



Montana Supreme Court
Access to Justice Commission
2015-2016 Forum Series Report

December 28, 2016

Purpose

About 182,000 Montanans (18%) live at or below the poverty line. These families exhaust their personal resources and networks simply trying to get by. When a civil legal crisis arises, affecting access to food, shelter, or safety, many of these Montanans feel they have nowhere to turn. They do not know the civil legal system or how to access available resources designed to help them. And resources for such populations are usually stretched beyond limits.

One of the primary goals of the Montana Access to Justice Commission is to foster development of a statewide system to deliver civil legal services to low- and moderate-income Montanans. In order to further this goal, the Commission hosted a series of regional discussions among community service providers and justice leaders regarding the successes and challenges in securing equal access to the civil legal system for all Montanans. Additionally, the gatherings highlighted how those issues impact the communities in which we live.

Forum Description

Between October 2015 and October 2016, the Commission held public forums in Kalispell, Great Falls, Billings, Missoula, Bozeman, Butte, and Helena.

At these forums, representatives on “listening panels” heard testimony from community “witnesses” and comments from the public.

The listening panels included representatives from the Montana Supreme Court, the Access to Justice Commission, the Legislature, the Governor’s office, Montana’s Indian Tribes, local judges, local community service providers, and the Montana Bar Association.

The witnesses included representatives from Montana Legal Services Association (MLSA), the Montana Justice Foundation, Montana AAA Legal Services, local attorneys, local judges and court staff, domestic violence shelters, health care providers, Native American communities, programs for the disabled and the elderly, military and veteran’s organizations, and youth advocates.

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 findings are summarized here:

Identified Needs

Low- and moderate-income Montanans most often face a legal crisis arising out of housing problems, parenting and custody disputes, domestic violence, and debt collection.

Many Montanans do not realize that they do not have the right to an appointed attorney when they face a civil legal problem. You can be evicted, lose your home, or lose custody of your child—all without ever having the right to an attorney.

When low- and moderate-income Montanans experience civil legal problems, they are usually dealing with a number of non-legal problems at the same time. Some of the common non-legal challenges highlighted included: mental illness or diminished capacity, substance abuse, physical disabilities, education barriers, finances, threats to safety, transportation, and child care. Such problems are intersectional in nature, meaning that they affect and intensify one another.

Addressing a civil legal crisis without the help of an attorney can be overwhelming. With so many other challenges, low- and moderate-income Montanans often cannot tackle their civil legal problems alone. Daunting paperwork, limited education and literacy, lack of awareness, and poor prior experiences lead to a fear of the legal system for many people.

Homeless Population Montanans are led to homelessness by legal issues such as evictions, domestic violence, and employment discrimination. Montanans are kept homeless by legal issues such as violent crimes, scams, illegal hiring practices, and civil and criminal fines. These Montanans experience extreme barriers to the civil legal system due to the lack of a stable address, fear of the legal system, addiction, and other mental health issues. This population uniquely experiences the compounding burdens of civil legal problems, criminal legal problems, and an inability to access services. Forum presenters in every community discussed housing problems and their connection with civil legal problems.

Indigenous Populations Members of Montana's Native American communities often experience the legal system in a punitive way and thus fear unfairness. Many Reservations lack local services—there is simply no adequate substitute for an advocate physically present on the Reservation. They also lack access to legal services for Indian Wills. Finally, Native Americans in Montana have experienced significant levels of incarceration and often face hurdles they cannot overcome after release such as an inability to meet sentencing requirements, lack of mental health services, suspended driver's licenses, and other intersectional criminal and civil issues.

Minors The needs of “unaccompanied minors” who are under eighteen years old and lack a present parent or guardian were also brought to light. For these youths, simply accessing basic services such as non-emergency healthcare or finding a place to sleep through a shelter, renting a motel room, or leasing an apartment, can be impossible.

Non-English Speakers Montana has many citizens with limited English language proficiency, yet has only two certified Spanish interpreters for the entire state. The lack of services for Montanans with limited English skills results in additional stress and fear when trying to access the legal system. Additionally, at times people give up rights because they do not understand the court process.

People with Disabilities 148,000 Montanans live with disabilities. They face challenges on many fronts, ranging from abuse and neglect, access to programs and facilities, employment discrimination, mental health services, educational needs, and housing. There is only one statewide organization focused exclusively on addressing the legal needs of Montana's disabled population, and it falls far short of meeting the demand.

Senior Citizens There is a rising tide of need in the area of elder law and the concentration of elderly people living in very rural areas makes obtaining services a struggle. They face a risk of exploitation by scammers and family members alike. Many are facing healthcare problems and related financial challenges, they lack access to modern methods of communication, do not know how to navigate services available online, and have no link to legal aid organizations or volunteer attorney programs. Many seniors also are without basic documents necessary for health care directives and estate planning and management.

Veterans The unique needs of veterans were at the forefront of the discussion in Great Falls and were also discussed to a lesser degree in other forums. Veteran's Court is an exceptional resource for struggling veterans, helping them to get back on their feet and stay out of the civil and criminal justice systems. The Military Pro Bono Project is an excellent nationwide program that connects service members with attorneys.

What is Working

Statewide Programs

- Montana Legal Services Association (MLSA):

MLSA provides civil legal advice and representation to Montanans at or below 125% of the poverty line who qualify for their services. In 2014, 7,000 Montanans sought assistance from MLSA, and MLSA met the needs of one-third of those contacts. Many MLSA clients spoke at the forums to express their gratitude to MLSA and testify that they would not have been able to overcome their civil legal problems without the assistance of a qualified attorney.

Mary, a domestic violence victim whose husband controlled her finances, found herself facing an arrest warrant after being unable to pay insurance fines. Helped by a Musselshell County sheriff's deputy, Mary and her child found refuge in a Bozeman domestic violence shelter. A lawyer with MLSA helped her get an Order of Protection, file for divorce, and obtain sole custody of her child. Mary now has her own home, a full-time job, and child care for her mentally-challenged daughter.

- Court Help Centers (Centers):

The six Centers across Montana provide civil legal forms and information to Montanans who do not have an attorney, regardless of income level. The Centers also provide outreach services to rural communities and maintain self-help kiosks in these less populous areas of the state. The Court Help Program has developed online legal forms and instructions so that people can represent themselves in court. Self-represented litigants often are not educated on legal issues and take up more of the court's time than represented litigants. After passing through a Center, a self-represented litigant is more prepared, more organized, and takes less of the court's time. The Centers have provided more than 63,000 customer interactions since the program's inception in 2008.

- Aging Services Bureau’s Legal Services Developer and Montana AAA Legal Services:
These programs provide legal assistance and put on eight free document clinics per year, open to Montanans who are age 60+ and below 250% of the poverty line. These clinics provide Montanans with much needed documents such as Wills, Living Wills, Powers of Attorney, Declarations of Homestead, and Indian Wills. The programs have completed 5,415 estate planning documents through on-site and phone clinics, and 60 Indian Wills. Their legal advice and advocacy program has addressed 7,506 legal issues in the past two years.
- University-based Legal Programs:
Legal services programs offered by Montana State University and the University of Montana help students effectively resolve problems involving landlord/tenant issues, family matters, and even minor criminal matters at low overall cost to the school system. For example, approximately 60% of the students seen in MSU’s program are able to resolve problems on their own after a 30-minute advice and counseling session and approximately 40% receive limited representation by ASMSU Legal Services lawyers.

The witnesses and public praised the efforts of MLSA and the Court Help Centers, describing these organizations as “fabulous,” “great,” and “wonderful.” Nonetheless, participants agreed that these organizations lack the capacity to address the need in the state, as discussed below.

Local Programs

There are many local organizations in each community that address the interconnected problems of low- and moderate-income Montanans. We heard from organizations in each city that help Montanans address problems including parenting, domestic violence, runaway youth, health care, physical and mental disabilities, and veteran’s issues. Organizations and programs like the YWCA, Family Court Services, Veterans Treatment Courts, Court Appointed Special Advocates, community mediation programs, as well as other government, non-profit, and for-profit organizations in each city provide assistance to low- and moderate-income Montanans who are facing civil legal problems. These organizations have developed strong networks and partnerships with each other to broaden and strengthen the services they offer. The forums offered an opportunity to strengthen these networks and increase awareness of available services. Coordination among agencies is key to a comprehensive system for meeting the needs of our communities.

What Needs Improving

The Need for More than Just Volunteers

Witnesses emphasized the inability to handle the need with volunteer services alone. Devoted private attorneys offer many hours of *pro bono* legal services each year but they cannot serve all in need. Montana needs funding for dedicated, full-time legal aid staff to ensure sustainable, meaningful access to high-quality civil legal services for all Montanans and to help make the courts work efficiently for all court users.

“You cannot solve a problem with volunteers alone. Not a problem that is this big—like access to the courts.” *Alison Paul, Executive Director, Montana Legal Services Association*

Volunteers are vital, but access to justice problems persist. The staff of the Court Help Centers consists of a handful of employees and AmeriCorps service members. The reliance on AmeriCorps

and volunteers results in limited hours of availability, periodic closures of some Centers, and large amounts of volunteer training.

The Need for More Attorneys

The Court Help program gives information but not legal advice. The civil legal problems of low- and moderate-income Montanans are often more complex than a Court Help Center can handle. These Montanans need the assistance of an attorney to resolve their legal problems. The Centers provide invaluable assistance to self-represented litigants and greatly ease the burden on the courts but for some cases there is simply no substitute for the advice and representation of an attorney. MLSA, the primary provider of attorneys for low- and moderate-income Montanans, has only 13 case-handling attorneys for the entire state, making it impossible to serve every qualified family in need.

The Need for Holistic Solutions

At every forum, discussion focused on the inter-connected nature of civil and criminal legal problems and other social problems. Low- and moderate-income Montanans often experience civil legal needs, which in turn create criminal legal problems, both of which are made worse by an inability to access programs and services designed to help them. Because of the intersectional nature of these problems, forum participants emphasized that solutions must be holistic, involving the entire community, not just lawyers and legal advocates.

Suggestions from Forum Participants

Alternative Dispute Resolution and Limited Legal Services

Witnesses suggested the promotion of alternative dispute resolution. Because many low- and moderate-income Montanans have non-legal challenges that magnify their civil legal problems, a court offers an incomplete solution. Alternative dispute resolution resources ease court dockets and provide holistic solutions for low- and moderate-income Montanans. In addition, some legal issues can be resolved with limited assistance from a lawyer or other person trained in the law. Witnesses suggested exploring other state models for allowing limited-license legal technicians, similar to paraprofessional positions in health care, to provide a limited scope of services without supervision from a licensed attorney.

A Specialty Court for Domestic Violence Issues

A few witnesses suggested the creation of a specialty court to address domestic violence issues. The traditional courtroom can intimidate even an experienced attorney. For a domestic violence survivor, such a stressful environment decreases the likelihood of obtaining a civil protective order, a vital step in moving on with their lives safely. By contrast, the interventionist model of a domestic violence court keeps survivor safety at the forefront of all proceedings.

Securing and Prioritizing Funding

The most commonly cited need from forum participants was the need for more funding for civil legal aid. This funding must be targeted to have the greatest impact. With many legal problems—such as in the areas of domestic violence and housing—the availability of legal

assistance at the critical time can prevent a major crisis. Funding for attorney services on Reservations would make huge strides in closing the justice gap that Native Americans experience. Additionally, some suggested that funding be used to create “legal navigators” within communities to help find wrap-around services for individuals. Duties would include determining when a problem is legal in nature and making referrals to appropriate legal services when needed, whether it be a limited advice clinic, skilled mediation, counseling with a paraprofessional, or full representation by an attorney.

Conclusions and Recommendations

Access to legal assistance can help prevent people from defaulting on court notices and other legal obligations, keep them in their homes and in their jobs, find them safe shelter and provide legal protection for their children, and resolve their legal issues without burdening Montana’s court system. The forum series brought Montanans together from all corners of the state, shining a light on the network of resources available and revealing areas of greatest challenge. From the information provided, the Commission recommends several areas for action, with specific plans to be further developed and addressed through the Commission’s strategic planning process:

1. Develop and maintain a statewide inventory of services and programs available in each region and a means for making the inventory known and available throughout our communities.
2. In conjunction with the inventory, develop and maintain a means for people to get connected with one another—linking Montanans who have legal problems with the programs, attorneys, and service providers who may be able to assist with their particular issues.
3. Promote better understanding of, and facilitate partnerships with, agencies and organizations to address the relationships between civil legal needs and:
 - health outcomes
 - housing security
 - school attendance
 - a productive workforce
 - transition for returning veterans
 - community re-entry of offenders
 - protection of seniors
4. Secure sustainable funding that is adequate 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. This would enable more people to resolve their legal issues without going to court. For those who end up turning to the courts, legal assistance will help them be better prepared to present their issues for resolution, leading to less congestion, more effective focus, and better use of judges’ time.

All of the forums in this series were recorded. The Access to Justice Commission plans to release a summary video and complete recordings of each forum in the near future. [Appendix 1](#) to this Report contains a list of listening panel members and witnesses from each forum. [Appendix 2](#) is a written summary of the witness testimony.