



ORIGINAL

MONTANA SUPREME COURT PUBLIC MEETING MINUTES

Tuesday, June 28, 2022, 1:15 p.m.

Joseph P. Mazurek Justice Building

215 North Sanders, Helena

Attorney's Lounge, 4th Floor | Also Available via Zoom Conference

FILED

SEP 06 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Chief Justice McGrath called the meeting to order at 1:18 p.m. In attendance were the Chief Justice and Justices Baker, Gustafson, McKinnon, Sandefur, and Shea. The Chief Justice noted that Justice Rice was not available to attend the meeting. Judicial staff also in attendance were Ward “Mick” Taleff, Attorney-at-Large of the Commission on Practice; Shelly Smith, Office Administrator for the Commission on Practice; Jeanine Blaner, Supreme Court Staff Attorney; Kevin Cook, Electronic Services Coordinator; Beth McLaughlin, Court Administrator; and Robert Hogan, Supreme Court Law Clerk.

Item 1: Approval of the Minutes from May 17, 2022 Public Meeting

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

Item 2: Proposed Revisions to Drug Treatment Court Funding for the 2023 Fiscal Year

- Chief Justice McGrath introduced the matter.
- Court Administrator Beth McLaughlin (McLaughlin) described the proposed Fiscal Year 2023 (FY2023) updates to the drug treatment court funding policy that were recommended to the Court by the Drug Court Advisory Committee.
- McLaughlin noted that the only significant proposed change to the FY2023 general fund appropriation for drug treatment courts involved expanding the general fund “participant cap” to include family courts. In Fiscal Year 2022, the participant cap had been set at “30”; however, the proposed change would revise this cap to read “28 for adult courts and 32 for family courts” for FY2023.
- Next, the Chief Justice asked McLaughlin to estimate the number of drug treatment courts whose operations would be transitioned from federal funding to state funding in the coming fiscal year. According to McLaughlin, the current Montana Legislature had already approved state funding for five additional drug treatment courts for FY2023. McLaughlin also noted that state funding for two additional drug treatment courts was expected to be approved during the 2023 session of the Montana Legislature, resulting in an estimated total of seven drug treatment courts that would be transitioned from federal funds to state funds in the coming year.
- Justice Baker moved to approve the proposed updates for FY2023. Justice McKinnon seconded the motion. The Justices then voted unanimously in favor of all proposed changes, and the proposed changes were approved.

Item 3: Appointments to the Commission on Practice

- The Chief Justice noted that the terms of three members of the Commission on Practice, Pat Leikham (Leikham), Lori Maloney (Maloney), and Mick Taleff (Taleff), were set to

expire on June 30, 2022. The Chief Justice recommended the reappointment of Leikham, Maloney, and Taleff to the Commission on Practice with each member serving a four-year term effective through June 30, 2026.

- There were no questions or objections, and all Justices affirmed these three reappointments to the Commission.
- The Chief Justice also acknowledged Taleff's presence at the meeting and thanked Taleff for his many years of dedicated service on the Commission.
- Lastly, the Chief Justice noted that an additional vacancy existed on the Commission for eastern Montana's "Area E" due to Commission member Heather Perry's (Perry's) recent appointment to the District Court bench to replace retiring Judge Jon Oldenburg. The Chief Justice remarked that the Court would appoint Perry's replacement on the Commission at a later date following a vote of practicing attorneys from Area E.

Item 4: Appointments to the Commission on Courts of Limited Jurisdiction

- The Chief Justice noted that Charlie Harball (Harball) was retiring from his position as the City Attorney Member on the Commission on Courts of Limited Jurisdiction. According to the Chief Justice, Harball recommended that current Great Falls City Attorney, Jeff Hindoein (Hindoein), be appointed to serve as his replacement on the Commission.
- The Chief Justice also noted that the term of Yellowstone County Attorney Scott Twito (Twito) as the County Attorney Member on the Commission on Courts of Limited Jurisdiction was set to expire on June 30, 2022. The Chief Justice recommended that Twito be reappointed to a new four-year term with the Commission, ending on June 30, 2026.
- There were no questions or objections, and all Justices affirmed both Hindoein's appointment and Twito's reappointment to the Commission.

Item 5: Appointments to the District Court Council:

- The Chief Justice noted that a member of the District Court Council, the Honorable Gregory Todd, had retired from the bench on December 31, 2021, and the Montana Judges Association had elected the Honorable Jessica Fehr to finish out the term of Judge Todd on the District Court Council through June 30, 2024.
- The Chief Justice also noted that a second member of the District Court Council, the Honorable Jon Oldenburg, would be retiring from the bench on July 2, 2022, and the Montana Judges Association had elected the Honorable Brenda Gilbert to finish out Judge Oldenburg's term on the District Court Council through June 30, 2023.
- All Justices ratified the elections of both Judge Fehr and Judge Gilbert to the District Court Council.

Item 6: Appointment to the Montana Chiropractic Legal Panel

- The Chief Justice noted that the Director of the Montana Chiropractic Legal Panel, Tara Preston (Preston), would be resigning from the Panel as of July 1, 2022. The Chief Justice noted the Association had appointed Becky Zaharko (Zaharko) as Preston's replacement, subject to the approval of the Chief Justice under § 27-12-201, MCA.

- No discussion was had, and the Chief Justice approved Zaharko's appointment.

Item 7: Revisions to the Montana Rules of Civil Procedure

- Justice Baker discussed how the Clerk's Office had recently received an e-mail from Bozeman-based attorney, Casey Magan (Magan), informing the Court of a likely scrivener's error contained in M. R. Civ. P. 37(d)(1)(A)(i) (titled "Party's Failure to Attend its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection"). According to Magan's e-mail, the alleged scrivener's error had been present since the Rule was last revised in 2011.
- Justice Baker next discussed how Supreme Court Staff Attorney, Jeanine Blaner (Blaner), had looked into the issue on the Supreme Court's behalf. Blaner's research confirmed that, at the time of the Rule's adoption in 2011, both the Advisory Commission on Rules of Civil and Appellate Procedure and the Supreme Court had intended for M. R. Civ. P. 37(d) to be a verbatim adoption of Fed. R. Civ. P. 37(d). However, Magan's e-mail correctly identified that the word "or"—which was present in Fed. R. Civ. P. 37(d)(1)(A)(i)—was missing from the current text of M. R. Civ. P. 37(d)(1)(A)(i). This accidental omission slightly changed the intended meaning of the Rule.
- The Chief Justice motioned for M. R. Civ. P. 37(d)(1)(A)(i) be amended to add the word "or" to keep the Rule's text consistent with that of Fed. R. Civ. P. 37(d)(1)(A)(i).
- All Justices unanimously approved the adoption of the above change.
- Although Magan was not present at the meeting, the Justices expressed their gratitude to Magan for catching this scrivener's error.

Public Comment

- The Chief Justice asked for further public comment or questions. There were none.

Chief Justice McGrath adjourned the meeting at 1:36 PM.

Submitted by Robert Hogan, Law Clerk, on Wednesday, June 29, 2022.