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ORIGINAL

MINUTES

MONTANA SUPREME COURT PUBLIC MEETING

JUL 21 2015

2015, June 9, 1:00pm

Attorney's Lounge 4th Floor

Ed Smith

Justice Building, 215 North Sanders, Helena, MT

CLERK OF THE SUPREME COURT
STATE OF MONTANA

Chief Justice McGrath called the meeting to order at 1:00 pm. In attendance were Justices ~~Rice~~, Baker, Cotter, Shea, Wheat, and McKinnon. Also present were the following people: Marie Connolly, Chris Manos, Betsy Brandborg, and Kathie Lynch, on behalf of the Montana State Bar; Randy Cox and Jacqueline Lenmark on behalf of the Board of Bar Examiners; Annie Goodwin, Chair of the Commission on Character and Fitness; Shaun Thompson, Chief Disciplinary Counsel for the Office of Disciplinary Counsel; Bill Mercer, on behalf of the Montana Petroleum Association; Attorney John Tabaracci; Assistant Attorney General Stuart Segrest; Nick VandenBos, intern at the Attorney General's Office; Patricia Klanke, Jessica Walker-Keleher, Alex Pyle, and Aislinn Shaul-Jensen, Law Clerks for the Montana Supreme Court; Chris Wetherorn, Staff Attorney for the Montana Supreme Court; and Melanie D'Isidoro, intern at the Montana Supreme Court.

Item 1: Minutes for the April 28, 2015 public meeting.

- Justice Baker noted a correction to the Minutes from the April 28, 2015 Public Meeting. She said the Minutes should read "Heidi Ulbricht is happy to be appointed," instead of "Heidi Ulbricht is happy to be re-appointed."
- After the correction was made, the Court unanimously approved the Minutes from the April 28, 2015 Public Meeting.

Item 2: AF 14-0356 Judicial Standard Commission Rules

- Chief Justice McGrath related that Judge Blair Jones, of the Twenty-Second Judicial District Court, requested more time to address suggested revisions to the Judicial Standard Commission Rules. Chief Justice McGrath said the Court will postpone approval of the Rules and take up the issue at a later date.

Item 3: AF 11-0244 Amendments to Rules for Admission to the Bar of Montana and Bar Examiners' Proposal to Modify Montana Law Seminar

- Chief Justice McGrath noted that the Court had invited public comment on the proposed Amendments to the Rules for Admission to the Bar of Montana and the Montana Board of Bar Examiner's Proposal for Modification of Montana Law Seminar. The Amendments to the Rules for Admission would include a rule allowing for admission on motion. Chief Justice McGrath noted that a substantial number of public comments were received and considered.

Discussion re: Amendments to Rules for Admission to the Bar of Montana

- Justice Cotter said she looked through the public comments and recommendations, which came from numerous groups and individuals, including attorneys, law firms, and the State Bar. Justice Cotter said she had circulated a memorandum to the Court highlighting the many recommendations received. She noted a common request that the Court not “rush into” adopting a final rule regarding admission on motion but instead, on an interim rule basis, allow the State Bar to propose permanent rules after evaluating factors such as cost. Justice Cotter said she was not proposing an order, but seeking comment from those present.
- Justice Baker asked representatives of the State Bar whether she was correct in understanding that the Bar was requesting six months to draft temporary rules, which would be in place for a couple of years. Justice Baker also asked whether the new rules regarding motion practice would come into effect at the end of the six month period, and whether they would include fees.
- Chris Manos replied that the new rules regarding admission on motion contain references to other bar rules, and that the Bar would need time to review those rules. He said that the amount of time needed would depend on how the Court addresses reciprocity, which may in turn necessitate changes to the Lawyers Fund for Client Protection Rules and Fee Arbitration Rules to accommodate outside attorneys. Mr. Manos referred to Comment submitted by the Bar, asking the Court to allow the Bar time to get new rules into place before the Court formally adopts anything. He said that, currently, it is not clear to whoever would apply the rules which things they would need to pay attention to (for example, trust accounts and fee disputes). Mr. Manos said the Bar does not want to implement anything until the rules are clear and the Court allows them to be adopted.
- Justice McKinnon asked Mr. Manos for clarification. She asked whether, if the Court makes a change, it would need to provide some direction as to whether admission is limited to certain practice areas or number of years of experience. Justice McKinnon also asked what the spillover effect would be, based on the Court’s direction.
- Chris Manos responded that the Bar requests some clear direction on who is allowed to apply for admission. He said the new rules can be fashioned to accommodate the Court’s direction.
- Justice McKinnon asked about New Mexico’s limited process based on practice areas and reciprocity, and whether those were treated separately.
- Betsy Brandborg explained that New Mexico implements two different processes. She said the first process is for admission and all its component parts. She further noted that New Mexico splits different types of reciprocity, and said that, if the Court is going to give the Bar direction, it should look to what is going on in New Mexico. Ms. Brandborg said that Montana should keep all admissions in one channel, and that it would help to have direction, which could happen by bringing the parties together so each can explain how the new admissions rules impact their process. New Mexico started channeling out, so there are eight or nine separate processes for different groups, such as military, people admitted over a number of years, government, and nonprofits.
- Justice Baker said it makes sense for the Bar to have six months to develop proposed rules, but clarified that she did not want another study. She spoke in favor of allowing admission on motion. Justice Baker said the Court’s direction should be relatively simple—it should not have different rules on admission for different people. She raised a question whether there should be a requirement that an applicant for admission by motion

should show that Montana is her primary place of practice. Justice Baker wasn't sure what the answer should be, but felt the Court should give some direction. She said that Montana should only give reciprocity to states who give reciprocity to Montana, and that admission should be based on good standing and a certain number of years of practice. Justice Baker liked the proposed amendments because they reference active practice and a certain number of years.

- Justice Cotter asked Justice Baker whether she would be inclined to do something along the lines of the proposal.
- Justice Baker responded that she would, but she was not sure about having different kinds of admission. She suggested adding a requirement that the applicant show evidence of attendance at the Montana Law Seminar, but said that could be structured under the next agenda item.
- Justice McKinnon asked Justice Baker whether she was suggesting that a certain time frame would be the only basis for admission on motion.
- Justice Baker clarified that she was suggesting both a time frame and that the applicant be a member in good standing of a bar in another jurisdiction. She said her only question was whether Montana should be the primary place of practice.
- Justice McKinnon asked whether Justice Baker meant that, under a hypothetical five year requirement, someone who did not meet that requirement would not qualify for admission regardless of his or her specific area of practice.
- Justice Baker stated that the only requirement would be the active practice of law, however that would be defined.
- Chief Justice McGrath said that "active practice of law" is defined in Section (d) of the proposal.
- Justice Baker stated it would be a good idea for the Bar and related entities to look at that definition for drafting any rules, but there might be something the Court is overlooking.
- Justice Shea asked how the Court would reconcile the allowance attorneys to be admitted within three years under the Uniform Bar Exam with the hypothetical five year experience requirement for admission by motion. He said that he was largely on board with Justice Baker's comments, and he thought that requiring that Montana be an applicant's primary place of practice would not be a bad idea. Justice Shea said he was not sure whether the Court should require actual residency or, like Alabama, create a rule that would test whether Montana is an applicant's primary place of practice. Justice Shea said he thought a primary place of practice requirement would eliminate the need for practice categories because attorneys would either move to Montana or certify that their primary place of practice was in Montana.
- The Chief Justice asked whether, if the Court created a primary practice requirement, other individuals could still be admitted pro hac vice.
- Justices Baker and Shea responded that yes, they could.
- Justice McKinnon said she understood that the Court would have to look at the pro hac vice rules if the Court adopts a number of years requirement for admission on motion. She said that pro hac vice may become redundant or unnecessary, and it would be within the drafting committee's realm to look at that.
- Justice Baker said she had no concerns about the definition of active practice, but asked the Court to leave it on the table.
- Chief Justice McGrath noted that the Court can always revise the rules.

- Justice Baker said she thought the Bar's recommendation to take six months before coming back with a rule was probably a good idea, but reiterated that she was not suggesting another study.
- Chief Justice McGrath said he likes the rule the Court put out the way it is proposed. He said he was open to (1) making the new rule work with the three-year time requirement for transferring a UBE score; and (2) amending subsection (a)(9) to clarify that the Bar can require applicants to submit to a character and fitness evaluation. He said the Court should also consider a fee—he was not sure the fee should be \$2500 as the Bar proposed, but the Court could talk about that issue later. Chief Justice McGrath said that if the Court adopts the rule the way it is proposed, it gets rid of the issues of splitting sub-practices because it only talks about reciprocity.
- Justice Baker noted that one Comment said that the rule does not identify the jurisdictions with which Montana has reciprocity. She said the Court should address that issue.
- Chief Justice McGrath said he would base reciprocity on whether the other jurisdiction gives reciprocity to Montana.
- Justice Baker noted that the draft says "on approval by the Court," which is not very specific.
- Justice McKinnon said that the drafting committee could look at whether, if there is no reciprocity requirement in the rule, there is a method to ensure that Montana is officially given reciprocity by the other jurisdiction. She said she wanted to make sure that any rule does not disadvantage Montana attorneys from participating in other states. She asked whether that would require a formal agreement with other jurisdictions.
- Chief Justice McGrath said a rule stating that Montana will give reciprocity to any state that gives reciprocity to Montana should be sufficient, which would also cover UBE states. Chief Justice McGrath said he thinks the issue will take care of itself over the next few years, as more states join the UBE, and the Court will not have to keep tinkering with the wording.
- Betsy Brandborg said that one reason other states specifically mention jurisdictions with which they have reciprocity is that they do not want certain jurisdictions to have reciprocity – notably, California and Texas, due in part to accreditation standards.
- Justice Rice noted that the rule as proposed does not require graduation from an ABA-accredited law school. He said that the Court could add language to that effect as a standard for anybody who wants to waive in or take the test.
- Justice Shea said he thought that was a good idea.
- Chris Wethern pointed out that there is already an ABA requirement in the proposal, under subsection (c)(2) on the second page.
- Justice Rice said the Court should also list that requirement under Section (a).
- Justice Baker asked Betsy Brandborg whether, since different levels of admission or requirements were not in the proposed rule, New Mexico adopted something else that the Montana proposed rule does not have.
- Betsy Brandborg said that New Mexico did adopt an additional component, and added that New Mexico is currently revising its rule.
- Chris Manos said that states in the Northwest specifically list everybody with whom they have reciprocity under a compact. He noted that Washington recently opened reciprocity to every jurisdiction that gives reciprocity to Washington.

- Chief Justice McGrath said he wants to stay away from that.
- Justice Baker said she could agree with the Chief's points; the only thing she wasn't sure the Court agreed on is whether the State Bar had six months to draft the new rules, and asked what the effective date would be.
- Chief Justice McGrath said the Court could make the effective date January 1, 2016.
- Justice Rice said there should be enough time for people to know how much to pay and what to do.
- Marie Connolly noted that most people start applying for the February bar examination on October 1.
- Chief Justice McGrath noted that the new rule would not apply to the bar examination.
- Several others present said that the rule would apply to people who will take the bar anyway.
- Justice Baker said people would know the rule is coming if the Court adopts it effective January 1, 2016, and she would be okay with that.
- Chief Justice McGrath noted that the UBE now allows people to transfer scores within three years of taking the exam and being admitted elsewhere, that the Montana bar examination no longer specifically tests Montana law, and that the nature of the economy is different than before with people constantly crossing state lines. He provided the example of North Dakotans practicing in Montana and Montanans practicing in North Dakota, and said it seems like that sort of scenario is the future of the economy and the general practice of law.
- Justice McKinnon asked whether the Court needed to address residency. Justice McKinnon said she does not think an applicant necessarily should be required to be a resident of Montana.
- Chief Justice McGrath said that is how the proposed rule is currently written.
- Justice Rice said that a residency requirement would defeat the purpose of allowing North Dakota attorneys to practice here in Montana, particularly eastern Montana.
- Justice Shea said there is some validity in making a requirement that means people from, for example, Minneapolis, cannot just use Montana bar membership as letterhead without having much practice in Montana. He said he did not think a residency requirement was necessary so much as some requirement that prevents people who only practice periodically in Montana from admission. He noted that is what pro hac vice is for, and suggested that the Court set some parameters.
- Justice Rice noted that applicants still have to attend the Montana Law Seminar.
- Justice McKinnon said she agreed with Chief Justice McGrath concerning the way law is practiced and the interstate direction it is going. She said that Montana will need to have policing mechanisms in place, one of which is the Montana Law Seminar. She further stated that this is not a new issue to Montana—other states have dealt with it.
- Chief Justice McGrath noted that, once attorneys are admitted to the Montana Bar, they are subject to Montana rules and disciplinary procedure.
- Justice Baker said that is probably another reason why the fee needs to be fairly significant.
- Chief Justice McGrath asked if the Court could put a motion on the table.
- Justice Rice asked whether it would be correct to move the Court to adopt the proposed rule and put it out for Comment as the rule on admission on motion, with several changes

(for example, stating that the Commission on Character and Fitness can investigate applicants).

- Chief Justice McGrath said the Court should make a basic rule and then discuss amendments.
- Justice Rice moved the Court to adopt the Court's proposed rule amending Montana's rules on admission effective January 1, 2016. He further stated that his motion would include a directive that the State Bar use the interim time to draft rules implementing admission on motion.
- Chief Justice McGrath noted that the Court could vote down Justice Rice's motion or further discuss it. He asked for the Court to vote.
- Chief Justice McGrath and Justices Cotter, Rice, Baker, McKinnon, and Shea voted in favor of Justice Rice's motion. Justice Wheat voted against the motion. The motion passed 6-1.
- Justice McKinnon said she thought it might be a good idea, since the UBE was first administered in Montana in 2012, to start by allowing admission on motion after three years, with the idea that it would eventually go to five. She said there currently is a void of two years when someone who had practiced longer than someone who waived in would be unable to be admitted.
- Justice Cotter asked Justice McKinnon if she was looking at paragraph one of the proposed rule.
- Justice McKinnon said she was. She said that, if we adopt the five-year time frame, then there would be people who had passed the UBE waiving in with no experience. She suggested that the Court discuss changing the time limit to three years.
- Justice Rice noted that admission via UBE score is a separate requirement: a person must have taken the test within the last three years.
- Justice McKinnon agreed with Justice Rice.
- Justice Rice said that waiving in without taking the Montana bar examination requires a certain number of years of practice; the two do not merge together.
- Justice McKinnon stated she did not think that the requirements should be merged, but she was trying to avoid the situation where, for example, an attorney who has been practicing for four years is caught in the middle.
- Chief Justice McGrath stated that Justice McKinnon's hypothetical attorney would not have taken the Montana bar examination, which is an exception to the five-year rule.
- Justice McKinnon said she was fine with the five-year time requirement.
- Justice Baker asked if the Court needed a motion to adopt the character and fitness requirement.
- Chief Justice McGrath told her to go ahead and do that.
- Justice Baker moved to strike the word "otherwise" from Section (a)(9).
- Annie Goodwin asked the Court to make clear that the Court authorized the Montana Commission on Character and Fitness to use the NCBE character and fitness investigation.
- Justice Baker so moved, and said that Chris Wethern can work with Annie Goodwin to make the language clear in the final order.
- Justice Rice seconded Justice Baker's motion.
- Chief Justice McGrath asked for a vote.

- The Court voted unanimously in favor of Justice Baker's motion.
- Justice Baker then noted that there was a Comment from Edward Lucas about Section (c)(4). The Comment stated that attorneys who know an applicant best may not necessarily be from the jurisdiction where the applicant is licensed. Justice Baker gave the example of an applicant from the military, and suggested allowing the character and fitness statements to be from attorneys licensed in any jurisdiction.
- Chief Justice McGrath clarified that Justice Baker was asking that character and fitness statements be required from three non-related attorneys in any jurisdiction.
- Annie Goodwin said that the Commission thought changing the language was probably redundant because the NCBE conducts a thorough investigation of all employers and law schools. Currently Montana does not require character and fitness statements.
- Justice Baker moved to strike (c)(4) of the proposed rule on admission on motion.
- Justice McKinnon seconded Justice Baker's Motion.
- Chief Justice McGrath called for a vote.
- The Court voted unanimously in favor of Justice Baker's motion. The motion passed 7-0.
- Justice Baker referred to Justice Rice's earlier comment that the rules should require an applicant to have graduated from an ABA law school, which should be added to Section A.
- Chief Justice McGrath said that requirement could be added as Section (a)(11).
- Several members of the Court agreed.
- Chief Justice McGrath asked for input from the Board of Bar Examiners.
- Jacqueline Lenmark said she thought that would work.
- Justice Rice moved to add the requirement that an applicant be a graduate of an ABA accredited law school as Section (a)(11) to the proposed rule.
- Justice Baker seconded the motion.
- Chief Justice McGrath called for a vote.
- The Court unanimously voted in favor of Justice Rice's motion. The motion passed 7-0.
- Chris Wethern asked if the Court would also address reciprocity, and whether it would allow reciprocity with any state.
- Chief Justice McGrath said the Court had not yet voted on that issue, but would now discuss it.
- Justice McKinnon asked if the Court knew whether Montana attorneys would be denied elsewhere, and whether Montana needed a formal reciprocity declaration.
- Patricia Klanke noted that the District of Columbia administers its own examination, which no one takes because the requirements are very low for admission on motion, so most people living in DC take the Virginia or Maryland bar examination. Ms. Klanke said that someone admitted in Montana would be admitted in the District of Columbia.
- Randy Cox said that, generally speaking, most states that have reciprocity give reciprocity in return. He noted that statement may not be true across the board, but it is generally the case.
- Justice Baker stated that the Court should make that clear. She said the rule as proposed directs the State Bar Association to make a list of jurisdictions that are reciprocal, which the Court can modify.
- Justice Cotter said that the Court has not yet stated whether it would be limiting applicants from those jurisdictions.

- Justice McKinnon responded that she thought Chief Justice McGrath said that Montana should open the door to everyone.
- Chief Justice McGrath said that the Court would have to change some of the wording, because currently the proposed rule says that any applicant who meets the requirements will be admitted.
- Randy Cox said he was having a hard time understanding the difference between reciprocity and admission on motion.
- Chief Justice McGrath said the Court would have to clarify that there is no distinction.
- Justice Baker said we should make clear that we are not restricting admissions from states with limited reciprocity.
- Justice Cotter said she thought that was what Randy meant—if there was no specific process, then admission on motion does not protect Montanans.
- Randy Cox said he thinks that, if Montana opens the admissions process to attorneys in other states, those states will open their admissions processes to Montana attorneys, as long as there is reciprocity language in the proposed rule. He noted that the way Section (f) is currently written does not allow reciprocity for everybody. He said that, if the Court wants to allow an attorney to become a member of the Montana Bar no matter where she is from, as long as she meets the requirements, then she will be admitted simply by making a motion.
- Stuart Segrest referred to the example of North Dakota attorneys in Montana and asked whether, if Montana allowed reciprocity with North Dakota, North Dakota attorneys would automatically be Montana attorneys.
- Randy Cox responded that was not the case because bar members would still need to pay fees.
- Stuart Segrest asked whether the word “motion” was a problem.
- Randy Cox replied that he did not think so. Randy said the Court need not give second thought to reciprocity, but can simply say that a successful applicant must meet the requirements.
- Justice Baker moved to strike section (f), and stated that Section (a)(1) needs to be changed from “in one or more jurisdictions” to clarify that it does not cover jurisdictions in foreign countries. She suggested that the language might read something along the lines of “in one or more United States or territories.”
- Chris Manos said that changing the language would be a good idea because the ABA accredits schools outside of the United States.
- Justice Baker moved to include “States or Territories of the United States,” and to allow Chris Wethern to make additions.
- Justice Rice seconded Justice Baker’s motion.
- Justice Baker said that she had not yet scoured the proposed rule for any other similar language, but said that Chris Wethern could fix that language.
- Chief Justice McGrath called for a vote.
- The Court voted unanimously in favor of deleting all references to reciprocity. The motion passed 7-0.
- Chief Justice McGrath said that there was still a big issue left regarding fees. He noted that the Bar proposed a \$2500 net fee. Chief Justice McGrath assumed that the Court would decrease that. He said that, starting as a base, a person applying for admission on

motion must go through NCBE character and fitness, and that fee (\$375) is not paid to the Montana Bar, so the \$2500 amount should be reduced by that number. Chief Justice McGrath said that an admission on motion fee would have to include the following: \$220 for the first year of bar membership, the Montana Law Seminar fee, the \$400 Character and Fitness exam fee, \$175 in miscellaneous fees, and the Office of Disciplinary Counsel, Continuing Legal Education, Lawyers Fund, and License Tax fees. Chief Justice McGrath said these fees total \$965, not including the cost of taking the bar exam. He asked whether it would be fair to say that this amount is included in the \$2500 proposal.

- Chris Manos said that the starting point for admission was whatever attorneys who want to practice in Montana or take the UBE currently pay.
- Chief Justice McGrath said that he did not include the costs of taking the bar examination in his calculations.
- Chris Manos said that the Court should establish a high enough rate to make sure that an applicant is serious about practicing in Montana. He said that was the rationale for New Mexico charging a fee of \$2500.
- Chief Justice McGrath said that, if the Court arbitrarily sets the fee \$2,000, that number would include the \$965 in normal admissions fees but not the \$375 for the NCBE character and fitness evaluation. He said that the fee could be lower—maybe half—for an applicant who worked primarily for legal services or another nonprofit. Chief Justice McGrath said \$965 would be the base fee, the difference between \$965 and \$2000 would cover administrative costs, and an applicant would still have to pay the \$375 NCBE fee.
- Justice Baker said that she liked the suggestions, and she wanted to follow up on Chief Justice McGrath's idea about legal services. She noted that the court had adopted a rule on the disposition of residual funds in class actions that defined access to justice organizations. She suggested that the Court grant a fee waiver with reference to that definition, but noted that it does not include other public servants, such as public defenders.
- Justice Rice noted the definition cited by Justice Baker did not refer to attorneys.
- Justice Baker responded that the definition was worded broadly enough that it could apply to attorneys.
- Justice McKinnon asked whether, in terms of issues with administration, the Court would require an applicant to have a certain amount of time working with legal services organizations.
- Chief Justice McGrath asked the Court to discuss a basic fee before discussing a waiver.
- Justice McKinnon said she agreed with the Bar's \$2500 figure.
- Justice Cotter agreed with Justice McKinnon, and said the fee was an incentive that people would want to invoke.
- Justice Shea stated that the \$2500 was an arbitrary number anyways, and it would address costs and make sure attorneys are serious about their applications.
- Justice Cotter agreed. She said \$2500 is not unreasonable, but the Court could discuss lowering that fee for certain individuals. Justice Cotter moved that the Court charge a basic, non-refundable fee of \$2500, and then grant exceptions based on that.
- Justice McKinnon seconded Justice Cotter's motion.
- Justice Rice asked whether increased membership would increase Bar expenses and staffing.

- Chris Manos responded that it would, which is why the Bar produced the \$2500 estimate. He said that no one knows how many people will apply for pro hac vice versus admission on motion, but that the Bar estimates there will be 100 new members. He said that out of state applications require more time to process.
- Chief Justice McGrath asked whether the Court should clarify that the \$2500 includes the fees he had listed in his calculations adding up to \$965, such as first year dues, the Montana Law Seminar fee, the Montana Character and Fitness fee, and other miscellaneous fees.
- Justice Cotter said that it should.
- Justice Baker said she was not prepared to vote on the motion until she knew whether the Court would agree to allow a reduced fee for certain applications. She moved to amend Justice Cotter's motion to allow the fee to be \$1,000 for attorneys who demonstrate that they are coming to Montana to work for an access to justice organization or other nonprofit that provides legal services primarily to those unable to pay, and that this fee would cover everything except for the NCBE character and fitness fee.
- Justice Rice clarified that those applicants would not be able to waive out of the normal fees totaling \$965.
- Justice Wheat suggested that the Court leave the issue up to the Bar, as it will cost the Bar money to process an application whether or not it comes from an attorney working for a nonprofit.
- Justice Baker asked to modify her motion to approve the \$2500 fee with all of the qualifiers, and to direct the State Bar to return with a recommendation for a reduced fee for qualified attorneys coming to Montana to perform legal services for people who are unable to pay.
- Justice Cotter seconded Justice Baker's motion.
- Chief Justice McGrath called for a vote. He said he would vote in favor of the motion, but thought Montana should back out the \$375 NCBE character and fitness fee from the total fee.
- The Court voted unanimously to adopt the motion. The motion passed 7-0.
- Chief Justice McGrath asked whether there was any further discussion on the proposal for admission on motion, with the adopted amendments.
- Annie Goodwin suggested that, whenever there is a reference to the State Bar of Montana, it should also include the Board of Bar Examiners and the Commission on Character and Fitness.
- Justice Cotter asked where that change would be implemented.
- Annie Goodwin answered that, at the beginning of the order, there could be a statement that the three groups will work on this joint proposal.
- Stuart Segrest said that he had not yet heard a discussion on the State Bar's proposal that there be a trial period.
- Chief Justice McGrath said that the effective date would be January 1, and added that revisions could be made by the Court at any time, following a petition process and public comment.
- Stuart Segrest asked whether there would be a general trial period.
- Several justices responded that the Court can always revisit the proposed rule.

- Stuart Segrest asked whether the Court should add language that it will reassess the proposed rule in five years.
- Justice Baker said that the Court assumes the Bar admission organizations will advise if the new rule doesn't work.
- Marie Connolly asked whether an applicant would need to submit an application before submitting a motion.
- Justice Cotter said that the motion for admission would need to establish that the applicant already met the requirements.
- Justice McKinnon said admission on motion was just how Montana would identify a type of application.
- Chief Justice McGrath said that a motion for admission must be supplemented with all necessary information.
- Marie Connolly said that the NCBE application fee is separate because applicants currently submit dual applications—one to the NCBE with an investigation fee and one to Montana with an application fee.
- Chief Justice McGrath said that is how the Character & Fitness Commission recommended things be done, and clarified that the \$2500 fee would not include the \$375—that would be done separately.
- Justice Shea clarified that January 1, 2016, would be the effective date and that, if there are no adjustments made within that time period, then the amendments takes effect on that date, but the Court can make changes in the interim.
- Justice Baker moved to adopt the proposal as amended.
- Justice Cotter seconded Justice Baker's motion.
- Chief Justice McGrath called for a vote.
- The Court voted 6-1 in favor of Justice Baker's motion. Justice Wheat voted no.
- Chief Justice McGrath thanked everyone who had submitted comments and worked on the rule over the years.

Discussion re: Proposal to modify the Montana Law Seminar

- Chief Justice McGrath noted that this proposal comes from the Board of Bar Examiners and opened the meeting to discussion.
- Justice Baker noted that Chief Justice McGrath had distributed a proposed order to adopt the recommendations and moved the court to adopt that proposed order. She said that the order needs to clarify that completion of the Montana Law Seminar requirement will remain a prerequisite to admission to the Bar for all applicants. She suggested adding a clause to the end of the second paragraph of the proposed order so that it says “provided that completion of the MLS requirement will remain a prerequisite for admission to the bar, *including for those admitted on motion.*”
- Chief Justice McGrath said he thought the language as currently worded is clear enough.
- Justice Baker pointed out that, earlier in that paragraph, there is the phrase “prior to taking the exam.” She said that, since people admitted on motion are not taking the exam, that paragraph needs clarification. Justice Baker moved to approve the order with the clarifying language.

- Justice McKinnon said that she had a question for Chris Manos regarding the proposal's statement that the Bar will allow applicants to complete the MLS requirement during the first two administrations after they take the exam. She asked what this time period would be in practice.
- Randy Cox responded that, the way the rule currently is written, an applicant who passes the UBE has two chances to complete the MLS, and cannot be admitted until that requirement is completed.
- Justice Rice asked what would happen if an applicant misses those sessions.
- Randy Cox answered that, under the Bar's new proposal, an applicant has four chances to attend the MLS, which he or she should be able to do.
- Justice Rice said that, if the applicant missed all sessions, he presumably would move the court for a waiver of the rules.
- Chief Justice McGrath asked whether the Court was ready to make a motion.
- Chris Manos asked whether the time period would begin on the date of the court's previous adoption of admission on motion.
- Chief Justice McGrath said it would not because, before being admitted to the Bar, an applicant must take the MLS, and the \$2500 includes that fee.
- Chief Justice McGrath called for a vote on Justice Baker's motion to approve the Court's proposed order with her suggested clarifying language.
- The Court voted unanimously in favor of Justice Baker's motion. The motion passed 7-0.

Item 4: AF 09-0688 Amendments to Model Rules of Professional Conduct

- Chief Justice McGrath introduced the next item on the agenda as amendments to the Model Rules of Professional Conduct for in-house counsel. He noted that he had drafted a proposed revised rule in response to the Montana Petroleum Association's petition.
- Justice Baker said her only concern about the proposal was that there was no mention of comments by the ODC that the ABA had updated its rules to include services performed by a foreign lawyer.
- Chief Justice McGrath said the proposal addresses those comments—the changes allow for lawyers admitted in other jurisdictions, but leave out the word "United States." Chief Justice McGrath read the proposed new language for Section (b).
- Justice Baker said that she did not see how that section includes the ABA provision regarding services provided by a foreign lawyer. She said that pro hac vice only applies to appearances in court and the purpose of the ABA rule is to make sure that it extends to advice given by in-house attorneys. Justice Baker asked whether Shaun Thompson could address this issue.
- Shaun Thompson said that the ABA rule makes a distinction between in-house counsel already admitted in the U.S. and foreign counsel. If the in-house counsel is foreign, he or she cannot give advice about law of any state or the United States unless he or she has consulted an American lawyer or a lawyer in that state.
- Chief Justice McGrath asked whether the language referring to the United States should be left in the rule.
- Justice Baker said it was additional language, so the rule would read: (b) "A lawyer admitted in another United States jurisdiction . . ." Justice Baker suggested that the Court

add the last clause of ABA Model Rule (d)(1). She said that this clause would mean that, if you have foreign lawyers from another country giving advice to a Montana client, they would have to consult with a Montana lawyer.

- Chief Justice McGrath noted that language submitted by the Petroleum Association contained language referring to the United States, but not foreign lawyers.
- Shaun Thompson said that was correct: the Petroleum Association's proposal did not include language about needing to consult an American lawyer.
- Justice Baker said that, as long as the Court is clarifying the rule, it should include foreign lawyers, consistent with the ABA rule.
- Bill Mercer said that his client, the Petroleum Association, presented the proposal in 2003. He said the purpose of the proposal is to address the number of in-house attorneys serving entities of the Petroleum Association. He said those attorneys were concerned because they did not want to engage in the unauthorized practice of law. Mr. Mercer said he had no objection to Shaun Thompson's observations, and that it may make administrative sense because now the Bar is considering certifying people coming from jurisdictions that they may not normally certify.
- The Chief Justice said that there would not be any certifications.
- Bill Mercer responded that the Petroleum Association had attached Exhibit C, a rule that Nevada adopted, to its proposal.
- Chief Justice McGrath said that Montana did not have a similar rule.
- Bill Mercer said he had no objection to the model rule set forth by Shaun Thompson.
- Shaun Thompson said he should mention that the ABA amended the model rule regarding registration of in-house counsel to include foreign lawyers, and that process was not dissimilar to the Nevada rule, where in-house lawyers need to register in state within 180 days. He said he did not see the need for a registration process, but it was out there.
- Chief Justice McGrath said that was not part of the proposal at this point.
- Justice Cotter asked whether that was an issue now.
- Chris Manos responded that it was with Canadian lawyers.
- Justice McKinnon asked whether there was a problem with adopting ABA Model Rule 5.5(d) instead of (b) on the proposed rules.
- Justice Baker said the Court would just add to it. She said the "systematic and continuous presence" language in the ABA rule was too vague, and that the Court should just add the last part. Justice Baker moved to adopt Chief Justice McGrath's suggested language with the addition of the last clause of ABA Model Rule 5.5 (d)(1).
- Chief Justice McGrath asked whether there was any further comment.
- Justice Cotter said that, in lines 2-3 of the proposal, she would strike the words "that are provided."
- Chief Justice McGrath agreed.
- Justice Baker said that the only other thing she would add was the ABA Model Rule language from Model Rule 5.5(e).
- Justice McKinnon asked why the court was not also including Section (d)(2) since it included Section (d)(1).

- Chief Justice McGrath responded that the whole point was to allow in-house counsel to give advice without being admitted to the Montana Bar Associate, and the discussion was going beyond that now.
- Justice McKinnon said she would just adopt the whole ABA rule.
- Justice Baker said that was not part of her motion—her proposed changes covered only foreign lawyers who are in-house counsel.
- Chief Justice McGrath called for a vote.
- The Court unanimously voted in favor of Justice Baker's motion. The motion passed 7-0.

Item 5: Drug Court Funding Policy

- The Chief Justice said that updates to the Drug Court Funding policy were done every couple of years. The policy change would be to add funding for the First Judicial Court because it ran out of federal funding, which would require changing the administrative policies. He noted that the changes had already been approved by the DCC and asked for comments or questions.
- The Court voted unanimously in favor of the Drug Court Funding Policy.

Chief Justice McGrath asked whether there was any public comment for any item not on the agenda. Seeing none, he adjourned the meeting.

Duly Submitted
Aislinn Shaul-Jensen
Law Clerk