

MINUTES

FILED

Montana Supreme Court Public Meeting

APR 08 2013

January 29, 2013

Justice Building, Attorneys' Lounge, 4th Floor

215 N. Sanders

Helena, Montana

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Chief Justice Mike McGrath called the meeting to order at 1:03 p.m. Chief Justice McGrath and Justices Baker, Cotter, McKinnon, Morris, Rice, and Wheat were in attendance. Also in attendance were Chris Manos of the State Bar of Montana; Marie Connolly of the State Bar of Montana; Betsy Brandborg of the State Bar of Montana; Mark Parker on behalf of the State Bar of Montana; Brian Murphy of Parker, Heitz, & Cosgrove; Kelton Olney on behalf of the Montana Medical Legal Panel; Jean Branscum of the Montana Medical Legal Panel; Shaun Thompson on behalf of the Office of Disciplinary Counsel (ODC); Chris Wethern, Staff Attorney for the Montana Supreme Court; and Seamus Molloy, law clerk for Chief Justice McGrath.

Item 1: Minutes for the October 23, 2012 Public Meeting

The Court unanimously approved the Minutes of the October 23, 2012 Public Meeting.

Item 2: AF 06-0628 Proposed Revision to Rule 33 of the Rules for Lawyer Disciplinary Enforcement

Chief Justice McGrath opened the discussion on the proposed changes to Rule 33 of the Rules for Lawyer Disciplinary Enforcement. The Justices discussed the proposed changes with Ms. Brandborg and Mr. Parker of the State Bar, and Mr. Thompson of the ODC. Justice Baker expressed concern about the lack of notice to attorneys for whom a trustee is appointed. Mr. Thompson said that the proposed changes were modeled off of similar rules in other states. He explained that most jurisdictions do not provide notice or the opportunity to be heard before a trustee is appointed. Ms. Brandborg and Mr. Parker of the State Bar told the Justices that this procedure is usually implemented when the attorney cannot be found and someone is needed to protect the clients' interests. The Justices then discussed adding a provision that would allow an attorney to challenge the appointment of a trustee subsequent to the appointment.

The Justices then discussed amending the proposed changes to have district courts, instead of the Supreme Court, issue the orders that appoint trustees. The Justices agreed that would be appropriate and then considered which courts would have jurisdiction.

Justice McKinnon asked when an attorney is considered disabled under the Rule and whether there is a difference under the rule between the handling of matters

involving a dead or disabled attorney and those involving an attorney who has been suspended or disbarred. After discussing the issue with Mr. Thompson, the Justices agreed that the Rule needs to better define the operative terms.

The Justices concluded their consideration of the issue and unanimously agreed to have the ODC draft additional changes to the proposed Rule. The Justices asked the ODC to define “disabled,” to provide that district courts will appoint trustees, and to add a provision that allows attorneys an opportunity to be heard post-deprivation. Justice Cotter agreed to assist the ODC in making these amendments.

Item 3: AF 06-0238 Appointment to the Judicial Nomination Commission

The Court unanimously approved the appointment of Patrick Kelly to the Judicial Nomination Commission of the State of Montana. His term will end on January 1, 2017.

Item 4: AF 06-0090 Appointment to the Commission on Practice

The Court unanimously approved the appointment of James A. Hubble to the Commission on Practice for a term to end on June 30, 2013.

Item 5: AF 06-0112 Reappointments to the Criminal Jury Instructions Commission

The Court unanimously approved the reappointments of the Honorable Julie Macek, the Honorable Karen S. Townsend, and Chad M. Wright to the Criminal Jury Instructions Commission. Their new terms will end on January 1, 2017.

Item 6: AF 06-0263 Appointment to the Commission on Courts of Limited Jurisdiction

The Court unanimously approved the appointment of the Honorable Robert J. Wood to the Commission on Courts of Limited Jurisdiction. His term will end on December 31, 2016.

Item 7: AF 13-0027 Proposed Rule Changes Re: The Montana Medical Legal Panel

The Court next considered proposed changes to Rules of Procedure of the Montana Medical Legal Panel. Ms. Branscum of the Legal panel told the Justices that the changes were needed because the old rules did not reflect current practice. She explained what had been done to identify what changes are necessary and how to best make those changes.

Chief Justice McGrath asked if the proposed changes had been put out for public comment. Ms. Branscum said that they had not. The Justices unanimously agreed to put the changes out for public comment for 30 days before taking further action.

Item 8: AF 07-0016 Rules Proposed by the Appellate Defender Regarding Judicial Bypass

The Justices unanimously agreed to refer for a 60-day public comment period the proposed rules regarding judicial bypass minors seeking abortions without parental notice.

Item 9: AF 11-0244 Petition to Adopt Amended Rules for Admission to the Bar of Montana and Amended Board of Bar Examiners' Rules

The Justices next considered the proposed modifications to the Rules for Admission to the Bar of Montana and modifications to the Montana Board of Bar Examiners' Rules. The Justices first discussed the proposed changes to the Rules for Admission. Specific changes to the text were suggested to add clarity. Chief Justice McGrath additionally proposed adding provisions regarding the swearing-in ceremony which are currently common practice. The Justices unanimously agreed to the changes and approved the modifications as amended.

The Justices then considered the proposed Amendments to the Bar Examiners' Rules. Ms. Connolly of the State Bar explained what was new and why the changes were proposed. The Justices unanimously approved the amendments.

Chief Justice McGrath adjourned the meeting at 1:42 p.m.

Duly Submitted,
Seamus Molloy
Law Clerk