

State of Montana



DISTRICT COURT COUNCIL

**Minutes of August 16, 2002
Old Livestock Building
1310 East Lockey
Helena, MT 59620**

DCC Voting Members Present:

Chief Justice Karla M. Gray, Montana Supreme Court
The Honorable Diane Barz, District Court Judge, 13th Judicial District
The Honorable Ed McLean, District Court Judge, 4th Judicial District
The Honorable John Warner, District Court Judge, 12th Judicial District

DCC Non-voting Members Present:

Mike Hutchin, Lake County Commissioner, Polson
Lori Maloney, Clerk of the District Court, Butte
Vickie Pratt, Court Reporter, Helena
Glen Welch, Juvenile Probation Officers Association, Missoula

Staff:

Rick Lewis, Supreme Court Administrator
Beverley Boyd, Court Services Director
Dan Chelini, Information Technology Director
Beth McLaughlin, Human Resources Director
Shelly Hinson, Administrative Assistant

Guests:

Harold Blattie, Montana Association of Counties (MACo), Helena
Connie Erickson, Legislative Services Division, Helena
Gordon Morris, Montana Association of Counties (MACo), Helena
Lynn Zanto, Legislative Fiscal Division, Helena

I. Welcome

The District Court Council met on Friday, August 16, 2002, at 8:00 a.m. at the Old Livestock Building, 1310 East Lockey, Helena, MT 59620. Chairperson Chief Justice Karla M. Gray called the meeting to order. A quorum being present, the meeting duly convened and business was transacted as follows:

Chief Justice Karla M. Gray recapped the budget cuts made as a result of the Special Session.

II. Approve May 10, 2002 and July 19, 2002 DCC Minutes

II.(a) Motion to Adopt: Judge Diane Barz, District Court Council Member, moved to adopt the July 19, 2002 District Court Council minutes as presented. Judge Ed McLean seconded. Judge McLean called the question. No further discussion. Motion passed unanimously.

The May 10, 2002 minutes were held until later in the meeting.

III. Involuntary Commitments

Judge John Warner, didn't consider asking for a change in Section 1, 53-21-132(2), MCA, from "County of residence" to "Department of Public Health and Human Services" because this type of change is not mandated by SB176. Chief Justice Karla Gray concurred.

III.(a) Motion to Adopt: Judge Ed McLean, District Court Council Member, moved to adopt Section 1, 53-21-132, MCA. Chief Justice Karla Gray asked for clarification if he meant document 4 of Involuntary Commitments. Judge Ed McLean stated that is what he intended. Judge Diane Barz seconded. Judge McLean called the question. No further discussion. Motion passed unanimously.

Chief Justice Karla Gray gave a recap of SB176 cleanup legislation that was approved at the July 19th District Court Council meeting.

Revert to II. Approve May 10, 2002 Minutes

II.(b) Motion to Adopt: Judge Diane Barz, District Court Council Member, moved to adopt the May 10, 2002 District Court Council minutes as presented. Judge Ed McLean seconded. Judge McLean called the question. No further discussion. Motion passed unanimously.

IV. Youth Court

This topic was held until later in the meeting for Youth Court Act copies for the Council.

V. Water Commissioners

The Council discussed Water Commissioner's options for workers' compensation.

V.(a) Motion to Adopt: Judge Ed McLean, District Court Council Member, moved to adopt Proposal 2, as submitted together with the statutory amendments to Section 85-5-101, MCA, which modifies the law to require individual workers' compensation coverage at the expense of the water users. Judge Diane Barz seconded. There was some discussion regarding immunity and providing workers' compensation. Judge John Warner moved to amend the Section 85-5-101, MCA, that gives immunity and add, "Those persons who hired the Water Commissioners would have the immunity provided by the Workers' Compensation Act." The amended motion died for lack of a second. Judge McLean called the question. No further discussion. Motion carried.

Revert to IV. Youth Court

The Council discussed the Section 62 mandate of SB176 that requires the District Court Council to present to the Legislature a proposal identifying the costs of involuntary commitment proceedings and Youth Court proceedings that are recommended to be designated as district court expenses in 3-5-901, MCA.

The following costs were determined by the District Court Council to be State Judicial costs:

Court Activity: Appointed counsel for youth, assessments conducted by staff pursuant to court contract (intake hearing and screening), miscellaneous court expenses (witness, court reporters, and travel fees), and court appointed Guardian ad Litem expenses.

Chief Justice Karla Gray instructed the use of statutory references to draft the legislative language. Example, "Guardian ad Litem appointed, pursuant to 41-5-1411, MCA".

Transportation: Post-adjudicatory transportation to out-of-state and in-state non-secure or non-correctional placements. This will not preclude the use of JDIP monies. [reference 41-5-1513(3)(4), MCA]

Other Costs: Chief Justice Karla Gray suggested amending 41-5-111, MCA, to clarify court costs and expenses. Chief Justice Karla Gray, Beth McLaughlin and Glen Welch will go through the Youth Court Act to determine any added state costs in the "Other Costs" category.

IV.(a) Motion: Judge John Warner, District Court Counsel Member, moved to direct staff to draft proposed legislation to meet the Section 62

mandate on Youth Court proceedings specifically as discussed and to mesh with the involuntary proceedings portion so a final draft can be taken to the Legislature. Judge Ed McLean seconded. Chief Justice Karla Gray informed the Council the drafting would need to be ready by September 15th. Judge Ed McLean amended Judge Warner's motion to give Beth McLaughlin and her committee the authority to move ahead, draft the final legislation and to be ready to submit it, but that prior to submitting it for drafting, a phone call be made to the individual voting members of the Council to review the final e-mail draft of the document. Chief Justice Karla Gray stated she didn't want the Council to vote without a public meeting. Judge Ed McLean withdrew his amended motion and substituted it with a motion to give the committee the authority to draft the final legislation and to submit it for drafting, however, at the same time, to reserve the right for individual members of the Council to bring the matter up for reconsideration in the event that they see any problems with the legislation. Judge John Warner seconded. No further discussion. Judge Ed McLean called the question. Motion carried.

VI. Legislation: Standing Masters and Water Masters

The District Court Council reviewed the draft copy of the employment bill for an Act entitled: AN ACT AMENDING STATUTES RELATING TO THE EMPLOYMENT STATUS OF WATER MASTERS AND SPECIAL MASTERS; REPEALING SECTION 3-7-302, MCA; AMENDING SECTION 3-5-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

VI.(a) Motion to Approve: Judge Ed McLean moved to approve the proposed repeal of Section 3-7-302, MCA. Judge John Warner seconded. No further discussion. Judge Ed McLean called the question. Motion carried.

Chief Justice Gray proposed repeal of Section 3-7-301(3), MCA, as it is unnecessary in light of the classification and compensation plan. There was discussion between Chief Justice Karla Gray and Judge Ed McLean on issues and concerns of Judge C. Bruce Loble. Judge Ed McLean will discuss this section with Judge C. Bruce Loble prior to the next District Court Council meeting.

Section 3-5-123, MCA, regarding standing masters, was discussed among the Council members on the proposed amendment. Chief Justice Karla Gray opposed the proposed amendment. She said resource allocation is a subject that will be discussed at a future DCC meeting.

VI.(b) Motion to Adopt: Judge Ed McLean moved to adopt, under Section 3-5-123, MCA, the first sentence of the proposed legislation which reads, " **A standing master position created prior to July 1, 2002**

cannot be eliminated except by the appointing district court judge or a successor judge.” Motion died for a lack of a second.

Judge Ed McLean moved to adopt the provision that starts with the second paragraph of the proposed legislation that reads, **“The governing body of the county or counties served by the district court may provide funding to the state district court program to allow for the appointment of one or more standing masters within the particular county. A standing master position funded by county must be authorized and funded on a two-year basis.”** Judge John Warner seconded the motion. Chief Justice Karla Gray requested time to work with Beth McLaughlin to make wording changes of the language “within the particular counties”.

Judge Ed McLean amended his motion to read, **“The governing body of the county or counties served by the district court may provide funding to the state district court program to allow for the appointment of one or more standing masters within the particular county or counties. A standing master position funded by county must be authorized and funded on a two-year basis.”** Judge John Warner seconded. Judge Ed McLean called the question. No further discussion. Motion carried.

VI.(c) Motion to Adopt: Judge John Warner moved to adopt the deletion of all the language of Section 3-5-123, MCA, which is lined out. Judge Diane Barz seconded. Judge Ed McLean opposed the motion because he said other parts of the statutory language would be necessary as a result of his previous motion. Judge John Warner called the question. No further discussion. Three members voted to adopt the deletion of all the language of Section 3-5-123, MCA, which is lined out and Judge Ed McLean voted against. Motion passed by majority vote.

VII. Other Business

Judge Ed McLean discussed amending the language of Guardian ad Litem and CASA in SB176. Chief Justice Karla Gray said it would be a substantive amendment and therefore opposed the matter.

The next District Court Council meeting is scheduled for September 13, 2002. Chief Justice Karla Gray said the items to be covered at the September meeting are finishing legislative items and to start thinking about ideas and approaches to resource allocation.

Gordon Morris, Director of the Montana Association of Counties, presented a resolution to establish a Montana State Public Defender System with full responsibility for its administration. It is recommended by MACo that

legislation be drafted that would be similar to the current structure of the Appellate Defender System in so far as it would be allocated to the Department of Administration for all administrative purposes rather than the Court Administrator's Office.

Gordon Morris stated his understanding was the District Court Reimbursement Program for FY02 would be completed by the end of August of 2002.

VIII. Adjournment

Meeting adjourned at 12:30 PM by order of the Chair, Chief Justice Karla Gray.