

MONTANA SUPREME COURT PUBLIC MEETING MINUTES

Tuesday, November 19, 2024, 1:00 p.m

Joseph P. Mazurek Justice Building

215 North Sanders, Helena

Attorney's Lounge, 4th floor

Chief Justice McGrath called the meeting to order at 1:00 p.m. In attendance were Chief Justice McGrath, and Justices McKinnon, Rice, Shea, and Baker. Justices Gustafson and Sandefur attended by Zoom. Judicial staff in attendance included Jeanine Blaner, Supreme Court Staff Attorney; Kathleen Androlewicz, Electronic Services Coordinator; Beth McLaughlin, Court Administrator; Hannah Good, Law Clerk; and Blake Phillips, Law Clerk.

Others in attendance included: Chief Justice Elect Cory Swanson; Bowen Greenwood, Clerk of the Supreme Court; Hon. Amy Eddy, District Court Judge for the Eleventh Judicial District; John Mudd, Executive Director of the State Bar of Montana; and Regina Mercado, State Bar of Montana.

Item 1: Approval of Minutes from the September 24, 2024, Public Meeting

- The Justices unanimously approved the Minutes from the previous public meeting.

Item 2: Amendments to the Judicial Standards Commission Rules

- Chief Justice McGrath introduced the matter and explained that the role of the Court was to accept for filing the amended rules adopted by the Commission.
- Copies of the amended rules adopted by the Commission were distributed.
- Chief Justice McGrath explained that no motion was necessary due to the Court's limited function in accepting the adopted rules for filing.
- There were no comments, and the amended rules were accepted.

Item 3: Amendments to the Rules for Admission to the Bar of Montana

- Chief Justice McGrath introduced the matter and turned the discussion over to Justice Baker.
- Justice Baker explained that the proposed amendments would simplify the pro hac vice rules for federal attorneys practicing before the Water Court and attorneys representing Indian parents, tribes, and custodians in Indian Child Welfare Act (ICWA) matters.

- Justice Baker explained Proposed Rule VI.M would allow an attorney working for the federal government to appear in Water Court matters without associating with local counsel or paying the fee.
 - Justice Baker asked John Mudd if the State Bar had reviewed the comments from the United States Department of Justice concerning its recommendations for the rules, and whether the State Bar had any objections.
 - Mudd responded the State Bar reviewed the comments and thought they were well-taken and did not object to revising the amended rules in accordance with the comments.
 - Under Proposed Rule VI.M, the Department of Justice requested the proposed amended rule be revised to include Water Court appeals before the Montana Supreme Court.
 - Under Proposed Rule VI.M, the Department of Justice requested the amended rule be revised to exempt federal attorneys and the Department of Justice practicing before the Water Court from the appearance limitations imposed by Rule VI.C.
 - Under Proposed Rule VI.M, the Department of Justice requested the amended rule be revised to remove the nonresident requirement.
- There were no suggestions for amendment to Proposed Rule VI.L concerning the pro hac vice admission of attorneys representing Indian parents, tribes, and custodians in ICWA matters.
- Justice Baker moved to adopt Proposed Rules VI.L and VI.M.
 - Justice McKinnon seconded the motion.
 - Justice Rice clarified that Justice Baker's motion included the Department of Justice's recommendations.
 - Justice Baker answered affirmatively.
 - The motion was approved unanimously.
- Justice Baker noted that the final order had not been circulated for review and would be available for signature.

Item 4: Appointments to the Sentence Review Division

- Chief Justice McGrath introduced the matter. He explained that it is a division of three, plus an alternate, District Court judges appointed by the Chief Justice and who are limited to serving two terms. He outlined the purpose of the Division. At the request of a defendant, the Division reviews a criminal sentence that is not otherwise appealable, and the Division may decrease or increase the sentence based on its review.
- Chief Justice McGrath explained that Hon. Luke Berger had reached his two-term limit, and that Hon. Christopher Abbott had agreed to serve.
- Chief Justice McGrath appointed Hon. Christopher Abbott.

Item 5: Appointments to the Judicial Education Committee

- Chief Justice McGrath introduced the matter and turned the discussion over to Justice McKinnon.
- Justice McKinnon explained that she and Justice Gustafson already attend all the meetings.
- Justice Gustafson moved to appoint Justice McKinnon to the Committee and reappoint Hon. Mary Knisely and Hon. Christopher Abbott.
- The motion passed unanimously.

Item 6: Appointments to the District Court Council

- Chief Justice McGrath introduced the matter and outlined the purpose and structure of the District Court Council. The District Court judges elect members from among their ranks and the Chief Justice certifies that election.
- Chief Justice McGrath explained that member Hon. Robert J. Deschamps III was retiring, and that the term of member Hon. Jessica Fehr expired.
- Chief Justice McGrath noted that the following members were elected to the Council following an election held by the Montana Judges Association:
 - Hon. Jessica Fehr was reelected as Position 2 member for a three-year term ending June 30, 2027.
 - Hon. Rienne McElyea was elected to complete Hon. Deschamps' term as Position 1 member ending June 30, 2025.
- Chief Justice McGrath certified the election.

Item 7: Appointments to the Criminal Jury Instructions Commission

- Chief Justice McGrath introduced the matter and outlined the purpose and structure of the Commission. The members include attorneys and a few District Court judges who suggest proposals for and amendments to the uniform criminal jury instructions.
- Justice Gustafson noted that attorney Chad Wright had resigned his position and that he had recommended the appointment of attorney Alexander Pyle.
- Justice Baker moved to appoint Alexander Pyle.
 - Justice Rice seconded the motion.
 - The motion passed unanimously.

Item 8: Appointments to the Drug Treatment Court Advisory Committee

- Chief Justice McGrath introduced the matter and outlined the purpose and structure of the Committee. He explained that its role was to address novel issues facing drug courts and offer advice to the legislature.

- Chief Justice McGrath noted that Hon. Kurt Kreuger and Hon. Nickolas Murnion resigned from the Committee, as both are retiring.
- Chief Justice McGrath explained that Hon. Brenda Gilbert was a current member of the Committee and agreed to serve as the new chair. Hon. Olivia Rieger and Hon. Heidi Ulbricht agreed to serve as new members.
- Justice Gustafson moved to appoint Hon. Olivia Rieger and Hon. Heidi Ulbricht as members, and to appoint Hon. Brenda Gilbert as chair.
 - Justice Shea seconded the motion.
 - The motion passed unanimously.

Public Comments

- Bowen Greenwood offered public comment asking the Court to consider whether the pro hac vice rules should be further revised so that the litigants would serve other parties with notice that they were seeking admission under the rules. Under the current system, the Clerk of Court's office is effectuating service.
 - Justice Baker asked if that needed to be done as a rule.
 - Greenwood clarified that the current procedure is that when the State Bar approves an application, the Clerk submits it to the Court and sends notice to the parties, but he would be happy to require filing of a motion.
 - Chief Justice McGrath noted that it is often referred to the Bar if the application form has not been submitted.
 - Hon. Amy Eddy noted that the same thing is happening at the District Court level and that an amendment to require a motion would be helpful.
 - John Mudd asked whether it would be helpful for the State Bar to send the approval packet to the party with instructions to file a motion rather than the current procedure of sending the approval packet to the courts.
 - Justice Baker concurred with the procedure proposed by John Mudd and noted it would comply with the current rule as written.
 - Justice Shea concurred based on the current practice for other attorney admissions.
 - Jeanine Blaner noted that the current procedure usually treats the State Bar's packet like a motion.
 - Justice McKinnon agreed that the packet should be sent to counsel and then filed with a motion.
 - Jeanine recommended adding a sentence to make sure that happened.
 - Justice Rice noted that the two-appearance limit means that such a motion would be necessary for enforcement, or that the cap should be eliminated.
 - Chief Justice McGrath observed the two-appearance limit is antiquated.
 - Justice McKinnon noted that pro hac vice and waiving in might differ.
 - Justice Baker recommended looking at the procedure in other jurisdictions.
 - Chief Justice McGrath noted that the interested parties should confer and propose any needed rule amendments.

Chief Justice McGrath adjourned the meeting at 1:23 p.m.

Submitted by: Hannah Good and Blake Phillips on November 19, 2024.