

DRAFT Agenda
Montana Supreme Court Access to Justice Commission
June 25, 2014
Director's Conference Room, DNRC, 1625 Eleventh Avenue, Helena
11:00 AM – 3:00 PM

I. Introductions, Welcome, and Approval of Meeting Minutes from 2/28/13: Justice Baker (11:00 – 11:10)

II. JIC Update: Abby St. Lawrence (11:10 – 11:30)

III. State Bar Update: Janice Doggett (11:30 – 11:40)

IV. Court Budget and SJ 22 Study Update: Beth McLaughlin (11:40-12:00)

V. Working Lunch: Kelly Carmody to Present Gaps & Barriers Study (12:00 – 1:00)

BREAK (1:00 – 1:10)

VI. Communications & Outreach Committee Report: Matt Dale (1:10 – 1:30)

VII. Self Represented Litigants Report: Judge Snowberger (1:30 – 1:50)

VIII. Law School Partnerships Committee Report: Jamie Iguchi (1:50 – 2:10)

- **Action Item:** Adopt Revised Recommendation

IX. Policy & Resources Committee Report: Amy Sings In The Timber (2:10 – 2:30)

- **Action Item:** Adopt Cy Pres Recommendation
- **Discussion Item:** Approve Support for Uniform Collaborative Law Act

BREAK (2:30-2:35)

X. Access to Justice Awards: Justice Baker (2:30 – 2:45)

XI. Wrap-up: Next Meeting Date and Public Comment (2:45-3:00)

Tab 1

Montana Supreme Court Access to Justice Commission

February 28, 2014

State Capitol, Room 172

1:00 p.m. – 3:30 p.m.

Meeting Minutes

Commissioners Present: Matthew Dale, Rep. Chuck Hunter, Justice Baker, Judge Krueger, Judge Ortley (phone), Judge Snowberger (phone), Hillary Wandler (phone), Jon Bennion, Aimee Grmoljez, Teri Mazer (phone), Andy Huff, and Michele Robinson.

Commissioners Absent: Sen. Rick Ripley, Judge Jackson, Jennifer Brandon, Melanie Reynolds, Alison Paul, Jackie Schara, and Randy Snyder.

Others Present: Chris Manos, Janice Doggett, Kate Kuykendall, Amy Sings In The Timber, Michelle Potts, Abby St. Lawrence, and Krista Partridge.

Call to Order: 1:05 p.m.

Justice Baker introduced a new member of the Commission, Teri Mazer, Gallatin County Justice Court Clerk.

Justice Baker asked if there were any comments or corrections on the November meeting minutes. Aimee Grmoljez and Michele Robinson stated that they were listed as present at the meeting, but both were absent.

Justice Baker moved that the November minutes be adopted as corrected. The motion passed without objection.

Gaps and Barriers Study Update

Amy Sings In The Timber delivered an update on the Gaps and Barriers Study. She reported that Montana Legal Services had agreed to contribute an additional \$7,000 along with other in-kind assistance. In addition, the Montana Justice Foundation Board is considering a special grant for \$12,000 to fund the completion of the study. The MJF special grant is a seconded motion and the vote is pending at the board meeting scheduled for March 28, 2014. The consultant, Kelly Carmody, resumed work in early January and expects to submit a draft report in mid-March. The final report is targeted for completion in time for presentation at the joint meeting of the Access to Justice Commission and the Justice Initiatives Committee in June. Judge Snowberger asked if the raw data will be accessible electronically for future use. Justice Baker said that the data will be provided under the terms of the contract, but she is unsure of the format. Amy Sings In The Timber pointed out that the bulk of the study consisted of listening sessions and interviews and as a result the report will not be data-intensive. Matt Dale asked if the additional \$19,000 to be

contributed by MLSA and MJF will be sufficient and Amy confirmed that all costs will be covered. Justice Baker thanked everyone who assisted with the study and in particular MJF and MLSA for their monetary and in-kind contributions.

Self Represented Litigants Committee Update

The SCSRL Report, Strategic Plan and Priorities and chart, and Court Help Program update were provided in advance of the meeting, and Judge Snowberger expanded on the Committee's process in developing their strategic plan. Judge Snowberger explained that the Committee had already begun identifying priorities and strategies prior to the adoption of the Commission's Strategic Plan, and since the November Commission meeting the Committee had worked to integrate the two documents. The SCSRL decided that they would not undertake two of the recommended strategies in the Commission's Strategic Plan: analysis of the cost to the court system of SRLs, and an analysis of the cost to society of unachieved outcomes due to SRLs. The SCSRL felt that these strategies should be off the table for the SCSRL and recommended that they be considered by other committees if they are pursued at all. The SCSRL also suggested that the study of the creation of an SRL Division within the OCA be taken up by the Policy and Resources Committee. Judge Snowberger stated that the current goal of the SCSRL is to continue work on a new dissolution form packet and to provide training for advocates on legal information vs. legal advice. Justice Baker commended the Committee for providing a template for other committees to use as they move forward with their priorities and strategies, and she advised that Commission would take action on other committee plans at the next meeting.

Action Item: Strategic Planning Report

Justice Baker asked the Commissioners if there were any corrections, additions or other thoughts on the Strategic Plan as revised based on input provided during the November meeting. Judge Snowberger requested that the SCSRL portion be replaced by the Committee's final plan. Justice Baker explained that this is not necessary because the Strategic Plan merely refers strategies to the various committees, but does not require that every strategy must be implemented. Judge Ortley asked for confirmation that the Strategic Planning Report included in the meeting materials was the revised version. Justice Baker confirmed that this was the correct version, but that the report date hadn't been updated by John Tull.

Amy Sings In The Timber moved to approve the Strategic Planning Report. Matt Dale seconded the motion. The motion passed unanimously.

Action Item: Discuss and Approve Committee Structure and Membership

Justice Baker asked the group to review the membership of the Standing Committees and request changes or additions. In addition to the Communications and Outreach Committee, Matt Dale asked to be included on the Policy and Resources Committee. Judge Snowberger noted that Casey Clark, a District Court Clerk, has joined the SCSRL. Abby St. Lawrence added that Patty

Fain and Jennifer Brandon are also on the Justice Initiatives Committee, and that the SCSRL is working on adding a member from the JIC.

Matt Dale moved that the Standing Committees and members be approved. Jon Bennion seconded the motion. The motion passed unanimously.

Action Item: Finalize strategic priorities of Standing Committees

Justice Baker asked for discussion on the assignments of priorities to the Standing Committees, and noted that a motion isn't needed, but asked the group if anyone disagreed with the assignments. Justice Baker asked that the strategies not adopted by the SCSRL be removed from their list. Andy Huff suggested that the strategy to analyze the cost to the court system of SRLs be added to the Policy and Resources Committee for consideration. Justice Baker then directed that the Standing Committees should meet at least once before the joint meeting of the ATJC and JIC in June and that they should be ready with their review of priorities and strategies.

Law and Justice Interim Committee Update

Justice Baker gave an update on the Law and Justice Interim Committee's study of changes to the family law process. She described two mediation-focused tracks: a proposal to make mediation mandatory in family law cases and to adopt a sliding fee scale; and a proposal based on the North Dakota model to fund up to 6 hours of mediation. Evaluations of the North Dakota model have shown a reduction in the number of case re-openings. The North Dakota Supreme Court Administrator will speak at the next committee meeting on April 28, 2014. Bill drafts on the mediation proposals will begin in April and need to be started by June at the latest. Chris Manos advised that the State Bar Planning Meeting will take place on May 16-17, 2014, in Billings and that bill drafts would be helpful to have in hand for their discussions.

Other Business

Justice Baker reminded the group that the comment period for the Supreme Court Pro Bono Requirement Order expires next week and so please submit comments if you haven't already. Justice Baker stated that she hopes for a ruling around the end of March. She mentioned that the ABA comments were very thorough and helpful. Hillary Wandler requested that the ABA comments be circulated to the Commission members.

Wrap-up and Public Comment

Justice Baker opened the floor for public comments.

There were no public comments.

Justice Baker stated that the next meeting will be a joint meeting with the Justice Initiatives Committee meeting which is already scheduled for June 25, 2014, in Helena. Details will be circulated at a later date.

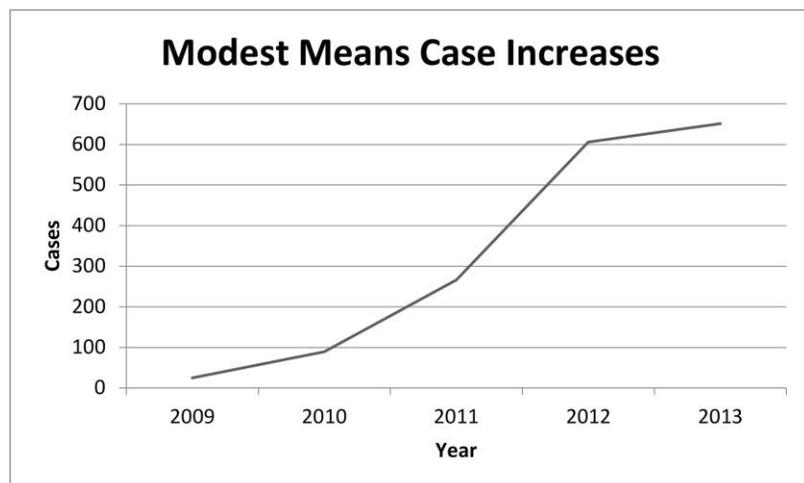
Justice Baker adjourned the meeting at 2:24 p.m.

Tab 2

STATE BAR ACCESS TO JUSTICE (ATJ) PROJECTS

MODEST MEANS PROGRAM OF THE BAR

This is a reduced fee civil representation program created by the State Bar. The Bar now places about 60 cases per month and has 150 attorney participants. The cases are referred by MLSA when the client's income is above 150% of poverty and below 200%.



EMERITUS PROGRAM

The program has expanded the *Emeritus* status offerings to include the work of qualified non-profit organizations. (*Emeritus*: seasoned attorneys who provide 25 hours of pro bono/year, no dues required)

LEGAL CLINICS PROGRAM

The Bar assists with legal clinics offered by state entities e.g. MLSA, legal services developer and local bars. We also work with the state law librarian to engage state attorneys and post free CLEs geared toward *pro bono* activities.

CLE CERTIFICATES

The Bar and CLE Institute sent free CLE certificates to 112 attorneys who provided more than 50 hours of *pro bono* direct service through an established program.

SELF-HELP CENTER/PRO BONO REPORT

Work with Office of the Court Administrator (OCA) on issues related to the self-help center and the pro bono report.

EQUAL JUSTICE BRIEFS

Publish quarterly Equal Justice Briefs.

LAW SCHOOL PRESENTATIONS

Present a series of panel discussions on practice at U of M School of Law, one specifically on *pro bono* practice; the panels include judges, justices and award winners.

CLE INTEGRATION

Integrate ATJ information and resources into a variety of State Bar CLEs

FAMILY LAW WEBINARS

Created and aired a series of webinars on family law practice including limited scope representation.

STATE BAR'S JUSTICE INITIATIVES COMMITTEE (JIC)

Participate in the meetings and work of the Law and Justice Interim Legislative Committee. Other noted JIC efforts:

- > JIC representatives assigned to each of the ATJC standing committees.
- > The mediation subcommittee created a comprehensive document that sparked interest in local and statewide programs. Judges, OCA, ATJC and the Bar's Dispute Resolution Committee worked together on this project.
- > Pro bono clinics and resources, train attorneys, resources on JIC webpage.
- > Work with local judges and bar members to support local bar programs.
- > Designate an access to justice contact person in each local bar.
- > Coordinate authors, articles for the Montana Lawyer on ATJ and family law issues.
- > Developing a family law mentoring program based on data collected in a survey of Montana attorneys.

THE ACCESS TO JUSTICE COMMISSION OF THE SUPREME COURT (ATJC)

Randy Snyder is a member and serves on the law school partnership committee. He also participates in the self-represented litigant committee. Janice Doggett participates in all commission and committee meetings.

2014 STATE BAR DATA (Member survey and pro bono report)

The activities rated highest in importance (top five) include:

1. Fosters a positive reputation for the profession – 4.18 (4.15 in 2010)
2. Provides me with information on my area of practice – keeping me current – 3.89 (3.77 in 2010)

3. Develops positive relationships between the bench and the bar – 3.88 (3.72 In 2010)
4. Provides support for pro bono and legal services to the poor – 3.84 (3.81 in 2010)
5. Provides me with networking opportunities – 3.51 (3.17 in 2010)

The activities rated highest in success of bar providing include:

1. Fosters a positive reputation for the profession – 3.65 (3.48 in 2010)
2. Provides support for pro bono and legal services to the poor – 3.50 (3.43 in 2010)
3. Develops positive relationships between the bench and bar – 3.50 (3.33 in 2010)
4. Provides me with information on my area of practice – keeping me current – 3.25 (3.05 in 2010)
5. Provides me with networking opportunities – 3.21 (3.02 in 2010)

Respondents were asked to indicate in which pro bono opportunities available through the State Bar they would be most inclined to participate. The top three opportunities cited were:

1. Pro bono clinics (36% yes, 27% maybe)
2. Family law training (32% yes, 20% maybe)
3. Landlord/tenant training (32% yes, 26% maybe)

Respondents were asked to indicate their level of concern (on a scale of 1-5 with 5 being the highest level of concern) with several issues and their impact on the profession and their practice. The issues rated highest include:

1. Lack of public understanding and confidence in the judicial system – 4.09 (3.99 in 2010)
2. Public perception of the profession – 3.84 (3.69 in 2010)
3. Availability of legal services to Montana's low-income population – 3.71 (3.54 in 2010)
4. Increased client expectations about value of services rendered – 3.05 (2.88 in 2010)

PRO BONO REPORT

More than 2,000 Montana attorneys volunteered in excess of 157,000 hours of free and substantially reduced fee legal services to low-income Montanans across the state in 2013. The value of pro bono legal services approaches \$20M. How can we improve pro bono representation? The survey responses provide some guidance:

1. Additional CLE
2. Opportunities for limited hour contributions (e.g. legal clinic, limited scope representation)
3. Administrative/staff support for pro bono cases
4. Co-counsel or assistance from a paralegal or law student
5. Experienced attorney mentor
6. Opportunities in my area of expertise
7. Referral from an organized pro bono program
8. Ability to choose cases from a general solicitation from an organized program
9. Other:
 - a. Thorough screening of cases
 - b. Accommodations from employer or change in department policies to facilitate pro bono
 - c. Use of office space or equipment
 - d. Expanded opportunities in my geographic area

Tab 3

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



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

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

**Carmody and Associates
June 2014**

Index

Acknowledgements.....	2
Executive Summary or Key Findings.....	3
I. Introduction.....	5
II. Legal Assistance Currently Available.....	6
A. Statewide General Legal Provider	
B. Providers for Specific Populations or in Specialized Legal Areas	
C. Mediation Services	
D. Pro Bono Programs	
E. Reduced Fee Programs	
F. Legal Information and Assisted Pro Se	
III. Gaps in Assistance and Barriers to Obtaining Assistance.....	17
A. Barrier of High Cost of Legal Help Exacerbated by Gap in Amount of Free Legal Help	
B. Major Gaps in Types of Legal Help	
C. Service Gaps in All Legal Areas, Not Just Family Law	
D. Reduced In-Person Services Intensified by Long Distances	
E. Challenges with Services by Telephone	
F. Challenges with Web Services	
G. Free Services Not Known and Referrals Not Always Made	
H. May Know of Service and Have Access, but Do Not Contact Because...	
IV. Populations that Need Particular Consideration.....	29
A. Victims of Domestic Violence	
B. Persons with Mental Illness or Mental Disability	
C. Native Americans	
D. Persons Who Do Not Speak English or Who Cannot Hear	
E. Older Montanans	
F. Veterans	
V. Possible Goals and Strategies to Address the Gaps and Barriers.....	35
A. Availability of Free Legal Assistance	
B. Awareness of Services	
C. Collaboration	
D. Populations that Need Particular Consideration	
VI. Conclusion.....	40
Appendix: Methodology.....	42

Acknowledgements

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

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

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

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

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

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

Kelly Carmody
Study Director and Report Author

Executive Summary

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

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

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

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

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

Lack of All Types of Legal Assistance. Montanans with legal problems need various levels of services. Some only need legal advice to get their questions answered. Others, like victims of domestic violence, need full representation in order to make it through the court system to obtain safety and untangle the relationship legally. Like victims of domestic violence, older adults with cognitive difficulties due to aging, those living with a mental illness, or those with limited education must have full representation in order to solve their legal problems. **Full representation by an attorney—both for brief and extended services—is the largest over-riding gap in services.**

The Montana courts continue to work on making the use of the judicial system less challenging for those who can represent themselves. However, **the legal and judicial systems are still very complicated and many Montanans**

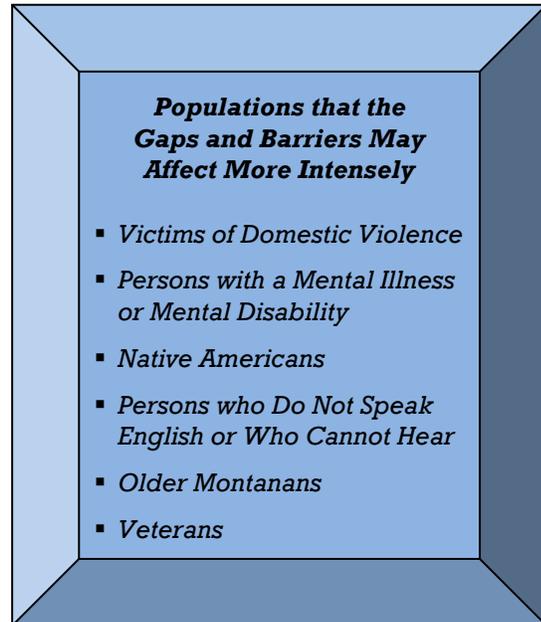
Gaps and Barriers to Legal Assistance

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

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

are simply unable to navigate them by themselves. Some of these individuals may be able to do it if they have some advice, but Montana also has a huge gap in assistance to pro se litigants.

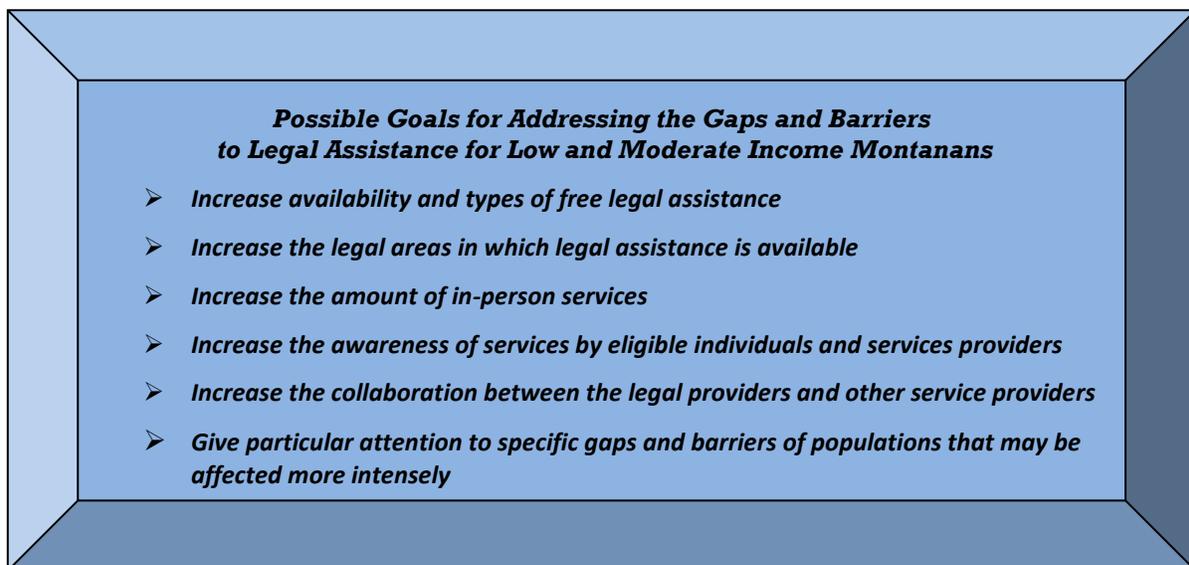
Reduced In-Person Services Aggravated by Long Distances. The free and reduced fee services that are available are often too distant for those who live far from one of Montana's major cities. Because of the recent funding cuts, MLSA, which used to have attorneys in eight locations around the state, now has attorneys in only three offices—Billings, Helena and Missoula, and one satellite office on the Crow reservation. **MLSA attorneys travel as much as possible, but the long distances make it difficult and sometimes impossible to provide timely assistance.**



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

MLSA created and continually updates one of the best legal information websites in the country for low and moderate income individuals. The website, www.montanalawhelp.org, contains a wealth of information on a variety of civil legal topics, including access to interactive legal forms, and referrals to the legal providers. This website was accessed nearly 69,000 times in 2013. However, some Montanans have barriers to using the website, including that they do not have computers, do not know how to use a computer or the internet, and/or do not have internet access.

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



I. Introduction

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

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

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

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

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

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

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

II. Legal Assistance Available Currently

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

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

A. Statewide General Legal Provider

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

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

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

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

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

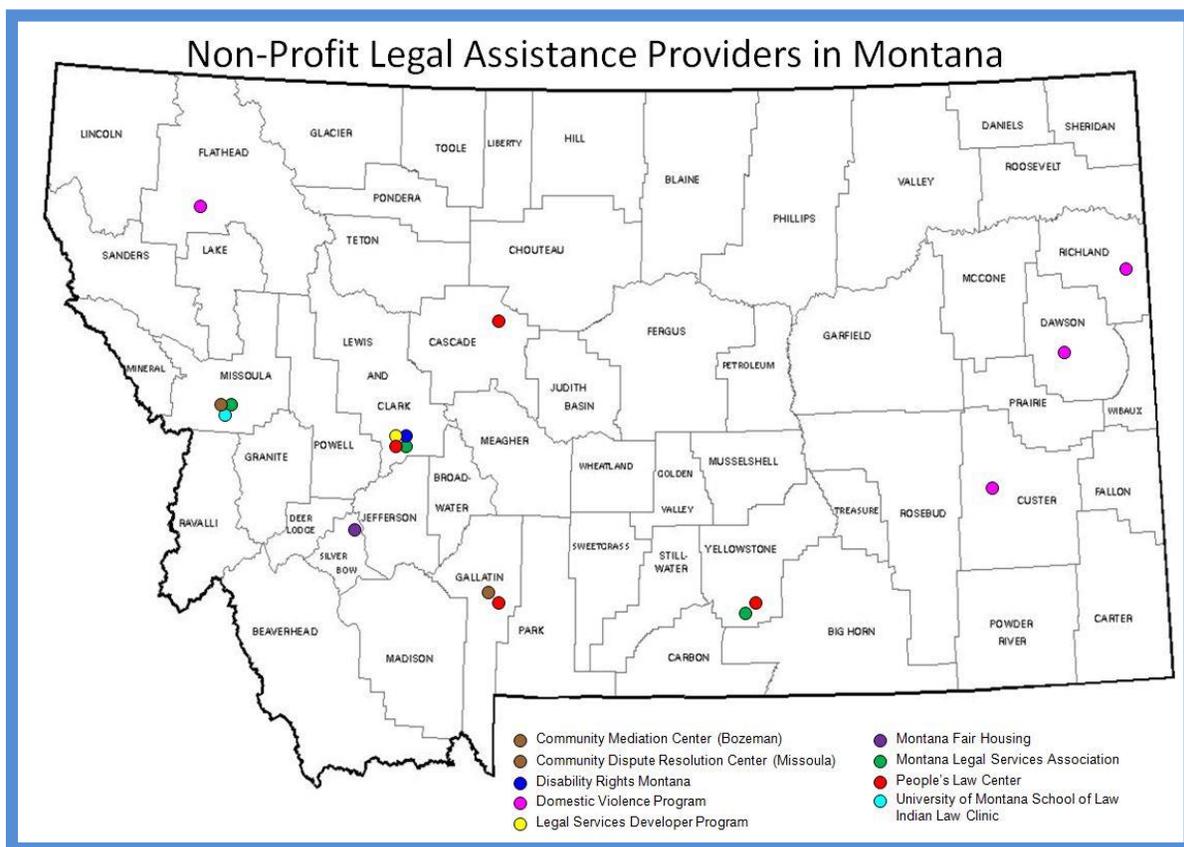
² In 2014, 125 of the poverty level for an individual is \$14,362 and for a family of four is \$29,437. <http://aspe.hhs.gov/poverty/14poverty.cfm>

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

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

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

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

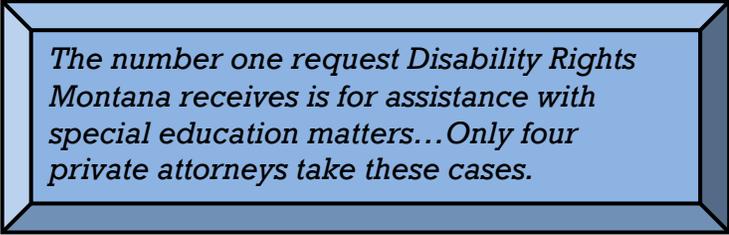


B. Providers for Specific Populations or in Specialized Legal Areas

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

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

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



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

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

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

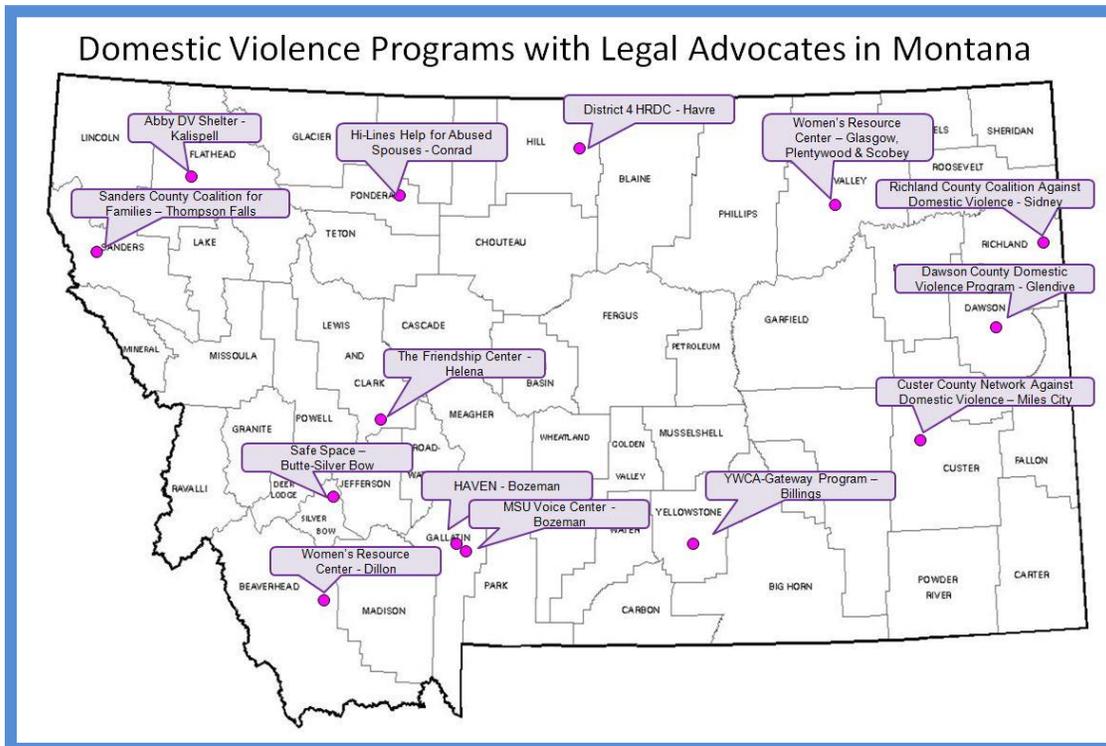
The **People's Law Center**, a statewide non-profit organization, represents individuals who are attempting to obtain or keep Social Security Disability benefits. The vast majority of their clients have incomes below 250 percent of the poverty level. The Center takes initial disability cases on a contingency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

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

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

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

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



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

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

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

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

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

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

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

C. Mediation Services

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

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

D. Pro Bono Programs

In late November 2013, Montana had approximately 3,100 attorneys on "active" status with the State Bar of Montana.⁵ At about the same time, 1,873 Montana attorneys (of all practice statuses) reported to the Montana Supreme Court that they provided pro bono services *without expectation of a fee* to individuals/families of limited means or organizations designed to assist people of limited means in the last year. The largest legal area of assistance was in family law—nearly half of these attorneys reported providing assistance in family law. Some of these attorneys and other reporting attorneys (a total of 672) reported they provided legal services at a *substantially reduced* fee for individuals of limited means or organizations designed to assist people of limited means.⁶

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

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

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

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

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

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

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

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

Local Pro Bono Programs

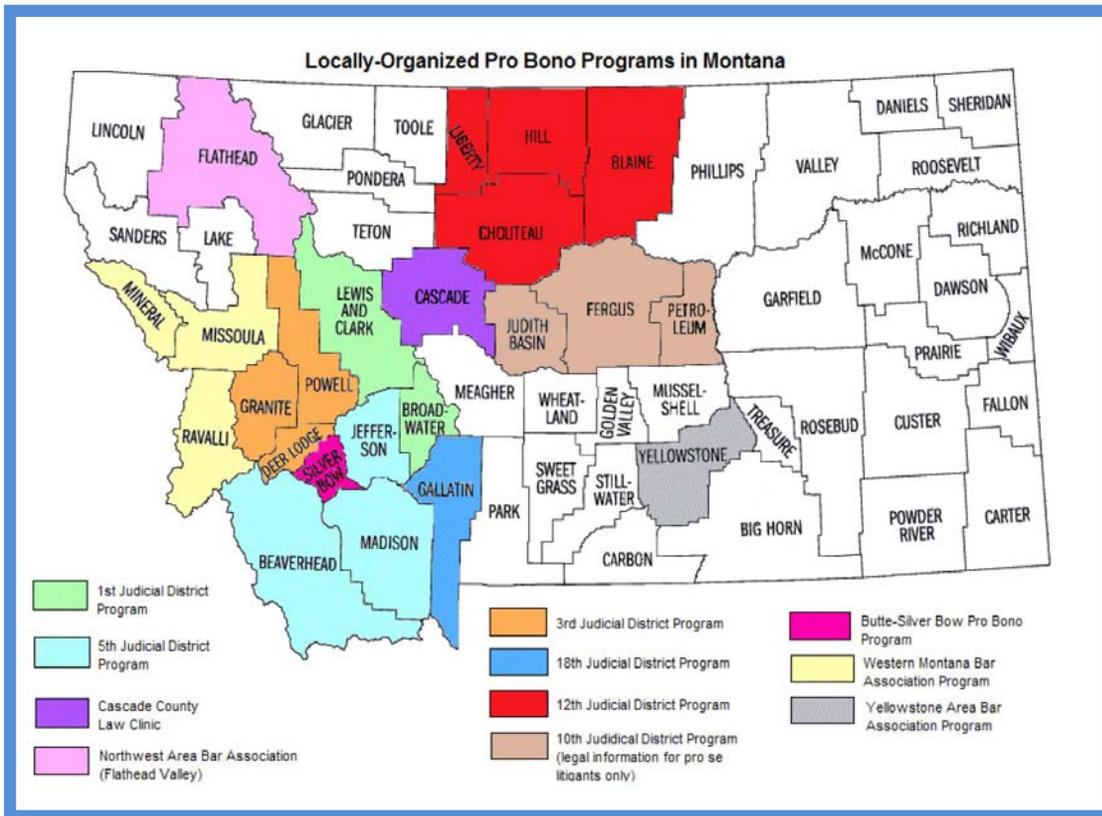
The **1st Judicial District Bar Association Pro Bono Program** (Broadwater and Lewis and Clark counties), administered by MLSA, had 47 attorneys and five mediators provide assistance through its pro bono program in 2012. They provided assistance in the legal areas of consumer, employment, family, and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

The **Butte-Silver Bow Pro Bono Program** works closely with MLSA, which refers screened applicants to the program, but it also has a Pro Bono and Pro Se Coordinator employed by the **Second Judicial District Court**. At least one pro bono case per year is mandatorily assigned to attorneys who practice in Butte-Silver Bow. Only dissolution of marriage and parenting plan (no modifications) cases are assigned. Most clients have to be victims of domestic violence and both parties and the children must live in the county. In 2012, 18 attorneys took a new case while others continued providing assistance in a case taken before 2012.

⁷Id.

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

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



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

The [Pro Bono Program of the 5th Judicial District](#) provides services in Beaverhead, Jefferson and Madison Counties. It is administered by the district court's administrator and MLSA. Although the program is not limited to family law, most of the referred cases are in the area of family law. Six attorneys provided assistance during 2012.

The [Cascade County Law Clinic](#) is a local organization that places family law cases and some housing cases with pro bono attorneys in Great Falls, which is in the **8th Judicial District**. In 2012, 144 cases were placed with pro bono attorneys. The CCLC charges applicants a \$25

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

processing fee, and an additional \$25 if an attorney accepts the case. The fees are waived for domestic violence and emergency cases.

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

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

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

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

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

[Specialized Pro Bono Programs](#)

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

Some [Domestic Violence Programs](#) recruit and have direct connections with pro bono attorneys who represent victims of domestic violence.

[Montana Attorneys for Montana Veterans](#) is a pro bono program coordinated by the Montana Supreme Court and the University of Montana School of Law. Pro bono attorneys receive the

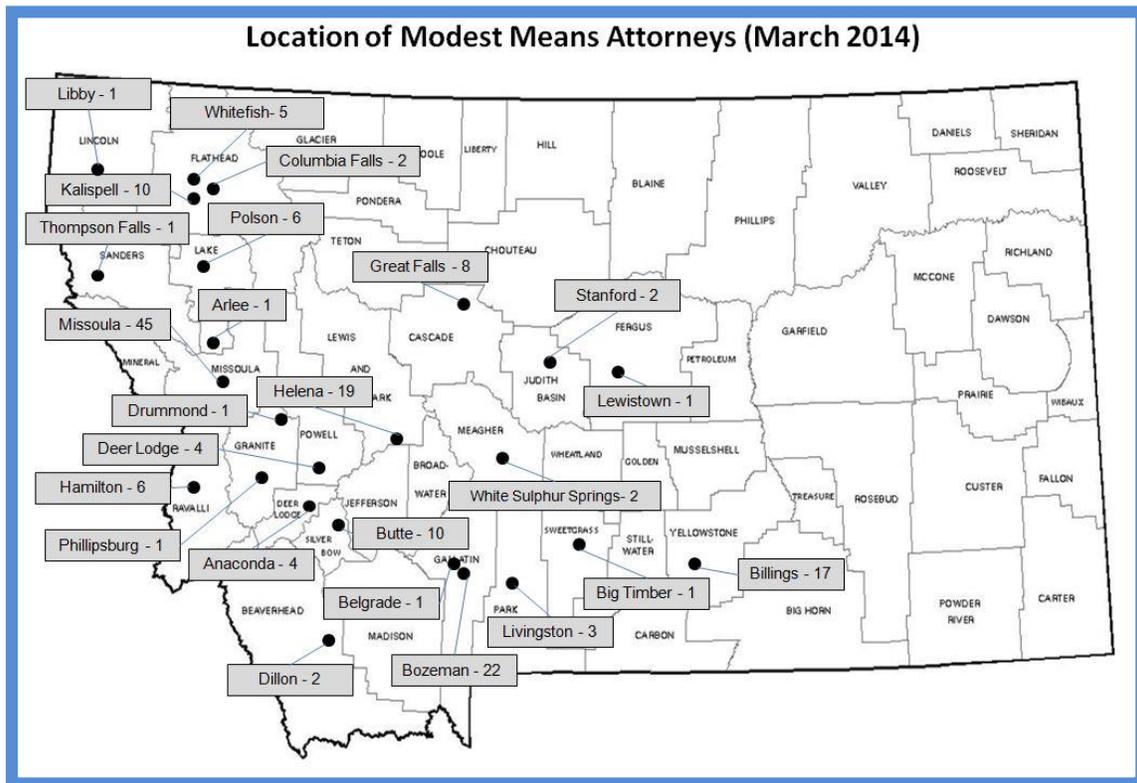
The Justice Gap in Montana: As Vast as Big Sky Country

required training to become accredited to represent veterans with VA disability benefits claims before the Board of Veterans Affairs. MAMV's training has increased the number of accredited attorneys from two to 50.

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

E. Reduced Fee Programs

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



Currently, 143 attorneys are in the Modest Means Program. In Bar Year 13-14, referrals were made to attorneys for 651 applicants. The largest number of cases (almost 300) involved parenting plans, and the second largest number of cases (nearly 200) involved

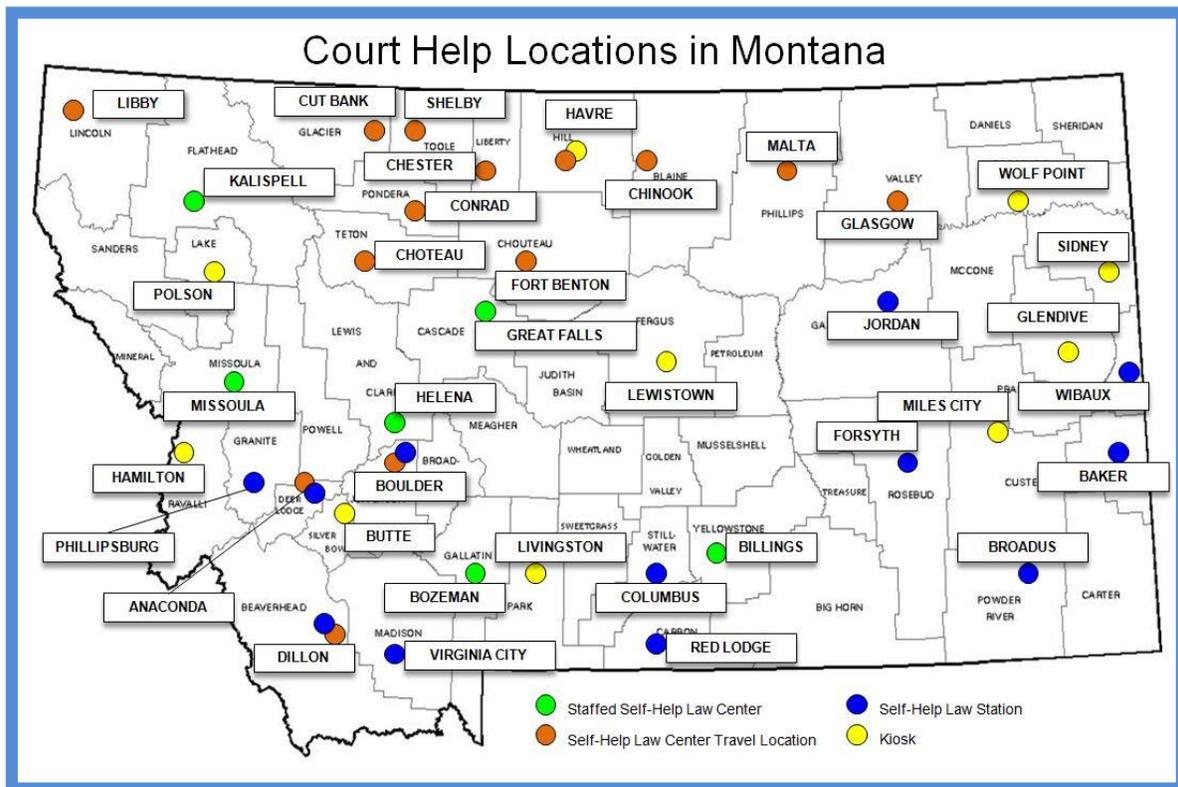
The Justice Gap in Montana: As Vast as Big Sky Country

bankruptcy/debtor relief. Forty applicants were not given a referral due to a lack of attorneys near where they lived.

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

F. Legal Information and Assisted Pro Se

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



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

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

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

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

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

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

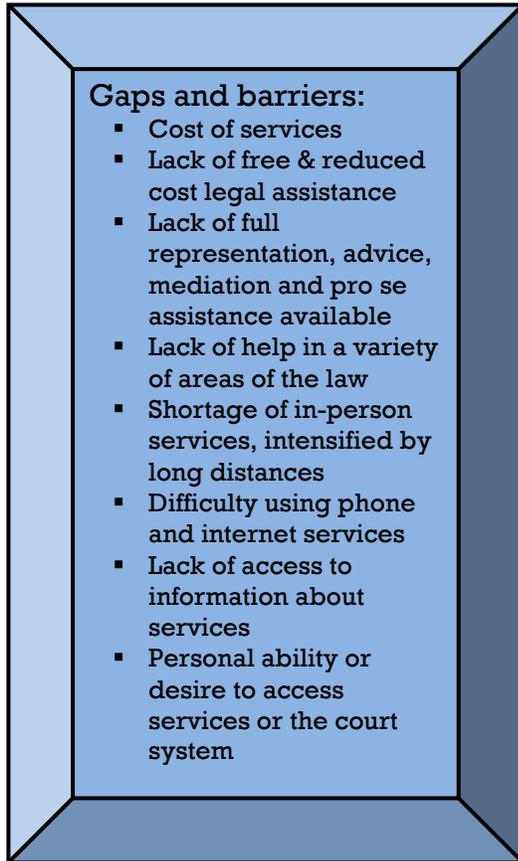
The **Second Judicial District Court’s Pro bono and Pro Se Coordinator** provides pro se litigants with the correct forms to file, uses an automated document computer program provided by MLSA to complete the forms with the litigants, helps them understand general court procedure and decorum, helps them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

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

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

III. Gaps in Assistance and Barriers to Obtaining Assistance

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



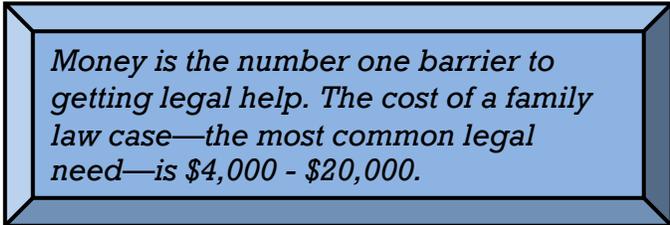
Gaps and barriers:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Major Gaps in Types of Legal Help

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

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

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

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

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

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

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

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

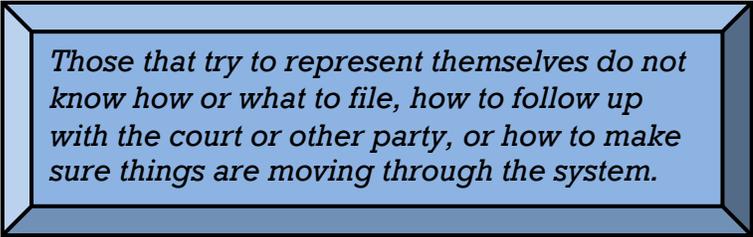
The Justice Gap in Montana: As Vast as Big Sky Country

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Reduced In-Person Services Intensified by Long Distances

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

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

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

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

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

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

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

A recurring theme of other service providers was the need for services to be delivered locally. This is needed not just to address transportation and other logistical barriers, but because many Montanans in smaller communities and on reservations need to have a level of trust with an individual or organization before they will ask for assistance. The example was given of MLSA having an attorney on the Crow reservation for many years, and how he is now a trusted source of legal assistance there. The staff of the organizations in the communities where MLSA used to have staff or offices were particularly expressive of the need for in-person services. They are well aware of the gap that was created now that MLSA staff are no longer in their local communities.

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

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

E. Challenges with Services by Telephone

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

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

Some service providers did not see access to telephones as a problem, saying that applicants find a telephone to use—whether from a friend, family member or organization. This view, however, could be due to individuals without telephones not having accessed their services.

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

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

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

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

F. Challenges with Web Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Free Services Not Known and Referrals Not Always Made

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

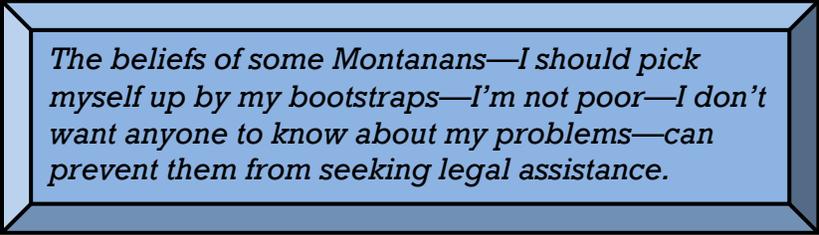
try their hardest because it was free.” She added that she thought they would not do a very good job.

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

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

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

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



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

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

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

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

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

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

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

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

IV. Populations that Need Particular Consideration

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

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

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

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

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

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

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

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

A. Victims of Domestic Violence

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

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

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

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

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

Assistance with orders of protection is a need specific to victims of domestic violence. Those that are able to connect with a DV program or a victim witness assistance program may receive help with obtaining an order of protection from a lay advocate. However, there are victims that do not have access to this service.

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

Victims of domestic violence are in particular need of representation in court because often their abuser is represented by an attorney and the abuser uses the legal system to continue the

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

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

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

abuse. Between the DV programs and MLSA, there are only 6.5 DV attorneys for the entire state of Montana—two of which are funded to represent Native Americans only. Very few pro bono attorneys will represent DV victims. Even fewer are licensed to represent them in tribal court.

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

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

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

B. Persons with a Mental Illness or Mental Disability

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

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

receive legal help after saying that her parental rights had been terminated. In fact, if she called MLSA, she would not have received assistance in that case because she would have had an appointed attorney. Her answers to other questions showed the severity of her mental illness. Others who were interviewed and said they had a mental disability described how their anger or anxiety had prevented them from receiving legal assistance or that it was hard to remember the steps they should take. Approximately 39,000 adults in Montana live with *serious* mental illness.¹¹

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

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

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

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

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

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

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

C. Native Americans

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

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

¹² 2012 estimate, U.S. Census Bureau.

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

not have a bar exam, but rather require an attorney to receive permission from the tribal court to practice.

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

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

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

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

communities and does not occur only in tribal courts.

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

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

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

A young Native American woman who lives on a reservation said, "I would be intimidated explaining my problems to some white person. I am sorry to say that, but I just don't think that white people understand the problems Indians face living on the reservation." MLSA has a white attorney that travels to the Northern Cheyenne reservation and another to the Crow reservation that have built trust by being there often and long-term. Other attorneys—Native

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

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

American as well as non-Native—are needed on the reservations and off to provide assistance to Montana’s Native Americans.

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

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

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

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

E. Older Montanans

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

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

Many of the identified technological challenges, particularly the use of computers, likely affect older Montanans more than most. To the transportation barriers is added that many older people no longer drive so getting somewhere without assistance is not an option. For those that drive, but not at night, many long-distance trips are not possible. At the same time, older adults are likely one of the groups of people, like Native Americans, that most

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

¹⁴ 2012 estimate, U.S. Census Bureau.

need to see someone face-to-face to trust them. Finally, the complications of representing yourself are intensified for those who have cognitive difficulties due to aging.

F. Veterans

Almost 98,000 Montanans are veterans.¹⁵ The State Bar of Montana’s Law-Related Education Committee conducted a legal needs assessment of Montana veterans and active military. The assessment’s survey found that many of them were experiencing civil legal problems and most were trying to resolve the problems without legal assistance. The barriers to their receiving legal assistance were not explored, but the cost of legal assistance and the lack of resources to pay for an attorney were put forward as possible barriers.¹⁶

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

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

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

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

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

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

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

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

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

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

A. Availability of Free Legal Assistance

Staff Attorneys

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

Pro Bono Attorneys

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

Advice and Assisted Pro Se

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

Mediation

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

Rural and Remote Services

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

Web and Video Call Services

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

Court Forms

- **Revise the court forms to make them more understandable**, with the goal of a 5th grade readability level.
- **Use document assembly software to create more automated court forms that pro se litigants, advocates and attorneys can use.**

B. Awareness of Services

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

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

C. Collaboration

- **Promote and support collaborations between legal providers and service providers that work with Montanans of low and moderate income.** Staff of the other service providers can be the information, application and follow-up link between legal providers and

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

individuals who need legal assistance and the support to obtain it. A connection with local advocates gives credibility and resources to statewide legal providers. Create an MLSA help desk position for the service providers to contact for guidance on how they can better help their clients with their legal problems.

- **Locate MLSA and other legal provider staff at community agencies.** Co-location will provide easier access for Montanans in the geographic areas in which the legal providers do not have a physical presence now and provide a source of support for a client who needs legal assistance. Case managers, advocates and other staff in community agencies often are able to coordinate services for an individual, helping them to receive several services that address their needs.
- **Train service providers' staff.** Possible topics include how to apply for each legal providers' services, how to interact with each legal provider, how to use www.montanalegalhelp.org, the legal process and timeframes, understanding the unwritten rules of going to court, and identifying legal issues.

D. Underserved and Vulnerable Populations

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

Victims of Domestic Violence

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

Persons with Mental Disorders

- **Formalize collaborations between the legal providers and mental health case managers.** The collaboration should include training of mental health case managers in identifying possible legal issues and making appropriate referrals to legal providers. This may improve access and follow-through of persons with mental disorders. The case managers can help their clients apply for services, arrange for or provide transportation, be the contact for those who do not have telephones or do not answer their telephones, and reduce the fear of their clients.

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

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

Native Americans

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

Persons Who Do Not Speak English Well or Who Cannot Hear

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

Older Adults

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

Veterans

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

Homeless

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

VI. Conclusion

This Report has chronicled and analyzed the gaps and barriers to civil legal assistance for low and moderate income Montanans. Viewed from any perspective, these gaps and barriers are vast. They span the entire state and impede Montanans in every region from receiving the legal help they need to move forward in their lives— whether it is a mom seeking to escape a violent spouse, a veteran needing health care, a child who needs a special education, or a family facing foreclosure or eviction.

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

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

Appendix: Methodology

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

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

Box 1: Study’s Regions, Counties and Reservations		
<u>Region 1</u>	<u>Region 2</u>	<u>Region 4</u>
Carter	Cascade	Deer Lodge
Custer	Chouteau	Granite
Dawson	Hill	Powell
Fallon	Liberty	Silver Bow
Garfield	Blackfeet	
Powder River	Reservation	<u>Region 5</u>
Richland		Flathead
Rosebud	<u>Region 3</u>	Lake
Treasure	Yellowstone	Lincoln
Northern Cheyenne		Sanders
Reservation		

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

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

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

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

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

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

Box 3: Demographics of Interviewed Community Members

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

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

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

Box 4: Community Service Providers Interviewed

Region 1

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

Region 2

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

Region 3

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

Region 4

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

Region 5

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

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

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

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

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

Tab 4

**MONTANA BAR ADMISSION
VOLUNTARY LAW-RELATED PRO BONO ACTIVITY STATEMENT**

Information and Instructions

Montana places a high value on [Rule 6.1](#) of the Montana Rules of Professional Conduct which states in part, “Every lawyer has a professional responsibility to provide legal services to those unable to pay.” This professional obligation takes effect upon your admission to the Bar. In order to fully prepare for the practice of law, aspiring lawyers are encouraged to gain volunteer experience.

The provision of pre-admission pro bono services is not a condition to become licensed for law practice in Montana or a consideration for certification by Montana’s Character & Fitness Commission. The Law-Related Pro Bono Activity Statement is designed to provide an opportunity for applicants to voluntarily disclose pro bono activities and to express specific interests or training needs in the provision of post-admission *pro bono publico* services. Once admitted to practice law in Montana, you will be asked on an annual basis to complete a similar reporting form.

The hours reported for law related pro bono activity should meet the goals of Rule 6.1 of the Rules of Professional Conduct. Thus, the substantial majority of law-related services should be provided without fee or expectation of fee to:

- (1) persons of limited means; or
- (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.

Additional law-related services may be provided through:

- (1) delivery of law-related services to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate; or
- (2) participation in activities for improving the law, the legal system or legal profession.

For student bar applicants not yet licensed to practice law, “law-related services” include:

- (a) Direct legal services under supervision of a licensed attorney or legal services provider;
- (b) Similar volunteer law-related services that do not constitute the practice of law, provided that such services are designed primarily to address the legal needs of persons of limited means. Examples of qualifying services include, but are not limited to, services as a volunteer for a self-help legal clinic, domestic violence program, Court Appointed Special Advocates (CASA) program, or providing community legal education; or
- (c) Services provided to and under the direct supervision of a court-based program designed to facilitate the resolution of cases involving self-represented litigants of limited means.

MONTANA
VOLUNTARY LAW-RELATED PRO BONO ACTIVITY STATEMENT

Applicant Name: _____
(First, Middle, Last, Suffix)

NCBE Number: _____

- Law Student Applicant
- Attorney Applicant/law school in Montana
- Attorney Applicant/law school outside Montana

I am an attorney applicant and, within the last twelve months preceding my application, I have provided legal assistance **without expectation of fee** to the following:

- People of limited means
- Charitable organization(s) designed to assist people with limited means
- Religious organizations(s) designed to assist people with limited means
- Community organization(s) designed to assist people with limited means
- Civic organization(s) designed to assist people with limited means
- Governmental organizations(s) designed to assist people with limited means
- Educational organization(s) designed to assist people with limited means
- Organizations seeking to secure or protect civil or public rights and/or liberties

Estimated Number of Hours

I am an attorney applicant and, within the last twelve months preceding my application, I have provided legal assistance at a **substantially reduced fee** to the following:

- People of limited means
- Charitable organization(s) designed to assist people with limited means
- Religious organizations(s) designed to assist people with limited means
- Community organization(s) designed to assist people with limited means
- Civic organization(s) designed to assist people with limited means
- Governmental organizations(s) designed to assist people with limited means
- Educational organization(s) designed to assist people with limited means
- Organizations seeking to secure or protect civil or public rights and/or liberties

Estimated Number of Hours

I am an attorney applicant and, within the last twelve months preceding my application, I have provided free or substantially reduced fee legal services to charitable, religious, civic, community, governmental or educational organizations in furtherance of their organizational purposes, where payment of fees would greatly deplete their economic resources.

I am an attorney applicant and, in addition to any hours above, within the last twelve months preceding my application, I also provided hours participating in volunteer activities for improving the law, legal system or legal profession.

--

I am a **law student** applicant and, within the last three years preceding my application, I have provided legal assistance under the direct supervision of an attorney or through a clinical program to:

- People of limited means
- Charitable organization(s) designed to assist people with limited means
- Religious organizations(s) designed to assist people with limited means
- Community organization(s) designed to assist people with limited means
- Civic organization(s) designed to assist people with limited means
- Governmental organizations(s) designed to assist people with limited means
- Educational organization(s) designed to assist people with limited means

Estimated Number of Hours

I am a **law student** applicant and, within the last three years preceding my application, I have provided law-related services that do not constitute the practice of law but are designed primarily to address the legal needs of persons of limited means.

I am a **law student** applicant and, within the last three years preceding my application, I have provided services to and under the direct supervision of a court-based program designed to facilitate the resolution of cases involving self-represented litigants of limited means.

I am a **law student** applicant and, in addition to any hours above, within the last three years preceding my application, I have also provided hours participating in volunteer activities for improving the law, legal system or legal profession.

To all applicants: If admitted to the Montana Bar, do you wish to receive information about training and pro bono opportunities upon admission? Yes No

What is your area of pro bono interest(s)? _____

What additional training would you like to see offered specific to future pro bono work? _____

Are you interested in being paired with a mentor to guide you in providing pro bono services? _____
Are there additional support services that would assist you in providing pro bono services in your practice or employment? _____

If you wish to receive information about pro bono opportunities, training or updates, please provide your contact information below:

Address: _____

City: _____ State: _____ Zip Code: _____

I prefer to receive the information via email. Email address: _____

MONTANA APPLICATION COMPLETION CHECKLIST

IMPORTANT NOTE:

The Montana Rules of Admission require that you are certified by Montana's Character & Fitness Commission before you can sit for the bar exam or be admitted to the Montana Bar. The NCBE performs a background investigation on behalf of the Commission, but does not determine certification for admission to the Montana Bar. The Commission will not certify you for admission until receipt of the NCBE investigative summary, which takes at least 90 days after submission of your application. Therefore, it is critical you respond to requests for information from both the Bar Admissions Administrator and the NCBE as quickly as possible as failure to do so will delay your certification. Incomplete applications will not be considered and complete applications do not assume certification.

This is a list of requirements to be completed after the online NCBE Character & Fitness Application is finalized. Print the checklist for future reference. Supporting documents should be mailed simultaneously with the online submission of your application. However, documents coming from other sources may be mailed separately.

Print TWO Complete Applications:

Please submit all forms that print with your application. The application will only include forms that are necessary for your application.

- Complete Method of Payment (For NCBE: page *i* of Application).
- Sign and notarize three Authorization and Release Forms for each application.
- Sign and notarize Acknowledgement of Complete Application.
- If you completed Form 1 (Military Service), attach a copy of your report of separation.
- Sign and notarize Form 7 (Authorization to Release Medical Records), if applicable.
- Retain a copy for your records.
- To Revise Finalized Application - Use the Revisions Form to report any errors or omissions on your finalized online application. DO NOT make manual changes to your printed application; use this form to note any changes and attach it to the front of your application. Use this form ONLY if your application has NOT yet been mailed to a jurisdiction or to NCBE. Any revisions mailed to the NCBE must also be mailed to Montana Bar Admissions.
- To Amend Finalized Application - It is your responsibility to update your application while it is pending. Use the amendment forms to report any errors, omissions, changes, or updates to your application. Use these forms ONLY if your application has already been mailed to a jurisdiction or to NCBE. Any amendments mailed to the NCBE must also be mailed to Montana Bar Admissions.

After signing **two original applications**, follow the instructions below to submit an original to the NCBE and an original to the Montana Bar with the required documents and fees for each:

MAIL TO NCBE: ALL APPLICANTS:

- Original Application** - One complete signed and notarized **original** of the character and fitness application including the authorization and release forms, attestation page, and all other required forms. Mail to the following address with the NCBE investigation fee:

**NCBE Intake Department
302 South Bedford Street
Madison, WI 53703-3622**

MAIL TO MONTANA: ALL APPLICANTS:

- **Original Application** - One completed and notarized **original** of the application including all required forms that were mailed to the NCBE.
- **ID – Two color photocopies** of your current driver’s license. A valid U.S. Federal or State-issued photo ID that contains a name, date of birth, gender, expiration date and a tamper-resistant feature will be accepted in lieu of a drivers’ license. This should be the same ID you will use to register for the bar exam and the Montana Law Seminar.
- **Official law school transcript or degree certification** - Arrange for your official law school transcript to be sent directly to the Bar Admissions Administrator. This document must verify that you hold a JD degree from an ABA accredited law school.
- **Two completed fingerprint cards & Fingerprint Declaration Form.** Fingerprints must be taken by a law enforcement official or authorized agency and mailed with a completed declaration form. (*Follow link for Fingerprint Declaration Form and sample fingerprint card.*)
- **Credit report.** A complete credit report dated within 30 days of the submission of the application. (*Follow link to free credit report gov. site.*)
- **Voluntary Law-Related Pro Bono Activity Statement (optional)**
- **Montana Application Cover Page.** (*Follow link to Application Cover page.*)
- **Application Fee:** A personal check or money order made payable to the State Bar of Montana. (*\$400 for attorney applicants; \$150 for student applicants*)

STUDENT APPLICANTS (In addition to submissions above):

- **Law School Dean Certificate** - This form from the Law School Dean is required to be submitted at the time of application. The final transcript showing that the applicant has earned a JD is due within 30 days prior to the scheduled bar examination.
- **Law school application** - Arrange for a copy of your law school application to be mailed directly by the law school to the Bar Admissions Administrator.
- **Copy of other bar applications** - If you have ever applied for admission in any other jurisdiction(s), arrange for the admissions authority to transmit a copy of your application, regardless of whether or not you obtained admission.

ATTORNEY APPLICANTS (In addition to submissions above):

- **Copy of previous bar applications**- If you have ever applied for admission in any other jurisdiction(s), arrange for the admissions authority to transmit a copy of your application, regardless of whether or not you obtained admission. The application should be the one required for the character and fitness background check (not just the demographic information allowing you to sit for the examination.) **If the application is not available or has been destroyed**, ask the admissions authority to complete the linked form and provide documents available (if any).

Mail the application and all attachments to the following address:

**Montana Bar Admissions
7 West Sixth Ave.
PO Box 577
Helena, MT 59624**

NOTE: Application must be postmarked by October 1 for February Exam or March 15 for July Exam. *Late applications will be accepted only if so ordered by the Montana Supreme Court. There is an additional \$100 late filing fee if the Court grants a late application petition. If you have questions regarding the Montana application process, please visit the Montana State Bar at <http://www.montanabar.org>.*

INFORMATION ABOUT ADMISSION TO THE MONTANA BAR

ELIGIBILITY for ADMISSION:

To be eligible for admission, you must:

1. Have earned a JD from an ABA accredited law school;
2. Have been certified by the Commission on Character & Fitness;
3. Have submitted a qualifying MPRE score;
4. Have submitted a qualifying UBE score (whether by exam or transfer);
5. Have attended the Montana Law Seminar;
6. Have paid your license tax and dues to the State Bar of Montana.

Application for Admission:

Whether applying for admission by exam or transfer of UBE score, all applicants must complete the online [NCBE Application for Montana](#). A signed original application must be mailed to the Montana Bar Admissions office, with the [Montana Application Cover Page](#), all documents required on the [Montana Application Checklist](#) and the Montana application fee. A second signed original application must be mailed to the NCBE with their investigation fee. **Also included with the Montana application materials is a Voluntary Law-Related Pro Bono Activity Statement.** You are required to have an email address as email will be our primary communication method with you. The [Guide to Montana Bar Admissions](#) provides detailed information about how to apply for admission to the Montana Bar, links to forms, instructions and the application.

Upcoming Dates for Uniform Bar Exam & Montana Law Seminar:

July 2014 - Exam: July 29-30, MLS: July 31st, University Center, UM Campus, Missoula-
Application Deadline: Postmarked by March 15, 2014

February 2015- Exam: February 25-26, MLS: February 27th, Great Northern Hotel, Helena-
Application Deadline: Postmarked by October 1, 2014

Fees, Deadlines & Bar Exam Information: For both exam applicants and UBE transfer applicants, the deadline for the February administration is October 1st and the deadline for the July administration is March 15th. Applications must be postmarked or hand-delivered to the Bar Admissions Administrator on or before the stated deadline. Late applications will not be accepted without a Court Order approving late filing. If the Montana Supreme Court grants a petition for late application, a late filing fee will be charged in addition to the application fee. To pay application fees, send a check or money order with the completed application or [pay application fees online](#) and mail a copy of the confirmation of payment with your completed application. **NOTE:** A separate application fee is charged for the NCBE Character & Fitness Application. The NCBE Application (page *i.*) includes categories for Law Student Registration and Foreign Educated or Foreign-Licensed Attorneys. Montana does not at this time accept early applications for law students or recognize foreign applicants. All applicants are required to hold a JD from an ABA accredited school.

The Uniform Bar Exam (UBE): Montana will accept the transfer of a score of 270 or greater from a qualified UBE exam within three years of the date of application. All UBE applicants are required to complete the application process outlined above through the NCBE and meet the requirements set forth in the [Rules for Admission](#) to the State Bar of Montana. [Follow this link for more information about the Uniform Bar Exam.](#)

The Montana Law Seminar (MLS): Before being admitted to the practice of law in Montana, all applicants must attend the Montana Law Seminar (MLS). **The MLS is given the day following each February and July bar exam at the site of the bar examination.**

Register & Pay Fees for the UBE & the MLS: Registration for the Montana Law Seminar and/or the Uniform Bar Exam is open only to applicants to the Montana State Bar. *These fees are not refundable and applicants may wait until they have been certified by the Commission on Character & Fitness before submitting the fee.* Please register and [pay online](#) or send a check or money order to Montana Bar Admissions at PO Box 577, Helena, MT 59624.

Defer to the next scheduled admission cycle: An applicant's failure to appear for examination without first requesting a deferral in writing will result in the application being dismissed. After three deferrals, an applicant shall submit a new application and pay the application filing fee. To defer to the next exam, send the completed [Addendum/Deferral form](#) to the Bar Admissions Administrator with a check or you may [pay the \\$20 fee online](#).

Reciprocity: **Montana does not have reciprocity and there is no admission on motion.** All applicants are required to sit for the Bar exam or may transfer a UBE score of 270 or higher earned within 3 years from the date of application.

ADA Accommodation Requests: If you have a medical, physical, or cognitive disability, you may request that the bar examination be administered under reasonable special conditions to accommodate your needs. You must make your request via the [Special Accommodations Request Form](#). An applicant who claims a disability and who seeks an accommodation on the bar examination must submit a request for the accommodation with supporting documentation by the application deadline. Applications for accommodations not submitted by the application deadline will not be considered, except where the disability occurs after the application filing deadline.

Uniform Bar Exam (UBE) Scores: It is the applicant's responsibility to have UBE scores from another jurisdiction certified to the State Bar of Montana. *ALL applicants are required to sit for the Uniform Bar Exam (the MEE, MPT and MBE) or meet the requirements to transfer a UBE score.* **To have your UBE score certified to Montana,** contact the National Conference of Bar Examiners at <http://www.ncbex.org/about-ncbe-exams/ube/ube-transcript-services/>.

Multistate Bar Exam (MBE) Scores: Montana no longer accepts transferred MBE scores and all examinees must sit for the MEE, MPT and MBE in a single exam cycle to earn a UBE score.

Multistate Professional Responsibility Exam (MPRE) Scores: A MPRE score of 80 or better earned within 3 years is not required prior to sitting for the UBE, but is required prior to

admission to the Montana Bar. Montana does not give the MPRE, but information about registration and testing locations for the MPRE is available on the NCBE's website. It is the applicant's responsibility to have MPRE scores from another jurisdiction certified to the State Bar of Montana. Contact the NCBE at <http://www.ncbex.org/multistate-tests/mpre/mpre-score-reporting-services/> to request your certified score be provided to Montana. A qualifying score must be certified to the Bar Admissions Administrator no later than nine (9) months after notification of successful completion of the Montana Bar Examination.

Certified Application Requests: To request that a copy of your Application for Admission to Montana be provided to another jurisdiction, please [complete this request form](#) or send a written request and a \$15 check or money order to Bar Admissions Administrator, State Bar of Montana, P.O. Box 577, Helena, MT 59624. *Note: Application files are maintained for five years after which, if no litigation is pending concerning the application, the file may be destroyed.*

Bar Review Course: The Montana Board of Bar Examiners is not affiliated with any bar review course. The National Conference of Bar Examiners is responsible for development of the MEE, MPT and MBE, and we encourage applicants to review the [NCBE website](#) for study materials as well as mock exams and other exam preparation. Consult the Board of Bar Examiners' rules and review the information provided by the Bar Admissions Administrator and the National Conference of Bar Examiners.

Guide to Montana Bar Admissions

The following information is a brief summary of the process for admission to the State Bar of Montana and any variation in the information will defer to the Rules of the Board of Bar Examiners, Rules of Admission and the Rules of the Character & Fitness Commission.

The Commission on Character and Fitness and the Board of Bar Examiners were created by the Supreme Court to oversee admission of new attorneys to the State Bar of Montana. The Bar Admissions Administrator works for both of these groups and is administratively connected to the State Bar of Montana. The information below is designed to help you complete the application for admission to the State Bar of Montana. Questions should be directed to Marie Connolly, the Bar Admissions Administrator, by phone at (406) 447-2204 or email to mconnolly@montanabar.org.

THE CHARACTER AND FITNESS COMMISSION

The Montana Rules of Admission require that you are certified by Montana's Character & Fitness Commission before you can sit for the bar exam or be admitted to the Montana Bar. The NCBE performs a background investigation on behalf of the Commission, but does not determine certification for admission to the Montana Bar. The Commission will not certify you for admission until receipt of the NCBE investigative summary, which takes at least 90 days after submission of your application. Therefore, it is critical you respond to requests for information from both the Bar Admissions Administrator and the NCBE as quickly as possible as failure to do so will delay your certification. Incomplete applications will not be considered and complete applications do not assume certification.

"Certification" as used in the Rules of the Character & Fitness Commission refers to permission to sit for the Montana bar examination and be admitted to the practice of law in Montana. Your certification to sit for the exam or be admitted by transferred UBE score will be determined by the Commission on Character and Fitness after a thorough review of your application and findings of the Commission's investigation. You have an ongoing responsibility to **keep your application current**. This includes, but is not limited to, any changes to the application previously submitted, such as changes in employment, address, and most notably, any matter relating to character & fitness. Certification letters are typically mailed by hard copy thirty days prior to the examination. **No applicant may sit for the exam or be admitted to the State Bar of Montana until they have received certification from the Character & Fitness Commission. Failure to provide a complete application to the Montana Bar and to the NCBE in a timely manner may delay or prevent certification.** Certification may be delayed or revoked by the Commission at any time prior to admission.

THE APPLICATION PROCESS

- All applications must be completed using the National Conference of Bar Examiner's Character & Fitness Application. There is no separate application for Montana.
- Follow the instructions on the Application Checklist carefully. Two original applications must be mailed by the application deadline with supporting documents and fees.
- Applications must be postmarked by March 15 for the July exam and October 1 for the February exam. You are welcome to send your supporting documents ahead of your application and the materials will be held until your application is received. Notify Marie if you cannot obtain all supporting documents in time to send them with the application; however, you will not be certified to sit for the exam unless your file is complete, so start requesting your documentation as early as possible.
- Once your application has been reviewed, you will be contacted (usually by e-mail) to advise whether your file is complete or if documents are missing. You will also be provided with a memo that includes the exam schedule, examinee instructions, laptop and exam payment deadlines, etc.
- Become familiar with the information provided on the Admissions link on the State Bar's website (www.montanabar.org). It is updated regularly and has links to the rules, forms and payment of fees.

SUPPORTING DOCUMENTS:

A number of documents are required to be submitted with your application. The Application Checklist identifies which of these documents need to be supplied to the NCBE with your application and which need to be provided to the State Bar. Some documents may take time to acquire, so request them early; documents may arrive separately if mailed from a third-party. Incomplete applications will delay certification from the Character & Fitness Commission and may require the applicant to defer to the next scheduled admissions cycle.

INVESTIGATION PROCESS:

- 1) The initial review is done by the Bar Admissions Administrator (BAA). If there are concerns, the file may be reviewed by Bar counsel and/or referred to a subcommittee of the Character & Fitness Commission (CAF).
- 2) The subcommittee reviews all information provided by the applicant, the NCBE and any other source it deems necessary.
- 3) The subcommittee then advises the BAA of their decision to either certify the applicant unconditionally or conditionally or to deny the applicant.
- 4) A conditional admittee is granted admission under the terms of a stipulated agreement to meet certain requirements. The term of the conditional admission is typically 3 years, but can be extended or terminated by the Commission.
- 5) If an applicant is denied by the subcommittee, the applicant has an opportunity to provide an answer. The subcommittee again decides whether to certify the applicant unconditionally or conditionally or to deny the applicant.
- 6) If the subcommittee again recommends a denial, the file is reviewed by the remaining members of the Commission, who decide whether to certify the applicant unconditionally, conditionally or to deny the applicant.
- 7) If the remaining members decide to deny certification, the applicant may request a hearing before the full Commission.
- 8) This is a simplified explanation of the process outlined in the Rules of Procedure of the Commission on Character and Fitness, which are the definitive resource for all matters involving certification for admission.

THE BOARD OF BAR EXAMINERS

THE UBE/MLS SCHEDULE:

The Montana Bar exam is always held the last Tuesday and Wednesday of February and July.

Tuesday - the Multistate Essay in the morning and the Multistate Performance Test in the afternoon.

o The MEE is a 3-hour exam with 6 questions.

o The MPT is a 3-hour exam with 2 questions.

Wednesday - the MBE consisting of 200 multiple-choice questions.

The Montana Law Seminar is held the day after the administration of the Montana bar exam.

Thursday – the Montana Law Seminar

UBE & MLS FEES

All certified applicants must have their examination and Montana Law Seminar fees paid in full by the deadlines provided by the Bar Admissions Administrator. These fees are for administration of the UBE and MLS **and are separate from and in addition to the application fees** you paid with your original application. Fees can be paid online, by check or by calling the Bar Admissions Administrator at (406) 447-2204 with credit card information.

- Uniform Bar Examination (UBE) \$300
- Montana Law Seminar (MLS) \$150

SCORE TRANSFERS

It is the APPLICANT'S SOLE RESPONSIBILITY to have previous examination scores certified to the Bar Admissions Administrator.

UBE Score: A UBE score is a requirement for admission to the State Bar of Montana. Applicants who have earned a UBE score and are seeking to transfer the score to Montana must request a UBE score transfer from the NCBE to Montana. More information about the UBE and a link to request transcript services is available on the NCBE website.

MPRE Score: To qualify for admission, an applicant must obtain a MPRE scaled score of 80 or higher from any testing site within three years prior to taking the Montana Bar Examination or no later than nine months after notification of successful completion of the Montana Bar Examination. For UBE transfer applicants, a MPRE score earned within 3 years of the date of the exam in which the UBE score was earned will qualify for admission. Montana does not administer the MPRE, but information about MPRE test dates, deadlines, preparation and study materials are available on the NCBE website.

DEFERRALS & NO SHOWS

Deferral: If you are unable to sit for the examination, **prior to the exam** you are required to submit a written addendum to your application requesting a deferral. After three deferrals, an applicant must submit a new application and pay the application-filing fee. **Dismissal:** If an applicant fails to appear for examination without first completing an Addendum/Deferral form, the application will be dismissed and the applicant will be required to file a new application with the application fee. Find the form and pay the fee online.

LAPTOP OR HANDWRITE?

All essay answers (the MEE and MPT) may be handwritten in blue books that we provide or by using a laptop pre-registered with ExamSoft's SofTest® software. There is a separate fee payable to ExamSoft for using your laptop, but it is completely voluntary and any examinee may choose to handwrite their exam rather than use a laptop. A laptop examinee may choose to handwrite once the exam begins, but a hand-writer cannot decide to use a laptop after laptop registration has closed. ALL examinees who utilize the laptop option should be prepared to hand write in case of power outages or laptop problems.

UNIFORM BAR EXAMINATION – EXAM CONTENT

The Uniform Bar Examination (UBE) consists of three separate exam components administered together in a single exam administration; six MEE questions, two MPT items, and the MBE. All three exams are developed by the National Conference of Bar Examiners (NCBE) and are uniformly administered, graded, and scored by user jurisdictions resulting in a portable score. The NCBE provides excellent information, study aids and preparation information regarding each of these exams.

The Multistate Essay Examination (MEE) is developed as a six-question essay test to be administered in one three-hour test session. The purpose of the MEE is to test the examinee's ability to (1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. The particular areas covered on the MEE vary from exam to exam, and valuable MEE information and preparation material are available on the NCBE website.

The Multistate Performance Test (MPT) is a three-hour examination, with two 90-minute skills questions covering legal analysis, fact analysis, problem solving, resolution of ethical dilemmas, organization and management of a lawyering task, and communication. The MPT is designed to test an examinee's ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an examinee's ability to complete a task that a beginning lawyer should be able to accomplish. More information and study aides for the MPT can be found on the NCBE's website.

The Multistate Bar Examination (MBE) is a 200-question multiple-choice test that is administered in two three-hour test sessions. The purpose of the MBE is to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns. The exam is divided into morning and afternoon testing sessions of three hours each, with 100 questions in each session. The questions on the MBE are distributed between the following topics: constitutional law, contracts, criminal law and procedure, evidence, real property and torts. Subject matter outlines and more information on the MBE can be found on the NCBE's website.

MONTANA LAW SEMINAR

All applicants, whether by transferred UBE score or by examination, must register and attend the **Montana Law Seminar (MLS)**, which is offered the Thursday following the February and July bar exam. The Montana Law Seminar is a Supreme Court-required course that will focus on the structure of the legal system in Montana, the unique aspects of Montana law and the accepted mores and culture of practicing law in Montana. The Seminar is directed specifically to those seeking admission to the Bar, and only those who are applying for admission to the State Bar of Montana are eligible to attend. The MLS is not a CLE program, nor will CLE credits be awarded. An applicant may delay attendance at the MLS, but may not be admitted to the Montana Bar until attendance at the Seminar has been confirmed. Dress is casual.

Attendance at the MLS is a prerequisite to admission.

GRADING & SCORING

The MEE and MPT answers will be graded on a scale of zero to six, with six being the highest qualifying score and zero being the lowest possible score. The scores from each segment of the exam will be converted to the 400-point UBE scale and combined with the MBE scaled scores. The MEE and MPT scores are scaled to the MBE, with the MBE weighted 50%, the MEE 30%, and the MPT 20%. The lowest passing combined score for Montana is 270. *NOTE: The application and investigation process is confidential and the Board of Bar Examiners does not know the identities of applicants until after pass/fail decisions are final.*

RESULTS

Test Results will be sent by US Mail within 8 weeks to the last known address we have on file for you. Those who pass the exam will receive instructions for swearing-in and admission. If you do not pass the exam, you need not reapply but will receive copies of your MEE and MPT exams and your MBE score along with instructions for retaking the next scheduled exam.

FOR ADDITIONAL INFORMATION: The Rules of the Montana Board of Bar Examiners, Character & Fitness Commission Rules and the Rules of Admission are the definitive source of information regarding the Bar Examination and admission to the Bar. Copies of these rules as well as information about admission to the State Bar of Montana can be found at <http://www.montanabar.org>. Information and study guides specific to the Uniform Bar Examination or the separate components (the MEE, MPT and MBE) can be found on the NCBE website at <http://www.ncbex.org>.

VOLUNTARY LAW-RELATED PRO BONO ACTIVITY STATEMENT

The provision of pre-admission pro bono services is not a condition to become licensed for law practice in Montana or a consideration for certification by Montana's Character & Fitness Commission. The Voluntary Law-Related Pro Bono Activity Statement is designed to provide an opportunity for applicants to voluntarily disclose pro bono activities and to express specific interests or training needs in the provision of post-admission *pro bono publico* services. Once admitted to practice law in Montana, you will be asked on an annual basis to complete a similar reporting form.

Tab 5

Proposed Amendment to Rule 23, M.R.Civ.P. (adding new subparagraph (i), as follows:

. . .

(i) Disposition of Residual Funds.

(1) “Residual Funds” are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys’ fees and other court-approved disbursements. This rule does not prohibit the trial court from approving a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to the Montana Justice Foundation to support activities and programs that promote access to the Montana civil justice system. The court may disburse the balance of any residual funds beyond the minimum percentage either to the Montana Justice Foundation or to another non-profit entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.



Contact Us: **312.450.6600**

Collaborative Law Act Summary

INTRODUCTION

The Uniform Collaborative Law Rules/Act (UCLR/A), originally promulgated by the Uniform Law Commission in 2009 and subsequently amended in 2010, standardizes the most important features of collaborative law practice, remaining mindful of ethical considerations and questions of evidentiary privilege.

COLLABORATIVE LAW PROCESS OVERVIEW

As the use of collaborative law grew, it became increasingly governed by a patchwork of statutes, court rules, formal, and informal standards. The UCLR/A represents a necessary comprehensive statutory framework which guarantees the benefits of the collaborative process and further enhances its use. Additionally, because collaborative law is a form of limited scope representation (where an attorney is retained solely for the purpose of reaching a settlement, and expressly not for the purpose of litigation) clear rules about the mechanics of the practice help both attorneys and clients. The Rules/Act provides clarity, allowing parties and counsel to consistently rely on a statutorily-enacted privilege governing communications during a collaborative law process. It further provides attorneys guidance in determining whether collaborative law is appropriate for a particular dispute or client. As a uniform state law, the UCLR/A will help establish uniformity in core procedures and consumer protections, while minimizing the spread of the patchwork of varying approaches and definitions. As an increasing number of states adopt the uniform approach, costs associated with interstate dispute resolution will be reduced, and both practitioners and clients will benefit from the practical experience of sister jurisdictions.

The collaborative law process provides lawyers and clients with an important, useful, and cost-effective option for amicable, non-adversarial dispute resolution. Like mediation, it promotes problem-solving and permits solutions not possible in litigation or arbitration. Collaborative law is a *voluntary* process in which clients and their lawyers agree that the lawyers will represent the clients solely for purposes of settlement, and that the clients will hire new counsel if the case does not settle. The parties and their lawyers work together to find an equitable resolution of the dispute at hand, retaining experts as necessary. No one is required to participate, and parties are free to terminate the process at any time.

To this end, the UCLR/A includes explicit informed-consent requirements for parties to enter into collaborative law with an understanding of the costs and benefits of participation. The process is intended to promote full and open disclosure; information that is disclosed in a collaborative process, which is not otherwise discoverable, is privileged against use in any subsequent litigation.

2010 AMENDMENTS

The 2010 Amendments to the UCLR/A made several important changes. First, the amendments create an explicit mechanism for the operative provisions of the act to be adopted by rule, rather than statute, and new commentary provides guidance as to the method of implementation. Also, the amendments provide states with the option to limit the application of the act to family law matters. Finally, the amendments provide that courts have the discretion to approve stays of ongoing proceedings and calendaring deadlines when parties voluntarily enter into a collaborative law process. By standardizing the collaborative process, the UCLR/A secures the benefits of collaborative law for the parties while ensuring ethical safeguards for the process.

ENDORSEMENTS AND DRAFTING PROCESS

Like all of the Uniform Law Commission's uniform state laws, the UCLR/A is the result of more than three years of intensive effort. Representatives from state bars, collaborative attorney groups, litigators, domestic violence coalitions, and state courts all participated in the drafting of the UCLR/A, as did representatives from the family law, dispute resolution, and litigation sections of the American Bar Association (ABA).

The ABA Standing Committee on Ethics and Professional Responsibility and at least eight state bar ethics committees (Kentucky, Maryland, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, and Washington) have expressly approved the use of collaborative law.

Since its promulgation, the UCLR/A has enjoyed broad support, including the ABA Section of Dispute Resolution, Section of Family Law, and Section of Individual Rights & Responsibilities, the Ohio Bar Association, South Carolina Bar Association, Tennessee Bar Association Board of Governors, Vermont Bar Association Board of Managers, and the Association of the Bar of the City of New York. In addition, in 2011, the UCLA was designated as "Suggested State Legislation" by the Council of State Governments.

SECTION-BY-SECTION SUMMARY

Rule/Section 1 sets forth the title: Uniform Collaborative Law Rules/Act.

Rule/Section 2 sets forth definitions of terms used in the Rules/Act. *[Amended in 2010 to allow states to limit the application of the Rules/Act to family law disputes.]*

Rule/Section 3 makes the Rules/Act applicable to a collaborative law participation agreement signed after the effective date of the Rules/Act and emphasizes that a tribunal cannot order a party to participate in the collaborative law process over that party's objection.

Rule/Section 4 establishes minimum requirements for a collaborative law participation agreement—the agreement that parties sign to initiate the collaborative law process. The agreement must be in writing, state the parties' intention to resolve the matter (the issue for resolution) through collaborative law, contain a description of the matter, and identify and confirm the engagement of the collaborative lawyers. The Rule/Section further provides that the parties may include other provisions not inconsistent with the Rules/Act.

Rule/Section 5 specifies when and how the collaborative law process begins, and how the process is concluded or terminated. The process begins when parties sign a participation agreement, and any party may unilaterally terminate the process at any time without specifying a reason. The process is concluded by a negotiated, signed agreement resolving the matter, or a portion of the matter, and the parties' agreement that the remaining portions of the matter will not be resolved in the process.

Several actions will terminate the process, such as a party giving notice that the process is terminated, beginning a proceeding, filing motions or pleadings, requesting a hearing in an adjudicatory proceeding without the agreement of all parties, or the discharge or withdrawal of a collaborative lawyer. The Rule/Section further provides that under certain conditions the collaborative process may continue with a successor collaborative lawyer in the event of the withdrawal or discharge of a collaborative lawyer. The party's participation agreement may provide additional methods of terminating the process.

Rule/Section 6 provides for an automatic application for a stay of proceedings before a tribunal (court, arbitrator, legislative body, administrative agency, or other body acting in an adjudicative capacity) once the parties file a notice of collaborative law with the tribunal. A tribunal may require status reports while the proceeding is stayed; however, the scope of the information that can be requested is limited to insure confidentiality of the collaborative law process. *[Amended in 2010.]*

Rule/Section 7 creates an exception to the stay of proceedings by authorizing a tribunal to issue emergency orders to protect the health, safety, welfare or interests of a party or family or household member; or, to protect financial or other interests of a party in any critical area in any civil dispute.

Rule/Section 8 authorizes a tribunal to approve an agreement resulting from a collaborative law

process.

Rule/Section 9 sets forth a core element and the fundamental defining characteristic of the collaborative law process. Should the collaborative law process terminate without the matter being settled, the collaborative lawyer and lawyers in a law firm with which the collaborative lawyer is associated are disqualified from representing a party in a proceeding before a tribunal in the collaborative matter, except to seek emergency orders (**Rule/Section 7**) or to approve an agreement resulting from the collaborative law process (**Rule/Section 8**). The disqualification requirement is further modified regarding collaborative lawyers representing low-income parties (**Rule/Section 10**) and governmental entities as parties (**Rule/Section 11**).

Rule/Section 10 creates an exception to the disqualification for lawyers representing low income parties in a legal aid office, law school clinic, or a law firm providing free legal services to low income parties. If the process terminates without settlement, a lawyer in the organization or law firm with which the collaborative lawyer is associated may represent the low income party in an adjudicatory proceeding involving the matter in the collaborative law process, provided that the participation agreement so provides, the representation is without fee, and the individual collaborative lawyer is appropriately isolated from any participation in the collaborative matter before a tribunal.

Rule/Section 11 creates a similar exception to the disqualification requirement for lawyers representing a party that is a government or governmental subdivision, agency, or instrumentality.

Rule/Section 12 sets forth another core element of collaborative law. Parties in the process must, upon request of a party make timely, full, candid, and informal disclosure of information substantially related to the collaborative matter without formal discovery, and promptly update information that has materially changed. Parties are free to define the scope of disclosure in the collaborative process, so long as they do not violate another law, such as an open records act.

Rule/Section 13 acknowledges that standards of professional responsibility of lawyers and abuse reporting obligations of lawyers and all licensed professionals are not changed by their participation in the collaborative law process.

Rule/Section 14 addresses the appropriateness of the collaborative law process. Prior to the parties signing a participation agreement, a collaborative lawyer is required to discuss with a prospective client factors which the collaborative lawyer reasonably believes relate to the appropriateness of the prospective client's matter for the collaborative process, and provide sufficient information for a prospective client to make an informed decision about the material benefits and risks of the process as compared to the material benefit and risks of other reasonably available processes, such as litigation, arbitration, mediation, or expert evaluation. Further, a prospective party must be informed of the events that will terminate the process and the effect of the disqualification requirement.

Rule/Section 15 obligates a collaborative lawyer to make a reasonable effort to determine if a prospective client has a history of a coercive or violent relationship with another prospective party, and if such circumstances exist, establishes criteria for beginning and continuing the process and providing safeguards.

Rule/Section 16 provides that oral and written communications developed in the collaborative process are confidential to the extent agreed upon by the parties or as provided by state law, other than the Rules/Act.

Rule/Section 17 creates a broad privilege prohibiting disclosure of communications developed during the process in legal proceedings. The provisions are similar to those in the Uniform Mediation Act and apply to party and non-party participants in the process.

Rule/Sections 18 and 19 provide for the possibility of waiver of privilege by all parties, and certain exceptions to the privilege based on important countervailing public policies such as preventing threats to commit bodily harm or a crime, abuse or neglect of a child or adult, or information available under an open records act, or to prove or disprove professional misconduct or malpractice. Parties may agree that all or part of the process is not privileged.

Rule/Section 20 addresses the enforcement of an agreement made in a collaborative process that fails to meet the mandatory requirement for a participation agreement (**Rule/Section 4**), or a collaborative lawyer who has not fully complied with the disclosure requirements (**Rule/Section 14**). When the interests of justice so require, a tribunal is given discretion to enforce an agreement resulting from a flawed participation agreement, if the tribunal finds that the parties intended to enter into a participation agreement, and reasonably believed that they were participating in the collaborative process.

Section 21 emphasizes the need to promote uniformity in applying and construing the Act among states that adopt it. *[No equivalent Rule provision.]*

Section 22 provides that the Act may modify, limit, or supersede certain provisions the Federal Electronic Signatures in Global and National Commerce Act. *[No equivalent Rule provision.]*

Section 23 is a severability clause. *[No equivalent Rule provision.]*

Rule/Section 24 establishes an effective date for the Rules/Act.

[Home](#) | [Acts](#) | [Committees](#) | [Legislation](#) | [Meetings](#) | [News](#) | [About ULC](#)

© 2014 The National Conference of Commissioners on Uniform State Laws. All Rights Reserved.

111 N. Wabash Avenue Suite 1010 Chicago, Illinois 60602