



Law and Justice Interim Committee

59th Montana Legislature

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JESSE LASLOVICH
GARY PERRY
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COMMITTEE STAFF

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

MINUTES

PRO SE SUBCOMMITTEE

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

March 22, 2006

Sheraton Inn, Sundance Room
Billings, Montana

COMMITTEE MEMBERS PRESENT

SEN. BRENT CROMLEY
SEN. GARY PERRY

REP. RON STOKER
REP. JEANNE WINDHAM

STAFF PRESENT

SHERI HEFFELFINGER, Staff Research Analyst
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

Visitors List and Agenda

Visitors' list, [Attachment 1](#)
Agenda, [Attachment 2](#)

COMMITTEE ACTION

- The Committee approved adding to subsection (5) in Section 4, "program staff may not provide legal representation through this program" in draft LCpro1.
- The Committee approved striking in subsection (1) of Section 4, "the Supreme Court shall establish and provide staff within available appropriations for" and inserting "(1) there is a self-help law program. The program is administered by the Supreme Court. The Supreme Court may designate a commission to perform its duties under sections 1 through 5" in draft LCpro1.
- The Committee approved striking the language on page 2, Section 4, subsection (3)

- "provide statewide coordination to" and leaving the colon. in draft LCpro1.
- The Committee approved striking "coordination to develop" in section 2, subsection (2), and saying "provide state level self-help legal resources, etc." in draft LCpro1.
- The Committee approved for a new subsection (3)(b) "to develop, update, and provide curriculum and materials for classes or clinics for self-represented litigants" and subsequently renumber the subsections after that, in draft LCpro1.
- The Committee approved taking out the language "including the website and local computers at work stations" so subsection (3)(c) of Section 4 reads "establish and maintain multi-media materials that provide self-represented litigants with access", etc., of LCpro1.
- The Committee approved striking subsection (1) of Section 5 on page 3 of draft LCpro1.
- The Committee approved presenting the draft bill LCpro1 to the full committee in May.

CALL TO ORDER AND ROLL CALL

SEN. PERRY called the meeting to order at 4:00 p.m. Secretary noted the roll.

SUBCOMMITTEE'S BILL DRAFT PCpro1

SHERI HEFFELFINGER, Research Analyst, LSD, presented LCpro1 and her drafter comments on LCpro1 (**EXHIBIT 1**). She said that she drafted the bill based on the Subcommittee's directions on February 17. The Subcommittee went through the draft legislation and the drafter comments.

Ms. Heffelfinger discussed the Pro Se Costs (**EXHIBIT 2**). PAT GERVAIS, Fiscal Analyst, LFD talked about the preliminary estimates of the fiscal 2007 costs associated with the new self-help law program provided for in the draft bill.

MS. HEFFELFINGER discussed the Components Chart (**EXHIBIT 3**) about the self-help law program, which had been prepared by a stakeholder working group and presented to the Subcommittee on February 17.

DISCUSSION

THE HONORABLE RUSSELL FAGG, District Judge, 13th Judicial District, Billings, said that rather than additional funding for positions that might be in Helena, it would be better to simply fund some private entity to carry out the outline of the program that was put together by the Montana Self-Help Law Project. He said not to fund additional people under the Court Administrator's Office but to fund for as much as was suggested by the handout provided by Ms. Veazey and the working group.

SEN. PERRY asked Mr. Fagg about the draft bill language on page 2, which said the Supreme Court shall assign and provide staff for a Self-Help Law Program. He asked if Judge Fagg wanted to change that so the Supreme Court had less or no input. JUDGE FAGG said that

rather than say "Supreme Court", he would like to see the Access to Justice Committee through State Bar continue what it is doing now. He said that the State Bar's Access to Justice Committee should be the ones who would be funded and that they would allocate the money and report to this committee on how the money was spent and what progress has been made. MS. LANE said that the legislature cannot appropriate money to non-governmental entities. The Subcommittee could look at a grant program that would be administered through the Supreme Court for certain purposes which would be the self-help programs.

REP. WINDHAM said that her understanding is that the bill would not create FTEs. She said we can create the program and fund it. She said that Chief Justice Gray had made it clear that the Supreme Court did not want direct responsibility, but would delegate to a commission, such as the Supreme Court's Commission on Self-represented litigants. REP. WINDHAM said that she wants accountability.

SEN. CROMLEY asked if LCpro1 was the original bill draft presented by the stakeholder work group. MS. HEFFELFINGER said yes and that the Subcommittee has reached its first decision point. Judge Fagg has a different idea than what the stakeholder work group presented and what is reflected in the bill draft LCpro1. She said that Judge Fagg is suggesting a grant program. Choosing between these two ideas is the Subcommittee's first decision point.

TARA VEAZEY, Montana Legal Services Association (MLSA), Self-Help Law Project, said that what the working group came up was that the funds and the program would be administered by the Supreme Court and the Supreme Court would decide the program's structure. MS. NANCY Sweeney, Lewis and Clark County Clerk of District Court, said just for clarification that the positions that Ms. Veazey outlined were basically what it would take to make a delivery service. The working group decided that it has to be a state agency. MS. VEAZEY said that we all recognized that what is missing is statewide coordination.

REP. WINDHAM asked if the fiscal note that would actually reflect individual positions that the Subcommittee is trying to provide for in LCpro1. MS. HEFFELFINGER said that the bill draft would not say "seven FTEs", the assumptions in the fiscal note could reflect that the appropriation amount provided in the bill is sufficient for seven FTEs. If the Subcommittee wants a grant program instead, there would not be any state level FTE, money would simply pass through as a grant to someone else to do the coordination.

TAPE 1B

REP. STOKER said that he doesn't have a problem with the bill as drafted, which provides for state level positions to coordinate volunteers, etc., but he did have a problem with subsection (4) of Section 1, stating "access regardless of personal financial means". He said that he was afraid that that kind of statement opens Pandora's Box far too wide. One of the things he liked

was the idea of gatekeepers. But, he said he also recognized there were problems with setting a 125% poverty level arbitrarily. He asked how the program could differentiate between the wealthy and the poor without some type of gatekeeper. He said subsection (4) would mean the program couldn't discriminate on income levels. He said that he liked two things about the grant concept: one, gatekeepers; and two, private enterprise. He asked why the working group felt it necessary for the money to go to a government entity. Is that a matter of economics? Does a grant meet that need? MS. VEAZEY said that the working group was a group that included Montana Legal Services, Nancy Sweeney for Clerks of District Court, the State Law Library, and the Chief Justice. She said that what the group came up with was a consensus it took time to build.

SEN. CROMLEY said that one of the items that the original bill proposed by the working group had was that the Supreme Court could designate a commission to direct the program.

REP. STOKER asked Sen. Cromley if the concept was that the commission would be the gatekeeper for the grant money and that only one employee would be needed. SEN. CROMLEY said that only one FTE to administer a grant would be more like the status quo. MS. VEAZEY said that some of the ideas that led the working group to identify the Court as the best to administer this project was more than just a matter of money. The project needs the stamp of approval by the Supreme Court.

SEN. PERRY said he thought that at the February 17 meeting the Subcommittee was what was reflected in this bill draft.

JUDGE FAGG said that he liked the self-help law program and doesn't want to see more FTEs in the Court Administrator's Office. He said that he wanted to see the people who are doing it now continue to do it and the money will be very well utilized. When asked who would administer the funding, Judge Fagg said the Access to Justice Committee in the Bar, or the Commission o Self Represented Litigants.

SEN. PERRY said that when the interim committee developed the Public Defender Program, there were programs already in place all over the state, but they were disjointed. He said the interim committee dismantled those and put them back together in a streamlined fashion. Theoretically, in the long term, that was a way to provide better services in a more economical and efficient way. He said that he thought that was what the Committee was trying to do here. He said it does rattle the cage a little bit for Judge Fagg to offer a different direction now.

REP. STOKER said that Judge Fagg's suggestion has been talked about behind the scenes. He asked whether Montana Legal Services was prepared to think in terms of seven FTEs in Missoula and seven FTEs in Billings that will reach out and provide this service statewide for half-a-million dollars.

REP. STOKER said that when Ms. Heffelfinger was going through the bill, she identified that the theoretical seven FTEs were not specifically enumerated. He said he was thinking more in terms of a lawyer and a couple of paralegals in Helena. Rep. Stoker asked Ms. Heffelfinger to explain why there were seven FTEs on the chart. MS. HEFFELFINGER said that she was adding up what was in the working group's proposal. She said that she left the line blank on the appropriation in the bill draft and that the appropriation would determine how many FTE positions could be hired. She said her comment about seven FTEs was to inform the Subcommittee about how many FTEs the working group had proposed. Ms. Heffelfinger said that with regard to subsection (4) of Section 2, the point of the statement was to actually not guarantee a level of services.

REP. STOKER said that he realized that when he read it, but that he was concerned that if the legislature later struck three or four words, the whole meaning will change 180 degrees. He said that Administrative Rules would also come into play. He said he would favor making sure that Pandora's Box wouldn't be opened allowing legal help other than pro se assistance.

SEN. PERRY asked if that might constitute a motion.

REP. STOKER moved to strike subsection (4) of Section 2, "help make Montana court system accessible regardless of a person's financial means without guaranteeing a certain level of legal assistance or legal representation".

REP. WINDHAM said that she understands Rep. Stoker's concern. She said the Subcommittee was specifically concerned first with low income Montanans, then only with pro se services which would provide forms and therefore tools and technology to low income Montanans. She said that subsection (4) was vague enough, that it could be construed as requiring direct representation. She suggested rewording it somehow.

MS. LANE said the Subcommittee might want to consider a new subsection (5) in Section 4 to the effect that the program may not provide direct legal assistance or direct representation to self-represented litigants. Placing the language in Section 4 would be putting the language in substantive form not in purpose statement.

REP. STOKER moved to strike subsection (4) and say that the program may not provide direct legal assistance or direct legal representation to self-represented litigants.

MS. VEAZEY said to make sure that the additional language is clear that direct representation can be provided by pro bono attorneys at Montana Legal Services.

The Subcommittee discussed the motion.

TAPE 2A

SEN. STOKER modified his motion to add to subsection (5) in Section 4, "program staff may not provide legal representation through this program". **REP. WINDHAM** seconded. **MOTION CARRIED UNANIMOUSLY.**

SEN. CROMLEY moved that in subsection (1) of Section 4, strike "the Supreme Court shall establish and provide staff within available appropriations for" and insert "(1) there is a self-help law program. The program is administered by the Supreme Court. The Supreme Court may designate a commission to perform its duties under sections 1 through 5". **REP. STOKER** seconded. **MOTION CARRIED UNANIMOUSLY.**

REP. WINDHAM moved that on page 2, Section 4, subsection (3) strike "provide statewide coordination to" and leave the colon. **MOTION CARRIED UNANIMOUSLY.**

SEN. CROMLEY moved to strike "coordination to develop" in section 2, subsection (2), and say "provide state level self-help legal resources, etc." **REP. WINDHAM** seconded. **MOTION CARRIED UNANIMOUSLY.**

MS. VEAZEY said that the ideas of developing curriculum, disseminating educational materials into communities, and pro se clinics were not articulated in section 4. **REP. WINDHAM** said that ultimately we cannot separate pro bono programs from self-help, but she thought that it would be clarified when they get to the bill section dealing with the general legal resources. **MS. VEAZEY** said that if you take out the components of providing community education and pro se clinics, the rest is meaningless.

MS. HEFFELFINGER said a new subsection could be added to subsection (3) that would add specific language about clinics and classes.

REP. STOKER said he did not envision program staff providing the clinics and training. He said the Bar Association, Montana Legal Services, or any other volunteer groups would have a curriculum and they could hold classes. **REP. WINDHAM** said that that was how she understood it. She said she thought the statewide coordinators would develop, update and provide information and training material. She said this does not constitute providing legal advice. **MS. VEAZEY** said the language in subsection (3) of Section 4 doesn't get to the substance of what our training materials would be about.

REP. STOKER said he was concerned the language would be interpreted to mean that state staff would do the clinics as opposed to providing the information, forms and things that any volunteer organization would utilize in setting up the class. **SEN. CROMLEY** said that as he reads subsection (3)(b), it is limited to instructing court officers, judicial branch employees, other

officials, and the clerk of court how to assist somebody asking for help to act pro se.

REP. WINDHAM moved for a new subsection (c), in Section 4, subsection (3) "to develop, update, and provide curriculum and materials for classes or clinics for self-represented litigants".

CHRIS MANOS, Montana State Bar, said that he agrees with that language but he wonders if it should be subsection (a) instead of subsection (b) because it would say; one, have educational materials for self-represented litigants; two, have legal forms and instructions that they can use; and three, train staff and judges on how to give that information to clients and members of the public who need help to proceed pro se; and lastly, you would have forms available in different medias.

REP. WINDHAM withdrew her previous motion. REP. WINDHAM moved for new subsection (3)(b) "to develop, update, and provide curriculum and materials for classes or clinics for self-represented litigants" and subsequently renumber the subsections after that. MOTION CARRIED UNANIMOUSLY.

REP. WINDHAM asked if subsection (3)(c), which will now be (d), require a website and computer or work stations. She said that she is concerned and that it could be a neither, or it could cost too much money. She said that she envisions 56 counties with 56 work stations. She asked if it needs to be clearer than that unless it is a pilot project. MS. HEFFELFINGER said that in order for the Subcommittee to do a fiscal note, the Subcommittee needs to be clear so that they can assume how many computers or work stations would be needed..

TAPE 2B

NANCY SWEENEY, Clerk of District Court, Lewis and Clark County, said the availability of computers differs in counties. She said that they have a public access terminal to search their records in Lewis and Clark County. However they are bringing in a court-based self-help center. They are going to have separate access point because there are county objections to the public accessing the internet through their portholes.

MS. VEAZEY said that it wasn't in the contemplation of anyone in the working group that in one year there would 56 self-help work stations throughout the state. She said that the working group was talking about phasing in the work stations or starting some pilot work stations.

MR. MANOS suggested establishing multi-media materials through the website, local computer or work station that provide self-represented litigants access. REP. WINDHAM asked if the Subcommittee should strike the language in the bill "including the website and local computer at work stations" because then it wouldn't imply that there is going to be 56 work stations within a

year.

REP. STOKER supported that idea.

SEN. CROMLEY moved to take out "including the website and local computers at work stations" so subsection (3)(c) of Section 4 reads "establish and maintain multi-media materials that provide self-represented litigants with access", etc. REP. WINDHAM seconded. MOTION CARRIED UNANIMOUSLY.

DISCUSSION ON SECTION 5

MS. HEFFELFINGER asked if language about the Supreme Court is to be carried over from section 4: the Supreme Court "or its designated commission". SEN. PERRY said that it appears to him that the Supreme Court shall establish procedures for the delivery of state law library and court-based program services and that the Supreme Court may designate a commission. REP. STOKER expressed concern about the language in subsection (1) of Section 5. REP. WINDHAM said that she didn't like the language either because it doesn't mean anything. MS. HEFFELFINGER said that subsection (1) can come out.

REP. WINDHAM moved to strike subsection (1) of Section 5 on page three. MOTION CARRIED UNANIMOUSLY.

REP. WINDHAM moved to present the draft bill to the full committee in May. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

SEN. PERRY adjourned at 6:32 p.m.

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