

Judicial Redistricting Commission – September 3, 2015

Review HB 430 – bill requires the commission to study using the following factors(not all included):

- the relative proportions of civil, criminal, juvenile, and family law cases in each judicial district;
 - the extent to which special masters, alternative dispute resolution techniques and other measures have been used in the judicial districts;
 - any other factors that the commission considers significant to the determination of whether the state’s judicial districts should be redistricted.
- I. Mediation overview – civil, criminal, juvenile, and family law
 - a. Dispute resolution types– using a neutral – arbitration, settlement conferences, mediation (facilitative, transformative), facilitation
 - b. Programs – private, court – voluntary- Project SETTLE, local rules/ordered, contractual –AAA, securities, USPS, OPI, etc.
 - II. Dispute Resolution in MT – State District Courts
 - a. Special masters – 4th, 8th, 13th, 18th Judicial districts?
 - b. Alternative dispute resolution – mediation, settlement conferences
 - c. Other measures – neutral evaluation, facilitation, collaborative law
 - d. Training – 32-40 hrs basic – specialized – family, victim offender, domestic violence; private, State Bar CLE, UM School of Law, others
 - III. Measures used in Judicial Districts
 - a. MT Statutes
 - b. Local rules
 - IV. Other factors to consider
 - a. Changing judges/ practitioners
 - b. Changing delivery of legal services/dispute resolution – internet

MEMBERSHIP INFORMATION REPORT

August 19, 2015

By: *Jill Diveley*

MEMBERSHIP TYPE	"A"	"I"	"ID"	"E"	"J"	"AM"	"SU"	"R"	"S"	"P"	TOTAL
Montana	3094	296	12	6	108	3	167	200	112	146	4132
Out-of-State	709	614	1	1	18	29	361	311	74	0	2117
TOTAL	3803	910	13	7	126	32	528	511	186	146	6249

Membership Types: Active, Inactive, Inactive/Disability, Emeritus, Judicial, ActiveMilitary, SUsuspended, Resigned/Retired, Senior, Paralegal

(GENDER & DISTRICT includes Active, ActiveMilitary, Inactive & Senior members)

GENDER	"M"	"F"	TOTAL
Montana	2312	1193	3505
Out-of-State	941	485	1426
TOTAL	3253	1678	4931

(DISTRICT includes Active/ActiveMilitary, Inactive/Senior members)

DISTRICT	"A"	"I"	TOTAL
1	562	71	633
2	82	7	89
3	24	8	32
4	621	81	702
5	50	8	58
6	40	8	48
7	32	4	36
8	225	26	251
9	36	5	41
10	22	1	23
11	233	37	270
12	35	6	41
13	522	66	588
14	6	3	9
15	17	0	17
16	24	6	30
17	22	0	22
18	347	44	391
19	17	1	18
20	79	8	87
21	56	13	69
22	45	5	50

SECTION COUNTS

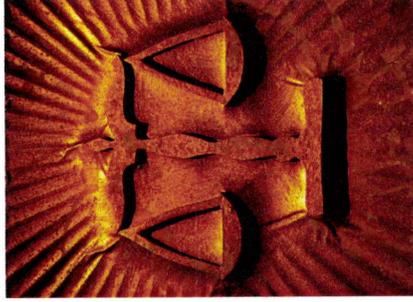
BANKRUPTCY	94	NAT. RSRCE/ENVIRON.	123
BETTR LAW	232	NEW LAWYERS	299
CONSTRUCTION LAW	56	NONPROFIT LAW	36
CRIMINAL LAW	79	PARALEGAL	148
FAMILY LAW	168	PUBLIC LAW	117
FEDERAL PRACTICE	79	SCHOOL LAW	30
HEALTH CARE LAW	59	VETERANS LAW	45
INDIAN LAW	94	WOMEN'S LAW	105

PRESIDENTS OF THE BAR

Presidents of the State Bar of Montana are as follows:

- 1975-76 Marshall H. Murray
- 1976-77 Thomas H. Mahan
- 1977-78 Bruce R. Toole
- 1978-79 Theodore K. Thompson
- 1979-80 L. Morris Ormseth
- 1980-81 Robert D. Corette
- 1981-82 Alexander A. George
- 1982-83 Ward A. Shanahan
- 1983-84 Sandy McCracken
- 1984-85 Douglas A. Wold
- 1985-86 George C. Dalthorp
- 1986-87 Terry N. Trieweller
- 1987-88 John A. Warner
- 1988-89 Max A. Hansen
- 1989-90 Gary L. Spaeth
- 1990-91 Damon L. Gannett
- 1991-92 James W. Johnson
- 1992-93 Sherry S. Matteucci
- 1993-94 Robert M. Carlson
- 1994-95 Robert J. Phillips
- 1995-96 Gary L. Day
- 1996-97 Donald D. Macintyre
- 1997-98 Martha Sheehy
- 1998-99 Brent Cromley
- 1999-00 Ed Bartlett
- 2000-01 Molly Shepherd
- 2001-02 Donald R. Murray
- 2002-03 Andrew P. Suenram
- 2003-04 Robert J. Sullivan
- 2004-05 Keith A. Maristuen
- 2005-06 Bernard F. McCarthy
- 2006-07 Peggy Probasco
- 2007-08 John C. Schulte
- 2008-09 Chris D. Tweenen
- 2009-10 Cynthia K. Smith
- 2010-11 Joseph M. Sullivan
- 2011-12 Shane A. Vannatta
- 2012-13 Pamela J. Bailey
- 2013-14 Randall A. Snyder
- 2014-15 Mark D. Parker

STATE BAR OF MONTANA



The Mission of the Board of Trustees of the State Bar of Montana is to lead the legal profession and serve the public interest.

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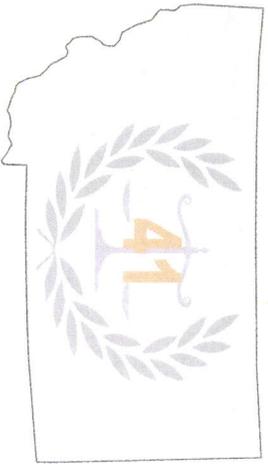
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HISTORY AND PURPOSE OF ASSOCIATION

The purposes of the State Bar of Montana are to aid the courts in maintaining and improving the administration of justice; to foster and maintain and require on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct; to safeguard a forum for the discussion of and effective action concerning subjects pertaining to the practice of law, the science of jurisprudence and law reform, and relations of the bar to the public; to provide for the continuing legal education of members of the bar, and to insure that the responsibilities of the legal profession to the public are more effectively discharged. *Constitution of the State Bar of Montana, Article III, Purposes. [Effective March 1, 1975]*

The voluntary Montana Bar Association, established on January 8, 1885, had by 1889, the year Montana's first constitution was adopted, a standing committee on legal education and admission to the Bar. The State Bar of Montana was created by order of the Montana Supreme Court in January of 1974. In its Order, the Court provided that all persons practicing law in the state were obliged to be members of the State Bar. The Court ordered that the purposes of the State Bar of Montana are to aid the courts in maintaining and improving the administration of justice; to foster and maintain and require on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct; to safeguard a forum for the discussion of and effective action concerning subjects pertaining to the practice of law, the science of jurisprudence and law reform, and relations of the bar to the public; to provide for the continuing legal education of members of the bar, and to insure that the responsibilities of the legal profession to the public are more effectively discharged. *Supreme Court Order - Unification of the Bar of the State of Montana, January 29, 1974.*

GOVERNANCE

The State Bar is governed by a Board of Trustees. Sixteen members of the Board are elected by the Active members of the Bar to two-year terms from the State Bar areas. State Bar areas are made up of one or several judicial districts. The other four Board members are the President and the President-Elect, who are elected statewide to one-year terms, the Secretary-Treasurer, who is elected statewide to a two-year term, and the Immediate Past President. The State Bar has two ABA delegates.

MEMBERSHIP DATA

As of August 19, 2015, State Bar membership totaled 6,249. Of this number, 4,132 were in-state members and 2,117 were out-of-state members. Of the same total, 3,803 were Active members, 910 were Inactive members, 126 had Judicial status, 186 were Senior members, 7 were Emeritus members and 32 were Active Military members.

FINANCIAL INFORMATION

Annual dues are \$200 for Active members, \$125 for Inactive Members and \$50 for Senior members. Judicial members do not pay dues while serving on the bench. (These assessments are in addition to the \$25 paid by Active, Inactive and Active Military members to the Clerk of Court for the statutory lawyer license fee). Assessments of \$125 and \$20 are also paid by Active and Active Military members only to fund the Montana Supreme Court's Office of Disciplinary Counsel and the Lawyers' Fund for Client Protection. Section dues for the Bar's 15 sections range from \$0 to \$20. Dues revenue constitutes the major source of income to the State Bar. Other revenue sources include income from State Bar continuing legal education programs, the sale of publications and affinity programs.

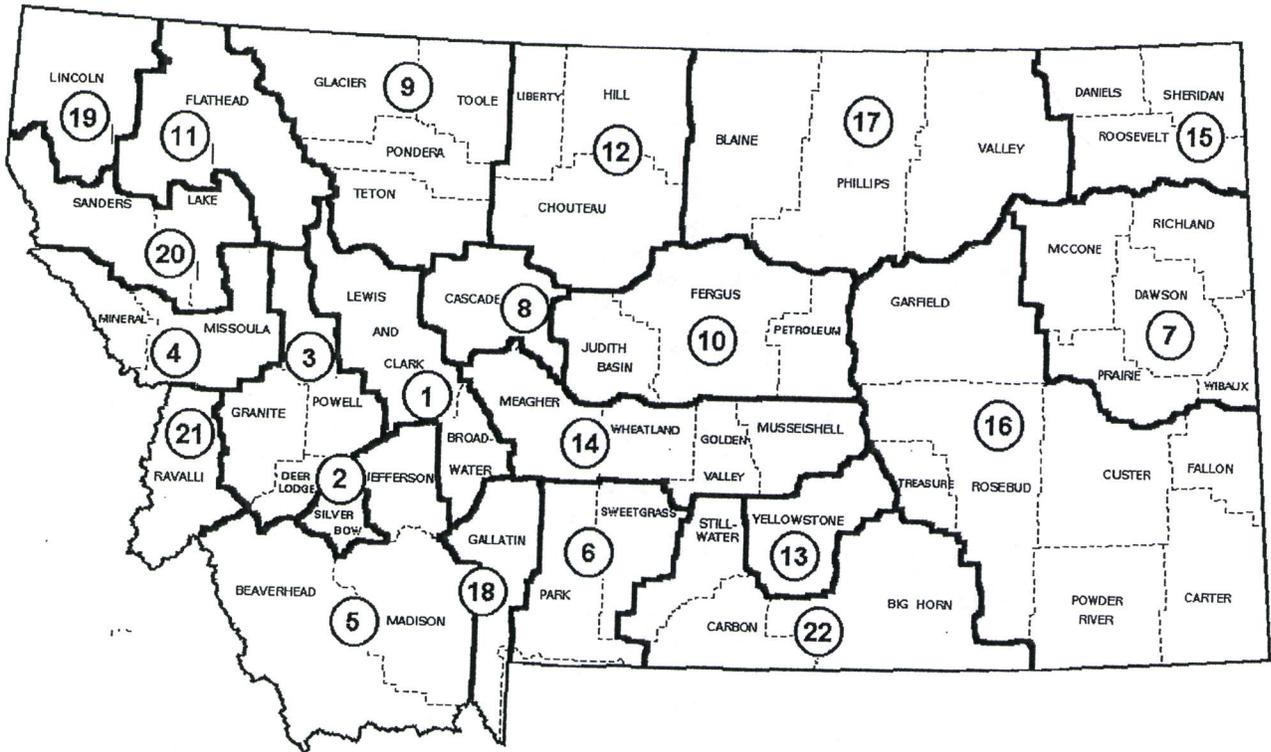
ACTIVITIES AND PROGRAMS

Major activities and programs of the State Bar include:

- Lawyers Fund for Client Protection, which makes restitution in cases where an attorney has improperly appropriated client funds.
- Lawyer Referral and Modest Means service, which allows members of the public to get help to find a lawyer for help with their particular legal problem.
- Fee Arbitration Program to settle fee disputes between an attorney and a client in lieu of litigation.
- Publication of annual Deskbook and informational pamphlets for the general public on a wide variety of legal subjects, including marriage and divorce, landlord-tenant law, small claims court, rights of clients and wills and probate.
- Administrative support for the Commission of Continuing Legal Education requiring active members of the State Bar to secure 15 hours of continuing legal education including 2 ethics credits every year.
- Administrative support for both the Commission on Character and Fitness to determine if the applicants for admission to the State Bar possess the necessary traits of character and fitness for the practice of law and the Board of Bar Examiners.
- Support of access to justice/pro bono activities.
- Free Fastcase legal research for active attorneys and Paralegal Section members.
- A variety of services to its members, including continuing legal education seminars, practice manuals and ethics opinions.
- A website at www.montanabar.org offering information and links to www.montanalahelp.org and montanaprobono.net.



JUDICIAL DISTRICTS





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26-1-813. Mediation -- confidentiality -- privilege -- exceptions. (1) Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decisionmaking authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

(2) Except upon written agreement of the parties and the mediator, mediation proceedings must be:

- (a) confidential;
- (b) held without a verbatim record; and
- (c) held in private.

(3) A mediator's files and records, with the exception of signed, written agreements, are closed to all persons unless the parties and the mediator mutually agree otherwise. Except as provided in subsection (5), all mediation-related communications, verbal or written, between the parties or from the parties to the mediator and any information and evidence presented to the mediator during the proceedings are confidential. The mediator's report, if any, and the information or recommendations contained in it, with the exception of a signed, written agreement, are not admissible as evidence in any action subsequently brought in any court of law or before any administrative agency and are not subject to discovery or subpoena in any court or administrative proceeding unless all parties waive the rights to confidentiality and privilege.

(4) Except as provided in subsection (5), the parties to the mediation and a mediator are not subject to subpoena by any court or administrative agency and may not be examined in any action as to any communication made during the course of the mediation proceeding without the consent of the parties to the mediation and the mediator.

(5) The confidentiality and privilege provisions of this section do not apply to information revealed in a mediation if disclosure is:

- (a) required by any statute;
- (b) agreed to by the parties and the mediator in writing, whether prior to, during, or subsequent to the mediation; or
- (c) necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator.

(6) Nothing in this section prohibits a mediator from conveying information from one party to another during the mediation, unless a party objects to disclosure.

History: En. Sec. 1, Ch. 481, L. 1999.

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40-4-301. Family law mediation -- exception. (1) The district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) Unless each of the parties provides written, informed consent, the court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party. A mediation conducted under this subsection may be conducted by a mediator who is trained in mediating domestic violence cases.

(3) The court shall appoint a mediator from the list maintained pursuant to [40-4-306](#). By agreement of all parties, mediators not on the list may be appointed.

(4) The court may adopt rules to implement this part.

(5) For purposes of this section, "informed consent" means an educated, competent, and voluntary choice to enter into mediation.

History: En. Sec. 1, Ch. 199, L. 1993; amd. Sec. 2, Ch. 350, L. 2013.

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40-4-302. Mediation proceeding -- tolling of statute of limitations. (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the parenting, child support, parental contact with the child, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to [40-4-301\(1\)](#) and except in cases involving domestic violence, the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement. In cases involving domestic violence, a victim may elect to have advocates and support persons who are not attorneys present during the mediation.

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator.

History: En. Sec. 2, Ch. 199, L. 1993; amd. Sec. 28, Ch. 343, L. 1997; amd. Sec. 3, Ch. 350, L. 2013.

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40-4-303. Proceedings -- records -- confidentiality. Mediation proceedings under this part are subject to the confidentiality and privilege provisions of 26-1-813. Mediation proceedings must be conducted in private unless otherwise agreed to in writing by the parties and the mediator. All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in 40-4-301. A mediator and the parties to a mediation under this part are entitled to the confidentiality and privilege provisions of 26-1-813.

History: En. Sec. 3, Ch. 199, L. 1993; amd. Sec. 2, Ch. 481, L. 1999.

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40-4-304. Mediator recommendation. The mediator may, upon stipulation by the parties, recommend temporary orders to the court prior to the final decree.

History: En. Sec. 4, Ch. 199, L. 1993.

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40-4-305. Mediation agreement. An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, before the agreement is finalized. An agreement reached in mediation is not admissible as evidence in any action unless the agreement has been affirmed by the parties in a signed, written agreement. The signed, written agreement is governed by [40-4-201](#).

History: En. Sec. 5, Ch. 199, L. 1993; amd. Sec. 3, Ch. 314, L. 2003.

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40-4-306. Mediator list. The district court shall establish and maintain a list of mediators available to assist parties in formally mediating disputes as provided in [40-4-301](#) and [40-4-302](#). The list of mediators must be maintained by the clerk of court. The clerk of court may accept the applications of individuals who meet the qualifications required under [40-4-307](#) and who seek placement on the mediator list. The applications must be presented to the court for review and approval. A mediator may be a member of the staff or contracted staff of a district court, probation department, mental health services agency, or private mediation service.

History: En. Sec. 6, Ch. 199, L. 1993.

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- 40-4-307. Mediator qualifications.** A mediator must meet the following minimum qualifications:
- (1) knowledge of the court system and the procedures used in family law matters;
 - (2) knowledge of other resources in the community to which the parties may be referred for assistance;
 - (3) knowledge in the area of domestic violence;
 - (4) if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and parenting research; and
 - (5) knowledge of the mediation process.

History: En. Sec. 7, Ch. 199, L. 1993; amd. Sec. 29, Ch. 343, L. 1997; amd. Sec. 4, Ch. 350, L. 2013.

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40-4-308. Court to establish fees. A court may establish a fee schedule for the costs of administering this part. The fees must be paid by the parties to the mediation proceeding.

History: En. Sec. 8, Ch. 199, L. 1993.

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Montana Code Annotated 2011

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39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

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Montana Code Annotated 2011

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39-71-2401. Disputes -- jurisdiction -- settlement requirements -- mediation. (1) A dispute concerning benefits arising under this chapter, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response must state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if the mediator finds that either party did not comply with this subsection (4). A decision dismissing a petition under this subsection (4)(c) must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) This subsection (4) does not relieve a party of an obligation otherwise contained in this chapter.

History: En. Sec. 8, Ch. 464, L. 1987; amd. Sec. 1, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 558, L. 1991; amd. Sec. 29, Ch. 416, L. 2005; amd. Sec. 1550, Ch. 56, L. 2009.

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Montana Code Annotated 2011

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39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under this chapter if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration.

History: En. Sec. 52, Ch. 464, L. 1987; amd. Sec. 2, Ch. 427, L. 1989; amd. Sec. 30, Ch. 416, L. 2005.

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39-71-2407. Department authority -- rules. (1) The department shall designate mediators and shall implement the provisions of this part.

(2) The department may adopt the rules necessary to implement this part. The rules may prescribe:

(a) the qualifications of mediators; and

(b) a procedure for the conduct of mediation proceedings.

(3) The cost to the department of implementing this part must be paid out of the workers' compensation administration fund.

History: En. Sec. 53; Ch. 464, L. 1987.

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39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under this chapter, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

History: En. Sec. 54, Ch. 464, L. 1987; amd. Sec. 31, Ch. 416, L. 2005.

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39-71-2409. Duties of mediator. A mediator shall assist the parties in negotiating a resolution to their dispute by:

- (1) facilitating an exchange of information between the parties;
- (2) assuring that all relevant information is brought forth during the mediation process;
- (3) suggesting possible solutions to issues of dispute between the parties;
- (4) recommending a solution; and
- (5) assisting the parties to voluntarily resolve their dispute.

History: En. Sec. 55, Ch. 464, L. 1987; amd. Sec. 3, Ch. 427, L. 1989.

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39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(8)(c), mediation proceedings must be:

- (a) held in private;
- (b) informal and held without a verbatim record; and
- (c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all persons but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) The mediator's report and any of the information or recommendations contained in the report are not admissible as evidence in any action subsequently brought in any court of law.

(5) Subsections (1) through (4) do not prohibit a mediator from issuing a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

History: En. Sec. 56, Ch. 464, L. 1987; amd. Sec. 4, Ch. 427, L. 1989; amd. Sec. 11, Ch. 558, L. 1991; amd. Sec. 1, Ch. 39, L. 2005.

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39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under this chapter may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The claimant and an employee of the insurer or an authorized third-party examiner with settlement authority shall attend any scheduled mediation conference in person or shall participate by telephone conference call.

(5) The mediator shall request that each party offer an argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(6) After the parties have presented all their information and arguments to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(7) A party shall notify the mediator within 25 days of the mailing of the mediator's report as to whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(8) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (8)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute.

History: En. Sec. 57, Ch. 464, L. 1987; amd. Sec. 5, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 516, L. 1995; amd. Sec. 2, Ch. 39, L. 2005; amd. Sec. 32, Ch. 416, L. 2005.

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61-4-511. Manufacturer's dispute settlement procedure -- certification -- prohibited contents.

(1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703, shall submit a copy of the procedure to the department. The department shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with the federal regulations and subsection (2) and shall maintain a record of the manufacturer's procedures certified. The department may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to the department in an investigation related to the certification of a manufacturer's informal dispute settlement procedure.

(2) A manufacturer's informal dispute settlement procedure must afford the consumer or the consumer's representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in [61-4-503](#);

(c) require the consumer to make the motor vehicle available for inspection by a manufacturer's representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).

History: En. Sec. 7, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 196, Ch. 483, L. 2001; amd. Sec. 17, Ch. 280, L. 2005; amd. Sec. 185, Ch. 542, L. 2005.

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85-5-110. Appointment of water mediators -- duties. (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

- (a) upon request of the governor;
- (b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or
- (c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

- (a) discuss proposed solutions to a water controversy with affected water right holders;
- (b) review options related to scheduling and coordinating water use with affected water right holders;

- (c) discuss water use and water needs with persons and entities affected by the existing water use;
- (d) meet with principal parties to mediate differences over the use of water; and
- (e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under [75-1-1101](#) to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right.

History: En. Sec. 1, Ch. 625, L. 1989; amd. Sec. 1, Ch. 108, L. 1991; amd. Sec. 2776, Ch. 56, L. 2009.

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85-5-111. Water commissioner and mediator education. The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

- (1) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;
- (2) preparation and, as necessary, revision of a water commissioner and mediator manual; and
- (3) an outreach program that identifies persons who might serve as water commissioners or mediators.

History: En. Sec. 2, Ch. 625, L. 1989.

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22-3-804. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of this part;

(i) adopt rules necessary to administer and enforce the provisions of this part; and

(j) perform any other duties necessary to implement the provisions of this part.

(4) The board is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 748, L. 1991; amd. Sec. 54, Ch. 483, L. 2001.

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22-3-805. Discovery -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [22-3-808](#).

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make a determination within 2 working days from the time the person responsible for the excavation notifies the coroner of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, the coroner shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make a determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, the coroner shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or the landowner's representative for a reasonable time extension to complete the review. The field review must include:

- (a) a determination of whether the site can be preserved;
- (b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and
- (c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

- (a) the descendants, if identifiable;

(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity that can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

History: En. Sec. 5, Ch. 748, L. 1991; amd. Sec. 358, Ch. 56, L. 2009.

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