

**Montana Supreme Court Access to Justice Commission
December 9, 2016 1:00–3:15 PM
Large Conference Room, Office of the Court Administrator
301 S. Park, Third Floor, Helena, MT
Meeting Minutes**

Commissioners Present: Justice Beth Baker, Hon. Kurt Krueger, Kyle Nelson (by phone), Matthew Dale, Randy Snyder (by phone), Dean Paul Kirgis, Alison Paul, Melanie Reynolds, Ed Bartlett, and Georgette Boggio (by phone).

Commissioners Absent: Hon. David Carter, Hon. Greg Pinski, Rep. Kim Dudik, Sen. Nels Swandal, Jennifer Brandon, Aimee Grmoljez, and Hon. Winona Tanner.

Others Present: Niki Zupanic, Katie MacFeeters, Nolan Harris, Michelle Potts, Patty Fain (by phone), Chris Manos, Brian Coplin, Justice Laurie McKinnon, Janice Doggett, Crystine Miller, Sarah McClain, Derrek Shepherd, Stefan Koliš, Ann Goldes-Sheahan, Debra Steigerwalt, Shanni Barry, and Krista Partridge.

Call to Order: 1:08 p.m.

Justice Baker welcomed new Commissioners Kyle Nelson and Georgette Boggio, new State Law Library Director Sarah McClain, and new Court Services Director Derrek Shepherd. Justice Baker asked for comments or corrections to the September meeting minutes. Brian Coplin noted that his last name was misspelled. There were no other comments or corrections.

Matt Dale moved that the September minutes be adopted as corrected and Justice Baker seconded. The motion passed without objection.

Policy & Resources, Communications & Outreach Committee Reports

Melanie Reynolds reported that the final public forum in Helena was well-attended by a broad cross section of legal and non-legal community members. She added that the panel members were very good and attendees had good feedback, many commenting that they weren't aware of the issues prior to the panel discussion. She thanked Mēghan Scott, Patty Fain, and Niki Zupanic for their help in coordinating the event. Justice Baker commented that the series was successful and educated many people in communities around the state. Matt Dale said that the draft report on the series has been written and the video is in production, both of which will be used during the legislative session to support the funding bill for civil legal aid. Matt asked for feedback and comments on the written report. Melanie said that a one-page Executive Summary might be helpful and Justice Baker agreed. Justice Baker stated that all of the attachments to the report would be available electronically and not as part of the printed report. She added that the Commission website needs improvement so that information is readily accessible. Patty said that she will be putting in links to community organizations and to media coverage of the forums. Chris Manos suggested that the Commission should consider running a public forum series every 2-3 years, and that perhaps this should be part of the strategic plan. He added that lessons learned should be documented for future reference. Matt stated that the committee would draft lessons learned and forum planning checklist documents.

Self-Represented Litigants Committee

Ann Goldes-Sheahan reported that the committee has not been as active recently and has planned a meeting in January to review the strategic plan and refocus their efforts. She asked for input from the Commission on areas to prioritize. The Forms Subcommittee has completed their work on the dissolution forms which are still being piloted in Gallatin County. Nolan Harris has done in-person and online training on the forms, and the MLSA project to automate the forms is ongoing. Nolan asked for input from the Commission on priorities for the next forms to update. Ann stated that the committee is also monitoring legislation related to self-represented litigants and reported that there have been no updates on the indigency fee waiver since the last meeting. Justice Baker asked about the possible need for legislation regarding the fee waiver. Randy Snyder stated that the current statute is incorrect and outdated and that he's working with the Attorney General's office to introduce legislation to correct the statute. Ann stated that the committee needs more members and asked the Commission, particularly judges and clerks, for referrals or suggestions for people to contact. Justice Baker said that we need to reach out beyond the Commission for committee volunteers because there is so much work to be done. Justice Baker asked if the State Bar would include an appeal for SRL Committee volunteers in the Montana Lawyer. Chris Manos said that he would work with Ann to make that happen.

Law School Partnerships Committee

Debra Steigerwalt, the new Chair of the Law School Partnerships Committee, reported that the committee is continuing to work on the incubator project with Montana Legal Services Association (MLSA) and the State Bar of Montana. They are reviewing the law student practice rule and seeking input from judges and public defenders. In addition, the group is working on pro bono opportunities for law students and the issue of attorney supervision.

National Center for State Courts "Justice for All" Grant Proposal, Strategic Planning and Resource Guide Update

Niki Zupanic reported that the "Justice for All" grant proposal was not funded and that only 5 states received funding out of 29 that applied. She suggested that the Commission should work on two tracks going forward: internal assessment and more strategic planning with a focus on what can be done without additional funding; and updating and creating resource guides for clients, advocates, and attorneys. Nolan Harris reported that the Justice for Montanans AmeriCorps members are updating the county resource guides and that he has reached out to "Code for America," a group that creates searchable databases for resource guides. He stated that Missoula County has used this group to create a database and that it works well. Justice Baker said that the Legal Services Corporation also has a grant program funded by Microsoft for statewide legal resource portals and suggested that we can follow that model even if Montana is not funded under that grant program. Melanie Reynolds said that in her experience, resource guides are outdated almost as soon as they are produced. Nolan responded that Justice for Montanans members update the county resource guides every year. Alison Paul added that the resource guide project is part of the AmeriCorps training process so that the members learn about Montana and their local communities. Justice Baker said that since the Justice for All proposal wasn't funded, we need to activate Randy Snyder's Strategic Planning Committee and recruit new volunteers who have time to fully participate. Justice Baker noted that current committee members are herself, Niki Zupanic,

Alison Paul, Randy Snyder, and Melanie Reynolds, and she asked for additional volunteers. Ann Goldes-Sheahan, Sarah McClain, and Brian Coplin volunteered.

State Bar of Montana Justice Initiatives Committee

Ann Goldes-Sheahan reported that the committee has accomplished a lot in the past year and has added four new members, some from rural areas. An in-person meeting in Havre is planned for April. She also pointed out that committee Co-Chairs Robin Turner and Brandi Ries were awarded the 2016 Community Improvement Award by the Montana Board of Crime Control for their work in improving access to justice for DV survivors. Finally, she said that the Resource Guide Subcommittee would like to work with Nolan's group to help update the county resource guides with a particular focus on resources for pro bono attorneys.

Montana Justice Foundation Update

Niki Zupanic reported that 2016 was full of change for the Montana Justice Foundation (MJF), including new leadership and staff, and the move of the organization's office from Missoula to Helena. She introduced Crystine Miller, the new program assistant and main contact for access to justice issues at MJF. She said that in 2016, MJF made \$349,000 in grants to 17 different organizations including MLSA, CASA programs, mediation programs, and domestic violence advocacy groups, with MLSA as the largest single grantee. MJF also administers a program to provide law school loan repayment assistance to attorneys working for qualifying organizations. MJF received a Cy Pres award of over \$1.5 million as part of the Bank of America settlement, and the funds must be used for community development. MLSA received the first grant from this award to establish a Consumer Fair Debt Collection Practice, and the MJF Board will be putting out additional requests for proposal over the next several years. Niki mentioned that MJF also funds law related educational programs such as "We the People," a constitutional issue competition for high school students. Finally she thanked the State Bar for their help in streamlining the IOLTA reporting process.

Update on the Commission's Legislative Proposal, and Plan of Action

Justice Baker informed the Commission that HB 46 has been pre-introduced and is co-sponsored by Rep. Kim Dudik and Sen. Nels Swandal. The bill should get an early hearing before the House Judiciary Committee. A draft fact sheet and flyer were included in the meeting packet. Justice Baker has received confirmation from the Attorney General and the Montana Trial Lawyers Association that they will support the legislation, but most organizations have not committed to support legislation at this point. Ed Bartlett reported that the Montana Chamber of Commerce board unanimously voted to support the bill and that Justice Baker's meeting with Webb Brown was a big factor in gaining the group's support. Justice Baker added that there are strong indications of support for the bill, but there are also concerns from the Montana Collector's Association regarding the \$5 Justice Court fee increase since that court has seen recent fee increases. She stated that the collectors would not oppose District Court fee increases if the increases in the courts of limited jurisdiction were removed from the proposed legislation. Justice Baker said that Rep. Dudik has recommended that we should amend the legislation to remove the Justice Court fee, particularly since these fees would account for only 10% of the projected funding. Justice Baker stated that she agrees with this approach and asked for comments from the Commissioners. Judge Krueger said that he believes getting an early hearing is a good approach and that legislators are mostly concerned with the issues in the public defender's office and we

don't want our effort to get caught up in that controversy. Janice Doggett said that it's important that any conflicts are resolved before the hearing on the bill. Ed Bartlett commented that we need to stick to our selling point of not adding fees where there have been recent increases. Justice Baker asked if there were any objections to amending the legislation as proposed. She indicated that no formal motion is needed. There were no objections to the proposed amendment. Justice Baker and Ed Bartlett reiterated that it will be very important to be ready for the first hearing, likely in early January, because there are many new members on the Judiciary Committee who will need to be educated on access to justice issues. They encouraged Commissioners to reach out to legislators on the committee.

Update on State Bar of Montana/Law School Mediation Project

Patty Fain reported that a primary focus of the E-RAMP Committee's work this far has been mediator qualifications, both for attorney and non-attorney mediators. The committee reviewed the Montana Mediation Association standards to ensure that E-RAMP met those requirements. Patty asked the Commission to approve the committee's E-RAMP Mediator Qualifications, Education, and Training for Attorneys included in the meeting packet. Justice McKinnon stated that the biggest challenge of the project is to meet statewide needs by tapping into the pool of attorneys who are interested in picking up pro bono hours. To that end the standards must be robust, but not too onerous as to discourage participation. She added that the committee is still working on case qualification criteria and on a process to ensure that mediators understand when mediation is not appropriate in domestic violence cases. Justice Baker asked Dean Kirgis to comment on the committee's work thus far. Dean Kirgis replied that he believes the group is taking the correct approach and that care is being taken to ensure adequate safeguards for litigants against poorly trained or bad mediators. Justice Baker asked for a motion to approve the proposed mediation standards.

Matt Dale moved to approve the E-RAMP Mediator Qualifications, Education, and Training for Attorneys. Ed Bartlett seconded the motion. The motion passed without objection.

Proposal for Court Consideration of Licensed Limited Legal Technicians

Shanni Barry, Chair of the State Bar Paralegal Section, presented some background on limited legal technicians. She explained that this is an option for those in need of limited legal help, but who cannot afford an attorney. She said that 12 states are currently looking at this option and that Washington is the first state to authorize this type of legal assistance by non-lawyers in certain legal matters. Chris Manos added that this is a nationwide topic of discussion and that the State Bar considered forming a committee to study the issue, but decided to bring it to the Commission. Chris proposed that a joint petition to study the issue and make recommendations should be presented to the Supreme Court by the State Bar, Paralegal Section, and the Access to Justice Commission. Judge Krueger asked if the Family Law Section of the State Bar was involved in these discussions and suggested that attorneys might be opposed since this may cause them to lose paying clients who could afford their services. Justice Baker said that the State Bar Family Law Section should be consulted on any proposal. Chris stated that he doesn't know what the reaction of the Family Law Section will be, but that he knows that there aren't enough attorneys in Montana who will take family law cases. He added that Washington studied non-lawyer legal assistance for 10 years before it was adopted by their Supreme Court. Sarah McClain said that she has experience with this in immigration cases in Oregon where accredited non-profit organizations could provide

non-attorney legal assistance. Ed Bartlett said that we should study the issue and supported the idea of a joint petition to the Supreme Court. Justice Baker reiterated that the Commission cannot take this on and that the proposal belongs under the auspices of the Supreme Court. Derrek Shepherd suggested that it will be important for the courts to assess the possible impacts, including increased filings and a smoother process for self-represented litigants. Matt Dale stated that this proposal came up during the Bozeman forum. Alison Paul said that she's supportive of the concept, but cautioned that the Commission should not be too reactive and that we need to keep the Commission's work more focused. Justice Baker suggested that we need to see the petition and that the reason for Commission support of the petition must be clear.

Ed Bartlett moved that the Commission support the concept of a joint petition to the Supreme Court by the State Bar of Montana and the Access to Justice Commission to study and make recommendations on the issue of licensed limited legal technicians. Matt Dale seconded the motion. The motion passed without objection.

Inmate Access to Courts

Justice Baker advised the Commission that letters from several Montana State Prison inmates resulted in a meeting between the State Law Library, the Office of the Clerk of the Supreme Court, and the Department of Corrections to discuss how to better address inmate requests and access to legal materials. Comment was presented to the Commission from Richard Shreves, the father of an inmate at the Montana State Prison, whose son wrote a letter to Justice Baker regarding his concerns about limitations on access to legal materials by prisoners. Mr. Shreves explained several ways in which prisoners are denied access to legal information and gave examples of legal research that he has conducted that prison officials would not allow his son to receive until written grievances were submitted. Mr. Shreves suggested that State Law Library materials should be made available on a dedicated computer terminal in the prison. He added that he would like to see access to justice for all inmates, and not just those with the means to pay for photocopies of legal materials. Mr. Shreves also expressed concern that prison officials often hold his son's mail for many days, sometimes resulting in missed court deadlines. Justice Baker thanked Mr. Shreves for his presentation and for his help in trying to figure out better approaches for inmate access to legal materials.

ATJC Biennial Report

Justice Baker stated that the Commission's next biennial report to the Montana Supreme Court is due in April 2017 and drafting will begin before the next Commission meeting.

Public Comment and Next Meeting Dates

Justice Baker asked for public comment. There was no additional public comment.

All the 2017 meetings have been scheduled and are noted on the agenda. The next meeting is scheduled for March 10, 2017.

Justice Baker adjourned the meeting at 3:24 PM.