

**Access to Justice:
Civil Legal Representation for Victims of Domestic
Violence in El Paso County, Colorado**

Information Gathering

July 2006

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Justice denied anywhere diminishes justice everywhere.

~Martin Luther King, Jr.

Across the country, communities are struggling with issues associated with access to justice. Historically, Legal Service Corporation (LSC) programs have been the primary source of legal assistance for victims of domestic violence.¹ As federal funding for LSC remains stagnant, the vast majority of people from low to moderate income households are left to handle legal matters without the advice or assistance of attorneys.² A 2005 study, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, found that between 70 and 80 percent of the legal needs of the poor are unmet each year resulting in a national crisis.³ The report asserts that one in every two eligible clients who seek assistance from a federally funded legal aid program is turned away because of lack of program resources.

In the context of domestic violence, lack of access to legal assistance can have dire consequences for victims and their children. Thus, this issue is paramount because:

- 1) Separation can serve as a catalyst for increased violence.⁴ It is an extremely dangerous time period when a battered woman is pursuing a protection order, a divorce, or taking other steps to extricate herself from an abusive relationship.
- 2) The legal system is frequently used by batterers as an effective way to exert and maintain control over the victim. Litigation is an opportunity to reassert the control batterers feel themselves losing as the relationship ends. Batterers can attempt to intimidate their partners by threatening to take the children away (for example, by making false reports to child protective services, kidnapping, or maintaining ongoing litigation around custody or parent-child contact) and countering such actions can be financially devastating.⁵

¹ Jeanne Charn & Richard Zorza, *Civil Legal Assistance for All Americans*, The Bellow-Sacks Access to Civil Legal Services Project, Harvard Law School (February 14, 2006).

² Michael S. Greco, President ABA, Open Letter Regarding FY 2007 Funding for the Legal Services Corporation (June 12, 2006).

³ Legal Services Corporation, *Documenting the Justice Gap in America: A Report of the Legal Services Corporation* (September 2005).

⁴ Lundy Bancroft & Jay G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* 1, 99 (2002); Peter Jaffe, et al., *Common Misconception in Addressing Domestic Violence in Child Custody Disputes*, *Juvenile and Family Court Journal* 57, 59 (NCJFCJ Fall 2003); Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348) 4 (August 1995).

⁵ Batterers are more likely than nonviolent parents to seek custody of their children. See, Cynthia Grover Hastings, *Letting Down their Guard: What Guardians ad Litem Should Know about Domestic Violence in Child Custody Disputes*, 24 B.C. Third World L.J. 283 (2004); David Adams, *Identifying the Assaultive Husband in Court: You Be the*

- 3) Research has indicated that limited access to legal representation may be a factor in abused women remaining or returning to abusive relationships and that access to an attorney is the service above others that reduces a victim's exposure to further abuse.⁶
- 4) Many victims of domestic violence face the daunting legal system without the assistance of an attorney. At a point of crisis, victims are required to navigate complex systems in order to access limited services.⁷
- 5) Due to limited finances or poverty, often victims of domestic violence face the choice between self-representation or counsel constrained by minimal hours or lack of experience and specialization in the field.⁸
- 6) For a variety of reasons, the weight and impact of domestic violence is often not taken into consideration by family courts, lawyers, and court-related services.⁹

Legal services are the most expensive support service, the service to which the fewest women have access, and according to our research, the only service that decreases the likelihood women will be battered.

- Amy Farmer, Economist

What process was used to examine the issue?

The Greenbook Project of El Paso County (Project) recognizes that legal assistance for victims of domestic violence is a key component to affording safety for both victims and their children. With time of the essence, the Project wanted to identify gaps in services and begin to examine ways to leverage resources to meet the needs of victims of domestic violence locally. The Project contracted with consultant, Lauren Litton to conduct a preliminary gathering of information and highlight both short and long term opportunities to increase legal assistance.

The Project wanted to hear from key stakeholders in El Paso County about their thoughts, concerns, and suggestions related to access to justice/legal assistance for victims of domestic violence. A majority of the information gathering occurred through in-person and telephone interviews with the attorneys, judges, advocates, policy makers, court facilitators, gatekeepers

Judge, Boston Beacon Journal, July/Aug. 1989; Carrie Cuthbert, et al., *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts* 19, 66 (2002).

⁶ Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, CONTEMPORARY ECONOMIC POLICY 21, (2), 158 – 172 (April 2003); Ontario Association of Interval and Transition Houses, *Locked In, Left Out* (1996).

⁷ Peter G. Jaffe & Claire V. Crooks, *Understanding Women's Experiences Parenting in the Context of Domestic Violence: Implications for Community and Court-Related Service Providers*, commissioned by Violence Against Women Online Resources (February 2005).

⁸ Linda, Neilson, *Spousal Abuse, Children and the Legal System Final Report for Canadian Bar Association Law for the Futures Fund*, Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick (March 2001).

⁹ Jaffe, et al., *supra* note 5, at 61; Jeffrey Edleson, et al., *Parenting in the Context of Domestic Violence* Judicial Council of California, Administrative Office of the Courts (March 2003).

(GALs and CASA), consumers (victims of domestic violence), and other interested parties as well as through research.¹⁰ Most of the interviews were conducted in April and the early part of May.

To assist the Project in examining the issue from a consumer's perspective, a survey was developed and provided to service providers for dissemination to victims of domestic violence.¹¹ In order to preserve confidentiality, survey participants were not asked to reveal any identifying information and they were provided a self-addressed, stamped envelope so that they could mail the completed survey directly to Lauren Litton. At the time of writing this report, there was a 15 percent return rate of the total number of surveys disseminated to service providers.¹²

This narrative serves as a summary of the major themes that evolved from the information collection process. The number of people that were interviewed and completed surveys constitutes a small sample. Therefore, no true conclusions can be drawn from the collected data.¹³ Instead, it is the intent to use this information to bring attention to the issue, inform critical thinking about the topic, and design next steps on the road to the development of mechanisms to meet the legal assistance needs of victims of domestic violence.

What themes emerged from the information collection process?

Many people echoed similar sentiments when it came to access to justice in El Paso County. The following are the common themes:

- ❑ **Resources for the provision of legal assistance should be developed and expanded.** Representation available through Colorado Legal Services (CLS) and volunteer/pro bono attorneys are not sufficient to meet the needs of low to moderate income victims of domestic violence in El Paso County.
- ❑ The greatest areas of need surround family law, housing, and consumer/credit.
- ❑ There is **no one solution to meet the demand** that exists.
- ❑ Victims of domestic violence have **varied needs around legal issues** and therefore a diverse set of mechanisms should be developed to meet them. The **full continuum** from advice to education about legal rights and responsibilities, to brief assistance to full legal representation is necessary. Clients should be assessed individually to determine where they fall on the continuum.
- ❑ Ongoing **domestic violence training.** Attorneys, judges, and “neutral” third parties should continue to receive training about its impact and battering tactics so that they can better respond to families experiencing domestic violence and be

¹⁰ A list of the people interviewed is attached as Appendix A.

¹¹ Surveys were sent to T~E~S~S~A's safehouse, victims groups, main office lobby, and rural advocates as well as the District Attorney's victim advocates, Department of Human Services and DVERT. A copy of the survey is attached as Appendix B.

¹² The Greenbook Project Director sent a total of 170 surveys to 8 different places in which domestic violence victims may go for assistance. It is not known how many surveys were actually disseminated. Additionally, surveys may still continue to be sent in. Any updated information collected from the surveys will be provided to the Greenbook Project Manager.

¹³ Through this information gathering process, it was learned that Colorado Legal Services will be conducting their own statewide legal needs survey that will be comprehensive in the next 4 to 6 months.

aware of and understand available legal remedies. For attorneys who are going to specifically take domestic violence cases, this is even more imperative.

- ❑ **Cooperation** is essential. Almost all funding opportunities for legal services have been explored by one agency or another within the county. Therefore, working collaboratively across agencies is required in order to find ways to meet the needs of victims of domestic violence.
- ❑ There is agreement that there is no substitution for legal representation, but there is also acknowledgment that will not always be possible.
- ❑ **Pro se litigants** require the most assistance with reviewing paperwork and learning procedural rules, such as how to get something admitted into evidence and how to set a hearing.
- ❑ **Coordination and marketing.** Self-represented litigants and professionals around the county are not necessarily aware of available community legal services. Information about where to go to receive legal assistance was not readily obtainable around the county and professionals did not have a common understanding of what exists. Individuals use numerous techniques for finding out where to receive assistance (brochures, internet, bar association, word of mouth, etc.) and information about legal assistance should be accessible through all these means.
- ❑ Having someone monitor new developments in the domestic violence legal arena and distributing the information on a regular basis to professionals is a way to keep the issue on people's radar and raise community awareness about domestic violence.
- ❑ There is support for **unbundling legal services** for victims of domestic violence.
- ❑ The income guidelines used by LSC prevent many people from obtaining help who are still unable to afford legal services on their own.
- ❑ **Pro bono** efforts need to continue to expand. Since the coordinator position was established, there have been tremendous strides in this area. The expansion effort must persist with the support of professionals across the county.
- ❑ Some of the greatest barriers for victims of domestic violence not receiving legal representation include lack of money, lack of resources to get to an attorney (such as transportation), lack of knowledge of where to go, and fear of speaking to an attorney.
- ❑ The use of **technology** is something that should be explored as a means of bridging the gap in services and geographical barriers.
- ❑ Collaboration is a prospective practice. **Linking advocates with attorneys** would create strong partnerships, as long as the questions around confidentiality/privilege and legal advice are worked out in advance.

Advice to Attorneys from Victims of Domestic Violence:

- ***Listen***
- ***Know what domestic violence is and its impact***
- ***Be patient and compassionate***
- ***Be sympathetic, not judgmental***
- ***Help us gather evidence***
- ***Understand we don't have much money***
- ***We need your assistance***

~ Survey Participants

- Court facilitators have helped in addressing some of the needs of pro se clients, but are limited in how much time they can spend with litigants, are not there to check the accuracy of paperwork, nor coach litigants on evidentiary matters. However, the positions have been important in meeting the demands of pro se litigants. Several people suggested it would be nice to have a court facilitator dedicated to domestic violence cases.

What is happening around the county?

Through no fault of their own, Colorado Legal Services (CLS) does not have the number of attorneys to meet the demands of the community. The population of El Paso County is more than 500,000¹⁴ with CLS employing less than 3 full-time attorneys to serve the entire county. As in accordance with the *Justice Gap* Report, CLS attorneys *estimate* that up to 20 people a day who are looking for legal assistance are being turned away for a variety of reasons.¹⁵

CLS has formed a partnership with the El Paso County Bar Association in supporting the establishment of a Pro Bono Coordinator. This position is funded (a little more than half time) by the bar association and is housed at CLS. CLS is able to support the project not only by providing space, but by mentoring the volunteer attorneys, offering malpractice

It is really difficult to be forced into standing up for yourself and then...to fight to get an attorney, to get help with housing, and to get out of your situation. It was definitely harder than I thought to have to face someone still trying to degrade you while trying to make it everyday – work, pay the bills, take care of the kids, and in general just try to care of those you care about.

- Survey Participant

insurance coverage, and having direct linkages to individuals in the county who are seeking legal aid. The one identified draw back is that individuals who are referred to a pro bono attorney must meet CLS income guidelines. This leaves out a large group of people who although may be above the federal poverty income guidelines, do not have enough money to pay an attorney or come up with a large retainer. There are approximately 25-30 attorneys in the county that consistently take pro bono cases. The county bar reports to have

a membership of 850.¹⁶ It is difficult to attract additional attorneys to the volunteer pool, even with such incentives as free continuing legal education credits.

There are two clinics that are operated in the county, one through CLS and the other by the Self Help Center of the 4th Judicial District, El Paso County Courthouse. The clinics are

¹⁴ U.S. Census Bureau, 2000 Census.

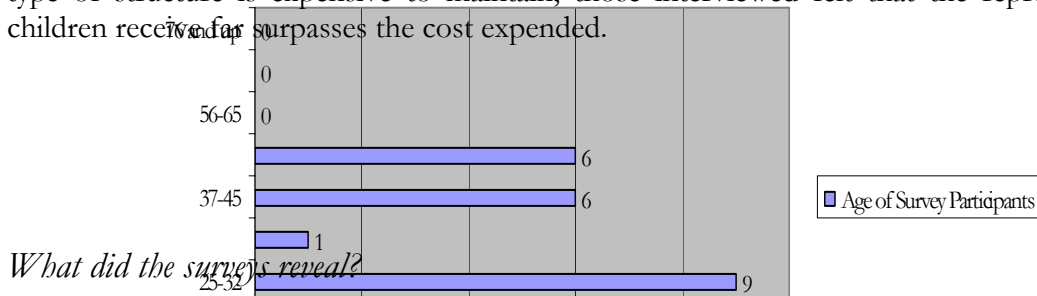
¹⁵ These are not concrete numbers. People were asked to estimate without looking at real numbers.

¹⁶ Membership figure was taken from the Bar Association's website.

<http://www.elpasocountybar.org/about.cfm>

similarly organized. They offer a class that provides litigants an overview of the paperwork that needs to be completed in a given legal matter (e.g. a divorce). They also each offer the opportunity for litigants at a later date to meet briefly with an attorney for remaining questions. Interestingly, both reported that the latter service is not used as frequently as expected.

One structure that many people pointed to as one that has created a professional response to a special interest issue is the El Paso County Office of the Guardian ad Litem. As an established office, under the Office of the Child’s Representative, it provides a mechanism for attorneys to work actively on behalf of children and maintain high standards. While this type of structure is expensive to maintain, those interviewed felt that the representation children receive far surpasses the cost expended.



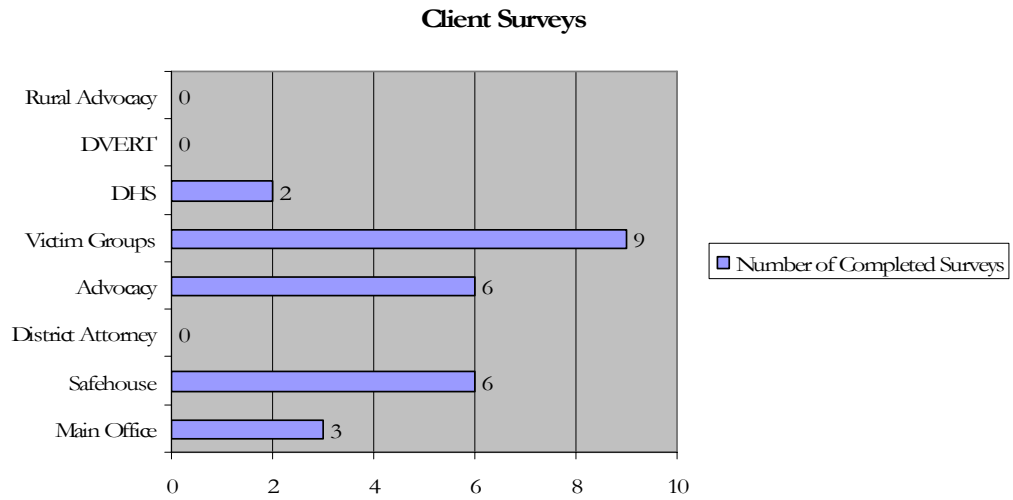
26 surveys were completed by victims of domestic violence who are receiving or sought services from TIPS-S-A. Of the 26, 25 were female and 65 percent were between the ages of 25 and 45. 57 percent were Caucasian, 23 percent Latina/Hispanic, 12 percent Bi-Racial, 4 percent African American, and 4 percent Native American. 65 percent had children with the average number of children being 2.5. 62 percent of the participants were employed, with 18 out of the 26 participants earning less than \$22,000 annually. 4 out of the 26 participants were still residing with their abusers. The following tables illustrate more specific information.

Annual Income

Percentage

Less than \$8,000	35
Between \$8,000 and \$12,000	11
Between \$12,001 and \$18,000	15
Between \$18,001 and \$22,000	8
Between \$22,001 and \$28,000	11
Between \$28,001 and \$35,000	4
Between \$35,001 and \$45,000	8
Over \$45,000	8

The table below illustrates where the completed surveys were disseminated. The greatest number of surveys received was from the victim support groups.

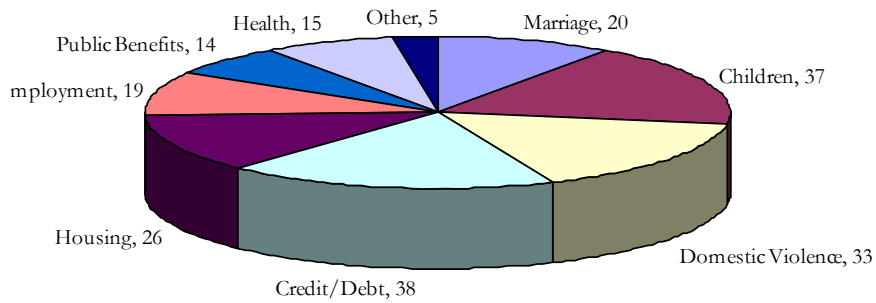


Consumers were asked about the type of abuse they experienced at the hands of their abuser. All survey participants indicated that they were subjected to psychological or emotional abuse and more than 80 percent also endured both physical assaults and intimidation.

Forms of Abuse Experienced by Survey Participants	Percentage
<i>Physical Assaults/Battery</i>	81
<i>Sexual Assault, including pressured or forced sex</i>	50
<i>Psychological/Emotional Abuse</i>	100
<i>Economic Abuse/Coercion</i>	62
<i>Destruction of Property</i>	27
<i>Child Physical Abuse</i>	23
<i>Child Sexual Abuse</i>	03
<i>Child Emotional Abuse</i>	42
<i>Child Neglect</i>	23
<i>Intimidation, Humiliation, Degradation</i>	85
<i>Stalking or Harassment</i>	50
<i>Violence Against Pets</i>	38
<i>Threats or Use of Weapons</i>	51
<i>Withholding Legal Papers/Documentation</i>	37
<i>Other Forms of Oppression</i>	50

The chart below exhibits the different categories in which survey participants indicated that they had legal issues arise in the past two years. Thus, family law (the combination of marriage and children) had the most with the 26 participants having a total of 46 different legal issues in that category. Credit/Debt and Housing were also areas in which there was a large amount of legal activity. In the survey, each category had specific topic that could be selected in order to get a better sense of what types of cases were occurring. The statistics were compiled for these subtopics and are attached in Appendix C.

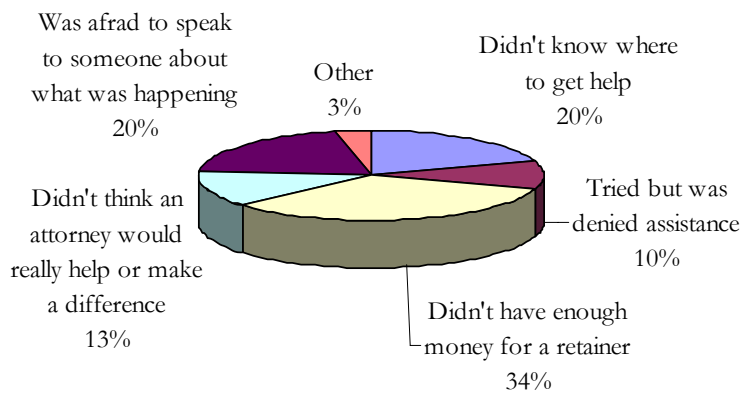
Topic Areas of Legal Related Issues Experienced by Survey Participants in Past Two Years



35 percent of the participants

had representation in the above matters, where 58 percent did not, and 7 percent had representation in some of their legal proceedings. Those who did not have an attorney indicated they did not for the following reasons:

Reasons Survey Participants Did Not Have Legal Representation



55 percent of the individuals who had some representation, expressed satisfaction with the services received. For those who were not happy, some of the reasons given were the perception that the attorney did not care, information was not being provided to the client in a timely manner, the fees were too high, or felt the attorney did not make a difference in the case or did not do his/her job. In response to whether legal advice from an attorney via the phone would be comparable, 37 percent said it would be the same, 18 percent indicated it would be better, 27 percent thought it would be worse, and 18 percent did not know. For those who indicated that it was better, the main reason was that it would be less intimidating or embarrassing. The main reason cited for being worse, was that it was impersonal.

Many consumers were unaware of the legal assistance options available throughout the county as indicated in the table below:

Service	Percentage Used	Percentage Not Used	Percentage Did Not Respond	Percentage of People Who Did Not Use the Service Because They Were Unaware of its Existence
<i>Court Self-Help Center</i>	27	58	15	80
<i>Pro Se Legal Clinic</i>	19	69	12	67
<i>Pro Bono/Volunteer Attorney</i>	15	66	19	59
<i>Domestic Violence/Legal Advocate</i>	50	38	12	70
<i>Telephone Legal Advice</i>	19	69	12	78

The top issues that the survey participants indicated that they wanted assistance with were: housing, divorce, child custody, credit/finances, and restraining orders. More resources toward financial assistance and job training were clearly desired by survey participants, even more than legal representation.

What are some potential next steps?

The ideas listed below are offered as suggested activities that can be undertaken to establish a wide spectrum of legal assistance venues. They are presented in no particular order, however asterisks appear next to a few that the Project may want to try within their time period while resources exist to support and pilot those efforts.

Partnering with Law Schools

Law schools are a good resource for communities seeking to provide legal assistance. Typically, law schools have law libraries open to the public, clinics dedicated to representing low income individuals in a variety of legal matters, and law students who are eager to gain professional experience. Colorado has two accredited law schools; both were contacted as part of the information gathering process to explore the possibility of establishing domestic violence clinics with off-site/remote locations in El Paso County.

Neither of the schools at this time have clinical programs that are dedicated to serving victims of domestic violence, although both have clinics that would handle domestic violence cases through family law programs/clinics. Students are usually restricted to appearing in local courts (to the law school) due to the fact that students and professors have to travel frequently to those destinations. Currently, there are no plans to expand or start new clinical programs that focus on domestic violence, although the University of Colorado at Boulder is in the process of hiring a new clinical director within this upcoming year. He/she will be responsible for setting the agenda around the operation of new clinics.

However, both schools may have opportunities with students who reside in El Paso County for the students to work under the supervision of attorneys and assist victims of domestic violence. Law students can interview and screen clients, help prepare paperwork, conduct legal research, and appear in court. In Colorado, law students who have completed at least two years of law school may appear in court pursuant to §12-5-116 as long as they are working *in the public sector*. CLS would qualify as the public sector.

The University of Denver Law School has a formal law student placement program where students can be placed under the supervision of an attorney and earn credits. The supervising attorney must at a minimum be in practice for 5 years. Requests to have a student placement can be submitted online. They are reviewed by Professor Karen Steinhauer, who indicated that placing a student to work exclusively on domestic violence issues would be of interest. This link provides more information on the student placement program:

<http://www.law.du.edu/internships/prospective/Student%20Internship%20Handbook.doc>

Unbundling Legal Services *

The concept of unbundling is the practice of law delivered in the form of a limited, discrete service. Traditionally, if an attorney represented someone for a part of a court proceeding, he/she had to represent that person for the entire proceeding. Examples of “unbundling” include an advice session (both procedural and substantive), coaching for a specific upcoming hearing, aiding in a negotiation, researching a legal point, or drafting a one-time document. This provides flexibility to litigants to select when to bring an attorney into their legal matters and allows individuals to gain the maximum possible guidance within a very limited scope of representation. Each state has its own rules outlining whether unbundling is allowed and if so, the scope.¹⁷

The Colorado Supreme Court permits attorneys to draft documents for the client without binding the attorney to the case. The client is still appearing in court pro se, however the paperwork has been completed by a trained attorney and the litigant prepared for the court appearance. For litigants that are capable of representing themselves, unbundling is a good option as they receive the benefit of legal advice in the drafting of documents and the preparation of their cases for court presentation without the necessity of paying a lawyer to go to court with them. In Colorado, the attorney who agrees to this arrangement has a few obligations such as explaining the risks and benefits of limited representation to the client, the provision of meaningful legal advice, and must also indicate on paperwork that he/she assisted in the drafting of the pleadings.

See Appendix D for more information on unbundling.

Use of Paralegals

The use of paralegals to screen clients and to assist in the preparation of paperwork is a very common practice. In 2003, the American Bar Association adopted Model Guidelines for the Utilization of Paralegal Services and most states following suit, have also prepared or adopted state-specific recommendations or guidelines around service provision by paralegals. The guidelines are intended to provide lawyers with useful and authoritative guidance in working with paralegals. It is imperative that paralegals are working under the guidance and supervision of a highly experienced attorney in order to make their services effective.

The Colorado Bar Association defines paralegals as “a distinguishable group of persons who assist attorneys in the delivery of legal services.” The Board of Governors of the Colorado Bar Association has approved guidelines for the utilization of paralegals in 18 specialty practice areas, including civil litigation, collections, employment law, family law, immigration, and real estate. The guidelines provide a general framework of potential tasks that can or should be performed by a paralegal in an effort to assist with work flow. The following is a sampling of the activities that paralegals can undertake in Colorado. This link leads to the complete list of approved activities:

<http://www.cobar.org/group/index.cfm?EntityID=CLAS&category=106>

Family Law Paralegal:

¹⁷ It is important to note that the concept of unbundling has been controversial.

1. Screen prospective clients by telephone and/or personal interview;
2. Commencement of Action:
 - a. Prepare initial pleadings, including Petition, Summons and Waiver of Service, Affidavit as to Children, informational data, and Response;
 - b. Arrange for service of process;
3. Temporary Orders:
 - a. Prepare motions for temporary orders or temporary injunctions;
 - b. Notice and set hearings;
 - c. Attend hearings;
4. Financial Affidavits:
 - a. Work with clients in gathering, compiling, and preparing financial information;
5. Child Support:
 - a. Prepare child support worksheets and arrearage calculations;
 - b. Assist in all phases of wage assignments;
6. Discovery:
 - a. Draft discovery requests and interview witnesses;
7. Settlement Negotiations:
 - a. Distribute information regarding mandatory mediation and parenting classes, follow up on compliance, and file proof of compliance with the court;
 - b. Assist in preparing client for ADR;
 - c. Draft proposed Parenting Plan for attorney review;
8. Final Orders:
 - a. Set final hearing and prepare decree
9. Post Decree:
 - a. Prepare wage assignments, writs of garnishment for support, writs of continuing garnishment, motions for entry of judgment and motions for contempt citations;
 - b. Prepare motion (response or replies) for modification of parenting time, custody or child support; and

Immigration Law Paralegal:

1. Family Based I-130 Petitions **(or occasionally I-360)**:
 - a. Determine, under attorney supervision, eligibility
 - b. Prepare visa petition with supporting evidence and forms for attorney review.
2. I-485 Adjustment of Status to Permanent Residence:
 - a. Consult with attorney to establish that the I-130, I-140 or I-360 has been approved or is approvable, and that the visa priority date is current,
 - b. Assemble all supporting documents,
 - c. Notify clients of interview dates and assist them in understanding the meaning of permanent residence,
3. Consular Processing:
 - a. Following approval of I-130, I-140 or I-360 petition and on direction of attorney, assist client in completing Packet 3 from the National Visa Center,
 - b. Prepare client for immigrant visa interview,

4. Cancellation of Removal

Sliding Scale Civil Representation or Reduced Fee Panel Attorneys *

The Colorado Criminal Defense Bar established a model that could be replicated in the civil arena for domestic violence cases. The Defense Bar recognized that many people who did not qualify for the public defender's services were appearing pro se because they could not afford the services of an attorney due to their income and thus created the Income Based/Sliding Scale Criminal Representation project. Attorneys were contacted around the state to see if they would be interested in being listed as attorneys willing to adjust their normal fees on a sliding scale based on a person's income.

The fees, costs, retainers, and conditions of representation are not fixed and vary from one attorney to another. Additionally, representation is not guaranteed by attorneys who are on the list. By being listed they agree to two things 1) to speak with people who are not able to afford large retainers and 2) if they do take a case, having a reduced retainer upfront with a payment schedule thereafter. Attorneys are listed by practice area and locality (as this is a statewide project). The Criminal Defense Bar makes it clear to people that they do not represent the expertise, talent, or outcome of anyone's case if handled by an attorney on the list. It is up to individuals interested in representation to contact attorneys and ask questions about their fees, if they have a license to practice law in Colorado and malpractice insurance, and other matters that may be important to them. Basically, this list assists in identifying attorneys who will not require large retainers upfront which can be a barrier to many individuals seeking representation. The coordinator of the project indicated that the most difficult task has been keeping the information about the attorneys updated and recommended that if anyone was considering starting a similar project to have a person dedicated to that administrative task. More information about this project can be found at: <http://www.ccdb.org/locator/index.cfm?category=Income%20Based%20Sliding%20Scale%20Program>

For civil cases, something quite similar could be established where skilled attorneys are identified, through the local bar association and the pro bono coordinator that would be willing to have reduced fees (including a reduced retainer) based on a victim's income. It would also be important to have attorneys on the list who work in different practice areas, such as housing, family law, immigration, and consumer protection so that the various needs of victims of domestic violence can be met.

An alternate way is to create a reduced-fee panel where attorneys agree to take cases at a set fee (maybe paid for through the Greenbook Project). So for example, a contested protection order hearing is \$400, a contested divorce \$700, an eviction proceeding \$250, etc. A quick analysis would need to occur of what are standard fees for different types of cases. If the Project was to pay fees for victims, attorneys should be required to be trained on domestic violence, have malpractice insurance, and a valid Colorado license. Several people who were interviewed indicated that they liked the idea of a fixed or reduced rate, but

wanted the requirements of the attorneys clearly outlined so that victims are receiving quality representation.

Technology

Technology is already integrated into the delivery of legal assistance. For example, websites offer information and advice, attorneys market their services online and clients in remote areas can be reached via video conferencing. Courts have experimented with kiosks and websites that lead parties through the preparation of standard pleadings and documents to assist people appearing pro se. Web-based services have become a permanent feature in the access to justice landscape.¹⁸ CLS is hoping to receive a technology grant and produce a video that shows a protection order hearing that can be watched by victims over the internet.

In El Paso County, technology can be used to address the barriers presented by rural areas and reduce the fear of victims of domestic violence sometimes have in meeting with attorneys and going to court. The following are a few ways in which technology can be employed and usually at very little cost:

- ✓ *Ex parte* protection order hearings. Victims in rural areas can “appear” before the judge via web camera at a remote and safe location. The court can accept the petition and affidavit via fax. This works if the court has the availability and authority to take testimony in this manner.
- ✓ Linking attorneys and victims. Web cameras are a great way to have attorneys and clients speak in cases where transportation is an issue or the fear level is high. Eventually, it is important for clients to meet with attorneys face to face in order to build a relationship.
- ✓ Trainings. Webinars are fast becoming a way to offer trainings to professionals. They are a bit costly, but once produced, they can be repeated and allow professionals to access the trainings at their own convenience. The training could be developed in a way in which attorneys can earn continuing legal education credits for logging in and also have the trainings be a requirement for attorneys who want to serve on the reduced or income sliding fee panels.

Companies are often willing to donate cameras and other equipment versus money. The offering of web cameras could also be used as an incentive to attract attorneys into agreeing to take one or two pro bono or reduced fee cases. Two resources for technology were identified through research. The first is the Internet Assistance for Rural Law Enforcement Agencies. The grant program¹⁹ through The National Center for Rural Law Enforcement and the Bureau of Justice Assistance (BJA) provides Internet access at no cost to rural law enforcement agencies. El Paso County may already receive this grant. If so, law enforcement could be approached about making the Internet available also at no cost to victims of domestic violence through the victim advocate’s office. The second is the Colorado Assistive Technology Project (CATP), a statewide technology related assistance program. It is designed to support capacity building and advocacy activities designed to assist states in maintaining permanent, comprehensive statewide programs of technology related

¹⁸ Jeanne Charn & Richard Zorza, *supra* note 1.

¹⁹ www.ncrle.net

assistance for all people with disabilities living in Colorado. Currently, CATP has four major areas of focus: public awareness, training and technical assistance, interagency coordination, and outreach to rural and underrepresented populations. This may be a resource that could be tapped into for victims of domestic violence who have disabilities.

Pairing Advocates with Attorneys *

During the information gathering process, the suggestion that people liked the most was the pairing of domestic violence advocates with attorneys. This model has been implemented elsewhere through clinic and collaborative settings to bring a holistic approach to legal services. Attorneys have been receptive to the model because it offers a support system for victims of domestic violence and also affords attorneys more time to focus on legal aspects of cases. Advocates can perform many roles: screening/interviewing clients to assess for representation needs and perform conflict checks; serve as support systems during court hearing; explain court procedures and processes; and provide linkages to other needed services such as housing and job training. In order for this model to be successful it is important that the role of the advocates and attorneys are defined upfront and any issues around confidentiality and information sharing addressed.

Potential ways advocates and attorneys can partner:

- ✓ Advocates can be available at pro se clinics that are already occurring around the county. Thus, if victims of domestic violence want to speak with an advocate after learning more about the legal process, they do not have to travel to another location.
- ✓ Advocates can be available at the supervised visitation and exchange center operated by CASA. CASA is currently waiting to hear about their reapplication for Safe Havens: Supervised Visitation and Safe Exchange funding. In the reapplication, CASA requested money to initiate a legal advocacy component. This component has not been formalized and there is an opportunity to partner attorneys and advocates in order to assist victims of domestic violence with presenting child visitation issues.
- ✓ Advocates can serve as resources to Respondent Counsel in abuse and neglect cases when domestic violence exists. Respondent Counsel is exploring the possibility of creating an office similar to that of the GAL, where attorneys are employed full-time and have experts available to them for consultation in cases. In the interim, advocates may want to reach out to Respondent Counsel and offer their services to the attorneys to assist them in thinking through their cases when their client is victim parent.
- ✓ Advocates can be paired with attorneys that take domestic violence related cases on a pro bono basis. Having advocates available to assist with cases can help attract attorneys to volunteer service. Attorneys often state that domestic violence cases are too time consuming to take for free because of the amount of time victims spend contacting them or seeking information on issues that seem unrelated to the legal matter at hand. Advocates can serve as intermediaries. They can help victims prioritize what issues to present to attorneys and how to present them, and conversely assist attorneys in understanding how the information that victims bring forth is relevant and provide context about domestic violence and its impact.

The Greenbook Project may want to pilot this concept by identifying an advocate who is already familiar with legal proceedings or who has worked with attorneys before and then collaborating with the pro bono coordinator and CLS to market the idea.

Self-Help Checklists *

In El Paso County, there are mechanisms through which litigants who are representing themselves can receive some assistance, such as help with completing necessary paperwork. However, litigants often need to hear/receive the same information more than once, especially when they are escaping from a violent relationship and are worried about their safety and the safety of their children. Checklists are another way to impart critical advice to victims of domestic violence that is accessible when they need it. It can be used in conjunction with other forms of legal assistance and reaches a broad audience.

Numerous checklists can be developed to cover a wide array of issues, such as:

- ✓ *What to Expect in Court* – E.g., what to wear to a hearing. How long you might have to wait and where you would wait before entering a hearing. How to contact court about upcoming hearings. What information court personnel will be able and not able to provide to litigants.
- ✓ *Working with an Attorney* – E.g., how to choose/find an attorney. What to ask and provide to an attorney. What to expect from an attorney. What happens if your attorney is not doing his/her job?
- ✓ *Procedural Aspects of Court* – E.g. when to file a motion for contempt. How to set a hearing. What is the case management process of the court. How much time can elapse from the beginning of a case to final orders.
- ✓ *Evidentiary Issues* – E.g., what is evidence? What types of things will the judge look at and how to get them before the court. Expectation of the court that information will be shared with the opposing party. How to call a witness in a case. What is a subpoena and how is one served upon someone?

Expanding Pro Bono Efforts *

There is a strong pro bono effort underway in El Paso County, but there is still more to be done. One suggestion is similar to the unbundling concept. Instead of taking on a full case, attorneys may be more willing to dedicate 3-5 hours to work with an individual victim in preparation for court. This can take the form of helping a victim draft questions to ask of witness, teaching her how to present evidence, and walking her through a legal proceeding. Case preparation can assist many victims by helping them build their confidence and expectations about court. Victims should be screened in advance for their ability and capacity to represent themselves as this is not an option for everyone.

During the information gathering process, many people talked about the Colorado Supreme Court's²⁰ push to get law firms to dedicate 50 hours of pro bono legal service annually. It was suggested that maybe a law firm or two could be located that would adopt domestic

²⁰ Go to <http://www.cobar.org/group/display.cfm?GenID=7745> for more information on Colorado's Supreme Court pro bono law firm policy.

violence as its issue, and exclusively work for victims of domestic violence victims in the county. A consideration of this approach is that many attorneys within law firms do not have a lot of experience handling legal matters that would be of the most relevant to victims of domestic violence. Therefore, a mentoring system may need to be put in place. This is being done in Denver. Michelle Roche, the pro bono coordinator for the Rocky Mountain Children's Law Center, has 50 volunteer attorneys at any one time appearing in protection order cases as the child's legal representative. She said she has successfully recruited from national and large law firms. Ms. Roche works with the attorneys individually, offers legal support, and provides four trainings on domestic violence annually. Her program uses the Victims of Crime Act (VOCA) funding to support her position. She indicated that her program is one of three VOCA programs (out of 134 statewide programs) to use those funds to provide legal representation.

Funding Streams

The primary sources of funding that exist for legal services for victims of domestic violence are already being exhausted in El Paso County or at the state-level. These are:

- ✓ Rural Domestic Violence and Child Victimization Enforcement Discretionary Grant Program
- ✓ Violence Against Women Act
- ✓ Legal Service Corporation
- ✓ Interest on Lawyers' Trust Account
- ✓ Victims of Crime Act (VOCA) through the Office on Victims of Crime – formula grants to states for victim assistance and victim assistance
- ✓ STOP (Services, Training, Officers, Prosecutors) Formula Grants to Combat Violence Against Women
- ✓ Legal Assistance to Victims Grant

The Legal Assistance for Victims (LAV) Grant Program²¹ was created to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, Indian tribal governments, legal aid or statewide legal services, faith and/or community-based legal service providers. It is a funding stream heavily relied up by legal aid programs nationwide. Colorado Legal Services has been a previous recipient of these grants and have an application in for FY2006. With this funding, CLS has funded five attorneys around the state (none are based in El Paso County). At the time of writing this summary, there was only one other organization in Colorado (a domestic violence program) that receives funding from LAV. LAV is a 24-month grant award. If CLS does receive a LAV grant award for FY2006, an application could be put together for FY2007 that would not compete with CLS. In fact, CLS could even be a partner in that application up to \$50,000. Additionally, STOP

²¹ To find out more about the LAV program, go to <http://www.usdoj.gov/ovw/ovwfy2006legalassistanceforvictimssolicitation.pdf>

funds are used in other states quite frequently to support legal advocacy. That is not occurring in El Paso County.

Other Possible Activities *

- ✓ Advertisement/marketing of existing legal assistance. The information gathering process revealed that there is a lack of “common” knowledge of what legal assistance exists in the county and what does exist, is not widely advertised. There is a Legal Assistance Handout on the internet that explains the available services in El Paso County²² however it was not distributed at the courthouse or other places that victims of domestic violence present themselves. Steps should be taken to widely disseminate this information. For example, submit information about T~E~S~S~A’s legal advocacy program to the University of Colorado Law School which lists legal assistance across the state (see <http://lawweb.colorado.edu/ilc/providers.jsp>). Also, create a brochure or use the Legal Assistance Handout (if all information is current) and make it available at the courthouse and different entry points to social services for victims of domestic violence.
- ✓ The Greenbook Project could offer financial assistance to victims of domestic violence for court filing and process of service fees. This was a need identified through the client surveys.
- ✓ Create mechanisms for service providers to share more regularly with each other about funding they are seeking and activities being performed around the provision of legal services (with services being broadly defined as advice, advocacy, and representation). Not sharing information can lead to unintended competition or duplication of services. Frequent communication also allows for providers to more adequately advise victims of domestic violence about opportunities for assistance.

²² The Handout can be found at <http://www.ppld.org/AboutYourLibrary/Services/LawLibrary/LegalAidHandout.pdf>

Appendix A

List of People Involved in the Information Gathering Process

Aaronson, Norman, *Acting Director of Legal Clinics, University of Colorado School of Law (via phone)*
Alderman, Tralita
Anderson, Betsy, *STOP Administrator, Colorado Department of Public Safety (via phone)*
Campeau, Deborah, *Managing Attorney, Office of the Guardian ad Litem*
Cisneros, Theresa, Hon., *Chief Juvenile Court Judge*
Corey, Mary Ann, *Pro Bono Coordinator*
Davis, Cari, *Executive Director, TESSA*
Dodge, Michelle, *Program Specialist, Office on Violence Against Women (via phone)*
Gorgey, Drew, *Office of the County Attorney*
Guarino, Guss, *Colorado Criminal Defense Bar Association*
Hunt, Rob, *Colorado Legal Services*
Husted, James, *Family Court Facilitator*
Iuppa, Barney, Hon., *Chief County Court Judge*
Pedraza, Mittie, *CASA*
Ptak, Amber, *Greenbook Project Director, TESSA*
Roche, Michele, *Director Pro Bono Program, Rocky Mountain Children's Law Center (via phone)*
Rotolo, Ann, *Magistrate (via phone)*
Ryan, Molly, *Colorado Legal Services (via phone)*
Saucedo, Randy, *Colorado Coalition Against Domestic Violence (via phone)*
Vigil, Michael, *Family Court Facilitator (via phone/email)*
Villalobos, Vicki, *Court Administrator*
Yale, Linda, *Internship Office, University of Denver Sturm College of Law (via phone)*

APPENIDX B

El Paso County Legal Assistance Needs

Client Survey

T~E~S~S~A has been partnering with the courts, the department of human services, and many community-based service providers for the past five years working to improve access to safety and services for women and children impacted by domestic violence. Locally, this project is referred to as “The Greenbook Project.” The Greenbook Project is committed to building and maintaining resources in the community.

The goal of the survey is to learn more about the legal needs that are critical to the safety of children and adult victims of domestic violence. As a current/prior victim of domestic violence, your input is very important to us. You will not be asked to provide your name or any contact information. Your responses will be used to help us decide what areas to concentrate on and what next steps to take as we focus on increasing legal assistance to victims of domestic violence in El Paso County.

Thank you in advance for taking the time to complete the survey.

Background Information:

1. Your gender Female _____ Male _____
2. How do you identify your ethnicity? (select the appropriate box)
 Caucasian Asian/Pacific Islander
 African American Bi/Multi-Racial
 Latino/Hispanic Other _____
 Native American
3. How old are you? (select the appropriate box)
 15-19 46-55
 20-24 56-65
 25-32 66-75
 33-36 76 and up
 37-45
4. Are you employed? Yes _____ No _____
5. How many people currently reside in your household? _____

6. What is your current annual household income? Include wages, benefits, and all other sources of income. (select the appropriate box)

- | | |
|--|--|
| <input type="checkbox"/> Less than \$8,000 | <input type="checkbox"/> Between \$22,001 and \$28,000 |
| <input type="checkbox"/> Between \$8,000 and \$12,000 | <input type="checkbox"/> Between \$28,001 and \$35,000 |
| <input type="checkbox"/> Between \$12,001 and \$18,000 | <input type="checkbox"/> Between \$35,001 and \$45,000 |
| <input type="checkbox"/> Between \$18,001 and \$22,000 | <input type="checkbox"/> Over \$45,000 |

7. Do you have children? Yes _____ No _____

8. Are you living with your abuser? Yes _____ No _____

9. What forms of abuse have occurred in your household? Mark all that apply

- | | |
|--|---|
| <input type="checkbox"/> Physical assaults/battery | <input type="checkbox"/> Child emotional abuse |
| <input type="checkbox"/> Sexual assault, including pressured or forced sex | <input type="checkbox"/> Child neglect |
| <input type="checkbox"/> Psychological/emotional abuse | <input type="checkbox"/> Intimidation, humiliation, degradation |
| <input type="checkbox"/> Economic abuse/coercion | <input type="checkbox"/> Stalking and harassment |
| <input type="checkbox"/> Destruction of property | <input type="checkbox"/> Violence against pets |
| <input type="checkbox"/> Child physical abuse | <input type="checkbox"/> Threats or use of weapons |
| <input type="checkbox"/> Child sexual abuse | <input type="checkbox"/> Withholding legal papers/documentation |
| | <input type="checkbox"/> Other forms of oppression |

10. Where is your residence?

- Within Colorado Springs city limits
- Outside of Colorado Springs, but within El Paso County
- On a military base _____
- Teller County
- Other Colorado County or Out of State

11. Are YOU currently on military duty? Yes _____ No _____

Is your PARTNER currently on military duty? Yes _____ No _____

What branch or duty station? _____

Legal Needs:

12. Which of the following legal issues have you had to deal with in the past two years?
Check all that apply.

Marriage:

- Divorce
- Legal separation
- Dispute over or problem getting spousal support

Children:

- Custody
- Visitation/exchanges
- Relocating
- Dispute over or problem getting child support
- Problems keeping health insurance coverage for children
- Involvement with DHS – abuse/neglect case
- Problems trying to modify final orders

Domestic Violence:

- Obtaining restraining/protection order
- Responding to petition for a restraining/protection order
- Problems with bond conditions for abuser in criminal case
- Problems receiving victim/witness assistance
- Being charged with a domestic violence related crime

Credit and Debt:

- Bankruptcy or threat of bankruptcy
- Utilities being cut off
- Dispute about credit rating
- Problem paying a loan, bill or debt
- Problem collecting money owed to you (other than child support)

Housing:

- Eviction or threat of eviction
- Property damage
- Foreclosure
- Discrimination in housing
- Dispute with landlord or public housing authority
- Unsafe/unhealthy condition in rental housing

Question 12, continued: Which of the following legal issues have you had to deal with in the past two years? Check all that apply.

Employment:

- Termination
- Work related discrimination
- Denial of unemployment or workers compensation
- Problem obtaining legal permission/visa to work
- Harassment on the job

Public Benefits: (problems accessing)

- Food stamps
- SSD or SSI
- Welfare

Health:

- Discrimination due to disability
- Health insurance problems
- Involuntary psychiatric hospitalization

Other:

- Immigration related problems
- Arrest for alleged crime (not domestic violence related)
- Other _____

13. Were you represented by an attorney in any of the above legal matters? Yes _____ No _____

13(a). If yes, how did you obtain the attorney and were you satisfied with the legal representation you received? Please explain your responses.

13(b). If no, what are some of the reasons that you have not been able access legal assistance?
Mark all that apply.

- | | |
|---|--|
| <input type="checkbox"/> Didn't know where to go to get help | <input type="checkbox"/> Didn't have enough money to retain an attorney |
| <input type="checkbox"/> Tried but was denied assistance
<i>Provide reason for denial</i>
_____ | <input type="checkbox"/> Had an attorney, but ran out of money |
| _____ | <input type="checkbox"/> Didn't think an attorney would really help or make a difference |
| <input type="checkbox"/> Didn't have services in my language or language barriers | <input type="checkbox"/> Was afraid to speak to someone about my problems |
| | <input type="checkbox"/> Other _____ |

14. Please indicate whether you used any of the following services and whether you found them helpful:

SERVICE	USED (YES/NO)	IF DIDN'T USE , PLEASE MARK WHY	IF USED, WERE YOU SATISFIED? (YES/NO) PLEASE PROVIDE COMMENTS
COURT SELF-HELP CENTER		Didn't Know About it _____ Couldn't Access it _____ Other _____	
PRO SE LEGAL CLINIC		Didn't Know About it _____ Couldn't Access it _____ Other _____	
PRO BONO OR VOLUNTEER ATTORNEY		Didn't Know About it _____ Couldn't Access it _____ Other _____	
DOMESTIC VIOLENCE/LEGAL ADVOCATE		Didn't Know About it _____ Couldn't Access it _____ Other _____	
TELEPHONE LEGAL ADVICE		Didn't Know About it _____ Couldn't Access it _____ Other _____	

OTHER (PLEASE LIST)			
---------------------	--	--	--

15. Please list the top three legal issues that victims of domestic violence in El Paso County need the most help with.

16. If you were going to provide advice to an attorney about how best to help victims of domestic violence, what you say to him/her?

17. Do you think more resources should be directed to self-help? Yes ____ No ____

If yes, in what areas?

18. In your opinion, would access to legal advice from an attorney over the telephone be better, the same, or worse than an office visit?

19. What other resources are lacking in El Paso County for victims of domestic violence and their children? Mark all that apply and whether the need right now is more/less important than creating more access to affordable legal representation.

SERVICE/RESOURCE	MORE NEEDED (YES/NO)	IS THIS MORE OR LESS IMPORTANT THAN INCREASING ACCESS TO LEGAL REPRESENTATION? (MORE/LESS)
Housing		
Job training		
Battered women's support groups		
Domestic violence shelter/emergency housing		
Financial assistance		
Affordable child care		
Transportation		
Children's support groups or counseling services to deal with domestic violence		
Supervised visitation/exchange centers		
Legal advocates		
Parenting classes		
Batterer Intervention Programs		
Culturally-specific programs		
Other (please list)		

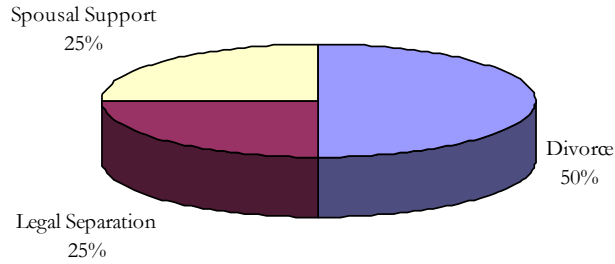
20. Please use the space below to provide any other comments you have on the issue.

Thank you again for assisting in improving T~E~S~S~A 's effort to respond to the needs of victims of domestic violence and their children.

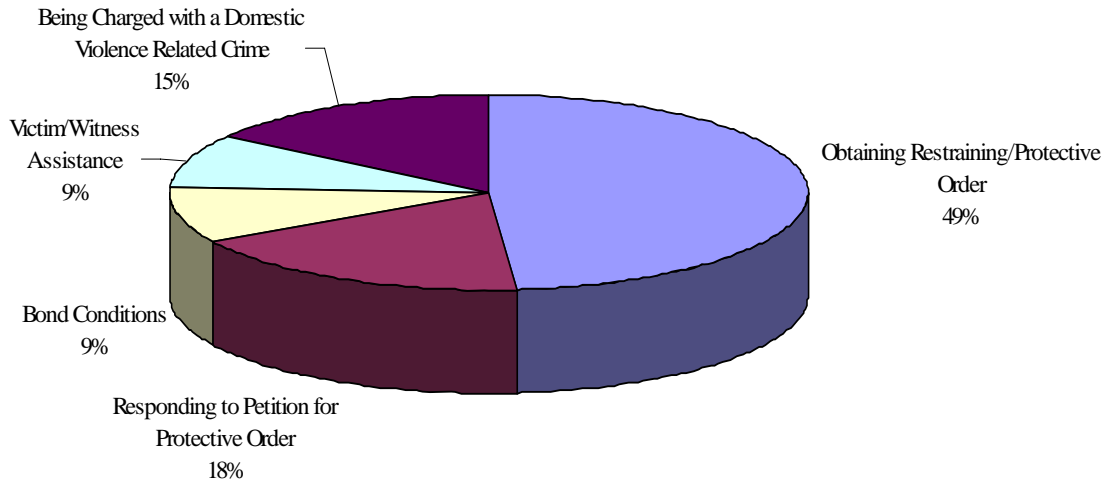
APPENDIX C

Charts Outlining Legal Matters Faced by Survey Participants

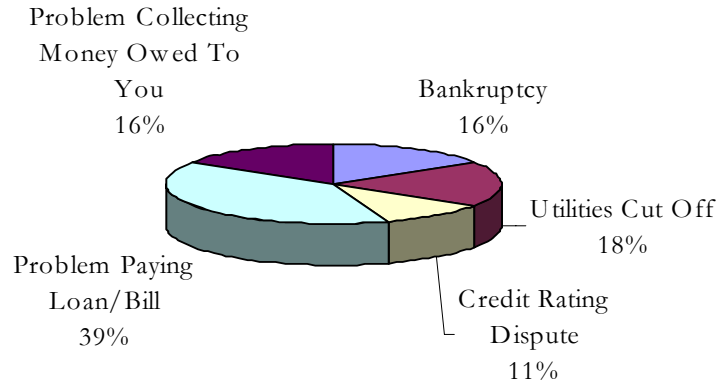
Legal Issues Related to Marriage



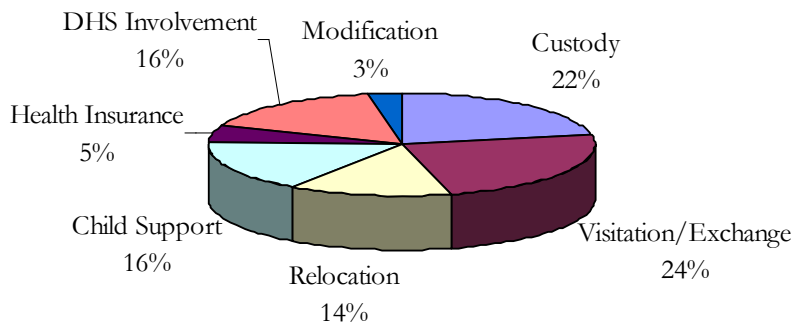
Legal Issues Related to Acts of Domestic Violence



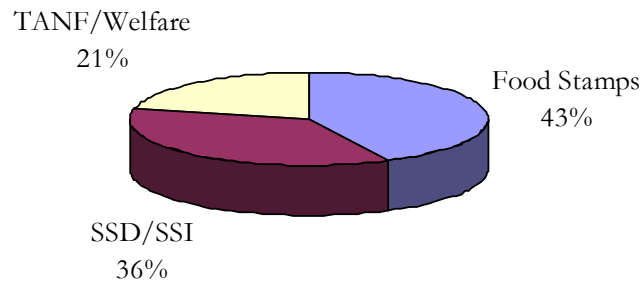
Legal Issues Related to Credit/Debt



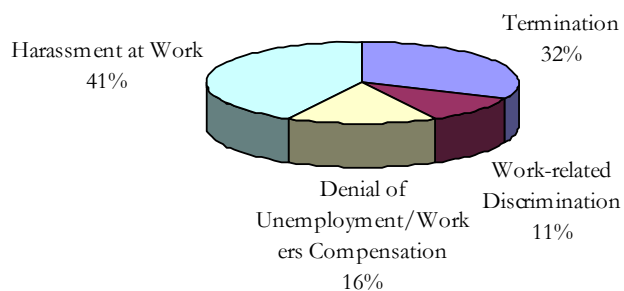
Legal Issues Related to Children



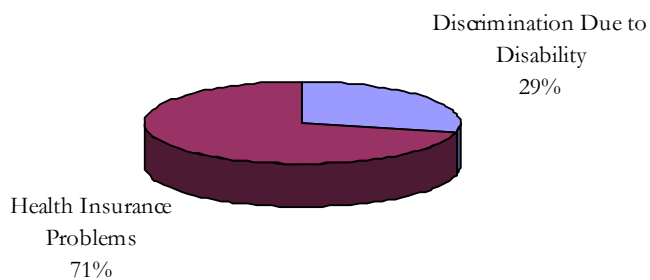
Legal Issues Related to Public Benefits



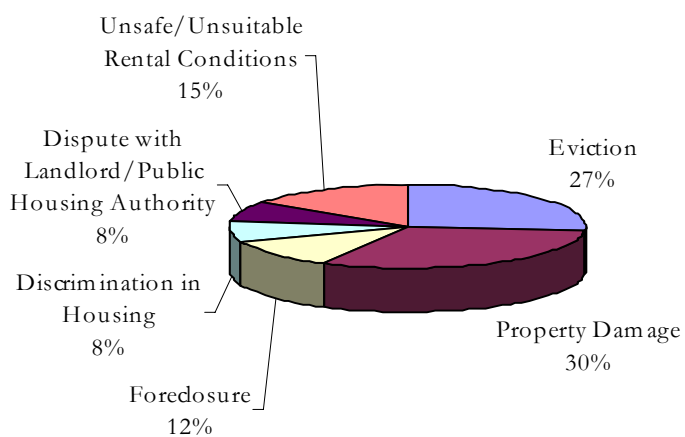
Legal Issues Related to Employment



Legal Issues Related to Health



Legal Issues Related to Housing



APPENDIX D

Information on Unbundling Legal Services

<http://www.unbundledlaw.org/default.htm>

<http://www.unbundledlaw.org/thinking/White%20Paper%20-%20Doc%20Assembly.pdf>

COLORADO:

- Effective July, 1 1999, the Colorado Supreme Court adopted changes to the [Colorado Rules of Civil Procedure](#) that allowed limited representation and provided guidelines for such representation under the Colorado Rules of Professional Conduct
http://www.courts.state.co.us/supct/rules/1999/1999_10.pdf
- An order by the [US District Court for the District Court of Colorado](#) (bottom of the page) stated that the 1999 changes adopted by the state supreme court are not applicable in the district court or the US Bankruptcy Court for the District of Colorado.
- "[Unbundling Family Law Practice Creates Pro Bono Opportunities](#)" - An article published by the Colorado State Bar Association while the 1999 changes were pending.
- [Description of unbundled legal services](#) provided by Colorado's 17th Circuit.

Departments

Legal Services News

Unbundling Family Law Practice Creates Pro Bono Opportunities
by Melody Kay Fuller

The Concept of Unbundling

The courts, legal aid and *pro bono* referral programs, and consumer advocates increasingly are looking to unbundled legal services as a mechanism of providing legal assistance to those unable or unwilling to retain an attorney for representation in a family law case.¹ A lawyer "unbundles" services by providing a client with some, but not all of the functions normally involved in a matter and by limiting representation to a specific task or series of tasks.

For example, in a dissolution of marriage case, a lawyer generally would provide an array of services, such as investigation, advice, drafting, research, and court representation. Unbundling allows the client and the attorney to determine the extent of legal assistance provided for each discrete task.

The concept and practice of unbundling is commonly used in estate planning, transactional work, or mediation. Unbundling may be a natural outgrowth of the public's recognition that consumers do have options, including alternative dispute resolution, that allow them to limit reliance on lawyers and the courts. Given all the forces that encourage discrete task work, some lawyers assert that unbundling is a conceptual model for the lawyer-client relationship that will transform family law practice in the twenty-first century.²

Ethics of Discrete Task Services

The Colorado Bar Association Ethics Committee recently responded to some of the numerous and serious ethical concerns about the burgeoning practice of unbundling. The Committee was aware of the potential dangers with the practice of discrete task services, but recognized the large number of *pro se* litigants with domestic relations cases who needed information and advice about legal procedures, principles, and strategies. Reluctant to create barriers to the procurement of legal advice, the Committee gave general approval for discrete task work in Formal Opinion 101, "Unbundled Legal Services," adopted early this year after considerable deliberation.³ The Opinion concludes: "The Colorado Rules of Professional Conduct, and especially Rule 1.2, allow unbundled legal services in both litigation and non-litigation matters."⁴

Colo.RPC 1.2 allows a lawyer to limit the objectives of representation, with client consent, but the Ethics Committee cautions lawyers to do sufficient inquiry and analysis of the factual and legal elements of the problem. Opinion 101 also instructs lawyers to warn *pro se* litigants that they may be confronted with matters they will not understand.⁵ The Colorado Supreme Court Rules Committee has proposed an amendment to Colo.RPC 1.2 to require lawyers to disclose the risks and benefits of limited representation before providing limited services in litigated matters.⁶

Lawyers should be ever-vigilant, as in a full-service practice, to avoid encouraging a client to engage in any kind of behavior that would be improper for the lawyer (Rules of Professional Conduct, and Comments thereto, Rules 1.2, 1.16, and 3.1). C.R.C.P. Rule 11 dictates that an attorney may not condone a client filing a pleading that the lawyer is ethically prohibited from signing. All the ethical rules and constraints of professionalism should be employed in discrete task work, even though the mechanics of practice are somewhat different.

The Mechanics of Providing Unbundled Services

Many clients and cases will not be appropriate for discrete task services. The lawyer is responsible for determining whether a *pro se* litigant is capable of understanding the risks inherent in self-representation and whether the litigant can adequately present the facts and argument in a given case. This requires careful consideration of the complexity of the facts, law, and procedure; anticipation of evidentiary issues; and a willingness to try to explain how these problems may be addressed.

A lawyer should not undertake to provide unbundled services without a thorough intake and screening process for each potential client. It is the lawyer, not the client, who ethically is responsible for obtaining the facts necessary to determine the legal issues and the complexity of the case. Many clients are unable to recognize the significance of facts that are critical to even a basic analysis of the case; thus, questions should be structured to elicit all relevant information.

The practice of "ghostwriting," where an attorney drafts pleadings or briefs for a client to file without the attorney's signature, resulted in a strong reprimand from a Colorado federal court in 1994.⁷ Although the Tenth Circuit did not agree with the district court's conclusion that the attorney violated Rule 1.1 of the Colorado Rules of Professional Conduct, lawyers must be aware that some judges consider ghostwriting to be a "deception" on the court, violating the duty of candor to the tribunal. Some courts may prefer that attorneys indicate on pleadings that the document was drafted with the assistance of counsel, and attorneys should consider inquiring about the practice in any court in which they intend to file a

ghostwritten document. A proposed amendment to C.R.C.P. Rules 11 and 311 will require attorneys to sign pleadings they have "substantially" drafted for a *pro se* litigant.⁸

Lawyers providing unbundled services should carefully utilize retainer forms to ensure that litigants understand the limitations and risks of the limited services and to protect practicing lawyers from claims due to advice or services not provided. Retainers should disclose both the work to be performed by the attorney and a list of other tasks that the client will do or that will not be done. Attorneys may want to include a paragraph for civil immunity for counsel where the client waives any claims of professional negligence for services not included in the list of lawyer tasks.² It is unclear, however, to what extent such a waiver will be effective.

Malpractice exposure for providing unbundled legal services cannot be ignored. As in all lawyer-client relationships, malpractice claims are best protected against by clear communication and a positive personal relationship between lawyer and client. In any event, all lawyers practicing family law, unbundled or full service, should carry professional liability insurance.

Opportunities to Provide *Pro Bono* Unbundled Services

The Legal Aid Society of Metropolitan Denver and the Metro Volunteer Lawyers ("MVL," formerly the Thursday Night Bar Program) operate a Family Law Day project in metropolitan area district courts that provides *pro se* litigants with a *pro bono* lawyer at the courthouse for technical assistance. Volunteer lawyers help clients prepare the initial pleadings, which MVL files and then arranges for service on the respondent. Later, the volunteer lawyers help the litigants prepare financial affidavits and notices of hearing for a day set aside for hearing these cases. MVL prepares the necessary court documents, including decrees, separation agreements, permanent orders, child support orders, and entry/withdrawal orders. On the day of the hearing, the volunteer lawyer represents the client, and the court allows the attorney to withdraw immediately following the hearing.

Boulder County Legal Services ("BCLS"), providing assistance for low-income residents in the Twentieth Judicial District, recently implemented another type of *pro se* program because *pro bono* attorneys were not available to meet the demand of financially eligible clients with domestic relations cases. The BCLS program is designed to provide individual advice and information necessary for clients to handle their own domestic relations cases from filing through court hearings.

Clients are given a package of forms used by the Twentieth Judicial District, including motions for filing *in forma pauperis*. A *pro bono* attorney is available one afternoon each week to give clients information about forms and procedures and to advise litigants about substantive issues and strategy. Retainer forms explaining the discrete task services offered are provided to clients to emphasize the limited scope of assistance. Clients are urged to take advantage of other local resources, such as the YWCA educational programs on divorce, custody, and support; Safehouse; and other counseling services.

Some district courts around the state have implemented case management systems, designed to provide *pro se* litigants with the procedural information necessary to process their family law cases. The Boulder District Court employs a case manager who meets with individual *pro se* litigants to answer questions about forms and procedures. The Denver District Court's Information and Referral Office is staffed by a case manager, but also uses volunteer lawyers to provide guidance to *pro se* litigants.

Conclusion

A wide variety of district court case management programs and *pro se* clinics are used throughout the state. Lawyers are needed to staff these various projects in many communities; potential volunteers should call their local *pro bono* program, bar association, or court to find out which programs use volunteer lawyers in their district. Lawyers will find it particularly rewarding to assist *pro se* litigants with discrete task services as these clients are especially appreciative and motivated.

NOTES

1. See, e.g., "Post-Decree Multi-Door Courthouse: A Pilot Program for the State," 27 *The Colorado Lawyer* 109 (June 1998); Chief Judge Connie Peterson, Denver District Court, "Is Unbundling Legal Services An Answer?" 19 *The Docket* 15 (Feb. 1996); "Supporting Fathers and Families in the Judicial System," Colorado Responsible Fatherhood Initiative, *Judicial Action Committee Report* (Fall, 1997).
2. Mosten, "Unbundling of Legal Services in Family Law," 4 ACFLS (Newsletter of the Association of Certified Family Law Specialists) (Sept. 1994); Mosten, "Unbundling of Legal Services and the Family Lawyer," 28, No. 3, *Family Law Quarterly* (Fall, 1994).
3. See "Formal Opinion No. 101: Unbundled Legal Services," 27 *The Colorado Lawyer* 21 (April 1998).
4. *Id.* at 22.
5. *Id.*
6. See "Court Business: Proposed Amendments Concerning Limited Representation of *Pro Se* Parties," 27 *The Colorado Lawyer* 102 (Aug. 1998).
7. *Johnson v. Board of County Comm'rs*, 868 F.Supp. 1226 (D.Colo. 1994), *rev'd on other grounds*, 85 F.3d 489 (10th Cir. 1996).
8. *Supra*, note 6 at 101.
9. Whether a malpractice waiver and limited engagement retainer will be enforceable and binding or is ethically permissible is only partially addressed by Formal Opinion 101: "A lawyer may not so limit the scope of the lawyer's representation as to avoid the obligation to provide meaningful legal advice, nor the responsibility for the consequences of negligent action." *Supra*, note 3 at 22.

APPENDIX E

**Survey sent to Michael Vigil
NO RESPONSE FROM MV AS OF JUNE 26TH, 2006**

- 1. What is the most critical need of pro se litigants (in addition to legal representation) in El Paso County?**
- 2. Are there any specialized services needed for pro se victims of domestic violence?**
- 3. What suggestions do you have to increase the number of attorneys who are committed to pro bono work?**
- 4. Do you believe a reduced fee panel or unbundling legal services would attract attorneys to take cases? Please explain your answer**

