

Tab 1

Montana Supreme Court Access to Justice Commission
December 1, 2023
Zoom Video Conference
10:00 AM – 12:00 PM
Meeting Minutes

Commissioners Present: Justice Beth Baker, Ed Bartlett, Lillian Alvernaz, Hon. David Carter, Laura Smith, Aimee Grmoljez, Hon. Leslie Halligan, Kekek Stark, Hon. John Kutzman, Katy Lovell, Margaret Weamer, Alison Paul, and Olivia Riutta.

Commissioners Absent: Rick Cook, Hon. Stacie FourStar, Juli Pierce, Jacob Griffith, and Sen. Wendy McKamey.

Others Present: Emma Schmelzer, Franklin Runge, Alissa Chambers, Grace Loveless, Valerie Falls Down, Becky Schupp Watson, Emma O’Neil, and Ann Goldes-Sheahan.

Call to Order & Introductions

Justice Baker called the meeting to order at 10:02 a.m. and she introduced new Commissioner Laura Smith. She then asked all participants to introduce themselves.

Approval of March Meeting Minutes

Justice Baker asked for corrections on the September meeting minutes. Judge Halligan requested that the word “litigates” on page 4 of the minutes be changed to “litigants”. With that correction, the minutes were approved without objection.

IDRT/Family Law Mediation Update

Emma Schmelzer reported that two months have elapsed since IDRT has been the default trial proceeding for cases with at least one litigant who is pro se. She said that she is planning to create more resources for litigants to help them decide what to present in court. She also plans to survey all judges early next year to find out how things are going with IDRT. Justice Baker said that she’s had one comment from a judge who is concerned about IDRT being the default process.

Emma then reported on the Family Law Mediation program. To date, 13 cases have been fully resolved in mediation, 5 have been partially resolved, and 6 were not resolved. She said that the program has experienced a slight drop in the number of people reaching out, and added that the program will begin accepting cases where one litigant is represented by counsel and the other litigant is pro se. Emma said that additional districts are interested in participating in the mediation program and she is interested in ideas for reaching out to other groups. Justice Baker asked for comments from Judges Halligan and Kutzman. Judge Halligan said that she has been referring litigants who are relieved to have the option for mediation, and commented that it seems like there are good supports in place for participants. Judge Halligan added that she would appreciate a mechanism to find out if the people she refers are actually following up. Emma said that a set of notices is sent out once both parties reach out, but it’s very common that only one of the parties makes contact. Judge Halligan asked if she should issue an order and send it to Emma. Emma replied that this would be very helpful and said that contact information for both parties should be included in the order. Judge Kutzman commented that some judges in his area were surprised by

the IDRT rule and wish that it was not the default option. Professor Stark asked if the Family Law Mediation Program applied to cases that would fall under the Indian Child Welfare Act. Justice Baker replied that the program does not apply in any cases where child welfare is an issue. Justice Baker asked Olivia Riutta if pediatricians might be a good group for outreach regarding the Family Law Mediation program and Olivia offered to connect Emma with the right person to begin this process.

2023 Biennial Report

Justice Baker thanked Alissa Chambers for drafting the report. She asked that the information on page five of the report regarding the Family Law Mediation program be updated to include the most current information on the mediation process, and asked that the signature page be revised to remove Rep. Sullivan and to correct the spelling of Sen. McKamey's last name. She also asked that the first sentence on page six of the report be revised to reflect that three members of the Commission's Racial Justice Working group assembled along with nine other participants to discuss racial equity issues in Montana's civil justice system. Justice Baker then asked Alison Paul to present the report on the racial equity discussion which is included in Appendix C of the biennial report. Alison said that it was very difficult to focus the discussion on civil legal issues because criminal justice issues were the primary area of concern for most of the participants. She noted that the final recommendations focused on education and anti-bias training. Justice Baker said that we should incorporate those recommendations into the strategic planning process.

Justice Baker then asked for a motion to approve the draft report to be submitted to the Supreme Court with the corrections as noted. Ed Bartlett so moved and Alison Paul seconded the motion. The report was approved without objection.

Strategic Planning Committee Update

Justice Baker reported that draft strategic plan is not ready to share with the group at this point. She said that through Tara Veazey, who guided the strategic planning process 3 years ago with funding from the National Center for State Courts (NCSC), Montana has the opportunity to be one of three states to test a diagnostic tool developed by the NCSC for updating strategic plans. As part of the testing process, Montana will also have access to a strategic planning facilitator at NCSC. This will be a top priority of the committee in early 2024.

MLSA Update

Emma O'Neil presented the Montana Eviction Impact Report, an analysis of the affordable housing and eviction crises in Montana during the COVID-19 pandemic and the ongoing impact on Montana families and communities. Emma explained that MLSA worked with Bozeman-based data analytics consultant SciGaia to survey clients who applied to MLSA for help with an eviction issue between April 2020 and August 2022. Sixty-five clients in 19 different counties responded to the survey and follow-up interviews were conducted with those who expressed an interest in being contacted about their experience. Key takeaways from the report include the fact that the majority of those surveyed were employed full or part-time, but had no room in their budget for unexpected medical or other large expenses; nearly half spent more than 50% of their income on housing; and most of the clients who were evicted spent more than 10% of their income on costs such as storage, moving, utility start-stop fees, and temporary motel expenses. MLSA will use the results of the survey to inform current efforts to assist Montanans at risk of eviction and to identify

other service needs that are not being met. A lack of awareness about sources of support such as rental assistance and other emergency funds contributed to adverse outcomes, pointing to a clear need for more education and outreach. MLSA has distributed the report to a broad range of stakeholders, policymakers, and members of the media. The report has been well-received and has garnered press coverage across the state. Justice Baker thanked Emma and MLSA for the report and encouraged the group to share the report broadly. Links to the both the analysis and personal stories were included on the agenda.

Alison Paul provided an update on MLSA's eviction intervention and rental assistance projects with the Department of Commerce (DOC). She said MLSA is still waiting on a final contract from DOC and expects that it will cover two more years of funding. MLSA went from one full-time housing attorney pre-pandemic, to four housing staff attorneys, plus contract attorneys across the state who provide advice and representation in eviction cases. She added MLSA is trying to raise awareness and secure additional funds to prepare for the end of DOC and other pandemic-related funding for housing assistance and that is why the eviction report is so important. Olivia Riutta asked if there are policy recommendations in the report. Alison replied that MLSA is prohibited from advocating for policies, but we can provide background information. Laura Smith asked why only 57% of applicants received rental assistance funds. Emma replied that there were long delays in paperwork processing because the system was overwhelmed with requests. Paperwork errors and lack of cooperation by landlords also contributed to the low success rate. Alison said that MLSA is now administering all the rental assistance funds and added that we have a great working relationship with DOC. She said that in order to qualify for assistance through MLSA, the person must have a legal issue.

Alison reported on some of MLSA's other projects, including a statewide legal needs assessment that is close to wrapping up. Preliminary data suggest that the largest areas of legal need are housing, consumer issues, and family law, in that order. This is a change from what we've seen over the last decade or more where family law has always been identified as the biggest need. Alison said that MLSA recently received one of six grants awarded nationwide from the federal Administration for Children and Families to expand our medical legal partnership program to the Urban Indian Healthcare Centers across the state. We are also ramping up our disaster response infrastructure with money received from LSC as a result of the Yellowstone Flood Disaster Declaration in 2022. Finally, MLSA is a partner with Alaska Legal Services on their LSC disaster grant to train Community Justice Workers in health centers and social services agencies. She added that Alaska's Supreme Court has authorized a process for lay advocates to become certified to provide limited scope legal services. Justice Baker commented that there are a lot of discussions about similar models around the country and the National Association of Chief Justices has formed a study committee to look at this issue. Lillian Alvernaz said that the Indian Law Section of the State Bar has advocated for lay advocates to work on ICWA cases, but thus far the State Bar has opposed this approach.

Public Comment and Next Meeting Dates

Justice Baker asked for public comment. There was no public comment. Justice Baker then asked Alissa Chambers to report on her trip to the Philippines to engage with access to justice advocates in that country. Alissa said that she traveled to the Philippines through a reciprocal exchange funded by the State Department. She met with the advocate who visited Montana to learn about

our access to justice initiatives to help inform the process in her own country. Alissa helped the advocate set up a legal aid workshop and said that it was inspiring and humbling to learn about the obstacles faced by Philippine citizens trying to navigate the court system, and to witness the efforts underway to form an Access to Justice Commission in the Philippines.

The next meeting is on March 1, 2024. The meeting was adjourned at 11:19am.