

MINUTES

Commission on Courts of Limited Jurisdiction
Helena, Montana
December 17, 2010

Members Present were: Hon. Larry Carver, Hon. Perry Miller, Shaun Donovan, Hon. Greg Mohr, Hon. Gary Olsen, Prof. Peggy Tonon, and Randi Hood. Hon. Mary Jane Knisely, Hon. David Ortley and Kelly Addy appeared via video. Hon. Doug Harking and Jennifer Boschee attended via telephone.

Members Absent: Supreme Court Liaison Justice Jim Nelson.

Staff Present: Karen Sedlock and Beth McLaughlin

Chairman Perry Miller called the meeting to order at 8:35 a.m.

PUBLIC COMMENT: None

MINUTES: The minutes from the November 14,, 2010 meeting were reviewed. Judge Larry Carver asked that an amendment be made to the minutes reflecting that he, Judge Perry Miller, Judge Karen Orzech and Judge Greg Mohr provided two days training to 22 new judges, prior to the Certification Conference in November. The training was well attended and went well. **A motion was made by Judge Carver and seconded by Peggy Tonon that the minutes be approved as amended.** The motion passed unanimously.

OLD BUSINESS:

Concerns from Citizens RE: City Court of Drummond Closure: Mr. Addy reported that a letter was prepared and sent to Mayor Gail Leeper of Drummond reiterating that because litigants have been unable to resolve pending cases and the Drummond City Court is in limbo, the Commission is encouraging the city to move quickly to resolve the issue, and appoint a judge to preside over the city court. Ms. Sedlock reported there has been no response to the letter. Therefore, there shall be no further action by the commission at this time.

Recommendations for Vacant Commission seats: Larry Judges of the Peace Seat: Hon. David Ortley was elected as District Court Judge, therefore vacates his seat on the commission. There were eight names submitted for the large Justice of the Peace seat on the commission. They were: Hon. Audrey Barger, Hon. Robin Clute, Hon. Larry Herman, Hon. Steven Fagenstrom, Hon. Kathleen Jensen, Hon. Dan Wilson, Hon. Kerry Burman and Hon. Karen Orzech. Because Judge Burman is a City Judge, she does not qualify for this position. All seven of the other names were discussed and considered. A motion was made by Judge Carver that **Hon. Steve Fagenstrom, JP from Great Falls** be recommended for the vacant seat. The motion was seconded by Kelly Addy and passed unanimously.

Municipal Judge Seat: Judge Knisely has been selected as District Court Judge, therefore vacates her seat on the commission. Hon. Marie Andersen was considered by the commission for the vacant seat. Judge Nancy Luth's name was also submitted, but she asked that her name be withdrawn, which it was. A motion was made by Kelly Addy and seconded by Judge Greg Mohr that **Hon. Marie Andersen's** name be recommended to the Supreme Court for the Municipal Court Judge vacant seat on the commission. The motion passed unanimously.

County Representative Seat: Shaun Donovan was defeated in his reelection for County Attorney, therefore, his seat became vacant on the commission. Two names were submitted for consideration, Sam Cox from Butte and Bernie Cassidy from Libby. There was discussion on both individuals and a motion was made by Shaun Donovan and seconded by Randi Hood that **Bernie Cassidy's** name be recommended to the Supreme Court for the vacant seat. The motion passed unanimously.

Judge Olsen suggested that a letter be sent to all the nominees and include a paragraph about how and why the commission was established and briefly explain the process.

TO DO: Staff will call the three individuals to make sure they are still interested in serving on the commission and if so, then submit their names to Justice Nelson for the Supreme Court's consideration and appointment. All nominees will be notified by letter the results of the commission's recommendations.

NEW BUSINESS

Report on Certification Test: Beth McLaughlin reported that all certification tests have been graded and judges notified of their scores. There were seven questions that were thrown out, due to 50% or more of the judges missing the test questions. Each of the seven questions were read and discussed. Beth reported there are two judges that need to take the certification test. They are Hon. Bob Lee, JP from Butte, who missed the conference and Jackie Rieger, newly appointed City Judge from Bridger. Both received waivers and the training judges will contact them.

Evaluation Results: The evaluations from the Judges' and Clerks' conferences were reviewed and discussed. Staff will work with the Clerks to make recommended changes to improve their future conferences.

Contempt: Judge Carver brought a booklet on "Contempt" that the Attorney General's Office prepared in 2002. Karen Sedlock called the AG's office to see if there has been an update. Staff at the AG's office did not know the booklet existed and did not know who authored it. Karen sent them a copy for their review and consideration of an update. Judge Carver state the information is still current and a valuable piece of information for the Limited Court Judges and suggested that a copy be sent by email to all COLJ Judges.

Judge Mohr reported that Judge Steven Muth has spent an enormous amount of time drafting a report on contempt. It was suggested that Judge Mohr obtain a copy of the report for the commission's review.

TO DO: Judge Mohr will request a copy of Judge Muth's report. Staff will email a copy of the 2002 Contempt booklet written by the AG's Office to all COLJ Judges as well as the contempt information that Judge Harkin prepared for a previous conference.

State v. 18th Judicial District Court: On December 14, 2010, the Supreme Court issued a decision on State v. 18th Judicial District Court. The Court granted the State's petition for supervisory control and reversed the District Court's order excluding "other crimes, wrongs, or acts" evidenced for noncompliance with M.R. Evid 404(b) and Modified Just Rule. The Court –recognized "how far afield...[its]jurisprudence in this area has gone" and that "[t]he problem is with the precedent itself" – also overruled the cases that established the Modified Just Rule (Just and Matt) and set forth a new approach for the admission of "other crimes, wrongs, or acts" evidence under Rule 404(b).

TO DO: Judge Ortley will dedicate one-hour on this subject at the spring Nuts and Bolts. Judge Harkin will assist. Staff will rework the agenda and send out a revised draft for approval. Staff will email a summary of this decision to all COLJ members and reference the site where the entire opinion can be viewed.

Appointment of Mentor Judge: The Commission appointed Judge Perry Miller to mentor the newly elected Shelby Justice of the Peace, Sherrie Murphy. A letter will be sent to her and Judge Miller will make arrangements for a visit.

Letter of Advice from AG's Office: On August 17, 2010, Chris Tweeten, Chief Civil Counsel from the Attorney General's Office wrote a letter of advice to the Fallon County Attorney's Office regarding questions they had about service by the Fallon County Justice of the Peace as Municipal Judge for the City of Baker. This letter in its entirety can be found on the attorney general's website under letters of advice. This issue was brought to the commission's attention for information proposes only.

Article in Butte Standard: An article appeared in the December 17, 2010 Montana Standard newspaper stating that they have filed a formal request for a copy of a police report regarding Butte-Silver Bow Justice of the Peace Bob Lee. The initial report lists the call as a misdemeanor DUI. Judge Lee, has not been accused or charged with any crime, but has confirmed that a police report was taken on November 11, 2010.

Thank You: The Commission thanked Shaun Donovan, Judge Ortley and Judge Knisely for their commitment and years of dedicated service to the Commission.

Next Meeting Date: The next meeting of the COCOLJ will be January 21, 2011, beginning at 8:30 am at 301 S Park Ave, Room 328, Helena, MT, unless otherwise stated by the Chairman.

Meeting Adjourned: The meeting adjourned at 10:15 a.m.