

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

IN RE REQUEST BY MONTANA LEGAL SERVICES ASSOCIATION TO ADOPT RULES
AUTHORIZING CERTIFIED LAY ADVOCATES TO PROVIDE LIMITED LEGAL
SERVICES IN JUSTICE COURTS AND CITY COURTS

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PETITION

Montana Legal Services Association (MLSA) petitions the Court, in the exercise of its constitutional authority to make rules governing conduct of its members of the State Bar and those admitted to practice, to adopt rules authorizing certified lay advocates to provide limited legal services in Justice Courts and City Courts. MLSA will train and mentor these non-lawyer lay advocates, or Community Justice Workers (CJWs), who will provide legal services in Order of Protection cases, and simple housing and consumer matters¹ in Justice Courts and City Courts. MLSA has developed this project with support from the Montana Supreme Court Access to Justice Commission and in conjunction with the State Bar of Montana and the Office of the Supreme Court Administrator.

In support of this Petition, MLSA represents:

1. MLSA is a private, non-profit law firm that provides non-criminal legal information, advice, and representation to thousands of Montanans each year. MLSA serves the entire state of Montana.
2. MLSA has successfully developed the Tribal Advocacy Incubator Project (TAIP), a project which supports community members to become legal advocates in tribal courts. TAIP recruits, trains, mentors, and supports people to become tribal lay advocates, permitted to represent tribal members in tribal court with common civil legal matters. TAIP advocates are authorized to practice in the tribal court. TAIP partners with the

¹ MLSA is currently focusing the Community Justice Worker Program on representation in Order of Protection matters. MLSA anticipates developing similar programs in the areas of consumer law and housing law. It is expected that these programs will focus on representation in simple evictions and debt collection proceedings.

University of Montana Alexander Blewett III School of Law and six Tribal Courts on the Crow, Northern Cheyenne, Fort Peck, Fort Belknap, Rocky Boy's, and Blackfeet Reservations.

3. MLSA is working in partnership with Alaska Legal Services Corporation as part of their Community Justice Worker Disaster Response Cohort, on a project in which a lay advocate, working with and under the supervision of an MLSA lawyer, provides assistance to eligible clients in matters relating to public benefits. The project is made possible by a grant from the Legal Services Corporation.

The Montana Community Justice Worker Project – *Order of Protection Matters.*

4. The federal Department of Justice, Office on Violence Against Women, recently awarded MLSA a \$500,000, thirty-six month grant, under which MLSA, in partnership with the YWCA of Missoula (YWCA), Safe Harbor of Lake County, and Fort Peck Tribes' Red Bird Woman Center, will implement the Montana Community Justice Worker Project.
5. The Montana Community Justice Worker Project is an active cooperation between the grant partners, the Montana State Bar, the Montana State Supreme Court Access to Justice Commission; the Montana Coalition Against Domestic and Sexual Violence; as well as MLSA's Tribal Advocate Incubator Protect (TAIP). The Project will provide expanded legal assistance to adult and minor victims of domestic violence, dating violence, sexual assault, and stalking in rural communities, including Lake and Mineral Counties, and Blackfeet, Fort Belknap, Rocky Boy's, Fort Peck, Northern Cheyenne, Crow, and Flathead Reservations.

6. The purpose of the Project is to enhance access to justice for persons seeking Orders of Protection, by training non-attorney CJWs to represent survivors in Orders of Protection in courts of limited jurisdiction.

Community Justice Worker Project Details.

7. Initially, MLSA will establish the training framework for domestic and sexual violence advocates and tribal lay advocates to provide skilled representation to survivors seeking Orders of Protection in Montana's courts of limited jurisdiction. CJWs will be trained to provide legal services specifically limited to Order of Protection proceedings in justice courts and city courts. The services include drafting documents, providing legal advice, and appearing in court on behalf of the petitioner for the Order of Protection. Later, after collaborating with community partners and identifying specific legal needs, MLSA anticipates developing an appropriate curriculum and training program, to certify CJWs in providing the same services in simple housing and consumer law matters heard in courts of limited jurisdiction.
8. Applicants for legal assistance will be advised that CJWs are not lawyers. Applicants must give their informed consent, confirmed in writing, in order to participate in the Project. CJWs will agree to be bound to the appropriate Rules of Professional Conduct. CJW training will include discussion of the relevant Rules of Professional Conduct and limitations on the information and assistance that CJWs may provide. The CJWs will be instructed to avoid conflicts of interest, abide by confidentiality rules, and refrain from revealing any information about the client's situation except to Project staff. The Project will set up a process by which clients may submit a grievance relating to their

relationship with the Project. The Project will have detailed instruction on court processes, the applicable law for the limited areas of representation, the roles of representatives, and will outline how to identify complex matters that should be referred back to the MLSA attorney for services. Project participants must participate in interactive courtroom simulations and must pass a certification exam.

9. MLSA will assign a CJW Project Attorney to offer attorney shadowing and mentoring opportunities to the CJWs. The Project Attorney will conduct evaluation sessions with the CJWs to review the assistance they are providing, discuss reported concerns, and provide additional guidance.
10. The CJW Project Attorney will provide legal advice, brief services, limited scope legal services, and full representation to service area survivors. Partners will refer qualifying individuals who need additional civil legal aid assistance to MLSA.

The Need for Community Justice Workers.

11. Access to legal assistance is limited in Montana. Results of a recent survey by the Montana State Bar Association emphasize the magnitude of the justice gap. According to the Executive Summary, “overwhelming agreement” exists that there is a justice gap in Montana – particularly in rural areas. Seventy-two percent of respondents believe that addressing access to justice gaps is “critical and urgent,” and 73% consider low income to be the biggest barrier to accessing legal services.
12. The lack of adequate legal resources is not defined by geography or case type. The impact is felt throughout Montana. Even where an individual has the resources to pay for

a private attorney, accessing one can be difficult: Montana's 30 eastern-most counties (excluding the state's most populous county of Yellowstone) have just 79 active attorneys - one attorney for every 2,386 citizens in eastern Montana. Most of Montana's lawyers are concentrated in larger towns and cities. Out of Montana's 56 counties, 27 have 5 or fewer attorneys, with some of those attorneys inactive due to age, serving as judges, conflicted out, or otherwise unable to represent a low-income client.²

13. This problem is exacerbated when a person is low-income. The Montana Access to Justice Commission estimates that 9 out of 10 low-income Montanans do not get any or enough legal assistance. Overall, in 2024 MLSA had 9,015 requests for assistance but only had resources to handle 4,502 statewide cases. It is clear that the current legal resources available in Montana are not enough to handle many Montanans' basic legal needs, and that more creative approaches are required.

14. Montanans face an acute need for additional legal assistance in domestic violence cases. Crimes of domestic violence, stalking, sexual assault, and dating violence are all too common in Montana. In 2022, 44% of all aggravated assaults in Montana were assaults on a victim with an intimate or family relationship to the offender, with 5,838 partner or family member assaults occurring in total.³ Meanwhile, a 2017 National Center for Injury Prevention and Control Report estimated that 37.2% of Montana women and 34.6% of

² American Bar Association, Profile of the Legal Profession (2020), available at <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

³ See Montana Board of Crime Control, *Statistical Analysis Center, Annual Agency NIBRS Offense Summary dashboard*, at https://dataportal.mt.gov/t/MBCC/views/CIM-DomesticViolence/Dash_DVstats_County.

Montana men experience intimate partner violence or abuse in their lifetimes.⁴ For Native American women, the likelihood of facing these crimes is even greater, with an estimated 84.3% of Native American and Alaska Native women nationwide experiencing violence in their lifetime.⁵ The outcomes of these offenses can be dire. From 2018-2023, at least 91 people were killed in Montana as a result of domestic violence-related murders.⁶ American Indians are victims of intimate partner homicide at a disproportionate rate: while American Indians make up 6.5% of Montana’s population, they make up 10% of intimate partner homicide events.⁷ Unfortunately, evidence shows that severe violence and murder risk escalates when a victim tries to leave.⁸ For rural Survivors leaving an abusive relationship, receiving community-based DV services is vital to ensure safety,

⁴ National Center for Injury Prevention and Control (2017). The national intimate partner and sexual violence survey: 2010-2012 State Report. Centers for Disease Control and Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

⁵ André B. Rosay, “National Institute of Justice Research Report: Violence Against American Indian and Alaska native Women and Men,” Department of Justice (May 2016), page 2, available at <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>

⁶ See Montana Board of Crime Control, *Statistical Analysis Center, Domestic Violence Crime in Montana* at <https://mbcc.mt.gov/Data/Montana-Reports/Crime-Dashboards>.

⁷ See Report to the Legislature: Montana Domestic Violence Fatality Review Commission (August 2023), page 12, 28, available at <https://dojmt.gov/wp-content/uploads/March-2023-Montana-DV-Fatality-Review-Report-FINAL.pdf>

⁸ Campbell, J.C., Webster, et al., *Assessing Risk Factors for Intimate Partner Homicide*, Nat’l Inst. Of Justice Journal 250 (2003); Wilson, M. & Daly, M., *Violence and Victims* (1993) 8(1), 3-15.

because it provides local access to legal protections needed to safely exit their relationship.

15. MLSA tries to fill this justice gap by providing free legal information, advice and representation to as many survivors of domestic violence as possible, but the demand far outstrips MLSA's available resources and capacity. In 2023, MLSA handled 1,644 statewide cases involving survivors, with legal services ranging from legal advice to full representation. These services make a big difference in survivors' lives, but more survivors need legal assistance than MLSA has the resources to help.

16. Montana lawyers support the limited licensure of lay advocates as a viable solution to help bridge the justice gap. Over one half of all respondents to the survey support limited licensure in the areas of housing, government benefits, and family law. The survey identified the top five areas in which non-lawyers can be trained to help: housing: landlord-tenant; government benefits/assistance; family law, domestic relations; restraining orders; consumer law/debt. According to the survey, judges are more confident than lawyers about the potential efficacy of licensed legal paraprofessionals.⁹

Issues Relating to the Prohibition of the Unauthorized Practice of Law

17. The Community Justice Worker Project is an innovative effort to help fill the justice gap in Montana and assist persons in need. But it raises questions of whether the work of the

⁹ State Bar of Montana, *2024 Taskforce on the Future of the Legal Profession Survey*.

CJWs and MLSA attorneys' participation in the Project would expose them to disciplinary sanctions related to the unauthorized practice of law.

18. Montana law prohibits people who are not lawyers from practicing law without authorization. The prohibitions on the unauthorized practice of law are intended to protect clients.

19. Mont. Code Ann. § 37-61-201 defines who is considered to be practicing law.

37-61-201. Who considered to be practicing law. Any person who holds out to the public or advertises as an attorney or who appears in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who engages in the business and duties and performs acts, matters, and things that are usually done or performed by an attorney at law in the practice of that profession for the purposes of parts 1 through 3 of this chapter is considered to be practicing law.

Mont. Code Ann. § 37-61-210 sets the penalty for practicing without a license.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney, the person is guilty of a contempt of court.

20. In *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, the Court observed that the unauthorized practice statutes “are narrowly tailored to target only the provision of legal services in Montana by individuals who have not proven through examination and admission to the bar that they ‘are qualified and possess a familiarity with [Montana] law.’” 2006 MT 284, ¶ 80, 334 Mont. 311, 147 P.3d 200, (citation omitted); cert. denied, 549 U.S. 1282, 127 S. Ct. 1868, 167 L. Ed. 2d 324 (2007).

21. According to the Restatement (Third) of the Law Governing Lawyers, § 4, comment c, the traditional position of bar associations in support of a prohibition on the unauthorized

practice of law has been that nonlawyer provision of services denies the person served the benefit of legal measures, such as the attorney-client privilege, the benefits of confidentiality of client information and the protection against conflicts of interest, and the protection of such measures as those regulating lawyer trust accounts and requiring lawyers to supervise nonlawyer personnel.

22. Only an enrolled active member of the State Bar of Montana may practice law in the state. Exceptions to this rule exist. Under the Student Practice Rule adopted by this Court in 1975, law students who meet certain criteria and are adequately trained to perform as a legal intern, may appear in court, prepare pleadings and briefs, and perform other appropriate legal services. *Shapiro v. Jefferson County*, 278 Mont. 109, 114-15, 923 P.2d 543, 546 (1996).¹⁰
23. The Montana Rules of Professional Conduct (MRPC) apply to all members of the State Bar of Montana, which includes all persons admitted to the practice of law in Montana. *Steele v. McGregor*, 1998 MT 85, ¶ 28, 288 Mont. 238, 956 P.2d 1364.
24. The purpose of the rule limiting the practice of law to members of the bar is to “protect[] the public against rendition of legal services by unqualified persons.” ABA Model Rule 5.5, Comment [2].¹¹

¹⁰ As a further exception to the general rule, Mont. Code Ann. § 25-31-601 permits a friend or relative to assist and speak on behalf of a party in a “one-time only” privilege in justice court matters. *Sparks v. Johnson*, 252 Mont. 39, 44, 826 P.2d 928, 930 (1992) (The Court extended the privilege to civil proceedings in city courts).

¹¹ While this Court has not formally adopted the Comments to the ABA Model Rules of Professional Conduct, it has found ABA model rules and standards to offer persuasive guidance, particularly when the language of the ABA Rule is identical, or nearly identical, to Montana’s

25. The Board of Trustees of the State Bar of Montana voted to support the CJW project during a June 2025 Board of Trustees meeting.
26. This Court may “make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members.” Art. VII, Sec. 2(3), Mont. Const.; *Harlen v. Helena*, 208 Mont. 45, 49, 676 P.2d 191, 193 (1994); *In re the Rules of Professional Conduct*, 2000 MT 110, ¶ 9, 299 Mont. 321, 2 P.3d 806.
27. Without authorization from this Court, a CJW who provides legal assistance through the auspices of the Community Justice Worker Project would risk being subjected to discipline or sanctions for engaging in the unauthorized practice of law, and a lawyer admitted to practice in Montana who participates in the Project risks being subjected to disciplinary proceedings for an alleged violation of MRPC 5.5(b). A respondent or a lawyer for a respondent in a Justice Court proceeding might file a complaint with the Office of Disciplinary Counsel, alleging that a CJW Project lawyer was violating MRPC 5.5. This is not an idle concern - the scenario happened in *Steele v. McGregor*, 1998 MT 85, ¶¶ 28-30, 288 Mont. 238, 956 P.2d 1364. McGregor, a state Department of Labor and Industry lawyer, sent a letter to the Court’s Commission on Unauthorized Practice of law, advising of his concern that Steele, a non-lawyer certified public accountant who represented a company in an administrative matter, was practicing law without a license. McGregor, in response to a lawsuit filed by Steele, said he felt he was required by MRPC

own rule. See, e.g., *In re Perry*, 2013 MT 6, ¶ 21, 368 Mont. 211, 293 P.3d 170; *Stock v. State*, 2014 MT 46, ¶14, 374 Mont. 80, 318 3d 1054.

5.5(b) to refrain from assisting Steele in what McGregor perceived to be the unauthorized practice of law. This Court concluded that McGregor's motion was authorized by the order promulgating the rules of professional conduct, and, specifically, by Rule 5.5(b).

MLSA's Request for Relief

28. MLSA requests that the Court enter a special Order modifying Rule 14, Montana Uniform Rules for the Justice and City Courts to permit community justice workers who are certified by the CJW Project to provide legal assistance in these courts. The proposed revised Rule 14 is as follows (with amendment underlined):

Rule 14. Representation.

(a) A party may represent oneself, or be represented by counsel or by a non-lawyer Community Justice Worker, as provided in (b) below.

(b) Except as provided in (c) below, no representation can be made on behalf of a party by another person except an attorney duly licensed by the State of Montana or by a non-lawyer community justice worker who is authorized to provide limited legal assistance to clients in specified areas of law, under the jurisdiction of the Montana Supreme Court and the State Bar of Montana. A nonresident attorney may be permitted to represent a party upon motion of a licensed resident attorney as allowed under Section IV, Pro Hac Vice, of the 1998 Rules for Admission to the Bar of Montana.

(c) Unless the articles of organization state otherwise, a member with a majority interest in a limited liability company may represent the limited liability company as an attorney in justice's court as provided in 25-31-601.

(d) Death or removal of an attorney shall be governed by Rule 10 of the Uniform District Court Rules.

29. MLSA further requests that the Court enter a special Order which sets out definitions; defines eligibility factors for CJWs; establishes an application process; provides that the State Bar of Montana may approve applications for CJWs; specifies the types of

authorized legal assistance CJWs may provide; and, mandates regular reports to the Court and the State Bar. A proposed Order is submitted with this Petition.

Dated this 15th day of September, 2025.

MONTANA LEGAL SERVICES ASSOCIATION

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