issue and reinstating a person's license on its own accord are not training issues and can be taken up with the Judicial Standards Commission if he deems appropriate. The recording issues will be covered at the next training school.

Client Reimbursement of Costs SB 263: Randi Hood wrote a memo to the Commission members bringing their attention to SB 263. She gave the Office of Public Defender's

interpretation of SB 263 relating to the reimbursement of attorney fees by defendants. Judge Carver finds the "fines only sentences" portion a little confusing.

TO DO: Judge Ortley will cover SB 263 in the Nuts & Bolts session during the Spring 2010 School.

Time Pay Bail, letter from Scott Restvedt: Mr. Restvedt questions how time pay bail is being handled in Billings Municipal Court. Since the judge has discretion in the handling of these cases, and this specific matter was previously addressed by this commission, there will be no further action.

TO DO: Staff will contact Mr. Restvedt and let him know that the matter was previously addressed and there will be no further action.

State v. Gatlin: Melvin Gatlin was convicted of two counts of robbery. He appeals the denial of his motion to dismiss the charges. Nothing in the record demonstrated that the justice of the peace told Gatlin he was entitled to counsel on the Missoula County charges, or that if he could not afford counsel an attorney would be appointed to defend him at State expense.

The Court reversed the district court's denial of Gatlin's motion to dismiss. Although Gatlin had a timely initial appearance in Butte-Silver Bow justice court on the Missoula charges, the justice of the peace did not inform Gatlin of his right to counsel as Mont. Code Ann. §§ 46-7-102(1)(b) and 46-8-101 require. Neglecting to inform an incarcerated defendant of his right to counsel taints the fundamental fairness of all subsequent proceedings. Thus, the appropriate remedy is to vacate Gatlin's convictions and dismiss the charges.

TO DO: Staff will forward the Supreme Court Opinion to all limited court judges with a letter of explanation. Judge Ortley will also address the issue during the Spring 2010 Nuts and Bolts session.

Next Meeting Date: The next meeting of the COCOLJ will be January 15, 2010 in Helena.

Meeting Adjourned: The meeting adjourned at 11:30 a.m.