



# The Court Help Reporter

Fall 2014

## MEET JIM TAFLAN, NEW COURT HELP ADMINISTRATOR



Jim Taflan was recently hired as the new court help program administrator replacing Erin Farris. Jim is a native Montanan whose roots are in Roosevelt county and the small farming towns of Wolf Point and Poplar.

Jim graduated with a degree in Business Finance from MSU in Bozeman and shortly thereafter attended Gonzaga University School of Law in Spokane where he was a member of the Law Review. Upon graduation and successfully passing the Montana Bar, Jim applied to and was accepted as a member of the JAG Corp (Judge Advocate General) of the U.S. Air Force and was subsequently assigned to the legal office at F.E. Warren AFB, Wyoming.

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After Jim's active duty tour, he joined the Montana Air National Guard and settled in Helena in 1992, beginning his Guard career performing JAG officer duties and commanding the Montana National Guard's Support to Civilian Agencies -Counterdrug Program for almost 24 years. Jim retired in 2008 and went to work as legal counsel and contracting advisor for a consulting firm specializing in federal government contract management. After the firm moved its office to Washington state Jim took a job with the VA at Fort Harrison as a level I certified and warrantable contracting officer. Jim is married and has two adult children and two grandsons. Welcome, Jim. We are glad to have you.

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FAREWELL, GOOD LUCK AND THANK YOU TO OUR DEPARTING AMERICORPS



**Emily Gutierrez**

**Home town:** Whitefish, MT

**Location:** Kalispell Center

**What are you up to next?**

Hopefully law school

**What will you remember most about your service term?**

I now understand how difficult and intimidating it can be for people to interact with the legal system. I hope to always remember this and carry that knowledge forward in my career.



**Kyle Nettleblad**

**Home town:** Gilroy, CA

**Location:** Great Falls Center

**What are you up to next?**

I'll be starting law school at USC, Hastings, with the hope to continue working in public interest legal work in some form or another.

**What will I remember most about your service term?**

The people! One of the best things about our program is the people who work there My self help compatriots as well as those in the JFM program at-large made the tough times less tough.



**Rachel Wagner**

**Home town:** Spokane, WA

**Location:** Bozeman Center

**What are you up to next?**

Applying to jobs in the social service/non-profit sector of Bozeman, hoping to work with children and families.

**What will you remember most about your service term?**

The client interactions for a good time to come. I am amazed at the gratitude of those seeking help. Truly, interacting with those seeking services is what kept me coming back day after day.

### *A bit of AmeriCorp Vista History*

*President Lyndon B. Johnson welcomed the first group of 20 VISTA volunteers in 1964 as part of the "War on Poverty." 2014 marks AmeriCorp VISTA 20th Anniversary*

*To those VISTAs Johnson said, "Your pay will be low; the conditions of your labor often will be difficult. But you will have the satisfaction of leading a great national effort and you will have the ultimate reward which comes to those who serve their fellow man."*

## COURT HELP WELCOMES NEW VISTA AMERICORP TEAM FOR 2014-2015

As fall begins in earnest, so does the staffing at four of the self help center service centers located throughout the state. Justice for Montanan’s AmeriCorps service members are provided by the Office of Community Service in collaboration with MLSA.

On Sep 12<sup>th</sup> Justice Beth Baker swore in 4 new AmeriCorps service members: Re-enrolling service member **Nolan Harris** of Ronan is serving a second tour at our State Law Library

Self Help Law Center.

**Anna Chithelen** of New York , another re-enrolling service member is serving her second year at the Yellowstone County Self Help Center.

**Gareth Ford** of Idaho has begun serving the Gallatin County Self Help Law Center.

**Kristal Fifield**, of Missoula has joined the Missoula County Self Help Law Center.



Governor Bullock welcomes new VISTAs



2014 Service Members Sworn In

## GLAC FINDS A PERMANENT HOME

The Gallatin Legal Assistance Clinic (GLAC) was formed in 2012 by a group of Bozeman attorneys , lead by Pam Poon, interested in improving access to legal assistance from licensed attorneys.

GLAC hosts monthly clinics specific to family law and boasts an impressive attorney volunteer roster. GLAC works with Montana Legal Services Association for financial screening and support for Clinic scheduling and with Patty Fain, the Court Help Statewide Pro Bono Coordinator, to assist with pro bono

program management. The Gallatin Self-Help Law Center staff regularly assists at the Clinics and the Court’s Clerk of Court, Jennifer Brandon is there every clinic. All of these volunteers makes a dream team we can all be proud of.

A significant challenge to the efficient delivery of attorney and clinic services was the lack of a space specifically for GLAC functions. That was until attorney Alanah Griffith offered space in her new

law office for GLAC to call home. The permanent space means no more lugging equipment from place to place or lack of a comfortable and confidential space to meet with clients who are in crisis. Congratulations.

[Click here](#) to learn more about GLAC.



## COURT HELP QUICK FACTS

**Self Represented Litigants** One of the most significant changes in the court systems of the nation in recent years is the growing number of self-represented litigants. Self-represented litigants often have difficulty preparing complete pleadings, meeting procedural requirements, and articulating their cases clearly to judges, court staff, and opposing parties or counsel. These difficulties produce obvious challenges. Self represented litigants are most pervasive in family law matters. 2012 Montana state court data indicates more than 4,669 domestic relations cases each year have one or more litigants who are unrepresented which accounts for approximately 54% all domestic relations cases.

**Self Help Services** The mission of the Court Help Program is to “[e]nhance court efficiency by assisting self represented litigants with access to Montana legal resources and information.” Self help law centers have served over 9,600 people statewide since January 2013. Approximately 200 customers a month visit our Yellowstone County Self Help Law Center. Court Help services are provided for free with no income eligibility. However, approximately 73% of self help customers indicate an annual income within 125% of the poverty guidelines and 84 percent report an income within 200% of the federal poverty guidelines.

Center	Staff	Appointment Service Locations	Remote Service Locations
Billings	Facilitator AmeriCorps	None	Forsyth, Miles City, Glendive, Sidney, Round up, Red Lodge, Baker, Wibaux, Jordan, Broadus, and Columbus.
Great Falls	AmeriCorps (2)	Havre, Malta, Glasgow, Shelby, Cut Bank, Conrad, and Choteau.	Wolf Point
Missoula	Facilitator AmeriCorps	None	Hamilton
Kalispell	Facilitator AmeriCorps	Libby, Eureka	Lake County
Helena	AmeriCorps	Dillon, Anaconda	Phillipsburg, Virginia City, Boulder, Deer Lodge
Bozeman	Part time Facilitator AmeriCorps	Livingston	Lewiston

**Self help law centers utilize federal AmeriCorps grant funding.** For the current grant cycle, September 2013 -August 2014, the amount of federal funds that will support the Court Help AmeriCorps members is \$73,117.

**Pro Bono Services:** One full time Pro Bono Coordinator actively supports local pro bono initiatives throughout the state. **Violence Against Women Act (VAWA) funds support our pro bono coordination work.** For fiscal year 2013, July 2013-June 2014 \$40, 557 dollars in federal VAWA funds will be utilized.

### Program Challenges

- One-time only funding. The Court Help Program was funded on a one-time only basis for the 2007, 2009, 2011, and 2013 legislative cycles. Managing a bi annual budget limits our institutional knowledge, program growth, and overall effectiveness of engaging local court staff.



## COURT HELP CUSTOMER SATISFACTION SURVEY RESULTS VERY POSITIVE



A customer satisfaction survey relating to the 2013-2014 AmeriCorp service year reveals Self-Help Law Center patrons are overwhelmingly satisfied with the assistance they receive from center staff. And AmeriCorp members.

According to the survey results:

- ◆ **92 percent** said the Center helped them to understand their legal rights and what they could do.
- ◆ **85 percent** said they felt more prepared to handle their legal situation.
- ◆ **90 percent** said that on a scale from 1—10 (10 = excellent), their experience with the Center was rated an 8 or above.



### ACCESS TO JUSTICE COMMISSION'S COMMITTEE ON SELF-REPRESENTED LITIGANTS RELEASES DISSOLUTION WITH CHILDREN PACKET FOR REVIEW AND COMMENT

The Vision Statement of the Access to Justice Commission's Standing Committee on Self-Represented Litigants (SRLs) is "To achieve the fair and efficient resolution of unmet legal needs" and focuses on self-help resources and tools to assist the self-represented in navigating the court system. Among its many tasks, the Committee undertakes the ongoing development, review and updating of forms designed for SRLs.

The Committee committed substantial time and effort, under the direction of its Chair Hon. Michele Snowberger, to the development of a new "Petition for Dissolution of Marriage with Minor Children" forms Packet. The Committee received substantial feedback from practitioners, court staff, and litigants. The Committee asks anyone interested to review the forms for substantive, visual, readability, formatting, and grammatical purposes. The perspective of those regularly exposed to the forms is critical.

You may review the proposed forms at: [http://courts.mt.gov/supreme/boards/self\\_represented\\_litigants/proposed\\_forms](http://courts.mt.gov/supreme/boards/self_represented_litigants/proposed_forms). The public comment period ends on October 17, 2014. But, if you have a comment after that date, you may reach the SCSRL at [scsrl@mt.gov](mailto:scsrl@mt.gov).

### PRO BONO COORDINATOR ELECTED TO NATIONAL POSITION



The Court Help Statewide Pro Bono Coordinator, Patty Fain, has been elected to the Executive Committee of the National Association of Pro Bono Professionals (NAPBPro) representing the Mountain Pacific Region. NAPBPro, created in 1987, is the only national organization devoted to promoting pro bono services to the poor and the professional development of pro bono managers and professionals.



## MEDIATION OF PRO SE FAMILY DISPUTES

Brian Muldoon and Pam Poon



All families have conflict—that’s simply an unavoidable feature of different personalities trying to live together. But when families are faced with the end of a marriage or a committed relationship, the resulting conflict can become quite challenging. Some of those challenges involve property and finances, and others grow out of competing ideas about how to best parent the children. Because marriage (even common law marriage) is a creature of the law, the legal system is ultimately responsible for deciding how to distribute property and how the children are to be parented when mom and dad live in different households.

But most experts agree that it is far better for the parents to work these things out than to leave the matter in the hands of a judge who does not know the children, who sees only a brief snapshot of the family and its history, and who is expected to make life-changing decisions with very little guidance from the law. The primary method for reaching an out-of-court agreement is mediation.

Mediation is a guided process in which the parties work with a trained professional to formulate their own agreements about property division, parenting time and decision-making, and other thorny issues that the legal system is charged with resolving. Most family mediators have a background in law or psychology, or both, and have been trained in the art of helping parties find the common ground where a lasting agreement is possible.

For the past thirty or forty years, there has been an explosive growth in the use of mediation in all walks of life—not only in divorce, but for employment disputes, medical malpractice, civil disputes and, of course, in foreign affairs. The Interior Minister of England recently announced that, starting this coming year, all family law cases must first go through mediation before seeking judicial relief.

Dealing with the courts is especially challenging when a party is not represented by an attorney. In Montana, clerks of court report that one or both parties are unrepresented in some 70% of contested family law hearings. *Pro se* cases are well-suited to mediation because the parties find it difficult to deal with the courts and the courts often find it frustrating to deal with the parties. In most cases, the dispute can be resolved in a single mediation session of perhaps three hours. That can save many hours in the courthouse for everyone.

Although all trial lawyers are familiar with the court-mandated settlement conference, not everyone understands why mediation is very different from a settlement conference. The goal of a settlement conference is to accurately predict the outcome of a case if it goes to trial, with the settlement master carefully assessing the weaknesses of each party’s position. That is, it tends to be a *deflationary* process, premised on the notion that people settle more quickly if they are convinced that they have over-estimated the probability of success. This depends on the settlement master’s superior knowledge of the law, a more pragmatic expectation of a jury or other decision-maker, or the settlement master’s ability to convince the parties and their counsel that a trial will be disappointing. This process is especially well-suited to cases in which a lawyer needs a third party to lower the client’s expectations. It also brings to mind a definition by Ambrose Bierce in The Devil’s Dictionary: “Lawsuit: A machine that you go into as a pig and depart as a sausage.”

Mediation comes in several different flavors. It can be “directive,” with the mediator urging a party one way or the other (like a settlement master), or “non-directive” or “facilitative” (helping a party to clarify his or her own thinking and facilitating a conversation where the party expresses that position). When the mediator sees that there is something at the root of the dispute that the parties aren’t addressing, the mediator might utilize what is known as “transformative” mediation. This goes beyond the surface of the dispute

(which is regarded as a symptom, but not the disease) and usually involves processes like clarifying accountability, urging candor and acknowledging forgiveness. If it works, the parties will actually change how they treat each other. Sometimes they even decide that divorce wasn't such a good idea.

In family matters, any given mediation is often a combination of all three approaches. Some disputes are resolved by re-directing the parties, perhaps by simply informing one or the other that Montana law won't permit the hoped-for outcome, or that judge so-and-so never approaches a certain parenting schedule. Sometimes the parties simply behave better when a third party is listening, and simply need to be facilitated. And sometime they need someone with the courage and experience to bring up the elephant in the room and to get beneath the surface.

In Montana, there are a variety of places where mediators can be found to work with *pro se* litigants. Private mediators can be found in the yellow pages in most of the larger communities or through the Montana Mediation Association. In some jurisdictions, such as Butte-Silver Bow County, a courthouse employee such as a judge's clerk provides free mediation services. In Gallatin County the non-profit Community Mediation Center offers low-cost mediation of family disputes by a trained panel of mediators drawn from all walks of life. Flathead County is investigating the use of mediation through Family Court Services. It is expected that all judicial districts will eventually offer some form of mediation services, as recommended last Fall by the Justice Initiatives Committee of the Montana State Bar.

Mediation is effective for a variety of reasons. It is well-known that mediated agreements are honored by the parties far more often than judge-imposed decrees. This means fewer petitions for enforcement or modification of child support or parenting schedules. Mediation is also flexible—it allows the parties to structure parenting arrangements that would not likely emerge from the “winner-take-all” mentality of the adversarial process. Some parties may agree to review and revise their agreements annually, or when the children graduate from one level of education, or when a parent remarries. They can designate a trusted third party, such as a family member, friend, physician or pastor, to make certain decisions when they can't agree. The possibilities and variations are only limited by the parties' creativity.

But most important, parties to a mediation are far more likely to focus on the best interest of their children. The non-adversarial setting of mediation enables them to relax a little and to think collaboratively, even when they have suffered a loss of trust, are depressed or angry. That's because litigation is a zero-sum game (meaning, what one side wins the other side loses), but mediation requires an outcome acceptable to both sides. When both parties hold veto power, it changes the dynamic. Neither party wins or loses, so there is little to be gained by exaggerating the character flaws of the other. Being adversarial weakens your position, rather than strengthening it. So, when the weapons are neutralized and set aside, it finally becomes possible to address the children's needs.

In terms of human physiology, we know that when we are in extreme distress, it triggers the “fight or flight” response of the ancient part of the brain. The perception of danger causes us to react instinctively to threats, and literally circumvents the thinking part of the brain. It is not physically possible to consider the welfare of others—even our own children—when our brains have been hijacked by our most primitive emotions. Rather than protect our children, we ignore our “better angels” and, perversely, put them in the middle. In a courtroom contest, “best interest” is reduced to a mere buzzword. But mediation helps the parties relax enough to re-engage the higher brain so they can problem-solve, rather than compete. And they can actually think about what the kids need.

But there are practical limits to what mediation can accomplish. There is a tremendous incidence of domestic violence in Montana's households. Some of those cases are so severe that they require the strong arm of the law. The victim of domestic violence may be so intimidated by his or her partner that any agreement would be a self-defeating attempt to accommodate or mollify the offender. Mediation requires that both parties have sufficient internal confidence to advocate for themselves, and a well-trained mediator can

usually find ways to bring a power imbalance back into balance. But there are limits.

For this reason the Montana Supreme Court ruled in *Hendershott v. Westphal*, 2011 MT 73 that where there is “reason to suspect” domestic violence, including emotional abuse, the parties cannot be compelled to participate in court-ordered mediation. Because the *Hendershott* holding was so broad, the Montana legislature subsequently amended M.C.A. 40-4-301 to provide that the parties could voluntarily agree to mediate the dispute. Where there is consent, the statute requires that the mediator be properly trained in handling domestic violence cases. The State Bar and the Montana Mediation Association are now developing training models to provide that level of domestic violence competence.

When should parties mediate a family law case? Generally, the sooner the better. Trial lawyers often say that the parties need to wear themselves out (and exhaust their financial resources) before they are ready to compromise. That cynical perspective is seldom true, in our experience. Litigation tends to reinforce the parties’ positions and negative views of the other, not to cause parties to second-guess themselves. Of course, before coming to mediation both sides must first provide financial disclosure to one another so they know what is on the table. But that doesn’t usually require formal discovery or months of litigation. And it is seldom that the opinion of evaluative experts is needed before the parties are able to address parenting issues—they already know (or think they know) all the facts they need to know on that front.

But how to select a mediator? What qualifies someone to plunge into the chaos of a collapsed relationship?

There are two essential qualifications—training and experience. Most lawyers and judges were trained as advocates, not as practitioners of collaborative problem-solving. Those of us with a legal background have to be completely re-trained to see the big picture, to think on behalf of the family, and to look for global solutions, not partisan victories. This is a very different orientation, and not everyone can make that adjustment. Seasoned mediators, even if they are lawyers, tend to sound “touchy-feely” because they speak more in the language of therapy than law.

Mediators have to be superb listeners and express compassion without the critical skepticism that characterizes us as lawyers. Fortunately, these skills can be learned. At a minimum, that typically involves a basic 40-hour training program in the principles of conflict resolution plus another 20-hour training for family law issues. It is also extremely helpful to be trained in early childhood development, domestic violence and substance and alcohol abuse.

And then, experience. The more experience the better—not just experience in mediation, but in life. Every mediation is different, so the more experience one brings to the table, the better. Wisdom and common sense are far more important than an ability to parse legal principles.

And, although mediation cannot resolve every conflict, it very seldom makes it worse. At the least, mediation will resolve portions of the dispute or plant the seeds of an eventual settlement. It may not always be win-win, but it’s certainly a no-lose proposition.

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*Since 1992, attorney mediator **Pamela Poon** has provided comprehensive mediation services including family law, workplace business dispute resolution, and custom-designed conflict management training. Pam is the founder of the Gallatin Legal Assistance Clinic (GLAC), is a regular volunteer at the Community Mediation Center and is the 2014 recipient of the Neil Haight Pro Bono Award.*

*In 1985 **Brian Muldoon** founded the first full-time mediation firm in the Midwest and in 1996 Brian’s comprehensive treatment of conflict resolution, *The Heart of Conflict*, was published and drew national acclaim. Brian moved to Montana after the youngest of his three children entered college and was admitted to the Montana Bar in 2009.*