

Access to Justice Commission Standing Committee on Policy and Resources

April 24, 2014, 1:30 P.M.

Via Teleconference

In Attendance: Sarah Garcia, Alison Paul, Michele Robinson, Janice Doggett, Andy Huff, Jon Bennion, Justice Baker, Abby St. Lawrence, Randy Bishop, and Amy Sings In The Timber. Also in attendance: Kate Kuykendall.

Call to Order: 1:30 PM

Approve minutes from 3/26/12

The following changes to the minutes were made:

- Sarah Garcia's name was spelled wrong.
- Aimee Grmolez was not present.
- Michelle Potts was present.
- The section on "next tasks" on the second page should read "related legislative issues".

Randy moved to approve the minutes as amended. Justice Baker seconded the motion. The minutes were approved as amended.

OCA Report on Court Help Program Funding

Sarah Garcia provided a report on the budget request for Court Help Program funding, which includes a request for a 1.0 FTE divided for Cascade and Gallatin Counties to put a staff member in the self help centers. The Cascade County center currently doesn't have a staff member, and the program is relying on AmeriCorps volunteers. Turnover has been a problem, causing a lack of institutional knowledge. This is the biggest change in the budget request from previous years. The request will be \$854,616 for the biennium.

Amy Sings In The Timber asked whether the OCA will be asking for support from the Access to Justice Commission and providing guidance on the timing and nature of the Commission's support. Sarah replied affirmatively.

Beth Baker described the process of drumming up support for the budget proposal in previous years. This support has typically been of a grassroots nature. The Law & Justice Interim Committee meets on Monday; Beth McLaughlin will attend. This Committee would benefit from having a member watch the progress of the Interim Committee and report back. Jon Bennion agreed to attend at Justice Baker's suggestion.

Janice and Abby St. Lawrence were tasked with reporting on activities taking place in the JIC's arena. Justice Baker and Sarah Garcia were tasked with reporting on the Court's budget process. Beth McLaughlin and Sarah will also report on the Interim Committee's progress.

Amy Sings In The Timber clarified that the Committee will be looking to Sarah Garcia and Beth McLaughlin for guidance on supporting the Court's budget. Amy also described the Montana Justice Foundation's past support of the budget, including Board member support in local communities.

Cy Pres

Amy Sings In The Timber gave a brief summary of the national landscape regarding Cy Pres, and explained the MJF's work on the issue in Montana. She summarized the ways in which cy pres has been incorporated into rules, noting that states are trending toward making cy pres rule-based in a variety of ways. Montana does not currently have a rule. The MJF has been working to bring attorneys up to speed on cy pres, and make it easy for them to use the doctrine effectively for support of access to justice. There have been some tremendous successes, largely due to the efforts of Jim Regnier, Randy Bishop, and John Heenan.

The Committee discussed whether there is a need for a cy pres rule in Montana, and concluded that a rule would help make attorneys and the judiciary aware of the possibility that residuals can go to support access to justice.

The Committee discussed what sort of rule might be the most effective in Montana. Amy Sings In The Timber related her experience in talking about cy pres with various sectors of the legal community, noting that for the most part people support cy pres but would welcome guidance on how to use the doctrine correctly. Beth Baker noted that court rules vary widely from state to state, and suggested starting with a rule that acts as an authorization rather than a requirement. Amy Sings In The Timber and Randy Bishop both favored a court rule over a legislative rule so that the legislature won't be asked to consider a rule before it approves solid funding for the Court Help Program. In addition, cy pres is currently an uncertain source of funding; a court rule would provide time to gather more data on what sort of money it will generate in Montana. The Committee agreed to pursue recommending a court rule to the Commission.

Randy Bishop proposed pursuing the rule well before the legislative session or shortly thereafter. Beth Baker noted that the Court takes up recommendations fairly quickly, usually directly after a 60-90 day comment period. Randy Bishop agreed to create a draft rule for the Committee's consideration, incorporating input from a variety of sources. Amy Sings In The Timber agreed to provide support.

Kate will ask Matt Dale to share the minutes of this Committee with the Communications & Outreach Committee.

Pro Hac Vice

Amy Sings In The Timber and Janice Doggett provided a history of pro hac vice in Montana. Randy Bishop noted that from a civil litigation standpoint, any fee representing less than one hour of attorney time is ridiculously low. This represents a rate of approximately \$300 - \$500 per hour.

Amy Sings In The Timber agreed that this is a pretty universal opinion. Montana's fee is currently a total annual fee of \$385, for each year the case is open. \$250 of that goes to the state bar. \$125 goes to the Office of Disciplinary Council, and \$20 goes to the Office of Client Protection. The annual total brought in for last year was \$36,000.

Beth Baker related that Montana's rule also strictly limits the number of pro hac vice appearances a lawyer and firm can make, which acts as a limit on how much can be generated. Exploration of a reciprocity rule is currently on the Court's radar screen, which may make this a poor time to put much effort toward a pro hac vice amendment.

Amy Sings In The Timber gave a brief statement about what other states are doing with pro hac vice. Randy Bishop noted that attorneys hoping to come in under pro hac vice are more than happy to pay whatever fee we charge.

The Committee agreed that it will not pursue pro hac vice as a priority at this time, but that it may be appropriate soon when the timing is more ripe.

Other Business

Beth Baker reminded the Committee that the Interim Committee is looking at a pilot program for court-based family mediation funding. This may dovetail with the Committee's assigned strategy regarding mediation. This is something we want to keep on the radar.

Alison Paul agreed to discuss what MLSA is doing about pro bono and mediation at the next meeting. Abby St. Lawrence may be able to talk about JIC's work in those areas as well.

The Committee agreed to set a standing meeting at 1:30 on the last Thursday of each month. If a meeting isn't needed, Kate will cancel it. The next meeting of the Committee will be **May 29th at 1:30 pm.**

Randy moved to adjourn. Alison seconded the motion. The meeting adjourned at 2:36 pm.