

**Appendix D:  
Proposed Legislative and Rule Revisions**

MCA 40-4-219(9):

Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

MCA 40-4-301(2):

Unless each of the parties provides written, informed consent, the court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party. "Informed consent" shall mean an educated, competent, and voluntary choice to enter into mediation. Mediations conducted under this subsection shall be conducted by a mediator trained in domestic violence.

40-4-302(3):

Subject to 40-4-301(1) and except in cases involving domestic violence, the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement. In cases involving domestic violence, victims also may elect to have non-attorney advocates and support persons present in the mediation.

40-4-307. Mediator qualifications:

A mediator must meet the following minimum qualifications:

- (1) knowledge of the court system and the procedures used in family law matters;
- (2) knowledge of other resources in the community to which the parties may be referred for assistance;
- (3) knowledge of domestic violence;
- (4) if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and parenting research; and
- (5) knowledge of the mediation process.

MCA 39-51-2111(5):

(a) "domestic violence" means the physical, sexual, or emotional abuse of an individual or the individual's child by that individual's spouse, former spouse, partner, or former

partner, or by a person with whom that individual or the individual's child lives or has recently lived;

#### Administrative Rule

#### 37.47.1001 DEFINITIONS

(2) "Domestic violence" means any act or threatened act of violence, including any forceful detention of an individual which results or threatens to result in physical, sexual, or emotional injury and is committed by a person against another person to whom such person is or was married or with whom the assaulted person cohabits or formerly cohabited. "Spouse abuse" is included within the definition of "domestic violence".

Montana Rule of Appellate Procedure 7: Mandatory appellate alternative dispute resolution.

(b) Domestic relations. Appeals in domestic relations cases, including but not limited to all dissolution issues, child custody and support issues, maintenance issues and modifications of orders entered with respect to those issues; but excluding proceedings regarding abused or neglected children, paternity disputes, adoptions, and all juvenile and contempt proceedings when the excluded matters constitute the only issues on appeal. In addition, if there has been a finding by a district court that one of the parties or a child of one of the parties has been a victim of domestic violence, or if the Court otherwise has reason to suspect domestic violence, the appellate mediation may not be conducted unless upon each of the parties' written, informed consent.