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IN THE SUPREME COURT OF THE STATE OF MONTANA
No. AF 07-0110

IN RE THE PROPOSED AMENDMENTS TO THE MONTANA UNIFORM DISTRICT COURT RULES	COMMENTS OF MONTANA LEGAL SERVICES ASSOCIATION
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Montana Legal Services Association (MLSA) respectfully submits the following comments to the proposed changes to the Montana Uniform District Court Rules. *See* Order, June 13, 2019. MLSA is a non-profit law firm that provides free legal assistance to individuals across Montana. As Montana's only general civil legal aid provider, MLSA has worked for over 50 years to protect and enhance the civil legal rights of some of Montana's most vulnerable populations, including individuals living in poverty, domestic violence (DV) survivors, crime victims, Native Americans, and senior citizens.

MLSA appreciates the opportunity to comment on the proposed changes to the Uniform District Court Rules. MLSA's comments are focused on the potential impact of the proposed changes on low-income Montanans, self-represented litigants, and DV survivors. MLSA recognizes the potential benefit the changes may offer to represented litigants. At the same time, the proposed changes have the potential to negatively impact those without counsel, and could possibly result in deterring pro se litigants from raising valid claims. In order to maximize judicial economy, it is important that court processes are simple and accessible for both pro se litigants and represented parties.

In light of these concerns, MLSA respectfully submits its comments to the changes proposed for Rules 2 and 16, and to the general impact of substantive rule changes on the existing pro se court forms. MLSA has endeavored to suggest alternative provisions that may preserve the benefits of the proposed changes to represented parties while adequately protecting pro se litigants.

I. RULE 2 – MOTIONS

A. Rule 2(a)

Proposed Rule 2(a) mandatorily requires ex parte contact with the non-moving party. The proposal contains no exception for cases involving DV allegations or where one party has a DV order of protection against the other party.

As written, the rule could force the parties to violate an order of protection or force a DV survivor to interact with her abuser in a way that may pose a significant danger to the survivor or the children at issue in the case. If enacted, the rule could dissuade DV survivors from seeking relief from the court in the form of a motion (e.g. the seeking an interim parenting plan or child support) because of the pre-filing contact requirement.

MLSA suggests the following revision:

(a) Prerequisites to Filing a Motion. The text of the motion must state ~~that~~ whether other parties have been contacted and state whether any party objects to the motion. Parties that have not yet appeared in the action or whose default has been entered need not be contacted. If the movant has not contacted a party, then the movant shall explain in the text of the motion why each party has not been contacted (e.g. that an order protection prohibits contact between the parties). The court shall waive the requirements of Rule 2(a) upon a showing of good cause apparent from the text of the motion. When a motion is unopposed, the word "unopposed" must appear in the title of the motion.

B. Rule 2(f)

Proposed Rule 2(f) requires the moving party to file a notice of submittal with the Court after briefing is completed, and to send an additional copy of the notice to the presiding judge's chambers.

This requirement is problematic for pro se litigants because:

- 1) a pro se litigant may not fully understand all of the briefing deadlines, and may not be a reliable source of information for the Court about whether an issue is fully submitted;
- 2) the proposal places pro se litigants and courts at a significant risk of violating prohibitions on ex parte communication between litigants and the court. As non-attorneys, pro se litigants often have difficulty carefully complying with rules regarding service of papers and pleadings. It is not uncommon for pro se litigants to include extraneous material in papers and pleadings or fail to properly serve them contemporaneously. Allowing pro se litigants to submit papers directly to chambers eliminates the gatekeeping function of clerks of court, potentially allowing documents containing inappropriate ex parte material to make their way directly to the presiding judge.

MLSA suggests the following modifications to the proposal:

- 1) Exempt pro se litigants from the rule;
- 2) Remove the requirement that the movant provide a copy to chambers.

II. RULE 16- SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS

MLSA supports the intent of Rule 16—to provide litigants with the option of choosing a streamlined, quicker route to trial, provided that courts have adequate

resources to expedite these cases while meeting other statutory requirements for priority cases (such as dependency and neglect proceedings). However, MLSA is concerned about the application of this rule to pro se litigants, who may select the process for its expedience without adequately understanding the rights waived and full impact of selecting the process.

As currently proposed, the rule does not provide any special requirements to ensure pro se litigants make informed choices when selecting the process or are adequately protected during the process. While the rule requires attorneys to educate their clients about the process, it makes no provision for how pro se litigants will receive similarly comprehensive information about the process.

Further, Rule 16 does not state what happens where the parties disagree about utilizing the Simplified Procedure. The proposal does not clearly require an opt-in by each party.

MLSA proposes the following changes:

- 1) Prior to the effective date of the rule, the Court work with the State Bar of Montana, MLSA, and/or other interested parties to develop a brochure about the process written in plain English which shall be distributed by the Clerks of Court to all parties in all cases upon the filing of a jury demand by any party in the case.

- 2) Clarify that all actions will proceed under the Rules of Civil Procedure, and not the Simplified Procedure, unless all parties agree to utilize the Simplified Procedure in a signed written stipulation filed with the court.

III. FISCAL IMPACT OF THE PROPOSED RULES

As requested by the Montana Supreme Court, MLSA has collaborated with the Access to Justice Commission to develop dozens of civil court forms, primarily for use by pro se litigants. Development of these court forms is time-consuming and expensive for all involved. Implementing the proposed rules would require significant revision and redistribution of many of the pro se forms currently utilized. MLSA respectfully requests that the court consider this issue among others in analyzing the fiscal impact of the proposed rules.

RESPECTFULLY SUBMITTED this 12th day of August, 2019.

MONTANA LEGAL SERVICES ASSOCIATION

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