

Drafter Comments on LCpro1

(unedited)

prepared for the
Pro Se Subcommittee of the
Law and Justice Interim Committee

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Purpose

This paper provides a section-by-section discussion of the language used in drafting the bill (LCpro1) requested by the Pro Se Subcommittee of the Law and Justice Interim Committee (LJIC). It is intended to be used side-by-side with the LCpro1 bill draft.

Section-by-section discussion of the bill draft

Title.

There is a substantial body of case law concerning titles. It is the bill drafter's responsibility to ensure that the title is drafted appropriately. The title should contain only one subject. Any provision in the act that is not reflected in the title may be void.

Section 1: Short title.

A short title enables quick future identification of new law in a definable area.

Section 2: Purpose.

A purpose section should thoughtfully describe intent. Purpose language may be referred to by the courts to interpret unclear or ambiguous language. In the sample bill draft (provided to the Subcommittee by the Pro Se working groups of stakeholders, the purpose language was very broad. The section was redrafted to specifically articulate legislative staff's understanding of the purposes contemplated by the subcommittee. The Subcommittee should carefully review this language to ensure it reflects an accurate interpretation of intent.

Section 3: Definitions.

A definition section is used to avoid repetition and ensure clarity. "Self-represented litigant" was defined to give an exact meaning to the phrase and thus avoid contrary interpretation of the terminology. To allow for the use of "court" in this bill draft in a context broader than the Supreme Court, "court" was not defined as proposed in the sample bill. Rather, "supreme court" is used in the bill draft when appropriate and "court" is used when the context is broader than the supreme court.

Section 4. Self-help law program.

Subsection (1) establishes the program and states that the program and staffing is to be provided for within available funding. Subsection (2) provides that the program staff are subject to the judicial branch pay plan. Subsection (3) lists the basic components of the program. Subsection (4) provides for the self-help law program to coordinate with other programs. References in the sample bill to only Montana "residents" and a "pro bono program" were removed. The subcommittee should carefully review these changes and this language to ensure this section is consistent with the subcommittee's intent.

Section 5. Procedures -- data -- reports.

This section is essentially and implementation sections that requires the supreme court to (1) establish procedures, (2) ensure data is collected, and (3) report to the legislature.

Section 6. Appropriation.

This section provides the money to the supreme court from the general fund. The amounts are blank pending additional fiscal analysis. This section means that the bill is a "cat and dog" bill that would be added to the budget later in the legislative session. In other words, this bill assumes that the money for this program would not be provided for in HB 2. Because this is not an on-going statutory appropriation (statutory appropriations do not get reviewed by the legislature each session), if the bill is passed and approved, future funding for this program would need to be included in the Supreme Court's budget request and, after the 2007-2008 biennium, included in HB 2.

Section 7. Codification.

Sections 1 through 5 are to be codified in chapter 1 (general provisions) of Title 3 (Judiciary, Courts). Codification means that only sections 1 through 5 will appear in the Montana Codes Annotated.

Effective dates.

A special effective date is not specified in the bill. As provided in section 1-2-201, MCA, the appropriation section would be effective July 1, 2007, and the other sections would be effective October 1, 2007.

Miscellaneous notes.

This bill draft will receive an official LC number only after the full LJIC has passed a motion to formally request the bill as a committee bill. After it has an official LC number and the LJIC has approved a final draft, the bill will be put into the formal bill draft review process, which includes editing and legal review.