



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

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.**

February 17, 2006

Capitol Building, Room 152
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. GARY PERRY, Chair
SEN. BRENT CROMLEY

REP. RON STOKER
REP. JEANNE WINDHAM

STAFF PRESENT

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

Visitors

Visitors' list, [Attachment #1](#).

CALL TO ORDER AND ROLL CALL

SEN. GARY PERRY called the meeting to order at 9:30 a.m. The Secretary noted the roll.

SEN. PERRY gave opening remarks. He said that at the January 19 meeting, the Chairman formed a subcommittee to study pro se litigation and assistance. He said the subcommittee will be hearing from some people on this subject, and that at the end of the day the subcommittee will have a work session to see if and what type of a bill the subcommittee might be able to draft and propose to the full committee at our next meeting.

COMMENTS FROM SHERI HEFFELFINGER

MS. HEFFELFINGER discussed the extract from The Future of Self-Represented Litigation: Report From the March 2005 Summit (**EXHIBIT 1**). Ms. Heffelfinger said that this was a summit of national and other state organizations that met to discuss programs throughout the nation that support self-represented litigants. She said that this extract gives the Subcommittee an idea about effective practices.

PAT GERVAIS, LFD, Fiscal Analyst

MS. GERVAIS discussed state revenue sources and the legislative appropriations process, and distributed excerpts from Understanding State Finances and The Budgeting Process (**EXHIBIT 2**).

QUESTIONS

SEN. CROMLEY asked if there are any statutory appropriations now that would be relevant to the type of program the subcommittee was considering. MS. GERVAIS said she could not think of any specific statutory appropriations, but she can go back and research that. MS. HEFFELFINGER said that there is a statute called Civil Legal Assistance for Indigent Victims of Domestic Violence Account, Section 3-2-714, MCA. There must be paid into this account the district court filing fees paid under 25-1-201(3)(a) and (5), MCA. She said that when the Subcommittee is crafting a bill, they need to identify what the account is for and that it is in a State Special Revenue Fund, and what the money must be used for.

SEN. PERRY asked Ms. Gervais to explain the difference between a tax and a fee. MS. GERVAIS said that that is a definition that can receive much discussion and can be a politically charged discussion. For some individuals, she said, there is no difference. She said that the term tax is probably used more commonly in terms of general things, such as individual income tax, where a fee is more commonly used in terms of specific things, such as a hunting license fee. In both cases they are revenue that comes from citizens of the state of Montana. SEN. PERRY asked if it might be described as a direct benefit to the person paying the fee. MS. GERVAIS said that often the concept behind the fee is that the user of the services pays for the fee.

JUDGE JIM HAYNES, District Judge, 21st Judicial District (Ravalli County)

JUDGE HAYNES handed out and explained a document titled, "21st Judicial District Caseload - 2005" (**EXHIBIT 3**), which showed the different types of cases and the number of cases handled by his court. Judge Haynes said that the second handout (**EXHIBIT 4**) showed the total pro se cases in 2005. He said that both he and Judge Langton encourages the use of standard forms and that there is a tremendous need to have a uniform statewide form system of effective forms that work.

QUESTIONS

REP. WINDHAM asked how many of the 190 pro se dissolutions in 2005 were joint petitions.

JUDGE HAYNES said that the court doesn't have the ability to sort that out, that their data base just tells how many parties are involved in the case. He said that if it is a pro se petition for dissolution, joint petition, without children, it is easy. If it is with children, they fill out the parenting agreement and they completed the child support guidelines, it is easy and it is done.

TAPE 1B

SEN. CROMLEY asked Judge Haynes if he had a sense, from his contact with other judges and through the Judges Association, whether or not there would be support for the type of activity this committee might propose which could include more standardization of forms and assistance to pro se litigants. JUDGE HAYNES said that he thinks that there would be widespread support.

TARA VEAZEY - SELF-HELP LAW PROJECT

MS. VEAZEY presented a proposal for the Subcommittee's consideration that would establish a self-help law program under the Supreme Court. MS. VEAZEY said that the pro se working group came up with a targeted proposal for a program that would meet the needs of a pro se litigant and capitalize on some of the work that is already being done. Ms. Veazey discussed her first document, a diagram of the Montana Self-Help Law Program (**EXHIBIT 5**) that gives a bird's eye view of the process a person goes through when they have a legal issue or problem and can't get an attorney. Her next handout, Components and Staffing (**EXHIBIT 6**) described in more detail the six components of the proposal shown in Exhibit 5, and an estimate of staffing needs for each component. Ms. Veazey handed out two more documents. One document was Montana Poverty Statistics (**EXHIBIT 7**) and proposed legislation (**EXHIBIT 8**) drafted as a sample bill by the pro se working group.

QUESTIONS

REP. STOKER asked if Ms. Veazey could comment on the "attorney and non-attorney" words used in Exhibit #5. MS. VEAZEY said that it was important that the staff person working on the form and instruction development be an attorney since they will be delving into legal issues. They tried to limit the places where an attorney was needed to those where legal expertise of an attorney was needed. All of the other positions were made non-attorney positions.

SEN. CROMLEY asked if Ms. Veazey's program really needed an attorney in the coordinating position. He said that he did not see specific reference to interaction with the district court judges and if in fact item 6, Management was an attorney, if that might not be appropriate. MS. VEAZEY said that what they envisioned was any of these core components could work for local communities and their courts. Although it is not spelled out, it is a good thing to put in there, coordination with the district courts. She said that the working group felt that ideally it would be an attorney.

REP. STOKER asked Ms. Veazey if she agrees that the Montana Legal Services Association experience would parallel the charts of Judge Haynes, and if those percentages are applicable statewide. MS. VEAZEY said that there is an increasing number of pro se users of the court. She said that they are not seeing as many joint petitions, and in those cases where they see joint petitions, it is not always because people are in total agreement, but because it is the easier option available for them.

REP. STOKER said that he was asking about the percentage breakout of the court cases, and would Ms. Veazey agree that those percentage breakouts would be applicable for all 42 districts. MS. VEAZEY said that she thinks it is consistent statewide. REP. STOKER asked if Ms. Veazey and Mr. Manos had discussed the possibility of those attorneys who could do pro bono work. MS. VEAZEY said that she and Mr. Manos and the working group worked collaboratively and talked constantly about increasing pro bono participation to meet the pro se needs.

REP. WINDHAM asked if it was possible to have one full time attorney for both components III and IV. MS. VEAZEY said that they broke it down for consistency, but what they envisioned was one position.

SEN. PERRY asked if the proposed system would be available to anyone regardless of income. MS. VEAZEY said that most programs nationwide are developing comprehensive pro se assistance projects open to the public in general. She said that eligibility would need to be income-based for a pro bono attorney.

SEN. PERRY asked Ms. Veazey where she saw the starting point. MS. VEAZEY said that all of the components that were outlined in the proposal were pieces of work that they are doing in large part on their own time. She said that the beginnings have been developed. What is needed is just getting the resources to be effective, meet needs, and support some of the efforts that are in their infancy.

REP. STOKER said that he is curious how Ms. Veazey and Mr. Manos view that if an attorney becomes a part of a state function in a courthouse, how can they apply an income test for a person who is above the poverty percent? MS. VEAZEY said that she does not know how the pro bono piece would work, but she thinks it is a good question, one that they would have to work out the details for, and something that Legal Services would have to do the income screening for.

PUBLIC COMMENT

CHIEF JUSTICE KARLA GRAY, Montana Supreme Court, said that she is in full support of the proposal as it has been presented. She said that she wanted to remind the subcommittee that

there is another impact to the large numbers of self-represented litigants that they are seeing and that is on opposing counsel and on the courts. She said that a problem is the absence of adequate tools and resources for the pro se litigant to represent themselves in cases where they can't get counsel. Chief Justice Gray said that they do not have to start from scratch but there is a need for a coordinated effort. Chief Justice Gray urged the Subcommittee and the full Committee to be bold, to have courage, and to step up to the plate, to not go down the filing fee road or the filing surcharge road because those funding sources are inconsistent and unreliable.

SEN. CROMLEY asked Chief Justice Gray if she is aware that in Ms. Veazey's draft legislation, the Supreme Court shall direct the program. CHIEF JUSTICE GRAY said that they are still talking concepts and yes, she envisions the program would be housed at the Court Administrator's Office in part because there is no other appropriate place for it. She said that she does not think that the Supreme Court will directly manage it, that the Management and Coordinator position of the program will.

BETH BAKER, Chair of State Bar Access to Justice Committee, said that she is in strong support of proposal that has been presented. Ms. Baker said she wanted to address the questions regarding the role of lawyers in this program. She said that the proposal calls for a maximum of 3 FTE lawyers, which includes the pro bono coordinator. She said that she agrees with Sen. Cromley, that the person who is coordinating would also be a lawyer. She said it is important to understand that these lawyers will not be providing direct assistance to members of the public. She said that having the program under the auspices of the court would give it a better ability to do statewide coordination and give it more stature, make progress and get more people involved.

TAPE 2A

JOHN CONNOR, Prosecutor with Attorney General's Office, said that he is appearing today on his own time, as the Chairman of the Supreme Court's Commission on the Unauthorized Practice of Law. Mr. Connor gave a brief background on what the Commission on Unauthorized Practice of Law does. The Commission is mandated to carry out the Supreme Court's directive as it appears in their Rule 1, which is basically, "the public interest requires that in securing professional advice and assistance upon matters affecting one's legal rights, one should have assurances of the confidence and integrity of one's representative." The Commission tries to dissuade through mediation people from engaging in what amounts to the unauthorized practice of law, not to protect the economic base of lawyers, but to protect those unsuspecting members of the public who are receiving services from people who they are trusting to provide legitimate services and are in fact getting ripped off. He said the Commission supports the ideas that have been discussed today. He said that he would be happy to attend any of the Committee's meeting that they think would be worthwhile and would answer any questions on behalf of the Commission.

DICK MOTTA, Philipsburg, said that the one area in the proposed legislation that he thinks is omitted is the representation of individuals in the courts concerning open meeting laws. He said that the intent of the legislature is that all laws will be interpreted liberally where the person does have the right to participate. He said that he would like a specific piece of legislation regarding a person's right to participate because unless things change, a person will not receive due process in the courts when trying to enforce open meeting laws.

CYNTHIA DINGMAN, Helena, said that she encourages the Subcommittee to consider licensing or providing legislation that allows paraprofessional assistance for pro se parties who don't qualify for pro bono assistance. Ms. Dingman talked about her letter to Ms. Heffelfinger (**EXHIBIT 9**) regarding her legal dispute with Lewis and Clark County and a developer over the use of a private road. She said that she is not asking for legal help but is asking for assistance of a paraprofessional to help navigate the system.

NANCY SWEENEY, Lewis and Clark County Clerk of District Court, and a member of Access to Justice Committee, Co-Chair of Equal Justice Task Force, said she is in support of the working group's recommendation.

QUESTIONS

SEN. CROMLEY asked Ms. Sweeney, if she wished to speak on behalf of the Clerks of Court today in supporting, or as an individual clerk. MS. SWEENEY said that she is the Chairperson for the legislative committee for the Clerks of District Court Association and that she would say that she represents the Association but can't speak on every issue but that she experiences the same problems as do the clerks statewide.

REP. STOKER asked if Ms. Sweeney envisioned a set of forms in racks in the District Court Clerk's Office, or that the office would provide help in filling out the forms? He asked how close to the line she feels this legislation could go in terms of Clerks of Court helping pro se litigants. MS. SWEENEY said that it is a very difficult line for the clerks of court to walk. She said that the clerks of court statewide agree that one of their main functions is to provide public access to the court, provide some education, specifically to those people who come to their office for service. She said that people don't necessarily ask for legal advice but they want to know what to do in terms of process.

REP. STOKER asked, if the Bar Association was manning this office with forms in the courthouse under the pro bono concept, would that help the clerks of court stay on the correct side of John Connor's law. BETH BAKER said that they deliberately tried not to talk too much on the subject of pro bono because they understand that that will be an entire topic of one of the future committee meetings. What they envision through this program is a statewide coordination function, to have someone at the state level coordinating a variety of local pro bono programs. She said that their pro bono efforts are most successful when they allow them to be

done on a community by community basis. She said that this statewide program is going to be reaching out, helping develop pro bono programs in communities where they do not exist and coordinating in communities where they do exist, to try and get lawyers to assist people in rural areas that have fewer lawyers.

ROUND TABLE DISCUSSION

KLAUS SITTE, Executive Director of Montana Legal Services

TAMMY HINDERMANN, Reference Librarian, State Law Library

TARA VEAZEY, Montana Legal Services

CHIEF JUSTICE KARLA GRAY, Montana Supreme Court

BERNADETTE FRANKS-ONGOY, Executive Director, Montana Advocacy Program

JUDY MEADOWS, State Law Librarian, Co-Chair of Commission on Self-Represented Litigants and member of Equal Justice Task Force

NANCY SWEENEY, Lewis and Clark County Clerk of District Court

SEN. CROMLEY said that we have to keep clear the idea of representation because there is some confusion between pro se and pro bono representation. This bill will be aimed at assisting the public in accessing the courts in the civil legal system.

SHERI HEFFELFINGER said that the Subcommittee has been given a directive from the full committee to develop a bill. She said there are actually three vehicles with which a program can be provided for: Option A, a committee bill by request of the Law and Justice Interim Committee; Option B, a Judicial Branch or agency bill which would be by request of the Supreme Court, in which case you will not be developing a committee bill; and Option C, to rely on the House Bill 2 budget bill and appropriate money in the base budget for the Judicial Branch and restrict the appropriation for a pro-se program.

SEN. PERRY said that the intent of SJR 6 was an interim study and that there is no requirement that the Committee come out with a bill. REP. STOKER asked if another option would be a white paper that goes from the subcommittee to the full committee? SEN. CROMLEY said that it was his understanding that the motion that Sen. Shockley made was to draft a bill and that is the reason that this subcommittee was formed, to come up with the language for a draft bill to go back to the Law and Justice Committee. SEN. PERRY asked Ms. Heffelfinger if the subcommittee was to formulate a bill. MS. HEFFELFINGER said that the motion was to appoint a subcommittee to draft a bill, that you can interpret that broadly in the sense that if you determine that you would rather have language in HB 2, then what you could come out with would be what language you want in HB 2 for your appropriation restriction, but the way she interpreted it was, Option A, that the subcommittee was supposed to come out with a committee bill for discussion. She said that as staff, she needed to make sure that she is not leaving out an option that you might want to consider. She said that it was Sen. McGee's motion that

passed that was for a subcommittee to be appointed for the development of a bill that the full committee could consider on how to support pro se litigation.

REP. STOKER said with Option B, has Chief Justice Gray put pencil to paper in the form of a suggested bill that would come out of the Supreme Court or the Court Administrator that would come into play at a future date? CHIEF JUSTICE GRAY said the Court has not. She said that specifically with regard to Option B, the Court would not be requesting a bill. She said a bill "by request of the Supreme Court" would likely be killed by the legislature.

TAPE 2B

TARA VEAZEY said that this is an issue for low income constituents, an issue about providing access for those most in need in Montana. This is not primarily a court issue, or a lawyer issue, it is a low income issue. That is another reason to go with Option A, rather than Option B.

SEN. PERRY said that he would entertain a motion regarding whether we should proceed with a bill draft for Option A, B, or C.

SEN. CROMLEY moved to proceed to propose a draft bill as a committee bill and send it to the Law and Justice Committee for their review. REP. WINDHAM seconded. MOTION PASSED UNANIMOUSLY.

DISCUSSION

REP. WINDHAM asked if it is at the March meeting that this will be reviewed. MS.

HEFFELFINGER said that this subcommittee can make the initial review draft request, the staff would work out the technical language and get a draft of that by the March meeting. Ms. Heffelfinger said that she could mail a draft to the subcommittee members prior to the full committee meeting in March. The subcommittee could say what they wanted or didn't want and come to the meeting on March 23rd to make their changes. Then between March and May, staff would make the bill draft changes and finish a fiscal note so that the subcommittee could then come to the full committee meeting in May to present the bill as a formal proposal. SEN. CROMLEY asked how specific does the subcommittee have to get on FTEs and budget. MS. HEFFELFINGER said that the subcommittee does not have to specify an attorney, but should at least identify duties and whether the program should be under the Supreme Court. SEN. CROMLEY said that he questioned whether the supervisor should be an attorney.

REP. STOKER said that he would like to see a fiscal note included with the bill draft to the whole committee. SEN. CROMLEY referred the subcommittee to the sample bill draft handed out by Ms. Veazey (**EXHIBIT 8**).

Preamble

REP. STOKER said that he would prefer not to have the preamble because he would have a tougher time defending this particular preamble. He said that he would prefer to rewrite it or do without one. SEN. PERRY said it is the agreement of the committee to eliminate the preamble.

Section 1. Short Title

The subcommittee agreed to keep the short title "The Montana Access to Civil Justice Act".

Section 3. Purpose

REP. STOKER said that there needs to be more education about civil lawsuit representation and the civil court system.

TAPE 3A

REP. WINDHAM said that Subsection (2) is redundant and suggested amendments.

SEN. CROMLEY said that in paragraph 1, we should put in "establish program and provide Montanans with education and information about Montana law." He said that if they could add another item, he would like a subsection (4) to read something like "provide assurances that the program does not guarantee a certain level of legal assistance and does not", he would like to insert "provide or guarantee direct legal representation to parties" just to be specific, but this act does not provide representation.

CHIEF JUSTICE GRAY said that back at sub (1) and new section, Section 3, she thinks that Sen. Cromley suggested adding the words education and information about Montana law in the civil legal system. She said that that kind of education is seriously needed. REP. WINDHAM said that she understands Justice Gray's concerns about education, but do we want to leave it Montanans, or do we want to put in self-represented litigants? MS. VEZEY said that we should be careful when that is inserted because the proposed program deals with more than just people who have a litigation case, and that part of the program's idea is to help people avoid litigation. We're just talking about numbers of the public.

SEN. PERRY said that in Section 3, sub (2), strike "education" and to replace the word "education" with "information" throughout the bill draft.

Section 4. Self-Help Law Program -- duties

SEN. CROMLEY suggested an addition in sub (2), development and delivery of educational programs and resources", programs might be too specific, might be kiosks or brochures.

REP. WINDHAM said that she would like "shall" for those legal forms, that there are some things that she doesn't want to be an option but an absolute so in two years, she would rather have them say that this is what they've done. It would be fair to them that they have specific

goals of this program, what we want to see them accomplish. SEN. PERRY said that the pilot program itself we can hold as a backup in case we run into difficulties later on. CHIEF JUSTICE GRAY asked if the committee might want to consider for purposes of first draft, putting the word "shall" in the new section for all of these items and when the committee gets the beginnings of a fiscal note, that would be a time to look at it.

REP. STOKER said on sub (5) that he supports "does not guarantee that a resident has the right to state-funded counsel in a civil matter."

MS. LANE said that stylistically that subsection (4) be a subsection (1) right after the catch line and 1, 2, 3, 4, or 5 be a, b, c, and then that last sentence be a new subsection (2) where it says "not guarantee".

SEN. PERRY asked if this was okay with the Court. CHIEF JUSTICE GRAY said certainly, understanding that the Supreme Court itself in its entirety is not going to be directly supervising this program.

Section 5. Program -- duties -- report.

SEN. PERRY said that under subsection (2), the pro bono program does not guarantee a right to state-funded counsel in a civil matter not subject to appointment under other state or federal laws. REP. STOKER asked if we are going to keep the pro bono as a separate question for a later, or are we going to include it in this draft at this time. SEN. PERRY asked if there is a redundancy or is it a separate discussion. MS. LANE said that she was under the impression that that is a separate subject farther down the road for consideration. MS. VEAZEY said that she thinks that it is fine to consider it separately.

SEN. PERRY said to strike sub (2) for now.

VALENCIA LANE asked the Chief Justice if she anticipated that this will be a separate commission and should it be set up like any other commission? CHIEF JUSTICE GRAY said that what she had envisioned was that the Court would create a commission with membership. VALENCIA LANE asked if the staff would be staff of the Supreme Court? CHIEF JUSTICE GRAY said that she would anticipate that the staff would be Judicial Branch staff located within the Court Administrator's Office and that the Court would create a commission.

SEN. PERRY said that subsection (4) looks good. Subsection (5) and subsection (6) looks good.

MS. HEFFELFINGER asked Ms. Gervais if she needed additional direction before they come up with a draft fiscal note. MS. GERVAIS said that with the information presented in the outline, they could come up with a rough estimate of the potential costs. She clarified that fiscal notes

are generally prepared by the Office of Budget Program Planning, although the Legislative Finance Committee does have someone looking at the fiscal note process. MS. HEFFELFINGER said that she would anticipate presenting to the committee not only a bill draft but a list of the assumptions that would be made and a figure to fill in the blank on the Appropriations, that figure would be based on that list of assumptions, that the subcommittee could make changes between March and May. SEN. PERRY asked Ms. Heffelfinger to email the bill to everyone on the subcommittee.

ADJOURNMENT

SEN. PERRY adjourned the meeting at 1:44 p.m.

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