

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
MARCH 25, 1981

The fifty-second meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

Every member was present.

CONSIDERATION OF AMENDMENTS TO COMMITTEE BILLS:

Relative to the two proposed committee bills drawn for the purpose of reinstituting the small claims court system in Montana, amendments had been prepared by David Niss which would answer some of the problems described by Gladys Vance, a Cascade County justice.

Senator Anderson described the problem in Cascade County as being one of scheduling ten or fifteen cases to be heard, only to have one or two appear at the given time. He said that the suggested amendments would help the non-appearance problem.

Mike McCabe, Helena justice, said that the problem is much worse in Cascade County than it is anywhere else in the state, and the present default provision is adequate remedy if it is just used. He also objected to the six-day response requirement contained in the bills.

Senator Mazurek stated that he also disliked the amendments because they turned the small claims court into something more complicated and therefore less available to the people it is intended to help.

Senator Crippen felt that the amendments would do the reverse of the intent of the bill, which is to get more of these actions settled in the small claims court.

CONSIDERATION OF SENATE BILL 485:

CREATING A SMALL CLAIMS COURT  
PROCEDURE WITHIN JUSTICE'S  
COURT (REMOVAL PROVISION)

David Niss explained that the bill would repeal all of current Title 25, chapter 35, relative to the small claims court within justice's court. He pointed to the two new

sections, 17 and 18, dealing with removal.

Mike McCabe rose to support the bill because it does not provide for an appeal de novo. He suggested that on page 4, subsection (2), the requirement that the attorney general distribute sufficient pamphlets be changed since no appropriation exists to pay for this distribution. He said that on page 7 the language relative to setting the hearing was unnecessary, and that all the notifications required for this would cost additional money. He added that on page 9, subsection (2), because of the limit's having been raised to \$3,500 for justice court claims, the language specifying which court should be used was unclear.

John Maynard, assistant attorney general, supported the bill as being preferable to SB 486, and submitted a "Technical Assistance Report" (attached Exhibit A) prepared by the National Center for State Courts on the subject of Montana's justice courts.

Senator Mazurek asked John Maynard if a provision for the defendant's having to pay the plaintiff's attorney's fee in the event he lost his appeal might not be fair, and something which should be added.

CONSIDERATION OF SENATE BILL 486:

CREATING A SMALL CLAIMS COURT  
PROCEDURE WITHIN JUSTICE'S  
COURT (APPEAL PROVISION)

David Niss said that the bill provides for an appeal de novo to the district court, and that the only section in this bill which is new is Section 18, on page 11, which provides for such an appeal. These provisions included requirements for a bond and costs, and inconvenience if the execution of the small claims judgment is stayed.

Mr. McCabe opposed this bill by saying that SB 485's provisions would cover the positive aspects of SB 486, and SB 486 fails to provide a speedy remedy.

Senator Crippen asked Mr. McCabe if the trial de novo feature in SB 486 might force the parties to accept the decision of the small claims court because of the delay which would result otherwise, and asked if this did not conflict with the purpose of the small claims court, which is to expedite cases.

Mr. McCabe said that it would do nothing to prevent an appeal.

Senator Mazurek asked whether, in Section 18, there would be

a conflict, and said that there should be an exception added if the bill is passed, insuring that Section 22 would deal with the appeal. He also wondered, in cases that are removed from small claims court to justice's court, if there was a constitutionality problem because no distinction was made between what is "removed" and what is not.

David Niss said that there would be no constitutionality problem because a waiver has been made to a jury trial under those circumstances. He added that Gladys Vance had mentioned other problem areas, specifically 1) limiting to three the number of complaints per person per year which could be brought in small claims court; 2) defendants' denying prior knowledge of the charges being brought; and 3) including in the attorney general's publication advice to defendants as well as to plaintiffs if an answer is to be required as proposed in the offered amendments.

The committee decided to have Chairman Anderson write to the Cascade County justice advising her that the committee had decided not to include her suggestions in either bill, and giving her the reasons for their decision.

DISPOSITION OF SENATE BILL 486:

Senator Berg moved that the bill be TABLED, and his motion passed unanimously.

DISPOSITION OF SENATE BILL 485:

Senator S. Brown moved the second amendment as shown on the attached Committee Report, and his motion carried unanimously. Senator Mazurek moved the remaining amendments shown on the attached Committee Report, and they passed unanimously except for the New Section 25 included in the eighth amendment, which Senator Olson opposed. Senator Berg moved that the bill DO PASS AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 536:

Senator Mazurek moved that the bill BE CONCURRED IN, and his motion passed over Senator Tveit's objection.

DISPOSITION OF HOUSE BILL 815:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion passed unanimously. Senator Tveit moved that the bill BE NOT CONCURRED IN AS AMENDED, and his motion passed over the opposition of Senators Mazurek, Berg, and S. Brown.

DISPOSITION OF HOUSE BILL 656:


Senator S. Brown moved to table the bill, and his motion carried.

DISPOSITION OF HOUSE BILL 703:

Senator Mazurek proposed that the bill be amended as shown on the attached Committee Report. Senator Olson moved these amendments, and his motion passed unanimously.

Senator Anderson asked about access to records of non-custodial parents, and said that it could cause problems. Senator Mazurek said that while the parent may not have custody of the child, he still has parental rights.

Senator Mazurek moved that the bill BE CONCURRED IN AS AMENDED, and his motion carried over the opposition of Senators Crippen and Tveit.

A handwritten signature in cursive script, reading "Mike Anderson", written over a horizontal line.

Mike Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date *March 25, 1981*

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: John P. Morgan DATE: 3/28/21

ADDRESS: Rm 225 State Capitol

PHONE: 404-2020

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: SB 005450.

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

March 25, 1981

SENATE BILL NO. 485 & 486

## VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

Exhibit A

TECHNICAL ASSISTANCE REPORT  
FOR THE SMALL CLAIMS COURT  
YELLOWSTONE COUNTY, MONTANA

Prepared by:

Randy Wolfe  
Steven Weller

National Center for State Courts

This report was supported by grants from the Florence V. Burden Foundation and the McDonald's Corporation. The opinions expressed herein are those of the authors and do not necessarily represent the positions of the Florence V. Burden Foundation, McDonald's Corporation, or the National Center for State Courts.

## INTRODUCTION

The Yellowstone County Justice Court is a court of limited jurisdiction handling criminal actions (including deputy sheriff's citations, county attorney filings, vehicle weight violations, public service commission citations, violations of dog ordinances, Highway Patrol citations, and Fish and Game citations), civil actions (involving monetary amounts of \$1,500 and less), and small claims actions (involving amounts of \$750 and less). The two-judge court handles almost 18,000 filings each year (17,891 actions were filed in 1979.) Approximately 17% of these filings are civil and small claims actions.

Judge Pedro Hernandez and Judge Janet Eschler of the Yellowstone County Justice Court have been examining various aspects of their small claims procedures in hopes of improving the process. They requested technical assistance from the National Center for State Courts in this endeavor. Specifically, the National Center was asked to review procedures for scheduling, docketing, and better informing litigants in using the system. In addition, a recent decision by a Montana District Court Judge ruled that, as the Montana Justice Court legislation currently is written, the small claims court in Montana is unconstitutional (see following section entitled The Montana Small Claims Statute). In this regard, the National Center also was requested to analyze the small claims court statute and public relations efforts of the small claims court.

Ms. Randy Wolfe, Project Director of the Small Claims Assistance Project and Dr. Steven Weller, former project director of the project and consultant to the National Center, visited the Yellowstone County Small Claims Court on

September 11 and 12, 1980 to observe their operation. The primary issues identified and discussed during the visit and included in this report are:

- Statutory analysis and recommendations,
- public relations,
- litigant handbooks, and
- clerical procedures (scheduling, case filing, and the complaint and docket form).

# STANDING COMMITTEE REPORT

..... HOUSE ..... 1902.....

MR. PROSDOCIMI.....

We, your committee on JUDICIARY.....

having had under consideration HOUSE Bill No. 536.....

MULLENBERGERS (HAEURER)

Respectfully report as follows: That HOUSE Bill No. 535.....

~~DO PASS~~

BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 25, 1961

MR. McFADDEN:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 703

DUBSAULT (MAZURAK)

Respectfully report as follows: That HOUSE Bill No. 703

after reading copy, be amended as follows:

1. Title, lines 4 through 5.  
Following: the second "ACT" on line 4  
Insert: "PERTAINING"  
Following: "TO" on line 4  
Strike: line 4 through "FOR" on line 5

2. Title, line 6.  
Following: ";"  
Strike: line 6  
Insert: "CONSIDERING"

3. Page 1, line 23.  
Following: "custody"  
Strike: "to any interested party"

DO PASS

March 25, 1991

4. Page 1, line 23.

Following: "establish"

Strike: "preferences and"

5. Page 2, lines 2 through 3.

Following: "awarded" on line 2

Strike: "in"

Insert: "to"

Following: "following" on line 2

Strike: line 2 through "preference" on line 3

6. Page 2, line 17.

Following: "3."

Strike: "Presumption in favor of joint"

Insert: "Joint"

7. Page 2, lines 20 through 21.

Following: "custody," on line 20

Strike: line 20 through "that" on line 21

Insert: "the court shall consider whether or not"

*M.*  
And, as so amended,  
BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 25, 1961

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 815

Respectfully report as follows: That HOUSE Bill No. 815,

this reading copy, be amended as follows:

1. Page 1.

Following: line 12

Insert: "Section 2. Purpose. This act provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this act is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-132, MCA.

Repeal: subsequent sections

2. Page 7,

Following: line 2

Insert: "Section 9. Codification instruction. Sections 1 - 8 are intended to be codified as an integral part of Title 40, chapter 3.

And, as so amended,

~~the passage~~

~~is recommended~~

IS NOT CONCURRED IN

# STANDING COMMITTEE REPORT

..... 19 .....

MR. .... PRESIDENT: .....

We, your committee on ..... JUDICIARY .....

having had under consideration ..... Bill No. 485 .....

Respectfully report as follows: That ..... SANITARY Bill No. 485 .....  
be amended as follows:

1. Title, line 9.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 3-10-1001 AND"

2. Page 4, lines 22 through 23.

Following: "distribute" on line 22

Strike: "a sufficient number of"

3. Page 7, line 19 through line 20.

Following: "clerk" on line 19

Strike: line 19 through "peace" on line 20

4. Page 9, line 13.

Following: "appropriate"

Insert: "justice or"

DO PASS

continued

March 25, 1931

Page 12, line 8.

Reading: "the first 'removal'"

Strike: "."

Insert: " -- effect of failure to remove. (1)"

Page 12, line 9.

Reading: "court"

Strike: " ", including rules and statutes governing appeals from justice's court,"

Page 12, line 14.

Reading: "."

Insert: "(2) Failure to request removal within the time provided in section 17 constitutes a waiver by the defendant of his right to trial by jury and representation by an attorney, and the justice shall inform the defendant of such fact prior to commencement of the hearing."

Page 14,

Section 13.

Section 13. Attorney's fees upon removal or appeal. (1) If a defendant removes a matter to justice's court under the provisions of section 17 but does not prevail in justice's court, the court shall grant the plaintiff his reasonable attorney's fees, if any. (2) If the parties are represented by counsel on appeal, the court may grant the prevailing party his reasonable attorney's fees, in addition to costs.

Section 26. Section 3-10-1901, MCA, is amended to read:  
3-10-1901. Purpose. It is the purpose of this part and chapter 3-10-1901 to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial."  
Repeal: subsequent sections

AND, as so amended,

XXXXXXXXXXXXXXXXXX

DO PASS