



ORIGINAL

MONTANA SUPREME COURT PUBLIC MEETING MINUTES

Tuesday March 8, 2022, 1:00 p.m.
Joseph P. Mazurek Justice Building
215 North Sanders, Helena
Attorney's Lounge, 4th Floor

FILED

APR 05 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Chief Justice McGrath called the meeting to order at 1:04 p.m. In attendance were the Chief Justice and Justices Baker, Gustafson, McKinnon, Rice, Sandefur, and Shea.

Also in attendance were Jeanine Blaner, Supreme Court Staff Attorney; Ali Brondson, Supreme Court Law Clerk; Pamela Bucy, Office of Disciplinary Counsel; Rachel Fox, Montana Legal Services Association (MLSA); Jacob Griffith, Montana Department of Justice; Bill Hooks, MLSA; Andrew Hursh, Supreme Court Law Clerk; Michael Larson, State Bar of Montana; Beth McLaughlin, Montana Court Administrator; Mary Moe, Montana Continuing Legal Education (CLE) Commission; John Mudd, State Bar of Montana; Kim Obbink, Montana CLE Commission; Alison Paul, MLSA; Jennifer Rickman, State Bar of Montana/CLE Administrator; Stuart Segrest, Attorney; Paul Stahl, Montana CLE Commission; and Ellie Webster, MLSA.

Item 1: Approval of the Minutes from the February 15, 2022 Public Meeting

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

Item 2: Revisions to the Rules of Continuing Legal Education

- The Chief Justice introduced the matter and suggested assessing each proposed rule change individually.
- Interested parties introduced themselves, including Paul Stahl from the CLE Commission, Jennifer Rickman, a CLE administrator and State Bar of Montana staff member; John Mudd, Executive Director of the State Bar of Montana; and Pam Bucy from the Office of Disciplinary Counsel.
- The Justices and meeting participants first discussed proposed changes to CLE Rule 3.B, which were suggested by the Chief Justice in response to concerns about attorneys making false claims regarding CLE compliance.
- Pam Bucy suggested that professional conduct rule 8.1 also creates a means to address such concerns and otherwise voiced her support for the revision.
- No other parties raised objections.
- The Justices unanimously approved the proposed revision. [This revision, however, was later withdrawn upon further discussion of the desire to wait for a broader CLE rule overhaul].

Duly submitted by: Andrew Hursh

- The Justices and the participants discussed proposed changes to CLE Rule 5, which would increase the amount the Commission could charge attorneys for administering CLE records and enforcing CLE rules.
- Representatives from the CLE Commission expressed the need for this increase to provide necessary revenue; although increases in fees for CLE sponsorship and accreditation had recently increased revenue, the Commission does not expect any further adjustment there to provide additional means of raising necessary funds. CLE Commissioner Stahl noted an email he sent to the Court expressing additional thoughts on the matter.
- The Justices agreed to incorporate and publish Stahl's email as part of the public comment record.
- The Justices and the participants discussed different funding sources related to CLE programs and which funds end up in various coffers, such as those of the State Bar versus the CLE Commission.
- The Justices and the participants discussed the proposed elimination of the present CLE Rule 10, which is not currently followed in practice and relates to accredited sponsorship and fees charged to CLE sponsors per event.
- Representatives from the State Bar of Montana expressed a general concern about adding detailed regulations that may require additional resources and work.
- The Justices and the participants discussed at length various concerns regarding attorneys seeking credit for frivolous CLE events that do not meet Commission standards. Currently, revoking a sponsor's accreditation under the rules would not take effect in the same year as the problem arose.
- The Justices and the participants also addressed proposed revisions to CLE Rule 8, which concern the concept of "presumptive" accreditation for certain kinds of sponsors. CLE Commissioner Paul Stahl expressed a concern that many attorneys interpret "presumptive" to mean "guaranteed," and expressed a belief by the Commission that the word could be removed without substantive change to the process of its work.
- The Justices and the participants also discussed proposed revisions to Rules 9 and 12 that were intended to modify the language but not the substance of those rules.
- The Justices and the participants discussed the degree to which antiquated software may hamper the work of the CLE Commission and the possibility of aligning the Commission's software with newer programs used by the State Bar.
- All of the Justices expressed their general agreement on the philosophical direction that revisions to the CLE rules should take. The Justices expressed a desire to move in a direction of reciprocity with other states, whereby the growing number of out-of-state attorneys could depend upon CLE compliance in their states being recognized as satisfactory for Montana compliance as well.

Duly submitted by: Andrew Hursh

- The participants and the Justices held a lengthy discussion about these aims, the reciprocity practices of other states, concerns about such a system's workability given differing state standards, and desires to alleviate difficulties in satisfying CLE requirements while maintaining the substantive value received from CLEs.
- The Justices expressed intent to revisit the idea of revising the CLE rules later in the year, after participants like those from the State Bar and the CLE Commission got together to assemble a proposal that reflected the ideas put forth in this meeting.
- The Justices unanimously approved a revision to Rule 5, regarding the fees charged to attorneys, to reflect a new maximum of \$45 effective April 1, 2023.
- Given the decision to table broader rule revisions until a more expansive proposal has been developed, the Justices voted unanimously to withdraw the earlier approval of the modifications to Rule 3.B.

Item 3: Montana Legal Services Association's Application Re: M. R. Pro. Cond. 1.8

- Justice Baker summarized the application from MLSA, which requested that the Court clarify the relationship between professional conduct Rule 1.8 and MLSA's work assisting with the distribution of federal rental assistance funds. MLSA's application requested that the Court clarify that its work in this program would not violate Rule 1.8. Justice Baker suggested issuing an order clarifying that this was the case, which would take effect immediately and remain in effect until further order on the matter by the Court.
- MLSA representatives expressed their gratitude for the measure and support of the proposed action.
- Discussion clarified that MLSA's efforts were not a duplication of those relating to other, similar funds.
- Representatives from the State Bar Association also voiced their support.
- The Justices unanimously agreed to proceed with the requested order.

Item 4: Appointments to the Access to Justice Commission

- Justice Baker introduced Jacob Griffith, a supervising attorney in the consumer protection office at the Department of Justice. Griffith had agreed to take over the position on the Access to Justice Commission from a departing Department of Justice attorney.
- The Justices unanimously approved Griffith's appointment to the commission.

Item 5: Adoption of the Temporary Rules for Expungement, Resentencing, or Redesignation of a Conviction under the Montana Marijuana Regulation and Taxation Act

- The Chief Justice extended gratitude to Staff Attorney Jeanine Blaner and Court Administrator Beth McLaughlin for preparing the temporary rules. The Chief Justice noted that while the law authorizes the creation of an expungement-specific court, there is a possibility that these temporary expungement and resentencing rules could transition to permanence after they are demonstrated in practice.
- Jeanine Blaner noted that they sought simplicity in drafting these rules to accomplish a workable framework that could be built upon if needed.
- Beth McLaughlin noted that the rules received feedback from some judges and attorneys familiar with how they would operate in practice. She applauded Jeanine's work on the accompanying self-help forms.
- The Justices unanimously approved the temporary rules.

Public Comment

- None.