

University of Denver

Digital Commons @ DU

---

Sturm College of Law: Faculty Scholarship

University of Denver Sturm College of Law

---

1-1-1982

## Providing Legal Services for the Poor: A Dilemma and an Opportunity

Robert M. Hardaway

*University of Denver*, [rhardawa@law.du.edu](mailto:rhardawa@law.du.edu)

Kay H. Paine

Jane P. Gill

Follow this and additional works at: [https://digitalcommons.du.edu/law\\_facpub](https://digitalcommons.du.edu/law_facpub)



Part of the [Law and Society Commons](#)

---

### Recommended Citation

Kay H. Paine, Jane P. Gill & Robert M. Hardaway, Providing Legal Services for the Poor: A Dilemma and an Opportunity, 11 COLO. LAW. 666 (1982).

This Article is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Sturm College of Law: Faculty Scholarship by an authorized administrator of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu,dig-commons@du.edu](mailto:jennifer.cox@du.edu,dig-commons@du.edu).

---

## Providing Legal Services for the Poor: A Dilemma and an Opportunity

### Publication Statement

Copyright is held by the authors. User is responsible for all copyright compliance.

---

# Providing Legal Services for the Poor: A Dilemma and an Opportunity

by Kay H. Paine, Jane P. Gill and Robert M. Hardaway

---

Legal aid offices across Colorado are closing their doors. Staffs in the remaining offices are being reduced. Clients are being turned away. Never able to meet the legal needs of the poor, legal services programs are now confronted with painful cutbacks. Legal Services Corporation ("LSC") funding has been reduced by \$700,000; the LSC board now requires that 10 percent of all LSC funding be directed to involve private bar participation; and inflation is eating away at the remaining funds. Never before has the legal profession been faced with such a challenge and opportunity for community involvement.

The obligation of lawyers to participate in serving the disadvantaged has long been recognized in the history of the legal profession and is set forth in the Code of Professional Responsibility (DR-2, EC 2-24 and EC 2-25). However, the obligation of lawyers to participate in serving the disadvantaged is limited. "The legal profession," as EC 2-16 indicates, "cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered." Therefore, a balance must be struck; private attorneys must continue to prosper economically and poor people must continue to have access to the justice system.

This article serves as a report on the status of pro bono legal services programs in Colorado and the possible options available for attorney participation. It is hoped that this information will assist attorneys in examining their pro bono responsibilities and in seeking creative ways to turn these responsibilities into opportunities. Perhaps as background, the definition of pro bono should first be examined.

## WHAT IS PRO BONO?

An argument can be made that pro bono encompasses a wide range of activities. It can include serving on a local church board, advising a friend's son or daughter about a traffic violation or accepting a court appointment which necessitates a lower fee. Indeed, some attorneys would argue that pro bono should include clients whose fees must be absorbed because they did not pay.

The opposite side of this argument is the belief that pro bono includes *only* activity which is clearly "for the benefit of the public" and not for the benefit of the attorney. For example, representing an elderly poor person who is having trouble receiving Social Security benefits or a group of low-income tenants who need assistance in negotiating with a landlord to

get the plumbing repaired. Regardless of which argument is set forth, there appears to be general agreement that there are a variety of pro bono opportunities for attorney participation which can make use of individual skills.

### **COLORADO: A LEADER**

Colorado lawyers enjoy a long and impressive history of demonstrating their commitment to the provision of legal services to the poor. In fact, throughout the country many Colorado bar associations are looked upon as leaders. Examples of bar association projects which have generated national attention include the following.

#### ***Thursday Night Bar Program***

The Denver Bar Association's Thursday Night Bar Program uses the talents of over 1,000 volunteer attorneys who assist over 3,500 clients each year.

#### ***Boulder County Legal Services***

The Boulder County Bar Association's contribution in developing and sustaining a local legal services program won the ABA's prestigious Harrison Tweed Award.

#### ***CBA NW Colorado Project***

The Colorado Bar Association's Northwestern Colorado Legal Services Project is an innovative pro bono program serving eleven sparsely populated counties.<sup>1</sup>

In addition, Colorado is considered unique because of the on-going close working relationship between the private bar and the staff attorneys of the federally funded legal services programs. In many states, there appears to be an inherent conflict between the private bar and legal services attorneys. Fortunately, in Colorado, both the private bar and legal services attorneys are committed to one common goal—high quality legal services for poor people.

### **COLORADO'S RESPONSE TO FUNDING CUTS**

During recent months, both the Denver and Colorado Bar Associations have reacted quickly and affirmatively to address the cutbacks in federal funding for legal services. The Denver Bar Association is in the process of revitalizing and expanding the Thursday Night Bar Program with increased funding, additional staff and an on-going appeal for greater attorney participation. The Colorado Bar Association Board of Governors, during its September 1981 meeting, passed a multi-faceted resolution to demonstrate support for legal assistance for the poor.

Specifically, the Colorado Bar Association resolved to take action to promote activity within the bar to support legislative efforts to retain adequate funding for the Legal Services Corporation; to approach the Colorado legislature for both funding and statutory authorization of a program of civil legal assistance to the poor; and to adopt a strong statement of purpose with regard to the desirability and necessity of increased pro bono activity within the private bar.

The Colorado Bar Association has also allocated funds (up to \$51,412 for fiscal year 1981-82) to develop and implement local pro bono programs designed to provide direct legal assistance to eligible clients. To that end, two part-time staff members have been hired to assist local bar associations develop pro bono programs in their communities which are responsive to local needs and resources.

By these actions, the leadership of the Colorado Bar Association is reaffirming its commitment to pro bono services. It is also recognizing that the true burden for providing these services necessarily will fall on individual attorneys, law firms and local bar associations. Pro bono program options must be examined to determine which combination would be

the most beneficial for the client community, without placing too heavy an economic burden on the legal community.

### PRO BONO OPTIONS

There are many options for pro bono participation by attorneys. The options listed below already have been implemented or researched in Colorado and may provide a basis for consideration in developing a local strategy.

#### *Pro Bono Referral System*

The most common type of pro bono work is representation of eligible clients on a no-fee or low-fee basis. This includes individual client representation, as well as class action or impact litigation. Generally, this system is structured to include an initial interview or some other form of screening device prior to actual referral to an attorney, and appropriate follow-up to ensure that assistance is provided.

#### *Financial Support for Legal Services Programs*

While financial contributions do not fall within the traditional parameters of pro bono service, they are certainly important to ensure the continued existence of staffed legal services programs. As a result of a diminished level of funding from LSC, five legal services programs<sup>2</sup> have banded together to establish the Legal Aid Foundation of Colorado, Inc. The purpose of this foundation is to develop broad-based (private and public) funding for legal services. The foundation is a tax exempt organization and contributions can be made to support the effort on a statewide or local basis.

#### *In-Kind Contributions*

In addition to donations of time, expertise or money, in-kind contributions can be made to help sustain the efforts of

a legal services program. For example, providing free or reduced fee office space, and contributing office supplies, equipment, library materials, computerized legal research or photocopying are valuable contributions to local legal services programs and their clients.

#### *Technical Assistance*

Private attorneys and law firms have a tremendous amount of talent which can be shared with the staff of legal services programs. Perhaps mutually beneficial training programs could be established to train private attorneys on how to handle traditional poverty law cases and to train legal services attorneys in complex litigation skills or in areas of law which are commonly handled by the private bar. Other examples would include donating paralegal or receptionist time or assisting program staffs in organizing an efficient library or developing more streamlined administrative systems.

#### *Special Projects*

Local bar associations can sponsor special projects designed to educate or assist clients. Such projects may include the following:

- 1) sponsoring *pro se* workshops on such topics as Small Claims Court procedures or how to file a *pro se* dissolution of marriage;
- 2) preparing and distributing educational pamphlets on specific areas of law such as landlord/tenant rights and responsibilities or debtor/creditor problems;
- 3) sponsoring preventative legal education forums at the public library or at other community facilities;
- 4) working with a local radio station to develop a monthly call-a-lawyer program or providing a weekly article to the local newspaper on common legal problems and possible solutions; and

- 5) sponsoring a local Community Law Week; a week-long series of special events to provide the community with free access to attorneys and information about the judicial system.

### **Alternative Dispute Resolution Centers**

To alleviate the demand for court time, local bar associations may want to examine the possibility of establishing a local center to offer mediation or arbitration to resolve disputes. This may be particularly appropriate in addressing custody cases or neighborhood disputes (cases where the parties involved will continue to have an on-going relationship) and may be a more cost efficient alternative for people with limited financial resources.

### **"Teaching Law Center"**

A possible long-term solution to the financial pressures being exerted on legal services as well as law schools would be to pool limited resources by establishing a "teaching law center," similar in concept to the "teaching hospital" of the medical profession. Under the teaching law center concept, the school would provide office space within the law school for legal aid attorneys, and pay part of their salaries. As the teaching doctors in a teaching hospital who have a joint responsibility to the hospital and the medical school, legal aid attorneys would have joint responsibility to legal services and the law school.

In return for a portion of their salary and office space, legal aid attorneys would act as clinical advisors to students

# Professional to professional

We are experts in *legal malpractice* insurance. Through American Home Assurance Company, we have provided a market for many years.

Inquiries regarding this important insurance protection should be directed to us or your agent or broker.



**JAMES S. KEMPER & COMPANY**  
*of Colorado, Inc.*

6825 EAST TENNESSEE AVE. • BLDG. 1 • STE 101  
DENVER, CO 80224      PHONE (303) 388-4381

in the law school clinical program. The pooling of both legal services resources and those of the law school would accomplish the dual purpose of increasing legal services to the poor while helping to alleviate the burgeoning costs to the law schools of providing clinical legal education to its students.<sup>3</sup>

Despite the building pressures for pooling law school and legal services resources, the teaching law center concept probably would require significant changes in the present rules governing the practice of law and student practice rules,<sup>4</sup> especially if student legal clinics are permitted to accept some fee-generating cases. While the existing student practice rule and statute<sup>5</sup> do not expressly limit student clinical cases to those that are not fee-generating, the establishment of a fee-generating teaching law center would certainly require an amendment specifically to allow for the acceptance of fee-generating cases by such clinics.

In order to test the viability of this concept, a survey on attitudes of members of the bar in Colorado was made. In early 1980, Professor Robert Hardaway of the Denver University College of Law received a preliminary grant to finance a survey of Colorado attorney reactions toward the teaching law center concept, the notion of resource consolidation and fee-generating clinics.

Professor Hardaway's survey showed the following results: of the forty attorneys practicing in a variety of legal settings who were interviewed, a vast majority (approximately 87 percent) were very or moderately favorable to the teaching law center concept. There was greater resistance to the idea of fee-generating clinics, although there was still substantial support (77 percent were favorable or moderately favorable). Thirty percent of the attorneys polled who were in the private practice of law (excluding lawyers in a private legal "clinic"), felt that fee-generating clinics would not have an impact on their practice.

These preliminary survey results appear to indicate no widespread objection by members of the bar to the concept of a teaching law center. However, Professor Hardaway is continuing to examine the feasibility of this concept and would appreciate receiving feedback from members of the bar regarding this idea.

## CONCLUSION

The number of pro bono opportunities for attorney, firm and bar association participation is unlimited. Hopefully, participation in legal services programs will offer attorneys a new and rewarding experience, especially as such programs are tailored to individual talents to optimize each contribution.

Individual attorneys, firms and local bar associations must begin now to examine local needs and develop a plan for implementation. One community may decide to hire a local pro bono coordinator, while another may wish to develop a local mediation center using trained volunteer mediators. The CBA Co-Directors of Legal Services are available to help with any stage in the development of such programs. Please contact either Kay Paine or Jane Gill at the CBA office in Denver.<sup>6</sup>

It is hoped that future cooperation among law schools, state and local bar associations and legal services programs will provide the basis for a long-term solution to the present crisis in legal aid funding. It is imperative that Colorado lawyers continue to play a leadership role in providing the support and services necessary to meet the needs of low-income clients.

## NOTES

1. The program is staffed by five non-attorney coordinators and "contract" attorneys who assist the coordinators in identifying legal problems and possible remedies. All le-

gal work is done on a pro bono basis. The following counties are included in this program: Clear Creek, Summit, Jackson, Grand, Gunnison, Lake, Pitkin, Eagle, Routt, Moffat and Rio Blanco.

2. Legal Aid of Metro Denver, Colorado Rural Legal Services, Pikes Peak Legal Services, Pueblo County Legal Services and the Northwest Colorado Legal Services Project.

3. Hardaway, "Legal and Medical Education Compared: Is It Time for a 'Flexner' Report on Legal Education?", 59 *Wash. Univ. Law J.* (1981), pp. 710-714. In Colorado, the seeds for such a program are being laid at the University of Denver Law School, where the recent award of a \$36,000 government grant has enabled the school, under the tutelage of Professors Frank Jamison and Jim Branch, to

hire a full-time attorney to head a civil law clinic within the law school in cooperation with legal services.

4. For a summary of student practice rules see Klein *et al.*, *Bar Admission Rules and Student Practice Rules* (1978); see generally, Hardaway, "Student Representation of Indigent Defendants and the Sixth Amendment; On a Collision Course?" 29 *Cleveland State Law J.* (1981), p. 499.

5. C.R.C.P. Rule 22b; C.R.S. 1973, § 12-5-116. For a discussion of the Colorado Student Practice Rule and Statute, see Hardaway, "Student Practice in Colorado," 10 *The Colorado Lawyer* (July, 1981), p. 1601.

6. 250 W. 14th Avenue, Suite 800, Denver, CO 80204. (303) 629-6873 or call toll-free number: 1-800-332-6736.



## FOGEL & ASSOCIATES, INC.

Consulting Engineers/Construction Claims Consultants

- Documentation Review
- Scheduling Evaluation
- Change Order Analysis
- Exhibits Preparation

373 PARK AVE SOUTH • NEW YORK, NY 10016 • (212) 686-6500  
1385 SO. COLORADO BLVD. • DENVER, CO. 80222 • (303) 692-8882

BOSTON • CARMEL • DENVER • DETROIT • FT. LAUDERDALE