

# State of Montana



## DISTRICT COURT COUNCIL

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**Minutes of May 10, 2002  
Old Livestock Building  
1310 East Lockey  
Helena, MT 59620**

**DCC Voting Members Present:**

Chief Justice Karla M. Gray, Montana Supreme Court  
The Honorable Diane Barz, District Court Judge, 13<sup>th</sup> Judicial District  
The Honorable Thomas McKittrick, District Court Judge, 8<sup>th</sup> Judicial District  
The Honorable Ed McLean, District Court Judge, 4<sup>th</sup> Judicial District  
The Honorable John Warner, District Court Judge, 12<sup>th</sup> Judicial District

**DCC Non-Voting Members Present:**

Mike Hutchin, Lake County Commissioner, Polson  
Tim Smith, Court Reporters Association, Billings  
Tim Callahan for Glen Welch, Juvenile Probation Office, Great Falls  
Nancy Sweeney for Lori Maloney, Clerk of the District Court, Helena

**Staff:**

Rick Lewis, Supreme Court Administrator  
Beverley Boyd, Court Services Director  
Dan Chelini, Information Technology Director  
Beth McLaughlin, Human Resource Director  
Lisa Smith, Administrative Services Director  
Becky L. Buska, Accounting & Fiscal Policy Analyst, Administrative Services  
Cathy Pennie, Accounting & Fiscal Policy Analyst, Administrative Services  
Jane Hayden, Financial Specialist, Court Services Division

**Guests:**

L. Harold Beattie, Montana Association of Counties (MACo), Helena  
Matt Bugni, Office of Budget and Program Planning, Governor's Office, Helena  
Connie Erickson, Legislative Services Division, Legislative Branch, Helena  
Marko Lucich, Juvenile Probation Office, Butte  
Gordon Morris, Montana Association of Counties (MACo), Helena  
Sandra Oitzinger, ED, MJPOA, Helena  
Bonnie Olson, District Court Administrator, Flathead County, Kalispell  
Bob Peake, Juvenile Probation Office, Havre

The District Court Council met in regular session on Friday, May 10, 2002, at 8:00 a.m. at 1310 East Lockey, Helena, Montana. Chairperson Chief Justice Karla M. Gray called the meeting to order. A quorum being present, the meeting duly convened and business was transacted as follows:

### **I. Introduction of New Employees**

Lisa Smith introduced two new staff members to the Court Administrator's Office: Becky Buska and Cathy Pennie, both are Accounting and Fiscal Policy Analysts for the Administrative Services Division.

### **II. Approval of April 19, 2002 Minutes**

Judge Ed McLean moved to adopt the minutes of April 19, 2002, subject to amendments at the next scheduled District Court Council meeting on July 19, 2002

### **III. Budget/Fixed and Variable Costs/Other**

Becky Buska and Cathy Pennie went through every county budget and segregated the fixed and variable costs. Chief Justice Gray reminded Lisa Smith that Senate Bill 176 (SB176) specified that the FY 1999 budget would be used for the fixed and variable costs because it was a completed closed period and truly representative of costs in the counties. The FY 1999 figures are only being used for getting the fixed and variable percent in each court. In the next couple of weeks the FY 1999 figures will be sent out to the counties to be reviewed for errors with a week's turnaround back to the OCA.

In a discussion between Judge Warner and Lisa Smith concerning the purpose of the District Court Council deciding the allocations of monies to each county, Ms. Smith stated that the reallocation of funds by the DCC is only applicable to the variable cost allowance, not the fixed monies. Ms. Smith read directly from SB176 in response to Judge Warner's questions and states that the goal at this time is the get approval of the methodology and authorization to use this process to get the county budgets set up on the state system.

Judge Warner continued that the OCA needs the DCC's and the District Court Judges' approval for these allocations. Judge Diane Barz agreed with Judge Warner that they need time to present the methodology and the allocations to at least the four voting DCC District Court Judges. Lisa Smith stated that budgets are estimates and that the DCC members and OCA staff have the responsibility to manage these budgets. District Court Judges must take the responsibility to be educated and respond. Chief Justice Gray and Judge Warner talked about having to "rubber stamp" the numbers and percentages at this juncture because of the time limitations and agreed that in the future that the DCC will have more to say about these items as the District Court Assumption proceeds into the next fiscal years.

Lisa Smith continued by making her presentation on the budget sheets that illustrate what each county's budget will look like, but cautioned that the numbers on the sheets may not be the actual dollar amounts. Worksheets will be sent out to each county's financial departments. Judge McLean inquired whether or not the counties are aware that they will have some share in covering these costs. Judge Warner responded that MACo has been keeping the counties very well informed and Lisa Smith also said that

many of the district court judges and their staffs have called on speaker phones to keep everyone informed.

Lisa Smith moved on to the Budget Establishment Organization (BEO) sheets. The BEO will be broken into the fixed and the variable components. The reports will look different than what is being presented on these sheets. In FY 2003 the variable cost monies will be kept separate to monitor the budget. Some of the variable costs will be on a reimbursement basis, such as indigent defense and jury costs as they are incurred. The District Court Reimbursement Program will no longer exist; those monies will go to the State's General Fund. Processes will be in place to submit variable costs such as indigent defense expenses to the State on a monthly basis for a percentage of those costs. Many costs will be paid directly because they are assumed costs, but not all variable costs will be reimbursed or be reimbursed at 100 percent. To compensate for the unpaid portions the counties will need to have a contingency fund to cover them.

After July 1, 2002, Chief Justice Gray stated that a supportable proposal to the Legislature must be prepared as to how the Youth Court and Involuntary Commitment costs should be handled. Judge McLean raised concerns about each county receiving monthly breakdowns on expenses versus allocations, so that the counties will know when they are "in the red". Judge McLean also expressed anxiety about jeopardizing funding for Juvenile Detention. Lisa Smith declared that staff is in the process of finding the "cap" for each county. Furthermore, the staff will be able to better control the budget if a "cap" can be put on at the county level because then the county will know when it is out of funding.

There was a lengthy discussion concerning keeping the county commissioners and district court judges informed about the District Court Assumption and especially the need for a county contingency fund. Those partaking in the discourse were Chief Justice Gray, Judge Barz, Judge McLean, Judge McKittrick, Judge Warner, Nancy Sweeney and Lisa Smith. Concerning the information issue, Nancy Sweeney praised MACo for keeping county commissioners, district court judges, and clerks of district court informed about cost projections and giving them guidance. Discussing the contingency funds, Judge McKittrick made the point that there was very little discretionary funding available in the counties and many costs relating to trials are unpredictable. Chief Justice Gray responded that the counties are responsible for certain costs, the counties backed SB176 and cannot turn their backs on their legal obligations. Chief Justice Gray stated that none of us know about the dollar amounts or where we will get all of the monies needed, but it is not our responsibility—the counties wrote the bill so they must know where the monies are going to come from.

Nancy Sweeney recommended that the District Court Judges obtain from their respective Clerks of District Court the "District Court Assumption Questions and Answers" which discusses some of the money sources available such as the Local Option Vehicle Tax. Lisa Smith pointed out that we have until FY 2003 to address many of these issues and time to help the Legislature understand that many of the costs associated with the State Assumption are not controllable and that the staff will continue to work on plans and policies to tackle these matters.

**III (a) Motion to Adopt:** Judge John Warner, District Court Council Member, moved to direct the staff to make a request to the Clerks of District Court Association, the Department of Revenue, and MACo send to all District Court

Judges and the District Court Council all written communication regarding Senate Bill 176. Judge Ed McLean seconded. Judge Diane Barz called the question. No further discussion. Motion passed.

To do: Office of the Court Administration's staff will write letters requesting the Clerks of District Court Association, the Department of Revenue, and MACo to mail copies of all written communications regarding Senate Bill 176 to all District Court Judges.

## **V. Policies**

Beverley Boyd presented an overview of the policies, some of which have already been approved, and some that are new or changed and must be approved for adoption. Approved at the last meeting were policies numbered as listed: 1) Fixed and Variable Costs, 3) Vehicles.

Judge Ed McLean asked whether membership dues are reimbursable for associations District Court Judges belong to. Lisa Smith remarked that standards needed to be set on reimbursement for dues according to the resources available.

**V. (a) Motion to Amend:** Judge Ed McLean, District Court Council Member, moved to amend Legal Resources, 1.0 Policy be amended to read, "The cost of *approved professional memberships*, publications and subscriptions are authorized by the District Court Council is a state district court program cost." Judge John Warner seconded. Judge Thomas McKittrick called the question. No further discussion. Motion passed.

**Vehicle Policy** was approved at the April 19, 2002, District Court Council meeting.

**Office Equipment/Furnishings Policy:** Ms. Boyd explained that as discussed at the April DCC meeting, the District Court Judges and the Judges of Courts of Limited Jurisdiction had been notified that no Justices of the Peace would be evicted from their district court facilities. Also, at the last meeting changes were made to this policy with the addition of Section 5.0 Historic Furnishings Policy.

**V. (b) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to adopt the Office Equipment/Furnishings Policy as amended at the April 19, 2002, DCC meeting. Judge John Warner seconded. Judge Thomas McKittrick called the question. No further discussion. Motion passed.

**Telephones Policy** was approved at the April 19, 2002, District Court Council meeting.

**Office/Operating Expenses Policy:** Beverley Boyd stated there was a discussion at the April DCC meeting and that some of the resulting changes were the establishment of three new separate policies on Detention, Youth Court and Transportation. Beth McLaughlin is to discuss these later in this meeting.

Ms. Boyd continued that there were some major changes made. In 3.1, contracting parties were changed to the district court judge and the court reporter instead of the Office of the Court Administrator and the court reporter. In 3.2, court reporters should be

included as exceptions to the Request For Proposal process and this will have to wait to be changed during the next Legislative Session. Until then, to meet legal requirements, the Independent Contractor Court Reporters will have to go through an RFP process, which is a multi-vendor contract based on qualifications and not the amount of the bid. The District Court Judges would be able to choose their court reporters by qualifications and not by the amount of the bid.

Ms. Boyd stated the changes under 8.2: reasonable security provided, and 8.3: District Court Judges authorization of bailiffs.

**V. (b) Motion to Amend:** Judge John Warner, District Court Council Member, moved to amend the Office Equipment/Furnishings Policy 8.3 to be changed to read: "District court judges are authorized to require reasonable and necessary security using the *services* of a bailiff *and* other law enforcement officers as needed on a case-by-case basis. Judge Ed McLean seconded. Judge Thomas McKittrick called the question. No further discussion. Motion passed.

**V. (c) Motion to Adopt:** Judge John Warner, District Court Council Member, moved to adopt the Office Equipment/Furnishings Policy as amended (Sections 8.2 and 8.3). Judge Diane Barz seconded. Judge Ed McLean called the question. No further discussion. Motion passed.

**Computer Services Policy** was approved at the April 19, 2002, District Court Council meeting.

**Criminal Case Expenses Policy:** Chief Justice Gray, Judge Barz, Judge McKittrick, Judge McLean, and Judge Warner discussed the addition of 7.0 Defendants Unfit to Proceed. Chief Justice Gray pointed out that it was added verbatim because it is required by the statute changes, but it is expensive to transport defendants requiring either a car and driver or an airplane, and at least one deputy sheriff. Judge McLean stated that there would be a need to amend 7.0 to read, "...of keeping the defendant there *pending trial*..." in SB176 and other statutes in the MCA's particularly in Sections 46 and 53.

**V. (d) Motion to Amend:** Judge Thomas McKittrick, District Court Council Member, moved to amend that Section 7.0 remain in the Criminal Case Expenses Policy as written. Judge John Warner seconded. No further discussion. Motion passed.

**V. (e) Motion to Adopt:** Judge Thomas McKittrick, District Court Council Member, moved to adopt the Criminal Case Expenses Policy as amended. Judge Diane Barz seconded. Judge McLean called the question. No further discussion. Motion passed.

**Special Proceedings Policy** was approved at the April 19, 2002, District Court Council meeting.

**Child Abuse and Neglect Proceedings Expenses Policy:** Sections 1.3 and 1.4 were added because inadvertently left out of the Policy.

**V. (f) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to amend the Child Abuse and Neglect Proceedings Expenses Policy by adopting Sections 1.3 and 1.4 as written. Judge Diane Barz seconded. Discussion brought by Judge Warner. Chief Justice Gray and Judge McLean responded, Judge Warner conceded that these were valid district court expenses. Judge Warner called the question. No further discussion. Motion passed.

**Involuntary Commitment Policy:**

**V. (g) Motion to Amend and Adopt:** Judge John Warner, District Court Council Member, moved that Section 1.3 be amended to read. “Any other pre-commitment costs incurred such as treatment, lodging, and transportation is the responsibility of the *county* initiating the proceeding”, and that the Involuntary Commitment Policy be adopted as amended. Judge Ed McLean seconded. Discussion brought by Judge Thomas McKittrick asking where the three percent growth came from and Chief Justice Gray responded that it was in SB 176. Judge Diane Barz concurred that we must go by the statute. Judge Ed McLean called the question. No further discussion. Motion passed.

**Grand Jury Costs Policy** was approved at the April 19, 2002, District Court Council meeting.

**Court Sanctioned Education Program—Dissolution of Marriage Policy:**

Beverley Boyd stated that the only changes to this policy were the separating of Section 1.0 into two “bullets”.

**V. (h) Motion to Adopt:** Judge John Warner, District Court Council Member, moved to adopt the Court Sanctioned Education Program—Dissolution of Marriage Policy as amended. Judge Ed McLean seconded. Discussion followed between Chief Justice Gray, Judge Diane Barz, Judge John Warner and Nancy Sweeney. Judge Ed McLean called the question. No further discussion. Motion passed.

**Civil Jury Trial Expense Policy** was approved at the April 19, 2002, District Court Council meeting. Beverley Boyd stated that a letter concerning this policy was sent to “almost everyone” because the DCC wanted those involved to be aware of this policy, and that she has been receiving calls ever since. Lisa Smith wanted to help the DCC understand the difference between a budget and a fund stating that money for budgets comes out of funds.

**Youth Court Case Expenses Policy:**

In policy 2.0, 2nd paragraph, individual youth courts are directed to seek reimbursement from other sources.

**V. (i) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to adopt the Youth Court Proceeding Expenses Policy, Judge John Warner seconded. Judge Ed McLean called the question. No further discussion. Motion passed.

**Transportation Policy:**

The initial custody and detention of a juvenile is a law enforcement responsibility and not a responsibility of the Juvenile Probation officer. The pre-adjudatory transportation

policy states that law enforcement is also responsible for transporting youth to the youth court hearings. The county is responsible for transportation to a correctional facility unless the facility is out of state in which case the Department of Corrections is responsible.

Transportation safety is not in statute, but is important and was added to the policy. Each probation office must develop protocol to ensure the safety of staff and juveniles during transportation.

**V. (j) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to adopt the Transportation Policy, Judge John Warner seconded. Judge Ed McLean called the question. No further discussion. Motion passed.

### **Detention Policy**

Detention is the responsibility of the County. Youth court employees should not be managing Juvenile Detention facilities.

The Counties may provide for shelter care. Individual Judicial Districts can authorize the use of placement money to pay for pre-adjudicatory shelter care.

Electronic monitoring is a youth court responsibility.

**V. (k) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to adopt the Detention Policy, Judge John Warner seconded. Judge Ed McLean called the question. No further discussion. Motion passed.

### **SummitNet Use Policy**

This policy is designed for connectivity, how it's used, and possible limitations for security purposes. Unauthorized remote access to state facility resources is considered a security violation.

**V. (l) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to adopt the SummitNet Use Policy, Judge John Warner seconded. Judge Ed McLean called the question. No further discussion. Motion passed.

### **Electronic Mail Policy**

The state-provided e-mail system is to be used for the conduct of state and local government business and delivery of government services. Email training is available. Privacy of e-mail is not guaranteed. The use of encryption should be considered when sending confidential messages. The Department of Administration personnel can monitor e-mail for performance, troubleshooting purposes, or if abuses are suspected.

**V. (m) Motion to Amend and Adopt:** Judge Ed McLean, District Court Council Member, moved that Section 1.3 be amended to read. "Employees *do* not have expectations of privacy for any messages", and that the Electronic Mail Policy be adopted as amended. Judge Thomas McKittrick seconded. Judge Ed McLean called the question. No further discussion. Motion passed.

### **Computer Use Policy**

Each user is responsible for knowing the state's policies concerning security and care for their computer.

Only the State ITSD can grant exceptions for the use of software that does not meet state standards.

Marko Lucich asked if videoconferencing would be regarded as non-standard software. Dan Chelini mentioned videoconferencing is not included in this policy.

**V. (n) Motion to Amend and Adopt:** Judge Ed McLean, District Court Council Member, moved that Section 2.0 be amended to read. "Therefore, employees *do* not have expectations of privacy when using the Internet, e-mail, or other computer sources", and that the Computer Use Policy be adopted as amended. Judge Diane Barz seconded. Judge Ed McLean called the question. No further discussion. Motion passed

### **Involuntary Commitment Policy**

Lisa Smith brought up discussion that the cap on the cost for involuntary commitment is actual fiscal year 2001 District Court expenses. This is a state-wide cap. Problems for small Counties must be dealt with administratively by the OCA. Chief Justice Karla Gray stated SB176 supports the County concept, not District.

### **Public Defenders Policy**

Public defender costs, whether paid under contract or through personal service, is a variable cost. According to SB176, public defender costs are state costs. Chief Justice Karla Gray suggested in 2003 the Counties end up picking up some of these costs for public defenders and or other indigent defense.

### **IX. Information Technology Update**

There are estimated 43 Counties with sufficient connections in the county courthouses. Thirteen Counties have been identified with problems for connectivity. Automation is currently working on the solutions for these counties.

ITSD will provide services in assisting with the District Court Assumption. ITSD will charge \$72.60 per month for desktop services if connections are needed.

Beverly Boyd and Dan Chelini are trying to secure a \$240,000 Juvenile Accountability grant to fund juvenile probation automation costs. A Juvenile Criminal Enforcement Coalition will need to be formed in order to qualify for the grant funds.

Chief Justice Karla Gray suggested that we continue to be creative in obtaining grant funds to show the Legislature our efforts in getting funding elsewhere.

Judge Ed McLean suggested a grant writer be available to obtain more funding. Chief Justice Karla Gray and Lisa Smith discussed the possibilities of presenting the need for a grant writer to the Legislature.

Beverly Boyd stated the current grant should be completed about the middle of June. Names are needed to form the committee members. The suggestions for members were: Judge Susan Watters, Joe Connell, James Dupont, Bill Witts, David Irion, Dori Brownlow, Pam Ponich, Rick Floren, and Phillip Caldwell. When the members meet, their travel will be reimbursed.



## **VII. Procard**

Every time the pro card is used, the cardholder will complete a log sheet. The log sheet must be reviewed and signed by the cardholder's supervisor and sent to the OCA for reconciliation purposes. Pro card expenditures will be reviewed on a monthly basis by the OCA.

## **VIII. Human Resources Update**

The approved personnel policies will be posted on the State Law Library's web site and sent to all District Court Judges, chief probation officers and others. The Compensation and Classification Plan provided by the National Center for State Courts received comments regarding changes in job classifications.

Payroll is the primary focus for each district to identify a point person who can be used as the payroll contact. The point person will help the employees in their district with electronic time sheets. The instructions for payroll will be sent out by the end of May.

The employee benefit forms have been returned to the OCA and the majority of the employees are transferring to the state plan. The first paycheck a state assumed employee receives will be on July 24, 2002.

Mike Hutchin asked if the personnel files were going to be transferred to the OCA. Beth McLaughlin told him that the OCA would be requesting the personnel files as well as payroll and leave information.

Chief Justice Karla Gray commented there is good communication from Human Resources, which is making the transition from County to State go smoothly.

## **XI. DCC Membership Reappointment**

Rick Lewis received a letter from MACo requesting re-appointment of Mike Hutchin. Tim Smith mentioned a Court Reporters convention is scheduled for the first week in June and the membership will formally vote for the new member. Judge Diane Barz and Judge John Warner will be the two judges spots open for reappointment.

## **X. Legal Resource Policy**

A checklist was provided to the District Court Judges to review what is available on Lexis verses Westlaw and what is available on the Law Library website. District Court judges may select one. Judge John Warner and Judge Diane Barz commented Westlaw is more user-friendly than Lexis.

**Motion to Adopt Amended Policy:** Judge Ed McLean, District Court Council Member, moved that the Legal Resource Policy be adopted as amended. Judge Thomas McKittrick seconded. Judge Ed McLean called the question. No further discussion. Four members voted to adopt the amended policy and Judge Diane Barz voted against. Motion passed by majority vote.

## **XII. Other Business**

July 19, 2002 is the next scheduled District Court Council meeting date.

Judge Ed McLean made a motion that all copies of minutes of the DCC meetings are to be sent to the County Commissioners and the Clerks of District Court and Clerks of Limited Jurisdiction Courts.

Chief Justice Karla Gray informed the council that the minutes are available on the Law Library website and that mailing the minutes would be too costly. Beverley Boyd suggested e-mailing to these areas except she did not have the email addresses for the Clerks of Limited Jurisdiction Courts.

Harold Blattie addressed questions that came to MACo from the individual County Commissioners. Harold's April 26<sup>th</sup> version of his address to the County Commissioners will be distributed by email to the District Court Judges.

Chief Justice Karla Gray presented Certificates of Appreciation to Judge Diane Barz, Judge Thomas McKittrick, and Judge Ed McLean. Chief Justice Karla Gray and Rick Lewis signed the certificates. Chief Justice Karla Gray read a letter from the procurement staff addressed to The Honorable John Warner.

Chief Justice Karla Gray wished everyone a wonderful first part of the summer and thanked everyone for attending.

### **Schedule**

Meeting scheduled for July 19, 2002.

### **Adjournment**

Meeting adjourned at 1:20 PM by order of the Chair, Chief Justice Karla Gray.