

ORIGINAL

MONTANA SUPREME COURT PUBLIC MEETING MINUTES

Wednesday December 16, 2020
Joseph P. Mazurek Justice Building
215 North Sanders Helena, Montana
Meeting via Zoom

FILED

AUG 17 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Chief Justice McGrath called the meeting to order at 9:30 a.m. In attendance were the Chief Justice and Justices McKinnon, Baker, Shea, Sandefur, Rice, and Gustafson.

Also, in attendance were Erika Colstad & Hallee Kansman, Supreme Court Law Clerks; Britton Fraser, Supreme Court Law Clerk; Kevin Cook, Electronic Services Coordinator; Jeanine Blaner, Supreme Court Staff Attorney; Sheila Stearns, Chair of the Montana Redistricting and Reapportionment Committee; Kendra Miller, Jeff Essmann, Joe Lamson, & Dan Stusek, Commissioners for the Montana Redistricting and Reapportionment Commission; Maylinn Smith, former UM Law professor, tribal judge, and prosecutor; Tom Cherry; Rachel Weiss, Research Analyst for the Legislative Services Division; Fred Thomas, Senator from Stevensville; Eric Dietrich, Montana Free Press Journalist; two phone numbers.

Item 1: Approval of the Minutes from October 13, 2020, Public Meeting

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

Item 2: Appointment to the Montana Districting and Apportionment Commission

- The Chief indicated Sheila Stearns is resigning from the Chair of the Commission due to health reasons. The Justices thanked her for her service and the Chief opened the meeting up to public comment.
- The Chief called upon the Court to make nominations for the position. Justice Baker nominated Maylinn Smith for the Chair of the Commission. Justice Baker asked Maylinn to make comments discussing the extent of her political experiences and involvement.
- Maylinn indicated the extent of her political involvement centers around equal justice, although she feels this is non-partisan work. As to her former contributions, Maylinn has donated to former students' campaigns and people and/or groups who do work in Indian Country. She acknowledged these donations were all to the Democratic party, however, Maylinn stated this was not the reason why she donated; rather, it was due to the platforms for equal justice. She values fundamental fairness and equal justice in the election process and tries to be a consensus builder.
- The Chief opened up the discussion to members of the Court. Justice Rice spoke to the history and political nature of this position. Justice Rice asked what Maylinn could offer from her background that demonstrates she has worked with both sides of the political aisle in an equitable manner.
- Maylinn stated that her experience in Indian Law required her to work with both sides of the political spectrum. Her entire career has been in Indian Law, which has necessarily forced her to work with members of both parties as Indian law is not Democratic or

Republican in nature. Her work in the judicial system has established her demonstration of fundamental fairness. She was fully transparent that her political contributions were made only to Democratic candidates, however, those candidates were former students.

- Justice Gustafson asked what types of areas Maylinn mediates. Maylinn indicated that she worked in UCC, ICWA, treaty work, economic development, education, and fair housing in Indian Country. Justice Gustafson asked if Maylinn would characterize equal justice as political. Maylinn clarified that she does not view it as political, but rather fundamental fairness—ensuring everyone is heard. Justice Gustafson also asked Maylinn about gerrymandering. Maylinn answered that the goal of this Commission is to maximize voices being heard, and to the extent gerrymandering is used to minimize voices, she is not interested.
- Justice McKinnon asked about polarization and what Maylinn’s process would be if there was polarization in the Commission. Maylinn stated she would try to find common ground first and, ideally, never make a tie-breaking decision. She sees herself and this position as a facilitator for proper discussion. Maylinn stated she had mediation experience as a judge and with clients, but no formal training in mediation.
- Justice Baker clarified that Maylinn did not apply for this position, but that she stood out to Justice Baker due to her qualifications. Justice McKinnon seconded these sentiments.
- Justice Rice and the Chief thanked Tom Cherry for his interest and contributions in this position.
- The Chief closed the nominations and called for a vote. The Justices unanimously voted in favor of Maylinn for the Chair of the Commission.
- Sheila Stearns congratulated Maylinn and stated she looked forward to assisting her in the transition.
- Senator Fred Thomas, former majority leader of the Montana Senate, made a public comment indicating the Constitution requires that the “districts must be compact, contiguous, and as equal as practicable” and encourages the new Chair to adhere to that.

Item 3: Appointments to the District Court Council

- The Chief stated the terms of Judge Jon Oldenburg, Tenth Judicial District Court, and Judge Holly Brown, Eighteenth Judicial District Court, expired on June 30, 2020. Judge Holly Brown is retiring. Judge Oldenburg was re-elected to District Court Judge, Position 4 member to the Council. Judge Amy Eddy, Eleventh Judicial District Court, was elected as the District Court Judge, Position 3 member to the council.
- The Chief asked if there were any objections to the proposed Order. No objections were made.

Item 4: Appointments to the Uniform District Court Rules Commission

- The Chief stated that Judge Eddy’s term as the Chair of the Uniform District Court Rules Commission has expired. Judge Eddy agreed to be reappointed as Chair.
- The Chief asked the Justices if there were any objections for reappointment. No objections were made.

Item 5: Appointments to the Judicial Nomination Commission

- The Chief stated the term of Elizabeth Halverson is set to expire on January 1, 2021 and that she wished to be reappointed to the Commission. The Chief asked if there were any objections to the proposed Order. No objections were made.
- The Chief indicated that Judge John Brown, Eighteenth Judicial Court, was re-elected to serve as a member of the Judicial Nomination Commission at the Montana Judges' Association meeting. No objections were made to this reappointment.

Item 6: Appointment to the Sentence Review Division

- The Chief stated the term of Judge Dan Wilson, Eleventh Judicial District Court is set to expire on December 31, 2020. The Chief called for objections to his reappointment. No objections were made.

Assumption of Division Administrator of the Office of the State Public Defender

- The Chief indicated the term of Peter Ohman as the Division Administrator of the Office of the State Public Defender expired due to his appointment as a district judge of the Eighteenth Judicial District. Brian Smith assumed Peter Ohman's position.
- The Chief noted this was a matter for ratification and asked the Justices if there were any objections. No objections were made.

The meeting was called to close at 10:05 a.m.