

JUL 02 2014

MINUTES

Montana Supreme Court Public Meeting
Tuesday, April 15, 2014 1:15 p.m.
Justice Building, Attorney's Lounge, 4th Floor
215 North Sanders, Helena, Montana

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Chief Justice McGrath called the meeting to order at 1:15 p.m. Justices Baker, Wheat, Cotter, Rice, and McKinnon were in attendance. Also in attendance were Clerk of Court Ed Smith, Deputy Clerk of Court Rex Renk, staff attorney Chris Wethern, and law clerk Patricia Klanke.

The Court approved the minutes of its last meeting.

Agenda Item One. The Court reappointed Tracy Axelberg and Daniel McLean to the Commission on Practice.

Agenda Item Two. The Court addressed proposed changes to the Rules of Appellate Procedure. Chief Justice McGrath noted that comments had been received from the Office of the Appellate Defender and the Clerk of Court. No proposed order had yet been prepared.

Justice Baker referred to a comment from the Clerk of Court regarding changes to Rule 2(4), addressing captions in multi-party cases. Justice Baker proposed clarifying that parties may file a joint notice of appeal, similar to the Federal Rules of Appellate Procedure. The Deputy Clerk of Court noted that the federal docketing system differs from that employed by the Court. After discussion, the Court concluded that the primary intent of the proposed rule change is only to clarify that the names of the parties should appear in the same order as they did in the district court.

Chief Justice McGrath opened discussion of proposed changes to Rule 4(2) requiring a copy of the final judgment to be attached to the notice of appeal. Justice Baker raised concerns about the effect on timeliness of appeals, particularly with respect to inmates who may not have prompt access to full records. Justice Cotter noted that reference to a "final judgment" may be confusing in cases where the order appealed from is not a final judgment. Justices McGrath and Wheat were inclined to keep the existing rule.

Justice Baker noted that the Office of the Appellate Defender and the Clerk of Court made similar comments regarding Rule 5. Justice Baker also noted a suggestion by the Clerk of Court that reference in Rule 5(4) to a statement of the account prepared by the correctional institution be removed. Justice McKinnon raised concerns about maintaining consistency with procedures in the district courts. Justice Cotter and Chief Justice McGrath were in favor of the suggestion by the Clerk of Court.

Chief Justice McGrath opened discussion of proposed changes to Rule 7. The Clerk of Court suggested adding a provision to subsection 2(b) requiring the parties to file written,

informed consent to mediation within ten days of the notice of appeal. The Clerk of Court also suggested that parties opting out of mediation should be required to note this in the notice of appeal. Justice Baker indicated she would approve of the second suggestion, but not the first. The Deputy Clerk of Court addressed the need for some notice of the parties' consent. After discussion, Justice Wheat said that a 15-day period may be appropriate, rather than ten days.

With regard to proposed changes to Rule 12, Justice Baker suggested combining the statement of the case and statement of facts. Chief Justice McGrath and Justices Cotter and Wheat expressed a preference for a separate statement of the case. Justice Baker also suggested clarification of Rule 12(2) and (5). The Clerk of Court addressed the problems created by colored appendix dividers with respect to electronic filings and scanning of briefs. Members of the Court expressed a preference for plain paper tab dividers. Justice McKinnon asked about redacting confidential information in appendices. Justice Baker replied that electronic or scanned appendices would not be available on the public view docket.

Chief Justice McGrath opened discussion of Rule 17. There was discussion about clarifying the rule to refer to both exhibits and handouts used at oral argument. Justice Rice noted that the aim of the proposed rule is to ensure that exhibits and handouts are merely illustrative and do not contain new argument.

The Court discussed proposed changes to Rule 13. After discussion, there was consensus that the existing rule should be maintained.

Regarding proposed changes to Rule 20, Justice Baker noted objections from the Office of the Appellate Defender regarding petitions for rehearing of orders disposing of petitions for extraordinary writs. Justice Baker proposed an exception for petitions for extraordinary writs or supervisory control. Justice Cotter expressed concern that the exception would swallow the rule.

Chief Justice McGrath noted that the Court intended to address possible changes to Rule 30 in the near future. The Chief Justice opened the floor for public comment. No comments were heard. The meeting was adjourned at 2:00 p.m.

Duly submitted,



Patricia Klanke
Law Clerk