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## *Access to Civil Legal Justice Study*

Final Report of the  
Law and Justice Interim Committee

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## Section I

### SJR 6 - Access to Civil Legal Justice Study

#### RECOMMENDATION

The legislature should enact LC0072 establishing a state-level self-help law program. The program will help coordinate and sustain the efforts and accomplishments of numerous individuals and organizations in the legal community who have dedicated years of service to developing "how to" legal packets, on-line and hard-copy references materials, and instructional classes for people who cannot afford an attorney and must navigate the court system *pro se*. The self-help law program would also help recruit attorneys who can provide the *pro bono* (free) services essential to ensuring the self-help materials are current, applicable, and properly used. The LJIC's recommended legislation would establish this self-help law program under the Supreme Court and appropriate \$505,000 from the state general fund in each year of the upcoming biennium to fund a handful of staff positions.

#### **The problem**

What if you were injured on the job, got fired as a result, and your workers' compensation benefits were being denied? Or, what if your car broke down and you purchased a used car with the help of a payday lender so you could keep working, but you fell behind on a payment and were now being notified that the car would be repossessed or your wages garnished? Or, what if you were a single mom and your ex-husband, after failing to make promised child support payments, which left you broke, hired an attorney to petition for sole custody of the children? Or, what if you suffered from a mental illness and, although you were qualified and competent, your employer discovered your illness and fired you? In any of these cases, what if you had to represent yourself in court?

The LJIC found that the above scenarios are all too real for many Montanans. A legal needs study conducted in 2004 estimated that there are 175,000 people in 71,400 Montana households who are living at or below 125% of federal poverty guidelines. (See Figure \_\_\_\_.) The legal needs study also found that low-income households experienced an average of 3.5 civil legal problems in 2004, which amounted to more than 247,000 legal needs. Most of these legal needs involved employment, housing, family, and consumer matters. The study also showed that in 84% (or about 207,000) of the cases, at least one party had to face the legal problem without an attorney's assistance. On a scale of "no big deal" to "extremely important", the vast majority of the problems were rated by those experiencing the problems as "important" to "extremely important". Family law (e.g. abuse, dissolution, child custody, adoption, etc.) was by far the most pressing legal problem experienced by survey respondents.<sup>9</sup>

Although equal justice for all irrespective of financial means is commonly accepted as a fundamental principle of American justice, access to justice depends largely on a person's access to an attorney (one who is trained and skilled in applying the law and navigating the court system). However, when a person of limited financial means encounters a legal problem and is unable to afford an attorney, the problem, which could have been solved in a court of law, can quickly snowball, causing an avalanche of additional problems leading to consequences such as higher rates of unemployment, family break down, crime, and homelessness.

So, what can be done to help people with legal problems who are unable to afford an attorney? Attorneys are strongly encouraged to, and many do, provide assistance *pro bono* (i.e., for free). However, it is not feasible that everyone with a legal problem and who is unable to afford an attorney will be able to find free legal advice. In fact, most people with limited financial means cannot and instead must represent themselves in court (i.e., *pro se*).

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<sup>9</sup> D. Michael Dale, "Legal Needs of Low Income Households in Montana", Montana State Bar Association in conjunction with the Equal Justice Task Force and Access to Justice Committee, 2005. This legal needs study was finalized during the course of the LJIC's SJR 6 study.

The LJIC found that in most civil cases in Montana, at least one party in the case is representing themselves (i.e., *pro se*). A case study in the 21st Judicial District indicated that the number of *pro se* cases is growing and that, in 2005, at least 64% of the district court's cases involved at least one *pro se* litigant.<sup>10</sup> Other testimony indicated a far higher percentage (more than 80%) of civil court cases involve *pro se* litigants.

### **Historical perspective**

A review of American history helps one gain an appreciation for how fundamental legal assistance to the poor is as a principle of American justice. Immigration to America reached its peak between 1880-1930 when immigration reached its peak. To build healthy communities, immigrant aid societies were formed to assist fellow immigrants to secure food, shelter, jobs, and other essentials. In the struggle secure these essentials, immigrants quickly learned that, in a nation built on laws, access to the legal system was essential to opening doors of opportunity that were being shut by ethnic discrimination, unfair labor practices, fraud, and other injustices.

In 1919, Mr. Reginald Heber Smith, who today is heralded as the father of legal aid to the poor in America, proclaimed in a book entitled *Justice and the Poor* that access to the machinery of law was not only a fundamental right, but that providing access to justice was a public duty and moral obligation. Smith challenged lawyers to donate their services for the public good (i.e., *pro bono publico*) and called upon government to help. Legal aid, which had begun as an integral part of immigrant aid societies, soon evolved into a public-private partnership; and non-profit legal aid corporations were founded in nearly every urban center in America.

Federal government funding entered the picture in 1964, when President Lyndon B. Johnson declared a national war on poverty. Johnson's Office of Economic Opportunity initiated a federal grant program to help local communities fund

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<sup>10</sup> LJIC hearing and exhibits, February 17, 2006.

"neighborhood law offices" to provide legal assistance to low income citizens. In an effort to make the federal program more responsive to local concerns and remove politics from funding decisions, Congress in 1974 established an independent, non-profit national entity called the Legal Services Corporation (LSC) to administer the federal grant program for local legal services associations.

Although the amount of federal funding for LSC has peaked and dipped over the years, beginning in 1995, a series of budget cuts forced numerous LSC-funded legal service associations to drastically reduce staff, cut services, and close offices. State-level strategic planning efforts have become a pre-requisite for receipt of LSC funding; and there is renewed emphasis and more reliance on *pro bono* work by private attorneys, self-help programs, and student legal services. Banking law changes have also helped. Interest on Lawyer Trust Accounts (IOLTA) programs allow money that attorneys keep in client services accounts to be pooled to earn interest, which can then be donated to non-profit legal aid associations.

While LSC funding remains the largest single source of funding for many local civil legal aid programs, non-LSC funding now exceeds LSC funding in 32 states. The LSC's annual budget of approximately \$340 million funds 143 programs and 3,700 attorney positions nationwide. Annually, more than 1 million cases and 4 million legal "matters" are handled by LSC-funded programs, though 4.2 million Americans are financially eligible for the services.<sup>11</sup>

### **Inventory of services in Montana**

Civil legal services can be broken into three basic categories:

- direct assistance from an attorney employed by a non-profit organization established specifically to provide legal aid to low-income people;
- *pro bono* assistance from a private attorney; and

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<sup>11</sup> Legal Services Corporation, 2002-2004 Annual Report.

- self-help programs designed to help people who represent themselves in court.

Dedicated volunteers and non-profit organizations in Montana engage in several collaborative efforts to deliver legal aid to low-income Montanans. The following is a partial inventory of these civil legal aid programs:

***Montana Supreme Court***

- Commission on Self-Represented Litigants
- Equal Justice Task Force
- State Law Library

***State and Local Bar Association***

- Access to Justice Committee
- Encouraging *pro bono* work
- Individual attorneys participating in the IOLTA program (see below)

***Montana Legal Services Association***

- Direct assistance from MLSA lawyers
- Private attorney assistance (*pro bono* programs)
- Self-help programs

***Montana Justice Foundation***

- Provides funding through Interest on Lawyer Trust Accounts (IOLTA)

***Montana Advocacy Program***

- Non-profit corporation under federal law advocating for the rights of Montanans with disabilities.

***UM Law School***

- Clinic programs for students to work under attorney supervision (e.g., Indian Law Clinic, Criminal Defense Clinic, MLSA Clinic)
- Community Involvement Grant Program
- Faculty *pro bono* services
- *Pro se* resources available through law library and web site

***People's Law Center***

- Non-profit corporation providing direct representation in obtaining certain Social Security benefits

***Cascade County Law Clinic***

- Provides legal assistance and coordinates *pro bono* services in a variety of civil legal areas.

**Montana Legal Services Association**

Founded in 1966, the MLSA assists people whose income threshold is at or less than 125% of federal poverty guidelines. The MLSA provides civil legal services through:

- a web-site ([www.MontanaLawHelp.org](http://www.MontanaLawHelp.org));
- a telephone hot-line;
- the Eastern Montana Self-help Law Project;
- recruiting *pro bono* attorney services; and
- direct representation by MLSA attorneys.<sup>12</sup>

The MLSA also collaborates with a variety of state and local public and private entities who form the civil legal aid community in Montana. With an annual budget of approximately \$2.4 million, MLSA employs 14.63 full-time attorneys and 11 paralegals in seven offices statewide. In 2004, MLSA offices closed about 5,000 cases (about 370 of the cases were closed with private attorney assistance)

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<sup>12</sup> LJIC, *Minutes*, September 21, 2005, p. 4.

and 12,000 people received other MLSA assistance.<sup>13</sup>

In 2005, LSC funding to the MLSA totaled about \$1.5 million, accounting for 56% of its total funding. Non-LSC funding totaled slightly more than \$850,000. The two most significant non-LSC funding sources for the MLSA in 2005 were from district court filing fees deposited to a state special revenue account for civil legal services to indigent domestic violence victims (about \$187,000)<sup>14</sup> and from the Montana Justice Foundation from interest earned on client trust accounts in the IOLTA program (about \$145,000).<sup>15</sup>

### **Pro Bono Services**

The Montana Supreme Court also actively works to promote access to justice. The Supreme Court's Rules of Professional Conduct encourage attorneys to donate at least 50 hours of service annually to individual clients or to charitable, religious, civic, or other non-profit community organizations.<sup>16</sup> The Supreme Court has also established an Equal Justice Task Force of volunteers so that justices, judges, clerks of court, the law school and law librarians, Native Americans, the Montana Justice Foundation, the State Bar, and the MLSA can

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<sup>13</sup> LJIC, *Minutes*,

<sup>14</sup> Under section 25-1-201(3)(a) and (5), \$19 from the filing fee for dissolution of marriage and \$9 from the fees for filing other actions or proceedings must be deposited to an account in the state special revenue fund created in section 3-2-714, MCA, for civil legal assistance for indigent victims of domestic abuse. This fund is administered by the supreme court administrator.

<sup>15</sup> Montana's IOLTA program is provided for by the Montana Supreme Court under Rule 1.18 of the Rules of Professional Conduct. Participation is mandatory (though some lawyers and law firms are specifically excepted). Funds received from a client by the participating lawyer or firm that are nominal in amount or to be held only for a short period of time are deposited to interest-bearing accounts with a participating financial institution. All interest or dividends generated on the money in these accounts is paid quarterly to the Montana Justice Foundation. The Montana Justice Foundation distributes the money through a competitive grant process to qualified non-profit organizations providing civil legal services to low income Montanans. According to a Montana Justice Foundation flyer, 80% to 90% of all interest generated on the IOLTA accounts has gone to the MLSA.

<sup>16</sup> Rule 6.1 - *Pro Bono Publico*.

collaborate on access to justice matters.

An internet forum at [www.MontanaProBono.net](http://www.MontanaProBono.net) provides a resource and referral network for attorneys, paralegals, law students, and faculty interested in providing *pro bono* services. There are about 2,700 active members of the Bar in Montana. A 2004 survey of Bar members indicated that about 50% of the 1,600 members who responded to the survey provided some level of *pro bono* services during the year. Survey respondents stated that the biggest challenge limiting their ability to provide more *pro bono* services is time and the need to earn a living.<sup>17</sup>

Testimony from Chief Justice Karla Gray also indicated a strong commitment to access to justice and that the Judicial Branch and the Bar are doing all that can be done to encourage *pro bono* services and support volunteer access to justice initiatives.<sup>18</sup>

### **Self help**

The third component of civil legal services in Montana is "self-help", i.e., resources to help people help themselves and to assist people who represent themselves in court (i.e., *pro se*).<sup>19</sup>

*On-line:* A key self-help resource is the web site at [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org). A product of collaboration among the various stakeholders in the civil legal services community, this web site organizes legal information by type of legal need (such as family law, employment, benefits, disability, taxes, seniors, American Indian issues, etc.) It also provides a directory of services available by county, access to available standardize court forms and documents, and referral services to attorneys who may be able to provide *pro bono* assistance.

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<sup>17</sup> LJIC, *Minutes*, September 21, 2006, pp. 4-6.

<sup>18</sup> LJIC, *Minutes*, January 19, 2006, pp. 8-12.

<sup>19</sup> *Pro Se* is a Latin term meaning "on one's own behalf; in courts, it refers to persons who present their own cases without lawyers.

*MLSA:* A corner-stone of self-help resources in Montana is the Eastern Montana Self-Help Law Project sponsored by the MLSA. The project offers classes, individual explanations of the law and legal options, information on court locations and procedures, court forms, computer work stations, and legal advise from staff or volunteer attorneys.<sup>20</sup>

*Court-based services:* The judicial system itself has undertaken various efforts to assist self-represented persons access the court system. For example, the Supreme Court's law library answers questions and provides access to legal references and research materials. According to testimony from the state law librarian, Ms. Judy Meadows (who is also a member of the Supreme Court's Commission of Self-Represented Litigants), roughly 75% of law library users are lay people accessing materials in an effort to help themselves with a legal problem. However, Ms. Meadows expressed concern that many people who are of moderate financial means do not qualify for MLSA services (available only to those with an income of 125% of poverty or below) but who still cannot afford to hire an attorney.

Clerks of court are also a nexus of information for self-represented litigants who need information about court processes. However, clerks may provide information and access to forms, but cannot and should not provide legal advise. This often places clerks in a difficult position because, for example, a person needs, which the clerk may provide, but then asks for help filling out the form, which, if provided, can amount to providing legal advise. Ms. Meadows testified that she and her staff have volunteered many hours to travel around the state training Clerks of Court about how to provide legal information without straying over the line and providing legal advise (which would be an unauthorized practice of law).

The Commission on Self-Represented Litigants, Ms. Meadows testified, is also actively working with judges and justices to help make the court system more "user friendly" for self-represented litigants. All of the work done by the

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<sup>20</sup> Eastern Montana Self-Help Law Project flyer, revised 3/04.

Commission is volunteer.<sup>21</sup>

*Attorney assistance still an essential part of self-help:* Testimony throughout the study process confirmed that volunteers spent many extra hours over more than two years to develop a "how to" packet of court documents that *pro se* litigants in the area of family law. Similar packets could be made in other areas of law. However, producing these packets, ensuring the forms meet the needs of local courts, and developing instruction materials to help conduct clinics for *pro se* litigants about which forms to use and how to use them is a monumental task. It is also an on-going task due to the fluid nature of the legal process, needs of local court officials, and, of course, the ever-changing law. Nonetheless, access to justice requires more than access to legal forms. Because access to justice requires knowledge about how to apply the law and work the machinery of justice, direct attorney assistance, either through *pro bono* assistance or non-profit legal aid organizations such as the MLSA, will always be an essential piece of any self-help program.

## **Conclusion**

The LJIC's bill (LC0072) to fund a modest self-help law program supervised by the Supreme Court reflects the following conclusions:

- There is a huge unmet need in Montana for civil legal aid.
- An individual or family legal problem that is unaddressed is likely to snowball and cause an avalanche of problems resulting in unemployment, family breakdown, poverty, and other hardships.
- People of limited financial means facing these hardships will most likely have to navigate the justice system *pro se* (i.e., as a self-represented

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<sup>21</sup> LJIC, Minutes, November 17, 2005, pp. 4-9.

litigant); so the most feasible way to provide legal aid is through self-help programs. However, due to the nature of the legal process, *pro bono* attorney assistance will always be an essential component of any self-help program.

- The legal community in Montana (judges, attorneys, advocates, the law school, clerks of court, etc.) is doing all it can to help people of limited financial means navigate Montana's legal system. Though great strides have been taken and many individuals continue to do commendable jobs, more should be done.
- State-level support is now needed to provide the "wheels" and the "driver" for the "car" of self-help legal assistance that has already been built through years of dedicated effort.