

The Supreme Court of Montana
Office of the Court Administrator

Beth McLaughlin
Court Administrator



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September 4, 2024

Senate President Jason Ellsworth
P.O. Box 200500
Helena, MT 59620

Dear President Ellsworth:

Several Judicial Branch employees were issued subpoenas to appear at a meeting on September 5, 2024. I have conferred with Chief Justice Mike McGrath and am notifying you the two employees will not be in attendance. The attached memo, as well as the Chief Justice's memo of August 5th, outlines the reason for the decision. As an appointed official, I will attend as requested.

Ms. Jeanine Blaner, a staff attorney, had a subpoena delivered on Friday, August 30th at 4:30 p.m. and Ms. Shelly Smith, a secretary, received one on September 3rd for a meeting scheduled on September 5th. (Ms. Blaner is out-of-state this week and could not have appeared on such short notice regardless.) Neither of these employees are elected officials or appointed staff with policy-making authority and should not be subject to the questioning of a working group. The information the group is seeking is readily available through other channels or officials.

The Supreme Court is accepting public comment and scheduled a public meeting to discuss the proposed Judicial Standards Commission rules. Public comment and the public meeting on September 10th are open to everyone. Remote attendance is available as well.

Significantly, the Judicial Branch will appear in front of the Legislative Audit Committee on September 11th to discuss the findings contained in the performance audit of the Judicial Standards Commission.


There are ample opportunities for in-depth discussion of the JSC rules with elected officials, who are actually charged with making the policy-level decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth McLaughlin".

Beth McLaughlin
Supreme Court Administrator

MEMORANDUM

To: Beth McLaughlin
From: Mike McGrath 
Date: September 4, 2024
Re: Legislative Subpoena Power

Several staff members of the Judicial Branch have received subpoenas issued by the “Senate Select Committee on Judicial Oversight and Reform,” citing section 5-5-107(1), MCA.

Your question is whether this group has subpoena power.

Section 5-5-107(1), MCA provides:

A subpoena requiring the attendance of any witness before either house of the legislature, a committee of either house, a committee established under legislative rules, or a statutory committee or an interim committee may be issued by the president of the senate, the speaker of the house, or the presiding officer of any committee before whom the attendance of the witness is desired.

This group does not appear to satisfy the requirements of the statute.

The official Legislative Branch website categorizes it as “Other Legislative Work Groups.” Its membership extends beyond legislative members, including citizens who, while listed as non-voting members, have authority to question witnesses, fully participate in discussion, and offer suggestions for group resolutions.

Serving Judicial Branch staff members serves no plausible legislative purpose for recommending proposed legislation.

The participating membership consists of only State Senators from one political party. While some State Representatives are listed as members, they are designated as non-voting members.

As such, it does not carry the full Legislative authority to issue subpoenas pursuant to the provisions of § 5-5-107(1), MCA.