

Montana Supreme Court Access to Justice Commission

December 12, 2014

Court Administrator's Office

301 S. Park, Room 328

11:00 a.m. – 2:00 p.m.

Meeting Minutes

Commissioners Present: Justice Beth Baker, Judge Kurt Krueger, Judge Michele Snowberger (phone), Jennifer Brandon, Michele Robinson (phone), Alison Paul, Randy Snyder (phone), Andrew King-Ries (phone), Jon Bennion, Aimee Grmoljez, Melanie Reynolds, and Andy Huff.

Commissioners Absent: Matthew Dale, Rep. Chuck Hunter, Sen. Nels Swandal, Judge David Ortley, Amy Blixt, Winona Tanner.

Others Present: Erin Farris-Olsen, Chris Manos, Kate Kuykendall, Amy Sings In The Timber, Lisa Mecklenberg Jackson, Iris Marcus, Jim Taflan, Jamie Iguchi, Patty Fain (phone), Michelle Potts, Abby St. Lawrence, and Krista Partridge.

Call to Order: 11:04 a.m.

Justice Baker asked for comments or corrections to the October meeting minutes. Jennifer Brandon noted that she was listed as absent, but was present for the October meeting.

Andy Huff moved that the October minutes be adopted as corrected and Alison Paul seconded. The motion passed without objection.

Policy and Resources Committee Update

Amy Sings In The Timber described the Committee's work on the 2015 Legislative Initiative. She explained that after exploring a number of options, the group settled on a single recommendation to include a \$5 surcharge on a broad range of criminal and civil court filings to provide civil legal assistance for low income Montanans. The surcharge would be modeled after the Court Information Technology surcharge and would be drafted as a new section. Justice Baker added that Senator Ripley was consulted and provided input about the importance of educating legislators on access to justice issues and that fee increases, although more palatable than general fund requests, would still meet with significant opposition. Senator Ripley emphasized that broad and well-grounded support would need to be cultivated to have any chance at success, and stated that fiscal rather than philosophical objections would be the biggest hurdle. Additional input was received from Justice of the Peace Larry Carver who explained that as a group, the magistrates are opposed to all new surcharges, but he would be willing to work with the Commission on other ideas. The money collected from the proposed surcharge would go to the Court and would be earmarked for low-income civil legal assistance. Amy stated that

the Committee recommends putting this proposal forth as a concept to open the discussion and get the issue on the Legislature's radar. Justice Baker responded that the Commission needs to decide whether or not to present a bill draft and questioned the utility of a "concept" proposal. Andy Huff stated that the Commission should present a bill draft for educational purposes. Commissioners discussed the potential pitfalls of a bill draft in 2015, with Jon Bennion and Judge Krueger arguing that a bill draft is premature at this point and could harm the Court Help funding effort. Amy explained that the Committee isn't proposing a bill draft for 2015, but they want to build a foundation for the next session. Justice Baker asked for a motion on the proposal.

2015 Legislative Initiative Action Item: The Commission should not present a bill draft for the civil legal assistance surcharge, but should pursue an education campaign for this session. The Policy and Resources Committee and Communications Committee will be tasked to develop the education campaign.

Aimee Grmoljez so moved and Melanie Reynolds seconded the motion. The motion passed without objection.

There was additional discussion on the significant obstacle of the magistrates' opposition to surcharges and Judge Snowberger explained that the position is that the Court should not be used as a taxing authority and that the current Court Information Technology surcharge, which is assessed on almost every traffic ticket, falls largely on criminal defendants rather than users. Chris Manos noted that a focus on charging users could result in Court Help users paying a surcharge. Justice Baker stated that these points are exactly why the Commission needs to build support and lay the groundwork before moving to the bill draft stage.

Finally, Michelle Potts reported that the Economic Impact Study on civil legal aid in Montana is almost complete and preliminary estimates are that \$9 million in economic benefits are generated from \$3 million in spending on civil legal aid. She stated that the economist is doing a final review of the report, and the Committee will vet the report before presenting it to the Commission.

Court Help Program Budget Update

Justice Baker reported that the Court Help Program is contained in the Governor's budget for \$875,000, with the increase in funding used to support part-time staff in Gallatin and Cascade Counties. She asked Commissioners with existing relationships to reach out to the legislative sub-committee members (Randy Brodel, Kristin Hanson, Kim Dudik, Ken Holmlund, Dave Howard, and Cynthia Wolken) in support of Court Help funding. The Justice for Montanans AmeriCorps program recently surveyed Court Help users and 95% of respondents ranked the program a "9" on a scale from 1-10. The comments received through the survey were very enthusiastic. Melanie Reynolds asked if any Court Help users could testify and if a packet of

talking points was available. Justice Baker pointed out that a fact sheet could be emailed to Commission members who wish to testify, and asked if the AmeriCorps survey results could be synthesized into a one-page summary. Erin Farris-Olsen noted that Self Help client testimony has not gone smoothly in the past, but that participants in advice clinics through the various pro bono associations may be willing to testify. Justice Baker noted that the 2012 Legislative Audit measured the success of the program, and responded in answer to questions that we cannot say how much it would cost for additional judges if the Court Help program were eliminated. Judge Krueger explained that the time spent with pro se litigants as reported in the Court Performance study was lower than expected. He pointed out that this is because most pro se litigants had been assisted by Court Help, and that people who don't receive assistance simply don't appear. Judge Krueger argued that these results should be used to show that Court Help is working as intended. Erin offered to share a California study showing the economic impact in a county where a self-help program had been terminated. Chris Manos asked if we can use average attorney fees and Court Help staff time to estimate the value of self-help. Justice Baker concluded that Judges have been very helpful in keeping Court Help funded impact in their communities and promised to distribute materials for talking points and fact sheets.

Self Represented Litigants Committee Update

Judge Snowberger reported that the Committee is moving forward with the strategic plan with four working groups. The Resources and Tools group is in the final stages of revising the dissolution with children forms packet and has put the revisions out for comment. The comments received have been very helpful, but did not come from a wide cross-section of people. They had hoped the revisions would be finalized by the end of the year, but this is unlikely to happen. The Education and Training group is assessing training on legal information vs. legal advice. They've reviewed training from around the country and concluded that Montana's training is solid. The group is looking to disseminate that training through live sessions, webinars and website resources. She reported that the Committee has voted to approve the first phase of the data collection project and Lisa Mecklenberg Jackson distributed the final report to the attendees. She said that the report will be posted online next week and was provided to the Law and Justice Interim Committee in draft form. Finally, she noted that the Legislative Rule Change group is monitoring HB 20 to allow spouse to restore their original names as part of a dissolution filing and HB 26 to increase the debt limit allowed for summary dissolution. Judge Snowberger stated that there are not yet training materials ready for Commission approval. Jennifer Brandon asked if gender neutral dissolution forms are under consideration and Judge Snowberger said that they've been discussed, but the Committee hasn't decided on the best approach.

Communications and Outreach Committee Update

Melanie Reynolds reported that the Commission website has been updated with better information and more opportunities to add information and thanked Lisa Mecklenberg Jackson for her assistance. The next goal for the website is to make the URL for the Commission shorter

and easier to communicate that the current URL. She stated that the Committee will be advising an AmeriCorps VISTA member at the Montana Justice Foundation, Iris Marcus, on creating a clearinghouse for access to justice related information, such as the Economic Impact Study.

Action Item: Approve Gaps & Barriers Summary Sheets

Melanie directed the members to the proposed Gaps & Barriers Summary Sheets in the meeting packet and asked the Commission for approval. Alison Paul asked for time to give feedback on the MLSA portion, and Justice Baker asked for additional comments. Amy Sings In The Timber stated that the sheet targeted toward professionals should be closer in content to the sheet meant for laypersons. Erin asked how the sheets are intended to be used and suggested that contact information for MLSA and Court Help should be included, with open space left available for local contact information. Alison agreed that a more direct route to services is needed. Chris Manos suggested that information for the Lawyer Referral Service, State Bar, Modest Means, MLSA, Court Help, and Kiosks all be included. Contact information for all resources will be provided to the Communications Committee.

Amy Sings In The Timber moved that the Commission approve the documents with the additions as suggested and adding Kate Kuykendall's full name and the area code to her contact phone number. Jennifer Brandon seconded the motion. Justice Baker confirmed that the Commissioners were in agreement with the proposed edits and the motion carried unanimously.

Action Item: Approve Outreach Plan for Gaps & Barriers Study

Melanie explained that the Outreach Plan included in the meeting packet is a bare bones plan and that the Committee is looking for input to determine if they're on the right track. She stated that the goal isn't to do broad outreach, but rather to conduct outreach to relevant audiences. Justice Baker suggested that the Economic Impact Study results should be incorporated to provide credibility. Michele Robinson suggested getting the report out to statewide low-income organizations and public housing associations. Justice Baker noted that this goes along with the broader educational effort to lay the groundwork for the 2017 legislative proposal, and she suggested that the Montana Lawyer publication and a presentation at a Montana Trial Lawyers Association conference would be good places to start. Amy reported that work is already being done on a series of articles for the Montana Lawyer, starting with an introduction to the study and then focusing on vulnerable groups in subsequent articles. Justice Baker asked Amy to work with Erin, Iris Marcus and the Communications Committee in developing these articles. Erin asked about a potential Missoula Independent series and Amy said she would follow up with the reporter. Alison Paul offered to follow up with Casey Stephenson, the Justice for Montanans Coordinator, so that the results of the Court Help user survey can be incorporated into the outreach effort. Justice Baker stated that everyone on the Commission should be able to speak to the Gaps & Barriers study results and that specific point persons do not need to be chosen today.

Melanie stated that the Committee's next step will be to flesh out the outreach plan based on the comments from today's meeting. Amy and Alison volunteered to help with that effort. Justice Baker asked all members to provide a list of potential organizations to contact and then Commissioners would be matched to the appropriate contacts.

Aimee Grmoljez moved that the outreach plan be approved in draft form and that the Committee is authorized to continue to develop the plan based on the input provided today. Alison Paul seconded the motion and it carried unanimously.

Law School Partnerships Committee Report

Jamie Iguchi distributed a summary of the Committee's study into the appropriateness of incubator programs and explained the difference between incubator programs and clinics or internships. Specifically, incubators are analogous to medical residencies and are designed for law school graduates rather than students. Incubator programs have the potential to generate income on a sliding fee scale while meeting the largely unmet needs of low to moderate income people. She reported that the Committee is working on a survey to distribute to the University of Montana Law School student body. Jamie explained that there are a wide variety of options on how to structure an incubator program that can be tailored to the particular needs of the community and law school graduates. Alison Paul offered to discuss the incubator program that MLSA proposed to a major funder within the past year. Chris Manos also offered to consult with the Committee as the State Bar has been looking into incubator programs as well. He suggested that the Committee should focus broadly on all new lawyers, not just UM graduates.

Potential Commission Initiatives for 2015

Three possible initiatives for 2015 were discussed. Justice Baker described a State and Tribal Court Interface initiative that might involve a written guide to the courts for tribal offices, and pro bono and right to counsel in tribal courts. She asked if the Communications and Outreach Committee could take on the tribal court initiative.

Next, Justice Baker described an initiative for the Development of Uniform Parenting Plan Guidelines. She explained that this initiative would not be pursued through legislation, but would provide guidance for the judiciary across the state with a goal of fostering greater uniformity. Justice Baker suggested that this initiative will likely require an ad hoc committee of judges and the State Bar.

Erin Farris-Olsen and Patty Fain discussed a third initiative to Improve Outreach to Attorneys Following Pro Bono Reporting. Erin explained that as part of required pro bono reporting, attorneys are asked if they're interested in additional pro bono opportunities, and that currently there is no follow-up being done with those who express an interest in more pro bono work. Patty stated specific follow up hasn't been done, but that pro bono participation has grown and

explained that she sees structural problems with this type of follow-up. Justice Baker asked if the Commission wanted to tackle this issue or if it's best left to the Justice Initiatives Committee. Both Erin and Judge Snowberger argued that the Commission should be involved and Judge Snowberger stated that outreach should be done for attorneys who indicate that they want to do more pro bono work. Chris Manos noted that this is an example of a coordination opportunity for the Commission and that the State Bar has been trying to schedule a meeting with the Court Administrator's Office to discuss.

Justice Baker moved that the Commission direct the Office of the Court Administrator to work with the State Bar and Montana Legal Services on the Pro Bono Reporting Outreach Initiative, and to report back to the Commission and the Montana Justice Foundation on their progress. Aimee Grmoljez seconded the motion and it carried without objection.

Regarding the Parenting Plan Guidelines initiative, Judge Krueger explained that Mars Scott has put forth a specific proposal that would establish very complex guidelines including counseling, mediation and a large cost component that would make the process even more difficult for pro se litigants. Judge Krueger argued that it's beyond the scope of the Commission to pursue parenting plan guidelines. Chris Manos stated that Mars Scott also presented this proposal to the State Bar and that there is no support from the Bar for his proposal. Alison Paul noted that MLSA staff have identified general parenting plan guidelines as a needed resource so that people have an idea of what a parenting plan should contain. She explained that the guidelines should be very simple and basic and suggested that the SRLC should look at this issue. Judge Snowberger said that Gallatin County used a model from Arizona when developing their guidelines and it was a very difficult process. Judge Snowberger stated that although she thinks they are needed, Parenting Plan guidelines would not be a priority for the SRLC due to the size of the project. The Committee will need more help to take on this initiative. Justice Baker agreed to defer the Parenting Plan Initiative.

Other Business

Justice Baker reported that the Order creating the Commission requires a biennial report and that work on the report should begin early in 2015.

Wrap-up and Public Comment

Justice Baker opened the floor for public comments. There were no public comments.

An early spring date will be targeted for the next meeting, with the specific date to be determined based on the progress of the committees.

Justice Baker adjourned the meeting at 2:08 p.m.

Tab 2