

**To: Access to Justice Commission**  
**From: Abby Brown & Ann Goldes-Sheahan**  
**Date: May 18, 2016**  
**RE: Report from Standing Committee on Self-Represented Litigants**  
**Recommendation re: Commission Action on Fee Waiver Form**

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**Update on Standing Committee.** The Committee met on April 12, 2016, which was the first substantive meeting since we took over from Michele Snowberger as co-chairs. The following is a synopsis of the substantive work the Committee is doing in 2016-2017:

- **Forms Sub-Committee.** The pilot program to test the Dissolution of Marriage with Children forms is starting in Cascade and Gallatin Counties. While the draft forms are available to everyone on the SCSRL webpage (<http://courts.mt.gov/supreme/boards/self-represented-litigants>), only those in the pilot counties are being encouraged to use the draft forms. Public comment and feedback is requested on the forms using the [scsrl@mt.gov](mailto:scsrl@mt.gov) website. The pilot project will likely last at least 6 months so that a sufficient number of litigants can get through the entire dissolution process using the pilot project forms. Training has also started re: use of the forms and the Forms Sub-Committee will continue to train groups as the need arises.
- **2016 Action items.** The Committee's Strategic Plan is robust and ambitious. In October 2015 the Committee decided to break the strategic plan into discreet, manageable action items that can be accomplished each year. The Committee members then divided into subcommittees to tackle these action items. For 2016 those action items fall into two categories: Education & Outreach and Legislative Changes. Specifically:
  - **Education & Outreach.** The focus for this subcommittee is to:
    - Plan and conduct 3-6 in-person training across the state on the education materials the Committee has developed on "legal information vs. legal advice". As of today, four trainings have been scheduled/conducted in Kalispell, Missoula, and Helena. The subcommittee is exploring additional training opportunities, particularly at the Clerk's Conference in September 2016.
    - Seek an endorsement from the Commission on these training materials. The materials are being compiled and we expect to present them to the Commission for endorsement at the September 2016 Commission meeting.
    - Explore funding options for disseminating materials, trainings, and eventual web-based trainings. Currently all trainings are done by members of the Committee voluntarily and without reimbursement for travel or expenses.
  - **Legislative Changes.**
    - The 2015 Legislative Session had numerous pieces of legislation that potentially affected self-represented litigants; however the Committee has no mechanism or protocol in place to monitor bills, determine whether it should provide input on the bills, or actually provide input. Therefore, in 2016 this subcommittee will devise a method for monitoring bills in the 2017 Legislative Session and a protocol for how and if the Committee should be involved in proposed legislation, including discussion on whether the Committee should make recommendations to the Commission.
    - The Committee will present its proposed method and protocol to review Legislative changes to the Commission by the end of 2016.

**Recommendation to Commission.** The Committee recommends that the Commission request the Montana Supreme Court to: (1) standardize the fee waiver form/financial affidavit required by Section 25-10-404, MCA; and (2) amend the Montana Rules of Civil Procedure to mandate that all Montana courts utilize the standardized form.

If the Commission chooses to act on the Committee's recommendation, the Committee further requests instructions from the Commission in terms of how to proceed. The Committee is prepared to draft an appropriate form and proposed language for the amended Rules of Civil Procedure to be submitted by the Commission via Petition to the Montana Supreme Court no later than December 31, 2016.

The rationale for this proposal will be further presented at the June 3<sup>rd</sup> Commission meeting, but in sum:

- This is an Access to Justice issue because self-represented litigants are subject to disparate treatment across Montana due to the justice and district court's various and inconsistent fee waiver forms and procedures, including some courts requiring additional financial information while others do not.
- Section 25-10-404(4), MCA, states the Montana Attorney General's Office shall "prescribe the form of the financial statement required by subsection (1) for use in determining indigence." Despite this statutory mandate, this form is not consistently used by Montana courts and some courts require litigants to provide additional financial information above and beyond what is required by the AG's form.
- The disparate treatment resulting from these forms is exemplified in the pending Petition for Writ of Supervision Control *Hadley v. Justice Court of Missoula County, Montana*, Montana Supreme Court Case No. OP 16-0202. As of the date of this report no decision has been released by the Supreme Court.