

Montana Supreme Court Access to Justice Commission
December 8, 2017
Large Conference Room, Office of the Court Administrator
301 S. Park, Third Floor, Helena, MT
1:00 – 3:00 PM
Meeting Minutes

Commissioners Present: Justice Beth Baker, Rep. Kim Dudik, Sen. Terry Gauthier, Hon. Leslie Halligan, Rick Cook, Kyle Nelson, Dan McLean, Dean Paul Kirgis, Ed Bartlett, Melanie Reynolds, and Georgette Boggio.

Commissioners Absent: Matthew Dale, Hon. Greg Pinski, Hon. David Carter, Hon. Winona Tanner, Alison Paul, and Aimee Grmoljez.

Others Present: Angie Wagenhals, Crystine Miller, Derrek Shepherd, Ann Goldes-Sheahan, Nolan Harris, Niki Zupanic, Sarah McClain, Abby Brown, Chris Manos, Debbie Steigerwalt, Patty Fain, Charlie Rehbein, and Krista Partridge.

Call to Order: 1:03 p.m.

Justice Baker began the meeting by noting that this will be Chris Manos' final meeting before his retirement from the State Bar of Montana. She thanked him for his tremendous contributions to access to justice initiatives in Montana. She then asked for comments or corrections on the September meeting minutes. There were no comments or corrections. Judge Halligan moved to approve the September minutes and Dan McLean seconded the motion.

The September minutes were adopted with no objections.

Self-Represented Litigants Committee Report

Ann Goldes-Sheahan reported that the Fee Waiver Form will not be final until it is approved by the Secretary of State, likely before the end of the year. She asked that the form not be distributed until it is published in the rules. Some final modifications were made to make the form more user friendly, to expand the income sections, and to include more plain language. Justice Baker asked if comments from the judges were taken into account when making the final changes. Ann replied that input from the judges was incorporated where possible, but some of them thought the form was simply too long. She said that the length of the form is due largely to the instructions for completion, however, the expenses section was moved to an optional section at the end and the table in Item 3 was removed to shorten the form. Justice Baker stated that the judges' review was beneficial and they will be more likely to accept the form as a result. She added that we need to make sure the form is distributed to all the courts, clerks and judges as soon as it is published. Melanie Reynolds asked if clients have tested the form and Ann replied that the form was not piloted with clients. Abby Brown added that the form is a rule and not conducive to client piloting because certain elements had to be included. Abby said that they tried to make the instructions clear and concise and noted that most self-represented litigants will qualify based on the first three check-boxes. Justice Baker added that many individuals who work with clients helped to develop the form. Judge Halligan expressed concern that there are too many income source categories and

not enough room for extraordinary expenses such as medical or student loan debt, and that judges may not approve the waiver if litigants don't include their debts. Justice Baker asked Ann to pass along Judge Halligan's concerns to Stuart Segrest at the Attorney General's office, and Judge Halligan said that she would also contact Stuart.

Ann also reported that the Family Law automated forms are in the final stages of review and revision and that the forms will be posted on the Law Help website as soon as they are complete. She also said that the Education and Training subcommittee will hold their first meeting soon and she will provide an update on the subcommittee's 2018 plans at the next meeting. Finally, Sarah McClain reported that the new State Law Library website is nearing completion and will go live in the next 2-3 weeks.

Law School Partnerships Committee

Debra Steigerwalt said that the committee has been very busy and is still seeking more Access to Justice Commissioners and law students as members. She reported that the new AmeriCorps member at the law school started in September, and that MLSA submitted a grant proposal to MJF for Bank of America settlement funds to start a rural incubator program. Niki Zupanic added that the funding decision will be made in January. Debra stated that Chief Justice McGrath, Dean Kirgis, and Chris Manos all sent letters of support and asked that the Commission also provide a letter of support for the proposal. Justice Baker said that the draft support letter from the Commission was included in the meeting packet on page 30. Niki explained that IOLTA programs across the country received a portion of funds resulting from the Bank of America mortgage lender settlement to fund legal assistance for foreclosure prevention and community development. She said that the MJF Board thought that the incubator program seemed like a good fit, and that they would be expecting a support letter from the Access to Justice Commission. Justice Baker asked for a motion to support the incubator proposal. Judge Halligan moved that the Commission approve the support letter as written and Melanie Reynolds seconded the motion.

The Access to Justice Commission letter in support of the incubator proposal to the Montana Justice Foundation was approved without objection.

Justice Baker added that she would like to follow up at a later date with the Landlord Tenant Subcommittee regarding the eviction pilot program with Homeward.

Justice Baker said that the Law and Justice Interim Committee meeting was canceled due to the Special Legislative Session, and the Commission will have 60 minutes to present at the rescheduled meeting. Justice Baker will notify the Commission as soon as the new meeting date has been set.

Strategic Planning Committee Update

Niki Zupanic reported that the committee has reviewed and reworked the objectives from the previous strategic plan and has developed an overall statement of purpose. Next, the activities will be assessed and revised, with a full draft strategic plan to be presented at the March 2018 meeting. She added that the feedback from the SWOT analysis was helpful and the highlights are included in the meeting packet. She said that the committee would welcome additional feedback. Justice Baker thanked Niki for spearheading this effort.

Working Group on Civil Legal Issues for Domestic Violence Survivors

Angie Wagenhals stated that an update from Alison Paul was included in the meeting packet in Tab 5. She said that a meeting of DV attorneys from around the state has been scheduled for January 16 in Helena and that the meeting will be co-chaired by Diana Garrett, MLSA's Supervising Attorney for DV, and Brandi Ries, the past chair of the Justice Initiatives Committee of the State Bar. Representatives from the Montana Board of Crime Control will also attend. Ann Goldes-Sheahan said that judges will be included in future meetings.

ATJC JIC Liaison Report and Orders of Protection Update

Judge Carter was not able to attend the meeting due to a scheduled trial, but Patty Fain directed the group to the materials in the meeting packet.

Limited License Legal Technician (LLLT) Update

Georgette Boggio reported that the LLLT committee decided to recommend that Montana not pursue the LLLT model. She referred the group to the report included in the packet and highlighted the primary reasons for the committee's conclusion. She said that the level of training required for the license would be a significant barrier to participation. Georgette added that the other LLLT programs that the committee studied had the advantage of a uniform set of forms, something that doesn't exist in Montana. Justice Baker commented that the report from the committee was very thorough and asked if anyone thought that the Commission needed to weigh in on the matter. Ed Bartlett stated that while there is no reason for the Commission to comment separately on the LLLT concept, he personally thinks that it is a good approach that could work in Montana and that the idea shouldn't be abandoned. Justice Baker said that the committee report included recommendations that could be addressed as part of the strategic plan in order to lay the groundwork for a successful LLLT initiative in the future. Georgette said that the Commission should keep an eye on the Utah LLLT program as a model that might be a better fit for Montana's needs. Dean Kirgis said that he sees the value in the LLLT concept and doesn't want this to be the end of the conversation. He added that most of Washington's LLLTs work for attorneys and this wouldn't address the need in Montana. He concluded that it doesn't make sense for Montana to experiment and that we should wait for a more appropriate model to emerge. Judge Halligan stated that we need to continue to pursue this idea and that the State Bar should find a way to certify paralegals so that they have a way to demonstrate their qualifications. Dean Kirgis agreed and said that the School of Law would be interested in working with the State Bar to establish paralegal certification criteria.

Guardianship Program Update

Angie Wagenhals reported that Larry Riley and Tom Lynaugh have been working with the group to do training and outreach for attorneys on guardianships for children with disabilities who are reaching the age of majority. Following the training scheduled for January 2018, MLSA will provide screening and referrals to pro bono attorneys on this type of guardianship.

Veteran's Law Initiative

Patty Fain reported that Professor Wandler initiated the Veteran's Law Clinic at the ABIII School of Law and that the program has been a huge success. As a result of training offered through the law school, Montana now has over 50 attorneys accredited to practice in the VA Appeals Court,

compared to only 2 accredited attorneys prior to the training. Patty noted that there is a great need for assistance with discharge upgrades for military personnel who received less than honorable discharges, often as a result of behavior stemming from service-related brain injuries or PTSD. She explained that law students screen veteran clients, conduct the clinics and assist attorneys who take cases. Dean Kirgis added that the law school has approached the Volunteers of America Northern Rockies Supportive Services for Veteran's program as a potential partner on the clinics.

Unbundling Conference Update

Patty Fain and Ann Goldes-Sheahan attended the ABA Unbundling Conference in Denver and reported on what they learned. Unbundling is better known in Montana as Limited Scope Representation (LSR). They reported that LSR is not a familiar concept for most attorneys and that it is not widely practiced in Montana, even though State Bar rules were changed in 2012 to address the ethical considerations related to LSR. Patty said that attorneys need to be trained on how to provide limited scope services and how to apply the rules, and that clients need to be aware that this service is an option. Ann pointed out that the Ethics Committee of the State Bar has concerns that LSR is not always sufficient and thus may be a disservice to clients who really need the full scope of services. Justice Baker suggested that the discussions and recommendations included in the conference report would be a good starting point for the Self-Represented Litigants Committee and the State Bar Justice Initiatives Committee to begin exploring ways to promote LSR and to address the related ethical issues.

Public Comment and Next Meeting Dates

Justice Baker asked for public comment. There was no public comment. Justice Baker stated that the 2018 meeting dates are listed on the agenda. The next meeting will take place on March 9, 2018. The meeting was adjourned at 2:30 p.m.