

**Justice Action Group Board of Directors Meeting
June 28, 2018 — 3:00 p.m.
Feeney Conference Room
Cumberland County Courthouse, Portland**

MINUTES

Present: Mead, J., Rich, J., Eben Albert, Charles Dingman, Nan Heald, Juliet Holmes-Smith, Robyn Merrill, Jodi Nofsinger, Diana Scully and Deirdre Smith

By Phone: Susan Driscoll

Self-introductions were offered and Justice Mead welcomed our newest member, Jodi Nofsinger.

I. CONSENT AGENDA

A. Reports from the ACP: Justice Mead noted the status reports of the ACP members, which are provided twice a year. He commented, as he has in the past, on the exceptional quantity and quality of work that the members are able to accomplish with such limited resources. He thanked everyone for the reports and offered the court's gratitude for the important work the providers are doing.

B. Approval of Minutes: JAG Board December 7, 2017 meeting minutes – Justice Mead inquired whether there were any additions/corrections to the December 7, 2017 Board meeting minutes. None were noted and the minutes were accepted.

II. WORKING AGENDA

A. Report from the Chair — *J. Mead*

i. Report from ATJ Day at the Legislature: Justice Mead reported that the 2018 ATJ Day at the Legislature was very successful. He thanked the MJF for providing refreshments for the Legislators who stopped by the provider kiosks that were set up in the Hall of Flags. Justice Mead and Magistrate Judge Rich met separately with the Republican and Democrat caucuses of the House and Senate. He reported that JAG's message was well received and thanked Charlie Dingman, Charlie Soltan, and the rest of the JAG Legislative Committee for their work in setting up the event. Several members of the House and Senate are particularly supportive of the cause of civil legal services and we hope that they will continue to serve as champions for us in the future, particularly in the event that we commence a new legislative initiative for funding of the providers.

ii. Report from ABA/ATJ conference: Justice Mead reported on his attendance at the recent ABA National Meeting of State Access to Justice Commission Chairs held

May 2, 2018. The ABA/ATJ conference is the premier access to justice gathering in the country and representatives from virtually all commissions in all states are typically present. Many ideas and initiatives are discussed and exchanged.

Justice Mead was a panelist on a program entitled "ATJ Commission Funding, Staffing, Structure and Planning" where he presented on the issue of operating an ATJ Commission with little or no funding. His message was basically that Maine is very fortunate to have supportive providers who already talk to one another and are willing to cooperate, contribute, and collaborate with one another.

Justice Mead reported that Connecticut and several other states have instituted court service centers where unrepresented litigants can obtain materials, forms, and information on court proceedings. The "service center" often is simply a part of the Clerk's counter and is staffed by a member of the Clerk's staff. It is claimed that this does not add significant additional workload to the Clerks' offices because people already come to the counter regularly to ask questions and seek assistance. He indicated this is just a much more efficient way of doing things. He may consider presenting such a proposal to the court after the dust has settled on the implementation of the court's new case management and e-filing system.

Justice Mead additionally reported that some states have approved unrepresented litigator assistants and facilitators who are often paralegals. In many instances, students or paralegals have been trained sort of as a "first responder" to assist people coming to court unrepresented who do not know where to go, or what to file. These assistants can give such individuals generalized advice. They are supervised by overarching organizations who train and certify them. He felt it was a really interesting concept.

Limited representation initiatives were discussed at the meeting. He and Liz Scheffee have had discussions with the court and the MSBA in hopes of encouraging further use of this tool by private lawyers, but no leadership course of action has been embraced at this point. The providers, however, make extensive use (with great success) of limited representation agreements.

Justice Mead said many states have instituted highly publicized call centers. Some are run by commissions, some are run by providers. People can call in and they are quite similar to VLP's FLAME program ("Free Legal Answers Maine"). He said the call centers have been very successful.

Justice Mead reported that many legislatures and courts across the country have been recently adding additional surcharges to court fees and fines to fund legal services as we do in Maine with the Civil Legal Services Fund. Although this is a convenient means to funnel funding to the legal services community, there has been recent pushback from organizations that consider the fees and surcharges to be “taxes” on justice, and there is a movement to dial them back.

See <https://finesandfeesjusticecenter.org/news/>

Justice Mead spoke about NYC embarking on a very ambitious program that promises that it will have 100% of all eviction defendants represented by lawyers within 5 years. He said it was very inspirational. He indicated the State of Washington has what’s called Limited License Technicians where people who don’t necessarily have legal training can go to specialized training to assist with evictions or protections from abuse. They’ve sort of stepped in, in place of where a lawyer would be. Justice Mead is not convinced that’s a great idea, but more people are getting help.

Justice Mead said he went to a session called “Civil Gideon is not dead.” See civilrightto counsel.org for an update on the efforts and a comprehensive review of the status of right to counsel in civil matters in each state. They came in with some very energized and inspirational people.

iii. Website upgrade/Unprofessional Conduct—*Initiatives and Solutions*: The Board voted unanimously to upgrade the JAG website and feature a table or database that will document efforts being undertaken by organizations and people across the state to address concerns of sexual harassment and professional misconduct taking place in the legal community as noted in Nan Heald’s February 2018 article published in the *Maine Lawyer’s Review*. With the approval in place, work will begin in earnest to get the website up and running within the next couple months.

Nan suggested, and the Board agreed, that we should partner with the MaineCanDo organization <http://www.mecando.org> which operates a resource sharing website dedicated to the same objectives. Jodi Nofsinger knows one of the primary individuals involved with the MaineCanDo organization and may be able to facilitate a partnership with them.

[NOTE: The website will feature a news sidebar. Members are encouraged to submit any news or developments in their organizations to help populate the sidebar!]

iv. Funding for providers implicit bias conference: At the last Executive Committee meeting, Jamie Kilbreth mentioned that the providers were putting on an implicit bias

conference in October during the JB administrative week and inquired whether JAG could contribute to the funding. Jaime mentioned the figure of \$1,500. Justice Mead noted that JAG doesn't actually have any money, although there are funds (possibly about \$9,000) in the MJF account that have been earmarked for JAG initiatives.

A wide-ranging discussion followed regarding how the providers' conference could be funded from MJF funds without creating a precedent that JAG funds could be applied in a way that didn't specifically conform to the purposes that motivated the MSBA, the courts, and the MJF to contribute those funds and earmark them for JAG undertakings. In the end, the Board authorized the Executive Committee to explore the issue further and to act upon the results.

v. IOLTA Funds: Justice Mead reported the court met with representatives of the Maine Justice Foundation to speak about a range of things including IOLTA funds and their application to MJF administrative expenses and disbursement for purposes other than direct legal services. The MJF agreed to provide a more detailed report on the specific administrative undertakings that the IOLTA funds were being diverted to. The report would be submitted, hopefully, by the end of summer.

vi. Justice Systems Committee: Justice Mead referenced the recent Justice Systems Committee (JSC) Report. The JSC originally envisioned submitting a large, final report on suggestions to improve justice delivery systems, but the report concludes that the JSC objectives are better served by casting it as a continuing, standing group that will keep lines of communication between the providers and the court open and if any specific recommendations come out, they will forward that information up the chain. Justice Mead thought this approach had a lot of value and agreed fully with the JSC's recommendation. The Board echoed those sentiments.

B. Report from the Chair — *J. Rich*

Judge Rich talked about the status of outreach to the private sector. He talked about how it was a long time coming but IDEXX has now put a team together (9 staff attorneys and non-attorneys) and they plan to take on an asylum case. He talked about Janet Britton being in-house counsel at IDEXX. He mentioned that Miles Archer at UNUM might also be interested in taking on something. Juliet mentioned that UNUM already does a lot of work through VLP. She thinks we need to be careful approaching UMUM because they're already doing a lot.

Jodi asked if there was a similar outreach to bigger law firms. Her law firm, Berman & Simmons, has already taken on 7 asylum cases. She said her firm would be happy to approach other law firms to take on these kinds of cases.

Nan said the things these law firms are doing would be good to highlight on the website. Eben mentioned providers have come to his firm in the past to get some people involved in legal services projects like asylum work. He suggested that they should ramp that up again.

C. Pro Bono Committee:

Judge Rich discussed the Pro Bono Committee report provided by Juliet recommending adding questions regarding pro bono hours to the Maine Board of Bar Overseers annual registration form. He said the Committee needs JAG Board action on this issue. He discussed how many Maine attorneys responded to the ABA survey that they sent out and how important it is to capture these numbers to use in seeking funding from legislators and grant funding. Juliet inquired about the data that gets reported: Who would own that data, etc.? Judge Rich talked about the suggested question regarding recognition for KC. Juliet mentioned that Committee member Judge Soucy had talked to most of the lawyers in Aroostook County. She indicated that a lot of attorneys do not want recognition for fear it will be announced and then the public will think they're providing free legal services.

Judge Rich said that the Maine BOBO knows this topic is coming up at today's meeting so they want to see how the JAG Board feels about it. The Pro Bono Committee and the Board of Overseers will have to put a package together showing they're onboard with this proposal and that JAG is onboard with it too, then it can be presented to the SJC.

Juliet questioned whether a rule change was needed. The Board of Overseers doesn't think that it's needed. Judge Rich commented that the SJC will have the final say on that.

Justice Mead asked what the Board thought of this proposal. Everyone agreed that we should forge ahead with the new registration form.

Nan asked about the emeritus counsel rule. She said she has had a lot of out of state retired attorneys that have come into Pine Tree saying they're bored and would like to work on something. She would really like to use those volunteers at Pine Tree. Justice Mead mentioned that recent movements toward interstate reciprocity may increase the number of available lawyers who have moved to Maine from other jurisdictions. In the meantime, the "character and fitness" elements of being admitted to the Maine bar would have to be folded into any proposal.

Juliet said Pro Bono Committee members Jennifer Archer and Zach Heiden spent a lot of time looking at this and Jennifer talked to the Maine Board of Bar Examiners because she's on that board. What Jennifer reported back to Juliet is that the cost of doing it would be around \$1,000 because the Examiners would feel compelled to do the same background checks that they have to do for everyone else and that the volunteer attorneys would have to pay that cost. What they'd be paying for is the

ability to do pro bono work. Juliet said that the committee feels this to be a big barrier. To do all of this work, she doesn't think they'd get a lot of attorneys willing to do that. She discussed Maine attorneys who are retiring, getting them to take emeritus status, and that Justice Cuddy, another Pro Bono Committee member, has been trying to spearhead this. The Pro Bono Committee seemed to think it will be a nonstarter for out-of-state attorneys, and feel they should focus on Maine retiring attorneys, getting them to take emeritus status.

D. Justice Systems Committee/ Administrative Systems Subcommittee:

Reported on earlier in this meeting. See Justice Mead's comments above.

E. ACP Report:

Deirdre Smith reports that most of the ACP issues (pro bono proposal, the implicit bias training, and the justice systems subcommittee) have been addressed earlier in the meeting. The ACP is exploring the possibility of hosting breakfast meetings with key members of the Legislature on ACP Day.

F. Legislative Committee:

Charlie Dingman spoke about the importance of identifying a core group of legislators who are supportive of the ATJ cause who can serve as champions and who can help us understand what we need to do if we are to undertake an affirmative funding initiative. This core group of legislators could serve as an information conduit to other legislators. Much depends on the makeup of the legislature, so we will watch with great interest the outcome of contested elections. Diana suggested that MJF funds might be available for the breakfast sessions.

F. Maine Justice Foundation

Diana mentioned that they've been working for the last few months on letters to go out to the financial institutions that participate in IOLTA, especially the ones paying the comparable rates, and that letter is just about ready to go out. Justice Mead asked about the ABA's position on IOLTA. Diana talked about how the ABA has been undergoing dramatic budgetary challenges for some years now and with that came some cuts. The most senior members with the most knowledge of access to justice issues and IOLTA were given a golden parachute to retire. They were about to eliminate the commission on IOLTA, but she said it's going to hold on by a thread at a level of \$8,600 for the next year. She's hopeful the ABA will start to build it up again in the next few years.

H. Maine State Bar Association

Susan Driscoll reported that last week's MSBA annual conference had double the attendance of last year. Day One was about the disruption to the legal profession, which is mostly due to changes in technology. They had good speakers from out of state. Day Two had a good panel to talk about e-filing and the issues between rights of privacy of litigants and rights of the public to transparent government. She said that was a very interesting discussion. In terms of the MSBA survey on unprofessional conduct, they're in the process of presenting the results in various forms. They've presented for the first time at Bernstein Shur (30-40 people attended) and they are scheduled on July 20th at Verrill Dana and again on August 8th at the Penobscot Judicial Center. They're hoping to set up a few more around the state with the purpose of not just to disseminate the results or just put them on the website, but to spark a conversation about the larger issues of bullying and civility. She said they're also in the process of putting together a mockup of some signage that they're going to ask to be put up in courthouses that will reflect the guidelines for civility.

I. New Business: None reported.

J. Future Meetings of the JAG Board:

December 6, 2018 - 3:00 p.m., Feeney Conference Room, Cumberland County Courthouse

Meeting adjourned at 4:33 p.m.