

MINUTES

Commission on Courts of Limited Jurisdiction
Big Sky, Montana
Sept 28, 2009

Members Present were: Hon. Johnny Seiffert, Hon. Larry Carver, Hon. Doug Harkin, Hon. Perry Miller, Hon. Mary Jane Knisley, Hon. David Ortley , Peggy Tonon, Hon. Gayle Stahl, and Jennifer Boschee.

Members Absent: Randi Hood, David Nielsen, Shaun Donovan and Supreme Court Liaison Justice Jim Nelson.

Guests: Judge Michele Snowberger and Judge Greg Mohr.

Staff Present: Karen Sedlock and Beth McLaughlin

Chairman Johnny Seiffert called the meeting to order at 12:00 noon.

MINUTES: The minutes from the August 21, 2009 meeting were reviewed. Judge Carver noted two corrections: Fish & Game HB 222, law requires they did have discussion, and the wrong date was given for the next meeting date. The date should have been September 28th in Big Sky instead of August 21st in Helena. A motion was made by Judge Ortley to approve the minutes as corrected and Judge Carver seconded the motion. It passed unanimously.

OLD BUSINESS:

Training Update: Hon. Greg Mohr reported since the last meeting, Judge Orzech has trained three new judges, Judge Monforton from Bozeman, Judge Vose and Judge Motta from Philipsburg. There was concern regarding the oath that Judge Motta took when he took office. Because it was not the usual language, he retook the oath.

On September 4th, Judge Mohr went to Philipsburg to provide additional training to Judge Motta. Many issues were discussed, including legal research, contract negotiations and training on how to disperse money collected through his court.

Judge Monforton took and passed the certification test today, September 28, 2009. Judge Motta and Judge Vose will be taking the certification test after the conference.

TO DO: Karen was instructed to send both Judge Motta and Judge Vose a letter asking them to set a date in November to take the test. Each judge shall be sent the certification tapes for their review and they shall be offered a tutor upon request. Also to be included in the letter, shall be a standard sentence, to let staff know if special accommodations are needed to take the test.

Rule 4 (Filing of Certificate): A certificate must be filed with the Clerk and Recorder when a judge begins a term of office, after each general election, and after each certification school. There is no requirement that a certificate must be filed after each school. Judge Ortley will clarify when the filing is necessary during the Nuts & Bolts session of the conference.

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. Judge Ortley contacted Judge Clute and Judge Bailey and reminded them that the court records are public. Judge Ortley will cover this issue in the Nuts & Bolts section of the conference.

TO DO: Judge Harkin suggested that there needs to be consistency throughout the state on courts records being public. He suggested placing this issue on the agenda for consideration on the spring 2010 school agenda.

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 followed up by contacting Mr. Scott and reiterating that all judges have authority and discretion in their sentencing. The Commission cannot overrule a judges' decision.

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. Since Mr. Donovan was unable to attend the meeting, this issue will be carried over to the November 21, 2009 agenda.

TO DO: Judge Carver will check with Karen Nelson to see if there is a surcharge policy for restitution in FullCourt. Beth McLaughlin 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. She will contact Judge Knisely to make sure she forwarded the memo she wrote regarding this to Mr. Donovan for his review. Beth will also check with Judge Herman to make sure the Yellowstone County Attorney's office still plans to ask for an AG's Opinion.

NEW BUSINESS:

Letter from Pat Mischel: Chairman Seiffert received a letter from Pat Mischel of Glendive on September 4, 2009, asking the Commission to provide him with a copy of the Commission's opinion as described in the Glendive News Paper dated August 9, 2009 and the Montana Statute used to reach this decision; a copy of the setter sent from Judge Williamson to the Commission as sited in the COLJ minutes March 20, 2009; a copy of the email from Judge Williamson regarding courts withholding names of MIP's 18 years and younger, as listed on the June 19, 2009 agenda; and a copy of the April 27 and June 19, 2009 COLJ Minutes.

In reviewing the Glendive New Paper, there are misstatements. The Commission does not provide opinions.

TO DO: Beth McLaughlin will contact Mr. Mischel and explain the Commission does not give written opinions. She will also inform Mr. Mischel that the minutes of the COLJ are public information and can be reviewed on the court's website and that issues before the COLJ are for training purposes only.

Note from Trista Stewart, dated September 1, 2009: Ms. Stewart from AAA Bail, writes about their concern of bond being exonerated on a client that was picked up by the Sheriff and arrested on the 90th day.

TO DO: Judge Seiffert will get back to Ms. Stewart and inform her that their remedy is by appeal, and not an issue for this Commission to address.

Supreme Court Website: Judge Harkin stated he would like to see proposed material for good judicial instruction and best practices on "Learning Your Craft" listed on the Supreme Court website. The material should include a summary of what has been presented to the judges. Presenters should provide their PowerPoint presentation and summarize the material they presented. Kevin Cook, the web-master could post the material that comes from each conference. Another issue to be placed on the web-site is: How to protect your skills? Limited Court Judges should be able to get answers to technical questions that arise, such as "How to properly distribute funds?" The goal would be to get uniformity throughout the state. Judge Harkin requested permission to start working with staff on how to list the web-site.

Appointment of Study Committee: There is much confusion and many questions being asked about 61-8-442, MCA, Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device. A motion was made by Judge Miller that the Commission appoint a study group to research the new DUI sentencing requirements and department policies for implementation of the required sentence. The motion was seconded by Judge Stahl and passed.

The study commission will include: Judge Knisely, Chairman, Judge Miller, Judge Mohr, Judge Ortley and Judge Carver. TO DO: The commission shall be prepared to give a report that can be presented at the 2010 Spring Conference.

Nuts & Bolts: Judge Ortley reported he has a slide on the Role of the Commission. Since there has been a distortion of what the Commission's role is, he will outline the fact that the Commission is charged with training, education and certification of judges in all courts of limited jurisdiction. He will inform the judges that the Commission will address issues reasonably related to training. The Commission does not issue advisory opinions, does not advocate on behalf of individuals, does not enforce the Model Code of Judicial Conduct and does not intervene in disputes with local government. Judge Ortley will also introduce the Commission members so the Judges will be able to identify those that serve on the commission.

Issue for November Meeting Agenda: Beth McLaughlin requested that fees adjustment be placed on the agenda for the November meeting.

Desk Book: Peggy Tonon reported that Judge Duehr now has the first 92 pages of the desk book completed. Judge Carver suggested that forms should be included in the desk book.

TO DO: Judge Carver will contact Judge Duehr regarding forms for the desk book.

Announcement: Prof. Peggy Tonon announced that she will be retiring from the Law School on June 30, 2010. The Commission stated they will miss her, and her knowledge and expertise on the Commission. Prof. Tonon plans to contact the State Bar to see if they wish to suggest a new representative.

PUBLIC COMMENT: Judge Snowberger addressed concerns about issues to show cause and commented on the discussion regarding AAA bail bondsman.

Next COCOLJ Meeting: There will be no COCOLJ meeting in October. The next meeting will be held November 20, 2009 in Helena, beginning at 8:30 am.

Adjournment: The meeting adjourned at approximately 2:35 p.m.