

FILED MONTANA SUPREME COURT PUBLIC MEETING
DRAFT MINUTES

JUN 22 2017

Tuesday, April 25, 2017, 1:15 p.m.
Joseph P. Mazurek Justice Building
215 North Sanders, Helena
Attorney's Lounge, 4th floor

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Chief Justice McGrath called the meeting to order at 1:15 p.m. In attendance were the Chief Justice and Justices Baker, Sandefur, McKinnon, Shea, and Wheat. Justice Rice was not in attendance.

Also in attendance were: Michael Marchesini and Melanie D'Isidoro, Law Clerks; Chris Wethern, Supreme Court Staff Attorney; Bill Hooks, Chief Public Defender; James Reavis, Assistant Appellate Defender; Peter Lacney, President of the Montana Association of Criminal Defense Lawyers; Colin Stephens, Secretary/Treasurer of the Montana Association of Criminal Defense Lawyers; Chad Wright, Chief Appellate Defender; and Chris Manos, Executive Director of the Montana State Bar.

Item 1: Approval of the Minutes from the Last Public Meeting

- The Justices unanimously approved the minutes from the last public meeting.

Item 2: AF 07-0016, Revisions to the Montana Rules of Appellate Procedure

- The Chief Justice stated his appreciation for the comments received. He noted that there are structural problems with the proposed revisions, including issues with the statute providing for a writ of review. He stated that a statutory change might be necessary, but that discussion on the proposed revisions should proceed nonetheless.
- The Chief Justice stated that the Court proposed these revisions because of concern over lengthy delays in determining criminal appeals and the numerous motions for extensions that the Office of the Appellate Defender (OAD) files. The appeals of misdemeanor convictions from courts of limited jurisdiction create a significant burden for the OAD. The Chief Justice is hopeful that HB 77, which provides for a reorganization of the public defender office, and HB 133, which eliminates imprisonment as a criminal penalty for certain nonviolent misdemeanor offenses, will help reduce the appellate defender workload. But the Chief Justice is still concerned about the caseload and associated delays.
- Justice McKinnon said that we currently have a two-track system for cases arising in courts of limited jurisdiction – those that arise in courts of record and those that do not. This two-track system is problematic. Justice McKinnon stated her appreciation for the comments. She said that our concern should be with judicial resources, and that we should look comprehensively at how we handle appeals from limited jurisdiction courts.
- Justice Baker shares the Chief Justice's interest in trying to make the appeals system more efficient while also protecting the rights of criminal defendants. The comments point out legal and policy issues with the proposed revisions. Because of the numerous potential legal barriers, we ought not to proceed with this proposal in its current form. But we should still discuss how to improve on this so that misdemeanor convictions do not last for multiple years on appeal.

- The Chief Justice asked Mr. Hooks to explain HB 133; he replied that it removes the possibility of jail time for certain nonviolent, first-time misdemeanants. He stated that public defenders would not be required to represent the defendants in those cases.
- Justice McKinnon stated that HB 77 and HB 133 are appropriate, but that reform of the appeals system from courts of limited jurisdiction is still needed.
- Justice Wheat stated that the underlying problem is the time it takes after conviction for the OAD to appeal cases to the Supreme Court. He asked Mr. Wright what procedures his office uses for prioritizing cases. Mr. Wright and Justice Wheat discussed the OAD's internal procedures for prioritizing cases. Mr. Wright stated that his office generally process cases on a first-in, first-out basis, with some exceptions. Justice Wheat stated that the Appellate Defender office has too many cases and not enough lawyers.
- The Chief Justice asked whether the Appellate Defender has trainings separate from OPD trial attorneys. Mr. Wright answered that there are some training sessions specifically for appellate attorneys.
- The Chief Justice pointed out that in certain cases, such as Dependent Neglect cases, there are relatively few legal issues, and so experienced defenders should be able to process these cases more quickly than contract attorneys. Mr. Wright responded that the contract attorneys are available to brief these cases within the timeframes that the court expects. He noted further that the speed with which the contract attorneys complete their cases does not greatly affect the case load of his office.
- Justice McKinnon stated her discontent with the fact that a felony defendant receives two "bites at the apple,"—trial in District Court and then appeal to this Court—while misdemeanor defendants may receive three. She would like to explore how to make this more consistent. She believes that we need to manage our judicial resources better and that we need a comprehensive review of the appeals system.
- Justice Baker asked Mr. Wright if his office could contribute towards forming a working group to examine these issues and try to come up with solutions. Mr. Wright answered yes. The Chief Justice and Justice Baker agreed that suggesting an intermediate appellate court should not be among the proposed solutions of the working group.
- Justices Baker, Wheat, and the Chief Justice emphasized that the Court is satisfied with the quality of the Appellate Defender's briefing.
- Justice Sandefur stated that he does not think the proposed revision faces any legal barriers. He agrees that the statutory vehicle of a writ of review does not work by its terms. But he believes that the Montana Constitution grants this Court appellate jurisdiction and broad discretion to govern appellate procedure, and that the Court could use this authority to create a remedial writ of review to accomplish its goals. The Chief Justice suggested that the working group should examine this.
- Justice Sandefur stated that he did not believe the policy issues raised in the comments were of concern, because the Court would still have discretion under the proposed revision to review cases of concern.
- Justice Baker emphasized that the proposed revision potentially implicates numerous statutes, and that the Court would have to take a comprehensive look at its effects. Justice Sandefur agreed.
- Justice McKinnon reiterated that the Court should examine how to ensure that every case receives just one review on appeal. She acknowledged that the fact that some courts are not courts of record complicates this. She believes the Court should examine this issue.
- Justice Baker suggested that the working group also engage the Law and Justice Interim Committee on this issue.

- Justice Sandefur supports using Court rulemaking to accomplish the Court's goals, and stated that the legislature may make changes if it does not like what the Court does.
- Justice Wheat said that the Court wants realistic suggestions from the defense bar about how the Court can solve the problem of the Appellate Defender's excessive workload.
- Mr. Wright stated that the proposed revision would free up workload in his office equivalent to one full-time attorney's workload.
- Mr. Lacney expressed concern about having just one judge review a conviction on appeal. He noted that misdemeanor convictions can still have serious consequences. He also expressed doubt that the proposed revision would significantly reduce the OAD's caseload or the Court's because of writ petitions.
- Justice McKinnon suggested that the working group examine whether a Justice of the Peace should be designated to a district. She noted that Montana has many law school graduates who are well qualified for these positions.
- Mr. Stephens stated that he did not believe the proposed revision was the proper vehicle to achieve the Court's goals. He believes that it would muddle the definition of a final judgment and that it would overwhelm the Court with petitions for writ of review. Justice Sandefur believes that these are minor issues that the Court could iron out with the language of the rule. The Chief Justice agreed with Justice Sandefur that the issue of the finality of judgments could be dealt with.
- The Chief Justice reiterated that the Court considers this a serious issue and that it will continue to examine it.

The Chief Justice adjourned the meeting at 1:56 p.m.

Duly Submitted,
Michael Marchesini
Law Clerk