

**Agenda**  
**Montana Supreme Court Access to Justice Commission**  
**March 10, 2017**  
**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 Charlie Rehbein and Rick Cook and thank you to Jennifer Brandon (Tab 1)
  - b. Approval of 12/9/16 meeting minutes: Justice Baker (Tab 2)
  
- II. Standing Committee Reports:
  - a. Self-Represented Litigants: Ann Goldes-Sheahan and Abby Brown (1:05-1:15)
  - b. Law School Partnerships Committee: Debbie Steigerwalt (1:15-1:30) (Tab 5)
  
- III. Update on Resources Inventory and Pilot Forms in Gallatin County: Nolan Harris (1:30-1:40)
  
- IV. Wrap on Forum Series: video and discussion on next steps: Justice Baker & Matt Dale (1:30 – 1:40)
  
- v. Biennial Report: Niki Zupanic and Sarah McClain (1:40-2:00) (Tab 6+)
  
- VI. Federal Budget Issues: Justice Baker (2:00-2:10)
  
- VII. Update on the Commission’s Legislative Agenda HB 46: Justice Baker (2:10–2:20)
  
- VIII. 2016 Pro Bono Report and Discussion of how Commission might help increase reporting: Patty Fain (2:30-2:40) (Tab 7)
  
- IX. Update on State Bar of Montana/Law School mediation project: Justice McKinnon and Patty Fain (2:40 – 2:55) (Tab 6)
  
- X. Update on Order of Protection Checklist: Judge Carter (2:55 – 3:00)
  
- XI. Public Comment and Review 2017 Meeting Dates (3:00-3:15)
  - a. June 9, 2017
  - b. September 8, 2017
  - c. December 8, 2017

# Tab 1

Agenda  
Tab 2

## IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

FILED

Case Number: AF 11-0765

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IN RE THE APPOINTMENT OF MEMBERS OF  
THE ACCESS TO JUSTICE COMMISSION

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FEB 07 2017

ORDER

By Order entered May 22, 2012, this Court established the Access to Justice Commission. The Court's initial order designated eighteen members to make up the Commission. Included in the membership was a position designated for a clerk of a limited jurisdiction court. In September 2015, the Court eliminated that position because of difficulty keeping the position filled. The Court's initial order also designated:

Two representatives of any of the following: Native American communities; the Governor's Office of Indian Affairs; entities that advocate for individuals with disabilities; entities that advocate for Montana's senior citizens; Montana Department of Public Health and Human Services; State Bar of Montana Paralegal Section; Access to Justice Committee and/or Dispute Resolution Committee; and entities working with low-income people in Montana.

In light of information and data the Commission has gathered over the past four years, the Court sees a need to include an appointee on the Commission who works with Montana's senior population. Montana ranks in the top five of states in percentage of residents 65 and older. The Commission's 2016 report of its yearlong public forum series found a rising tide of need in the area of elder law and a concentration of elderly people living in rural areas that makes obtaining legal services a struggle. The Court has determined to restore the Commission's membership to eighteen members.

In addition, Gallatin County Clerk of Court Jennifer Brandon has resigned from the Commission. The Court thanks Ms. Brandon for her years of service on the Commission.

The initial appointment order also fails to reflect the current designation of the State Bar's Justice Initiatives Committee, which replaced the former Access to Justice Committee.

IT IS THEREFORE ORDERED that the May 22, 2012, Order establishing the Access to Justice Commission is amended as follows, with new language emphasized:

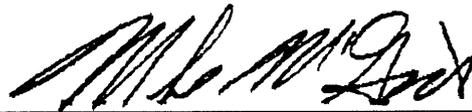
**Three** representatives of any of the following: Native American communities; the Governor's Office of Indian Affairs; entities that advocate for individuals with disabilities; entities that advocate for Montana's senior citizens; Montana Department of Public Health and Human Services; State Bar of Montana Paralegal Section, **Justice Initiatives** Committee, and/or Dispute Resolution Committee; and entities working with low-income people in Montana.

With the consent of the appointees,

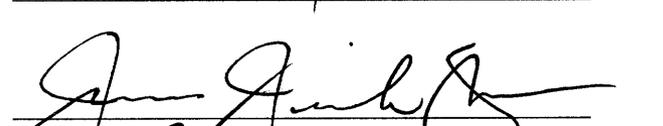
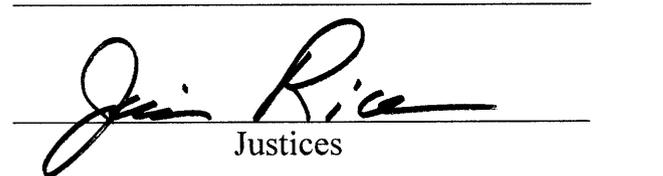
IT IS FURTHER ORDERED that Charlie Rehbein, Chief of the Aging Services Bureau for the Montana Department of Public Health and Human Services is appointed to the Access to Justice Commission for a term ending September 30, 2019, to fill the position added by this Order; and Rick Cook, Chouteau County Clerk of Court, is appointed to replace Jennifer Brandon for a term ending September 30, 2017.

The Clerk is directed to provide copies of this order to each member of the Access to Justice Commission and to the State Bar of Montana.

Dated this 7<sup>th</sup> day of February, 2017.



Chief Justice

Justices

# Tab 2

Agenda  
Tab 3

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

**Commissioners Present:** Justice Beth Baker, Hon. Kurt Krueger, Kyle Nelson (by phone), Matthew Dale, Randy Snyder (by phone), Dean Paul Kirgis, Alison Paul, Melanie Reynolds, Ed Bartlett, and Georgette Boggio (by phone).

**Commissioners Absent:** Hon. David Carter, Hon. Greg Pinski, Rep. Kim Dudik, Sen. Nels Swandal, Jennifer Brandon, Aimee Grmoljez, and Hon. Winona Tanner.

**Others Present:** Niki Zupanic, Katie MacFeeters, Nolan Harris, Michelle Potts, Patty Fain (by phone), Chris Manos, Brian Coplin, Justice Laurie McKinnon, Janice Doggett, Crystine Miller, Sarah McClain, Derrek Shepherd, Stefan Kolis, Ann Goldes-Sheahan, Debra Steigerwalt, Shanni Barry, and Krista Partridge.

**Call to Order:** 1:08 p.m.

Justice Baker welcomed new Commissioners Kyle Nelson and Georgette Boggio, new State Law Library Director Sarah McClain, and new Court Services Director Derrek Shepherd. Justice Baker asked for comments or corrections to the September meeting minutes. Brian Coplin noted that his last name was misspelled. There were no other comments or corrections.

**Matt Dale moved that the September minutes be adopted as corrected and Justice Baker seconded. The motion passed without objection.**

**Policy & Resources, Communications & Outreach Committee Reports**

Melanie Reynolds reported that the final public forum in Helena was well-attended by a broad cross section of legal and non-legal community members. She added that the panel members were very good and attendees had good feedback, many commenting that they weren't aware of the issues prior to the panel discussion. She thanked Mēghan Scott, Patty Fain, and Niki Zupanic for their help in coordinating the event. Justice Baker commented that the series was successful and educated many people in communities around the state. Matt Dale said that the draft report on the series has been written and the video is in production, both of which will be used during the legislative session to support the funding bill for civil legal aid. Matt asked for feedback and comments on the written report. Melanie said that a one-page Executive Summary might be helpful and Justice Baker agreed. Justice Baker stated that all of the attachments to the report would be available electronically and not as part of the printed report. She added that the Commission website needs improvement so that information is readily accessible. Patty said that she will be putting in links to community organizations and to media coverage of the forums. Chris Manos suggested that the Commission should consider running a public forum series every 2-3 years, and that perhaps this should be part of the strategic plan. He added that lessons learned should be documented for future reference. Matt stated that the committee would draft lessons learned and forum planning checklist documents.

### **Self-Represented Litigants Committee**

Ann Goldes-Sheahan reported that the committee has not been as active recently and has planned a meeting in January to review the strategic plan and refocus their efforts. She asked for input from the Commission on areas to prioritize. The Forms Subcommittee has completed their work on the dissolution forms which are still being piloted in Gallatin County. Nolan Harris has done in-person and online training on the forms, and the MLSA project to automate the forms is ongoing. Nolan asked for input from the Commission on priorities for the next forms to update. Ann stated that the committee is also monitoring legislation related to self-represented litigants and reported that there have been no updates on the indigency fee waiver since the last meeting. Justice Baker asked about the possible need for legislation regarding the fee waiver. Randy Snyder stated that the current statute is incorrect and outdated and that he's working with the Attorney General's office to introduce legislation to correct the statute. Ann stated that the committee needs more members and asked the Commission, particularly judges and clerks, for referrals or suggestions for people to contact. Justice Baker said that we need to reach out beyond the Commission for committee volunteers because there is so much work to be done. Justice Baker asked if the State Bar would include an appeal for SRL Committee volunteers in the Montana Lawyer. Chris Manos said that he would work with Ann to make that happen.

### **Law School Partnerships Committee**

Debra Steigerwalt, the new Chair of the Law School Partnerships Committee, reported that the committee is continuing to work on the incubator project with Montana Legal Services Association (MLSA) and the State Bar of Montana. They are reviewing the law student practice rule and seeking input from judges and public defenders. In addition, the group is working on pro bono opportunities for law students and the issue of attorney supervision.

### **National Center for State Courts "Justice for All" Grant Proposal, Strategic Planning and Resource Guide Update**

Niki Zupanic reported that the "Justice for All" grant proposal was not funded and that only 5 states received funding out of 29 that applied. She suggested that the Commission should work on two tracks going forward: internal assessment and more strategic planning with a focus on what can be done without additional funding; and updating and creating resource guides for clients, advocates, and attorneys. Nolan Harris reported that the Justice for Montanans AmeriCorps members are updating the county resource guides and that he has reached out to "Code for America," a group that creates searchable databases for resource guides. He stated that Missoula County has used this group to create a database and that it works well. Justice Baker said that the Legal Services Corporation also has a grant program funded by Microsoft for statewide legal resource portals and suggested that we can follow that model even if Montana is not funded under that grant program. Melanie Reynolds said that in her experience, resource guides are outdated almost as soon as they are produced. Nolan responded that Justice for Montanans members update the county resource guides every year. Alison Paul added that the resource guide project is part of the AmeriCorps training process so that the members learn about Montana and their local communities. Justice Baker said that since the Justice for All proposal wasn't funded, we need to activate Randy Snyder's Strategic Planning Committee and recruit new volunteers who have time to fully participate. Justice Baker noted that current committee members are herself, Niki Zupanic,

Alison Paul, Randy Snyder, and Melanie Reynolds, and she asked for additional volunteers. Ann Goldes-Sheahan, Sarah McClain, and Brian Coplin volunteered.

### **State Bar of Montana Justice Initiatives Committee**

Ann Goldes-Sheahan reported that the committee has accomplished a lot in the past year and has added four new members, some from rural areas. An in-person meeting in Havre is planned for April. She also pointed out that committee Co-Chairs Robin Turner and Brandi Ries were awarded the 2016 Community Improvement Award by the Montana Board of Crime Control for their work in improving access to justice for DV survivors. Finally, she said that the Resource Guide Subcommittee would like to work with Nolan's group to help update the county resource guides with a particular focus on resources for pro bono attorneys.

### **Montana Justice Foundation Update**

Niki Zupanic reported that 2016 was full of change for the Montana Justice Foundation (MJF), including new leadership and staff, and the move of the organization's office from Missoula to Helena. She introduced Crystine Miller, the new program assistant and main contact for access to justice issues at MJF. She said that in 2016, MJF made \$349,000 in grants to 17 different organizations including MLSA, CASA programs, mediation programs, and domestic violence advocacy groups, with MLSA as the largest single grantee. MJF also administers a program to provide law school loan repayment assistance to attorneys working for qualifying organizations. MJF received a Cy Pres award of over \$1.5 million as part of the Bank of America settlement, and the funds must be used for community development. MLSA received the first grant from this award to establish a Consumer Fair Debt Collection Practice, and the MJF Board will be putting out additional requests for proposal over the next several years. Niki mentioned that MJF also funds law related educational programs such as "We the People," a constitutional issue competition for high school students. Finally she thanked the State Bar for their help in streamlining the IOLTA reporting process.

### **Update on the Commission's Legislative Proposal, and Plan of Action**

Justice Baker informed the Commission that HB 46 has been pre-introduced and is co-sponsored by Rep. Kim Dudik and Sen. Nels Swandal. The bill should get an early hearing before the House Judiciary Committee. A draft fact sheet and flyer were included in the meeting packet. Justice Baker has received confirmation from the Attorney General and the Montana Trial Lawyers Association that they will support the legislation, but most organizations have not committed to support legislation at this point. Ed Bartlett reported that the Montana Chamber of Commerce board unanimously voted to support the bill and that Justice Baker's meeting with Webb Brown was a big factor in gaining the group's support. Justice Baker added that there are strong indications of support for the bill, but there are also concerns from the Montana Collector's Association regarding the \$5 Justice Court fee increase since that court has seen recent fee increases. She stated that the collectors would not oppose District Court fee increases if the increases in the courts of limited jurisdiction were removed from the proposed legislation. Justice Baker said that Rep. Dudik has recommended that we should amend the legislation to remove the Justice Court fee, particularly since these fees would account for only 10% of the projected funding. Justice Baker stated that she agrees with this approach and asked for comments from the Commissioners. Judge Krueger said that he believes getting an early hearing is a good approach and that legislators are mostly concerned with the issues in the public defender's office and we

don't want our effort to get caught up in that controversy. Janice Doggett said that it's important that any conflicts are resolved before the hearing on the bill. Ed Bartlett commented that we need to stick to our selling point of not adding fees where there have been recent increases. Justice Baker asked if there were any objections to amending the legislation as proposed. She indicated that no formal motion is needed. There were no objections to the proposed amendment. Justice Baker and Ed Bartlett reiterated that it will be very important to be ready for the first hearing, likely in early January, because there are many new members on the Judiciary Committee who will need to be educated on access to justice issues. They encouraged Commissioners to reach out to legislators on the committee.

### **Update on State Bar of Montana/Law School Mediation Project**

Patty Fain reported that a primary focus of the E-RAMP Committee's work this far has been mediator qualifications, both for attorney and non-attorney mediators. The committee reviewed the Montana Mediation Association standards to ensure that E-RAMP met those requirements. Patty asked the Commission to approve the committee's E-RAMP Mediator Qualifications, Education, and Training for Attorneys included in the meeting packet. Justice McKinnon stated that the biggest challenge of the project is to meet statewide needs by tapping into the pool of attorneys who are interested in picking up pro bono hours. To that end the standards must be robust, but not too onerous as to discourage participation. She added that the committee is still working on case qualification criteria and on a process to ensure that mediators understand when mediation is not appropriate in domestic violence cases. Justice Baker asked Dean Kirgis to comment on the committee's work thus far. Dean Kirgis replied that he believes the group is taking the correct approach and that care is being taken to ensure adequate safeguards for litigants against poorly trained or bad mediators. Justice Baker asked for a motion to approve the proposed mediation standards.

**Matt Dale moved to approve the E-RAMP Mediator Qualifications, Education, and Training for Attorneys. Ed Bartlett seconded the motion. The motion passed without objection.**

### **Proposal for Court Consideration of Licensed Limited Legal Technicians**

Shanni Barry, Chair of the State Bar Paralegal Section, presented some background on limited legal technicians. She explained that this is an option for those in need of limited legal help, but who cannot afford an attorney. She said that 12 states are currently looking at this option and that Washington is the first state to authorize this type of legal assistance by non-lawyers in certain legal matters. Chris Manos added that this is a nationwide topic of discussion and that the State Bar considered forming a committee to study the issue, but decided to bring it to the Commission. Chris proposed that a joint petition to study the issue and make recommendations should be presented to the Supreme Court by the State Bar, Paralegal Section, and the Access to Justice Commission. Judge Krueger asked if the Family Law Section of the State Bar was involved in these discussions and suggested that attorneys might be opposed since this may cause them to lose paying clients who could afford their services. Justice Baker said that the State Bar Family Law Section should be consulted on any proposal. Chris stated that he doesn't know what the reaction of the Family Law Section will be, but that he knows that there aren't enough attorneys in Montana who will take family law cases. He added that Washington studied non-lawyer legal assistance for 10 years before it was adopted by their Supreme Court. Sarah McClain said that she has experience with this in immigration cases in Oregon where accredited non-profit organizations could provide

non-attorney legal assistance. Ed Bartlett said that we should study the issue and supported the idea of a joint petition to the Supreme Court. Justice Baker reiterated that the Commission cannot take this on and that the proposal belongs under the auspices of the Supreme Court. Derrek Shepherd suggested that it will be important for the courts to assess the possible impacts, including increased filings and a smoother process for self-represented litigants. Matt Dale stated that this proposal came up during the Bozeman forum. Alison Paul said that she's supportive of the concept, but cautioned that the Commission should not be too reactive and that we need to keep the Commission's work more focused. Justice Baker suggested that we need to see the petition and that the reason for Commission support of the petition must be clear.

**Ed Bartlett moved that the Commission support the concept of a joint petition to the Supreme Court by the State Bar of Montana and the Access to Justice Commission to study and make recommendations on the issue of licensed limited legal technicians. Matt Dale seconded the motion. The motion passed without objection.**

### **Inmate Access to Courts**

Justice Baker advised the Commission that letters from several Montana State Prison inmates resulted in a meeting between the State Law Library, the Office of the Clerk of the Supreme Court, and the Department of Corrections to discuss how to better address inmate requests and access to legal materials. Comment was presented to the Commission from Richard Shreves, the father of an inmate at the Montana State Prison, whose son wrote a letter to Justice Baker regarding his concerns about limitations on access to legal materials by prisoners. Mr. Shreves explained several ways in which prisoners are denied access to legal information and gave examples of legal research that he has conducted that prison officials would not allow his son to receive until written grievances were submitted. Mr. Shreves suggested that State Law Library materials should be made available on a dedicated computer terminal in the prison. He added that he would like to see access to justice for all inmates, and not just those with the means to pay for photocopies of legal materials. Mr. Shreves also expressed concern that prison officials often hold his son's mail for many days, sometimes resulting in missed court deadlines. Justice Baker thanked Mr. Shreves for his presentation and for his help in trying to figure out better approaches for inmate access to legal materials.

### **ATJC Biennial Report**

Justice Baker stated that the Commission's next biennial report to the Montana Supreme Court is due in April 2017 and drafting will begin before the next Commission meeting.

### **Public Comment and Next Meeting Dates**

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

All the 2017 meetings have been scheduled and are noted on the agenda. The next meeting is scheduled for March 10, 2017.

**Justice Baker adjourned the meeting at 3:24 PM.**

# Tab 3

Agenda  
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Law School Partnerships Committee  
March 2017 Report to ATJC

1. Current Composition. The current composition of the committee is:

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

2. Projected Next Meeting. The next meeting of the Committee will be a teleconference on April 12, 2017 at 10:00 a.m.

### 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.

i. Subcommittee Members: Debra, Hillary, Patty

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. The Committee plans to organize the meeting shortly after the 2017 legislative session.

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. The February 2016 meeting identified the development of discrete task programs in the law school building, promoting pro bono involvement through the first year theory and practice course, and getting law professors involved as a level of supervision to reduce private attorney reluctance to supervise law students. At the its January 11, 2017 meeting, the Committee organized the following subcommittees:

i. Landlord Tenant Subcommittee: Shannon (chair), Stefan, Patty, Angie.

ii. Missoula Self-Help Center Subcommittee: Debra, Hillary, Shannon, and Stefan. The Subcommittee met on January 18, 2017 with the Missoula Self-Help Center Advisory Board and Professor Eduardo Capulong to discuss potential areas for collaboration. At the meeting, Professor Capulong stated that the supervisory piece of taking sufficient pro bono cases for each first year law student in his Theory and Practice Course has been burdensome and he is exploring other options for institutionalizing the annual involvement of each of the 80 first year students in pro bono work. (For 2017, Professor Capulong will exposing his students to pro bono work through field trips). Areas of potential collaboration: involving IL Volunteers at the Self-Help Law Center for regular 2-4 hour shifts for 2 semesters (either Fall-Spring or Spring-Summer), CLE Offerings to facilitate practitioner involvement in Self-Help Center work and as IL mentors, identifying attorney volunteers to serve as IL mentors.

iii. End of Life Document Clinic: Stefan. Stefan has provided his assistance to John McCray and Professor Jordan Gross in getting law students involved in an End of Life Document Clinic in Missoula. As of February 21, 2017, Stefan has signed up 10 students for the April 20, 2017 clinic at St. Paul’s Lutheran Church, 202 Brooks Street, Missoula. The students receive an hour of instruction prior to the clinic.

iv. Family Law Clinic at Law School: Angie. The Subcommittee is seeking ways to involve practitioners who would like to become involved as clinic mentors to students at the Western Montana Pro Bono Committee’s family law clinics.

v. Community Dispute Resolution Center of Missoula County (CDRC) - TBD at the Committee’s April Meeting.

# Tab 4

Agenda  
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## **Biennial Report of the Montana Access to Justice Commission**

In accordance with the Montana Supreme Court's Order of May 22, 2012, the Access to Justice Commission (Commission) submits this second biennial report to the Court. Since the Commission's last biennial report, submitted April 2015, the Commission has completed an extensive public forum series, sponsored legislation to fund civil legal aid, drafted new forms and documents for use by self-represented litigants, and embarked on new programs in collaboration with the law school, among many other activities. Much of the Commission's work continues to be carried out through the four standing committees created under its strategic plan: the Standing Committee on Self-Represented Litigants, the Committee on Law School Partnerships, the Committee on Outreach and Communication, and the Committee on Policy and Resources. This report outlines the work being done by each Committee and the Commission as a whole as directed by the Court's Order.

### **Assess the legal needs of low- and moderate-income Montanans, evaluate the extent to which those needs are going unmet, and coordinate efforts to better meet those needs.**

Between October 2015 and October 2016, the Commission conducted a statewide series of public forums designed to evaluate the state of access to the civil justice system in Montana. The forums were held in Kalispell, Great Falls, Billings, Missoula, Bozeman, Butte, and Helena. The series brought together judges, legislators, community leaders, and Montana legal aid organizations to discuss pressures on Montana courts and the barriers people face when accessing our legal system.

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 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, area agencies on aging, Native American communities, programs for the disabled, 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. The Commission found that many low- and moderate-income Montanans face legal crises arising out of housing problems, parenting and custody disputes, domestic violence, and debt collection. For Montana’s veterans, a growing population of seniors, Native American communities, domestic violence victims, children, and people with disabilities, legal and non-legal problems frequently go unaddressed because these problems are often understood as unrelated. Complicated paperwork, limited literacy skills, lack of education and awareness, and poor prior experiences lead to a fear of the legal system. In addition, many Montanans—including many senior citizens—live in isolated and rural areas without ready access to services.

The forum series also highlighted successes across the state, including the Court Help Program—which has provided thousands of Montanans with “self-help” services for addressing their problems in court—and non-profit legal aid providers like MLSA and Aging Services’ AAA Legal Developer program, which provide legal advice and representation with online, phone, and in-person assistance to low-income residents and senior citizens. Individual Montanans voiced appreciation for these programs and testified that they were able to overcome their legal challenges after receiving the assistance of a qualified attorney.

Positive media coverage of the series, including opinion-editorial pieces, articles and radio reports helped bring awareness to the network of resources available in different communities, while also emphasizing that more needs to be done for Montanans who need legal assistance.

The Commission concluded the series by issuing a [written report](#) (also attached as Appendix 1) and a [video compilation](#). The report recommended the following actions:

1. Develop and maintain a statewide inventory of services and programs available by region, and a means for making that inventory known and available throughout Montana communities.
2. Develop and maintain a means for linking Montanans who have legal problems with appropriate programs, attorneys, and service providers.

3. Promote better understanding of, and facilitate partnerships with, agencies and organizations to address the relationships between civil legal needs and non-legal issues involving health, housing, education, seniors, veterans, and re-entry of offenders.
4. Secure adequate, sustainable funding to achieve an effective continuum of services, from self-help services to civil legal aid, including mediation or other dispute resolution mechanisms that can act quickly to address civil legal problems when they first arise.

In regard to the last recommended action item, the Commission drafted and sponsored legislation for the 2017 legislative session to approve increases in some civil court filing fees and dedicate that new revenue to funding legal aid. House Bill 46 by Commission members Rep. Kimberly Dudik and Sen. Nels Swandal is discussed more fully in the funding section of this report.

In addition to assessments done through the forum series, the Commission also renewed other resource inventory assessment and strategic planning activities in 2016. The Commission supported, and several stakeholders collaborated, on a grant proposal submitted by the Montana Justice Foundation to develop a detailed resource inventory and strategic action plan. While that proposal was not funded, its development prompted the Commission to begin reviewing its current strategic plan and creating new comprehensive statewide resource guides. That work will continue in 2017.

**Assess the ability of all court users to access the courts, and make recommendations to improve rules, statutes, and judicial processes to assure accessibility to all.**

The Standing Committee on Self-Represented Litigants (SCSRL) continued significant work to revise and automate standardized forms for use by self-represented litigants and pro bono attorneys. In 2015, the SCSRL completed updates to forms for Dissolution of Marriage with Children and for Guardianship of a Minor. In 2016, the SCSRL began a pilot program in Gallatin County to test the dissolution forms. Committee members “packetized” the forms with instructions and provided training to court staff and other users. The SCSRL also posted the forms to their webpage and has collected public comment

and feedback during the pilot program period. Once the forms complete the pilot phase, they will be finalized and automated for wider use. The forms project is a top priority for the Court Help Program, and its staff have been instrumental in moving this project forward.

In 2016, inconsistencies in fee waiver forms used among the courts and inconsistent results for litigants who attempted to use the forms prompted members of the SCSRL to create and adopt a standard fee waiver form. Following this Court's directive, an SRLC working group reviewed forms used across the country and developed a proposed form and order for use in Montana. The Commission approved SCSRL's continued work on the fee waiver issue and the SCSRL is currently working with the Attorney General's office to complete a proposed form and order for final consideration by the Commission.

At its June 3, 2016 meeting the Commission assigned a SCSRL working group to develop and implement an order of protection pilot project. The working group has since created a checklist to assist litigants with collecting evidence and preparing for a hearing for a permanent order of protection. The working group will continue to develop other order of protection materials and resources.

The Committee on Law School Partnerships (CLSP) began implementing the Court's approval of a process to incorporate law students into the performance of pro bono service pursuant to Rule 6.1 of the Montana Rules of Professional Conduct. Because law school students are given the opportunity (but are not required) to report pro bono law-related services during their legal education, the CLSP has focused on eliminating barriers to law student pro bono participation. To this end, the CLSP drafted a proposal for changes to Rule 6.1, which has circulated among the CLSP and law school faculty. Because some proposed changes involve criminal law, the Committee is developing contacts within the Office of the Public Defender (OPD) and with judges for additional input. The CLSP intends to pursue such input in late spring 2017.

**Provide long-range, integrated planning among legal assistance providers and other interested entities and people in Montana, and continue to facilitate networking and communication among them.**

The Commission and its committees continue to involve individuals representing a variety of access to justice stakeholders, including legal assistance providers and other

interested entities. The Commission's primary project this biennium, the public forum series, featured testimony from dozens of programs across the state and provided meaningful opportunities for all participants to communicate and collaborate. The Commission also maintained its strong relationship with the State Bar of Montana's Justice Initiatives Committee (JIC), holding a joint meeting in September 2015 and ensuring JIC representation on Commission committees. The assessment inventory and strategic planning grant proposal developed by Montana Justice Foundation, MLSA, and other Commission members also reflect ongoing collaboration between various stakeholders and has set a framework for integrated efforts in the upcoming year.

**Foster the development of a statewide integrated civil legal services delivery system, design and implement new programs to expand opportunities for access to justice, and work toward the most efficient use and delivery of resources relating to civil access to justice.**

This biennium, the CLSP explored the potential for an "incubator" program at the University of Montana School of law. Incubator programs provide participants with legal skills training, mentor guidance, and business development resources to prepare newly-admitted lawyers to launch practices that include low- and moderate-income legal services. First, the CLSP developed, promoted, and administered a multi-question survey for University of Montana law students. The survey, which received a 60% response rate, showed strong support for limited scope practice and in starting a practice in a town with fewer than 10,000 residents. Participants noted several barriers to starting rural practices serving modest means clients, including student loan debt and lack of opportunities for spouses and other family members. In April 2016, the CLSP held several facilitated focus groups with law students to explore the students' interest in and suggestions for a law practice incubator program in Montana, and third-year law student Hannah Cail incorporated the result of the focus groups into a presentation exploring a potential legal incubator model for Indian Country and rural Montana. In the second half of 2016, the Law School Partnerships Committee began collaborating with Montana Legal Services and the Montana State Bar in an Incubator Working Group to develop a detailed proposal, which suggested that an 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.

The CLSP also worked on new programs to increase student pro bono opportunities. In February 2016, the CLSP met with Montana law school faculty to develop ideas for increasing law student involvement in pro bono legal services. The CLSP identified law student time and supervisor availability as barriers to greater student involvement. The CLSP also identified priority areas of developing discrete task programs in the law school building, promoting pro bono involvement through the first year theory and practice course, and recruiting law professors as supervisors in order to compensate for private attorney reluctance to supervise law students.

Continuing work for voluntary bar applicant pro bono reporting, the CLSP also participated in the State Bar of Montana's and Statewide Pro Bono Coordinator's development of a process to give all applicants for the bar examination the opportunity to submit a voluntary statement of any pro bono law-related activities. The first report from that new system will be available shortly.

The Commission created an ad hoc Mediation Project Committee to provide guidance and support for a court-connected mediation program spearheaded by Justice Laurie McKinnon and Patricia Fain. The program is intended to keep matters out of court and to prevent matters from being litigated repeatedly. The project's initial focus was to create mediator qualifications. The committee reviewed the Montana Mediation Association standards and developed a set of recommended mediator qualifications, education, and training for the Commission's review and approval. The Commission approved those proposed mediation standards at its December 2016 meeting.

**Work toward securing and maintaining adequate funding for civil access to justice, and coordinate statewide efforts to do so.**

The Commission's public forum series identified an acute need to expand the number of legal professionals available to provide advice and representation. Recognizing that an effective continuum of legal services requires adequate and sustainable funding, the Commission developed a legislative proposal for the 2017 legislative session to create new revenue. House Bill 46, introduced by Commissioners Kimberly Dudik and Nels Swandal,

would increase some civil court filing fees and direct the additional revenue generated for grants to legal aid organizations. The Commission explored several funding mechanisms before determining that a filing fee increase presented the best option. HB 46 was approved by the House Judiciary Committee, passed an initial vote by the full House, and is currently in the House Appropriations Committee.

The Commission also supported the Montana Justice Foundation's strategic planning grant proposal and continues to explore other grant funding opportunities.

**Serve as the advisory council for the Montana Legal Services Association VISTA project.**

While the Montana Legal Services Association's AmeriCorps VISTA project ended in 2014, the Commission continues to play a vital role in AmeriCorps in Montana by serving as an advisor to the Justice for Montanans AmeriCorps Project ("JFM"). JFM is a partnership between the Montana Legal Services Association, the Supreme Court Administrator's Office, the State Bar of Montana and the Montana Attorney General's Office of Consumer Protection and Victim Services. Through this project, 18 AmeriCorps members provide assistance to low and moderate income individuals seeking assistance with their civil legal problems, including coordinating community education campaigns, providing access to services, assisting people with completing pro se documents, and making referrals to other resources. This project has the dual purpose of training our next generation of community leaders on access to justice, as well as providing information and referrals to people in need. The JFM project supports the work of the Court Help Program by providing staffing for Self Help Centers across the state and the Commission receives and reviews Court Help Program updates regularly.

**Conduct regular meetings to achieve the ATJC's purposes.**

The Commission held seven public meetings during 2015 and 2016, and will continue to meet quarterly. Meetings took place on the following dates:

- March 27, 2015
- September 23, 2015
- December 4, 2015
- March 4, 2016

- June 3, 2016
- September 9, 2016
- December 9, 2016

Minutes of all Commission and Standing Committee meetings are posted on the Commission's website, <http://courts.mt.gov/supreme/boards/a2j/default.mcp.x>.

**Establish the former Self-Represented Litigants Commission as a permanent ATJC committee to continue the Self-Represented Litigants Commission's mission, including forms development for self-represented litigants.**

The SCSRL continues to be a strong and active Commission committee. In addition to its work on revising and promoting standardized forms, as discussed above, the SCSRL created a set of materials and provided multiple in-person trainings on the difference between legal advice and legal information. These sessions were held in a variety of settings across the state, including Kalispell, Helena, and Missoula. The SCSRL is in the process of compiling all of its training materials for review by the Commission.

**Conclusion**

The Commission again thanks the Court for its vision in creating a Commission with exclusive focus on improving the way in which Montana's court system responds to and addresses the legal needs of all Montanans. The Commission expresses special thanks to the Court and the Office of Court Administrator for making access to the civil justice system a priority of both the Court Help and Law Library staff. Many people have volunteered their time in the Commission's efforts to date, and the Commission is also grateful to all of them for their work and dedication. In addition, the Commission is grateful to have had the staff support graciously provided by the Montana Justice Foundation, which has been instrumental in moving the Commission's work forward.

Over the past two years, the Commission has made considerable progress to assess the state of our justice system and to promote a robust, statewide, integrated access to justice system. The Commission respectfully submits this summary of its findings, accomplishments, and plans for working to assure access to justice for all Montanans.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

For the Commission,

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Justice Beth Baker, Chair

Commission Members:

Ed Bartlett

Georgette Boggio

Hon. David A. Carter

Rick Cook

Matthew Dale

Rep. Kimberly Dudik

Aimee Grmoljez

Paul F. Kirgis

Hon. Kurt Krueger

Kyle Nelson

Alison Paul

Hon. Greg Pinski

Melanie Reynolds

Charlie Rehbein

Randy Snyder

Sen. Nels Swandal

Hon. Winona Tanner

# Tab 5

Agenda  
Tab 6

# Montana Pro Bono 2016 Annual Report

ATTORNEYS

1,561

PRO BONO HOURS

120,036

EQUIVALENT TO

58 Full-time Attorneys  
Annually

WORTH

\$18 MILLION DOLLARS

49%

Percentage of active Montana  
attorneys providing pro bono service  
in 2016

50%

Provided free services to  
non-profits and other  
organizations assisting  
people of limited means

## Improving Pro Bono

30%  
Finite Hours

31%  
CLE/Training

23%  
Staff Support

43%

Provided pro bono  
services in  
Family Law



## The Montana Pro Bono Attorney

Most commonly a  
sole practitioner in  
practice for 25  
years providing 36  
hours of pro bono  
service to a self-  
referred client.



20%

Provided  
Limited Scope  
Representation

93%

Reported a positive  
pro bono experience



30%

Attorneys who provided  
reduced fee services

# Montana Pro Bono 2016 Annual Report

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Attorneys who provided  
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## 2016 Montana Pro Bono Final Report

February 2016

### *Executive Summary*

Rule 6.1 of the Montana Rules of Professional conduct states that Montana attorneys authorized to practice law in the state should provide 50 hours of *pro bono publico* service with the substantial majority of those hours devoted to provision of legal services to people of limited means. This summary report outlines results from the data collected from attorney 2016 reporting forms. The highlights of the data are as follows:

Pro bono reporting information was received for a **total 2,376** attorneys with **1,945** (82 percent) reporting primary practice **in-state** and **431** (18 percent) **out-of-state** attorneys<sup>1</sup>. The State Bar of Montana 2016 Attorney Membership Report is included as Attachment 1.

**1,561 in-state** attorneys **reported pro bono hours in at least one pro bono category** in 2016. In addition, **41 out-of-state** attorneys reported pro bono hours for the benefit of Montanans.

- **1,301** attorneys reporting Montana pro bono hours provided **70,706** hours of pro bono services ***without expectation of fee*** for individuals/families of limited means or organizations designed to assist people of limited means.
- **461** attorneys reporting Montana pro bono hours provided **22,144** hours of pro bono service ***at a substantially reduced fee*** to people/families of limited means or organizations designed to assist people of limited means.
- **582** attorneys reporting pro bono hours provided **15,284** hours of **free** pro bono services to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes.
- **81** attorneys reporting pro bono hours provided **11,902** hours of **reduced fee** services to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes.
- In addition to reported pro bono hours, **686** in-state attorneys reported **17,260** hours participating in volunteer activities for improving the law, legal system or legal profession.
- 93 percent of reporting attorneys described their pro bono experience as very positive or positive.

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<sup>1</sup> 44 Out-of-State Attorneys provided pro bono services for the benefit of Montanans or Montana-based organizations

## 2016 Pro Bono Hours Recapitulation

CATEGORY	Hours	Category	Total
Without expectation of fees to/for persons of limited means or charitable, religious, etc. serving people of limited means	<b>70,706</b>		
Free to charitable, religious, etc. in furtherance of their purposes	<b><u>15,284</u></b>		
<b>Total Free</b>		<b>85,990</b>	
Reduced to people/organizations to/for persons of limited means or charitable, religious, etc. serving people of limited means	<b>22,144</b>		
Reduced to charitable, religious, etc. for furtherance of their purposes	<b><u>11,902</u></b>		
<b>Total Reduced Fee</b>		<b>34,046</b>	
<b>TOTAL PRO BONO HOURS</b>			<b>120,036</b>

### Analysis of Reported Pro Bono Publico Service Value

(Does not include Volunteer Activities for improving the law, legal system, legal profession)

Free Services	85,990 hours x \$175/hr <sup>2</sup>	\$15,048,250.00
Reduced fee services	34,046 hours x \$85/hr <sup>3</sup>	<u>\$ 2,893,910.00</u>
<b>TOTAL</b>		<b>\$17,942,160.00</b>

<sup>2</sup> Hourly rate based median hourly rate of responders to the 2014 Montana State Bar Membership Survey

<sup>3</sup> Reduced rate services calculated at one-half the average hourly rate

## I. INTRODUCTION

The Pro Bono Reporting process is managed jointly by the State Bar of Montana and the Montana Supreme Court Office of the Court Administrator through its Statewide Pro Bono Coordinator. The Statewide Pro Bono Coordinator was responsible for compiling and analyzing the data. This report summarizes the results of the calendar year 2016 pro bono hours. Pro Bono Reporting is conducted in conjunction with the annual Interest On Lawyers Trust Account (IOLTA) certification. IOLTA reporting is mandatory pursuant to Rule 1.18 of the Rules of Professional Conduct. Pro Bono reporting is voluntary. The Pro Bono Coordinator is not responsible for compiling and analyzing data for IOLTA Compliance.

This report includes information for **2,376 attorneys**, including **1,945** in-state lawyers and 431 out-of-state attorneys received by January 31, 2017. This report does not exclude data received from attorneys with a status other than active.

The purposes of reporting are:

1. to identify and evaluate the status of pro bono service in the Montana by Montana attorneys;
2. to assess the time attorneys spend providing pro bono publico and volunteer services, in what categories and to whom those services are provided;
3. to assess the financial impact of pro bono contributions by Montana attorneys;
4. to identify ways to improve pro bono participation and experiences among Montana attorneys;
5. to identify areas of improvement for promoting participation in pro bono services and programs.

## II. General Characteristics of Reporting Montana Attorneys

This section utilizes the pro bono reporting to present a general overview of practice types of Montana lawyers. Because of the substantial in-state attorney reporting volume, this data provides a general descriptive measure for the overall Montana attorney. Ninety-seven percent of in-state reporting attorneys responded to this question.

### II.1 Firm Size/Employment – Generally (Montana only)

The most common firm type/employment status and correlating percentages for reporting attorneys are:

- **30** percent are **solo practitioners** and 89 percent reported pro bono hours in at least one category.
- **25** percent work in **government/public interest** employment and 47 percent reported pro bono hours in at least one category.<sup>4</sup>
- **13** percent are in **3-5 attorney** firms and 86 percent reported pro bono hours in at least one category
- **10** percent are in a **2-attorney firm** and 85 percent reported pro bono hours in at least one category
- **8** percent **6-10 attorney** firms and 84 percent reported pro bono hours in at least one category

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<sup>4</sup> 13% state government, 8% county/city government, 2% federal government and 2% other government/public interest

- The **remaining** percentage is disbursed relatively evenly throughout firm size larger than 10 attorneys and collectively 76 percent of this category reported pro bono hours in at least one category.

### III. PRO BONO SERVICE STATEWIDE

This section presents the analyses result for the 2016 Pro Bono Report data for services provided and hours spent improving the law and the legal system (also found in the Executive Summary).

**1,561 attorneys reported Montana pro bono hours in at least one pro bono category** in 2016. In addition, **41 out-of-state** attorneys reported pro bono hours for the benefit of Montanans.

- **1,301** attorneys reporting Montana pro bono hours provided **70,706** of pro bono services **without expectation of fee** for individuals/families of limited means or organizations designed to assist people of limited means.
- **461** attorneys reporting Montana pro bono hours provided **22,144** hours of pro bono service **at a substantially reduced fee** to people/families of limited means or organizations designed to assist people of limited means.
- **582** attorneys reporting pro bono hours provided **15,284** hours of free pro bono services to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes.
- **81** attorneys reporting pro bono hours provided **11,902** hours of reduced fee services to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes.
- In addition to reported pro bono hours, **686** in-state attorneys reported **17,260** hours participating in volunteer activities for improving the law, legal system or legal profession.

### IV. BENEFICIARIES OF PRO BONO SERVICE

The Pro Bono Reporting Form contains of a series of questions regarding to whom pro bono service was provided and distinguishes between services without the expectation of fee and substantially reduced fees. Responses were not mutually exclusive.

**IV.1** Among the **1,561** lawyers who reported pro bono in any category, **1,301** (83 percent) provided services **without the expectation of fee** to people of limited means or organizations designed to assist people of limited means. **Table T.1** represents free pro bono hours were distributed across the question base using this category response total. Responses were not mutually exclusive.

**Table T.1 – Pro Bono Hours - Without Expectation of Fee – Limited Means**

CATEGORY	# Attorneys	Total Hrs.
Referred by MLSA or one of its programs	204	6,223
Referred by organized local or state pro bono program	143	2,894
A court based program	101	2,693
Individuals/families self-referred/outside organized pro bono program	1,065	38,542
Charitable organizations that assist people of limited means	243	5,152
Religious organizations that assist people of limited means	126	2,665
Community organizations that assist people with limited means	165	3,226
Civic organizations that assist people of limited means	72	1,298
Governmental organizations that assist people of limited means	52	1,290
Educational Organizations that assist people of limited means	95	1,977
Organizations seeking to secure/protect civil or public rights and/or liberties	96	4,746
<b>TOTAL</b>		<b>70,706</b>

**IV.2** Among the 1,593 lawyers who provided pro bono services in any category, **598** provided **20,740 hours** of services **at a substantially reduced fee** to people of limited means or organizations designed to assist people of limited means. **Table T.2** represents how those substantially reduced fee hours were distributed across the question base using this category response total. Responses were not mutually exclusive.

**Table T.2 – Substantially Reduced Fee – Limited Means**

CATEGORY	# Attorneys	Hours
Referred by MLSA or one of its programs	33	835
Referred by organized local or state pro bono program	22	654
A court based program	22	683
Individuals/families of limited means outside organized pro bono	383	15,255
Charitable organizations that assist people of limited means	36	742
Religious organizations that assist people of limited means	12	180
Community organizations that assist people with limited means	22	343
Civic organizations designed to assist people of limited means	11	286
Governmental organizations that assist people of limited means	24	2,468 <sup>5</sup>
Educational Organizations that assist people of limited means	9	255
Organizations to secure/protect civil/public rights/ Liberties	12	443
<b>TOTAL</b>		<b>22,144</b>

**IV.3** Among the 1,561 lawyers who provided pro bono services in any category, **585** provided **15,284 hours of free legal services** and **81** provided **11,902 hours of substantially reduced fee** service to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes, where payment of fees would greatly deplete their economic resources. Responses to this question were not mutually exclusive.

<sup>5</sup> This year's analytics allows filtering out of entries that likely do not meet the criteria of pro bono service resulting in a 90 percent reduction of hours in this category.

#### IV.4 Hours Improving the Law or Legal System

In 2016, **686** reporting lawyers provided **17,260** hours participating in **volunteer activities for improving the law, legal system or legal profession.**

#### V. PRO BONO SERVICE BY LEGAL TYPE

**Family law** continues to lead legal type category of individual pro bono service at 45 percent. Non-profit legal work has remained the second most common category for seven successive years and criminal law was the third largest category in 2016 followed closely by Landlord-Tenant. Table T.4 below provides percentages in all categories.

**Table T.3 – Pro Bono Service by Category**

CATEGORY	Percentage	CATEGORY	Percentage
Family Law	45%	Self Help Support	5%
Non-Profit	23%	Conservatorship	5%
Criminal Law	20%	Adoption	5%
Landlord-Tenant	19%	ADR All Types	5%
Estate Planning	19%	Disability Rights	5%
Business	17%	Bankruptcy	5%
Employment/Labor	15%	Bankruptcy	5%
Probate	12%	Youth in Need of Care	4%
Consumer Law	12%	Military/Veterans	4%
Guardianship	12	Tax	4%
Insurance	10%	Human Rights	3%
All other categories	9%	Social Security	3%
Education	9%	Indian Law	3%
End of Life Planning	8%	Health Law	3%
Domestic Violence	8%	Immigration	2%
Civil Rights	7%	Pro Bono Coordination or Administration	1%

#### VI. Years in Practice

Eighty six percent of reporting attorneys provided a response to the number of years in practice. The average of years in practice generally is 20.13.

#### VII. No Pro Bono

The Pro Bono Reporting Form allowed attorneys to indicate no reportable pro bono hours and offered options to indicate reasons for no pro bono hours. **Fifty-one percent** of no-pro bono hours responses came from **government/public service attorneys.** Note: most responses in the “Other” reason category would otherwise conform to a choice provided with selection boxes. The allocation of percentages across no pro bono service are illustrated in **Table T.5.**

**Table T.4 – No Pro Bono Service**

<b>REASONS</b>	<b>Percent</b>
Other	27%
Do not have time to do pro bono	30%
Employment/employer prohibits pro bono	12%
Cannot afford to do pro bono	11%
Work outside the practice of law	11%
Only recently been admitted to the practice of law	9%
No opportunity given to me to provide pro bono	9%
Only recently admitted to practice law	8%
<b>Lack</b> necessary skills or training	7%
No reason	6%
No longer practice law	5%
Specific rule or regulation prohibits participation	5%
Do not believe pro bono is my professional responsibility	2%
Unemployed	1%

Also of note are demographics of attorneys who did not submit a 2016 Pro Bono Report and whether this raises the presumption that those non-reporting attorneys did not have pro bono service hours to report.

***XIII. PRO BONO SATISFACTION, IMPROVEMENT and LIMITED SCOPE REPRESENTATION***

**XIII.1 Pro Bono Experience**

Approximately 70 percent of attorneys providing pro bono service rated their pro bono experience and **93 percent** of responses indicated the pro bono experience **positive or very positive**. Of those attorneys reporting negative or very negative experiences, 71 percent provided family law pro bono services. .

**XIII.2 Improving Pro Bono**

Attorneys were asked what could be done to improve the attorney’s ability to do pro bono work. Thirty-eight percent of reporting attorneys responded to this question. **Table T.5** below illustrates response percentages.

**Table T.5 – How to Improve Pro Bono Participation**

<b>REASONS</b>	<b>Percent</b>
Additional Training/CLE	31%
Opportunities for finite hour contributions (e.g. legal clinic, limited task representation)	30%
Administrative/staff support for pro bono cases	23%
Co-counsel/paralegal/law clerk	21%
Experienced attorney mentor	21%
Referrals from an organized program	21%
Thorough case screening –merit and financial	15%
Opportunities in my area of expertise	13%
Ability to choose cases from a general solicitation	12%
Use of office space or equipment	9%
Other	9%
Expanded opportunities in my geographic location	8%
Accommodations from employer/changes in policies to permit pro bono	8%

Generally, responses not offering a viable opportunity for us to improve ability to do pro bono work (winning the lottery or more hours in a day) were included in the “other” category.

### **XIII.3 Limited Scope Representation (LSR)**

Seventy percent of reporting attorneys responded to this question and **twenty percent** indicated they provided pro bono LSR services and **eighty percent** did not.

## **IX. Recommendations**

**Support Systems:** Based on the 2016 reporting data, it is recommended that those working in the access to justice arena in Montana consider concentrating development efforts or support allocation for attorneys as follows:

1. Continue expansion of **limited scope representation opportunities** without diluting full representation attorney resources;
2. **Expand attorney training opportunities** in the areas of greatest legal need;
3. Development of supportive non-attorney legal professional and law student modules for existing pro bono programs to offer assistance to attorneys taking pro bono cases;
4. Creation or expansion of **mentor-mentee** protocols and opportunities in pro bono programs to provide support to new lawyers and as well as lawyers who wish to provide services in an unfamiliar legal area.
5. Create **signature programs** designed to align with **government and public interest lawyering** and remove impediments to participation in pro bono programs.
6. Update government agency pro bono policies to facilitate pro bono participation and develop education and outreach regarding adopted policies.

# **MEMBERSHIP INFORMATION REPORT**

**January 10, 2017**

**By: Jill Diveley**

<b>MEMBERSHIP TYPE</b>	<b>"A"</b>	<b>"I"</b>	<b>"ID"</b>	<b>"E"</b>	<b>"J"</b>	<b>"AM"</b>	<b>"SU"</b>	<b>"R"</b>	<b>"S"</b>	<b>"P"</b>	<b>TOTAL</b>
Montana	3159	337	12	5	199	3	176	222	122	157	4392
Out-of-State	748	636	1	2	20	26	377	337	82	1	2230
<b>TOTAL</b>	<b>3907</b>	<b>973</b>	<b>13</b>	<b>7</b>	<b>219</b>	<b>29</b>	<b>553</b>	<b>559</b>	<b>204</b>	<b>158</b>	<b>6622</b>

Membership Types: Active, Inactive, Inactive/Disability, Emeritus, Judicial, ActiveMilitary, Suspended, Resigned/Retired, Senior, Paralegal

(**GENDER & DISTRICT** includes Active, ActiveMilitary, Inactive & Senior members)

<b>GENDER</b>	<b>"M"</b>	<b>"F"</b>	<b>TOTAL</b>
Montana	2366	1255	3621
Out-of-State	970	522	1492
<b>TOTAL</b>	<b>3336</b>	<b>1777</b>	<b>5113</b>

(**DISTRICT** includes Active/ActiveMilitary, Inactive/Senior members)

<b>DISTRICT</b>	<b>"A"</b>	<b>"I"</b>	<b>TOTAL</b>
1	566	79	645
2	81	7	88
3	25	8	33
4	649	89	738
5	45	11	56
6	43	8	51
7	32	3	35
8	219	35	254
9	35	5	40
10	22	1	23
11	247	38	285
12	31	5	36
13	529	74	603
14	6	3	9
15	16	0	16
16	26	3	29
17	18	0	18
18	369	57	426
19	18	3	21
20	80	9	89
21	60	15	75
22	45	7	52

BANKRUPTCY	82	NAT. RESOURCE/ENVIRON.	116
BETTR LAW	222	NEW LAWYERS	298
CONSTRUCTION LAW	56	NONPROFIT LAW	41
CRIMINAL LAW	83	PARALEGAL	158
FAMILY LAW	169	PUBLIC LAW	67
FEDERAL PRACTICE	79	SCHOOL LAW	23
HEALTH CARE LAW	59	VETERANS' LAW	38
INDIAN LAW	82	WOMEN'S LAW	111
INTELLECTUAL PROPERTY	8		

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**January 10, 2017**

**By: Jill Diveley**

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Montana	3159	337	12	5	199	3	176	222	122	157	4392
Out-of-State	748	636	1	2	20	26	377	337	82	1	2230
<b>TOTAL</b>	<b>3907</b>	<b>973</b>	<b>13</b>	<b>7</b>	<b>219</b>	<b>29</b>	<b>553</b>	<b>559</b>	<b>204</b>	<b>158</b>	<b>6622</b>

Membership Types: Active, Inactive, Inactive/Disability, Emeritus, Judicial, ActiveMmilitary, Suspended, Resigned/Retired, Senior, Paralegal

(**GENDER & DISTRICT** includes Active, ActiveMmilitary, Inactive & Senior members)

<b>GENDER</b>	<b>"M"</b>	<b>"F"</b>	<b>TOTAL</b>
Montana	2366	1255	3621
Out-of-State	970	522	1492
<b>TOTAL</b>	<b>3336</b>	<b>1777</b>	<b>5113</b>

(**DISTRICT** includes Active/ActiveMmilitary, Inactive/Senior members)

<b>DISTRICT</b>	<b>"A"</b>	<b>"I"</b>	<b>TOTAL</b>
1	566	79	645
2	81	7	88
3	25	8	33
4	649	89	738
5	45	11	56
6	43	8	51
7	32	3	35
8	219	35	254
9	35	5	40
10	22	1	23
11	247	38	285
12	31	5	36
13	529	74	603
14	6	3	9
15	16	0	16
16	26	3	29
17	18	0	18
18	369	57	426
19	18	3	21
20	80	9	89
21	60	15	75
22	45	7	52

BANKRUPTCY	82	NAT. RESOURCE/ENVIRON.	116
BETTR LAW	222	NEW LAWYERS	298
CONSTRUCTION LAW	56	NONPROFIT LAW	41
CRIMINAL LAW	83	PARALEGAL	158
FAMILY LAW	169	PUBLIC LAW	67
FEDERAL PRACTICE	79	SCHOOL LAW	23
HEALTH CARE LAW	59	VETERANS' LAW	38
INDIAN LAW	82	WOMEN'S LAW	111
INTELLECTUAL PROPERTY	8		

# Tab 8

Agenda

**Early Resolution and Mediation Project Committee**  
**Report to Access to Justice Commission**  
**March 10, 2017**

**Narrative:**

The E-RAMP Committee is comprised of 13 members (list attached). The Committee has two working groups: Mediator Qualifications, Education and Training (MQET) and Litigant Participation and Education (LPE). This quarter, each working group has focused on specific tasks.

**MQET:** MQET Group Leader is Alissa Chambers, Esq. Mediator Qualifications, Education and Training Standards developed by the MQET working group were previously approved by the Commission. MQET has since developed **non-attorney mediator** qualifications, education and training requirements. The E-RAMP Committee approved Mediator Qualifications, Education and Training is attached. Additions since last approval are at items II. and III.

**LPE:** LPE Group Leader is Prof. Eduardo Capulong. The most recent focus of this Working Group is assuring parents are appropriate candidates for E-RAMP participation through program intake processes and screening instruments anticipating limited or no additional resources or staff for program administration. .

Recognizing and identifying domestic violence and informed consent is of particular concern for the LPE working group. The Working Group originally focused on creating instruments designed to identify and screen out domestic violence involved cases. There are substantial logistical challenges to screening all E-RAMP potential cases for domestic violence at the intake phase. The Working Group is currently examining opt-out provisions that achieve first-level screening. A key component of this proposal is litigant mediation and participation education throughout the E-RAMP process.

For some domestic violence survivors, having a voice in the outcome of their case is empowering. Therefore, efforts of court-connected mediation programs will include a strong outside resource referral system for cases screened out of the abbreviated, E-RAMP styled mediation program.

**I. About Opt-Out Provisions**

Party self-determination is a core value of court-connected mediation services. Incorporating a strong opt-out provision will allow mediation parties who do not feel comfortable going

forward to opt-out of mediation rather than be coerced into attending. Allowing a party to opt-out of mediation not only reinforces self-determination, but provides a safety door for parents who may be victims of domestic abuse. Opt-out provisions also provide the initial screening mechanism.

## **II. Intake Form**

The intake form is designed primarily to:

1. Inform parents generally about E-RAMP;
2. Provide an avenue for parents to opt-out of E-RAMP mediation<sup>1</sup>;
3. Provide general case information for court case management, E-RAMP tracking and program evaluation;
4. Provide general information about the case for use by mediator.

The E-RAMP Intake Form is for program management purposes only; does not become part of the court file; and is subject to confidentiality rules. The Intake Form is automated to allow for broad access through multiple devices, and to employ logic skipping features designed to customize the series of questions based on individual responses.

## **III. Substantive Screening**

E-RAMP Standards and Guidelines and mediator training curriculum provide for screening and continually assessing prior to and during the mediation process to enhance a litigants educated, competent, and voluntary choice to enter into mediation. E-RAMP mediators will employ ongoing, standardized E-RAMP screening instruments and protocol to be developed by the E-RAMP Committee based on best practices.

### **Action Items:**

- 1. Approve updated E-RAMP Mediator Qualifications, Education and Training Standards.**
- 2. Provide a recommendation for E-RAMP opt-in/opt-out provision.**
- 3. Provide recommendation for E-RAMP substantive domestic violence and competency screening attendant to and not part of the general program intake process.**

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<sup>1</sup> E-RAMP mediators are not fact-finders. Therefore, the Intake Form allows a parent to opt-out and indicate if they do not feel safe mediating with the other parent.

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

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## **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 Montana Certified Mediators**

Currently, rules governing mediators are not established by the Montana legislature. However, pursuant to E-RAMP Standard 6.2, court-connected mediation programs and services must be high quality. This includes the roster of E-RAMP mediators maintained by the court. Therefore, it is necessary to establish qualifications for non-attorney mediator participants in E-RAMP.

1. The Montana Mediation Association is the only professional, non-profit organization with established Certified Mediator Qualifications and accompanying Code of Ethics and Standards of Practice. The rigorous training and continuing education requirements for Certified Family Mediator status demonstrates the high quality mediation threshold established in E-RAMP Standard 6.2.<sup>1</sup> Therefore, for purposes of the E-RAMP program, non-

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<sup>1</sup> Montana Mediation Association Certified Mediator Qualifications are attached as Attachment 1

attorney volunteer mediators will be considered qualified provided the following criteria are satisfied:

- a. Certification by the Montana Mediation Association with Family designation.
- b. Mediators qualified under this category must annually provide proof of continuing membership eligibility in the Montana Mediation Association.
- c. Mediators qualified under this category must attend the court-connected, E-RAMP specific orientation training prior to providing mediation services. The E-RAMP specific orientation training will include:
  - i. Logistical information regarding the internal, court-based E-RAMP Project; and
  - ii. Familiarization of the Standards and Guidelines, attached as Attachment 2.

### **III. Other E-RAMP Qualified Mediator Categories**

It is likely there are individuals who do not meet the criteria for volunteer mediator under category I or II above but possess education, training, skills and experience to successfully participate as an E-RAMP mediator. Examples include court personnel; law students who have completed academic coursework specific to mediation, negotiation and alternative dispute resolution and participated in mediation clinics; or individuals with degrees emphasizing theory, ethics, principles and practical application of mediation. Careful consideration of the criteria for this category of volunteer mediators, including any additional training and experience required in providing competent mediation services to the E-RAMP program is critical.

During the E-RAMP pilot phase, those involved evaluating the program and its volunteer base, will make recommendations to the Access to Justice E-RAMP Committee concerning additional criteria for potential volunteer mediators not falling within category I or II above.