

AF 07-0110

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

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

O R D E R

The Access to Justice Commission petitioned this Court in August 2021 to authorize a pilot project with guidelines for district courts wishing to participate in informal domestic relations trials (IDRT) within their jurisdictions during the pilot. The Court approved the petition and adopted guidelines, and several district courts opted to participate. Pursuant to the Court's August 17, 2021 Order, the participating district courts, through the Supreme Court Administrator's Simplified Family Law Project Administrator, submitted a report to the Court with comments and a recommendation that the Court establish the IDRT process as a permanent rule of court. The Project Administrator followed with an addendum to the report containing additional recommendations. The Court put the proposal out for public comment on June 30, 2023.

After considering the participating courts' recommendations and public comment on the proposal, the Court hereby adopts the Informal Domestic Relations Trial process as a new rule in the Montana Uniform District Court Rules, which will become Rule 17. Rule 17 is effective October 1, 2023. The Court further directs the Project Administrator to develop a Bench Guide to the IDRT Process for District Courts, including sample forms and instructions, and to continue developing informational materials for parties considering or participating in the process.

IT IS ORDERED that the proposed revisions as approved by the Court are ADOPTED. The Montana Uniform District Court Rules are amended to include Rule 17, which is set forth in the attachment to this Order, effective October 1, 2023.

This Order and the attached rule shall be posted on the Court's website. In addition, the Clerk is directed to provide copies of this Order and the attachment to: the State Law Library, the Office of the Court Administrator for dissemination to all District Court Judges, the Simplified Family Law Project Administrator, the members of the Access to Justice Commission, the Executive Director of the Montana Legal Services Association, the President of the University of Great Falls, the Dean of the Alexander Blewett III School of Law, Todd Everts, Shana Harrington, and Karl Kempel at Montana Legislative Services, Eric Goodemote at Thomson Reuters, Patti Glueckert and the Statute Legislation department at LexisNexis, and the State Bar of Montana with the request that it provide notice to the membership by publication in the *Montana Lawyer* magazine and through other electronic and timely means .

DATED this 30th day of August, 2023.

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON
/S/ JIM RICE

RULE 17 – INFORMAL DOMESTIC RELATIONS TRIALS

- (a) Unless one or both parties objects or the court orders otherwise, in every original or modification action for dissolution of marriage, parenting and visitation, child and medical support, declaration of invalidity of marriage, paternity, separation, grandparent-grandchild contact, or orders of protection brought under MCA Title 40, including interim proceedings, in which at least one party is self-represented, the issues will be resolved through an informal domestic relations trial before a judge or standing master as provided in this Rule. If both parties are represented by counsel and wish to use the informal process provided in this Rule, the court in its discretion may allow the informal proceeding upon stipulation in the record.
- (b) The court must explain the informal domestic relations trial process and advise the parties of their right not to consent. The court may include in the case scheduling order a deadline for parties to opt out of the process. A party's decision to opt out must be stated on the record or in a signed filing with the court.
- (c) The court may refuse to allow the parties to utilize the informal domestic relations trial process at any time and may direct that a case proceed in the traditional manner.
- (d) The court may allow a party to withdraw from an informal domestic relations trial election as long as the other party is not prejudiced by the withdrawal. The court will not allow a withdrawal of an election that has the effect of postponing the trial date absent a showing of good cause.
- (e) During an informal domestic relations trial, parties may present any evidence they believe is relevant. The court may admit any evidence a party offers, even if this evidence might be inadmissible under formal rules of evidence, and may determine how much weight to give any evidence. The traditional format used to question witnesses at trial does not apply. In many cases, the parties will be the only witnesses. The parties may call other witnesses in the discretion of the court. The court may question the parties and any other witnesses, and the parties may suggest additional topics or questions.
- (f) Any evidence offered during an informal domestic relations trial initiated under this Rule is not admissible in any other proceeding unless the court in the other proceeding determines the evidence meets the applicable rules of evidence.
- (g) If an informal domestic relations trial converts to a formal proceeding, the court will determine the admissibility of evidence previously offered in the

informal proceeding. The court may not rely on any evidence in a formal proceeding that is not admissible under the applicable rules of evidence.

- (h) The court will allow each party an opportunity to file any objections or motions on the admissibility or use of any evidence offered in an informal domestic relations trial before relying on that evidence in a formal proceeding.
- (i) An informal domestic relations trial will proceed as follows:
 - (1) At the beginning of an informal domestic relations trial, the court will ask the parties to affirm that they understand the rules and procedures of the informal domestic relations trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the informal domestic relations trial.
 - (2) The court may ask the parties or their lawyers for a brief summary of the issues.
 - (3) The court will allow the moving party to speak to the court under oath concerning all issues in dispute. The party is not questioned by the other party or any lawyers, but the court may question the party to develop evidence required by any statute or rule or necessary in the court's discretion to address the matters at issue.
 - (4) The parties will not be subject to cross-examination. However, the court will ask the nonmoving party or their lawyer whether there are any other areas the party wishes the court to inquire about. The court will inquire into these areas if requested and if relevant to an issue to be decided by the court.
 - (5) The process in subsections (i)(3) and (i)(4) is then repeated for the other party.
 - (6) Expert reports will be received as exhibits. Upon the request of the court or either party, the expert will be sworn in and subjected to questioning by the parties, their lawyers, or the court.
 - (7) The court may receive any exhibits offered by the parties which are capable of being made a part of the record of the case. The court will determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented.

- (8) The court will allow the parties or their lawyers to respond briefly to the statements of the other party.
 - (9) The court will offer each party or the party's lawyer the opportunity to make a closing statement.
 - (10) At the conclusion of the case, the court will render judgment. The court may take the matter under advisement, but it will make its best efforts to issue prompt judgments.
 - (11) The court may modify these procedures as justice and fundamental fairness requires.
- (j) A case proceeding as an informal domestic relations trial will be subject to the same pretrial procedures and orders of the court that apply to traditional cases. Parties seeking a dissolution proceeding under informal domestic relations trials are subject to the mandatory disclosure requirements of MCA § 40-4-252.
- (k) The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.