

SJR 6 Study:
Pro Se Subcommittee Report
LC0072: Montana Access to Civil Justice Act

prepared by
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for the
Law and Justice Interim Committee

May 6, 2006

Pro Se Subcommittee members

Sen. Gary Perry -- Chairman
Sen. Bent Cromley
Rep. Ron Stoker
Rep. Jeanne Windham

Scope of work

The *Pro Se* Subcommittee was appointed at the LJIC's January 19, 2006, meeting to develop a preliminary bill draft for the full LJIC's consideration. The bill draft was to have a broad title covering all access to civil justice matters within the scope of SJR 6. However, the Subcommittee was to concentrate its efforts only on the aspects of the SJR 6 study that involved assistance to self-represented litigants (i.e., *pro se* proceedings).

Activities

The *Pro Se* Subcommittee met two times. At its first meeting, held in Helena on February 17, 2006, the Subcommittee:

- received a staff report on a 2005 national summit on access to justice, which included a discussion of best practices nationwide.
- received general information about bill drafting, bills with fiscal impacts, and the different vehicles that could be used to appropriate state funding: HB 2, statutory appropriations, and "cat and dog" appropriation bills.
- received and discussed a detailed recommendation from an ad hoc *pro se* working group of stakeholders, which included members of the Supreme Court's Commission on Self-Represented Litigants, the Supreme Court's Access to Justice Task Force, and the State Bar's Access to Justice Committee.
- took actions to move forward with a bill draft based on the *pro se* working group's recommendations and to include the appropriation in the bill.

At its second meeting on March 22, 2006, the *Pro Se* Subcommittee (and other members of the LJIC) toured the staff offices of the Montana Legal Services Association (MLSA) in Billings. The tour included discussions with MLSA staff, volunteers, and the pro bono coordinator of the Yellowstone Area Bar Family Law Project.

At its meeting later that afternoon, the *Pro Se* Subcommittee reviewed its initial bill draft (LCpro1) in detail, considered comments and suggestions from various stakeholders and interested persons, and took actions to amend and fine-tune the bill draft. The meeting concluded with a unanimous vote to present the Subcommittee's amended bill draft to the full LJIC.

Recommendation: LC0072

Attached are two bill drafts. The draft numbered **LCpro2** is the Subcommittee's initial draft but with "strikes" and "inserts" showing how the draft was amended during the Subcommittee's March 22, 2006, work session. The bill draft numbered **LC0072** is the clean copy of the Subcommittee's bill draft recommendation.

Pro bono component

Although the *Pro Se* Subcommittee was limited to working within a narrow definition of *pro se* programs, Subcommittee members learned that a *pro bono* component (i.e., attorney assistance or representation for no fee or a low fee) is essential to the success of any *pro se* program. Because, the LJIC study plan was designed to treat *pro bono* as a separate aspect of access to justice, a separate staff report has been prepared. However, the intent of the Subcommittee is that when the LJIC considers LC0072, the LJIC will consider this *pro bono* aspect within the scope of LC0072.

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As of: May 7, 2006 (3:57pm)

LCpro2

**** Bill No. ****

Introduced By *****

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act creating the Montana access to civil justice act; directing the supreme court to establish a self-help law program within appropriated funding; specifying purposes, definitions, and duties; requiring ~~procedures~~, data collection, and reports; ~~and providing an appropriation; and providing an effective date.~~"

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Access to Civil Justice Act".

NEW SECTION. **Section 2. Purpose.** The purposes of [sections 1 through 5] are to make Montana's court system more accessible by:

(1) ~~provide~~ providing all Montanans with user-friendly information about Montana's civil law, courts, and legal system;

(2) ~~provide~~ providing state-level coordination to develop self-help legal resources, tools, information, and training materials on a statewide basis in a cost-effective manner emphasizing technology and volunteer services; and

(3) ~~facilitate~~ facilitating the efficient use of judicial resources in civil court proceedings that involve self-

represented litigants, ~~and~~

~~(4) help make Montana's court system accessible regardless of a person's financial means without guaranteeing a certain level of legal assistance or legal representation.~~

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "program" means the self-help law program established in [section 4]; and

(2) "self-represented litigant" means a person involved in the civil legal system without direct representation by an attorney.

NEW SECTION. Section 4. Self-help law program -- staff --
-- duties -- coordination. (1) ~~The supreme court shall establish and provide staff within available appropriations for~~ There is a self-help law program. The program is administered by the supreme court. The supreme court may designate a commission to perform its duties under [sections 1 through 5].

(2) Program staff are subject to the judicial branch personnel and pay plan provided for in 3-1-130.

(3) The program shall provide statewide coordination to:

(a) develop, maintain, and make available to self-represented litigants legal forms and instructions about the use of the forms in civil legal proceedings in Montana's courts;

(b) develop curriculum and materials suitable for classes and clinics about court processes and legal forms;

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LCpro2

~~(b)(c)~~ develop, update, and provide information and training materials for judges, clerks of court, other court officers, judicial branch employees, and volunteers about self-help legal resources and how to assist self-represented litigants in a manner that is impartial, facilitates effective and efficient court operations, and does not constitute providing legal advice or legal representation; and

~~(c)(d)~~ establish and maintain multimedia materials, including a web site and local computer or work stations, that provide self-represented litigants with access to information about Montana's civil laws, courts, rules, legal forms, and available legal resources.

(4) The program shall coordinate and cooperate with other access to justice efforts, such as initiatives by state or local bar associations, non-profit legal services organizations, pro bono attorney networks, volunteer programs, and other public or private efforts that are consistent with the purposes of [sections 1 through 5].

(5) Program staff may not provide legal representation through this program.

NEW SECTION. Section 5. Procedures -- data -- Data and reports. ~~(1) The supreme court shall establish procedures for the delivery of state law library and court-based program services.~~

~~(2)(1)~~ The supreme court shall ensure that relevant and detailed data concerning program costs and services are recorded, collected, reported, and used for program planning.

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As of: May 7, 2006 (2:33pm)

LC0072

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the Montana access to civil justice act; directing the supreme court to establish a self-help law program within appropriated funding; specifying purposes, definitions, and duties; prohibiting program staff from providing legal representation through the program; requiring data and reports; providing an appropriation; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Access to Civil Justice Act".

NEW SECTION. **Section 2. Purpose.** The purposes of [sections 1 through 5] are to make Montana's court system more accessible by:

(1) providing all Montanans with user-friendly information about Montana's civil law, courts, and legal system;

(2) providing state-level self-help legal resources, tools, information, and training materials on a statewide basis in a cost-effective manner emphasizing technology and volunteer services; and

(3) facilitating the efficient use of judicial resources in

civil court proceedings that involve self-represented litigants.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "program" means the self-help law program established in [section 4]; and

(2) "self-represented litigant" means a person involved in the civil legal system without direct representation by an attorney.

NEW SECTION. **Section 4. Self-help law program -- staff -- duties -- coordination.** (1) There is a self-help law program. The program is administered by the Supreme Court. The Supreme Court may designate a commission to perform its duties under [sections 1 through 5].

(2) Program staff are subject to the judicial branch personnel and pay plan provided for in 3-1-130.

(3) The program shall:

(a) develop, maintain, and make available to self-represented litigants legal forms and instructions about the use of the forms in civil legal proceedings in Montana's courts;

(b) develop curriculum and materials suitable for classes and clinics about court processes and legal forms;

(c) develop, update, and provide information and training materials for judges, clerks of court, other court officers, judicial branch employees, and volunteers about self-help legal resources and how to assist self-represented litigants in a

manner that is impartial, facilitates effective and efficient court operations, and does not constitute providing legal advice or legal representation; and

(d) establish and maintain multimedia materials that provide information about Montana's civil laws, courts, rules, legal forms, and available legal resources.

(4) The program shall coordinate and cooperate with other access to justice efforts, such as initiatives by state or local bar associations, non-profit legal services organizations, pro bono attorney networks, volunteer programs, and other public or private efforts that are consistent with the purposes of [sections 1 through 5].

(5) Program staff may not provide legal representation through this program.

NEW SECTION. Section 5. Data and reports. (1) The supreme court shall ensure that relevant and detailed data concerning program costs and services are recorded, collected, reported, and used for program planning.

(2) The supreme court shall report to the law and justice interim committee established in 5-5-226 and each regular legislative session to house appropriations and senate finance and claims committees concerning the program's status. Each report shall include the status of program funding and services and any strategic plan changes, implementation problems, or recommendations to the legislature.

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NEW SECTION. **Section 6. Appropriation.** The following money is appropriated from the general fund to the supreme court for the purposes of [sections 1 through 5]:

Fiscal year 2008 \$ _____

Fiscal year 2009 \$ _____

NEW SECTION. **Section 7. {standard} Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 1 through 5].

NEW SECTION. **Section 8. {standard} Effective date.** [This act] is effective July 1, 2007.

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