

Montana Supreme Court Access to Justice Commission
March 1, 2024
Zoom Video Conference
10:00 AM – 12:00 PM
Meeting Minutes

Commissioners Present: Justice Beth Baker, Hon. Stacie FourStar, Sen. Wendy McKamey, Hon. John Kutzman, Juli Pierce, Margaret Weamer, Alison Paul, Olivia Riutta, Jacob Griffith, Laura Smith.

Commissioners Absent: Ed Bartlett, Lillian Alvernaz, Hon. David Carter, Rick Cook, Aimee Grrmoljez, Hon. Leslie Halligan, Katy Lovell.

Others Present: Emma Schmelzer, Kaylan Minor, Franklin Runge, Becky Schupp Watson, Grace Loveless, Alissa Chambers, Cherie LeBlanc-Dyba, Ann Goldes-Sheahan, Stuart Segrest, and Krista Partridge.

Call to Order & Introductions

Justice Baker called the meeting to order at 10:03am and asked participants to introduce themselves.

Approval of December Meeting Minutes

Justice Baker asked that the minutes from the December meeting be corrected to reflect the actual position of the State Bar of Montana regarding lay advocates working on Indian Child Welfare cases. The minutes should state: “Lillian Alvernaz said that the Indian Law Section of the State Bar has advocated for lay advocates to work on ICWA cases. The State Bar opposed including such language in the 2023 legislation because it would fall within the purview of the Supreme Court.”

With that correction, the minutes were approved without objection.

Eastern Montana CASA GAL Update

Cherie LeBlanc-Dyba of Eastern Montana CASA GAL reported on the difficulties faced by foster children when they age out of the system. She stated that she is a proponent of HB 603 that would reinstate parental rights in cases where parents have done the work to turn around their lives and where the children would benefit. Justice Baker said that the Commission hasn’t been involved in dependency and neglect issues, but asked the legislators on the Commission for suggested approaches. Both Rep. Smith and Sen. McKamey offered to have follow-up discussions in working on this issue. Cherie also described the expansion of Eastern Montana CASA GAL to the Fort Peck Reservation. They will be working with the Bureau of Indian Affairs and Child Protective Services to advocate for children in the tribal court at Fort Peck. She added that they have a team of advocates on the Hi-Line and a great relationship with the Fort Peck Tribal Court.

Strategic Planning Committee Update

Justice Baker provided an update on the activities of the committee and shared the core values from the draft strategic plan: access, education, and resource development. She explained that the

committee is testing a diagnostic tool that the National Center for State Courts has developed to help courts and their partners assess opportunities for addressing gaps in a state's access to justice efforts. The tool will use inputs provided by the committee to generate a customized report with suggestions for potential access to justice activities as well as resources and best practices. The process also includes a survey designed to gather individual perspectives about access to justice efforts in Montana. Justice Baker said she would share the survey link with all members of the Commission, and with Grace Loveless and Franklin Runge. The committee's goal is to present a draft strategic plan for consideration at the June meeting.

IDRT/Family Mediation Update

Emma Schmelzer provided an update on the status of the IDRT. Emma explained that in October 2023, IDRT became the default for domestic relations cases where at least one litigant is self-represented. Earlier this year, a survey was distributed to Judges and Standing Masters to gather input on IDRT. Half of those who responded had not presided over an IDRT, and noted that often when one party is represented the litigants opt out of the IDRT. Overall, the comments were positive, but respondents expressed the need for more explanatory materials and engagement from the State Bar. Judges commented that it has been difficult for them to explain the process and it's important for them to be confident that litigants fully understand the process. Judge Kutzman said that lots of people are asking where to find resources and materials. Emma said she would send those to him and also said that the materials are available on IDRT.mt.gov. Judge Kutzman added that there are concerns about how appeals will work after an IDRT. Justice Baker said that this model has been used extensively in Alaska and they have experienced very few appeals. She said that Tara Veazey can help connect members of the judiciary with the Court Administrator in Alaska who can answer these kinds of questions. Alison Paul said that MLSA could organize a CLE on IDRT. Justice Baker offered a Zoom Q&A on IDRT for judges and Judge Kutzman thought that was a great idea. Emma will organize and coordinate the Q&A with the Judge's Association Conference in May if possible.

Emma then gave an update on the Family Law Mediation Program. She explained that there have been a lot of challenges with the program and participation numbers have been lower than expected. As a result, the eligibility criteria have been expanded so that only one of the parties needs to qualify financially. The program receives court referrals as well as self-referrals through the Self Help Law Centers, MLSA, Clerks of District Court, community partners, and word of mouth. Emma added that most of the time, only one of the parties makes contact with the program, even when it is a court referral. In addition, more attorneys are needed to provide advice to the parties prior to mediation. Alison Paul said that those attorneys are paid at a modest means rate by MLSA as part of the contract with the Court Administrator's Office. Justice Baker asked if the State Bar can help get the word out to attorneys through an article in the Montana Lawyer. Stuart Segrest agreed, and Emma and Ann Goldes-Sheahan will work on that. Maggie Weamer said she could circulate information through the Gallatin County listserv and could also arrange for Emma to present at an upcoming lunch meeting. She suggested that other local bar associations could do the same. Ann will put Emma in touch with local bar leaders, and Juli Pierce said she would make the connection with the Yellowstone Area Bar Association. Alison added that MLSA will be presenting on Family Law Mediation at the First Judicial District bar association lunch next month.

State Bar Discussion of Attorney Regulation & Licensure Alternatives

Justice Baker explained that the growing demand for legal services and the shrinking bar population, particularly in rural areas, led to discussions about the potential role of non-lawyer advocates in Montana. Stuart said that the next step is to put together a group to determine what needs to be done in terms of legislation and/or court rules in order to make this happen. Alison added that the Commission should be involved in this process and described how Alaska's Bar and Supreme Court approved a program in which Alaska Legal Services trains and certifies non-lawyer advocates called Community Justice Workers. These advocates are staff members at community organizations and domestic violence shelters, and already work with people who need legal help and can't afford an attorney. She explained that this won't change the need for licensed attorneys because this is not something they would do and so the need is unmet. She said that no one objected to this concept during the State Bar discussion and Dean Gagliardi of the UM School of Law is interested in coordinating training with the UM College in Missoula. Alison said that this would not be a legislative issue, but rather should be done through the Montana Supreme Court with the support of the State Bar of Montana. Justice Baker added that task forces across the country are looking at this model and asked anyone who is interested in participating in a work group should let her, Alison, and Stuart know. Olivia Riutta and Laura Smith both expressed an interest. Finally, Alison mentioned that there is already Montana statute that has been interpreted by the Montana Supreme Court to enable a friend or relative to assist and speak on behalf of a party at a proceeding as "one-time only" grant of a privilege in justices' court civil proceedings.

MLSA Update

Alison reported that MLSA has experienced a loss of federal domestic violence grant funding and has laid off a full-time domestic violence attorney as a result. This will impact the level of services that MLSA is able to provide DV survivors, but we will still have five full-time DV attorneys and a full-time DV legal assistant on staff. Stuart suggested that a Montana Lawyer article on DV services and the loss of funding might be helpful and Alison said MLSA would work on a draft.

Alison said that MLSA conducted a benefits review over the last year in an effort to improve recruitment and retention. The top recommendation from the review was to adopt a 35-hour work week that will be effective in April. She explained that MLSA has piloted a shortened work week over the last three summers with good results. She added that most legal aid organizations have full time weeks between 32 and 37 hours in recognition of the low pay for legal aid staff relative to state government and the private sector. She said that there is a lot of evidence that this is an effective means to reduce burnout and attract high quality staff.

Alison reported that MLSA has recently partnered with the Montana Consortium of Urban Indians in an expansion of our medical legal partnership program with community health centers. Finally, she explained a recent success for MLSA in access to justice litigation. In this case, a judge refused to accept a fee waiver application without additional documentation of a litigant's income, even though the litigant received SNAP benefits and should have received a fee waiver on that basis alone. MLSA stepped in and still the judge would not approve the fee waiver. MLSA successfully petitioned for a Writ of Supervisory Control from the Montana Supreme Court.

Public Comment and Next Meeting Dates

Justice Baker reminded the group of the upcoming meeting dates and asked members to review the Commission roster and update their email addresses if necessary. She asked for public comment and there was none.

The next meeting is on June 7, 2024. The meeting was adjourned at 11:30am.