

# SUMMARY ASSESSMENT OF PERSONNEL FUNCTIONS OF MISSOULA COUNTY JUDICIAL COURT #1

**Requested by:** Missoula County Human Resources Department

**Assessment by:** Michele Puiggari, Puiggari & Associates Consulting Services

**Dates of Inquiry:** Weeks of June 11 and June 18, 2018

**Date Summary Preparation:** July 10, 2018<sup>1</sup>

## **A. REASON FOR ASSESSMENT**

Michele Puiggari was retained by Missoula County Administration to perform an assessment of the personnel functions in Judge Marie Andersen's Justice Court #1. The reasons for the assessment arose from concerns regarding the following:

1. *High employee turnover rate of Justice Court Managers (JCMs) in Justice Court #1.*
2. *Patterns and common themes of concerns raised by JCMs during exit interviews with Missoula County Human Resources.*
3. *High employee turnover rate of Justice Court Clerks (JCCs).*
4. *Job duties being performed by Justice Court employees at the direction of Judge Marie Andersen (who is an elected official, Justice of the Peace, Justice Court #1) that are not in the best interests of the public.*
5. *Statutory limitations of authority of the Judge to direct employees' work versus the JCM's responsibilities to direct/supervise JCC's work.*

## **B. SUMMARY OF FINDINGS**

Following are findings and common themes that arose out of the assessment based on interviews of current and former employees.

1. *Excessive turnover of Justice Court #1 staff.*
  - a. Four JCMs have resigned or been terminated between one and one-half months and eight months of employment since April 2016 (a period of approximately two years and two months).

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<sup>1</sup> Report prepared by Human Resources from the original report for purposes of dissemination to the Missoula County Board of Commissioners and Judge Marie Andersen. Recommendations were not offered by Ms. Puiggari in the assessment.

The reasons for this are:

- The Judge is not accurate in stating the JCM will have autonomy in their job to manage and complete work.
- The Judge does not allow the JCM to manage and the Judge micromanages the court staff.
- The Judge wants employees to be disciplined when the JCM does not agree this is necessary.
- The Judge wants the JCM to go over “Mistake Sheets” with employees when she perceives they make errors. Some of these lists go back several months before they are addressed with a staff person. This sheet is created by the Judge.
- The Judge does not let the JCM have autonomy to handle job performance issues of the staff and really seems to want the JCM to act as another clerk under the Judge’s direction.
- There is no training provided to the JCM or JCCs that is helpful, especially when many of the clerks and JCMs are new over the past two years.
- The Judge requires the JCM to meet with her for excessive periods of time; sometimes after normal work hours.
- The Judge blames the JCM for “mistakes” for items the JCM may not have known about.
- The Judge has the JCM spend excessive amounts of time on items not relevant to managing the staff to enable the JCM to properly support the functioning of the court.
- The Judge required the JCM to research if legal files were being destroyed and then did not accept the result of the research which indicated this was not happening.
- The JCM was required to research why the Judge in Justice Court #2 had printed office envelopes with the court’s return address that also included Justice Court #2 Judge’s name in the return address.
- The JCM was required to research if a former employee possibly stole a book purchased by the County when it was possible the book was simply missing. The book was replaced for free by the publishing company, but the Judge was not satisfied unless the JCM could find out what happened to the previous book.

2. *Two out of five Justice Court Clerks have recently resigned. The most senior JCC employee was hired only a little over two years ago.*

- a. This level of turnover has been excessive since the time Judge Andersen has served in her role. This creates issues related to lack of ability to thoroughly train staff and create cohesion between staff. This also affects their ability to efficiently serve the public.

Staff reported to Ms. Puiggari the following:

- There is no training provided when newly hired into the JCC position.
- Staff are expected to perform all tasks of their jobs but there is no training manual and they cannot ask another clerk (who may know an answer) for help. Asking for assistance from a co-worker is forbidden by the Judge. They are also forbidden from asking for help from an employee in the other court, Justice Court #2. Staff are directed to only ask the Justice Court Manager or the Judge herself. However, the JCCs are not allowed to initiate an e-mail with a question to the Judge; this, too, is forbidden. The staff are only allowed to respond to an e-mail that is initiated by the Judge.
- Lengthy and excessive “Mistake Sheets” created by the Judge that sometimes include up to three or four months of “mistakes” made by the clerks that the Judge requires them to review with her and the Justice Court Manager. These are not effective as a training tool and create a disincentive for employees. Employees also spend significant time researching the “mistake” to explain how it happened. There are also times when the mistake did not occur when they were employed.
- Policies and procedures change frequently at the direction of the Judge. There is a policy manual but it is not updated and not accessible in the computer for employees to easily access. Changes are not put into the manual in a logical fashion.
- The Judge does not inform the manager or employees of procedural changes in a manner so that all the staff know of the change. Sometimes the Judge tells one staff person about a change, sometimes it is by e-mail; but usually not to everyone or in a consistent manner. Then, if the employee does not implement a change that the Judge may or may not have communicated (that they did not know about), the staff are blamed for making a mistake.

3. *There is a substantial amount of time wasted by the Justice Court Clerks.*

- a. The employees are required to perform tasks assigned by the Judge that are not part of their job descriptions.
- b. The Judge has established her own recycling plan which requires excessive recycling of all types of materials that are taking staff anywhere from a couple to several hours per week to handle. This includes washing and removing labels from bottles and cups, saving cardboard, plastic, and even food for composting.
- c. Animal care – clerks are asked to feed kittens in the office and walk the dog during work hours.
- d. Clerks are required to perform tasks in an inefficient manner because:

- They are not allowed to ask each other questions to obtain help when serving the public.
  - Staff are directed to only e-mail the Judge in response to an e-mail she initiated. They are forbidden from initiating their own e-mail to ask questions or seek clarification.
- e. The JCM and JCCs spend a large amount of time rescheduling the Judge's appointment and hearings because the Judge is frequently absent or arrives late for work.
- f. The clerks are required to keep the door to the main office locked (this is the door that previously allowed public access to the Justice Court Clerks). The public must now go to a window. This was done to force one clerk to be more attentive to the public by having to greet them at an outside-access window. Then, the clerk can "buzz" the citizen in to the office area. This demonstrates micromanaging by the Judge and does not allow the JCM perform her work in her assigned position.
4. *The Judge is acting outside the scope of her statutory duties by managing staff herself on matters not essential to the performance of her judicial function.*
- a. For example, locking the outside door that provides access to the clerks' office area, onerous recycling requirements, and not allowing the JCCs to ask their co-workers for assistance.
  - b. Not allowing staff to initiate an e-mail the Judge with their questions.
5. *The Judge is frequently absent.*
- a. The Judge is frequently absent which causes issues with the timely handling of warrants. The Judge may be unexpectedly absent on days that citizens arrive to pay fines or attend court to eliminate arrest warrants, which is only scheduled for one time per month. If the Judge is absent, citizens return home with a warrant still out for their possible arrest. Citizens must reschedule their time again for a future date. Some citizens travel from outside Missoula County.
6. *Potential confidentiality/privacy violations due to the Judge's own recycling policy.*
- a. The Judge has a mandatory recycling policy requiring paper with printing on one side be reused. There is no assurance the reused papers do not include confidential information. These reused papers were examined and it was noted that the other side of the paper contained a medical release for treatment with the person's name, mediation agreements with parties and settlement amounts, default judgements with names and amounts, DUI charges with other side having drug possession charges, and citations

issued by law enforcement that sometimes included a citizen's social security number, address and phone number.

- b. It is also extremely difficult to clearly identify which side of a document is the relevant/current side of the paper versus the reused side of the paper. The Judge does not allow staff to shred these papers. This is a potential violation of the County's recycling policy.

7. *Potential violations of fiduciary responsibilities and acting outside of judicial capacity.*<sup>2</sup>

- a. The Judge had court monies taken to her home and left in an unlocked box on her back porch. There was no way to ensure the Judge was home at the time of delivery or to safely secure the monies. This request had nothing to do with the Judge's responsibility to perform judicial functions, but was clearly an administrative task under the authority of the JCM.

8. *Potential violations of Missoula County policies.*<sup>2</sup>

- a. Possible violation by the Judge of Missoula County's own personnel policies regarding retaliatory actions against a staff person who participated in this assessment.
- b. Based on interviews with former employees, there have been two incidents whereby Judge Andersen contacted other people/personnel to see if they were interested in the Justice Court Manager position because the current JCM was not expected to work out. In other words, the Judge was seeking a replacement for an employee already working for the County.

9. *Potential violations of ethical responsibilities.*

- a. The Judge states she wishes to have a good relationship with Justice of the Peace #2 (JP #2) and for the courts to interact. However, these actions are not put into action. The Judge refused to interact with JP #2 and will not allow her staff to interact with JP #2. A JCM previously received some assistance from JP #2 and was terminated a week later.
- b. The Judge has an ethical obligation to cooperate with other Judges and court officials in the administration of court business. However, there is no cooperation between JP #1 and JP #2 because of JP #1's ban on any such cooperation.

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<sup>2</sup>Ms. Puiggari is not a practicing attorney in Montana and cannot and will not provide legal advice. To ascertain if there is any potential violation of policies, Missoula County will be acting to examine/analyze these issues further.

C. **ASSESSMENT RESOURCES**

Ms. Puiggari performed the assessment by interviewing current and former employees, reviewing documents and communications, and obtaining information about Justices of the Peace and their authority and practices from statute and other resources. A partial list of the documents reviewed are:

1. *Exit interviews conducted by Human Resources staff.*
2. *Variety of e-mails and phone texts communications between Judge and personnel.*
3. *Montana Code Annotated 2017, 3-10-221; Duties of Justices.*
4. *Montana Judicial Branch Personnel Policies & Procedures effective May 6, 2002.*
5. *Rule 2.5, Competence, Diligence, and Cooperation, of the 2008 Montana Code of Judicial Conduct.*
6. *Rule 2.13, Supervisory Duties, of the 2008 Montana Code of Judicial Conduct.*
7. *Samples of documents with other persons' information on back of legal documents due to the excessive recycling of court paper.*
8. *Sample "Mistake Sheets" regarding Court Clerks' work.*
9. *Job descriptions of Justice Court Manager and Justice Court Clerks.*
10. *Training and court scheduling instructions.*
11. *Meeting Agenda dated June 4, 2018.*
12. *Judge's own Reuse/Recycle/Compost procedures.*
13. *Affidavits by Court Clerks.*

In addition to the documents listed above, Ms. Puiggari also:

1. *Interviewed former and current employees and elected officials. (Note: Judge Andersen declined to be interviewed.)*
2. *Reviewed training of Judges of Limited Jurisdiction related to personnel and the Judge's authority.*
3. *Ms. Puiggari also prepared a timeline of events from documents and uncontested statements of events.*

D. **JUDICIAL AUTHORITY REGARDING PERSONNEL MANAGEMENT**

A Judge has the authority to manage the court process to ensure they can perform their judicial obligations. However, there is a question of what processes and procedures performed by the JCM and JCCS are needed for the judge to perform judicial functions and what procedures are incidental to that function.

Although the Judge is an elected official, the Justice Court Manager and Justice Court Clerks are employees of Missoula County and the County. The clerks are subject to the union's Collective Bargaining Agreement and both the clerks and manager are subject to the Missoula County Personnel Policies.

The Judge should follow the Missoula Personnel Policies. The primary definition of responsibilities of the JCM's job description is, "Performs duties to provide staff

supervision and operational management for Missoula County Justice Court, involving processing and maintaining Justice Court records and documents.” The JCM also, “Works under the general direction of a Missoula County Justice of the Peace,” and is “Responsible for the supervision of a small staff assigned to one Justice Court Department.” (*Note: The JCM position supervises five full-time Justice Court Clerks.*)

The primary definition of responsibilities of the Court Clerks’ job description is, “Performs a variety of complex clerical duties for the Justice Courts of Missoula County to provide legal and administrative support; and to process and maintain Justice Court records.” As for supervision received, they, “Work under the general supervision of a Justice Court Office Manager.”

Currently, the Judge is requiring staff to perform tasks outside their job descriptions and is not allowing the JCM to perform their job as defined in their job description. The employment atmosphere in Justice Court #1 is one in which employees are confused, do not receive thorough training, are fearful of retaliation, and concerned about serving the public well. The management issues stated above have created extremely frequent and high employee turnover. This raises concern as to potential employment liability issues that could result.

Concern is also raised regarding Missoula County’s potential failure to provide appropriate judicial services for the public, and its obligations to be fiscally responsible and accountable to the taxpayers to provide efficient and cost effective judicial services.