

# Access to Legal Services in Rural Areas of the Northern Rockies: A Recommendation for Town Legal Centers

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## INTRODUCTION

There are two distinct but related issues that affect legal representation in rural areas of the United States: the problem of attracting and keeping private attorneys,<sup>1</sup> and the problem of satisfying the immense need for pro bono representation for low-income residents.<sup>2</sup> Although these issues are interrelated—attracting attorneys to rural areas can help satisfy the need for pro bono representation—each state is handling the problems in distinctive ways.<sup>3</sup>

In Part I, this Note will demonstrate why the Northern Rockies—which consists of the states of Idaho, Montana, and Wyoming—is a distinctive region with enough similarities between states that a single proposal to improve legal services delivery would be effective across the entire region. In Part II, this Note will discuss the problems facing the Northern Rockies states in delivering legal services to rural areas. In Part III, this Note will examine some of the current solutions being employed in the Northern Rockies states, as well as across the nation, to increase access to legal services for low-, moderate-, and high-income rural residents. This Note will then argue that each solution is either ineffectual or insufficient to solve the issues related to the access of legal services facing rural residents of the Northern Rockies. In Part IV, this Note will recommend that the Northern Rockies states establish statewide networks of “Town Legal Centers,” which operate as virtual offices in local communities where residents can meet with legal professionals from around the state. This Note will then propose that Town Legal Centers should be open not only to legal aid organizations but also to private attorneys offering paid legal services. With a rational basis referral system, these Centers can promote increased pro bono participation from the private bar and provide statewide volunteer opportunities for law students. Last, this Note will explore several different sources of funding that could be used to create and maintain Town Legal Centers and then argue that the program could potentially achieve self-sufficiency through a use fee for paid legal services.

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\* J.D. candidate, 2015, Indiana University Maurer School of Law. I would like to thank my parents and siblings for serving as excellent role models and for constantly motivating me throughout my life. I would also like to thank the residents of Encampment, Wyoming—Encampment will forever be my hometown, and this tight-knit, rural town served as the inspiration for this Note.

1. See Ethan Bronner, *No Lawyers for 100 Country Miles, So One Rural State Offers Pay*, N.Y. TIMES, Apr. 9, 2013, at A1.

2. See AM. BAR ASS’N STANDING COMM. ON PRO BONO & PUB. SERV. & THE CTR. FOR PRO BONO, RURAL PRO BONO DELIVERY: A GUIDE TO PRO BONO LEGAL SERVICES IN RURAL AREAS 11–12 (2003) [hereinafter RURAL PRO BONO DELIVERY].

3. Compare South Dakota’s incentive payments approach, *infra* text accompanying notes 88–94, with, for example, Idaho’s innovative approach that uses interactive forms for self-represented litigants to help them prepare legal documents, *infra* text accompanying notes 130–31.

I. THE NORTHERN ROCKIES STATES ARE SUFFICIENTLY SIMILAR TO ALLOW FOR A SINGLE GENERALIZED SOLUTION TO PROVIDE RURAL RESIDENTS WITH ACCESS TO LEGAL SERVICES

The Northern Rockies states share the nationwide issues of attracting legal talent and delivering much-needed legal aid to low-income individuals in rural areas.<sup>4</sup> For the purposes of this Note, the Northern Rockies consist of three states: Idaho, Montana, and Wyoming. These three states are similar in geography, population measures, poverty levels, racial diversity, and attorney and law school density—these similarities afford the ability to generalize about current problems and the ability to propose a single solution to increase access to legal services for rural residents.

The geography of the Northern Rockies states, with high mountain peaks leading to vast fertile plains, offers distinctive challenges to providing legal services. Towns that are mere miles apart and within the same county may require hours-long journeys over rugged terrain. Significantly, the Northern Rockies states are some of the largest in the country: Montana has the fourth largest land area in the United States, Wyoming has the ninth, and Idaho has the eleventh.<sup>5</sup> Population centers spread across these vast distances make traditional, face-to-face legal representation difficult and expensive.<sup>6</sup> As the American Bar Association (ABA) notes, geographic distance “constitutes only one impediment [to rural legal service delivery], but what an impediment it is.”<sup>7</sup>

Additionally, the Northern Rockies states have small populations, low population density, and high rates of rural population. Wyoming is the least populated state<sup>8</sup> in the entire United States and ranks second to last in population density.<sup>9</sup> Montana is the forty-fourth most populated state<sup>10</sup> and ranks third to last in population density.<sup>11</sup> Idaho is slightly more populated than Wyoming and Montana, ranking thirty-ninth

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4. See, e.g., Angie Dorsch, *Wyoming Volunteer Lawyers: The Building Blocks of Justice*, WYO. LAWYER, Apr. 2014, at 38, 40; Klaus Sitte, *A Mile Wide and an Inch Deep No More: Achieving Access to Justice in Rural Montana*, 70 MONT. L. REV. 273, 276 (2009) (describing the high level of need for legal aid in Montana); Robert T. Wetherell, *On Age, Globalization, Technology and the Bar*, ADVOCATE, May 2014, at 14, 14–15.

5. *State Area Measurements and Internal Point Coordinates*, U.S. CENSUS BUREAU, <http://www.census.gov/geo/reference/state-area.html>. Montana has a land area of 147,040 square miles, Wyoming has 97,813 square miles, and Idaho has 83,569 square miles. *Id.*

6. RURAL PRO BONO DELIVERY, *supra* note 2, at 11–12.

7. *Id.* at 11.

8. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES, at 19 tbl.14 (2012), available at <http://www.census.gov/compendia/statab/2012/tables/12s0014.pdf> [hereinafter STATISTICAL ABSTRACT].

9. *Resident Population Data: Population Density*, U.S. CENSUS BUREAU, <http://www.census.gov/2010census/data/apportionment-dens-text.php> [hereinafter *Resident Population Data*]. Wyoming has 563,626 residents as of the 2010 Census and 5.8 residents per square mile, trailing only Alaska in population density. *Id.*

10. STATISTICAL ABSTRACT, *supra* note 8. Montana has 989,415 residents as of the 2010 Census. *Id.*

11. *Resident Population Data*, *supra* note 9. Montana has a population density of 6.8 residents per square mile. *Id.*

in population,<sup>12</sup> but is still ninth to last in population density.<sup>13</sup> In addition to small populations, the percentage of residents living in rural areas is significantly higher in the Northern Rockies states than the rest of the United States.<sup>14</sup> According to the 2010 U.S. Census, 19.3% of the population of the United States lives in rural areas.<sup>15</sup> However, 29.4% of the population of Idaho, 44.1% of the population of Montana, and 35.2% of the population of Wyoming live in rural areas.<sup>16</sup>

The Northern Rockies states also share similar poverty rates that hover near the national average of 15.9%.<sup>17</sup> The Legal Services Corporation (LSC)—a private, nonprofit corporation established by the federal government that helps fund much of the legal aid in the United States—gives grants to programs “on a per-capita basis according to each service area’s share of the eligible poverty population.”<sup>18</sup> The funds from LSC grants constitute the largest share of funding for pro bono programs in all three Northern Rockies states,<sup>19</sup> so having similar poverty rates gives states proportional funding for legal aid programs. Also, each state currently has only one LSC-funded legal aid organization, which provides legal aid services for the entire respective state. Idaho Legal Aid Services, Inc., the Montana Legal Services Association, and Legal Aid of Wyoming, Inc. are the only legal aid organizations currently providing services in their respective states,<sup>20</sup> although Montana and Wyoming have state-run programs that support legal aid efforts.<sup>21</sup>

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12. STATISTICAL ABSTRACT, *supra* note 8. Idaho has 1,567,582 residents as of the 2010 Census. *Resident Population Data*, *supra* note 9.

13. *Resident Population Data*, *supra* note 9. Idaho has a population density of 19.0 residents per square mile. *Id.*

14. The definition of what constitutes “rural” is highly debated. *See* Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 177–84 (2006) (discussing how various statutes and judicial decisions have defined “rural”). But the U.S. Census defines “rural” as “all population, housing, and territory not included within an urban area.” *2010 Census Urban and Rural Classification and Urban Area Criteria*, U.S. CENSUS BUREAU, <http://www.census.gov/geo/reference/ua/urban-rural-2010.html>. In order to qualify as an “urban area,” the area “must encompass at least 2,500 people, at least 1,500 of which reside outside institutional group quarters.” *Id.*

15. *2010 Census Urban and Rural Classification and Urban Area Criteria*, *supra* note 14.

16. *Id.* (expand “Lists of Population, Land Area, and Percent Urban and Rural in 2010 and Changes from 2000 to 2010” section; then follow hyperlink on “Percent urban and rural in 2010 by state”).

17. ALEMAYEHU BISHAW, U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY BRIEFS, POVERTY: 2010 AND 2011, at 3 tbl.1 (2012), *available at* <http://www.census.gov/prod/2012pubs/acsbr11-01.pdf>. In 2011, Idaho posted a poverty rate of 16.5%, Montana had a rate of 14.8%, and Wyoming had a rate of 11.3%. *Id.*

18. LEGAL SERVS. CORP., 2012 FACT BOOK 2, 7 (2012), *available at* [http://www.lsc.gov/sites/lsc.gov/files/LSC/lscgov4/AnnualReports/2012\\_Fact%20Book\\_FIN\\_ALforWEB.pdf](http://www.lsc.gov/sites/lsc.gov/files/LSC/lscgov4/AnnualReports/2012_Fact%20Book_FIN_ALforWEB.pdf) [hereinafter 2012 FACT BOOK]. Eligibility for individuals seeking LSC-funded services is defined as 125 percent of the poverty line. *Id.*

19. *Id.* at 10–14.

20. *See Find Legal Aid*, LEGAL SERVICES CORP., <http://lsc.gov/find-legal-aid>.

21. *See State Funding Initiative*, IDAHO LEGAL AID SERVICES, <http://idaholegalaid.org/About/StateFunding>. Idaho remains the only state in the United States that does not have state support for legal aid funding. *Id.*

Overall, the three Northern Rockies states share very similar racial and ethnic diversity, with high populations of residents who identify their race as white alone.<sup>22</sup> While it is not readily apparent that racial and ethnic diversity influences the provision of legal services in rural areas, it is well established that racial and ethnic minorities experience higher rates of poverty.<sup>23</sup> In response to these poverty rates, some states that have high Native American populations, such as those in the southwestern United States, have created specific pro bono legal projects supporting this minority group.<sup>24</sup> The Northern Rockies states do not currently have any legal aid programs for specific minority groups.

Lastly, the Northern Rockies states all have below average numbers of attorney density, as well as only a single accredited law school located in an urban area of each state. Idaho's single accredited law school is the University of Idaho College of Law, which is located in Moscow, Idaho.<sup>25</sup> Idaho also has the 47th lowest number of attorneys per capita.<sup>26</sup> Montana's single accredited law school is the University of

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22. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES, at 24 tbl.19 (2012), available at <http://www.census.gov/compendia/statab/2012/tables/12s0019.pdf>. Roughly 89.1% of Idaho residents, 89.4% of Montana residents, and 90.7% of Wyoming residents identify as white alone. *Id.*

23. See, e.g., Carlos Gradín, *Poverty Among Minorities in the United States: Explaining the Racial Poverty Gap for Blacks and Latinos*, 44 APPLIED ECON. 3793, 3793 (2012) (“The two largest minorities in the United States, African Americans and people of Hispanic origin, show official poverty rates at least twice as high as those of non-Hispanic Whites.”); Kelvin M. Pollard & William P. O’Hare, *America’s Racial and Ethnic Minorities*, POPULATION BULL. Sept. 2004, at 1, 34–41; Mark Mather, *U.S. Racial/Ethnic and Regional Poverty Rates Converge, but Kids Are Still Left Behind*, POPULATION REFERENCE BUREAU (Aug. 2007), <http://www.prb.org/Publications/Articles/2007/USRacialEthnicAndRegionalPoverty.aspx> (“While poverty rates continue to vary widely by subgroup and region, longer-term trends point to a growing convergence in poverty levels among minority groups and for people living in different parts of the country.”); *Poverty in the United States: Frequently Asked Questions*, NAT’L POVERTY CENTER, <http://www.npc.umich.edu/poverty/> (“The poverty rate for all persons masks considerable variation between racial/ethnic subgroups. Poverty rates for blacks and Hispanics greatly exceed the national average.”).

24. See, e.g., DNA-PEOPLE’S LEGAL SERVICES, <http://www.dnalegalservices.org> (describing a LSC-funded program that provides legal services to impoverished members of seven Native American tribes).

25. See 2015 ABA-LSAC Official Guide to ABA-Approved Law Schools, LAW SCH. ADMISSIONS COUNCIL, [https://officialguide.lsac.org/release/officialguide\\_default.aspx](https://officialguide.lsac.org/release/officialguide_default.aspx) (select “State Map” then on the state of Idaho) (last updated Apr. 2014); *About the College of Law*, U. IDAHO, <http://www.uidaho.edu/law/aboutthecollegeoflaw>. Idaho also has Concordia University School of Law in Boise, a nonprofit private school that opened in August 2012. See *About*, CONCORDIA U. SCH. L., <http://law.cu-portland.edu/about>. However, as of printing, Concordia has yet to receive ABA accreditation or provisional status. *Accreditation Process*, CONCORDIA U. SCH. L., <http://law.cu-portland.edu/about/accreditation>.

26. This statistic was calculated using data providing the number of resident and active attorneys in a state in 2013, AM. BAR ASS’N, NATIONAL LAWYER POPULATION BY STATE (2013), available at [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/Public Documents/2013\\_natl\\_lawyer\\_by\\_state.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/Public Documents/2013_natl_lawyer_by_state.authcheckdam.pdf), and each state’s population in 2013, U.S. CENSUS BUREAU, STATE TOTALS: VINTAGE 2013 available at <http://www.census.gov/popest/data/state/totals/2013/> (select the “XLS” file format next to “Annual Estimates of the

Montana School of Law, located in Missoula, Montana,<sup>27</sup> and the state has the 26th lowest number of attorneys per capita.<sup>28</sup> Wyoming's single accredited law school is the University of Wyoming College of Law, located in Laramie, Wyoming.<sup>29</sup> Wyoming has the 33rd lowest number of attorneys per capita.<sup>30</sup>

## II. THE NEED FOR LEGAL SERVICES IN RURAL AREAS AND THE PROBLEMS OF DELIVERY

There is a stereotype of rural residents as being “independent, self-sufficient, and neither in need of nor amenable to regulation.”<sup>31</sup> Some studies suggest that rural residents are less likely to seek legal redress for their problems than their urban counterparts and that these residents may create “alternative techniques for handling matters that might normally come to an attorney’s office.”<sup>32</sup> This may not be the case today, however: in 1990, Donald D. Landon observed, after interviewing many rural attorneys, “a general consensus that folks in the country are somewhat more inclined to seek legal redress today than they were in the past.”<sup>33</sup> Additionally, rural residents have significant legal needs that are not being met by the legal aid programs currently in place—a lack of private attorneys in rural areas adds to this justice gap.<sup>34</sup> In Subpart A, this Note will demonstrate the need for legal services in rural areas of the Northern Rockies. Subpart B will then highlight some of the problems with delivery of legal services that residents of rural areas of the Northern Rockies face.

### *A. The Need for Legal Services for Low-Income Residents of Rural Areas of the Northern Rockies*

Low-income households are having legal needs go unsatisfied with the legal aid programs currently in place. According to the LSC, in 2013, there were 65.5 million individuals eligible for LSC-funded legal assistance,<sup>35</sup> while only 1,833,240 people

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Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2013 (NST-EST2013-01)”) (last revised Jan. 23, 2014). Idaho has roughly 23 attorneys per 10,000 residents. *Id.*

27. *About the University of Montana School of Law*, U. MONT., <http://www.umt.edu/law/about/default.php>.

28. AM. BAR ASS’N, *supra* note 26. Montana has roughly 30 attorneys per 10,000 residents. *Id.*

29. *College of Law*, U. WYO., <http://www.uwyo.edu/law/>.

30. AM. BAR ASS’N, *supra* note 26. Wyoming has roughly 29 attorneys per 10,000 residents. *Id.*

31. Pruitt, *supra* note 14, at 217.

32. Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 493 (2014) (quoting DONALD D. LANDON, COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE 131 (1990)).

33. LANDON, *supra* note 32, at 132.

34. RURAL PRO BONO DELIVERY, *supra* note 2, at 11–12.

35. LEGAL SERVS. CORP., 2013 ANNUAL REPORT 5 (2012), available at <http://www.lsc.gov/sites/lsc.gov/files/LSC/Publications/AnnualReport2013/LSC2013AnnualReportW.pdf>. An individual is eligible for LSC-funded assistance when the individual is at or below 125% of the current official Federal Poverty Guidelines amounts. Income Level for

were served through the programs.<sup>36</sup> Across the nation, LSC estimates that “roughly one-half of the people who seek help from LSC-funded legal aid providers are being denied service because of insufficient program resources.”<sup>37</sup> LSC also estimates that fewer than one in five legal problems faced by low-income people are resolved using the help of an attorney.<sup>38</sup> Further complicating the issue, poverty rates are traditionally higher in rural areas than in urban areas.<sup>39</sup> In 2012, the national poverty rate for nonmetropolitan areas was 17.7%, while only 14.5% for metropolitan areas of the country.<sup>40</sup>

There have been similar findings of significant unmet legal needs for low-income residents in the Northern Rockies states. In 2010, the Bureau of Business and Economic Research at the University of Montana conducted a survey of all low-income households—defined as at or below 125% of the poverty line, which correlates with LSC eligibility<sup>41</sup>—to determine whether civil legal needs were being met in Montana.<sup>42</sup> The survey estimated that 49% of, or about 33,596, low-income households experienced at least one civil legal problem in the previous year.<sup>43</sup> The survey concluded that “[a] substantial portion of the civil legal needs of low income Montanans go unmet”;<sup>44</sup> 77.1% of low-income households that reported having a civil legal need and believed they needed help from an attorney also reported doing nothing to respond to this need.<sup>45</sup> The survey concluded that this number might be conservative because there were likely households that reported experiencing a civil legal problem but mistakenly assumed they did not need the help of an attorney.<sup>46</sup> While the survey does not hypothesize the reasons for failing to take action, a lack of easy access to legal aid is almost certainly a factor. With poverty more prevalent

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Individuals Eligible for Assistance Rule, 45 C.F.R. § 1611.3(c)(1) (2012). For a family of four in 2013, this amount was \$29,438. Income Level for Individuals Eligible for Assistance Rule, 45 C.F.R. § 1611 app. A (2013). The poverty line is set by the Office of Management and Budget, and “living in poverty” means having “total income less than an amount deemed to be sufficient to purchase basic needs of food, shelter, clothing, and other essential goods . . . .” *Poverty Overview*, U.S. DEP’T AGRIC., ECON. RESEARCH SERVICE, <http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/poverty-overview.aspx> (last updated Feb. 28, 2014).

36. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 4 (2009), available at [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

37. *Id.* at 12.

38. *Id.* at 18.

39. See U.S. DEP’T AGRIC., ECON. RESEARCH SERV., RURAL AMERICA AT A GLANCE: 2013 EDITION 4 (2013), available at [http://www.ers.usda.gov/media/1216457/eb-24\\_single-pages.pdf](http://www.ers.usda.gov/media/1216457/eb-24_single-pages.pdf).

40. *Id.* There are approximately 8.5 million individuals living in poverty in nonmetro areas of the United States. *Poverty Overview*, *supra* note 35.

41. See *supra* note 18.

42. See PATRICK BARKEY, 2010 MONTANA LEGAL NEEDS SURVEY FINAL REPORT (2011), available at <http://www.mtjustice.org/wp-content/uploads/2012/09/MT-Legal-Needs-Survey-FINAL-REPORT1.pdf>.

43. *Id.* at 4.

44. *Id.*

45. *Id.*

46. *Id.* at 6.

in rural areas, and given the high rural populations of the Northern Rockies, it is safe to assume that many households with unmet legal needs are found in rural areas. Additionally, while large numbers of impoverished individuals are having their legal needs go unmet, individuals living outside the poverty range are also having their legal needs go unmet.<sup>47</sup>

Low-income rural residents face many of the same legal problems as their urban counterparts, but also face distinct problems. Based on LSC-collected data, low-income residents seek legal aid for many different types of needs. Cases involving family law issues, such as child custody or visitation disputes and domestic abuse, are the most common types of cases that LSC-funded legal aid organizations take on.<sup>48</sup> Housing disputes are another common area where legal services are provided, constituting over a quarter of all resolved cases by LSC-funded organizations.<sup>49</sup> Other common areas of service are income maintenance, which includes unemployment compensation, veteran's benefits, Social Security, and food stamps; and consumer disputes, which includes bankruptcy and debt collection.<sup>50</sup> Low-income rural residents also face distinct problems, such as foreclosures of family farms, migrant worker issues, and tribal issues for Native Americans on reservations.<sup>51</sup>

#### *B. Problems with the Delivery of Legal Services in Rural Areas*

In its 2003 guide, the ABA Standing Committee on Pro Bono and Public Service and the Center for Pro Bono identified several issues of specific relevance to the Northern Rockies that affect the delivery of pro bono legal services in rural areas.<sup>52</sup> Specifically, the report found that extremely rural communities, like many found in the Northern Rockies states, can be far from population centers and more than one hundred miles from lawyers and courthouses, which adds to delivery costs, imposes significant travel demands on attorneys and clients, and can be a logistical nightmare.<sup>53</sup> For example, “[o]nly 54% of Montana’s population lives in towns larger than 2,800 people.”<sup>54</sup> The rest of the population lives in smaller, far-flung towns across the state or out in unincorporated areas, such as on family farms and ranches, which can be many miles from population centers. Driving from one corner of Montana to the other can take up to eleven hours,<sup>55</sup> and “demanding travel

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47. See Luz E. Herrera, *Rethinking Private Attorney Involvement Through a “Low Bono” Lens*, 43 LOY. L.A. L. REV. 1, 2 (2009) (“Millions of people in our country who do not qualify for subsidized civil legal services, but who do not make enough money to hire an attorney . . . have few means of obtaining adequate representation for the myriad of unavoidable legal problems they routinely encounter.”).

48. 2012 FACT BOOK, *supra* note 18, at 18.

49. *Id.*

50. *Id.* at 18–19.

51. RURAL PRO BONO DELIVERY, *supra* note 2, at 13–14. Every Northern Rockies state has at least one Native American Indian reservation. See *Indian Reservations in the Continental United States*, NAT’L PARK SERVICE, <http://www.nps.gov/NAGPRA/DOCUMENTS/ResMAP.HTM>.

52. RURAL PRO BONO DELIVERY, *supra* note 2, at 11–12.

53. *Id.* at 12.

54. Sitte, *supra* note 4, at 276.

55. The drive from Eureka, Montana, to Baker, Montana, is 677 miles and is estimated to

requirements consume [the Montana Legal Services Association's] law firm dollars and staff hours."<sup>56</sup>

Where few lawyers serve a sparsely populated but widely dispersed client base, conflicts of interest that prevent representation frequently arise, essentially cutting off legal avenues of dispute resolution.<sup>57</sup> Rural residents are frequently interrelated and have relatives in other rural communities, which can make conflicts arise unexpectedly.<sup>58</sup> In addition to formal conflicts of interest, attorneys in rural areas face much higher levels of community scrutiny, which may prevent rural attorneys from taking on controversial or unpopular cases.<sup>59</sup> Given the lack of anonymity for these attorneys, they "may feel beholden to local economic elites who provide most of their business,"<sup>60</sup> leading to an informal conflict of interest. Additionally, rural practitioners frequently work in solo practice or few-person firms, and rarely have support staff.<sup>61</sup> Further, practice areas for rural lawyers may not mesh with all rural population legal needs, or local attorneys may not have the specialization required by low-income rural clients.<sup>62</sup>

Although prevalent urban technology such as high-speed Internet and cell phone service is slowly moving into rural areas, these technologies may still be nonexistent or prohibitively expensive, especially for those located outside rural population centers.<sup>63</sup> The Northern Rockies states all rank forty-fifth and lower for the availability of high-speed Internet.<sup>64</sup> It is estimated that 14.5 million people living in rural areas in the United States (roughly one-quarter of the rural population) lack access to high-speed broadband Internet.<sup>65</sup> Furthermore, only about 40% of those who have access to high-speed Internet actually subscribe to the service, with lower levels of subscribership in rural areas.<sup>66</sup>

In addition to the problems that face low-income individuals in rural areas, private attorneys are now flocking to urban areas; this "rural flight" hinders access to

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take over eleven hours. *See, e.g., Driving Directions from Eureka, MT to Baker, MT*, GOOGLE MAPS, <http://maps.google.com> (follow "Get Directions" hyperlink; then search "A" for "Eureka, MT" and search "B" for "Baker, MT"; then follow "Get Directions" hyperlink).

56. Sitte, *supra* note 4, at 276.

57. RURAL PRO BONO DELIVERY, *supra* note 2, at 12.

58. Steve Evenson, *Rural Lawyers in the Changing Marketplace*, GPSOLO, Jan./Feb. 2013, at 30, 33.

59. Pruitt & Showman, *supra* note 32, at 490–91.

60. *Id.* at 490.

61. RURAL PRO BONO DELIVERY, *supra* note 2, at 12.

62. *Id.*

63. *Id.*

64. Nat'l Telecomm. & Info. Admin., *Analyze*, NAT'L BROADBAND MAP, <http://www.broadbandmap.gov/analyze> (under subsection "Rank," follow "Rank Your Geography" hyperlink; then choose "State" under "Select Geography" criterion; then choose "Speed" under "Select Metric" criterion; then follow "Generate the List" hyperlink). High-speed Internet is defined as download speeds greater than 3 Megabytes per second (Mbps) and upload speeds greater than 0.768 Mbps. *Id.*

65. Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, 27 FCC Rcd. 10,342 (2012) (eighth broadband progress report).

66. *Id.* at 10,395.



traditional paid legal services for rural residents, as well as the opportunity for pro bono services for low-income individuals. Rural areas account for up to one-fifth of the population of the country, but only two percent of law practices.<sup>67</sup> Idaho has recently faced this problem of “rural flight.” Boise, the capital of the state and one of the few metropolitan areas, has a population of 205,671.<sup>68</sup> Although it only has 13% of the total population of Idaho, Boise is home to 47% of Idaho’s attorneys.<sup>69</sup> Even as jobs in the legal market have dried up over the past five years, local prosecutors in areas surrounding Boise find themselves competing for qualified candidates with the highest salaries offered in the state capital.<sup>70</sup> In total, 80% of the attorneys in Idaho live in metropolitan areas, where only 66% of the population lives.<sup>71</sup> After the State Bar of South Dakota presented its report to the ABA on the decline of attorneys in its rural areas, the ABA adopted Resolution 10B, which “urges federal, state . . . and local governments to support efforts to address the decline in the number of lawyers practicing in rural areas and to address access to justice issues for residents in rural America.”<sup>72</sup>

Perhaps the largest issue facing rural legal service delivery for low-income residents in the Northern Rockies states is inadequate funding for legal aid. In 2012, LSC grants constituted the largest source of the funding used by legal aid programs in Idaho, Montana, and Wyoming.<sup>73</sup> During the Reagan administration, Congress slashed the LSC’s budget.<sup>74</sup> Then, in 1996, LSC budgets were once again slashed, this time by 30.5%, from \$400 million to \$278 million.<sup>75</sup> After the 1996 funding cuts, the Montana Legal Services Association lost 48% of its revenue, had a 30% federal appropriations reduction, and was prohibited from receiving attorney’s fees.<sup>76</sup> Although the program once had fourteen offices and thirty-nine attorneys, it was down to seven offices manned by twelve lawyers in 1997.<sup>77</sup> Most recently, the LSC budget has been cut from \$420 million in 2010 to \$348 million in 2012.<sup>78</sup> Thus, significant portions of legal aid funding in the Northern Rockies states are subject to the battles of federal politics.

As federal funding for legal services has been cut nationwide, the Northern Rockies states have attempted to step in and help fund programs. The Northern Rockies states have worked with local state bars and financial organizations to set up “interest on lawyer’s trust accounts” (IOLTA).<sup>79</sup> These accounts hold some client

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67. Bronner, *supra* note 1, at A1.

68. U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS, BOISE CITY, IDAHO, *available at* <http://quickfacts.census.gov/qfd/states/16/1608830.html> (select “Download these tables”) (last updated Dec. 17, 2013).

69. Bronner, *supra* note 1, at A1.

70. *Id.*

71. *Id.*

72. AM. BAR ASS’N, HOUSE OF DELEGATES, RESOLUTION 10B, at 1 (2012).

73. 2012 FACT BOOK, *supra* note 18, at 11–14. LSC funding constitutes 53.77% of Idaho Legal Aid Services’ total funding, 44.06% of the Montana Legal Services Association’s total funding, and 70.07% of Legal Aid of Wyoming’s total funding. *Id.*

74. *See* Sitte, *supra* note 4, at 278.

75. 2012 FACT BOOK, *supra* note 18, at 3.

76. Sitte, *supra* note 4, at 278.

77. *Id.*

78. 2012 FACT BOOK, *supra* note 18, at 3.

79. *What is IOLTA?*, IOLTA.ORG, <http://www.iolta.org/what-is-iolta>.

funds and generate interest; this interest is given to public interest groups, including LSC-funded aid organizations.<sup>80</sup> As another funding measure, most states have established state-run legal aid programs (such as the Wyoming Center for Legal Aid), which provide grants to legal aid organizations.<sup>81</sup> The Center was created by the Wyoming Supreme Court and is funded through increased court-filing fees.<sup>82</sup> For fiscal year 2014, the Center granted Legal Aid of Wyoming \$353,000—representing a significant source of revenue for the organization.<sup>83</sup> However, Idaho remains the only state in the country that does not provide financial support to its legal aid program through filing fees, fines, or by direct appropriation;<sup>84</sup> Idaho Legal Aid Services has been trying to change this since 2005 but has thus far failed.<sup>85</sup> Legal aid organizations in the Northern Rockies states also engage in private fundraising, but this practice has not amounted to a significant source of revenue for the organizations.<sup>86</sup>

### III. CURRENT SOLUTIONS BEING USED TO INCREASE ACCESS TO LEGAL SERVICES

There are currently many solutions being employed by various states to combat the lack of access to legal services for rural residents, and some programs are finding success. To increase the number of private attorneys practicing in rural areas, some states have offered incentive payments to entice private practice lawyers to rural areas, as seen in South Dakota.<sup>87</sup> Further, legal aid organizations have experienced success reaching low-income rural residents by expanding physical offices into new areas and by implementing technology-based initiatives, such as expanding website resources, creating legal hotlines, using video courtrooms, and initiating self-help programs that assist with legal document creation and assembly. However, these current solutions being used by states and legal aid organizations are insufficient to fully meet the needs of all rural residents in the Northern Rockies states.

#### A. South Dakota's Incentive Payments

In response to a shortage of lawyers in rural South Dakota, the state bar formed Project Rural Practice in 2011, which was charged with identifying the extent of the decline in the number of rural attorneys, assessing its impact, and developing recommendations to combat the phenomenon.<sup>88</sup> The Project piloted a program that

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80. *Id.*

81. *Wyoming Center for Legal Aid*, WYO. JUD. BRANCH, <http://www01.courts.state.wy.us/WCLA.aspx>.

82. *Id.*

83. WYO. CTR. FOR LEGAL AID, ANNUAL REPORT TO THE WYOMING SUPREME COURT 13 (2013), available at [http://www.legalhelpwy.org/files/4413/7580/7711/2013\\_Annual\\_Report.pdf](http://www.legalhelpwy.org/files/4413/7580/7711/2013_Annual_Report.pdf).

84. *See State Funding Initiative*, IDAHO LEGAL AID SERVS., <http://idaholegalaid.org/About/StateFunding>.

85. *Id.*

86. For example, Montana raised \$27,004 in private grants in fiscal year 2012, less than one percent of its total funding of \$3,069,294. 2012 FACT BOOK, *supra* note 18, at 10.

87. *See Rural Attorney Recruitment Program*, S.D. UNIFIED JUD. SYS., <http://ujs.sd.gov/Information/rarprogram.aspx>.

88. AM. BAR ASS'N, *supra* note 72, at 4.

matched a select group of lawyers, dubbed the “Sweet Sixteen,” to eligible rural counties.<sup>89</sup> A county is eligible to participate in the program if it has fewer than 10,000 residents.<sup>90</sup> With the passage of South Dakota House Bill 1096 in March 2013, these select sixteen attorneys will each receive an incentive payment for practicing in their rural counties.<sup>91</sup> These incentive payments are approximately \$13,288 per attorney per year,<sup>92</sup> so approximately \$66,440 over the five-year commitment and \$1,063,040 program-wide. These attorneys must be in good standing with the South Dakota Bar Association and must agree to a five-year commitment to practice law in the rural county.<sup>93</sup> Half of the funding for this program comes from the state, 35% comes from local governments, and the state bar association funds 15%.<sup>94</sup>

The program has sparked much debate and enthusiasm throughout the legal profession.<sup>95</sup> However, this type of program would only provide a temporary and expensive solution to providing legal services in rural areas of the Northern Rockies and would be unlikely to improve the availability of legal services for low-income households. The incentive payments present a valuable source of funding—over \$1 million in five years—that does not ensure or guarantee the continued presence of an attorney in these rural communities. While the program has lofty goals that the Sweet Sixteen will build viable practices in their rural areas and elect to stay after the five-year commitment, there is no demonstrated evidence that this will happen. Further, single attorneys covering entire counties in the vast Northern Rockies will not solve problems related to geographic distance; single counties can cover areas of over 10,000 square miles.<sup>96</sup> Most significantly, while arguably solving issues of access to paid legal services, the program does not address the issue of providing legal aid for low-income individuals. The program may spark the Sweet Sixteen to take on pro bono cases in their rural counties, but there is no incentive or requirement that they do so. Given that rural law practices may not be the most financially lucrative, it is foreseeable that rural attorneys may forgo volunteering for pro bono cases in order to concentrate on fee-generating cases.

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89. Patrick G. Goetzinger, *Project Rural Practice: Saving an Endangered Species by Recruiting the Sweet Sixteen*, B. LEADER, July–Aug. 2013, available at [http://www.americanbar.org/publications/bar\\_leader/2012\\_13/july\\_august/project\\_rural\\_practice\\_saving\\_endangered\\_species\\_recruiting\\_sweet\\_sixteen.html](http://www.americanbar.org/publications/bar_leader/2012_13/july_august/project_rural_practice_saving_endangered_species_recruiting_sweet_sixteen.html).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Some commentators have saluted the plan as an attempt to bring access to justice for rural residents. *See, e.g.*, Bronner, *supra* note 1, at A1. However, other commentators have compared this plan to “quasi-indentured servitude.” *See* Staci Zaretsky, *Need a Rural Lawyer? Why Not Use a Quasi-Indentured Servitude Plan?*, ABOVEHELAW.COM (Apr. 9, 2013, 2:43 PM), <http://abovethelaw.com/2013/04/need-a-rural-lawyer-why-not-use-a-quasi-indentured-servitude-plan/>.

96. For example, Sweetwater County in southwestern Wyoming covers an area of nearly 10,500 square miles. U.S. Census Bureau, *Sweetwater County, Wyoming*, STATE & COUNTY QUICKFACTS, <http://quickfacts.census.gov/qfd/states/56/56037.html> (last updated Dec. 17, 2013).

*B. Expanding Legal Aid Offices to New Areas*

In order to provide increased access to legal services for low-income households, the Northern Rockies states have attempted to expand physical office locations.<sup>97</sup> Idaho Legal Aid Services, for example, has established seven physical office locations around the state in the larger population centers of Idaho: Boise, Twin Falls, Pocatello, Coeur d'Alene, Idaho Falls, Lewiston, and Nampa.<sup>98</sup> Legal Aid of Wyoming currently has five physical office locations in Wyoming: Cheyenne, Casper, Rock Springs, Gillette, and Lander.<sup>99</sup> Expanding physical locations has many positive benefits for low-income people in these centralized communities.<sup>100</sup> Some have argued that “[t]o be effective advocates for the poor, there must be a presence in the community: clients need a place to meet and advocates need to participate directly in issues confronting the community.”<sup>101</sup>

The ABA, in its guide on the delivery of pro bono services in rural areas, identifies establishing offices in rural areas as a strategy that is working for some states.<sup>102</sup> The guide specifically identifies Maine as a model for this type of solution; Maine experienced success with a program created in the urban south that encouraged private attorneys to take on pro bono cases.<sup>103</sup> Using this model, Maine adapted this program in the rural central and northern areas of the state and established a physical office in a northern city in order to increase access to legal services for rural residents.<sup>104</sup> The expanded program experienced success by getting more private attorneys involved in rural pro bono cases.<sup>105</sup> Some pros of establishing a physical office are that it creates a strong physical presence, raises community awareness, and can improve the private bar’s involvement in pro bono.<sup>106</sup> However, the most significant disadvantages are the high costs of opening and operating an office—the increased staff costs and diversion of agency resources can stretch limited funds.<sup>107</sup>

Ultimately, expanding the number of staffed offices will do little to increase the access to legal services and legal aid for individuals in rural areas. In the Northern Rockies states, where geographic distance can be such a barrier to the provision of legal services, adding legal aid offices in the largest communities—where there is

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97. See, e.g., WYO. CTR. FOR LEGAL AID, *supra* note 83, at 10–11 (discussing a new office location in Rock Springs and a then-proposed expansion to Gillette).

98. IDAHO LEGAL AID SERVS., ANNUAL REPORT 2012 at 20, available at [http://www.idaholegalaid.org/files/2012\\_Annual\\_Report.pdf](http://www.idaholegalaid.org/files/2012_Annual_Report.pdf).

99. See *Contact Us*, LEGAL AID WYO. (2014), <http://www.lawyoming.org/contact/>.

100. Sitte, *supra* note 4, at 280 (discussing that, because of the MLSA model of face-to-face interaction, “a renter in Billings could more easily access MLSA’s services than a tenant in Circle”).

101. Larry R. Spain, *The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities*, 28 WM. MITCHELL L. REV. 367, 378–79 (2001) (citing David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia, and Oregon Describe the Costs*, 17 YALE L. & POL’Y REV. 337, 350 (1998)).

102. RURAL PRO BONO DELIVERY, *supra* note 2, at 22–23.

103. *Id.* at 22.

104. *Id.*

105. *Id.*

106. *Id.* at 23.

107. *Id.*

likely already an established private bar—may bring these legal aid offices closer, but a sizeable gap will still exist. Further, given the austere budget cuts that have faced LSC-funded legal aid organizations in the Northern Rockies,<sup>108</sup> the idea of expanding physical locations is almost untenable. Before the 1996 budget cuts for the LSC, Montana had fourteen physical office locations.<sup>109</sup> Due to these budget cuts, there are now only three offices to serve the entire state of Montana, located in Missoula, Billings, and Helena.<sup>110</sup> There are simply not sufficient available resources for legal aid organizations to add staffed office locations in enough areas that would help bridge the large geographic gaps that exist in the Northern Rockies states.

### C. Technology-Based Initiatives

There are numerous technology-based initiatives that have attempted to deliver legal services and legal aid to rural areas. Technology-based initiatives “offer[] significant opportunities to those who provide legal assistance and education to low-income people and communities.”<sup>111</sup> Montana has been one of the leaders in finding innovative ways to deliver legal services. Montana has begun to use video courtrooms through the Montana Judicial Video Network, established in 2000, where counsel can remotely represent clients who are in court proceedings hundreds of miles away.<sup>112</sup> In 2005, this program was estimated to have saved district court participants over \$600,000 in costs related to travel and time.<sup>113</sup> This approach increased access to legal aid for individuals in rural areas. For example, a legal aid attorney in Missoula, located in western Montana, can represent a low-income litigant in an action in Custer County, located in eastern Montana.<sup>114</sup> However, video conferencing court programs have their skeptics. In Wisconsin, some trial court participants do not believe that video conferencing court programs are beneficial to the court system.<sup>115</sup> Participants deemed it “depersonalizing” and have concerns about maintaining attorney-client confidentiality during hearings.<sup>116</sup>

A video conferencing program for trial court participants increases access to justice for low-income individuals and can help bridge the vast geographic gap of the Northern Rockies states. However, this program only serves those low-income individuals involved in courtroom litigation and ignores the vast majority of people

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108. *See supra* notes 73–78 and accompanying text.

109. Sitte, *supra* note 4, at 278.

110. *Office Locations*, MONT. LEGAL SERVICES ASS'N, <http://www.mtlsa.org/office-locations/>.

111. JULIA GORDON, PROJECT FOR THE FUTURE OF EQUAL JUSTICE, EQUAL JUSTICE AND THE DIGITAL REVOLUTION: USING TECHNOLOGY TO MEET THE LEGAL NEEDS OF LOW-INCOME PEOPLE 5 (2002), available at <http://www.clasp.org/resources-and-publications/archive/0110.pdf>.

112. *See* HERBERT & ASSOCIATES, MONTANA JUDICIAL VIDEO NETWORK PHASE II REPORT: DEVELOPMENT OF A FORMAL GOVERNANCE STRUCTURE AND RELATED RECOMMENDATIONS 5 (2006), available at <http://courts.mt.gov/cao/technology/video/default.mcp.x>.

113. *Id.* at 3.

114. RURAL PRO BONO DELIVERY, *supra* note 2, at 52.

115. Steven Elbow, *Courtroom Video—A Cost Saver or Just a Hassle*, MADISON.COM (Mar. 30, 2009, 12:00 AM), [http://host.madison.com/news/article\\_9a94815d-4ff2-52c1-8f02-74b8082d5099.html](http://host.madison.com/news/article_9a94815d-4ff2-52c1-8f02-74b8082d5099.html).

116. *Id.*

who need other types of legal assistance. In 2012, LSC-funded programs closed a majority of cases (61%) with just counsel and advice.<sup>117</sup> Only 14% of cases from LSC-funded programs ended in a court decision or settled with litigation.<sup>118</sup> Therefore, while a video conferencing court program is helpful for some low-income individuals, it does not help a vast majority of those with legal needs. Further, this program does little to help serve those individuals who fail to take any action for their legal needs, which was found to be over three-quarters of low-income individuals who believed they needed the help of an attorney in Montana.<sup>119</sup>

Another technology-based initiative that has gained popularity is legal hotlines, which enable attorneys and experienced paralegals to staff phone lines and serve as “first responders” for legal service requests.<sup>120</sup> For example, the Wyoming Center for Legal Aid coordinated with Legal Aid of Wyoming to create a legal aid hotline, which began operating in November 2012.<sup>121</sup> The hotline has greatly increased the ability of staff attorneys to help clients: Legal Aid of Wyoming was able to increase litigation and extend services by 79.3% and increase advice and brief services by 314%.<sup>122</sup> Montana has created a similar program called “HelpLine,” which places experienced paralegals on phone lines monitored by veteran attorneys.<sup>123</sup> The sheer volume of calls has proved to be taxing on this hotline; it takes callers an average of 3.5 attempts to reach an intake specialist.<sup>124</sup> However, up to 90% of callers receive a forty-five minute consultation within three days, and staff can immediately refer legal emergencies to an attorney who specializes in the relevant area.<sup>125</sup>

Legal hotlines are a simple but effective way to increase access to legal aid for low-income individuals. Given the gains in services able to be provided by Legal Aid of Wyoming, legal hotlines appear to be an effective tool for getting legal aid to those that need it most. However, legal hotlines do not solve the problem of access to legal services; they mostly serve as a gatekeeper for vetting potential clients and triaging their needs, the overall design of which can carry certain risks.<sup>126</sup> Also, some people oppose the use of legal hotlines because these hotlines are a form of “indirect representation” and “a cheap and condescending substitute for direct representation.”<sup>127</sup> Additionally, while increasing the access for those who choose to seek out services, legal hotlines do not encourage those individuals who decide to forgo representation in the face of their legal needs. In the Northern Rockies, legal hotlines can be a tool to increasing access to legal aid but do not constitute a panacea.

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117. 2012 FACT BOOK, *supra* note 18, at 17.

118. *Id.*

119. *See supra* text accompanying notes 42–47.

120. Sitte, *supra* note 4, at 281–82.

121. WYO. CTR. FOR LEGAL AID, *supra* note 83, at 7–9.

122. *Id.* at 8–9.

123. Sitte, *supra* note 4, at 282.

124. *Id.*

125. *Id.*

126. *See* James E. Cabral, Abhijeet Chavan, Thomas M. Clarke, John Greacen, Bonnie Rose Hough, Linda Rexer, Jane Ribadeneyra & Richard Zorza, *Using Technology To Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 300–02 (2012). These risks include concerns about the multiplicity of systems, litigant privacy, dehumanization, and transparency. *Id.*

127. Sitte, *supra* note 4, at 281.

Another technology-based initiative that has garnered support is the use of self-help resources, such as websites and document-assembly services, in order to aid pro se litigants.<sup>128</sup> In 2006, Idaho began using a program called Access to Justice Author (“A2J Author”), which is “an interactive software tool with a dynamic digital guide, a 3D avatar on your computer screen that helps you fill out legal forms.”<sup>129</sup> The software guides users through a series of questions, puts the responses into a legal form, and produces a copy that is ready to file at a local courthouse.<sup>130</sup> A legal scholar has described this technology as a “transformative tool for legal services.”<sup>131</sup> The Montana Legal Services Association has developed a similar system through its “Self-Help Law Unit,” a system that “seeks to prepare clients for pro se representation by educating them about the court system and supplying them with well-prepared, accurate forms.”<sup>132</sup> This system uses HotDocs, which asks users questions and then puts the information into a legal form;<sup>133</sup> users can then submit a completed form to be reviewed by legal aid staff or volunteer lawyers.<sup>134</sup> In November 2012, the Wyoming Center for Legal Aid launched the state’s first legal information website, which provides legal information and self-help resources for a variety of legal issues.<sup>135</sup> Low-income individuals use these self-help resources to help direct and solve legal issues without direct representation by legal aid staff or pro bono volunteers.<sup>136</sup>

Although self-help resources offer many benefits to litigants who cannot afford legal representation, they are usually only appropriate for limited types of cases. The Montana Legal Services Association has identified family law as a practice area where direct representation is not always needed and thus developed forms for many family law actions.<sup>137</sup> Similarly, simple cases, or cases where only one party is appearing, also may be appropriate for pro se litigants.<sup>138</sup> However, many other types of cases remain too complicated for pro se litigants to proceed without legal assistance. Additionally, creating and maintaining these forms is costly, intensive, and requires continual monitoring.<sup>139</sup> Wyoming Center for Legal Aid has tried to

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128. See Ronald W. Staudt, *All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice*, 42 LOY. L.A. L. REV. 1117, 1121 (2009) (arguing that document assembly technologies such as A2J Author can increase access to justice for low-income individuals); Michael J. Wolf, *Collaborative Technology Improves Access to Justice*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 759, 779–83 (2012) (describing some successful implementations of online document assembly services and arguing that these services could increase access to justice for pro se litigants).

129. Aili McConnon, *Case Study: Access to Justice*, BUSINESSWEEK, Nov. 27, 2006, at 36.

130. *Id.*

131. Staudt, *supra* note 128, at 1141.

132. Sitte, *supra* note 4, at 282.

133. *Id.* at 283.

134. *Id.*

135. WYO. CTR. FOR LEGAL AID, *supra* note 83, at 6.

136. *Id.*

137. Sitte, *supra* note 4, at 282–83.

138. *Id.* at 282. For example, a dissolution of marriage proceeding where the couple has no children or real property has been proposed as a “simple” matter that could be appropriate for pro se litigants armed with document-assembly technology. See Staudt, *supra* note 128, at 1131.

139. WYO. CTR. FOR LEGAL AID, *supra* note 83, at 7.

begin compiling pro se forms for family law issues but has run into delays in automation.<sup>140</sup> Further, in the development of a divorce without children pro se packet, the “[c]enter staff must test each possible scenario and correct any problems in the program before making the program available to the public.”<sup>141</sup> Therefore, automation can be costly and time intensive to maintain and expand, which may not be the best allocation of scarce legal aid dollars.

#### IV. RECOMMENDATION FOR TOWN LEGAL CENTERS

As discussed above, there are two distinct problems facing people in rural areas: a lack of access to legal services due to increasingly urban-based attorneys and a lack of access to legal aid for low-income rural residents. Many different programs have been used to attack each problem independently, but this Note proposes that the creation of “Town Legal Centers” will help solve both problems—specifically, through the use of video conferencing and virtual office capabilities. In particular, Town Legal Centers would be formed through partnerships between legal aid organizations, local communities, and the state bar, and these centers would ultimately give rural residents better access to much-needed legal services. Town Legal Centers would be open for use by legal aid organizations, as well as private attorneys offering paid legal services, and would enhance pro bono volunteering through a rational basis referral system. The Centers would also allow law students greater opportunities to work on pro bono cases from around their respective Northern Rockies states. Funding for Town Legal Centers could come from a variety of sources, including local communities, state organizations, and federal grants.<sup>142</sup>

##### *A. Structure of Town Legal Centers*

Town Legal Centers would rely on existing structures in local communities and use video conferencing and virtual office technologies to serve clients in all civil legal needs. In its report on the delivery of pro bono legal services to rural areas, the ABA highlighted the Library Liaison Project by Legal Services of Eastern Michigan.<sup>143</sup> The program represented a partnership with public libraries statewide, where librarians were trained by pro bono lawyers to “help clients find needed information and offer advice on using electronic or hard-copy information resources.”<sup>144</sup>

Similarly, in the Northern Rockies states, Town Legal Centers could be formed through a partnership with statewide networks of public libraries and other local public buildings, with the goal to be in every population center in the state. Public libraries and other public buildings would serve as a central meeting space for video conferences with legal aid staff attorneys and private attorneys from around the state. Many libraries already have rooms that could serve as interview sites for job

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140. *Id.*

141. *Id.*

142. The following proposal is not intended to be all-inclusive; rather, it is to serve as a rough outline for legislatures and bar associations in the Northern Rockies to begin constructing and implementing their own programs.

143. RURAL PRO BONO DELIVERY, *supra* note 2, at 46–47.

144. *Id.* at 46.



applicants.<sup>145</sup> While many rural residents lack access or a subscription to high-speed Internet capable of video conferencing,<sup>146</sup> most public libraries offer fast and free public access.<sup>147</sup> By partnering with local communities, legal aid programs will decrease the time, staff, and upkeep needed to provide services to rural residents.<sup>148</sup> By placing these Town Legal Centers in every community, the vast geographic distances of the Northern Rockies states would shrink, and rural residents would have better access to legal services. Town Legal Centers are a cheaper alternative to establishing staffed legal aid offices in rural communities—Centers would act as a physical presence where clients could meet with attorneys, and advocates could participate in issues affecting the community.

The Wyoming Center for Legal Aid has already initiated a similar program, which has partnered with one county library to provide remote access to connect to pro bono and legal aid services over the Internet using Skype.<sup>149</sup> The program, funded through a 2013 Access to Justice Innovations Grant from the ABA, has placed these remote access sites in five Wyoming towns.<sup>150</sup> This demonstrates the broad array of existing community partners that could provide infrastructure to support a Town Legal Center.<sup>151</sup>

The Town Legal Centers need a minimum amount of equipment; they should be equipped with adequate video conferencing technology, document cameras, and fax machines. With this equipment, a Town Legal Center would allow participants to mimic a traditional attorney-client interaction: through the use of document cameras and fax machines to view and transfer documents between an attorney and a client, in addition to the live interaction of video conferencing, an adequate interaction should take place.<sup>152</sup> Adequate security protections should be built into the electronic systems in order to avoid breaches of attorney-client confidentiality and violations of legal ethics.<sup>153</sup>

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145. *Id.*

146. *See supra* notes 63–66 and accompanying text.

147. *Sitte, supra* note 4, at 284.

148. RURAL PRO BONO DELIVERY, *supra* note 2, at 46–47.

149. WYO. CTR. FOR LEGAL AID, *supra* note 83, at 9.

150. *Virtual Lawyer via Skype*, EQUAL JUSTICE WYO. (June 9, 2014), <http://www.legalhelpwy.org/index.php/about-us/news/virtual-lawyer-skype/>.

151. These potential existing community partners could include public libraries (Thermopolis and Cody), religious organizations, local economic development offices (Douglas), municipal governments (Evanston), and county senior centers (Newcastle). *See id.*

152. Although an independent consultant evaluating the use of video conferencing in Montana reported that “[v]ideo appearance and participation is different from in-person appearance and participation” and “can not be viewed as just as or ‘almost’ the same,” he also reported that video conferencing was more effective than phone conferencing, and it “has great value for all its participants” and “increases access and saves resources.” RICHARD ZORZA, VIDEO CONFERENCING FOR ACCESS TO JUSTICE: AN EVALUATION OF THE MONTANA EXPERIMENT 3–4 (2007), available at <http://lsntap.org/sites/all/files/TIG%2003693%20MLSA%20Final%20Video%20Conferencing%20Evaluation%20Report.pdf>. Further, the report concluded that “[c]lient interviews conducted by video save resources and make additional pro bono participation possible.” *Id.* at 11.

153. For a discussion of some of the risks, see Thomas H. Clarke, Jr. & Lael D. Andara, *Ignorance Is Risk: Impact of NSA Monitoring Technologies on Attorney-Client Communications, Part 1*, LEXISNEXIS (July 23, 2013, 5:23 PM), <http://www.lexisnexis.com/legalnewsroom/litigation/b/litigation-blog/archive/2013/07/23/ignorance-is-risk-impact-of-nsa-monitoring>

In addition to providing traditional legal representation services, Town Legal Centers could be used to deliver self-help clinic services, pro bono and legal aid trainings for staff and volunteers, and Continuing Legal Education programs for rural lawyers.<sup>154</sup> Instead of relying on traveling self-help clinics<sup>155</sup> or participating in “circuit riding,”<sup>156</sup> self-help trainings could be broadcast across the state to local Town Legal Centers from centralized legal aid offices, increasing access to these trainings on important legal subjects while eliminating expensive travel and time costs for legal aid staff. Similarly, necessary trainings for pro bono volunteers and legal aid staff located in offices across the state could be conducted through Town Legal Centers. Although the Montana report noted that “[t]raining by video requires significant additional attention by the trainer,” it concluded that video training is useful and “saves significant resources and makes additional training possible.”<sup>157</sup> For example, using video conferencing for an all-staff meeting for the three offices of the Montana Legal Services Association saved the office a total of \$7886 in travel costs and staff time over an in-person meeting.<sup>158</sup> Thus, significant savings could be realized through the use of video conferencing for trainings.

*B. Town Legal Centers Will Encourage Pro Bono and Law Student Volunteering*

Perhaps the most significant function of Town Legal Centers, and how the proposal significantly differs from the Montana and Wyoming video conferencing programs, is by stimulating private pro bono and law student volunteering while increasing access to paid legal services for rural residents. Video conferencing, by

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-technologies-on-attorney-client-communications-part-1.aspx. *But see* Richard Zorza, *Re-Conceptualizing the Relationship Between Legal Ethics and Technological Innovation in Legal Practice: From Threat to Opportunity*, 67 *FORDHAM L. REV.* 2659, 2662 (1999) (arguing that “[r]ather than threatening the practice of law, technological innovation can dramatically advance the values that the ethical rules seek to protect”).

154. For example, Zorza’s Montana video conferencing evaluation concluded that “[s]elf-help clinic services can be very successfully delivered by video.” ZORZA, *supra* note 152, at 9.

155. An example of one of these programs is the Mobile-Self-Help-Center, nicknamed the “Winnebago of Justice,” started by the Ventura County Superior Court in Ventura County, California. RURAL PRO BONO DELIVERY, *supra* note 2, at 26–27. The self-help center is equipped with computers, video stations, books, and self-help materials; follows a published schedule; is run by trained volunteers; and visits areas in the county that lack easy access to self-help centers at local courthouses. *Id.* at 26.

156. “Circuit riding” is the term for making routine visits to rural areas that lack established legal aid offices, for face-to-face meetings and trainings with low-income residents. Sitte, *supra* note 4, at 277. The term originates from the practice of Supreme Court justices at the founding of the federal judiciary in the United States, which lasted 121 years, where the justices would travel across the nation to serve as judges on the federal circuit courts. *See generally* Joshua Glick, *On the Road: The Supreme Court and The History of Circuit Riding*, 24 *CARDOZO L. REV.* 1753 (2003) (describing and discussing the practice, history, and constitutionality of the practice of circuit riding for Supreme Court Justices in the early days of the United States).

157. ZORZA, *supra* note 152, at 8.

158. *Id.* at 16.

itself, has been found to “facilitate[] much greater opportunities for pro bono participation” due to decreased travel distances and costs.<sup>159</sup> Austere budget cuts from political battles have plagued LSC-funded programs, and relying more on pro bono representation from the private bar is an attractive option. LSC has promoted this option for LSC-funded programs and has enjoyed a 38.9% increase in pro bono attorney closed cases from 2008 to 2012.<sup>160</sup> The Northern Rockies states’ bar associations have also responded to this need by revising rules of professional conduct to include hour-based pro bono legal service goals for attorneys.<sup>161</sup> In addition to these aspirational goals from bar associations, LSC regulations require that 12.5% of an LSC-funded program’s basic field award be spent in support of the private bar representing low-income clients.<sup>162</sup> While there is a debate as to whether a staff attorney delivery system is preferable to a private attorney delivery system,<sup>163</sup> it has been argued that a private attorney system is more appropriate in rural areas because staffed offices are not “economically practicable.”<sup>164</sup> With the large geographic distances of the Northern Rockies, a pure staffed office delivery method is not appropriate.

To stimulate the private bar into volunteering for pro bono cases, Town Legal Centers could be used to provide a financial incentive for participation. Along with legal needs being unmet for low-income people in rural areas, many areas of the rural United States are experiencing shortages for attorneys to handle *paid* legal services.<sup>165</sup> Therefore, the Northern Rockies states’ bar associations or legal aid organizations should open up Town Legal Centers for use by private attorneys and develop a sophisticated referral system. In order to gain a referral for paid legal service through the system, an attorney would have to volunteer for pro bono opportunities. This would be a rational case referral system, which would take into account such factors as previous pro bono service, “the complexities of an individual case, the time the case will consume, and the relative economies of staff or private attorney representation on the particular case.”<sup>166</sup> Additionally, before a case is referred to a particular private attorney, the client should have some role in choosing which private attorney handles their case,<sup>167</sup> whether it is a pro bono or a paid legal service. By using a rational referral system, “private attorneys are far more likely to

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159. *Id.*

160. 2012 FACT BOOK, *supra* note 18, at 28.

161. *See, e.g.*, MONT. RULES OF PROF’L CONDUCT R. 6.1 (2011) (specifying that attorneys should provide, at a minimum, fifty hours of pro bono legal services per year).

162. Private Attorney Involvement, 45 C.F.R. § 1614.1(a) (2013).

163. *See* Andrea J. Saltzman, *Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Office Delivery System*, 34 HASTINGS L.J. 1165, 1169–75 (1983).

164. *Id.* at 1175.

165. South Dakota, North Dakota, and Iowa are all states that have proactively initiated programs to stem the decline of lawyers in rural areas. *See* Bronner, *supra* note 1, at A1; Bruce Cameron, *Another Approach*, RURAL LAW. (Dec. 31, 2013, 9:41 AM), <http://rurallawyer.com/2013/12/31/another-approach/>; *supra* text accompanying notes 67–72.

166. Saltzman, *supra* note 163, at 1198–99 (describing a proposed legal aid delivery system that incorporates staffed office delivery and private attorney delivery).

167. *Id.* at 1199.

get [pro bono] cases in which they have an interest or expertise . . . .”<sup>168</sup> By incentivizing pro bono opportunities for the private bar, more low-income individuals would get needed legal services, and rural residents would be able to receive paid legal services from a statewide bar association.

This type of referral system would not only increase access to justice for rural residents by stimulating pro bono volunteering, but it could allow for fewer conflicts of interest and better representation by knowledgeable attorneys. Two problems with rural practice have been identified: increased conflicts of interest and a lack of attorney subject matter knowledge or experience for issues that arise in rural areas.<sup>169</sup> By using Town Legal Centers, the entire state bar could be available to represent a client at any corner of the state, significantly reducing the danger of a conflict of interest. Similarly, with the entire state bar available by video conferencing, rural residents could be paired with attorneys who specialize in the area of their legal needs. While many issues for low-income individuals fall under poverty law<sup>170</sup>—in which few private attorneys specialize—experienced private attorneys could handle other legal issues like employment, bankruptcy, or complex family law disputes.

By allowing attorneys to receive opportunities for paid legal services in return for pro bono legal services, funds spent compensating the private bar for representation for low-income individuals can be used on the most worthwhile cases. While LSC regulations still require 12.5% of a basic field award to go to compensating the private bar for representing low-income clients, these funds could be saved for compensating private attorneys who take on cases that require more extensive representation, such as Social Security disputes that require a hearing or consumer litigation that goes to trial. These types of extensive representations are rare, as simple counsel and advice close 61% of LSC-eligible cases.<sup>171</sup> An additional benefit to opening up Town Legal Centers to paid legal services would be to remove any stigma that could deter low-income individuals from using legal aid services.<sup>172</sup>

Town Legal Centers would also allow law students of the Northern Rockies states to get more involved in pro bono volunteering, which has many positive benefits for low-income clients and students. Because Idaho, Montana, and Wyoming each have only a single, accredited law school located in an urban area,<sup>173</sup> opportunities to work with rural residents would traditionally require extensive traveling for either the student or the client. Town Legal Centers would allow these students to get involved in clinical opportunities on or near their urban campuses, where they could aid clients across the entire state. The ABA has recognized the ability and considerable aid that law students in a clinical setting, supervised by practicing attorneys, can give to rural residents.<sup>174</sup> Many of the cons recognized by the ABA in starting rural practice

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168. *Id.* at 1200.

169. *See supra* text accompanying notes 57–62.

170. Saltzman, *supra* note 163, at 1172.

171. 2012 FACT BOOK, *supra* note 18, at 17.

172. *Cf.* Gail Schontzler, *Stigma of Poverty a Barrier to Helping Poor Bozeman-Area Kids*, BOZEMAN DAILY CHRON. (June 27, 2013, 12:15 AM), [http://www.bozemandailychronicle.com/news/economy/article\\_a5f546b2-dee4-11e2-a13c-001a4bcf887a.html](http://www.bozemandailychronicle.com/news/economy/article_a5f546b2-dee4-11e2-a13c-001a4bcf887a.html).

173. *See supra* text accompanying notes 25–30.

174. RURAL PRO BONO DELIVERY, *supra* note 2, at 30–31.

projects for law students are related to extensive travel time and costs,<sup>175</sup> which would be eliminated through the use of Town Legal Centers. Recruitment for law students would be much easier and more concentrated, as they have been described as a “captive audience,”<sup>176</sup> and the opportunity to work in clinical programs has been found to produce stronger, more competent legal graduates.<sup>177</sup> Potential clients would be screened by legal aid coordinators, who in turn would refer appropriate clients to the supervising attorney of the clinic, who could then coordinate representation with law students participating in the clinic. Exposing law students to rural clients and rural legal issues may also spur students to open up practices in rural areas, which could further increase access to legal services in these areas.<sup>178</sup>

### *C. Funding To Create and Maintain Town Legal Centers*

In order to create and maintain Town Legal Centers in the Northern Rockies states, local community, state, and federal funding sources could be used to supply the necessary capital. Local communities stand to gain the most from having Town Legal Centers, as all community residents would enjoy increased access to legal services. It has been observed that “[r]esidents of rural communities seem to have a stronger commitment to local control and self-help,”<sup>179</sup> and by including local communities, there would be increased buy-in and greater support for the program. However, local communities are perhaps the least prepared to absorb the cost of creating and maintaining the Centers. Because Town Legal Centers could use existing public spaces, such as public libraries or town halls, the task for finding a space (or spaces) for the Town Legal Center could be assigned to local communities, counties, or regional library systems<sup>180</sup> who would decide which space they would like to use for the Center. Further, these spaces could use existing staff to help clients get online and connected through the video conference system. Similar programs

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175. *Id.*

176. *Id.* at 31.

177. *See, e.g.,* ROY T. STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 151 (2007) (arguing that contextualized learning, such as clinical experiences, are the most effective and efficient way for law students to develop professional competence); Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359, 396 (2008) (finding that “students with clinical experience are more proficient in problem solving in actual practice”).

178. *Cf.* Juan Miguel Pedraza, *Pilot Project Seeks To Add Lawyers in Rural N.D.*, N.D. SUP. CT. NEWS (Nov. 5, 2013), <http://www.ndcourts.gov/court/news/rural1113.htm> (describing a program to increase law student exposure to rural legal needs and demonstrate the benefits of rural practice to students through judicial internships in rural communities).

179. E. KEITH STOTT, JR., THEODORE J. FEDDER & LAURA L. CRITES, RURAL COURTS: THE EFFECT OF SPACE AND DISTANCE ON THE ADMINISTRATION OF JUSTICE 73 (1977).

180. In Montana, for example, cities or counties can establish a public library. MONT. CODE ANN. § 22-1-303(1) (2012). In Idaho, cities or regional library systems, which encompass multi-county regions, can establish a public library. IDAHO CODE ANN. § 33-2603, -2612 (2012). The appropriate level of government to partner with will depend on which entity formed the library.

have given small stipends to these organizations in order to cover increased costs, such as faxing costs, but these payments would not need to be extensive.<sup>181</sup>

State organizations could also help cover some start-up and maintenance costs through grants from bar associations, legislatures, or other statewide aid organizations. The Wyoming Center for Legal Aid, funded by court filing fees, routinely gives out grants for legal aid projects;<sup>182</sup> in 2014, the Center awarded over \$750,000 in grants to legal aid providers in the state.<sup>183</sup> Montana Justice Foundation is a similar organization and is “the charitable arm of the Montana legal community.”<sup>184</sup> Montana Justice Foundation gives out grants to legal aid organizations in the state of Montana and may also be willing to grant money to create and establish Town Legal Centers. Idaho may have more trouble securing state funding or grants for a Town Legal Center program because the state currently does not help fund legal aid.<sup>185</sup> But the Northern Rockies states may also appeal directly to state legislatures for funding—this has been an effective strategy for funding other types of legal aid, such as civil legal assistance for indigent victims of domestic abuse.<sup>186</sup>

There are also several federal programs in which the Northern Rockies states have been successful in receiving grants for technology-based initiatives, which may help provide funding for the creation and maintenance of Town Legal Centers. Technology Initiative Grants (TIG), funded by the Legal Services Corporation, are given to “projects to develop, test and replicate technologies that enable programs to improve client access to high quality assistance in the full range of legal services, and to improve program efficiency.”<sup>187</sup> In 2013, LSC gave nearly \$3.4 million in TIG awards, with Idaho and Montana each receiving a sizeable grant for technology-based initiatives.<sup>188</sup> Wyoming Center for Legal Aid also recently received a 2013 Access to Justice Innovations Grant from the ABA, which helped pilot a project to install Skype sites in a few communities around the state.<sup>189</sup> These grants are given “to develop and test innovative new projects . . . [and] target critical areas of potential innovation.”<sup>190</sup> Given the nature of these grants and the previous success of the Northern Rockies legal aid organizations in receiving them, these

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181. See, e.g., RURAL PRO BONO DELIVERY, *supra* note 2, at 46 (describing a legal aid partnership with a public library to deliver self-help legal materials and free access to fax machines; the legal aid organization paid the public library a \$50 stipend per year to cover fax charges).

182. See WYO. CTR. FOR LEGAL AID, *supra* note 83, at 13.

183. *Id.*

184. Home, MONT. JUST. FOUND., <http://www.mtjustice.org>.

185. See *supra* text accompanying notes 84–85.

186. See, e.g., MONT. CODE ANN. § 3-2-714 (2012) (establishing a civil legal assistance account for indigent victims of domestic abuse funded by a portion of court filing fees).

187. *Technology Initiative Grants*, LEGAL SERVS. CORP., <http://tig.lsc.gov>.

188. LEGAL SERVS. CORP., 2013 TECHNOLOGY INITIATIVE GRANTS (2013), available at <http://tig.lsc.gov/sites/lsc.gov/files/TIG/pdfs/TIG-2013grants.pdf>.

189. WYO. CTR. FOR LEGAL AID, *supra* note 83, at 9.

190. AM. BAR ASS'N, ABA ACCESS TO JUSTICE COMMISSION EXPANSION PROJECT: 2013 INNOVATION GRANTS 1 (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_atj\\_2013\\_innovation\\_grant.auth\\_checkdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_2013_innovation_grant.auth_checkdam.pdf).

federal programs pose a viable option to getting necessary up-front funding to pay for the initial costs of the Centers.

The ongoing costs of maintenance could be offset through fees from attorneys who use the Town Legal Centers for offering legal services to clients. Flat fees could be charged to attorneys who use Town Legal Center equipment, which could amount to several dollars per use. Fees would be waived for attorneys using the Town Legal Centers to provide pro bono legal services. These small fees could then be used to fund the ongoing maintenance of equipment and subsidies for local facilities to cover costs of Town Legal Centers, and excess revenues could fund future updates to the virtual office equipment and perhaps further expansion of the program. Due to this small use fee, the Town Legal Center program may be able to achieve self-sufficiency after a single round of capitalization by bar associations or government organizations.

Therefore, although legal aid organizations face limited budgets for implementing and maintaining Town Legal Centers, there are ample sources of funding for such projects, ranging from local communities to the federal government.

#### CONCLUSION

Through the development of Town Legal Centers in rural communities across the Northern Rockies states, there would be better access to legal services for low-income rural residents, as well as better access to paid legal services for all rural residents. Current solutions to addressing these two distinct problems affecting rural areas have been insufficient in the geographically vast and sparsely populated Northern Rockies states. Town Legal Centers would utilize video conferencing equipment, document cameras, and fax machines to create virtual offices out of established public buildings in rural communities, such as public libraries, and use existing local staff to manage the program. By allowing private attorneys to offer paid legal services statewide through a rational referral system that takes into account prior pro bono volunteering, Town Legal Centers could increase pro bono volunteering from the private bar while increasing access to paid legal services for all rural residents. Town Legal Centers could also encourage strong clinical program participation from law schools because there would be decreased travel costs and a wider client base. Funding for Town Legal Centers could come from a variety of sources, including local communities, state organizations, and federal grants. By instituting a small fee for paid legal services using a Center's resources, Town Legal Centers may be able to be self-sufficient after initial start-up costs. By creating Town Legal Centers, the Northern Rockies states can more fully address the problem of access to justice for rural residents and bridge the vast geographic distances that characterize the area.

