

**Access to Justice Commission Standing Committee on Law School Partnerships**

**Monday, September 8, 2014**

**2:00 p.m.**

**Missoula MLSA Office**

**In attendance:** Justice Baker, Jamie Iguchi, Randy Snyder, Kate McGrath Ellis, Angie Wagenhals, Diana Garrett, Hillary Wandler, Judge Krueger, Judge Fagg, Patty Fain, and Kate Kuykendall.

Call to Order: 2:03 p.m.

**Item 1: recap, discuss activity statement.**

Jamie gave an introduction of the issue. The working group has been working on a revision of the voluntary activity statement. The Commission received the Committee's recommended draft with some concerns. There were concerns about confidentiality and over-consent. The working group got back together and added a new paragraph to the voluntary activity statement to address these concerns. Justice Baker and Patty can speak to the revisions.

Justice Baker said the revision is first intended to make clear who will be using the information, which is the Supreme Court and the State Bar. This is a data collection effort, not to be used for attribution purposes. The second purpose is a consent to provide the applicant's contact information with the intent of receiving information about opportunities and so forth. There was discussion of who would get the information. A legal services provider needs the information for coordination purposes. We propose that the information will be given to a legal services provider that was approved by the Commission. It inserts the Commission in the process a little more than it was previously, but addresses the concern over who gets the information. In order for a service provider to get that information, they have to be approved by the Commission. All of this will take a bit of logistical detail to implement, but should address the Commission's concern. One other concern raised at the meeting is how information will be used in the bar application process. After review of the new language that's already been added to the form, there isn't much more that can be done. The form makes clear that the information will not be used to evaluate the person's character and fitness to practice law.

Jamie asked the Committee to discuss the revisions and come to an agreement over whether the document in its current form will address the Commission's concerns.

Justice Baker added that the Commission on Character and Fitness has reviewed this draft and has no suggested revisions at this time. Another step we could take is to ask the State Bar to review it as well. We should send it to Chris Manos and have State Bar staff weigh in.

Judge Fagg said it looks good and covers the concerns raised.

Randy said he agrees, but still wonders where the information will reside and who has access to it later once it's been submitted.

Patty said it's currently set up like the pro bono reporting data. It will be housed in a secure database. The State Bar and the Court have programs that allow them to access the collection set. No one else can get access; you have to be an administrator with those privileges. You can follow the links in the materials you received to see how the reporting would take place. It's not accessible through any avenue other than the regular system or direct request of the Commission.

Randy asked how the information gets extracted from the application, because the application goes into a different pot.

Patty said we do and will encourage online reporting. Anything that comes in through paper is inserted into the program manually. The online data is extracted automatically. The program allows you to query directly. There is a two-part element to the consent. We say we use it for data purposes only, UNLESS the applicant indicates an interest in receiving information about pro bono opportunities and trainings. If someone doesn't mark that on their form, it's just a data collecting effort, with numbers only rather than identifying information.

Hillary said she thinks the consent portion looks good. She still wonders if the concerns about character and fitness could be better addressed. She made a suggestion regarding the first sentence that's highlighted yellow, beginning with "...the provision of pre-admission pro bono services is not an...". If we put a period after "for law practice in Montana", and then make an active sentence following that, it might feel more definitive. "The character and fitness...will not consider the pro bono activities statement in its ...certification process."

Patty said there's no harm in making it more definitive. It's hard to distinguish on the form what things go where. Some go to Character & Fitness; some go to the State Bar. It'd be nice to clarify that this never even lands on the desk of Character & Fitness.

Beth said she doesn't see a substantive difference, but also doesn't see any harm in breaking it into two sentences.

There were no objections to making Hillary's suggested change.

Beth said we want to recommend this to the Commission at the October 1<sup>st</sup> meeting. We also want to authorize Jamie to send it to the State Bar before the Commission sees it.

**Judge Fagg moved to approve the recommendation as amended. Beth seconded the motion. The motion carried unanimously.**

Jamie mentioned that someone raised a concern over the notion that it may illuminate who passes and who doesn't pass the bar. Beth said it would just be a matter of coordination between the pro bono coordinator and the data collection people. That's an important detail, but it's not something we have

to have completely figured out at this stage. The Commission can instruct that the two entities can flesh out how those administrative details will be handled.

Patty said we could tie it together with a number identifier, and then separate passes or fails without a name identifier. Once you pass the bar, the number is then obvious.

Beth said she hopes people from the Bar can come to the Commission meeting and explain it. We need to make sure everyone understands the process.

Kate Ellis raised a question. It seems like there's a consent to the release of information above in the form, and there's a second authorization for release of information to contact you. She suggested that we probably want a manifestation of consent for release of the form, and one for receiving contact. This may be as simple as having both on a line and having them check the box twice.

Beth said there are strategic reasons not to do that. We can always make changes to the form if it's not productive. We want to encourage people to participate. We don't want people to find it too easy opt out. We want one kind of general broad consent, and to modify it later if it's not useful.

Angie asked if there's a timeline associated with when they send the form in saying they don't want to be contacted, and when they appear in the deskbook. The minute they're in the deskbook, MLSA has them on a list of people to cold call for pro bono cases.

Beth said that it shouldn't narrow the list; MLSA can just say it's something they do on their own as a matter of course.

**Judge Fagg moved to adjourn. Judge Krueger seconded the motion. The meeting adjourned at 2:37 p.m.**