

# State of Montana



## DISTRICT COURT COUNCIL

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**Minutes of June 11, 2002  
Conference Room  
State Law Library  
215 North Sanders Street  
Helena, MT 59620**

**DCC Voting Members Present:**

Chief Justice Karla M. Gray, Montana Supreme Court  
The Honorable Diane Barz, District Court Judge, 13<sup>th</sup> Judicial District (via conference call)  
The Honorable Thomas McKittrick, District Court Judge, 8<sup>th</sup> Judicial District  
The Honorable Ed McLean, District Court Judge, 4<sup>th</sup> Judicial District  
The Honorable John Warner, District Court Judge, 12<sup>th</sup> Judicial District

**DCC Non-voting Members Present:**

Mike Hutchin, Lake County Commissioner, Polson  
Lori Maloney, Clerk of the District Court, Butte

**Staff:**

Rick Lewis, Supreme Court Administrator  
Beverley Boyd, Court Services Director  
Beth McLaughlin, Human Resource Director  
Lisa Smith, Administrative Services Director  
Jane Hayden, Administrative Assistant, Court Services Division

**Guests:**

Matt Bugni, Office of Budget and Program Planning, Governor's Office, Helena  
Nancy Everson, Lewis and Clark County Finance, Helena  
Gordon Morris, Montana Association of Counties (MACo), Helena  
Nancy Sweeney, Clerk of the District Court, Helena

## **I. Welcome**

The District Court Council met in emergency session on Tuesday, June 11, 2002, at 2:00 p.m. at 215 North Sanders Street, Helena, Montana. 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:

## **II. Policies**

### **Indigent Defense/Public Defender Policy**

There was a lengthy discussion involving Chief Justice Gray, Judge Barz, Judge McLean, Judge Warner, Lori Maloney and Lisa Smith in an attempt to understand the impact of Sections 4.0, 4.1, and 6.0 under this Policy. Chief Justice Gray suggested modifying Section 4.1 to read: "Lawyers providing indigent defense via contract must track their time and expenses by case number. Reimbursement amounts will be based on the percentage of time spent on criminal cases. Lawyers providing indigent defense through a county-established public defender offices must submit their costs for indigent defense related matters broken down into percentages for criminal cases, youth court cases, youth in need of care actions, and involuntary commitment actions."

Judge Ed McLean proposed that the DCC approve these modifications subject to a phone call from each member and not wait until the next meeting.

**II. (a) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to adopt this policy with its proposed amendments as presented. Judge John Warner seconded. Judge McLean called the question. No further discussion. Motion passed unanimously.

Judge Diane Barz asked whether the payments made to public defender offices would cover the salaries of paralegals, private investigators and secretaries along with the attorneys. Chief Justice Gray and Lisa Smith responded that they would all be paid the criminal and YINC percentage of their salaries along with office costs, but the form would be simplified.

Judge Barz question prompted a lengthy discussion concerning the need for what Judge Ed McLean, Judge John Warner, Mike Hutchin and Gordon Morris termed a safety net—paying only a percentage of the costs submitted until all the counties had received at least 65 percent of their reimbursable monies. Chief Justice Gray and Lisa Smith responded that the District Court Reimbursement Program (DCRP) is gone and that the state assumption cannot be funded or run in the same manner as the DCRP. Chief Justice Gray and Lisa Smith reminded the Council that the Department of Revenue sees the money as if in one pool, and not a separate pot. Gordon Morris asked to speak and stated that MACo went into SB176 believing that every county would be given an equal percentage of the monies available driven by caseload and not by an artificial 2001 statistical

base. Judge Warner asked Lisa Smith if it was possible to set up a percentage payout on the state system. Ms. Smith responded that it could be done, but there might not be enough money to cover even the 80 percent.

Judge Diane Barz asked whether YINC costs would be paid after the indigent defense costs with what monies were leftover or simultaneously. Lisa Smith said all categories of costs would be paid as they come in and would be tracked under separate line items on the state budget system.

Judge Warner thought it would work to pay 80 percent of the costs until 80 percent of the budget was used up and then stop any further payments until June 30, 2003, and pay the counties as much of the 20 percent owed them from the remaining monies in the budget at that time. Instead of doing it that way, Judge McLean suggested that all eligible program costs be paid at 80 percent until all the money is gone. These suggestions were followed by a discussion of what percentage to use when setting this policy and Lisa Smith questioned whether there should be a maximum budget set for each county or just use up the budget on a statewide basis. There was a consensus that the percentage used would be 65 percent and that the maximum cost set would be on a statewide basis and not a county-by-county one.

Judge Barz asked Judge Warner for clarification concerning his remarks on indigent defense reimbursement. Judge Warner explained that the payments would be made for the “four different categories in four different ways with four different pots, with different limitations on each pot, each with the same percentage of reimbursement, statewide.”

**II. (b) Motion to Amend:** Judge John Warner, District Court Council Member, moved that the costs for the four indigent defense categories of adult criminal, juvenile criminal, youth in need of care, and mental health evaluation cases be dispersed at 65 percent or at a percent as amended in the internal procedures as approved by the District Court Council of the submitted monthly costs by the state assumption program to each county from the variable expenses that are available on a statewide basis and that there be a policy set by the District Court Council as to how the Office of the Court Administrator will pay those costs. Judge McLean seconded. Chief Justice Gray asked two questions: 1) (to Judge Warner) When the minutes are completed, can the staff meet and restate your motion and then take a vote on it? Judge Warner responded in the affirmative. 2) (to Lisa Smith) Can this process be set up in the next 2 ½ weeks before the state assumption takes place? Lisa Smith responded in the affirmative. Judge Ed McLean called the question. No further discussion. Motion passed 4 to 1. Judge Thomas McKittrick voted against the motion.

## **II. Policies (continued)**

**II. (c) Motion to Adopt:** Judge Ed McLean, District Court Council Member, moved to adopt the policies with the proposed amendments as presented. Judge John Warner seconded. Judge McLean called the question. No further discussion. Motion passed 4 to 1. Judge Thomas McKittrick voted against the motion.

## **Child Abuse and Neglect**

**II. (d) Motion to Amend:** Judge Ed McLean, District Court Council Member, moved to amend Section 2.5 to read, "Expenses associated with the appointment of a guardian ad litem (GAL) *and* court appointed special advocate (CASA) for the youth are state assumed costs." Judge Diane Barz seconded. Judge John Warner called the question. Chief Justice Karla Gray explained that the language in the original policy is statutorily mandated and should not be changed. Judge John Warner, District Court Council Member, then again made the same motion. Judge McLean seconded. No further discussion. Judge McLean called the question. Motion passed 4 to 1. Chief Justice Gray voted against the motion.

**II. (e) Motion to Amend and Adopt:** Judge Ed McLean, District Court Council Member, moved to amend within this policy that Child Abuse and Neglect cases will be dispersed at 65 percent or at a percent as amended in the internal procedures as approved by the District Court Council of the submitted monthly costs by the state assumption program to each county from the variable expenses that are available on a statewide basis and that there be a policy set by the District Court Council as to how the Office of the Court Administrator will pay those costs. Also, that the Child Abuse and Neglect Policy be adopted in its entirety as amended. Judge John Warner seconded. Judge Ed McLean called the question. Motion passed 3 to 2. Judge Diane Barz and Judge Thomas McKittrick voted against the motion.

## **Psychiatric Examinations**

**II. (f) Motion to Amend and Adopt:** Judge Ed McLean, District Court Council Member, motioned to adopt the Psychiatric Examinations Policy as written with the understanding that it includes psychiatric examinations ordered by the court at the request of either the State or the public defenders. Judge Thomas McKittrick seconded. Judge McKittrick called the question. Motion passed 3 to 2. Chief Justice Karla Gray and Judge Diane Barz voted against the motion.

## **II. Policies (continued)**

## **Psychiatric Examinations**

**II. (g) Motion to Adopt:** Judge John Warner, District Court Council Member, moved to adopt the Psychiatric Examinations Policy in its entirety as amended. Judge McLean seconded. Motion passed 4 to 1. Chief Justice Karla Gray voted against the motion.

## **III. Water Commissioners Practice**

Beth McLaughlin explained that the Court Administrator's Office recently become aware of workers' compensation problems with water commissioners. Water Commissioners are appointed by the District Court judges to enforce water decrees. Water commissioners, who are currently provided with workers' compensation, receive the coverage through counties. Some commissioners do not receive any coverage. Water commissioners are not employees of the District Court and will be not be employees under state assumption. However, the staff and Chief Justice Gray agree that the Court must provide workers' compensation coverage. Beth distributed a memo outlining the plan for providing coverage to water commissioners. Judge Ed McLean stated that the water commissioners must have this coverage because they are often threatened and in danger. Chief Justice Gray stated that this issue of coverage for water commissioners must be brought to the Legislature in their next session for clarification.

**III. (a) Motion to Adopt:** Judge John Warner, District Court Council Member, moved to adopt this policy as presented. Judge Ed McLean seconded and called the question. No further discussion. Motion passed unanimously.

## **IV. Other Business**

Chief Justice Gray stated that the Law and Justice Interim Committee of the Legislature has put in a bill draft request for "cleanup" of Senate Bill 176, concerning inconsistencies and procedural questions only (nothing substantive). The DCC will begin working on this cleanup of SB176 beginning with the July meeting. By the Supreme Court's request, the Committee is submitting bill draft requests to retain the five-dollar information technology surcharge on court filings, and to fix the conflicts and inconsistencies concerning the independent contractor court reporters by adding them to the list of exclusions in the Procurement Act.

Chief Justice Gray and Rick Lewis received a letter from the Yellowstone County's Board of County Commissioners threatening to oppose the five-dollar information technology surcharge if the Courts of Limited Jurisdiction do not get the funding they expect. Chief Justice Gray stated that she would send a response, not from the District Court Council, but from her personally to the

Yellowstone County Commissioners and to the Montana Magistrates Association, who sent a similar message, stating that they will be left out of any future budgetary considerations if they oppose the surcharge. Judge McLean advised that it is the duty of the court to set the requirements for court reporting, as far as what automation system will be used by courts of record and courts of limited jurisdiction, and if they don't want any assistance with that funding that is fine, but they still will be required to have those programs. Mike Hutchin requested a copy of both of the letters, and stated that the Commissioners should not be doing this sort of thing. Judge Barz stated that she knew nothing about the letter that the Yellowstone County Commissioners had sent. Chief Justice Gray revealed that Larry Herman, Justice of the Peace in Yellowstone County, drafted the Commissioners' letter for them and forewarned her that it was being sent.

Chief Justice Gray explained that the Supreme Court has made slight changes to the Computer Use Policy and the Electronic Mail Policy presented in a previous meeting by Dan Chelini, Information Technology Director. The major change was the removal of the form that required judicial branch employees to sign a consent form that waives their rights to privacy, but that there can be no expectation that privacy for e-mail communication cannot be guaranteed.

The Supreme Court approved the Classification and Compensation Plan with a minute change and will be sent to the DCC as soon as Beth McLaughlin revises it. Furthermore, there was significant employee input and the National Center for State Courts (NCSC) made accommodations for the changes. Even though the Plan does not go into effect until July 1, 2003, it will be used for new hires in the interim.

Judge McLean inquired if the DCC would be meeting with legislators in the fall concerning the legislative package. Chief Justice Gray responded that it would be best to wait until after the November elections take place when the party leaderships have been established and after the DCC has thoroughly prepared its legislative requests. Judge McLean stated that it would be good to invite legislative leaders from both parties before and after the November elections. Chief Justice Gray concurred.

Chief Justice Karla Gray stated to Mike Hutchin that the Judicial Branch took voluntary reductions in its budget, but wanted to make it clear that none of the reductions were taken out of Senate Bill 176.

### **Schedule**

Next meeting scheduled for July 19, 2002, in the Old Livestock Building.

### **Adjournment**

Meeting adjourned at 4:06 p.m.