

FILED

03/31/2017

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: A 11-0765



The Supreme Court of Montana
Access to Justice Commission

FILED

AF 11-0765

MAR 31 2017

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Biennial Report of the Montana Access to Justice Commission

In accordance with the Montana Supreme Court's Order of May 22, 2012, the Access to Justice Commission (Commission) submits this second biennial report to the Court. Since the Commission's last report, submitted in April 2015, the Commission has completed an extensive public forum series, sponsored legislation to fund civil legal aid, drafted new forms and documents for use by self-represented litigants, and embarked on new programs in collaboration with the law school, among many other activities. Much of the Commission's work continues to be carried out through the four standing committees created under its strategic plan: the Standing Committee on Self-Represented Litigants, the Committee on Law School Partnerships, the Committee on Outreach and Communication, and the Committee on Policy and Resources. This report outlines the work being done by each Committee and the Commission as a whole as directed by the Court's Order.

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

Between October 2015 and October 2016, the Commission conducted a statewide series of public forums designed to evaluate access to the civil justice system in Montana. The forums were held in Kalispell, Great Falls, Billings, Missoula, Bozeman, Butte, and Helena. The series brought together judges, legislators, community leaders, and Montana legal aid organizations to discuss pressures on Montana courts and the barriers people face when accessing our legal system.

At these forums, representatives on a "listening panel" heard testimony from community "witnesses" and comments from the public. The listening panels included representatives from the Montana Supreme Court, the Commission, the Legislature, the

providers, the Montana Bar Association, and more. The witnesses included representatives from the Montana Legal Services Association (MLSA), the Montana Justice Foundation (MJF), local attorneys, local judges and court staff, domestic violence shelters, health care providers, area agencies on aging, Native American communities, programs for the disabled, military and veterans' organizations, youth advocates, and more.

The testimony and discussion offered insights into the successes and challenges of existing statewide programs, current pressures on the court system, and unique perspectives from each community. The Commission found that many low- and moderate-income Montanans face legal crises arising out of housing problems, parenting and custody disputes, domestic violence, and debt collection. For Montana's veterans, a growing population of seniors, Native American communities, domestic violence victims, children, and people with disabilities, legal and non-legal problems frequently go unaddressed because these problems are often understood as unrelated. Complicated paperwork, limited literacy skills, lack of education and awareness, and poor prior experiences lead to a fear of the legal system. In addition, many Montanans—including many senior citizens—live in isolated and rural areas without ready access to services.

The forum series also highlighted successes across the state, including the Court Help Program—which has provided thousands of Montanans with “self-help” services for addressing their problems in court—and non-profit legal aid providers like MLSA and Aging Services' AAA Legal Developer program, which provide legal advice and representation through online, phone, and in-person assistance to low-income residents and senior citizens. Individual Montanans voiced appreciation for these programs and testified that they were able to overcome their legal challenges after receiving the assistance of a qualified attorney.

Positive media coverage of the series, including opinion-editorial pieces, articles, and radio reports, helped bring awareness to the network of resources available in different communities, while emphasizing that more needs to be done for Montanans who need legal assistance.

The Commission concluded the series by issuing a written report (attached as Appendix 1) and a video compilation. The report recommended the following:

1. Develop and maintain a statewide inventory of services and programs available by region and a means for making that inventory known and available throughout Montana communities.
2. Develop and maintain a means for linking Montanans who have legal problems with appropriate programs, attorneys, and service providers.
3. Promote better understanding of, and facilitate partnerships with, agencies and organizations to address the relationships between civil legal needs and non-legal issues involving health, housing, education, seniors, veterans, and re-entry of offenders.
4. Secure adequate, sustainable funding to achieve an effective continuum of services, from self-help services to civil legal aid, including mediation or other dispute resolution mechanisms that can act quickly to address civil legal problems when they first arise.

In regard to the last recommendation, the Commission drafted and sponsored legislation for the 2017 legislative session to approve increases in some civil court filing fees and dedicate that new revenue to funding legal aid. House Bill 46, introduced by Commission members Rep. Kimberly Dudik and Sen. Nels Swandal, is discussed more fully in the funding section of this report.

In addition to assessments done through the forum series, the Commission renewed other resource inventory assessment and strategic planning activities in 2016. The Commission supported a grant proposal submitted by MJF to develop a detailed resource inventory and strategic action plan. Although that proposal was not funded, its development prompted the Commission to begin reviewing its current strategic plan and creating new comprehensive statewide resource guides. That work will continue in 2017.

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

The Standing Committee on Self-Represented Litigants (SCSRL) continued significant work to revise and automate standardized forms for use by self-represented litigants and pro bono attorneys. In 2015, the SCSRL completed updates to forms for

Dissolution of Marriage with Children and for Guardianship of a Minor. In 2016, the SCSRL began a pilot program in Gallatin County to test the dissolution forms. Committee members combined the forms with instructions and provided training to court staff and other users. The SCSRL also posted the forms to their webpage and collected public comment and feedback during the pilot program period. Once the pilot phase is completed, the forms will be finalized and automated for wider use. The forms project is a top priority for the Court Help Program, and its staff have been instrumental in moving this project forward.

In 2016, inconsistencies in fee waiver forms used among the courts and inconsistent results for litigants prompted members of the SCSRL to create and adopt a standard fee waiver form. Following this Court's directive, a working group reviewed forms used across the country and developed a proposed form and order for use in Montana. The Commission approved SCSRL's continued work on the fee waiver issue, and the committee is currently working with the Attorney General's office to complete a proposed form and order for final consideration by the Commission.

At its June 3, 2016 meeting the Commission assigned a SCSRL working group to develop and implement an order of protection pilot project. The working group created a checklist to assist litigants with collecting evidence and preparing for a permanent order of protection hearing. The working group will continue to develop order of protection materials and resources.

The Committee on Law School Partnerships (CLSP) made progress on the Court-approved process to incorporate law students into pro bono service pursuant to Rule 6.1 of the Montana Rules of Professional Conduct. Because law school students are given the opportunity (but are not required) to report pro bono law-related services during their legal education, the CLSP has focused on eliminating barriers to law student pro bono participation. To address those barriers, the CLSP drafted proposed changes to Rule 6.1, which circulated among the CLSP and law school faculty. Because some proposed changes involve criminal law, the Committee is developing contacts within the Office of

the Public Defender (OPD) and with judges for additional input. The CLSP intends to pursue such input in late spring 2017.

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

The Commission and its committees continue to involve individuals representing a variety of access to justice stakeholders, including legal assistance providers and other interested entities. The Commission's primary project this biennium, the public forum series, featured testimony from dozens of programs across the state and provided meaningful opportunities for all participants to communicate and collaborate. The Commission also maintained its strong relationship with the State Bar of Montana's Justice Initiatives Committee (JIC), holding a joint meeting in September 2015 and ensuring JIC representation on Commission committees. The assessment inventory and strategic planning grant proposal developed by MJF, MLSA, and other Commission members reflect ongoing collaboration between various stakeholders, setting a framework for integrated efforts in the upcoming year.

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

This biennium, the CLSP explored the potential for an "incubator" program at the University of Montana School of Law. Incubator programs provide participants with legal skills training, mentor guidance, and business development resources to prepare newly-admitted lawyers to launch practices that include low- and moderate-income legal services. First, the CLSP developed, promoted, and administered a multi-question survey for University of Montana law students. The survey, which received a 60% response rate, showed strong support for limited scope practice and interest in starting a practice in a town with fewer than 10,000 residents. Participants noted several barriers to starting rural practices serving modest means clients, including student loan debt and lack of opportunities for spouses and other family members. In April 2016, the CLSP held several

facilitated focus groups with law students to explore the students' interest in, and suggestions for, a law practice incubator program in Montana. Third-year law student Hannah Cail incorporated results of the focus groups into a presentation exploring a potential legal incubator model for Indian Country and rural Montana. In the second half of 2016, the CLSP began collaborating with Montana Legal Services and the Montana State Bar in an Incubator Working Group to develop a detailed proposal, which suggested that such a program should focus on facilitating the development of law practices serving modest means clientele in rural areas, while serving pro bono populations during the training phase.

The CLSP also worked on new programs to increase student pro bono opportunities. In February 2016, the CLSP met with Montana law school faculty to develop ideas for increasing law student involvement in pro bono legal services. The CLSP identified law student time and supervisor availability as barriers to greater student involvement. The CLSP also identified priority areas of developing discrete task programs in the law school building, promoting pro bono involvement through the first year theory and practice course, and recruiting law professors as supervisors in order to compensate for private attorney reluctance to supervise law students.

Additionally, the CLSP worked with the State Bar of Montana and the Court's Statewide Pro Bono Coordinator to develop a process to give all bar examination applicants the opportunity to submit a voluntary statement of any pro bono law-related activities. The first report from that new system will be available shortly.

Also this biennium, the Commission created an ad hoc Mediation Project Committee to provide guidance and support for a court-connected mediation program spearheaded by Justice Laurie McKinnon and Patricia Fain, the Court's statewide pro bono coordinator. The purposes of the program, known as E-RAMP (Early Resolution and Mediation Program), are to provide litigants in parenting disputes a path to mediation for self-determined, early resolution; to facilitate early District Court case management; to produce greater likelihood of compliance with agreements; and to provide pro bono opportunities to volunteer attorneys and mediators. The E-RAMP pilot program is limited

to court fee-waived cases involving two self-represented litigants in a child custody or visitation proceeding. The project's initial focus was to create mediator qualifications. After reviewing the Montana Mediation Association standards, the committee developed a set of recommended attorney mediator qualifications, education, and training for the Commission's review and approval. The Commission approved those proposed attorney mediator standards at its December 2016 meeting.

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

The Commission's public forum series identified an acute need to expand the number of legal professionals available to provide pro bono or low-cost advice and representation. Recognizing that an effective continuum of legal services requires adequate and sustainable funding, the Commission developed a legislative proposal for the 2017 session to create new revenue. House Bill 46, introduced by Commissioners Kimberly Dudik and Nels Swandal, would increase some civil court filing fees and appropriate that new revenue to the Office of Court Administrator for grants to legal aid organizations. The Commission explored several funding mechanisms before determining that a filing fee increase presented the best option. As of the date of this Report, HB 46 has passed the Montana House of Representatives and is on its way to the Senate.

The Commission also supported the Montana Justice Foundation's strategic planning grant proposal and continues to explore other grant funding opportunities.

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

MLSA's AmeriCorps VISTA project ended in 2014. Still, the Commission continues to play a vital role in AmeriCorps in Montana by serving as an advisor to the Justice for Montanans AmeriCorps Project (JFM). JFM is a partnership between MLSA, the Supreme Court Administrator's Office, the State Bar of Montana, and the Montana Attorney General's Office of Consumer Protection and Victim Services. Through this project, 18 AmeriCorps service members provide assistance to low- and moderate-income individuals seeking assistance with their civil legal problems, including coordinating

community education campaigns, providing access to services, assisting people with completing pro se documents, and making referrals to other resources. This project has the dual purpose of training our next generation of community leaders on access to justice, while at the same time providing information and referrals to people in need. The JFM project supports the work of the Court Help Program by providing assistance to Self Help Centers across the state; the Commission receives and reviews Court Help Program updates regularly.

Conduct regular meetings to achieve the ATJC’s purposes.

The Commission held seven public meetings during 2015 and 2016, and will continue to meet quarterly. Meetings took place on the following dates:

- March 27, 2015
- September 23, 2015
- December 4, 2015
- March 4, 2016
- June 3, 2016
- September 9, 2016
- December 9, 2016

Minutes of all Commission and Standing Committee meetings are posted on the Commission’s website, <http://courts.mt.gov/supreme/boards/a2j/default.mcp.x>.

Establish the former Self-Represented Litigants Commission as a permanent ATJC committee to continue the Self-Represented Litigants Commission’s mission, including forms development for self-represented litigants.

The SCSRL continues to be a strong and active Commission committee. In addition to its work on revising and promoting standardized forms described above, the SCSRL created a set of materials and provided multiple in-person trainings on the difference between legal advice and legal information. These sessions were held in a variety of settings across the state, including Kalispell, Helena, and Missoula. The SCSRL is in the process of compiling all of its training materials for review by the Commission.

Conclusion

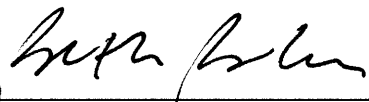
The Commission again thanks the Court for its vision in creating a Commission with exclusive focus on improving the way in which Montana’s court system responds to and addresses the legal needs of all Montanans. The Commission expresses special thanks to the Court and the Office of Court Administrator for making access to the civil justice

system a priority of both the Court Help and Law Library staff. Many people have volunteered their time in the Commission's efforts to date and the Commission is grateful for their work and dedication. Finally, the Commission is grateful for staff support graciously provided by the MJF. The Foundation has been instrumental in moving the Commission's work forward.

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

Dated this 31st day of March, 2017.

For the Commission,



Justice Beth Baker, Chair

Commission Members:

Ed Bartlett

Georgette Boggio

Hon. David A. Carter

Rick Cook

Matthew Dale

Rep. Kimberly Dudik

Aimee Grmoljez

Paul F. Kirgis

Hon. Kurt Krueger

Kyle Nelson

Alison Paul

Hon. Greg Pinski

Melanie Reynolds

Charlie Rehbein

Randy Snyder

Sen. Nels Swandal

Hon. Winona Tanner