

Access to Justice Commission Standing Committee on Policy and Resources

August 28, 2014, 3:30 P.M.

Via Teleconference

In Attendance: Justice Mike Wheat, Justice Beth Baker, Andy Huff, Abby St. Lawrence, Michelle Potts, and Amy Sings In The Timber. Also in attendance: Ed Bartlett and Kate Kuykendall.

Call to Order: 3:33 PM

Approve minutes from 7/31/12

Andy moved to approve the minutes; Justice Baker seconded the motion. Those present all voted in favor of the motion.

Committee Support for the Court Help Program

Beth McLaughlin talked to the Commission at its last meeting about support for the program. The Commission's Committee Chairs met recently, and agreed that we know we need to be moving forward on support for this piece of the Court's budget, none of us are sure what it is we should be doing. We want to make sure what the appropriate next steps might be. Ed Bartlett has joined us today to address this topic.

Ed will provide some lobbying support for the State Bar and the Montana Judges Association. Combining these provides a better-coordinated joint effort.

Justice Baker said that the Committee Chairs will be talking with Beth McLaughlin about specific actions people should take. We want this to be a coordinated effort. Matt Dale has talked about having the Communications Committee put together some materials. We need to decide what roles each person will take. We want to have a more organized effort than "just talk to your legislators". We need to start ahead of the session.

Justice Baker said that Beth McLaughlin gave us a fact sheet with budget figures. If we have materials beyond those, we need to decide what they will be. Having the Commission or Committees organize efforts is what we need. Organizing community meetings with judges and legislators is important.

Amy said there was discussion of taking potential legislators on a tour of the local court help center in their community.

Justice Baker said she isn't sure if that will be happening, but we will find out tomorrow.

Ed Bartlett mentioned that at the last legislative session, a committee that Amy led developed some short 1-page fact sheets, example letters to the editor, contact information for legislators, and that kind

of thing. It coordinated the effort across the state so that everyone had the same information. Ed recommends that again if it's possible to do.

Amy summarized how this happened last time. It started with the MJF VISTA, and then the materials went through the Equal Justice Task Force and were finalized by the Office of the Court Administrator.

Ed thanked the Commission for wanting to be involved. The profile of the Commission's membership will be very helpful. Ed has talked with Beth McLaughlin and Justice Baker, and will be glad to provide whatever support he can to the Commission to help these efforts. When it gets in front of the legislators, this topic becomes a lot more important than the dollars that they give us. They talk about it a lot, and it's not an easy thing to get funding for. Thank you for being willing to help support including this topic in this budget.

Amy asked whether we'll have more guidance after tomorrow's Chairs meeting. Justice Baker said we will. There were no more questions on this issue.

Direct Funding for Legal Services

Amy drew the Committee's attention to the materials on this issue. Wyoming has recently had success achieving funding; an article about Wyoming's efforts was included in the materials. In addition, a memo from Meredith McBurney identifying state funding and its type for each state that has it was included.

Amy spoke with Meredith about efforts in other states. Meredith suggested contacting several states with issues common to Montana. Amy has reached out to a few of these people, but has not yet been able to connect with anyone. If you had a chance to read the article, you can kind of get the lay of the land in WY. When Michelle Potts, Jon Bennion, and Amy got together to talk about what makes sense in Montana for 2015, it looked like if we are going to have a real shot at success, we need to get things rolling, and we're probably most likely looking at a court fee.

Justice Baker said she talked with Justice Burke, the author of this article, and got some insight. There are some differences and similarities between MT and WY. When WY started this effort, Wyoming's legal services provider was being eliminated altogether. It was an immediate crisis. They were able to push this as a state problem rather than looking outside for a federal solution, and billed it as stepping up and having the state solve its own problem. They have a \$10 filing fee on virtually everything. A lot of what they raise comes from traffic tickets. There are a few points to consider. First is that we are getting a late start. The public meetings they had in WY were useful to get the awareness spread about the problem. They invited legislators to something like 5 meetings around the state. Second is that the activity of the Wyoming Commissioners, including a particular lawyer lobbyist, helped a lot. They had support from courts of limited jurisdiction, which is one issue we will face. The Courts of limited jurisdiction oppose any kind of filing fee because they are the party that will have to administer it, and adding a filing fee seems counter intuitive to supporting access to justice. Representative Hunter is willing to throw in a bill draft for us to get something started. That will give the legislative staff an

opportunity to see what could be raised through various means. District Judges were also key in WY; we haven't discussed this with District Judges in Montana. We have a lot of legwork to do if we want to succeed. We need to discuss the pros and cons of a general funds request vs. an add-on to something else. Justice Baker is not sure how the Office of the Court Administrator would feel. We might need to approach with a cat & dog bill.

Andy Huff said he thinks a general fund approach will be hard to do. A more realistic approach for this session will be a cat & dog bill.

Amy asked if there is anyone who thinks this just isn't the session to start with.

Justice Baker said it's always hard, but that there's never a good time. We haven't done a lot of legwork, but we have to start sometime.

Amy asked if we can move on to talking about what the legwork will be. Is there enough consensus on this call to proceed, even knowing that we're behind the ball?

Andy said he thinks we should move forward. We have done a lot of legwork; there's the Commission and the Gaps & Barriers Study. If we want to move forward this session, we need to think about how we would get the money, which would determine what we need to do prior to the session. Who are we going to impact? That's who we need to start talking to.

Justice Baker noted that Senator Ripley is critical. We should come up with our ideas, and then seek out a sit-down meeting with him to run all of this by him and see if we can get his thoughts on it. He will have a better sense of what else is coming.

Amy asked that we start talking about what it could look like. Who might be in opposition? Who do we need to count on support from?

Justice Baker pointed out that under Montana on the chart, it shows money under a filing fee to support domestic violence work. This is money that comes to the Supreme Court, but which has limits on spending authority. That's \$100,000 that's not being used. This is tagged only for domestic violence victims. Using the statutory authority that's already in place might make things simpler. Amend the statute that identifies domestic violence to add some other surcharge or filing fee or civil legal aid generally and increase the court's spending authority. Justice Baker expressed having mixed feelings about a filing fee, but if it's small and broad enough, it won't affect the access to justice issue as harshly. There are other possibilities; the sky is the limit in terms of mechanism.

Amy asked if Justice Baker is suggesting increasing the spending authority to include the full amount collected so it is available for use, and adding a surcharge or filing fee for general legal aid.

Justice Baker said yes, and that the spending authority comes through a different process. Spending authority doesn't have to be in the bill itself, but it is two separate issues.

Justice Baker asked Justice Wheat what he thinks about filing fee increases.

Justice Wheat said he isn't sure. We've run into trouble asking the legislature to help people who can't afford access to justice. We've done filing fees in the past for the court. Fee for court technology and those kind of things. It'll be easier if it's a fee than asking for a general fund appropriation.

Amy said she's in favor of amending something to make an existing vehicle more effective or efficient; may be a better option than pursuing something new. Amy asked if Justice Baker had a chance to talk with Chuck Hunter about this approach.

Justice Baker said no, but that he has made clear that he is open to ideas. One way of getting the courts of limited jurisdiction and clerks of court on board is that it could make their jobs easier someday if people have better access to legal services. That doesn't mean it'll be easy to sell. How much is the fee, and what is it on? Those options can be explored with legislative drafting staff. How much do we want to raise, and what will it take to do that? Or, we could start small with \$5 or \$10 and see what it will generate.

Amy identified the Courts of limited Jurisdiction, Clerks of Court, and District Court Judges as three parties we know we need to talk with. Are there other groups we know we need to communicate with right away?

Justice Baker asked Ed whether the Chamber might be a group we could look to for support. Ed said the Chamber might be a possibility. He thinks it's worth exploring.

Amy asked who's the right person to approach the Chamber. Justice Baker said Ed Bartlett and Jon Bennion.

Ed said he would be pleased to do that. Amy will ask Jon as well.

Amy asked if we have people we know should be point people for the other three groups. Justice Baker suggested talking with Judge Snowberger about that, to see if she is the right person and who she might suggest. Justice Baker will also talk to the office of the Court Administrator as well. Jennifer Brandon is our Commission representative for the Clerks of Court, so she will be a good person to start with. Amy will contact Jennifer.

Amy asked how much we should start by asking for. Justice Baker suggested looking at what states similar to Montana raise. It varies a lot. North Dakota has \$300,000 and Wyoming has \$1 Million. Justice Baker said we could ask for a million, and see what we hear back.

Andy suggested \$2 million, and noted the amount will likely get cut down. Justice Wheat said we can ask for what we want, but the budget should define what we ask for. Legislators want to see what the money will do.

Justice Baker said the Gaps & Barriers study will help with that. Maybe we want a subcommittee with Alison Paul to look at the study and look at the Montana Legal Services Association budget, and Montana Justice Foundation annual resources and requests, and come up with something more tangible and realistic.

Amy said looking at the MJF spending plan is a good place to start. It goes beyond Montana Legal Services Association's budget, taking into account the Gaps & Barriers study and Montana's long-range needs, and addressing the different areas in the study.

Justice Baker asked whether the Montana Justice Foundation and Montana Legal Services Association should sit down and put something together. Amy said yes. She also said if we are talking about \$1 million for the biennium, it's right in range of what we're talking about to provide a base level of meaningful legal services throughout the state for the long range.

Michelle said Montana Legal Services Association had over 10,000 requests for services last year, and closed just over 3,000 cases. We can say how many we could have dealt with given X number of dollars.

Amy said the Justice Foundation can show the level of requests it receives and the level it isn't able to fund. This will provide another metric.

Justice Baker asked if we need a formal motion to start the process. Amy said it would be a good idea to get it going. Justice Wheat suggested agreeing amongst those present that we want to move forward, and that Amy will send an email next week to get a full Committee vote. Let them know what we've done and what they're voting on. Justice Baker asked if we need a formal motion to present in the email. Move forward with developing a proposal.

Amy moved that the Access to Justice Commission's Policy and Resources Committee agree to move forward on putting together a proposal for a 2015 Legislative Initiative in support of increased funding for civil legal services through a filing fee or some kind of surcharge. Justice Wheat seconded the motion, adding that we will get full approval through an email vote.

Those on the call voted unanimously in favor of the motion.

Amy will contact Jennifer Brandon regarding starting conversations with clerks of court. Justice Baker will contact Judge Snowberger, Representative Hunter, and Senator Ripley. Ed has agreed to contact the Chamber. Amy will contact Jon Bennion and let him know he was volunteered to contact the Chamber as well. Kate will send a scheduler out to set up a meeting between Amy, Kate, Alison, and Michelle to start putting together a budget.

Justice Baker suggested we think about other potential opposition. Amy noted that West Virginia, Iowa, Indiana, and Utah can shed light on this.

Dues Check-off

Amy gave some background on the Committee's discussion of this topic. Amy had agreed to put together a memo and approach the state bar. In her efforts to do this (draft provided in the materials), Janice looked at it and provided feedback. Amy started looking at Meredith's information, and crunching numbers. It wasn't promising. Arizona serves as an example, with a voluntary opt-out. The number of attorneys they have there is significant. They have 60,000 attorneys, and are only raising \$175,000; far more attorneys than in Montana. Amy then learned that half of the \$175,000 is from pro hac vice. They have two-thirds of the attorneys in the state not filling out their own dues statement. Firm administrators and government attorney secretaries fill it out and pay the smallest amount possible. Seems like spending lots of time and effort lobbying for a voluntary dues assessment is a waste of capital. However; there are a handful of states with compulsory bars where the bar association has asked for a dues assessment to support legal services. It's nominal, like \$20.00, and at 3,000 attorneys it would raise \$60,000, which is nothing to sniff at. It's far more than we're likely to get on a voluntary add on. This will very likely need to come from within the Bar. Amy and Janice talked about this, and agreed that the last three years of the bar membership survey say the important things are that the bar make the profession look good, highlight the good work of lawyers, and support access to justice. Amy recommended not moving forward with this from the perspective of the Committee.

Justice Baker agreed.

Andy asked if we should talk with the bar association and see if they can do this themselves. Amy said she has had individual conversations about this with several bar board of trustees to take the temperature of this issue. Amy will proceed with this, and report back. We need to find out how willing some individuals are to take the issue up as an initiative of the bar.

Amy will follow up with individuals at the State Bar and report back. Justice Baker asked if we should make a formal recommendation that we table this issue for now. The Committee agreed. Justice Wheat said he doesn't think this is something we should rule out, but that we should pursue it carefully right now, continue laying the ground work. Our bar is active, and may be more willing to participate in this process than we think. He thinks we need to put it on the back burner, but frame it so we can pursue it in the future.

Amy noted that looking at the data, pro bono support in a number of states is a very palatable area for dues check-offs to go in support of. Because local bar members identify with local pro bono programs, there's room for discussion on that front as well.

Rule 23 Update

Amy worked with several people to create the article that's in the materials that ran in the issue of the *Montana Lawyer*. As of this morning, there have been no comments filed regarding this rule. Amy reached out the Montana Trial Lawyers Association (MTLA) and we have some favorable feedback from them. MTLA reached out to the Montana Defense Trial Lawyers (MDTL) to see if they might be interested in filing a joint comment in support. As of today, Amy heard back from Mark Williams regarding MDTL. He said most were supportive or neutral about it, but encouraged Amy to follow up with Dale Cockerell, who was gone on travel as of today. Amy is not certain there'll be a comment filed jointly, but the good news is that the two associations and their members that would have the most to say about whether this is a good amendment to this rule seem to be mostly positive.

Justice Baker said we need to have something filed by someone. She suggested polling the members of each organization's Board, or something that would give rise to a comment.

Amy said the board members have already been polled. We're still seeking more information, and she hesitates to contact anyone more on this for fear of muddying the waters.

Justice Baker said that even one or two individual lawyers would be a good thing. We need comments. Amy said we will probably see something from MTLA. We're waiting to hear from MDTL. Individuals Amy has spoken with indicated they are very much in favor, so she is hopeful we will get some individual comments. MLSA also filed a comment in support today.

Kate will get an email out with the minutes to all committee members to ratify the motions put forth.

Amy shared the late-breaking news that the Cascade County Law Clinic Board of Directors has filed a comment in opposition to the Rule 23 Amendment, which she learned while on the call.

Next Meeting

The next meeting would typically be Thursday, September 25th, at 3:30. That conflicts with the state bar's annual meeting in Big Sky. The tentative re-schedule date is September 24th at 3:30.

The meeting adjourned at 4:42 pm.