

Tab 1

Montana Supreme Court Access to Justice Commission

September 8, 2023

Zoom Video Conference

10:00 AM – 12:00 PM

Meeting Minutes

Commissioners Present: Justice Beth Baker, Hon. David Carter, Aimee Grmoljez, Juli Pierce, Lillian Alvernaz, Hon. Leslie Halligan, Ed Bartlett, Margaret Weamer, Jacob Griffith, Olivia Riutta, Alison Paul, Sen. Wendy McKamey, Katy Lovell.

Commissioners Absent: Rick Cook, Hon. John Kutzman, Rep. Katie Sullivan, Rep. Laura Smith, Hon. Stacie FourStar, Kekek Stark.

Others Present: Alissa Chambers, Becky Schupp Watson, Stuart Segrest, Ellie Webster, Emma Schmelzer, Morgan Dake, Kayre Chatellier, Patty Fain, Megan Dishong, Grace Loveless, Franklin Runge.

Call to Order & Introductions

Justice Baker called the meeting to order at 10:01 a.m. She welcomed Senator Wendy McKamey from Great Falls who was court appointed to take the place of former Senator Terry Gauthier. Senator McKamey introduced herself. She mentioned that she served in the House for 8 years and this is her first term in the Senate. She expressed her eagerness to learn and collaborate with everyone at the ATJC. Becky Schupp Watson was also introduced as a new staff member of the Montana Justice Foundation. Though absent from the meeting, Justice Baker mentioned that McKayla Hensen has started law school at the University of Vermont Law School. Justice Baker thanked McKayla for all her work over the past years at the Montana Justice Foundation. She also asked participants to introduce themselves.

Approval of March and June Meeting Minutes

Justice Baker noted that we have a quorum and asked for corrections or additions on the March and June meeting minutes. There were no corrections or additions offered for either and the minutes were approved without objection; provided, however, the June minutes shall be corrected to reflect a correction to the IDRT funding (discussed herein).

IDRT/Family Mediation Update:

Justice Baker provided an update on the Informal Domestic Relations Trial project (“IDRT”) and the Family Mediation Project. She referred to Tab 3 of the meeting materials, which contained the court’s Order formally establishing IDRT as a permanent initiative. IDRT is now a part of the uniform district court rules and will serve as the default procedure for all cases involving divorce or parenting plans, as well as orders of protection, when at least one of the litigants is self-represented. Participation is voluntary, even with legal representation. This marks a significant milestone, and it was this Commission that advocated for the court to consider this program two years ago. A pilot project was conducted with six district court judges participating. A report on the pilot program was released, which is attached to the last minutes, and can be found on the Access to Justice Commission’s website. The feedback on the pilot program was positive with no objections after public comment.

Emma Schmelzer discussed IDRT procedures, highlighting that the process is less onerous and stressful for all concerned parties. IDRT allows individuals to share their stories directly with the judge, presenting what is most important to them regarding their case. Judges can ask direct questions to clarify any overlooked points. Importantly, there is no cross-examination, which simplifies and lessens the intimidation factor. This process also enhances safety in Orders of Protection cases, as parties speak directly to the judge rather than to each other. Judges have found this program helpful in providing more control and the ability to ask necessary questions.

Emma mentioned that pilot judges in the following judicial districts have adopted this process: the fourth judicial district (Missoula County and Mineral County); the 12th district; and the first judicial district. Twenty-five cases were identified as using IDRT, but there were likely many more. One challenge during the pilot was keeping track of opt-ins and their timing. With IDRT becoming the default, collecting data will become more systematic. Emma is currently finalizing materials for judges who will start in October, including a bench guide, a new order template, participant materials, and potentially an explanatory video to clarify what the process entails.

Family Transition Project:

Emma is currently involved in the Montana Family Transition Project (“FTP”) in collaboration with MLSA. FTP accepts cases from anywhere in the state, either directly from parties or through court referrals. The rollout has been gradual to ensure that each district has the necessary infrastructure in place. As of September 1st, the list of participating counties has grown to include judges from Kalispell, Polson, Missoula, and Hamilton.

Justice Baker provided context, explaining that FTP project began with funds from the 2021 legislature’s approval of Federal Pandemic Relief resources, aiming to address delays in family law cases due to the pandemic. Because the IDRT work had been initiated, FTP was a fitting continuation. Tara Veazey and Niki Zupanic assisted with developing the FTP. The funds, available until the end of 2024, support mediation efforts to streamline cases and reduce court backlogs, ultimately helping families.

Justice Baker noted that, while the June minutes indicated \$330k annually for the biennium, the correct amount is \$300k total for the biennium. This adjustment was discussed internally with Emma’s program and the court administrator. This funding is deemed sufficient for continuing FTP but will be closely monitored for its effectiveness and whether additional funding should be considered during the next legislative session. The primary goal is to implement FTP statewide, which could save thousands of judge hours annually. Moreover, it has a significant impact on families in crisis. When family law cases are delayed, individuals’ lives are put on hold, leading to increased reliance on public assistance, among other issues. Justice Baker expressed excitement about the progress made by Emma and the MLSA team, especially as it expands.

Emma discussed efforts to increase FTP participation, including free mediation, legal advice, and child support calculation. To date, 19 cases have been concluded: 10 reached full agreement, 5 achieved partial agreement, and 4 resulting in no agreement. Overall, even in cases with no agreement, the level of reflection and information gained through mediation and legal advisors can

be beneficial when parties eventually appear before a judge. Emma plans to reach out to other districts interested in case referrals and highlighted opportunities for community referrals, with success stories involving victim advocates, faith leaders, and various community organizations already working closely with separating couples. Emma acknowledged that while she has been the launch point for this program and IDRT, it has been a collective effort of many individuals over the years who were on the call. Justice Baker recognized Patty Fain for her work on the Early Resolution and Mediation Program with Justice McKinnon, which set the foundation for these initiatives.

Justice Baker opened the call for any questions for Emma. There were no comments or questions.

ATJC Standing Committee Reports

Strategic Planning Committee Update

Juli Pierce, chair of the Commission's Strategic Planning Committee, shared some of her background on strategic plans. She mentioned that the committee has had a few meetings to narrow the focus for the next strategic plan with the goal of making it more measurable and attainable. The committee's current strategic plan expires this year and Juli aims to present a draft plan at the next commission meeting. Justice Baker mentioned that the previous strategic plan had a lot in it because of the many important items that need to be addressed. However, with a more focused plan, goals will be easier to accomplish within a two-year block of time, while storing all other priorities, so they do not slip through the cracks.

Justice Baker opened the call for any questions for Juli. There were no comments or questions. She encouraged folks to reach out to her, Juli, or Alissa Chambers with any questions. The commission is working on filing a biennial report with the court, which informs them of the Commission's work during the previous two years, and this report can help inform the Strategic Planning process. A draft report is planned for the December ATJC meeting. Justice Baker and Alissa will reach out to standing committee chairs to compile thoughts on what's been accomplished over the last two years to be included in the report.

Justice Initiatives Committee (JIC) Update

Morgan Dake started by introducing herself and Ellie Webster as the new co-chairs to the Justice Initiatives Committee ("JIC"). Morgan shared her background and why she joined JIC. She explained their goals, including increasing pro bono involvement among State Bar members, raising awareness of available resources, and implementing pro bono policies for law firms. JIC would like to publish a regular blurb in the Montana Lawyer featuring pro bono opportunities and attorney stories. JIC would like to revisit the 2013 Pro Bono policy toolkit and engage law firms in their communities to do more pro bono work. JIC will continue regular meetings as they work on their next goals and projects.

Ellie Webster added that another way to effectively execute some action items is to provide paralegals, or first points of contact for pro bono inquiries, a quick referral sheet, such as a script, to better screen cold calls and handle pro bono inquiries effectively.

Stuart Segrest expressed his gratitude to Morgan and Ellie for getting JIC off the ground. Since he will be the State Bar president this year, he will submit a monthly President's note which he could potentially coordinate with the "Pro Bono Chronicles."

Lillian Alvernaz asked if section chairs could be included on the quick referral sheet. As the Indian Law Section Chair, Lillian often has clients who need improved access to representation for serious issues in tribal courts. Morgan and Ellie will coordinate with Lillian when a draft is ready to make sure she has the correct input on where to direct specific calls.

Alison Paul noted that MLSA has attorneys licensed in every tribal court and they also have a new advocate incubator program, where the first class is becoming licensed and setting up business. Even though they are new advocates, they have MLSA's help. If a person qualifies for legal aid, MLSA will always try to help. Megan Dishong provided the tribal advocacy project link in the Zoom chat: <https://www.mtlsa.org/tribal-advocate-incubator-project/>

Patty Fain thanked Morgan, Ellie, and the previous chair, Lindsay, for their leadership.

MLSA Update

Alison reported that the Department of Commerce is extending the MLSA's housing project and housing assistance fund with ARPA funds for another year. MLSA will be the sole recipient of the emergency rental assistance payments for at least another year.

The State Bar has discovered pro bono funds, donated in the early 2000s, to support Gallatin County and Yellowstone County. These funds will primarily aid pro bono attorneys in those counties. Ellie is coordinating efforts to best utilize these funds, which currently amount to about \$19k for Gallatin County and \$11,662 for Yellowstone County, which is the result of compounding interest for 20 years. Justice Baker plans to discuss this funding with the Gallatin County Bar Association in September.

MLSA has open attorney and non-attorney positions, including opportunities to work in a medical legal partnership. Details can be found on the MLSA website.

A new AmeriCorps class started, with some court positions still available. Sixteen have been sworn in, with the possibility of 4 more by January. They may not all be placed in the court help centers but it would be 4 to make the team complete. Recruitment for January positions is underway. Grace Loveless mentioned that AmeriCorps members are currently serving in Bozeman, Missoula, and the Law Library for Lewis and Clark County, but Great Falls and Billings are short-staffed. All the self-help positions were filled early this summer, but then all the Great Falls and Billings members backed out right before August once recruiting had wrapped up. Housing affordability is a challenge for AmeriCorps members, and efforts are being made to address this issue.

Justice Baker received an email from Bill Bronson, of the Cascade County Law Clinic and a member of JIC, announcing the implementation of a new program they're calling the Self Represented Litigates Assistance Program. The program was started due to an influx of individuals seeking to handle their own family law issues in court, but who realize, once they

receive their forms from the self-help clinic, they need guidance from an attorney. The program provides limited scope representation that can range from simply reviewing forms in an uncontested divorce to guiding people through property transactions. Since last summer through June 2023, the program has assisted over 120 individuals. This is a great feature that the clinic is doing, and they've ramped up their efforts, in part, because there are no AmeriCorps members serving that center on a regular basis. The Great Falls Bar has also stepped up in helping this initiative.

Alison wrapped up by adding that MLSA is very thankful to the courts for the Family Mediation Program and the IDRT program mentioned by Emma.

Justice Baker opened the meeting to any questions, of which there were none.

Karla M. Gray Equal Justice Award

Justice Baker mentioned that the ATJC submitted two nominees to the State Bar for the Past President's Committee award selection. This year, the committee chose Judge Mike Moses, who has been actively involved in the Yellowstone County pro bono project since his days as a lawyer. Throughout his time on the bench, he always displayed enthusiasm when advocating for access to justice. He is set to receive the award at the upcoming Bar convention in Billings, which will be a fitting retirement send-off.

Alison also mentioned that Morgan Dake was selected as this year's Neil Haight Pro Bono award winner.

Justice Baker asked if Alissa Chambers would like to add anything about the Bar meeting next week. Alissa spoke about the Art for Justice Auction and provided the link in the Zoom chat: <https://givebutter.com/c/KdLXhO/auction>.

Next Meeting Dates

The next meeting will be held on December 1, 2023. Before this meeting, committee chairs should reach out to either Justice Baker or Alissa with thoughts about what can be added to the biennial report. The first meeting of next year will be March 1, 2024, and then June 7, 2024.

Public Comment

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

The meeting was adjourned at 11:09am.

Tab 2

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

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

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

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

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

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

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

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

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

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

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

IDRT

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

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

Judges participating in the IDRT pilot reported a streamlined process that worked well to get cases resolved in a timely manner. Participating parties provided valuable feedback on the IDRT pilot, with most parties reporting that their needs were addressed and they understood what took place and what they needed to do as next steps. The Commission coordinated and advised the Project Administrator throughout the pilot period and

reviewed and analyzed the May 26, 2023 Pilot Report (Pilot Report) filed with this Court and the Addendum to Pilot Report filed on June 23, 2023 (Addendum).

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

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

Mediation

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

As part of the Mediation Program, litigants also receive legal advice before mediation through MLSA. In addition to legal advice and mediation, the Mediation Program now offers access to a child support calculation performed by a knowledgeable professional. The

Mediation Program is available statewide for self-referred cases (i.e. cases in which the parties contact MLSA or a self-help law center directly about mediation services). The Mediation Program is now accepting court-ordered cases from judicial districts serving Cascade, Yellowstone, Gallatin, Lincoln, Flathead, Lake, Sanders, Missoula, Mineral, and Ravalli Counties. The Commission will continue to coordinate with the Judicial Branch staff and the Project Administrator to assist in further development and monitoring of the program as it expands statewide.

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

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

Court Forms Summit

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

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Exploring Racial Justice Issues in Montana's Civil Justice System

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

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

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

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

In 2023, the Commission reconvened its Strategic Planning Committee to begin the process of reviewing the Commission's existing mission and goals and developing a set of recommended strategies and actions for the Commission and its partners to pursue over the coming years. The Commission intends to adopt an updated strategic plan by early next year to guide its work for the next three years.

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

Pro Bono Action Committee

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

Following the focus group sessions, the PB Committee invited pro bono partners, including attorneys, judges, state and local bar leaders, access to justice communities and others to join in reviewing and evaluating the focus group report and to provide additional feedback. The PB Committee interpreted and integrated the post-focus group feedback into previous findings in developing broad key strategic initiatives, which was compiled and outlined in the Pro Bono Initiatives Matrix (PB Matrix), attached hereto as **Appendix D**.

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

Recognition and Celebration of Partner Projects

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

MLSA was selected as one of nine of the country's most innovative rural justice programs to serve as models for other communities as part of the Rural Justice Collaborative Initiative for its work on the Rural Incubator Project for Lawyers (RIPL). RIPL is a joint effort of MLSA, the University of Montana's ABIII School of Law, the Montana Justice Foundation, the State Bar of Montana and the Commission. RIPL was established to help address the justice gap that prevents low- and moderate-income Montanans from achieving justice, particularly in the underserved and rural communities that are often a "legal desert," places where residents have to travel far to access routine legal services. RIPL provides a 24-month fellowship program that trains and supports attorneys to develop solo or small firm practices that provide legal services to low-income Montanans in rural communities. RIPL

fellows are required to provide 300 hours of legal assistance annually to low-income clients pro bono or at a modest-means rate. MLSA's RIPL program has been praised for its replicable nature and other states like Wyoming are looking to MLSA as a model when evaluating how to draw attorneys to rural areas. Representatives from MLSA spoke at a national conference in May of 2023 to standing room only crowds to share their experience with the RIPL Program and the Tribal Advocate Incubator Project (TAIP).

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

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

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

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

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

Recognizing that an effective continuum of legal services requires adequate and sustainable funding, the Commission continued to focus on Montana's lack of resources to meet the civil legal needs of our citizens and to manage the growing burden on the court system. The Commission began the biennium by building on its previous legislative efforts and refined its legislative proposal for the 2023 session. Similar to its previous proposals,

the Commission drafted a bill to generate new revenue by raising certain civil filing fees in district court and appropriating the new revenue to the Judicial Branch to create a fund to provide alternative dispute resolution, legal information, and legal assistance to ordinary Montanans who cannot afford an attorney to help with family- or housing-related civil legal problems. Once again, community support for the bill was overwhelming and broad-based. Despite this broad support, however, the bill was tabled in the Senate Judiciary Committee during the first week of the legislative session.

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

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

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

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

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

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

MLSA's AmeriCorps VISTA project ended in 2014. The Commission continues to play a vital role in AmeriCorps in Montana by serving as an advisor to the Justice for Montanans AmeriCorps Project (JFM), an AmeriCorps State/National program. JFM is a partnership between MLSA, the Supreme Court Administrator's Office, the MT DOJ Child and Family Ombudsman program, DPHHS Legal Services Developer Program, the Confederate Salish and Kootenai Tribe, YWCA of Missoula, and the Montana Innocence Project. Through this project, 16 AmeriCorps service members were sworn in by Justice Baker in the fall of 2023 to provide assistance to low- and moderate-income Montanans seeking assistance with their civil legal problems. Their work includes coordinating community education campaigns, providing access to services, assisting people with completing pro se documents, and making referrals to additional resources. This project has the dual benefit of training our next generation of community leaders on access to justice, while at the same time providing information and referrals to people in need. The JFM project supports the work of the Court Help Program by providing assistance in Self Help Centers across the state; the Commission receives and reviews Court Help Program updates regularly.

Conduct regular meetings to achieve the ATJC's purposes.

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

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

- June 2, 2023
- September 8, 2023 (Joint Meeting with the Justice Initiatives Committee)
- December 1, 2023

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

Conclusion

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

Over the past two years the Commission has made considerable progress in assessing the state's justice system and promoting robust, statewide, integrated access to that system. The Commission respectfully submits this summary of its findings, accomplishments, and plans for working to assure access to justice for all Montanans.

Dated this ____ day of December, 2023.

For the Commission,

Justice Beth Baker, Chair

Commission Members:

Ed Bartlett

Juli Pierce

Hon. David A. Carter

Rick Cook

Rep. Katie Sullivan

Sen. Wendy McKamy

Aimee Grmoljez

Hon. Leslie Halligan

Olivia Riutta

Hon. John Kutzman

Katy Lovell

Rep. Laura Smith

Margaret Weamer

Alison Paul

Jacob Griffith

Professor Kekek Stark

Hon. Stacie FourStar

Appendix A

 ORIGINAL

FILED

08/30/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 11-0765

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

FILED

AUG 30 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ACCESS TO JUSTICE COMMISSION:
IN RE THE ADOPTION OF GUIDELINES
FOR ESTABLISHING INFORMAL
DOMESTIC RELATIONS TRIALS

ORDER

The Access to Justice Commission petitioned this Court in August 2021 to authorize a pilot project with guidelines for district courts wishing to participate in informal domestic relations trials (IDRT) within their jurisdictions during the pilot. The Court approved the petition and adopted guidelines, and several district courts opted to participate. Pursuant to the Court's August 17, 2021 Order, the participating district courts, through the Supreme Court Administrator's Simplified Family Law Project Administrator, submitted a report to the Court with comments and a recommendation that the Court establish the IDRT process as a permanent rule of court. The Project Administrator followed with an addendum to the report containing additional recommendations. The Court put the proposal out for public comment on June 30, 2023.

After considering the participating courts' recommendations and public comment on the proposal, the Court hereby adopts the Informal Domestic Relations Trial process as a new rule in the Montana Uniform District Court Rules, which will become Rule 17. Rule 17 is effective October 1, 2023. The Court further directs the Project Administrator to develop a Bench Guide to the IDRT Process for District Courts, including sample forms and instructions, and to continue developing informational materials for parties considering or participating in the process.

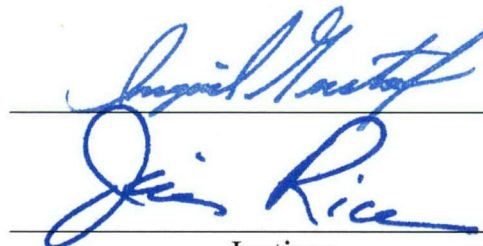
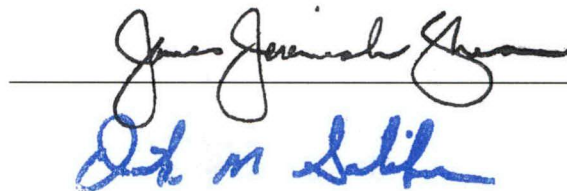

IT IS ORDERED that the proposed revisions as approved by the Court are ADOPTED. The Montana Uniform District Court Rules are amended to include Rule 17, which is set forth in the attachment to this Order, effective October 1, 2023.

This Order and the attached rule shall be posted on the Court's website. In addition, the Clerk is directed to provide copies of this Order and the attachment to: the State Law Library, the Office of the Court Administrator for dissemination to all District Court Judges, the Simplified Family Law Project Administrator, the members of the Access to Justice Commission, the Executive Director of the Montana Legal Services Association, the President of the University of Great Falls, the Dean of the Alexander Blewett III School of Law, Todd Everts, Shana Harrington, and Karl Kempel at Montana Legislative Services, Eric Goodemote at Thomson Reuters, Patti Glueckert and the Statute Legislation department at LexisNexis, and the State Bar of Montana with the request that it provide notice to the membership by publication in the *Montana Lawyer* magazine and through other electronic and timely means .

DATED this 30th day of August, 2023.



Chief Justice



Justices

RULE 17 – INFORMAL DOMESTIC RELATIONS TRIALS

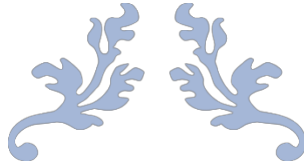
- (a) Unless one or both parties objects or the court orders otherwise, in every original or modification action for dissolution of marriage, parenting and visitation, child and medical support, declaration of invalidity of marriage, paternity, separation, grandparent-grandchild contact, or orders of protection brought under MCA Title 40, including interim proceedings, in which at least one party is self-represented, the issues will be resolved through an informal domestic relations trial before a judge or standing master as provided in this Rule. If both parties are represented by counsel and wish to use the informal process provided in this Rule, the court in its discretion may allow the informal proceeding upon stipulation in the record.
- (b) The court must explain the informal domestic relations trial process and advise the parties of their right not to consent. The court may include in the case scheduling order a deadline for parties to opt out of the process. A party's decision to opt out must be stated on the record or in a signed filing with the court.
- (c) The court may refuse to allow the parties to utilize the informal domestic relations trial process at any time and may direct that a case proceed in the traditional manner.
- (d) The court may allow a party to withdraw from an informal domestic relations trial election as long as the other party is not prejudiced by the withdrawal. The court will not allow a withdrawal of an election that has the effect of postponing the trial date absent a showing of good cause.
- (e) During an informal domestic relations trial, parties may present any evidence they believe is relevant. The court may admit any evidence a party offers, even if this evidence might be inadmissible under formal rules of evidence, and may determine how much weight to give any evidence. The traditional format used to question witnesses at trial does not apply. In many cases, the parties will be the only witnesses. The parties may call other witnesses in the discretion of the court. The court may question the parties and any other witnesses, and the parties may suggest additional topics or questions.
- (f) Any evidence offered during an informal domestic relations trial initiated under this Rule is not admissible in any other proceeding unless the court in the other proceeding determines the evidence meets the applicable rules of evidence.
- (g) If an informal domestic relations trial converts to a formal proceeding, the court will determine the admissibility of evidence previously offered in the

informal proceeding. The court may not rely on any evidence in a formal proceeding that is not admissible under the applicable rules of evidence.

- (h) The court will allow each party an opportunity to file any objections or motions on the admissibility or use of any evidence offered in an informal domestic relations trial before relying on that evidence in a formal proceeding.
- (i) An informal domestic relations trial will proceed as follows:
 - (1) At the beginning of an informal domestic relations trial, the court will ask the parties to affirm that they understand the rules and procedures of the informal domestic relations trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the informal domestic relations trial.
 - (2) The court may ask the parties or their lawyers for a brief summary of the issues.
 - (3) The court will allow the moving party to speak to the court under oath concerning all issues in dispute. The party is not questioned by the other party or any lawyers, but the court may question the party to develop evidence required by any statute or rule or necessary in the court's discretion to address the matters at issue.
 - (4) The parties will not be subject to cross-examination. However, the court will ask the nonmoving party or their lawyer whether there are any other areas the party wishes the court to inquire about. The court will inquire into these areas if requested and if relevant to an issue to be decided by the court.
 - (5) The process in subsections (i)(3) and (i)(4) is then repeated for the other party.
 - (6) Expert reports will be received as exhibits. Upon the request of the court or either party, the expert will be sworn in and subjected to questioning by the parties, their lawyers, or the court.
 - (7) The court may receive any exhibits offered by the parties which are capable of being made a part of the record of the case. The court will determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented.

- (8) The court will allow the parties or their lawyers to respond briefly to the statements of the other party.
- (9) The court will offer each party or the party's lawyer the opportunity to make a closing statement.
- (10) At the conclusion of the case, the court will render judgment. The court may take the matter under advisement, but it will make its best efforts to issue prompt judgments.
- (11) The court may modify these procedures as justice and fundamental fairness requires.
- (j) A case proceeding as an informal domestic relations trial will be subject to the same pretrial procedures and orders of the court that apply to traditional cases. Parties seeking a dissolution proceeding under informal domestic relations trials are subject to the mandatory disclosure requirements of MCA § 40-4-252.
- (k) The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.

Appendix B



INFORMAL DOMESTIC RELATIONS TRIAL BENCH GUIDE

For Montana District Courts



SEPTEMBER 29, 2023

OFFICE OF THE COURT ADMINISTRATOR
Simplified Family Law Resolution Project Administrator

As of October 1, 2023, the Informal Domestic Relations Trial (IDRT) process will be default for all domestic relations cases in Montana involving at least one pro se litigant. We hope this guide will help support a smooth and successful transition to using the IDRT process in your district.

Enclosed, you will find:

- the MT Supreme Court order regarding IDRTs and Rule 17 of the Uniform District Code
- the IDRT Pilot Report and Addendum
- a template IDRT scheduling order
- a script for explaining the IDRT process to parties
- an IDRT flyer for parties
- a detailed document for parties called “Understanding IDRTs”
- an opt out request form with instructions for parties

Each of these documents may also be downloaded from <https://idrt.mt.gov/>.

<> <> <>

If you would like to speak to a judge, standing master, or court staff member who participated in the IDRT pilot, you may reach out to the 1st, 4th, or 12th Districts.

If you have questions, need assistance, or would like to request additional materials, please contact the program administrator, Emma Schmelzer, at emma.schmelzer@mt.gov or 406-444-6196.

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

ACCESS TO JUSTICE COMMISSION:
IN RE THE ADOPTION OF GUIDELINES
FOR ESTABLISHING INFORMAL
DOMESTIC RELATIONS TRIALS

O R D E R

The Access to Justice Commission petitioned this Court in August 2021 to authorize a pilot project with guidelines for district courts wishing to participate in informal domestic relations trials (IDRT) within their jurisdictions during the pilot. The Court approved the petition and adopted guidelines, and several district courts opted to participate. Pursuant to the Court's August 17, 2021 Order, the participating district courts, through the Supreme Court Administrator's Simplified Family Law Project Administrator, submitted a report to the Court with comments and a recommendation that the Court establish the IDRT process as a permanent rule of court. The Project Administrator followed with an addendum to the report containing additional recommendations. The Court put the proposal out for public comment on June 30, 2023.

After considering the participating courts' recommendations and public comment on the proposal, the Court hereby adopts the Informal Domestic Relations Trial process as a new rule in the Montana Uniform District Court Rules, which will become Rule 17. Rule 17 is effective October 1, 2023. The Court further directs the Project Administrator to develop a Bench Guide to the IDRT Process for District Courts, including sample forms and instructions, and to continue developing informational materials for parties considering or participating in the process.

IT IS ORDERED that the proposed revisions as approved by the Court are ADOPTED. The Montana Uniform District Court Rules are amended to include Rule 17, which is set forth in the attachment to this Order, effective October 1, 2023.

This Order and the attached rule shall be posted on the Court’s website. In addition, the Clerk is directed to provide copies of this Order and the attachment to: the State Law Library, the Office of the Court Administrator for dissemination to all District Court Judges, the Simplified Family Law Project Administrator, the members of the Access to Justice Commission, the Executive Director of the Montana Legal Services Association, the President of the University of Great Falls, the Dean of the Alexander Blewett III School of Law, Todd Everts, Shana Harrington, and Karl Kempel at Montana Legislative Services, Eric Goodemote at Thomson Reuters, Patti Glueckert and the Statute Legislation department at LexisNexis, and the State Bar of Montana with the request that it provide notice to the membership by publication in the *Montana Lawyer* magazine and through other electronic and timely means .

DATED this 30th day of August, 2023.

/S/ MIKE McGRATH

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ INGRID GUSTAFSON

/S/ JIM RICE

RULE 17 – INFORMAL DOMESTIC RELATIONS TRIALS

- (a) Unless one or both parties objects or the court orders otherwise, in every original or modification action for dissolution of marriage, parenting and visitation, child and medical support, declaration of invalidity of marriage, paternity, separation, grandparent-grandchild contact, or orders of protection brought under MCA Title 40, including interim proceedings, in which at least one party is self-represented, the issues will be resolved through an informal domestic relations trial before a judge or standing master as provided in this Rule. If both parties are represented by counsel and wish to use the informal process provided in this Rule, the court in its discretion may allow the informal proceeding upon stipulation in the record.
- (b) The court must explain the informal domestic relations trial process and advise the parties of their right not to consent. The court may include in the case scheduling order a deadline for parties to opt out of the process. A party's decision to opt out must be stated on the record or in a signed filing with the court.
- (c) The court may refuse to allow the parties to utilize the informal domestic relations trial process at any time and may direct that a case proceed in the traditional manner.
- (d) The court may allow a party to withdraw from an informal domestic relations trial election as long as the other party is not prejudiced by the withdrawal. The court will not allow a withdrawal of an election that has the effect of postponing the trial date absent a showing of good cause.
- (e) During an informal domestic relations trial, parties may present any evidence they believe is relevant. The court may admit any evidence a party offers, even if this evidence might be inadmissible under formal rules of evidence, and may determine how much weight to give any evidence. The traditional format used to question witnesses at trial does not apply. In many cases, the parties will be the only witnesses. The parties may call other witnesses in the discretion of the court. The court may question the parties and any other witnesses, and the parties may suggest additional topics or questions.
- (f) Any evidence offered during an informal domestic relations trial initiated under this Rule is not admissible in any other proceeding unless the court in the other proceeding determines the evidence meets the applicable rules of evidence.
- (g) If an informal domestic relations trial converts to a formal proceeding, the court will determine the admissibility of evidence previously offered in the

informal proceeding. The court may not rely on any evidence in a formal proceeding that is not admissible under the applicable rules of evidence.

- (h) The court will allow each party an opportunity to file any objections or motions on the admissibility or use of any evidence offered in an informal domestic relations trial before relying on that evidence in a formal proceeding.
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 - (1) At the beginning of an informal domestic relations trial, the court will ask the parties to affirm that they understand the rules and procedures of the informal domestic relations trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the informal domestic relations trial.
 - (2) The court may ask the parties or their lawyers for a brief summary of the issues.
 - (3) The court will allow the moving party to speak to the court under oath concerning all issues in dispute. The party is not questioned by the other party or any lawyers, but the court may question the party to develop evidence required by any statute or rule or necessary in the court's discretion to address the matters at issue.
 - (4) The parties will not be subject to cross-examination. However, the court will ask the nonmoving party or their lawyer whether there are any other areas the party wishes the court to inquire about. The court will inquire into these areas if requested and if relevant to an issue to be decided by the court.
 - (5) The process in subsections (i)(3) and (i)(4) is then repeated for the other party.
 - (6) Expert reports will be received as exhibits. Upon the request of the court or either party, the expert will be sworn in and subjected to questioning by the parties, their lawyers, or the court.
 - (7) The court may receive any exhibits offered by the parties which are capable of being made a part of the record of the case. The court will determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented.

- (8) The court will allow the parties or their lawyers to respond briefly to the statements of the other party.
 - (9) The court will offer each party or the party's lawyer the opportunity to make a closing statement.
 - (10) At the conclusion of the case, the court will render judgment. The court may take the matter under advisement, but it will make its best efforts to issue prompt judgments.
 - (11) The court may modify these procedures as justice and fundamental fairness requires.
-
- (j) A case proceeding as an informal domestic relations trial will be subject to the same pretrial procedures and orders of the court that apply to traditional cases. Parties seeking a dissolution proceeding under informal domestic relations trials are subject to the mandatory disclosure requirements of MCA § 40-4-252.
 - (k) The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

ACCESS TO JUSTICE COMMISSION:
IN RE THE ADOPTION OF GUIDELINES FOR
ESTABLISHING PILOT INFORMAL
DOMESTIC RELATIONS TRIALS

PILOT REPORT

In accordance with the Montana Supreme Court’s order of August 17, 2021, the Simplified Family Law Resolution Project Administrator submits to the Court this report, which was compiled from feedback provided by participating districts throughout the pilot period. In January 2022, the Informal Domestic Relations Trial (IDRT) program launched in the First Judicial District (Lewis & Clark and Broadwater counties), the Fourth Judicial District (Missoula and Mineral counties), and the Twelfth Judicial District (Chouteau, Hill, and Liberty counties). IDRTs have been used for dissolutions, parenting plans, and orders of protection.

Finding #1: There is general agreement that the IDRT process was beneficial to pilot courts and parties who chose to participate.

“IDRT has been effective in getting folks a more timely resolution that have little dispute with regard to property and need the court to help them navigate parenting plan challenges. This allows the court flexibility to simply ask the parties the questions that matter, rather than watching self-represented litigants fumble through a contested final hearing. IDRT also gives full detail on what to expect from the Court—IDRT is what most self-represented litigants want, as

they do not understand the legal process or legal intricacies such as foundation for evidence, etc.” – *Judge Snipes Ruiz, Twelfth Judicial District*

“I think that when we have used IDRT in hearings, it has been very beneficial, made the process more user-friendly for self-represented litigants, and led to better decisions in those cases because we can receive a wider variety of information and direct the testimony more efficiently.” – *Judge Abbott, First Judicial District*

“IDRT provides a mechanism for judges to hear what parties have to say because we can overlook some evidentiary foibles and decide what to take into consideration. We get permission to hear the whole story. When we render a decision, the parties can at least rest in the knowledge that they were heard.” – *Judge Vannatta, Fourth Judicial District*

Though returned surveys were limited in number, all feedback received from parties themselves was positive, apart from one serious concern related to the power imbalance that can still exist within the IDRT process if one party is represented and one is not.

Finding #2: Some judges and standing masters found IDRT particularly useful for pro se order of protection (OOP) cases.

“In OOP cases without attorneys appearing, I have been using IDRT almost exclusively—works great to bring the temperature down in these proceedings where emotions run hot.” – *Judge Snipes Ruiz, Twelfth Judicial District*

“Some of the principles of IDRT work really well with an OOP even if the parties have not elected to use IDRT. For example, the IDRT method of judge involvement is particularly helpful to use in OOP cases to avoid having a pro se petitioner or respondent asking questions directly to the opposing party (which would normally happen in cross examination). In this way,

the judge can essentially run interference by asking the questions of the parties instead.” –

Standing Master Rubin, Fourth Judicial District

Finding #3: It was challenging to encourage participation and secure consent from parties.

Each District created their own plan for informing parties about the IDRT option, and consent could either be elicited through a signed consent form or verbally on the court record. Information about the IDRT process was provided through self-help centers, clerks of court, and scheduling orders, and the option was often discussed during scheduling conferences or just before trials began. Despite those efforts, parties were sometimes still unaware of IDRT or reticent to embrace the process. Often, one party wished to proceed, but the other declined.

“I still am having resistance from parties to using an informal process even when it is clearly to their benefit (even in OOP hearings).” - *Standing Master Rubin, Fourth Judicial District*

“As a practical matter I use IDRT in virtually all of my pro se family law and order of protection cases even though I have only occasionally remembered to go through the formal IDRT paperwork process. I do this because it feels to me to be the natural and efficient way for the matter before me to progress to a conclusion. When I have remembered to do the paperwork, I have found that it caused delay explaining what it was all about.” – *Judge Deschamps, Fourth Judicial District*

Finding #4: Court staff have had a generally good experience with the pilot.

According to reports from the districts and staff themselves, the introduction of the IDRT option did not place an addition burden on judicial assistants or scheduling clerks, and some staff spoke positively about the benefits IDRT offers the parties and the court. Staff indicated that they

would be excited if IDRTs continued to be available for pro se litigants in particular because parties often feel more comfortable, and the process is more manageable for courts.

Finding #5: There is a general recommendation that an IDRT rule be adopted and that IDRT become the default process for pro se family law matters.

Overall, the pilot judges, standing masters, and staff like the IDRT process and believe that some of the barriers to entry would be alleviated by instituting it as default. They believe it would increase efficiency, reduce the parties' sense that they are giving something up or selecting a "lite" version of the full family law process, and relieve a great burden from an already-stressed court system.

"I certainly request that IDRT be adopted by the Montana Supreme Court. IDRT should be an opt-out mandatory program where both parties are pro se. Where a party is represented by counsel, I do not recommend IDRT." – *Judge McMahon, First Judicial District*

"I think having an actual IDRT rule of evidence / uniform district court rule would be helpful to explain precisely how it differs from traditional hearings. It would help us better explain it to litigants and lead to more uniformity in how we deal with documentary evidence, experts, cross-examination, etc." – *Judge Abbott, First Judicial District*

"Self-represented litigants would benefit from speedier resolution if this were implemented as default." – *Judge Snipes Ruiz, Twelfth Judicial District*

"I would not object to IDRT as the default for any DR case that has at least one pro se litigant. Regardless of being formally adopted, we are all doing some form of IDRT anyway." – *Judge Vannatta, Fourth Judicial District*

"I wholeheartedly recommend adoption of an IDRT Rule in Montana as a default requirement in family law and order of protection (O/P) cases where one or both parties are pro

se. I strongly encourage IDRT as a default procedure in all pro se family law and O/P cases. I also urge going further and requiring IDRT procedures as the default in all family law and O/P cases where only one side is represented by counsel. While there will still be an imbalance of power and skill, utilizing IDRT procedures in such cases will help in a small way to level the playing field.” – *Judge Deschamps, Fourth Judicial District*

There are elements of any potential rule that may require specific consideration. First, if IDRT were to become the default process, it would be beneficial to specify for whom it would be the default and how the opt-out procedure would function. Some judges and standing masters would like to see IDRT become the default process for DR cases in which at least one party is pro se, while others would advocate that IDRT should be default only where both parties are pro se. There is also a question of whether the formal process would only be able to be used if both parties elect to opt out of an IDRT.

Additionally, there is concern from some judges about the characterization that “the rules of evidence do not apply” in IDRTs. Some suggested that a more accurate way to describe how the rules of evidence function within an IDRT would be that the rules of evidence are administered in a relaxed fashion, or the rules of evidence do still exist, but the judges are the gatekeepers.

Final Notes

31 IDRTs were identified by case number during the pilot period. The number of completed IDRTs reported informally was higher, but since there was not a cost-effective way to implement IDRT tracking into the court data system, and sometimes parties did not consent until the day of the IDRT, it was a challenge for judges, standing masters, and court staff to accurately capture which cases used the IDRT process.

In response to pilot district requests, program staff will create additional materials to support the IDRT process during the summer of 2023. These will include a bench card/script for judges with suggestions on holding an effective IDRT hearing, a video for participants introducing the IDRT option (which may be able to be incorporated into required parenting classes in some districts), a template for an IDRT-specific scheduling order, and a handbook for implementing the IDRT process for districts that choose to participate in the future.

The program administrator anticipates that the pilot group judges will follow this report with additional, specific recommendations before the Court opens a public comment period or considers whether to adopt the program on a permanent basis or rescind or supersede the pilot Order. Any additional proposals will be submitted to the Court by June 23, 2023.

DATED this 25th day of May, 2023.



Emma Schmelzer

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

ACCESS TO JUSTICE COMMISSION:
IN RE THE ADOPTION OF GUIDELINES FOR
ESTABLISHING PILOT INFORMAL
DOMESTIC RELATIONS TRIALS

ADDENDUM TO
PILOT REPORT

A smaller group of pilot judges (Judge Deschamps, Judge Abbott, and Judge Menahan) were able to gather on June 22nd to discuss additional, specific recommendations they would like to make before the Court opens a public comment period or considers whether to adopt the program on a permanent basis or rescind or supersede the pilot Order.

This group proposes that the Informal Domestic Relations Trial (IDRT) process be default for all DR cases in which both parties are self-represented *and* cases where one party has counsel and the other does not. They also recommend that if either party (represented or not) objects to the use of IDRT, the traditional trial format should be used instead.

Finally, this group suggests that any IDRT Order include a robust description of how the rules of evidence will be used in comparison to a traditional trial. Example language: “Parties may present any evidence they believe to be relevant, and judicial discretion will be used to determine how much weight any piece of evidence is given.”

DATED this 23th day of June, 2023.



Emma Schmelzer

MONTANA XX JUDICIAL DISTRICT COURT, XX COUNTY

IN RE THE MARRIAGE OF

xx,

and

xx,

Petitioner,

Respondent.

Cause No. DR-23-xxx

**ORDER SETTING STATUS
HEARING**

A Status Hearing will be held on _____, the _____ of _____,
2023 at _____ a.m./p.m. at [location] before [judge or standing master].

Parties must participate [in person or via video conference (see Zoom instructions below for joining by either video or telephone)].

During this hearing, the parties must be prepared to discuss the status of the case, [proposed parenting plans], and any actions needed to help prepare for trial or resolve this dispute.

No witnesses, other than the parties, will be able to testify at the Status Hearing.

Before the Status Hearing, both parties must review the attached information about the Informal Domestic Relations Trial (IDRT) rules. **If you or the other party are not represented by a lawyer, your trial will be held using IDRT rules unless you formally say you want a traditional trial.** It is important that you understand the differences between the two kinds of trials before the Status Hearing.

If either party would like to opt out of the IDRT trial and use a traditional trial format instead, that party must file the form below by the date of Status Hearing or tell the judge on the record during the Status Hearing.

1 DATED this _____ day of _____, 2023.

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4 *Electronically Signed and Dated Below*

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IDRT Explanation Script

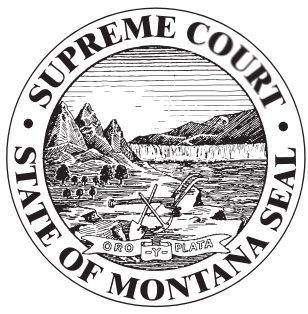
All Montana courts now use a process called an Informal Domestic Relations Trial (or IDRT) for family cases where at least one person doesn't have a lawyer. Because neither of you objected by the deadline I set, we will be using the IDRT process. This means that:

- You speak directly to me without interruption or questions from the other party.
- You explain the issues in a way that makes sense to you and can provide any documents or other evidence without worrying if it's allowed under the Montana Rules of Evidence.
- I ask you and the other party questions about what you've told me.

Here's how this will work:

- 1) The person who started the case will speak first. That will be you, [petitioner's name]. You will tell me about the case, what result you want, and why. I will then ask you questions so I can confirm relevant facts. Only I will ask questions, not the other party or lawyer. I will then ask [respondent's name] or their lawyer whether there are other topics I should ask you about.
- 2) Then we'll repeat this process for you, [respondent's name].
- 3) While you testify, you can both submit relevant documents and any other evidence you want me to see. I'll look at each item and decide whether it should be considered. The other party can't object to your testimony or the evidence you give to me.
- 4) If there are any experts: the expert's report will be given to me. Either of you can ask to have the expert testify, and the expert can be questioned by me, either of you, or your lawyers.
- 5) I'll give you each an opportunity to respond to statements made by the other person.
- 6) At the end, each of you or your lawyer may make a short closing statement about the issues and how I should rule.
- 7) Once we've gotten through all that, I will make my decision. I may be able to share that with you before we leave the courtroom, or I may need some time to consider and send you the result in writing.

Any questions?



MONTANA

JUDICIAL BRANCH

Are you involved in a divorce or parenting plan?

There is a new way for your District Court to handle the trial.

Informal Domestic Relations Trial (IDRT)

- You speak directly to the judge without interruption or questions from the other party.
- You explain the issues in a way that makes sense to you and provide any documents or other evidence without worrying if it's allowed under the Montana Evidence Rules.
- The judge asks you and the other party questions.



Traditional Trial

- You or your lawyer present information to the judge by calling witnesses and asking questions of them.
- Each side gets to ask questions directly of the other person and their other witnesses.
- The Montana Rules of Evidence apply, so only certain kinds of documents and testimony can be considered by the judge.



As of October 1st, 2023 all family cases where at least one person doesn't have a lawyer will be handled using the IDRT process. This will happen automatically, unless you or the other party tell the court that you want to opt out and use a traditional trial instead.

Have questions?

Contact the Self-Help Law Center closest to your county.

<https://courts.mt.gov/selfhelp/>

Understanding Informal Domestic Relations Trials

As of October 1st, 2023, all Montana courts will use a new process to resolve family law cases. This process is called an “informal domestic relations trial,” or IDRT.

Domestic relations cases include divorces (or “dissolutions”), custody and visitation (or “parenting plans”), child support, division of property, grandparent-grandchild contact, protection orders, as well as changes to previous domestic relations orders (or “modifications”). If you are a party in one of these types of family law case in a Montana district court, you now have two options for how the trial will go.

The two types of trials you can choose between are informal and traditional. You will need to choose the type of trial that you think is best for your case. You may want to talk to a lawyer before deciding which type of trial is best for you.

If you or the other party don’t have a lawyer, then you will have informal trial automatically unless you or the other party officially asks to have a traditional trial instead. If you want an informal trial, you do not need to do anything. **If you do not have a lawyer and want a traditional trial, you will have to opt out of the informal trial by using the form on <https://idrt.mt.gov> or telling the judge in court by the deadline set in the judge’s order.**

What is an Informal Trial?

In an informal trial, you and the other party speak directly to the judge. The judge will ask questions to make sure you cover everything the judge needs to know to decide your case. When you are done speaking, the judge will ask the other person or that person’s lawyer if there are other questions that they think the judge should ask. If it seems helpful, the judge will ask the questions suggested. The other person or lawyer does not question you directly. They also do not get to interrupt you or object to evidence you want to give the judge. Similarly, you (or your lawyer) do not get to ask the other party questions directly, interrupt, or object to evidence. Most of the time, you and the other person will be the only witnesses.

In an informal trial, either party can present any evidence they think is relevant and the judge may consider it, even if that evidence wouldn’t be accepted under the Montana Rules of Evidence. This means you can explain the issues more informally and provide any documents or other evidence to the judge without worrying whether it is allowed (or “admissible”). The judge will decide the importance of what each person says and the evidence provided.

No one can force you to do an informal trial. An informal trial will automatically be used for any family case where at least one party doesn’t have a lawyer. But if you or the other party want to do a traditional trial instead, all if you have to do is tell the judge in a hearing or by filing out the form found at <https://idrt.mt.gov>.

What is a Traditional Trial?

In a traditional trial, lawyers or people who represent themselves usually present information to the judge by testifying and by calling witnesses and asking questions of them. Each side gets to

ask questions directly of the other person and their other witnesses (this is called “cross-examining”). Generally, the judge asks few, if any, questions during a traditional trial.

In a traditional trial, the Montana Rules of Evidence (found in [title 26, chapter 10 of the Montana Code Annotated](#)) apply. These evidentiary rules can be complicated. They place limits on the things you and other witness can talk about and the kind of documents and other evidence that you can give to the judge to consider in deciding the case.

If you or the other person has a lawyer in a traditional trial, the lawyer may, if allowed by the court, make opening statements and closing arguments to the judge and will ask questions of you, the other person, and other witnesses. The lawyer may object if they believe the testimony or documents violate the Montana Rules of Evidence. **If you represent yourself, you will be expected to follow the Rules of Evidence. You will be the one to make opening statements and closing arguments, question witnesses, and make objections.**

If I Choose an Informal Trial, Can I Have Other Witnesses?

In general, an informal trial will only involve testimony from you and the other party. The judge can decide if other witnesses are necessary.

There is one exception. If you or the other party give the judge a written report from an expert, you, the other party, or the judge can ask that the expert testify under oath and answer questions by either party, their lawyers, or the judge.

Can I Choose an Informal Trial if I Have a Lawyer?

Yes. People with lawyers and people representing themselves can both use informal trials. If you have a lawyer, the lawyer will help you prepare and can sit next to you during the informal trial to offer advice.

In an informal trial, lawyers CAN NOT ask you or the other party questions and they CAN NOT object to evidence or testimony.

A lawyer in an informal trial CAN help you to:

- prepare for the trial,
- identify the issues in the case,
- identify other issues that the judge should ask the other party about,
- question expert witnesses, and
- make short arguments about the law at the end of the case.

Remember, informal trials are now the default for family cases where at least one person doesn't have a lawyer. A formal trial will be used if one party opts out of the informal process and asks for a traditional trial. You can ask for a traditional trial by filling out the form on <https://idrt.mt.gov> or asking the judge at the hearing.

Why Would I Choose an Informal Trial?

- Fewer rules apply. Informal trials are usually easier for people who are representing themselves. The judge asks questions and guides the process. The judge will try to

reduce conflict between the two sides and help them focus on the children or other issues.

- You can speak directly to the judge about your situation without interruption or objections from the other person or their lawyer.
- You may be uncomfortable with a setting where the other person is allowed to directly ask you questions. In an informal trial, the other person and their lawyer may not question you.
- You do not have to worry about formal rules of evidence that limit what you can say in the courtroom. You can:
 - speak freely about conversations between you and other people who are not present in the courtroom;
 - tell the judge about the important issues in your case without worrying if what you say is admissible; and
 - ask the judge to consider any documents or other evidence. It is up to the judge to decide if they are important.
- You do not need to worry about getting a lot of different witnesses to come to court to make your case. Instead, you can tell the judge yourself what is important or rely on letters or other documents. If the judge agrees that a particular witness is needed to explain something in person or to answer questions, that witness can be called.
- Informal trials may be shorter. If you have a lawyer, the lawyer may need less time to prepare and work on your case, which may cost you less. Also, you may not need to take as much time off from work.
- An informal trial might be right for you if your case is relatively simple, and you are comfortable explaining your circumstances and the facts to the judge.

Why Would I Choose a Traditional Trial?

- The Rules of Civil Procedure and formal procedures are in place to control the process. The Montana Rules of Evidence will apply. You or your lawyer may feel more comfortable with this structure.
- You may like the fact that the Rules of Evidence control what people can say and what documents the judge can consider.
- It is important for you or your lawyer to question the other person directly.
- You may bring any witnesses you think are important to the courtroom. You or your lawyer can question your own witnesses and cross examine the other person's witnesses.
- In a traditional trial, the judge will not usually consider written statements from family members, friends, or professionals such as teachers, counselors, appraisers, or police officers. People with something to say about the issues will need to testify during the trial.
- A traditional trial might be better for you if you are represented by a lawyer and your case is complicated. For example, you might prefer a traditional trial if you and the other person own a business or have lots of stocks and property to divide that is difficult to value.

How Does an Informal Trial Work?

- The person who started the case will speak first. The person will tell the judge about the case, what result the person wants, and why. The judge will ask the person questions in order to confirm relevant facts. Only the judge asks questions—not the lawyers and not the other person. The judge will ask the other person or their lawyer whether there are other topics the judge should ask about.
- This process is repeated for the other person.
- Each person may submit relevant documents and other evidence that they want the judge to see. The judge will look at each item and decide whether it should be considered.
- If there are any experts, the expert's report will be given to the judge. Either person may ask to have the expert testify. The expert may be questioned by the judge, the people in the case, or their lawyers.
- The judge will give each person an opportunity to respond to statements made by the other person.
- Each person or their lawyer may make a short closing statement about the issues and how the judge should decide.
- After all the above steps are done, the judge decides the case and shares it with both people. Because informal trials are often shorter and less complicated, sometimes the judge can decide the matter before the parties leave the court room.

How Does a Traditional Trial Work?

- Both people and/or their lawyers make an opening statement if permitted by the judge. The person who filed the case or the motion at issue goes first.
- The person who filed the case or motion then calls their witnesses. Following the Rules of Evidence, that person or their lawyer questions the witnesses and presents the documents or other evidence that the person wants the judge to review. The other person or their lawyer then cross-examines the witnesses. Both people in the case usually testify.
- The other person then gets a turn to call witnesses. That person or their lawyer questions the witnesses and presents documents or other evidence for the judge to review. The person who filed the case or their lawyer then takes a turn questioning the witnesses.
- The question-and-answer process and the presentation of documents or other evidence can be interrupted by objections. Some evidence and testimony may not be allowed if the judge agrees with the objections.
- The parties and/or their attorneys may make a closing argument if permitted by the judge, summarizing the evidence (witness statements, documents, and other items), explaining how the evidence supports the result that person wants, and telling the judge what the person thinks the judge should consider in deciding the case.
- After all the above steps are done, the judge will make a decision. The judge may need additional time to make a ruling.

Opting Out of an Informal Domestic Relations Trial for Your Family Law Case: Form and Instructions

Note: As of October 1, 2023, all family cases will automatically use the Informal Domestic Relations Trial (IDRT) process. If you don't want to use that process, you have the right to request a traditional trial either by using this form or telling the judge during a hearing. Make sure you do so before the deadline. Before you make a decision, read about the differences between the two kinds of trials at <https://courts.mt.gov/idrt/>.

These instructions cannot take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

What Terms Do I Need to Know?



Petitioner/Plaintiff- Depending on the type of case, the person who files an action in court is either called the petitioner or the plaintiff. If you were the first person to file something in court, this is you.

Respondent/Defendant- Depending on the type of case, the person who needs to respond to someone else's action in court is either called the respondent or defendant. If the other person filed first, this is you.

Dissolution- Dissolution is the legal word for divorce in Montana.

Modification- If you want to change something about an earlier order (*i.e.*, a dissolution, parenting plan, or order of protection), then you are asking for a modification.

Informal Domestic Relations Trial (IDRT)- This is the new default process for handling family laws cases in Montana, where the rules of evidence are relaxed and the judge takes a more active role. You can learn more about the difference between this and a traditional trial at <https://courts.mt.gov/idrt/>.

Traditional Trial- Previously, family law cases used a traditional trial, where the normal rules of evidence apply. You can learn more about the difference between this and an IDRT at <https://courts.mt.gov/idrt/>.

Montana Rules of Evidence- The laws that govern evidence in a traditional family law case are called the Montana Rules of Evidence. They can be found [in title 26, chapter 10 of the Montana Code Annotated.](#)

Who Can Use the Form?



You can use this form if:

- Your case is in a Montana District Court, AND
- Your case involves a dissolution, parenting and visitation, child and medical support, invalidity of marriage, paternity, grandparent-grandchild contact, an order of protection, or modification of any of those.

What Do I Do with this Form?

1 If don't want to use the Informal Domestic Relations Trial process, fill out the Form.

- ☐ Fill out all the blanks on the Notice to Opt Out of an Informal Domestic Relations Trial.
- ☐ Sign and date your Notice to Opt Out of an Informal Domestic Relations Trial.
- ☐ Fill out the judicial district, county, and caption. If you aren't sure which judicial district you are in, you can look at another document that has been filed in your case or ask the Clerk of District Court. The caption looks like this:

Montana _____ Judicial District Court <i>Number of the judicial district where you are filing</i>	
_____ County <i>Name of the county where you are filing</i>	
<hr/> Petitioner / Plaintiff, and <hr/> Respondent / Defendant.	<hr/> Case No.: _____ <i>Filled out by Clerk of District Court Unless you have already filed your case and know the number</i> Notice to Opt Out of an Informal Domestic Relations Trial

2 Make Copies

- ☐ Make two copies of the form after you have filled it out.

3 File Form at the Courthouse

- ☐ Go to the Clerk of District Court's office in your county courthouse. Give the Clerk of District Court the original Notice to Opt Out of an Informal Domestic Relations Trial
- ☐ Give your copy to the Clerk of District Court and ask them to stamp it as "Filed". Keep the copy in a safe place.

3 Serve Form to the Other Party

- ☐ Mail or hand deliver a copy of the Notice to Opt Out of an Informal Domestic Relations Trial to the other parent. Use the method of service you checked on the form.

Where Can I Get Help?



- **The Court Help Program** is a free service provided by the Montana Supreme Court to assist people with civil, non-criminal legal problems. You can visit their website at <https://courts.mt.gov/selfhelp/> to find your nearest Self-Help Law Center.
- **Montana Legal Services Association (MLSA)** gives free legal help to low and moderate-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help. The referral is free. Call LRIS at 1-406-449-6577.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at 1-800-710-9827 or by email at mtlawlibrary@mt.gov.

Name

Mailing Address

City State Zip Code

Phone Number

E-mail Address (*optional*)

☐ Petitioner/Plaintiff ☐ Respondent/Defendant

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

<p>_____, Petitioner / Plaintiff, and _____, Respondent / Defendant.</p>	<p>Case No: _____</p> <p>Notice to Opt Out of an Informal Domestic Relations Trial</p>
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My name is _____. I agree to the following:

- I understand that there are two ways for my District Court to handle my case: a traditional trial or an informal trial (also known as an Informal Domestic Relations Trial).
- I understand that in a traditional trial, the Montana Evidence Rules apply, and I will not be able to talk about any issues or provide any documents unless allowed by those rules. I also know that I will have the right to question the other side and the other side will be able to question me.
- I understand that because I am not doing an informal trial, I will not be able to speak directly to the judge without interruption or questions from the other party,

Notice to Opt Out of an Informal Domestic Relations Trial

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and I won't be able to explain the issues and present documents unless allowed to under the Montana Evidence Rules.

I have read and understood this document, and I am voluntarily opting out of the informal domestic relations trial process so that I can have a traditional trial.

Signature

Date

Certificate of Service

I, _____, swear (or affirm) under oath that:
(print your name)

I served a copy of the above Notice to Opt Out of an Informal Domestic Relations Trial
upon _____,
(name of the opposing party)

on _____ day of _____, _____, by
(date) (month) (year)

☐ mailing a true and correct copy with postage prepaid and addressed as follows:

(opposing party's name or name of opposing party's attorney, if he/she has one)

(opposing party's mailing address or mailing address of his/her attorney)

(city, state, zip code)

☐ hand delivering a true and correct copy to:

(opposing party's name or name of opposing party's attorney, if he/she has one)

DATED this _____ day of _____, _____.
(date) (month) (year)

(Your signature)

Notice to Opt Out of an Informal Domestic Relations Trial

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Appendix C



EVENT SESSION

Created By

Montana Supreme Court Access To Justice Subcommittee Advisory Group

November 10, 2022
Online Zoom Call

Considerations for Action

*Facilitated and documented for MT Supreme Court Access to Justice
Subcommittee by*



Contents

This report contains the results of the November 2022 convening of the MT Supreme Court Access to Justice Subcommittee Advisory Group.



3 Introduction

Context about the process



3 - 5 Guided Group Dialogue

The group was guided through a facilitated discussion to begin the work. The discussion and insights are detailed here.



6 – 7 Strategic Efforts Analysis

Participants were asked to consider solutions-oriented strategies towards addressing some of the disparities they discussed. The results of that work are listed here.



8 – 9 Next Steps, Participant List



Introduction

Members of the Montana Supreme Court Access to Justice Subcommittee Advisory group came together to consider issues and potential solution-oriented strategies. The work started with a guided group dialogue. Then participants worked in small groups to consider strategic efforts based on the discussion, and then came together to discuss and consider the efforts involved.



Guided Group Dialogue

The work started with a facilitated discussion, about disparities, challenges and solution-oriented strategies in the Montana Justice System related to race, with a particular focus on Native people. Following are the questions asked and responses from participants.

Where do you see race playing a role?

- Public Law 280 – others having jurisdiction over Natives (county)
- Missoula county using jail data – only using jail for violent crimes (during COVID). Disproportionate # of Natives
- Everywhere – intake, pronouns being honored, sovereign rights
- Disproportionate access to legal services
- Cultural awareness
- At every level - disproportionate policy, arrests, detention, confinement, sentence lengths, access to representation
- Overlap w/Tribal justice systems – minimization of, not honoring or understanding Tribal orders
- Equal weight of Tribal courts e.g. with district courts
- Attorneys practicing in Tribal courts – not licensed in Tribal courts
- Profiling – need for recognition
- Missing & murdered indigenous women & children
- Disproportionate # of children in foster care system
- Seemingly insurmountable presumptions about fitness of parenting w/Native people.
- In DV, jurisdictional complications. Lack of education, understanding & care of DV within relationships of indigenous partners & mixed relationships. Race and politics factor in.

What are challenges for community?

- We don't know how siloed arenas influence our relationship to one another – e.g. how health care impacts & influences housing
- How responsibility to address issues is assigned
- Family law challenge, then add issues of cultural consideration. Fear presents when people are afraid of what they don't know – and so there's an auto "no" response. Solution is to address fears. Mythbust first, then address issues.
- Clerks & judges don't know what they don't know. They make assumptions to fill the gaps, and biases impact decisions about people with low income in general, and it's worse with Natives.
- ICWA compliance is a major issue. Even when there are appropriate placement families, kids are put into group homes. Some get trafficked. We know of an instance where group kids were issued to a non-Native man who trafficked them. Law enforcement refused to investigate. Kids are not being kept safe.
- There are so many layers. Lack of cultural recognition. More than that – it feels insurmountable to educate. People refused to acknowledge or admit that system is racist. Judges say racism is not applicable & accusing us of making it an issue in order to sensationalize it, and elected officials deny it exists.

What are situations that shine light on solutions? Where do we see the twinkle of possibilities?

- Having pro-bono attorneys trained. And then to stand up in court and educate / inform as necessary can go a long way.
- Demonstrate models outside of Montana. Billings has 2nd highest rate of law enforcement violence disproportionately taken out on Natives. 1/3 of police killings are Native, and they are 1/6 of the population. Canada has something called *Gladue*, where people are able to share their experiences & it's used to factor into sentencing
- Some places get rid of "qualified immunity", including New Mexico, Colorado & Illinois.
- If change is to occur, an appropriate educational space needs to exist. Like for attorneys, before they become attorneys – make it part of law school programs.
- Educate in the courtrooms, in the presence of Judges, opposing council, juries. To educate and inform as part of the process.
- Having ability to represent ourselves – our constitutional protections
- Support our legislators
- Push forward inquests into police killings. They are biased. Native witnesses are not allowed to testify. All white jury took 10 minutes to convict. He didn't have a gun & gun found at the scene did not have his prints on it. It was not even admitted as evidence.

Why does it matter?

- If we have disparate outcomes, policy makers should care. They have a basic duty of care.
- The people least represented should be a concern for all. If one group is misrepresented we all could be.
- It's not just access to justice, but MEANINGFUL access to justice.
- The state is concerned about and talking about spending money. Investing appropriately in this reduces recidivism and saves money.
- If you don't have a personal story, it's easy to deny. If you're incarcerating people, it costs a lot of money & they're not contributing to society, so there's a compounded cost.



Strategic Efforts Analysis - What Could Be Done

The group broke out into small teams to discuss solutions-oriented strategies, which were then, as a whole group, broken out into “hard” and “doable” efforts. The group was asked to identify two strategies within each arena, that would make the biggest impact if it were carried out. They are indicated in bold.

What Would Be Hard		What Would Be Doable?	
<ul style="list-style-type: none"> • Increasing meaningful representation of Native people and POC in legal system and government in general specific to court & legal system • Systemwide reckoning – having facilitated dialogues like this at all levels of justice system • Requiring Indian Law on state bar exam • Mandated collaboration between State & Tribal courts (e.g. California Drug Court & Yurok Dependency Court) • Dual dependency court like Veterans courts (ICWA specific court?) • Prosecuting violence against Natives by non-Natives as Hate Crime • Specific requirements in law enforcement academy specific history of colonialism and how those professions have been used to enforce it 	<ul style="list-style-type: none"> • Role of public law 280 – a function of jurisdiction & financial responsibility & resources for implementation • Anti-racism report card – looking at statewide investments & outcomes • Court watch program. Specific courtrooms & judges on individual case level • Using justice system to give back land & resources to Native people • Supporting policies that reinforce respect for Native & non-binary people • Land back effort – what would it look like. Exploring the “what ifs” • Building & implementing robust system of pro-se litigant resources & tools to address anti pro-se bias at the courts • Statewide investigation tribunal around corrections brutality • Changing hearts & minds 	<ul style="list-style-type: none"> • A report on the economic impacts and costs of racism across the system at every step in MT • State increasing investment in education on racism and its effects on all levels of the justice system • Improving access to legal representation for marginalized groups • Improving enforcement of Tribal court orders • Efforts to promote representation of all (Native / non-binary) people in court system at all levels • Redefining inquest process in MT • Tribal justice system weighing in on sentencing through collaboration with State courts • Court watch –appropriately trained council to observe & document issues & challenges that could be remedied through other efforts 	<ul style="list-style-type: none"> • Educate Tribes on how to advocate at state level to address needs at community level. Advocacy at federal level may help reduce larger issues down the road • Continue to support Tribal advocacy incubator at MT Legal Services • Hold or host community-based awareness events : e.g. demonstrations, education, public forums, gathering of testimony, and/or focus groups • Host education conference or series aimed at justice system as well as social workers, educators etc. • Incentivizing and creating resources to help people get licensed in tribal courts to and creating resources to make participation become more accessible & less intimidating.



Strategic Efforts Analysis - What Would Be The Effort To Involve

Taking into consideration the two bolded strategies above, the group considered who the players are that would need to be engaged, and then how the engagements might begin.

Who		
<ul style="list-style-type: none"> • MT Judges Assn • State Bar of MT • Law School • All legislative reps • Every elected official • Victim services programs • Prosecutors 	<ul style="list-style-type: none"> • County attorney association across the board • Law enforcement academy • Assn of public defenders • County law enforcement • City councils • Victims & their families 	<ul style="list-style-type: none"> • Formerly incarcerated folks • Medical community – mental health as well as physical • Tribal leaders / councils • Tribal courts • POST through Dept of Justice
How might the engagements begin		
<ul style="list-style-type: none"> • Starting statewide leadership council consisting of reps from the groups we've identified in a space that requires participation from all parties • Require Indian law in legal education at basic level in order to practice law in MT • Creating state court / Tribal court judiciary offering training to judges, host dinners for networking • Incorporate identify people who can create curricula for Law enforcement academy & POST through dept of justice. (challenge to ensure its used) • Create a platform for people with lived experience to inform the process for tackling these issues in general. We need more info and need to hear from people most affected (e.g. The Tribunal implementing that) • State put together commission to solicit testimonies and review existing literature and provide tangible state workplan • Ask for data from MACO on disparities in jails • Inventory what's currently existing – research and outreach to discover what data & info is available and identify gaps. 		



Next Steps

- This report will be shared w/commission and work towards action steps for what's feasible
- Considerations for focus group participants' ongoing engagement
- Experts on this call be available to lend their expertise to engage and assist in producing resources and knowledge to inform & evolve the work we're already doing across the state.
- To support bringing the representative impacted voices, data to the process to help inform next steps & push this work forward in the justice system
- We will have documentation to Kearan and Alison by Nov 21st
- Distributed to everyone on call
- Distributed to Justice Baker

Participants, MT Supreme Court Access to Justice Subcommittee Advisory Group November 11, 2022

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Appendix D

Pro Bono Action Matrix

	Category	Lower Effort (Quick Wins)	Higher Effort (Major Projects)
High Impact	Awareness, Recruitment, Retention and Recognition	<ul style="list-style-type: none"> • Develop and publish current pro bono opportunity overviews and pro bono FAQs • Promote revolving attorney-directed pro bono opportunity events • Provide judicially-directed, bar leadership-supported pro bono education for attorneys, law firms and students. • Enhance judicial support for local pro bono program recruitment and referral through direct outreach and local bar networking events 	<ul style="list-style-type: none"> • Expand pro bono opportunities, including on reservations and for Indian populations and their specific legal needs. • Facilitate increased use of court-based technologies for remote court appearances for pro bono attorneys. • Develop web-based pro bono program opportunity lists • Create framework and promote formation of local pro bono advisory councils, including judges, local bar leaders, and community service providers. • Establish thresholds and protocols of pro bono participation for public recognition
	Client/Attorney Relationship	<ul style="list-style-type: none"> • Create and deliver standardized protocols for screening and intake by attorneys/firms to capture organized programs and reduce need for increased MLSA administration • Create pro bono representation onboarding portfolio and protocols for clients • Create pro bono client onboarding portfolio and protocols for attorneys 	
	Attorney Preparedness	<ul style="list-style-type: none"> • Create group general and topic-specific experiential earning and mentoring opportunities (in-person and virtual) • Provide legal-topic specific education on regular and rotating schedule 	<ul style="list-style-type: none"> • Expand and strengthen mentorship programs • Create easily accessible and rich content databases with documents, briefs and instructional materials

Low Impact\Beyond the Scope

Exploration, research
and expansion

Fill-Ins

- Exploring malpractice insurance for non-MLSA cases
- Develop LSR as a market-based approach to modest means clients
- Exploring Incentivization of pro bono participation
- Exploring charging a nominal pro bono fee
- Examine additional legal needs

Delegate – Beyond the Scope

- Research legal needs in Indian Country
- Centralized, sortable database listing of individual pro bono opportunities
- Expand modest means/reduced fee generating platforms