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12/07/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 11-0765

**Biennial Report of the Montana Access to Justice Commission
No. AF 11-0765**

In accordance with the Montana Supreme Court's Order of May 22, 2012, the Access to Justice Commission (Commission) submits this fifth biennial report to the Court. Since the Commission's last report, submitted in September 2021, the Commission and its committees have coordinated with the Office of Court Administrator (Judicial Branch) staff, Montana Legal Services Association (MLSA) and other partners to oversee the informal domestic relations trial (IDRT) pilot program and to support the adoption of the IDRT as a permanent court rule, supported the Branch's work to implement a family law mediation program, and pursued legislation to secure state funding for access to justice programs.

Much of the Commission's work continues to be carried out through three standing committees: the Standing Committee on Self-Represented Litigants (SRL Committee), the Committee on Outreach and Communication, and the Committee on Policy and Resources. Additionally, the Commission has created an ad hoc committee for strategic planning and a working group comprising attorneys, legal service providers and members of the judiciary to respond to the increasing gap in the need for pro bono services and the availability of those resources called the Pro Bono Action Committee (PB Committee). 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.

Montana district courts have observed a consistent rise in the number of Domestic Relations cases being filed. Domestic relations cases make up between 15 and 20% of all filings in district courts. Despite a slight dip during the height of the COVID-19 pandemic, filings are back up, with close to 10,000 such cases filed in the calendar year 2022. A significant portion of these cases involve individuals representing themselves (referred to as self-represented litigants or SRLs). This influx of SRLs in Domestic Relations cases presents challenges for both these individuals and the overall efficiency of the court system.

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A Workload Assessment Study of District Court Judicial Officers, conducted by the National Center for State Courts, was released on September 29, 2022, the first update to this study in Montana since 2014. An impressive 95% of district court judges and standing masters participated in this time study, providing a highly accurate account of judicial working time for case-related activities.

The study revealed that Domestic Relations cases are the third most time-consuming category, surpassed only by Child Abuse and Neglect cases and Criminal cases. Notably, Domestic Relations cases were the only category in which the time spent per case increased since 2014. It rose from an average of 99 minutes in 2014 to 140 minutes per case, as calculated by the Study. With an assumed statewide filing count of 10,000, this translates to nearly 7,000 additional judge-hours each year. Judges attribute this increase in time to the higher volume of SRLs and the growing complexity of their issues.

With crowded court dockets and statutory time demands in high-priority cases, a large volume of SRL Domestic Relations cases contributes to court congestion and delayed resolutions. These delays can lead to financial strain, heightened emotional stress, living arrangement uncertainties, increased conflict between the parties, and disruptions in parenting and support arrangements. Delayed resolution can also affect employment and impede future financial stability for Montana families. Given the unique and powerful impact courts have by intervening in families' and children's lives in Domestic Relations matters, the Commission works to assist the Judicial Branch in improving efficiencies for those cases. The Simplified Family Law Resolution Project (the Project), discussed in more detail below, aims to better address the needs of low- to moderate-income Montanans facing Domestic Relations cases.

The Commission notes that MLSA is currently in the process of completing a legal needs assessment that is expected to be completed in 2024. The Commission continues to work closely with MLSA and other stakeholders to facilitate the legal needs study and will be reviewing the results of that study in depth in the coming year.

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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 Commission has made significant progress regarding simplification of court rules and procedures through its support, coordination and collaboration with the Simplified Family Law Project Administrator (Project Administrator), legal service providers, Judicial Branch staff, MLSA and the judiciary to further develop and implement the Project. Thanks to efforts from Judicial Branch staff, and especially Project Administrator Emma Schmelzer, the IDRT program is now well in place and being implemented across the State.

IDRT

The Commission petitioned this Court in August 2021 to authorize a pilot project with guidelines for district courts wishing to participate in the IDRT pilot; that petition was approved by this Court in its August 17, 2021 Order, and the pilot program began soon after. The IDRT program allows litigants to agree to an informal process that does not adhere to the formal court process. IDRTs have been used for dissolutions, parenting plans and orders of protection (OOP). The following paragraphs summarize the progress made with respect to IDRTs since this Commission's last report, submitted in September 2021.

At least 31 IDRTs occurred in three pilot districts between January 2022 and June 2023 (the pilot period). The number of completed IDRTs reported informally was higher. However, participating judicial districts struggled to accurately capture which cases used the IDRT process because it was cost prohibitive to implement IDRT tracking into the court data system for the pilot period. The Commission will continue to collaborate with the Judicial Branch staff and other stakeholders and experts to develop a data collection and analysis plan to ensure the Project's anticipated court efficiency outcomes are effectively evaluated and reported.

Judges participating in the IDRT pilot reported a streamlined process that worked well to get cases resolved in a timely manner. Participating parties provided valuable feedback on the IDRT pilot, with most parties reporting that their needs were addressed and they understood what took place and what they needed to do as next steps. The Commission coordinated and advised the Project Administrator throughout the pilot period and reviewed and analyzed the May 26, 2023 Pilot Report (Pilot Report) filed with this Court and the Addendum to Pilot Report filed on June 23, 2023 (Addendum).

After review of the Pilot Report and Addendum, this Court put the proposal to establish the IDRT process as a permanent rule of court out for public comment on June 30, 2023. Only one public comment was submitted, which favored the proposal. By Order of this Court dated August 30, 2023 (IDRT Order), accepting additional recommendations from the pilot judges, IDRT become the default process across Montana for all Domestic Relations cases where at least one party is an SRL. The IDRT Order amended the Montana Uniform District Court Rules to include new uniform rule 17, effective October 1, 2023. A copy of the IDRT Order and the new uniform Rule 17 (attached to the Order) is attached to this Report as **Appendix A**.

The IDRT Order further directed the Project Administrator to create an IDRT Bench Guide for District Courts. Judicial Branch staff and the Project Administrator have created an IDRT Bench Guide, which has been distributed to all district judges, standing masters, clerks of court, law clerks, judicial assistants, and court administrators. A copy of the IDRT Bench Guide is attached to this Report as **Appendix B**. The Commission will continue to coordinate with the Judicial Branch staff and the Project Administrator to educate attorneys and the judiciary about the new IDRT process available and to evaluate the efficacy of the process and its opt-out requirement.

Mediation

The Commission collaborated with Judicial Branch staff and MLSA on the mediation component of the Project (Mediation Program). The Judicial Branch, through a contract with the MLSA, provides family law mediators in certain cases where litigants meet financial requirements, are self-represented, and need a parenting plan as part of the domestic relations case. The primary goal of the Mediation Program is to implement this project statewide, which could save thousands of judge hours annually. Moreover, it has a significant impact on families in crisis. When family law cases are delayed, individuals' lives are put on hold, leading to increased reliance on public assistance, among other issues.

As part of the Mediation Program, litigants also receive legal advice before mediation through MLSA. In addition to legal advice and mediation, the Mediation Program now offers access to a child support calculation performed by a knowledgeable professional. The Mediation Program is available statewide for self-referred cases (i.e. cases in which the parties contact MLSA or a self-help law center directly about mediation services). The

Mediation Program is now accepting court-ordered cases from judicial districts serving Cascade, Yellowstone, Gallatin, Lincoln, Flathead, Lake, Sanders, Missoula, Mineral, and Ravalli Counties. The Commission will continue to coordinate with the Judicial Branch staff and the Project Administrator to assist in further development and monitoring of the program as it expands statewide.

Parties reached full or partial agreement in 75% of the cases that have proceeded to mediation so far, with full agreement in thirteen cases, partial agreement in five cases, and no agreement in five. Six cases are currently in progress, and MLSA continues to receive new inquiries about the Mediation Program. Features of the Mediation Program that differ from normal MLSA intake procedures include a stand-alone phone number and e-mail address to identify cases specifically seeking the Mediation Program so that the parties do not need to go through the general intake process with MLSA to participate in the Mediation Program.

The Commission is hopeful that the Mediation Program will expand and gain traction across Montana. The Mediation Program has been a collective effort of many individuals over the years and is building upon the foundation laid by Justice Laurie McKinnon and Supreme Court Pro Bono Coordinator Patty Fain on the court-connected Early Resolution and Mediation Program piloted in the 11th Judicial District in 2018.

Court Forms Summit

The SRL Committee has been conducting significant outreach and education to stakeholders with respect to the updated and revamped court forms that the Commission coordinated and reported on in its last report to this Court. The Court Help Program and its staff have been instrumental in moving this project forward. In 2022, the Court Help Staff, members of the Justice for Montanans AmeriCorps Project (JFM) and representatives from MLSA participated in a court forms summit with Judicial Branch law clerks who volunteered their time to assist with forms development. In 2023, committee members from the SRL Committee and other partners scheduled a court forms summit and coordinated with law library staff to conduct an outreach event at the Lewis and Clark County Library in March 2023. The outreach event included education about family law forms, and Court Help staff was available to review forms at that event.

Exploring Racial Justice Issues in Montana's Civil Justice System

On November 10, 2022, members of the Commission's Racial Equity Working Group and stakeholders met by video conference to consider racial equity issues in Montana's civil justice system and to discuss potential strategies for fostering a more equitable system. The stakeholder group included members from state and local government agencies, tribal organizations, human rights organizations, and the Montana Legal Services Association. The four-hour discussion was led by Indigenous Collaboration, a consulting firm that specializes in working with organizations doing work with Indigenous peoples and in facilitating groups to make consensus-based decisions and plans. As part of the process, participants worked in small groups to consider strategic efforts based on the discussion, and then came together to discuss and consider the efforts involved. Indigenous Collaboration then produced a report that included highlights from the guided group dialogue, an analysis of potential strategic initiatives and important stakeholders, and recommended next steps. The report is included as **Appendix C**. One challenge of this process was focusing the participants on the Commission's mission of improving the civil justice system, as the participants were more keen on discussing challenges faced in the criminal justice system. The Commission and MLSA will work together to determine next steps.

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 continues to lead the state's long-range, integrated planning efforts for access to justice issues, most notably through its strategic planning, the work done through the Pro Bono Action Committee and through its work in the Legislature. The Commission also remains a forum for information-sharing and networking among legal assistance providers and other interested entities.

The Commission has maintained its partnership with Alexander Blewett III School of Law (ABIII School of Law) and its Access to Justice Program. The Commission thanks the ABIII School of Law for its important work in building understanding about the needs and for fostering a culture of service.

In 2023, the Commission reconvened its Strategic Planning Committee to begin the process of reviewing the Commission's existing mission and goals and developing a set of recommended strategies and actions for the Commission and its partners to pursue over the

coming years. The Commission intends to adopt an updated strategic plan by early next year to guide its work for the next three years.

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. In particular, the Commission's Pro Bono and SRL Committees have included participants and solicited input from a broad section of community members. The Commission also maintained its strong relationship with the State Bar of Montana's Justice Initiatives Committee (JIC), holding joint meetings in September 2022 and September 2023 and ensuring JIC representation on Commission committees. Coordination between the Commission and JIC has resulted in the new Montana State Bar President, Stuart Segrest, committing to submitting a monthly Bar President's note in the Montana Lawyer that will highlight access to justice issues to more broadly share the work of the Commission and its stakeholders with Montana lawyers. The Commission continues to be a forum for information sharing and celebrating successes of partners and stakeholders in the access to justice arena.

Pro Bono Action Committee

In the spring of 2022, a Pro Bono Action Committee (PB Committee) was formed to respond to the increasing gap in the need for pro bono services and the availability of those resources. PB Committee members included attorneys, legal service providers, and members of the judiciary. The PB Committee developed and organized focus groups in local communities facilitated by the Montana Justice Foundation. The focus groups consisted of approximately 8-14 participants each in Billings, Bozeman, Missoula, and a Rural Group. A total of 42 participants attended these focus group sessions in-person or remotely in April and May of 2022. The purpose of the focus groups was to explore the perceptions and opinions of Montana attorneys about the societal impact of lawyers and their communities and how we can better assist attorneys and courts in addressing the unmet legal needs of Montanans. The PB Committee compiled a report representing the aggregate of themes, observations and suggestions from focus group participants.

Following the focus group sessions, the PB Committee invited pro bono partners, including attorneys, judges, state and local bar leaders, access to justice communities and others to join in reviewing and evaluating the focus group report and to provide additional

feedback. The PB Committee interpreted and integrated the post-focus group feedback into previous findings in developing broad key strategic initiatives, which was compiled and outlined in the Pro Bono Initiatives Matrix (PB Matrix), attached hereto as **Appendix D**.

The Commission reviewed the PB Matrix and coordinated with MLSA to determine which programs identified on the PB Matrix were already in existence and discussed ways to make stakeholders aware of the services and resources currently in place at MLSA to avoid recreating the wheel. The PB Committee will continue to work to develop initiative-specific projects with actionable outcomes and to outline projects to include specific tasks to achieve over a specific time in conjunction with identified leaders and partners. One objective, presently underway, is to have a password-protected portal accessible to volunteer attorneys and housed on the Judicial Branch website, with informational resources and templates for legal documents commonly used in family and other cases in which pro bono services are needed.

Recognition and Celebration of Partner Projects

Commission members regularly share updates and innovations at Commission meetings to keep all Commission members informed about the work being done by the various stakeholders and to celebrate successes.

MLSA was selected as one of nine of the country's most innovative rural justice programs to serve as models for other communities as part of the Rural Justice Collaborative Initiative for its work on the Rural Incubator Project for Lawyers (RIPL). RIPL is a joint effort of MLSA, the University of Montana's ABIII School of Law, the Montana Justice Foundation, the State Bar of Montana and the Commission. RIPL was established to help address the justice gap that prevents low- and moderate-income Montanans from achieving justice, particularly in the underserved and rural communities that are often a "legal desert," places where residents have to travel far to access routine legal services. RIPL provides a 24-month fellowship program that trains and supports attorneys to develop solo or small firm practices that provide legal services to low-income Montanans in rural communities. RIPL fellows are required to provide 300 hours of legal assistance annually to low-income clients pro bono or at a modest-means rate. MLSA's RIPL program has been praised for its replicable nature and other states like Wyoming are looking to MLSA as a model when evaluating how

to draw attorneys to rural areas. Representatives from MLSA spoke at a national conference in May of 2023 to standing room only crowds to share their experience with the RIPL Program and the Tribal Advocate Incubator Project (TAIP).

In response to the reported need for advocates from tribal court judges and staff, and following the success of the RIPL Program, MLSA partnered with six tribal courts, the ABIII School of Law and the Montana State Bar Indian Law Section to launch the TAIP in July 2021. Valerie Falls Down joined MLSA to develop, coordinate and implement initiatives to expand access to and enhance quality of justice in civil legal matters in Montana's tribal courts. Thanks to MLSA leadership, this program has been very successful to date.

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.

Much of the Commission's work this biennium has focused on the Simplified Family Law Project, which has the potential to both improve Montanans' ability to resolve their Domestic Relations cases more promptly and to enhance efficiencies across the court system.

The Commission expects to invest time and energy to advance the work of the PB Committee as summarized herein and will collaborate and coordinate with partners and stakeholders to identify and outline projects and specific tasks to achieve over a designated timeline to improve pro bono participation as set forth in the Pro Bono Initiatives Matrix.

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

Recognizing that an effective continuum of legal services requires adequate and sustainable funding, the Commission continued to focus on Montana's lack of resources to meet the civil legal needs of our citizens and to manage the growing burden on the court system. The Commission began the biennium by building on its previous legislative efforts and refined its legislative proposal for the 2023 session. Similar to its previous proposals, the Commission drafted a bill to generate new revenue by raising certain civil filing fees in district court and appropriating the new revenue to the Judicial Branch to create a fund to provide alternative dispute resolution, legal information, and legal assistance to ordinary

Montanans who cannot afford an attorney to help with family- or housing-related civil legal problems. Once again, community support for the bill was overwhelming and broad-based. Despite this broad support, however, the bill was tabled in the Senate Judiciary Committee during the first week of the legislative session.

With leadership from the Commission and Judicial Branch budget subcommittee chair Rep. Bill Mercer, however, the 2023 Legislature approved one-time-only funding in the amount of \$300,000 from the General Fund to continue the Mediation Program through the biennium. This funding is deemed sufficient for continuing the Mediation Program. The Commission will monitor the program closely for its effectiveness and work with the Judicial Branch to evaluate whether additional funding should be considered during the next legislative session.

The Committee also responded to emerging legislation introduced at the last minute that effectively would have eliminated Montana's interest on lawyer trust account (IOLTA) program, which is administered through the Montana Justice Foundation. The stated purpose of this legislation was to require that all interest on lawyer trust accounts must be paid to the client (as opposed to the Montana Justice Foundation).

Commission members assisted in the very short window to reach out to and provide education on IOLTA programs and to oppose the proposed legislation that would have impacted IOLTA funds. The legislation failed. The Commission will continue to collaborate and coordinate with the Montana Justice Foundation and other stakeholders to educate the public about the IOLTA program and its effectiveness in helping to meet the mission of the Montana civil justice system.

The Commission coordinates with access to justice organizations such as MLSA and Montana Justice Foundation to monitor and advise on ways to increase *cy pres* revenue to supplement funding for civil legal aid. Since the Committee's last report to this Court, over \$1,500,000 in *cy pres* revenue has been contributed to Montana Justice Foundation, MLSA and CASA programs.

The Commission plans to revisit its ideas for state funding over the coming biennium and to work with supporters, legislators, and interested organizations to develop new ideas for sustained resources to meet growing demands on the court system and to serve the people who need it in addressing their civil legal issues.

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

MLSA'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), an AmeriCorps State/National program. JFM is a partnership between MLSA, the Supreme Court Administrator's Office, the MT DOJ Child and Family Ombudsman program, DPHHS Legal Services Developer Program, the Confederated Salish and Kootenai Tribe, YWCA of Missoula, and the Montana Innocence Project. Through this project, 16 AmeriCorps service members were sworn in by Justice Baker in the fall of 2023 to provide assistance to low- and moderate-income Montanans seeking assistance with their civil legal problems. Their work includes coordinating community education campaigns, providing access to services, assisting people with completing pro se documents, and making referrals to additional resources. This project has the dual benefit of training our next generation of community leaders on access to justice, while at the same time providing information and referrals to people in need. The JFM project supports the work of the Court Help Program by providing assistance in Self Help Centers across the state; the Commission receives and reviews Court Help Program updates regularly.

Conduct regular meetings to achieve the ATJC's purposes.

The Commission held eight public meetings during 2022 and 2023 and will continue to meet quarterly. Meetings took place on the following dates:

- March 4, 2022
- June 3, 2022
- September 9, 2022 (Joint Meeting with the Justice Initiatives Committee)
- December 2, 2022
- March 3, 2023
- June 2, 2023
- September 8, 2023 (Joint Meeting with the Justice Initiatives Committee)
- December 1, 2023

Minutes and materials of all Commission meetings are posted on the Commission's website, <https://courts.mt.gov/Courts/boards/a2j/>.

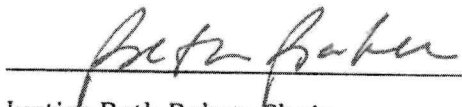
Conclusion

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 Judicial Branch 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; the Commission is grateful for their work and dedication. Finally, the Commission is grateful for staff support graciously provided by the Montana Justice Foundation and MLSA. Both have been instrumental in moving the Commission's work forward.

Over the past two years the Commission has made considerable progress in assessing the state's justice system and promoting robust, statewide, integrated access to that 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 7 day of December, 2023.

For the Commission,


Justice Beth Baker, Chair

Commission Members:

Ed Bartlett

Juli Pierce

Hon. David A. Carter

Rick Cook

Sen. Wendy McKamey

Aimee Grmoljez

Hon. Leslie Halligan

Olivia Riutta

Hon. John Kutzman

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