

DISTRICT COURT COUNCIL
Minutes of November 30, 2001
Old Livestock Building, 1310 E. Locky
Helena, MT

Members Present:

Chief Justice of the Montana Supreme Court: Hon. Karla M.Gray

District Court Judges: Hon. Diane Barz, Hon. Thomas McKittrick, Ed McLean, and Hon. John Warner.

Ex Officio Members: Mike Hutchin, MACo; Lori Maloney, Clerk of District Court (Butte); Tim Smith, Court Reporters Association; and Glen Welch, Juvenile Probation Officers Association.

Staff: Rick Lewis, Court Administrator and Lisa Smith, Operations Manager;

Guests:

Christopher L. Manos, Executive Director of the State Bar of Montana; Connie Erickson, Legislative Services Division; Matt Bogni, Office of Budget, Program and Planning; Sandy Oitzinger, Lobbyist; Dorothy Bradley, District Court Administrator (Bozeman).

Chief Justice Karla Gray called the meeting to order at 8:03 a.m. She introduced Rick Lewis and asked for a round table introduction of each member of the Council and also asked the guests to identify themselves for the Council.

Staffing Updates

Rick Lewis gave an overview of the new job positions which were created from Senate Bill 176. The Court Administrator's office needs to establish an administrative structure to assist in implementing and ultimately supporting SB 176. Five new positions have been created and will be funded out of the District Court Funding Bill. Additional positions may be created to assist these five positions at a later date.

A Human Resources Director will be developing a judicial personnel plan and working with the National Center for State Courts to assist in the development of a compensation and classification plan. The job was posted nationwide and over 75 applications were received on this position. Initial interviews will take place on December 4th and 5th.

The second position is the Court Services Director which will provide direction and leadership for the assumption. This position will be responsible for implementation of SB 176 and will be the contact for the courts. Approximately 60 applications were received for this position. This position was advertised nationwide. The initial interviews will be held on December 3, 2001. Qualifications of the top 11 candidates include public policy and/or management background. Hopefully, this position will be on board by the first week in January.

The District Court Program Manager will be the project manager and will be working closely with the Court Services Director. The fourth position is the Budget and Finance Manager which is the most complex and critical position. The applications for these two positions will be looked at next week for possible candidates and interview scheduling.

The final position to be filled is the Information Technology position. This position will be responsible for considering the needs of automation technology for the District Courts and will assist the Supreme Court in establishing a long range vision and plan for future information technology in the Montana Court system. This position is open until December 28, 2001.

Chief Justice Gray suggested that a council member serve on the selection committee for the Court Services Director. Rick Lewis agreed and invited Judge Barz to be on the selection committee. Judge Barz accepted.

Personnel Plan Update

Rick Lewis updated the council that he has been in contact with the National Center for State Courts (NCSC) and the contract has been signed for the personnel classification and pay plan study. The Position Description Questionnaires were sent to Gerald Kuban, the project director of the NCSC in Denver, Colorado. The Human Resources Director will be working closely with Gerald Kuban. The first week of this project, Gerald will be reviewing the questionnaires and will determine where they need to go for site visits here in Montana. It is anticipated this will start the beginning of next year. There will also be three other consultants working with Gerald on this project.

Department of Revenue Data Base

A request from Lisa Smith was sent out to all District Court Judges asking for their FY02 budgets to compare with the Department of Revenue's State-Assumed District Court Costs FY 2001 Data spreadsheet. Lisa explained the differences between the information from the judges and the D.O.R.'s information. All of the courts had to submit their expenses to the D.O.R., they submitted total District Court expenses and then Revenue determined how those expenses were going to be paid according to statute. The county will continue to pay certain costs, some will be reimbursed and some will be assumed by the state. They also identified the amounts the courts had from private grants and the board of crime control, etc. They categorized all the expenses to see who was going to be responsible for them. State Grants and Reimbursements plus State Assumed District Court Costs equal total State Costs.

The Guaranteed Share means a guaranteed percent of the budget. Statewide, the District Court Council needs to determine what the total District Court fixed costs are. Once this is determined, it will be divided by the total statewide district court budget. The result is the statewide fixed cost percent. That percent is then applied to our total appropriation, which is 19.2 million and the result is the "fixed" portion of our appropriation. Then each court will take their fixed costs and divide them by the total state wide district court fixed costs. That will give them their percent of the state total available for fixed costs. It was discussed whether indigent defense costs will be covered by the state. Lisa Smith stated they will be reimbursed this first year to the extent funds are available.

The new staff, primarily the Budget and Finance Manager, will be contacting all judges to come up with a plan and a process to make court budgets consistent for recording and comparison purposes. It was suggested by Chief Justice Gray that a "heads up" letter be sent out to all judges stating what the process is going to be for each court regarding the FY02 budget, the involvement of each judge and their financial officer, and advance notice of the actual field trip.

FY 02 Salary/FTE Increases

Lisa Smith requested data from each District Court Judge regarding increased FTE and salaries over those that were reported for FY01. The reported information was used to create a spreadsheet showing the increases. Not all judges reported their information as requested. Therefore, the information is incomplete and inconclusive.

Judge Barz mentioned the benefits that will be effective for the new employees July 1, 2002. The benefits cover sick leave and vacation. Comp time will not be carried over. It was suggested by Chief Gray to encourage the employees to use as much of their comp time as possible as the state will not assume the liability.

Review and Adoption of Court Reporter Policies

A draft of court reporter policies and procedures was distributed to review and discuss. Chief Justice Gray pointed out that people other than the judge or court may request transcripts. Suggested edits were discussed.

Basically, the actual costs of transcription fees are costs of the court reporter to produce transcriptions. At times a court

reporter will have someone proof the transcription and they will be charged so much per page. Scopus charges were also discussed as a possible fee. Judge McLean brought up the fact that if a court needs a transcript for its own use, an official transcript is not necessary and rough notes may be used. Therefore, a scopus is not necessary.

Judge Warner moved that actual costs of preparation, those documented out-of-pocket costs, incurred to create a transcript, these costs are paper, printing, and photocopy charges. Judge McKittrick seconded the motion. No discussion on the motion. Motion passed.

Chief Justice Gray moved the transcript definition and the transcription fees definition be adopted as amended to more exclusively reflect statutory language. Judge McKittrick seconded. No discussion on the motion. Motion passed.

According to statute, when the court reporter is not entitled to retain transcription fees, the transcription fees required must be paid to the Clerk of District Court, who shall forward the amount to the state treasurer for deposit in the state's general fund.

Judge Barz moved that the council adopt the statutory language, that in the statute it requires the responsibility of the Clerk of Court to forward the amount to the state treasurer for deposit in the state's general fund. Judge Warner seconded. The council discussed how the Clerk and Recorder should send out requests for the transcription costs to the attorneys and also how the Clerk of Court should receive the transcript from the court reporter and not deliver it to the attorney until the fees are paid.

Judge McLean moved to amend the motion to say the Clerk of Court will be given the transcripts and cannot deliver them to the attorney requesting them until such time as the fees have been paid. Judge McKittrick seconded the motion. No discussion on the amended motion. Amended motion passed.

Chief Justice Gray asked if Section 2.0- Definitions, Section 3.0- Procedure and subsections, Section 4.0- References and Authorities; and Section 5.0- Closing be accepted in the policies. Rick Lewis believed Section 5.0, regarding training, should not be part of the policy. Once the policy is adopted by the council, there will be training provided.

Judge Barz moved that Section 5.0 and its subsections are stricken from the policy. No discussion on the motion. Motion passed.

Chief Justice Gray moved for the council to authorize editorial changes on the court reporter equipment policies and procedures. Judge McKittrick seconded the motion. No discussion on the motion. Motion passed.

Tim Smith mentioned the rough estimate of the equipment cost and Real Time for a new court reporter would be \$8,000, which would include a steno machine, computer and software. These items would be necessary to preserve the record. The state will not pay for the judges laptop or any recording equipment used to produce transcripts. Everyone was in agreement that the court reporters steno machine, computer and software is necessary equipment to preserve the record.

There was discussion of the state assuming the maintenance contract to get a better rate. A loaner program is available with the maintenance contract. If a steno machine goes down, the company will fed ex another steno machine overnight. The cost of a new steno machine is in the neighborhood of \$4,000. Therefore, a maintenance contract is necessary.

Another area discussed was the state buying the equipment the court reporter already has. Most court reporters would opt to keep the equipment they have so they can use it for personal use outside the courtroom. If the equipment is state owned, it can not be used for personal use. Judge McLean suggested the council request the court reporters to set up a committee to make suggestions to the council for standard policies.

Chief Justice Gray suggested each District Court Judge get in contact with their court reporter now to discuss appropriate ways to handle court reporter operations and send the results in to the Court Administrator's office. This would give the council more information to consider before adopting the policies. Discussion of having Tim Smith set

up a plan that states how you get from point A to point B, according to statute. Lisa Smith will draft a letter from the council to the judges stating the council's objective and requesting the judge to discuss it with his or her court reporter and reply to the council of how they think the transition to state employment should flow. There will be a deadline for the response. Automation issues need to be addressed also.

The court reporters work schedule will need to be in compliance with FLSA. It was Rick Lewis' understanding that if the court reporters are pooled within a court system and can be assigned to various judges within that court, those reporters are eligible for overtime pursuant to the Fair Labor Standards Act. Those court reporters that are viewed as official reporters assigned to a specific judge are at will employees to that judge and it is his understanding that Fair Labor Standards Act does not allow overtime for those reporters. He suggested that the overtime issue be investigated.

If judges are required to travel to another court, the court reporter in that area should be available. Court reporters that are state employees will be required to fill out a time sheet. Mike Hutchin commented that court reporters may be hired as exempt employees at the maximum salary under statute, which is \$35,000.00. There was a request for a specific site which explains this situation.

It was suggested that if a court reporter can't serve, then other reporters in the district can be utilized. Chief Justice Grey asked if the state of Montana can employ people that don't have workers compensation insurance coverage. Rick Lewis said he would research the exempt employee issue. Lisa Smith suggested the possibility of a court reporter pool. These employees would be considered temporary state employees. They would be paid under personal services and the workers comp would be covered.

Information Technology

Judge McLean felt it is necessary to form a technology committee to address the issues of technology in the courts. He would keep the council informed of issues discussed and decisions reached by the committee. The council he proposed is as follows: Rose Bridenstein, assistant from the judge's office in Polson; Terry White from the Juvenile Probation office in Missoula; Honorable Jeffrey Sherlock from the District Court in Helena; Dana Corson from the Supreme Court Administrator's office, technology department; the new IT Director; John Bulger to represent both the staff attorney's and the court administrator's position; and Peg Allison from the Clerk of Court's office in Kalispell. Every person was contacted and was advised that the committee was not in existence yet and formation was subject to approval by the District Court Council.

Judge McLean moved that the technology committee be formed, that the individuals mentioned be contacted and asked them to be members of the committee, and that they start work immediately. Judge Warner seconded the Motion. There was discussion of unified technology in all jurisdictions so that all courts reported statistics in the same manner. Minutes from the technology committee meetings will be distributed to the District Court Council. Rick Lewis mentioned a letter Chief Justice Karla Gray received from the head of the association of IT Administrators. The association identified many issues they have concerns with. For example, who maintains the PCs, how the PC's hardware is replaced, terms of replacement schedules, who pays for the software licenses, maintenance, network servers, cables, switches, training, trouble shooting, and internet access. The technology committee will need to take these and other issues into account and determine how to address them in accordance to SB-176. It is the intent of the court that everyone will be using Microsoft Word as the unified word processing program. Motion passed.

Review of Work plan/Time lines & Instructions to Staff

The technology committee will be underway and information should be available in the January meeting. It is anticipated that by the January meeting the court reporter policies should be ready for serious discussion on two or three of the issues.

A standardized contract for all the counties will be considered for ordering supplies.

The guaranteed share process will need to await the field trips by the new staff so accurate numbers may be established. The message to the district courts is that the requests must be responded to in a timely manner.

Identify the issues that will need to be taken to the Legislature.

The Court Services Director, the District Court Program Manager, and the Budget and Finance Manager should be ready to go out in the field by the second week in January.

Independent Contractors should have a standardized contract to work for the courts.

Suggestion for a standardized form for county employees where the Supreme Court will designate whether the employee is salaried, exempt, hourly, or non-exempt.

Meeting Dates

The dates for the next District Court Council meetings are:

January 25, 2002; February 15, 2002; March 15, 2002; and April 19, 2002. All meetings will begin at 8:00 a.m. and Lisa Smith will try to keep the meetings in the Old Livestock Building.

Other Business

Judge Warner questioned if there was going to be other committees. Rick Lewis does not see any need for committees other than the technology committee.

Chief Justice Gray stated the quicker the draft policies can be out, input can be filtrated through and noted as to which ones haven't been included, and send them back out so the council can be one step further along.

Chief Justice Gray extended her wishes to all for a wonderful holiday and to travel safely.

Meeting adjourned at 1:30 p.m.