

THE SUPREME COURT OF MONTANA

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April 30, 2021

Senator Greg Hertz
Representative Sue Vinton
Montana State Capitol
Helena, MT 59620

Dear Senator Hertz and Representative Vinton:

Thank you for your letter asking additional questions following our committee appearance on April 19, 2021.

Before I respond to your specific questions, I will take the opportunity to make some general comments in response to your report released on April 28.

As elected officials, justices, district court judges, and judges in courts of limited jurisdiction are not included within the provisions that apply to lobbyists under Montana law. The term "Elected State Official" in § 5-7-102, MCA, and the Rules adopted by the Commissioner of Political Practices make it abundantly clear that justices and judges are excluded from lobbyist regulations.

Admin. R. M. 44.12.106(1) defines elected public officials to include Supreme Court justices, district court judges, the governor, lieutenant governor, attorney general, and others. Admin. R. M. 44.12.105(1)(d) specifically exempts those public officials from lobbyist regulations "while acting in their official capacity . . . to promote or oppose the introduction or enactment of legislation . . ."

It has long been the accepted practice that state and local elected officials and respective staff members talk to legislators to support or oppose legislation while acting in their official capacities.

As to the "lobbying" activities of the court administrator, her direct contact with legislators is almost entirely related to budget administration, and therefore is exempt by Admin. R. M. 44.12.105(c). Further, state agencies and the offices of public officials, which in our case includes the court administrator, are also exempt. Admin. R. M. 44.12.105(1).

The references in your report to the court administrator's coordination or facilitation of district court judge contacts with legislators is not lobbying. Section 5-7-102(12)(b)(ii), MCA, makes it clear individuals who do not have personal contact with legislators are not lobbyists. Coordinating Branch staff and elected judges to testify when necessary is part of the court administrator's job.

The Committee has raised questions about the propriety of the Judicial Branch's use of the state email system. We use email constantly to conduct confidential discussions regarding cases or other motions pending before the Court.

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Attached is a copy of the Judicial Branch policies regarding electronic mail. Note that misuse of email includes use for “‘non-profit’ or public, professional or service organization activities that aren’t related to an employee’s job duties.” Emails that address legislative participation are clearly related to our duties and responsibilities regarding public policy. The Branch has an obligation to inform the Legislature as to how proposed legislation affects Branch operations. There has been no misuse of state resources.

Our policy does not contain an email retention provision. Our IT department regularly encourages us to delete emails because of lack of storage capacity.

To address the questions in your letter, the position of court administrator is autonomous, much like that of a department director in the Executive Branch. Many of the position’s duties are set out in statute or rule, and decisions related to day-to-day activities are made by the court administrator. As I have stated before, the court administrator does serve at the pleasure of the Supreme Court and communicates with the chief justice and other justices as needed.

The chief justice participates as a member of the MJA Legislative Committee, and, as such, is included on emails involving legislative matters. On rare occasions I have testified on specific bills. I participated in a forum conducted early in the session regarding the Judicial Branch; otherwise, I have not testified this session on any matter other than the Judicial Branch budget. Incidentally, in future sessions I anticipate MJA will give more authority to the Legislative Committee and discontinue polling the full membership for authorization on legislative positions.

Justices do not take positions, nor do we meet or confer, on matters pending before the Legislature. Justices make a sincere effort to refrain from involvement in or discussion of matters pending before the Legislature.

Finally, as with most people I sometimes wonder why I receive as many emails as I do, Most likely I am copied on some of the emails you are referring to as a matter of courtesy.

Respectfully,



Mike McGrath
Chief Justice

Attachment

c: President Mark Blasdel
Speaker Wylie Galt
Rep. Kim Abbott
Rep. Tom McGillvray
Rep. Amy Regier
Sen. Diane Sands
Beth McLaughlin
Supreme Court Justices
District Court Judges
Members of the Courts of Limited Jurisdiction

Montana Judicial Branch

Administrative Policies

Subject: Electronic Mail	Policy No.: 1530
Chapter:	Number of Pages: 2
Section: Computer Usage	Revision Date: June 6, 2017
Effective Date: July 1, 2002	

1.0 Policy

This policy applies to all Judicial Branch employees, contractors, and local government employees using a state owned computer.

The state-provided electronic mail (e-mail) system is to be used for: the conduct of state and local government business and delivery of government services; transmitting and sharing of information among governmental, research, and educational organizations; supporting open research and education in and between national and international research and instructional institutions; communicating and exchanging professional information; encouraging debate of issues in a specific field of expertise; applying for or administering grants or contracts; announcing requests for proposals and bids; announcing new services for use in research or instruction; and conducting other appropriate state business.

Judicial Branch employees are required to use the state provided e-mail system for state business purposes unless they do not have direct connection to SummitNet, the state's internal network. Qualifying use of an external e-mail system must be approved by the Judicial Branch IT Security Officer and SITSD.

All messages created, sent or retrieved, over the state's systems are the property of the State of Montana. Privacy of e-mail is not guaranteed; employees should not have the expectation of Privacy for any messages. It is the expectation that any message sent is subject to public scrutiny. Employees should never send any messages with Personally Identifying Information (PII) or Protected Health Information (PHI) over the e-mail system. The use of encryption should be considered when sending these types of messages, or use of an alternative method to send documents such as the state's file transfer service, or MT Drive.

Stationery may be used when it enhances the business content of e-mail. Stationery, moving graphics and/or audio objects should not be used unnecessarily since they consume more resources, such as disk space and network bandwidth, and tend to detract from the message content.

SITSD reserves the right to block e-mail from specified domains, from specific e-mail addresses, or e-mail that contains specific information in the

subject line. These filters may be put into place because of the effect on the states e-mail system or computer network.

E-mail on personal mobile devices is permissible if the employee's job function necessitates. Connectivity to e-mail services must be done in accordance to the states Mobile Device Policy, and follow all procedures within that policy.

Any e-mail received that is unsolicited, or suspicious in nature should not be opened, and should be reported to the security officer for investigation.

2.0 Misuse of E-Mail

The following items represent, but do not constitute either an exhaustive or exclusive listing of, misuse of state e-mail resources:

- 2.1 Circulating chain letters.
- 2.2 Using the state e-mail system for: 1) "for-profit" activities, 2) "non-profit" or public, professional or service organization activities that aren't related to an employee's job duties, or 3) extensive use for private, recreational, or personal activities.
- 2.3 Sending messages with Personal Identifiable Information (PII) or Protected Health Information (PHI) in an unsecured manner.
- 2.4 Statewide distributions of e-mail. The Supreme Court Information Technology Division should be contacted for correct procedures for large e-mail distributions.
- 2.5 Using personal e-mail accounts.

3.0 Guidelines and Recommendations

Employees should check e-mail with a frequency appropriate to the job duties. If employees are unable to check e-mail for an extended period of time, they should use the "auto reply" feature in outlook, or make arrangements to have the mail received by someone else and reviewed in an appropriate time frame.

The chance of receiving a virus or malware increases with the use of e-mail. Many forms of malware come embedded in attachments. Suspicious e-mail messages should be forwarded to the security office for investigation before they are opened.

Employees should strive to keep e-mail message and attachment size as small as possible. All attachments over one megabyte (1MB) should be compressed (zipped) prior to sending.

In drafting e-mail and sending e-mail messages, employees are reminded that they should not include anything they are not prepared for the public to read. E-mail communications should resemble typical professional and respectful business correspondence.

4.0 Compliance

Failure to comply with any or all the portions of this policy is grounds for disciplinary action up to and including termination.

5.0 References and Authorities

2-17-533; 2-17.534, MCA; MOM.

6.0 Closing

6.1 Level of training required: (A) All court employees. (1) Read only.

6.2 Questions concerning this policy should be directed to the Information Technology Director or IT Security Officer, Office of the Court Administrator, Montana Supreme Court.