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Wyoming Attorneys Pro Bono Obligation

John M. Burman

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WYOMING ATTORNEYS' *PRO BONO* "OBLIGATION"

*John M. Burman**

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I. INTRODUCTION

The need for legal services for low-income persons is both large¹ and largely unmet.² In Justice Sandra Day O'Connor's words, there is "a great and crying need for legal services for the poor . . ."³ Although one often hears of attorneys' obligation or duty to provide *pro bono* legal services, no such legal or ethical⁴ duty exists, either in Wyoming or in any other American jurisdiction.⁵ Rather, the "obligation" is "aspirational" only.

1. The need is described in Leigh Anne Manlove's article, "Wyoming's Unmet Legal Needs," which is also published in this issue of the WYOMING LAW REVIEW. Leigh Anne G. Manlove, *Unmet Legal Needs in Wyoming*, 5 WYO. L. REV. 471 (2005).

2. Nationally, over eighty percent of the legal needs of low income persons go unmet. *The Current Crisis in the Delivery of Legal Services to the Poor, Excerpts from ABA Committee Report Supporting 1993 Amendments to Rule 6.1*, reprinted in S. GILLERS & R.D. SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS 2004 334 (Aspen 2004). While reliable information is not available for Wyoming, it seems clear that most of the legal needs of Wyoming's low-income population also go unmet. Over 50,000 persons in Wyoming live below the poverty line (Over eleven percent of Wyomingites live at or below the federal poverty level). See *infra* note 165. The only publicly funded legal services available to meet their needs are the eight to ten lawyers who work for the federally funded Legal Services Corporation. The state provides no funding for legal services other than state support for the University of Wyoming College of Law Legal Services Program and a recent appropriation to provide guardians *ad litem* for children. See *infra* note 181.

3. S.D. O'Connor, *Professionalism*, WYO. LAWYER, Apr. 2004, at 12, 14.

4. The word "ethical" is used in this article to refer to the ethical standards contained in the Wyoming Rules of Professional Conduct. That is, an action is "ethical" if it is permitted by the rules. Similarly, an action is "unethical" if it is prohibited by the rules.

5. New Jersey's rule sounds mandatory, but it really is not. The rule states, "Every lawyer has a professional responsibility to render public interest legal service." N. J. RULES OF PROF'L CONDUCT R. 6.1 (2004). The rule, however, is entitled "Voluntary Public Interest Legal Service." *Id.* In addition, New Jersey lawyers are required to accept court appoint-

One often hears the argument that having a lawyer is really just not that important, especially in civil cases. After all, a person accused of a crime that may result in incarceration is entitled to a lawyer,⁶ and civil cases generally do not result in incarceration (the exception is that a person held in contempt of a court order may be put in jail). Civil cases, however, often involve critical issues, such as which parent will be the custodian of a child, whether a family will be evicted from their home, or whether a victim of domestic violence will get protection from her or his batterer. The absence of a lawyer in any of the foregoing cases, and in many others, can lead to poor results, not because judges will treat *pro se* parties unfairly, but a *pro se* party who does not know what to do in court or how to do it may inadvertently fail to present the judge with the evidence he or she needs to hear or see before making a decision.

Persons forced to represent themselves in court face a daunting task, resolving difficult and often complex issues in a forum they do not understand. Often, especially in child custody matters, the solutions imposed by the courts will have long-term, and potentially harmful, impacts on the parties and their children. Once entered, orders involving the custody and visitation of children are very difficult to change, even if a change would be in the best interests of the children.⁷

The importance of competent legal representation in civil matters for which there is no right to representation is hard to overstate. When it comes to victims of domestic violence, for example, research shows that “the provision of legal services significantly lowers the incidence of domestic vio-

ments to represent indigent persons, usually in criminal cases. Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413, 427 (2003). Although no states require pro bono, one county does: Orange County, Florida. Kellie Isbell & Sarah Sawle, *Pro Bono Publico: Voluntary Service and Mandatory Reporting*, 15 GEO. J. LEGAL ETHICS 845, 855 (2002). The By-laws of the Orange County Bar Association contain the requirement:

The Association has a longstanding commitment to provide pro bono legal services to qualified residents of Central Florida. Regular Members are required to comply with the procedures established by the Legal Aid Society of the Orange County Bar Association, Inc. for pro bono service or contribution in lieu of service. The Executive Council may from time to time by resolution require other categories of Members to participate in Legal Aid Society programs and all Members are strongly encouraged to participate if practical.

Id. at 859. Sanctions for not fulfilling the obligation are limited. A lawyer who does not meet the standard “can be denied membership in the association.” *Id.*

6. See *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963).

7. A custody determination, for example, may not be modified unless the party seeking the change can show “a material change in circumstances since the entry of the order in question and that the modification would be in the best interests of the children.” WYO. STAT. ANN. § 20-2-204(c) (LexisNexis 2003).

lence.”⁸ The reason for that decrease is that “legal services help women with practical matters (such as protective orders, custody, and child support).”⁹ Assistance with “practical matters” leads to economic self-sufficiency, which is the ultimate goal.¹⁰

Competent legal representation, in short, has consequences that extend far beyond the courthouse doors. Promoting self-sufficiency ultimately benefits everyone, even those whose lives are never touched by violence. The same considerations apply to every person in need of legal representation, regardless of whether the person is a victim of domestic violence, a child who has been abused or neglected or whose parents are divorcing, a family on the verge of eviction, or a working person wrongfully terminated from his or her employment. The consequences of not having competent legal representation will extend far beyond a court order’s immediate effects on the parties involved in the legal proceeding. It is, therefore, in the public’s interest that everyone have effective access to the legal system.

II. THE ETHICAL FRAMEWORK

Before discussing whether lawyers should provide *pro bono* services, it is useful to define the term. The term “*pro bono*” is really incomplete. It is short-hand for *pro bono publico*. The complete term means “[f]or the public good.”¹¹ The issue, therefore, is whether lawyers should do something “for the public good,” something for which they will not get paid, or at least not get paid their normal fees.

The Wyoming Rules of Professional Conduct admonish lawyers to “be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and [lawyers] should therefore devote professional time and civic influence in their behalf.”¹² Along with that admonition comes a goal: Lawyers should provide *pro bono* legal services.

8. A. Farmer & J. Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, CONTEMPORARY ECON. POLICY, Apr. 2003, at 157, 167.

9. *Id.* at 164. In contrast to funding for legal services for low-income persons in general, which has declined substantially, legal services for victims of domestic violence has increased significantly. *Id.* “Clearly, the expansion of legal assistance to battered women has accounted for part of the decline in the incidence of domestic violence nationwide.” *Id.*

10. *Id.* at 159.

11. BLACK’S LAW DICTIONARY 1220 (8th ed. 2004).

12. WYO. RULES OF PROF’L CONDUCT Preamble 5 (2003). The preamble provides “general orientation” to the Rules of Professional Conduct. *Id.* at Scope 9. See also *id.* at R. 1.2 cmt. 3 (“Legal representation should not be denied to people who are unable to afford legal services.”).

A. *The Rules of Professional Conduct for Attorneys at Law Establish the Outer Boundaries of Permissible Conduct, Within Which Lawyers Have Professional Discretion to Choose How to Behave*

All lawyers practicing in Wyoming, whether admitted to the bar in Wyoming or elsewhere, are bound by the Wyoming Rules of Professional Conduct,¹³ and are “subject to the disciplinary authority”¹⁴ of the Wyoming Supreme Court. Those rules, however, leave much to the discretion of lawyers.

On one hand, many rules say “a lawyer shall”¹⁵ do certain things, thereby establishing the floor beneath which lawyers may not go. On the other hand, many say “a lawyer shall not”¹⁶ do certain other things, establishing the ceiling on ethical conduct for a lawyer. Between the floor and the ceiling is a significant amount of space, within which lawyers may choose how to practice. They may choose, for example, to treat other lawyers and other persons with respect and civility, or they may choose to engage in so-called “hard-ball” litigation tactics in which a lawyer always pushes for every possible perceived advantage, even those which ultimately benefit no one. Similarly, a lawyer has professional discretion to disclose information about a client “to prevent the client from committing a criminal act.”¹⁷ The choices facing a lawyer include the choice of whether to provide *pro bono* legal services, or represent only those clients who can and will pay. The reason that lawyers have a choice about whether to provide *pro bono* legal services is that such services are not required by the Rules of Professional Conduct; rather, they are “aspirational.”

13. DISCIPLINARY CODE FOR THE WYO. STATE BAR § 2(b) (2004) (“Acts or omissions by an attorney, . . . which violate the Rules of Professional Conduct . . . shall constitute misconduct and shall be grounds for discipline.”)

14. WYO. RULES OF PROF'L CONDUCT R. 8.5 (2003).

15. See, e.g., *id.* at R. 1.2(a) (“A lawyer shall abide by a client's decisions concerning the objectives of representation.”); *id.* at R. 1.16(a) (“[A] lawyer . . . shall withdraw from the representation of a client if . . . the representation will result in violation of the Rules of Professional Conduct or other law.”).

16. See, e.g., *id.* at R. 1.6(a) (“A lawyer shall not reveal information relating to the representation of a client.”); *id.* at R. 1.7(a) (“A lawyer shall not represent a client if the representation of that client will be directly adverse to another client.”).

17. *Id.* at R. 1.6(a)(1). A lawyer who decides not to disclose information has not, therefore, committed misconduct and is not subject to a disciplinary sanction. *Id.* at R. 1.6 cmt. 15. The absence of an ethical duty does not mean, however, that the lawyer does not have a legal duty to disclose the information. See, e.g., J.M. Burman, *Lawyers and Domestic Violence: Raising the Standard of Practice*, 9 MICH. J. OF GENDER & LAW 207, 259 (2003) (“All lawyers should have a legal duty” to warn).

B. Wyoming Lawyers Should Aspire to Provide Fifty Hours of Pro Bono Legal Services Per Year

The rule regarding attorneys providing *pro bono* legal services is part of the Wyoming Rules of Professional Conduct. The rule, which is based on the American Bar Association's Model Rules of Professional Conduct, says a lawyer "should aspire to tender at least fifty (50)¹⁸ hours of pro bono legal services per year."¹⁹ According to the rule's commentary, the "responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer . . ."²⁰ "Every lawyer," therefore, "regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged."²¹ That aspiration is restated in the commentary to Rule 6.2, the rule which addresses accepting court appointments. "All lawyers have a responsibility to assist in providing pro bono publico service . . . An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients . . ."²²

While the rules and the commentary expressly acknowledge the need for *pro bono* services, as well as lawyers' responsibility to provide them, that responsibility "is not intended to be enforced through [the] disciplinary process."²³ The reason is that while providing *pro bono* services is something lawyers have traditionally done and should continue to do, it is not a legally or ethically enforceable duty.²⁴ Accordingly, the responsibility of which the rules speak is a purely voluntary one. The voluntary nature of attorneys' *pro bono* "obligation" is made clear in the ABA's Standards for Imposing Lawyer Sanctions, which are used in Wyoming to determine what sanction a lawyer should receive for having committed misconduct. When it

18. The ABA suggests fifty hours. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2004). States are, of course, free to establish whatever amount they wish. Some states make no recommendation. See, e.g. ALA. RULES OF PROF'L CONDUCT R. 6.1 (2005); KAN. RULES OF PROF'L CONDUCT R. 6.1. (2005); N.D. RULES OF PROF'L CONDUCT R. 6.1 (2005). Of those states that recommend a specific number, the number varies from twenty in Florida to eighty in Oregon. FLA. BAR. REG. RULES R. 4-6.1 (2005); ORE. STATE BAR BYLAWS 13.1 (2004). Fifty hours is the most common recommendation, with fifteen states, including Wyoming, suggesting that number. See, e.g., COLO. RULES OF PROF'L CONDUCT R. 6.1 (2005); IDAHO RULES OF PROF'L CONDUCT R. 6.1 (2004); MONT. RULES OF PROF'L CONDUCT R. 6.1 (2004).

19. WYO. RULES OF PROF'L CONDUCT R. 6.1(a) (2003). The ABA Model Rules say, "Every lawyer . . . should aspire to render at least (50) hours of pro bono publico legal services per year." MODEL RULES OF PROF'L CONDUCT R. 6.2 (2004).

20. WYO. RULES OF PROF'L CONDUCT R. 6.1 cmt. 3 (2003).

21. *Id.* at R. 6.1 cmt. 3.

22. *Id.* at R. 6.2 cmt. 1.

23. *Id.* (emphasis added).

24. ANNOTATED RULES OF PROFESSIONAL CONDUCT 467 (3d ed. 1996).

comes to Rule 6.1, the rule regarding *pro bono* legal services, the standards say “No Applicable [Disciplinary] Standard.”²⁵

In addition to laying out the goal, the rule suggests both where and how that goal should be achieved. First, a lawyer should furnish “a substantial majority of the fifty (50) hours of legal services within the State of Wyoming”²⁶ Second, the services should be provided to “persons of limited means; or . . . charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means”²⁷ The rule then suggests the remainder of the fifty hours, or any additional services, should be provided in one of three ways.

First, a lawyer may fulfill part of his or her *pro bono* obligation by providing free or reduced fee legal services,

[T]o individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.²⁸

Second, *pro bono* services include legal services provided “at a substantially reduced rate to persons of limited means.”²⁹ Although this subsection uses the same language as the earlier one, “persons of limited means,” the difference is that a “substantial majority” of a lawyer’s *pro bono* obligation should be met by providing services, either directly or indirectly, to persons of limited means “without fee or expectation of fee.”³⁰ The remainder may be provided to such persons “at a substantially reduced rate.”³¹

Finally a lawyer may provide *pro bono* services by “participation in activities for improving the law, the legal system or the legal profession.”³²

Whether they provide direct legal services to low-income persons or to the organizations that serve them, the goal remains constant. The general

25. AMERICAN BAR ASS’N, STANDARDS FOR IMPOSING LAWYER SANCTIONS Appendix 1, Cross-Reference Table, *reprinted in* ABA COMPENDIUM OF PROFESSIONAL RESPONSIBILITY RULES AND STANDARDS 394 (2004).

26. WYO. RULES OF PROF’L CONDUCT R. 6.1(a)(1) (2003).

27. *Id.* at R. 6.1(a)(1)(i)-(ii).

28. *Id.* at R. 6.1(a)(2)(i).

29. *Id.* at R. 6.1(a)(2)(ii).

30. *Id.* at R. 6.1(a)(1).

31. *Id.* at R. 6.1(a)(2)(ii).

32. *Id.* at R. 6.1(a)(2)(iii).

idea is that lawyers should assist in the following areas: “poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice.”³³

A Wyoming lawyer who prefers not to provide direct services, or who has limited opportunities because of his or her employment, has a buy-out option. Instead of furnishing legal services, the lawyer may contribute \$500.00 to a “non-profit organization which provides direct legal assistance to persons of limited means.”³⁴ The rule mentions the Wyoming State Bar Foundation, the Wyoming Legal Services Corporation offices, and the University of Wyoming College of Law Legal Clinic.³⁵

States encourage lawyers to provide *pro bono* services in a variety of ways.³⁶ As discussed below, several such methods have been adopted in Wyoming.³⁷

III. THE MORAL BASIS FOR AN OBLIGATION TO PROVIDE *PRO BONO* SERVICES

In the absence of an ethical or a legal duty to furnish *pro bono* legal services, the question for each lawyer becomes, “Why should I? Spending time providing *pro bono* services will reduce the time I spend representing clients who can pay, take time from my family, or both.” The simple answer is because it’s the right thing to do, i.e., it’s morally correct. “Morality” and “law” are not often spoken in the same breath, especially by the large number of folks who generally disparage lawyers.³⁸ Morality does, however, have a major place in law practice. Before discussing that role, it is important to differentiate “ethics” from “morals.”

Rules of ethics are the standards of conduct that the legal profession, or any profession,³⁹ for that matter, imposes on itself. As Justice O’Connor has observed, “[o]ne distinguishing feature of any profession . . . is that membership entails an ethical obligation to temper one’s selfish pursuit of

33. *Id.* R. 6.1 cmt. 1.

34. *Id.* at R. 6.1(b).

35. *Id.*

36. *See infra* notes 154-64 and accompanying text.

37. *See infra* notes 88-153 and accompanying text.

38. The degree of disparagement is remarkable. The Internet, for example, has numerous sites devoted to lawyer jokes. Not surprisingly, the jokes are not intended to make lawyers look good. *See, e.g., Lawyer Jokes etcetera*, at <http://members.aol.com/twh427/law-yer.htm> (last visited Mar. 5, 2005). One section of this website is entitled “A Loathsome Miscellany.” *Id.*

39. Physicians, for example, have a set of ethical standards. AM. MED. ASSOC., CODE OF MEDICAL ETHICS (2004), available at <http://www.ama-assn.org/ama/pub/category/2416.html> (last visited Apr. 28, 2005). Among them is the admonition to provide care to patients unable to pay. “The AMA . . . [urges] physicians to share in the provision of uncompensated care to the uninsured indigent.” *Id.* at H-165.886.

economic success by adhering to standards of conduct⁴⁰ Those standards “could not be enforced either by legal fiat or through the discipline of the market.”⁴¹ Those standards are the rules or codes of ethics to which lawyers must adhere.

Morals, by contrast, are the standards that each person imposes on himself or herself, based on subjective beliefs about what is right and what is wrong. Ernest Hemingway’s description of morality captures its inherently subjective nature: “I know only that what is moral is what you feel good after, and what is immoral is what you feel bad after.”⁴²

In Wyoming, as in every American jurisdiction, the highest court has adopted a code of ethics, which is binding on any “person duly admitted to practice law in this state, a person admitted to practice law by a court of this state, or a person admitted to practice law in any other jurisdiction who engages in the practice of law within this state.”⁴³ As noted earlier, however, the Wyoming Rules of Professional Conduct make the furnishing of *pro bono* legal services an aspiration for lawyers, not a requirement.⁴⁴

As the rules themselves say, “[t]he Rules do not . . . exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.”⁴⁵ Lawyers must therefore, be “mindful of the moral and social aspects” of their “power and position” as officers of the court.⁴⁶ The question thus becomes what other considerations “should inform a lawyer?” Part of the answer is that lawyers are professionals, and economic success should not be the only goal of a professional. Rather, “the special privileges incident to membership in the profession and the advantages those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth. *That goal is public service.*”⁴⁷ And it is public service that “marks the difference between a business and a profession.”⁴⁸

Public service includes providing *pro bono* legal services. Further, public service is, by definition, voluntary. Providing voluntary public service is so important that an “attorney’s history of voluntary public service is

40. Shapero v. Kentucky Bar Ass’n, 486 U.S. 466, 488 (1988) (O’Connor, J., dissenting).

41. *Id.* at 489.

42. L.R. FRANK, QUOTATIONARY 524 (2000).

43. DISCIPLINARY CODE FOR THE WYO. STATE BAR § 3(a) (2004); *see also*, WYO. RULES OF PROF’L CONDUCT R. 8.5 (2003) (“A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.”).

44. *See supra* notes 11 through 37 and accompanying text.

45. WYO. RULES OF PROF’L CONDUCT Scope 2 (2003).

46. O’Connor, *supra* note 3, at 13.

47. Shapero, v. Kentucky Bar Ass’n, 486 U.S. 466, 489 (O’Connor, J., dissenting) (emphasis added).

48. O’Connor, *supra* note 3, at 14.

a relevant factor in selecting judicial candidates.”⁴⁹ More importantly, furnishing voluntary *pro bono* services can contribute immensely to a lawyer’s satisfaction with his or her career. In Justice O’Connor’s words, “I can imagine no greater duty than fulfilling this obligation [to provide public service]. And I can imagine no greater pleasure.”⁵⁰

IV. HOW LAWYERS MAY DISCHARGE THEIR *PRO BONO* “OBLIGATION”

As noted earlier, the Wyoming rules suggest that the majority of a lawyer’s *pro bono* legal services should be devoted to “persons of limited means; or . . . charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.”⁵¹ Any additional *pro bono* services may be: (1) legal services provided to either “individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes;”⁵² (2) legal services furnished “at a substantially reduced rate to persons of limited means”⁵³ (as opposed to legal services provided “without fee or expectation of fee” to such persons.); or (3) through “participation in activities for improving the law, the legal system or the legal profession.”⁵⁴ Finally, a Wyoming attorney may fulfill his or her *pro bono* obligation by making a \$500.00 annual contribution to “any existing non-profit organization that provides direct legal assistance to persons of limited means.”⁵⁵

The emphasis is on providing direct legal services to low-income persons because that is where the need is the greatest. Part of the reason for that need is the relative dearth of civil legal services in this State. Wyoming, in fact, is one of only nine states that do not provide any state funding for civil legal services for low-income persons,⁵⁶ other than funding for the University of Wyoming, which includes a legal services clinic in its College of Law. Other than the clinical program at the college (the University of Wyoming Legal Services Program),⁵⁷ the only civil legal services for low-income persons in Wyoming are those provided by the eight to ten attorneys employed by Wyoming Legal Services, Inc., which is financed primarily by

49. *Shapiro*, 486 U.S. at 490.

50. O’Connor, *supra* note 3, at 14.

51. WYO. RULES OF PROF’L CONDUCT R. 6.1(a)(1) (2003).

52. *Id.* at R. 6.1(a)(2)(i).

53. *Id.* at R. 6.1(a)(2)(ii).

54. *Id.* at R. 6.1(a)(2)(iii).

55. *Id.* at R. 6.1(b).

56. The other states are Alabama, Alaska, Arkansas, Colorado, Connecticut, Idaho, Mississippi, South Dakota, and Wisconsin. E-mail from Meredith McBurney, American Bar Association’s Project to Expand Resources for Legal Services, to John M. Burman, Professor of Law, University of Wyoming College of Law (Feb. 23, 2005) (on file with author).

57. The clinic includes a Domestic Violence Legal Assistance Project.

the federally-funded Legal Services Corporation,⁵⁸ and the three⁵⁹ attorneys employed by the Wyoming Coalition Against Domestic Violence and Sexual Assault (the Coalition). Those attorneys are federally funded to provide civil legal services to victims of domestic violence.

The greatest legal need of low-income persons is representation in domestic relations matters, especially custody disputes in divorces or paternity cases.⁶⁰ As of this writing, the only sources of legal assistance generally available in such matters are the University of Wyoming Legal Services Program, including its branch Domestic Violence Legal Assistance Project (collectively referred to as “the clinics”), and the three attorneys who work for the Coalition. Although located in Laramie, the clinics represent persons throughout the state (one of the Coalition attorneys is in Laramie; the other is in Casper). One of the ways it does so is by forming partnerships with lawyers who are willing to provide some *pro bono* legal services.

The partnerships work like this: One of the clinics agrees to perform all the legal services a client needs, other than in-person court appearances. Such legal services normally include client contact (often by telephone), drafting correspondence and pleadings, negotiating with other lawyers, and handling court proceedings which can be conducted by telephone (Courts in Wyoming generally allow all proceedings in civil matters, other than trials on the merits, to be conducted by telephone).⁶¹ The lawyer agrees to become co-counsel and make any necessary in-person court appearances. Since the majority of cases are settled short of trial, it is often not necessary to make any in-person appearances, and the lawyer’s role consists of monitoring the case, while the student assigned to the case handles the majority of the work. The result is that a lawyer plays the valuable role of being available to make an in-person court appearance and consult with the student about the case and local practices, while not becoming mired in an often lengthy and contentious domestic relations matter. At the same time, the clinics are able to help persons throughout the state and gain exposure to different lawyers and judges. Such partnerships have been used in Jackson, Powell, Evanston, and Gillette, to mention just a few Wyoming cities. The system has greatly expanded the service area of the clinics, allows students to gain valuable ex-

58. Wyoming Legal Services, Inc. has offices in Lander, Casper, and Cheyenne. In addition to its attorneys, Wyoming Legal Services, Inc. has two tribal advocates. WYO. STATE BAR 2004 DIRECTORY 226 (2004).

59. One of those three, Dona Playton, supervises the student interns in the Domestic Violence Legal Assistance Project, an expansion of the University of Wyoming Legal Services Program.

60. Manlove, *supra* note 1, at 473.

61. UNIF. RULES FOR DIST. COURTS OF THE STATE OF WYO. R. 802 (2004) (“In a civil case, the court in its discretion, may use a telephone conference call for any proceeding.”).

perience, and allows lawyers to fulfill their *pro bono* "obligation" without running the risk of spending dozens of hours on a contentious case.⁶²

V. PROVIDING *PRO BONO* LEGAL SERVICES IS IN THE LAWYER'S BEST INTEREST

While the need for *pro bono* legal services is beyond dispute, and lawyers are uniquely positioned to help meet that need, there is no question that diverting time and energy from one's practice to provide free or low-cost legal services will result, at least in the short run, in a diminution of a lawyer's income, particularly if the lawyer is in solo practice or practices with a small firm, which virtually all lawyers in Wyoming do. The question that naturally raises is, "Why should a lawyer act in a way that appears to be contrary to that lawyer's interest, or at least the lawyer's economic interest?" The reason is simple. Providing *pro bono* legal services is not just the right thing to do, it is often in a lawyer's best interest.

A. *Providing Pro Bono Services Often Results in Enhanced Career Satisfaction*

Depending on which survey one reads, a large percentage of practicing lawyers are not happy with their careers.⁶³ Part of the reason is that a career in law is very demanding. Law practice often requires long hours—there is always, it seems, one more case to read, one more fact to investigate, or one more prospective client to whom a lawyer should speak. And by definition, representing others is extremely stressful. Clients' property, children, liberty, and even their lives, are in the hands of lawyers. The demands in private practice may be even higher. Both partners and associates feel the pressure to bill (and collect) more fees. Their income, after all, is generally directly dependent on the amount of fees they collect. The amount of fees, in turn, is often directly dependent on the number of hours they work. And most lawyers have families. When lawyers are not working, spending time with spouses, significant others, or children, is a high priority. Devoting even a few hours to *pro bono* services means that something else has to give. The question is what should that be? The answer is it depends. It depends on the choice each lawyer must make about what it takes for that lawyer to

62. A University of Wyoming law student recently worked over 200 hours on a divorce case filed in Jackson. The bulk of that time was spent drafting pleadings and correspondence from the other attorney, consulting with the client, and negotiating with the other attorney. Both the consultations with the client and the bulk of the negotiations with the other attorney occurred by telephone.

63. See, e.g., ABA YOUNG LAWYER'S DIV., LIFE IN THE BALANCE: ACHIEVING EQUILIBRIUM IN PROFESSIONAL AND PERSONAL LIFE 4 (2003), available at <http://www.abanet.org/yld/about/writtenguide03.pdf> (last visited March 22, 2005). In a survey taken during 2002 and 2003, fifty percent of young lawyers reported they have no time for themselves or their families. Seventy-five percent reported difficulty in balancing their careers with their personal lives. *Id.*

have both an economically viable and a personally satisfying career. The ultimate goal for lawyers, and for everyone else, should be to achieve a balance. Balance may mean sacrificing some income or some time. There is simply no way around it, and no one can tell another how to achieve that balance. It is important, however, to actively seek it. Otherwise, it is too easy to get caught up in the unceasing demands of life, in general, and law practice, in particular. Suddenly, decades will have flown by, and one who did not actively seek balance may be very sorry he or she did not.

The title of a recent article about lawyers and law practice sums up the dilemma lawyers face: "On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy and Unethical Profession."⁶⁴ The article begins with an open letter to law students:

Dear Law Student:

I have good news and bad news. The bad news is that the profession that you are about to enter is one of the most unhappy and unhealthy on the face of the earth—and, in the view of many, one of the most unethical. The good news is that you can join this profession and still be happy, healthy, and ethical. I am writing to tell you how.⁶⁵

Much of the article is about the pressures on and, ultimately, the unhappiness of lawyers in big firm practice.⁶⁶ In contrast to the unhappiness of lawyers in big firms in big cities, the article's author declares that "[w]ithout question, the attorneys I knew who seemed to be the happiest, who seemed to have the most balanced lives, and who seemed to have the most interesting, satisfying practices were those practicing in small towns."⁶⁷ Since all Wyoming lawyers live and practice in small towns, we enter the profession with a significant advantage. We are much more likely to have satisfying careers than our colleagues in urban areas. We can increase that advantage by how we choose to lead our professional lives.

Before returning to Wyoming, where I had been born and reared, I practiced law for several years in a major urban area, Minneapolis-St. Paul, Minnesota. Although I worked in a large law office (more than 150 lawyers), it was the Minnesota Attorney General's office, not a large private firm. It was an excellent place to work, and while I enjoyed the time I spent there, and most lawyers and judges with whom I interacted practiced ethi-

64. P.J. Schultz, *On Being A Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy and unethical profession*, 52 VAND. L. REV. 871 (May 1999).

65. *Id.* at 872.

66. *Id.* at 924 ("Avoid Working in Large Law Firms—or in Firms That Act Like Large Law Firms.").

67. *Id.* at 941.

cally and professionally, returning to Wyoming was a personal and professional reawakening for me.

Living and working in Wyoming made my previous life pale in comparison. The relationships among lawyers and the relationship between lawyers and the bar simply amazed me. While my income took a significant hit, my professional and personal satisfaction rose substantially.⁶⁸ Practicing law in Wyoming was, and remains, enjoyable. Judges and lawyers are generally far more congenial and professional than in urban areas. It may be due to the relatively small number of judges and lawyers in the state, and Wyoming judges and lawyers really are different. The practice of law went from being a career which I generally enjoyed, to one that I loved. I felt that I had truly found where I belonged, and that Thomas Wolfe was wrong.⁶⁹ You really can go home again.

Before returning to Wyoming, I never performed any *pro bono* legal services. I had a convenient excuse. As a government lawyer, I could not represent anyone other than the State of Minnesota in court, and I really did not feel competent to help anyone with a will or a transaction. While I am certain there were ways I could have provided *pro bono* services, no one ever suggested that I should, or how I could go about it. That changed when I came back to Wyoming.

I had the good fortune to join a firm in Laramie, Corthell and King, which allowed me great flexibility in how I spent my time. Rather by accident, I found that I had an interest in children, an interest which was ideal for providing *pro bono* services.

A (paying) client asked me to represent him and his wife in a juvenile case involving their daughter. I had never even heard of juvenile court, and told the client of my ignorance. The client brushed aside my objections and insisted I represent him. He always paid his bills promptly, so I agreed. That experience piqued my interest in how children are treated by the legal system, and, ultimately, it changed my life. After learning that Albany County had little money to pay attorneys who were appointed to act as guardians *ad litem* (GALs) for children in juvenile cases, I decided to take appointments and not charge for my services. Representing children's best interests⁷⁰ as a GAL proved to be the most satisfying professional work I

68. I spoke recently with a young lawyer who had graduated from the University of Wyoming not too many years ago. The lawyer had gone to work for a large firm in Denver, and he hated it. The lawyer returned to Wyoming, where he says he makes fifty percent as much money, and is "ten times happier."

69. THOMAS WOLFE, *YOU CAN'T GO HOME AGAIN* (Harper & Row Publishers 1998) (1934).

70. In 2002, the Wyoming Rules of Professional Conduct were amended to clarify that "as a guardian ad litem, a lawyer represents the best interests of the individual for whom the lawyer has been appointed to act . . ." WYO. RULES OF PROF'L CONDUCT Preamble 2 (2003).

have ever done, and it kindled an interest in children and how they are treated by the legal system that continues to this day.⁷¹ I was then, and I remain, stunned at how parents will neglect or abuse their own children, and at how important it is for someone to represent the best interests of those children in court. Meeting with children and then representing their best interests is an unforgettable, life-altering experience, which contributes significantly to the enormous personal and professional satisfaction I derive from my life as a lawyer in Wyoming.

Now, having practiced both in a large urban area and in Wyoming, I say with confidence that both the good news and the bad news are better here. While law practice will always be a challenging career, which may, ultimately, be an unsatisfying one for some, the odds of it being a satisfying career are much higher in Wyoming. One of the main reasons is the unethical and unprofessional conduct which apparently permeate much of the rest of the country, are much less common in Wyoming, though they do exist.⁷² Despite Wyoming lawyers' generally ethical conduct and a fairly high level of professionalism, law practice is still a demanding profession, and one which should be entered with a healthy respect for those demands and an idea of how to make it more enjoyable.

One of the ways for a lawyer to increase his or her career satisfaction is to find something he or she cares about, and then give time and energy to that passion. While doing so may reduce the number of hours the lawyer can bill, and hence the lawyer's income, more money does not translate into more satisfaction. While many issues surrounding *pro bono* activities are difficult to measure, one is not. "Research has shown that, with the exception of those living in poverty, people are almost always wrong in thinking that more money will make them happier."⁷³ By contrast, "[a] wide array of studies find that regular volunteering is correlated with both physical and mental health."⁷⁴ Whatever else one wants to call it, providing *pro bono* legal services is a form of volunteering.

B. Providing Pro Bono Services Will Result in More and Better Contacts With Clients, Other Lawyers, and the Courts

While providing *pro bono* legal services is a desirable goal, the plain truth is that surviving in private practice depends on having clients who need legal services who can and will pay for them. This can be difficult in a small

71. See, e.g., J.M. Burman, *Juvenile Injustice in Wyoming*, 4 WYO. L. REV. 669 (2004).

72. See, e.g., J.M. Burman & W.U. Hill, *Professionalism and Leadership*, WYO. LAWYER, Apr. 2004, at 16, 17 ("[Although] lawyers and judges in Wyoming generally treat each other well . . . that is not always the case.").

73. Schultz, *supra* note 64, at 922.

74. Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413, 416 (2003).

firm in a small town, and one who has not experienced that reality should hesitate to tell those who have how they should behave.⁷⁵

Clients, especially in small towns, generally select attorneys based on the recommendations of others,⁷⁶ though sometimes their reasons are not based on a lawyer's professional prowess.⁷⁷ A new lawyer who joins an established firm, as I did, benefits greatly from the firm's reputation, which determines whether it receives favorable recommendations. In time, the firm will benefit from the reputation of the formerly new lawyer, assuming he or she becomes a respected member of the community and the bar. Providing *pro bono* legal services can enhance a lawyer's, and a law firm's, reputation, which will lead to more referrals.

Word about lawyers in Wyoming spreads quickly. Within a few months of becoming an active member of the bar, a new lawyer has a reputation. If it is negative, it will follow the lawyer for a long time. If it is positive, it will follow the lawyer for as long as he or she continues to do good work. A lawyer's reputation has at least three aspects. First, the lawyer has a reputation with other lawyers (that reputation begins locally, but spreads quickly to other parts of the state).⁷⁸ Second, judges have opinions about lawyers, and just as lawyers talk about judges, judges talk about lawyers. Finally, a lawyer has a reputation in his or her community. Former clients tell their friends and family members about their lawyers. Did the lawyer do a good job? Did the lawyer charge a reasonable fee? Did the lawyer tell the truth? These and other questions are answered quickly and emphatically when asked. Negative answers make a favorable recommendation unlikely. Favorable ones have the opposite result.

75. The change from being a salaried government lawyer in a large law office to being a salaried associate in a small private firm in Wyoming was not very dramatic. The big change came when I went from being an associate to being a partner. For the first time, the economic realities of small firm—small town practice hit home.

76. I found no empirical studies on how clients select lawyers. The statement is based on my experience as a lawyer in Laramie, and anecdotal information from others who practice in Wyoming.

77. While in private practice I made it a habit to ask clients why they had come to me. Many gave reasons such as the firm's reputation, in general, or mine, in particular. I will never forget two clients, who had rather different reasons. One had worked in a local pharmacy years before. She had known my parents and had seen me come into the store with my mother. I came from "good stock," she said, and that's why she had chosen me. Another client said he had watched me play basketball for Laramie High in the early '70s, and had recognized my name in the phone book.

78. I recently received a telephone call from an experienced lawyer in Wyoming. The lawyer asked if I knew a lawyer (who lives and practices in a third city) from whom the experienced lawyer had just received an aggressive letter. "Yes," I replied, "[that lawyer] is a fairly new lawyer." "Oh," said the experienced lawyer, "the [new lawyer] will learn that one need not act that way." After I hung up, I couldn't help but think how quickly a lawyer's reputation spreads in Wyoming, especially among other lawyers (and judges).

Former clients who received *pro bono* services are no different. They talk to their friends and family members about their lawyers. And those friends and family members may not be low income. A lawyer cannot receive a better recommendation than that he or she provided *pro bono* services to someone who needed them, and performed them competently and professionally. And, as almost all law students know, poverty is often a temporary condition.⁷⁹

Finally, low income persons are as likely to suffer serious injuries, which require legal redress, as higher-income persons. If that happens, they are likely to return to the lawyer who helped them out before.

VI. ENCOURAGING *PRO BONO* LEGAL SERVICES

The need is clear. The obligation is also clear, though it is not enforceable. Given the need, and an unenforceable "obligation," the question becomes what should be done to encourage Wyoming lawyers to provide *pro bono* legal services?

A. *Why do Lawyers Provide Pro Bono Services?*

Lawyers are no different than non-lawyers. They provide *pro bono* services for a variety of reasons, both internal and external.⁸⁰

Significant internal or intrinsic factors "include the personal characteristics, values, and attitudes that motivate decisions to help others."⁸¹ Of the internal factors that motivate lawyers, "two personal characteristics appear most significant: a capacity for empathy and a sense of human or group solidarity."⁸² Further, "[t]hose who participate in volunteer activities during their formative years, and those who observe participation by parents or other . . . admirable individuals, are much more likely to volunteer than those who lack such exposure."⁸³ Not surprisingly, those internal values are generally formed long before persons become lawyers and often before they enter law school.⁸⁴ It is, therefore, "too late to alter . . . personal traits and experiences that influence public service motivations" during or after law school.⁸⁵ It is not too late, however, to create external factors that will encourage lawyers to furnish *pro bono* services.

79. I recall all too well how little money we had during law school, and how that changed, albeit somewhat gradually, afterwards. Fortunately, we never needed a lawyer during our time of relative poverty. If we had, we would not have been able to hire one.

80. Rhode, *supra* note 74, at 418.

81. *Id.*

82. *Id.*

83. *Id.* at 419.

84. *Id.* at 423.

85. *Id.*

The external factors that motivate lawyers to furnish *pro bono* services include “social rewards, reinforcement, costs and other contextual dynamics that affect charitable assistance” in general.⁸⁶ It is clear that “well-designed strategies by law schools, bar associations, and legal employers can increase the quality and attractiveness of *pro bono* service.”⁸⁷ The good news is a number of “well-designed strategies” exist in Wyoming.

B. The Wyoming Bar Encourages Lawyers to Provide Pro Bono Services by Recognizing Lawyers and Law Students Who Do

One way to encourage lawyers to provide *pro bono* services is to provide “[r]ewards that are related to merit . . . [because such awards] can enhance motivations” for providing *pro bono* services.⁸⁸ The Wyoming State Bar (“WSB”) and the Wyoming State Bar Foundation (“WSBF”) have established three awards to recognize lawyers and law students who provide public service.

Each year, the WSB and WSBF present three awards: (1) the Pro Bono Award for Legal Services to Indigent Clients; (2) the Pro Bono Public Services Award; and (3) the Bono Student Lawyer award. The awards reflect both the diversity of services that qualify as *pro bono* services, as well as an effort to encourage lawyers and law students to go beyond the mandates of the Rules.

The Pro Bono Award for Legal Services to Indigent Clients reflects the traditional notion that providing direct legal services to low-income persons is *pro bono*. The recipient of the award in 2004 was Lawyers & Advocates for Wyoming, a public interest law firm in Jackson, established in 1991 by Gerry Spence.⁸⁹ The award was given to recognize the firm’s “outstanding contribution to the low-income community, and for its legal representation of those who have legal issues”⁹⁰

The Pro Bono Public Service Award was presented to Nick Murdock, a Casper attorney. It recognizes Murdock’s “outstanding contribution to his community in work that is not directly related to the practice of law.”⁹¹

The Student Lawyer Pro Bono Award was awarded for the first time in 2003. The 2004 recipient, Meredith Asay, was recognized for “her outstanding contribution involving time and effort to lower-income citizens, and

86. *Id.* at 418.

87. *Id.* at 423.

88. *Id.* at 421.

89. *Pro Bono Recipients Announced*, WYOMING LAWYER, Oct. 2004, at 11.

90. *Id.*

91. *Id.* Mr. Murdock’s activities include teaching at Casper College (without compensation) and reading to children in the Casper Cares/Casper Reads program.

for exemplifying the legal profession's high ideals."⁹² Recognizing a law student for *pro bono* activities is an important step away from the traditional student awards that reward academic achievement, and little else. And as we all know, academic achievement has little, if anything, to do with one's performance as a lawyer. Rather, whether one is a good lawyer depends much more on one's character than on one's grades in law school.

C. *Lawyers May Receive CLE Credit for Providing Pro Bono Services*

Wyoming is one of seven states⁹³ that encourage lawyers to provide *pro bono* legal services by awarding them continuing legal education (CLE) credits for doing so. The CLE for *pro bono* rule went into effect on July 1, 2003.⁹⁴ A Wyoming lawyer may now earn up to three hours annually of CLE credits (fifteen are required)⁹⁵ for "representation or mentoring activities as approved by the Wyoming Pro Bono Organization (WYPBO)"⁹⁶ The representation must be in a civil case, and "representation" means "providing legal services to one or more clients in a single or series of related matters."⁹⁷ The amount of CLE credit a lawyer may receive, of course, depends on the amount of time involved in the representation. A lawyer may receive one hour of CLE "for every five (5) billable-equivalent hours."⁹⁸

Thus far, the WYPBO has not been formed. Its functions are being fulfilled by Leigh Anne Manlove, the Executive Director of the WSBF and the Pro Bono Coordinator for the Wyoming State Bar. A lawyer who wishes to receive CLE credit for providing *pro bono* services should, therefore, contact her.⁹⁹ The rule is new, and not many lawyers have taken advantage of it. It is having some effect, however. During calendar year 2004, ten Wyoming lawyers received CLE credits for furnishing *pro bono* legal services.¹⁰⁰

The rule is not limited to providing direct services. Wyoming is one of only three states in which a lawyer may receive CLE credit for "mentor-

92. *Id.* Among other things, Ms. Asay was honoured for serving as a role model to her peers.

93. The other states are Colorado, Delaware, New York, Oregon, Tennessee, and Washington. C.R.C.P. 260.8 (2005); DEL. CLE R. 8(D) (2004); 22 N.Y. C.R.R. § 1500.22(j) (2004), available at <http://www.nycourts.gov/attorneys/cle/1500.shtml> (last visited Apr. 28, 2005); Or. Minimum CLE Rule 3.6 (2005); TENN. SUP. CT. R. 21, § 4.07 (2004); WASH. ADMIS. TO PRACTICE R. 103 (2005).

94. RULES FOR CONTINUING LEGAL EDUCATION OF MEMBERS OF THE WYO. STATE BAR R. 4. (2004).

95. *Id.* at R. 3.a.

96. *Id.* at R. 4.a.

97. *Id.* at R. 4.c.

98. *Id.* at R. 4.a.

99. Leigh Anne Manlove may be reached at the office of the Wyoming State Bar at 307/632-9061.

100. Telephone interview with Leigh Anne Manlove, Foundation Director, Wyoming Bar Association (Feb. 7, 2005).

ing” activities.¹⁰¹ A Wyoming lawyer may receive CLE credits for serving as a mentor to another lawyer or to a law student.¹⁰²

A lawyer who acts as a mentor for another lawyer may receive “one (1) CLE credit per case and shall not be eligible to receive more than three (3) CLE credits for pro bono work in any one calendar year.”¹⁰³ The client must be indigent, and the lawyer who serves as a mentor and the lawyer who is mentored may not be members of the same firm.¹⁰⁴ The general idea is the mentor “shall be available to the attorney representing the indigent client for information and advice on all aspects of the case, but the mentor will not be required to file or otherwise enter an appearance on behalf of the indigent client.”¹⁰⁵

An eligible law student is one “who has successfully completed at least four (4) semesters at an ABA accredited law school.”¹⁰⁶ A lawyer who acts as a mentor for a law student shall receive three CLE credits per case, not to exceed three per year.¹⁰⁷ A lawyer who wishes to serve as a mentor for a law student “will be assigned to law students at the time of referral by the WYPBO coordinator with the consent of the law student and law school and the mentor.”¹⁰⁸ The idea, of course, is the student will learn from the mentor while providing good quality representation to a client. Accordingly, the lawyer “shall be available to the law student for information and advice on all aspects of the case and shall mentor the law student on the case while supervising but allowing the law student to provide services with the direct supervision of the mentoring attorney.”¹⁰⁹ Since the mentoring lawyer will be the attorney of record, he or she “shall be required to file or otherwise enter an appearance on behalf of the indigent client”¹¹⁰

Finally, the CLE Board has the authority to award CLE credits “for such activities, as in the board’s determination further the purposes of these

101. RULES FOR CONTINUING LEGAL EDUCATION OF MEMBERS OF THE WYO. STATE BAR R. 4.a. (2004). The other states are Colorado and Washington. C.R.C.P. 260.8 (2005); WASH. ADMIS. TO PRACTICE R. 103 (2005).

102. RULES FOR CONTINUING LEGAL EDUCATION OF MEMBERS OF THE WYO. STATE BAR R. 4.c(1)-(2) (2004).

103. *Id.* at R. 4.c(1).

104. *Id.*

105. *Id.*

106. *Id.* at R. 4.c(2). Having successfully completed four semesters of law school is the same standard found in Wyoming’s student practice rule, which allows eligible law students to practice law under supervision. See RULES OF THE SUP. CT. OF WYO. PROVIDING FOR THE ORGANIZATION AND GOV’T OF THE BAR ASSOC. AND ATTORNEYS OF THE STATE OF WYO. R. 12 (2004).

107. RULES FOR CONTINUING LEGAL EDUCATION OF MEMBERS OF THE WYO. STATE BAR R. 4.c(2) (2004).

108. *Id.*

109. *Id.*

110. *Id.*

rules”¹¹¹ “Such activities” may be “writing and publishing an article in a legal periodical, part-time teaching by a practitioner in an ABA approved law school, or delivering a paper or speech on a professional subject at a meeting primarily attended by lawyers or law students.”¹¹²

D. Wyoming’s Rules Encourage Lawyers to Provide Limited or Unbundled Legal Services

A lawyer who undertakes to represent a client has both a legal¹¹³ and an ethical¹¹⁴ obligation to provide competent representation to that client. Competence generally means the lawyer makes an “inquiry reasonable under the circumstances” into both the facts and the applicable law.¹¹⁵ This reasonableness standard was often thought to mean that “a lawyer must provide complete representation to a client.”¹¹⁶ “In particular, providing limited services appeared to run afoul of provisions such as Rule 102(a)(2) of the Uniform Rules for District Courts: ‘An appearing attorney shall be considered as representing the party or parties for whom the attorney appears *for all purposes*.’”¹¹⁷ While it has long been ethical for a lawyer to limit his or her representation of a client,¹¹⁸ the rules of ethics could not override the court rules that governed attorneys’ appearances in court. Recent amendments to both the Rules of Professional Conduct and the Uniform Rules permit, and thereby encourage, limited representation. Those amendments, which specifically provide for providing limited or so-called “unbundled” legal services, make it clear that a lawyer need not provide comprehensive services in order to provide competent services. Wyoming is now one of eight states that expressly allow legal services to be unbundled.¹¹⁹

111. *Id.* at R. 4.d.

112. *Id.*

113. *Moore v. Lubnau*, 855 P.2d 1245, 1248 (Wyo. 1993) (“A lawyer is held to that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction.”).

114. WYO. RULES OF PROF’L CONDUCT R. 1.1 (2003) (“Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”).

115. WYO. RULES OF CIV. PROC. R. 11(b) (2004). In a criminal case, the standard is the same. A lawyer must be “reasonably effective” *Strickland v. Washington*, 466 U.S. 669, 702 (1984).

116. J.M. Burman, *Recent Amendments to the Wyoming Rules of Professional Conduct, Part 1: Unbundled Legal Services*, WYOMING LAWYER, Feb. 2003, at 46.

117. *Id.* (quoting WYO. UNIFORM RULES FOR DIST. COURTS R. 102(a)(2) (2003) (emphasis added)).

118. Since their adoption in 1986, the Wyoming Rules of Professional Conduct have permitted a lawyer and a client to agree to “limit the scope of the representation if the limitation is reasonable under the circumstances” WYO. RULES OF PROF’L CONDUCT R. 1.2 (2001). That provision was amended in 2002 to clarify the extent and procedures to be followed in making such a limitation. WYO. RULES OF PROF’L CONDUCT R. 1.2 (2003).

119. The others are Arkansas, California, Colorado, Florida, Maine, New Mexico, and Washington. ARK. RULES OF PROF’L CONDUCT R. 1.2 (2004); CAL. RULES OF CT. R. 5.70,

The heart of Wyoming's unbundling rules is Rule 1.2, which is entitled "Scope of representation."¹²⁰ The rule says that a lawyer "may limit the objectives or means of the representation . . ."¹²¹ Any such limitation must be either pursuant to Rule 6.5,¹²² or "fully disclosed and explained to the client in a manner which can reasonably be understood by the client," and the client must give written consent to those limitations, unless the consultation consists solely of telephone contact.¹²³ To further facilitate providing unbundled legal services, the appendix to the rules provides a Notice and Consent form, the use of which will create the presumptions that the representation is limited and "the attorney does not represent the client generally . . ."¹²⁴

The Wyoming Supreme Court amended rule 1.2 "to facilitate the provision of unbundled legal services, especially to low-income clients."¹²⁵ As the commentary to the rule notes, persons typically need legal help in one or more of three areas: (1) advice about a pending or impending matter; (2) help with drafting or reviewing a legal document; and/or (3) assistance with a court appearance.¹²⁶ The concern for lawyers has been that if the lawyer helped in one area, he or she thereby became obliged to become involved in all of them in order to discharge his or her duty to provide competent representation. And since legal cases, in general, and domestic relations cases, in particular, tend to become long and drawn out, lawyers were reluctant to get involved at all, for fear of being dragged into in a quagmire. The unbundling rules should eliminate that concern, and free lawyers to become involved for a limited time and/or a limited purpose.

The "unbundling" amendments expressly permit a lawyer and a client to "agree that the lawyer will: (1) provide advice and counsel on a particular issue or issues; (2) assist in drafting or reviewing pleadings or other documents; or (3) make a limited court appearance."¹²⁷ To permit a lawyer to make a limited court appearance, the rules which regulate lawyers' appearances in court were also amended. "Except in a criminal case, a written entry of appearance may be limited, by its terms, to a particular proceeding

5.71 (2005); COLO. RULES OF PROF'L CONDUCT R. 1.2(c) (2005); FLA. BAR R. 4-12 (2005); ME. BAR. R. 3.4i (2005); N.M. RULES OF PROF'L CONDUCT R. 16-102 (2004); WASH. RULES OF PROF'L CONDUCT R. 1.2 (2004).

120. WYOMING RULES OF PROF'L CONDUCT R. 1.2 (2003).

121. *Id.* at R. 1.2(c).

122. Rule 6.5 allows for non-profit legal services programs, such as those operated by "the state or county bar association, or a court . . ." *Id.* at R. 6.5; *see infra* notes 138-141 and accompanying text.

123. WYO. RULES OF PROF'L CONDUCT R. 1.2(c)(1)-(3) (2003).

124. *Id.* at R. 1.2(c)(4)(a)-(b).

125. *Id.* at R. 1.2 cmt. 5.

126. *Id.*

127. *Id.* The comments are designed to "explain and illustrate the meaning and purpose" of the rules. *Id.* at Scope 9.

or matter.¹²⁸ Furthermore, “[a]n attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance.”¹²⁹ The effect of the changes is to clarify that a lawyer may ethically become involved with a client for a limited purpose. While the lawyer remains obliged to provide competent representation, the commentary to Rule 1.1 has been amended to reflect the possibility of limited representation and a corresponding shift in the standard for competence.¹³⁰ When a lawyer and a client agree to limited representation, “competence means the legal knowledge, skill, thoroughness and preparation reasonably necessary for the limited representation.”¹³¹

The unbundling amendments promote *pro bono* services by making it easier for a lawyer to assist a client on a limited basis, without fear of being dragged into a seemingly endless morass of litigation. It is one thing for a lawyer to spend an hour or two on a *pro bono* case. It is quite another to become ensnared in lengthy litigation with no prospect of being paid. The former is both realistic and potentially very useful to a client. The latter is every lawyer’s nightmare.

E. Wyoming Lawyers Who Provide Pro Bono Services May Receive Reimbursement for the Expenses Incurred in Providing Them

The federal courts in Wyoming charge a fee to non-Wyoming lawyers who wish to appear *pro hac vice*.¹³² Those fees are paid to the Clerk of Court, who maintains an account from which funds are disbursed for worthy causes.¹³³ One such cause is the provision of *pro bono* services by Wyoming lawyers. Accordingly, the Wyoming State Bar Foundation was awarded a \$5,000.00 grant in 2005 for the purpose of providing a fund to which lawyers may apply to receive reimbursement of expenses incurred in providing *pro bono* legal services.

F. Wyoming Encourages Non-Profit, Limited Legal Services Programs

In addition to the unbundling rules, Wyoming’s Rules of Professional Conduct have been changed to encourage lawyers to participate in non-profit limited legal services programs, which have operated in the State for a number of years.¹³⁴ Such programs have always been permissible, but

128. WYO. UNIFORM RULES FOR DIST. COURTS R. 102(a)(1)(c) (2003). That rule is incorporated in the Circuit Court rules. WYO. UNIFORM RULES FOR CIRCUIT COURTS R. 1.02 (2003).

129. WYO. UNIFORM RULES FOR DIST. COURTS R. 102(c) (2003).

130. WYO. RULES OF PROF’L CONDUCT R. 1.1 (2003).

131. *Id.* at R. 1.1 cmt. 6.

132. U.S. DIST. CT. FOR THE DIST. OF WYO., LOCAL CIVIL RULES R. 83.12.2(b) (2005).

133. Telephone interview with Leigh Anne Manlove, Foundation Director, Wyoming Bar Association (Feb. 7, 2005).

134. WYO. RULES OF PROF’L CONDUCT R. 6.5 (2003).

the rule adopted in 2002 expressly authorizes such programs and provides important protections for lawyers who participate in them. Fourteen other states have also adopted rules to encourage such programs.¹³⁵

The idea is simple: Provide a forum in which a person can talk to a lawyer for a short time, receive the benefit of his or her suggestions, and not create any expectation by the individual of continued representation or any obligation for the lawyer to provide it. Such a program has existed in Uinta County for over ten years.¹³⁶

Once every other month, a group of lawyers in Uinta County (usually two or three lawyers) gathers in the County Attorney's Office for "Bar Night." Participating lawyers meet with anyone who attends ("Bar Nights" are publicized by advertisements in the local newspaper). On a typical evening, five to ten individuals appear with questions for the lawyers. While questions are accepted in any area of law, the most common questions involve child custody. Often, clients are referred to other lawyers for more extensive consultations. Sometimes the clients can pay, and sometimes they cannot. If they cannot, the lawyer who interviews the individual may take the case *pro bono*, or help the individual find a lawyer who will. The program has flourished for years, even though the Uinta County Bar only has about fifteen members. Programs such as Uinta County's "Bar Nights" are now expressly authorized by Rule 6.5 of the Wyoming Rules of Professional Conduct.¹³⁷

Rule 6.5 of the rules is entitled "Non-profit limited legal services programs." It authorizes limited legal services programs "sponsored by a nonprofit organization, the state or county bar association, or a court . . ."¹³⁸ Under the auspices of any such program, a lawyer "may . . . provide short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter . . ."¹³⁹ No on-going lawyer-client relationship will be formed if "the lawyer informs the client of the scope of the representation at the time legal services are provided and the lawyer obtains the client's informed consent to the limited scope."¹⁴⁰ The disclosure of the limited scope and the client's

135. The following states have adopted a version of Rule 6.5 or a similar rule: Arkansas, Delaware, Idaho, Indiana, Louisiana, Montana, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Virginia, and Washington.

136. The information about the Uinta County Bar Night program was provided by Geoff Phillips, who has been involved with the program since he became a lawyer and moved to Evanston in 2001. Interview with Geoff Phillips, Attorney, James E. Phillips, PC (Feb. 25, 2005).

137. WYO. RULES OF PROF'L CONDUCT R. 6.5 (2003).

138. *Id.* at R. 6.5(a).

139. *Id.*

140. *Id.*

consent must be in writing unless the consultation “consists solely of telephone consultations(s)”¹⁴¹ The rule not only facilitates such programs, it provides important protections to the lawyers who participate in them.

Lawyers may not generally represent a client if an impermissible conflict of interest exists.¹⁴² An impermissible conflict exists if the lawyer’s representation of a client will be “directly adverse”¹⁴³ to another client, or if the lawyer’s representation “may be materially limited” by the lawyer’s obligations to a third party, another client, or the lawyer’s own interests.¹⁴⁴ Conflicts may be waived if a “disinterested lawyer would conclude” that waiver would be appropriate.¹⁴⁵ Disqualifying conflicts of interest may arise because of a lawyer’s representation of a former client¹⁴⁶ or a client of a firm with which the lawyer formerly practiced.¹⁴⁷

The purpose of the conflict of interest rules is to preserve a lawyer’s loyalty to each client. Loyalty to a client is so important that it is an “essential element” of every attorney-client relationship.¹⁴⁸ Accordingly, lawyers have a duty to identify and properly evaluate conflicts of interest.¹⁴⁹ Fulfilling that duty requires a lawyer or law firm to maintain a client database which identifies all the lawyer’s or law firm’s current and former clients,¹⁵⁰ as well as prospective clients from whom significant information was obtained.¹⁵¹ The normal conflict of interest rules are relaxed when lawyers participate in a non-profit, limited legal services program.

Rule 6.5, which permits non-profit, limited legal services programs, expressly exempts lawyers from the rules on concurrent conflicts of interest (Rule 1.7), the rule on former client conflicts of interest (Rule 1.9(a)), and the rule which imputes an individual lawyer’s conflicts to the firm with which the lawyer practices (Rule 1.10(a)), unless the lawyer “actually knows

141. *Id.* at R. 6.5(b). That requirement is identical to the requirement under Rule 1.2(c). See *supra* notes 120-131 and accompanying text.

142. WYO. RULES OF PROF’L CONDUCT R. 1.7 (2003).

143. *Id.* at R. 1.7(a).

144. *Id.* at R. 1.7(b). For a discussion of waiver of conflicts of interest, see J.M. Burman, *Conflicts of Interest in Wyoming*, 35 LAND & WATER L. REV. 79, 82-84 (2000).

145. WYO. RULES OF PROF’L CONDUCT R. 1.7 cmt. 4 (2003).

146. *Id.* at R. 1.9(a).

147. *Id.* at R. 1.9(b).

148. *Id.* at R. 1.7 cmt. 1.

149. J.M. Burman, *Conflicts of Interest in Wyoming*, 35 LAND & WATER L. REV. 79, 181 (2000). See also, MODEL RULES OF PROF’L CONDUCT R. 5.1 cmt. 2 (2004) (“[L]awyers with managerial authority within a firm [must] make reasonable efforts to establish internal policies and procedures . . . to detect and resolve conflicts of interest . . .”).

150. Robert W. Martin, Jr., *Practicing Law in the 21st Century: Fundamentals for Avoiding Malpractice Liability*, 33 LAND & WATER L. REV. 191, 197 (1998).

151. J.M. Burman, *Conflicts of Interest in Wyoming*, 35 LAND & WATER L. REV. 79, 89 (2000) (“Conflicts may result from consultations with prospective clients who never become clients.”).

that the representation of the client involves a conflict of interest.”¹⁵² It is not necessary, therefore, for the program in which the lawyer participates to maintain a client database and/or check for conflicts. The reason for the exclusion is that “[s]uch programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.”¹⁵³

G. Other States Have Adopted Other Measures to Encourage Lawyers to Provide Pro Bono Services

While numerous incentives to provide *pro bono* services exist in Wyoming, two other methods have been adopted in other states, mandatory reporting of *pro bono* services and providing malpractice insurance for lawyers who provide such services. While the former issue would be controversial, and of uncertain value, at best, the latter is something that should be considered in Wyoming.

1. Mandatory Reporting of *Pro Bono* Services Appears to Increase Such Services

Three states (Florida, Maryland and Nevada) require lawyers to report whether they have performed *pro bono* services and, if so, the number of hours.¹⁵⁴ The Florida rule has been in effect for about a decade. Maryland’s rule went into effect on July 1, 2002, and the Nevada requirement became effective in May of 2003. The Florida and Maryland rules have existed long enough to at least begin to evaluate their effect.

In 2003, 31,153 Maryland attorneys reported that they had provided 1,031,216 hours of *pro bono* service, an increase of 3.6 percent from 2002, in which 30,024 attorneys provided 995,615 hours of service.¹⁵⁵ The most recent *pro bono* statistics available for Florida are for the twelve-month period beginning on July 1, 2001. Nearly 30,000 or Florida’s 70,000 lawyers reported providing more than 1.3 million hours of donated legal services during that time.¹⁵⁶ Statistics for Nevada are not yet available.

152. WYO. RULES OF PROF’L CONDUCT R. 6.5(a)(1)-(2) (2003).

153. *Id.* at R. 6.5 cmt. 1.

154. FLA. BAR. REG. R.4-6.1(d) (2005); MD. R. 16-903 (2004); NEV. S. CT. R. 191 (2004).

155. MD. ADMIN. OFFICE OF THE COURTS, FINAL REPORT: CURRENT STATUS OF PRO BONO SERVICE AMONG MARYLAND LAWYERS, YEAR 2003 (2004); MD. ADMIN. OFFICE OF THE COURTS, FINAL REPORT: CURRENT STATUS OF PRO BONO SERVICE AMONG MARYLAND LAWYERS, YEAR 2002 (2003).

156. Flabar Online, *The Florida bar reports that pro bono legal work is on the rise in Florida* (May 3, 2005), available at <http://www.flabar.org/TFB/TFBPublic.nsf/WNews-Releases/2CE8D70E2DAEB80285256CBC0070660E>.

The effect of a lawyer's failure to report depends on the state. In Florida, the failure to report is "a disciplinary offense."¹⁵⁷ A "disciplinary offense" is misconduct for which a sanction may be imposed, including disbarment for serious offenses.¹⁵⁸ A Maryland lawyer who fails to file a *pro bono* report may be prohibited "from practicing law in the State."¹⁵⁹ By contrast, while Nevada requires lawyers to report, the rule provides no sanction for not doing so, saying only that "[t]he professional responsibility to provide pro bono services . . . is aspirational rather than mandatory Accordingly, the failure to render pro bono services will not subject a member to discipline."¹⁶⁰

2. Providing Malpractice Insurance for Lawyers Who Provide *Pro Bono* Services Would Encourage Such Services

Wyoming is one of forty-nine states that do not require lawyers to maintain malpractice insurance; the only state that does is Oregon.¹⁶¹ According to the 2003 Wyoming State Bar survey of Wyoming lawyers, thirty-seven percent of lawyers in private practice in Wyoming do not maintain malpractice insurance.¹⁶² An innovative incentive of providing malpractice coverage for lawyers who provide *pro bono* services has been adopted in Alaska, Missouri, and Wisconsin.

Wisconsin has created a program called "WisBar Team Pro Bono."¹⁶³ A lawyer who elects to become a "player" on the team receives "free CLE courses, printed resource materials, pre-screened cases, technical assistance, and *malpractice insurance coverage*."¹⁶⁴

No one knows if the absence of malpractice insurance is a barrier to Wyoming lawyers providing *pro bono* legal services. If it is, that barrier

157. FLA. BAR. REG. R. 4-6.1(d) (2005).

158. Fla. State Bar v. Spann, 682 So. 2d 1070 (Fla. 1996).

159. MD. R.16-903(e) (2004).

160. NEV. S. CT. R. 191.2 (2004).

161. An Oregon statute allows the Board of Governors of the Oregon Bar Association "to require all active members of the state bar engaged in the private practice of law . . . in Oregon to carry professional liability insurance . . ." OR. REV. STAT. § 9.080(2)(a) (2003). The Board is further empowered "to . . . organize and sponsor . . . a lawyer's professional liability fund . . ." *Id.* Pursuant to that authority, Oregon lawyers must maintain insurance, and, in 1977, the Board established and still maintains a lawyer's professional liability fund. See Oregon State Bar website, at <http://www.osbar.org/plf/plf.html> (last visited Apr. 19, 2005).

162. Interview with Mary Bell Guthrie, Executive Director, Wyoming State Bar (Mar. 7, 2005).

163. The program was created pursuant to Article IV, Section 5 of the Wisconsin State Bar's bylaws. WIS. STATE BAR, BYLAWS Art. IV, § 5 (2002), available at http://www.wisbar.org/AM/Template.cfm?Section=Rules_and_Bylaws#article3 (last visited Apr. 29, 2005).

164. See State Bar of Wisconsin homepage, at <http://www.wisbar.org/AM/Template.cfm?Section=Retirement&Template=/CM/ContentDisplay.cfm&ContentID=31053> (last visited Apr. 19, 2005).

could be easily removed, assuming a source of funding for such coverage could be located.

VII. THE NEED FOR LEGAL SERVICES FOR LOW-INCOME PERSONS CANNOT BE MET SOLELY BY LAWYERS PROVIDING *PRO BONO* SERVICES

The need for legal services for low-income persons living in Wyoming¹⁶⁵ and elsewhere is enormous.¹⁶⁶ Even if every lawyer in Wyoming met the aspirational goal of furnishing fifty hours of *pro bono* legal services annually, that need would not be met. The gap between that need and the goal of meeting “the public good” is simply too big.

Although one often hears jokes about the excessive number of lawyers, that is simply not the case in Wyoming. About 1400 lawyers are active members of the Wyoming Bar.¹⁶⁷ Of those, about 800 are engaged in private practice.¹⁶⁸ Even though Wyoming’s population is barely half a million,¹⁶⁹ both the population and the lawyers in the state are widely scattered and concentrated in a few geographical areas, making Wyoming a completely rural, and mostly “frontier”¹⁷⁰ state. Unfortunately, “poverty falls disproportionately on rural residents and rural regions.”¹⁷¹ To compound the problem,

165. Leigh Anne G. Manlove’s article, “Unmet Legal Needs in Wyoming,” discusses the need for legal services in Wyoming. Manlove, *supra* note 1, at 473-75. The need is demonstrated by the large number of persons of limited means. More than eleven percent of Wyomingites live in a household that has an income equal to or less than the federal poverty level. See U.S. CENSUS BUREAU, QUICKFACTS, at <http://quickfacts.census.gov/qfd/states/56000.html> (last visited Apr. 19, 2005). The financial eligibility standard for the Legal Services Corporation (“LSC”) is 125 percent of the federal poverty level. 45 C.F.R. § 1611.3(b) (2005). The clinics at the College of Law are required to use the same eligibility criteria. WYO. BAR ASSN. ORGAN. & GOVT. R. 12(b)(2)(iii) (2003). Although ineligible for services from the LSC or the clinics because of incomes in excess of 125 percent of the poverty level, many Wyomingites are functionally unable to access the legal system by hiring a lawyer.

166. An estimated eighty percent of the legal needs of low-income Americans go unmet. See *supra* note 2.

167. Interview with Mary Bell Guthrie, Executive Director, Wyoming State Bar (Mar. 7, 2005).

168. *Id.*

169. Wyoming’s 2003 population was estimated by the United States Census Bureau at 501,242. See U.S. CENSUS BUREAU, QUICKFACTS, at <http://quickfacts.census.gov/qfd/states/56000.html> (last visited Apr. 19, 2005).

170. “[F]rontier areas in the United States [are] characterized by both remoteness and sparse population . . . [Frontier status is determined by a] matrix of population density, distance to the closest ‘market’ for services, and travel time.” FRONTIER EDUCATION CENTER, FRONTIER: A NEW DEFINITION: THE FINAL REPORT OF THE CENSUS DEVELOPMENT PROJECT (1998), available at <http://www.frontierus.org/index.htm?p=2&pid=6003&spid=6109> (last visited Apr. 19, 2005). Aside from Natrona and Laramie counties, Wyoming is completely “frontier.” FRONTIER EDUCATION CENTER, USA FRONTIER COUNTIES, 2000 CENSUS (2000), available at <http://www.frontierus.org/documents/Frontier%20Counties%202000.pdf> (last visited Apr. 19, 2005).

171. AM. BAR. ASSOC., RURAL PRO BONO DELIVERY: A GUIDE TO PRO BONO LEGAL SERVICES IN RURAL AREAS 11 (2003).

rural areas, such as Wyoming, do not suffer from an excess of lawyers. Rather, there is “a small and limited pool of lawyers”¹⁷² from which to choose. As the lawyers in Wyoming cannot meet the need for legal services to low-income Wyomingites, the question becomes, “how should that need be met?” I assume the need should be met because it is in our collective best interest for low-income persons to have effective access to the legal system.

While the *pro bono* “obligation” belongs to individual lawyers, their efforts are insufficient, and “the profession generally” must be involved.¹⁷³ Accordingly, “it has been necessary . . . to institute additional programs to provide legal services, [such as] legal aid offices, lawyer referral services and other related programs”¹⁷⁴ The largest such program is the federally funded Legal Services Corporation. The next largest source of funding for civil legal services is IOLTA (interest on lawyer trust accounts) programs. Although they combine to provide legal representation to many low-income persons, they fall far short of meeting the need.

A. Funding for the Legal Services Corporation Needs to be Increased Substantially if the Corporation is to Come Close to Meeting the Need

The Legal Services Corporation (“LSC”) was created by Congress in 1974, and signed into law by President Nixon, with bipartisan support.¹⁷⁵ It has offices in every state, including Wyoming. The problem is its funding is wholly inadequate. In fiscal year 2004 (October 1, 2003 through September 30, 2004), the LSC budget for the *entire country* was \$338,848,000.00.¹⁷⁶ That amounts to less than \$2.00 per person. The allocation for the State of Wyoming in 2004 was approximately \$622,000.00,¹⁷⁷ or about \$1.25 per person.

In real dollars, funding for LSC reached its apex during fiscal year 1994, when the corporation received \$400 million. In actual dollars, funding peaked in fiscal year 1981 at \$321 million (It would take \$667 million of today’s money to equal the purchasing power of \$321 million in 1981. Four hundred million dollars in 1994 is only \$510 million in today’s money).¹⁷⁸

172. *Id.* at 12.

173. *Id.*; WYO. RULES OF PROF’L CONDUCT R. 6.1 cmt.3 (2003).

174. WYO. RULES OF PROF’L CONDUCT R. 6.1 cmt. 3 (2003).

175. Legal Serv. Corp. Act, Pub. L. No. 88-452 (codified as amended at 42 U.S.C. § 2996, et seq).

176. Pub. L. No.108-199, 118 Stat. 3; H.R.2673, 108th Cong. (2004) (enacted), *available at* http://www.lsc.gov/press/pr_04a.htm (last visited Apr. 19, 2004).

177. For information regarding recent Wyoming funding allotments, *see* LEGAL SERV CORP., MAP OF LSC PROGRAMS, *at* <http://www.lsc.gov/map/WY.htm> (last visited Apr. 29, 2005).

178. The current values were determined using the Consumer Price Index “Inflation calculator.” CONSUMER PRICE INDEX, INFLATION CALCULATOR, *available at* <http://www.bls.gov/cpi/> (last visited Feb. 28, 2005).

The LSC appropriation was slashed to \$240 million for fiscal year 1982, and has gradually been increasing. Although the 2004 appropriation was “up” to \$338 million, that figure represents a huge decline in purchasing power from 1982. Adjusted for inflation, the LSC today has just over half the federal funding it had twenty-four years ago to provide legal services to low-income Americans.¹⁷⁹ As the need for legal services has increased during that time, LSC has substantially fewer resources than it once did. Accordingly, correspondingly fewer low-income persons receive legal services from LSC funded attorneys. The bottom line is funding for LSC has not even kept pace with inflation, and it is time for Congress and the President to help lawyers meet the legal needs of low-income Americans.

In addition to funding limitations, federal law limits the kinds of representation that LSC funded offices may provide. LSC lawyers may not represent a class in a class action suit, appeal a class action, or be involved as an amicus curiae without “the express approval of a project director.”¹⁸⁰

Most states supplement funding to LSC offices and/or other providers of legal services to low-income persons through state appropriations. Wyoming is one of ten states that provide no funding for legal services for low-income persons.¹⁸¹ Given the crying and chronic needs of low-income Wyomingites, especially children and elderly persons who live in poverty and have pressing legal needs, it is time for the State to step up to the plate.

B. Wyoming's IOLTA Program Provides Valuable Assistance to Providers of Civil Legal Services in Wyoming, But it Cannot Meet the Need

Every state has an IOLTA program. Some, such as Wyoming's are very small, because the number of lawyers participating in the program is

179. By contrast, the federal government spent over \$177 billion on Medicaid in fiscal year 2004. DEPT. OF HEALTH AND HUMAN SER., BUDGET 125, available at <http://www.gpoaccess.gov/usbudget/fy04/pdf/budget/hhs.pdf> (last visited May 3, 2005). Medicaid is the primary mechanism to provide for the medical needs of low-income Americans.

180. 42 U.S.C. § 2996e(d)(5) (2005).

181. The other states are Alabama, Alaska, Arkansas, Colorado, Connecticut, Idaho, Mississippi, South Dakota, and Wisconsin. Alaska, Colorado and Wisconsin previously provided funding, but that funding was eliminated in each state's last legislative session. Wyoming did provide bridge funding for the Domestic Violence Legal Assistance Project at the University of Wyoming when that project lost its federal funding from July 1, 2004 through October of that year. Although it has not funded legal services for low-income persons, the Wyoming Legislature took a huge step forward this year when it appropriated \$2.1 million to pay GALs, or attorneys appointed to represent a child's best interests, in juvenile cases involving abuse or neglect of a child, or a child in need of supervision. 2005 Wyo. Sess. Laws 237. Although some representation has been available (from the counties), payment has been sporadic, with children in some counties having GALs who were reasonably well compensated, while children in most counties had GALs who received next to nothing and/or had enormous caseloads.

very small. For example, Wyoming's IOLTA program made grants of about \$30,000.00 in 2003.¹⁸² In more populous states, IOLTA funds are much larger. New Jersey's IOLTA program made grants of over \$13 million dollars in the same year.¹⁸³ Collectively, state IOLTA programs granted over 125 million dollars in 2003, the vast majority of which went to grantees that provide direct legal services to low-income clients.¹⁸⁴

In some states, IOLTA programs were created by statute; however, "in most other States, the IOLTA program was established by the State Supreme Court pursuant to its authority to regulate the practice of law."¹⁸⁵ While they have been attacked as involving an unconstitutional taking, the United States Supreme Court recently held that IOLTA programs do not involve an unconstitutional taking for which compensation is required. They are, therefore, constitutionally permissible.¹⁸⁶ Accordingly, a lawyer's participation in an IOLTA program is "neither unethical nor illegal."¹⁸⁷

Wyoming has an opt-out IOLTA program, meaning that lawyers must participate in the IOLTA program unless they affirmatively elect not to and notify the Wyoming State Bar accordingly.¹⁸⁸ IOLTA funds are collected by the Wyoming State Bar Foundation ("WSBF").¹⁸⁹ Aside from costs of administration, all funds collected by the WSBF are used for three purposes: "(1) providing legal services to the poor of Wyoming . . . ;(2) providing public education projects which promote a knowledge and awareness of the law; [and] (3) providing projects which improve the administration of justice."¹⁹⁰

Unfortunately, as interest rates have plummeted in recent years, the amount of funds generated by all IOLTA programs, including Wyoming's, has plummeted, too. As a result, the WSBF only has about twenty-five percent of the funds it had four years ago. Most of the remaining funds have gone to the University of Wyoming College of Law to help fund its Legal Services Program and its Domestic Violence Legal Project.

VIII. CONCLUSION

Wyoming is in the forefront of providing incentives for lawyers to provide *pro bono* services and making it easy for them to do so. The rules

182. WYO. ST. BAR FOUND., IOLTA GRANT HISTORY, available at, http://www.wyoming-statebarfoundation.org/IOLTA_history.asp (last visited Apr. 29, 2005).

183. *Id.*

184. *Id.*

185. *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 220 (2003).

186. *Id.* at 239.

187. *Id.*

188. WYO. RULES OF PROF'L CONDUCT R. 1.15, § II(b)-(c) (2003).

189. *Id.* at R. 1.15, § II(d).

190. *Id.* at R. 1.15, § II(f).

allowing lawyers to receive CLE credit for furnishing such services, either directly or through mentoring another lawyer or law student, and the rules which provide for the unbundling of legal services are the two most obvious manifestations of the commitment to *pro bono* services by the Wyoming Bench and the Wyoming Bar.

The need, unfortunately, is too great; lawyers simply cannot meet it alone. They need help, and that help should come in the form of increased funding for the Legal Services Corporation at the federal level, and, for the first time, additional funding from the State to increase the availability of legal services for low-income Wyomingites. In a State with massive budget surpluses, it is penny wise and pound foolish to not make the courts accessible to everyone. The issues are too important, and the cost of inadequate representation will, ultimately, be borne by all of us.