

## Access to Justice: A Judge's Perspective

By Hon. Scott W. Skavdahl

The words sound regal and the concept of providing access to justice sounds good. But what does it really mean and is it really that important? As a practicing attorney, I had little concern or appreciation for access to justice. My clients could pay the filing fee and my fee. What more was there to be concerned about, right? Wrong. The integrity of our legal system and the quality of justice it delivers requires access to justice be defined by more than merely words, packets or forms. It is substantive. Let me explain why I now feel this way and why I believe it is imperative that the words "access to justice" are given substance and meaning.

As a judge, one of your biggest concerns is that in rendering your decision you have considered all the relevant evidence, considered the controlling precedent and made a legally correct decision. To achieve this result the judge is dependent, in part, upon the parties having presented all of the relevant evidence and controlling legal precedent. In the ideal scenario, counsel for the parties will have researched the legal issues, developed the facts and evidence to support their client's position and then presented their respective case to the Court. Based upon a complete understanding of the relevant facts and guiding legal precedent, the Court would then render a decision that is legally correct and justice is, at least, theoretically served. While the losing party is certainly disappointed, he/she had a full and fair opportunity to have the judge hear and consider his/her side of the story and consider his/her legal position. Moreover, to the extent the judge did not get it right, the record on appeal has been made and the trial court's decision can be reviewed to ensure that justice is done. Justice prevails. Sounds good. So, what's the problem? The problem is that this scenario is becoming atypical, to the detriment of all.

More and more litigants are appearing pro se. In fact, more and more cases are occurring where both parties are appearing pro se. Whether it is in the form of a packet for divorce with children or armed with a \$75.00 prepare-it-yourself guardianship packet from "uslegalforms.com," more and more litigants enter into the legal forum without the assistance or guidance of legal representation. In 2008 Natrona County saw the highest number of pro se initiated civil cases on record, with 417 civil cases being filed by pro se parties, over 100 more cases than had been filed by pro se parties in 2007. This dramatic increase may be in part attributable to the recent demise of Wyoming Legal Services, Inc.; however, the data indicates an increasing trend of pro se litigants over the last five years. What is wrong with this increasing trend of pro se litigants? Justice is being lost along with respect for our legal system and the value of legal counsel.

The first encounter with a pro se litigant usually occurs in the Clerk of Court's office, as the pro se litigant attempts to file his case or, more frequently, seek an explanation from the clerk why that lazy judge has not acted on his case. Or, worse yet, why that idiotic judge keeps

writing sticky notes on the Orders, refusing to sign it and telling them first about bad service and the latest about some financial affidavit. Then comes the million dollar question—why won't he/she just sign my order so I can [you fill in the blank]? Lacking legal representation, these pro se parties also lack any legal understanding or appreciation for legal requirements. They become disenfranchised with the legal system and see it as one for the wealthy insiders. Given this, we shouldn't be surprised when they ignore their summons for jury duty or any other Court Order. Why bother? The judge wouldn't listen to me; why should I listen to him/her?

For those pro se litigants who make it past the Clerk of Court's counter and enter the courtroom, they too ultimately suffer the same frustration. First, they try to submit their documents and papers to tell their side of the story, but "the judge won't consider it, something about the "Rules of Civil Procedure." Then the pro se party attempts to orally explain to the judge what really happened, but "the other side doesn't want the Judge to know what really happened and kept objecting and saying something about the "Rules of Evidence." Then, "to top it all off the judge, who is obviously on their side, kept refusing to listen and told me he/she can only consider admissible evidence." Predictably, the results (in their mind) confirm the pro se litigant's frustration and disgust for the whole legal system. They too become disenfranchised.

The only thing worse in these scenarios is when the subject of the pro se litigants' dispute involves innocent children. The best interest of which are to be somehow discerned from this pro se presentation, lacking in relevant evidence or even an understanding of the factors to be considered. Unfortunately, the victims in these cases are wholly innocent and the errors of an uninformed decision can be untreatable and the harm irreparable. In many scenarios our adversarial legal system simply is not designed to function based upon the submissions of a pro se party or parties. Meaningful access to justice requires more than just a warm body, forms or packets. Moreover, access to justice affects more than just pro se litigants. It impacts the quality of a judge's decision, how our legal system is perceived and the lives of people.

The recent events involving the funding and demise of Wyoming Legal Services, Inc. have brought to a forefront the significance of pro bono work and the funding of legal aid for indigent civil litigants. Not completely coincidental, and very timely, the Wyoming Supreme Court, on December 16, 2008, entered an order, *In the Matter of Establishing the Wyoming Access to Justice Commission*. This Order establishes an Access to Justice Commission in Wyoming, the purpose of which is to assure access to the civil justice system in Wyoming through the provision of high quality legal services for low and moderate income people in Wyoming. Among other things, this Commission will be assessing the legal needs and long term solutions and funding to address these needs. These are issues that are currently being grappled with by other states.<sup>1</sup> It is important work. It will help define what "access to justice" is and how we can give substantive meaning to it. That in turn will impact the integrity of our legal system and the quality of justice it delivers, something about which we must all be concerned.

*Hon. Scott W. Skavdahl received his B.S. in political economics from the University of Wyoming in 1989, and his law degree from the University of Wyoming School of Law in 1992. In 1992, Judge Skavdahl joined the law firm of Brown, Drew, Massey & Sullivan as an associate attorney, and in 1994, accepted a law clerk position with the Honorable William F. Downes, United States District Judge for the District of Wyoming. In 1997, after completing a three-year clerkship with Judge Downes, Judge Skavdahl joined the law firm of Williams, Porter, Day & Neville, P.C. in Casper, Wyoming. Judge Skavdahl was appointed a Part-Time United States Magistrate Judge for the District of Wyoming on December 4, 2001. In July of 2003, Governor Freudenthal appointed Judge Skavdahl to the Seventh Judicial District as a District Court Judge.*

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<sup>1</sup> Justices consider nonprofit corporation to address access to justice, The Wisconsin Law Journal, Legal News, December 22, 2008; <http://www.wislawjournal.com/article.cfm/2008/12/22/Justices-consider-nonprofit-corporation-to-address-access-to-justice>. A False and Unfair Economy, Editorial, The New York Times, January 2, 2009; [http://www.nytimes.com/2009/01/02/opinion/02fri3.html?\\_r=1](http://www.nytimes.com/2009/01/02/opinion/02fri3.html?_r=1). South Dakota Panel aims to boost access to legal services for the poor, The ArgusLeader.com, December 30, 2008; <http://www.argusleader.com/article/20081230/NEWS/812300314/1001/news>. Access to Justice, Remarks by Chief Justice Janice M. Holder, Supreme Court of Tennessee; December 5, 2008; <http://www.nlada.org/DMS/Documents/1230561747.02/TN%20ATJ%2012-08.pdf>.