

MONTANA SUPREME COURT PUBLIC MEETING MINUTES

Tuesday April 5, 2022

Joseph P. Mazurek Justice Building

215 North Sanders, Helena

Attorneys Lounge 4th | Also Available via Zoom Conference

Chief Justice McGrath called the meeting to order at 1:15 p.m. In attendance were the Chief Justice and Justices, Baker, Gustafson, Rice, Sandefur, Shea. The Chief Justice noted that Justice McKinnon was not available to attend the meeting. Judicial staff also in attendance were, Jeanine Blaner, Supreme Court Staff Attorney; Kevin Cook, Electronic Services Coordinator; Beth McLaughlin, Court Administrator; Sarah McClain, Court Services Director; and Shelly Smith, Judicial Office Administrator. Supreme Court Law Clerks present included Ali Bronsdon, Emily Erickson, Britton Fraser, Anders Newbury, Liz Webster. Also in attendance were Abra Belke, Legislative Special Counsel; Bowen Greenwood, Clerk of Court; Greg Hertz, District 6 Senator; Christine Mandiloff, State Law Librarian; Lois Menzies, Commission on Practice member; Kyle Schmauch, Legislative Spokesperson; Laura Schultz, Department of Justice paralegal; Sue Vinton, House District 56 Representative. Members of the press present included Eric Dietrich, Montana Free Press; Amy Hanson, Associated Press; Seaborn Larson, Independent Record; Ashley Nerbovig, KTVH; Shaylee Ragar, Montana Public Radio; Eric Young, Northern Broadcasting System. Additional members of the public present included those identified as Pat Frisch; Sarah Clerget; Mr. Hart; Carl Mendenhall; and Alden.

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

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

Item 2: Revisions to Judicial Branch Administrative Policy Number 1530 on Electronic Mail

- Justice Shea introduced the matter.
- Court Administrator Beth McLaughlin (McLaughlin) described proposed revisions as recommended by Commission on Technology.
- The Chief Justice asked for questions from the Court.
 - Justice Rice asked about changes to cross-referenced matter in Policy Number 1570.
 - McLaughlin advised this would be discussed next.
- The Chief Justice asked for questions or comments from the public on the proposed changes to Judicial Branch Administrative Policy Number 1530. There were none.
- Justice Shea moved to approve. Justice Sandefur seconded the motion.
- The Justices voted unanimously in favor of the proposed changes.
- Proposed changes were approved.

Item 3: Adoption of Judicial Branch Personnel Policies and Procedures Number 1570 on Records Retention and Disposal

- Justice Shea introduced proposed changes to Policy 1570 and asked Clerk of Court Bowen Greenwood to comment on definition of “judicial deliberations” under § 2.0.
 - Clerk of Court Bowen Greenwood responded that he was concerned that the inclusion of the term “legal topics” in the definition of “judicial deliberations” would shield too much information from public access.
 - Justice Shea agreed and suggested striking “and legal topics” from the definition of “judicial deliberations” under § 2.0.
- McLaughlin summarized the proposed revisions considered and recommended for approval by the Commission on Technology. She noted that the policy does not apply to case files/records which are maintained by the independently elected Clerk of Court, and youth court records which are addressed through specific statutory provisions.
- McLaughlin suggested adding a § 4.0 to have language regarding training for this policy analogous to that present in Policy 1530 § 7.0.
- Justice Baker advised that the title be changed to reflect the administrative nature of the policy, rather than “personnel policy and procedures.”
- The Chief Justice asked for questions from Court.
 - Justice Rice clarified that “Judicial Deliberations” as defined in § 2.0 falls within the separate definition of “Confidential Information” as used within §§ 3.3 & 3.9.
- The Chief Justice noted that the subject of the court administrative policies at hand were to be distinguished from the official court records maintained by the Clerk of Court’s office or the lower courts.
- The Chief Justice asked for questions or comment from the public. There were none.
- Justice Shea moved for adoption with the proposed amendments. Justice Baker seconded the motion
- The Policy was unanimously adopted.
- The Chief Justice noted the immediate effectiveness of the adopted and revised materials.

Item 4: Appointments to the Commission on Practice

- The Chief Justice noted that the Commission on Practice (COP) addresses complaints regarding attorneys and hears and decides complaints investigated and brought before it by the Office of Disciplinary Counsel (ODP). The Chief Justice described the appointment process, by which a regional election is held for attorney members and the practice of court is typically to appoint highest vote-getter from each district.
- The Chief Justice recommended reappointment of Randy Ogle as the highest vote-getter in an Area A election conducted by Judge Allison.
 - There were no questions and all Justices affirmed reappointment.
- The Chief Justice recommended reappointment of Carl Mendenhall as the top vote-getter in Area B conducted by Judge Larson.
 - All Justices affirmed reappointment.

- The Chief Justice recommended appointment of Andres Halladay as the top vote-getter in the Area F election conducted by Judge Abbott.
 - All Justices affirmed appointment.

Item 5: Revisions to the Rules for Public Access to Court Records

- McLaughlin summarized revisions as recommended for adoption by the Commission on Technology. Notes that recent technological advances will allow for a public portal, expected to be ready for launch in July, with which to locate court records pursuant to the Rules.
- The Chief Justice noted that the Full Court electronic court case management system has been made available in every county and thanked those whose efforts brought about the transition, noting the importance of the resulting public access to court records.
- Justice Baker noted that not all counties have e-filing and asked whether the portal will apply to all counties.
 - McLaughlin clarified that the portal will allow members of the public to locate documents in all counties, but they will have to go to the court in person to access the document.
- Justice Baker noted that the reference to “cases specifically closed by statute” in § 4.30 was ambiguous as to whether it referred to merely concluded cases as opposed to protected/confidential matters.
 - McLaughlin responded that it was intended to refer to confidential matters and suggested alternative language, with which the Court agreed.
 - Justice Sandefur questioned whether there would be a distinction between the term “sealed” in Section 4.30(c) and “closed,” “confidential,” or another term as used in § 4.30(a).
 - Justice Shea responded that he believed § 4.30(a) would provide for automatic protection of the material, whereas § 4.30(c) would require court order to “seal” a case.
- Justice Baker suggested that the policy make clear that the portal will be available to the public at no cost, noting the beginning of § 2.0 as a possible location for such language.
- The Chief Justice asked for further questions from the Court.
 - Justice Rice indicated that he understood the policy to allow a person to use a portal to remotely discover the presence of documents on the record, before the individual goes on to request it pursuant to § 5(b), at which point the clerk of court would resolve the request in a way that properly protects confidential material in accordance with applicable law.
 - McLaughlin agreed, noting that the available redaction technology is not yet able to allow for automated online access to files without endangering confidential information such as social security numbers.
 - Justice Baker noted that the policy is not in regard to the Supreme Court, which already has a different case management system to provide the public with access to court documents.

- McLaughlin noted that the water courts, similarly, already have their own case management and public access system.
- The Chief Justice asked for questions and comment from the public. There were none.
- Justice Shea moved to adopt the proposed revisions, subject to the amendments discussed.
 - Justice Rice seconded the motion
 - The Justices unanimously adopted the proposed revisions.

Public Comment

- The Chief Justice asked for further public comment or questions.
- McLaughlin responded to a question seeking clarification regarding the public access portal's expected 24-hour lag time in making documents searchable online.
- Shelly Smith asked whether there was an expected opening for the COP, pending the expiration of Lori Maloney's (Maloney) term.
 - Justice Baker confirmed that Maloney's term had just expired.
 - The Court indicated that it will move forward accordingly with determining whether Maloney will be seeking reappointment.

The Court indicated its gratitude to those who spent time working on the revisions and rules and policies adopted today.

Chief Justice McGrath adjourned the meeting 2:17 PM

Submitted by Anders Newbury, Law Clerk, on April 12, 2022.