

Wyoming Access to Justice Commission

2020 Report to the Wyoming Supreme Court January 30, 2020

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TO: Chief Justice Michael K. Davis, Wyoming Supreme Court

Governor Mark Gordon, State of Wyoming

President of the Wyoming Senate and Speaker of the House of Representatives

SUMMARY

The Wyoming Access to Justice Commission was in its formative stages when it issued an ambitious five-year plan in November 2014 (the “Plan”). In pursuing the Plan, the Commission achieved two significant goals:

1. A structure for the delivery of civil legal services for the indigent was put in place, primarily under the auspices of Equal Justice Wyoming.
2. Concrete programs were established that assisted or improved the delivery of civil legal services to the indigent in Wyoming.

This simple statement of the work initiated and executed by the Commission under the Plan belies the effort and progress that was accomplished. This report highlights those activities.

Looking to the future, the Commission will focus on streamlining its own structure and narrowing its remit to that of an advisory body that assists with fundraising and discrete tasks, and that provides active but limited oversight. To this end, the membership of the Commission will be reduced by approximately two-thirds. The Commission will continue to emphasize the need for pro bono participation and prompt action in areas such as elder care, forms revisions, creative approaches to efficiently handling family law matters, and public education regarding available services.

This revision to the Commission’s make-up and duties was made possible by the delivery of the work contemplated in the Plan. It took a dedicated group of volunteers, together with the organization of Equal Justice Wyoming and its constituent providers, to deliver that work.

I. Review of 2015-2020 Strategic Plan Commitments & Accomplishments

In a report dated November 20, 2014 the Commission established a five-year plan (“the Plan”) for organizing the delivery of civil legal services to low and moderate income individuals in the State of Wyoming. A link to access the Plan is included in the References on page 18.

The Plan was the organizationally logical “next step” for the Commission following:

- The December 2008 Wyoming Supreme Court order (“the Order”) creating the Commission;
- The 2009 White Paper stating priorities for the Commission; and
- The 2010 Wyoming Civil Legal Services Act (Wyo. Stat. Ann. § 5-2-121, *et. seq.*) (the “Act”) establishing a funding mechanism and calling for creation of an operating entity and program.

The Plan established three broad initiatives on which to focus the Commission’s efforts.

- Initiative #1: Continued Support for Legal Services in Wyoming.
- Initiative #2: Communications and Public Awareness Inside and Outside Wyoming’s Legal Community.
- Initiative #3: Inspiring *Pro Bono* Service by Wyoming Attorneys.

Within these three initiatives, several specific actions were proposed for implementation. This section will summarize progress against the Plan’s stated initiatives and proposed actions.

Initiative #1: Continued Support for Legal Services in Wyoming

Perhaps the most important activity of the Commission over the last five years is its support for and guidance to Equal Justice Wyoming (“EJW”—originally named the Wyoming Center for Legal Aid) as EJW has matured in fulfilling its mission of helping income-eligible Wyoming citizens connect with legal resources and find ways to address their legal needs. EJW was created pursuant to Wyo. Stat. Ann. § 5-2-122 and has established working relationships and systems with Legal Service Providers including Legal Aid of Wyoming, University of Wyoming College of Law Clinics, the Wyoming Coalition

Against Domestic Violence and Sexual Assault, the Wyoming Children’s Law Center, Laramie County Community Partnership Medical-Legal Partnership, and the Teton County Access to Justice Center. Importantly, it is now well-settled that EJW is the clearinghouse for coordinating a statewide network of civil legal services programs and resources for low and moderate income citizens of Wyoming.

A link to access EJW’s most recent “Annual Report to the Wyoming Supreme Court” is in the References. The myriad programs and activities of EJW are detailed more fully in that report. Many of those programs and activities were identified in the Plan and have been developed with the advice, input or other assistance of the Commission. Examples are discussed briefly below.

Raising Public Awareness of the Need for Legal Services

Working with EJW, the Commission developed a “presentation in a box” addressing both the need for legal services among low to moderate income citizens in Wyoming and the ongoing gap that exists in meeting that need. Over the last few years, both members of EJW and the Commission have given the presentation to groups inside and outside the legal community. Additionally, EJW is a regular participant in the State Bar meeting where civil legal service needs are discussed.

Legal Aid of Wyoming and the Equal Justice Wyoming Foundation, with support from the Commission and other entities, are preparing a “Statewide Legal Needs Assessment”. The assessment has highlighted that the need for legal services among the indigent remains high. Of slight surprise has been the fact that, over the course of the Plan, both EJW and the Commission have become acutely aware that, even more than their lack of knowledge that there are resources to help with their legal issues, low and moderate income citizens often are unaware that the problem they are confronting has legal implications in the first instance. Thus, while EJW and the Commission have made good progress in this area, raising public awareness of the need for legal services will remain a necessary priority for the foreseeable future.

Alternative Methods for Delivery of Legal Services

The Plan recognized that simply hiring more lawyers was never going to be a practical solution to meeting the need for civil legal services. The Commission has worked with EJW to foster creative mechanisms for delivering legal assistance. A few examples are:

- The Volunteer Reference Attorney program has been instituted in six counties with plans to expand to other counties in the state. In this program Volunteer Reference Attorneys provide legal information, explain court procedures, help self-represented litigants complete necessary court forms and navigate the court system.

Laramie, Natrona, Sweetwater, Albany, Carbon and Sheridan counties currently participate in the program. In most of these counties a Volunteer Reference Attorney is available at the courthouse on the first and third Thursday of each month from 2 to 4 p.m.

- A family law mediation program is being piloted in Cheyenne. A recurring theme that the Commission has encountered is that family law cases tend to have a disproportionate number of self-represented litigants and, consequently, a disproportionate impact on court dockets. The mediation pilot is one of several concepts being tested to address this issue.
- Wyoming.freelegalanswers.org is a secure online “virtual legal advice clinic” designed to help reach some of the more remote parts of the State where in-person assistance is less readily available. The website screens users to ensure financial eligibility. Qualifying users are then able to ask legal questions which are answered by Wyoming licensed attorneys. EJW manages the website in partnership with the American Bar Association.

Obviously, given scarcity of resources, this will continue to be a high priority for EJW and the Commission.

Development of Resources for Self-Represented Litigants

As mentioned above, self-represented or *pro se* litigants can be a vexing problem for the efficient functioning of the courts. Inevitably, our judges will often feel compelled to try to assist *pro se* litigants with navigating court procedures and filings. Court dockets can lag behind and justice for all litigants can be delayed despite the good intentions of all involved.

One of the key ways that EJW and the Wyoming Judicial Branch has attempted to help deal with this issue is through the development of forms to aid *pro se* litigants. The forms are available online and often batched into packets for particular types of cases. An online classroom to help self-represented litigants navigate divorce cases has also been made available by EJW.

Feedback from the courts on these efforts has been mixed. Streamlining the language of the forms and their online content in order to make them more “user-friendly” is ongoing work. Continued diligence in this area and close coordination with the judges, clerks and Bar will be fundamental to continuing to make progress on solving this issue.

Addressing Barriers to Access to Justice

Barriers to the justice system are not exclusive to low and moderate income citizens. Nonetheless, they typically are greater for those who lack the necessary resources to overcome or advocate against barriers. The Commission and EJW have identified such barriers and, in appropriate cases, have worked with the Legislature and the courts to craft remedies. For example, in tenant eviction cases the requirement of filing a written answer in order to present a defense has been dispensed with so that people under threat of eviction may still appear and advocate on their behalf. Similarly, a requirement that a *petitioner* seeking a divorce reside in Wyoming for the 60 days prior to filing a divorce petition was leaving individuals restricted in their ability to seek a divorce. This was particularly problematic for domestic violence victims who were forced to flee the state for their personal safety. Now a divorce may be filed if *either party* has been a resident of Wyoming for the past 60 days, eliminating the barrier to divorce for many victims fleeing abuse.

Continued vigilance and collaboration on the part of EJW, the Commission, the Courts and the Legislature will be important to identifying and addressing barriers to obtaining justice. The well-established infrastructure that is now in place should aid greatly in this ongoing work.

Identification of Underserved Segments of the Wyoming Population

As alluded to above in the discussion on raising awareness, one of the greater challenges the Commission, EJW, and other entities have faced is making the public and potential legal aid recipients aware of the resources that are available. Legal Aid of Wyoming and the Equal Justice Wyoming Foundation are working with experts to conduct a statewide legal needs assessment. We anticipate that assessment will be of great assistance in defining and further addressing this issue.

Strengthening Ties with Civil Legal Service Providers

By their very nature, many of the activities discussed in this section will endure beyond the Plan which, of course, was the intent of the Plan. One of the main reasons that these activities and Initiative #1 from the Plan have demonstrated progress and will continue to be pursued diligently is, again, because a collaborative legal services infrastructure now exists. One of the principle components of this infrastructure is the importance of EJW in coordinating and tracking resources. This is accomplished in large part through well-established working relationships between EJW and the Legal Service providers (Legal Aid of Wyoming, the University of Wyoming Law Clinics, the Wyoming Coalition Against Domestic Violence and Sexual Assault, Wyoming Children's Law Center, Laramie County Community Partnership Medical-Legal Partnership, and the Teton County Access to Justice Center). When the Plan was issued these relationships were in their infancy with overlapping (or occasionally conflicting) priorities and operations. Increased

efficiency is an ongoing goal for all organizations but the State should be proud of the relative efficacy of the system now in place for delivery of civil legal services.

Initiative #2: Communications and Public Awareness Inside and Outside Wyoming's Legal Community

As described under Initiative #1 above, the Commission has worked with EJW to raise awareness of the need for civil legal service for low and moderate income citizens. Much of that discussion applies to Initiative #2. There has been extensive outreach to the Wyoming legal community. Examples are:

- Regular features in the Wyoming Bar Journal including an issue devoted to access to justice in the last year;
- Annual meetings between EJW and the State Bar Officers and Commissioners;
- Presentations to local Bar associations;
- Regular presentations to students at the college of law as well as through the Legal Clinics;
- Regular presentations to the judges and clerks of court. Indeed, the clerks' offices tend to be the Wyoming legal system's first point of interface with the public and one of the key ways that the work of the Commission and EJW gets communicated to those in need of legal services.

The net result of these efforts has been an embedded recognition within Wyoming's legal community of the existence of a civil legal services infrastructure. This work will continue in order to build on and maintain the gains achieved to date.

As already discussed, engaging with the public outside of the legal community has been challenging and progress more incremental. Nonetheless, work pursuant to Initiative #2 has largely been institutionalized with the areas of greatest need being clearly visible to the Commission and EJW.

Initiative #3: Inspiring Pro Bono Service by Wyoming Attorneys

The third initiative from the Plan has proven to be the most challenging for the Commission and EJW. On the one hand, the Wyoming Bar is to be commended for its rates of *pro bono* volunteerism relative to many other states. In an article published on April 26, 2018, the

ABA Journal recognized that Wyoming lawyers ranked third out of the participating states for the highest pro bono average hours by attorneys. See:

http://www.abajournal.com/news/article/which_lawyers_spend_the_most_time_on_pro_bono_survey_finds_4_out_of_5_offer.

The full report can be found at:

https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_supporting_justice_iv_final.pdf.

On the other hand, Wyoming's rural nature often makes getting *pro bono* volunteers "at the right place, at the right time" difficult. Particularly in the less populated judicial districts with few practicing attorneys, providing representation or even assistance to *pro se* litigants can be problematic. To contrast, many states with major metropolitan areas host national law firms that typically have institutionalized *pro bono* service both as a development tool and as part of their business model. This is a dynamic that is more amenable to legal practices of scale rather than the local and rural practices that predominate in Wyoming.

Notwithstanding these realities, the Commission and EJW have been in action. EJW employs a full-time *pro bono* coordinator and has developed training and materials promoting limited scope representation as well as online aids for attorneys to use when providing limited scope services. Additionally, EJW communicates prolifically within the Bar about the need for and benefits of *pro bono* service. Despite these considerable efforts, EJW has struggled to achieve consistent *pro bono* participation. Many judges have noted that greater *pro bono* assistance, particularly in domestic cases, would aid the handling of their dockets greatly.

In summary, there has been a lot of activity in support of greater *pro bono* participation but with mixed results at best. This will be a primary area of focus for the Commission and EJW going forward.

A Note on Funding

Inevitably, for activities such as those contemplated and supported by the Commission, funding is a critical consideration. Since the passage of the Wyoming Civil Legal Services Act, the Commission and EJW have been prudent stewards of the resources granted by the State of Wyoming, the Federal Government and fees collected pursuant to the Act. What follows is a brief summary of the current state of legal services funding in Wyoming.

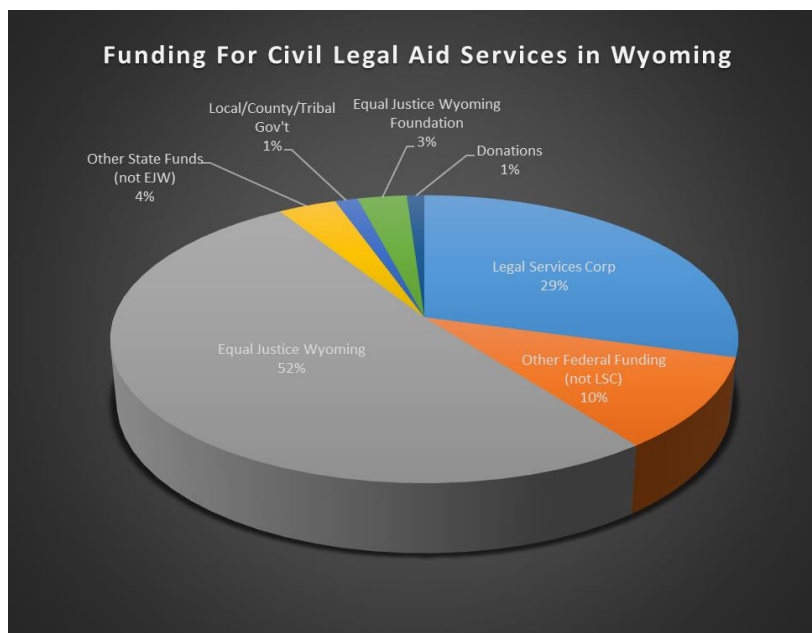
Preliminarily it should be noted that states across the country have established widely varying approaches to the delivery of civil legal services. In all states, the federal funding through the Legal Services Corporation (LSC) is used to provide services. In FY 2017,

LSC awarded grants and entered into contracts for a total of \$388,015,681 in funding. In 2015, for example, LSC funded 812 legal services offices providing direct legal services throughout the United States and its territories. Many of these federally-funded programs supplement their budgets through state, private, and other funding sources. In addition to legal services offices with full-time attorneys providing direct legal services, there are many part-time and *pro bono* attorneys providing legal services across the country. Other entities, such as law school clinical programs, also provide legal services. For more information regarding efforts in other states and how Wyoming compares, see the *American Bar Foundation Report of the Civil Justice Infrastructure Report at http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf*.

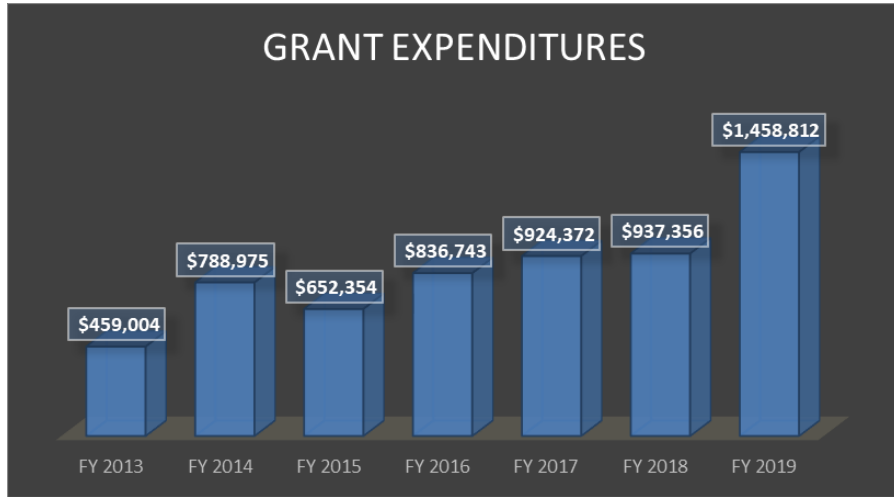
As stated earlier, in 2010, the Wyoming Legislature passed House Bill 61, establishing the Civil Legal Services Account and providing Wyoming’s first state funding for legal services. Wyo. Stat. Ann. §§ 5-2-121 *et seq.* The financial status of legal services in the state has improved over the past nine years. However, there is still a significant difference between the need for legal services funding and available resources. Over the past two years, the balance of the Civil Legal Services Account has decreased. The Account is funded through a state court filing fee surcharge and court assessments and there has been a noticeable decrease in the revenue generated from these fees.

The Commission, which proposed and supported the 2010 legislation, is working with EJW, the EJW Foundation, and other entities to preserve funding for legal services. These efforts include promoting private contributions, working to increase the Interest on Lawyer Trust Accounts (IOLTA) funding, and searching and applying for grants.

Sources of Legal Services Funding in Wyoming (2019)



Growth of EJW Grants—2013-2019



EJW 2019 Snapshot

State Civil Legal Services Fund Revenue	\$1,049,830
Other funds administered and granted by EJW	For example: EJW received federal Victims of Crime Act (VOCA) funds of \$300,000 and \$100,000 of State Surcharge Funds, which were granted to provide civil legal services to victims of crime, as well as \$22,800 of Pro Hac Vice Fees used for general grants.
Grants	\$1,458,812
Number of Persons Receiving Legal Services & Self-Help Assistance	4,979
Salaries & Benefits	\$332,680
Office Expenses & Travel	\$31,620
Telecommunications Expenses	\$3,493

II. Challenges, Opportunities and the Commission Going Forward

Organization of and Membership on the Commission

As will be discussed below, many of the priorities for the Commission and EJW remain the same or similar to those outlined in the Plan five years ago as those priorities will inevitably be critical components of a civil legal services effort. Before addressing those priorities, however, it is worth revisiting the infrastructure that has been fostered by the Supreme Court as well as the Legislature.

A link to the Commission's March 24, 2015 bylaws is included in the References. At the time the bylaws were adopted, and the Plan was being drafted, the task before the Commission was daunting. Chief among the goals to be accomplished was the continued conception and maintenance of EJW. As this was being accomplished, the Commission was also pursuing the goals outlined in the Plan. Much of this work was being performed by "working groups" formed from Commission members. These working groups became standing committees. The current working groups are:

Communication—fostering knowledge of EJW's services and available resources

Delivery of Legal Services—conceiving and implementing alternatives to the traditional delivery of legal services by EJW, the Bar and the courts

Law Improvement—advocating changes to the law or court rules to improve access

Tribal—to coordinate with the tribal courts regarding initiatives and resources

Funding

During the ensuing five years, as described above, EJW became a recognized cornerstone in Wyoming for the delivery of legal services. In addition to facilitating the institutionalization of EJW, the working groups have also delivered many of the goals set out in the Plan. In order to do this work, the membership of the Commission increased substantially as allowed by the Commission bylaws. Membership on the Commission stood at 29 members.

During the last few years it has become clear that, while the essential work of delivering legal services to low income individuals has not abated, the working groups' remit has largely been subsumed by EJW. This result is partly design, partly simple organizational evolution. The residual working group infrastructure, however, has begun to hamper

efficiency as work conceived in the working groups often ends up being performed by EJW staff rather than the volunteer members of the working groups. This work by EJW is often duplicative of or in addition to efforts that EJW is already undertaking.

In order to support EJW's work and to assure that valuable resources are not diverted from the central objective of delivery of civil legal services, the Commission proposes to eliminate the working groups, with one exception. In the future, the Commission will have four primary functions:

1. Acting as an advisory body to the Supreme Court in support of the Court meeting its statutory obligations under the Act. This includes assisting the Court in its role as liaison with the Legislature, Agencies, Bar, etc.
2. Acquiring and maintaining funding and other resources in support of EJW's efforts consistent with the Act and the Order. Because of this, the Funding Working Group will remain a standing working group within the Commission.
3. Exercising limited, focused independent oversight over EJW as contemplated by the Act and the Order.
4. Serving as a resource to EJW for specific tasks where the EJW Board of Commissioners determines the Commission can be most helpful. This can include simple requests for input from EJW to the Commission.

Because of the more limited scope of the Commission, its membership will necessarily recede to a number more compatible with its duties. As the Commission takes on special projects on its own prerogative or, more often, at the request of EJW, it will work through ad hoc committees staffed from within the Commission and with the assistance of individuals that the Commission believes have expertise peculiar to the task at hand. Such individuals would not, however, be added to the roster of Commission membership.

Work that has been commenced by a working group that can be completed in the next six months will be done. Otherwise, all residual tasks remaining in the working groups will be transitioned to EJW. As members of the Commission's terms expire over the next two years, they will not be replaced with the exception of the following individuals. This will constitute the Commission membership after December 31, 2021:

- The Chief Justice of the Wyoming Supreme Court or his or her designee. This person will chair the Commission (1 member);

- A State District Court Judge recommended by the District Court Judges' Conference (1 Member);
- A State Circuit Court Judge recommended by the Circuit Court Judges' Conference (1 Member);
- Two members of the Wyoming State Bar recommended by the President of the Wyoming State Bar (2 Members);
- A representative of the University of Wyoming College of Law recommended by the Dean of the College of Law (1 Member);
- A District Court Clerk designated by the President of the Clerk of District Court's Association and a Circuit Court Clerk recommended by the President of the Wyoming Association of Circuit Court Clerks (2 Members);
- Two members of the Wyoming Legislature recommended by the Speaker of the House and the President of the Senate, respectively (2 Members);
- The Attorney General of Wyoming or his or her designee;
- A Member at Large may be appointed at the discretion of the chair of the Commission if particular expertise is deemed necessary and circumstances warrant expansion of the Commission rather than an ad hoc request for assistance.

In addition to the eleven to twelve-member Commission outlined above, the Executive Director of EJW will be a standing invitee and participant in Commission meetings and communications. The Executive Director of EJW will serve as the liaison between the Commission and EJW's legal service provider organizations. The Executive Director will also have the discretion to invite a representative or representatives from legal service provider organizations to any Commission meeting where such an invitation would aid efficiency and communication of information.

The Executive Director of the Wyoming State Bar and the Children's Justice Project will also be standing invitees and participants in Commission meetings.

Wyoming Supreme Court recently replaced the Commission bylaws and rules to effect these changes. A link to the amended bylaws is included in the References.

Again, the Commission emphasizes that the working groups were necessary to embed many of the principles in the Plan and to allow EJW time and space to become a functioning entity. With EJW established as the focal point of the civil legal services effort and responsible for execution of the priorities established by the Act, the Order and the Commission itself, it is time for the Commission to assume an oversight role that supports and guides EJW and that is less involved in direct execution of policy.

Priorities for the Commission

As alluded to above, the priorities for the Commission and EJW are largely the same and have changed little since the issuance of the Plan. While substantial progress has been made, by their nature, most of the priorities listed below will almost certainly always be critical in a successful program for assuring that low income individuals receive the legal services they need.

Pro Bono

As discussed earlier, based on feedback from the courts, clients, EJW and others, *pro bono* participation is critical to the Commission's mandate. While the Wyoming Bar's response has been admirable, more needs to be done. EJW has *pro bono* participation as a focus area and it is the Commission's intention to support EJW's efforts through the influence of its judicial members and the insights of its members from the Bar and the clerks' associations.

Elder Care

In January 2017 a task force charged with investigating the issues associated with a growing elderly population in Wyoming issued its report and recommendations. A link to the report is included in the References. While progress has been made, the Commission is of the view that its mandate includes the ability to foresee where issues could potentially become problematic for the delivery of civil legal services. For this reason, the Commission will emphasize a focus on the issues raised by the Elder task force and coordinate with EJW on steps appropriate to the Commission and EJW's remit.

Residual Working Group Initiatives

As described above, the working groups will be completing their work or transitioning what remains to be done to EJW. The Commission views much of this work as valuable and will be assuring its delivery by the working groups or EJW. Examples include:

- Updating of the currently available forms to use simpler language and to be more "user friendly."

- Continued study and piloting of creative approaches to shepherding family law cases through the courts. As described, these cases tend to feature more *pro se* litigants and constitute a substantial drain on judicial resources.
- Continued efforts to highlight the availability of resources for low income individuals in order to assist that population with both recognizing when they are in need of legal assistance as well as where to obtain legal services.
- Exploration of alternative and creative ways to deliver legal services beyond those presently contemplated and managed by EJW. Many of the current delivery organizations have been extant for some time so it will be important for the Commission and EJW to continually test their model.

A Word About the Tribal Courts

While intercession in tribal matters is not within the direct remit of the Commission, the Commission has attempted to coordinate with the tribal courts in Wyoming to share knowledge and, where allowed, resources. These efforts have, admittedly, met with mixed results despite good faith efforts by Commission members and the tribal courts themselves. While the Commission will disband the current Tribal Court Working Group, it will not set aside its efforts to work with the tribal courts on a meaningful program as those courts face many of the same challenges that the Commission and EJW face. With many of the civil legal services priorities contemplated by the Plan delivered or embedded in the State's legal services architecture, the time is right for a fresh look at tribal court relationships and, where desired and feasible, assistance.

CONCLUSION

This report has described the evolution of the Wyoming Access to Justice Commission under its 2014 five-year plan. Successful execution of the Plan has allowed the State of Wyoming to accomplish the primary goal that led to the creation of the Commission in the first instance, namely, increasing the availability of civil legal resources for Wyoming's indigent population. In order to efficiently build on the substantial progress achieved pursuant to the Plan, the Commission will optimize its membership and responsibilities. This will allow the Commission to focus on those areas that have proved critical to delivery of civil legal services.

REFERENCES

A. November 20, 2014 Report to the Wyoming Supreme Court & Five-Year Strategic Plan 2015-2020

http://www.courts.state.wy.us/wp-content/uploads/2017/03/Report_Strategic_Plan.pdf

B. July 2019 Equal Justice Wyoming's Annual Report to the Wyoming Supreme Court

http://www.courts.state.wy.us/wp-content/uploads/2019/09/EJW.Annual.Report.2019_Final.pdf

C. March 24, 2015 Bylaws and Rules of the Wyoming Access to Justice Commission

http://www.courts.state.wy.us/wp-content/uploads/2017/03/bylaws_2403201500.pdf

D. January 28, 2020 Bylaws and Rules of the Wyoming Access to Justice Commission

<http://www.courts.state.wy.us/wp-content/uploads/2020/01/Order-Repealing-Bylaws-and-Rules-of-AJC-effective-March-1-2020.pdf>

E. January 20, 2017 Elder and Vulnerable Adult Task Force Report to Governor

<http://www.courts.state.wy.us/wp-content/uploads/2017/03/20170120ReportToGovernor.pdf>