



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Law and Justice Interim Committee

59th Montana Legislature

SENATE MEMBERS

DANIEL MCGEE--Vice Chair
BRENT CROMLEY
JESSE LASLOVICH
GARY PERRY
JIM SHOCKLEY
CAROL WILLIAMS

HOUSE MEMBERS

JOHN PARKER--Chair
GEORGE EVERETT
DIANE RICE
RON STOKER
BILL WILSON
JEANNE WINDHAM

COMMITTEE STAFF

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

MINUTES

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.**

January 19, 2006

Capitol Building, Room 102
Helena, Montana

COMMITTEE MEMBERS PRESENT

REP. JOHN PARKER, Chair
SEN. DANIEL MCGEE, Vice Chair

SEN. BRENT CROMLEY
SEN. GARY PERRY
SEN. JIM SHOCKLEY
SEN. CAROL WILLIAMS

REP. DIANE RICE
REP. RON STOKER

REP. JEANNE WINDHAM

COMMITTEE MEMBERS EXCUSED

SEN. JESSE LASLOVICH
REP. GEORGE EVERETT
REP. BILL WILSON

STAFF PRESENT

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

Visitors

Visitors' list ([ATTACHMENT 1](#))

COMMITTEE ACTION

- Minutes of September 21 and 22, and November 17, 2005, were approved with corrections.

CALL TO ORDER AND ROLL CALL

REP. PARKER called the meeting to order at 8:45 a.m. Secretary took roll visually (**ATTACHMENT 2**). Sen. Laslovich, Rep. Everett, and Rep. Wilson were excused.

SEN. SHOCKLEY moved to adopt September 21 and 22, 2005 minutes. Motion carried unanimously.

SEN. SHOCKLEY moved to adopt the November 17, 2005. Sen. Williams noted that the minutes stated that she was a member of the Children, Families, Health and Human Services Interim Committee. Sen. Williams said that she is not a member of CFHHS but only on loan from the LJIC. The minutes were approved with the correction.

STATE LAW LIBRARY - Tammy Hindermann

Ms. Hindermann, Reference Librarian, talked about what is available to self-represented litigants at the Law Library, what projects are currently being worked on, forms that are available and the process of developing forms.

Resources available for *pro se* are legal dictionaries, legal encyclopedias, books about legal topics with the *pro se* in mind, form books written for attorneys, and forms from the Montana State Bar. The problem with some of the resources is that most of the material is protected by copyright laws.

Forms can be found on the Montana State Law Library website www.lawlibrary.mt.gov/. Ms. Hindermann noted that the website is not easily navigable if you don't have a background in law.

Discussed "The Dissolution Packet" (**EXHIBIT 1**), a prototype of a new website www.courts.mt.gov/library/, which contains information on finding a lawyer, finding a CLE class, what services are available at the Law Library, and other information.

Discussed the Motion Packet (**EXHIBIT 2**), approved by the Commission. Online at www.courts.mt.gov/library/topics/civ_forms.asp

TAPE 1B

QUESTIONS

SEN. McGEE asked Ms. Hindermann why the state could not create forms that are not copyrighted, why district courts cannot have a commonality of forms, and how many clients the

Law Library deals with who are from the prisons. MS. HINDERMANN said that the Supreme Court's Commission on Self-Represented Litigants is discussing how to adapt forms and address the copyright issue. Regarding the commonality of forms, MS. HINDERMANN said that there are statewide formatting rules called the Uniform District Court Rules that apply to all district courts across Montana. Those rules are subject to amendment by local courts. There are local rules that apply in particular to districts. One issue, in trying to come up with statewide forms, is how to take into account the local rules. Are there going to be separate forms for each of the 56 judicial districts, or are we going to ignore the local rules and have a general form. But a pro se litigant would always have to check the local rules to make sure the judge will accept it. Each of the judges are independent and they may like things in a different format than others. MS. HINDERMANN said that the Law Library does not provide direct assistance to incarcerated individuals. The Law Library does provide limited services through the prison librarian.

SEN. WILLIAMS asked Ms. Hindermann if there is feedback from people using the website and where is that feedback found. MS. HINDERMANN said that public feedback can be provided through the "Ask a Librarian" link at the www.court.mt.gov/library/asklib.asp website.

WHAT LEVEL OF ASSISTANCE JUDGES CAN AND CANNOT PROVIDE TO PRO SE LITIGANTS - The Honorable Michele Snowberger, City Judge

The Honorable Michele Snowberger, Belgrade City Judge, gave a presentation on the unique role that a judge has in assisting self-represented litigants. She said that Judge Fagg sent his apologies for not being able to be at the meeting, but he is currently in a jury trial. Ms. Snowberger said that the court is where citizens come to have their disputes resolved fairly and impartially. Judges take this principle of impartiality very seriously. Historically, impartiality is meant that the self-represented litigant is held to the same standard as an attorney and the judge will not provide any assistance to the parties. However, a better definition of true impartiality would be where both parties are informed of their rights, their procedural options and the benefits, detriments, and exercising them. She said that all court users are entitled to due process and that judges can be engaged in that process in making sure that people understand what is actually going on in court without losing their neutrality. It is the judge's responsibility to make sure that people understand what actually is happening to them in court, what is going on with their case, and what the status of that case is.

Ms. Snowberger said that, as a member of the Commission for Self-Represented Litigants, she thinks that there are some very practical and short term steps that the Commission can take to assist judges in making the system work better to the pro se litigants. The Commission could develop formal curriculum for judges and provide training for judges regarding the pro se litigants in the use of plain language and better use of forms. The Commission is training court clerks on the difference between legal information and legal advice. She said that this could be the responsibility of judges to make sure that the court clerks are adequately trained in providing adequate assistance to the pro se litigant. She said that she would also like to see some curriculum development for attorneys to conduct clinics for

pro se litigants in their community on getting legal information on issues such as domestic relations or landlord.

Ms. Snowberger said that she would like to see a full time staff employee on the Commission to coordinate the efforts of the Commission, further discussion on a full time employee, possibly an attorney, who could do form development with the Commission or with the Supreme Court, have a full time employee who would coordinate all pro se litigant efforts in the state, have court-based staffed self-help centers supervised by attorneys to facilitate timely and cost-effective assistance to self-represented litigants, have local resources available to pro se litigants not only at the State Law Library but available to people living in other communities, have technical assistance for software or hardware development, and have access to computers in every courthouse for any individuals who come into court.

QUESTIONS

SEN. MCGEE asked what would be the problem from her perspective with having unified forms that the courts would use. MS. SNOWBERGER said that there is personal preference that comes into play, but generally speaking, there should be no reason why the courts cannot use the forms the Commission is developing. Ms. Snowberger said that the fundamental problem with saying that there is a form that is going to be used by every court is that Montana's court system is not a unified court system and each court has that ability to make their own rules.

MONTANA STATE BAR ASSOCIATION - Chris Manos, Executive Director

MR. MANOS discussed what private attorneys and the State Bar can or cannot do to help a pro se client. He said private attorneys and State Bar staff have collaborated in three areas: producing forms and reference materials, developing websites, and in supporting self-help initiatives.

Mr. Manos discussed the pros and cons of a non-attorney providing "legal" advise. He said that he wanted to make three points. He said first, direct representation is preferred, second, supervision of a non-attorney (paralegal) should be by an attorney, and third, pro se litigants usually need assistance from an attorney to do specific things. Mr. Manos distributed to the Committee a two-page document (**EXHIBIT 3**) from the Commission on Unauthorized Practice of the Supreme Court of the State of Montana entitled "What is the Unauthorized Practice of Law".

TAPE 2A

QUESTIONS

SEN. SHOCKLEY said that in the document, What Constitutes the Practice of Law, on page 2, 3(b) "Acting as a lay representative if authorized by administrative agencies or tribunals to do so." Sen. Shockley said that, what is or is not practicing law, should be up to court and not agency.

EASTERN MONTANA SELF-HELP LAW PROJECT - Tara Veazey

MS. VEAZEY talked about some projects that the Self-Help Law Project is working on and the constraints with current resources. She distributed brochures and the Order Form (**EXHIBIT 4**) to the Committee and gave a demonstration on their website, montanalawhelp.org/MT/index.cfm. Ms. Veazey talked about a pilot project, Live Chat Box (in Baltimore), which is staffed by The Legal Services Corporation.

Ms. Veazey said that the five key components of the Self-Help Law Project are: 1) the development of forms and instructions for pro se litigants; 2) the development and distribution of community education material both in hard copy and on the internet; 3) the creation of self-help work stations in rural Montana that are staffed by MLSA volunteers or attorneys for the public to come in and assist them with finding forms that they need; 4) the presentation of self-help classes on various legal topics that teach people an introduction to the area of the law as well as giving them instructions on how to fill out the forms and complete their legal action; and 5) the individual one-on-one advice between attorneys or paralegals and the self-represented litigants.

Ms. Veazey said that the automation of Family Law forms will change the way they will assist Pro Se litigants in family law cases. This will allow people to use HotDocs, a national server, to address some of the problems with legal forms.

QUESTIONS

SEN. MCGEE asked if Ms. Veazey is putting disclaimers on her documents. MS. VEAZEY said that every article that is pulled up has a disclaimer on it.

SEN. CROMLEY asked if the forms on the HotDocs are national forms or state forms. MS. VEAZEY said that the forms are based entirely on the Family Law forms approved by the Montana Supreme Court's Commission on Self-Represented Litigants that Ms. Hindermann had passed out earlier to the Committee.

MONTANA STATE PRISON - Mike Mahoney, Warden, and Bob Anez, Public Information Officer

BOB ANEZ gave a summary of the escape during transport of Dustin Haggart. He explained how Mr. Haggart escaped, and how he was apprehended. Mr. Anez noted that following Mr. Haggart's apprehension, a handcuff key was found hidden in the tongue of his shoe.

MR. ANEZ said that the Department of Corrections issued an RFP to obtain a new contractor, but that after looking at the three responses, the Department decided to look at providing its own transport of inmates. He said 47% of all inmate transfers are handled by the Department, 37% by U.S. Marshalls, and the remainder by county sheriffs and private entities. Mr. Anez said the Department is also considering using GPS technology to keep track of inmates being

transferred. A GPS device would be attached to the inmate with another device in the transport vehicle itself. If an inmate escapes, that individual can be tracked by the GPS. The benefit would be a more coordinated system with more consistent standards for security. Mr. Anez said that if the Department took over transport of all prisoners, the department could establish an advisory board made up of representatives of the Sheriffs Departments, the Governor's Office, Corrections, Legislators, and private transport providers. This board would write the policy and develop the standards for a statewide system.

QUESTIONS

REP. STOKER asked if the handcuff key was a common standard key. MR. MAHONEY said that it was not a Montana State Prison key, and that the origin of the key is still under investigation by Cascade County officials.

SEN. SHOCKLEY said that he thought that the crux of the problem was the key. He said he didn't think that a GPS system was needed. MR. ANEZ said that it wasn't that the inmate had a key but that the key wasn't found. He said that the problem was that the policy of searching the inmate wasn't followed. MR. MAHONEY said that the issue is public safety and that the GPS equipment and technology is on the market and available.

TAPE 2B

REP. PARKER said that he would like the Department to make a presentation about its proposal at the LJIC's March meeting. SEN. PERRY said that he thought the GPS was an excellent idea and should be discussed further.

PUBLIC COMMENT

PAM BUCY, Co-Chair of Supreme Court Equal Justice Task Force, said that the Task Force is the umbrella planning entity for all Access to Justice issues in Montana, and they are charged with insuring that all Montana citizens have access to justice. She said that all of the work on websites, on the development of forms, and that is being done by the Eastern Self-Help Law Project, the Law Library, and Ms. Bucy is being done in their spare time. She said that the Equal Justice Task Force and the Commission for Self-Represented Litigants are completely unfunded. Ms. Bucy said that in order to provide meaningful access to the court system, they need assistance and funding for the Judicial Branch, and that without that institutionalized assistance and funding, there may not be a continuation of all the work that is being done now.

NEIL HAIGHT, Helena, former Director of Montana Legal Services, said that developing and assisting self representation has the greatest potential for expanding Access to Justice and that more attention needs to be given to the various aspects of self representation. He hopes that the Committee will preserve the vitality of the group who is presently working on self representation because they are exceptional and are achieving great results.

JERRY O'NEILL, Senator from Senate District 3, provided a letter to the Committee (**EXHIBIT 5**) and a copy of an article from the *Legal Reformer*, October - December 2005, on "Study Shows High Consumer Satisfaction with Independent Paralegals".

KANDI MATTHEW-JENKINS, Missoula, prefacing her remarks with her rights in the Declaration of Independence, and U.S. Constitution, and Montana Constitution, that she has the right to redress and to make public comment, and that it is her right and her duty to bring out the wrongs she sees. She said that in the Montana Constitution there's a right to participate. Ms. Matthew-Jenkins referred to the Freedom of Information handbook by John Shontz where it states that public employees do not have a constitutional right to privacy. She said that she has never found a right to privacy in her reading of the Constitution. She said she was in no way attacking any person at any time on a personal level, and all the things she has talked about in the last four years is to benefit the parents who have been falsely accused of child abuse and neglect. She said she thinks it is great that there is a system in the state to help people understand their rights and to allow people to express their rights and ask for redress, ask for things to be changed, and to point out problems within the system. She said that she would like to see a comprehensive determination of what is practicing law and what is not practicing law. She said that she is not apologizing for anything that she or the families she represents has said. She said that these families have come to the Committee with open hearts, but were greeted many times with silence and many times patted on the back and thanked for coming. She said that the testimony given by her and the families has never been so low as to say about any Committee members, that they were totally out of bounds, obnoxious, or egregious, or that they were embarrassed to be around them, which is what has been said about the testimony of her and the families. She said that she does not think that their testimony has been terrible. She said that they have the right to be heard. She said that in the past, she has been demeaned but that the Constitution says all political power is vested in and derived from the people. She said that if we are not eloquent, if we are emotional, if we want to tell you about public servants that have violated our rights in the process of their official duties, we have that right. She said that 56 people died to have the Constitution written and they were protecting their rights and their families and did not stop to make sure that their nylons were tight, or their makeup was on right, or that their tie was twisted the right way to make the right impression. She said that this is the place where we are to come to work for equal access to justice.

REP. PARKER said that the United States Constitution does not provide an explicit privacy right. The Supreme Court has held that such a right does exist and it is derived from other enumerated rights, but that the Montana Constitution, does provide an explicit privacy right in Article II, Section 10, and for that reason this Committee will not entertain any attacks on public officials or state employees. He said that the committee members respect the due process right of all Montana citizens to provide policy critiques and to advise the committee on matters, but that the Committee does reserve the right to provide some structure and decorum and will continue to do that.

SEN. SHOCKLEY said that Ms. Mathews-Jenkins was referring to his comments about obnoxious testimony. But, he said, it arose out of himself, Rep. Stoker and Rep. Rice, at our own expense with no per diem, no pay, attending the Children, Families, Health and Human Services Committee (CFHHS) meeting on August 22, chaired by Sen. Schmidt. He said they spent their time to make the pitch for a subcommittee on the DPHHS child abuse issues. He said he agrees with Ms. Mathews-Jenkins about DPHHS. He said that if he was the chairman of CFHHS, he would have ruled Ms. Mathews-Jenkins out of order and had her removed because of her testimony. He said Ms. Mathews-Jenkins' testimony made it very difficult for those of us who had stayed there all that time to make our point. He said that there is a difference between abuse and eloquence.

REP. PARKER said that public comment is a topic that has evolved over the last few months and years and that the Legislature is developing a more sophisticated view about how it provides for this public right. He thinks that the legislature is carving out the distinction between policy critiques, and needed legal changes, and allowing a totally unstructured, free-for-all that evolves into an attack on individual legislators, judges, or state employees. He said he believes that this Committee and this Legislature has a deeply held value of providing public participation, and that determinations are not based on how someone dresses. Everyone has a right to be heard and the Committee will continue to guard those rights.

MONTANA SUPREME COURT - The Honorable Chief Justice Karla Gray

Chief Justice Gray said that she has been involved in access to justice issues, pro bono, pro se and every other aspect, since coming to the court almost 15 years ago. She said that she has become more active because resources are thin. She said every person in the Access to Justice community in Montana has stretched their time and any nickel they can find. She said that she salutes those people. She said we must never lose track of the U.S. Constitution's promise of equal protection under the law and that courts of justice shall be open to every person. Right and justice shall be administered without denial or delay. She said that for families and low income people in your district, your constituents, my constituents, the people of the state of Montana, the need is huge. She said the access to justice community has leveraged every hour, every nickel, about ten times farther than anyone else anywhere in the country in trying to address these issues. She said that she personally, and the courts of this state, have nudged, cajoled, encouraged, and semi-coerced lawyers into meeting their professional obligation of rendering pro bono service and that the Legislature can take it to the bank that the court will keep doing that, but the fact is, there is never going to be enough pro bono lawyers to represent every low income person in our great state who has legal problems and needs to get into court. She said the answer is, we must do more for self-represented litigants and keep leveraging every federal dollar and keep our thumb on the IOLTA (Interest on Lawyer Trust Accounts) accounts. She said she would keep doing pep talks, push talks, kick talks, whatever it takes because it is a subject about which she is very passionate about. She said she can't go everywhere or be everywhere. She said low income people have more legal

problems than average income people and sometimes more serious legal problems because of health issues, landlord/tenant issues, family issues and other issues. She said sure, they can walk into an open court but what does that get them. Does it get them a fair hearing? Do they have the tools, even the beginning of the tools to get the justice to which they are entitled? Not without help. She said the access to justice community has looked for every source of funding it can. She said that like every other state, when the Legal Services Corporation budget was slashed in Montana by an incredible 40%-45%, we floundered, we grasped, we despaired, and then we built back up as best we could, not with money but with technology, with new ideas, with creative thinking, with new kinds of programs. She said she didn't think we can get it any farther without more funds. That is the bottom line. We don't have any more time we can volunteer. Legal Services staff don't have anymore hours in their 14- or 16-hour day to give to our constituents. She said one of the more fundamental rights we have is the right to have legal problems resolved like middle income people can or higher income people can in a court where you have at least reasonably adequate tools through forms, through phone advice, through clinics, through self-help centers, through every conceivable kind of option. She said it is harder in our state because Montana is so huge and our few people are so spread out. She said please, I implore you, help our low income people. This is a basic need, it is as basic a need as any others that the Legislature has recognized. She asked the Legislature to step up to the table and commit some funds; not just send a letter encouraging us. We don't need any encouragement. We are there for each other every hour of the day. She said we can't stretch any farther and we can't meet the need without the Legislature bringing something to the table in some rational way.

TAPE 3A

QUESTIONS

SEN. McGEE asked Chief Justice Gray what her perspective is on standardization of forms and the utilization of simpler formatting on forms. MS. GRAY said that the Supreme Court established an entity called the Self Represented Litigant's Commission, a group of hard working people who are working on this issue. She said there needs to be a "How To" Manual written for the self-represented.

SEN. SHOCKLEY asked Chief Justice Gray what funding is necessary to get the forms done within six months or a year. MS. GRAY said she didn't know but she would try to get an idea of costs if the Committee was willing to consider that option.

ROUNDTABLE DISCUSSION

The Honorable Chief Justice Karla Gray
Chris Manos, State Bar
The Honorable Michele Snowberger, City Judge
Tammy Hindermann, State Law Library

Lori Maloney, Clerk of District Court, Butte
Klaus Sitte, MLSA
Tara Veazey, MLSA, Self-help Law Project

REP. PARKER asked Lori Maloney what the practical challenges are for having one computer work station in every county courthouse in Montana where pro se litigants could access forms and information and have Montana Legal Service pamphlets next to the computer work station. MS. MALONEY said that right now, almost all counties do have computer work stations but maybe not necessarily access to the internet. She said that the problem is that the clerks cannot give out legal advice. There have been many discussions on what is legal information and what is legal advice, helping the public access and print out the forms is one thing, but when the public asks for help in filling out the forms, that is another thing. She said that the clerks would have to have definitive training as to what they can or cannot do. REP. PARKER asked if Ms. Maloney would be willing to help him contact other clerks of court around the state, as the Committee would like to hear now rather than later, what the complications would be so the Committee could get through those issues and make it workable, the sooner they are addressed, the better position the Committee will be in and hopefully have some workable concepts. Ms. Maloney said that she would be glad to.

REP. RICE asked the panel if the main issue to be agreed upon is standardized forms for pro se litigants. MS. MALONEY agreed that the main issue is standardized forms. MS. HINDERMANN said that she would start with forms that are easy to read with instructions that are easy to understand, and a handbook that leads a pro se through the process and that more legal information in addition to forms would be a great place to start. Addressing the idea of computers, Ms. Hindermann said it was a great idea, but she said the Law Library has many patrons who are not comfortable with computers. She recommended having information available in several different formats.

SEN. MCGEE asked Chief Justice Gray what would be wrong with allowing the Clerks of District Court to help someone fill out standardized forms. CHIEF JUSTICE GRAY said that the line between practicing law and not practicing law is not always clear, nor can she answer his question with any clarity or substance. She said that there has been training for clerks about what they can and what they cannot do. JUDGE SNOWBERGER said that clerks can provide assistance in completing forms and direct what is put into the form, but one of the problems is that court clerks must be impartial. They are not to provide information to one party that they would not provide to another party.

SEN. CROMLEY asked in what other areas forms should be developed besides in domestic relations. MS. HINDERMANN said eviction procedures, emancipation of children, modification of child support and custody orders, guardianship of minors and incapacitated persons, wills, and advance directives. She said that beyond forms, it would be great to have information on

court procedures, such as discovery procedures, evidence and how to serve a subpoena, what is a subpoena, what do you get if you have a subpoena, challenging a subpoena, information on how a hearing works, how to collect on a judgment once you get one, how to enforce a divorce decree, and more information on the appeals process. She said information could be presented in different formats, such as classes.

KLAUS SITTE commented that last year nearly 400 low income clients passed through the Yellowstone Area Bar Association Family Law Advice Project and the Missoula Family Advice Clinic, as well as Tara Veazey's Self-Help Law Project clinics. He said the model works. Clients come to court prepared, know what they have to do to represent themselves, and they get the job done. A lot of clients are served in that manner.

CHRIS MANOS said that he would suggest using some pilot initiatives and model programs and recognize the unique differences that demographics have. What works in Missoula may not work in Miles City because of the demographics.

REP. PARKER asked about the concept of using computers equipped with a DVD-rom drive that would allow these classes to be on DVD and not requiring a live class, and equally accessible in all 56 counties. Is that something we should be looking at. MR. MANOS said that there's probably other people here that could give a better idea on the technology. He said that what Chief Justice Gray has suggested is looking at all the variety of different ways to deliver, try it in a couple of locations before expending the dollars to see if it is working, do it demographically smart, in smaller counties to see if it is acceptable, does that work as well in some of the larger communities.

TARA VEAZEY said that she agrees that having standard DVDs and videos available so that people can view them at their convenience is a great idea. She said that within the year, the Montana Law Help website should have video streaming capabilities so they can put those videos online and anyone with internet access can access them with or without a DVD-rom. She said that one benefit of having live classes is that people can ask questions when they need a point of clarification or they have a specific question. She said that one of the things that they have been doing to try to maximize cost-effectiveness and efficiency at Legal Services is using video-conferencing to teach those classes. The work station idea is great and one that they are trying to do.

TAPE 3B

REP. WINDHAM asked about the idea of lawyers fulfilling part of their continuing legal education (CLEs) by teaching classes in the communities. MR. MANOS said that CLE requirements are to meet the need for lawyers to keep current on developing topics. There is a board appointed by the Supreme Court that decides what continuing education qualifies as

credit and he does not want to presume to speak on their behalf. If lawyers are teaching classes, they can receive a certain number of credits, but that those classes are generally for continuing education programs.

SEN. PERRY asked about the source of Mr. Manos' handout (**EXHIBIT 3**). MR. MANOS said that the handout came from the Commission on Unauthorized Practice. SEN. PERRY asked if these rules are formulated by the Supreme Court. MR. MANOS said yes they were.

SEN. CROMLEY said that he didn't think it is a matter of the clerks of court wanting to be able to give more advice. That puts them into an uncomfortable position. It is a fine line or a gray area between telling someone how to fill in the forms and representing someone. But at some point, you get to the point where you have a relationship with that person where they may be revealing confidential information to you and you develop a relationship and you are practicing law, then you are going to have a problem when other parties come in with the same type of information. He said that he doesn't think that those lines should be changed.

SEN. WILLIAMS complimented the panel on a wonderful job they have done for the State of Montana and ask that they correspond with the Chair about where money could best be spent.

REP. PARKER thanked the people of the Roundtable for their time. He moved the Committee into executive session and said that he would like a motion for a committee bill to address Access to Justice issues.

SEN. SHOCKLEY moved for the Committee to draft a proposed committee bill for presentation to 2007 Legislation Session, the topic being civil Access to Justice for low income Montanans.

SEN. McGEE said that there are points he would like the staff to consider in addressing the motion. He said that the first point is that there is significant differences between legal and non-litigation legal situations, such as wills in one class and suits for divorce in a different class. The second thing is that he would ask staff to do research on licensure of paralegals. The third point is that what he had heard today is that people are already doing the yeoman's work that has to be done to address access to low income Montanans. He said he thinks that what they are dealing with is primarily a fiscal situation. Sen. McGee discussed the judiciary budget. He said that currently, the Legislature funds \$73.7M to the Judiciary Branch, and of that only \$545,000 goes to Boards and Commissions and only \$1.7 M goes to the Law Library.

REP. PARKER said he would entertain a motion to fund FTE for the Judiciary to develop forms and an FTE to develop curriculum.

SEN. SHOCKLY moved that the Committee draft a bill to fund a full time staff attorney

and a non-lawyer staff assistant to work for the Supreme Court Commission of Self-Represented Litigants at their direction.

SEN. MCGEE said he would prefer that the Supreme Court put together a proposal of what they need and who they need and that the bill draft not be too specific. REP. WINDHAM said that she would like to have something definable, such as having someone as a statewide outreach coordinator developing curriculum, developing forms, and assisting in filling out the forms, and to do this as a pilot project. SEN. SHOCKLEY said that members of the Committee should coordinate with the Supreme Court to see what the solution is and determine what the costs would be to effectuate the forms, provide the education, and solve the problem. SEN. PERRY asked the Committee what are the top three or five legal needs and about whether those issues could be narrowed down and whether those needs could be met by a new definition of a paralegal for example. He also asked about whether there is a need in every county for computers.

REP. PARKER said that in order to do an effective job on this issue, the Committee needs to convene a 4-person subcommittee to meet in February to process the ideas.

SHERI HEFFELFINGER discussed the issue of FTEs. She explained that the Legislature does not create an FTE. An FTE is funded based upon what a particular FTE might cost. It is important that some parameters are defined so that cost assumptions can be made in the fiscal note.

TAPE 4A

Sen. Shockley said that he would like to withdraw both motions.

SEN. MCGEE move to convene a subcommittee to draft a bill for Access to Justice for low income people. Motion passed unanimously. REP. PARKER said that the members of the subcommittee are Rep. Windham, Rep. Stoker, Sen. Cromley and Sen. Perry, with Sen. Perry acting as chair. Rep. Parker asked that the subcommittee meet in February and that Ms. Heffelfinger poll the members for a possible date.

REP. PARKER said that the Committee will fund travel expenses for Sen. Williams, Rep. Windham, Sen. Perry and Rep. Stoker to attend the January 27 Equal Justice meeting by the State Bar.

PUBLIC DEFENDER COMMISSION - Randi Hood, Chief Public Defender

Ms. Hood gave an overview of what the Public Defender Commission has been doing. She provided a map (**EXHIBIT 6**) which shows the proposed public defender regions. She said that the state office opened in Butte on December 5, 2005. Harry Freeburn was hired as

Administrative Director. Her goal is that by the middle of March, she will present to the Commission her plan for delivery of services throughout the state.

HARRY FREEBURN, Administrative Director, Office of the State Public Defender (OPD), gave an overview of what he is doing as Administrative Director. He said that he helped open the office at 44 West Park, Butte, Montana. He said he is in the process of transitioning county employees to state employment, and transitioning county accounts payable to the State Office of Public Defender. He discussed the Strategic Plan of OPD.

QUESTIONS

SEN. McGEE asked if county employees wish to stay as county employees and not transition as state employees, could the OPD then contract with the counties for their services? MS. HOOD said there has been no requests made to do that.

SEN. PARKER said that some public defenders are concerned about the recent Attorney General's opinion that grants the State Public Defender the ability to rebuild the organization from scratch. He asked Ms. Hood if they expect turnover in personnel. MS. HOOD said that the intent was not to dismantle the public defender system in Montana. She said that there are many public defenders who are doing good work. One thing that she has tried to do is to reassure the people who's work she is satisfied with and who are good public defenders that their jobs are safe.

REPORT ON LEGISLATIVE AUDITS OF COUNTY PUBLIC DEFENDER EXPENSES - Ms. Angie Lang

MS. LANG, Coordinator for Audit Development, Legislative Audit Division, gave an update on audits being done on six county public defender offices, Cascade, Flathead, Lewis and Clark, Gallatin, Missoula and Yellowstone Counties. A private accounting firm was contracted to handle those audits. The audit work began in September 2005 and LAD has now received the reports and are currently compiling the results to be made available later in the spring.

SEN. McGEE said that he had asked Ms. Lang do this presentation after his county commissioners called him in to discuss the audit for Yellowstone County. He wanted to bring to the committee's attention some aspects of SB 146 that will have to be attended to. Yellowstone County's audit has been completed. He said that there was a meeting of three county commissioners, Harold Blattie of MACo was on the phone, Doug Kaercher, President of MACo, together with the financial officer and Charles Brooks. SEN. McGEE said that there was concern, and that he anticipates that other counties will also have concerns. Yellowstone County, as a consequence of the audit, was saying "well, this audit shows that we paid all this money" and the concern is that the county entitlement will somehow be reduced by that amount. The further concern was "we ought not to have had paid all this" and that many claims should have been paid by the Court Administrator. The Legislature told the Audit Division in SB 146

not to make the decision about what expenses should have been county expenses and what should have been state expenses. SEN. McGEE read a portion of SB 146. "After the determination of the actual costs, the Law and Justice Interim Committee shall prepare legislation to be introduced to the 2007 Legislative Session that will amend Section 15-1-121, to provide that the base entitlement share for Cascade, Gallatin, Lewis and Clark, Missoula, Flathead, and Yellowstone County is adjusted by an appropriate amount arrived at based on the audit and in consultation with the Legislative Finance Committee, the Audit Committee, representatives of the county, the Governor's Office, the ACLU, AG's Office, and other interested and participating parties." SEN. McGEE speculated that in March representatives from the audited counties are going to come to this committee and start making their arguments. He said the Court Administrator's Office will likely also present why county claims were paid or weren't paid. SEN. McGEE said that the committee will need to propose legislation to the 2007 session to deal with those dollars.

SEN. McGEE asked Ms. Lang for the status of the other five counties. MS. LANG said that LAD had received the audit reports from all the counties and is in the process of compiling those and asking additional questions. She said that LAD will likely be ahead of the April 30 deadline for completing its report.

SEN. McGEE asked if Ms. Lang could stay in touch with Ms. Heffelfinger about a possible presentation at the Committee's March meeting. He would like to get the numbers ironed out as early as possible prior to September.

UPDATE ON THE STATUS OF INFORMATION TECHNOLOGY EFFORTS IN THE JUDICIAL BRANCH - Jim Oppedahl, Court Administrator, Office of Court Administrator

MR. OPPEDAHL gave a presentation (**EXHIBIT 7**) which focused on five areas: Background and Structure of the Montana Judiciary, Strategic Planning and Initiatives, Costs and Challenges, Progress Report, and the Next Five Years. Mr. Oppedahl introduced the IT Director for the State Judiciary, Karen Nelson, who has been the director for about a year.

QUESTIONS

SEN. SHOCKLEY asked Mr. Oppedahl how private companies, real estate and insurance fit into the system. MR. OPPEDAHL said that once they have a judgment in the District Court which is public information and once the information is digitized and available electronically at a central repository, the information can be accessed anywhere. SEN. SHOCKLEY asked if those records would be safe. MR. OPPEDAHL said that that was part of the challenge, to make sure that they are only providing public access to what is public and that they are only providing access in a way that the record is secure. SEN. SHOCKLEY asked when there will be a system that will tell how many people were prosecuted, how many people went to jail, what the caseload is, and when will that be in place? MR. OPPEDAHL said that in Courts of Limited Jurisdiction, they are there now in terms of the ones which have been installed. They are modern systems, they can extract data from them. In District Courts, they have a 15-year old

case management system where there is some information available. Mr. Oppedahl said that what they need is uniform case filing, which is what was ordered by the Supreme Court beginning January 1, and then they need modern case management systems. If Full Court is what they think it is in terms of court administration and if clerks of court agree, they can deploy that beginning in April or May, and with some negotiations and changes, they will deploy it over a year or year and a half period. As to where they start and how they do that, that is open for discussion.

AGENCY RULE REVIEW - Valencia Lane

MS. LANE said that she did not have a presentation on Rule Review. She said that two recent reviews were included in the committee packets. She reminded the Committee that she will be sending summaries of all rule filings that come through the Secretary of State's Office for the Department of Justice and Department of Corrections, which the Committee will receive periodically.

OTHER BUSINESS - Sheri Heffelfinger

MS. HEFFELFINGER talked about information on the National Conference for State Legislators (NCSL), Promoting Economic Success for Montana Families. She said that NCSL will hold a seminar in Helena on January 25, but that the Committee could not reimburse travel, per diem or salary for legislators who wanted to attend.

REP. PARKER informed the Committee that Ms. Heffelfinger drafted a letter to tribal communities regarding Access to Justice. SEN. WILLIAMS said that she thought it was a good letter and asked Rep. Parker that if there was an opportune time, if the Committee could bring in some tribal people to touch upon some issues that they have a concern about.

REP. PARKER discussed the March meeting to be held in Billings and a day touring facilities, which will not be reimbursed. There will be a tour of the Women's Prison, a Drug Treatment Facility, and a Pro Se pilot project in Yellowstone County.

MS. HEFFELFINGER discussed the work plan. She said there will be four more full committee meetings and the Committee will have to fit review of agency legislation into the schedule. The month of August will be the final wrap up of the Committee's final recommendations.

STAFF INSTRUCTION

REP. PARKER asked Ms. Heffelfinger to poll the subcommittee members to identify a meeting in February, to identify a place in Billings to meet, to contact the facilities the Committee might be able to tour, and to arrange transportation for the Committee members in Billings.

ADJOURNMENT

REP. PARKER adjourned the meeting at 4:30 p.m.

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