



Family law case process and mediation

JANUARY 25, 2024

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Training Topics

- ▶ Anatomy of a lawsuit overview
- ▶ The FTP process
- ▶ The mediator's role
- ▶ Domestic violence issues in mediation
- ▶ Questions?



Anatomy of a Lawsuit – the basics

Cases always begin somewhere – often, **long** before the attorney or any MLSA staff touches them, whether litigation has begun or not.

The Beginning



Although a matter may come to MLSA differently, the basic outline of the start looks something like this:

- ▶ Client(s) interact with other people in their lives
- ▶ An event occurs which causes client to reach out to MLSA, usually with the desire for help
- ▶ The event that pushes the client to MLSA may or may not be the most legally solvable, or even the most legally time-sensitive, one

Timeline of a Lawsuit


1. Notice of Appearance or First Filing
 1. Complaint, Petition for Dissolution, Proposed Property Distribution, Proposed Parenting Plan, Summons, Acknowledgment of Service, Praecipe, Request to Serve Documents, Confidential Reference List
 2. Answer to Complaint, Response to Petition, Response to Property Distribution, Respondent's Parenting Plan, Respondent's Property Distribution
2. Substitution of Judge; MCA 3-1-804 (30 days from 1st service if Respondent)
3. Preliminary Declaration of Disclosure; MCA 40-4-252 (w/in 60 days of petition); non-compliance covered by Mont. Code Ann. 40-4-255
4. Trial setting; Mont. R. Civ. P. 16
5. Discovery; Mont. R. Civ. P. 33, 34, 36 for written; 30 & 31 depositions

Timeline of a Lawsuit, cont.

1. Motions in Limine; Mont. R. Evid.; Mont. R. Civ. P. 34-35 & 37
2. Objection to Standing Master Finding; Mont. Code Ann. 3-5-126 (10 days)
3. Motion for Summary Judgment; Mont. R. Civ. P. 56
4. Final Documents
 - a) Declaration of Disclosure; Mont. Code Ann. 40-4-253 (45 days pretrial)
 - b) Final Property Distribution
 - c) Final Parenting Plan
5. Findings of Fact Conclusions of Law and Order Judgment or Order issued

Calendared. Now what?

- ▶ Every interaction with the Court is an opportunity for the client to further their case
- ▶ Family law cases often languish for months (or years) due to the parties not knowing how or being able to move the case to a conclusion and the court's docket congestion
- ▶ Our program gives them an opportunity either before or after filing to reach a resolution on their timeline
- ▶ Parties may self-refer or be referred by the court with a deadline to complete mediation



Referral to family transition project-
now what?

FTP self-referrals

- ▶ A party may self-refer to the project or may be screened by MLSA staff and offered referral to it
 - ▶ Parties may see our materials and contact us about the program
 - ▶ We are also now screening people who have requested services related to a dissolution or parenting plan and offering them the service
- ▶ In these cases, we have to tell the initial party to encourage contact by the opposing party for screening; until we have screened both parties, we cannot refer for mediation
- ▶ We screen for income eligibility, domestic violence concerns, and other MLSA eligibility criteria before we schedule with an attorney and refer for mediation

FTP court referrals

- ▶ Courts may refer parties to us at any point in a case; it typically comes when the case has been pending with no resolution
- ▶ The court order will have a deadline to complete mediation - this can place pressure on all parties to move the case forward
- ▶ Once again, both parties must contact us for screening; if they do not, or the parties do not qualify, MLSA files a notice with the court that we were unable to place the case for mediation

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

IN RE THE MARRIAGE OF:

,
Petitioner,
and
,
Respondent.

Cause No.
ORDER REQUIRING MEDIATION
AND SETTING A STATUS HEARING

A status hearing was held in this matter on October 23, 2023.
Both Petitioner and Respondent personally appeared pro se.

Based upon the Court's prior findings in this matter, all
orders entered by this Court remain in place. As set forth more
fully on the record, the parties agreed to mediate their case
through the Montana Family Transition Project. Therefore, IT IS
HEREBY ORDERED that if the parties qualify, the Montana Family
Transition Project will provide mediation and consultation services
to Petitioner and Respondent with the goal of helping them resolve
the legal matters at issue in this case.

IT IS FURTHER ORDERED that the parties shall contact the
Montana Family Transition Project at (406) 442-9830 ext. 116 or

mediate@mtlsa.org in order to schedule mediation. Mediation is to
be completed before the next status hearing in this matter.

IT IS HEREBY ORDERED that a status hearing is set in this
matter for Thursday, the 11th day of January, 2024, at the hour of
9:30 a.m. Both parties shall personally appear with their counsel,
if any, at this hearing on the record. If either party resides
out-of-state, they may appear via Zoom (instructions attached).

ELECTRONICALLY SIGNED AND DATED BELOW.

cc: Petitioner, pro se -

Monta

Program - mediate@mtlsa.org

CERTIFICATE OF MAILING
This is to certify that the foregoing was
duly served by mail upon counsel of
record at their address this _____
day of 10/24/2023, 20____
TINA HENRY, CLERK OF COURT
By Jodi Flood DEPUTY

Successful screening

- ▶ When both parties are screened and qualify, the next steps are:
 - ▶ The parties are placed with an attorney for advice prior to mediation
 - ▶ Emma assigns a mediator to the case
 - ▶ The parties may also request assistance with child support calculations

What we file with the court

MONTANA FAMILY TRANSITION PROJECT
C/O Montana Legal Services Association
616 Helena Avenue, Suite 100
Helena, Montana 59601

MONTANA * JUDICIAL DISTRICT COURT, *** COUNTY**

IN RE THE MARRIAGE OF:

***,

Petitioner,

and

***,

Respondent.

Cause No. ***

NOTICE TO THE COURT

On ***, 2023 the Court ordered the parties to this action to apply to the Montana Family Transition Project for the purposes of receiving free mediation services and legal assistance from an attorney. The Montana Family Transition Project herewith advises the Court that it has processed the referrals and is working on finding a mediator for the parties.

DATED this *** day of ***, 2023.

Megan L. Dishong
Montana Family Transition Project

MONTANA FAMILY TRANSITION PROJECT
C/O Montana Legal Services Association
616 Helena Avenue, Suite 100
Helena, Montana 59601

MONTANA * JUDICIAL DISTRICT COURT, *** COUNTY**

IN RE ***

***,

Petitioner,

and

***,

Respondent.

Cause No. ***

NOTICE TO THE COURT

On ***, 2023 the Court ordered the parties to this action to apply to the Montana Family Transition Project for the purposes of receiving free mediation services and legal assistance from an attorney. The Montana Family Transition Project herewith advises the Court that it is unable to refer this case through the Montana Family Transition Project for the following reason(s):

☒ MLSA was not able to make contact with one or more of the parties to screen for program eligibility.

☐ One or more of the parties does not meet the program eligibility requirements.

☐ Other reasons _____.

DATED this *** day of ***, 2024.

Megan L. Dishong



The Mediator Role

The basic outline of your role

- ▶ Up to 15 hours to work with the parties separately and/or in mediation to reach a resolution
 - ▶ More hours may be approved for complex or difficult cases – please ask Emma and she can pass on the request to me
- ▶ You are welcome to request a copy of all filings in the court case if this will inform your mediation
- ▶ You can also speak to the advising attorney if/as needed or request assistance with child support calculations
- ▶ If it is a court-referred mediation, don't forget to notify the court and Emma with the notice template
 - ▶ Why is this important?

1 Name
2 Address
3 Phone
4 E-mail

5 MONTANA JUDICIAL DISTRICT COURT, COUNTY

6 IN RE THE MARRIAGE OF	Dept.
7 OR	Cause No. DR-
8 IN RE THE PARENTING OF	
9	
10 Petitioner,	NOTICE OF SCHEDULED
11 vs.	MEDIATION
12 Respondent.	
13	

14
15 The undersigned Montana Family Transition Project Mediator reports to this
16 Court that mediation is scheduled in this matter for ____ (date) ____.

17
18
19 Dated this ____ day of _____, 20 ____.

20
21
22 _____
23 Mediator's signature

24 Mediator's printed name and address:

25 _____
26 _____
27 _____

Mediator's Report

1 Original to be filed with
2 The Clerk of District Court

3 _____
4 _____
5 _____
6 _____
7 _____

8
9 Copies to:

10 Montana Family Transition Project
11 Montana Legal Services Association
12 616 Helena Avenue, Suite 100,
13 Helena, MT 59601
14 Email: mediate@mtlsa.org

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25
26
27 Mediator's Report

Mediator privilege

- ▶ Montana law provides confidentiality protections for the communications you have with the parties as part of the mediation (MCA 26-1-813)
- ▶ Except upon written agreement of the parties and the mediator, mediation proceedings must be:
 - (a) confidential;
 - (b) held without a verbatim record; and
 - (c) held in private.
- ▶ Your files and records are also confidential and your discussions with each party are confidential, except to the extent they agree to disclosure to the other party (this is important in the DV context later)

Mediator privilege (cont.)

- ▶ Your notes and even any report you file with the court are not admissible in a future hearing and generally not subject to discovery
- ▶ MT Supreme Court cases state that a written waiver is required to breach confidentiality
- ▶ You should disclose to the court only what BOTH parties agree to be disclosed:
 - ▶ That the mediation was unsuccessful or
 - ▶ The terms of a successful agreement

What happens after the mediation

– unsuccessful mediation

- ▶ For a self-referred mediation, you will send notice to Emma. The parties will then be on their own to reach a resolution and either file or continue a court case
- ▶ For court referrals, you will file the template mediator report with the court stating that it was unsuccessful and send a copy to Emma
 - ▶ What happens next depends on the scheduling order
 - ▶ The parties may still reach an agreement on their own or it will go to a final hearing on any remaining issues between the parties (even a partial agreement simplifies this)

What happens after the mediation

– successful mediation

- ▶ For self-referred parties, you will assist them in drafting the final agreement
- ▶ We recommend the court approved forms found at https://courts.mt.gov/forms/end_marriage#6977557-forms or on Montana Law Help, <https://www.montanalawhelp.org/resource/ultimate-diy-guide-divorce-and-custody-montana>
- ▶ What forms the parties use will depend on whether they have filed with the court already

What happens after the mediation

– successful mediation (cont.)

- ▶ For a court ordered mediation, you will file the mediator's report with the court
- ▶ You should also attach the terms of any full or partial agreement between the parties using the same forms as self-referred mediations
- ▶ In both instances, the court will then set a final disposition of the case to enter the final parenting plan and/or dissolution decree

1 Name
2 Address
3 Phone
4 E-mail

5 MONTANA JUDICIAL DISTRICT COURT, COUNTY

6 IN RE THE MARRIAGE OF	Dept.
7 OR	Cause No. DR-
8 IN RE THE PARENTING OF	
9	
10 Petitioner,	MEDIATOR'S REPORT
11 vs.	
12 Respondent.	

13
14 The Montana Family Transition Project Mediator held a mediation conference
15 on the ____ day of _____, 20__.

16
17 ____ Parties reached an agreement and it is attached.

18 ____ Parties reached a partial agreement and it is attached. Parties request that the
19 court set a hearing to resolve the outstanding issues.

20 ____ The parties did not reach an agreement. The parties request that the Court set a
21 hearing as it sees fit.

22 ____ Other: _____

23 _____

24 _____

25
26
27 Dated this ____ day of _____, 20__.

Mediator's Report

1

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Mediator's signature

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Mediator's printed name and address:

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12 Original to be filed with
13 The Clerk of District Court

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19 Copies to:

20 Petitioner Address: _____

21 Respondent Address: _____

22 Montana Family Transition Project
23 Montana Legal Services Association
24 616 Helena Avenue, Suite 100,
25 Helena, MT 59601
26 Email: mediation@mtlsa.org

27

Mediator's Report



What about domestic violence
issues

Domestic violence – a complex issue about power and control

- ▶ Domestic violence may look like physical harm, but it is really about the abuser's control over the victim, and typically also includes a power imbalance that includes issues like financial control, threats about children, isolation, restriction of access to friends, family, education, and employment, and emotional abuse and control
- ▶ We screen for DV, but parties may or may not consider themselves DV victims if the abuse takes more insidious forms such as isolation, financial control, etc.
 - ▶ If we have allegations of DV from a potential referral, we may offer a referral to our DV attorneys, rather than referral to the program
 - ▶ We may also send a notice to the court that one of the parties does not meet the eligibility criteria

Domestic violence and mediation

- ▶ Because of these imbalances and the unequal position the parties are in, and fear, threat, and intimidation survivors may experience, DV survivors have a statutory right not to participate in mediation (MCA 40-4-301):
 - ▶ “Unless each of the parties provides written, informed consent, the court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party.”
 - ▶ Parties have the right to continue with mediation even if there are allegations of abuse, but as the mediator, you must be aware of the power imbalance and ensure fair treatment for both parties

What happens if DV is disclosed in mediation?

- ▶ We screen this out when possible, but the parties are not required to disclose it to us and may want to proceed anyway
- ▶ This intersects with mediator confidentiality
 - ▶ What happens when one party discloses information to you but has not authorized disclosure to the other party and/or to the court
 - ▶ You may want to document and get a waiver from the party alleging abuse that they know they have the right not to proceed, but are waiving that right

Name <i>Petitioner</i>	DATE
Name <i>Attorney for Petitioner</i>	DATE
Name <i>Respondent</i>	DATE
Name <i>Attorney for Respondent</i>	DATE

- ▶ This is used by one district court, but could be adapted if you both parties discuss/disclose and you want to file something with the court
- ▶ You could also use a similar format for your own files
- ▶ It still should not overcome the confidentiality requirements unless the party/parties waive



QUESTIONS?

CONTACT: MEGAN DISHONG, MDISHONG@MTLSA.ORG, 406-543-8343,
EXT. 223