

Montana Supreme Court Access to Justice Commission
September 8, 2017
Large Conference Room, Office of the Court Administrator
301 S. Park, Third Floor, Helena, MT
12:00–3:15 PM
Meeting Minutes

Commissioners Present: Justice Beth Baker, Matthew Dale, Rep. Kim Dudik, Hon. David Carter, Rick Cook, Alison Paul, Ed Bartlett, Aimee Grmoljez, Hon. Leslie Halligan, Dan McLean, and Sen. Terry Gauthier.

Commissioners Absent: Hon. Greg Pinski, Hon. Winona Tanner, Kyle Nelson, Dean Paul Kirgis, Melanie Reynolds, Georgette Boggio, and Charlie Rehbein.

Others Present: Niki Zupanic, Crystine Miller, Debra Steigerwalt, Sarah McClain, Patty Fain, Nolan Harris, Derrek Shepherd, Brian Coplin, Ann Goldes-Sheahan, Angie Wagenhals, Brandi Ries, Stuart Segrest, Abby Brown, Abby St. Lawrence, Sarah Urban, Holly Frederickson, Kayre Chatelier, Kay Lynn Lee, Chris Manos, and Krista Partridge.

Call to Order: 12:33 p.m.

Justice Baker welcomed new Commissioners Judge Leslie Halligan, Dan McLean, and Senator Terry Gauthier. She then asked for comments or corrections on the June meeting minutes. There were no comments or corrections. Aimee Grmoljez moved to approve the June minutes and Judge Carter seconded the motion.

The June minutes were adopted with no objections.

Introduction to Joint Meeting with Justice Initiatives Committee

Justice Baker welcomed the members of the Justice Initiatives Committee (JIC) to the joint meeting of the Access to Justice Commission and the JIC. She explained that the JIC works closely with the Commission with a focus on pro bono efforts.

Justice Baker then reviewed committee assignments for new and returning Commissioners. Randy Snyder and Judge Carter are no longer on the Self-Represented Litigants Committee and Justice Baker asked for volunteers to join the committee. Sen. Terry Gauthier and Abby St. Lawrence will join the Policy Committee, Judge Halligan volunteered for the Law School Partnerships Committee, Dan McLean will join the Communications and Outreach Committee, and Kyle Nelson will join the Law School Partnerships Committee. Justice Baker asked JIC members to consider volunteering for the Communications and Outreach Committee.

JIC Update and Upcoming Priorities

Brandi Ries noted that the JIC had a busy year with many new projects. Ann Goldes-Sheahan reported on the JIC initiative to establish a mechanism for non-profit organizations to qualify for pro bono services from emeritus members of the State Bar. An article in the October Montana Lawyer will encourage non-profits to apply for the program, and there are now four approved

organizations including the Western Montana Bar Association, Gallatin Legal Assistance Clinic, and Montana Legal Services Association. There are currently only 10 emeritus members of the State Bar, but Patty Fain noted that there are approximately 500 active members who are at least 62 years of age and said that attorneys nearing retirement should be encouraged to stay involved as emeritus members.

Brandi reported on the Domestic Violence (DV) initiatives undertaken by the JIC, including a series of articles in the Montana Lawyer and free training webinars on topics such as DV 101, Safety and Screening, Lethality Assessment, Childhood Impacts, and DV in Indian Country. An in-person training held in Missoula attracted over 80 participants, and the JIC is surveying attorneys for suggestions on DV-related topics of interest, and on the best ways to continue outreach and education about DV. Abby St. Lawrence mentioned that the Order of Protection webinar was very informative, and Judge Carter asked for details on this training. Angie Wagenhals explained that the format of the webinar was “Ask an Expert” where registered participants sent in questions in advance to MLSA DV attorneys Diana Garrett and Shannon Fuller. Angie noted that the webinars are recorded and are available for viewing on the ProBonoNet and State Law Library websites. Judge Carter suggested that the Clerks of Court Association should be included when these training opportunities are offered or webinars are posted since they have frequent contact with self-represented litigants seeking Orders of Protection. Abby St. Lawrence mentioned her recent experience with pro se forms from the State Law Library not being accepted by the clerk at the Lewis and Clark County District Court. Rick Cook asked that this and any other issues with form acceptance should be referred to him so that he can address this issue during statewide meetings and training with the Clerks of Court.

Patty Fain reported on the Government Lawyers Initiative. She stated that government attorneys were surveyed on the pro bono reporting form regarding the best methods for outreach and barriers to pro bono participation. As a result, the JIC will be offering a Pro Bono CLE and Summit tailored specifically for government attorneys to address policy and ethical issues and to dispel the common misconception that state policy prohibits pro bono involvement. She noted that Stuart Segrest has been a big help in this effort and that they already have a lot of registrations for the CLE. Patty also reported that the Rural Pro Bono project is ongoing, but that the recently scheduled meeting in Havre was postponed. The goal of the Rural Pro Bono project is to identify unique rural needs and areas of overlap with other initiatives.

Self-Represented Litigants Committee Report

Ann Goldes-Sheahan reported that committee’s final draft of the Fee Waiver Form is included in the meeting packet and asked the Commission to recommend approval of the form by the Attorney General’s office. She reminded the group that the form was drafted in order to facilitate consistent statewide practices with regard to fee waiver eligibility and assessment. She thanked Randy Snyder and Amy Hall for their work on the form. Ann confirmed that legislative action is not needed for the form’s adoption, only Department of Justice approval. Justice Baker asked for feedback or concerns on the form. Patty asked about the requirement for a certificate of eligibility from legal aid and noted that most pro bono attorneys don’t provide services through legal aid. Alison Paul responded that the certificate is required by statute to obtain an automatic waiver and that the court does the financial determination if the applicant isn’t eligible for an automatic waiver. Patty suggested that the wording in this section should be changed from “volunteer/pro bono attorney”

to “attorney through a legal aid entity.” Abby Brown stated that the committee is looking into allowing automatic waivers for clients represented by non-legal aid pro bono attorneys, but this would require legislative action. Brandi Ries asked if the form could include language stating that domestic violence victims who are represented by attorneys funded through the Office of Violence Against Women are not subject to income guidelines. Others expressed concern that this would be confusing.

Matt Dale moved that the Commission approve the Fee Waiver Form with modifications and Alison Paul seconded the motion. Stuart Segrest asked that the final version be sent to him for review by the Attorney General’s office.

The Fee Waiver Form was approved without objection.

Ann Goldes-Sheahan reported that the final revisions to the automated dissolution forms have been tested and the forms will be ready in time for the training of the new Justice for Montanans AmeriCorps members. She noted that a document checklist is now included in the form packet and that one of the major changes was to remove notary blocks on many of the forms. Nolan Harris and Ed Higgins will provide training on the new forms upon request. Chris Manos asked if the forms will be presented at the District Judges Conference in October. Derrek Shepherd replied that he and Justice Wheat will highlight the new forms in their updates to the judges.

Law School Partnerships Committee

Debra Steigerwalt reported that the new Justice for Montanans member at the Alexander Blewett III School of Law will start next Monday and will help connect law students and faculty with pro bono opportunities. She also reported that the Incubator Project working group has developed a draft curriculum and budget. She noted that the committee is working on potential changes to the student practice rule. Debra asked for input on current barriers in the student practice rule that should be addressed. The group agreed that lack of coordination is the biggest barrier, not the student practice rule, and no changes to the rule were suggested.

Policy and Resources Committee Update

Matt Dale reported that the focus of the committee leading up to and through the legislative session was on House Bill 46. The committee is now reviewing lessons learned during the legislative effort in preparation for the 2019 session. He noted that the date for the interim hearing of the Law and Justice Committee has not yet been set, but that we may have up to an hour on their agenda, so we need to make the most of this opportunity. Justice Baker asked Matt to schedule a meeting in advance of the Interim Committee’s meeting and suggested that Rep. Dudik and Sen. Gauthier be consulted regarding strategy and whether or not to show the public forum video. Justice Baker also suggested that we should approach other members of the Senate since that is where the bill died in the end. She noted that even though Sen. Swandal is no longer on the Commission, he has agreed to give us feedback on future legislation. Matt thanked Justice Baker, Rep. Dudik, Niki Zupanic, Aimee Grmoljez, and Ed Bartlett for all their support during the session. He noted that most of the objections raised by legislators focused on adding an entitlement for legal assistance, and that one of the best ways to counter this argument is to focus on the efficiencies to be gained in the court system.

Communications and Outreach Committee Update

Niki Zupanic reported that the committee's big initiative leading up to the legislative session was the public forum series. She added that the committee has reviewed national resources available and that communication and outreach efforts should be coordinated with the Strategic Plan and focused on high priority issues.

Strategic Planning Committee Update

Niki Zupanic reported that the committee met at the end of August and referred the group to the minutes of that meeting that were included in the packet. She explained that the goal of the committee is to review the 2013 Strategic Plan, reassess priorities in light of accomplishments and remaining areas of need, and to map a way forward based on the four focus areas identified in the plan: access, coordination, education, and resource development. She said that the committee plans to meet four more times between now and March 2018 and will develop a workable plan of top priorities and next steps for the standing committees. Niki added that the committee will undertake a SWOT analysis (Strengths, Weaknesses, Opportunities, Threats) and will survey the commission members as part of that analysis.

Orders of Protection Project and JIC Domestic Violence Initiatives

Brandi Ries reported on the JIC's Domestic Violence Initiative regarding systemic and procedural changes that would make the courts more accessible, friendly, and consistent. She encouraged the group to read the article on procedural justice by the Center for Court Innovation that was included in the meeting materials. The article includes practical tips on how to make the courts more accessible. Brandi added that the issue is bigger than pro se forms and that a major problem is the lack of coordination between the courts and all the entities that work on domestic violence issues. Rick Cook suggested that training and education for court personnel can be coordinated through him and the education committee. Alison Paul asked whether or not the Commission can form a DV Task Force and Justice Baker suggested that the Strategic Planning Committee can work on the formation of a task force. Judge Carter stated that we need to develop a project to take to the legislature and added that the biggest problem he sees is the attrition rate between the Temporary Order of Protection and Order of Protection hearing. He added that he's seen anecdotal evidence of success in his Order of Protection checklist pilot project, but that he doesn't have the resources to gather data to confirm the results. Nolan Harris offered that the Self Help Law Center could be leveraged to collect data. Judge Carter noted that it's very difficult for attorneys, much less self-represented litigants, to get criminal justice information in Montana due to the way the statutes are written. Finally, Judge Carter pointed out that unmarried people with children and no parenting plan are a huge problem when they enter the system through courts of limited jurisdiction, as is the case with most Orders of Protection. He would like to implement a program to send people in this situation to District Court to initiate a parenting plan action on the same day as their Order of Protection hearing. Justice Baker suggested that some of the issues being raised can't necessarily be addressed by the Commission, but she agreed that the Commission can work with the JIC and other groups to better coordinate efforts on DV issues in the courts. Alison Paul offered to lead a DV Working Group with Brandi, Patty, Judge Carter and Nolan Harris. Alison also suggested that MLSA's Victim Legal Assistance Network group could take on the issue of access to criminal justice information. Judge Carter asked the Commission to support development of a survey and form for collecting criminal justice information, but Justice Baker said that the Commission should be careful in considering initiatives that require the courts to take on more work. She stated that

the informal working group led by Alison Paul can work on the survey and criminal justice form. Ed Bartlett expressed concern that the Commission might be overstepping its mission by getting too deep into DV and Order of Protection issues, but Judge Carter reiterated that this area of law has the highest proportion of self-represented litigants. The Commission agreed to defer consideration of these issues pending further study by the DV working group.

Update on ERAMP Mediation Project

Patty Fain reported that intake and mediator qualifications have been approved and that the group is ready to begin training mediators for the pilot project. Professor Capulong has developed a curriculum and will conduct training in two locations, one in Kalispell and the second in a more rural area. The group has submitted a grant application to the Montana Justice Foundation to help cover the training costs and will find out if the grant is funded sometime in the next month or two. Justice Baker suggested reaching out to Holly Frederickson in Liberty County for a possible rural pilot location. Patty stated that she will send out a notice once funding for the pilot training has been secured and asked the group to please refer people to the training. Justice Baker mentioned that there upcoming CLE opportunities for mediation training this fall.

Limited License Legal Technician Update

Chris Manos reported that the group has met four times and that Justice Pat Cotter is the chair of the committee. The group has gathered information on the experiences of Washington and Utah with limited license legal technicians and is drafting a report on the issue for the Montana Supreme Court.

Public Comment and Next Meeting Dates

Justice Baker asked for public comment. There was no public comment. Justice Baker stated that the meeting dates have been set for 2018 and are listed on the agenda. The next meeting will take place on December 8, 2017. The meeting was adjourned at 3:03 p.m.