

**ORIGINAL**

**MINUTES  
MONTANA SUPREME COURT PUBLIC MEETING**

**FILED**

Tuesday, September 20, 2016, 1:15 p.m.  
Joseph P. Mazurek Justice Building  
215 North Sanders, Helena, Montana  
Attorney's Lounge, 4th floor

**DEC 13 2016**

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

The Chief Justice called the meeting to order at 1:15 p.m. In attendance were the Chief Justice, Justices Baker, Rice, Shea, Cotter, Wheat, and McKinnon, Law Clerks Tyler Stockton, Hannah Cail, and Danielle Shyne, and Mark Fowler, Betsy Brandborg, Sam Alpert, and John Morrison.

**Item 1: Minutes from the previous public meeting**

- The Court unanimously approved the Minutes from the previous public meeting.

**Item 2: AF 06-0238 IN RE MATTER OF THE APPOINTMENT OF A MEMBER OF THE JUDICIAL NOMINATION COMMISSION**

- The Court unanimously reappointed Elizabeth A. Halverson to the Judicial Nomination Commission.

**Item 3: AF 09-0688 IN RE THE RULES OF PROFESSIONAL CONDUCT**

- The Chief Justice opened the floor to public comment regarding AF 09-0688.
- John Morrison addressed the Court regarding language that had been removed by the Trustees before forwarding the proposed Rules changes to the Court. The Ethics Committee had initially recommended the proposal contain language that explicitly made it an ethics violation for an attorney to “knowingly access or use electronically stored information in a communication or document received from another lawyer, for the purpose of discovering protected work product, privileged or other confidential information unless the receiving lawyer has obtained permission to do so from the author of the communication or document.” In the original proposal from the Ethics Committee, this provision was denoted as Rule 4.4(c).
- Betsy Brandborg stated that the Trustees removed 4.4(c) because there were concerns with the language, but they wanted to go forward with the Rules changes and implement the language they have finalized thus far.
- Justice Baker moved to adopt the petition as drafted, request the State Bar Ethics and Technology committees meet and submit proposed language or comment on the prior version of 4.4(c), and open public comment to October 21 on 4.4(c)’s language as is.
- The proposal was seconded by Justice Wheat and passed unanimously.

**Item 4: AF 11-0765 IN RE THE APPOINTMENT OF MEMBERS OF THE ACCESS TO JUSTICE COMMISSION**

- Justice Baker raised the issue of appointments to the Access to Justice Commission and stated that three current members were willing to be reappointed to another three year term: Hon. Winona Tanner, Alison Paul, and Randy Snyder.
- Justice Baker stated that an order would be circulated once she had received confirmation that Kyle Nelson and Georgette Boggio were willing to be appointed to the Commission.
- The Court unanimously stated it had no objection to such subsequent order.

The Chief Justice adjourned the meeting at 1:51 p.m.

Duly submitted,  
Tyler Stockton  
Law Clerk