IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

ACCESS TO JUSTICE COMMISSION:
IN RE THE ADOPTION OF GUIDELINES FOR ESTABLISHING PILOT INFORMAL DOMESTIC RELATIONS TRIALS

PILOT REPORT

In accordance with the Montana Supreme Court's order of August 17, 2021, the Simplified Family Law Resolution Project Administrator submits to the Court this report, which was compiled from feedback provided by participating districts throughout the pilot period. In January 2022, the Informal Domestic Relations Trial (IDRT) program launched in the First Judicial District (Lewis & Clark and Broadwater counties), the Fourth Judicial District (Missoula and Mineral counties), and the Twelfth Judicial District (Chouteau, Hill, and Liberty counties). IDRTs have been used for dissolutions, parenting plans, and orders of protection.

Finding #1: There is general agreement that the IDRT process was beneficial to pilot courts and parties who chose to participate.

"IDRT has been effective in getting folks a more timely resolution that have little dispute with regard to property and need the court to help them navigate parenting plan challenges. This allows the court flexibility to simply ask the parties the questions that matter, rather than watching self-represented litigants fumble through a contested final hearing. IDRT also gives full detail on what to expect from the Court—IDRT is what most self-represented litigants want, as

they do not understand the legal process or legal intricacies such as foundation for evidence, etc." – *Judge Snipes Ruiz, Twelfth Judicial District*

"I think that when we have used IDRT in hearings, it has been very beneficial, made the process more user-friendly for self-represented litigants, and led to better decisions in those cases because we can receive a wider variety of information and direct the testimony more efficiently." – *Judge Abbott, First Judicial District*

"IDRT provides a mechanism for judges to hear what parties have to say because we can overlook some evidentiary foibles and decide what to take into consideration. We get permission to hear the whole story. When we render a decision, the parties can at least rest in the knowledge that they were heard." – *Judge Vannatta, Fourth Judicial District*

Though returned surveys were limited in number, all feedback received from parties themselves was positive, apart from one serious concern related to the power imbalance that can still exist within the IDRT process if one party is represented and one is not.

Finding #2: Some judges and standing masters found IDRT particularly useful for pro se order of protection (OOP) cases.

"In OOP cases without attorneys appearing, I have been using IDRT almost exclusively—works great to bring the temperature down in these proceedings where emotions run hot." – *Judge Snipes Ruiz, Twelfth Judicial District*

"Some of the principles of IDRT work really well with an OOP even if the parties have not elected to use IDRT. For example, the IDRT method of judge involvement is particularly helpful to use in OOP cases to avoid having a pro se petitioner or respondent asking questions directly to the opposing party (which would normally happen in cross examination). In this way,

the judge can essentially run interference by asking the questions of the parties instead." – *Standing Master Rubin, Fourth Judicial District*

Finding #3: It was challenging to encourage participation and secure consent from parties.

Each District created their own plan for informing parties about the IDRT option, and consent could either be elicited through a signed consent form or verbally on the court record. Information about the IDRT process was provided through self-help centers, clerks of court, and scheduling orders, and the option was often discussed during scheduling conferences or just before trials began. Despite those efforts, parties were sometimes still unaware of IDRT or reticent to embrace the process. Often, one party wished to proceed, but the other declined.

"I still am having resistance from parties to using an informal process even when it is clearly to their benefit (even in OOP hearings)." - *Standing Master Rubin, Fourth Judicial District*

"As a practical matter I use IDRT in virtually all of my pro se family law and order of protection cases even though I have only occasionally remembered to go through the formal IDRT paperwork process. I do this because it feels to me to be the natural and efficient way for the matter before me to progress to a conclusion. When I have remembered to do the paperwork, I have found that it caused delay explaining what it was all about." – *Judge Deschamps, Fourth Judicial District*

Finding #4: Court staff have had a generally good experience with the pilot.

According to reports from the districts and staff themselves, the introduction of the IDRT option did not place an addition burden on judicial assistants or scheduling clerks, and some staff spoke positively about the benefits IDRT offers the parties and the court. Staff indicated that they

would be excited if IDRTs continued to be available for pro se litigants in particular because parties often feel more comfortable, and the process is more manageable for courts.

Finding #5: There is a general recommendation that an IDRT rule be adopted and that IDRT become the default process for pro se family law matters.

Overall, the pilot judges, standing masters, and staff like the IDRT process and believe that some of the barriers to entry would be alleviated by instituting it as default. They believe it would increase efficiency, reduce the parties' sense that they are giving something up or selecting a "lite" version of the full family law process, and relieve a great burden from an already-stressed court system.

"I certainly request that IDRT be adopted by the Montana Supreme Court. IDRT should be an opt-out mandatory program where both parties are pro se. Where a party is represented by counsel, I do not recommend IDRT." – *Judge McMahon, First Judicial District*

"I think having an actual IDRT rule of evidence / uniform district court rule would be helpful to explain precisely how it differs from traditional hearings. It would help us better explain it to litigants and lead to more uniformity in how we deal with documentary evidence, experts, cross-examination, etc." – *Judge Abbott, First Judicial District*

"Self-represented litigants would benefit from speedier resolution if this were implemented as default." – *Judge Snipes Ruiz, Twelfth Judicial District*

"I would not object to IDRT as the default for any DR case that has at least one pro se litigant. Regardless of being formally adopted, we are all doing some form of IDRT anyway." – *Judge Vannatta, Fourth Judicial District*

"I wholeheartedly recommend adoption of an IDRT Rule in Montana as a default requirement in family law and order of protection (O/P) cases where one or both parties are pro

se. I strongly encourage IDRT as a default procedure in all pro se family law and O/P cases. I also urge going further and requiring IDRT procedures as the default in all family law and O/P cases where only one side is represented by counsel. While there will still be an imbalance of power and skill, utilizing IDRT procedures in such cases will help in a small way to level the playing field." – *Judge Deschamps, Fourth Judicial District*

There are elements of any potential rule that may require specific consideration. First, if IDRT were to become the default process, it would be beneficial to specify for whom it would be the default and how the opt-out procedure would function. Some judges and standing masters would like to see IDRT become the default process for DR cases in which at least one party is pro se, while others would advocate that IDRT should be default only where both parties are pro se. There is also a question of whether the formal process would only be able to be used if both parties elect to opt out of an IDRT.

Additionally, there is concern from some judges about the characterization that "the rules of evidence do not apply" in IDRTs. Some suggested that a more accurate way to describe how the rules of evidence function within an IDRT would be that the rules of evidence are administered in a relaxed fashion, or the rules of evidence do still exist, but the judges are the gatekeepers.

Final Notes

31 IDRTs were identified by case number during the pilot period. The number of completed IDRTs reported informally was higher, but since there was not a cost-effective way to implement IDRT tracking into the court data system, and sometimes parties did not consent until the day of the IDRT, it was a challenge for judges, standing masters, and court staff to accurately capture which cases used the IDRT process.

In response to pilot district requests, program staff will create additional materials to support the IDRT process during the summer of 2023. These will include a bench card/script for judges with suggestions on holding an effective IDRT hearing, a video for participants introducing the IDRT option (which may be able to be incorporated into required parenting classes in some districts), a template for an IDRT-specific scheduling order, and a handbook for implementing the IDRT process for districts that choose to participate in the future.

The program administrator anticipates that the pilot group judges will follow this report with additional, specific recommendations before the Court opens a public comment period or considers whether to adopt the program on a permanent basis or rescind of supersede the pilot Order. Any additional proposals will be submitted to the Court by June 23, 2023.

DATED this 25th day of May, 2023.

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