

**Access to Justice Commission Standing Committee on Policy and Resources**

**May 29, 2014, 1:30 P.M.**

**Via Teleconference**

**In Attendance:** Sara Garcia, Michele Robinson, Michelle Potts, Jon Bennion, Justice Beth Baker, Randy Bishop, Andy Huff, Representative Chuck Hunter, and Amy Sings In The Timber. Also in attendance: Kate Kuykendall.

**Call to Order: 1:30 PM**

**Approve minutes from 5/29/12**

The following changes to the minutes were made:

- Beth's edits/spelling corrections

**Randy moved to approve the minutes as amended. Jon Bennion seconded the motion. The minutes were approved as amended.**

**Revised Cy Pres Rule**

Amy summarized work thus far on cy pres rule changes. Randy drafted a rule, which Justice Baker and Amy have reviewed and helped to polish. Amy opened the floor for discussion regarding the draft cy pres rule.

Beth asked Randy to comment on where rule comes from.

Randy described the rule as patterned on what appears to be the mainstream approach in those states that have adopted a rule to deal with residual funds. Residual funds arise in class action cases when a settlement has been achieved that provides compensation for numerous claimants that are included in the class when it is certified. In large classes, it appears there will be claimants that we just can't find despite best efforts to do so. This results in money that remains sitting in an attorney's trust account that there's no way to dispose of. Rather than have it sit there forever, cy pres rules in civil procedure offer guidance on what to do with these residual funds. MT Rule 23 covers the subject of class actions, and is similar to other state rules and Federal Rule 23. We have some additional paragraphs, but to add a new one we started with paragraph lower case i. It defines what residual funds consist of, and describes what is to be done with those. A particular percentage has been injected into this. Randy initially suggested that residual funds should be treated the same as interest accruing to IOLTAs, giving it to MJF. This would have been a streamlined straightforward approach. Randy is committed to the goals of MJF, and IOLTA works well. Justice Baker suggested in order to head off objections we should spell out options for disbursement of residual funds and put a percentage in initially, which is consistent with what other states have done. There was some discussion. What we have now is truly a subcommittee product, not just Randy's own, generated by Amy Sings In The Timber, Justice Baker, Randy, with input from others. Randy asked if there were any questions.

Representative Chuck Hunter joined the meeting.

Amy noted that we hope to approve a draft that will go forward to the full commission for final approval at next month's meeting. It would come to the court from the commission.

Justice Baker described the process of the recommendation going forward. She also spoke in favor of the proposal.

Andy asked for clarification on the meaning of the last sentence of the second paragraph. Justice Baker explained that the sentence basically says that, to the extent there are residual funds over and above 50%, the court may disburse those funds to either MJF or some other entity. She suggested inserting the word "either" after "percentage".

**Randy moved the adoption of the proposed amendment with an additional amendment to insert the word "either" after "percentage" in the last sentence of the last paragraph. Andy seconded the motion. The motion passed unanimously.**

#### **Uniform Collaborative Law Act**

Amy described her contact with Tal Golden, President of the WMBA, regarding bringing a UCLA training to Montana, and Tal has been talking with Representative Ellie Hill about some legislative ambitions for the act. Tal contacted Amy a few months ago about a training, and we talked about it from the MJF's perspective. He also talked with several judges about potential support for the act. He has asked the Commission through this Committee to consider recommending to the Commission signing on support for adoption of the UCLA in Montana. Amy asked for discussion of whether the Committee feels it would be appropriate to recommend the Commission support the adoption of the UCLA in Montana.

The Committee agreed it is best suited to do the homework on the UCLA and make a recommendation either way to the Commission as a whole.

Justice Baker described her understanding of the UCLA, and her contact with Tal and others interested in its adoption. The act is uniform, which confers advantages. It is also well-suited to family matters, and doesn't impose mandates.

Amy described her initial concerns regarding the act, and conveyed that Tal has confirmed there is no reason the UCLA would be anything but entirely voluntary. Amy spoke about how attorneys trained need to be willing to take on cases on a pro bono or modest means basis in order to bring the access to justice component into play.

Justice Baker suggested it might be premature for the Committee to recommend support of the UCLA's adoption to the Commission until people have reviewed it in more depth.

Amy noted that Tal is scheduled to testify on the act soon.

Beth recommended asking Abby St. Lawrence to look at it as well. If she can look through the whole packet of stuff and come back with a recommendation with whether there are any issues with the act, it would be helpful. The Committee agreed to this course of action.

### **Potential for a Legislative Request**

Amy described the Committee's history with this subject. It's been a topic leading up to the Committee's formation. We have differing points of view on whether it's a good idea to make any type of request at all outside of funding for the self help law program in the upcoming session. We need to answer that first, before discussing what form that request might take.

Justice Baker noted that Beth McLaughlin will be coming to the next Commission meeting to talk about the court's proposal for funding for the court help program. Formerly we've been informal in our support; she will try to do that through the Commission this time. She'll also give the full Commission an update of the Law & Justice Interim Committee work.

Jon relayed that the Law & Justice Interim Committee has had two hearings about the Court Help Program, and has two meetings left. He also noted that the people on this committee aren't the people who are on the appropriations committee.

Amy noted that there have been concerns over having court help funding being a bargaining chip.

Justice Baker stated that there are two concerns, of which the bargaining chip issue is one. The other concern is that we need to have every duck in a row before asking for funding. That includes the Gaps & Barriers study to show where the needs are, the economic impact study that will be coming out of MLSA, and all other pieces that can be put together so the legislature can be fully informed of the need and what else is being done. A second proposal may be premature at this point.

Rep Chuck Hunter said it is always well advised to point out needs where they exist. Don't wait if you know you've got a need. This doesn't necessarily mean making a specific request. He said he wouldn't hesitate to talk about it in terms of pressing issues for the court system. Get it on their radar. Make people aware, even if all ducks aren't in rows.

The Committee discussed the timing of MLSA's economic impact study, and the work of the Law & Justice Interim Committee.

Amy summarized the discussion, saying we know we've needed state support for a long time, and we've worked for permanent support for the Court Help program for several sessions. It's clear that a request is likely to take more than one session before it's successful. Amy expressed her opinion that it is wise to get the information out there soon.

The Committee briefly discussed various vehicles for a funding request, such as speeding tickets, targeted fee increases, and general fund support. Representative Hunter noted that a defined funding source that makes sense sometimes makes the ask easier, but general funding is simpler and doesn't target a group that will object.

The Committee discussed Wyoming's recent success in getting funding for access to justice.

Amy volunteered to pull together information on other states' work and present it to the Committee at its next meeting. Michelle Potts agreed to help. Jon will help as well. Justice Baker will find and share the name of an attorney who worked on the Wyoming issue she thinks might be a good resource. She suggested talking with Walter Eggers of Holland & Hart in Wyoming. Beth volunteered Aimee Grmolez to contact him.

#### **Next Meeting**

Amy asked whether the Committee wanted to keep its regularly scheduled meeting time, which would fall on June 26<sup>th</sup>. The Committee agreed there is no reason to meet that soon, and moved its next meeting time to July 31, at 1:30 PM.

Jon moved to adjourn. **The meeting adjourned at 2:29 pm.**