

DISTRICT COURT COUNCIL
Minutes of September 21, 2001
Room 152, State Capitol
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: Lisa Smith, Acting Court Administrator; and Mary Bryson, Temporary District Court Council Liaison.

Guests:

Gordon Morris, MACO; Dallas Reese, Department of Revenue; Sandy Oitzinger, Lobbyist; Ceres Parker, Court Reporter; Amy Carlson, Office of Budget and Program Planning; Dave Brown, Legislative Fiscal Division.

Chief Justice Karla Gray called the meeting to order at 8:05 a.m. She asked for a round table introduction of each member of the Council and also asked the guests to identify themselves for the Council.

Minutes of the August 24, 2001 were reviewed and Chief Justice Karla Gray asked if there were any corrections to those minutes. Judge Diane Barz moved to adopt the minutes with no corrections, Judge McKittrick seconded the motion. Motion passed.

Overview of Policy Formats

The Montana Department of Justice and Department of Revenue Policies and Procedures were reviewed to suggest a possible format for the Court Reporter=s policies and procedures. The form from the Department of Revenue provided an outline to get ideas to set up policies. Lisa Smith reported that she mailed a questionnaire to the Clerks of District Court for them to fill out information regarding their position description. Request was made by Chief Justice Karla Gray and Judge Barz to mail copies of the questionnaire to all District Court Judges.

Overview of Policies Associated with Court Reporting

Senate Bill 176 Summary of Court Reporter Sections. Sections 5, 14, 15, 16, and 17 were reviewed Various policies will be established by the DCC for the Court Reporters such as work schedules, transcript fees and equipment. Judges may appoint their Court Reporter or the Court Reporters may choose to be independent contractors. There was discussion and concerns what equipment and transcript fees were going to be obtained by the state and if the courts would have to purchase stenographic equipment for the Court Reporters or if the Court Reporters would furnish any of their equipment. Other discussion covered the salaries of the Court Reporters on overtime or comp time issues. Policies should be adopted in the early stages on how the Court Reporters salaries should be determined. There was discussion of a provision in the policy for Court Reporters to make requests for equipment. Chief Justice Gray stated we do not want to be suggestive in any policies and that parameters should be set so potential employees don=t have expectations about changes. A temporary Court Reporter should be hired under a contract instead of being appointed by a judge.

Court Reporter Work Schedule Issues

Mary Bryson reviewed the work schedule issues. These issues are noted to give the District Court Council an outline

to help provide information for the policies that will need to be implemented for the Court Reporters. There was discussion of Court Reporters as exempt employees and what policies should be applied and shared equipment for preserving the record. The District Court's copy machines will be assumed by the state, therefore, Court Reporters could be charged for transcript copies as other departments are charged for the copies they make within the state. It was suggested that a policy should be provided that the state shall purchase equipment from the court reporter or for the court reporter. Judge Warner suggested a policy for a laptop and necessary software be purchased for the Court Reporter to preserve the record. The financial impact for purchasing laptops for all 40 judges= court reporters would be too much at the beginning. Tim Smith thought that the court reporters would most likely keep the equipment they currently have.

Discussion of Draft Court Reporting Policies/Review of Format Adoption of Court Reporting Policies/ Policy Format

Real time for Court Reporters was discussed. Special fees will be addressed at a later time, i.e. Attorney transcript fees from Court Reporters. A Actual transcript fees@ will be implemented in a policy where the actual cost will be defined. The Court could adopt the policy for alternate work schedules as defined in the Montana Department of Justice Policies & Procedures. Suggestion was made to adopt policies from different department formats to cover Court Reporters specifically to recognize the different situations that exist out in the court. As state employees the parameters should be set under the statute as a 40 hour per week limit. Should overtime or comp time be allowed due to high volume cases? Court Reporters should be exempt employees under Federal Laws. Also, look into what the State Laws are for exempt employees. Due to the fact the different sizes of districts court reporters work in, there are areas where they travel more, have more cases and therefore spend more hours than the court reporters in other areas.

Mike Hutchin suggested that if the court reporters are exempt employees, their salary can be set whether part time or full time and they are not subject to comp time. They will be given state benefits that state employees receive such as vacation and sick leave.

Should court reporters be allowed to have other part time court reporting jobs, such as taking depositions, outside the court? Would it be considered a conflict of interest? How would it fit within the parameters of their day to day work for the court and would they be able to use state owned equipment for their personal gain? Would the Court Reporter be obligated to travel with their judge if the case were being tried at another court? These are questions that staff were asked to review to give the council food for thought to help develop the policies for the Court Reporters.

District Court Cost Information Submitted to DOR

The Department of Revenue is collecting financial reports from all counties. Dallas Reese from the Department of Revenue reviewed the HB 124 Entitlement Share Payment FY2001 data. To date four counties had not reported. The District Court Funding and Structure Committee, with the information presented to them, calculated the state would assume around 12 million dollars in costs for District Court functions including all administrative staff and court reporters. Information Revenue has received is in line with that estimate. The total cost of the court, including the judges salaries is around 25 million dollars. Every county was contacted by the DOR regarding the Clerk of the Court fees to verify the portion of the fees which were retained at the county level.

Blaine County's expenses were questioned because Choteau is very similar in case number and population to Blaine County, and yet Blaine's expenses were more than double that of Choteau. Mary Bryson explained that with the full report of both counties, the differences were primarily due to the professional services area; juvenile probation officers and court reporters. While compiling the reports from the Clerk and Recorder's office, several district's reports were compared to see if they were reporting just their county's share of the court reporters or juvenile probation officer's expense that was shared between several counties. This was not done with all of the counties so there may be errors in

the remaining counties they didn't check.

The expense information that was reported to the Court Administrator's office for the District Court Reimbursement Program was compared to the expense information that was reported on the County sheets that came back from the Clerk and Recorder's office. In most cases Revenue found it to be fairly similar. There were some differences. Most ran less than 10% in difference. One county out of 44 counties received a Gold star for no errors on their report.

Discussion of Fixed and Variable Costs

Determination of Fixed Cost Categories

Generally speaking, personal services and operating expenses are likely to be fixed costs while purchased and contracted services are likely to be variable costs. Allocated expenses, such as equipment, insurance, computer services, and financial services are all likely to be fixed costs. The capital expenses, such as rent, building maintenance, remodeling will most likely be fixed costs. There are areas where fixed and variable costs in certain districts will be different than others. These would be figured out into percentages between the counties. Questions and discussion on which expenses, such as jury fees, witness fees, meals, public defender fees, etc., would be paid by the state and which would be paid by the county/clerk of court.

In the Clerk of Court's budget, they will be providing counsel for indigent defense people, but there are civil cases such as a welfare case, psychiatric case or a juvenile case and it is paid by the county. When it is a criminal case, it is paid by a different budget. Court appointed attorneys under a contract are considered a fixed cost. Examples of a variable rate court appointed attorney would be if the court needed an appointed attorney three times a year and contracted for those services three times. Public defenders will be covered under the District Court Reimbursement Program and will be reimbursed as the budget allows and after the first year the state will reimburse the court for these costs.

Juvenile Probation services should be considered with psychiatric evaluations and professional services and should be listed under variable expenses.

Brief discussion of possibly setting up a subcommittee of the counsel to work with automation at a later time.

A purchasing contract agreement with a court reporter would be a variable cost.

SUMMARY

Personal services and operating costs - fixed cost; jury/witness fees - variable, public defender services - to be determined; psych. services, transfer of prisoners, physician's lab - variable; professional services will be determined by looking at specific items to see if they are fixed or variable; allocated and capital expenses - fixed.

Discussion - Review of Work Plan/Next set of Policies

On schedule for the court reporter's transcript fees and equipment near the end of October. Started and are identifying the fixed and variable costs and the guaranteed share process which is scheduled to run out through the end of the year.

Discussion on whether or not the counsel should continue covering the current subjects at the next meeting and try to make as much progress as possible. Or start with staff assignments at the next meeting and push on to some of the

other items on the work plan scheduled for November thru December. Comments to finish the topics today so we can move on and not come back so the future meetings can be free to thoroughly discuss the new topics.

Other Business

The Supreme Court hired a new Court Administrator. Rick Lewis from Kingman, Arizona accepted the position September 20, 2001. He has experience in trial court administration and Full Court. October 9, 2001 is his starting date. Staffing for the District Court Assumption is going to continue to be a problem until Rick Lewis gets set in his position as Court Administrator. Until staff is hired, it was discussed that the October 19th meeting be canceled to make better use of Lisa Smith's time. The judges can collect information from the court reporters and get it to the Court Administrator's office.

Judge McLean moved and Judge Warner seconded a motion to cancel the October 19th meeting. Motion passed.

Judge Warner requested the minutes to be completed for a meeting he will be attending on October 8, 2001. They will be ready in draft form on October 8, 2001.

The project manager and the district court liaison will be hired by the Court Administrator and not by the Supreme Court. The urgency of staffing for the District Court Assumption project will be communicated to Rick Lewis. Experience in governmental accounting will be necessary for the project manager.

Chief Justice Gray hopes to have Rick Lewis attend the District Court Judges' Conference in Chico during the business meeting to try to meet a few of the judges.

Current Increases in Court Staff/Salary Budget Implications

Regarding the National Center for State Courts, the employee questionnaire will be filled out by court employees. The judges will be asked to give reports on increases of full time employees and/or increases in salaries.

Instructions to Staff

The biggest concern for the November meeting is the information technology subject. Because it is so big, it was suggested to informally start the process by using a sub group of the council to identify the issues with the IT staff before the November meeting. Concerns of what courts report and how the information should be reported were expressed by Judge McLean. It was suggested by Chief Gray that the IT subject be brought up at the MJA meeting at the conference on October 16, 2001 to get feed back from the majority of the judges. It would also be beneficial if Rick Lewis was at the MJA meeting during the new business so he could listen to the concerns of the judges on the IT issues.

Lisa Smith will try to get the Livestock building for the November meeting. Judge McKittrick will send a letter to Chief Gray in regards to the council's terms. Chief Gray felt that notwithstanding the staffing issues, she is very optimistic that the District Court Assumption is off to a good start.

Judge Warner motioned to adjourn the meeting and Judge McKittrick seconded the motion. Motion passed.

Next meeting: November 30, 2001. The meeting will begin at 8:00 a.m.

Meeting adjourned at 2:00 p.m.