

Montana Supreme Court Access to Justice Commission
October 1, 2014
Montana Supreme Court, 215 N. Sanders, Helena
10:00 a.m. – 12:30 p.m.
Meeting Minutes

Commissioners Present: Matthew Dale, Rep. Chuck Hunter, Justice Beth Baker, Hon. Kurt Krueger, Hon. David M. Ortley, Hon. Michele L. Snowberger, Michele Robinson, Alison Paul, Randy Snyder, Andrew King-Ries, Jon Bennion, Aimee Grmoljez, Melanie Reynolds, and Andy Huff.

Commissioners Absent: Jennifer Brandon, Amy Blixt, and Winona Tanner.

Others Present: Beth McLaughlin, Patty Fain, Lisa Mecklenberg-Jackson, Erin Farris-Olsen, Betsy Brandborg, Abby St. Lawrence, Jamie Iguchi, Amy Sings In The Timber, Michelle Potts, Jim Taflan, and Kate Kuykendall.

Call to Order: 10:05 a.m.

Justice Baker asked for comments or corrections on the June meeting minutes. Melanie Reynolds asked that the minutes be changed to reflect the correct legislative biennium.

Jon Bennion moved to approve the minutes as corrected and Aimee Grmoljez seconded. The motion passed without objection.

Court Help Program Update

Beth McLaughlin delivered an update on the Court Help Program. She introduced Jim Taflan, who was hired to replace Erin Farris-Olsen as the Court Help Administrator. Due to delays in AmeriCorps hiring, the Great Falls Court Self Help Center will be closed until the AmeriCorps position is filled. In addition, she noted that the Justice Index will be changed to reflect corrections to Montana information, including translator services available. She reported that the District Court study on average case time will be approved for distribution soon. Of note, in Domestic Relations cases, pro se cases take half of the time of represented cases. Judge Krueger suggested that if both sides are pro se, they are limited on witnesses and a multitude of things because they are intimidated by the process, and as a result the outcomes may not be as good. Aimee Grmoljez asked if there is any data tracking of outcomes for pro se vs represented cases. Judge Krueger said that outcome tracking for courts is complicated and depends on the side one is on. Beth McLaughlin reported that overall, 56% of family law cases are pro se, and the percentage is even higher in some courts. Judge Krueger reiterated that there are few resources for pro se litigants, no expert witnesses, and limited scope trials; the case time itself doesn't reflect justice. Patty Fain commented that 100% of Judges were concerned about outcomes of pro se cases, not concerned about the time spent on the case. Judge Snowberger asked if contested cases vs. defaults or uncontested could be separated. Judge Krueger said that it will vary from jurisdiction to jurisdiction depending on the availability of mediation. Justice Baker

added that it will also vary because of assistance at Self Help Centers in some courts. Finally, Beth McLaughlin reported that none of the mediation bills came out of committee, and the committee moved forward on the default judgment bill.

Law School Partnerships Committee Report

Jamie Iguchi provided an update from the Law School Partnerships Committee. The Committee asks the Commission to recommend that the Pro Bono Coordinator and State Bar work together to create a process for a voluntary statement by applicants about pro bono service. The statement would be completely voluntary and would not be used in determining eligibility for admission. Non-identifying information could be used for data collection and applicants could agree to be contacted regarding pro bono opportunities and request for pro bono service information. Justice Baker commented that the proposed materials handed out by Jamie Iguchi contain comments from State Bar following the Committee's latest draft. Justice Baker stated that working out how the process will function is important. The Character and Fitness Commission has reviewed the proposal and has no objections. She noted that the State Bar does not want an on-line form due to security concerns. In addition, it will be up to the State Board of Bar Examiners to approve the form, as the Supreme Court does not approve applications. Erin Farris-Olsen explained the process of application for the bar. The proposed form would come in hard copy and would be only in the State Bar file, not part of the application consideration. Betsy Brandborg explained that the document retention policy is to keep these application documents forever. Melanie Reynolds asked if the data will be used, and Justice Baker noted that the State Bar will be asked to create a process to utilize the non-identifying data. Andrew King Ries asked if current attorneys will be asked if they are interested in pro bono opportunities. Patty Fain answered that yes, they will be asked a slightly different question. Alison Paul indicated that the names are not released to MLSA. Patty Fain said that the names are not released to anyone and nothing is done with the data at all. Justice Baker suggested that this is something that needs to be fixed. Justice Baker read the proposal for benefit of commission members on the phone.

Judge Krueger moved that the Commission accept the proposal from the Law School Partnerships Committee, and Matt Dale seconded.

Randy Snyder moved to amend the proposal to add the recommendation that the Bar Association address and allocate the costs associated with this activity. Justice Baker seconded the motion and commented that it is important for the State Bar to at least monitor any associated costs.

Judge Krueger asked where the costs would be allocated and suggested that amendment presents more problems than it addresses.. Patty Fain noted that soft cost allocations are fuzzy because these costs are shared by so many people and entities, and Amy Sings In The Timber agreed.

Justice Baker made a substitute motion to amend the proposal to “monitor and report” the costs, and Jon Bennion seconded. The motion on the amendment carried with two voting against the motion. The motion on the proposal as amended carried with one vote against.

Policy and Resources Committee Update

Amy Sings In The Timber provided an update on the Cy Pres funding amendment to Class Action Residual rules. She noted that the order signed by court was not identical to the language put forth by Commission: instead of residuals going to the Montana Justice Foundation, the language was changed to “access to justice organization.” She said that Judges will still need guidance as to what counts as an access to justice organization and MJF will continue to do that work. Next, she asked for a motion to approve Commission Support of Funding for the Court Help Program in the next legislative session.

Judge Snowberger moved that the Commission support the permanent funding for the Court Help Program, and Judge Krueger seconded the motion.

Jon Bennion asked for a summary of the request for funding for Court Help Program. Beth McLaughlin provided a summary of the budget proposal: 15% increase from last year, mostly adding full time support to Bozeman and Great Falls.

The motion to support permanent funding for the Court Help Program carried unanimously.

Amy Sings In The Timber asked the Commission to approve the Committee’s motion for Commission Support of MLSA Economic Impact Report, paid for by the Montana Justice Foundation.

Alison Paul summarized the Economic Impact Report, and suggested that report could be “produced in conjunction with the Commission”, and funded by MJF. Matt Dale suggested that Commission “sponsorship” would be stronger. Alison Paul noted that report will be provided to Commission prior to publication. Judge Snowberger said it seemed to be the same scenario as the Gaps & Barriers study: sponsored by Commission, but paid for by other organizations.

The motion as proposed by Committee for the report to be “sponsored” by the Access to Justice Commission carried unanimously.

Amy Sings In The Timber asked the Commission to consider the Committee’s final action item to approve proceeding with a 2015 Legislative Initiative asking for funding for access to justice/legal aid. She explained that the Committee’s sense is that there will never be a perfect time for this funding request, but it is best to start it now by looking at filing fees or some other type of surcharge, and formulating a budget to support the amount of the request. At this point, the Committee is looking for approval from Commission to move forward with the initiative, and then the Committee will come back with the full legislative proposal.

Beth McLaughlin voiced concern that this will cause confusion and reduce the chances of permanent funding for the Court Self Help program since it may be perceived as a competing proposal. She noted that Clerks of Court and Courts of Limited Jurisdiction will likely not support a fee increase. She said that fee increase requests must start much earlier than now, with lots of prep work and building of support. Judge Snowberger agreed that there is historic opposition to fee increases at the courts of limited jurisdiction. Amy Sings In The Timber commented on these concerns, noting that Committee has wrestled with these same concerns and is seeking out support for the fee increases. She said the Committee doesn't think it's a competing proposal because it is a fee increase, not a general funding request. Aimee Grmoljez asked how the proposals are not competitive, and Justice Baker responded that the cat & dog bill will come from a special revenue account, rather than a general funding request, and that the Wyoming experience was used as a model. Aimee Grmoljez stated that Wyoming did more prep work. Amy Sings In The Timber agreed that more prep work would be helpful, but we need funding for actual services as well, and that we must start asking for this missing piece. Alison Paul noted that Court Self Help funding does self help for everyone, whereas the cat and dog bill will provide actual legal services to poor people. Jon Bennion asked when this proposal would be forthcoming from the Committee, and Justice Baker added that the Commission would need to meet before the end of the year if this is approved. Beth McLaughlin noted the fee increase language must include authorization to spend the money, so the Court Administrator's office will need to be included in the proposal. Jon Bennion noted that it is odd to approve something that isn't quite ready, but indicated his readiness to work on this proposal and finish it off for a limited window of opportunity then the Commission can approve or not at the end of the year. Andy Huff offered his support to move forward now to get resources to address the gaps and barriers for legal access, and Judge Ortley agreed noting that there are mechanical issues, but that it needs to be done for the good of the people. Patty Fain suggested that perhaps some documents could be created to show that there are no competing interests, and why and how the effort will be coordinated.

The motion for the Committee to draft a proposal for a 2015 Legislative Initiative, subject to the Commission's further review before moving it forward, carried unanimously.

Self-Represented Litigants Committee Update

Judge Snowberger distributed the Committee's report and provided some highlights of surveys. Involuntary Commitments and Water Law showed the greatest need for information. Landlord-Tenant law was last because there are robust amounts of information for Landlord-Tenant issues. Judge Snowberger reported that the Committee is in the final stages of public comment for Dissolution with Children Self-represented Litigant Form. She requested comments from Commission members because the Committee is not getting a lot of comments overall. Alison Paul announced that MLSA got the money from LSC to automate the new forms. Judge Snowberger asked for Commissioners to send interested people to the committee to help with work. She also noted that the Committee will ask Commission to approve the definition of self-

represented litigants at next meeting. Judge Ortley noted that the printed forms will be a vast improvement over old forms, and wants to be sure that someone in Miles City will get a hard copy to all Judges for that meeting. Judge Snowberger agreed to arrange hard copies for all Judges at that meeting, and repeated her request for comments. Erin Farris-Olsen added she would send copies to anyone who wanted to review. Patty Fain asked if the Family Law Bar Section had taken any interest in commenting. Judge Snowberger said no, and hopes someone will pass them along. Patty Fain commented that many more comments will come when the forms are automated. Judge Snowberger agreed. Alison Paul noted that automation will start fresh and will include user-group testing.

Communications and Outreach Committee Update

Matt Dale provided a summary of Committee activities. He reported that the Economic Impact Report will be completed, and that website improvements to committee information and commission information are underway. He asked that material about need or solutions to access to justice issues, be provided to the Committee and they will communicate that information. He also noted that the Gaps and Barriers Study will be summarized with a one-page for professionals and a one-page for public consumption, and the Committee would appreciate comments on these documents. Alison Paul asked that MLSA staff review the summaries for accuracy. Justice Baker suggested that a link to webpage for larger study should be included. Melanie Reynolds asked if everyone could review and Matt Dale suggested that comments be sent to Kate Kuykendall. He also thanked Kate Kuykendall for her work on this process. Lisa Mecklenberg Jackson said minutes of Committees are on website, and Matt Dale discussed the Committee's work on an outreach plan.

Discussion of Terms and Open Seats

Justice Baker brought up open terms and open seats. She expressed appreciation for the many commissioners who have agreed to renew their terms. Justice Baker noted that the open seat for the Clerk of Court of Limited Jurisdiction has been filled, and that the Senate seat will be appointed after the election.

Alison Paul asked the Commission to agree to deadlines for review of the Economic Impact Report so that it can be published. Judge Snowberger suggested a vote by email to approve the report which would speed things up, and Matt Dale suggested a two week deadline. The group agreed to review within two weeks and to conduct an email vote.

Wrap-up: Next Meeting Date and Public Comment

Justice Baker asked for public comment. There was no public comment. The next meeting should be in November, and a meeting date will be set later. The meeting was adjourned at 12:35 p.m.