A Mile Wide and an Inch Deep No More: Achieving Access to Justice in Rural Montana

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A MILE WIDE AND AN INCH DEEP: NO MORE: ACHIEVING ACCESS TO JUSTICE IN RURAL MONTANA

Klaus Sitte*

I. INTRODUCTION

In 1965, President Lyndon Johnson declared an “unconditional war on poverty,” asking Americans to join him in that effort. One year later, Montana Legal Services Association was created to provide those living in poverty with the legal help necessary to fight that war. Since then, more than 90% of Montana’s lawyers have never known a justice system without a federally-funded program which provides civil legal assistance to low-income Montanans. For many, access to justice may seem a matter of course. Court personnel, county attorney offices, and the private bar frequently refer those in need of help to Legal Services. Many expect that each applicant receives assistance. In reality, shrinking resources limit the available aid, and for every client served by a Legal Services law firm, another is turned away.

Montana Legal Services Association (MLSA) is Montana’s only free statewide civil legal assistance law firm. MLSA serves those living within the federal poverty standard—for a family of four in 2009, for example, living in poverty means living on an income below $22,060. Fourteen percent of Montana’s 957,861 residents live in poverty, resulting in a potential client base of over 134,000 people. Thirty-seven percent of Montana’s 957,861 residents live in poverty, resulting in a potential client base of over 134,000 people.

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1. While the origins of this 19th-century phrase remain obscure, Gary Connelley, former chair of the State Bar’s Access to Justice Committee, used the phrase facetiously to describe the Montana Legal Services Association following the severe funding cut of the mid-1990s.
3. Interview with Betsy Brandborg, Bar Counsel St. B. Mont. (Feb. 10, 2009).
Montana's population falls within 200% of the federal poverty level. These residents qualify for limited MLSA assistance as well. In 2009, MLSA serves clients with two-thirds fewer staff than 40 years ago. The task of representing clients with critical civil legal needs remains a daunting challenge.

II. Overview

The Montana Legal Services Association was incorporated over 40 years ago to meet the civil legal needs of Montanans living in poverty. MLSA's mission is to provide access to the justice system by delivering high-quality civil legal assistance to low-income Montanans within law firm resources and priorities. MLSA advises, helps, and represents clients at every level of the justice system, from the simplest advice case to the most complex appeal. MLSA cases appear in a range of venues including administrative hearings, justice courts, the Montana Supreme Court, federal courts, and even the United States Supreme Court.

In the United States, organized civil legal assistance for the poor first appeared over 130 years ago. In 1875, the German Immigrants' Society (later, the Legal Aid Society of New York) was the first attempt to level the playing field between those with lawyers and those without. Not until the turbulent 1960s, however, was there a significant and sustained effort to create a nation-wide, federally-funded civil legal assistance system. As part of President Lyndon Johnson's War on Poverty, Congress created the Office of Economic Opportunity (OEO). OEO financially supported Legal Services offices across the country. By 1974, many OEO Legal Services offices were funded through the Legal Services Corporation Act.

While the concept of "justice for all" sounds egalitarian, some people rejected the concept of federally-funded civil legal assistance programs.

10. To be eligible for MLSA's assistance, applicants must be within 125% of the federal poverty standard for direct representation. 45 C.F.R. § 1611.3. MLSA may offer services to a limited number of people living between 125% and 200% of the poverty standard. 45 C.F.R. § 1611.5. MLSA may not provide assistance to applicants who exceed 200% of the poverty level. Id. An applicant's assets are also considered. 45 C.F.R. § 1611.3(d)(1).
Opponents considered Legal Aid lawyers "a bunch of ideological ambulance chasers doing their own thing at the expense of the rural poor." President Nixon sought to dismantle OEO and, consequently, the Legal Services programs funded by OEO. Ironically, it was President Nixon who signed the Legal Services Corporation Act, one of his last acts before his resignation.

The early 1980s ushered in the first attempt to eliminate the Legal Services Corporation (LSC) entirely. President Ronald Reagan was one of the most vocal adversaries of federally-funded Legal Services programs. Reagan resented public funding for what he thought were social movements that accomplished change through the court system. Still, Congress refused to follow the Reagan’s lead and continued to fund LSC. Although the Reagan administration succeeded in decreasing LSC funding to $241 million in 1982—a dramatic 25% funding cut—LSC funding increased to $305.5 million by 1988. Under President George Bush Sr., funding levels increased only slightly. Later, since Hillary Rodham Clinton once served as the LSC board chair, LSC supporters expected funding increases when Bill Clinton became president. The 104th Congress and its commitment to eliminate LSC, however, ultimately dashed those hopes.

In 1996, Congress cut LSC funding by 30% and imposed a significant number of new restrictions on LSC grantee activities. New regulations prohibited LSC grantees from, among other things, challenging welfare reform and from participating in class-action lawsuits. A prohibition on requesting or collecting attorney’s fees effectively ended LSC grantee participation in areas like Social Security hearings where attorney’s fees were

14. "Legal Aid" and "Legal Services" are used interchangeably.
15. Shepard, supra n. 13, at 103–104.
16. Id.
19. Id.
21. Id.
23. Id.
25. 1 Leg. Servs., Fact Book, supra n. 20, at 3.
common. Regulations subjected both public and private funding to the same restrictions.28

III. UNDER THE BIG SKY: BIG STATE EQUALS BIGGER STAKES

Montana's vast size presents unique obstacles to delivering free civil legal services. Montana is the fourth largest state, yet ranks 44th in population.29 With more than 145,000 square miles, Montana's land mass exceeds the combined surface area of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Vermont, and 16 Rhode Islands.30 Only 54% of Montana's population lives in towns larger than 2,800 people.31 Legal needs draw MLSA lawyers to every corner of the state. Driving from Libby to Fairview in good weather can take more than 11 hours. Demanding travel requirements consume MLSA law firm dollars and staff hours. MLSA receives less funding than many smaller states because of its small population base.32 Resources are stretched thinly over Montana's giant landscape.

Still, Montanans in both rural and urban areas require legal assistance to secure basic human needs. A disabled person entitled to federal supplemental security income may be unable to obtain appropriate medical care if the federal assistance is wrongly denied. If a landlord fails to repair the malfunctioning water heater, the tenant's need for habitable housing remains unmet.

By providing civil legal services, MLSA strives to ensure people receive their basic needs. MLSA "was incorporated under the laws of the state of Montana on May 5, 1966, for the promotion of and assistance in, directly or indirectly, the provision of broader and more adequate legal representation for indigent persons resident in the state of Montana."33

Despite these benevolent and admirable goals, the creation of MLSA was not without controversy. The Montana Supreme Court twice considered ethical issues surrounding MLSA's community education activities.34 Legal Services antagonists claimed that MLSA community education activ-

27. Id. at § 1642 (prohibiting collection of attorney's fees).
28. Houseman & Perle, supra n. 12, at 34.
32. Leg. Servs., Fact Book, supra n. 20, at 8. MLSA receives about the same funding as Rhode Island, for example.
33. In re Professional Ethics, 503 P.2d 531, 532 (Mont. 1972) [hereinafter Professional Ethics II].
34. Id.; In re Professional Ethics, 485 P.2d 351, 352–353 (Mont. 1971) [hereinafter Professional Ethics I].
ities violated the Canons of Professional Ethics by allegedly soliciting clients for “contrived litigation.” 35 After attending a client education presentation, a reporter published an article claiming that MLSA solicited clients for specific cases. On its own initiative, the Montana Supreme Court issued an order to show cause to compel the director and deputy director to justify MLSA’s client community outreach activities. After reviewing a deposition of the reporter, the Court cleared MLSA of any wrongdoing. Still, the Court’s action sent MLSA supporters a clear message that this new law firm would be closely watched.

Regardless of the challenges, MLSA established field offices in Butte, Great Falls, Missoula, Helena, and Billings. Attorneys served Wolf Point, Hardin, Havre, and Cut Bank by making routine visits to the rural townships for face-to-face meetings—a delivery system known as “circuit riding.” Three Montana counties were served by a “Judicare” model, whereby local private attorneys received a substantially reduced fee to represent eligible clients. MLSA later expanded to provide two more counties with Judicare coverage, and circuit riders were added to Glendive, Miles City, Bozeman, Lewistown, and Anaconda. 36

MLSA’s first board consisted of 34 people, 20 of whom were attorneys. 37 This cumbersome board provided minimal oversight to individual local boards. Local office boards met regularly, but had little or no contact with the statewide board. 38 The law firm really operated as a loose confederation of offices with a central payroll location in Helena. This organizational structure made it unclear whether two separate MLSA offices could represent opposing parties in a civil action without creating a conflict of interest.

Over the course of the next three decades, both federal and internal MLSA regulations and procedures were adopted to affirm MLSA as a single law firm with branch offices. The MLSA Board, for example, eventually confirmed that a branch office in Havre could not represent the opposing party on a case filed by the Helena office. Multiple branch-office law firms were unknown in Montana in the early 1970s. All decisions to engage in major litigation, such as appeals or complex litigation were also restricted to the executive director. 39

37. Id.
39. Author’s Personal Recollection.
Large funding cuts in the early 1980s and the mid-1990s played a role in centralizing administrative duties in the main administrative office. Competitive bidding for LSC grants compelled higher levels of reporting from local LSC grantees. The result, overall, was greater oversight and control by the administrative office at the expense of local autonomy by individual lawyers and field offices.

Sustained animosity from the White House during the 1980s took its toll on most Legal Aid programs as federal funding remained stagnant or saw only minimal increases. LSC’s stated goal in 1974 was two LSC-funded attorneys per 10,000 low-income people. Insufficient funding restrained LSC from achieving this goal, however. In the first 100 days of Ronald Reagan’s first term, LSC’s minimum access plan was no longer achievable. Legal Aid field offices closed in Montana and throughout the nation.

No Legal Services program escaped the massive funding cuts in 1996. MLSA lost 48% of its revenue with a combination of a 30% federal appropriations reduction and a prohibition against receiving attorney’s fees. At one time, MLSA operated 14 offices with 39 attorneys. By 1997, MLSA served Montana with only seven offices and 12 lawyers.

By the end of the 1990s, most Legal Services programs sought other funding sources. MLSA was among the first to receive a grant authorized by the Violence Against Women Act (VAWA). Some Legal Aid organizations engaged in private fundraising while others worked with State Bar organizations on a program named IOLTA, an acronym for “interest on lawyers’ trust accounts.” IOLTA generates money from the interest that client funds—which are either negligible or held for too short a time to earn interest on their own—create when pooled into one trust account. The Montana Bar Foundation, now called the Montana Justice Foundation (MJF), distributes the interest from the trust account to programs serving the public interest. MLSA became the first recipient of money from the

40. 45 CFR § 1634.
42. Leg. Servs., Documenting, supra n. 4, at 1.
44. Id. at 37.
46. Author’s Personal Recollection.
Montana Bar Foundation. Currently, MLSA receives grants from 30 different sources.  

By 2001, MLSA began to rely more heavily on MJF funding. IOLTA funding, however, was also inconsistent and unstable. In 2002, IOLTA produced such little income that MJF could not grant MLSA any funds. This forced MLSA to close its Havre office and layoff staff in Great Falls and Kalispell. By 2003, only Helena, Butte, Billings, and Missoula offered walk-in field offices. Attorneys in Poplar, Browning, and Bozeman began working primarily from their homes.

With only 12 attorneys thinly spread statewide, "business as usual" at MLSA was no longer an option. The access-to-justice community rallied to bolster new initiatives. The Montana Supreme Court created an Equal Justice Task Force to examine and coordinate efforts among all access-to-justice stakeholders. Those stakeholders include MLSA, the State Bar of Montana, the Montana Judges Association, the Attorney General's office, the Clerks of Court Association, The University of Montana School of Law, the Pro Se Commission, MJF, and a host of others. Simultaneously, the State Bar Legal Services Delivery Committee became the Access to Justice Committee and clarified its objective to "expand civil legal services to low income people."

MLSA began its own internal examination to improve its legal services delivery systems. A primary change involved restructuring MLSA's legal services delivery model. The original model relied on face-to-face interactions between attorneys and clients. With fewer attorneys, caseloads frequently grew unmanageable. Twelve lawyers could not adequately provide services to 134,000 or more potentially eligible low-income residents. If it was difficult for 39 lawyers in the mid-1970s to meet the critical legal needs of Montana's low-income population, it became impossible for 12 lawyers to do so. Currently, 2,874 lawyers maintain licenses to practice law.
in Montana—one lawyer for every 333 people. For Montanans living in poverty, there is only one lawyer for every 11,000 people.\footnote{Janice F. Dogget, 2009 State Bar Statistics (2009).}

The MLSA Board considered the inequity in the distribution of services statewide. The model based on face-to-face interactions favored those who could walk into an MLSA office. Unfairly, a renter in Billings could more easily access MLSA’s services than a tenant in Circle. A model based on face-to-face interactions failed to meet changing needs. Knowing that something needed to be done, the Board reconsidered new ways to deliver services.

White House opposition in the 1980s forced LSC to adopt regulations requiring grantees to allocate 12.5\% of its funding to private attorney involvement.\footnote{45 C.F.R. § 1614.1.} Some LSC-funded programs simply distributed 12.5\% of their budget to local and state bar programs.\footnote{Houseman & Perle, supra n. 12, at 23.} Other LSC-funded programs used Judicare\footnote{Judicare was a flat fee-for-service model used by some states, paying private attorneys to provide civil legal assistance to low-income people at a substantial reduced hourly rate. \textit{Id.} at 10. In Ravalli County, Judicare began as early as 1996 but was discounted because its program primarily served a limited number of civil legal needs in uncontested family law cases. Informal discussion with former Director Neil Haight.} and similar means to fulfill the 12.5\% requirement, essentially ignoring the “involvement” aspect and thereby washing hands of any greater cooperation with the private bar.\footnote{Houseman & Perle, supra n. 12, at 23.} The Board decided not to revisit the Judicare for a number of reasons: high cost, difficulty in supervising, and without greater supervision, a failure to guarantee high-quality services. Judicare would have further reduced diminishing resources available for service delivery.

As an alternative, the MLSA Board considered ways the law firm could collaborate more closely and effectively with the State Bar, with local bar associations, and with other emerging access-to-justice initiatives. At the same time, the Equal Justice Task Force (EJTF) decided to survey Montanans living in poverty to determine which civil legal needs were being neglected.\footnote{Shepherd, supra n. 53, at 23; D. Michael Dale, \textit{Legal Needs of Low Income Households in Montana: Final Report 2005}, 36 (Mont. St. Bar. Assoc. 2005).} Predictably, the survey results paralleled studies in neighboring states. More than 200,000 separate incidents of unmet civil legal needs affect Montanans living in poverty every year.\footnote{\textit{Id.}} The data underscored the significant volume of unmet legal needs. When MLSA had its highest number of staff and attorneys, more than 12,000 clients per year

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were served. That number dwindled to 4,000 per year following the cutbacks in federal funding.66

The MLSA Board and staff agreed that changes were needed to make legal services more accessible. MLSA responded by implementing a five-tier model that utilizes a reorganized HelpLine, Self-Help Law Unit, self-service web sites, pro bono support, and direct representation by specialty units.67

A. HelpLine

To meet the increasing demand for assistance, MLSA created its first Hotline in 1997, shortly after the 1996 funding reductions. MLSA intended the Hotline to provide quick answers to those clients with routine and simple questions. Hotlines were neither new nor innovative by the time MLSA unveiled its version. Other Legal Aid providers and nonprofits nationwide had established effective hotlines. Experimenting with its own Hotline, MLSA initially staffed the first prototype with two attorneys on two toll-free numbers. Financial eligibility screening was conducted by local support staff

MLSA was, unfortunately, unprepared for the volume of callers seeking assistance. Within the first six months, the Hotline was inundated with an overwhelming number of calls from which this original version of Hotline telephone assistance never recovered. Even MLSA staffers called it a “warm line,” since it was difficult, if not impossible, to have a “hot” pressing case reach a Hotline attorney in time for them to help. It was not unusual to have 250 or more callers on the waiting list at a given time.

Busy signals and answering machine messages frequently greeted new applicants. Many people abandoned attempts to apply via telephone; instead, and contrary to the desired result, they visited the offices. MLSA staff struggled to make outgoing calls because telephones were constantly engaged by the Hotline. Lack of funding slowed any improvements to the system.

Although the Hotline enabled MLSA to serve greater numbers, some people, both inside and outside MLSA, opposed Hotline advice. While the Hotline enabled MLSA to serve more clients, it represented a form of indirect representation. Some saw the Hotline as a cheap and condescending substitute for direct representation. Still, MLSA was not ready to abandon the Hotline approach. Clients could resolve simple legal problems with just a bit of guidance. For example, if a landlord wrongfully withheld a security

deposit, a properly advised tenant could secure its return with an appropriate demand letter. If a debt collection agency harassed a debtor at her place of employment, after proper instruction on her rights, she could easily draft an appropriate letter to stop the harassment.68 While the Hotline empowered clients to take control of their cases, a thorough restructuring was needed to more efficiently handle the volume of calls.

MLSA created a new “HelpLine” to serve as the “first responder” to requests for services. The HelpLine placed experienced paralegals on the phone lines, while several veteran attorneys supervised and advised the paralegals. Later, intake staff, specially trained in gathering information on client eligibility, joined the HelpLine.

At first, LSC continued to require every client to sign a retainer agreement. This impractical policy significantly slowed HelpLine service. LSC eventually interpreted this regulation to require a signed retainer agreement only where a client physically visited in an MLSA office. Now most MLSA callers can reach an intake specialist in 3.5 attempts.69 Specialized computer software helps staff screen clients within 7 to 12 minutes.70 Ninety percent of callers receive a 45-minute consultation within three days.71 HelpLine staff immediately refer legal emergencies to specialists. Previously, a client might wait days before obtaining legal advice. The vast majority of callers receive sufficient advice to resolve their problems. In 2008, MLSA’s HelpLine served over 7,500 low-income Montanans.72

B. Self-Help Law Unit

The Self-Help Law Unit (SHLU) aids clients who need more than simple advice. SHLU seeks to prepare clients for pro se representation by educating them about the court system and supplying them with well-prepared, accurate forms. Family law, for example, is sufficiently complicated so that pro se litigants need additional support to navigate the jurisdictional and procedural complexities. Even so, MLSA determined that family law was an area where direct representation by an attorney was not always necessary. With guidance and the correct forms, pro se litigants could often learn to represent themselves. Simple cases—especially where only one party is appearing—are good candidates for pro se representation. A pro se appli-

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68. 15 U.S.C. § 1692(c) (2008). Once a consumer requests, in writing, that a debt collector cease further communications, then, except for limited circumstances, the debt collector must stop contacting the consumer. This is commonly referred to as a Section 1692 letter.
70. Id.
71. Id.
cant supplied with pre-drafted pleadings, appropriate documents, and sound instructions can proceed without an attorney.

Over the course of several years, using a combination of technology-improvement grants from LSC, MLSA developed user-friendly forms and pleadings for pro se litigants. MLSA recently incorporated the use of online documents into its legal resources, using a software application called HotDocs that helps users generate personalized forms. The online software prompts the user to answer questions and then inserts the information into a completed legal form or letter.73 Partnering with the Montana Supreme Court Administrator’s Office and the Commission on Self-Represented Litigants, MLSA staff is drafting an array of family law forms and other user-friendly forms for other legal topic areas. The forms are available through www.MontanaLawHelp.org and through the Montana Supreme Court Law Library.74

Clients complete a Family Law Information Form and identify the legal documents necessary for a particular family law action. Clients can access appropriate forms on the Internet. A pro se client then submits completed forms to SHLU for review by qualified MLSA staff or lawyer volunteers. SHLU also provides clients with step-by-step instructions for filing and completing the family law action. The Unit ensures that clients with special filing or procedural deadlines receive individual help. Since MLSA does not directly represent the participants, SHLU can serve some individuals with incomes exceeding 125%, but below 200%, of the poverty guideline.75

C. MLSA Websites

The MLSA website, www.MontanaLawHelp.org, includes an additional client resource which provides answers to simple legal questions. “[Forty percent] of rural residents with household incomes of $20,000–$30,000 go online.”76 In the Rocky Mountain states of Montana, Colorado, Idaho, Nevada, Utah, and Wyoming, 63.7% of rural residents use


75. 45 C.F.R. § 1611.5.

76. Pew Internet & Am. Life Project, Rural Areas and the Internet: Rural Americans’ Internet Use Has Grown, but They Continue to Lag Behind Others 19 (Pew Internet & Am. Life Project 2004).
the Internet frequently. Nearly every public library in Montana offers free public access to the Internet. MLSA applicants frequently use the Internet and are generally able to access computers.

MLSA designed a website where clients could easily access information about common areas of civil law. MLSA received one of the first LSC technology grants to create a Montana law-specific website. The website offers current information about Legal Aid offices and other community resources as well.

With the help of access-to-justice stakeholders, MLSA populated the website with a wide range of credible legal information for low to moderate income individuals. The website can offer guidance to tenants when a landlord refuses to fix a water heater, when a former spouse denies child visitation rights, or when a debt collector harasses an individual at work. The website provides Montanans with 24-hour access to legal information in at least ten categories of law, and the list is growing. For persons who need help navigating the website, MLSA offers “Live Help,” a service in which a live volunteer will respond to computer use related questions.

D. Pro Bono Support

MLSA has always relied on the pro bono help of Montana’s lawyers. In the early years of MLSA, many lawyers felt that Legal Aid lawyers eliminated the obligation for pro bono work. When the first major cutback in federal funding occurred during the Reagan administration in 1981, MLSA staff quickly became aware that the private bar was a key partner in the delivery of services to Montanans living in poverty.

Montana’s lawyers significantly contribute to serving Montanans in poverty by representing pro bono clients for free, but some speculate that pro bono work actually decreased after MLSA appeared. Cases once needing pro bono help could be referred to MLSA. Recognizing the need for pro bono services in the state and in the profession, the Montana Supreme Court adopted a revised Rule 6.1 of the Montana Rules of Professional Conduct in 2004. The revised rule included the more specific goal that lawyers should provide at least 50 hours of pro bono legal services per year.

Some have argued, even at a national level, that if all lawyers took their responsibility for pro bono representation seriously, there would be no need for federally-funded civil legal services assistance. The reality, how-

ever, is that poverty law is now a specialty. 79 Few private attorneys are willing to delve into the quagmire of federal housing regulations, for example. An entire body of due process rulings, now part of the common culture, emerged largely because Legal Services attorneys, who had time and energy to focus on these issues, were not dependent on collecting client fees. 80

For three decades, regulations have required Legal Services programs to devote 12.5% of its budget to support the private bar in its representation of citizens living in poverty. 81 While some suspect law makers imposed the 12.5% private attorney involvement to dismantle the LSC, the result was actually the opposite. Bar associations, private attorneys, and others concerned about access to justice formed new alliances, partnerships, and collaborations to advocate for low-income citizens. The intense lobbying effort, testimony, and advocacy of the American Bar Association and major bar organizations from nearly every state was paramount in saving LSC from elimination in the Gingrich-led Congress. 82

As MLSA restructured itself in the face of 21st-century challenges, the involvement of the private bar was deemed essential. With limited resources, MLSA could neither serve the many clients nor address the numerous legal issues alone. MLSA’s renewed interest in collaborating with the private bar sparked commitments to support pro bono activity from the Montana State Bar’s Access to Justice Committee, the Montana Supreme Court’s Equal Justice Task Force, and a host of other groups.

MLSA committed resources to professional liability insurance coverage for pro bono attorneys. 83 Because LSC regulations prohibit resources from being devoted to non-eligible clients, 84 MLSA developed a method of screening and referral for local organized bar association programs. Pro bono lawyers—who accept MLSA-screened clients through local bar-sponsored pro bono plans—are now insured through MLSA’s professional liability insurance carrier. 85

Next, MLSA encouraged its staff to become more involved and active in local bar activities. The MLSA staff frequently serves as a resource to

80. Houseman & Perle, supra n. 12, at 18–19. Between 1967 and 1972, for example, the U.S. Supreme Court heard more than 200 cases from Legal Services programs. Gwendolyn Mink & Alice O’Conner, Poverty in the United States: An Encyclopedia of History, Politics, and Policy 1, 436 (ABC-CLIO 2004).
81. 45 C.F.R. § 1614.1.
82. Shepard, supra n. 13, at 227.
83. MLSA’s professional liability insurance carrier, Complete Equity Markets, provides a specific Lloyd’s Insurance Certificate Endorsement for primary pro bono coverage for cases arising out of pro bono participation.
84. 45 C.F.R. § 1611.3(b).
85. See supra n. 83.
Continuing Legal Education (CLE) programs across the state. MLSA has trained hundreds of Montanans in courses with titles such as “Dealing with Clients Living in Poverty,” “Consumer Law Basics,” and “Principles of Montana Residential Landlord/Tenant Law.” Pro bono attorneys frequently consult MLSA staff members in areas of law with which they are unfamiliar. The MLSA Board recommitted itself to pro bono work by adopting a supportive Pro Bono Resolution, whereby the MLSA Board directed the staff to work with all access-to-justice stakeholders in Montana in collaborating, cooperating, and developing ways of promoting pro bono initiatives.86 While MLSA cannot provide financial support for pro bono work, such as fees, court costs, or expenses, MLSA plays a vital role in supporting pro bono attorneys with training, co-counseling, and mentoring.

Along with the creation of its client-centered website, MLSA also created MontanaProBono.net.87 This website contains information specifically designed for lawyers who commit themselves to doing pro bono work. After registering on the site, attorneys can access a library that boasts, among other things, a variety of practice aides, forms, and research tools.

MLSA staff work with every local Montana bar association to support pro bono recruitment and referral. In partnership with local bars, MLSA often provides free or lost cost continuing legal education training in exchange for accepting pro bono referrals. With help from the State Bar’s equal justice coordinator, the Montana Supreme Court’s pro bono coordinator, the Access to Justice Committee, the Equal Justice Task Force, and other interested organizations, MLSA promotes alternative means of fulfilling the pro bono obligations required by Rule 6.1 of the Montana Rules of Professional Conduct.88 Lawyers can volunteer at clinics in which they provide pro se litigants with advice and answers to common legal questions.89 Pro bono requirements can be satisfied by working on pamphlets, website content, training, mediating, and mentoring.90 While direct representation continues to be the most-sought service, lawyers unable or reluctant to do one-on-one direct representation casework can still meet the requirements of Rule 6.1.

Pro bono representation is a vital element in the delivery of legal assistance to people living in poverty. The work of volunteer lawyers no doubt

will become more significant as financial resources to support MLSA remain stagnant or dwindle. Lawyers are becoming increasingly aware that the obligation to do pro bono work is not charity but rather an integral and essential responsibility of the profession.

E. Direct Representation

Clients seeking direct representation comprise MLSA’s greatest number of service requests. Many people believe an attorney has greater power to address their legal problems. Direct representation, however, is neither client empowering nor cost effective. MLSA cannot directly represent all those requesting services. Instead, MLSA funnels cases to specialty law units for further action, if warranted. Currently, MLSA’s specialty units are:

- Domestic Violence Unit
- Housing Law Unit
- Consumer Law Unit
- Public Benefits Law Unit
- Native American Law Unit
- Migrant Farm worker Law Unit
- Employment Law Unit

So what happens when a caller seeks legal assistance? Assume, for example, a tenant needs help retrieving a security deposit. When the tenant calls the MLSA HelpLine, the caller’s financial and asset information is gathered. If the client is eligible, the client receives an appointment with an attorney or paralegal within three days. Because the tenant is neither being evicted from the apartment nor facing any legal deadlines, the Intake Unit would determine the situation does not require emergency action. During the HelpLine appointment, the attorney provides the client with information about Montana’s Residential Tenants Security Deposit Act, educates the client about the wrongful withholding of security deposits, and advises the client to write a letter demanding the return of the deposit. The Housing Law Unit routinely reviews all housing law cases to determine whether previous clients have complained about the same landlord. The Housing Law Unit may decide to reconnect with the client to inquire whether the landlord returned the security deposit. If the landlord did not return the deposit, the Housing Law Unit may provide the tenant more direct help and may even actively represent the client.

Cases for further action and individual representation are selected based on the specific priorities within a unit, as developed and adopted by

91. Currently, the Employment Law Unit is vacant because of funding shortfalls.
MLSA's board. MLSA reviews unit and law firm priorities regularly, after consulting with its clients, client groups, access-to-justice stakeholders, and staff. Regulations require the MLSA Board to submit its approved priorities to LSC annually. Each substantive law unit considers the impact of new cases on the individual client, the client community, and unit staff. Regrettably, there are times when new cases are precluded by the press of current caseloads.

MLSA accepts cases regardless of client location. While some staff will travel to remote locations for court representation, MLSA uses technology to meet the challenges of practicing law in a large rural state. As of 2009, MLSA is the only Legal Aid program in the country to use videoconferencing when representing clients in court. The videoconferencing system allows an attorney in Cut Bank to represent a Missoula resident in a Miles City court. The system enables residents in every corner of the state to receive substantially similar services. Through an agreement between MLSA and the Montana Supreme Court, even attorneys representing pro bono clients may use the state's district court videoconferencing systems.

Callers who have cases with short deadlines, such as those with answer or response due dates, bypass the HelpLine advice staff and are processed by specialty units. So, if a caller has been served with a summons and complaint seeking recovery for damages to an apartment, the Intake staff immediately refers the applicant for further action to the Self-Help Law Unit and the Housing Law Unit. The Self-Help Law Unit may help the client draft an answer, while the Housing Law Unit considers what, if any, further assistance MLSA can provide. In areas of the state where local pro bono programs exist, the caller might be referred to a private attorney who could seek attorney's fees in a landlord-tenant case.

F. On-Going Efforts to Reach Rural Montanans

In order to reach rural Montanans, MLSA has fully integrated computer-based technology and the latest technological innovations into the delivery system. MLSA ensures that each staff member has a computer and access to updated computer-based software. High-speed scanners are used for secure electronic document transmission. Conflict checking within MLSA's intake database is virtually instantaneous. Ponderous and time consuming manual legal research is now completed with specialized legal research websites, such as LexisNexis. Secure instant messaging capabili-

93. 45 C.F.R. § 1620.3 (requiring procedures and setting guidelines for establishing priorities for resource use); Minutes of MLSA Bd. Mtgs. (unpublished minutes, annual Dec. mtg.) (on file with MLSA).
94. 45 C.F.R. § 1620.5.
ties enable more efficient communication in the organization. Live Internet and computer-based interactive webinar meetings have replaced tedious conference calls.

Clients directly benefit from MLSA’s incorporation of technology. Clients in remote locations especially benefit from MLSA’s technology updates. Email, fax, and videoconferencing enable more efficient and, ultimately, more effective representation. With videoconferencing, for example, an attorney can represent a client in court from hundreds of miles away. MLSA will eventually perfect an online application process to make the intake process even simpler. The effective use of technology will soon touch every aspect of client contact.

IV. Conclusion

By the time this article is published, MLSA will have experienced another round of reductions in personnel. These painful layoffs are necessary for the future health of the law firm. The effects of minimal increases in federal funding and of the dramatic downturn in IOLTA funds have affected MLSA’s budget significantly. Increasing costs in the overall delivery of services have taken their toll on MLSA. The changes MLSA has made during the past five years enable MLSA to continue to deliver the highest quality service to the greatest number of Montanans with critical legal needs.

In their rousing defense of public funding for the legal services, Professors Rennard Strickland and Fran Read assert:

Public funding for legal services must receive more emphasis as well as more taxpayer dollars. The bar must emphasize the duty to provide pro bono services and work to expand the number of attorneys providing such services . . . . The public must be prepared to fund an adequate judicial system. Justice does not come cheap. Failure to adequately fund a judicial system costs more in the long run. Pay now, or pay more later—not only in dollars, but in human tragedy.95

When inadequate heat makes a low-income tenant’s apartment uninhabitable, who will help? If creditors improperly obtain a waitress’s tips, how can she buy food for her children? Clients contact MLSA only in times of crisis. Stable families and safe homes benefit all of society. Access to lawyers and the justice system is a societal need, not a problem of the legal profession. A recent Billings Gazette editorial opined, “The [justice] system isn’t just unless all citizens can use it.”96


Despite remarkable support for access-to-justice efforts in Montana, reaching all those who need civil legal assistance remains elusive. The State Bar, the Montana Supreme Court, MLSA, and, indeed, all access-to-justice stakeholders will need to redouble efforts to increase pro bono work statewide.

MLSA will remain the flagship of access to justice for Montana’s poor. Since its incorporation more than four decades ago, MLSA has provided hope to more than 250,000 Montanans. MLSA is now part of Montana’s common culture and expectations of its citizens. When the Legal Services Corporation was created in 1974 to support organizations like MLSA, it was viewed as a reaffirmation of faith in the rule of law.97 The presence of MLSA, as a partner within Montana’s justice system, is no different. As the state’s largest civil legal aid provider to Montana’s poor, MLSA remains an integral part of Montana’s justice system and the rule of law.

MLSA offers hope. MLSA’s presence, the advice MLSA offers, and the ability to listen—without judgment—may seem trivial to most people, but makes a world of difference to those without hope. For more than 40 years, MLSA has made a difference in people’s lives. Continuing change will be needed to meet the increasing needs of Montanans living in poverty during the next 40 years. MLSA is ready to meet those challenges.

97. Shepard, supra n. 13, at 244.