

JUSTICE CRISIS IN COLORADO 2014

Report on Civil Legal Needs in Colorado



**Justice Crisis in Colorado 2014:
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EXECUTIVE SUMMARY

In January 2008, a report issued by the Colorado Access to Justice Commission (Commission) concluded that “Colorado faces a serious crisis in civil legal representation of the indigent.” Unfortunately, six years later, the crisis remains no less severe. A convergence of factors — including the Great Recession, high unemployment, high foreclosure rates, low interest rates, and federal budget cuts — has increased the number of indigent persons in this state while reducing funding for Colorado Legal Services (CLS), Colorado’s only statewide legal aid program, by 10 percent between 2009 and 2013.

In the fall of 2013, the Commission held hearings in Boulder, Centennial, Colorado Springs, Denver, Grand Junction, Greeley, and Westminster. Scores of witnesses, including legal services clients, attorneys, judges, self-represented litigant coordinators, and employees of organizations that serve the indigent, provided testimony concerning the civil legal needs of the indigent in Colorado and the limited resources available to meet those needs. The most significant findings from the hearings include:

- **Lack of access to legal services.** Despite a number of initiatives and emergency measures, legal service providers for the indigent must turn down at least one of every two eligible applicants for services because of inadequate staffing and resources.
- **Too many unrepresented litigants.** The increasing numbers of pro se litigants, including both the indigent and those of modest means, place great strain on judicial and other court resources. More than 50 percent of all civil litigants and nearly 76 percent of parties in domestic relations cases are self-represented.
- **Too few legal aid attorneys.** CLS, the primary provider of civil legal aid services in Colorado, has just 47 lawyers to serve an income-eligible indigent population of more than 880,000. By comparison, 420 public defenders serve indigent Coloradans in criminal cases. The number of CLS attorneys has declined significantly since 1980, despite rapid growth of the indigent population.
- **State funding, while improved, remains well below the national average.** Despite an increased appropriation for the Family Violence Justice Fund, Colorado’s funding for civil legal aid per poor person remains a fraction of the national average.

- **Legal representation is often essential for vulnerable persons.** Numerous witnesses, including legal aid clients, explained the importance of legal representation for the elderly, victims of domestic violence and their children, victims of flooding, and others.
- **Civil legal services for the indigent are cost-effective and provide value.** A recent study of social return on investment demonstrates that each dollar spent on civil legal services for the indigent in Colorado generates a \$6.35 return.

Recommendations

In order to provide more equal access to justice in Colorado, measures must be taken to provide substantial additional funding of civil legal services for indigent Coloradans, to reduce the need for such services, and to mobilize additional private resources to help meet the need. Colorado would need \$2.3 million simply to reach the level of resources that were available for civil legal aid in 2009, which is when the recession-related reductions in funding began to occur. Significantly more resources will be necessary to meet the current and future needs of the growing low-income population.

The Commission accordingly makes the following recommendations.

1. To increase funding for the civil legal aid delivery system:
 - A. Additional legislative funding in the short term in the amount of \$1.73 million, which, together with the amount currently appropriated for the Family Violence Justice Fund and the amounts generated by Recommendations 1.B. and 1.C. below, would return Colorado to its pre-recession 2009 funding level.
 - B. Dedication of \$20 of the attorney registration fees for active attorneys with over three years in practice and \$10 of the registration fees for inactive attorneys under age 65 to support access to civil justice in Colorado. Using the number of lawyers in each category as of September 2013 as an estimate, this would generate approximately \$500,000 in additional funds for civil legal aid.
 - C. Amendment of court rules to require out-of-state attorneys to pay a fee of \$450 (rather than the \$300 currently required) to appear in Colorado courts. The additional \$150 would be dedicated to support access to civil justice in Colorado. Using

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the number of out-of-state attorneys appearing in 2012 as an estimate, this would generate approximately \$70,000 in additional funds for civil legal aid.

- D. Amendment of Rule 23 of the Colorado Rules of Civil Procedure (on “Class Actions”) to require that at least 50 percent of class action “residual funds” be disbursed to the Colorado Lawyer Trust Account Foundation (COLTAF) to support the civil legal aid delivery system. The amount generated by this proposal would be variable.
 - E. Approval and adoption of proposed amendments to Rule 1.15 of the Colorado Rules of Professional Conduct that would accomplish “interest rate comparability” for the COLTAF program and thus maximize COLTAF revenues for the civil legal aid delivery system. The amount generated by this proposal would be negligible so long as interest rates remain at current record lows and in the long term would be variable.
 - F. Continued dialogue with the Colorado Supreme Court concerning a possible filing fee surcharge for civil legal aid in order to provide a sustainable, long-term solution to the chronic unmet need. The revenue to be generated would be dependent on the amount of the surcharge.
 - G. Amendment of the Unclaimed Property Act to require that unclaimed funds in lawyer trust accounts be delivered to COLTAF to support civil legal aid. The amount generated by this proposal would be variable.
2. To enhance the resources for self-represented litigants, thereby reducing the need for legal representation:
- A. Adoption of the State Court Administrator’s Office proposal for legislation to increase the number of self-represented litigant coordinators.
 - B. Development and implementation of strategies to further improve the accessibility of technology for self-represented litigants, including electronic filing of online forms with plain-language instructions.

3. To mobilize additional private resources to help meet the need:

- A. Additional measures to encourage law firms, solo practitioners, government legal offices, and in-house counsel to provide, or expand their provision of, pro bono services.
- B. Encouragement and support for innovation that allows for the more cost-effective representation by private lawyers of persons of modest means.

NOTE

1. Recommendations 1.B. through 1.G. are included in a funding plan developed by the Commission, approved by the Board of Governors of the Colorado Bar Association, and presented for action to the Colorado Supreme Court.

COLTAF Revenue and Grants
2006 - 2015 (projection)

12/5/2014

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
COLTAF Revenue	2,353,331	3,916,419	4,321,323	2,485,954	1,708,653	1,305,406	1,225,032	715,262	716,877	600,000
All COLTAF Grants	1,854,280	2,375,841	3,061,554	2,855,854	2,396,700	2,079,500	1,478,800	1,138,000	935,000	422,000
CLS Grant	1,385,001	1,880,741	2,388,213	2,388,213	1,950,000	1,760,000	1,280,000	978,000	765,000	360,000
Reserve Balance	608,254	1,895,655	3,086,521	3,026,845	2,255,199	1,397,976	859,738	455,000	0	0

