

**Montana Supreme Court Access to Justice Commission**  
**June 3, 2016**  
**Large Conference Room, Office of the Court Administrator**  
**301 S. Park, Third Floor, Helena, MT**  
**1:00–3:30 PM**  
**Meeting Minutes**

**Commissioners Present:** Matthew Dale, Rep. Kim Dudik, Justice Beth Baker, Hon. Kurt Krueger, Hon. David Carter, Michele Robinson, Aimee Grmoljez, Melanie Reynolds, Ed Bartlett, Andy Huff, Sen. Nels Swandal, and Alison Paul. Andy Huff and Sen. Nels Swandal left the meeting at 2:30.

**Commissioners Absent:** Dean Paul Kirgis, Hon. Greg Pinski, Jennifer Brandon, Winona Tanner and Randy Snyder.

**Others Present:** Abby Brown, Patty Fain, Shannon Lewis, Beth McLaughlin, Nolan Harris, Al Smith, and Kate Seaton.

**Call to Order:** 1:05 p.m.

Justice Baker introduced Nolan Harris, the new Administrator of the Court Help Program.

Justice Baker asked for comments or corrections to the March meeting minutes. There were no comments or corrections.

**Aimee Grmoljez moved that the March minutes be adopted and Judge Carter seconded. The motion passed without objection.**

**Public Forum Series Update**

Matt Dale updated the Commission on the status of the Public Forum Series. Five of the seven total forums have been completed. The Butte forum will be on September 21 and the Helena forum will be on October 19. There will be a written report and a video compilation produced at the end of the series. An initial draft of the forum report has already been compiled by Kate Seaton. The forum series will inform future Commission action and recommendations, including a request of the Legislature to provide state funding for civil legal aid in Montana. Media coverage of the forums has been sporadic, with Kalispell having the best coverage. There have been about fifty people in attendance at each event, with the exact number varying from forum to forum. The Bozeman forum had the second highest number of legislators in attendance of all of the forums thus far. The Bozeman forum was slow at the start, but the audience filled out a few minutes after the start. Patty Fain noted thus far approximately fifty-five legislators have attended one of the forums. Justice Baker thanked everyone involved, particularly Matt Dale and Patty Fain.

### **Law School Partnerships Committee Report**

Justice Baker reported that Professor Wandler was unable to be present but provided a written report, nothing the Committee's focus on looking at an incubator program which would help provide services in rural areas, particularly in Indian Country.

### **Self-Represented Litigants Committee**

Abby Brown reported that the Self Represented Litigants Committee has completed forms for Dissolution of Marriage with Children, and those forms are currently on a six month pilot in Gallatin and Cascade County. The forms are available on the Committee's webpage and they are currently soliciting feedback and comments. Abby asked if the Commission should consider developing a protocol to address bills in the 2017 Legislative Session that affect access to justice. Justice Baker responded that this would be a good topic for discussion at the September or December meeting.

Abby reported that the Self Represented Litigants Committee recommends to the Commission that the Commission should request the Montana Supreme Court to standardize fee waiver forms across the state and amend the Montana Rules of Civil Procedure to require use of the standard form. Abby stated that the Committee is prepared to produce a draft form and draft amendments to the Montana Rules of Civil Procedure, but is looking to the Commission for guidance. Justice Baker noted that the Committee needs to seek involvement from the Attorney General's Office because the Attorney General's Office has a statutory mandate to produce fee waiver forms. Judge Carter reminded the Commission that the fee waiver forms ought to be mandatory for courts of limited jurisdiction as well as district courts. Justice Baker noted that court filings are on the rise but revenues are down, which indicates that fee waivers are being granted, so this will be a factor to keep in mind as we review the process. Judge Carter recommended the Commission act before the September meeting. Judge Krueger and Judge Carter noted that it is important for judges to maintain their discretion to make rulings on fee waivers.

**Alison Paul moved to advise the Self Represented Litigants Committee to meet with interested parties, including the Attorney General's Office, about the issue of standardizing fee waiver forms and report back to the Commission at the September meeting. Matt Dale seconded. The motion passed without objection.**

Melanie Reynolds mentioned that it would be valuable to have the forms reviewed by a non-lawyer. Justice Baker asked Nolan Harris if he would be willing to review the forms, and he said yes. Nolan will participate in the working group.

### **Strategic Planning Committee**

Randy Snyder was not present at the meeting but submitted a written report that is included in the materials. Justice Baker advised the Commission that Randy has done a significant amount of work and that the Committee's report should be coming together before the next meeting.

### **National Working Group Updates**

Justice Baker reported that the State Legislative Funding Working Group has provided several conference calls and the most fruitful result of those contacts is the readiness checklist which

will help the Commission to be prepared to take a bill to the Legislature. Justice Baker also noted that Judge Pinski attended several meetings on the same topic at the ABA meeting he attended.

Alison Paul reported that the Self Represented Litigants Working Group has provided many materials about best practices for working with self-represented litigants. She will share that information with Nolan Harris. According to this information, Montana falls into the middle in providing services for self-represented litigants.

### **Report from the National Access to Justice Chairs Meeting**

Judge Pinski was unable to attend the Commission meeting, but Justice Baker summarized his report from the meeting. There was some discussion about the State Justice Index, which found that Montana did fairly well in most areas regarding access to justice. Beth McLaughlin noted that the measurements this report utilized were not tailored to a rural state; therefore, Montana's standing may not accurately reflect the efforts Montana has made to provide access to justice in a large rural state. Judge Pinski's report from the national meeting is included in the meeting materials.

### **Court Messaging for Self-Represented Litigants**

Judge Carter presented the Commission with the idea of pursuing a text messaging system for the courts. This system would merge the courts' databases of contact information for litigants with the courts' databases of court calendars to send text messages or emails to litigants as a reminder of their court dates. Judge Carter recommended members of the Commission look online at the Legal Design Lab at Stanford to learn more about this option. Judge Carter emphasized that court messaging is an access to justice issue because it particularly affects self-represented litigants and can be a way to provide customer service to court users which would create a positive public image for the courts. Justice Baker pointed out that some have argued that the Access to Justice Commission is already potentially overburdened with the work it has taken on, and that the Technology Commission might more appropriately handle this idea. Judge Carter proposed that the Technology Commission and the Access to Justice Commission could work together on this project. Judge Krueger voiced his agreement that technology is changing and the courts need to change with it, but noted that there could be legal and constitutional issues surrounding notice if the courts used text messaging or email to notify litigants of court appearances. Judge Carter responded that this would simply be customer service and not a substitute for appropriate legal notice.

Beth McLaughlin agreed that this project is more appropriate for the Technology Commission, but noted that the Technology Commission is currently focused on updating Full Court to be hosted in a single database, as well as introducing e-filing in Montana. Justice Baker asked if the Full Court update could make room for this option. Beth responded that the Technology Commission would probably say that it needs to focus on getting the basics in place before it can work on things like court messaging. Judge Carter expressed that if the courts wait until later to implement court messaging, it may be more expensive. Aimee Grmoljez inquired whether some sort of pilot project could be implemented in a limited way. Beth McLaughlin said she thought it would need to be state-wide. Beth also noted that if this program were implemented, the water court would also need to be brought in.

**Justice Baker moved that the Access to Justice Commission express support for the Technology Commission to consider implementing any technology that improves access to justice, authorize Judge Carter to continue to research court messaging, and to express that the Access to Justice Commission is willing to help with implementing new technology to increase access to justice when the time is right. Ed Bartlett seconded. The motion passed without objection.**

Judge Carter affirmed that he would make his presentation to the Technology Commission and come back to this Commission with a report.

### **Orders of Protection Worksheet Concept**

Patty Fain explained that the courts have been seeing a fall-off between when a litigant gets a temporary order of protection and then attends a final hearing. The belief is that this fall-off is attributable to litigants not understanding what they need to do at the final hearing. Patty intends to create a document which will serve as a step-by-step guide for litigants to prepare for a final hearing on an order of protection. She noted that most of this work can piggy-back off of work she has already done, so there will be no costs involved, and this project will be part of her general work. Alison Paul noted that Montana Legal Services Association has offered to help with this project. Judge Krueger asked if Matt Dale could find the report from the Orders of Protection Commission Matt used to head in the Attorney General's Office. Matt responded that he will find it. Alison Paul and Matt Dale both noted the importance of these forms being appropriate for non-attorneys to read and understand. Abby Brown requested that these forms should go through the Forms Subcommittee. Beth McLaughlin suggested the Attorney General's Office be brought in the loop. Patty stated that she will work on this project, looping in all the relevant parties, and come back with something for the Commission to consider at the September meeting.

### **Discussion of Commission's Legislative Proposal**

Justice Baker provided two bill drafts for a potential request to increase civil filing fees to provide state funding for civil legal aid for the Commissioners to review. Also for review was a document summarizing the legislative history of court fees, to show when fees were last increased and by how much. Justice Baker noted that the estimates of revenue to be raised based on the increases in filing fees reflected in the materials is an extremely rough estimate because there is no certainty when it comes to filing fees. The first draft proposes raising the filing fee for a petition from \$90 to \$170, the appearance fee for a defendant from \$60 to \$100, the fee for a marriage license from \$53 to \$60, and raising the filing fee in courts of limited jurisdiction from \$40 to \$45. According to figures provided by the Department of Revenue, these proposed increases would raise an estimated \$989,252 from the district courts and \$110,000 from courts of limited jurisdiction each year. The second draft is the same but excludes courts of limited jurisdiction. Justice Baker noted that the last time the general filing fee was raised was 1999, the appearance fee was 1991, and the marriage license fee was 2005. Justice Baker also noted that in these drafts, a new account would be created with the court administrator and the first \$500,000 raised would go in to that account to be distributed to Montana nonprofits that provide or fund civil legal assistance.

Ed Bartlett noted that the legislation needs the addition of “every year” in the section on appropriation, as opposed to “per biennium.” Aimee Grmoljez asked why the legislation only appropriates \$500,000 when the estimated revenue raised is twice that. Justice Baker responded that primarily this is because we were unsure how much revenue would be raised when the Policy and Resources Committee developed the \$500,000 figure. Ed noted that a \$500,000 request will be an easier sell to the Legislature. Aimee responded that she believes legislators would not like so much money going into the general fund without any express purpose. Justice Baker reiterated how uncertain the revenue estimates are and there may be no money actually going in to the general fund. Judge Carter noted that this might be an easier sell if there is some way to tie the funding raised in a specific locality to go back to that locality. Justice Baker requested the input of Al Smith and the position of the Montana Trial Lawyers Association. Al stated that the justices’ court fees should also go up if the district court fees do. He stated that the Montana Trial Lawyers Association would not oppose this increase and is willing to offer support, if it would be beneficial. He noted that the filing fee in federal court is \$400, so this increase is not out of line when considering those fees. Rep. Dudik noted that there would need to be more clarity about where exactly this money would go and how it will help people. Judge Carter voiced his support for including courts of limited jurisdiction in any fee increase, but reminded the Commission that debt collection organizations are likely to oppose such an increase.

Rep. Dudik suggested beginning with raising the proposed fees in both District and Justices Courts and then perhaps some things will get cut out in the legislative process. Alison Paul noted that there was some pushback when adding in the domestic violence fee but Montana Legal Services Association was able to provide information and data about how this fee would actually help people and that made a difference. Montana Legal Services Association can provide similar information here. Judge Krueger and Ed Bartlett supported asking for \$500,000. Aimee Grmoljez supported including a specific allocation and a local focus to spending money. Justice Baker suggested that Montana Legal Services Association and the Montana Justice Foundation could provide information about where the money would go. Judge Carter suggested including a specific percentage of money raised to go back to each community. Justice Baker said that would be very difficult to accomplish in a piece of legislation because this will be a process dependent upon grant applications, but the proposal could include information about where the money would likely go based on existing funding and programs. Ed Bartlett pointed out that the Court Administrator has an excellent reputation with the Legislature, so the Legislature is more likely to be comfortable giving money to the Court Administrator without specifically allocating it. Aimee and Ed agreed to circulate the draft bill among legislators to get initial feedback. Justice Baker will ask the budget office to begin drafting a fiscal note.

Alison Paul suggested that the bill could include language that the funding can only go to organizations that provide statewide services to ensure the money is distributed around the entire state. Justice Baker said she was not sure that would work because the language in the domestic violence filing fee statute does not contain that provision, and it should not appear that this funding is just for Montana Legal Services Association. Alison agreed that the language should mirror that in the domestic violence funding statute. Justice Baker requested a motion.

**Matt Dale moved to approve going forward with the version one draft bill, including fee increases for both District Courts and Justices Courts, adding the language about “per year” and “for each year of the biennium” to the appropriation sections, and for Aimee to move forward with circulating the draft and return with information from key legislators at the next meeting. Melanie Reynolds seconded.**

**The motion passed. The votes were cast as follows:**

**Voting In Favor**

- Matt Dale
- Rep. Kim Dudik
- Justice Baker
- Judge Krueger
- Aimee Grmoljez
- Melanie Reynolds
- Ed Bartlett
- Andy Huff by proxy of Justice Baker
- Sen. Nels Swandal by proxy of Justice Baker

**Voting Against**

- Judge Carter
- Randy Snyder by proxy of Judge Carter

**Abstaining**

- Alison Paul
- Michele Robinson

**Absent, not voting**

- Judge Pinski
- Winona Tanner
- Jennifer Brandon
- Dean Paul Kirgis

Justice Baker noted that the Policy and Resources Committee will look at next steps with the bill draft and potentially confer with Montana Legal Services Association. Melanie Reynolds asked if there would be any additional work for the clerks of court to do under this bill and Justice Baker said there would be no additional work.

Justice Baker noted that the next Commission meeting is September 9 and most likely will be from 1-3 PM.

Michele Robinson noted that the Butte Access to Justice Forum is the next forum to occur, it will be at Montana Tech from 4–6 PM on September 21. Michele has reserved an auditorium there from 3–6:30 PM. The planning for this forum is well underway, and Michele mentioned that she will confer with Justice Baker, Matt, Melanie, and Patty to continue preparations.

**Updates from the Court**

Justice Baker said that she has confirmed a spot on the agenda for the Access to Justice Commission to present to the Montana Judges Association regarding the forms project and the issue of mandatory vs. non-mandatory forms. The presentation will be in the afternoon on October 13, 2016, at the MJA conference in Polson.

The Law Librarian and Reference Librarian positions remain open at the State Law Library. Justice Baker noted that the Court would like to fill these positions in a way that can address the substantial access to justice portion of that job. More than 70% of the inquiries the State Law Library receives are from non-lawyer citizens.

Justice Baker opened the floor for public comment. There were no public comments. The next meeting will be held September 9, and the final meeting before the opening of the 2017 Legislative Session will be December 9.

**Justice Baker adjourned the meeting at 3:19 PM.**