

Agenda
Montana Supreme Court Access to Justice Commission
December 9, 2016
Large Conference Room, Office of the Court Administrator
301 S. Park, Third Floor, Helena, MT
1:00 – 3:15 PM

- I. Call to Order and Introductions: Justice Baker (1:00 – 1:05)
 - a. Welcome new members: Georgette Boggio, Kyle Nelson (Tab 1)
 - b. Approval of 9/9/16 meeting minutes: Justice Baker (Tab 2)

- II. Standing Committee Reports:
 - a. Policy and Resources, Communications and Outreach: (1:05 – 1:20)
 - i. Public Forum Report: Matthew Dale, Patty Fain, and Melanie Reynolds (Tab 3)
 - b. Self-Represented Litigants: Ann Goldes-Sheahan (1:20-1:25)
 - c. Law School Partnerships Committee: Debra Steigerwalt (1:25 – 1:30) (Tab 4)

- III. National Center for State Courts Justice for All grant proposal – Strategic Planning and Resource Guide update: Niki Zupanic and Nolan Harris (1:30 – 1:40)

- IV. State Bar of Montana Justice Initiatives Committee Report: Ann Goldes-Sheahan (1:40 – 1:50) (Tab 5)

- V. Montana Justice Foundation Update: Niki Zupanic (1:50 – 2:00)

- VI. Update on the Commission’s Legislative Proposal, and Plan of Action: Justice Baker (2:00–2:20) (Tab 6)

- VII. Update on State Bar of Montana/Law School mediation project: Justice McKinnon and Patty Fain (2:20 – 2:35) (Tab 7)

- VIII. Proposal for Court Consideration of Licensed Limited Legal Technicians: Chris Manos, Shanni Barry (2:35 – 2:50)

- IX. Other Updates: Justice Baker (2:50 – 2:55)
 - a. Inmate Access to Courts Concerns (Tab 8)
 - b. ATJC Biennial Report

- X. Public Comment and Review 2017 Meeting Dates (2:55 – 3:15)
 - a. March 10, 2017
 - b. June 9, 2017
 - c. September 8, 2017
 - d. December 8, 2017

Tab 1

Montana Access to Justice Commission

Members	
Justice Beth Baker, Chair <i>Montana Supreme Court Justice</i> <i>Expires: 9/30/2018</i>	bbaker@mt.gov
Hon. David A. Carter <i>Court of Limited Jurisdiction Judge</i> <i>Expires: 9/30/2017</i>	dacarter@co.yellowstone.mt.gov
Matthew Dale <i>Office of the Attorney General</i> <i>Expires: 9/30/2018</i>	madale@mt.gov
Representative Kim Dudik <i>Montana House of Representatives</i> <i>Expires: 9/30/2017</i>	kimberly.dudik@gmail.com
Senator Nels Swandal <i>Montana Senate</i> <i>Expires: 9/30/2017</i>	nswandal@gmail.com
Hon. Kurt Krueger <i>District Court Judge</i> <i>Expires: 9/30/2017</i>	kkrueger@mt.gov skennedy@mt.gov
Hon. Greg Pinski <i>District Court Judge</i> <i>Expires: 9/30/2018</i>	gpinski@mt.gov
Jennifer Brandon <i>Clerk of a District Court</i> <i>Expires: 9/30/2017</i>	jbrandon@mt.gov
Hon. Winona Tanner <i>Montana-Wyoming Tribal Judges Association</i> <i>Expires: 9/30/2019</i>	winonat@cstkt.org
Kyle Nelson <i>Montana Justice Foundation</i> <i>Expires: 9/30/2019</i>	knelson@goetzlawfirm.com

Alison Paul <i>Montana Legal Services Association</i> <i>Expires: 9/30/2019</i>	apaul@mtlsa.org
Randy Snyder <i>State Bar of Montana</i> <i>Expires: 9/30/2019</i>	rsnyder@rnsnyderlaw.us
Paul F. Kirgis <i>University of Montana School of Law</i> <i>Expires: 9/30/2018</i>	paul.kirgis@mso.umt.edu
Ed Bartlett <i>Business/Communications Leader</i> <i>Expires: 9/30/2018</i>	efbartlett@charter.net
Aimee Grmoljez <i>Business/Communications Leader</i> <i>Expires: 9/30/2017</i>	agrmoljez@crowleyfleck.com
Melanie Reynolds <i>Representative of Organizations Working with Low-income Individuals</i> <i>Expires: 9/30/2018</i>	mreynolds@lccountymt.gov
Georgette Boggio <i>Representative of Native American Communities</i> <i>Expires: 9/30/2019</i>	gboggio@elkriverlaw.com
ATJC Support	
Niki Zupanic Montana Justice Foundation	Staff Support 406-523-3920 nzupanic@mtjustice.org
Krista Partridge Montana Legal Services Association	Staff Support kpartrid@mlsa.org
Kevin Cook Montana Law Library	IT Support 406-444-9285 kcook@mt.gov

Tab 2

Montana Supreme Court Access to Justice Commission
September 9, 2016
Large Conference Room, Office of the Court Administrator
301 S. Park, Third Floor, Helena, MT
1:00–3:30 PM
Meeting Minutes

Commissioners Present: Justice Beth Baker, Hon. Kurt Krueger, Matthew Dale, Randy Snyder, Hon. David Carter (by phone), Hon. Greg Pinski (by phone), Dean Paul Kirgis, Michele Robinson, Aimee Grmoljez, Melanie Reynolds, Ed Bartlett, Andy Huff, and Alison Paul.

Commissioners Absent: Rep. Kim Dudik, Sen. Nels Swandal, Jennifer Brandon, and Winona Tanner.

Others Present: Niki Zupanic, Abby Brown, Katie MacFeeters, Katy Lovell, Andrew Martinez, Nolan Harris, Damon Martin, Beth McLaughlin, Michelle Potts, Kayre Chatellier, Patty Fain, Chris Manos, Michael Marchesini, Brian Copeland, and Justice Laurie McKinnon.

Call to Order: 1:02 p.m.

Justice Baker asked for comments or corrections to the June meeting minutes. There were no comments or corrections.

Matt Dale moved that the June minutes be adopted and Aimee Grmoljez seconded. The motion passed without objection.

Self-Represented Litigants Committee

First, Abby Brown pointed out an error in the Committee's written report referencing the pilot program to test the Dissolution of Marriage with Children forms in Cascade and Gallatin Counties. In fact, the pilot program is only in Gallatin County.

Abby next asked for input from the Commission on the Committee's proposed process for tracking legislation in the 2017 Legislature. Justice Baker asked Beth McLaughlin how the Office of the Court Administrator (OCA) tracks legislation that may impact self-represented litigants. Beth stated that her office tracks all court-impacting legislation, and that a tracking category for self-represented litigant or access to justice issues could be created. She added that the OCA is very careful about weighing in on pending legislation and rarely takes a position. Chris Manos said that the State Bar retains Ed Bartlett and Bruce Spencer to work at the legislature and track relevant legislation. Ed Bartlett stated that his legislative tracking for the State Bar is broadly focused and directed by the State Bar Executive Committee. He added that he also works for the Montana Judges Association and tracks bills with an immediate impact on the courts, particularly those with a financial impact. Alison Paul said that Montana Legal Services Association (MLSA) monitors bills that impact self-represented litigants and explained that while MLSA is prohibited from lobbying, the organization can provide informational testimony upon request from a legislator. She added that MLSA can notify the Self-Represented Litigants Committee (SRLC) about pending legislation and that the Commission could then ask a

legislator to request testimony from MLSA. Ed stated that he will be tracking the same types of legislation for the State Bar and he can also notify the Commission. Chris added that all bills tracked by the State Bar are on the State Bar's website. Justice Baker noted that since so many groups are monitoring legislation, there is no apparent need for the SRLC to take on that task. Abby asked how the Commission should decide whether to take a position on a given piece of legislation. Justice Baker stated that it's very risky for the Commission to advocate or lobby for legislation, and suggested that monitoring and providing relevant information to legislative committees is the best approach. Aimee Grmoljez agreed and stated that the Commission would take a significant risk and likely accomplish very little by lobbying on legislation. Abby thanked the group for their feedback and stated that a formal motion was not needed.

Finally, Abby referred the group to the proposed standardized fee waiver form developed by the SRLC and included in the meeting materials. Randy Snyder explained that inconsistency in fee waiver forms used among the courts, as well as the inconsistent treatment of the litigants who attempt to use the forms, called for the creation of a standard fee waiver form to be developed and adopted as the new statutory form. The working group formed by the SRLC reviewed forms used across the country and has submitted the proposed form to the Montana Attorney General's office for review. Randy suggested that the SRLC needs the Commission's approval to continue their efforts, and not to approve the content of the form itself at this time. Justice Baker thanked the group for their hard work and asked for a motion.

Randy Snyder moved to approve and authorize the continuation of the SRLC's work on the fee waiver form in consultation with the Montana Attorney General's office, and Matt Dale seconded. The motion passed without objection.

Judge Krueger suggested removing "Appearing without a lawyer" on the form heading so that pro bono attorneys can easily use the form.

Public Forum Series Update

Matt Dale and Michele Robinson updated the Commission on the status of the Public Forum Series. The Butte forum will take place on September 21 at Montana Tech. Michele reported that she is still working on getting speakers and that she is waiting for one final member of the listening panel to confirm. Justice Baker said that Justice Shea will attend and suggested that Rep. Dudik be asked to make follow-up contact with invited legislators. Patty Fain offered to help contact County Commissioners. Michele said that she taped an interview with KXLF and they will air it a number of times prior to the forum. Justice Baker reminded the group that the final forum is scheduled for October 19 in Helena and that Justice McKinnon will attend. Melanie Reynolds said that Helena College is the preferred location for the forum and she's waiting for confirmation that the Helena College space is available. The Great Northern is available as a back-up location if needed.

National Working Group Updates

Justice Baker and Alison Paul reported that there were no significant updates from the Legislative Funding and Self-Represented Litigant groups. Niki Zupanic said that the Private Funding group is still in the process of forming and has not yet had a meeting.

State Bar of Montana/Law School Mediation Project Update

Patty Fain explained that the mediation project was the brainchild of Justice McKinnon with the intention of providing a structure for a self-determined approach to keep matters out of court and to prevent matters from being litigated over and over again. Justice McKinnon added that a statewide court-connected model that will work in both rural and urban districts is essential to the success of the mediation project. Patty said that court-connected doesn't mean court-funded, and that the statewide model can work on different levels depending on the capacity of each court. There are four mediation modules and a court may adopt all modules for the full day-of court mediation program (E-RAMP) or may choose to adopt only the education or training modules. Patty explained that Kalispell is the model program because they have the necessary components for all four modules. When the criteria of two litigants with fee waivers and parenting plan matters was applied to Kalispell, almost 400 cases per year would qualify for the mediation program. Justice McKinnon stated that the initial idea of mandatory mediation was not feasible, but by using criteria to limit qualifying cases and by incorporating the module concept, the process can achieve some success and build momentum. She concluded that simply compiling a list of qualified mediators is a good start and that we need to work with each court to find the best point of entry.

Justice Baker asked what role is envisioned for the Commission. Patty replied that the mediation project needs guidance and support from the Commission, and Justice McKinnon added that Commission support would help keep the project focused on access issues and improving case processing through mediation. She added that a court connected program will need support from the Court and likely funding in the future from the OCA and legislature to be successful. A court connected mediation program should be a large component of a state's access to justice agenda.

Dean Paul Kirgis stated that he has lots of experience with mediation and court-connected programs and that the quality of the volunteer mediators is a concern. He stressed that strong training programs and law school engagement are needed and that these programs require a fair amount of administration. Justice Baker suggested that it might make sense to absorb the mediation project working group into an ad hoc committee of the Commission and that the project may tie into the National Center for State Courts grant opportunity that will be discussed later in the meeting. Justice McKinnon asked Judge Krueger for his thoughts. Judge Krueger stated that as pro se filings continue to increase, a mediation program is needed. He agreed that the Commission should move forward with the ad hoc committee proposed by Justice Baker. Dean Kirgis stated that he would support the ad hoc committee and would serve along with Eduardo Capulong. Justice Baker asked for a motion on the ad hoc committee.

Dean Kirgis moved to create an ad hoc Mediation Project Committee and Matt Dale seconded the motion. The motion passed without objection.

Discussion of the Commission's Legislative Proposal

Justice Baker reported that following the Commission's approval in June to move forward with the legislative funding proposal, she and Andy Huff met with the Governor's Budget Director, Dan Villa, regarding the proposal. Mr. Villa recommended using a statutory appropriation to set aside funds designated to the OCA which would then award and administer civil legal assistance grants. In addition, Rep. Dudik and Sen. Swandal recommended including language in the draft legislation that would require a report to the Justice Initiatives Committee in 2021 and include a sunset date in 2023. Justice Baker said that the Commission now needs to take formal action to move forward with the proposal. She explained that an informational packet will be completed prior to the Commission's December meeting and will include a 2-sided infographic on the legislative proposal and supporting documentation such as the MLSA Economic Impact Report, the Gaps & Barriers Study, and the written report and video produced from the Public Forum Series. Ed Bartlett asked Beth McLaughlin if the OCA was prepared to take on the role of grant-making and administration of these funds, and Beth replied that her office already does a great deal of fund administration and this would not be an undue burden. Ed stated that the statutory appropriation approach won't be easy and may not be successful, but he is now in support. Andy Huff agreed that it won't be easy, but with the additions of the reporting requirement and sunset date, and by lining up our support, we have a good chance of success. Justice Baker asked for a motion to approve moving forward with the statutory appropriation bill draft and preparation of the informational materials.

Matt Dale moved to approve moving forward with the statutory appropriation bill and authorizing the Commission to prepare informational materials in support of the legislation. Dean Kirgis seconded the motion. Randy Snyder and Judge Carter voted against the motion and Alison Paul abstained. The motion passed.

Justice Baker noted that the next Commission meeting is in December and we need to move quickly. She asked any other Commission members who want to be part of the legislative proposal discussions to contact her.

National Center for State Courts "Justice for All" Grant Proposal

Niki Zupanic reported that the "Justice for All" project is a multi-year and multi-phase project to provide states with technical assistance and funding to pursue the 16 components of a good access to justice system. The grants are supported by funding from the Public Welfare Foundation. Niki explained that that the funding would allow the Commission to build on the work that has already been done to develop tangible products and to become eligible for additional funding in Phase 2 of the project. Phase 1 of the project would provide 12 months of funding to hire a local consultant to inventory current access to justice resources and to develop deliverables and an action plan for the Phase 2 implementation. The Montana Justice Foundation and MLSA have agreed to draft and submit the proposal and MJF will administer the project if the application is funded. Niki said that support from the Commission is a requirement of the application and asked that the Commission authorize Justice Baker to sign a letter of support.

Beth McLaughlin said that she's had good experience with grants from this organization and that they provide good technical assistance. She added that Chief Justice McGrath is supportive of this grant application. Michele Robinson asked how much funding is available for Phase 1, and Niki replied that we will ask for \$75,000 to fund staff, travel, and organizational support.

Melanie Reynolds asked what the consultant will do in Phase 1, and Niki replied that the consultant will walk the Commission through the work of assessing the available access to justice resources and will prepare a final report and action plan for Phase 2. Judge Krueger asked how much funding is available in Phase 2, and Alison Paul said that the funding level has not been published, but she has heard amounts in the several hundred thousand dollar range. Justice Baker asked Randy Snyder for input as the Chair of the Strategic Planning Committee. Randy reported that the Committee never really got off the ground, but that we still need to refocus the strategic plan and that effort could move forward in conjunction with this grant. Justice Baker asked if the Strategic Planning Committee could be folded into a working group for this project. Matt Dale asked why the Strategic Planning Committee didn't meet before and Randy and Alison explained that new members are needed who have more time to commit.

Melanie Reynolds moved to authorize the Commission to support the National Center for State Courts “Justice for All” grant proposal and Judge Krueger seconded the motion. The motion passed without objection.

Justice Baker asked for volunteers for the working group. Alison Paul, Melanie Reynolds, Brian Copeland, and Justice Baker volunteered. Randy said that he would contact other potential volunteers.

Orders of Protection Project Update

Patty Fain referred the group to the proposed Permanent Order of Protection Hearing Checklist that was developed at the request of the Commission at its June 3, 2016 meeting. This document is meant to help self-represented litigants prepare for the Order of Protection hearing and to prevent the significant drop off rate that is seen between the issuance of a Temporary Order of Protection and Permanent Order of Protection hearing. Judge Carter added that the form is designed to be impartial, but will mostly be used by petitioners and it follows the form of the petition. Justice Baker asked for comments on the form to be directed to Patty. Nolan Harris said that he will get input from local and regional courts and the form can be placed on the website once it is finalized. Abby Brown asked that the SRLC be given the opportunity to review and inventory the form. Patty replied that the form is not intended to be a court-filed form, but rather it's a tool for domestic violence survivors. Justice Baker said that it's important that all members of the Commission be aware of forms that are developed, and Abby clarified that the SRLC doesn't want to revise or have approval responsibility for the form. Judge Carter asked that the Commission endorse the form and suggested that the endorsement would lend some authority to its use. Justice Baker asked for a motion to endorse the Permanent Order of Protection Hearing Checklist.

Randy Snyder moved that the Commission endorse the Permanent Order of Protection Hearing Checklist and Michele Robinson seconded the motion. The motion passed without objection.

Montana Judges Association Presentation

Justice Baker reported that she is scheduled to give a 30-minute presentation at the Montana Judges Association meeting on October 13 and that she, along with Nolan Harris and Randy Snyder, will update the judges on the Commission's activities, discuss the status of the pro se

forms, and solicit feedback from the judges on the forms. She asked for comments and Judge Pinski stated that he will not be able to attend the meeting.

Public Comment and Next Meeting Dates

Justice Baker thanked OCA staff members Patty Fain, Nolan Harris, and Beth McLaughlin for their hard work on access to justice initiatives and welcomed Damon Martin, the new Reference Librarian at the State Law Library. She also noted that she was honored to swear in the new class of Justice for Montanans AmeriCorps members earlier in the week and welcomed the new members. Finally, Justice Baker thanked outgoing Commission members Andy Huff and Michele Robinson for their service.

Justice Baker asked for public comment. There was no public comment.

The next meeting is scheduled for December 9, 2016. Meeting dates for 2017 have not been set, but will be circulated prior to the December meeting.

Justice Baker adjourned the meeting at 3:20 PM.

Tab 3



Montana Supreme Court
Access to Justice Commission
2015-2016 Forum Series Report

Purpose

About 182,000 Montanans (18%) live at or below the poverty line. These families exhaust their personal resources and networks simply trying to get by. When a civil legal crisis arises, affecting access to food, shelter, or safety, many of these Montanans feel they have nowhere to turn. They do not know the civil legal system or how to access available resources designed to help them. And resources for such populations are usually stretched beyond limits.

One of the primary goals of the Montana Access to Justice Commission is to foster the development of a statewide system to deliver civil legal services to low- and moderate-income Montanans. In order to further this goal, the Commission hosted a series of regional discussions among community service providers and justice leaders regarding the successes and challenges in securing equal access to the civil legal system for all Montanans and how those issues impact the communities in which we live.

Forum Description

Between October 2015 and October 2016 the Commission held public forums in Kalispell, Great Falls, Billings, Missoula, Bozeman, Butte, and Helena.

At these forums, representatives on a “listening panel” heard testimony from community “witnesses” and comments from the public.

The listening panels included representatives from the Montana Supreme Court, the Access to Justice Commission, the Legislature, the Governor’s office, Montana’s Indian Tribes, local judges, local community service providers, the Montana Bar Association, and more.

The witnesses included representatives from Montana Legal Services Association (MLSA), the Montana Justice Foundation, local attorneys, local judges and court staff, domestic violence shelters, health care providers, Native American communities, programs for the disabled and the elderly, military and veteran’s organizations, youth advocates, and more.

The testimony and discussion offered insights into the successes and challenges of existing statewide programs, current pressures on the court system, and unique perspectives from each community.

Our findings are summarized here.

Identified Needs

Low- and moderate-income Montanans most often face a legal crisis arising out of housing problems, parenting or custody disputes, or domestic violence.

Many Montanans do not realize that they do not have the right to an appointed attorney when they face a civil legal problem. You can be evicted, lose your home, or lose custody of your child—all without ever having the right to an attorney.

When low- and moderate-income Montanans experience civil legal problems, they are usually dealing with a number of non-legal problems at the same time. Some of the common non-legal challenges we heard about included: mental illness, substance abuse, physical disabilities, education barriers, finances, threats to safety, transportation, and child care. Such problems are intersectional in nature, meaning that they affect and intensify one another.

Addressing a civil legal crisis without the help of an attorney can be overwhelming. With so many other challenges, low- and moderate-income Montanans often cannot tackle their civil legal problems alone. Daunting paperwork, limited education and literacy, lack of awareness, and poor prior experiences lead to a fear of the legal system for many people.

Homeless Population Forum participants discussed the unique needs of Montana’s homeless population. Montanans are led to homelessness by legal issues such as evictions, domestic violence, and employment discrimination. Montanans are kept in homelessness by legal issues such as violent crimes, scams, illegal hiring practices, and civil and criminal fines. These Montanans experience extreme barriers to accessing the civil legal system due to the lack of a stable address, fear of the legal system, and addiction and other mental health issues. This population uniquely experiences the compounding burdens of civil legal problems, criminal legal problems, and an inability to access services. Forum presenters in every community discussed housing problems and their connection with civil legal problems

Indigenous Populations Forum participants discussed the needs of Native American communities. Members of these communities often experience the legal system in a punitive way and thus fear unfairness. Many Reservations lack local services—there is simply no adequate substitute for a physically present advocate on the Reservation. Finally, Native Americans in Montana have experienced significant levels of incarceration and often face hurdles they cannot overcome after release, such as an inability to meet sentencing requirements, lack of mental health services, suspended driver’s licenses, and other intersectional criminal and civil issues.

Minors Also brought to light were the needs of “unaccompanied minors” who are under eighteen years old, but lack a present parent or guardian. For these youths, simply accessing basic services such as non-emergency healthcare or finding a place to sleep, through a shelter, renting a motel room, or leasing an apartment, can be impossible.

Non-English Speakers Montana has many citizens with limited English language proficiency, yet has only two certified Spanish interpreters for the entire state. The lack of services for Montanans with limited English proficiency results in additional stress and fear when trying to access the legal system, as well as people giving up rights because they do not understand the court process.

People with Disabilities 148,000 Montanans live with disabilities. They face challenges on many fronts, ranging from abuse and neglect, access to programs and facilities, employment discrimination, mental health services, educational needs, and housing. There is only one statewide organization focused exclusively on addressing the legal needs of Montana's disabled population, and it falls far short of meeting the demand for services.

Senior Citizens There is a coming tide of need in the area of elder law, and the concentration of elderly people living in very rural areas makes obtaining services a struggle. They face a rise in exploitation by scammers and family members alike. Many are facing healthcare problems and related financial challenges, lack access to modern methods of communication, do not know how to navigate services available online, and have no link to legal aid organizations or volunteer attorney programs.

Veterans The unique needs of veterans were at the forefront of discussion in Great Falls, and were also discussed at other forums. Veteran's Court is an exceptional resource for struggling veterans, helping them to get back on their feet and stay out of the civil and criminal justice systems. The Military Pro Bono Project is an excellent nationwide program that connects service members in need with attorneys.

What is Working

Statewide Programs

- Montana Legal Services Association (MLSA):

MLSA provides civil legal advice and representation to Montanans at or below 125% of the poverty line who qualify for their services. In 2014, 7,000 Montanans sought assistance from MLSA, and MLSA met the needs of one-third of those contacts. Many MLSA clients spoke at the forums to express their gratitude to MLSA and testify that they would not have been able to overcome their civil legal problems without the assistance of a qualified attorney.

Mary, a domestic violence victim whose husband controlled her finances, found herself facing an arrest warrant after being unable to pay insurance fines. Helped by a Musselshell County sheriff's deputy, Mary and her child found refuge in a Bozeman domestic violence shelter. A lawyer with MLSA helped her get an Order of Protection, file for divorce, and obtain sole custody of her child. Mary now has her own home, a full-time job, and child care for her mentally-challenged daughter.

- Court Help Centers (Centers):

The six Centers across Montana provide civil legal forms and information to Montanans who do not have an attorney, regardless of income level. The Centers also provide outreach services to rural communities and maintain self-help kiosks in less populous areas of the state. The Court Help Program has developed online legal forms and instructions so that people can represent themselves in court. Self-represented litigants often are not educated on legal issues and take up more of the court's time than represented litigants. After passing through a Center, a Self-Represented Litigant is more prepared, more organized, and takes less of the court's time. The Centers have provided more than 63,000 customer interactions since the program's inception in 2008.

- Aging Services Bureau’s Legal Services Developer:
Through this program, the Aging Services Bureau puts on eight free document clinics per year, open to Montanans who are age 60+ and below 250% of the poverty line. These clinics provide Montanans with much needed documents such as Wills, Living Wills, Powers of Attorney, Declarations of Homestead, and Indian Wills.
- University-based Legal Programs:
Legal services programs offered by Montana State University and the University of Montana help students effectively resolve problems involving landlord/tenant issues, family matters, and even minor criminal matters, at low overall cost to the school system. For example, approximately 60% of the students seen in MSU’s program are able to resolve problems on their own after a 30-minute advice and counseling session, and approximately 40% receive limited representation by ASMSU Legal Services lawyers.

The witnesses and public praised the efforts of Montana Legal Services Association and the Court Help Centers, describing these organizations as “fabulous,” “great,” and “wonderful.” Nonetheless, participants agreed that these organizations lack the capacity to address the need in the state, as discussed below.

Local Programs

There are many local organizations in each community that work to address the interconnected problems of low- and moderate-income Montanans. We heard from organizations in each city that help Montanans address problems including parenting, domestic violence, runaway youth, health care, physical and mental disabilities, and veteran’s issues. Organizations and programs like the YWCA, Family Court Services, Veterans Treatment Courts, Court Appointed Special Advocates, community mediation programs, as well as other government, non-profit, and for-profit organizations in each city provide assistance to low- and moderate-income Montanans who are facing civil legal problems. These organizations have developed strong networks and partnerships with each other to broaden and strengthen the services they offer. The forums offered an opportunity to strengthen these networks and increase awareness of available community services. Coordination among local services is key to a comprehensive system for meeting the needs of our communities.

What Needs Improving

The Need for More than Just Volunteers

Witnesses emphasized the inability to handle the unmet need with volunteer services alone. Devoted private attorneys offer many hours of *pro bono* legal services each year but they cannot serve all in need. Montana needs funding for dedicated, full-time legal aid staff to ensure sustainable, meaningful access to high-quality civil legal services for all Montanans and make the courts work efficiently for all court users.

“You cannot solve a problem with volunteers alone. Not a problem that is this big—like access to the courts.” *Alison Paul, Executive Director, Montana Legal Services Association*

Volunteers are vital, but access to justice problems persist. The staff of the Court Help Centers consists of a handful of employees and AmeriCorps service members. The reliance on AmeriCorps

and volunteers results in limited hours of availability, periodic closures of some centers, and consumption of large amounts of time with volunteer training.

The Need for More Attorneys

The Court Help program gives information but not legal advice. The civil legal problems of low- and moderate-income Montanans are often more complex than a Court Help Center can handle. These Montanans need the assistance of an attorney to resolve their legal problems. The Centers provide invaluable assistance to self-represented litigants and greatly ease the burden on the courts, but for some cases there is simply no substitute for the advice and representation of an attorney. MLSA, the primary provider of attorneys for low- and moderate-income Montanans, has only 13 case-handling attorneys for the entire state, making it impossible to serve every qualified family in need.

The Need for Holistic Solutions

At every forum, discussion focused on the inter-connected nature of civil and criminal legal problems and other social problems. Low- and moderate-income Montanans often experience civil legal needs, which in turn create criminal legal problems, and both of which are exacerbated by an inability to access programs and services designed to help Montanans in need. Because of the intersectional nature of these problems, forum participants emphasized that solutions must be holistic, and involve the entire community, not just lawyers and legal advocates.

Suggestions from Forum Participants

Alternative Dispute Resolution and Limited Legal Services

Witnesses suggested the promotion of alternative dispute resolution. Because many low- and moderate-income Montanans have non-legal challenges that intersect with their civil legal problems, a court offers an incomplete solution. Alternative dispute resolution resources ease the courts' dockets and provide holistic solutions for low- and moderate-income Montanans. In addition, some legal issues can be resolved with limited assistance from a lawyer or other person trained in the law. Witnesses suggested exploring other states' models for allowing limited-license legal technicians, similar to paraprofessional positions in health care, who could provide a limited scope of services without supervision from a licensed attorney.

A Specialty Court for Domestic Violence Issues

A few witnesses suggested the creation of a specialty court to address domestic violence issues. The traditional courtroom can intimidate even an experienced attorney. For a domestic violence survivor, such a stressful environment decreases the likelihood of obtaining a civil protective order, a vital step in moving on with their lives safely. By contrast, the interventionist model of a domestic violence court keeps survivor safety at the forefront of all proceedings.

Securing and Prioritizing Funding

The most commonly cited need from forum participants was the need for more funding for civil legal aid. This funding must be targeted to have the greatest impact. With many legal problems—such as in the areas of domestic violence and housing—the availability of legal assistance at the critical time can prevent a major crisis. Funding for attorney services to be offered on Reservations

would make huge strides to closing the justice gap that Native Americans experience. Additionally, some suggested that funding be used to create “legal navigators” within communities to help find wrap-around services for individuals—determining when a problem is legal in nature and making referrals to appropriate legal services when needed, whether it be a limited advice clinic, skilled mediation, counseling with a paraprofessional, or full representation by an attorney.

Conclusions and Recommendations

Access to legal assistance can help prevent people from defaulting on court notices and other legal obligations, keep them in their homes and in their jobs, find them safe shelter and legal protection for their children, keep their children in school, and resolve their legal issues without overly burdening Montana’s court system. The forum series brought Montanans together from all corners of our communities, bringing light to the network of resources available and revealing the areas of greatest challenge. From the information learned through these public sessions, the Commission recommends several areas for action, with specific plans to be further developed and addressed through the Commission’s strategic planning process:

1. Develop and maintain a statewide inventory of services and programs available in each region, and a means for making the inventory known and available throughout our communities.
2. In conjunction with the inventory, develop and maintain a means for people to get connected with one another—linking Montanans who have legal problems with the programs, attorneys, and service providers who may be able to assist with their particular issues.
3. Promote better understanding of, and facilitate partnerships within our communities to address, the relationships between civil legal needs and:
 - health outcomes
 - housing security
 - school attendance
 - a productive workforce
 - transition for returning veterans
 - community re-entry of offenders
 - protection of seniors
4. Secure sustainable funding that is adequate to achieve an effective continuum of services, from self-help services to civil legal aid, and including mediation or other dispute resolution mechanisms that can act quickly to address civil legal problems when they first arise and before they spiral out of control. This would enable more people to resolve their legal issues without going to court. For those who do end up turning to the courts, advance legal assistance will help them be better prepared to present the issues to the court for resolution, leading to less congestion in the courts, more effective focus, and better use of judges’ time.

All of the forums in this series were recorded. The Access to Justice Commission’s website has a summary video and complete recordings of each forum. Appendix 1 to this Report contains a list of listening panel members and witnesses from each forum. Appendix 2 is a written summary of the witness testimony.

Montana Supreme Court
Access to Justice Commission
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APPENDIX 1

Speaking and Listening Panel Program Representatives

Kalispell: October 21, 2015

Speakers	Listening Panel Members
Alison Paul , Executive Director Montana Legal Services Association	Hon. James Jeremiah Shea , Montana Supreme Court
Jim Taflan , Program Administrator, Court Help Program	Hon. Heidi Ulbricht , District Court Judge, 11 th Judicial District (Flathead County)
Hilary Shaw , Executive Director Abbie Shelter	Hon. Daniel Wilson , Flathead County Justice of the Peace
Kay Lynn Lee , Chair NW Bar Association Pro Bono Committee	Peg Allison , Flathead County District Court Clerk
Chris Krager , Executive Director The Samaritan House	Senator Bob Keenan , Montana Senate District 5
Grant Snell , Attorney Crowley Fleck Law Firm	Andy Huff , Chief Legal Counsel, Office of the Governor and Access to Justice Commission Member
Jamie Campbell , Executive Director CASA	Don Murray , Board Member, Montana Justice Foundation and Past President, State Bar of Montana
Caitlan Overland , Board Member Montana Justice Foundation	Randy Snyder , Immediate Past President, State Bar of Montana and Access to Justice Commission Member
Susan Kunda , Ombudsman and Director Area Agency on Aging	
Lance Issak , Director Flathead Attention Home	
Leigh Anne Miller , Supervisor Family Court Services	
Jeff Folsom , COO Aware	
Cathy Brennehan , Executive Director The Nurturing Center	
Holly Jordt , RN Flathead City-County Health Department	
Brian Muldoon , Attorney Mediator	

Great Falls: November 18, 2015

Speakers	Listening Panel Members
<p>Dave Belcher, Mentor Cascade County Veterans Court</p> <p>Capt Laura K. Buchholtz, Chief of Military Justice 341 Missile Wing</p> <p>Kayre Chatellier, Executive Director Cascade County Law Clinic</p> <p>Janet Duffy, Executive Director YWCA</p> <p>John McCrea, Legal Developer State of Montana Aging Services Bureau</p> <p>Montana Supreme Court, Court Help Program</p> <p>Jessica Wilkerson, Attorney Montana Legal Services Association</p>	<p>Hon. Patricia Cotter, Montana Supreme Court</p> <p>Hon. Greg Pinski, District Court Judge, 8th Judicial District & Access to Justice Commission Member</p> <p>Hon. Mary Jolley Cascade County Justice of the Peace</p> <p>Senator Edward Buttrey Montana Senate District 13</p> <p>Representative Casey Schreiner Montana House District 25</p> <p>Clarence Siversten 1st Vice Chairman, Turtle Mountain Tribe</p> <p>Andrew Huff Chief Legal Counsel, Office of the Governor & Access to Justice Commission Member</p> <p>Joella Bloomgren, President Montana Justice Foundation</p> <p>Joseph Sullivan, Past President State Bar of Montana</p>

Billings: March 16, 2016

Speakers	Listening Panel Members
<p>Erin Lambert, Director of Programs YWCA</p> <p>Dr. Michael Bush, Chief Medical Officer St. Vincent Healthcare</p> <p>Vicky, Citizen of Yellowstone County</p> <p>Todd Wood, Director Area II Agency on Aging</p> <p>Terry Bouck, Superintendent, with Sue Runkle, Homeless Education Liaison School District 2</p> <p>Georgette Boggio, Attorney Elk River Law</p> <p>Jade Jagers, MHA,CAC Riverstone Health</p> <p>Terry Stapleton Yellowstone Co. Veterans Treatment Court</p> <p>Gary Connelley, Attorney Crowley Fleck PLLP</p> <p>Alison Paul, Executive Director Montana Legal Services Assn.</p> <p>Patt Leikam, Facilitator, Billings Self-Help Law Center</p>	<p>Hon. Beth Baker, Montana Supreme Court Chair, Access to Justice Commission</p> <p>Hon. Rod Souza, District Court Judge 13th Judicial District (Yellowstone County)</p> <p>Hon. David Carter Yellowstone County Justice of the Peace</p> <p>Senator Robyn Driscoll, Senate District 26</p> <p>Senator Doug Kary, Senate District 22</p> <p>Commissioner Bill Kennedy Yellowstone County Commission</p> <p>Andrew Huff, Chief Legal Counsel, Office of the Governor, and Access to Justice Commission Member</p> <p>Darrell Ehrlick, Editor, Billings Gazette</p>

Missoula: April 20, 2016

Speakers	Listening Panel Members
<p>Kat Werner, Director of Programs, YWCA</p> <p>Charlotte Beatty, On behalf of Court Help</p> <p>Sindy Filler, Certified Interpreter</p> <p>Maylinn Smith, Clinic Program Director & Associate Professor Alexander Blewett III School of Law</p> <p>Ann Sherwood, Managing Attorney Tribal Defender's Office, Salish & Kootenai Tribes</p> <p>Erin Fowler, LCSW Poverello Center</p> <p>Meri Althaus, Chair Western Montana Bar Assn. Pro Bono Committee</p> <p>Alison Paul, Executive Director MLSA</p>	<p>Hon. Mike McGrath, Chief Justice Montana Supreme Court</p> <p>Hon. Leslie Halligan, District Court Judge 4th Judicial District (Missoula County)</p> <p>Hon. Winona Tanner, Chief Judge Confederated & Kootenai Tribes</p> <p>Hon. Karen Orzech, Justice of the Peace Missoula County</p> <p>Representative Kimberly Dudik, House District 94</p> <p>Representative Ron Ehli, House District 86</p> <p>Dean Paul Kirgis Alexander Blewett III School of Law</p>

Bozeman: May 18, 2016

Speakers	Listening Panel Members
<p>Pam Poon, Attorney and Mediator Foundation, Gallatin Legal Assistance Clinic</p> <p>Darcy Saunders, B.S.W. Cottonwood Case Management</p> <p>Lindsay Duckworth, Facilitator Bozeman Self Help Law Center</p> <p>Deborah Kottel Rural Dynamics</p> <p>Kevin Sylvester, Executive Director Family Promis</p> <p>Audrey Cromwell, Esq., Cromwell Law Montana State University Student Legal Services</p> <p>Christopher Hahn, Ph.D., MBA, Constructive Agreement & Chair, Community Mediation Center</p> <p>Mary R., Montana Legal Services Assn. Client</p> <p>Alison Paul, Executive Director Montana Legal Services Association</p>	<p>Hon. Mike Wheat, Justice Montana Supreme Court</p> <p>Hon. John C. Brown, District Court Judge 18th Judicial District (Gallatin County)</p> <p>Hon. J. Colleen Herrington, Municipal Judge City of Bozeman</p> <p>Hon. Bryan Adams, Justice of the Peace Gallatin County</p> <p>Senator Scott Sales, Senate District 34</p> <p>Representative Tom Woods, House District 64</p> <p>Matt Thiel, President, State Bar of Montana</p> <p>Jane Mersen, State Bar of Montana Board Trustee, Area G</p> <p>Nicholas Ehli, Managing Editor Bozeman Daily Chronicle</p>

Butte: September 21, 2016

Speakers	Listening Panel Members
<p>Tonya Geraghty, Executive Director Safe Space</p> <p>Steve Fournier. Action, Inc.</p> <p>Kathleen McBride, Attorney</p> <p>John McCrea, Legal Developer Program Aging Services Bureau, DPHHS</p> <p>Rose, Self-Represented Litigant</p> <p>Jim Fay, Continental Gardens</p> <p>Marijo McDonald, Self-Help and Pro Bono Coordinator, 2nd Judicial District</p> <p>Alison Paul, Executive Director Montana Legal Services Association</p>	<p>Hon. James Shea, Justice Montana Supreme Court</p> <p>Hon. Kurt Krueger, District Court Judge 2nd Judicial District (Butte-Silver Bow County)</p> <p>Hon. Debra D. Williams, Justice of the Peace Butte-Silver Bow County</p> <p>Senator Jim Keane, Senate District 38</p> <p>Representative Jeff Welborn, House District 72</p> <p>Michelle Robinson, Commissioner Montana Supreme Court Access to Justice Comm.</p> <p>Margie Seccomb, Human Rights Council</p> <p>Revonda Stordahl, Executive Director Public Housing Authority</p>

Helena: October 19, 2016

Speakers	Listening Panel Members
<p>Bernie Franks-Ongoy, Executive Director Disability Rights Montana</p> <p>Katy Lovell, Assistant Legal Developer. Senior & Long Term Care, DPHHS</p> <p>Alissa Chambers, Pro Bono Attorney Crowley Fleck, PLLP</p> <p>Liza, Montana Legal Services Association Client</p> <p>Marcus Myer, Consumer Protection and Victim Services, Montana Department of Justice</p> <p>Melinda Reed, Executive Director Friendship Center</p> <p>Michael O'Neil, Executive Director Helena Housing Authority</p> <p>Nolan Harris, Administator Court Help Program</p> <p>Alison Paul, Executive Director Montana Legal Services Association</p>	<p>Hon. Laurie McKinnon, Justice Montana Supreme Court</p> <p>Hon. James Reynolds, District Court Judge 1st Judicial District (Lewis & Clark County)</p> <p>Hon. Dennis Loveless, Municipal Judge City of Helena</p> <p>Andy Hunthausen, Commissioner Lewis & Clark County</p> <p>Representative Jenny Eck, House District 79</p> <p>Representative Kirk Wagoner, House District 75</p> <p>Melanie Reynolds, Commissioner Montana Supreme Court Access to Justice Comm.</p> <p>Bruce Spencer, President State Bar of Montana</p> <p>Niki Zupanic, Executive Director Montana Justice Foundation</p>

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APPENDIX 2

Witness Presentation Summaries

Kalispell: October 21, 2015

Jim Taflan, Program Administrator, Court Help Program

- Program provides information and resources to pro-se (self-represented) litigants
- Deal mainly with civil legal issues such as landlord/tenant and custody issues
- 6 Self Help Law Centers (Great Falls, Kalispell, Bozeman, Missoula, Helena, Billings)
- 46,000 contacts with pro-se litigants since 2007

Allison Paul, Executive Director, Montana Legal Services Association (MLSA)

- 13 staff attorney's provide civil legal aid to low income Montanans
- Custody issues and foreclosure are two most common problems
- 40% of cases are related to housing matters
- 130 cases handled in 2014 assisted 300 people
- Montana is under-resourced federally and there is great need for more pro-bono and low cost legal help

Hilary Shaw, Executive Director, Abbie Shelter

- Abbie Shelter deals mostly with domestic and family violence issues
- Biggest problem is the lack of Partner Family Member Assault (PFMA) prosecution; huge gap between the severity of the actions of offenders and the ways they're held accountable
- Public Defenders attending Order of Protection hearings creates problems for victims
- Need for more domestic violence (DV) training for members of the justice system and possibly a PFMA/DV specific court

Kay Lynn Lee, Chair, NW Bar Association Pro Bono Committee

- Deal mainly with low income and family law issues (specifically custody battles and parenting plans)
- 90% of cases are referrals from MLSA or the State Bar's Modest Means Program
- Pro bono attorneys need assistance from other agencies/resources
- Organizations providing civil legal aid need to cultivate a network of resources and provide support to each other

Chris Krager, Executive Director, The Samaritan House (Unable to attend)

From provided statement:

- Provide shelter, low income rentals, and case management to approximately 1400 individuals and families each year
- Work in collaboration with area organizations to provide services to low income and homeless people
- Self Help Law Center and MLSA provide much needed legal assistance
- Commonly seen problems: unfair evictions and divorces resulting in homelessness

Grant Snell, Attorney, Crowley Fleck Law Firm

- Full time in house pro bono program led by Gary Connelley of Crowley Fleck's Billings office
- Commonly seen: family law, elder issues, public benefits problems
- Majority of cases are referrals from MLSA and Modest Means
- Need for more family law education for pro bono attorneys

Jamie Campbell, Executive Director, CASA

- Advocates for abused and neglected children
- CASA always needs more volunteers
- Need for MT attorneys to have more child specific training
- Need for more prosecution of DV/SA (sexual assault) cases

Caitlin Overland, Board Member, Montana Justice Foundation

- Foundation assists in providing funding for non-profit civil legal aid organizations
- Approximately \$5 million in grants provided since mid-1980s
- Also assist with loan repayment for attorneys
- Problem: decrease in federal funding in recent years

Susan Kunda, Ombudsman and Director, Area Agency on Aging

- Advocates for the elderly; assist with Medicare benefits, in-home care and assisted living services
- See large amount of landlord/tenant issues
- Administer legal document clinic (power of Attorney, Declaration of Homestead, Living Will, etc.) with assistance of pro bono attorneys
- Need for more funding
- Need for more basic legal education for advocates

Lance Issak, Director, Flathead Attention Home

- Provide services to children ages 10 to 18
- Serve 80-90 kids each year
- Deal with issues stemming from poverty, drugs and alcohol, neglect/abuse of children
- Struggle to work through the "legal limbo" surrounding the age of adulthood for 18 year old clients
- Need for more collaboration between agencies, specifically the public school system

Leigh Anne Miller, Supervisor, Family Court Services

- Most common issues are family related (parenting plans, divorce) and tax related
- Refer to MLSA often
- Need for more fundamental parenting education

Jeff Folsom, COO, Aware

- Work mostly with children suffering from emotional, mental health, and developmental disabilities
- Serve approximately 100 families each year (statewide)
- Provide clients with in-home and outpatient care
- Most commonly experienced problems deal with housing, custody of children, and access to services

Cathy Brenneman, Executive Director, The Nurturing Center

- Provide advocacy for approximately 25 clients each day
- Frequently assist clients in dealing with family issues such as custody, parenting plans, grandparent rights, etc.
- Collaborate regularly with other agencies such as MLSA and Family Court Services
- See a high number of clients living in poverty and struggling to find resources
- Need for more family law specific professional education

Holly Jordt, RN, Flathead City-County Health Department

- Homelessness, poverty, DV, substance abuse, landlord/tenant and family issues are commonly seen
- Child Protective Services involvement in many cases
- MLSA provides assistance with legal issues
- Need for realization that for average person the justice system is overwhelming and appears to move very slowly. This causes many people to avoid interaction with legal system as much as possible.

Brian Muldoon, Attorney Mediator

- Issues dealt with by area agencies (family disputes, poverty, substance abuse) need to be seen as social problems, not legal problems
- Need for recognition that the legal system creates adversaries
- Need for mediation: get people out of court and working together towards resolution of problems
- Need for mental health education for family lawyers

Great Falls: November 18, 2015

Jessica Wilkerson, Attorney, Montana Legal Services Association (MLSA)

- Defendants in civil suit have no right to an attorney
- MLSA has 13 attorneys, 3 offices, and 2 satellite stations in MT
- MLSA attorneys provide legal advice and limited scope representation to low income Montanans
- Work with other agencies such as the Cascade County Law Clinic and Montana AAA Legal Services
- Works to assist clients with family, housing, public benefits, consumer, Native American, and domestic violence issues
- Receive funding mainly from federal grants; minimal state funding
- Only able to meet the needs of one-third of clients due to lack of resources

Dave Belcher, Veterans Court

- Dave is a veteran of the Gulf War who suffered from PTSD and fell into drug addiction
- Veterans Court helped Dave with mental health counseling and drug rehabilitation
- Particularly helpful for combat veterans returning home and trying to adjust to normal life

Captain Laura K. Buckholtz, Chief of Military Justice, Malmstrom Air Force Base

- JAG Corps provides services to military personnel, retired military personnel, and dependents of military personnel

- Malmstrom AFB's personnel have a low average age, therefore JAG Corps deals mostly with young people and retirees
- Attorneys are able to discuss legal options but do not represent military personnel
- Deal with such issues as family law, consumer law, tax law, landlord/tenant disputes, and assistance with legal documents
- Malmstrom attorneys work with Military Pro Bono Project, which accepts referrals and provides assistance to active-duty military personnel and their families in civil legal cases

Kayre Chatellier, Cascade County Law Clinic (CCLC)

- CCLC works closely with MLSA and provides many referrals
- Very focused on collaboration with other agencies such as the Cascade County Bar Association
- CCLC provides pro-bono and mediation services to civil litigants
- Cascade County Self Help Law Center and Victim-Witness Assistance Services encompassed within CCLC
- Clinic serves all of Cascade County with very limited funding and no full time paid staff

Janet Duffy, Executive Director, YWCA

- YWCA assists victims of domestic violence/sexual assault (DV/SA), stalking, and child abuse
- Provide temporary shelter to women and children as well as counseling services, classes and workshops
- Collaborate with Cascade County Law Clinic, Cascade County Self Help Center, Montana Legal Services Association, Montana Coalition Against Domestic and Sexual Violence, among others
- 90% of YWCA clients live in poverty
- Provide no legal advice but do provide support and advocacy to clients in court setting
- Getting Temporary Orders of Protection is a challenge for many clients

John McCrea, State of Montana Aging Services Bureau

- Work in partnership with such agencies as MLSA, MT State Bar, University of Montana Law School, Self Help Law Centers, Area Agencies on Aging, etc. to provide legal advice, information, and resources to seniors
- Host eight legal advice clinics each year to provide legal advice and assist seniors with legal documents
- Elder abuse and financial exploitation by family members is common; Aging Services Bureau works to help seniors protect themselves from being exploited

Kay Pace, Montana Supreme Court – Court Help Program

- Beginning in 2007, the Court Help Program provides tools and information to pro-se (self-represented) litigants as well as referrals to other agencies
- 46,000 contacts with customers to date
- Work in close partnership with MLSA and YWCA
- Serve primarily low to moderate income Montanans
- Landlord/tenant issues and family disputes are most commonly seen problems
- Americorps service members serve at Self Help Law Centers in six counties and provide guidance (but not legal advice) to pro-se litigants

Billings: March 16, 2016

Erin Lambert, Director of Programs, YWCA

- There is a need for immediate access to an attorney for an OOP
- Abusive partners make threats of legal action to keep control
- YWCA has added an attorney to their staff, but funding is a serious need
- Clients can't afford to pay for attorneys, but there is a need for attorneys, their new attorney has served 30 victims in two months
- Domestic violence is a safety risk, large risk of DV based homicide
- DV harms the economy, getting victims out of a DV situation will save various state systems money
- Note: when requesting funding for things like DV attorney, have a victim come speak to the legislature, not a lobbyist. Victim testimony will be more powerful.

Dr. Michael Bush, Chief Medical Officer, St. Vincent Healthcare

- Patients face myriad of problems—access to care, access to Medicare
- DV victims are very hard patients, help is needed to avoid tragedies
- Adult and Child Protective Services don't intervene early enough, probably due to a lack of sufficient funding
- Mental illness and substance abuse patients face additional legal problems and often cannot solve on their own
- Crisis center has been a great investment, saves money, keeps people out of ER. When crisis center is full, see increases in ER visits. WAY cheaper to have someone in crisis center than in ER bed.
- There is a lot of neglect of children that goes unreported.
- Senior neglect will be an increasing issue

Vicky, Citizen of Yellowstone County

- Has cerebral palsy, working, single mother. Had several falls and damaged spine, other health issues.
- Used a scooter for mobility and was able to be completely independent, cook, clean, care for grandchildren, get about.
- Medicare/Medicaid wanted to take away scooter and switch her to wheelchair, which was not going to work, too hard to get in and out of.
- Through a friend of a friend, became connected with MLSA and attorney. Attorney represented her through many hearings and ultimately Vicky was able to keep her scooter.
- She never would have been able to win without MLSA
- With help of attorney she was able to attend her own hearing, which she would not have otherwise been able to do.

Todd Wood, Director, Area II Agency on Aging

- Serves counties and reservations with state and federal funds
- Many people do not realize their problems are legal in nature
- Most common legal problems: LLT, OOP, POA, Guardianship, Wills & Estates, Consumer Protection, abuse, neglect, exploitation
- Elderly often don't have transportation (geographic isolation), electricity, phone, internet
- Privacy concerns, embarrassment over issues
- There is a need to assist people through the legal system, through the whole process

- Mental health and substance abuse issues; transportation issues to get to where services are being provided.

Terry Bouck, Superintendent, School District 2 with Sue Runkle, Homeless Education Liason, School District 2

- Large percentage of students in poverty, 633 homeless students last year
- Unaccompanied homeless youth face the biggest challenges. Ex. have SSI benefits but can't get a bank account so must use check cashing services and lose a portion of their benefits.
 - Hard to get healthcare beyond emergency room care
 - Can't sign leases or stay in hotels
 - Don't understand implications of emancipation process
 - Grandparents/neighbors/non-guardians can't fill same role as parent/guardian in a legal issue
- Youth and schools need legal access point, an attorney they can call.
- Self-help can be overwhelming and some are not capable of it

Georgette Boggio, Elk River Law

- Native Americans are overrepresented in criminal and child welfare areas
- Native Americans experience the legal system as punitive
- Racism and historical bias are not just historical
- Main areas of issue: housing, contract, family law
- Need targeted outreach—feet-on-the-ground lawyers
- Tribal members face all the same legal issues as anyone—no one specific area that could house legal reforms
- Need advocates in the right geographic areas, on Reservation weekly.

Jade Jagers, MHA, CAC, Riverstone Health

- Sliding scale services
- “Care coordinators” trying to close the loop = housing, food stamps, insurance
- A void and an advocate
- See 150 patients a day
- Brief and long term services
- Patient driven—self reporting of problems
- Can provide services to minors w/o guardians if they are patients of Riverstone

Terry Stapleton, Yellowstone County Veteran's Treatment Court

- Court serves anyone who is military or has an immediate family member who is military and has a felony or misdemeanor
- Vets work through the court in stages with progressively less supervision, three stages
- Main issues: family law (custody/divorce), bankruptcy, LLT, medical care (traumatic brain injury, PTSD)
- Physical disabilities and language barriers
- Can be hard for vets to reach out for medical or legal help

Gary Connelley, Crowley Fleck PLLP

- Domestic violence is dangerous for victims as well as for children, attorneys, staff.
- Need more ADR for family law issues—education and mediation
- The less contentious a divorce is, the better for children

- There is a coming wave of elder law issues
- Service providers are overwhelmed
- There is an administration problem in terms of matching up need with resources
- Need FULL FUNDING of legal services
- Crowley attorneys donated almost 5k hours in MT
- Still are turning 8 or 9 out of 10 applicants away
- Need to focus on getting to people before they get to court

Alison Paul, Executive Director, Montana Legal Services Assn.

- MLSA is primarily federally funded and funding is based on population size so MT doesn't get much funding
- 150k people in state qualify for services, 15 attorneys to meet need
- In 2015, 7000 requests for assistance, 2700 cases, only meeting 1/3 of need.
- Provide direct representation and other services like legal advice to self-represented litigants, increase public education (montanalawhelp.org)
- The greatest need is for more lawyers, more money
- Over 300 pro bono volunteers work with MLSA, can always use more
- There are only 2 or 3 other states that don't provide state funding for civil legal aid.

Patt Leikam, Billings Self-Help Law Center

- SHLCs just got permanent funding
- Billings center provides services to entire east half of state
- In 2015 SHLCs assisted 16,444 people, the Billings center served 4455.
- The families have be served AND the courts have been served.
- Family law is the major issue, also name changes, guardianships, LLT, adoption, debtor-creditor
- Most customers are people in poverty
- Customers report being very satisfied with services
- Other challenges: litigants don't understand the system, litigants fear the system is unfair, litigants don't have the resources they need

Public Comment

- There is a huge DV need—is the creation of a DV court possible? Money is being spent in a very inefficient way and there is a need to break the cycle, the cycle costs society a lot of money.
 - It is a complex issue but it is something that is being thought about. Issue is: is specialty court needed, or just more judges?
- CASA: We need and ICWA court—there is a disproportionate number of Indian children in the courts. Dist. Cts. may not handle ICWA cases well, they are more complex.
 - As usual, funding this court is the issue.

Missoula: April 20, 2016

Kat Werner, Director of Programs, Grants Manager, YWCA

- Missoula YWCA provides emergency housing to the homeless; served 89 families and 295 people during the last fiscal year

- Domestic violence and sexual assault are the leading causes of homelessness, often these victims need legal assistance with preparing parenting plans and filing for divorce, custody and Orders of Protection
- Victims are not served as well as they could be due to a lack of understanding of DV/SA and ensuing trauma throughout the legal system
- Many visitors to YWCA deal with homelessness because of a lack of understanding of their rights as renters and the fact that landlords are often unaware of the protection provided to survivors of intimate partner violence as renters under the Violence Against Women Act
- Visitors typically have the inability to repay debts and lack access to civil legal resources
- Montana Legal Services and the Self Help Law Center are valuable resources to those who utilize the support provided by the YWCA

Charlotte Beatty, On behalf of the Court Help Program

- 7000 people served in person by Self Help Law Centers since 2008, with many more served by phone
- 900 new family law cases were seen by Montana Legal Services (MLSA) in 2015, 70% involved self – represented litigants and 200 veterans were served
- Missoula Self Help Law Center provides much needed guidance to those trying to navigate the legal system, resulting in the courts working more efficiently because litigants are well prepared
- Landlord/tenant disputes, probate process and family law cases are the issues most commonly seen by the Court Help Program
- Court Help Program and Americorps service members provide outreach to the YWCA, MLSA clients, Mountain Home Montana shelter and mental health center for young mothers, Women’s Opportunity & Resources Development, Inc. (WORD) and rural communities
- Partnerships with University of Montana law students, pro-bono attorneys, and volunteer paralegals make the Court Help Program much more effective

Sindy Filler, Certified Interpreter

- Two Spanish interpreters in Montana
- Lack of legislation requiring a certification process for interpreters leads to the involvement of third parties acting as translators for litigants, which can cause confidentiality and communication issues
- Limited English proficiency makes equal access to justice impossible if legal system operates only in English
- Many Native Americans face the same communication problems as Spanish speaking citizens and migrant workers
- Limited English complicates both civil and criminal court proceedings because non English speaking litigants often don’t understand their rights
- Although many jurisdictions are now printing legal forms in Spanish there are still many non-English speakers that need help navigating the legal system

Maylenn Smith, Acting Clinic Program Director and Associate Professor, Alexander Blewett III School of Law

- Law school runs 26 clinics for students to take part in, 7 of which focus on civil issues
- Indian Law clinic is a great resource that travels to The Confederated Salish and Kootenai Tribes of the Flathead Reservation to provide legal advice, assistance with legal forms and some limited scope representation (which is taken on by law students)

- Issues typically seen by Indian Law clinic involve family law, domestic violence, landlord/tenant disputes, and those surrounding the Indian Child Welfare Act
- The clinic benefits Tribal members and often leads to pro-bono civil work after participating students graduate

Ann Sherwood, Managing Attorney, Tribal Defenders Office, Salish & Kootenai Tribes

- Tribal Defenders offer civil and criminal legal services for those who financially qualify according to guidelines set by Tribal Council
- 7% of Montana’s population is Native American
- 26% of females in Montana prisons are Native American
- 20% of males in Montana prisons are Native American
- Many Tribal members lack understanding of their rights and how to navigate the legal system. This leads to many pro-se litigants struggling to succeed.
- Civil Division represents Tribal members in landlord-tenant matters, consumer issues, some child custody, guardianships, mental health commitments, adult protective services, and jurisdictional issues. Many of these issues are the result of criminal charges, regardless of conviction.
- Civil Division also offers mediation services through the University of Montana, School of Law, Mediation Clinic
- Also offered are psychological assessments and following treatment recommendations from clinical psychology doctoral candidates from the University of Montana with assistance from Tribal Behavioral Health

Erin Fowler, LCSW, Poverello Center

- The Center is a safety net for the homeless and poverty stricken
- 60 veterans are served each year through Veterans Transitional Housing programs
- 250 people are served through the Homeless Outreach Teams
- Visitors to the Center face a variety of civil legal issues such as eviction, unpaid student, medical and other debts, child support and custody, and domestic violence related issues
- There is significant fear of the justice system and a lack of awareness of rights among the homeless and those living in poverty
- Illiteracy and lack of availability of pro-bono legal assistance exacerbate these challenges
- The homeless persons are sometimes involved in crimes related to untreated addiction and mental health
- They are vulnerable to violent crimes as well as scams and being taken advantage of by employers
- Often issued fines for loitering and related offenses. These types of fines can lead to issuance of arrest warrants; basic life needs of take priority over legal issues.

Meri Althaus, Chair, Western Montana Bar Association Pro Bono Committee

- The Committee matches litigants with attorneys
- Partnership with Montana Legal Services
- Committee’s hotline is staffed by Americorps service members
- Volunteer attorneys and law students run a limited scope clinic each month
- Montana needs more pro-bono attorneys, legal outreach, uniformity of the court system, more prompt legal action and more mediation in place of litigation.
- Low cost legal assistance is the key to closing the “justice gap”

Ed Higgins, Triage Attorney, Montana Legal Services Association (MLSA)

- MLSA is the only statewide provider of free civil legal aid
- Services provided include legal advice and full and limited scope representation
- 15 attorneys for 182,000 clients Family law, consumer law, and landlord/tenant disputes are the most commonly seen issues
- Majority of clients fall 125% below the federal poverty level
- Offices in Missoula, Helena and Billings serve clients all over the state
- Civil advocate services on the Blackfeet and Rocky Boy's reservations
- MLSA receives federal and private grant funding
- State funding has rapidly decreased: \$650,000 in 2006 vs. \$150,000 in 2015
- There is an overwhelming need for legal assistance not nearly enough volunteer attorneys

Kelsey, MLSA Client

- Kelsey was the victim of domestic violence while 8 months pregnant, causing her to go into premature labor
- Missoula County Attorney referred her to MLSA
- MLSA attorney Diana Garrett assisted her with filing for custody, filing a parenting plan, obtaining housing, and getting child support
- Diana was also with Kelsey during her Order of Protection hearing to help her face the fear she had of her abuser
- Missoula's Self Help Law Center provided her with forms and guidance
- Although her abuser continued to try to manipulate her and her child, Kelsey was able to gain financial independence, find housing, and successfully finish school

Bozeman: May 18, 2016

Pam Poon, Attorney and Mediator, found of Gallatin Legal Assistance Clinic (GLAC) and recipient of 2014 Neil Haight Pro Bono Award

- GLAC hosts one clinic each month except for December
- All attorneys work pro bono and provide advice, forms, limited assistance/representation, phone consultations, domestic violence advocacy in helping to prepare parenting plans, filing for divorce and custody and Orders of Protection, and notary service
- GLAC partners with the Bozeman Self Help Law Center, Crowley Fleck Law Firm, Montana Legal Services, and the clerk of Bozeman District Court to make and receive referrals to appropriate resources
- GLAC provides continuing legal education (CLE) to attorneys
- In 2015 GLAC conducted 100 advice appointments and had 78 repeat customers
- There is a need for reliable funding, as all funding and materials are currently received as donations and for a single paralegal to work 10 - 15 hours per month

Paige Taylor, Cottonwood Case Management

- Since 1998 Cottonwood has provided in-home care to seniors and interfaced with the court system as guardian conservators
- Services are offered pro bono to many clients
- There is a need to establish boards for guardianship services in all Montana counties
- In 2015 Cottonwood's 7 guardians provided 20 court visitor reports

Lindsay Duckworth, Facilitator, Bozeman Self Help Law Center (SHLC)

- Bozeman SHLC provides civil, non-criminal, legal information and forms to the citizens of 6 counties and maintains additional kiosks throughout the area
- 60% of visitors in 2015 were seeking help with family law issues; landlord/ tenant, debt collection, and guardianship are also commonly discussed
- SHLC serves all visitors regardless of income
- Daunting paperwork, low income, and lack of awareness lead to a fear of the legal system for many people
- SHLCs received 9,600 visitors statewide in 2015
- Coordination with local resources is key to providing the best possible service
- Additional training for AmeriCorps service members who staff SHLCs and regular communication with local courts would be very helpful

Deborah Kottel, Rural Dynamics

- Criminal issues, particularly felonies, follow people and deny them equal access
- Criminal fines are unreasonable in comparison with income and cause long term problems for low income Montanans
- Legal clinics are very helpful in providing assistance to survivors of domestic violence and those with family law issues, landlord/tenant disputes, and guardianship concerns
- Limited license legal technicians, serving a similar purpose as paraprofessionals in the healthcare industry, could provide limited scope practice and effectively help many more people and ultimately reduce the burden on the court system of unprepared pro se litigants
- Washington could be used as a model for this type of licensing
- Montana would need to look more carefully at the definition of the term paralegal and the role that paralegals play in the legal system
- It is contradictory that Justices of the Peace can be non-attorneys but that non-attorneys cannot provide any legal assistance

Kevin Sylvester, Executive Director, Family Promise

- Family Promise provides shelter assistance and full-time case management to homeless families with children
- Comprehensive program model assists with employment, housing and child care
- The complex personal histories of many clients cause barriers - lack of income, lack of awareness, low education and poor prior experiences lead to a fear of the legal system
- Gaining legal assistance can be intimidating and overwhelming
- Education and a more collaborative approach is needed to create entry points to the criminal justice system that all citizens can access

Audrey Cromwell, Esq., Associated Students of Montana State University (ASMSU) Legal Service and Cromwell Law

- Cromwell Law provides limited scope representation to low and moderate income Montanans
- ASMSU Legal Services offers 30 minute counseling sessions and advice to MSU students
- Approximately 60% of students are able to resolve problems on their own after counseling, and approximately 40% receive limited representation by ASMSU attorneys
- Students with landlord/tenant complaints, minor criminal cases and family law issues are frequently assisted by ASMSU
- Aim is to educate students about legal processes and provide support and empowerment
- ASMSU sees 200 – 250 students per year, while only operating part-time

- The program costs MSU \$100 per student

Christopher Hahn, Ph.D., MBA, Constructive Agreement, Board Chair, Community Mediation Center

- Mediation can lighten the load of courts
- Community Mediation Center (CMC) takes on 200 – 300 cases per year
- CMC’s family program provides service to low income clients only and has a 60-70% success rate
- Justice court program facilitates mediation in civil issues such as landlord/tenant disputes and small claims disputes; also encompasses “Project Settle,” which has 60-70% success
- CMC assists schools with peer mediation and teaches kids to mediate for themselves
- All cases are referrals from court system and are settled privately outside of courts
- Montana Supreme Court could use North Dakota as a model for instituting parenting coordinators to use mediation to resolve parenting time disputes

Alison Paul, Executive Director, Montana Legal Services Assn.

- Litigants have no right to an attorney in a civil case
- MLSA is the only statewide provider of free civil legal aid
- Services provided include legal advice, full and limited scope representation, outreach and education
- 15 attorneys for 182,000 clients Family law, consumer law, and landlord/tenant disputes are the most commonly seen issues
- Majority of clients fall 125% below the federal poverty level
- State funding has rapidly decreased in the past ten years and the need for low cost legal services is growing due to increasing poverty

Mary R., Montana Legal Services Assn. Client

- Financially isolated by her husband and unable to pay insurance fines led to a warrant for Mary’s arrest
- A survivor of domestic violence, she was helped by a Musselshell County undersheriff following a particularly terrifying incident
- Mary and her child ended up in Bozeman with family who were able to pay her bond and helped her get through her legal troubles
- Staying at the HAVEN shelter in Bozeman, she was assisted by Montana Legal Services in getting an Order of Protection, gaining sole custody of her child and filing for divorce
- Mary now has her own home, a full-time job, and stable family support and child care for her mentally challenged daughter

Butte: September 21, 2016

Alison Paul, Executive Director, Montana Legal Services Association (MLSA)

- MLSA provides statewide civil legal aid to low income clients
- Only 13 attorneys and 4 offices for the entire population of Montana
- Federal funding for civil legal aid is allotted based upon population, leaving Montana with very little
- Issues with public housing and Section 8 housing are commonly seen
- 167 people in Butte contacted MLSA last year, only 72 of those received legal aid
- MLSA assists in staffing and running the Self Help Law Centers across the state and making legal forms available to pro-se litigants

- 3 additional attorneys will soon be hired to work with crime victims
- MLSA looks for partners in every community; a Dillon, MT shelter for domestic violence survivors will soon have an attorney on site, placed by MLSA

Steve Fournier, Action, Inc.

- Action, Inc. provides services to the homeless, low income, elderly and disadvantaged in the areas of low income housing, Section 8, utility/electric service payment assistance and more
- These customers often have limited access to any means of communication
- There is no direct link to pro bono attorneys; many customers are referred to MLSA for legal aid
- Social security applicants are in particular need of legal representation

Tonya Geraghty, Executive Director and Tyler Fries, Shelter Manager, Safe Space

- Emergency shelter for domestic violence and sexual assault survivors
- 2015 saw 2,175 shelter nights provided to 358 survivors and 1,758 calls on the crisis line
- 2,200 crisis line calls have already been received in 2016 and more survivors are expected to need shelter
- Safe Space recently moved to a larger building, but the operating budget and needs of customers have remained the same
- 90% - 95% of the shelter's visitors are unable to pay for legal aid and many need assistance with getting protection orders, dissolving a marriage and filing parenting plans
- Before Butte's MLSA office was forced to close due to cost there was much more access to civil legal aid for DV/SA survivors

Kathleen McBride, Attorney

- Pro bono legal services in Butte have improved and become more accessible since the 1980s
- Attorneys providing pro bono services screen clients through MLSA and mainly take on family law cases, often many cases at once
- There is no official pro bono list in Butte, but many referrals come from the Law Librarian Marijo McDonald
- This referral system has helped local courts operate more efficiently
- Self-represented litigants often add to the burden of courts by being ill prepared; many Butte judges support this process of referrals to pro bono attorneys
- There are not enough attorneys doing pro bono work and the loss of MLSA's Butte office has significantly limited access to civil legal aid
- More needs to be done in Butte, especially for foster children
- Attorneys are able to advocate for foster kids much more effectively than the lay person typically acting as Guardian ad litem

John McCrea, Legal Developer Program, Aging Services Bureau, DPHHS

- Services provided to Montanans 60 years of age or older
- Pro bono attorneys host 8 legal document clinics at medical centers each year
- Most participants are low income and need assistance with estate planning, medical directive, homestead declaration and power of attorney documents
- Legal advice and advocacy program is in place to provide referrals to resources across Montana
- Legal Developer also operates an Indian wills program and helps attorneys obtain CLE credits

- Partnerships with MLSA and 265 senior centers statewide
- Local Area Agencies on Aging can offer phone clinics with Legal Developer attorneys

Rose, Self-represented Litigant

- Where does a self-represented litigant find assistance?
- Butte’s law librarian provided direction through every step of the process, from May to September
- Rose was prepared for court and didn’t feel under-represented
- The law library is an excellent resource for the people of Butte

Jim Fay, Continental Gardens

- Senior living program that sees a lack of advocacy for seniors when it comes to insurance issues and applications for benefits such as Social Security Disability
- Healthcare is a huge concern for the elderly, as ambulance service and emergency room visits can be extremely costly
- Many seniors have no assistance in recovering money after they are billed for medical services that have been denied coverage by Medicare/Medicaid
- Main issues seen at Continental Gardens: bankruptcy, reverse mortgage trouble, liens and loans, residence issues, domestic violence, elder abuse, end of life planning, divorce and the need for assistance with legal documents

Alveena, Foster Grandparent

- DPHHS program works with school principals to place foster grandparents in classrooms
- Foster grandparents are able to observe children in school and provide mentorship
- Montana needs more foster grandparents
- Foster grandparents need more education and training on how to deal with certain issues such as developmental and learning disorders

Marijo McDonald, Self-Help and Pro Bono Coordinator, 2nd Judicial District

- MLSA funding cuts reduced their ability to offer services in Butte but the need has not been reduced
- Self-help and pro bono program mainly deals with family law cases and provides referrals to pro bono attorneys
- Clients are screened by MLSA for eligibility and passed back to Marijo for referral to an attorney
- Not all low income Montanans are eligible for pro bono services
- Marijo works with self-represented litigants who are unable to or chose not to pay an attorney and walks them through each step of the court process
- She can only provide limited help and more attorneys are needed to offer pro bono representation
- Marijo typically meets with pro se litigants 4-5 times before their initial court appearance and often has contact with 15-25 customers per day
- Butte’s law clerks have started a free mediation program for family law issues that has been very successful and has reduced the burden on the local courts

Tony Dubray, North American Indian Alliance

- After dealing with the criminal legal system as a young adult, Tony reached a point where he needed civil legal aid and utilized some local resources

- During the long and expensive process of changing his name, Butte's law librarian Marijo McDonald helped Tony at each step
- Also in need of assistance in finding housing, Steve Fournier of Action, Inc. was able to help him find a suitable place to reside

Helena: October 19, 2016

Alison Paul, Executive Director, Montana Legal Services Association (MLSA)

- Litigants have no right to an attorney in a civil case
- MLSA is the primary civil legal service provider in MT, with 13 attorneys and offices in Helena, Billings and Missoula
- 49% of low income households have one or more civil legal problem - 77% of those households have no money to pay an attorney
- MLSA handled 2,761 cases in 2015, 261 cases in Lewis and Clark County
- MLSA focuses on "impact cases" - cases that will benefit the largest number of people
- Domestic violence, housing, consumer disputes, taxes and public benefits are the most commonly seen civil legal issues
- MLSA funding comes mostly from the federal government
- There is great need for more funding and more attorneys

Bernie Franks-Ongoy, Executive Director, Disability Rights Montana

- Disability Rights Montana is the designated advocacy organization for people with disabilities
- 148,000 Montanans live with disabilities
- Disability Rights has 5 attorneys and 6 non-attorney advocates and provide referrals, legal aid and training
- Work is often focused on the issues of abuse/neglect, physical access and access to programs, employment discrimination, dependent neglect, benefits, challenges to guardianship, service animals, and appropriate mental health services for prisoners
- Education for children with special needs is an especially important issue. In Montana there are 17,473 children with Individualized Education Programs (IEPs).
- Developing an IEP is a legally intense process and there is little in the way of legal resources to ensuring it is done properly
- Disability Rights can't keep up with the existing need for services. 20 calls per week were turned away for the time period of August 16 - September 16, 2016 because of high demand.
- Funding is provided by federal grants that are based on "qualifying disabilities"
- Disability Rights tries to collaborate with private attorneys but needs to do more going forward

Katy Lovell, Assistant Legal Developer, Senior & Long Term Care

- Advice and assistance program deals with 150 legal issues, including tenant/landlord disputes, debt, exploitation, and probate concerns
- Legal Service Developer has one attorney and two paralegals
- Host legal document clinics focused mainly on estate planning
- 4,625 legal documents have been completed during clinics
- There has been a rise in the exploitation of seniors by scammers and family members. A recent trend is home contractors charging for bad/incomplete work.

- Referrals are taken from local Agencies on Aging as well as senior centers, nursing homes, MLSA and hospitals
- Program needs more pro bono attorneys and earlier referrals from partners

Alissa Chambers, Attorney, Crowley Fleck, PLLP

- Provide direct representation and assist with self-help law clinics which last 1-2 hours
- Literacy problems can be a huge barrier
- Pro bono attorneys are often confronted with clients dealing with personal crises, mental health issues and trauma from domestic violence
- People need help understanding the legal process, which is something that judges can help with
- Mediation can be helpful in co-parenting situations, Billings is a good example of a community where mediation is working
- More attorneys need to get involved in providing pro bono services, ignoring the barriers they perceive to exist when they don't typically do a certain type of work
- More referrals should be made to the self-help law clinics

Liza, Montana Legal Services Association Client

- President of Residential Management Council
- Provides advice and guidance to Helena Housing Authority tenants to help resolve landlord-tenant issues
- Basic necessities are unaffordable for many households and legal issues cause a great deal of added stress
- Helps tenants fill out legal documents and refers individuals to MLSA
- Suggestion: student loan forgiveness for attorneys doing pro bono legal work

Marcus Meyer, Consumer Protection & Victim Services, Montana Dept. of Justice

- Office of Consumer Protection aims to protect Montana citizens against unlawful business practices
- Education and outreach are the main tools for helping consumers avoid and deal with issues
- Consumer Protection uses informal mediation through written documentation to resolve complaints; no legal representation for consumers
- Track trends and repeat offenders
- Communicate daily with consumers by phone and assist with mortgage issues, identity theft, provides data breach information, guidance on instituting security freeze on credit, and more
- Commonly seen issues are bad contractor jobs, debt collection, motor vehicle complaints, identity theft and scams
- Administer Identity Theft Passport program; so far in 2016 received 355 applications, 75 Identity Theft Passports awarded
- 4000+ calls so far in 2016, 62% were scam related
- Prevented \$150,000 in consumer losses and recovered \$500,000 for consumers

Melinda Reed, Executive Director, Friendship Center

- Domestic violence and sexual assault program for Lewis & Clark, Broadwater and Jefferson counties
- Provide shelter, counseling and advocacy
- Served 1,100 victims in 2015 and helped complete 80 Orders of Protection

- Utilize MLSA and very small pool of pro bono attorneys for help with legal issues such as family law, parenting plans, divorces and Orders of Protection
- Unpredictable lifestyles of victims caused by trauma, substance abuse, low self-esteem and poverty make the legal process very difficult
- Many legal proceedings are initiated but not completed
- Some survivors are reluctant to seek help because of criminal histories; most are not used to having to make decisions
- The period of highest lethality for victims is when leaving their abuser. The legal process needs to be fast but simply isn't.
- Profound need for more legal assistance as advocates cannot do legal work
- Law library clinics are helpful to victims but in shelter/on site clinics would be very useful

Michael O'Neil, Executive Director, Helena Housing Authority (HHA)

- Started in 1938, HHA serves eligible low income families, seniors and the disabled
- Resources have diminished over the years; many people are unaware of resources that exist
- Need for more legal outreach
- People need help navigating the process of obtaining services and legal advocacy for getting public benefits
- Issues get worse as time goes on. Legal assistance needs to begin as soon as possible.
- People facing eviction and foreclosure need legal assistance and tenants need help in protecting their rights under leases
- HHA often sees a need for help with family law issues

Nolan Harris, Administrator, Court Help Program

- Program operates six Self-help Law Centers that provide legal documents, information and referrals; assist mainly pro-se litigants
- AmeriCorps service members are utilized to staff each Self-help Law Center
- Funding is not available to staff Centers year round
- 63,780 customer interactions at Self-help Law Centers since 2000
- 4,479 customer interactions at Helena SHLC
- Most customers are vulnerable and from low income households
- 69% of interactions are focused on family law issues and many on probate issues
- Many people don't know about Court Help Program and rural areas are particularly underserved
- Program also operates many Self-help kiosks across Montana
- Working with Montana Legal Services to increase access to kiosks and make them more user friendly
- Helena SHLC coordinates with pro-bono program and utilizes the resources of MLSA and other organizations
- There is a need for more pro bono attorneys; limited scope representation is extremely helpful
- Need for more funding

Tab 4

Law School Partnerships Committee
December 2016 Report to ATJC

1. Current Composition. Professor Hillary Wandler passed the position of Chair to Debra Steigerwalt in November 2016. The current composition of the committee is:

Debra Steigerwalt Chair	DSteigerwalt@mt.gov
Hillary Wandler Alexander Blewett III School of Law	hillary.wandler@umontana.edu
Niki Zupanic Montana Justice Foundation	nzupanic@mtjustice.org additional contact: Crystine Miller (cmiller@mtjustice.org)
Hon. Kurt Krueger	kkrueger@mt.gov skennedy@mt.gov
Randy Snyder	rsnyder@rnsnyderlaw.us
Hon. Russ Fagg	RFagg@mt.gov
Patty Fain State Court Pro Bono Coordinator	PFain@mt.gov
Kate Ellis State Bar Trustee	kate@cplawmt.com
Jessica Walker-Keleher Exec Dir. CDRC of Missoula County	jwalker.keleher@gmail.com jwalker-keleher@cdrmissoula.org
Diana Garrett Montana Legal Services	dgarrett@mtlsa.org
Shannon Hathaway Montana Legal Justice, Member of New Lawyers Section	shannonh@montanalegaljustice.com
Angie Wagenhalls Montana Legal Services	awagenha@mtlsa.org
Jessica Fehr Eastern Montana, Civil Practice	Jessica.Fehr@moultonbellingham.com (volunteered to remain on committee although no longer a member of the commission)
Stefan Kolis Law Student Member	stefankolis@gmail.com

2. Projected Next Meeting. The next meeting of the Committee will likely be a conference call on Wednesday, January 11, 2017.

3. Current Projects.

a. Feasibility and Design of Law School Incubator Project in conjunction with Montana Legal Services Association (“MTLSA”). The Committee formed a working group with Alison Paul of MTLISA and Chris Manos of the State Bar of Montana to combine efforts to design an “incubator program” at the law school. The working group has met twice. The working group’s current consensus is that the incubator program should focus on facilitating the development of law practices serving modest means clientele in rural areas, while serving pro bono populations during the training phase. Alison Paul will be coordinating the details of the working group’s next meeting.

b. Proposed Changes to the Law School Practice Rule. The Committee has a draft of proposed changes to the law school practices rule to facilitate greater law student involvement in pro bono work. The current action item is to seek input from the Office of Public Defender, probably through a joint meeting with judges.

c. Exploration of Law School Faculty Suggestions. The Committee is exploring the implementation of ideas developed during its February 2016 meeting with University of Montana law faculty to expand opportunities for law student involvement in pro bono work.

i. Develop “Discrete Task” Program(s) in the Law School Building (e.g., coordinate with Missoula Self Help-Center to develop an on-site Self-Help Program that will effectively extend Self-Help Center hours and/or subject area services).

ii. Theory and Practice Course in the First Year. Use law school students in small groups to determine case merits of pro bono cases.

iii. Get law professors involved as a level of supervision where private attorney reluctance to supervise is the barrier to pro bono experiences.

Tab 5

State Bar of Montana Justice Initiatives Committee
2016 Report to the Access to Justice Commission
Prepared by Co-Chair Robin Turner
December 2016

2016 Highlights

1. **Neil Haight Pro Bono Award:** Awarded to Michele Snowberger of Belgrade/Bozeman.
2. **New Membership:** Pleased to add 4 new members to JIC in 2016: Jennifer Hill-Hart (Helena), Merle Raph (Shelby), Kay Lynn Lee (Kalispell), and Lindsay Lorang (Havre).
3. **Current Membership:** JIC is truly grateful for the service of all Committee members! Our Committee is energized by people who take time out of busy days and practices to encourage legal service to all Montanans. Our current membership is listed in the Deskbook.
4. **Domestic Violence CLE (June):** More than 60 attorneys/legal staff/students attended the Domestic Violence CLE, which was coordinated by State Bar staff and the JIC Domestic/Sexual Violence Subcommittee. Attendees received 7.75 CLE credits, and some attendees were able to participate via live webinar. Attendees received training on the following topics: Dynamics of Domestic Violence; Screening for Domestic Violence; Safety Planning with Clients; How to Present in Family Law Matters: Impacts of DV on Children, Impacts of DV on the Marital Estate; Crime Victim Rights; Immigration; Orders of Protection; and other related general topics. We received positive feedback from attendees and enjoyed robust discussion throughout the day. JIC was very grateful to the following entities for financial and logistical support: The State Bar of Montana (in particular, Ann Goldes-Sheahan and Meagan Caprara), Montana Board of Crime Control and the University of Montana School of Law. This event would not have been successful without that support.
5. **Co-Chairs Honored:** In October, Brandi Ries and Robin Turner were honored by the Montana Board of Crime Control for its 2016 Community Improvement Award. Nominated by Patty Fain for their work related to improving access to justice for DV survivors, both on JIC and in their general practice.

JIC Subcommittees – Very General Reports

1. *Government Lawyers:* This subcommittee works to increase capacity of government attorneys in taking pro bono cases/encouraging service in government agencies. The subcommittee completed a survey of government attorneys earlier this year, and based upon those responses, are working out their next steps. For now, JIC has asked the subcommittee to develop model pro bono policy for JIC's approval for government agencies. Next step: JIC approval and discussion with Access to Justice/other partners, following by promotion and planning.
2. *Nonprofit Organizations as Service Providers:* This subcommittee finalized its process for allowing nonprofit legal services organizations to work with retired/emeritus attorneys to provide pro bono services. This subcommittee is now finalizing the application for nonprofits to use for full JIC approval and implementation. The subcommittee is also working with partners at the State Bar and Supreme Court to determine the best place to house the applications, in order to ensure timely responses to applicants.
3. *Resource Guide:* This subcommittee is currently evaluating the Resource Guide to determine where it will be most useful to pro bono attorneys, with partners at MLSA, State Bar, and Supreme Court.

4. *Rural Pro Bono*: This subcommittee works to provide more outreach, recruitment, and development of pro bono opportunities in rural areas. In 2017, the subcommittee will sponsor an in-person JIC meeting in Havre.
5. *Domestic and Sexual Violence*: The DV/SV Subcommittee spearheaded the Domestic Violence CLE June 2016 (as well as a series of articles in *The Montana Lawyer* in 2015). Now, the Subcommittee is working to sponsor a series of State Bar Webinars to further enhance our Bar's knowledge of this issue. Webinar Schedule:
 - a. January 2016: How to Screen and Safety Plan in Cases Involving Domestic Violence.
 - b. February 2016: How to Use a Lethality Assessments, with Clients and in Court.
 - c. March 2016: The ACEs Study and Domestic Violence.
 - d. April 2016: Domestic Violence in Indian Country (presented with the Indian Law Section, more specific title pending).

2017 Event Plans

1. Webinar Wednesdays: January – April (see above DV/SV report for details.)
2. In-Person JIC Networking Meeting in Havre: April 2017.
3. Access to Justice/JIC Joint Meeting: Date TBD
4. JIC Regular Teleconference Meetings: 4th Wed. of each month, January – December 2017 (with short break in summer).

Thank you to the Access to Justice Commission for your partnership and support!

Robin Turner and Brandi Ries
Co-Chairs, Justice Initiatives Committee

Contact Info:

Robin: rturner@mcadsv.com
Brandi: brandi@rieslawgroup.com

State Bar Staff Contact:

Ann Goldes-Sheahan, Equal Justice Coordinator
Agoldes@montanabar.org

Tab 6

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CIVIL LEGAL ASSISTANCE FOR
5 LOW-INCOME PERSONS ACCOUNT; INCREASING FEES FOR CERTAIN FILINGS IN DISTRICT COURT AND
6 JUSTICE COURT; PROVIDING A STATUTORY APPROPRIATION FOR COSTS OF PROVIDING CIVIL LEGAL
7 ASSISTANCE TO LOW-INCOME PERSONS; AMENDING SECTIONS 3-1-702, 3-2-714, 17-7-502, 25-1-201,
8 25-9-506, 25-31-112, AND 44-4-310, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION
9 DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **NEW SECTION. Section 1. Civil legal assistance for low-income persons account.** (1) There is a
14 civil legal assistance for low-income persons account in the state special revenue fund. The money in the account
15 must be used solely to provide legal assistance to low-income persons in civil legal matters.

16 (2) The supreme court administrator shall establish procedures for the distribution and accountability of
17 money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily
18 provide or finance legal services to indigent persons in civil matters to receive or administer the distribution of
19 funds.

20 (3) Money in this account is statutorily appropriated, as provided in 17-7-502, to the judicial branch for
21 the office of the court administrator for the purpose provided in subsection (1).

22
23 **Section 2.** Section 3-1-702, MCA, is amended to read:

24 **"3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction
25 of the supreme court, the court administrator shall:

26 (1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded
27 district court program;

28 (2) collect, compile, and report statistical and other data relating to the business transacted by the courts
29 and provide the information to the legislature on request;

30 (3) report annually to the law and justice interim committee and at the beginning of each regular



1 legislative session report to the house appropriations subcommittee that considers general government on the
 2 status of development and procurement of information technology within the judicial branch, including any
 3 changes in the judicial branch information technology strategic plan and any problems encountered in deploying
 4 appropriate information technology within the judicial branch. The court administrator shall, to the extent possible,
 5 provide that current and future applications are coordinated and compatible with the standards and goals of the
 6 executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

7 (4) recommend to the supreme court improvements in the judiciary;

8 (5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

9 (6) administer civil legal assistance for low-income persons, as provided in [section 1];

10 ~~(6)(7)~~ administer state funding for district courts, as provided in chapter 5, part 9;

11 ~~(7)(8)~~ administer and report on the child abuse court diversion pilot project, as provided in 41-3-305;

12 ~~(8)(9)~~ administer the judicial branch personnel plan; and

13 ~~(9)(10)~~ perform other duties that the supreme court may assign. (Subsection ~~(7)~~ (8) terminates June 30,
 14 2017--sec. 7, Ch. 376, L. 2015.)"

15

16 **Section 3.** Section 3-2-714, MCA, is amended to read:

17 **"3-2-714. Civil legal assistance for indigent victims of domestic violence account.** (1) There is a
 18 civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. There
 19 must be paid into this account the filing fees ~~paid under~~ provided for in 25-1-201(3)(a) and (5). The money in the
 20 account must be used solely for the purpose of providing legal representation for indigent victims in civil matters
 21 in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the
 22 account may not be used for class action lawsuits.

23 (2) The supreme court administrator shall establish procedures for the distribution and accountability of
 24 money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily
 25 render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or
 26 administer the distribution of the funds."

27

28 **Section 4.** Section 17-7-502, MCA, is amended to read:

29 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 30 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the

1 need for a biennial legislative appropriation or budget amendment.

2 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
3 of the following provisions:

4 (a) The law containing the statutory authority must be listed in subsection (3).

5 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; section 1;
8 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310;
9 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
10 15-70-101; 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
11 17-7-215; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305;
12 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905;
13 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612;
14 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101;
15 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415;
16 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222;
17 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603;
18 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

19 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
20 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
21 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
22 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
23 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
24 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
25 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
26 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
27 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
28 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
29 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion
30 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004

1 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,
 2 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;
 3 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;
 4 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.
 5 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.
 6 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,
 7 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of
 8 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of
 9 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
 10 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates
 11 September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December
 12 31, 2023.)"

13

14 **Section 5.** Section 25-1-201, MCA, is amended to read:

15 **"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

16 (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from
 17 the plaintiff or petitioner, ~~\$90~~ \$170; for filing a complaint in intervention, from the intervenor, ~~\$80~~ \$170; for filing
 18 a petition for dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition
 19 for a contested amendment of a final parenting plan, \$120;

20 (b) from each defendant or respondent, on appearance, ~~\$60~~ \$100;

21 (c) on the entry of judgment, from the prevailing party, \$45;

22 (d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office
 23 in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50 cents
 24 for each additional page;

25 (ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

26 (iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means
 27 in all criminal and civil proceedings, 25 cents per page;

28 (e) for each certificate, with seal, \$2;

29 (f) for oath and jurat, with seal, \$1;

30 (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years,

- 1 and an additional \$1 for each name for any additional year searched;
- 2 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the
3 fee for entry of judgment provided for in subsection (1)(c);
- 4 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 5 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 6 (k) for filing and entering papers received by transfer from other courts, \$10;
- 7 (l) for issuing a marriage license, ~~\$53~~ \$60;
- 8 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment of
9 a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the
10 applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 11 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the
12 estate of a nonresident decedent, \$55;
- 13 (o) for filing a declaration of marriage without solemnization, ~~\$53~~ \$60;
- 14 (p) for filing a motion for substitution of a judge, \$100;
- 15 (q) for filing a petition for adoption, \$75; and
- 16 (r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.
- 17 (2) Except as provided in subsections (3) and (5) through ~~(7)~~ (9), fees collected by the clerk of district
18 court must be deposited in the state general fund as specified by the supreme court administrator.
- 19 (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's
20 trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent victims
21 of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family
22 member assault intervention and treatment fund established in 40-15-110.
- 23 (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund
24 account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention
25 and treatment fund established in 40-15-110.
- 26 (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an
27 amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may
28 not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under
29 subsection (1)(a).
- 30 (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be

1 deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714 and
 2 \$80 must be deposited in the civil legal assistance for low-income persons account established in [section 1].

3 (6) Of the fee for filing a complaint in intervention, \$90 must be deposited in the civil legal assistance for
 4 low-income persons account established in [section 1].

5 (7) Of the fee collected on the appearance from each defendant or respondent, \$40 must be deposited
 6 in the civil legal assistance for low-income persons account established in [section 1].

7 ~~(6)~~(8) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the
 8 county district court fund. If a district court fund does not exist, the fees must be deposited in the county general
 9 fund to be used for district court operations.

10 ~~(7)~~(9) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without
 11 solemnization, \$13 must be deposited in the domestic violence intervention account established by in 44-4-310,
 12 and \$10 must be deposited in the county district court fund, and \$7 must be deposited in the civil legal assistance
 13 for low-income persons account established in [section 1]. If a district court fund does not exist, the fees must be
 14 deposited in the county general fund to be used for district court operations.

15 ~~(8)~~(10) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not
 16 otherwise specifically allocated must be deposited in the state general fund."

17

18 **Section 6.** Section 25-9-506, MCA, is amended to read:

19 **"25-9-506. Fees.** (1) Except as provided for in subsection (2), a person filing a foreign judgment shall
 20 pay to the clerk of court a fee of ~~\$60~~ \$100, of which \$40 must be deposited in the civil legal assistance for
 21 low-income persons account established in [section 1].

22 (2) Fees for docketing, transcription, or other enforcement proceedings must be as provided for
 23 judgments of the district court.

24 (3) Fees collected by the clerk of district court not otherwise specifically allocated must be forwarded to
 25 the department of revenue for deposit in the state general fund."

26

27 **Section 7.** Section 25-31-112, MCA, is amended to read:

28 **"25-31-112. Fees.** The following is the schedule of fees that, except as provided in 25-35-605, must be
 29 paid in every civil action in a justice's court:

30 (1) when a complaint is filed, the following fee to be paid by the plaintiff:

1 ~~_____ (a) \$30 beginning July 1, 2013;~~
 2 ~~_____ (b) \$35 beginning July 1, 2014; and~~
 3 ~~(c)(a) \$40 beginning July 1, 2015; and~~
 4 (b) \$45 beginning July 1, 2017, of which \$5 must be deposited in the civil legal assistance for low-income
 5 persons account established in [section 1].

6 (2) \$20 when the defendant appears, to be paid by the defendant;

7 (3) \$20 to be paid by the prevailing party when judgment is rendered. In cases in which judgment is
 8 entered by default, no charge except the fee provided in subsection (1) for the filing of the complaint may be made
 9 for any services, including issuing and return of execution.

10 (4) \$20 for all services in an action in which judgment is rendered by confession;

11 (5) \$20 for filing a notice of appeal and transcript on appeal, justifying and approving an undertaking on
 12 appeal, and transmitting papers to the district court with a certificate."

13

14 **Section 8.** Section 44-4-310, MCA, is amended to read:

15 **"44-4-310. Domestic violence intervention account -- administration by board of crime control.**

16 (1) There is a domestic violence intervention account in the state special revenue fund in the state treasury. There
 17 must be paid into this account the designated filing fees paid under ~~25-1-201(7)~~ 25-1-201(9) to the clerk of the
 18 district court. The money deposited in the account must be used for services provided under 44-4-311.

19 (2) Funds deposited in the account may be expended by the Montana board of crime control, as provided
 20 for in 2-15-2006, to fund services and activities under and payment of administrative costs of the domestic
 21 violence intervention program provided for in 44-4-311."

22

23 NEW SECTION. **Section 9. Reporting.** The supreme court administrator shall submit a report to the
 24 law and justice interim committee on or before September 30, 2021, documenting the amount of revenue
 25 deposited in the civil legal assistance for low-income persons account established in [section 1], the amount of
 26 funds distributed pursuant to [section 1], and the nonprofit organizations to which the funds were distributed. The
 27 report shall include a summary of the legal services provided to low-income persons by organizations receiving
 28 funds under [section 1].

29

30 NEW SECTION. **Section 10. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 3, chapter 2, part 7, and the provisions of Title 3, chapter 2, part 7, apply to [section 1].

2

3 NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2017.

4

5 NEW SECTION. **Section 12. Termination.** [This act] terminates June 30, 2023.

6

- END -

Montana Access to Justice Commission An Act Establishing Funding For Civil Legal Aid (LC 487)

What does the bill do?

LC 487 funds legal aid programs for low-income Montanans by increasing some civil court filing fees and placing the funds in a special revenue account. The money in this new account will be statutorily appropriated to the Office of Court Administrator, who will distribute the money to nonprofit organizations that provide or fund legal services for low-income people.

What is civil legal aid, and who does it help?

Civil legal aid helps realize our nation's commitment to "justice for all." Civil legal aid is legal representation or advice for people who cannot afford to pay for the services of a lawyer to help them solve a problem like fixing unsafe housing, escaping domestic abuse, enforcing child support, or defeating consumer fraud and other scams. These problems are non-criminal; unlike in criminal cases, there is no right to a lawyer in these cases.

Civil legal aid helps people understand their rights and responsibilities. Civil legal aid often helps people resolve their legal problems without ever having to go to court.

Nearly 20 percent of Montanans qualify for legal aid, meaning that their annual income is less than 125% of the federal poverty level. For 2016, the federal poverty level for a family of four is just \$24,250. This population includes domestic violence survivors who need an order of protection, seniors who have been duped out of their savings, and veterans who need help obtaining the benefits they are entitled to. But for every 12,000 Montanans living in poverty, there is only one Montana Legal Services Association attorney available to help them, and the overwhelming majority of the civil legal needs of low-income Montanans go unmet.

Why do we need *this* bill?

Some of the court filing fees LC 487 would change haven't been updated in more than 20 years. During that time, the number of low-income Montanans forced to represent themselves in court without the help of an attorney has increased dramatically. More unrepresented litigants have led to longer delays, overburdened courts, and inefficiencies that affect everyone who relies on our court system. By increasing some filing fees, we can provide a better court system for every court user.

What fees are increasing, and how much money would be raised by this bill?

LC 487 would raise the filing fees for general civil actions in district court to match the filing fee now required for a marriage dissolution action. It also would increase fees for a defendant's appearance and for filing foreign judgments, which haven't been raised for nearly 30 years. The following district court fees would be changed:

Type of Filing	Old Fee	New Fee	Year of Last Increase
Commencement of an action or proceeding (excluding divorce)	\$90	\$170	1999
Complaint in intervention	\$80	\$170	1999
Appearance of defendant or respondent	\$60	\$100	1991
Marriage license; Declaration of marriage	\$53	\$60	2005
Foreign judgment	\$60	\$100	1989

LC 487 would also add \$5 to the cost of filing a civil action in justice court.

LC 487 would not change filing fees for probate, adoption, divorce, separation, or parenting plans, or the cost of court searches, certificates, or copies. It would not add any fees, fines, or surcharges in any criminal cases.

The Montana Department of Revenue estimates, based on recent filings, that the bill could raise over \$900,000 per year.

What legislative oversight will there be, and how will we know if the bill is working?

The Office of Court Administrator will report to the Law and Justice Interim Committee after four years documenting the amount of money collected and distributed and what organizations received it. The report will include a summary of the services provided by those organizations. The bill includes a sunset date in 2023, ensuring that the Legislature will review the bill's effectiveness and decide whether to continue its provisions.

Have other states done something like this?

Yes. Montana ranks among the lowest in the country in funding civil legal aid, with the State providing less than a dollar annually for every person with income below the federal poverty line. State funding for legal aid is currently limited to domestic

violence cases and family law mediation, and typically amounts to less than \$140,000 per year - about 77 cents for each Montanan who qualifies for civil legal aid. Montana Legal Services Association is Montana's only statewide general legal aid provider, and of its \$2.9 million budget, less than five percent comes from state funding.

As a recent example of other states' efforts, the State of Wyoming increased its court filing fees in 2011 by adding an indigent civil legal services fee to many types of filings. Wyoming has used the money to develop a statewide program for improving access to justice and providing civil legal services to Wyoming's low-income citizens. In 2016, Wyoming awarded \$900,000 in grants, and 3,453 people received assistance through the revenue from those filing fees.

The Montana Access to Justice Commission

LC 487 was proposed and is supported by the Montana Supreme Court Access to Justice Commission. The Commission's purpose, in part, is to assess the legal needs of low- and moderate-income Montanans and to coordinate efforts to better meet those needs. After extensive studies and public input about the extent to which Montanans' needs are going unmet, the Commission developed and voted to support LC 487 in June 2016. The Commission's 18 members include judges from all levels of Montana state courts, tribal representatives, legislators, private attorneys, legal aid and other service providers, business leaders, and other public representatives.

Contact information:

Justice Beth Baker, Chair
Montana Supreme Court Access to Justice Commission
Website: <http://courts.mt.gov/supreme/boards/a2j>
Email: SupremeCourt.mt.gov



Justice for All

Making Our Court System Work for All Montanans

CHILDREN • SENIORS • VETERANS • THE DISABLED • MINIMUM WAGE WORKERS • VICTIMS OF ABUSE

Civil Legal Aid

For over 50 years, civil legal aid in Montana has provided critical legal services:

- Helping victims of domestic violence escape abuse
- Fighting scams on consumers, especially seniors
- Preserving housing and improving housing conditions
- Protecting & improving household income for families

Eight-year-old "Taylor" has a severe illness that places her at risk for brain damage and death. Unfortunately, the expensive medicine that works best for Taylor is not labeled for her illness, so Medicaid would not pay for it. Taylor's grandfather dipped into his social security, but the family couldn't sustain the payments. In fear for her daughter's life, Taylor's mom called Montana Legal Services Association, whose attorney contacted experts all over the country to find evidence supporting use of the medication for Taylor's illness. With this evidence, Taylor's attorney convinced Medicaid that the denial of coverage should be reversed. Taylor's family can now afford her treatment, and she has a better future ahead of her.

The Justice Gap

Equal justice for all?



182,000 Montanans – 18% of our state's population – qualify for civil legal aid at or below 125% of the federal poverty level.

(Federal poverty level is \$24,250 for a family of four. "Low-income" is 125% of the federal poverty level.)



Current resources can help only 1 in 10 Montanans under 200% of federal poverty level with their civil legal needs.



At least half of low-income Montanans have a civil legal problem each year that they do not address.



There is one attorney in Montana for every 274 residents, but just one Montana Legal Services Association lawyer for every 12,133 low-income Montanans.



The Montana Justice Foundation can only fund less than half of the needs of Montana programs requesting financial assistance.

The legal system is complicated. Representation by an attorney, both for brief and extended services, is the largest overriding gap in services.¹

1. The Justice Gap in Montana: As Vast as Big Sky Country (July 2014), <http://courts.mt.gov/portals/113/supreme/boards/a2j/docs/justicegap-mt.pdf>

CONTACT INFORMATION:

JUSTICE BETH BAKER, *Chair*
Montana Supreme Court Access to Justice Commission
WEB: <http://courts.mt.gov/supreme/boards/a2j>
EMAIL: SupremeCourt@mt.gov

It's time to support full funding for civil legal aid.

Equal Justice for All: Bridging the Justice Gap

\$9,645,345
Total economic impact
of civil legal aid on
Montana's economy in 2013²

Montanans from many organizations work together to help their neighbors, but the need for civil legal aid still leaves many people in crisis.

Self Help: Court Help Program

Provided 60,000 customer services over the 8-year life of the program, almost 70% to families earning less than \$24,000 per year. *(Does not provide legal advice.)*

60,000
SERVED

Volunteer Attorneys: Pro Bono Services

1,799 Montana attorneys provided 142,406 volunteer hours in 2015.

142,406
HOURS VOLUNTEERED

Free On-Line Legal Forms: MontanaLawHelp.org

Over 2,000 self-help forms completed in 2015.

2,000
SELF-HELP FORMS
COMPLETED

Elder Wills: Montana AAA Legal Services

Handled 755 cases for elder Montanans in 2015.

755
CONSULTATIONS FOR
SENIORS HANDLED

General Civil Legal Aid: Montana Legal Services Association

- Is a national leader in innovative technology methods to increase access and efficiency.
- Provides a low-cost, rural service delivery model by using centralized attorneys serving clients in every single county.
- Helped 7,300 Montanans in 2015 with only 15 MLSA attorneys.

15 → **7,300**
LAWYERS MONTANANS HELPED

Montana Justice Foundation: Grants

Awarded \$220,000 statewide in 2016 to legal aid, domestic violence, CASA, and mediation programs.

\$220,000
GRANT FUNDS AWARDED

What Could State Funding Do?

The current network of services goes a long way; however, direct legal representation is critical to bridging the justice gap. For example, **\$500,000 per year could provide estimated additional civil legal services to achieve:**

- 46% increase in 2015 client service levels at MLSA
- 1,344 additional clients served, helping many more Montanans and their families.
- 53 additional pro bono family law clinics per year
- \$1,575,000 anticipated return on investment for Montana's economy

215%
Return on investment
in civil legal aid
in Montana

Tab 7

**Montana Supreme Court
Access to Justice Commission Committee Report**

Committee: Access to Justice Commission Early Resolution and Mediation Project (E-RAMP)

Submitted by: Patty Fain, Committee Chair. A list of Committee members and affiliations are attached as Appendix 1.

Date of Last Meeting: December 2, 2016

Previous Meetings – See Minutes – Appendix 2

Full Committee:

- 10.24.16
- 11.16.16
- 12.2.16

Mediator Qualifications and Education (MQET) Working Group - Group Leader: Alissa Chambers

- 11.08.16
- 11.17.16

Litigant Participation and Education (LPE) Working Group - Group Leader: Prof. Eduardo Capulong

- 11.2.16

Action Items Completed:

1. Case workload and program capacity scenarios
2. Draft of Attorney Mediator qualifications and training
3. Framework for E-RAMP litigant participation framework

Action Items In-Progress/Pending:

1. Non-attorney mediator qualifications and training
2. Litigant participant eligibility screening tool
3. Inclusion of mediation module content and protocol in current mandatory parenting education curriculum

Questions/Actions for Commission:

1. Review and discussion of Attorney Mediator Qualifications and Training
2. Approval of recommendation of Attorney Mediator Qualifications and Training

Other Notes: The current work and actions of the E-RAMP committee intended to provide further guidance, detail and documentation to the previously offered Standards and Guidelines for E-RAMP court-connected programs. We've made tremendous progress in a short period. This is wholly the result of an extremely dedicated and knowledgeable group of people who serve the E-RAMP Committee. I invite the Commission to join me in thanking them for their substantial time and dedication.

APPENDIX 1 – E-RAMP COMMITTEE MEMBERS

**Montana Supreme Court Access to Justice Commission
Early Resolution and Mediation Project (E-RAMP)
Committee Members
11.16.16**

Name	Affiliation	E-mail
Justice Laurie McKinnon	Montana Supreme Court	LMcKinnon@mt.gov
Judge Amy Eddy	11 th Judicial District	AEddy@mt.gov
April Armstrong	Attorney Specialist CSED	aarmstrong@mt.gov
Eduardo Capulong Anna Nix - Intern	University of Montana Alexander Blewett III School of Law Professor and Director of Mediation Clinic	Eduardo.Capulong@mso.umt.edu
Alissa Chambers	Attorney, Crowley Fleck LLP	achambers@crowleyfleck.com
Patty Fain	Statewide Pro Bono Coordinator Montana Supreme Court	pfain@mt.gov
Ann Goldes-Sheehan	State Bar of Montana Equal Justice Coordinator	agoldes@montanabar.org
Linda Gryczan	Immediate Past President Montana Mediation Association	LindaG@MediationWorks.tv
Dr. Christopher Hahn	Constructive Agreement LLC	chris@constructiveagreement.com
Dean Paul Kirgis	Dean, University of Montana Alexander Blewett III School of Law	Paul.Kirgis@mso.umt.edu
Leigh Anne Miller	Family Evaluation Supervisor 11 th Judicial District	LMiller2@mt.gov
Angie Wagenhals	Montana Legal Services Assn.	awagenha@mtlsa.org
Kay Lynn Lee	Chair, Northwest Bar Association Pro Bono Committee	kll@kaylynnlee.com

APPENDIX 2 – E-RAMP COMMITTEE MINUTES

DATE: Monday, October 24, 2016

TIME: 7:30 AM

LOCATION: By Phone

**Montana Supreme Court
Access to Justice Commission
E-RAMP Committee**

Meeting called to order by E-RAMP Committee Chair Patty Fain at 7:35 am.

- **Meeting to Discuss**
 - E-RAMP orientation and next steps
- **Attendee Names** – *A full list of committee members and their affiliations is attached as Attachment 1*
 - April Armstrong
 - Alissa Chambers
 - Prof. Eduardo Capulong
 - Linda Gryczan
 - Patty Fain
 - Dr. Christopher Hahn
 - Justice Laurie McKinnon,
 - Angie Wagenhals
- **Attendees Not Present**
 - Judge Amy Eddy, Dean Paul Kirgis, Anne Goldes-Sheehan, Leigh Anne Miller. **Note:** *Due to an error, Dean Paul Kirgis and Leigh Ann Miller did not receive meeting reminder with call-in information.*

Approval of Previous Minutes

First meeting. No prior minutes to approve

Agenda Topics

1. History of E-RAMP Effort and Framework

Committee members were provided an overview of the efforts of the original working group to date and the results of those efforts through the E-RAMP Standards and Court Connected Mediation Modules in Attachments 2 and 3. Clarification was provided about the development of a pilot project incorporating all modules for a day-of court-**connected mediation program**.

2. Review and Discussion of Court-Connected Mediation Modules and Standards

Members agreed the Modules and Standards were appropriate framework for continued work of this Committee. Considerations and implications concerning child support were discussed and April Armstrong, CSED attorney provided information about department processes and protocols. The Committee discussed the impact of a mediated parenting plan on child support, and child support orders on court-connected mediation efforts. Also discussed was the inclusion of amended parenting plans in the court-connected pilot or Standards.

Action: The Committee agreed child support considerations should be included in the Standards. Patty will draft a Standard for the Committee's review with the assistance of April Armstrong.

Action: The Committee will further discuss the implications and the conditions for which amended parenting plans may be included in a court-connected mediation program when we begin the implementation phase of program review. .

3. Goals

The Committee agreed the stated goals in the agenda were appropriate.

Goal 1. Providing recommendations for E-RAMP model court-connected mediation program, including process, guidelines, standards, and mediation program implementation.

Goal 2: Providing recommendations for new and amended model court rules; and proposed statutory amendments which would facilitate the integration of E-RAMP court-connected mediation into Montana court processes.

4. Next Steps

The Committee agreed that working in sub-groups on based on the Mediation Modules and their attendant associated Standards is the best approach to continued progress. Starting with the preliminary modules of Litigant Education and Volunteer Training and Education. Patty will send out a request for members to assist with one of the two working groups. When working groups are assigned, associated Standards (and any clarification about those Standards) will be identified for consideration in each working group effort.

5. Next Meeting

Patty will send out a meeting poll. Effort is made to accommodate alternating schedules.

Meeting was adjourned at 9 a.m.

ATTACHMENT 1

**Montana Supreme Court Access to Justice Commission
Early Resolution and Mediation Project (E-RAMP)
Committee Members
10.24.16**

Name	Affiliation	E-mail
Justice Laurie McKinnon	Montana Supreme Court	LMcKinnon@mt.gov
Judge Amy Eddy	11 th Judicial District	AEddy@mt.gov
April Armstrong	Attorney Specialist CSED	aarmstrong@mt.gov
Eduardo Capulong	University of Montana Alexander Blewett III School of Law Professor and Director of Mediation Clinic	Eduardo.Capulong@mso.umt.edu
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Linda Gryczan	Immediate Past President Montana Mediation Association	LindaG@MediationWorks.tv
Dr. Christopher Hahn	Constructive Agreement LLC	chris@constructiveagreement.com
Dean Paul Kirgis	Dean, University of Montana Alexander Blewett III School of Law	Paul.Kirgis@mso.umt.edu
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Angie Wagenhals	Montana Legal Services Assn.	awagenha@mtlsa.org

ATTACHMENT 2

EARLY RESOLUTION AND MEDIATION PROJECT (E-RAMP) STANDARDS¹

Introduction

The Early Resolution and Mediation Project (**E-RAMP**) Guidelines and Standards are designed to assist the Court-Connected Mediation Working Group in developing and implementing a court-connected mediation pilot project and to help guide District Courts who wish to construct a court-connected mediation program unique to their geographical area.

A court-connected mediation program, working in cooperation with mediators and local bar associations in providing cost-free mediation services to those who are unable to pay for such services, can extend limited resources and provide greater access to early resolution of disputes. Studies have shown that parties who reach agreement on their own are generally more likely to follow through and comply with its terms as compared to those whose settlements are imposed by a third-party decision-maker.

E-RAMP Purpose and Goals

The purpose and goals of **E-RAMP** are to provide litigants in parenting disputes a path to mediation for self-determined, early resolution; to facilitate early District Court case management; to produce greater likelihood of compliance with agreements; and to provide *pro bono* opportunities to volunteer attorneys and mediators.

E-RAMP Structure

E-RAMP is designed to poise parties for early resolution by directing select cases to an abbreviated mediation process conducted by volunteer mediators and managed by the court. The **E-RAMP** pilot program is limited to court fee-waived cases involving two self-represented litigants in a child custody or visitation proceeding. Limitations on participation allows a manageable volume for limited volunteer resources.

E-RAMP Mediation Process

Cases referred to the **E-RAMP** program are scheduled for a regular mass calendar. Participants are screened and cases not appropriate for mediation proceed with a judicial scheduling conference or other court action. Eligible cases are assigned a mediator who conducts an

¹ Adapted in part from The Institute of Judicial Administration

initial, two-hour mediation on the same day in the same location to assist the parties in resolving parenting disputes.

STANDARDS

1.0 DEFINITIONS

Mediation: Mediation is a term that has been used to describe a range of practices designed to help parties in conflict. In the **E-RAMP** program, **the term “mediation” is used to describe a method in which an impartial attorney or mediator helps the parties to communicate and make voluntary, informed choices to resolve their disputes.**

Court-Connected Program: **E-RAMP** is designed as a court-connected program. A court-connected program is defined as a **mediation program or service to which the court refers cases, including a program or service operated by the court.**

2.0 MEDIATION METHODS

2.1 Court-connected family law Mediation should employ facilitative mediation model.

Commentary: Facilitative mediation is a process of resolving the conflicts by meeting the needs of the parties to the greatest degree possible. A facilitative mediator does not provide or impose solutions, but rather facilitates a process that allows the parties to generate their own solutions to their issues.

3.0 ACCESS TO COURT-CONNECTED MEDIATION

3.1 Court-connected mediation should be made available as broadly as resources allow to parties who do not have the ability to secure paid mediation services.

Commentary: Limited financial and volunteer resources require **E-RAMP** to limit participation in the court-connected program. Applying a clearly defined financial threshold such as the Order Waiving Fees is also a primary factor in managing the volume of **E-RAMP** participants. Parties not eligible for **E-RAMP** are provided information about resolution through mediation by other mediators, mediation centers, or programs.

3.2 Cases should be screened to assure they are appropriate for E-RAMP.

Commentary: Employing an accepted and adopted screening tool to assure a case and the parties are appropriate for the abbreviated mediation contemplated in **E-RAMP** is crucial. The screening should assess the presence of child abuse or neglect, the level of parental conflict, domestic violence, other forms of intimidation or coercion, or a party's inability to negotiate

freely and make informed decisions. The screening tool developed for the E-RAMP program is attached.

3.3 Programs should ensure that self-represented litigants make informed decisions about mediation.

Commentary: A mediator cannot provide the same protections provided by an individual's personal advocate. Without legal representation or access to legal information, parties may be vulnerable to pressure to settle or accept unfair results. Programs should provide pre-mediation education and informative legal information to those participating in the court-connected program.

4.0 COURT'S RESPONSIBILITY FOR A COURT-CONNECTED MEDIATION PROGRAM

4.1 The court is responsible for monitoring its court-connected mediation program.

Commentary: The court hosting the mediation program should be responsible for monitoring its court-connected mediation program. These responsibilities include determining qualifications of program mediators and adopting program goals, structure, and procedures.

4.2 The court is not responsible for monitoring private mediation programs.

Commentary: The court has no direct responsibility to monitor or to evaluate private programs, but judges, clerks, and court administrators should be knowledgeable about private programs in the community. The courts should maintain a list of qualified private mediators to which parties who do not qualify for the court-connected mediation program should be referred.

4.3 Parties referred to the E-RAMP program should have access to a complaint mechanism to address any concerns about the process or mediators participating in the program.

Commentary: Court-connected programs such as E-RAMP should have a mechanism to accept concerns and complaints from both participating parties and attorneys and mediators.

5.0 INFORMATION FOR JUDGES, COURT PERSONNEL AND USERS

5.1 The court, the State Bar of Montana and associated professionals and professional organizations should provide to the public, the bar, judges and court personnel information about mediation; available programs and resources; potential cost and time savings; and any consequences of participation.

Commentary: Increasing awareness of mediation generally will likely increase the number of litigants voluntarily choosing mediation over litigation and improve acceptance of any anticipated mediation requirements in any particular geographical area. Courts have a vested interest in increasing voluntary participation in mediation.

5.2 Participants should be educated concerning the E-RAMP program prior to any court-connected participation or referral. Information should include:

General Information

1. The purpose of E-RAMP and basis for selecting cases
2. How E-RAMP operates
3. How legal and mediation processes interact
4. The enforcement of agreements
5. Applicable laws and rules concerning parenting and mediation in Montana
6. How mediators are selected/qualifications
7. Intake and screening procedures
8. The potential for savings of money and time

Process Information

1. Purpose and type of mediation
2. Confidentiality of process and records
3. Role of the parties and the mediator in the process
4. Voluntary acceptance of an agreement
5. Enforcement of agreements
6. Availability of formal adjudication if parties do not reach agreement

Commentary: At a minimum, courts should provide written information explaining the mediation and E-RAMP processes. However, information is more readily absorbed if litigants can see, hear, and experience how mediation works. This can be achieved through inclusion of mediation and program information in an already established education class or through a video presentation prior to the mediation process. This is particularly critical when referring unrepresented litigants to a court-connected mediation program when the court has a special interest in encouraging or requiring the use of mediation.

6.0 QUALIFICATION OF MEDIATORS²

6.1 Courts have a continuing responsibility to ensure the quality of mediators participating in the court-connected program. In Montana, family law mediation is generally governed by MCA §§ 40-4-307 and 26-1-813. No particular academic degree should be

² The Working Group has not yet reached a consensus on mediator qualifications

considered a prerequisite for service as a mediator. Instead, qualifications of mediators should be based on knowledge, skills, and values, which are acquired through formal training and experience.

These Standards suggest the minimum training and experience program **outlined in the attached Mediator Training Requirements** and that otherwise adhere to the state and national standards for family law mediators.

6.2 Courts are responsible for assuring the mediators who participate in the court-connected program are qualified.

Commentary: Assuring that court-connected mediation programs and services are of high quality is of special concern when parties are referred to a particular program or to a roster maintained by the court. Courts should establish a method to screen for qualifications. No distinction should be made between the qualifications of a *pro bono* mediator or a mediator who provides for-pay services. **The suggested E-RAMP Mediator Participation Questionnaire is attached.**

7.0 ETHICAL STANDARDS FOR MEDIATORS

7.1 Courts should adopt a code of ethical standards for mediators. Any set of standards should include provisions that address the following concerns:

- a. Impartiality**
- b. Conflict of Interest**
- c. Advertising by Mediators**
- d. Confidentiality**
- e. Role of Mediators in Settlement**

Commentary: The Montana Mediation Association Code of Ethics and Standards of Practice should serve as a guideline in establishing a set of ethical standards for mediators participating in a court-connected mediation program.

8.0 INAPPROPRIATE PRESSURE TO SETTLE

8.1 Courts participating in a court-connected mediation program should employ a process to permit parties to opt out of mediation.

Commentary: Ensuring fairness of the mediation process requires that both courts and mediators protect the parties' ability to make free and informed choices about reaching an agreement in a case. A referral system should include opt-out provisions to protect against inappropriate pressure to reach an agreement or impair a litigant's ability to protect their own

interests. This is especially true in cases which there is reason to suspect domestic violence. See MCA §40-4-301(2).

8.2 Courts should provide parties with full and accurate information about the court-connected program, including the fact that they are not required to settle.

Commentary: Inadequate information may lead parties to believe they must participate in the program or reach an agreement in mediation. At a minimum, litigants should be informed at the beginning of the process that they need not participate, mediator has no authority to impose a solution, and that no adverse consequences will be imposed as a result of their nonparticipation or inability to reach an agreement.

8.3 There should be no adverse response by the courts concerning the parties' nonparticipation and inability to reach an agreement.

Commentary: Nonparticipation and the inability to reach an agreement during mediation should not adversely affect the parties' treatment by the court. Courts should take special care to avoid drawing inferences regarding the reasons parties did not participate or a case did not reach agreement. Likewise, in the latter scenario, the mediator shall not offer a suggestion regarding the best outcome of the case. Concern about subsequent actions by the court may lead parties to reach an agreement involuntarily.

9.0 COMMUNICATIONS BETWEEN MEDIATORS AND THE COURT

9.1 During or subsequent to the court-connected mediation, the judge or other trier of fact should be informed only of the following:

- a. Failure of a party to comply with any order to attend mediation
- b. Request by the parties for additional time to complete the mediation
- c. If the parties agree, any procedural action by the court that would facilitate the mediation; and
- d. Mediator's assessment that the case is appropriate for mediation

Commentary: The purpose of this standard is to insulate the mediator from the court during mediation and, except for reports of violations of any court orders, to keep from the judge who may be involved in a future trial of the case, any information about the substance of the mediation. Any mediator assessment of the inappropriateness of a particular case for mediation should be conveyed to the court without elaboration.

9.2 When the mediation is concluded, the court should be informed of the following:

- a. If the parties do not reach an agreement, the mediator should impasse to the court without comment or recommendation.

- b. **If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general.**
- c. **With the consent of the parties, the mediator's report also may identify any pending motions or outstanding legal issues.**

Commentary: Although communications between the mediator and the judge who may try the case should be discouraged, these Standards are not intended to preclude discussions with administrative staff responsible for the court-connected mediation program or reports to the court designed to permit monitoring of the quality of mediation services.

10.0 ENFORCEABILITY OF MEDIATED AGREEMENTS

10.1 Agreements reached through court-connected mediation should be enforceable to the same extent as agreements reached without a mediator.

Commentary: To avoid creating a second-class status for court-connected mediation programs, programs should not impose any additional provisions or requirements to any agreement reached through participation in the court-connected program.

11.0 EVALUATION

11.1 Courts should ensure that court-connected mediation programs are monitored on an ongoing basis and evaluated on a periodic basis.

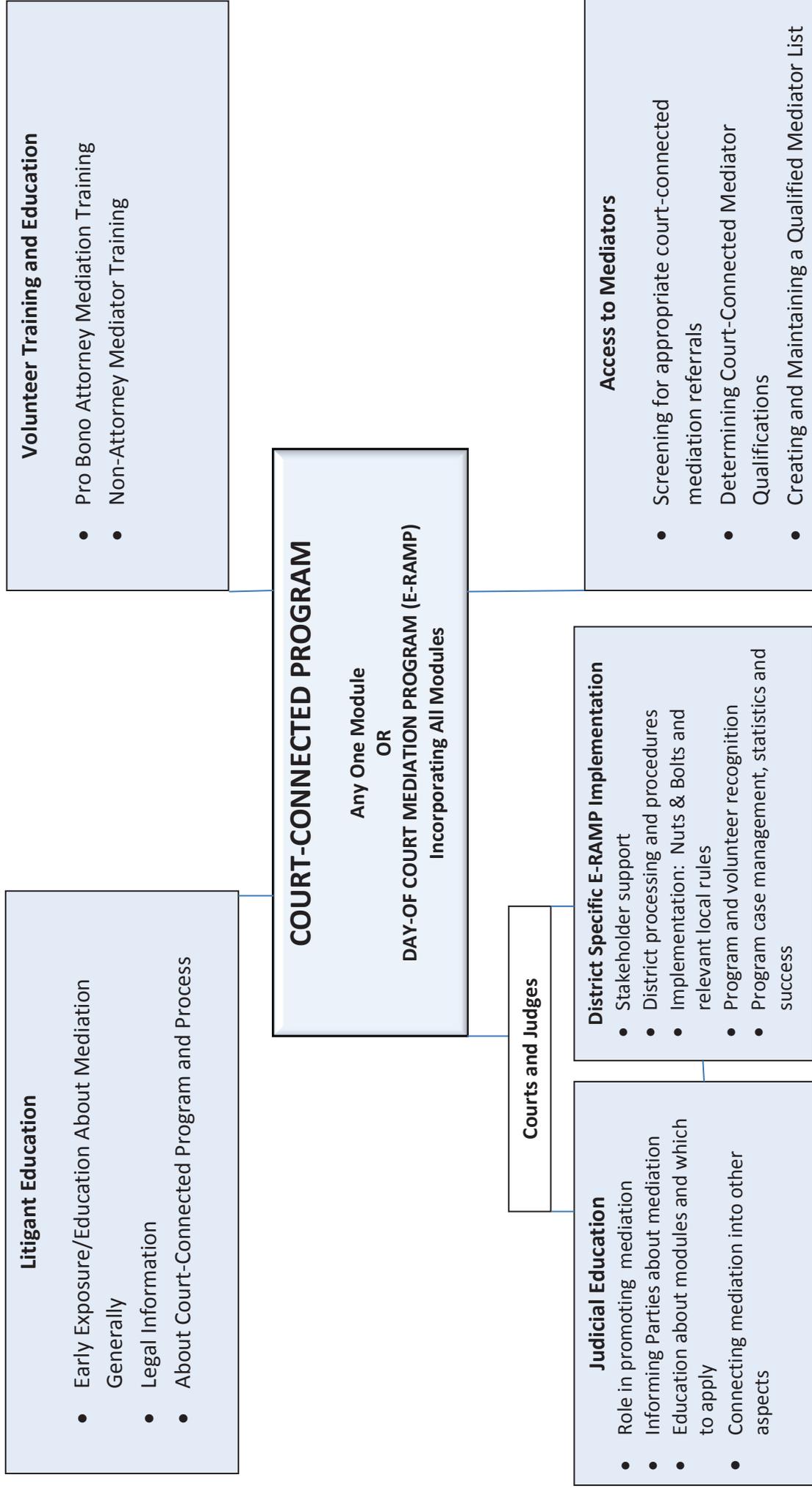
Commentary: A court-connected mediation program should be monitored internally to assure the program is operating as intended and whether the policies and procedures are implemented successfully. The primary purpose of evaluations or assessments is in ensuring the quality of the program.

11.2 Court-connected programs should collect sufficient, accurate information to allow adequate monitoring and evaluation.

Commentary: Programs should collect basic information and data to determine effectiveness of a court-connected program. This information should include whether an agreement was reached, whether it was partial or complete resolution of a case, and the types of issues that were resolved (or unresolved). Data can be collected from parties themselves, including demographic data and satisfaction with the court-connected program.

ATTACHMENT 3

Court-Connected Mediation Modules



E-RAMP (Early Resolution and Mediation Project) is a court-connected mediation pilot project designed to provide access to early resolution of family law cases by incorporating opportunities to mediate and considerations of a particular judicial district's case processing. The E-RAMP pilot project is guided by a Working Group with representatives from the Montana Supreme Court, district court judges, the State Bar of Montana, Montana Legal Services Association, The Alexander Blewett III School of Law, the Montana Mediation Association, private attorneys and mediators.

MEETING MINUTES

DATE: Wednesday, 11/16/16

TIME: 1:00PM

LOCATION: By Phone

**Montana Supreme Court
Access to Justice Commission
E-RAMP Committee**

Meeting called to order by E-RAMP Committee Chair Patty Fain at 7:35 am.

- **Meeting to Discuss**
 - Update and next steps from Litigant Participation and Education working group
 - Update and next steps from Mediator Qualifications, Education and Training working group
- **Attendee Names** – *A full list of committee members and their affiliations is attached as Attachment 1*
 - April Armstrong
 - Alissa Chambers
 - Prof. Eduardo Capulong
 - Linda Gryczan
 - Patty Fain
 - Dr. Christopher Hahn
 - Justice Laurie McKinnon,
 - Angie Wagenhals
 - Ann Goldes Sheehan
 - Leigh Ann Miller
 - Kay Lynn Lee
 - Anna Nix
 - Judge Amy Eddy
- **Members Not Present**
 - Dean Paul Kirgis – Law School commitment.

At Judge Eddy's suggestion, Kay Lynn Lee, Chair of the Northwest Bar Association Pro Bono Committee was added to the E-RAMP Committee and attended this meeting.

Approval of Previous Minutes

No changes or corrections to previous Minutes

Agenda Topics

1. Review of progress of Litigant Participation and Education Working Group

- a. Prof. Eduardo Capulong gave an update of this working group which met by phone on Wednesday, November 2. The Minutes of that Working Group are attached as *Attachment 2*. Eduardo provided a draft of a Standing Order for participants of E-RAMP. The draft Order is attached as *Attachment 3*. The group recommends:
 - i. Participant education should be folded into whatever protocol was already established

- ii. Participant screening should take place on the administrative level to conserve judicial resources

Action: Group should review draft and comment

- b. Leigh Ann Miller reported the vendor of the current parenting education component could likely modify the presentation to include mediation orientation.

Action: Leigh Ann will report on details at next meeting.

- c. Discussion: Importance of the participant screening tool to both the participants and the mediators. The discussion centered on screening out cases not appropriate for abbreviated mediation. The group decided to await the recommendations of the Mediator Qualifications, Education and Training (MQET) group to assess the level of screening. Judge Eddy emphasized the large number of cases that are drug and alcohol involved. Eduardo emphasized the need for screening protocols through the entire process to capture any cases not identified initially but not appropriate to continue mediation. This would be important for mediators to be trained in identifying those issues.

Action: The group will await the recommendations of the MQET working group

- d. Discussion: Inclusion of amended parenting plans. Currently, in many jurisdictions and model parenting plans, Decrees incorporate a mandatory mediation provision for reopened parenting cases. Often the provision is not enforced due to lack of mediation resources.

Action: Patty will pull statewide statistics and provide to the group.

2. Discuss Mediator Qualifications, Education and Training

Alissa Chambers provided an update on the MQET meeting on November 8. The Minutes are attached as *Attachment 3*. The group discussed the tiered qualification system. It was agreed it is best to focus first on attorney mediator qualifications and training.

Action: Whoever on the Committee that would like to meet at Crowley Fleck on Friday, November 18 to work through attorney qualifications and training is invited to attend. Those recommendations will be provided to the entire group for discussion at the next full Committee meeting.

Action: The MQET Committee will send recommendations concerning attorney qualifications and training to the full Committee prior to its next meeting.

Action: The Committee will further discuss the implications and the conditions for which amended parenting plans would be included in the E-RAMP program.

Meeting adjourned 3:15 p.m.

**Montana Supreme Court Access to Justice Commission
Early Resolution and Mediation Project (E-RAMP)
Committee Members
11.16.16**

Name	Affiliation	E-mail
Justice Laurie McKinnon	Montana Supreme Court	LMcKinnon@mt.gov
Judge Amy Eddy	11 th Judicial District	AEddy@mt.gov
April Armstrong	Attorney Specialist CSED	aarmstrong@mt.gov
Eduardo Capulong Anna Nix - Intern	University of Montana Alexander Blewett III School of Law Professor and Director of Mediation Clinic	Eduardo.Capulong@mso.umt.edu
Alissa Chambers	Attorney, Crowley Fleck LLP	achambers@crowleyfleck.com
Patty Fain	Statewide Pro Bono Coordinator Montana Supreme Court	pfain@mt.gov
Ann Goldes-Sheehan	State Bar of Montana Equal Justice Coordinator	agoldes@montanabar.org
Linda Gryczan	Immediate Past President Montana Mediation Association	LindaG@MediationWorks.tv
Dr. Christopher Hahn	Constructive Agreement LLC	chris@constructiveagreement.com
Dean Paul Kirgis	Dean, University of Montana Alexander Blewett III School of Law	Paul.Kirgis@mso.umt.edu
Leigh Anne Miller	Family Evaluation Supervisor 11 th Judicial District	LMiller2@mt.gov
Angie Wagenhals	Montana Legal Services Assn.	awagenha@mtlsa.org
Kay Lynn Lee	Chair, Northwest Bar Association Pro Bono Committee	kll@kaylynnlee.com

DATE: November 2, 2016 7:30m

TIME: 2:00 p.m.

LOCATION: By Phone

**Montana Supreme Court
Access to Justice Commission
Litigant Participation and Education Working Group
E-RAMP Committee**

- **Meeting to Discuss**
- **E-RAMP litigant participation and education.**
 - This group will examine a method for criteria screening for potential participants (See 3.2 of Standards). This includes the screening tool itself, when best to administer the screening tool, and by whom.
 - This group will determine how best to ensure that self-represented litigants make informed decisions about mediation (See Standards 3.3). It is not necessary to create the education materials, but to determine the portals and methods in which this information can or should be delivered together with any requirements in mediation education generally.
-
- **Attendee Names** – *A full list of committee members and their affiliations is attached as Attachment 1*
 - Prof. Eduardo Capulong, Group Leader
 - Judge Amy Eddy
 - April Armstrong
 - Linda Gryczan
 - Leigh Ann Miller
 - Angie Wagenhals
 - Anna Nix – Eduardo’s Mediation Clinic Intern
 - Patty Fain
- **Members Not Present**
 - Ann Goldes-Sheehan.

Discussion Topics

1. Review of Goals

Eduardo reviewed the goals of the E-RAMP effort generally.

- Provide litigants in parenting disputes a path to mediation for self-determined, early resolution;
- Facilitate early District Court case management
- Produce greater likelihood of compliance with agreements; and
- To provide *pro bono* opportunities for volunteer attorneys
-

2. Perspective from the Bench

Judge Eddy sent an email to the group outlining her initial thoughts on the pilot thus far. Judge Eddy indicated:

- The judges in the 11th judicial district are committed to entertain the pilot program;

- The current case filings are in alignment with the previous estimations of approximately 29 eligible cases per month;
- The court does not have a mechanism to track whether fee waivers are awarded in all of the otherwise eligible cases. Judges vary concerning granting of waivers;
- The Self-Help Law Center is operating at maximum capacity and it is not realistic to expect the centers to perform additional tasks or duties related to the E-RAMP pilot. The county is also reducing the physical space;
- The 11th judge refer on a case-by-case basis to the Family Court Services for evaluations and parenting plan recommendations. These cases are generally not amenable to mediation. FCS will mediate resolution in appropriate cases. FCS issued reports for 100 cases in 2016 and is at operating capacity.
- Same-day mediations at the 11th Courthouse itself would be a great challenge. There isn't space that isn't allocated for court time and other conferences. Judge Eddy is running the space allocation time tables to confirm.
- Judge Eddy indicates the primary reason for hosting a pilot at this time is the potential to reduce conflict in children's lives.
- The 11th judicial district requires all parties to participate in mediation.
- The most challenging cases are the reopened cases.
- Parties must participate in parenting plan classes within 45 days.
- There is currently no court security and this may pose a problem when multiple mediations co-occur.

Action: Judge Eddy will provide information about day-of court mediation space capacity.

3. Child Support Enforcement Division

April indicated the challenge for CSED is often the parties have a child support order in place and the parenting plan does not coincide with the provisions of the Order. Or, the parties did not every fully employ the parenting schedule and therefore, child support is not in alignment with the living circumstances of the children. Reopening cases due to change in circumstances and support is an important issue for consideration.

4. Education of Participants

The group discussed the importance and mechanism for educating litigants about mediation. This included discussion about existing standing orders or local rules and the possibility of incorporating those directives into new Rules. Judge Eddy indicated the best method is to issue a Standing Order for a pilot rather than a Rule change.

Action: Eduardo and Ann will work on a model Standing Order relative to the education component.

Action: Patty and Leigh Ann will work together to determine if a mediation component can be added to the current online or live parenting orientation/class.. .

5. Screening

The group discussed what should be contained in a mediation-appropriate screening tool, how the tool would be utilized when and by whom. Judge Eddy indicated the Self-Help Law Center does not have capacity to facilitate screening.

Action: Patty will research possible screening tools and mechanism for completion and report to the group.

DATE: November 8, 2016

TIME: 3:00 p.m.

LOCATION: By Phone

**Montana Supreme Court
Access to Justice Commission
Mediator Qualifications, Education and Training
E-RAMP Committee**

- **Meeting to Discuss**
- **E-RAMP Mediator Qualifications, Education and Training.**
 - Examining qualifications and training requirements to participate as a mediator in a court-connected E-RAMP program (*See Standards 6.1*). This can include revision of 6.1 for the purposes of the initial pilot program and any anticipation of expansion of a mediator base after a pilot. Note, the mediator qualifications would extend beyond a day-of court-connected mediation day and include any “Qualified Mediator List” in which a judge or court refers cases for mediation regardless of pro bono or for-pay services (*See Standards commentary 6.2*).
 - Determine the contents of a questionnaire/application or request for inclusion that would confirm mediator qualifications as established by a. above. This application/request would apply to attorney volunteers and day-of mediation pilot, inclusion on a qualified mediator list maintained by the court or referral to a mediation specific community based program
-
- **Attendee Names** – *A full list of committee members and their affiliations is attached as Attachment 1*
 - Alissa Chambers, Group Leader
 - Justice Laurie McKinnon
 - Dean Paul Kirgis
 - Linda Gryczan
 - Dr. Chris Hahn
 - Patty Fain

Discussion Topics

1. Establishment of Standards

The group discussed a baseline to begin evaluation of needed qualifications and standards for mediators participating in a court-connected mediation program. The group reached consensus that mediation specific training and experience may differ for attorneys in practice given attorneys are bound by attorney Rules of Professional Conduct which encompass mediation generally. The group agreed to begin with examining the Montana Mediation Association (MtMA) [Certified Mediator Qualifications](#) together with [Code of Ethics and Standards of Practice](#) and evaluate possibility of adaptation.

Action: The group scheduled a meeting to review and discuss the MtMA Qualifications and Code in person on Thursday, November 17 at 1:30 p.m. at the Helena offices of Crowley Fleck located at 900 N. Last Chance Gulch #200. Anyone interested in discussing this subject is invited to participate.

2. Levels of Mediation Competency

The group discussed the difference in mediating difficult or problematic parenting plan cases versus less complicated or involved parenting cases. Dean Kirgis emphasized the importance of screening out cases based on enumerated capacity and case appropriateness issues. The group concluded:

- **Screening cases appropriate for an abbreviated styled mediation program is critical.** It was noted that the Litigant Participation and Education group is undertaking recommendations for appropriate litigant screening mechanisms to assure litigants are more likely to reach resolution and mediators are qualified to mediate referred cases.
- **Examining a tiered system of qualifications for mediators for participation in a court-connected mediation program or inclusion on a qualified mediator list for more complicated mediations.** The group will first examine those qualifications that establish a minimum for the abbreviated mediation protocol for attorneys in a pro bono service arrangement.

Action: Patty Fain will send an email to the Litigant Education Group about this overlapping work and inform we will send information about what the group concludes about appropriate screening mechanisms to assure the issue is addressed collectively.

Action: Patty Fain will gather the information and research concerning cases appropriate for abbreviated or court-contained mediation (including limiting issues) as a beginning parameter with invitation for members for the entire committee to discuss or add others.

Action: Linda will provide her screening protocols and documents.

3. Current Statewide Mediation Practices and Protocols

Dean Kirgis and asked about precedent concerning mediation programs across the state. The response is there is no formalized approach or standards of practice. Instead, each judicial district employs different approaches to resolving parenting and domestic relations cases – particularly for otherwise unrepresented litigants. There is currently mediation from the bench, mediation by other court staff or programs and Standing Orders for mandatory mediation, among others. The hope is establishment of an E-RAMP styled program, which includes judicial education about mediation ethics and considerations generally will assist in establishing practices conducive to litigant directed mediation efforts.

There are some examples of current programs that employ minimum training standards for attorney volunteers which includes community mediation centers and Crowley Fleck in-house mediation program.

Action: Patty Fain will send an overview of the current standards for available community mediation programs and Crowley Fleck.

4. Preferred Mediation Method

The group discussed the fact the drafted E-RAMP Standards anticipate use of facilitative mediation model for E-RAMP programs. The group discussed the need to include training specifically on facilitative mediation.

5. Training

The group touched upon training. Members inquired about funding for training programs. There is currently no funding for paying for mediation training services. However, discussion about current resources that is available for modification. Patty and Alissa talked about Art and Kitty Lusse’s training program delivered for the Crowley Fleck program (and others). The group also discussed that what the qualifications and training requirements for participation would be will dictate development of a training module which could possibly be delivered through a combination of in-person and web based training sessions.

Action: Patty will send Art Lusse’s parenting plan specific training outline.

6. Malpractice Insurance

The group briefly discussed malpractice insurance. Certified mediators in the group indicated they carry mediation insurance but it is not a requirement. Patty reminded the group that malpractice insurance for attorneys in Montana is not mandatory. There was discussion about the need for MLSA malpractice insurance and how that might work with the need to screen all participants. The current protocol is for those litigants who have been granted an order waiving fees which may not be the same financial threshold or requirements of MLSA. In addition, as a court-connected program, is there immunity? It was decided that might be a discussion for a different day, but we need to examine the availability of malpractice insurance through MLSA.

Action: Patty will follow-up with Alaska Legal Aid to discuss their current arrangement to have attorneys automatically qualify for malpractice if they are on the Legal Aid volunteer list and provide services through the mediation program.

7. Parenting Plan Children Best Interest Considerations

The group discussed need to develop a model parenting plan for mediators to reference which employs best interest of the child type standards including age appropriate arrangements and other considerations.

Action: Patty will canvas the state and collect any standard parenting plan documents or guidelines and provide to the group.

The group discussed the existence of relevant statutes related to mediation. To review (with live links):

[40-4-307 MCA – Mediator Qualifications](#)

[26-1-813 MCA - Mediation -- confidentiality -- privilege -- exceptions](#)

[40-4-301 MCA – Family Law Mediation](#) – Exception (domestic violence)

[40-4-306 MCA – Mediator List](#)

Meeting adjourned 4:30pm.

DATE: Friday, December 2, 2016

TIME: 2:00PM

LOCATION: By Phone

**Montana Supreme Court
Access to Justice Commission
E-RAMP Committee**

Meeting called to order by E-RAMP Committee Chair Patty Fain at 2:00 p.m.

▪ **Meeting to Discuss**

- Attorney mediator qualifications offered by Mediator Qualifications, Education and Training working group.
- Case type inclusion in E-RAMP programs and next steps for Litigant Participation and Education working group

▪ **Attendee Names** – *A full list of committee members and their affiliations is attached as Attachment 1*

- Alissa Chambers
- Prof. Eduardo Capulong
- Linda Gryczan
- Patty Fain
- Dr. Christopher Hahn
- Justice Laurie McKinnon
- Angie Wagenhals
- Anna Nix

▪ **Members Not Present**

- April Armstrong, Linda Gryczan, Ann Goldes Sheehan, Leigh Ann Miller, Kay Lynn Lee, Judge Amy Eddy

Approval of Previous Minutes

No changes or corrections to previous Minutes

Agenda Topics

1. Review of Mediator Qualifications, Education and Training Working Group (MQET)

- a. Members of the MQET working group met in Helena to discuss and prepare the initial draft of the attorney mediator qualifications and training. The draft was offered to this Committee for consideration. The Committee had a robust discussion Topics for revision included discussion regarding balancing of classroom training with practicum and co-mediation models. The group seeks the following revisions:
 - i. Remove references and requirements for co-mediation
 - ii. Include provisions for observing mediation(s) (including with the use of technology); and being observed and assisted as part of the training module.

Action: Prepare revisions and offer to group for further and final review. Final draft version attached.

2. Litigant Participation and Education Working Group

- a. **Re-opened cases:** Patty reported the statistics in the capacity scenario of the 11th Judicial District includes re-opened cases. Any capacity impact is in perceived difficulty of reopened cases and not in volume. Experienced mediators in the group indicated no automatic difficulty barrier for re-opened cases and in most instances, they can be mediated effectively .A distinction in re-opened cases is a mandate by some jurisdictions to mediate pursuant to MCA §40-4-301. Often judges do not enforce the mandate due to lack of mediation resources. E-RAMP offers potential to address the lack of resources. The Committee agreed re-opened cases should be considered in the initial phase.
- b. **Mediation of domestic violence and other capacity issues:** Those in the group with familiarity of domestic violence and mediation indicated that not all DV cases should be excluded from E-RAMP mediation. There is distinction in episodic and coercion/control domestic violence situations. The group agreed there should be some avenue for survivors who wish to continue with mediation for certain types of DV cases. In addition, the group discussed capacity issues such as drug and alcohol. The LPE group will discuss how to screen for appropriate cases in the context of the suggested qualifications and considerations for DV. The final product will be included in the Standards and Guidelines.

Action: Eduardo will call a meeting of the LPE working group to begin the process of developing E-RAMP litigant participation criteria specific to DV and capacity issues; make a recommendation on a screening tool; and determine at what phase and by whom the screening should take place.

Meeting adjourned 4:00 p.m.

Early Resolution and Mediation Project (E-RAMP) Mediator Qualifications, Education, and Training

The Early Resolution and Mediation Project (E-RAMP) is a court-connected program that offers mediation services and resources to self-represented litigants in family law proceedings. Courts have a continuing responsibility to ensure compliance with E-RAMP Standards, including the qualifications of participating mediators. In Montana, family law mediation is generally governed by MCA §§ 40-4-307, 40-4-301, and 26-1-813. The E-RAMP model is devised specifically for resolution of parenting disputes.

For the purposes of E-RAMP, the term “mediation” is used to describe a method in which an impartial and trained volunteer attorney or mediator helps the parties communicate and make voluntary, informed choices to resolve their disputes.

Volunteer mediators will come from a broad range of backgrounds, including the fields of law, social work, counseling, psychology, communication, and education.

I. Attorney Mediators

The qualifications and training requirements set forth below are standards proposed for volunteer attorney mediators. Matters that involve domestic violence, high-conflict, or other issues deemed inappropriate for E-RAMP based upon E-RAMP screening criteria may require experience and training qualifications that exceed those set forth in subsections (1) and (2) below. In such instances, cases will not be accepted into E-RAMP, but may be referred by the court to other services. These qualifications and training requirements were drafted, in part, with the recognition that attorneys bring to mediation key skills acquired from traditional legal training. For example, lawyers are specifically trained to manage conflict and resolve disputes, and rely on analytical skills useful for sorting through issues and creating options for resolution. Lawyers also understand the principles of confidentiality and have an obligation under the Montana Rules of Professional Conduct to clearly communicate with parties the scope of the lawyer’s services, including a duty to disclose when a lawyer is acting in a neutral role. Finally, lawyers are trained to draft legal documents and can help write a proposed parenting plan in a form that can be directly incorporated into a decree of dissolution.

At the same time, while these skills are essential, it is also important to recognize that a lawyer may not possess all the skills needed for the program. To ensure that all E-RAMP mediators are qualified to perform parenting plan mediation services, the E-RAMP committee recommends that, in addition to being a licensed attorney, lawyer mediators also meet the requirements set forth below. Finally, in mediation, as in other professional tasks, a lawyer must be aware of her or his limitations and know when to enlist the aid of others, including professional mediators with the requisite experience and training to mediate more difficult issues.

Volunteer attorney-mediators must be: (a) licensed to practice law in Montana; (b) have no record of public discipline for a period of 5 years prior to applying to be an E-RAMP mediator; (c) adhere to the Montana Rules of Professional Conduct; and (d) rely on the ABA Model Standards of Conduct for Mediators. Further, all volunteer attorney-mediators must complete the E-RAMP orientation.

1. The basic mediation curriculum for Montana attorneys participating in court-connected mediation programs shall contain eleven (11) hours of training to include:
 - (1) Requirements enumerated in MCA 40-4-307.
 - (2) Training techniques that closely simulate the interactions that occur in parenting mediations and provide effective feedback to attorney mediators, including at least two hours of role plays with trainer feedback and self-assessment.
 - (3) Mediation-specific instruction, including:
 - a. principles of mediation;
 - b. mediation fundamentals and process with emphasis on facilitative mediation;
 - c. parenting objectives and criteria;
 - d. domestic violence and mediation, including
 - i. types of domestic abuse;
 - ii. recognizing and identifying domestic abuse; and
 - iii. common characteristics of abusive partners and abused partners.
 - e. child development and parenting plans.
2. In addition to training pursuant to (1), attorney mediators must:
 - (1) understand confidentiality and ethical standards for mediator conduct generally gained through study and knowledge of the Montana Rules of Professional Conduct;
 - (2) be familiar with the statutory provisions governing mediation in Montana, including but not limited to MCA §§ 26-1-813, 40-4-301, 40-4-306, 40-4-307;
 - (3) be familiar with any code of ethical standards for mediators established by a court-connected program;
 - (4) understand how to memorialize understandings and agreements; and
 - (5) possess competencies in:
 - a. Helping the parties identify salient issues;
 - b. communication skills; and
 - c. problem-resolution skills.
3. To help bridge the gap between classroom learning for newly trained mediators and conducting a first E-RAMP mediation, E-RAMP programs should offer the following mediation practicum to newly trained but otherwise program-qualified attorney mediators:

- a. Attorney mediator observes at least one entire E-RAMP parenting mediation conducted by a Montana Mediation Association family law-certified mediator or an E-RAMP qualified attorney mediator; and
- b. Attorney mediator observed and assisted by a Montana Mediation Association family law-certified mediator or an E-RAMP qualified attorney mediator in conducting at least one entire E-RAMP parenting mediation.

The training requirements for participation as an attorney-mediator in E-RAMP set forth above are designed for an attorney with little or no mediation or equivalent experience. However, an attorney volunteer with relevant work and life experience may be able to substitute such experience for the more formal training requirements above. In connection with the E-RAMP program, the court, in its sole discretion, shall have the right to waive any of the qualification or training standards for a volunteer attorney mediator upon demonstration by such volunteer that the skill requirements are met by some alternative format. For example, an attorney who has sufficient experience in family law matters may need some instruction on the facilitative model of mediation, but may not need portions of the formal training on relevant family law. Similarly, a law school graduate who successfully completed a family law course and participated in a mediation clinic may not need any of the above listed training recommendations. The E-RAMP committee does not attempt to provide an exhaustive list of all experiences or qualifications that may substitute for the recommendation above, but leaves this in the discretion of the Court.

II. Non-Attorney Mediators [To be discussed in next phase]

APPENDIX 3

**ATTORNEY MEDIATOR QUALIFICATIONS AND
TRAINING**

Early Resolution and Mediation Project (E-RAMP) Mediator Qualifications, Education, and Training

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II. Non-Attorney Mediators [To be discussed in next phase]

Tab 8

MEMORANDUM

Date: December 5, 2016
To: Justice Baker and Members of the Access to Justice Commission
From: Valentine D. Sworts, Pro se Law Clerk
Re: Inmates and Requests for Legal Materials

Overview

The receipt of letters from two Montana State Prison inmates provided a hidden benefit which was later realized. Mr. Lance's letter, especially, was the impetus for having a meeting between the staff of the State Law Library, the Office of the Clerk of Supreme Court, and the Department of Corrections. This November 29, 2016 meeting yielded a constructive and beneficial discussion regarding inmate requests and access to legal materials.

Discussion Highlights

State Law Library

The State Law Library discussed how the request process works and some of its history. Currently, a charge of \$5.00 per request is used, and a family member or friend may pay for the request. The other payment method would be from the inmate's prison account following a written request to a prison's staff person. The Library pointed out its policy of having a separate system for inmates because of no direct correspondence between inmates and staff. The staff people reiterated that they have a "fairly streamlined" process, *e.g.*, they receive an Inter Unit Journal or IUJ¹ notifying them that the inmate paid and then send the requested material. They note, however, that they have seen problems, as Mr. Lance references, such as: (1) sending documents to a prison staff person, and the inmate does not receive it; or (2) receiving a request, and there is no approval for payment.

After some discussion, the Library is considering to institute a process for indigent inmates and to try direct correspondence with inmates for some requests. The Library's personnel clarified that direct inmate request to the Library may be feasible, because the Library wants to provide a service while recognizing the need to build in a limitation (3-5 requests or annual limit) to prevent abuse of the system. Overall, requests from inmates are limited, but they also noted that the requests have not been quantified. Concern was expressed that if requests via direct correspondence from inmates occur, there is no way for the library to receive payment.

A staff person with twenty years prior experience at the Library discussed the difference between Interlibrary Loan and Document Delivery.

Department of Corrections

The Department of Corrections discussed the access process at the various facilities and the Montana State Prison's current library status. An inmate would place a written request via an

¹ An Inter Unit Journal is a payment from one state agency to another.

Offender Staff Request (OSR) or kite, and deliver that to the library employee to receive a case or statute. The Department reiterated that inmates do not have e-mail or Internet availability.

The Department referred to its Policy 3.3.2 for the current list of what an inmate may access. Inmates have access to all state case law, 9th Circuit, and United States Supreme Court via Lexis-Nexis, which is updated quarterly. The Law Library plans to incorporate that list into their policy and to explain to inmates that the item they are requesting is already available to them at their current facility.

The Department pointed out that library personnel are either Department employees or employees of the detention facility or private prison, and that it is not known if any employee has any librarian background. Each facility's library has a staff person available to assist inmates. The Department explained that the prison has specific procedures, such as Department contracts for certain vendors and other accounting mechanisms. The Department considered payment options and having a future training amongst all employees who work with inmates.

The Department also explained why reference materials were removed from the Montana State Prison library. They removed hard bound reference books because they were older and outdated as well as they obstructed vision and line of sight in the prison library. There was concern for the safety and protection of inmates after a recent incident.

Conclusion and Next Steps

All those in attendance appreciated the opportunity to learn more about each respective institution and its policy. All expressed the desire to make the current system better and more functional in order to assist inmates with their requests for materials. We all look forward to the next meeting and discussed a small training for all employees in the near future.

- Law Library
 - Revise policy – what is available, set a request cap, etc.
 - Incorporate what material are at facilities from DOC Policy 3.3.2
 - Draft template letters re: responses with direct correspondence
 - Attempt to quantify number of inmate requests for a few months
- Department of Corrections
 - Determine contact person or staff at Billings Women's Prison for inmate requests
 - Follow-up with accounting process for payment options
- All present
 - Coordinate cross-over training and meeting re: library procedures as well as distribution of consistent Montana Supreme Court forms across facility sites

Follow-up Meeting – January 2017