

MONTANA SUPREME COURT PUBLIC MEETING MINUTES

Tuesday, September 24, 2024, 1:00 p.m

Joseph P. Mazurek Justice Building

215 North Sanders, Helena

Supreme Court courtroom, 4th floor | Available via Zoom Conference

Chief Justice McGrath called the meeting to order at 1:07 p.m. In attendance were Chief Justice McGrath, and Justices McKinnon, Rice, Baker, and Shea. Justices Gustafson and Sandefur attended by Zoom. Judicial staff also in attendance were Jeanine Blaner, Supreme Court Staff Attorney; Kathleen Androlewicz, Electronic Services Coordinator; Beth McLaughlin, Court Administrator; Valentine Sworts, Pro Se Law Clerk; Gwyn Gregor, Judicial Assistant II; Blake Phillips, Law Clerk; Hannah Good, Law Clerk; Bowen Greenwood, Clerk of the Supreme Court.

Others in attendance included: Hon. Mike Menahan, District Court Judge for the First Judicial District; John Hooks, Montana Public Radio; Tina Chamberlain, Legislative Audit Division; Shelly Smith, Office of the Court Administrator.

Item 1: Approval of Minutes from the September 10, 2024, Public Meeting

- All present Justices approved the Minutes from the previous public meeting.

Item 2: Amendments to the Judicial Standards Commission Rules

- Chief Justice McGrath introduced the matter and clarified the role of the Court in reviewing and advising on the rules and their contents, as opposed to adopting them, pursuant to Article VI, Section XI and Article VII, Section II of the Montana Constitution.
- Chief Justice McGrath discussed the origins of the amendments in recent legislative actions and the judicial performance audit conducted by Tina Chamberlain.
- Chief Justice McGrath noted that there had been a period for public comment on the proposed amendments and that the Court had considered the comments in forming its own recommendations.
- Chief Justice McGrath introduced each amendment and solicited comments from the Court. Chief Justice McGrath clarified that the Justices would vote on their recommendations to the Commission, but the Commission would ultimately decide whether to adopt the Court's recommendations.
 - Rule 1 – Scope, Purpose and Title

- Chief Justice McGrath read the rule as it would read amended, noting that “allegations” was the only word added to the existing text.
 - Rule 2 – Definitions
 - Chief Justice McGrath noted that there was some public comment as to the definition of the word “grievance” used throughout the amended rules.
 - Justice Baker noted that the definition of “Judge” in 2(b) did not currently include Judges of the Water Court or Workers’ Compensation Court but that it should.
 - Justice Baker suggested that definitions of “grievance” and “complaint” be added to the rule and proposed definitions.
 - “Grievance” means a written statement submitted to the commission alleging improper conduct by a Judge pursuant to Rule 11.
 - “Complaint” means a statement of alleged grounds for discipline used to initiate formal proceedings against a Judge as provided in Rule 13.
 - Justice Baker moved that the definition of “Judge” in 2(b) be amended to include the omitted Judges.
 - Justice Shea seconded the motion.
 - The motion was approved unanimously.
 - Justice Baker moved that her proposed definitions of “grievance” and “Complaint” be added.
 - Justice Shea seconded the motion.
 - Justice Rice noted that this was consistent with the other proposed amendments that appeared later in the Rules.
 - The motion was approved unanimously.
 - Rule 3 – Organization of the Commission
 - Chief Justice McGrath noted that many of the proposed amendments were required by legislation passed in the most recent session.
 - Justice Baker suggested that 3(a) be modified to include a requirement that the Montana Judges Association notify all District Court Judges and then compile a list of interested Judges to be submitted to the Speaker of the House for consideration.
 - Justice Baker moved her suggested amendment be added to 3(a).
 - Justice McKinnon seconded the motion.
 - The motion was approved unanimously.
 - Chief Justice McGrath noted that in (g) “grievance” was substituted for “complaint” and record retention was extended from 10 to 12 years in accordance with the new statutory regime.
 - Rule 4 – Staff of the Commission

- Chief Justice McGrath noted that the changes to 4(a) and (b) were minor linguistic changes.
- Chief Justice McGrath moved that 4(c) be modified to include a clause prohibiting a retired DC Judge who has been subject to discipline by the Commission from being appointed as prosecutor.
 - Justice Baker pointed out that the prohibition also should apply to a retired Supreme Court Justice who had been subject to discipline and Chief Justice McGrath agreed.
 - Justice Baker seconded the motion with that addition.
 - The motion was approved unanimously.
- Chief Justice McGrath noted that the addition of 4(e) was intended to provide for a clerk to streamline the process of drafting orders and rules by the volunteer Commission.
 - Justice Baker noted that the only existing staff shouldering that burden was a part-time clerical staff member with no legal training.
 - Justice Gustafson asked whether the legislative approval required by the amendment was for the person who fills the role or the funding for the position.
 - Chief Justice McGrath clarified that only funding was subject to legislative approval.
 - Justice Baker suggested a minor revision to clarify the extent of the required approval.
 - Chief Justice McGrath suggested dropping the approval language entirely to avoid confusion.
 - Justice McKinnon asked for further clarification.
 - Chief Justice McGrath asked Court Administrator Beth McLaughlin for her opinion.
 - McLaughlin suggested that it could simply read that a “qualified law clerk may be paid.”
 - Chief Justice McGrath moved a friendly amendment to the proposed amendment to reflect McLaughlin’s proposed language.
 - Justice McKinnon seconded the motion
 - The motion was approved unanimously.
- Rule 5 – Meetings
 - Chief Justice McGrath noted the removal of outdated language from 5(b) and (d).
 - Justice McKinnon moved to approve the amendments.
 - Justice Rice seconded the motion.
 - The motion was approved unanimously.
- Rule 6 – Nonparticipation of Members of Commission

- Chief Justice McGrath noted that Rule 6 was essentially unchanged.
 - Justice Baker moved to approve the amendments.
 - Justice Shea seconded the motion.
 - The motion was approved unanimously.
- Rule 7 – Proceedings Confidential
 - Chief Justice McGrath noted that the proposed amendments were significant due to the legislative action to make the Commission’s actions more transparent and the Constitution’s mandate of confidentiality.
 - Chief Justice McGrath noted that the amendments to (a) attempted to walk the line between both interests.
 - Chief Justice McGrath read the 5 proposed exceptions to confidentiality in compliance with recently passed legislation.
 - Chief Justice McGrath moved to amend (a)(2) to include the disclosure of a filing of a formal complaint pursuant to rule 13(b).
 - Justice Baker seconded the motion.
 - Justice McKinnon noted that there was a comment from McLaughlin suggesting that disclosure of a “disability retirement” be removed.
 - Chief Justice McGrath asserted that the disclosure of a “disability retirement” was important given the number of Judges retiring due to disability.
 - Justice Baker proposed removal of the disclosure of a “disability” retirement-to ensure the privacy of that category of retiring Judges.
 - Chief Justice McGrath moved for a friendly amendment to remove the word “disability” retirement.
 - Justice Baker seconded the motion.
 - Judge Manahan stated the amendment was appropriate.
 - Both amendments were approved unanimously.
 - Chief Justice McGrath proposed an amendment to the newly added (a)(5) to include in the Commission’s report to the legislature summary rejections or dismissals made pursuant to rule 10.
 - Chief Justice McGrath noted that the current process of the Judicial Standards Commission allows for the Commission to summarily dismiss grievances stemming from rulings against the grievant and that 96% of grievances are of this nature.
 - Chief Justice McGrath noted that this is why complaints will now be called grievances.
 - Chief Justice McGrath noted that a more formal process will be suggested in 10(b)-but that (a)(5) should also include the summary dismissals in the report to the legislature.

- Chief Justice McGrath moved that (a)(5) be so amended.
 - Justice Baker seconded the motion.
 - The motion was approved unanimously.
 - Chief Justice McGrath noted that (b) was amended only for clarity
 - Justice Baker moved that (f) be amended to allow the Commission not to turn information over to a Judge about a grievance filed against them where the Commission found good cause not to, for instance to avoid retaliation against a grievant.
 - Justice Rice seconded the motion.
 - Justice McKinnon asked for clarification about the basis for the amendment.
 - Justice Baker noted that the audit report contained concerns that lawyers or members of the public may not file grievances due to fear of retaliation from Judges named in the grievance.
 - The amendment was approved unanimously.
 - Justice Shea moved to approve all of the amendments to Rule 7
 - Justice Rice seconded the motion.
 - The motion was approved unanimously.
- Rule 8 – Immunity
 - Chief Justice McGrath noted there was no change to Rule 8 in the proposed amendments.
 - Justice Baker moved to approve the existing Rule.
 - Justice McKinnon seconded the motion.
 - The motion was approved unanimously.
- Rule 9 – Jurisdiction and Grounds for Discipline
 - Chief Justice McGrath noted that there were no major changes to 9 (a) or (b), but that (c) was amended to include a requirement for submitting written orders to the Court in all cases where discipline is imposed or recommended with copies to interested parties; and under seal if necessary to protect the privacy of the judicial officers.
 - Justice Baker suggested that the new language was appropriate but noted that the recommendations from the audit included a new disciplinary method of informal corrective action.
 - Justice Baker moved for an amendment to (c)(1) to include the authority to implement mentorship or some other ethics training for Judges under admonition by adding “to suggest or require other informal corrective action” after “encouragement.”
 - Justice McKinnon seconded the motion.
 - The motion was approved unanimously.
 - Justice Baker noted that there was a typographical error in (c)(5) and “by” should be “but” and moved that Rule 9 be approved as amended.

- Justice Shea seconded the motion.
 - The motion was approved unanimously.
- Rule 10 – Grievances – Receipt and Review
 - Chief Justice McGrath noted that rule 10 has been amended to distinguish between a “grievance” and a “complaint,” that most of the current contents of the current Rule 10 were shifted to new Rule 11, and that the purpose of these changes was to provide for a formal jurisdictional dismissal process for the Commission.
 - Justice Baker moved to approve the rule as amended.
 - Justice Shea seconded the motion.
 - The motion was approved unanimously.
- Rule 11 – Grievances – Investigations
 - Chief Justice McGrath reiterated that Rule 11 is essentially just old Rule 10.
 - Justice McKinnon noted that there were comments from Judge McElyea regarding the rule.
 - Justice Baker recommended, based on Judge McElyea’s comments, that 11(a) be amended to revise the final sentence
 - Justice Rice noted that the last sentence gave the Commission the ability to notify Judges of grievances filed against them.
 - Justice Baker proposed to make notice the default and allow the Commission withhold notice only for good cause.
 - Justice McKinnon questioned whether Judges should be notified at the grievance stage.
 - Justice Baker suggested the commission should have discretion in making the notice decision based on their experience in processing grievances.
 - Judge Menahan noted that he was concerned with a default notice regime because these are significant issues and that Judges already get notice once an investigation is initiated, so they should not be notified of every grievance by default.
 - Justice Baker withdrew the proposed amendment based on the complexities Judge Menahan expressed.
 - Justice Baker moved to approve the rule as amended.
 - Justice McKinnon seconded the motion.
 - The motion was approved unanimously.
- Rule 12 – Grievances – Negotiated Disposition
 - Chief Justice McGrath noted that proposed Rule 12 was partially based on current practice and partially suggested by the audit report.
 - Justice Baker suggested that there needed to be clearer rules on when a disposition can or should be withheld from the public record, that Rule 7(e) provided good guidance, and proposed an amendment to

allow for confidentiality where a Judge negotiates a disposition due to a disability.

- Chief Justice McGrath suggested this might complicate negotiated dispositions based on the unclear definition of “disability.”
- Justice Rice suggested that Rule 9 already dealt with privacy concerns by allowing the dispositions under seal when a Judge’s health or family were concerned.
- Justice Baker expressed an ongoing concern that Rule 12 should provide for most negotiated dispositions be public and moved to amend to include confidentiality for dispositions concerning a Judge’s health or family as provided in Rules 7(e) and 9(c).
 - Justice Rice seconded the motion, adding that Justice Baker’s amendment was consistent with the goal of making dispositions more transparent.
 - The motion was approved unanimously.
- Justice Baker moved to approve rule 12 as amended.
 - Justice Shea seconded the motion.
 - The motion was approved unanimously.
- Rule 13 – Formal Complaint
 - Chief Justice McGrath noted that the rule was amended solely to comport with new statutory language.
 - Chief Justice McGrath proposed that “conduct a hearing” should be inserted into 13(a) to conform with § 3-1-1121, MCA.
 - Justice Baker seconded the motion.
 - The motion was approved unanimously.
- Rule 14 – Procedure on Formal Complaint
 - Chief Justice McGrath noted that the rule was only minorly amended for linguistic clarity.
 - Justice Baker moved to approve the rule as amended.
 - Justice Shea seconded the motion.
 - The motion was approved unanimously.
- Rule 15 – Hearing on Formal Complaint
 - Chief Justice McGrath noted that the rule was only minorly amended for linguistic clarity.
 - Chief Justice McGrath moved to amend 15(g) to make clear that a recommendation to the supreme court is a public document.
 - Justice Baker seconded the motion.
 - The motion was approved unanimously.
 - Justice Baker moved to approve the rule as amended.
 - Justice Shea seconded the motion.
 - The motion was approved unanimously.

- Rule 16 – Interim Disqualification of Judicial Officers
 - Chief Justice McGrath noted that the rule was amended to reflect comments from the audit and comports with the rules of other States.
 - Justice Baker moved to approve the rule as amended.
 - Justice McKinnon seconded the motion.
 - The motion was approved unanimously.
- Rule 17
 - Chief Justice McGrath noted that the rule would need to be amended because it did not agree with the Constitutionally prescribed method for rule adoption, proposed that they be amended to clarify the court’s role in reviewing, but not adopting, rules, turned the discussion over to Staff Attorney Jeanine Blaner for further clarification.
 - Blaner noted that current Rule 15 was adopted in 2015 based on the then Chairman Hon. Blair Jones’ understanding as to the proper procedure for rule adoption but at no point required adoption by the Supreme Court.
 - Blaner continued that in 2019 further revisions were made to Rules other than Rule 15, but that for unknown reasons, though likely due to a transcription error, the document in the Court’s records deleted the key phrase requiring review but not adoption by the Court.
 - Blaner did not note the difference between the 2015 and 2019 versions when drafting the current Rule 17 amendment recommendations for the Commission until comments noted the difference.
 - Blaner concurred with the Chief Justice’s recommendations.
 - Justice Baker noted that the current Rule 15 as published did not include the erroneous language and moved to adopt the Chief Justice’s amendments.
 - Justice Shea seconded the motion.
 - The motion was approved unanimously.
- Signature Page
 - Chief Justice McGrath noted that Jenny Eck was no longer a member of the Commission and her name needed to be replaced with current member Seth Berglee.
- Form-A
 - Chief Justice McGrath moved to change all mentions of complaint to grievance and add a footnote describing the process for dismissal for lack of jurisdiction.
 - Justice Baker seconded the motion.
 - The motion was approved unanimously.

- Chief Justice McGrath described the process of submitting the proposed amendments to the Commission for their ultimate adoption and thanked the staff involved in the process of drafting the Court's suggested amendments.

Item 3: Appointments to the Uniform District Court Rules Commission

- Chief Justice McGrath introduced the matter and turned the floor over to Justice Gustafson.
- Justice Gustafson noted that several commissions had expired and proposed to reappoint Hon. Amy Eddy, Elizabeth Halverson, and Brooke Murphy and appoint Sydney Best, Jordan Crosby, Professor Craig Cowie, and Hon. Robert J. Whelan to the commission.
- Justice Baker asked for clarification that Sean Goicoechea was not seeking reappointment.
- Justice Gustafson stated he was not and moved to approve the appointments and reappointments as proposed.
 - Justice McKinnon seconded the motion.
 - The motion was approved unanimously.

Item 4: Appointments to the Civil Jury Instructions Guidelines Commission

- Justice Gustafson introduced the matter and noted that some of the individuals on the committee have either resigned or retired and that the committee has not had substantial work in some time but that new legislative changes and court opinions prompted the need for further work and new members.
- Justice Gustafson proposed formal termination of the current commissions, the appointment of additional members, and the adoption of four-year staggered terms with the opportunity of reappointment to prevent future lapse.
- Justice Gustafson noted that the following had agreed to serve a four-year term: Hon. Amy Eddy, Hon. Shane Vannatta, Hon. John Kutzman, Jon Moyers, Gerry Fagan, and Mark Kovacich.
- Justice Gustafson noted that the following had agreed to serve a two-year term to facilitate staggering: Hon. Jessica Fehr, Hon. Matthew J. Cuffe, John Amsden, Matt Hayhurst, and Sean Goicoechea.
- Justice Gustafson moved to approve the proposed appointments.
 - Justice McKinnon seconded the motion.
 - The motion was approved unanimously.

Item 5: Appointments to the Judicial Education Committee

- Chief Justice McGrath introduced the matter and noted that Hon. Matthew J. Cuffe's term had expired and that he sought reappointment.

- Chief Justice McGrath motioned to reappoint Hon. Matthew J. Cuffe.
 - Justice Rice seconded the motion.
 - The motion was approved unanimously.

Public Comment

- None

Chief Justice McGrath adjourned the meeting at 2:42 p.m.

Submitted by: Blake Phillips and Hannah Good on September 25, 2024.