

Missoula County Justice Court Dept. #1 Proposal:

There have been multiple references to a Justice Court (JC) structure based on the Missoula County Clerk of Court's Office (C of CO). However, to model a JC structure on the C of CO, the District Court Judges' staff (DCJs) must figure into the equation.

Background info: The C of CO has 22 clerks. (avg. of 5.5/ judge). The District Court Judges have a separate staff of 16 (avg. of 4/ judge). This is a combined total of 38 support staff for 4 District Court judges (avg. 9.5/ judge). Justice Court (JC) averages 6 support staff per judge. JC staff perform the functions that the C of CO clerks, the DCJS do as well as some additional ones.

The C of CO clerks' duties & the DCJS duties are separate. JC staff is not separated by administrative functions and legal functions/functions with legal ramifications. Identifying the functions that the C of CO clerks perform and what functions the DCJs perform is critical. This is good guideline to start the process of splitting out administrative versus legal functions, if it is possible.

Additionally, JC performs functions that the C of DC clerks and the DCJs do not. Justice Court has a high volume of functions that are sua sponte (action on its own motion; action not prompted by either party). Examples include: issue warrants, monitor sentence compliance, Orders to Appear, Orders to Show Cause, etc. – all sua sponte. In District Court, these same functions are prompted by the County Attorney's Office. Some JC functions may seem administrative in nature but are actually legal because of their legal ramifications re: what & when are they proper to initiate, how to initiate & consequences if done improperly/illegally.

The challenges to this kind of bifurcated structure in JC:

1. Are JC functions able to be separated/split due to the multiple sua sponte functions in that court? Judicial functions are not confined to the courtroom. That is just one part of it. Many of the problematic issues I encountered upon my arrival related to these sua sponte functions being done illegally/incorrectly.
2. Split staff – clerical staff & judges' staff. Assuming one clerical staff & two judges' staffs, who would supervise the clerical staff? Who would supervise the supervisor of the clerical staff? Who would supervise the judges' staffs? Given how JP Court functions, the judges' staffs would be larger than the clerical staff. The interplay between the supervisors & the staffs seems complicated & vulnerable to misinterpretations & disagreement over hierarchy & territory.
3. All judges have their own way of being judges. They are not uniform. There seems to be an idea that we Justices of the Peace should do everything the same, like a cookie cutter. While we may be one County "department", we are two different departments in one court. There will always be variation in how two or more judges do their jobs. That is why each District Court judge has his/her own staff. Getting two or more judges to agree on everything is more difficult than herding cats. Can joint staff handle these differences? They haven't been able to in the past. Arguments between clerks regarding judge differences based on this promulgated idea of cookie cutter judges. It creates tension.

4. Physical separateness of JC space. There are 4 office spaces separated by the wide halls under the rotunda. Each judge has an office & each department's staff has an office. The current space is not conducive to these separate staffs. The supervisor needs to be with their staff. The management jobs in this court are very hands on & interactive. Having a supervisor in a separate physical location than their staff creates problems.

Historically, when JC departments shared staff, it did not work. When staff with different supervisors shared the same physical space, that did not work, either. It was a nightmare.

Proposed Structure/Changes:

1. Each JP has **one staff** located in **one office** space. (as it is now)
2. One **part-time, shared staff person** to do all **financials**. Dept. #1 has more physical space so that person could have a work station in that office. The judges share fiduciary responsibilities. It eliminates risk for each judge if the other department's financial person isn't doing financials in a timely manner, etc. No arguing, blaming, finger pointing re: financials. Judges agree on a job description for this position. Very straight forward. In the past, one OM did not share or turn over the bank reconciliation to the other OM. The judge whose OM didn't receive the account to reconcile discovered that the reconciliation was one year behind.
3. The **staff** would consist of:
 - a. **Manager (OM)** - paid more than \$18/hour. In all fairness to previous OMs, the job they were required to do @ the salary they made was too little for too much. It is a job with a lot of knowledge required & responsibility. Legal education/experience & supervisory experience a must.
 - b. **Assistant Manager (AM)**. - right hand to OM. Legal education/experience & supervisory experience a must.
 - c. **3 clerks** – legal experience/education preferred.
 - d. **3 judges' clerks** – paid more than clerks. Legal education/experience preferred.
4. The two **OMs** act as **liaisons** between departments. Develop a close working relationship & work cooperatively on joint projects. We currently have shared duties between the departments and the arrangement works well. If there are more shared duties to be had, we should add them. The OMs handle issues that arise between the departments unless they cannot. Then the issues come to the judges to be resolved (rarely). This has worked very well in the past. When the department consolidated into one physical office for each staff, the OMs were responsible for the interdepartmental communication prior to that move/transition. It was a big move and went incredibly well.
5. **Judge interacts directly with her OM**. Her OM interacts with staff. The judge does not interact with the other judge's OM & staff. The judge does not interact in a supervisory way with her own staff unless something happens in her presence & must be addressed instantaneously. Even then, the OM would follow up.

Advantages of this structure:

1. **Continuity.** The **AM** offers continuity if/when the OM is absent or non-existent. Continuity in supervision, liaison with other department, working knowledge of the department, relationship with judge, institutional knowledge of justice system, relationships with other departments. A built in back up for the OM – absolutely necessary.
When I was without an OM, there was no plan in place between departments for that occurrence. I attempted to discuss devising a default plan with the other judge to no avail. I taught myself how to do some financials. When I asked questions of the other department's OM, my department was required to pay their OM more/hour for several months. It seemed strange to me that we didn't work cooperatively on this issue.
2. A **shared part-time for shared financials** also insures continuity of financials being done correctly & timely. Eliminates fiduciary risk for each judge. Eliminates disagreements between department regarding financials.
3. Keeps **staff in the same physical space.** Supervision is much more effective in the same physical space. Given the hands on, interactive nature of the management job, the OM must be physically with her/his staff. When I arrived, both departments had staff in both offices. The OMs were both in one office. One office had no manager, constant bickering in both offices. The OMs & judges tried to supervise the other Judge's staff. A nightmare.
4. **Protects the County & JC staffs from individual judge personalities.** Their will always be new judges coming into JC. How a person represents themselves & how they actually are to work with can be two different things. Regardless of what the truth is, it is much easier to simply eliminate required judge contact. Contact between judges is not necessary for them to perform their duties. Forcing contact only guarantees friction. Cooperative attitudes may develop naturally between judges but they cannot be forced. The OMs provide the liaison function between departments.
5. **Court of record.** This structure would provide a solid foundation upon which the requirements of being a court of record could be successfully added. Being a **Court of Record is protective** of everyone who appears in court. No more disagreements about who said what. The court will need the added staff to make the transition to being a court of record.

This structure offers continuity if OM &/or judge changes. It protects the judges from any fiduciary issues with financials. It prevents friction between department staffs & judges. It is not dependent upon the personality of an OM or a J.

Relevant Judicial Codes and MCAs:

Judge Holloway & I are bound by the Code of Judicial Conduct. The Code is mandatory, not optional. I invite you to take the time to read them. They give a clear picture of the duties and obligations that we have under this Code.

Montana Code of Judicial Conduct (mandatory):

Rule 1.1: "...judge shall comply with the law..."

Rule 1.2: "...judge shall act at all times in a manner that promotes public confidence in the independence...and impartiality of the judiciary..."

Rule 2.13(A): "...judge shall require court staff, court officials and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code".

Comment: "judge is responsible...for the conduct of others, such as staff...acting under the judge's direction and control."

Rule 2.2: "judge shall uphold the law..."

Rule 2.5: "judge shall perform ...and administrative duties..."

2.13 Supervisory Duties

Again, I invite you to take the time to read these.

Montana Code Annotated:

MCA, 3-1-101(5)

" **3-1-111(3):** "power to provide for the **orderly conduct of proceedings** before it..."

" **3-1-111(4):** "power to **compel obedience to its...process...**"

" **3-1-111(5):** "power to **control, in furtherance of justice, the conduct of its ministerial officers...**"

MCA, 3-1-111(8): "power to **amend and control its process...so as to make them conformable to law...**"

" **3-10-103(1)(a):** " ...BCC ...shall provide ...the office, courtroom and **clerical assistance** necessary..."

" **7-5-2101:** "...BCC is chief **executive** authority."