



The Supreme Court of Montana

Access to Justice Commission

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 first biennial report to the Court. The Commission first met in December 2012 to introduce its members to the state of access to justice in Montana and to review the tasks set forth for the Commission by this Court. Over the course of its first year, the Commission engaged in a strategic planning process, resulting in the adoption of a strategic plan at the Commission's February 28, 2014 meeting. Much of the Commission's work has been carried out in one or more of the four standing committees created in accordance with the 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 will outline the work being done by each Committee and the Commission as a whole in light of each of the nine areas on which the Court directed the Commission to focus.

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.

The Commission's initial review of the state of access to justice in Montana included a thorough exploration of the types of services available and programs supporting access to justice efforts in Montana, including but not limited to providers of legal services. The Commission also reviewed two existing statewide legal needs studies from 2005 and 2010.

In June 2014, the Commission approved the final report of a study it commissioned to identify the gaps in legal services and barriers to accessing those services in Montana,

and to provide recommendations for eliminating those gaps and barriers. Funded primarily by the Montana Justice Foundation, The Justice Gap in Montana: As Vast as Big Sky Country, is a comprehensive report designed to bring the current condition of civil legal needs in Montana into focus.¹ The study included providers of a wide range of services targeting low- and moderate-income Montanans in a broad geographical area of the state. The report shows that all segments of Montana's low and moderate income populations need legal help but cannot afford it. The report identifies and explores several legal assistance gaps and barriers:

- cost of services;
- paucity of free and reduced fee legal assistance;
- limited availability of full representation, advice, mediation and pro se assistance;
- shortage of in-person services, intensified by long distances;
- difficulty using phone and Internet services;
- lack of awareness of legal services; and
- issues regarding personal desire to access services.

The report describes the enormity of needs that go unattended, why these gaps and barriers exist, and the possible strategies to address the problem. The Commission, through its Committee on Communications and Outreach (chaired by Matthew Dale), is developing a series of articles for publication in the *Montana Lawyer* exploring the study's findings. The Commission will use the information gleaned from the study and the recommendations in the report to inform its future activities.

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.

Two Committees of the Commission have been tasked with priorities falling under this charge: the Standing Committee on Self-Represented Litigants and the Committee on Policy & Resources. The Committee on SRLs, chaired by Michele Snowberger, is engaged in a three-part data collection effort discussed below. This effort is intended to shed light on the current state of SRL use of the courts, and will help identify areas where rules and processes need improvement. The Committee on Policy & Resources, chaired by Amy Sings In The Timber, has been tasked with monitoring activity in the legislature

¹ The study report is included as Appendix 1 to this Report.

and making recommendations to the Commission. Upon recommendation of these Committees, the Commission voted unanimously to support permanent funding for the Court Help Program and is providing assistance with the Court's legislative efforts when requested by the Office of Court Administrator.

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.

Through its strategic planning process, the Commission identified the sharing of information and inclusion of interested parties as a strong priority. As a result, the four Commission Committees include both members of the Commission and numerous other volunteers, including lawyers and judges from across the State. The Commission has maintained a strong relationship with the State Bar of Montana's Justice Initiatives Committee (JIC), ensuring that each Commission Committee includes at least one member of the JIC, and holding one joint Commission/JIC meeting each year. These groups are well-positioned to share information, to avoid duplication of efforts, and to address a broad variety of access to justice initiatives.

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.

One of the first tasks the Commission undertook, at the Court's direction, was to explore the benefits and drawbacks of a rule requiring applicants to the Montana Bar to provide pro bono service prior to admission. The Commission formed a working group to address this question. The working group included members of the Commission as well as representatives from the Bar, the Court, the legal community, and both students and faculty of the University of Montana School of Law. After numerous meetings, much research on other states' experiences, public comment, and feedback from the Court, the Commission crafted a final recommendation for voluntary reporting of pro bono activities by bar applicants. This Court approved the Commission's recommendation on December 16, 2014.

The Commission's Committee on Law School Partnerships, chaired by Jamie Iguchi, now has turned its attention to exploring the potential for an "incubator" program in Montana. The Committee is in the initial stages of this exploration, and is currently reviewing the wide range of incubator programs in practice across the nation.

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

In its first year, the Commission received support from the American Bar Association in the form of a modest \$15,000 grant made to the Montana Justice Foundation to provide limited staffing support for the Commission's first efforts and to engage a national expert to support the Commission's strategic planning process.

The Committee on Policy and Resources is charged with strategies relating to resource development and potential policy changes calling for legislation, regulations or rules. One of the Committee's first efforts was to research and craft a recommendation to the Commission, and subsequently to this Court, providing a revision to Rule 23 of the Montana Rules of Civil Procedure. The revision, approved as amended by this Court, provides for 50% of residual funds in class actions to be directed to an access to justice organization.

The Commission voted in December 2014 to engage in an educational campaign to lay the groundwork for and gather information in support of a potential legislative effort to secure state funding for civil legal assistance programs. The Committees are exploring similar efforts that have taken place in states similarly situated to Montana, and are making contact with interested parties across Montana to help gauge the approach most likely to succeed. The Commission continues to seek opportunities to direct funds toward access to justice efforts.

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

The Montana Legal Services Association (MLSA) AmeriCorps Justice for Montanans project (JFM) has contributed significantly to the work of the Commission, particularly in terms of providing the groundwork for the Commission's data-gathering

activities. JFM conducted surveys and interviews for both the Gaps & Barriers study and the SRL Committee's Self Represented Litigant Data project. In addition, the JFM project supports the work of the Court Help Program by providing staffing for Self Help Centers across the state. The Commission receives and reviews Court Help Program updates regularly.

Conduct regular meetings to achieve the Commission's purposes.

The Commission held eight public meetings between October 1, 2012, and December 31, 2014, and will continue to meet three to four times each year. Meetings took place on the following dates:

- December 12, 2012
- June 26, 2013
- September 18, 2013
- November 25, 2013
- February 28, 2014
- June 25, 2014
- October 1, 2014
- December 12, 2014

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 Commission committee to continue the Self-Represented Litigants Commission's mission, including forms development for self-represented litigants.

The Commission has a strong Standing Committee on Self-Represented Litigants, which engaged in its own strategic planning process specific to its focus on supporting Self-Represented Litigants (SRLs) and those in the court system who interact with SRLs. This process led the Committee on SRLs to identify several priorities, including development and improvement of forms for use by SRLs, data collection to inform the Committee on SRLs and the Commission about how SRLs are currently interacting with the court system, and outreach and education focused on improving interactions between courts, practitioners, and SRLs.

The SRL Committee's form development efforts have resulted in a packet of forms designed for use by SRLs in cases involving a dissolution of marriage with children. The forms are available for comment by practitioners, judges, and clerks, and the Committee on SRLs is revising the forms in response to community feedback.²

The SRL Committee's data collection efforts were broken into three phases: data collected from Montana judges and clerks of court, data collected from practitioners regarding their interactions with SRLs, and data collected from SRLs themselves about their needs, experiences, and outcomes when navigating the court system. The first phase is complete and has produced a comprehensive report of data gathered from three questionnaires distributed to District Court Judges, Courts of Limited Jurisdiction Judges, Clerks of District Court, and Courts of Limited Jurisdiction Clerks, and provides a wide range of data exploring Court professionals' experiences with SRLs.³ The Committee on SRLs intends to use this data and the data to be collected in the second and third phases of its data collection project to inform development of strategies for improving access to justice for all Montanans.

The Committee on SRLs' outreach and education efforts have been focused on improving courts' relationship with SRLs. The Committee has spoken at judges' and clerks' conferences about its data collection efforts and the forms it is developing for use by SRLs. The Committee is currently working to develop training for clerks and other court professionals to help clarify the difference between legal advice and legal information.

Conclusion

The Access to Justice Commission 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.

² The proposed forms have been posted on the ATJC's website: http://courts.mt.gov/supreme/boards/self_represented_litigants/proposed_forms/default.mcp.x. An index is included as Appendix 2 to this Report.

³ The Phase 1 report is included as Appendix 3 to this Report.

In its first two years, the Commission has undertaken considerable work to assess the state of our justice system and has begun taking action to further the Court's objectives. There are many people who have volunteered their time in the Commission's efforts to date and the Commission is grateful to all of them for their work and dedication.

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 _____, 2015.

For the Commission,

Justice Beth Baker, Chair

Commission Members:

Matthew Dale
Hon. Kurt Krueger
Jennifer Brandon
Michele Robinson
Andrew King-Ries
Melanie Reynolds

Rep. Chuck Hunter
Hon. David M. Ortley
Amy Blixt
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Jon Bennion
Andy Huff

Sen. Nels Swandal
Hon. David A. Carter
Winona Tanner
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Aimee Grmoljez

Appendix 1

THE JUSTICE GAP IN MONTANA: As Vast as Big Sky Country



**A report on the gaps and barriers to legal assistance
for low and moderate income Montanans**

Prepared for the Access to Justice Commission of the Montana Supreme Court

**Carmody and Associates
July 2014**

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Acknowledgements

The **Montana Access to Justice Commission** took the lead in seeking answers to critical questions about Montana's justice gap. This Report is the result of the Commission's leadership and the work and cooperation of many individuals and organizations in Montana.

Funding for the project was provided by the **Commission, Montana Justice Foundation, State Bar of Montana, Montana Legal Services Association, the Montana Office of Consumer Protection, and the Indian Law Section and Women's Law Section of the State Bar of Montana.**

Montana Legal Services Association staff and AmeriCorps members of the Justice for Montanans Project spent hundreds of hours conducting interviews, including those that involved traveling long distances. Thanks go to Mary Beall, Anna Chithelin, Luke Elzinga, Nora Fitton, Emily Guterrez, Amy Hall, Joseph Hardgrave, Nolan Harris, Ed Higgins, Jennifer Hill-Hart, Isaac Ho, Stefan Kolis, Liz Leman, Rochelle MacArthur, Christine Mandiloff, Judy Meadows, Kyle Nettleblad, Michelle Potts, Kate Seaton, August Swanson, Erick Valencia, Rachel Wagner, Ariane Wittman, and Larkin Yackulic.

Appreciation is given to the **more than 300 individuals** who were interviewed or participated in a listening session. More about these individuals and organizations is in the Appendix. Appreciation is also given to the **legal providers** who provided information for the study and who work to address the legal needs of low and moderate income Montanans every day.

Special thanks go to **Alison Paul, Michelle Potts, Krista Partridge, and Tracie Poindexter** of Montana Legal Services Association and **Amy Sings in the Timber and Kate Kuykendall** of Montana Justice Foundation for their countless hours helping with the details of the study and this report.

Database design and management, and report editing was done by **Robert Gross**. The cover photo, *Riding the Highways of Montana*, was taken by **Mark Stevens**, <https://www.flickr.com/photos/14723335@N05/>, License: CC BY-NC-SA 2.0.

Kelly Carmody
Study Director and Report Author

Executive Summary

Background. The Montana Access to Justice Commission learned that **nearly half of all low-income Montanans have at least one civil legal problem each year that they do not address.** Knowing that unaddressed legal issues can lead to even bigger problems for the individual, and the community, the Commission wanted to find out why so many problems go unaddressed and what can be done to close the justice gap between the legal help that is needed and what is available.

Cost of Legal Help Exacerbated by Shortage of Free Legal Help. The gaps and barriers to getting legal help in Montana are broad and deep. Many Montanans simply cannot afford to hire an attorney. This fact, coupled with a severe shortage of free and reduced cost legal assistance is the major reason tens of thousands of low and moderate income persons throughout the state cannot obtain the legal help they need. **No segment of the low or moderate income population is spared.** People who need help but cannot get it include the elderly, persons with disabilities, veterans, low-wage workers, victims of domestic violence, Native Americans on and off reservations, and many others who need help with legal problems.

The 13 attorneys at Montana Legal Services Association (MLSA), along with seven to twelve other attorneys at other non-profit organizations, have the special expertise needed to effectively represent low and moderate income persons. They make good use of technology and continuously look for the best ways to serve Montana's spread out population. **The problem is that these 20 to 25 attorneys are the only ones employed to help the estimated 167,000 Montanans with low and moderate incomes who have a legal problem.** Despite their best efforts, those 20+ attorneys, the pro bono attorneys who work with MLSA, and the workers in the Court Help Program are able to assist less than one in ten of the Montanans who need help with their legal problems.

Other pro bono and reduced fee attorneys fill in some of the gap, but not enough to provide more than a thin layer of services across only some parts of the state.

Shortage of Funding. Montana has so few attorneys employed to assist low and moderate income persons because available funding for this purpose is low. MLSA recently lost nearly a third of its federal funding—\$400,000 per year—when the federal Legal Services Corporation reallocated funding based upon updated Census data. The majority of states appropriate state funding for civil legal assistance. Montana does not. Although every state's civil legal aid delivery system is underfunded, Montana's is one of the lowest at a funding level of about \$20 for every person with income below the federal poverty level.

Lack of All Types of Legal Assistance. Montanans with legal problems need various levels of services. Some only need access to legal information about their rights, like that available through the Court Self Help Centers. Some only need legal advice to get their questions answered. Others, like victims of domestic violence, need full representation in order to make it through the court system to obtain safety and untangle the relationship legally. Like victims of domestic violence, older adults with cognitive difficulties due to aging, those living with a mental illness, or those with limited education must have full representation in order to solve their legal problems. However, the system is so strained that there is little access to any level of legal assistance across the State. **Full representation by an attorney—both for brief and extended services—is the largest over-riding gap in services.**

Gaps and Barriers to Legal Assistance

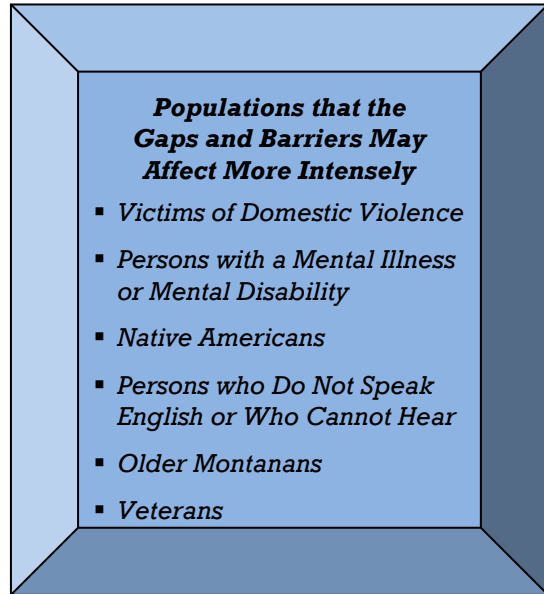
- *Cost of services*
- *Lack of free & reduced fee legal assistance*
- *Lack of full representation, advice, mediation and pro se assistance available*
- *Lack of help in a variety of areas of the law*
- *Shortage of in-person services, intensified by long distances*
- *Difficulty using phone and internet services*
- *Lack of access to information about services*
- *Personal ability or desire to access services*

The Justice Gap in Montana: As Vast as Big Sky Country

This Report looks at the gaps and barriers to direct legal assistance in Montana, although there are significant gaps in access to legal information as well. The Montana courts continue to work on making the use of the judicial system less challenging for those who can represent themselves. However, **the legal and judicial systems are still very complicated and many Montanans are simply unable to navigate them by themselves.** Some of these individuals may be able to do it if they have some advice, but Montana also has a huge gap in assistance to pro se litigants.

Reduced In-Person Services Aggravated by Long Distances. The free and reduced fee services that are available are often

too distant for those who live far from one of Montana's major cities. Because of the recent funding cuts, MLSA, which used to have attorneys in eight locations around the state, now has attorneys in only three offices—Billings, Helena and Missoula, and one satellite office on the Crow reservation. **MLSA attorneys travel as much as possible, but the long distances make it difficult and sometimes impossible to provide timely assistance.**

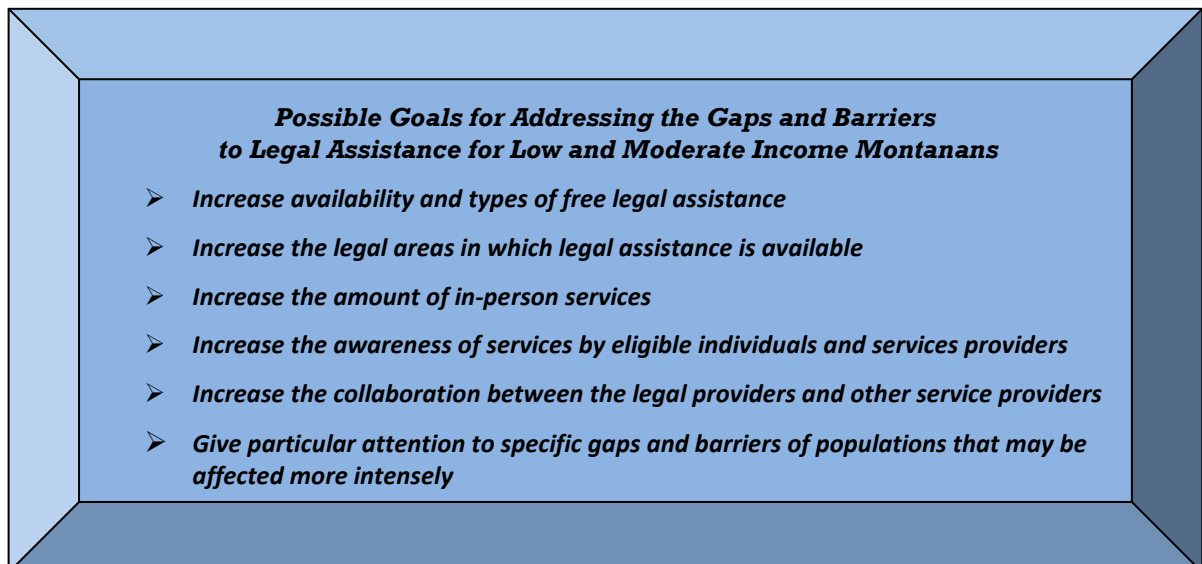


Challenges with Telephone and Web Services. Many of the legal providers provide legal assistance, when possible, by telephone. This is a useful service for many. However, the barriers to people using telephone services, especially for those who do not have them or cannot afford cell-phone minutes, create challenges for applicants and clients to access services and for attorneys to reach clients.

MLSA created and continually updates one of the best legal information websites in the country for low and moderate income individuals. The website, www.montanalawhelp.org, contains a wealth of information on a variety of civil legal topics, including access to interactive legal

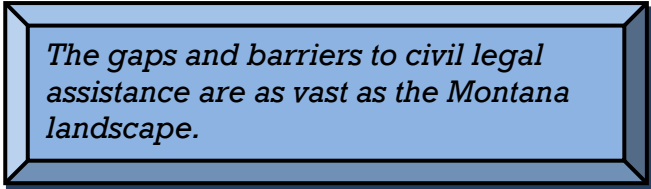
forms, and referrals to the legal providers. This website was accessed nearly 69,000 times in 2013. However, some Montanans have barriers to using the website, including that they do not have computers, do not know how to use a computer or the internet, and/or do not have internet access.

Possible Goals and Strategies to Address the Gaps and Barriers. Many states are narrowing the justice gap by employing a number of strategies, including increasing funding for civil legal aid. The six broad goals listed below could provide a roadmap to narrow Montana's justice gap. Nearly 50 strategies to meet these goals are listed in the report. Though some are low cost or no cost, **the fact is that most strategies will require additional funds** and additional staff because the legal providers are stretching their dollars and their staff as far as they can currently. **Additional staff and pro bono attorneys, staff and volunteer mediators, and other staff that can provide and coordinate legal assistance are essential to improve access to justice for low and moderate income Montanans.** Given the commitment of Montana's Access to Justice Commission and its partners, there is reason to believe that an investment in these strategies will go a long way toward closing the justice gap.



I. Introduction

The gaps and barriers to Montanans with low and moderate incomes obtaining civil legal assistance are as vast as the Montana landscape. This statement is not meant to discount the effort, quantity or the quality of the assistance currently being provided by Montana Legal Services Association, Court Help, and the other non-profit and pro bono providers of legal assistance. It is a conclusion, however, reached after talking with scores of low and moderate income Montanans and those who assist Montanans with meeting their basic needs of safety, health, shelter, food, education, and work.



The gaps and barriers to civil legal assistance are as vast as the Montana landscape.

A legal needs assessment conducted in Montana in 2010 found that in the prior year nearly half of low-income Montanans had at least one civil legal problem and almost one-third had two or more civil legal problems. However, more than three-fourths of them had not done anything in response to at least one of their civil legal problems.¹ Knowing that unaddressed legal problems can lead to even bigger problems, Montana's Access to Justice Commission wanted to find out why so many legal problems go unaddressed and identify strategies for overcoming the gaps in and barriers to civil legal assistance available to Montanans.

Gaps in Assistance. A study to gather information to answer that question and identify strategies is the basis of this Report. The study was designed to identify the free and reduced cost civil legal assistance available for low and moderate income Montanans and the “gaps” in this assistance for them. In other words, are there geographic areas, specific populations or types of legal need that do not have assistance available? A gap usually means a break or a crack in something—a mountain, a timeframe, a set of skills, etc. A gap is usually less than whatever has the gap. The study found that the gaps in free and reduced cost civil legal assistance in Montana are as large as or larger than the available assistance. They engulf every region and encompass every population studied in Montana.

Barriers to Accessing Assistance. The study was also designed to identify the “barriers” that impede low and moderate income Montanans access to legal services—if there is assistance available, what keeps individuals from accessing it? The barriers and the gaps are intertwined in such a way that it can be difficult to distinguish them. This Report will do so when it seems appropriate, but in many instances, they are described together because they often combine and result in someone not receiving the legal assistance they need to address the challenges that can only be solved through the legal system.

The study's methodology and implementation, including interviews, listening sessions, and research, is described in the Appendix.

¹ 2010 Montana Legal Needs Survey Final Report, The Bureau of Business and Economic Research, March 3, 2011.

II. Legal Assistance Available Currently

To determine and describe the gaps in assistance, the available assistance is first described. While this study did not attempt to evaluate the services provided, it is evident that the providers have developed the special expertise needed to effectively represent low and moderate income persons spread over wide geographical areas. Unfortunately, although the list of the organizations and programs described in this section may look lengthy, most are very small with few staff and provide services in limited areas of the law, in limited geographical areas, and/or to one population. The result is that despite vigorous effort by numerous organizations, in reality, Montana has a thin layer of free and reduced fee civil legal services for low and moderate income individuals.

Unless noted otherwise, the services described below are free. If no income eligibility restriction is noted, individuals of all incomes can access the service. In general, however, only individuals with lower and moderate incomes use these programs, and individuals with higher incomes hire private attorneys.

A. Statewide General Legal Provider

Montana Legal Services Association is the largest provider of civil legal aid in the state. MLSA has a national reputation for innovative approaches to serving clients across wide distances. Unfortunately, because of limited financial resources it has an extremely small number of attorneys—13—for an organization that is charged with providing legal assistance throughout a state as large as Montana. This equals approximately one attorney for every 14,800 Montanans who are generally eligible for MLSA's services.

MLSA has only 13 attorneys—one for every 14,800 eligible people in Montana.

MLSA's attorneys work out of offices in Helena, Billings, and Missoula. Two attorneys in the Billings office work exclusively on the Northern Cheyenne and Crow reservations. An attorney in Helena circuit rides to provide services to victims of domestic violence on the Rocky Boy's and Blackfeet Indian Reservations. The attorneys are assisted by one tribal advocate and seven non-attorney program staff.

With some exceptions, clients must have income below 125 percent of the poverty level to be eligible for MLSA's services.² More than 192,000 Montanans—almost one in five—are eligible.³

Clients access MLSA by calling the HelpLine, an 800 number where they are screened for eligibility. Clients can also access MLSA by using an on-line application, completing and faxing a written application, or walking into an MLSA office. If found eligible, they receive legal

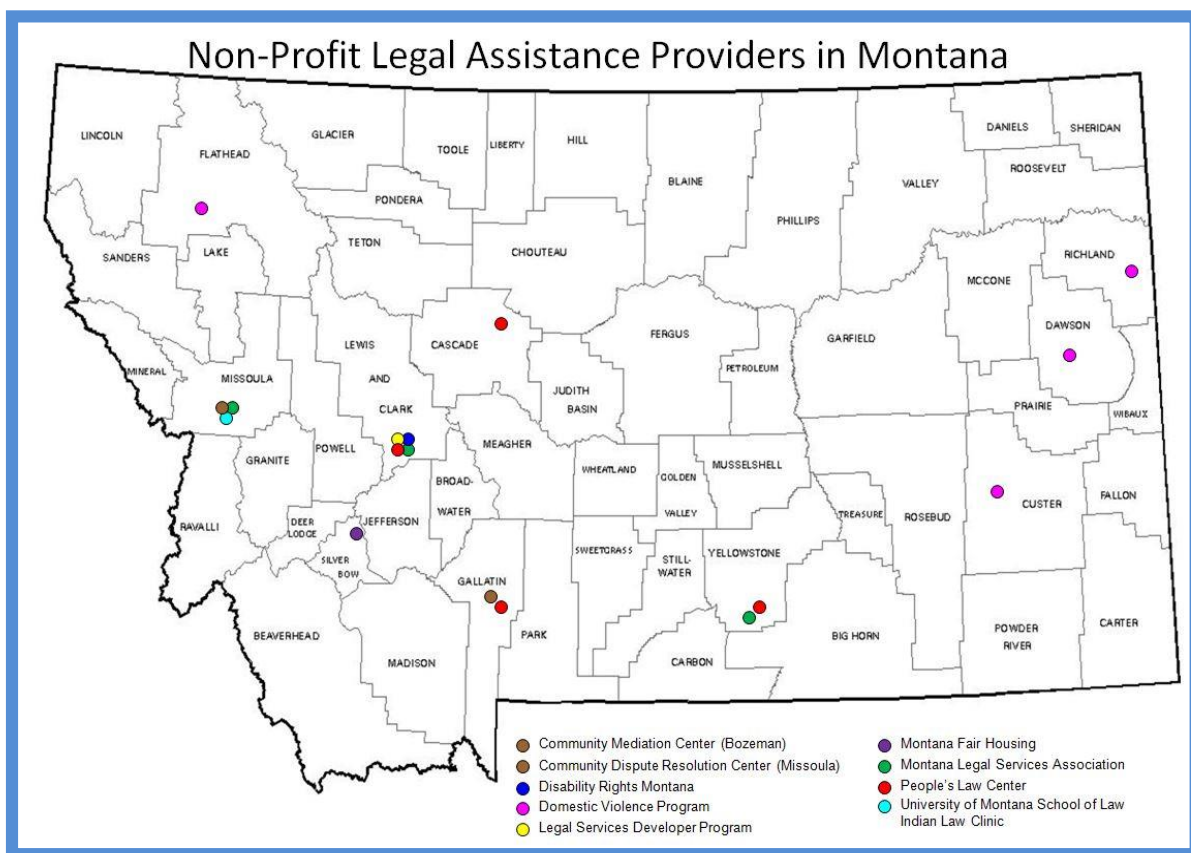
² In 2014, 125 of the poverty level for an individual is \$14,362 and for a family of four is \$29,437.
<http://aspe.hhs.gov/poverty/14poverty.cfm>

³ 2008-2012 American Community Survey 5-Year Estimates, U.S. Census Bureau.

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information and referral from the intake worker, are given legal advice and/or pro se assistance from an attorney, or receive more extensive representation from a staff or pro bono attorney. The type of assistance is determined by the priority of their case when compared to the cases of the thousands of others that apply and the limited number of staff available.

MLSA staff have the expertise to provide assistance in an array of legal areas, including consumer, education, employment, family, health, housing, individual rights, and public benefits. In 2013, MLSA handled more than 2,600 cases, with over 1,900 of them being opened in that year. In addition, as described more fully within, some of MLSA's other projects include referring screened applicants to most of the local pro bono programs and helping administer many of them; and maintaining and updating the website, www.montanalawhelp.org, which provides legal information on a wide-range of civil legal areas.



B. Providers for Specific Populations or in Specialized Legal Areas

Some organizations provide legal assistance to a specialized group of people or in a specialized area of the law.

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Disability Rights Montana is a statewide non-profit organization that assists Montanans who have legal problems related to a cognitive, mental, sensory or physical disability. Legal assistance is provided primarily in the areas of education, employment, health, and civil rights. The number one service request DRM receives is for assistance with the special education process. Even parents who may be able to pay a lawyer may not be able to find one that will help because only four private attorneys in Montana represent parents in special education matters. DRM has three attorneys and nine non-attorney program staff to serve the estimated 127,000+ Montanans with disabilities.⁴

The number one request Disability Rights Montana receives is for assistance with special education matters... Only four private attorneys take these cases.

The **Legal Services Developer Program**, a program of the Office on Aging in Montana's Department of Public Health and Human Services, provides legal assistance to individuals 60 years of age and older. One of the primary ways assistance is provided is through in-person and telephone legal clinics facilitated through a non-profit organization, **AAA Legal Services**, created by the Legal Services Developer Program. In 2012, 304 individuals attended one of eight clinics held in association with six Area Agencies on Aging. The clinics were held in Conrad, Glasgow, Glendive, Great Falls, Helena, Miles City, Missoula and Plains. Simple wills, durable powers of attorney, living wills, beneficiary deeds, and declaration of homestead were completed with assistance from 41 pro bono attorneys and 19 paralegals.

The Legal Services Developer Program also has two attorneys and a paralegal that provide advice over the telephone on a variety of topics, but not in the legal areas of family, Medicare, Medicaid, Worker's Compensation, and medical malpractice. In 2012, approximately 500 Montanans over the age of 60 received legal advice.

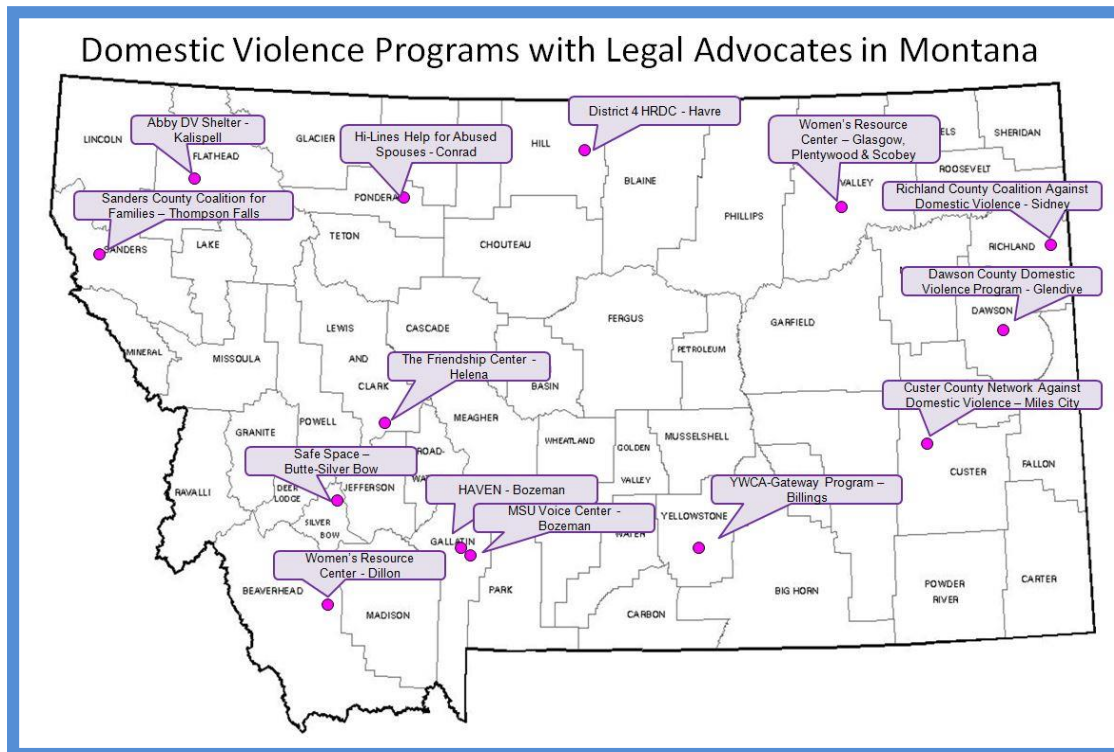
The **People's Law Center**, a statewide non-profit organization, represents individuals who are attempting to obtain or keep Social Security Disability benefits. The vast majority of their clients have incomes below 250 percent of the poverty level. The Center takes initial disability cases on a contingency fee basis with a maximum fee of \$6,000 per case, with the majority of clients paying far less than that. All other Social Security cases, including overpayments and cessations, are handled on a pro bono basis, as are counsel and advice cases in the legal areas of bankruptcy, consumer, family and landlord/tenant. The legal staff includes four attorneys and two paralegals in offices in Billings, Bozeman, Great Falls and Helena. In 2012, the Center opened 545 cases—which take about two to five years—and provided assistance to nearly 340 self-represented litigants.

Most of the **Domestic Violence Programs** in Montana have advocates who provide legal information to victims of domestic violence and assist them with obtaining orders of protection, including accompanying them to court. The advocates identified during the study are at **Abby DV Shelter** in Kalispell, **District 4 HRDC** in Havre, **HAVEN** in Bozeman, **Hi-Lines Help for Abused**

⁴ 2008-2012 American Community Survey 5-Year Estimates, U.S. Census Bureau.

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Spouses in Conrad, the **MSU Voice Center** in Bozeman, **Safe Space** in Butte-Silver Bow; **Sanders County Coalition for Families** in Thompson Falls; **The Friendship Center** in Helena; the **Women's Resource Center** in Glasgow, Plentywood and Scobey; **Women's Resource Center/Community Support Center** in Dillon; and the **YWCA-Gateway Program** in Billings. Advocates in **Victim Witness Assistance Programs** administered by a court, prosecutor's office and/or local law enforcement also assist victims with obtaining orders of protection and victim compensation, and accompany them to court. They may also provide information about filing for parenting plans and for dissolution.



In addition to lay advocacy services, legal representation is provided by some domestic violence programs. **Dawson County Domestic Violence Program**, in collaboration with **Custer Network against Domestic Violence** and **Richland County Coalition Against Domestic Violence**, have 1.5 attorneys who represent victims in the eastern counties of Custer, Dawson, Garfield, McCone, Powder River, Prairie, Richland, Rosebud, Treasure and Wibaux. They represent clients in court

There are only 6.5 staff attorneys to represent all the low and moderate income victims of domestic violence in Montana.

and provide assistance to self-represented litigants. **Safe Harbor**, which serves Lake and Flathead Counties, has a contract attorney that provides representation to victims of domestic violence for orders of protection, parenting plans and other civil cases.

Montana Fair Housing, a statewide non-profit organization, addresses discriminatory housing practices. In addition to testing for discrimination done by the two program staff, MHF works regularly with three private attorneys who file administrative complaints and federal lawsuits.

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In early 2014, MFH had ten active administrative complaints and two federal court cases. Most cases concern discrimination against families with children or individuals with a disability.

The [University of Montana School of Law Indian Law Clinic](#) has a supervising attorney and three to ten students per semester. The bulk of the student's work is representation of CSKT members in criminal cases. Approximately ten cases during the 13-14 school year involved civil cases in the area of custody, Indian Child Welfare Act, probate and a land dispute.

C. Mediation Services

The [Community Mediation Center](#) in Bozeman provides mediation services for dissolutions and parenting plans for individuals with incomes below 200 percent of poverty in Gallatin and Park Counties and a few from the surrounding counties of Sweet Grass, Madison, Yellowstone, and Golden Valley. Participants must get a mediation order from the court. They are assisted with this process by the Court Help program in the Law and Justice Center. The Center's services are coordinated by an Executive Director. The mediators volunteer their services. In 2013, the Center served 120 families and 15 family mediators co-facilitated mediations for 91 families. Participants pay a fee based on income. Most fees are in the range of \$55 - \$70.

The [Community Dispute Resolution Center](#) coordinates volunteer mediators for civil matters in the Missoula County Justice Center and for parenting plan mediations as ordered by the Fourth Judicial District Court. It also coordinates the Fourth Judicial District's monthly Parenting Plan Orientation. About 40 to 45 mediators volunteer their services. In 2013, the CDRC's volunteers mediated 121 cases—109 in Justice Court and 12 parenting plans. Participants pay a fee based on a sliding scale (\$10 per \$10,000 of annual income) for each two-hour parenting plan session; all Justice Court mediations are free of charge. The University of Montana School of Law's Mediation Clinic provides volunteer mediators as well. The Clinic and the CDRC will enter into a formal partnership in the Fall 2014 semester.

Other mediation services: A large Montana law firm provides free mediation for some low-income individuals in family law cases. There may be other instances where mediators provide free or reduced services to low and moderate income Montanans.

D. Pro Bono Programs

In late November 2013, Montana had approximately 3,100 attorneys on "active" status with the State Bar of Montana.⁵ At about the same time, 1,873 Montana attorneys (of all practice statuses) reported to the Montana Supreme Court that they provided pro bono services *without expectation of a fee* to individuals/families of limited means or organizations designed to assist people of limited means in the last year. The largest legal area of assistance was in family law—nearly half of these attorneys reported providing assistance in family law. Some of these attorneys and other reporting attorneys (a total of 672) reported they provided legal

⁵ *Membership Information Report*, State Bar of Montana, November 27, 2013.

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services at *a substantially reduced* fee for individuals of limited means or organizations designed to assist people of limited means.⁶

The attorneys who did cases for individuals/families and organizations without the expectation of a fee reported they received their cases from a variety of sources, including organized pro bono programs—local or state bar pro bono programs for 310 attorneys, MLSA for 250 attorneys, and court-based pro bono programs for 173 attorneys. (Responses were not mutually exclusive.)⁷

Most of Montana’s organized pro bono programs were started by district courts and/or local bar associations. Montana’s Supreme Court has a statewide pro bono coordinator who helps local pro bono programs get started and expand, and helps build capacity for pro bono legal assistance.

Montana Legal Services Association is a central element of many of these local programs. It recently consolidated its pro bono administration in one full-time pro bono coordinator. MLSA refers screened applicants to most of the local pro bono programs and helps administer many of them. Most pro bono referrals are family law cases—sometimes that is the policy of the local program and sometimes that is the only type of case a court refers. The pro bono coordinator also tries to place cases in the areas of the state that do not have an organized pro bono program. In 2013 the pro bono programs that MLSA helps administer worked with 226 attorneys who handled 661 cases.

Most pro bono referrals are family law cases—sometimes because of policy and sometimes because it’s the only type of case a court refers.

Unless otherwise stated, each local pro bono program described below uses MLSA’s income eligibility limit of 125 percent of poverty and services are free of charge. MLSA provides malpractice insurance for the volunteer attorneys who volunteer through a local bar or judicial pro bono program or directly with MLSA.

Local Pro Bono Programs

The **1st Judicial District Bar Association Pro Bono Program** (Broadwater and Lewis and Clark counties), administered by MLSA, had 47 attorneys and five mediators provide assistance through its pro bono program in 2012. They provided assistance in the legal areas of consumer, employment, family, and housing.

The **Butte-Silver Bow Pro Bono Program** works closely with MLSA, which refers screened applicants to the program, but it also has a Pro Bono and Pro Se Coordinator employed by the

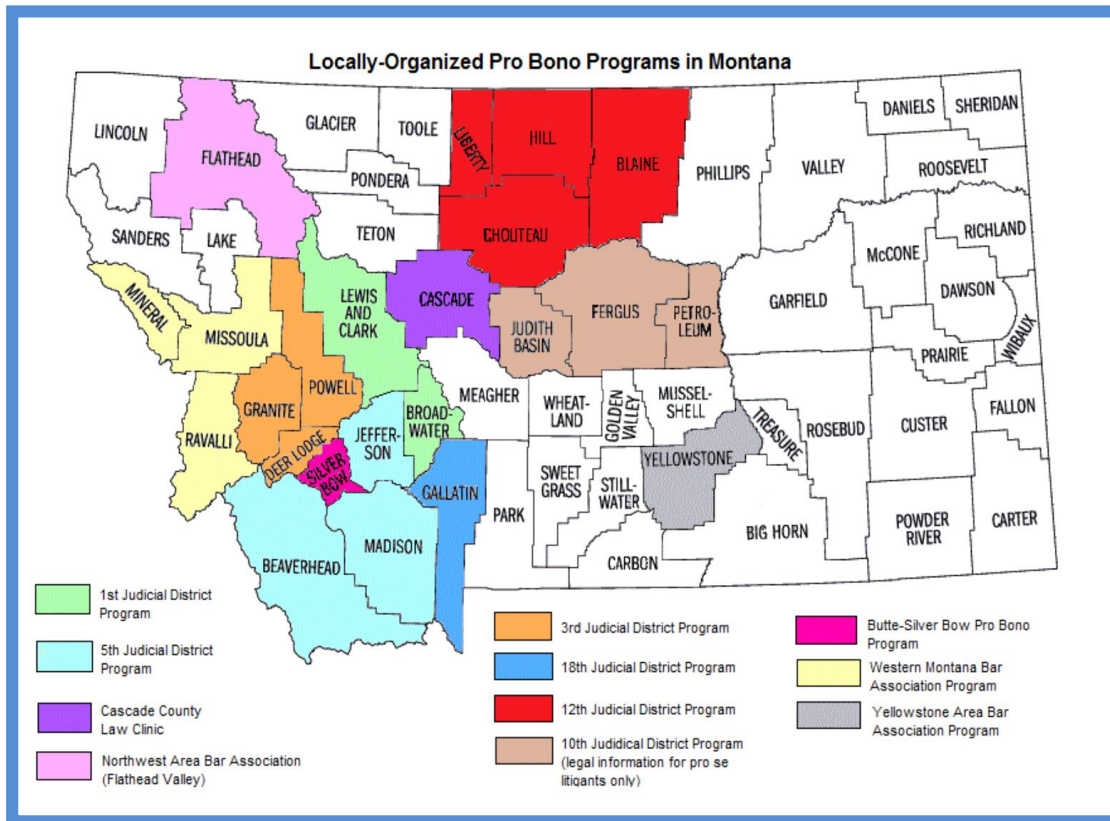
⁶This is self-reported survey information that is not independently verified. *2013 Pro Bono Final Report*, Supreme Court of Montana, January 2014, http://courts.mt.gov/content/cao/ct_services/probono/docs/2013probono.pdf

⁷Id.

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Second Judicial District Court. At least one pro bono case per year is mandatorily assigned to attorneys who practice in Butte-Silver Bow. Only dissolution of marriage and parenting plan (no modifications) cases are assigned. Most clients have to be victims of domestic violence and both parties and the children must live in the county. In 2012, 18 attorneys took a new case while others continued providing assistance in a case taken before 2012.

The **Pro Bono Program of the 3rd Judicial District** provides services in Deer Lodge, Granite and Powell Counties. It is administered by the district court's administrator and MLSA. Although the program is not limited to family law, most of the referred cases are in the area of family law. Eleven attorneys provided assistance during 2012.



The **Pro Bono Program of the Western Montana Bar**, supported and managed by the WMBA Pro Bono Committee and administered by MLSA, provides assistance in the **4th and 21st Judicial Districts** (Mineral, Missoula and Ravalli Counties). It is an “opt-out” program for attorneys, which uses a rotating referral system. Services include legal advice (including a family law advice clinic), extended representation, and mediation in a wide variety of areas of the law. In 2012, more than 180 attorneys provided assistance. Volunteer attorneys also provide advice to self-represented litigants at the **Missoula Self Help Law Center**. Volunteer attorneys regularly take half-day shifts and are available most of the hours that the Center is open.

The **Pro Bono Program of the 5th Judicial District** provides services in Beaverhead, Jefferson and Madison Counties. It is administered by the district court's administrator and MLSA.

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Although the program is not limited to family law, most of the referred cases are in the area of family law. Six attorneys provided assistance during 2012.

The [Cascade County Law Clinic](#) is a local organization that places family law cases and some housing cases with pro bono attorneys in Great Falls, which is in the **8th Judicial District**. In 2012, 144 cases were placed with pro bono attorneys. The CCLC charges applicants a \$25 processing fee, and an additional \$25 if an attorney accepts the case. The fees are waived for domestic violence and emergency cases.

The [Pro Bono Program of the 10th Judicial District](#) facilitates a pro bono attorney meeting individually with self-represented litigants on Wednesday morning in the Fergus County courthouse to answer questions about legal procedure, point people in the right direction for their legal programs, and review forms for completeness. All Lewistown attorneys (about a dozen) take turns providing this service.

The [Pro Bono Program of the Northwest Area Bar Association](#), administered by MLSA, provides assistance to clients in the **11th Judicial District** (Flathead County). Cases may be taken in a variety of legal areas. In 2012, 27 lawyers provided pro bono services through the program.

The [Pro Bono Program of the 12th Judicial District](#) is coordinated by MLSA and a local volunteer attorney. The program is not limited to particular legal areas, but most cases are family or housing law. Clients in Hill, Chouteau, Liberty and Blaine counties are eligible for the program. Three attorneys provided assistance through the program in 2012.

The [Pro Bono Program of the Eighteenth Judicial District](#), which covers Gallatin County, is coordinated by the district court's administrator and MLSA. Family law cases that are in contest before the court are placed with volunteer attorneys. In 2012, seventeen attorneys provided pro bono services through the program. The Gallatin County Pro Bono Working Group recently began the [Gallatin Legal Assistance Clinic](#). Self-represented litigants with family law cases are provided attorney advice and assistance with court documents and court procedures. During the five monthly clinics held so far, 46 individuals have received assistance from 12 attorneys.

The [Family Law Project of the Yellowstone Area Bar Association](#) is coordinated by the Bar's Pro Bono Committee, MLSA, and the **13th Judicial District Court**, which covers Yellowstone County. Family law advice clinics are held for a half-day every other week. Two attorneys at each clinic provide individual advice and determine if the individual needs extended representation. In 2012, approximately six attorneys provided assistance at the clinics. The program also places cases for extended representation with pro bono attorneys.

[Specialized Pro Bono Programs](#)

Pro bono assistance is coordinated for veterans who attend a [Veterans Stand Down](#). Some Stand Downs include the services of the Court Help Program, more fully described in the Legal Information section.

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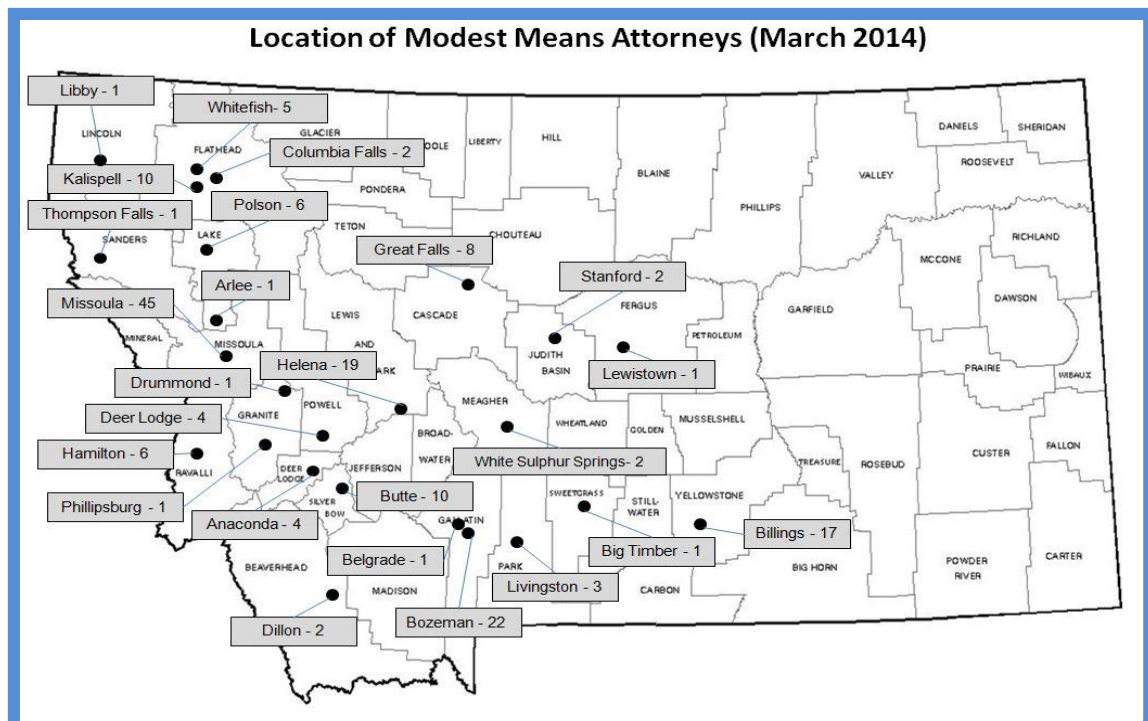
Some **Domestic Violence Programs** recruit and have direct connections with pro bono attorneys who represent victims of domestic violence.

Montana Attorneys for Montana Veterans is a pro bono program coordinated by the Montana Supreme Court and the University of Montana School of Law. Pro bono attorneys receive the required training to become accredited to represent veterans with VA disability benefits claims before the Board of Veterans Affairs. MAMV's training has increased the number of accredited attorneys from two to 50.

The recently created **Montana Appellate Pro Bono Program** provides the assistance of appellate counsel to self-represented litigants who meet MLSA's financial eligibility and have a case under review by the Supreme Court that the Court determines requires supplemental briefing or oral argument. Twenty attorneys have volunteered for the program, and two cases have been placed. The program may be expanded to more fully utilize the volunteer attorneys.

E. Reduced Fee Programs

The **Modest Means Program**, administered by the State Bar of Montana, is a lawyer referral program that coordinates attorneys who offer reduced fee representation in civil cases. MLSA refers applicants that it is unable to serve due to a conflict of interest, lack of resources, or being over MLSA's income guidelines. Anyone can also apply directly for the program. The income eligibility limit is 200 percent of the federal poverty guidelines. Eligible applicants are referred to private attorneys who agree to charge a reduced fee, if they take an applicant's case.



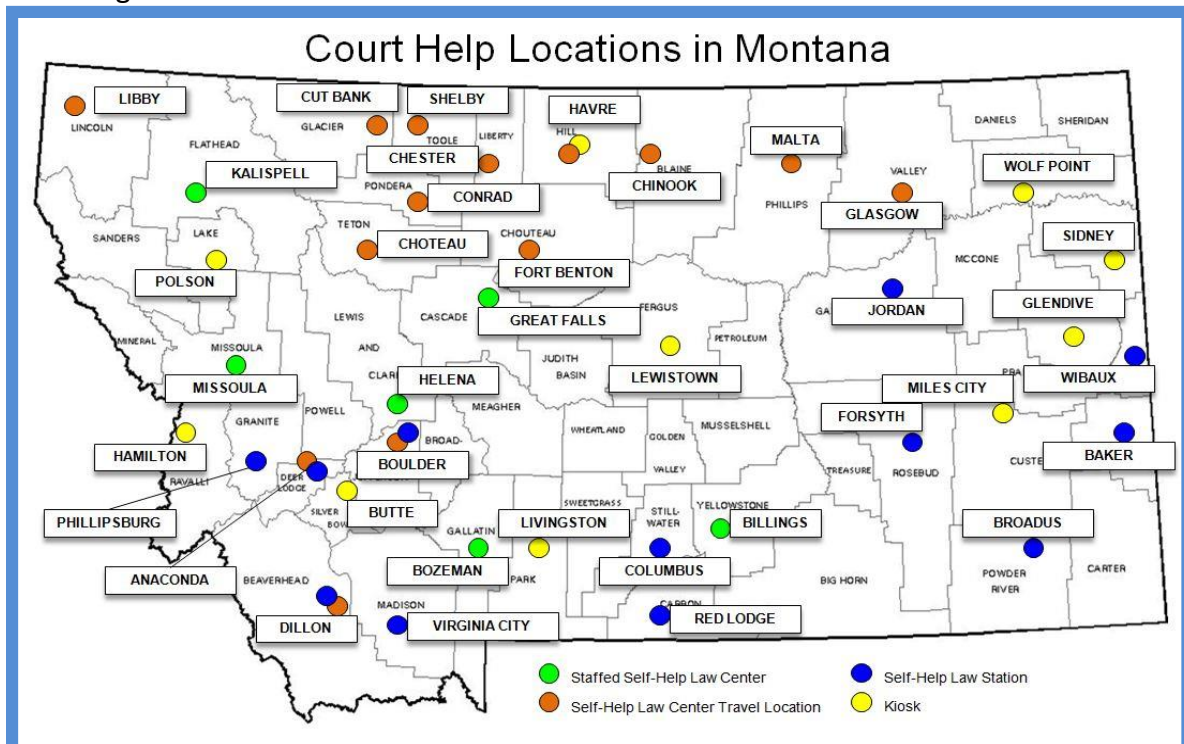
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Currently, 143 attorneys are in the Modest Means Program. In Bar Year 13-14, referrals were made to attorneys for 651 applicants. The largest number of cases (almost 300) involved parenting plans, and the second largest number of cases (nearly 200) involved bankruptcy/debtor relief. Forty applicants were not given a referral due to a lack of attorneys near where they lived.

Lawyers for Active Military Personnel (LAMP) and the **Military Pro Bono Project** are reduced fee programs for military members and their families. Attorneys must charge at least ten percent less than their regular fee. These American Bar Association initiatives are advertised by the State Bar of Montana. Information is unavailable regarding whether attorneys in Montana participate or how many Montanans receive this service.

F. Legal Information and Assisted Pro Se

Court Help Program, an initiative of the Montana Supreme Court, has staff or Americorps members in six **Self Help Law Centers** that (1) provide legal information about family law, consumer credit, landlord/tenant and other civil issues; (2) answer general questions about the legal process; and (3) review legal forms filled out by litigants for completeness. The centers are located in courthouses in Bozeman, Kalispell and Missoula, a law office in Great Falls, a social services office in Billings, and the state law library in Helena. In the Kalispell Center, a pro bono attorney volunteers once a week to help self-represented litigants complete child support calculations. Some of the Centers' staff also travel to fourteen courthouses in surrounding counties to provide services by appointment. The **State Law Library** provides legal information and forms through its website and a reference librarian, and has been instrumental in outreach and training for local libraries.



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The Self Help Law Centers served Montanans on more than 10,000 occasions in 2013. At least 45 percent of these customers were at a Self Help Law Center more than once in 2013. Although income data is not collected, a significant percentage reported on their intake survey that they receive SNAP food benefits, indicating they are low-income. The vast majority of

The Self Help Law Centers served Montanans on more than 10,000 occasions in 2013.

customers were looking for information about family law. On more than 900 occasions, a customer reported they did not feel safe in their relationship(s), a possible indication of domestic violence.

The Court Help Program also operates **Self Help Stations** in the courthouses in Beaverhead, Carbon, Deer Lodge, Fallon, Garfield, Granite, Jefferson, Madison, Powder River, Stillwater, Rosebud and Wibaux Counties. The self help stations contain legal forms and materials that assist individuals in representing themselves.

Self Help Kiosks, administered by the Court Help Program and maintained by Montana Legal Services Association, have a computer set up for access to free online legal forms and help, including a link to a “live chat” with a navigator that can help them find information they need. The navigators are MLSA staff persons, Americorps members and other volunteers. Kiosks are located in courthouses in Custer, Fergus, Park Counties and public libraries in Bitterroot, Butte, Glendive, Havre, Polson, Sidney, and Wolf Point.

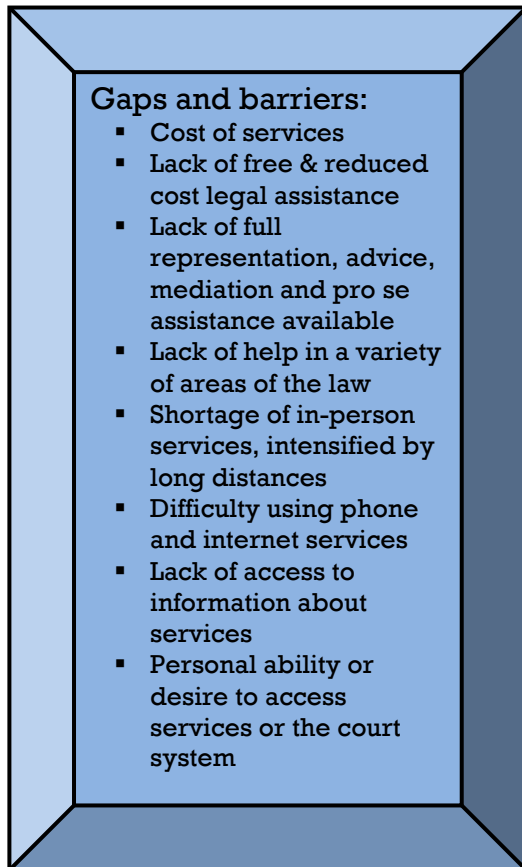
The **Second Judicial District Court’s Pro bono and Pro Se Coordinator** provides pro se litigants with the correct forms to file, uses an automated document computer program provided by MLSA to complete the forms with the litigants, helps them understand general court procedure and decorum, helps them prepare their testimony, and escorts them to court where she explains the process before and during a hearing, and provides moral support. She meets with an average pro se litigant four to five times before the case is resolved.

The website, www.montanalawhelp.org, maintained by Montana Legal Services Association, provides legal information on a wide-range of civil legal areas, access to interactive legal forms that the user can complete, and “live chat” help. In 2013, the website was visited nearly 69,000 times and pages were viewed almost 300,000 times, including on a mobile device.

The website www.montanalawhelp.org was visited nearly 69,000 times in 2013.

III. Gaps in Assistance and Barriers to Obtaining Assistance

A wide variety of barriers to finding free and reduced-fee legal assistance were described by the individuals with incomes below 200 percent of poverty who were interviewed. The representatives of the organizations that provide legal and other services explained how these barriers and others affect many of the individuals they work with and the huge gaps between what legal assistance is needed and what is available.



As will be seen, the high cost of legal help compounded by the extremely limited supply of free help for low and moderate income families is the major problem, but not the only one. Gaps and barriers exist in the types of help available, the substantive legal areas in which help is available, the paucity of in-person services—intensified by long distances, the challenges associated with delivering services by phone or internet, and the lack of information people have about how to access the services that do exist. Finally, there are many folks who need a lawyer but because of bad experiences, misperceptions about lawyers in general, or other personal reasons, are reluctant to seek help.

A. Barrier of High Cost of Legal Help Exacerbated by Gap in Amount of Free Legal Help

BARRIER: Cannot afford to pay for legal assistance. The number one barrier identified by individuals with low and moderate income and the staff of the organizations that provide services to them is the individuals' lack of money to pay for legal assistance. About four out of ten of the individuals interviewed had had a problem where a lawyer may have been helpful, but they did not seek legal help.⁸ The primary reason given for not seeking legal help was money—this was expressed both in terms of the high cost of lawyers' services and the lack of money to pay for those services.

Money is the number one barrier to getting legal help. The cost of a family law case—the most common legal need—is \$4,000 - \$20,000.

⁸ Montana's 2010 Legal Needs Survey, which used a scientific sampling for interviews, found more than seven in ten had had a legal problem for which they had not sought legal help.

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The cost of a family law case—the most common legal need—is \$4,000 - \$20,000. Just one motion for temporary orders can be more than \$1,000.⁹ Even a will—generally a less costly legal need—is out of reach for many. A 78 year old woman in Deer Lodge County, when asked why she had not sought legal help, put it this way, “I didn’t want to pay an attorney to look at my will since I can’t afford one (an attorney). I figured I could probably draft one by myself.” A 73 year old veteran summed it up this way, “Lawyers cost money. This is something I do not have.”

GAP: Not enough free legal assistance. This financial barrier is compounded by the lack of free legal assistance. As noted earlier, MLSA has 13 attorneys that provide legal assistance. The non-profit legal providers, combined, have 20 - 25 attorneys.

Pro bono and reduced fee assistance fills in some of the gap, but this assistance is scarce in much of Montana because attorneys are scarce in much of Montana. Sixty percent of Montana’s judicial districts—13 of 22—have less than 50 attorneys on active status. Eight of the 22 districts (all in the districts with few attorneys) have no locally-organized pro bono program.

A large unmet need. Montana has approximately 335,000 people that have incomes below 200 percent of poverty—incomes that preclude many of them from paying for legal assistance. If half of them had a legal problem in the last year—as Montana’s legal needs assessment and other states’ legal needs assessments have found—more than 167,000 Montanans may have needed free legal assistance. However, far fewer than that received free legal assistance.

In 2013, MLSA received nearly 11,000 requests for service. Almost 4,300 of the applicants were found eligible, but because of a lack of staff and pro bono resources, less than 45 percent of these individuals received services. Combined, the case reports from the providers of free and reduced fee legal assistance and other data provides a rough estimate that 9,100 Montanans received free or reduced fee legal advice and other representation in 2013. Court Help also assisted an estimated 5,700 with legal and court information. These numbers combined—14,800—are less than nine percent of the 167,000 individuals that may have needed free legal assistance or information.

*Montana’s largest legal aid provider, MLSA, had to turn away more than half of the eligible persons who **asked** for help.*

Put another way, less than one in ten Montanans with low or moderate income who likely need legal help receive it. Some comments made by the staff of a few of the organizations who work with low and moderate income Montanans further express the need for free legal assistance:

- **95 percent of our clients need free legal help. It’s an overwhelming problem.** (Domestic violence program in Sanders County)

⁹ Estimates provided by a Montana attorney who does family law cases for a fee and pro bono.

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- *The people we see have already hit a wall...they feel overwhelmed before they even get to us. They are at a critical need by the time we see them...There is a huge need for legal services. We send them to MLSA.* (Job Service in Butte-Silver Bow)
- *I have people ask about legal problems all the time. We refer to MLSA and other places.* (Employment training organization in Butte-Silver Bow)

B. Major Gaps in Types of Legal Help

The thinness of the layer of free and reduced-fee services currently available cannot be over-emphasized. Combined, the non-profit providers are able to employ 20 to 25 attorneys to provide legal assistance for all of the estimated 167,000 Montanans that may need it. Pro bono and reduced-fee attorneys thicken the layer of services slightly, but nowhere to the level needed. In addition to the resulting gaps in the overall availability of assistance, there are gaps in the types of legal help available.

GAP: Availability of brief and extended representation. Comparisons are difficult, but it is almost certainly accurate to say that the lack of free brief and extended representation is the largest, over-riding gap in services and thus the largest barrier to access to justice for Montana's individuals who cannot afford to pay an attorney. Due to reductions in grant funding

The lack of free brief and extended representation is the largest over-riding gap in services.

in recent years, MLSA has had to reduce staff and cut back the amount of representation it provides in every area of the law. With the exception of representation of individual victims of domestic violence—and it cannot represent all of them with the resources it

has—MLSA can take very few cases that affect only one individual or one family because of the small number of attorneys it has—13. MLSA attempts to take cases that may have a larger systemic impact so the organization can try to achieve a positive outcome for a larger number of people, but because of specialized funding of many of its attorneys and the large need it is attempting to meet, it is unable to take very many of these cases either.

All legal and other service providers described the great need for more extensive representation in cases. Sometimes only brief services, like writing a letter, are needed. In other cases—like most family law cases—going to court is the only alternative. Providing pro se assistance or even giving legal advice that technically is representation, may not help those that need to take further steps to address their legal problem.

Most cases require the expertise of an attorney—the professional who knows what facts are important, how to analyze the law, how to apply the law to the facts, how to write and file the proper pleadings, and how to proceed in court, if needed. Currently, there are not enough attorneys—staff and pro bono—providing this access to the law and the courts.

GAP: Availability of legal advice. Many individuals just need legal advice, especially about whether they have a problem that has a legal solution. Many only want to know what their

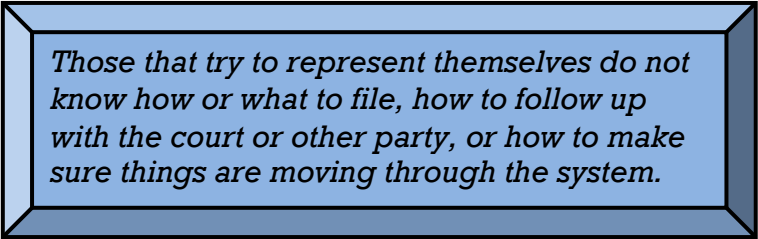
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rights are. If they have a case, they may decide not to pursue it for a variety of reasons, but knowing the answers to their questions can often help them go on with their lives.

Most individuals that need legal advice, however, are not receiving it due to one or more of the barriers identified in this Report, and due to the legal providers not having enough attorneys to give legal advice to all who need it.

BARRIER: Complicated to represent yourself. Educated individuals who are not in crisis find the process of representing themselves in court intimidating and challenging. Change the individuals to those who are less educated, have a mental disorder and/or are in crisis—multiple crises in many cases—and the situation of representing yourself can be an obstacle that is difficult, if not impossible, to overcome.

A recurring theme of the legal and service providers was that individuals who cannot afford an attorney need help facilitating the legal process because they are unable to self-navigate. The process is not clear from the statutes, which are one of the main resources the Self Help Law Center staff give to customers. Those that try to represent themselves do not know how or what to file, how to follow up with the court or other party, or how to make sure things are moving through the system. Victims of domestic violence and individuals with mental health issues have specific challenges representing themselves that are described in Section IV.



Those that try to represent themselves do not know how or what to file, how to follow up with the court or other party, or how to make sure things are moving through the system.

Part of the challenge is the forms that need to be filed with a court. Many of them are difficult to understand, and self-represented litigants find them challenging to complete without assistance. A subcommittee of the Standing Committee on Self-Represented Litigants of the Montana Access to Justice Commission is revising the family law forms to make them less complex. One committee member expressed how even using the words *pro se* for the process and forms add intimidation at a time that self-represented litigants are already intimidated by the court and the law. Having easier-to-complete forms would also reduce the time attorneys need to fill them out when representing someone *pro bono* or for a reduced fee.

A Montana district judge described filing for and completing federal bankruptcy proceedings *pro se* as “almost impossible.” When MLSA conducted clinics for *pro se* bankruptcy litigants, participants left more educated about filing for bankruptcy, and many came back to a future clinic with specialized questions. However, only about one-third actually filed for bankruptcy. The exact reasons for the low filing rate are unknown, but likely include the high complexity of filing.

GAP: Availability of Assisted Pro Se. Providing assistance to litigants as they proceed *pro se* is a growing service in the legal system in the United States, but Montana, similar to other states,

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has a huge gap in the availability of this assistance. The Court Help program assists self-represented litigants with their general questions, provides copies of statutes, and reviews forms for completeness, but does not give legal advice or help with completing the forms.

One component of assisting pro se litigants mentioned often as a gap is step-by-step information about the actions they should take. Giving this type of information can be difficult if it is done without providing individual advice that applies the steps to a litigant's situation. The same is true of an individual's rights. It is difficult to cover every situation that may come up, so the written or video legal information that is available is necessarily general. MLSA and a few of the other legal providers give legal advice to some self-represented litigants, but are unable to provide advice to all who need it nor help with completion of court forms for any individuals, except for a small few. Few clinics—in-person or by telephone—are held that provide a place or time for self-represented litigants to ask questions and receive advice and assistance with next steps at the beginning of their case and as it proceeds.

One of the domestic violence programs said what a great job they think MLSA does with the information and on-line forms it provides on www.montanalawhelp.org, adding, *"We love the interactive OP form."* They also think the Self Help kiosk is helpful, but went on to say that *"the biggest barrier is that the justice system is complex, even if you have the right forms. There's no substitute for a warm body to assist folks."* Advocates in domestic violence programs provide legal information and court accompaniment, but are prohibited from providing legal advice as a victim navigates the legal system pro se.

"...the justice system is complex, even if you have the right forms."

GAP: Availability of mediation. Mediation can be a way to lower the cost, time and amount of conflict for litigants. Free or low-cost mediation services are rare outside of the Billings, Bozeman, Helena and Missoula areas. There appear to be no trained mediators in Eastern Montana. One of the mediation providers wrote, *"The need for mediators to conduct (devise) parenting plans at very low rates cannot be overstated."*

C. Service Gaps in All Legal Areas, Not Just Family Law

The legal problems with which low and moderate income Montanans need help are diverse. Family law issues were mentioned the most by the service providers and legal providers, particularly orders of protection for victims of domestic violence, parenting plans, dissolutions of marriage, child support, and issues around grandparents taking care of grandchildren. However, other legal problems were described frequently, including consumer/financial issues, such as collections for medical debt and bankruptcy; housing problems, such as "handshake type agreements" with private landlords and deplorable conditions; employment issues, such as wrongful discharge; public benefits issues, such as applying for Social Security disability benefits; and end of life issues, such as wills and living wills.

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Current services. Part of the thinness of the current services provided is a result of the narrowing of eligibility in each of the legal areas in which the civil legal aid organizations provide services in order to have their limited staff help those in the most dire circumstances. For example, MLSA staff provides advice and other representation only in family law cases where domestic violence is involved. Others who need family law assistance are referred to the Self Help Law Centers, the kiosks and possibly to a pro bono attorney if there is an organized pro bono program near them that handles their type of case. Part of the thinness of the services is due also to the types of cases pro bono attorneys will accept.

The area of employment law has significant gaps—MLSA currently can take almost no cases because of a lack of staff. In some legal areas, such as education, MLSA is unable to provide any services. The only services available from a civil legal aid organization are those provided by Disability Rights Montana for children who have disabilities.

GAP: All legal areas. The gap in assistance for Montanans in family law cases, even those who are victims of domestic violence, is very large. Advice and extended representation in cases about parenting plans was a gap in the family law area mentioned repeatedly. However, all types of legal problems that affect individuals' safety, shelter, finances and health are in need

All types of legal problems that affect individuals' safety, shelter, finances and health are in need of additional free legal assistance.

of additional free legal assistance. The current staff and pro bono attorneys represent a small number of the individuals who need legal help.

D. Reduced In-Person Services Intensified by Long Distances

BARRIER: Great distances to services. In addition to being a very large state geographically—the fourth biggest in the nation—Montana's distances between cities and often, even smaller towns, are also large. Compounding the distance barrier is the limited number of roads, particularly four-lane roads, and the resulting travel times required to drive the long distances. Driving from Glasgow, which is not even the most northeastern corner of the state, to Billings where the nearest MLSA office is located, takes almost five hours. One of the service providers in this region of the state described how the long travel time can result in parents needing to pay for additional child care or even motels, depending on the time of appointments in Billings.

The remoteness of so many areas of the state is remarkable—the 17 counties in Eastern Montana have an average of 1.7 people per square mile. However, the time required to travel to any larger town or city is great for most residents of Montana, not just those in the remote areas.

BARRIER: Huge transportation challenges. The transportation barriers—short or long distances—are intensified for low and moderate income Montanans. More than half of the individuals interviewed answered “yes” when asked, “Do you ever *not* have enough money for gas or other transportation when you need to go somewhere?” The service providers

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repeatedly said that transportation challenges were a primary barrier for the people they work with. They described individuals not having a car that runs, not being able to afford car insurance, and always the challenge of not being able to buy the gas to go somewhere to get services even if they have a car. Some of these individuals have neighbors or family members that give them rides when needed.

Public transportation is very limited in Montana, even in the cities. There are some vans for older people and people with disabilities throughout Montana. In some areas, there are limited shuttles for the public. The frequency and routes of these public transportation options often require all-day excursions even to towns and cities that are not far away from where someone lives.

GAP: Few local in-person services. These transportation challenges are even more of an obstacle in recent years for individuals who need free legal assistance. Due to reductions in funding, MLSA has had to close offices or move staff from offices in Butte, Havre, Great Falls, Kalispell, and Wolf Point. MLSA currently has offices in Billings, Helena, Missoula and on the Crow reservation. The other providers have staff or offices in some of these cities and in Butte (Montana Fair Housing), Great Falls (People’s Law Center and Court Help) and Kalispell (Court Help). Advocates and attorneys in the domestic violence programs noted in Section II, pro bono attorneys, Modest Means attorneys, and legal clinics sponsored by AAA Legal Services spread the geographic coverage of some specialized services a little further, but large gaps are still widespread, with the rural and frontier areas of Montana having the greatest gaps.

A recurring theme of other service providers was the need for services to be delivered locally. This is needed not just to address transportation and other logistical barriers, but because many

A recurring theme was the need for services to be delivered locally.

Montanans in smaller communities and on reservations need to have a level of trust with an individual or organization before they will ask for assistance. The example was given of MLSA having an attorney on the Crow reservation for many years, and how he is now a trusted source of legal assistance there. The staff of the organizations in the communities where MLSA used to have staff or offices were particularly expressive of the need for in-person services. They are well aware of the gap that was created now that MLSA staff are no longer in their local communities.

Individuals in particular need of in-person services. Four populations were identified specifically as having a particular need for in-person connections or services from a live person in order to address their barriers to services, only some of which are transportation-related—older Montanans, Native Americans on reservations, victims of domestic violence, and persons with mental health disorders. Their special needs for in-person services are discussed in Section IV.

E. Challenges with Services by Telephone

Telephone services can be an effective way to deliver services for both the provider and the client. Individuals who do not want or cannot travel to an office may want to receive services by telephone. In an effort to provide more services statewide with its limited staff, MLSA provides almost all of its legal advice services over the telephone. Although this is an effective way to deliver services to many, some Montanans have barriers that limit its usefulness for them.

BARRIER: No telephone or limited telephone service. Access to and the type of telephones used varied among the individuals interviewed. One out of ten of them did not have a telephone. Half of them had only a cell phone. Both of these situations can create barriers to obtaining legal assistance over the telephone.

Some service providers did not see access to telephones as a problem, saying that applicants find a telephone to use—whether from a friend,

One out of ten persons interviewed did not have a telephone.

family member or organization. This view, however, could be due to individuals without telephones not having accessed their services.

Service providers help to overcome telephone barriers by allowing individuals that receive their services and others' services to use telephones in their offices, which at least gives individuals without telephones or limited minutes on their cell phones, some access to services provided over the telephone.

BARRIER: Returning calls. Returning applicants' and clients' calls is reported as a barrier by many of the service providers. Challenges include applicants borrowing phones to call with no ability to receive return calls, disconnected telephones, voicemails not set up to receive messages, and temporary cell phones running out of minutes. Using a restricted phone number is a common practice by legal aid providers to protect applicants' and clients' confidentiality. Some individuals, however, do not answer their telephones when the caller is displayed as "restricted" or "unknown," particularly if they have been contacted recently by a bill collector. Some also use *magicJack*, which provides low-cost phone service at home, but is not compatible with some organizations' phone systems, preventing them from leaving a messages or speaking with the individual.

When an applicant calls MLSA's Help Line, they are not put on hold, which is a good practice since many callers have limited cell phone minutes. If the call is not answered, the applicant may leave his/her number. An intake worker calls the applicant back three times. If they are unreachable, the applicant is sent a letter that their request has been closed. If the applicant calls back, the request is re-opened.

F. Challenges with Web Services

Delivering legal information via the Internet is another service component of some of the legal providers. The primary site, www.montanalawhelp.org, maintained by MLSA, contains a wealth

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of information on a wide variety of civil legal topics, including access to interactive legal forms, and referral information to the legal providers. One of the other service providers called the website an “*awesome resource*” and “*very accessible*.”

Four out of five of the individuals interviewed had access to the Internet. A library was the access point for about one-fourth of them. Of those with Internet access, about one in ten described their ability to search the web as only *fair* or *not good*. For those who did not have access to the Internet, the reasons may have included some of those described below by the service providers.

BARRIER: Do not have computers. The service providers in all the regions reported that many individuals they work with, of all ages, do not have computers. One of the primary populations, however, that does not have computers is older adults. A housing unit for low-income elderly and disabled persons described installing two computers with Internet access in the building’s public area, but only one of the 50 residents used them—the Internet service was then discontinued.

Many low-income individuals do not have computers. Older Montanans are particularly likely not to have or use a computer, making web-based services more difficult.

One school district’s staff person who works with parents of Native American children said most of the parents do not access anything on the web. They do not have computers at home because they cannot afford them and they do not have Internet service on the reservation. Sometimes parents will ask their children to look at or download something on the web at school or the library.

BARRIER: Do not know how to use computers. Many of the service providers described how older adults—although some said as young as 35—are intimidated by computers and want nothing to do with them. An Office of Public Assistance staff person said, “Older folks are almost blind to the technology.” A Job Service representative said he has participants who are afraid of computers, including being scared they are going to break a computer if they use it.

BARRIER: Web not used as much in some smaller communities. A county extension agent based in one of Montana’s smaller cities said when she worked in Helena, using the web to provide services worked well, but “here it just doesn’t get accepted.” A few of the service providers do not even have websites for their own organizations.

BARRIER: Do not have Internet service at home. One of the primary barriers service providers described is that the individuals they work with do not have Internet service, either because it is not available or because they cannot afford it. Some of the service providers, including community action agencies, YWCAs, senior citizen centers, Job Service, Offices of Public Assistance and others have computers with Internet access on-site that their participants can use.

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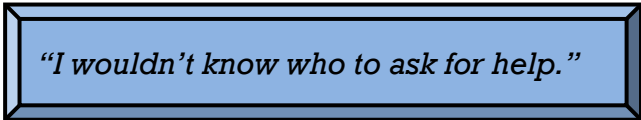
Libraries are one of the main places that those without Internet access at home get on the web, and many of them offer classes in how to use computers. Some also offer one-on-one assistance, but do not have the staff to help everyone who needs it. Using a library computer can come with its own barriers, however. Library computer systems sometimes block websites and e-mails that individuals need. Also, some individuals do not want to look for or disclose private information in a public place.

BARRIER: Do not have a “safe” computer. Many victims of domestic violence have their home computer use monitored by their abuser, so they are unable to access information at home. Some of them are able to go to a library and use a computer there.

BARRIER: Access only by smartphone. Some individuals’ access to the Internet is through their smartphone. This is a challenge when they need to download documents or print documents. Their phones may not have access to a printer.

G. Free Services Not Known and Referrals Not Always Made

BARRIER: Lack of knowledge about legal providers. Many of the individuals and the service providers who were interviewed did not know free legal help was available. The statement made by one of the individuals, “I wouldn’t know who to ask for help” summed up many of the individuals’ comments. A Northern Cheyenne woman said, *“Living on the Reservation, you*



“I wouldn’t know who to ask for help.”

always have legal issues, but can’t find any help.” She was unaware of MLSA’s services on the reservation. Providers described many of the individuals they work with as

lacking an understanding of available services or how to find out what services are available. Illiteracy and/or a lack of education can contribute to this.

Multiple avenues of getting information to people are needed because the public obtains their information in a variety of ways. Many individuals do not get their information from traditional sources, such as from newspapers and yellow pages. These methods are more likely to reach older persons. Younger individuals get their information from websites and social media. Most individuals watch a lot of television, especially in the rural areas and in the winter. Many individuals with mental disorders need written information, and particularly like business cards.

Montana Free File (free tax filing assistance) has an outreach component that is getting MLSA’s name out into the community. MLSA is using some non-traditional methods of advertising, such as distributing coasters with its name and number in bars and putting information in food pantries’ food bags.

Service providers in Eastern Montana seem to have the least knowledge of MLSA, which is to be expected given that MLSA has no offices there. Service providers who are aware of MLSA’s services vary in how often they make referrals. The organizations that have long-standing relationships with MLSA make referrals more often than the others. One said she refers to

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MLSA and assumes MLSA refers to Court Help if appropriate, adding, “Simpler is better for referrals.” Statewide, many service providers were unaware of the Court Help Program, both in cities where Court Help is located and where it is not.

The organizations also varied in their knowledge of www.montanalawhelp.org. Some that know of it make the referral there instead of to MLSA’s Help Line. One provider who had not looked at the website said she does not make referrals to it because she is not sure her callers have access to the Internet, but she knows they have a phone.

H. May Know of Service and Have Access, But Do Not Contact Because...

Barriers exist for some individuals even if they are aware of free or reduced-cost legal services and have a way to access it.

BARRIER: Intimidated by or have had a bad experience with a lawyer. Some individuals are intimidated by the demeanor of lawyers. This can be heightened for persons with mental health issues. A service provider who works with persons with disabilities described how people associated with the law can come across as aggressive, which can immediately cause a poor reaction from a person with mental health issues. Other behaviors, like addressing an individual by his/her first name may set them on edge, and they want nothing to do with the attorney.

Some individuals who have been turned down for services with a private attorney have a negative feeling about lawyers generally. Several mentioned lawyers not returning their calls. One individual said, *“Lawyers are not that interested in returning your calls. It’s hard to get a lawyer.”* The lack of goodwill toward attorneys generally by the public was evident in some of the interviews of individuals.

BARRIER: Turned down by MLSA before. Some individuals think they cannot get help from MLSA because they have contacted the organization in the past and were not given services. However, the denial could have been for a variety of reasons that do not apply to their current situation. It could have been a criminal matter, which MLSA does not handle. MLSA could have had an ethical conflict, and the turn-down letter was not specific about that because the organization cannot be explicit when this is the reason for the denial. The legal problem they had may not have been one that MLSA can assist with due to a lack of resources. All of these scenarios can result in a potentially eligible individual not contacting MLSA or possibly other legal providers in the future.

BARRIER: Think “free” equals “not as good.” Although not widespread, the sentiment was expressed that a free lawyer is not as good as a lawyer that you pay. A young woman of the Confederated Salish and Kootenai Tribes in Lake County said the main reason she did not seek legal help when a lawyer would have been useful was because she could not afford it. When asked if she knows there are free legal services for low-income Montanans, she said she did and the reason she did not seek that assistance was because she thought a free *“lawyer would not*

try their hardest because it was free.” She added that she thought they would not do a very good job.

BARRIER: Do not understand the timeframes of getting assistance and results. Many individuals have expectations of immediate help with their legal problem and quick results to solve it. Some self-represented litigants think that since they were able to get married in three days, a divorce will take the same amount of time. They want “the form” to get divorced. They do not understand how complicated the law is. They get frustrated because they are unfamiliar with the process and the timeframes.

BARRIER: Lack of skills to follow-through. Some individuals are unable to make appointments or to show up for appointments. While some are in crisis or have mental health or cognitive challenges, others have not been taught how to do some basic things, like make and keep appointments, that need to be done in order to get help.

BARRIER: Too proud to ask for help/do not think of themselves as poor/do not want others to know. Some Montanans—

older people in particular—believe they should “pick themselves up by their bootstraps” instead of seeking help. Even when they are told that they have paid taxes for

these services, it is very hard for them to ask for or accept help. They can also be embarrassed about the legal problem, like being taken advantage of by a home repair company.

The beliefs of some Montanans—I should pick myself up by my bootstraps—I’m not poor—I don’t want anyone to know about my problems—can prevent them from seeking legal assistance.

Others do not view themselves as the poor that are eligible for services. When MLSA began its program helping those at risk of foreclosure on their home, they had to change their outreach language from a program for the “poor” to a program for those “without the ability to pay” because many people facing foreclosure did not view themselves as poor. Being poor is not a usual part of the mentality in Montana.

Related to this can be the strong desire for others not to find out about their problems. Providers described others seeing how people that use SNAP and WIC are treated by some cashiers, and they are afraid they will be treated that way if anyone knows they are receiving free assistance. In small towns, “people seem to find things out,” expressed a man in his 30’s who lives in Silver Bow County.

Others can be very angry about asking for help, feeling like they have no control over the major things in their life.

BARRIER: A sense of resignation. Some individuals give up because they have been worn down by their situations. They accept having problems and not being able to receive help. One

individual said he felt resigned after having tried once and being denied help, and added “*Why would I try again?*”

IV. Populations that Need Particular Consideration

The interviewed service providers were asked which of the populations listed below they believe are disproportionately underserved for services, not just legal services, they need. This was asked to get a sense of any groups that may have additional barriers to legal assistance.

- Children who need educational services
- Youth (disconnected youth, youth in foster care, older teens, LGBT youth, young parents, victims or witnesses to domestic violence)
- Farm or ranch families
- Homebound persons
- Homeless
- Illiterate/ low literacy/limited education
- Immigrants/refugees
- Latinos
- Persons who do not speak English or do not speak it well
- LGBT adults
- Low wage workers
- Persons in institutions (nursing homes, veterans’ homes, foster care group homes)
- Persons in rural areas/geographic isolation
- Persons previously incarcerated
- Persons whose cultural background (beyond language) may inhibit their knowledge/ability to access services
- Persons with a mental illness or mental disability
- Persons with a physical disability
- Persons with substance abuse problems
- Seasonal workers
- Seniors
- Undocumented persons
- Unemployed
- Veterans
- Victims of discrimination
- Victims of domestic violence

Most named several of the listed populations. A service provider in Lake and Sanders counties said, “Rural areas especially are underserved, but everyone needs more services.” Hers is one of the key points made by many—the gaps and the underserved are widespread.

Some groups of people, however, are more intensely affected by one or more of the barriers or gaps, have some specific barriers that make accessing legal assistance even more difficult, or have a challenge that makes obtaining legal assistance even more important.

“Rural areas especially are underserved, but everyone needs more services.”

The groups described in this section—victims of domestic violence, persons with a mental illness or mental disability, Native Americans, persons who do not speak English or who cannot hear, older Montanans, and veterans have these more intense barriers or need. The intent of describing these populations is not to discount the barriers of others, but rather to highlight those that may need specific consideration.¹⁰

¹⁰ The Study explored whether the Bakken oil boom is causing additional gaps and barriers to legal assistance in the Eastern Montana counties affected by it. What was found is that the number of individuals and families who would be eligible for free or reduced-cost legal assistance has not increased, and may actually have decreased due to the availability of higher-paying jobs. Housing costs have doubled to quadrupled; sewer taxes have increased; food prices are at least double—all leading to less low-income people being able to afford to live there. Some are living in their cars.

Reportedly, some retired people on fixed incomes have moved away and there is a lack of workers for non-oil field high-paying jobs. As an example, the McDonald’s restaurant in Sidney was paying at least \$15/hour and could not find enough workers because they could make far more in the oil fields and could not afford to live on \$15/hour. The restaurant brought in

A. Victims of Domestic Violence

A particularly vulnerable group is victims of domestic violence. The law and the courts are critical components of helping a victim of domestic violence to end the abuse and the relationship. However, they face additional barriers—many of them have been beaten down mentally and emotionally by their abuser and lack the confidence needed to negotiate the legal system. Fear can stop them from moving forward. Some are unable to get people to believe they will follow through this time if they have not done so in the past.

The law and the courts are critical components of helping a victim of domestic violence to end the abuse and the relationship.

Therefore, more help for DV victims during and while they are getting out of a crisis is essential. Often there is a window of time in terms of safety and confidence

where legal assistance is the most helpful. Immediate help is more likely to result in the victim following through. However, the victim needs representation during the crisis and throughout the time needed to untangle the relationship legally.

Many DV victims are forced to make their way through the court system on their own without legal advice, representation or support at a time when they are least able to do it themselves. The power imbalance inherent in a domestic violence relationship makes it more difficult for victims of domestic violence to represent themselves, particularly if the abuser has representation. The results can be the loss of custody of the victim's children and the loss of her home.

Assistance with orders of protection is a need specific to victims of domestic violence. Those who are able to connect with a DV program or a victim witness assistance program may receive help with obtaining an order of protection from a lay advocate. However, there are victims that do not have access to this service. Interactive forms have been created to assist self-represented litigants, and the court system is designed to facilitate the issuance of temporary orders. However, obtaining a permanent order can be particularly difficult without assistance.

MLSA makes an effort to address the need for timely legal advice and court representation through distribution of a specific phone number to DV programs that their advocates can call in order to get more immediate, direct access to an MLSA DV attorney. Some DV programs have developed good working relationships with MLSA's DV attorneys and access them quickly and often. Advocates in some programs, however, do not use the number. This may be due to turnover in the advocates and newer advocates not knowing about this collaboration.

immigrants with H2B visas, but there were still not enough workers, so it closed. Single individuals who work in the oil fields are over the income eligibility for free and reduced-cost legal assistance, and many of them who have families who may be eligible because of a larger household, have their families living in Billings or Bismarck.

Legal issues that reportedly have increased are domestic violence and housing issues. Also, because of the lack of workers, extended care facilities and assisted living facilities have had to cut the number of units that can be used.

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Victims of domestic violence are in particular need of representation in court because often their abuser is represented by an attorney and the abuser uses the legal system to continue the abuse. Between the DV programs and MLSA, there are only 6.5 DV attorneys for the entire state of Montana—two of which are funded to represent Native Americans only. Very few pro bono attorneys will represent DV victims. Even fewer are licensed to represent them in tribal court.

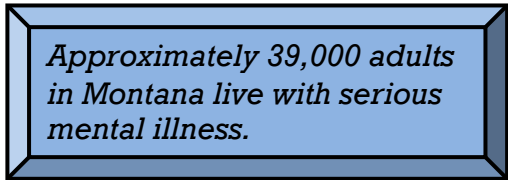
One pro bono attorney that represents victims of domestic violence expressed a *“tremendous need”* for representation of DV victims by attorneys who are competent in addressing domestic violence issues. Training of the attorneys, mediators, and judges in the dynamics of domestic violence is a gap in the system. Some attorneys do not understand they are representing an abuser and what that involves. The executive director of one of the mediation centers wrote, *“We all need more education about how to differentiate between domestic violence that is part of a pattern of coercive control (battering) and situation couple’s violence. One can be mediated, the other cannot.”* The Montana Supreme Court’s Pro Bono Program helps develop pro bono assistance for victims of domestic violence and provides training in the representation of DV victims for attorneys.

Assistance with parenting plans (custody and visitation) is a need expressed for many Montanans who need family law assistance, but particularly for those whose relationships involve domestic violence.

Another specific need of some DV victims is where they have been brought to the United States by a man for a relationship or marriage. If the victim wants to leave him, there may be immigration consequences for her. MLSA attorneys give legal advice to those victims that have an MLSA attorney or an advocate or attorney that works with one of the MLSA attorneys, but those that do not are at risk of losing their immigration status. MLSA does not have the resources to represent DV victims in immigration court, and private attorneys who take immigration cases are rare in Montana.

B. Persons with a Mental Illness or Mental Disability

“I am bipolar, schizophrenic, angry, and have a whole lot of mental issues. The screeners I talked to at Legal Services discriminated against me because of my disability.” These statements were made by a 26 year old woman in Deer Lodge County when she was asked why she did not



Approximately 39,000 adults in Montana live with serious mental illness.

receive legal help after saying that her parental rights had been terminated. In fact, if she called MLSA, she would not have received assistance in that case because she would have had an appointed attorney. Her answers to other questions showed the severity of her mental illness. Others who were interviewed and said they had a mental disability

described how their anger or anxiety had prevented them from receiving legal assistance or that it was hard to remember the steps they should take. Approximately 39,000 adults in Montana live with *serious* mental illness.¹¹

Some providers report seeing an increase in the number of persons with mental health disorders, but even those who have not seen increases in the overall number are seeing larger numbers of persons with untreated mental health disorders. Those that are in communities now have more severe situations than in the past. Victims of domestic violence often suffer from mental health disorders as well. Sometimes the mental health issues are a result of the domestic violence and sometimes those with mental health disorders are subjected to domestic violence because they may be more easily taken advantage of.

The additional barriers of persons with mental health disorders include that many want or need answers right away. Waiting for answers to legal questions is difficult for them, as is follow-through. Many are intensely over-whelmed and cannot remember who they have talked to, especially if they interact with multiple agencies. Some are dealing with a great deal of internal stimuli. One provider described it this way, “They can’t get from point A to point B without help, even though it is relatively simple for other people to do the same.”

Representing themselves is not an option for many persons with mental health disorders. They need representation. Even that is not enough sometimes. Some individuals who have anger issues or those who are unable to follow through may quit working with attorneys. They can alienate themselves from help or even isolate themselves on purpose. They can get “lost” unless a case manager helps them during the process, including helping them understand that the legal system is not evil. Not all individuals who live with a serious mental illness, however, have a case manager.

Representing themselves is not an option for many persons with mental health disorders.

Persons with mental health issues can be time-consuming to work with, and many staff believe they do not have the skills to know how to work with them appropriately.

C. Native Americans

About 66,000 Native Americans live in Montana.¹² Members of twelve tribal nations live on seven reservations and on non-reservation land. Native Americans who live on one of the reservations often do not have access to the Internet, and have the transportation barriers associated with living in the more remote areas of Montana.

¹¹ About one-fourth of U.S. adults have a mental illness. Mental illness refers to all diagnosable mental disorders, of which the most common in adults are anxiety and mood disorders. National Alliance on Mental Illness, www.nami.org. Factsheet, CDC Report: *Mental Illness Surveillance Among Adults in the United States*, Centers for Disease Control and Prevention, http://www.cdc.gov/mentalhealthsurveillance/fact_sheet.html.

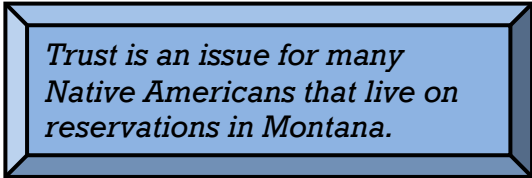
¹² 2012 estimate, U.S. Census Bureau.

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There is a lack of pro bono attorneys who represent individuals on reservations. Attorneys are not located on or near most of the reservations in Montana and do not want to travel the distances required to get to the reservations. In addition, most attorneys do not know or practice Indian law—in the federal or tribal courts. Tribal courts' licensure requirements vary. The CSKT Tribal Court allows an attorney with a Montana law license to practice in the court. Other courts require passage of a tribe's bar exam, which may not be given regularly. Some do not have a bar exam, but rather require an attorney to receive permission from the tribal court to practice.

The quality of representation in tribal courts by some tribal advocates—who are not attorneys and may not have received any legal training—is a gap in the quality of available services. Chief Dull Knife College on the Northern Cheyenne Indian Reservation recently began an educational program for tribal advocates in partnership with MLSA. This program will be shared with other tribes' community colleges after the curriculum is honed.

Trust is an issue for many Native Americans that live on reservations in Montana. Some do not trust the tribal courts, believing they do not respect the process. Sometimes confidentiality is



Trust is an issue for many Native Americans that live on reservations in Montana.

not kept by staff of the tribal courts. An example was given of abusers being called by a court clerk after victims of domestic violence file for orders of protection. Some providers said differences in confidentiality standards is not unlike other small

communities and does not occur only in tribal courts.

Some individuals expressed a belief that they could not get justice in tribal courts because decisions are based on who you are or who you know. Training of tribal court members, who can change frequently, was identified as a need to ensure they understand tribal and federal Indian law. Untrained members can result in due process and civil rights violations and make pro se appearances even more difficult.

Trust is also why Native Americans are more likely to use services where they can see the service provider they are talking with. Native American culture generally values being able to see and observe the body language of the person they are talking to or working with. This opportunity to build trust may be even more critical when the legal provider is not Native American.

Services by telephone can be more challenging for Native Americans also because many have communication styles that are circular, rather than linear, resulting in longer and more detailed descriptions of a situation. Many use stories to communicate, and patience is essential in order to not offend and to obtain trust and acceptance of offered help.¹³

¹³ These observations were made by service providers that work with Native Americans and are described further in publications such as *Culture Card: A Guide to Build Cultural Awareness: American Indian and Alaska Native*, U.S. Department of Health and Human Services, available at http://tribalnations.mt.gov/docs/SMA08-4354_mod.pdf.

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A young Native American woman who lives on a reservation said, “I would be intimidated explaining my problems to some white person. I am sorry to say that, but I just don’t think that white people understand the problems Indians face living on the reservation.” MLSA has a white attorney that travels to the Northern Cheyenne reservation and another to the Crow reservation that have built trust by being there often and long-term. Other attorneys—Native American as well as non-Native—are needed on the reservations and off to provide assistance to Montana’s Native Americans.

D. Persons Who Do Not Speak English or Who Cannot Hear

Approximately one percent of Montanans—10,000 individuals—speak English “less than very well.” Of these, about one-third speak Spanish, about one-third speak another Indo-European language, about one-fifth speak an Asian or Pacific Islander language, and the rest speak other languages, which includes Native American languages.

Providers report that persons who do not speak English contact them infrequently. MLSA uses Language Line, a translation service, to speak to applicants and clients who speak a language other than Spanish or Crow, the languages spoken by two bilingual staff. Language Line does not have translators for Montana’s native languages. When Native Americans that do not speak English contact the providers, most have a relative translate for them.

Those who are hard of hearing may access MLSA, Disability Rights Montana and Montana Fair Housing through a TTY relay line. They also use interpreters and e-mail. Other legal providers’ websites do not list a TTY relay line. They were not asked, but may use e-mail to communicate.

E. Older Montanans

Montana has nearly 158,000 people over the age of 65.¹⁴ Barriers to legal assistance for older Montanans are pointed out throughout this Report, but they are summarized here to emphasize how they may affect them more intensely or disproportionately.

Not wanting to ask for or accept help is a trait of many older people, even when they are in desperate need. For example, only one-third of older Americans who are eligible for SNAP food assistance receive benefits. They are embarrassed to take anything “free.” Other characteristics or beliefs that may be barriers include not wanting to be a burden on anyone, being too proud to ask for help, not viewing themselves as having a low-enough income to qualify, and not wanting anyone to know about their problems.

Many of the identified technological challenges, particularly the use of computers, likely affect older Montanans more than

The complications of representing yourself are intensified for those older adults who have cognitive difficulties due to aging.

¹⁴ 2012 estimate, U.S. Census Bureau.

most. To the transportation barriers is added that many older people no longer drive so getting somewhere without assistance is not an option. For those that drive, but not at night, many long-distance trips are not possible. At the same time, older adults are likely one of the groups of people, like Native Americans, that most need to see someone face-to-face to trust them. Finally, the complications of representing yourself are intensified for those who have cognitive difficulties due to aging.

F. Veterans

Almost 98,000 Montanans are veterans.¹⁵ Many Americans feel there is a duty to make sure veterans are able to receive needed services—in this case, it would be that those with low and moderate incomes receive needed legal assistance. The State Bar of Montana’s Law-Related Education Committee conducted a legal needs assessment of Montana veterans and active military. The assessment’s survey found that many of them were experiencing civil legal problems and most were trying to resolve the problems without legal assistance. The barriers to their receiving legal assistance were not explored, but the cost of legal assistance and the lack of resources to pay for an attorney were put forward as possible barriers.¹⁶

Additional barriers for veterans described by the providers in the study done for this Report are the occurrence of traumatic brain injury and Post Traumatic Stress Disorder (PTSD). More veterans who served in Iran and Afghanistan have these challenges. The symptoms of PTSD vary but the fear and/or anger often associated with it can be an obstacle to looking for and receiving legal help. They also can contribute to the need for legal assistance, particularly in the area of family law. Traumatic brain injury can be both a barrier and reveal a gap in services for those that need legal assistance to receive disability and other benefits.

The fear and anger associated with PTSD and traumatic brain injury can be barriers to seeking and receiving legal assistance.

V. Possible Goals and Strategies for Addressing the Gaps and Barriers

A review of the gaps and barriers identified in this Report lead to consideration of **six possible broad goals** to improve the civil legal delivery system for low and moderate income Montanans.

- Increase availability and types of free legal assistance.
- Increase the legal areas in which legal assistance is available.
- Increase the amount of in-person services.
- Increase the awareness of services by eligible individuals and service providers.
- Increase the collaboration between the legal providers and other service providers.
- Give particular attention to specific gaps and barriers of some populations.

¹⁵ 2008-2012 American Community Survey 5-Year Estimates, U.S. Census Bureau.

¹⁶ Veteran and Active Military Legal Needs Assessment in Montana, Christie Blaskovich, Michael Reed, Brook Redden, Janice Doggett JD, Law-Related Education Committee, State Bar of Montana, August 12, 2012.

The gaps in and barriers to services can be addressed in a multitude ways to meet these goals. The strategies listed below are a compilation of suggestions from those who were interviewed or attended a listening session, best practices from other states, and observations from the Report's author. This list of strategies is not meant to be exhaustive. Many of the strategies may help to meet more than one goal, and priorities will certainly need to be determined.

Almost all of the strategies will require additional funds and additional staff because the legal providers are stretching their dollars and their staff as far as they can currently. Although expanding and improving collaborations and communications are critical, having additional staff and pro bono attorneys, staff and pro bono mediators, and other staff that can provide and coordinate legal assistance is critical to meeting these goals.

Almost all of the strategies will require additional funds and additional staff because the legal providers are stretching their dollars and their staff as far as they can currently.

A. Availability of Free Legal Assistance

Staff Attorneys

- **Have additional staff attorneys who provide brief and extended representation** in a variety of legal areas to increase the amount of representation of individuals and increase the amount of representation in cases whose outcomes are beneficial for multiple individuals. Given the many types of legal problems low and moderate income persons encounter and the time and special knowledge required to address them, having additional staff attorneys in the delivery system is a core need and strategy.

Pro Bono Attorneys

- **Have a full-time, statewide Pro Bono Coordinating Attorney.** MLSA added a pro bono coordinator position recently, which is a critical resource for development and placement of cases and development and staffing of limited scope projects. Adding an additional position for an attorney who can mentor and support pro bono attorneys who are providing legal assistance would be another critical resource.
- **Ask attorneys who report providing pro bono services on their own to do so through an organized pro bono program.** Many Montana attorneys report providing pro bono services on their own. Doing it through an organized program would increase the amount of pro bono legal assistance for persons screened for income eligibility and in the most dire legal situations.
- **Create a specific family law training program for pro bono attorneys who are not family law practitioners.** Many attorneys do not feel they have the expertise to handle family cases. Providing training in the legal areas they will likely encounter during a pro bono case is likely to improve their confidence. Coordinating this with volunteering in family pro se clinics and other advice opportunities gives them options to develop their expertise and help them transition into more time-intensive extended representation.

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- **Increase the types of pro bono opportunities available.** Having more limited scope opportunities and more opportunities with limited time requirements may increase the number of volunteer attorneys. Having more opportunities in additional legal areas outside of family law may also help with recruiting more pro bono attorneys.

Advice and Assisted Pro Se

- **Create family law pro se clinics** where clients are given information about the law, the legal process, and local customs and procedures and then receive individual advice and assistance with court forms. Staff and/or pro bono attorneys could conduct the clinics and provide the advice.
- **Create more pro se advice clinics where pro bono attorneys give individual advice on a variety of legal topics and help self-represented litigants complete court forms.** Encourage the self-represented litigants to come back as many times as needed.
- **Recruit pro bono and paid attorneys in smaller communities** to meet with and provide time-sensitive advice to individuals and then refer them to MLSA when appropriate.

Mediation

- **Increase the opportunities for mediation and the number of volunteer mediators, and develop mediators outside of Montana's cities.** Mediation is an alternative to resolving issues through litigation that can be far less expensive, quicker and easier to understand.

Rural and Remote Services

- **Support the development of a legal incubator program for moderate income cases.** These programs generally have two purposes: to provide employment and training for new law graduates that want to provide services in a solo firm setting; and to provide reduced fee legal assistance to moderate income people. The new lawyers' office practice expenses and sometimes their income are subsidized while they provide legal assistance at a reduced fee. They are given training and mentoring while they learn the practice of law. In Montana, placing these lawyers in rural or remote areas may allow them to build up their practice in towns that are in need of lawyers for all income levels.

Web and Video Call Services

- **Use technology, such as video calls, to improve access and communication between clients and attorneys.** MLSA is testing the use of video by placing tablets at partner agencies so MLSA attorneys can meet with clients by video at remote locations. This project could be expanded for use by pro bono attorneys.
- **Create an opportunity for pro bono attorneys to provide guidance and advice by telephone** while individuals are looking at information on www.montanalawhelp.org.
- **Make www.montanalawhelp.org an even better website** by revising materials to a 5th grade readability level and creating additional content such as documents that provide definitions of words when a reader hovers on the word, a list of forms that are cross-referenced, answers to frequently asked questions, step-by-step instructions for as many legal problems as possible; legal process timetables, and short videos that explain the legal process and the law in small segments.

- Provide the link to www.montanalawhelp.org on all legal providers' and service providers' websites.

Court Forms

- Continue to revise the court forms to make them more understandable.
- Use document assembly software to create more automated court forms that pro se litigants, advocates and attorneys can use.

B. Awareness of Services

Although making more eligible Montanans aware of available legal assistance may create further demand that exceeds supply, strategies should be considered for increased service awareness to increase the possibilities that legal providers hear from a wide variety of individuals and those in the most need.

- **Create very easy to read posters** and place in service providers' facilities and other public places, such as grocery stores, laundromats, and shopping centers.
- **Update and redistribute brochures** when services change.
- **Create business cards** that service providers can share or can be taken by someone who does not want others to know they have a legal problem.
- **Provide information on the radio through advertisements and talk show spots.** This may be particularly effective in Montana since many are in their cars for long periods of time. Local radio is a major source of information on reservations.
- **Advertise in traditional places, such as in local newspapers, and in less traditional places, such as before movies in theaters, on buses, and at bus stops.**
- **Make presentations about services at targeted conferences** of service providers and others who work with low and moderate income Montanans, e.g. church groups, in different geographic areas.
- **Create a video about available legal assistance** that can be shown at service providers' and others' staff meetings and in-house trainings.
- **Provide ready-to-print or ready-to-post information** that service providers can put in their publications and e-mails and on Facebook and Twitter.
- **Remind service providers** to update their written referral information, including adding www.montanalawhelp.org to the list.
- **Ask libraries to set the home page on their computers to www.montanalawhelp.org.**
- **Clarify MLSA denials of service.** Add language to denial letters, outreach materials and presentations to help applicants and community partners understand that an income-eligible applicant's denial of services for one legal problem does not mean they will be turned down for a different problem.

C. Collaboration

- **Promote and support collaborations between legal providers and service providers that work with Montanans of low and moderate income.** Staff of the other service providers can be the information, application and follow-up link between legal providers and individuals who need legal assistance and the support to obtain it. A connection with local advocates gives credibility and resources to statewide legal providers. Create an MLSA help desk position for the service providers to contact for guidance on how they can better help their clients with their legal problems.
- **Locate MLSA and other legal provider staff at community agencies.** Co-location will provide easier access for Montanans in the geographic areas in which the legal providers do not have a physical presence now and provide a source of support for a client who needs legal assistance. Case managers, advocates and other staff in community agencies often are able to coordinate services for an individual, helping them to receive several services that address their needs.
- **Train service providers' staff.** Possible topics include how to apply for each legal providers' services, how to interact with each legal provider, how to use www.montanalegalhelp.org, the legal process and timeframes, understanding the unwritten rules of going to court, and identifying legal issues.

D. Underserved and Vulnerable Populations

- **Collaborate with the primary providers of services to underserved and vulnerable populations.** Having legal assistance as a component of comprehensive services may improve the ability to address multi-faceted problems.

Victims of Domestic Violence

- **Encourage domestic violence programs to take advantage of the direct connection to MLSA DV attorneys** to increase time-sensitive advice. This may also improve follow-through for victims of domestic violence if they are supported by DV advocates who can help lessen their fear and help them understand that MLSA can help them change their lives.
- **Develop projects for time-sensitive representation of victims of domestic violence.** Ask local pro bono committees for assistance with these projects to increase them in rural areas.
- **Have at least one advocate in each domestic violence program** who is trained in and available to accompany victims of domestic violence to court for hearings to obtain an order of protection.
- **Train court personnel and judges** in the dynamics of domestic violence.

Persons with Mental Disorders

- **Formalize collaborations between the legal providers and mental health case managers.** The collaboration should include training of mental health case managers in identifying possible legal issues and making appropriate referrals to legal providers. This may improve access and follow-through of persons with mental disorders. The case managers can help

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their clients apply for services, arrange for or provide transportation, be the contact for those who do not have telephones or do not answer their telephones, and reduce the fear of their clients.

- **Have staff attorneys go on-site to mental health centers regularly** to give legal advice and other representation to individuals who are less likely to apply for services and receive services unless the attorney is on-site.
- **Train the staff of legal providers and pro bono attorneys** in the best practices of working with individuals with mental health disorders. Offer Continuing Legal Education credits to the attorneys.
- **Train court personnel and judges** in the dynamics of mental disorders.

Native Americans

- **Have attorneys go on-site to Indian reservations** to give legal advice and other representation to individuals who are less likely to apply for and receive services from an attorney who is not on-site.
- **Expand educational programs for tribal advocates to other reservations.**
- **Work with a tribal advocate on each reservation**, where one can be identified, who can provide the link of trust to a pro bono or staff attorney who provides representation.

Persons Who Do Not Speak English Well or Who Cannot Hear

- **Ensure legal providers are aware of and use available services** for those who do not speak English well or who cannot hear.

Older Adults

- **Expand collaboration with Area Agencies on Aging** to include all legal providers to increase the availability of free legal assistance for older Montanans.

Veterans

- **Continue and expand the efforts of the Montana Supreme Court, State Bar of Montana, MLSA and others to improve outreach and services to veterans.**

Homeless

- **Have attorneys go on-site to homeless shelters regularly** to give legal advice and other representation to individuals who are less likely to apply for and receive services from an attorney who is not on-site.

VI. Conclusion

This Report has chronicled and analyzed the gaps and barriers to civil legal assistance for low and moderate income Montanans. Viewed from any perspective, these gaps and barriers are vast. They span the entire state and impede Montanans in every region from receiving the legal help they need to move forward in their lives— whether it is a mom seeking to escape a violent

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spouse, a veteran needing health care, a child who needs a special education, or a family facing foreclosure or eviction.

Equally important, this Report identifies steps Montana can take to close these gaps and minimize the barriers. The path forward is not easy. Although many low cost and no cost strategies are suggested, and it is hoped this Report will encourage all involved to work together to pursue them, **the biggest need is for more resources**. The legal providers are stretching their dollars and their staff as far as they can currently. Nearly every key identified strategy requires additional funding to achieve it. Given the commitment of Montana's Access to Justice Commission and its partners, there is reason to believe that an investment in these strategies will go a long way toward closing the justice gap.

Appendix: Methodology

The research for this Report was conducted at the state level and in selected regions of Montana. After a review of the demographic, financial and geographic characteristics of each of Montana's 56 counties, five regions with 21 counties and two reservations were selected for interviewing and listening sessions. See Box 1. These regions include all or parts of eleven judicial districts, and have a mix of urban, rural and frontier counties and demographic characteristics.

This study used four major strategies for obtaining information about the gaps and barriers to legal assistance for low and moderate income Montanans.

1. Legal Provider Survey and Interviews. To determine what legal assistance and legal information is currently available, an on-line survey was conducted of many of the organizations that are providing legal assistance or legal information to low and moderate income Montanans. This was supplemented by interviews with some of the leaders of the legal organizations and active pro bono attorneys.

2. Interviews of Community Members with Income Below 200 percent of Poverty. To identify the gaps in services and the barriers that impede low and moderate-income persons' access to services, 217 interviews of individuals in the community with income below 200 percent of poverty were conducted in the five regions. (Note that one-third of Montanans have incomes below 200 percent of the poverty level.) Individuals were interviewed at a wide variety of locations to ensure a representative group were questioned. Also prioritized were locations where more vulnerable populations and those with possibly greater access issues, such as older Montanans, would be. See Box 2.

Box 1: Study's Regions, Counties and Reservations

<u>Region 1</u>	<u>Region 2</u>	<u>Region 4</u>
Carter	Cascade	Deer Lodge
Custer	Chouteau	Granite
Dawson	Hill	Powell
Fallon	Liberty	Silver Bow
Garfield	Blackfeet	
Powder River	Reservation	<u>Region 5</u>
Richland		Flathead
Rosebud	<u>Region 3</u>	Lake
Treasure	Yellowstone	Lincoln
Northern Cheyenne		Sanders
Reservation		

Box 2: Community Member Interviews: Locations and Numbers of Interviews

Nine Libraries (42)	Eight Senior Citizen Centers (30)
Five Job Service Offices (19)	A Program for the Homeless (17)
A Swap Meet (16)	Two Courthouses (14)
A Food Bank (14)	Four Restaurants or Bars (12)
Two Laundromats (9)	Two Community Centers (7)
Two Community Health Centers (6)	Re-entry Program for Persons Previously Incarcerated (5)
Two Offices of Public Assistance (4)	Family Services Center (4)
Two Self Help Law Centers (3)	Two Residences (2)
Substance Abuse Treatment Center (2)	Grocery Store (1)
HRDC Office (1)	Low-income Housing Complex (1)
Park (1)	Post Office (1)
Tire Store (1)	Youth Behavioral Health Center (1)

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Although not a random sample, the population of interviewed community members had fairly similar characteristics to Montanans as a whole. Native Americans were purposefully a larger part of the individuals interviewed—12 percent interviewed compared to 6.4 percent in Montana. The percentage in the military or a veteran was nearly double Montana’s population as a whole. See Box 3.

The interviews were conducted by eighteen individuals who are members of Justice for Montanans—an Americorps program in Montana—and staff of Montana Legal Services Association. The study’s director trained the interviewers on how to utilize the interview instrument prior to their conducting the interviews.

Box 3: Demographics of Interviewed Community Members

- Gender: 55 percent female/45 percent male
- Age: range of 19 – 94 with average of 50 years old
- Race/ethnicity
 - 72 percent White/Caucasian
 - 12 percent American Indian
 - 6 percent Latino
 - 4 percent two or more races
 - 1 percent Black
 - 1 percent Asian
 - 4 percent not recorded
- Veteran or in the military: 18 percent
- Education: 89 percent completed at least high school or had their GED
- Household size: average of 2.38 members
- Households with children: 31 percent

The interviewees answered questions about their legal problems and how they addressed them, access to and use of technology, transportation, language, disabilities, and their demographics.

3. Interviews of Community Service Providers and Court Personnel. Interviews were conducted of 37 providers of other services in the five regions. See Box 4. These interviews were conducted by staff of Montana Legal Services Association. The interviewees answered questions about their clientele’s barriers to their services and their pressing legal problems, other populations they believe are underserved, their interactions with legal providers, and ways they could collaborate with legal providers.

Box 4: Community Service Providers Interviewed

Region 1

Action for Eastern Montana
Carter County Senior Citizen Center
Chief Dull Knife College
Custer Network Against Domestic Violence
Garfield County Health Center
Northern Cheyenne Prosecutor’s Office
Powder River County Extension Office
Richland County Attorney
Richland County Housing Authority

Region 2

Area Agency on Aging/Hill County Council on Aging
Choteau County Library
District 4 HRDC
Havre Job Service
Neighborworks
Victim Witness Assistance Services
YWCA
12th Judicial District Court

Region 3

Billings Veteran Center
Head Start
HRDC7
HUB
Riverstone Health
YWCA-Gateway Program

Region 4

Butte Silver Bow Library
District XII HRDC
Head Start
Office of Public Assistance
Powell County Council on Aging
Safe Space
2nd Judicial District Court

Region 5

Community Action Partnership of NW MT
Flathead Office of Public Assistance
Sanders County Coalition for Families
SAFE Harbor
Thompson Falls Public Library
Western MT Area VI Agency on Aging

4. Community Listening Sessions. After the interview results were reviewed by the Study’s Director, she conducted listening sessions in cities in four of the regions—Billings, Butte, Havre, Kalispell—and in Helena, where many of the individuals who conducted the interviews are located. A wide variety of individuals—representatives of organizations who had been interviewed, other services providers, individuals who conducted community member and provider interviews, and legal providers—attended the sessions. See Box 5.

The participants (1) discussed the gaps and barriers that had been identified so far through the interviews and other research, (2) identified additional gaps and barriers, and (3) recommended strategies to enable legal services providers and the access to justice community to address the gaps and barriers.

Box 5: Organizations Represented at Listening Sessions (some by multiple staff)	
<u>Billings</u> (11 participants) Head Start HRDC7 HUB Montana Legal Services Association Yellowstone Area Bar Association Pro Bono Program Yellowstone County Self-Help Law Center YWCA--Gateway Program	<u>Helena</u> (14 participants) Cascade County Legal Clinic Montana Justice Foundation Montana Legal Services Ass’n State Bar of Montana
<u>Butte</u> (9 participants) Career Futures District XII HRDC Job Services Legal Services Developer Program Montana Independent Living Project Montana Legal Services Association 2 nd Judicial District Court	<u>Kalispell</u> (13 participants) Abbie DV Shelter Community Action Partnership of Northwest Montana Flathead County Library Flathead County Victim Witness Service Flathead Job Service Office of Public Assistance United Way
<u>Havre</u> (9 participants) District 4 HRDC Havre School District Hill County Extension Hill County Library Office of Public Assistance Opportunity Links WIC	

Appendix 2

Montana State Supreme Court

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Proposed Forms

The Access to Justice Standing Committee on Self Represented Litigants is in the process of revising the dissolution with children forms packet. The standing committee received substantial feedback from practitioners, court staff, and litigants. We used these suggestions as well as examples of forms already developed to create these proposed forms. The standing committee does not expect that these forms will be mandatory. However, the committee's extensive process ensures these forms will be accepted in every court in the state. The revised forms were vetted by focus groups of practitioners, judges, clerks, and service providers.

The standing committee is asking you to review and give substantive, visual, readability, formatting, and grammatical public comments on each of these forms. The committee will review all submitted comments and determine how to best incorporate needed revisions into the form packet. Once the standing committee finalizes the forms, we will develop informational forms on the dissolution process and how to complete the forms.

Your perspective is critical to this process. The standing committee will carefully consider your comments. Please use the link for each form and give us your feedback and suggestions by Friday, Oct. 17. When you give your comments, list the particular section or paragraph you are giving comment on.

Explanation of Forms Revision

MP-113	Petition for Dissolution with Parenting Plan for Minor Children	Comment on MP-113
MP-300	Proposed Parenting Plan	Comment on MP-300
MP-300-A	Parenting Time Schedule	Comment on MP-300-A
MP-300-B	Holidays, Vacations, and Special Occasions	Comment on MP-300-B

MP-300-C	<u>Limited Parenting Visitation</u>	<u>Comment on MP-300-C</u>
MP-300-G	<u>Description of Existing Medical Coverage</u>	<u>Comment on MP-300-G</u>
MP-400	<u>Summons and Temporary Economic Restraining Order by Clerk of Court</u>	<u>Comment on MP-400</u>
MP-401	<u>Request for Sheriff to Serve Documents</u>	<u>Comment on MP-401</u>
MP-402.1	<u>Request for Order Granting Service of Summons by Publication</u>	<u>Comment on MP-402.1</u>
MP-402.2	<u>Order for Service of Summons by Publication</u>	<u>Comment on MP-402.2</u>
MP-402.3	<u>Summons for Publication</u>	<u>Comment on MP-402.3</u>
MP-403	<u>Notice and Acknowledgment of Service by Certified Mail of Petition for Dissolution and Summons</u>	<u>Comment on MP-403</u>
MP-404	<u>Notice and Acknowledgment to CSED and AG</u>	<u>Comment on MP-404</u>
MP-500	<u>Proposed Property Distribution</u>	<u>Comment on MP-500</u>
MP-510	<u>Income and Expenses</u>	<u>Comment on MP-510</u>
MP 701	<u>Request for Hearing and Statement of Compliance with Financial Disclosure</u>	<u>Comment on MP-701</u>
MP 702	<u>Order Granting Hearing on Dissolution with Children</u>	<u>Comment on MP-702</u>
MP 703	<u>Dissolution Decree</u>	<u>Comment on MP-703</u>
MP 704	<u>Notice and Entry of Decree</u>	<u>Comment on MP-704</u>

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Appendix 3

ACCESS TO JUSTICE COMMISSION
STANDING COMMITTEE ON SELF-REPRESENTED LITIGANTS

Self-Represented Litigants Data Collection Project

First Phase: A View from Court-side

Dec. 4, 2014

Self-Represented Litigants Data Collection Project
First Phase: A View from Court-side

*A Report by the Montana Supreme Court Access to Justice Commission's
Standing Committee on Self-Represented Litigants*

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EXECUTIVE SUMMARY

The Montana Supreme Court Access to Justice Commission's Standing Committee on Self-Represented Litigants (the Committee) completed Phase 1 of a data collection project on self-represented litigants.

The Standing Committee on Self-Represented Litigants identified a three-phase data collection project.

- **First Phase:** Data collection from those in Montana's court system who are most likely to encounter self-represented litigants (SRLs): judges and clerks of court. The Committee developed, administered, and analyzed the questionnaires without the assistance of outside professionals or added cost. The Committee considers the data to be reliable, but intended as a contextual marker for use by the Access to Justice Commission, its committees and partners. The qualitative data collected during the process should be considered along with available SRL quantitative data collected by the Office of the Court Administrator.
- **Second Phase:** Data collection from practitioners on their experiences with self-represented litigants. The Committee is working with local bar associations to discuss SRLs from the unique perspective of practitioners.
- **Third Phase:** The third phase is to collect data from self-represented litigants themselves. The Committee will ask SRLs their needs and experiences as well as outcomes when navigating the court system.

The Committee sent three different questionnaires to four categories within the judiciary: District Court Judges, Courts of Limited Jurisdiction Judges, Clerks of District Court, and Courts of Limited Jurisdiction Clerks. Although these questionnaires were completed anonymously, the separate data collection allowed for analysis by judicial position.

Notable quotes:

"The court system has yet to respond in a uniform manner in addressing the reality of the difference in these cases from those on which the system was founded."

"The biggest challenge for SRL's is to navigate through a system that is highly technical in nature and design, so much so that an attorney must study for years and obtain higher degrees of education than most other professions, must pass tests to practice law and then must continue to maintain education throughout the lawyers career in order to practice the same kind of law that the SRL is attempting in their case. It is the equivalent of asking a patient to perform their own surgery without instruments or anesthesia."

District Court Judges and Clerks of District Court reported an increase in the percentage of self-represented litigants. Traditionally individuals appearing in COLJ are self-represented and COLJ Judges and Clerks reported no increase in the percentage of self-represented litigants.

District and COLJ judges reported orders of protection as the most common case type where SRL appear. Clerks of District Court reported an increase in the types of cases where SRLs appear, the complexity of the cases, and a change in the demographics of the SRL. Clerks of District Court report family law cases as the most common type of SRL case.

Judges raised concerns that:

- SRLs consume large amounts of judicial/court time
- SRLs allow cases to languish due to inattention (a key court performance measure is the speed a judge is able to dispose of their case load)

- Ethical concern by needing to give too much assistance to SRL and how to balance the need to resolve a case with a SRL and represented party
- Perceived unjust outcome due to SRL's ability to present their case leaves the individual with poor view of judicial/court system.

Clerks raised concerns that:

- Crossing the line between giving legal information and not legal advice
- Dealing with the SRL frustration when the litigant believes they are not getting the answer they need
- SRLs correctly completing the forms/expectations the clerk can complete the forms
- SRLs lack knowledge of the court system
- SRLs fail to read or follow instructions
- SRLs are time consuming

All court report an increase in the use of forms developed and approved in Montana, but, the SRL might not complete the form appropriately.

District Court Judges recommend a SRL facilitator as the most helpful SRL service. COLJ Judges and Clerks, and Clerks of District Court recommended a toll-free helpline would be most beneficial. The vast majority of judges reported better links to online resources, brochures, or videos to explain procedure and court etiquette would be helpful to SRLs. The Clerks of District Court also recommend the continued development of approved forms.

The Committee will utilize this data to develop strategies for improving access to justice for all Montanans.

CONCLUSIONS AND RECOMMENDATIONS

The Montana Supreme Court Access to Justice Commission Standing Committee on Self-Represented Litigants (SRL) surveyed 136 District Court and Court of Limited Jurisdiction (COLJ) judges and 128 Clerks of Court representing the various district courts and courts of limited jurisdiction.

The surveys revealed the following major observations and their attendant conclusions and the Standing Committee on Self-Represented Litigants provides its recommendations:

Observation 1: The percentage of SRLs in civil cases is increasing in our district courts but not in our courts of limited jurisdiction.

Conclusion: Historically, most litigants in COLJ were not represented by lawyers. Although the number of filed cases has increased in COLJ, the percentage of SRLs has not. Historically, in district courts the majority of litigants had a lawyer. Now, many litigants are appearing in increasingly complex cases without a lawyer. Litigants with limited financial means have increased and the availability of affordable legal services has decreased.

Recommendation: Focus on developing resources and strategies in both the district courts and COLJ that specifically address the unique processes of each to assist the SRL and facilitates court efficiency.

Observation 2: The majority of respondents generally referred the SRL to a Self-Help Law Center, online resources, or Montana Legal Services Association. A SRL was less likely to be referred to non-law related social services.

Conclusion: Responders are familiar with well-established institutions and resources and believe them to be of benefit.

Recommendation: Continue growth of Self-Help Law Centers and augment online resources and increase awareness of attendant social services.

Observation 3: The majority of responders see an increase in the use of forms developed and approved in Montana.

Conclusion: Referral to Self-Help Law Centers and online resources was high among responders resulting in an increase in use of the forms available from those resources.

Recommendation: Revision and development of user-friendly forms and instructions that accommodate the needs of the self-represented and facilitate court efficiency.

Observation 4: The majority of responders believed improved self-representation references including online resources and links and written materials would be most beneficial in dealing with the self-represented. However, district court judges believed an on-site self-represented facilitator would be most beneficial.

Conclusion: There is a commonality among responders in expanding and improving online and written materials with benefits of other resources varying among courts and staff.

Recommendation: To focus attention on efforts that represent the greatest impact on the most self-represented and the courts that serve them beginning with attention to reliable, thorough, online resources and written educational materials. *Of note: The Court Help Program which facilitates the Self Help Center will draw from the same online resources, educational materials, and from to assist patrons who visit the centers.*

Observation 5: The majority of responders report a major challenge to be providing legal information without crossing the line into legal advice when the self-represented requires legal counsel.

Conclusion: Self-represented do not understand the limits of the court and staff and court and staff may not understand the ability to provide a broader range of information and assistance without constituting legal advice or breaking legal neutrality.

Recommendation: The courts should develop and promulgate written protocols for judges and staff that explain their duties and limitations in managing the self-represented.

Observation 6: The majority of responders in district court believe cases are becoming more or somewhat more complex while courts of limited jurisdiction do not.

Conclusion: Courts of limited jurisdiction were designed to address legal issues that are typically less complex, which effectively minimizes those types of cases. The reasons for an increase in complexity of district court cases could be multiple.

Recommendation: Conduct a survey of the self-represented to include information about case type and level of difficulty. Analyze court data to extract case anatomies and determine if early intervention and assistance may reduce complications impacting resolution.

Observation 7: The most common self-represented case type collectively among all responders was order of protection. District courts most commonly saw self-representation in family law while courts of limited jurisdictions' most common case type after order of protection to be small claims and landlord-tenant.

Conclusion: All courts would benefit from the development of information, resources and referral mechanisms for survivors and training and information among the judiciary about domestic abuse. District courts would benefit from domestic relations specific resources while courts of limited jurisdiction would additionally benefit from development of resources concerning landlord-tenant and small claims.

Recommendation: Development of judicial materials and training on domestic violence together with provision of information about available resources to survivors of domestic violence. Focus on development of materials, resources, and revised forms for the most common case type.

SUMMARY OF RECOMMENDATIONS:

- Focus on developing resources and strategies in both the district courts and COLJ that specifically address the unique processes of each to assist the SRL and facilitates court efficiency.
- Continue growth of Self-Help Law Centers and augment online resources and increase awareness of attendant social services.
- Revision and development of user-friendly forms and instructions that accommodate the needs of the self-represented and facilitate court efficiency.
- To focus attention on efforts that represent the greatest impact on the most self-represented and the courts that serve them beginning with attention to reliable, thorough, online resources and written educational materials.
- The courts should develop and promulgate written protocols for judges and staff that explain their duties and limitations in managing the self-represented.
- Conduct a survey of the self-represented to include information about case type and level of difficulty. Analyze court data to extract case anatomies and determine if early intervention and assistance may reduce complications impacting resolution.
- Development of judicial materials and training on domestic violence together with provision of information about available resources to survivors of domestic violence. Focus on development of materials, resources, and revised forms for the most common case type.

METHODOLOGY

DEVELOPMENT OF THE QUESTIONNAIRES

The Committee developed the questionnaires to help identify areas to improve court efficiency and understanding of SRL issues, and to develop new or maximize use of available resources relating to SRLs. Questionnaires include core questions (definitive response, yes/no) as well as opened-ended questions. The open-ended questions focused on the responder's specific experience with SRLs and sought suggestion to improve the interaction of the SRL and the court.

DATA COLLECTION

The Committee disbursed letters and questionnaires electronically as follows:

- Montana District Court judges
- Montana Court of Limited Jurisdiction (COLJ) judges¹
- Montana Clerks of District Court
- Montana COLJ Court Clerks

Responders submitted their answers anonymously because the collected data was qualitative and includes individual insights, attitudes and perceptions. Response rates were significant, demonstrating considerable interest by judges and clerks in issues surrounding SRLs. Data from each group was compiled and analyzed separately.

Montana courts vary both geographically and demographically resulting in different SRL populations. The qualitative data collected demonstrates trends and observations across the state. This report is an exercise in observational study generated from about 230 court-side responders. Specific quantitative data is limited to the number of responders and the rate they responded to a particular question.

RESPONSE RATES

All groups were sent the questionnaire by list serve and email. The COLJ court clerks' turnover rate makes it difficult to maintain an up-to-date email list. It is unclear whether all COLJ clerks are members of the listserve and whether all clerks received the questionnaire. List serves can substantially reduce likelihood recipients will read and respond to posts.

- 95.5 percent of District Court judges responded to the questionnaire
- 83 percent of COLJ judges responded to the questionnaire
- 64 percent of DC Clerks of Court responded to the questionnaire
- 39 percent of COLJ Clerks responded to the survey²

¹ COLJ are comprised of five different court types: City Courts, City Courts of Record, Justice Courts, Justice Courts of Record, and Municipal Courts.

² The percentage is based on an approximation of current COLJ Clerks of Court

MAJOR STATISTICAL AND OBSERVATIONAL FINDINGS

JUDICIAL RESPONSES

MAJOR STATISTICAL FINDINGS SUMMARIZED

- Incidence of self-representation has increased in DC but not in COLJ.³
- Most common SRL case type collectively both DC and COLJ judges is an Order of Protection. Remainder of case incidence categories is impacted greatly by court type.
- DC judges are most likely to refer a SRL to a Self-Help Law Center (SHLC) and COLJ judges are most likely to refer a SRL to Montana Legal Services Association (MLSA).
- Most DC judges report a change in demographics or circumstances leading to self-representation while COLJ judges do not.⁴
- Most DC judges have seen an increase in attorneys assisting otherwise self-represented litigants. A third report an increase limited task representation appearances. COLJ judges observe minimal increase in attorney assistance to otherwise SRLs.
- All courts report an increase in the use of forms developed and approved in Montana, with the highest incidence of increase among DCs.
- DC judges report a self-help facilitator would be the most helpful in dealing with SRLs while the majority COLJ judges thought a facilitator would not be helpful at all.
- COLJ judges were most likely to report a toll-free helpline would be most helpful to SRL.
- The vast majority of all judges report better links to online resources and brochures or videos explaining procedure and court etiquette would be helpful to SRL.

MAJOR OBSERVATIONAL FINDINGS (OPEN-ENDED RESPONSES)

- The most common themes arising from all judicial sub-groups concerning the **lack of representation impact on SRL** included (in approximate order of frequency)
 - Ineffectiveness or poor result due to inability to present proper evidence (overwhelmingly the most stated impact)
 - Inability to separate the emotional aspects from the legal issues (use the court and pleadings to punish adverse)
 - Not informed of rights so do not seek proper relief (unrealistic expectations or claims with no legal relief)
 - Delays in cases due to procedural insufficiencies or inadequate forms
 - Impact on represented adverse (additional time and cost required to sort through SRL issues)
 - Do not know how to defend a case, and therefore do not (default or plead guilty)
- Judges in all judicial sub-groups responded similarly to the question regarding most common **primary concerns about SRLs their courts**, suggesting that judges view the impacts of no representation for SRLs are the same problems that cause the courts concern. A few unique themes emerged as well:
 - Consume large amounts of judicial/court time

³ Note: This question and its responses relate to an increase in those who self-represent versus the volume of case filings/litigants generally in each court.

⁴ Data suggests that those seeking relief from COLJ have traditionally been self-represented regardless of demographics.

- Languishing cases due to inattention (often courts are judged on the speed in disposing of case load)
- Concerned about violating judicial code of conduct by providing too much assistance to SRL (balancing leniency toward SRL and represented party)
- Perceived unjust outcome due to lack of ability to present case leaves litigants with poor view of judicial/court system

Notable Quote: “The court system has yet to respond in a uniform manner in addressing the reality of the difference in these cases from those on which the system was founded.”

- Judges in all judicial sub-groups offered similar themes to those in the previous two questions regarding the **biggest challenge for judges and the courts regarding SRLs**. Because the question targeted the “biggest challenge”, listed are the most common responses in approximate rank order.
 - Managing court time (SRLs take substantial time)
 - Judicial neutrality/assisting without unfair benefit (particularly during hearings and trial)
 - Diffusing emotional issues between litigants
 - Patience

Notable Quote: “Changing the prevailing view among those who serve the public and the bar that the SRL is problem to be dealt with according to the rules. The concept of access has changed along with the reality of who the customer is in the court system. Getting those involved to accept the changes upon us and respond positively in a progressive manner is the biggest challenge of our day.”

- Judges in all judicial sub-groups overwhelmingly and equally perceive the **biggest challenge for SRLs in courts** is simply a lack of understanding of the law and legal process. Because the question targeted the “biggest challenge”, listed are the most common responses in approximate rank order.
 - Presenting evidence
 - What to do in a hearing or trial
 - Asking for the right relief (“getting the best deal”)
 - Understanding limits of a court system (in resolving otherwise personal /emotional issues)
 - Fear of the court system
 - Finding or getting necessary help

Notable Quote: “The biggest challenge for SRL's is to navigate through a system that is highly technical in nature and design, so much so that an attorney must study for years and obtain higher degrees of education than most other professions, must pass tests to practice law and then must continue to maintain education throughout the lawyers career in order to practice the same kind of law that the SRL is attempting in their case. It is the equivalent of asking a patient to perform their own surgery without instruments or anesthesia.”

CLERK OF DISTRICT COURT RESPONSES

MAJOR STATISTICAL FINDINGS

- DC clerks report increase in self-representation.⁵
- Almost all DC clerks believe the **complexity of SRL cases or circumstances surrounding those cases** are substantially or somewhat more complex.
- DC clerks report no increase in attorney assistance to otherwise SRLs generally, but 15 percent report increase in attorneys appearing through limited task representation.
- DC clerks report the most common SRL case type dissolutions and parenting plans (almost 100 percent collectively), followed by Name Change, and Modification of parenting plan or child support. Probate and estate polled ahead of Orders of Protection (53 percent).
- Most DC clerks provide written materials or forms to SRL. The vast majority indicate providing district-specific “packets” for dissolution or printing forms from the state law library for SRL.
- Most DC clerks report having no county-specific forms, special procedures, programs or court services directed to or required of SRLs, but those that do generally provide dissolution packets or fee waiver.
- DC clerks are most likely to refer SRLs to an online resources or the Montana Law Library followed closely by a Self-Help Law Center.
- Most DC clerks and staff spend between less than 20 percent of their time answering SRL questions during an average work day.
- Most of DC clerks report between 5-20 percent of SRLs require between 10 and 20 minutes of assistance per visit.
- The vast majority of DC clerks report a change in demographics or circumstances leading to self-representation.
- The vast majority of DC clerks report an increase in the use of forms developed and approved in Montana and report the forms help the SRL and the court.
- Most DC Clerks report brochures explaining court procedures and etiquette and approved forms SRL must use would be most helpful in dealing with SRLs.
- DC Clerks collectively report the most helpful SRL service would be a toll-free hotline followed closely by brochures and approved forms.

MAJOR OBSERVATIONAL FINDINGS (OPEN-ENDED RESPONSES)

- The most common themes arising from DC clerks the regarding **primary concerns about SRLs** (in approximate order of frequency):
 - Giving legal information and not legal advice – SRLs need legal advice
 - Frustration/anger from litigants when they believe they are not getting the answers to legal questions
 - Completing forms correctly/expectation Clerk can complete the forms for SRL
 - Failing to read or follow instructions
 - Time consuming
- DC clerks responded similarly to the question regarding **biggest challenge about SRLs their courts**, and overwhelming see the challenge of not giving legal advice or having legal advice available as the biggest challenge.

⁵ Note: This question and its responses relate to an increase in those who self-represent versus the volume of case filings/litigants generally in each court.

COURT OF LIMITED JURISDICTION CLERK OF COURT RESPONSES

MAJOR STATISTICAL FINDINGS

COLJ Clerks report no definitive collective increase or decrease in incidence of SRL (half reported increase and half reported no increase), suggesting geographic location of courts within the state may determine increases.⁶

- COLJ Clerks report no definitive collective increase or decrease in the complexity and circumstances of cases (half report increase and half report no increase).
- Most of COLJ Clerks are not certain if there are more attorneys assisting otherwise SRLs. The category reporting the greatest increase in attorney assistance is document preparation (Justice Court).
- COLJ Clerks collectively most often see SRLs in landlord-tenant/unlawful detainer cases and consumer-debt collection cases.
- Most COLJ Clerks provide written materials to SRLs.
- Most COLJ Clerks do not have special forms, procedures or programs for SRLs
- Most COLJ Clerks refer SRLs to a Self-Help Law Center or online resources/Montana Law Library.
- Most COLJ Clerks/staff spend less than 10 percent of the average day answering SRL questions.
- About half of COLJ Clerks/staff spend ten minutes or less with each SRL, but almost half spend ten to twenty minutes with each SRL.
- Most COLJ Clerks collectively report no increase in use of Montana
- The vast majority of COLJ Clerks collectively report a toll-free helpline would be the most helpful in dealing with SRL and court efficiency, with a majority also reporting a list of state and community resources and brochures as most helpful.

MAJOR OBSERVATIONAL FINDINGS (OPEN-ENDED RESPONSES)

- The most common themes arising from COLJ the regarding **primary concerns about SRLs** (in approximate order of frequency):
 - Giving legal information and not legal advice – SRLs need legal advice
 - Completing forms correctly/expectation Clerk can complete the forms for SRL
 - They are not treated fairly by the court system
 - Knowledge of court processes
 - Time spent
- COLJ Clerks responded similarly to the question regarding **biggest challenge about SRLs their courts**, and overwhelming see the challenge of not giving legal advice or having legal advice available as the biggest challenge.
- Many had added concerns about relieving concerns and fear and challenges with those who cannot read or write
- COLJ Clerks also reveal the added time constraints when there is a small office and no one to assist other than a single employee or two.

⁶ Note: This question and its responses relate to an increase in those who self-represent versus the volume of case filings/litigants generally in each court.

STATISTICAL ITEMIZATION

Percentages are based on those who responded to any particular question and not necessarily on the total number responding to the questionnaire generally. Not all respondents responded to all questions.

JUDICIAL STATISTICAL ITEMIZATION

INCIDENCE OF SRLS

- Almost all DC judges report SRLs have increased measurably over the last two years.
- There was no majority among Justice Court judges if SRLs had increased or decreased
- The majority of City Court judges believe SRLs have not increased in their courts over the last two years.
- 0 percent of Municipal judges believe SRLs have increased in their court, but 29 indicate SRLs have decreased in their court.

ATTORNEY ASSISTANCE

- The majority of judges in all sub-categories are not certain if there are fewer or more otherwise SRLs receiving assistance from attorneys.
- Collectively, about 30 percent of **District Court judges** see an increase in various types of assistance to otherwise SRLs and it is more likely that an attorney will represent a SRL after a case is filed than to withdraw at a later time.
- About 15 percent of justice court judges see an increase in various types of assistance to otherwise SRLs but it is more likely an attorney will file a case and withdraw at a later time than to represent an SRL after the case is filed.
- The majority of **Justice Court judges** are not certain if there are fewer or more attorneys
- **City court judges** report no incidence of attorneys withdrawing during the course of a case, but approximately one-quarter observe cases filed by an SRL that is later represented by an attorney.
- **Municipal judges** report an increase in attorney assistance to an otherwise SRLs. Note: Limited number of municipal judges should be considered when analyzing the impact of this sub-group's data comparatively to the balance of the judicial sub-groups.

CASE TYPE

- 100 percent of responding **District Court judges** indicate most common SRL case type is both Dissolution/separation/annulment and parenting plans/parenting time followed modification of parenting plan or child support (90 percent) and Order of Protection at (88 percent).
- 95 percent of responding **City Court judges** indicates most common SRL case type as Order of Protection, followed by landlord-tenant (32 percent) and small claims (26 percent).
- 90 percent of responding **justice court judges** indicates most common SRL case type as Order of Protection, followed by small claims (77 percent) and landlord-tenant/unlawful detainer (71%).
- 100% of responding **Municipal** judges indicate most common SRL case type as Order of Protection.

REFERRALS⁷

⁷ Note that Self-Help Law Centers limited to specific geographic locations, which impacts the availability of this referral source. In addition, the volume of litigants in varying courts results in much greater numbers by volume than by percentage.

- 79 percent of responding **District Court judges** refers SRLs to a Self-Help Law Center, followed by 47 percent to online resources, 37 percent to Montana Legal Services Association (MLSA) and 34 percent to an organized pro bono program.
- 63 percent of responding **City Court judges** refers SRLs to MLSA and/or online resources/Montana Law Library followed by 53 percent to a Self-Help Law Center.
- 71 percent of responding **Justice Court judges** refers SRLs to MLSA followed by 67 percent to a self-help law center and 42 percent to online resources/Montana Law Library.
- **Municipal judges** are most likely to refer SRLs to a Self-Help Law Center, online resources or a victim witness advocate.

CHANGES IN SRL DEMOGRAPHICS

- 65 percent of **District Court judges** indicate a change in demographics or circumstances leading to self representation (see Quantitative Section for comments and descriptions).
- 96 percent of **City Court judges** indicate no change SRL demographics or circumstances leading to self-representation.
- 74 percent of **Justice Court judges** indicate no change SRL demographics or circumstances leading to self-representation.
- 75 percent of **Municipal judges** indicate no change SRL demographics or circumstances leading to self-representation.

USE OF APPROVED FORMS

- 92 percent of **District Court judges** observe an increase in the use of forms developed and approved in Montana and 66 percent believe the forms help the SRL and the court.
- 78 percent of **City Court judges** observe no change in the use of forms developed and approved in Montana and 86 percent believe the forms help the SRL and the court.
- 60 percent of **Justice Court judges** observed an increase in the use of forms developed and approved in Montana and 78 percent found the forms helpful to the SRL and the court.
- 50 percent of responding **Municipal judges** observed an increase in the use of forms developed and approved in Montana and 100 percent found the forms helpful to the SRL and the court.

MOST HELPFUL TO THE COURT IN DEALING WITH SRLS AND COURT EFFICIENCY

- 69 percent of **District Court judges** indicated an on-site SRL facilitator would be most helpful followed by a sanctioned website with better links, forms, and general information (60 percent) and approved forms that SRLs must use (48 percent). 63 percent thought additional rules of civil procedure would not be helpful.
- 69 percent of **City Court judges** indicated a toll-free helpline would be most helpful followed by a sanctioned website with better links, forms, and general information (63 percent) and brochures explaining court procedures and etiquette (53 percent). 37 percent believed additional rules of civil procedure and an on-site SRL facilitator would not be helpful.
- 84 percent of **Justice Court judges** indicated a toll-free help line would be most helpful followed by brochures explaining court procedures and etiquette (74 percent) and videos explaining court procedures and etiquette (64 percent). 47 percent believed additional rules would not be helpful. 42 percent believe regular clinics or presentations for SRLs would not be helpful.

- 75 percent of **Municipal Court** judges believed brochures explaining court procedures and etiquette would be most helpful followed by a sanctioned website (67 percent) and approved forms SRLs must use and videos explaining court procedures and etiquette (50 percent each).

DISTRICT COURT CLERK STATISTICAL ITEMIZATION

INCIDENCE OF SRLS

- 97 percent of DC Clerks believe SRLs have increased measurably over the last two years.

COMPLEXITY OF CASES

- 95 percent of DC Clerks believe the complexity of SRL cases have increased over the last three years

ATTORNEY ASSISTANCE

- 63 percent of DC clerks do not know if there is an increase in attorneys providing assistance to otherwise SRLs.
- 20 percent of DC Clerks indicate an increase in limited scope appearance.

CASE TYPE

- Near 100 percent of responding DC Clerks indicate most common SRL case type is both Dissolution/separation/annulment and parenting plans/parenting time followed by Name Change (91 percent) and modification of parenting plan or child support (79 percent) and Order of Protection at (88 percent).

WRITTEN MATERIALS

- 66 percent of DC Clerks provide written materials or forms to SRLs.
- Most written materials provided involve pre-developed forms or printing from online sources from Clerk's office when SRL does not have access to a computer

Percentages are based on those who responded to any particular question and not necessarily on the total number responding to the questionnaire generally. Not all judges responded to all questions.

COUNTY-SPECIFIC FORMS, PROCEDURES OR PROGRAMS

- 66 percent of DCs do not have special forms, procedures or programs

REFERRALS⁸

- 75 percent of responding DC Clerks refer SRLs to online resources/Montana Law Library, 70 percent refer to a Self-Help Law Center and 50 percent to MLSA.

PERCENTAGE OF TIME SENT ANSWERING SRL QUESTIONS (NON-PROCEDURAL OR FILING)

- 20 percent of responding DC Clerks indicate spending less than 5 percent
- 36 percent of responding DC Clerks indicate spending 5-10 percent
- 24 percent of responding DC Clerks indicate spending 10-20 percent
- 12 percent of responding DC Clerks indicate spending 20-30 percent

AMOUNT OF TIME SPENT WITH EACH SRL

- 36 percent of responding DC Clerks indicate spending 6-10 minutes with each SRL

⁸ Note that Self-Help Law Centers limited to specific geographic locations, which impacts the availability of this referral source. In addition, the volume of litigants in varying courts results in much greater numbers by volume than by percentage.

- 24 percent of responding DC Clerks indicate spending 11-15 minutes with each SRL
- 16 percent of responding DC Clerks indicate spending 15-20 minutes with each SRL
- 20 percent of responding DC Clerks indicate spending 21-40 minutes with each SRL
- percent of responding DC Clerks indicate spending more than 40 minutes with each SRL

SRLS REQUIRING EXTENDED TIME

- 33 percent of responding DC Clerks believe 5-10 percent of SRLs require more than 10 but less than 20 minutes of assistance and 25 percent believe 10-20 percent requires this same amount of time.
- 39 percent of responding DC Clerks report less than 5 percent of SRLs requires more than 20 minutes of assistance and 13 percent report 5-10 percent of SRLs need this same amount of time.
- Collectively, 35 percent report more than 30 percent of SRLs require more than 20 minutes of assistance.

CHANGES IN SRL DEMOGRAPHICS

- 64 percent of reporting DC Clerks indicate a change in demographics or circumstances leading to self-representation (see Quantitative Section for comments and descriptions).

USE OF APPROVED FORMS

- 79 percent of responding DC Clerks observe an increase in the use of forms developed and approved in Montana and 66 percent believe the forms help the SRL and the court.
- 78 percent of responding DC Clerks believe the statewide forms are helpful to the SRL and the Court.
- 16 percent believe the forms help the SRL but not the court.

MOST HELPFUL TO THE DC CLERK/OFFICE IN DEALING WITH SRL AND COURT EFFICIENCY

- 75 percent of responding DC Clerks rank a toll-free helpline as most helpful, followed by brochures explaining court procedures (72 percent) and approved forms SRL must use (69 percent).

COURT OF LIMITED JURISDICTION CLERK STATISTICAL ITEMIZATION

INCIDENCE OF SRLS

- 97 percent of DC Clerks believe SRLs have increased measurably over the last two years.

COMPLEXITY OF CASES

- 95 percent of DC Clerks believe the complexity of SRL cases have increased over the last three years

ATTORNEY ASSISTANCE

- 63 percent of DC clerks do not know if there is an increase in attorneys providing assistance to otherwise SRLs.
- 20 percent of DC Clerks indicate an increase in limited scope appearance.

CASE TYPE

- Near 100 percent of responding DC Clerks indicate most common SRL case type is both Dissolution/separation/annulment and parenting plans/parenting time followed by Name Change (91 percent) and modification of parenting plan or child support (79 percent) and Order of Protection at (88 percent).

WRITTEN MATERIALS

- 66 percent of DC Clerks provide written materials or forms to SRLs.

- Most written materials provided involve pre-developed forms or printing from online sources from Clerk's office when SRL does not have access to a computer

Percentages are based on those who responded to any particular question and not necessarily on the total number responding to the questionnaire generally. Not all judges responded to all questions.

COUNTY-SPECIFIC FORMS, PROCEDURES OR PROGRAMS

- 66 percent of DCs do not have special forms, procedures or programs

REFERRALS⁹

- 75 percent of responding DC Clerks refer SRLs to online resources/Montana Law Library, 70 percent refer to a Self-Help Law Center and 50 percent to MLSA.

PERCENTAGE OF TIME SENT ANSWERING SRL QUESTIONS (NON-PROCEDURAL OR FILING)

- 20 percent of responding DC Clerks indicate spending less than 5 percent
- 36 percent of responding DC Clerks indicate spending 5-10 percent
- 24 percent of responding DC Clerks indicate spending 10-20 percent
- 12 percent of responding DC Clerks indicate spending 20-30 percent

AMOUNT OF TIME SPENT WITH EACH SRL

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- percent of responding DC Clerks indicate spending more than 40 minutes with each SRL

SRLs REQUIRING EXTENDED TIME

- 33 percent of responding DC Clerks believe 5-10 percent of SRLs require more than 10 but less than 20 minutes of assistance and 25 percent believe 10-20 percent requires this same amount of time.
- 39 percent of responding DC Clerks report less than 5 percent of SRLs requires more than 20 minutes of assistance and 13 percent report 5-10 percent of SRLs need this same amount of time.
- Collectively, 35 percent report more than 30 percent of SRLs require more than 20 minutes of assistance.

CHANGES IN SRL DEMOGRAPHICS

- 64 percent of reporting DC Clerks indicate a change in demographics or circumstances leading to self representation (see Quantitative Section for comments and descriptions).

USE OF APPROVED FORMS

- 79 percent of responding DC Clerks observe an increase in the use of forms developed and approved in Montana and 66 percent believe the forms help the SRL and the court.
- 78 percent of responding DC Clerks believe the statewide forms are helpful to the SRL and the Court.
- 16 percent believe the forms help the SRL but not the court.

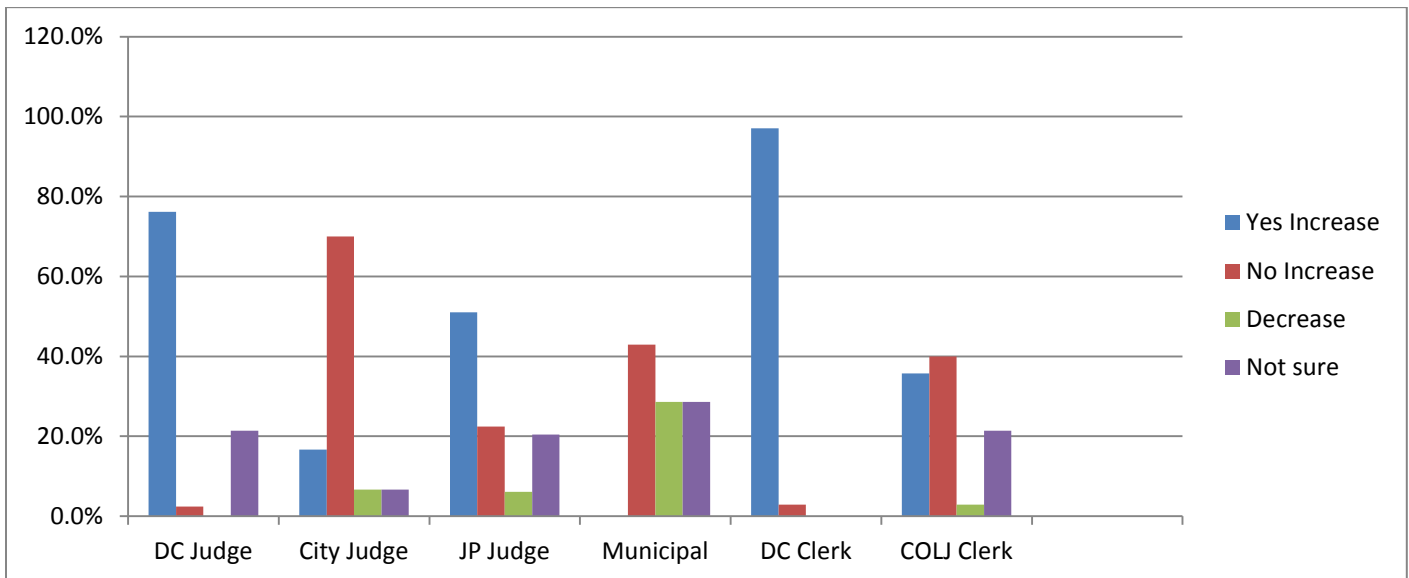
⁹ Note that Self-Help Law Centers limited to specific geographic locations, which impacts the availability of this referral source. In addition, the volume of litigants in varying courts results in much greater numbers by volume than by percentage.

MOST HELPFUL TO THE DC CLERK/OFFICE IN DEALING WITH SRL AND COURT EFFICIENCY

- 75 percent of responding DC Clerks rank a toll-free helpline as most helpful, followed by brochures explaining court procedures (72 percent) and approved forms SRL must use (69 percent).

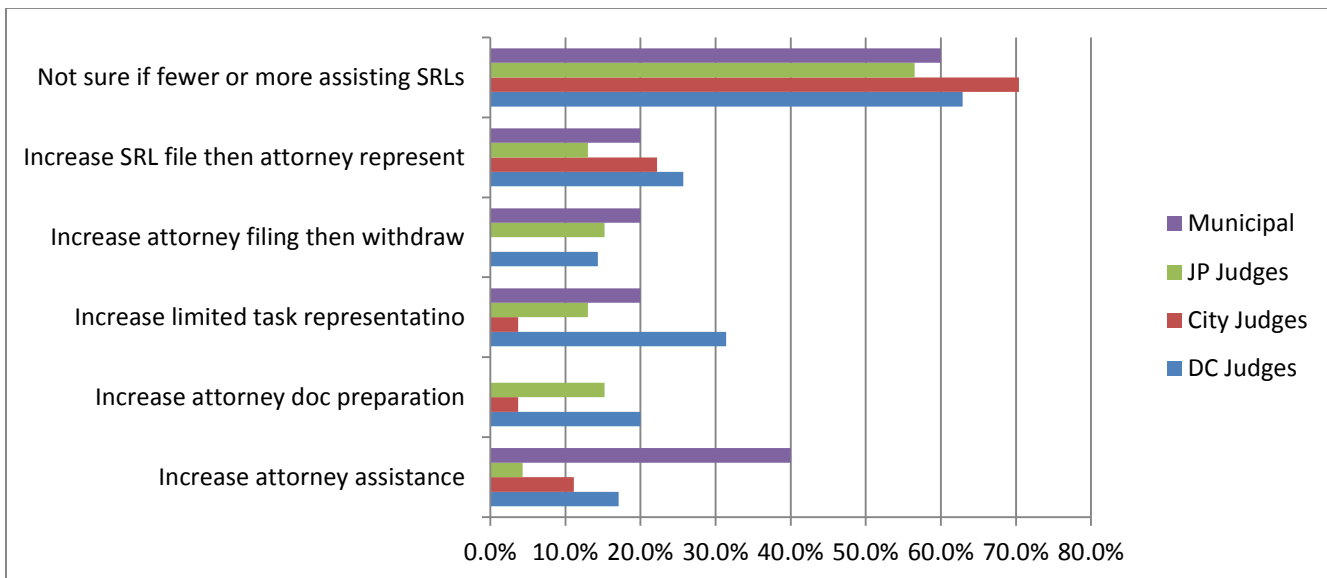
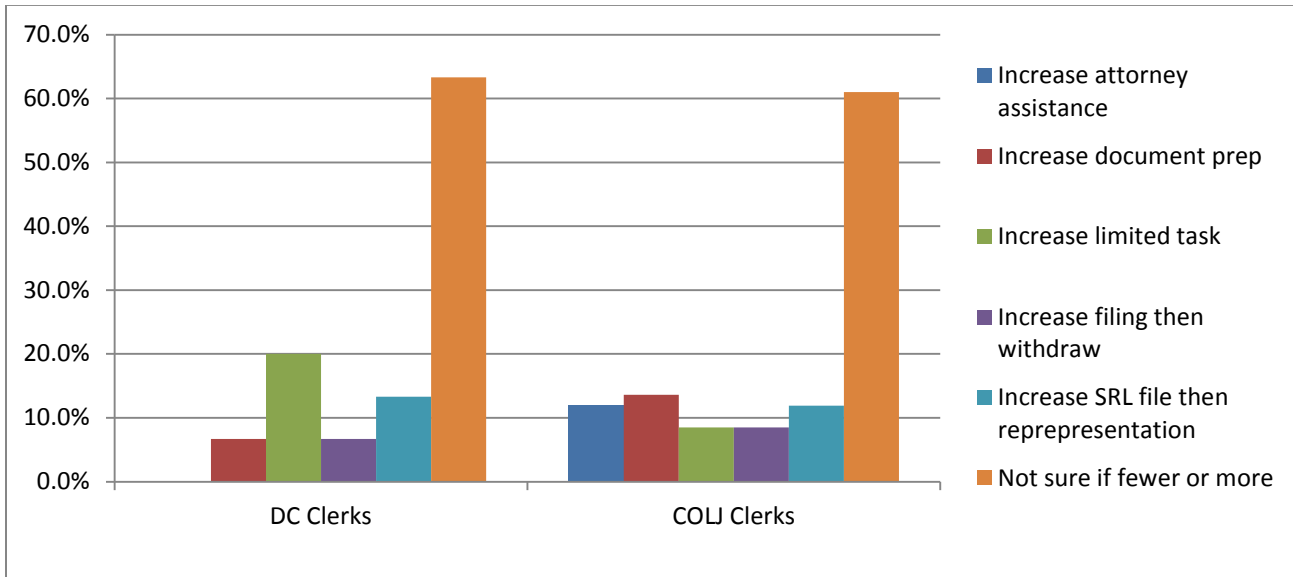
COMPARATIVE CHARTS

IN THE LAST TWO YEARS, HAVE YOU SEEN AN INCREASE IN THE NUMBER OF SELF-REPRESENTED LITIGANTS (SRLs) IN OUR COURT SYSTEM (OR COUNTY)?



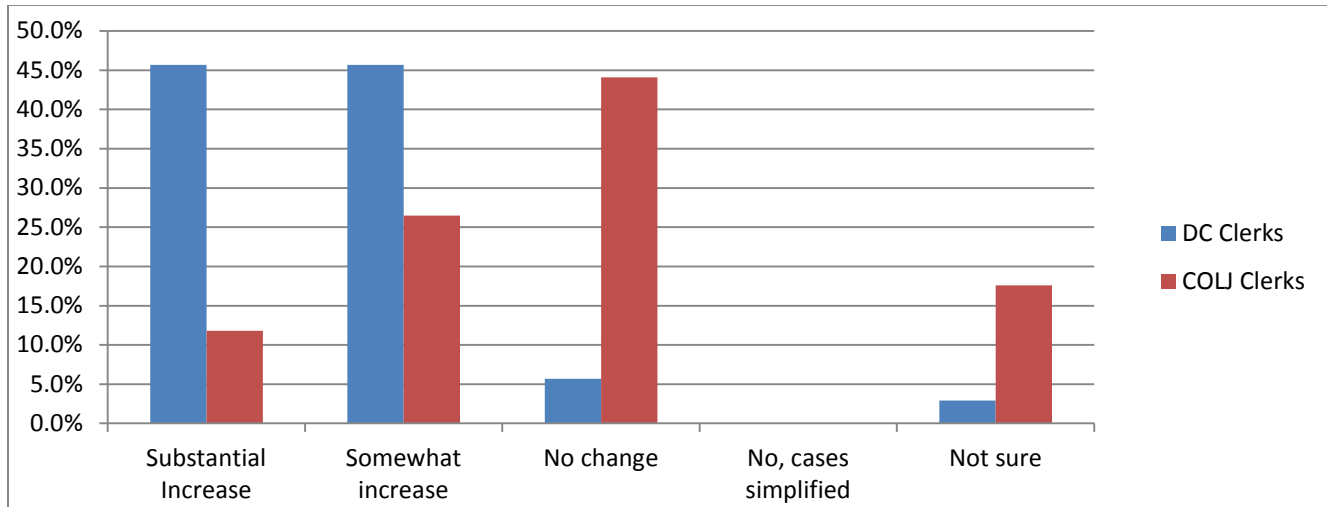
	DC Judge	City Judge	JP Judge	Municipal Judge	DC Clerk	COLJ Clerk
Yes Increase	76.2%	16.7%	51.0%	0.0%	97.1%	35.7%
No Increase	2.4%	70.0%	22.4%	42.9%	2.9%	40.0%
Decrease	0.0%	6.7%	6.1%	28.6%	0.0%	2.9%
Not Sure	21.4%	6.7%	20.4%	28.6%	0.0%	21.4%

WHAT ARE YOUR OBSERVATIONS REGARDING SRLS RECEIVING ASSISTANCE FROM ATTORNEYS DURING THE COURSE OF THE CASE? (MARK ALL THAT APPLY)

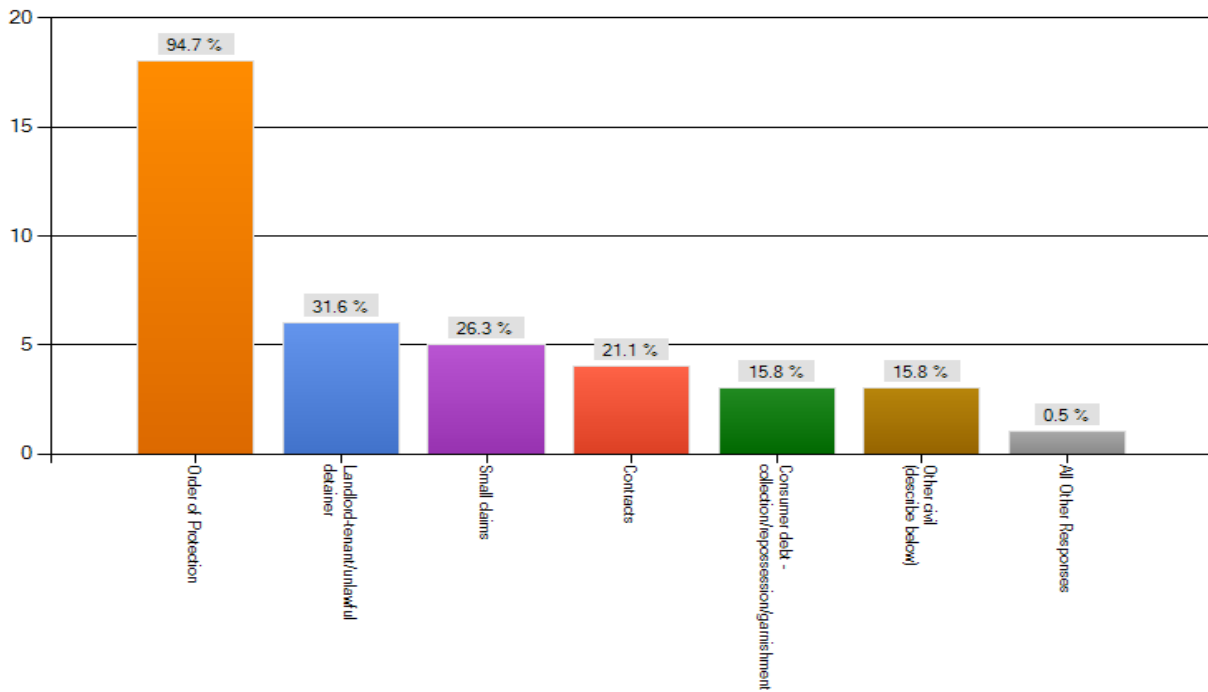


	DC Judge	City Judge	JP Judge	Municipal	DC Clerk	COLJ Clerk
Increase attorney Assistance	17.1%	11.1%	4.3%	40.0%	0.0%	11.9%
Increase attorney doc preparation	20%	3.7%	15.2%	0.0%	6.7%	13.6%
Increase limited task representation	31.4%	3.7%	13.0%	20.0%	20.0%	8.5%
Increase attorney filing then withdraw	14.3%	0.0%	15.2%	20.0%	6.7%	8.5%
Increase SRL file then attorney rep	25.7%	22.2%	13.0%	20.0%	13.3%	11.9%
Not sure if fewer or more attorneys assisting SRLs	62.9%	70.4%	56.5%	60.0%	63.3%	61.0%

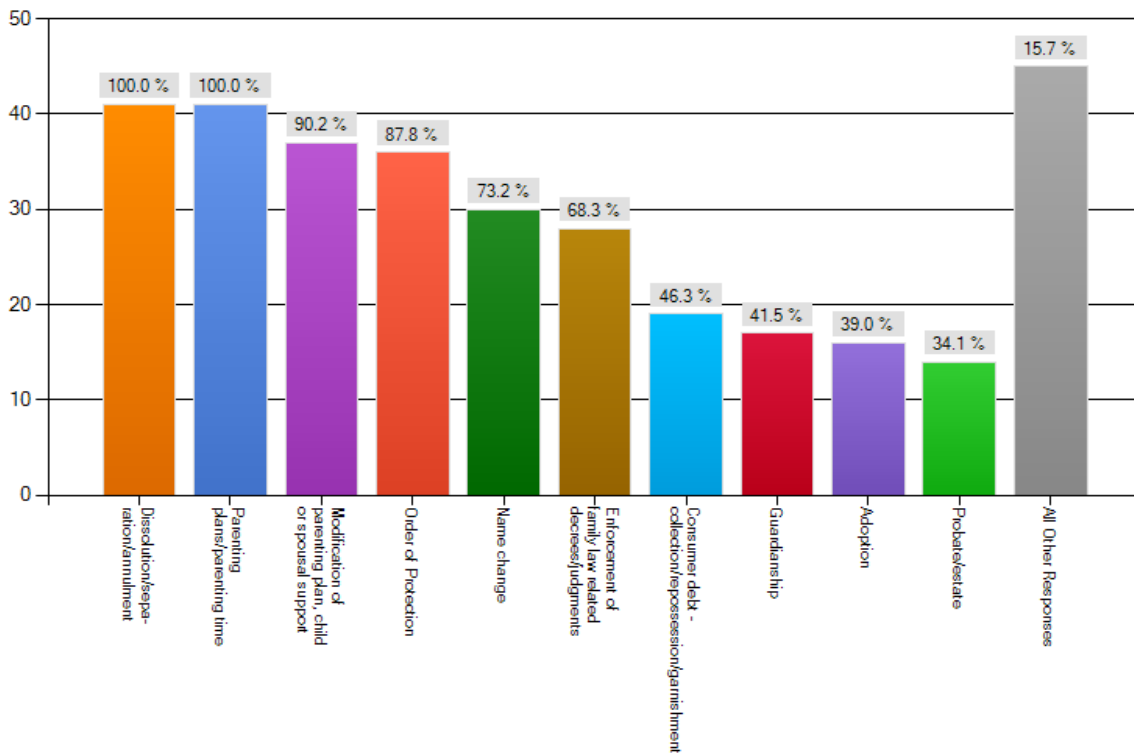
HAS THE COMPLEXITY OF SRL CASES AND CIRCUMSTANCES SURROUNDING THOSE CASES INCREASED OVER THE LAST THREE YEARS?



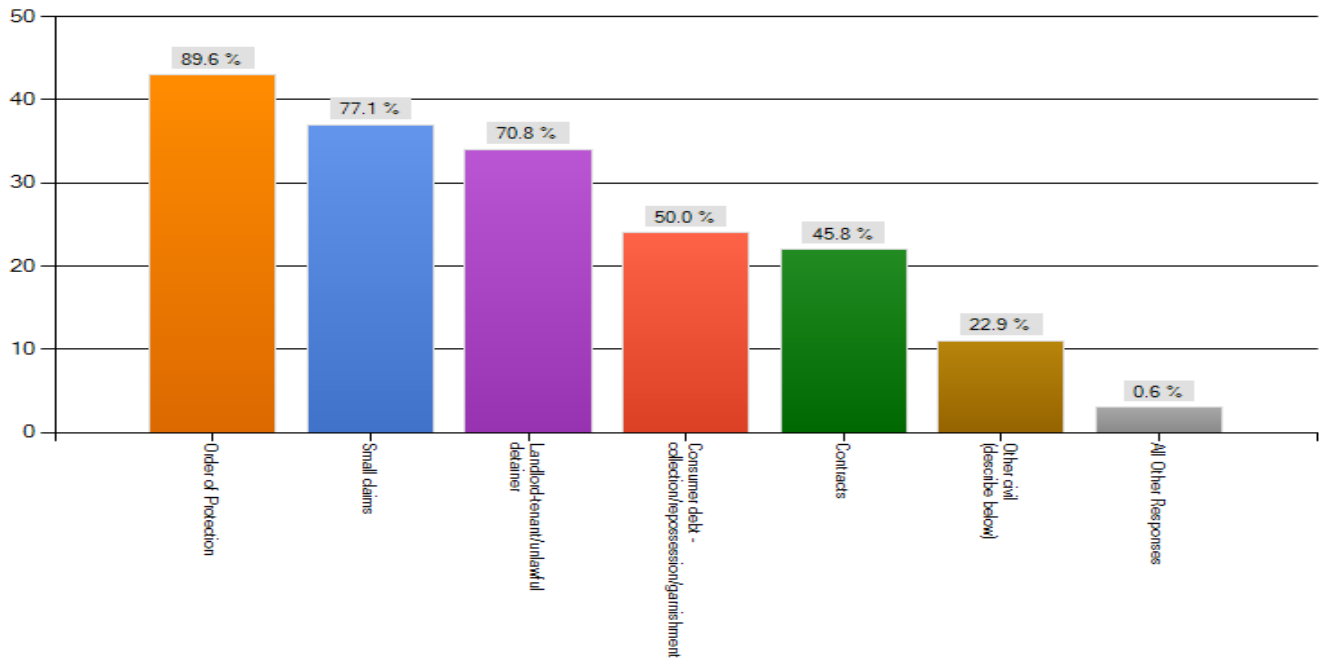
City Court Case Type



District Court Case Type



Justice Court Case Type

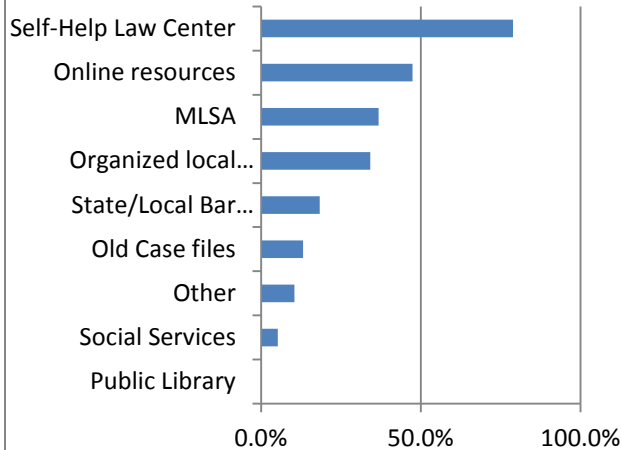


Case Type Table

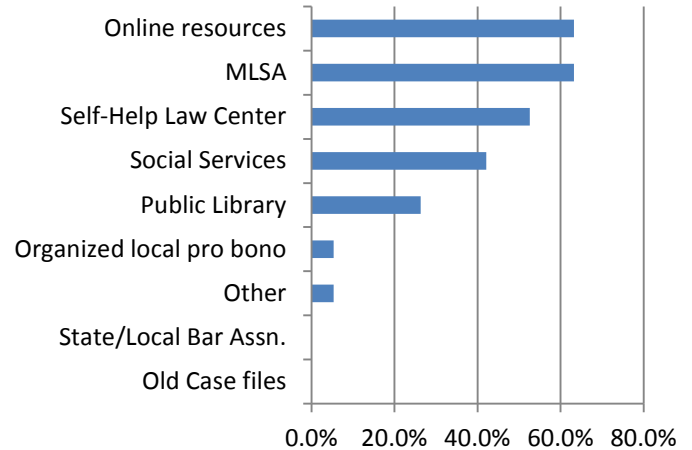
	DC Judge	City	JP Judge	Municipal	DC Clerk	COLJ Clerk
Dissolution/separation/annulment	100%	0.0%	0.0%	0.0%	100%	XX
Parenting	100%	0.0%	0.0%	0.0%	97.0%	XX
Petitions to establish paternity	19.5%	0.0%	0.0%	0.0%	21.2%	XX
Modify of parenting/spousal support	90.2%	0.0%	0.0%	0.0%	78.8%	XX
Enforcement of DR decrees/judgments	68.3%	5.3%	0.0%	0.0%	33.3%	XX
Adoption	39.0%	0.0%	0.0%	0.0%	24.2%	XX
Other family	29.3%	0.0%	0.0%	0.0%	6.1%	XX
Order of protection	87.8%	94.7%	91.5%	100%	54.5%	XX
Name change	73.2%	0.0%	0.0%	0.0%	90.9%	XX
Guardianship	41.5%	0.0%	0.0%	0.0%	27.3%	XX
Probate/estate	34.1%	0.0%	0.0%	0.0%	54.5%	XX
Landlord-tenant/unlawful detainer	12.2%	31.6%	70.2%	0.0%	0.0%	XX
Home ownership/real property	12.2%	0.0%	0.0%	0.0%	6.1%	XX
Consumer debt-collection	46.3%	15.8%	51.1%	0.0%	18.2%	XX
Small Claims	14.6%	26.3%	76.6%	0.0%	3.0%	XX
Contracts	9.8%	21.1%	46.8%	0.0%	3.0%	XX
Other Civil	12.2%	15.8%	25.5%	0.0	12.1%	XX

DO YOU REGULARLY REFER SRLS TO ANY OF THE FOLLOWING? (CHECK ALL THAT APPLY)

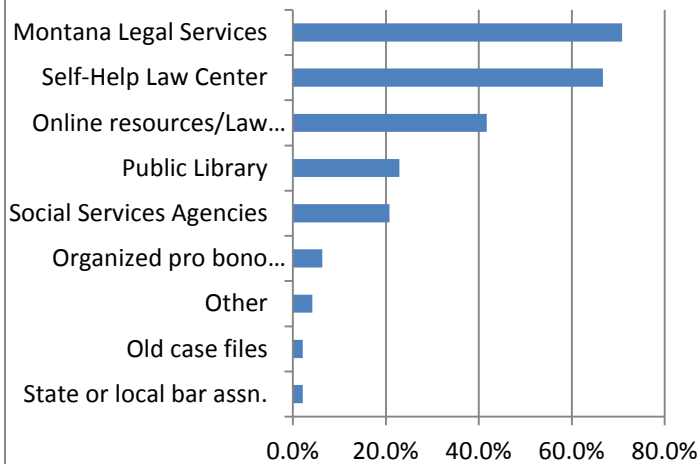
DC Judge



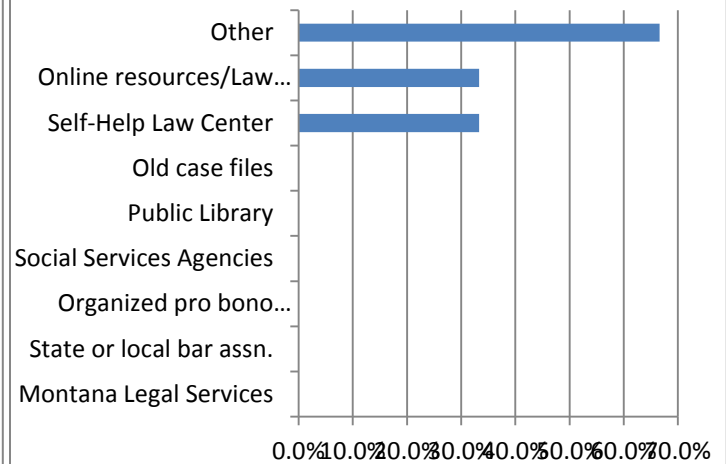
City Judge



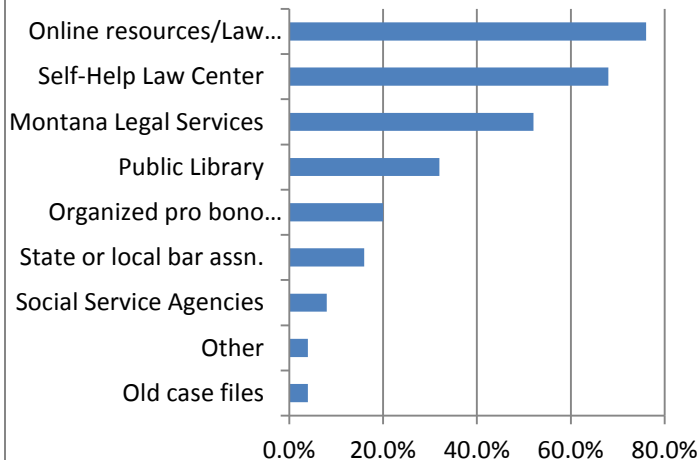
JP Judge



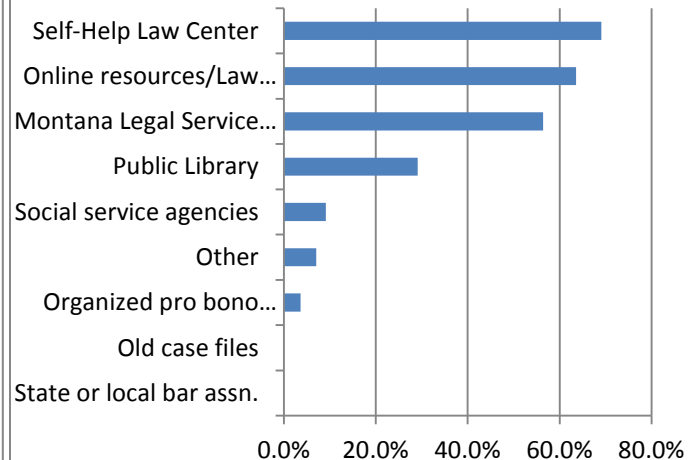
Municipal



DC Clerk



COLJ Clerk



Referral Table

	DC Judge	City Judge	JP Judge	Municipal	DC Clerk	COLJ Clerk
Montana Legal Services Assn.	36.8%	63.2%	70.8%	0.0%	52.0%	56.4%
Self-Help Law Center	78.9%	52.6%	66.7%	33.3%	68.0%	69.1%
Online resources/Montana Law Library	47.4%	63.2%	41.7%	33.33%	76.0%	63.6%
State or local bar association program	18.4%	0.0%	2.1%	0.0%	16.0%	0.0%
Organized local pro bono program	34.2%	5.3%	6.3%	0.0%	20.0%	3.6%
Social Service Agencies	5.3%	42.1%	20.8%	0.0%	8.0%	9.1%
Public Library	0.0%	26.3%	22.9%	0.0%	32.0%	29.1%
Old case files or similar case files	13.2%	0.0	2.1%	0.0%	4.0%	0.0%
Other	10.5% ¹⁰	5.3% ¹¹	4.2% ¹²	66.6% ¹³	4.0%	7.0% ¹⁴

¹⁰ Clerk of Court, Family Court Services, No referrals are made to SRLs

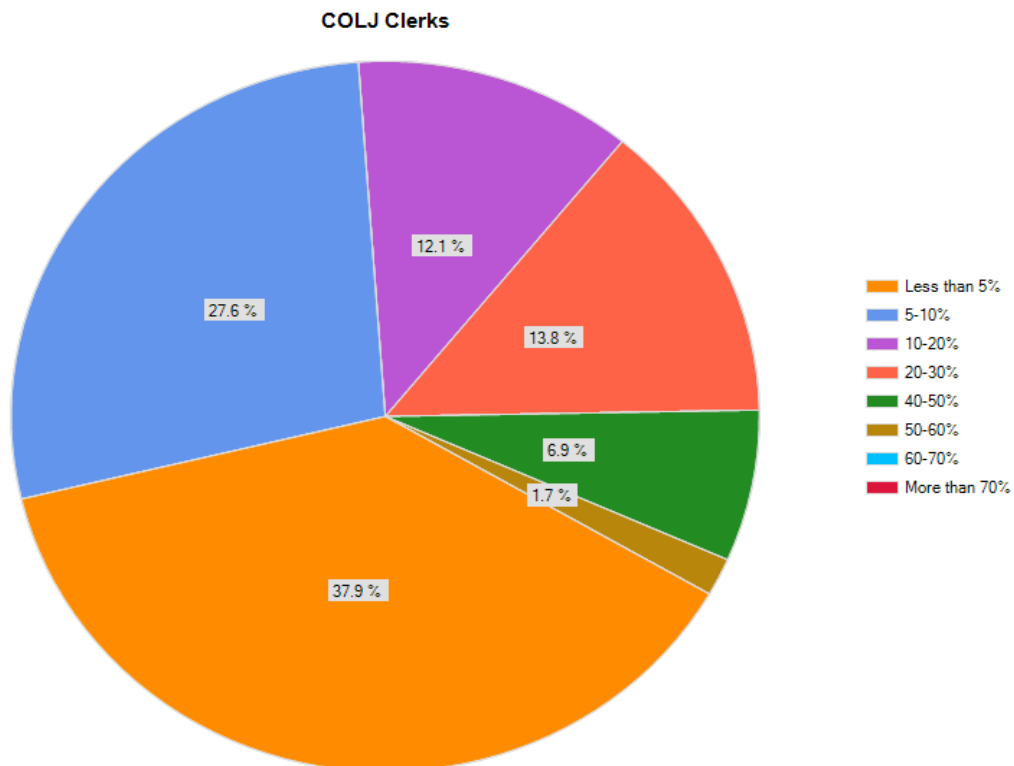
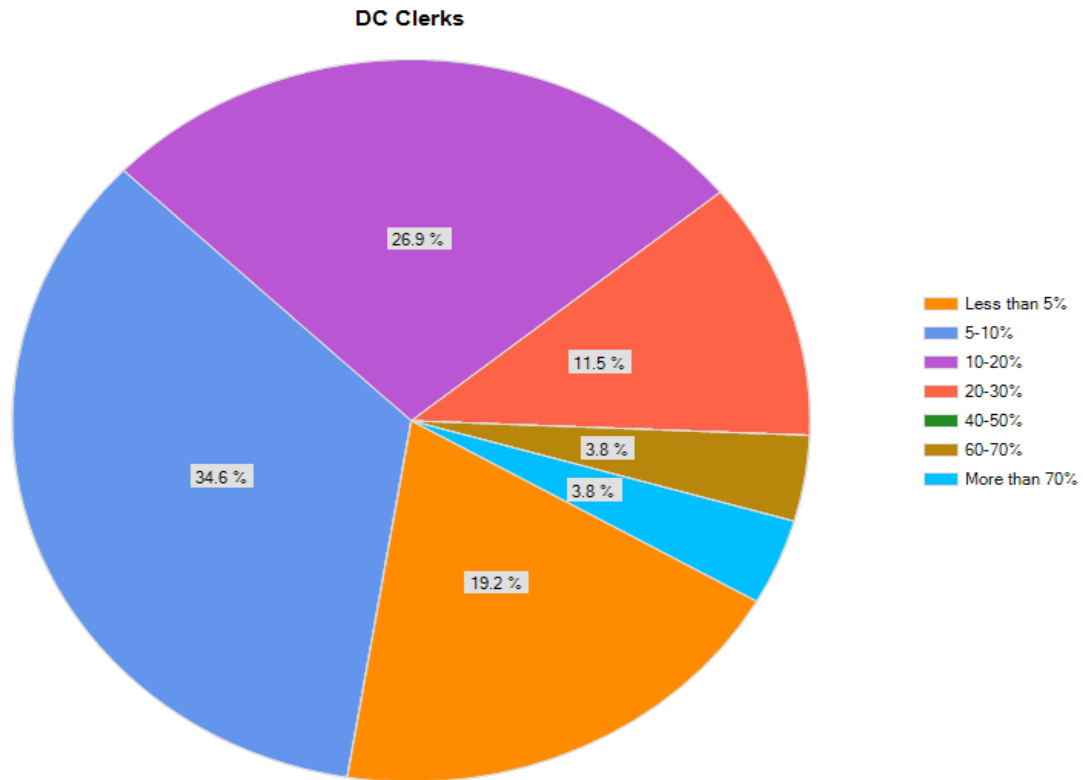
¹¹ Private attorney

¹² Clerk of Court, Public Defender

¹³ Crime victim services/victim advocates

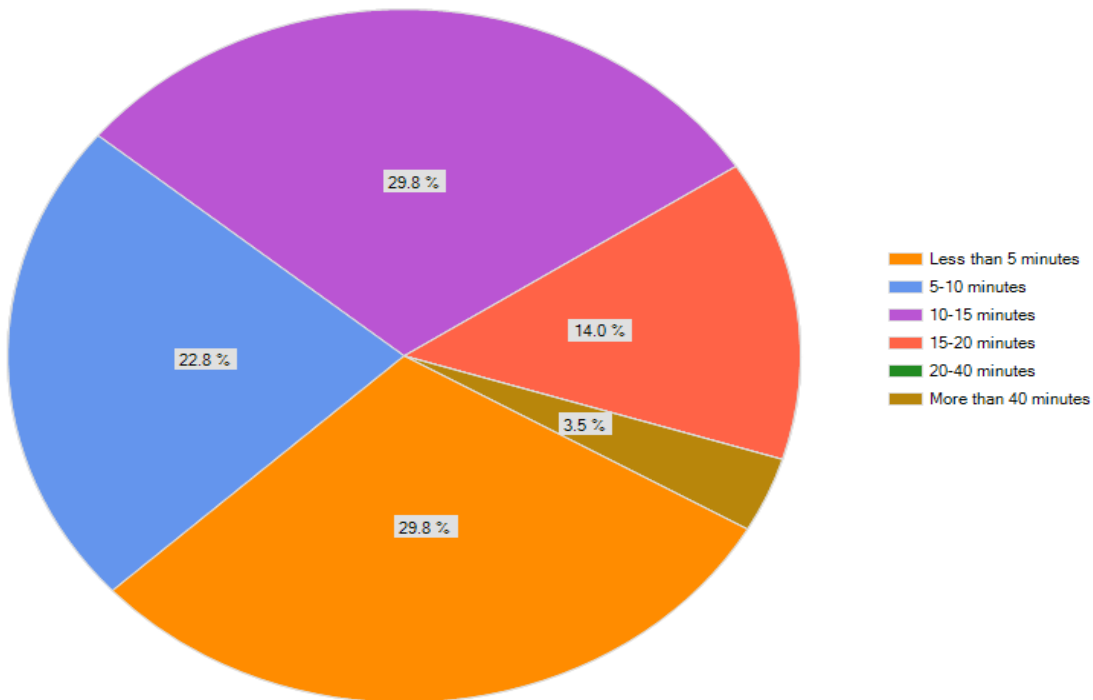
¹⁴ MT Landlord's Assn., Victim Services, Not allowed to refer to any services

ON AN AVERAGE DAY, ABOUT WHAT PERCENTAGE OF TIME DO YOU AND YOUR STAFF SPEND TO ANSWERING SRLs' QUESTIONS (NOT INCLUDING SIMPLE PROCEDURAL OR FILING QUESTIONS)?

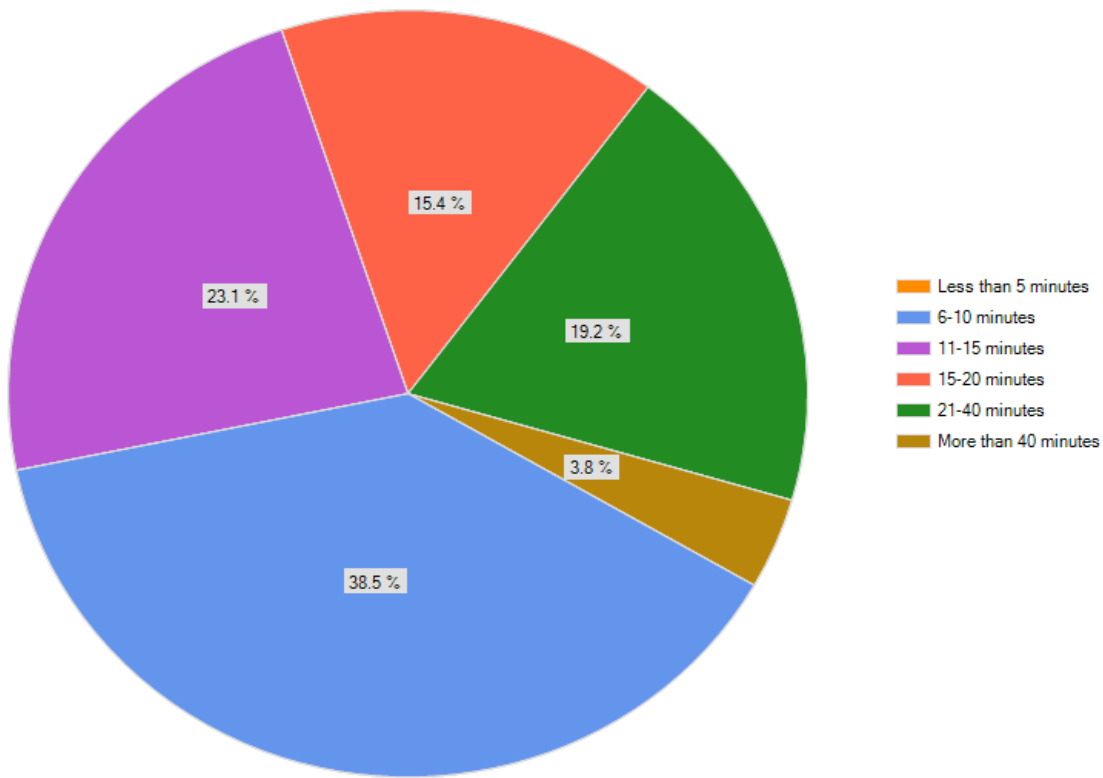


ON AVERAGE, WHAT AMOUNT OF TIME DO YOU OR YOUR STAFF SPEND WITH EACH SRL (NOT INCLUDING ASSISTING WITH STANDARD FILING PROCEDURES)?

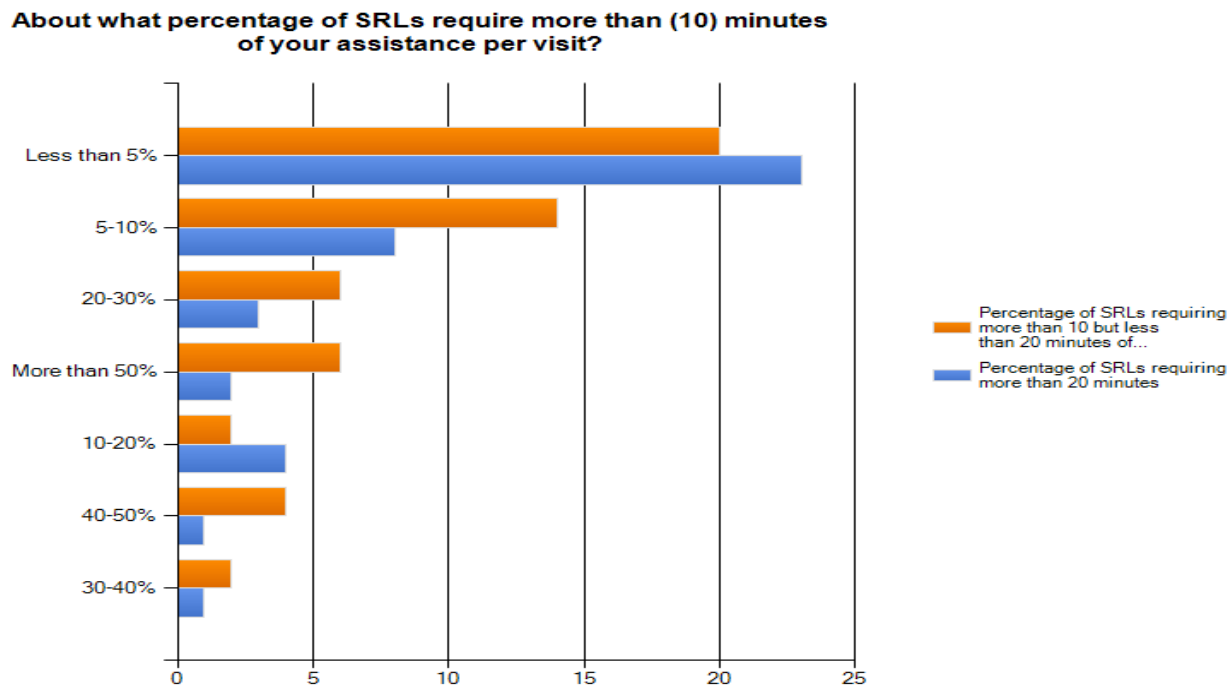
COLJ Clerks



DC Clerks

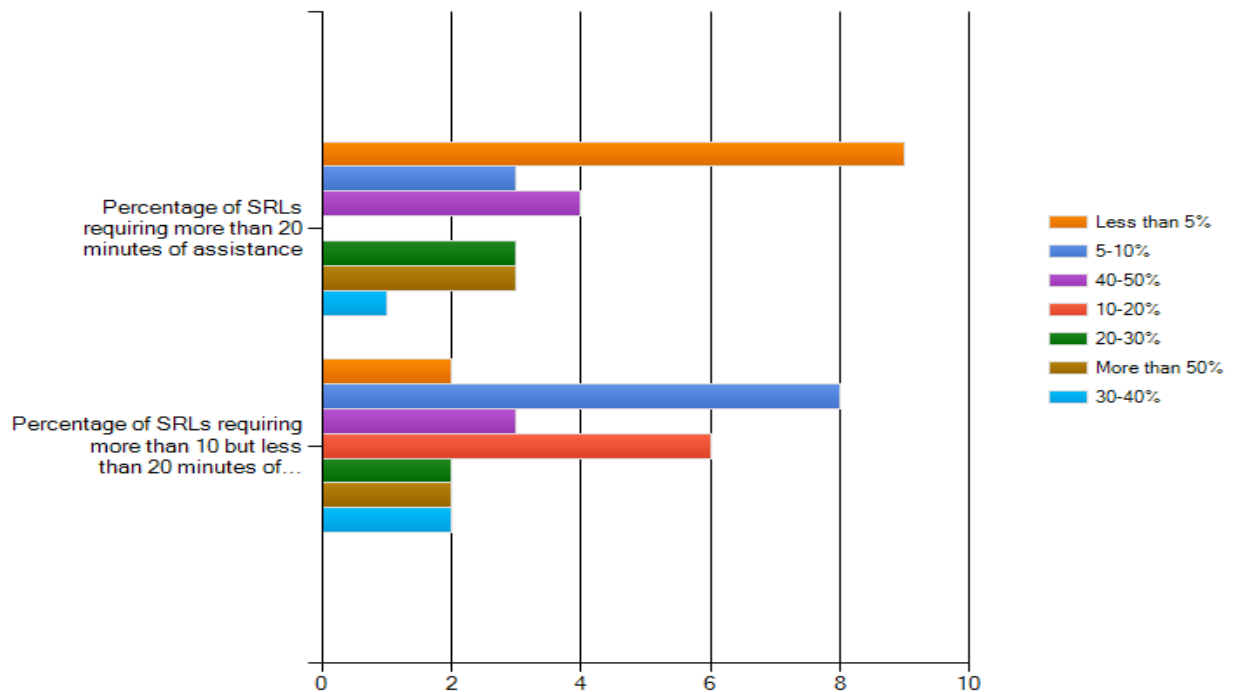


ABOUT WHAT PERCENTAGE OF SRLS REQUIRE MORE THAN (10) MINUTES OF YOUR ASSISTANCE PER VISIT?
 COLJ Clerks

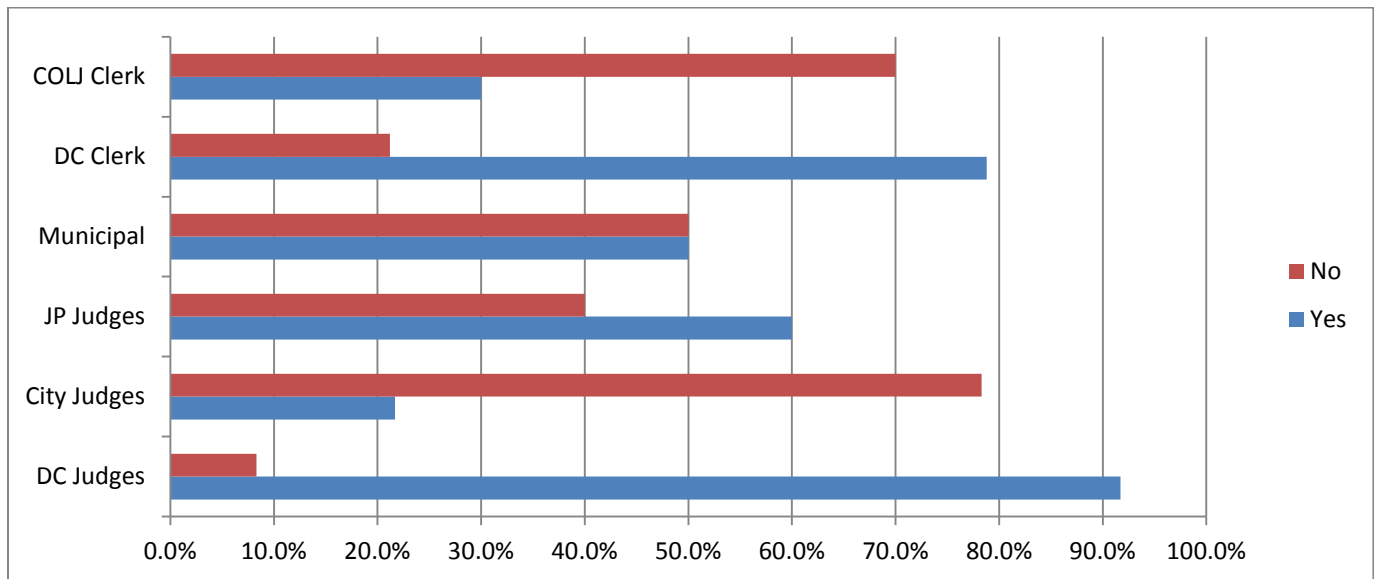


DC Clerks

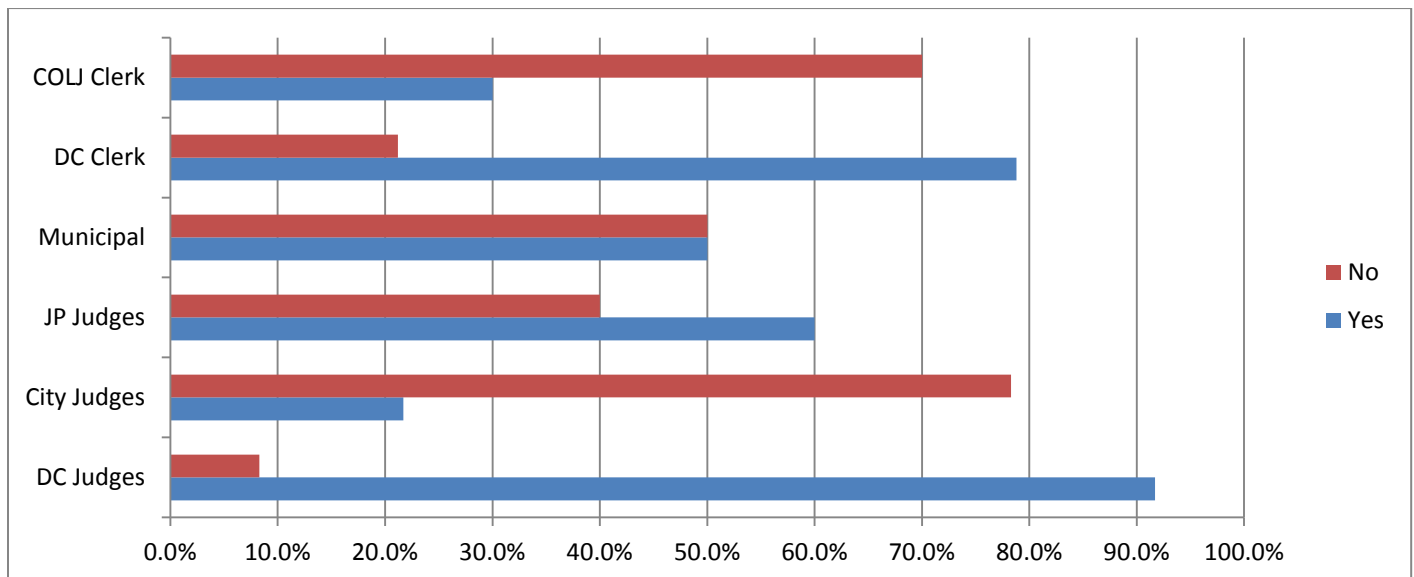
Please indicate what percentage of SRLs require your assistance for the times indicated.



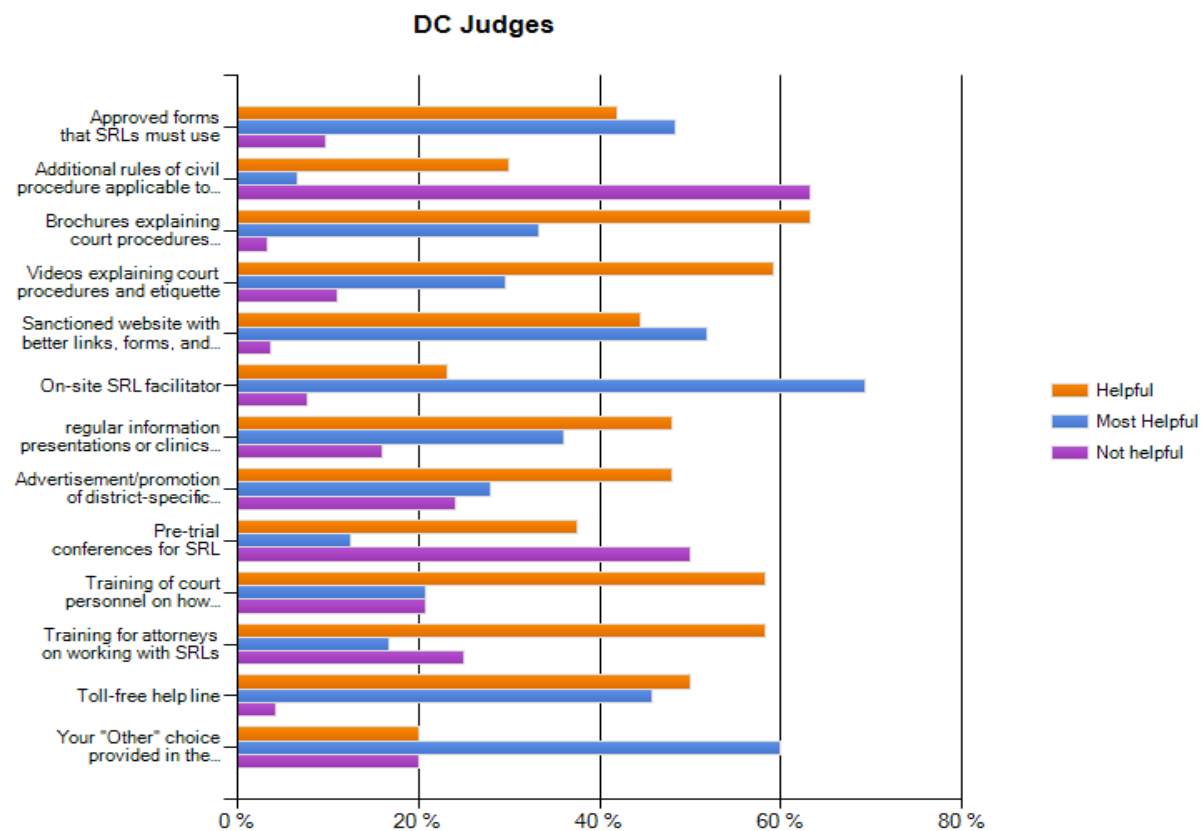
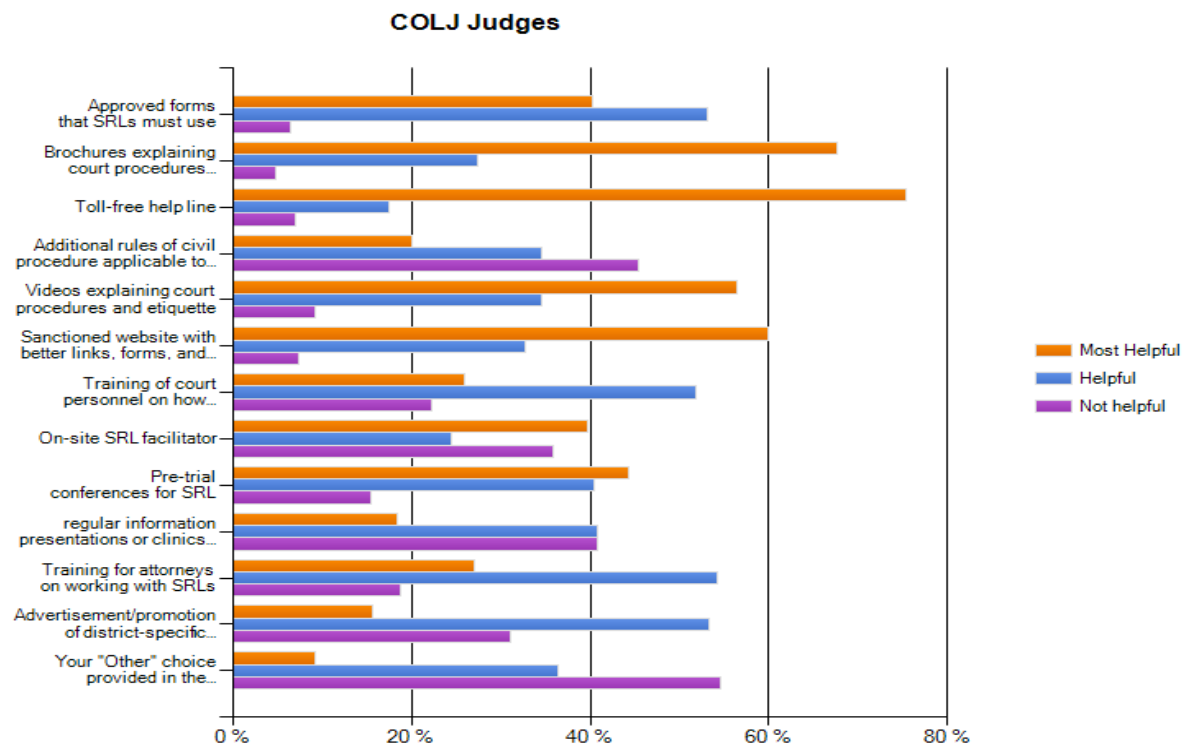
HAVE YOU SEEN A CHANGE IN SRL DEMOGRAPHICS OR CIRCUMSTANCES LEADING TO SELF-REPRESENTATION OVER THE LAST FIVE YEARS?



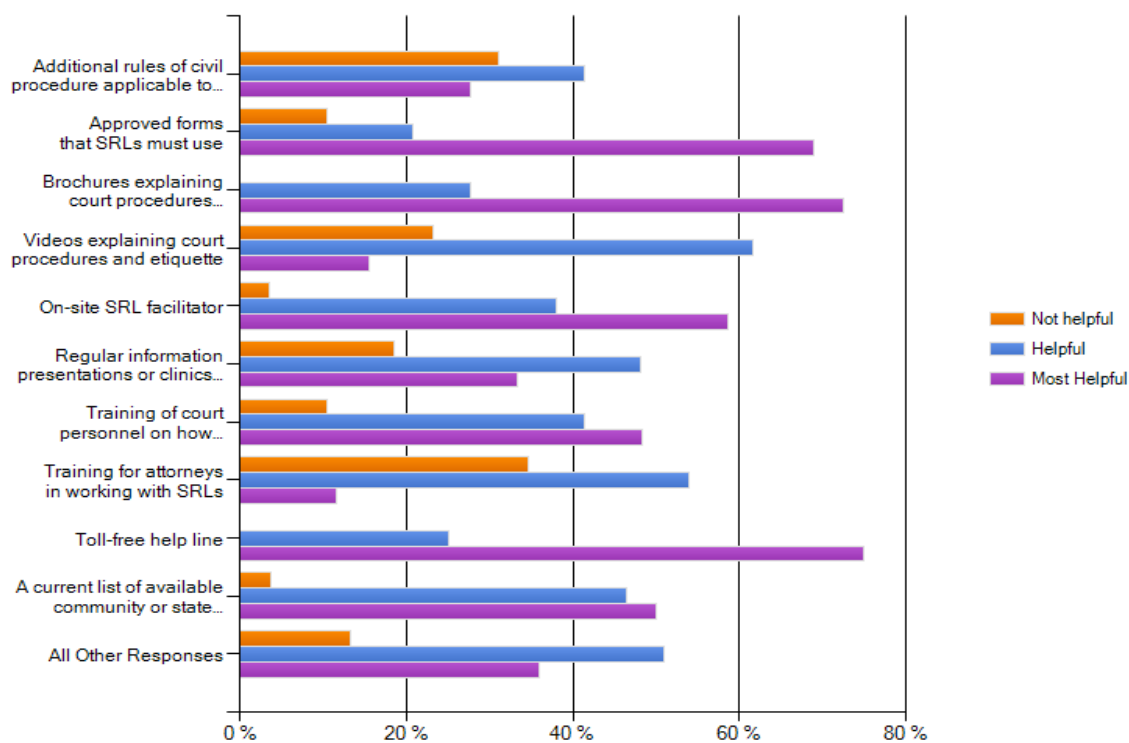
HAVE YOU SEEN AN INCREASE IN THE USE OF FORMS DEVELOPED AND APPROVED IN MONTANA?



OF THE POSSIBLE SRL SERVICES LISTED ABOVE, TELL US HOW HELPFUL EACH WOULD BE:



DC Clerk



COLJ Clerks

