

State of Montana



DISTRICT COURT COUNCIL

**Minutes of June 20, 2003
Justice Building 215 N. Sanders
Attorney's Lounge on 4th Floor
Helena, MT 59601**

DCC Voting Members Present:

The Honorable Karla Gray, Chief Justice, Supreme Court
The Honorable Diane Barz, District Court Judge, 13th Judicial District
The Honorable Ed McLean, District Court Judge, 4th Judicial District
The Honorable Thomas McKittrick, District Court Judge, 8th Judicial District
The Honorable John McKeon, District Court Judge, 17th Judicial District

DCC Non-voting Members Present:

Lori Maloney, Clerk of the District Court, Butte
Mike Hutchin, County Commissioner, Polson

Staff:

Jim Oppedahl, Court Administrator
Beverley Boyd, Court Services Director
Shelly Hinson, Administrative Assistant

Guests:

The Honorable Ted Lympus, District Court Judge, 11th Judicial District
The Honorable Stewart Stadler, District Court Judge, 11th Judicial District
Bonnie Olson, Court Administrator, 11th Judicial District
Mat Bugni, OBPP
Christi Moyer, OBPP
Dale Bickell, Missoula Co. Public Defender's Office
Ann Mary Dussault, Missoula Co. Public Defender's Office
George Corn, Ravalli County
Katrina Martin, Helena
Dee Ann Cooney, Helena
Gordon Morris, MaCO, Helena
Harold Blattie, MaCO, Helena
Beth Breneman, ACLU, Helena

I. Welcome

The District Court Council met on Friday, June 20, 2003, at 8:00 a.m. at the Justice Building, 215 N. Sanders, Helena, MT 59601 in the Attorney's Lounge on the 4th floor. 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:

II. Approve May 15, 2003 DCC Minutes

Lori Maloney, Council Member, was recorded as having seconded the motion to adjourn. Chief Justice Gray pointed out that Lori is not a voting member and asked the voting members who seconded Judge Diane Barz's motion to adjourn? Judge Ed McLean indicated that he had seconded the motion.

II.(a) Motion to Adopt: Judge Ed McLean, District Court Council Member, moved to adopt the May 15, 2003 District Court Council minutes as amended. Judge Thomas McKittrick seconded. Judge Ed McLean called the question. No further discussion. Motion passed unanimously.

III. Public Defender and Indigent Defense Policies

Jim Oppedahl gave an overview of the four drafted policies implementing SB490. Policy 810 relates to court-appointed counsel; Policy 820, County-contracted counsel; Policy 830, Public Defender offices; and Policy 840, Involuntary Commitment.

POLICY 810

III.(a) Motion to Adopt: Judge Ed McLean, moved to set a reimbursement rate at \$60.00 per hour with counsel to petition the court for higher hourly compensation in cases that have extraordinary circumstances. Judge Tom McKittrick seconded the motion. Judge John McKeon asked what "reimbursement rate" meant in the motion.

III.(b) Amended Motion: Judge Ed McLean amended the previous motion to "pay counsel at a rate of \$60.00 per hour with the right to petition the District Court for higher compensation in cases with extraordinary circumstances." Judge Tom McKittrick seconded the motion. There was brief discussion of extraordinary circumstances. Judge Ed McLean called the question. Motion carried unanimously.

Judge Ed McLean clarified that the motion was made to cover policy 810.

III.(c) Amended Motion: Judge Ed McLean moved to pay or reimburse at the rate of \$60.00 per hour, except in extraordinary circumstances, the counsel may petition the District Court for additional compensation. Judge

Tom McKittrick seconded the motion. The council discussed compensation ranges.

III.(d) Amended Motion: Judge Ed McLean amended his motion to amend Policy 810, 6.0a by deleting the ranges portion and incorporate the substance of the previous amended motion. Judge Tom McKittrick seconded the motion. Judge Ed McLean called the question. Motion carried unanimously.

III.(e) Motion to Amend: Judge Diane Barz moved to add to policy 810, “**subject to a cap of \$5.3 million, fiscal year 2004, for all indigent defense, the judicial branch will pay as follows:**” . No second was made and the motion died.

III.(f) Motion to Adopt: Judge Ed McLean moved to adopt policy 810. Judge John McKeon seconded the motion. Judge Ed McLean called the question. Judge Diane Barz voted no. Motion carried 4-1.

POLICY 820

III.(f) Motion: Judge Ed McLean moved to amend Policy 820 under 1.0 that neither the Court Administrator’s office nor individual district court judges can contract for the services of indigent defense. Judge Tom McKittrick seconded the motion. Judge Ed McLean called the question. Motion carried unanimously.

III.(g) Motion to adopt: Judge Ed McLean moved to adopt Policy 820 as amended.

Chief Justice Karla Gray suggested that Judge Ed McLean possibly add the other language to 6.0a that was added in Policy 810.

III.(h) Substitute Motion to previous motion to adopt: Judge Ed McLean moved to delete 6.0a under policy 820 and reletter accordingly. Judge John McKeon seconded the motion. Judge Ed McLean called the question. Motion carried unanimously.

III.(i) Revert to Amended Motion: Judge Ed McLean moved to adopt Policy 820 as amended. Judge Tom McKittrick seconded the motion. Judge John McKeon discussed the matter of encouraging the counties to enter into the contracts.

III.(j) Amended Motion: Judge Diane Barz moved to further amend Policy 820 (1.0) by encouraging counties to utilize the advantages of entering into a contract on these matters. Judge John McKeon seconded the motion. Judge Ed McLean called the question. Motion carried unanimously.

III.(k) Revert to Amended Motion: Chief Justice Karla Gray reverted to Judge Ed McLean's amended motion to adopt Policy 820 as amended and asked if there was any discussion. There was no discussion. Judge Ed McLean called the question. Motion carried unanimously.

There was discussion between the council members addressing the issue of paying or reimbursing appointed counsel.

III.(l) Substitute Motion to Policy 810 and 820: Judge Ed McLean moved to amend Policy 810 and 820 by inserting the language that **reasonable compensation shall be presumed to not exceed \$60.00 per hour in the absence of extraordinary circumstances.** Judge Diane Barz seconded the motion. Chief Justice Karla Gray asked the council if they would authorize Jim Oppedahl and her to edit the wording for style. The council agreed. Judge Ed McLean called the question. Motion carried unanimously.

POLICY 830

Jim Oppedahl provided an overview of Policy 830, which deals with county created public defender offices.

Ann Mary Dussault, representing the Missoula County public defenders office, recommended several changes to the way counties are paid for public defender offices. Jim Oppedahl recommended approving policy 830 as it was presented and then he would talk with the public defender's offices to discuss their concerns and return at the next District Court Council meeting with recommendations.

III.(m) Motion to adopt: Judge Tom McKittrick moved to adopt Policy 830. Judge Ed McLean seconded the motion. Chief Justice Karla Gray suggested the public defender offices and Jim Oppedahl conduct a conference call to gather details. For an operating premise, Judge Diane Barz moved to amend the policy to add the language **reasonable compensation shall be presumed to not exceed \$60.00 per hour in the absence of extraordinary circumstances** as was in Policy 810 and 820. Judge Ed McLean called the question. Motion carried unanimously.

POLICY 840

Policy 840 addresses involuntary civil commitments, which are not performed by public defender offices. Chief Justice Karla Gray suggested removing the first **3.0 Limitations** in Policy 840 since it is irrelevant to the policy.

III.(n) Motion to Amend: Judge John McKeon moved to amend Policy 840 by deleting 3.0 Limitations in Policy 840. Judge Ed McLean seconded the motion. Judge McKittrick called the question. Motion passed unanimously.

III.(o) Motion to Adopt: Judge John McKeon moved to adopt Policy 840 as amended. Judge Ed McLean seconded the motion. Judge Ed McLean called the question. Motion passed unanimously.

IV. Uniform Reporting Standards

Judge Ed McLean reported that Shirley Faust, District Court Clerk of Missoula, has been in touch with the Clerk of Court Association members. At this point they are proposing to use one name with one case for uniform reporting purposes. At the next District Court Council meeting a proposed rule will be submitted to the Council to petition the Supreme Court to adopt the rule for uniform reporting requirements. Chief Justice Karla Gray asked Judge Ed McLean to provide the council members the proposal in writing when it is ready prior to the next meeting.

V. Break

VI. Budget

Jim Oppedahl reported that \$4,789,378.60 has been reimbursed and direct pays to the counties for the months of July through March. The total available appropriation for the reimbursement and direct pays is \$7,483,879. Jim recommended continuing processing the bills and holding the last three months until accounting is sure what 100% of the expenses are. The counties will be informed.

VI.(a) Motion to Adopt: Judge Diane Barz moved that the last three months of payments be held pending a determination of the total costs. Judge Ed McLean seconded the motion. Judge Ed McLean called the question. Motion carried unanimously.

VII. Other Business

The next District Court Council meeting is scheduled for July 18, 2003 at the Attorney's Lounge in the Justice Building, 215 N. Sanders at 8:00 am.

The Council discussed the matter of the District Court Council taking a position on the public defender system to be assumed by the Department of Administration if the matter comes up in a special session. Chief Justice Karla Gray suggested scheduling the matter on the July agenda for the District Court Council to review and discuss.

Judge Ed McLean suggested other policies be reviewed with regard to the policies that were discussed at this meeting to see if the Council should revisit any of them.

Chief Justice Karla Gray informed the Council that the policy changes would need to go to the Supreme Court for final approval.

VIII. Adjourn

Motion: A motion was made by Hon. Tom McKittrick to adjourn the meeting. The motion was seconded by Hon. John McKeon and passed unanimously. The meeting adjourned at 11:45 a.m. by order of the Chair, Chief Justice Karla Gray.