## Tab 1

# Montana Supreme Court Access to Justice Commission June 7, 2024 Zoom Video Conference 10:00 AM – 12:00 PM Meeting Minutes

Commissioners Present: Justice Beth Baker, Ed Bartlett, Lillian Alvernaz, Hon. David Carter, Rick Cook, Hon. Stacie FourStar, Sen. Wendy McKamey, Kekek Stark, Hon. John Kutzman, Katy Lovell, Juli Pierce, Margaret Weamer, Alison Paul, Olivia Riutta.

**Commissioners Absent:** Aimee Grmoljez, Hon. Leslie Halligan, Jacob Griffith, Rep. Laura Smith.

**Others Present:** Alissa Chambers, Becky Schupp Watson, Beth McLaughlin, Franklin Runge, Grace Loveless, Emma Schmelzer, Valerie Falls Down, John Mudd, Megan Dishong, Ann Goldes-Sheahan, and Krista Partridge.

### **Call to Order & Introductions**

Justice Baker called the meeting to order at 10:05am and asked participants to introduce themselves.

### **Approval of March Meeting Minutes**

Justice Baker asked for a motion to approve the minutes from the March meeting. Alison Paul so moved and Olivia Riutta seconded the motion. The minutes were approved without objection.

### Karla Gray Award

Justice Baker reviewed the criteria for the Karla Gray Award and reminded the group that this is the only State Bar award for judges and is meant to recognize judges who focus on access to justice issues. The Commission's role is to make nominations, not to vote for the winner. She asked for nominations no later than June 20 and asked Rebecca to make a note that we should begin the process for nominations at the March meeting next year.

### **Self-Help Resources Assessment**

Beth McLaughlin reviewed the report, "An Assessment of Self-Help Resources in Montana," located at Tab 3 in the meeting materials. Beth explained that the self-help program has grown organically since its inception in 2007 and has not been systematically evaluated until now. She added that her group is still processing the report, but she shared some initial takeaways. The current self-help resources fall into two main categories - Self-Help Law Centers (SHLC) and automated court forms. One of the more pressing problems faced by the SHLCs is difficulty recruiting the Justice for Montanans (JFM) AmeriCorps members, who make up most of the SHLC staff, largely due to the high cost of living in Montana. To help address this issue, the decision was made to consolidate all the JFM members in Helena at the State Law Library. The members will travel to the other SHLC locations weekly and may be able to share housing costs. The members will also have access to more supervision and training in Helena and will be able to offer support to one another. Justice Baker asked about the plan for the Billings SHLC since it is the busiest, and Beth replied that a member will travel to Billings for two full workdays each week. Beth added

that they are looking at national standards for self-help centers and Franklin Runge in the State Law Library will help the SHLCs provide more assistance for self-represented litigants. Justice Baker asked Beth to update the Commission at the next meeting. Beth also reported that there will be a budget proposal for the 2025 legislative session to continue the Family Law Mediation Program for an additional six months after the ARPA funding sunsets in December 2026. Judge Carter asked if the Billings SHLC staff can be moved into the courthouse. Beth replied that there is no space available and that her office does not have leverage with the counties when it comes to office space. She added that OCA plans to ask for three more Yellowstone County judges at the next legislative session.

### **Legal Deserts Summit**

Alison Paul, Beth McLaughlin, John Mudd, and Rich Batterman, an attorney from Baker, recently attended the Legal Deserts Summit in Las Vegas, put on by the National Center for State Courts. The focus of the conference was on how to facilitate the recruitment and retention of attorneys in rural areas and how to expand the number and types of people who can provide legal services. Based on what they learned at the summit and dovetailing with work already underway at the law school and at the State Bar, the group asked for the support of the Commission on two proposals. The first involves providing paid internships and housing stipends for first- and second-year law students with judges, at law firms, or at public agencies in small communities. The host organization will be responsible for integrating and engaging the students in the community. Students who are originally from these small towns will also be recruited. John Mudd said that the State Bar will facilitate the program, but it will be a collaborative effort with the law school. He said they are ready to move forward with the program to begin in the summer of 2025 and asked for the Commission's support. Justice Baker moved to support the plan submitted by the State Bar and Court Administrator to place attorneys in rural areas and Ed Bartlett seconded the motion. The motion was approved without objection.

A second proposal for Community Justice Workers (CJW) was presented by Alison Paul and is focused on the goal of expanding the types of people who can provide legal services. Alison explained that the CJW or "Allied Legal Professionals" concept is a big movement around the country and is different from the limited license practitioner idea that was considered and rejected by the Commission a couple of years ago. The proposal for a Montana-specific CJW program is modeled on the successful Alaska program that allows trained individuals to provide legal services in specific types of cases. MLSA would train people working in social services agencies, domestic violence shelters, and other human services organizations to represent low- and moderate-income people in landlord-tenant and debt collection matters in Justice Court, and to represent domestic violence victims who are seeking Orders of Protection. MLSA would work with the State Bar and law school to develop a training curriculum and would seek a planning grant from the State Justice Institute to fund a coordinator for the program. Alison said that MLSA has already applied for a federal grant from the Office on Violence Against Women to start a Community Justice Worker program for Orders of Protection. Beth McLaughlin added that Rich Batterman is particularly enthusiastic about the potential for this program because he sees firsthand the impact on people in his community when they can't find anyone to represent them, particularly in Order of Protection hearings. Beth said that the support of the Commission will be very important for the planning grant application. Ed Bartlett asked why Montana wouldn't pursue limited license practitioners. John Mudd said that the limited licenses failed in Washington State because of the high cost and

resistance from stakeholders. Alison added that the infrastructure and resource requirements to implement a limited license program are not within reach of the State Bar and Court Administrator and would be outside of MLSA's mission. Both John and Alison stated that an incremental pilot approach is the best option. Justice Baker asked Alison to elaborate on the sustainability considerations for the CJW program. Alison explained that CJWs can be employed by MLSA and that we're currently doing this under a sub-grant from Alaska Legal Services. She said that MLSA's model doesn't currently include charging for services, but it's something that we would contemplate. Ed Bartlett said that he supports the CJW concept with an overall goal of working toward a limited license. He also recommended charging a nominal fee for the services. Beth McLaughlin noted that Texas is proposing a significant expansion of bar memberships, but their bar is much bigger and better funded. Alison also mentioned that MLSA's Tribal Advocacy Incubator Program (TAIP) is another model that could be replicated. She added that we need to evaluate TAIP to ensure that it has succeeded in increasing access to justice in tribal courts. Sen. McKamey added that she's excited about this program and being able to apply previous experience to make it a success. Justice Baker said that a formal motion is not necessary; the Commission agreed to support the development of a CJW plan from a working group of volunteers (Lillian Alvernaz, Katy Lovell, David Carter, and Alison Paul).

### MLSA Update & Legal Needs Assessment

Alison Paul reported that MLSA needs to update automated pro se court forms to take advantage of improvements in technology since they were first developed and will apply for a technology grant from the Legal Services Corporation to pay for these updates. Alison asked for a letter from the Commission in support of the application and a draft letter is included in the meeting materials. She added that MLSA is already updating family law forms through funding from the Family Mediation Program and said that the goal is to make all the forms available in Full Court for efiling. Justice Baker asked Beth McLaughlin for an update on the status of e-filing. Beth said that the system is almost completely deployed and that the contract with the e-filing vendor will expire in four years. At that time, the Court Administrator will put out an RFP for a new vendor and will include a self-represented litigant component. Justice Baker asked about the finding in the legal needs assessment report that people aren't using technology to find help for their legal problems. Alison replied that MontanaLawHelp.org is used extensively, but it could be used more and MLSA is doing a lot of outreach to increase awareness. Justice Baker asked for a motion to approve the support letter for MLSA's technology grant application. Ed Bartlett so moved and Olivia Riutta seconded the motion. Alison Paul abstained from the vote. The motion was approved without objection.

Megan Dishong explained that MLSA conducts a statewide legal needs assessment study every 3-5 years. This is required by the Legal Services Corporation, and it's also a valuable way to uncover issues. MLSA hired Angie Wagenhals to conduct the assessment in 2024, and she distributed electronic and paper surveys to a diverse mix of urban, rural, and tribal community partners, members of the State Bar, court personnel, and members of the Access to Justice Commission. She also conducted focus groups and arranged for one-on-one interviews of judges by MLSA attorneys. The assessment report is included in the meeting materials and Megan reviewed some of the key takeaways. The legal needs that rose to the top of the list were housing, public benefits, and education. Housing and public benefits were predictable given the eviction crisis and Medicaid unwinding, but education was a surprise and appears to be related to access to services for special

needs children. The report found that people with legal needs rely on in-person connections, along with Facebook and TikTok. Megan said that MLSA currently puts out a lot of content on social media but will focus on doing even more. Megan also noted that MontanaLawHelp.org analytics show that over 40,000 unique users have visited the site thus far in 2024, with most accessing housing and family law resources.

The biggest gap identified in the report is the difficulty in navigating MLSA's intake process and the long wait times for applicants. Megan said that MLSA is aware of this problem and MLSA's new Intake Manager has already implemented several process improvements. She explained that some of the inefficiencies are baked into the restrictions and requirements placed on MLSA by LSC and other funders, making eligibility determinations very time-consuming and complex. Megan also mentioned that the focus groups revealed that different communities were concerned about very different issues and that MLSA will look at ways to address these diverse needs. Alison added that public benefits and education legal issues don't often require an attorney, but rather trained navigators can be deployed to guide people through paperwork and processes. She said that MLSA's new CJW will focus on public benefits issues.

Finally, Alison reported that tenant groups in Bozeman and Missoula are pursuing "right to counsel" in landlord-tenant hearings and have approached MLSA for cost proposals to provide attorneys for tenants in these cities. Judge Carter said that in Colorado, fees for the licensure of rental property go into a legal fund to handle disputes in mediation or through a complaint process to prevent eviction filings.

### Strategic Plan Update

Justice Baker explained that the simplified draft strategic plan in the meeting materials is the culmination of many hours of work from the Strategic Planning Committee and consultant Tara Veazey who worked with the committee under a grant from the National Center for State Courts. Justice Baker pointed out that a vision statement inspired by the "Justice For All" initiative was added to the plan. She reviewed the core values of access, education, and resource development, and explained that the overarching principles and commitments apply across the entire plan. Justice Baker then reviewed the list of goals that begin on page 120 of the meeting materials and pointed out that Commission members and others will be asked to volunteer to serve on committees as "Goal Champions". Justice Baker asked for comments and questions. Alison Paul said she supported the plan and Sen. McKamey said that the plan looks thorough and well thought-out. Justice Baker said that current committee assignments and new committee opportunities will be sent out and she asked members to volunteer. She then asked for a motion to authorize the committee to complete the plan and to adopt the completed plan. Sen. McKamey so moved and Judge Kutzman seconded the motion. The motion was approved without objection.

### **Public Comment and Next Meeting Dates**

Justice Baker asked for public comment and there was none. The next meeting is on September 6, 2024. The meeting was adjourned at 11:48am.

### Tab 2



# Annual Pro Bono Report September 2024

Montana Supreme Court Statewide Pro Bono Program

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### **EXECUTIVE SUMMARY**

### **Pro Bono Pledge**

Rule 6.1 of the Montana Rules of Professional Conduct requires attorneys authorized to practice law in the state of Montana to provide 50 hours of pro bono publico service annually, with the majority of those hours dedicated to serving individuals of limited means. The annual Pro Bono Report aims to document and analyze the significant contributions of Montana attorneys in delivering pro bono services statewide and to assist in developing initiatives to increase statewide pro bono participation.

### **2023 Pro Bono Highlights**

In 2023 **1,592** attorneys licensed to practice law in **Montana** provided **108,811 hours** of pro bono service to Montanans of limited means, and organizations designed to assist people of limited means, valued at almost **\$17.3 million**.

### **Montana Response Rates**

Annual Pro Bono Reports were received from **3,384** attorneys with active status and licensed to practice law in Montana for an overall active status attorney reporting rate of 81 percent.<sup>1</sup>

### **Critical Data**

The Annual Pro Bono Report is designed to assist the access to justice community to:

- Identify and evaluate how Montana attorneys are helping to meet the legal needs of Montanans and improve the operation of the courts by volunteering their services.
- Assess the time attorneys spend providing volunteer services, in what categories, and the representative groups to whom those services are provided.
- Assess the economic impact of pro bono contributions by Montana attorneys.
- Identify ways to improve pro bono participation and experiences among Montana attorneys.
- Identify areas of improvement for promoting participation in pro bono services and programs by Montana attorneys.
- Help assess the need for legal assistance by Montanans of moderate and limited means.

<sup>&</sup>lt;sup>1</sup> Percentages based on July 2024 State Bar of Montana Membership Report

### **Introduction and Reporting Summary**

The Pro Bono Reporting process is managed by the State Bar of Montana and the Montana Supreme Court Office of the Court Administrator. This report summarizes the voluntarily reported pro bono hours for the calendar year 2023 through the State Bar of Montana member dashboard portal. Attorneys report hours provided without expectation of fee or at a substantially reduced rate.

There was a **total of 3,796 reports** received through the State Bar of Montana dashboard and **3,384 (89 percent) are designated as active status** including **2,547 (75 percent) Montana** resident attorneys and **837 (25 percent) non-resident** Montana licensed attorneys. Active Montana attorneys had an 80 percent reporting rate; active out-of-state attorneys had a 86 percent reporting rate. This report does not incorporate into any statistic or conclusion from the 412 attorneys who indicated a status other than active.

- **1,567** attorneys reporting Montana pro bono hours provided **61,967** hours of pro bono services *without expectation of fee* for individuals/families of limited means or organizations designed to assist people of limited means.
- **552** attorneys reporting Montana pro bono hours provided **26,534** hours of pro bono service *at a substantially reduced fee* to people/families of limited means or organizations designed to assist people of limited means.
- 488 attorneys reporting pro bono hours provided 16,161 hours of <u>free</u> services to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes.
- **102** attorneys reporting pro bono hours provided **4,149** hours of <u>reduced fee</u> services to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes.
- In addition to reported pro bono hours, **791** attorneys reported **21,155 in-state** hours participating in volunteer activities to improve the law, legal system or legal profession. (These hours are not included in the report of total hours of service provided under Rule 6.1.)

### 2023 Pro Bono Hours Recapitulation

CATEGORY	Hours	Category	Total
Without expectation of fees to/for persons of limited means or			
charitable, religious, etc. serving people of limited means	61,967		
Free to charitable, religious, etc. in furtherance of their	16,161		
purposes	10,101		
Total Free		78,128	
Reduced to people/organizations to/for persons of limited			
means or charitable, religious, etc. serving people of limited			
means	26,534		
Reduced to charitable, religious, etc. for furtherance of their			
purposes	<u>4,149</u>		
Total Reduced Fee		30,683	
TOTAL PRO BONO HOURS			108,811

### Analysis of Reported Pro Bono Publico Service Value

(Does not include Volunteer Activities for improving the law, legal system, legal profession)

Free Services Reduced fee services TOTAL 71,128 hours x \$200/hr<sup>2</sup> \$14,225,600.00 30,683 hours x \$100/hr<sup>3</sup> \$3,068,300.00 \$17,293,900.00

<sup>2</sup> Hourly rate based on the average Montana attorney hourly rate as determined by Clio, a leading legal technology company who has formed a partnership with the American Bar Association to data insights through its Legal Trends Report, which is often used as a reference for understanding industry trends, including hourly rates for attorneys.

<sup>&</sup>lt;sup>3</sup> Reduced rate services calculated at one-half the average hourly rate.

### GENERAL CHARACTERISTICS AND EXPERIENCES OF REPORTING ATTORNEYS

This section utilizes the pro bono reporting data to present a general overview of practice types and experiences of Montana attorneys. Because of the substantial in-state attorney reporting volume, this data provides a general descriptive measure of the overall Montana attorney population.

### **Years in Practice**

The **average years** of practice for **all Montana active status** reporting attorneys is **19**, and the **median** years in practice is **16**. The average and median years for active attorneys providing pro bono services in Montana are approximately the same.

The analysis of the "years in practice" data reveals a notable trend toward an aging attorney population. The distribution indicates that while a substantial number of attorneys are relatively early in their careers, a significant portion has been practicing for several decades. Specifically, 25 percent of attorneys have 29 or more years of experience, and the 90th percentile of attorneys have 40 or more years in practice. The median age for attorneys providing pro bono service is 20 years; the median age for attorneys with no pro bono service is 13. These insights highlight that a considerable segment of the attorney workforce who currently provide pro bono services is nearing traditional retirement age, underscoring the need for strategic planning in succession and recruitment to ensure sustainability of pro bono services.

### **Pro Bono Service**

Of attorneys reporting pro bono hours in any category, **68 percent** reported a positive experience related to their pro bono representation, **30 percent** indicated a **neutral** experience. Less than **2 percent** of attorneys reported a **negative experience**.

### Pro Bono by legal type

**Family law** continues to lead the type of individual pro bono services performed at **35 percent**. Most categories stayed relatively consistent, but there was a significant **decrease** in the **Real Estate/Foreclosure** category of **5 percent**. Table T.1 presents the percentages across all legal categories.

Table T.1Pro Bono Service by Category

CATEGORY	Percentage	CATEGORY	Percentage
Family Law	35%	Conservatorship	7%
Estate planning	21%	Education	7%
Criminal	19%	Civil rights	7%
Non-profit	18%	Self Help Support	6%
Business	17%	Adoption	5%
Landlord-Tenant	16%	Disability Rights	5%
Probate	13%	ADR	5%
Employment/Labor	12%	Education	5%
Guardianship	12%	Health	4%
Elder Law	10%	Youth in Need of Care	4%
Civil Rights	10%	Indian Law	3%
Consumer	10%	Human Rights	3%
Domestic Violence	10%	Immigration	3%
End-of-Life Planning	9%	Social Security	3%
Real Estate/Foreclosure	9%	Tax	3%
Insurance	9%	Military	2%
Other	8%	Program Admin	2%

### Pro Bono

The Pro Bono Reporting Form allowed attorneys to indicate no reportable pro bono hours and offered options to indicate explanation for absence of pro bono hours. Attorneys responding that they did not have time to do pro bono increased significantly from 16 percent to 39 percent. A significant shift in the percentage of attorneys citing a lack of time for pro bono work is driven by a demographic with substantially fewer years in practice, where the median experience is just 4 years, compared to 16 years in the broader attorney population. There was also a 5 percent increase in attorneys responding "no reason." The allocation of percentages across no pro bono service are illustrated in **Table T.2**.

Table T.2 – No Pro Bono Service

REASON	%	REASON	%
Do not have time to do pro bono	39%	Lack the necessary skills/training	7%
Other	24%	Specific rule or regulation prohibits participation	3%
No reason	15%	Work outside the legal profession	1%
No opportunity given to me	12%	No longer practice law	<1%
Cannot afford to do pro bono	11%	Unemployed	<1%
Employer/employment prohibits	9%	Do not believe pro bono is my professional responsibility	<1%

### Improving Pro Bono Participation

Attorneys were asked what could be done to improve the ability to do pro bono work. **Table T.3** illustrates response percentages.

Table T.3 – How to Improve Pro Bono Participation

REASONS	Percent
Opportunities for finite hour contributions	27%
Opportunities in my area of expertise	26%
Additional Training/CLE	22%
Other <sup>4</sup>	19%
Referral from an organized pro bono program or prescreening	17%
Choose a case list with details	15%
Accommodations from employer or change in department policies	12%
Administrative or staff support for pro bono cases	11%
Expanded opportunities in my geographic location	8%
Use of office space or equipment	7%
Screening for financial eligibility	7%

### Recommendations to Enhance Pro Bono Participation and Service Quality

### 1. Increase Accessibility to Training and CLE Opportunities:

- Action: Develop and promote targeted Continuing Legal Education (CLE) courses focused on common pro bono practice areas, such as family law, landlord/tenant disputes, and estate planning.
- Impact: By addressing the gap in necessary skills and providing attorneys with confidence in their abilities, this approach could reduce the 22% of attorneys who cite a lack of skills/training as a barrier to participation.

### 2. Expand Geographic Reach and Leverage Technology:

Action: Utilize virtual platforms to connect attorneys with pro bono opportunities across
the state, particularly in underserved rural areas. Continue to explore virtual case
management systems that allow attorneys to select cases from a state-wide database.

<sup>&</sup>lt;sup>4</sup> "Other" responses generally fit into one of the available categories or included responses without resolution (e.g. "more hours in a day.)

 Impact: This could mitigate the number of attorneys who noted the lack of pro bono opportunities in their geographic location or preferred a referral from an organized program or a pre-screened.

### 3. Promote Finite Hour Contributions:

- Action: Develop short-term pro bono projects or limited-scope engagements, such as document review or brief consultations, to attract attorneys who cite time constraints as a barrier.
- o **Impact**: Addressing the 39% of respondents who reported a lack of time as a reason for not participating in pro bono work could significantly boost engagement, particularly among attorneys in high-demand practice areas.

### 4. Enhance Employer Support and Flexibility:

- Action: Encourage law firms and government agencies to adopt pro bono policies using resources previously developed to facilitate these changes. Educate attorneys and employers about existing policies.
- o **Impact**: By improving employer accommodations and encouraging in-house pro bono policies, this could alleviate concerns of respondents who are currently prohibited from participating in pro bono work due to employment restrictions or challenges.

### 5. Strengthen Referral and Screening Processes:

- Action: Collaborate with organized pro bono programs to refine case referral and financial eligibility screening processes. Ensure that pro bono attorneys are matched with cases that align with their expertise and capacity.
- o **Impact**: This could increase participation among the attorneys who indicated that referrals from organized programs would enhance their ability to engage in pro bono work.

### 6. Engage Less Experienced Attorneys in Pro Bono Work:

- Action: Develop mentorship and support programs specifically targeted at attorneys with fewer years of experience. This could include pairing these attorneys with more seasoned pro bono practitioners, offering CLE credits for pro bono participation, and providing easy-to-use resources and toolkits for handling pro bono cases.
- o **Impact**: Addressing the disparity in pro bono participation will encourage newer attorneys, with a median of 13.5 years in practice, to engage more actively in pro bono work. This is particularly important as Montana's attorney population providing pro bono services continues to age.

### 7. Support Time-Constrained Attorneys in Pro Bono Participation

- Action: Develop strategies to assist attorneys who cite a lack of time as a barrier to fulfilling their pro bono responsibilities. In addition to more flexible, limited scope opportunities, promoting collaborative pro bono efforts in sharing pro bono workload; integrating pro bono work into billable hours by advocating for policies that allow up to 50 pro bono hours annually to count toward billable targets; and providing time management resources to assist attorneys in integrating pro bono work into their schedules.
- o **Impact:** By addressing the time constraints that many attorneys face, these strategies will enable greater participation in pro bono work. Attorneys will be able to fulfill their professional responsibilities without compromising their existing commitments.

### 8. Educate Attorneys early in Practice on Professional Responsibility and Pro Bono Obligations

- Action: Implement an educational initiative to reinforce the professional responsibility of attorneys to provide pro bono services, irrespective of their time constraints. This could include:
  - 1. **Mandatory Continuing Legal Education (CLE) Sessions:** Offer CLE sessions focused specifically on the ethical obligations related to pro bono work, emphasizing that the duty to provide pro bono services is not diminished by a busy schedule.
  - 2. **Distribution of Educational Materials:** Develop and distribute materials that clearly outline the rules and ethical standards governing pro bono participation, including real-life examples of how attorneys have successfully balanced pro bono work with their other professional responsibilities.
  - 3. **Regular Communications:** Integrate reminders and educational content into regular firm communications, such as newsletters or internal memos, to continuously emphasize the importance of fulfilling pro bono obligations.

### o **Impact**:

By educating attorneys about their professional responsibility and the ethical rules that mandate pro bono service, this initiative will help to reduce the number of attorneys who believe they cannot engage in pro bono work due to time constraints. Ensuring that all attorneys, regardless of their workload, understand and prioritize their ethical obligations will strengthen the pro bono culture within the legal community and contribute to better access to justice for those unable to pay for legal services.