

Colorado Legal Services

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Colorado Legal Services

Eviction Pilot Program

17th Judicial District

Report

December 2018 – October 2020

Overall Program Structure and Function:

Colorado Legal Services (CLS) is a private, non-profit corporation that provides high quality free legal assistance in civil matters to indigent clients throughout the State of Colorado. CLS is the only agency in the state that provides free legal services, including direct representation, in civil cases to indigent clients in every Colorado county. CLS has 13 local offices located throughout the state, in both urban and rural locations. CLS employs knowledgeable and committed attorneys who are skilled in all areas of poverty law, including housing law and eviction defense. CLS attorneys conduct in-depth interviewing, case investigation, extensive witness preparation, and representation in court or administrative hearings or trials, that all serve to achieve the best possible legal results for clients.

The primary funding source for CLS is the Legal Services Corporation (LSC); CLS is the only recipient of federal funds from LSC in Colorado. The remainder of CLS' funding comes from a variety of other federal, state and local sources. To qualify for CLS's services, an applicant's income may not exceed 125% of the current federal poverty guidelines. If certain designated exception factors exist, however, CLS is permitted, pursuant to federal regulations, to represent applicants whose income is between 125% - 200% of the current federal poverty guidelines, and even above 200% with certain public funding. In addition to the direct provision of legal services to low-income individuals, CLS has also secured the commitment of hundreds of private attorneys in the state who regularly accept referrals from CLS offices and who provide pro bono and significantly reduced fee (paid for pursuant to contracts with CLS) legal assistance to eligible clients. All legal assistance provided by CLS is without charge to its clients.



Colorado Legal Services received funding in late 2018 from Adams County, the City and County of Broomfield, and the Cities of Westminster, Thornton, Federal Heights, Brighton, Commerce City, Aurora, and later from Northglenn to create an eviction defense and housing assistance Legal Services Pilot Program. The purpose of the Pilot Program was and continues to be to “provide legal assistance to low-income households, to help prevent or mitigate the adverse familial and societal impacts of involuntary displacement and/or homelessness within the contributing jurisdictions.” Intergovernmental Agreement, Exhibit A.

In December 2018, a grant-funded attorney was hired by CLS and began the Pilot Program; in February 2019, a grant-funded paralegal was hired by CLS and began his work in the Pilot Program. In March 2020, a new and different grant-funded attorney was hired and replaced the original Pilot Program attorney, she assumed primary responsibility for the Pilot Program. A new and different paralegal was hired in July 2020 and replaced the original Pilot Program paralegal. The paralegal and his predecessor who worked in the Pilot Project are fluent in Spanish, which has been essential for the effective and efficient services provided to the many monolingual Spanish-speakers who reside in Adams and Broomfield Counties. The Pilot Program staff have been trained on the goals of the Pilot Program, the applicable state law and the practices in Adams and Broomfield County Courts. The Pilot Program staff have worked to ensure that the legal needs of their clients are being met. Prior to March 2020, the staff frequently worked in an office at the Adams County and Broomfield County Courts. Every morning that return dates for eviction matters were scheduled, Pilot Program staff were present in court and spoke with virtually every interested individual present in court in response to a Summons and Complaint in an eviction case. At the Court house, the Pilot Program staff provided legal information to any tenant who desired it, and screened tenants for CLS eligibility. For each eligible tenant, the Pilot Program staff completed a confidential legal interview and made decisions regarding representation based upon the client’s individual needs and goals in the case. The legal assistance from the Pilot Program’s attorney ranged from individualized legal advice through full representation in the court proceeding. When such legal representation involved court filings to challenge an eviction, the attorney prepared court filings for eligible clients on the return date, negotiated agreements and stipulations on behalf of the client, and/or represented the tenants in court hearings and the trial. Additionally, the Pilot Program attorney was able to facilitate discussions and communications between the landlord or the landlord’s attorney and the tenants facing eviction. This benefited those landlords or their attorneys and helped to create a more efficient negotiation process that resulted in numerous settlements and benefitted all the parties and the Court. The staff also made use of the space at the Irving Street Library in Westminster to meet with clients so that clients could avoid the time and costs of travelling long distances to CLS’s office in Denver.

CLS, with Pilot Program funding, purchased a cell phone and has enabled a dedicated telephone line and a dedicated email address specifically for potential Pilot Program clients. Notice of each point of entry to the Pilot Program is made available and distributed through different types of media, including paper and digital flyers available to all the Adams and Broomfield courts as well as through numerous community outreach presentations made by Pilot Program staff. In

addition, the Pilot Program staff are available from 8:30 A.M. to 5:00 P.M. Monday through Friday to answer questions and calls that come through these dedicated means of communication and contact. Moreover, before the pandemic, all calls and inquiries for legal assistance to the Colorado Legal Services main intake line that involved an eviction in Adams or Broomfield Counties, were immediately referred to Pilot Program staff for assistance, which streamlines services for Adams and Broomfield County applicants who may need emergency legal help. During the pandemic, that is still the preferred practice but with CLS working remotely that, unfortunately, has not been uniformly possible. During these times, there is no gap in services, and another qualified attorney in CLS's Denver Housing Unit provides emergency assistance as needed.

When Colorado courts instituted procedures limiting in-person court appearances in response to the COVID-19 pandemic on March 16, 2020, Pilot Program services shifted to remote contact as much as possible. The Pilot Program attorney continues to advise and represent clients and to attend administrative meetings, court hearings and trials remotely. New intake procedures have been implemented at CLS to address the unique needs of tenants participating in virtual court proceedings. Since March 16, numerous complicated Orders have been passed by the Adams and Broomfield County Chief Judge, the Colorado Supreme Court, the Governor of Colorado, Congress, and the Centers for Disease Control and Prevention. Relevant laws include: The CARES Act, passed by Congress on March 27, 2020, that placed a 120-day eviction moratorium for tenants living in properties receiving federal funding;; Colorado Executive Order D-2020-051, issued by the Governor of Colorado on April 30, 2020, suspending most eviction filings and proceedings for 30 days; and The The Temporarily Halt on Residential Evictions to Further Prevent the Spread of Covid-19 Order (CDC Order) issued by the Centers for Disease Control and Prevention on September 4, 2020, temporarily halting all evictions for covered tenants between September 4, 2020 through December 31, 2020. Governor Polis also issued Orders on October 21, 2020 and November 18,2020 expanding and clarifying the CDC Order for Colorado residents which, orders are in effect until December 18,2020.

Although eviction filings in Adams and Broomfield Counties have declined (from previous years) due to these Orders, Adams and Broomfield County tenants facing eviction, especially low-income and marginalized individuals and families, remained likely to become homeless and at increased risk for contracting and spreading COVID-19, and were often simply unable to comply with the shelter-in-place orders due to burdensome Court procedures. Most significantly, the Adams County Court largely continued to accept filings throughout the pandemic, placing the burden on tenants to demonstrate his or her eviction case was filed in violation of a state or federal Order.

CLS anticipates a significant increase in eviction filings and cases in 2021 after the expiration of the federal and state Orders. Currently, Pilot Program staff continues to advise and represent tenants in eviction proceedings in Adams and Broomfield County Courts, assist with rental assistance applications and delays, and provide services outside of the courtroom which include informing community groups of the existence and scope of the Executive Orders and CDC Order.

Pilot Program staff have also established a partnership with Maiker Housing Partners beginning August 2020 to streamline access to rental assistance for clients of Adams and Broomfield Counties who are eligible for CLS's services. Prior to the partnership, many tenants were facing eviction while their rental assistance application was being processed by Maiker Housing Partners. This partnership ensures tenants facing eviction will receive rental assistance in 21 days or less from Maiker. Rental assistance has been set aside by Maiker for these vulnerable tenants facing imminent homelessness. Pilot Program staff have offered a valuable virtual know-your-rights presentations to both community partners and tenants about the eviction process and relevant protections and laws, as well as resources available to tenants. Additionally, Pilot Program staff prepared electronic detailed legal resource guides on subjects such as: emergency housing, COVID resources, low-income housing tax credit, warranty of habitability, security deposits, small claims, veterans' services, consumer rights, and evictions guides. Many of these guides are available in English and Spanish or are currently being translated into Spanish.

Client Outcomes:

The Pilot Program began in mid-December 2018. As of October 23, 2020¹, Pilot Program staff have opened 363 cases for low-income households, with a majority facing an imminent eviction proceeding in court. 67% of the households are individuals in a landlord/tenant dispute with a private landlord, 26% of the households live in federally-subsidized housing based upon qualifying low-income, and 7% of the households served are mobile homeowners. The Pilot Program's constraint on serving a greater number of households with federal or local subsidies is limited by the terms of the Intergovernmental Agreement; the Agreement prohibits the Pilot Program staff from using Pilot Program funds to provide representation on behalf of a tenant in cases in which one of the local government's housing authorities is the opposing party in the eviction action. This limitation has prevented Pilot Program staff from representing a number of otherwise qualifying households. CLS, however, represented each of these households using attorneys funded by other revenue sources.

To date, in the 363 cases where eviction proceedings have concluded, Pilot Program staff were able to assist 85% of households in remaining in their homes, obtaining more time to move, or retaining a housing voucher or rental assistance. Over \$175,000 in rental assistance has been provided to 31 households in the program. The clients and their families in these households were also able to avoid having an eviction judgment on their credit report. Avoidance of having the eviction on a tenant's record will likely remove a significant barrier that would have made their ability to rent residential property or purchase property in the future, much more difficult.

In addition to the 363 households who Pilot Program staff represented, CLS staff provided legal advice and advocacy on Colorado residential property law to an additional 198 households primarily on housing issues that were not eviction or subsidized housing matters. These tenants

¹ All statistics provided regarding CLS services reflect services provided between December 15, 2018 and October 16, 2020.

were primary seeking advice on other housing matters, such as conditions questions or issues with neighbors. This provision of one-on-one legal advice provided valuable assistance and educated tenants on legal rights. Lastly, individuals who reached out to Colorado Legal Services, by the phone or at the return date and first appearance in court, and were screened and not eligible for services (primarily due to ethical conflict, income eligibility, or citizenship status) were referred to partner organizations and provided legal information and resources.

Configuration of Client Households:

The 363 households served over the past 22 months were comprised of 955 individuals, which includes 450 minor children. All households are at 200% or below of the 2018, then the 2019 and, as of May 1, 2020, the 2020 federal poverty guidelines, as set by the US Department of Health and Human Services and the Legal Services Corporation. Additionally, 13% of the households included at least one individual over the age of 60 as the primary client. Further, 35% self-reported as being disabled, but research suggests that individuals significantly underreport a disability. Of the clients served, 7% were either a veteran or had a veteran in their household. Finally, the racial/ethnic origins of the clients served during the Pilot Program: 39% identified as White/Caucasian, 32.5% as Hispanic/Latinx, 20.6% as Black or African American, 1.6% as American Indian, 1% as Asian, and 5.3% as Other.

Client Experiences:

Pilot Program staff have been able to achieve excellent results for many of its clients. Just a few examples:

Client A: Client A and her family reside in a private rental housing in Northglenn. Due to the COVID-19 pandemic, Client A, and her husband both lost their jobs and subsequently struggled to pay their rent on time. Client A was able to make full rent payments to her landlord, including late fees, through July 2020, although the payments were made after the due date each month. Client A applied for rental assistance through Maiker Housing Partners in August 2020, but due to the high demand for rent assistance, her application was not processed for over four weeks. In September 2020, Client A's landlord filed an eviction case in Adams County Court based on the nonpayment of rent. Client A, who was unaware of the various restrictions on eviction, and was also unaware of Colorado Legal Services, represented herself at a court trial held virtually.

However, a Pilot Program attorney observed Client A's virtual trial while waiting for a CLS client's trial to begin. The attorney stated (as a Friend of the Court) to the Judge hearing Client A's case that Client A had a strong defense to the eviction based on the Center for Disease Control and Prevention (CDC) Order. However, although Client A had raised the elements of the CDC Order, she had not signed a Declaration, as required by the CDC Order, and had not provided a copy of the Declaration to the landlord or to the court. The CLS attorney also noted that the landlord had not notified Client A of the CDC Order or the tenant's duty to prepare a Declaration, as required by the Order. Despite the CLS attorney's intervention, the Judge entered a Judgment

for Possession against Client A and ordered that a Writ of Restitution enter in 48 hours if the parties did not reach an agreement prior to that time.

Client A, who was fearful that she and her family would become homeless and would be forced to relocate to a shelter where they would possibly be exposed to COVID-19, called CLS shortly after the hearing. The Pilot Program attorney who had seen and spoken up at her hearing screened her for eligibility and accepted her case. That same day, the attorney contacted the landlord's attorney, provided a copy of Client A's signed CDC Declaration, and was able to negotiate a Stay of Execution of the Writ of Restitution. The CLS attorney then assisted Client A in completing her application for rental assistance through the Rapid Settlement/Rapid Relief Program. The landlord received the full amount owed and agreed to dismiss the eviction case. Client A will not have an eviction on her record, and she and her family are able to retain their housing and avoid becoming homeless during the pandemic.

Client B: Client B resides in private housing in Thornton, Colorado. Client B's landlord filed an eviction action in Adams County Court in March 2020. Due to Covid-19, Client B's case was continued by the Court numerous times, and Client B struggled to understand the Court's complicated virtual COVID-19 procedures, as well as the changes to the law and available resources. Client B's appearance in Court was finally scheduled on July 8, 2020, the week that Adams County Court reopened for evictions. Client B contacted CLS by phone on July 8, seeking assistance. The paperwork Client B received from her landlord stated she needed to physically go to Court, although she was not actually required to do so. The Pilot Program staff conducted a phone interview, drafted an Answer raising Client B's legal defenses and prepared a Motion to Waive filing fees. The Pilot Program attorney e-mailed the paperwork to the Court in compliance with the Court's new procedures. Despite compliance, a default judgment for possession was entered by the Court. The Pilot Project attorney sought to resolve the error with the Court unsuccessfully and filed a Motion to Set Aside the erroneous default judgment, the motion was granted on August 19, 2020. Client B remained in her housing during that time.

Client B's case was then set for trial on Friday, September 4, 2020 at 9:00 am. The Pilot Program attorney reached out to Client B the week prior to the trial to discuss the case and could not reach her. Therefore, the Pilot Program attorney sent a detailed advice letter to Client B. On September 2, the Centers for Disease Control and Prevention notified the public of an Order (the CDC Order) temporarily halting residential eviction for covered persons that would go into effect on September 4. On September 3 after 5 pm, Client B contacted the Pilot Program attorney to prepare for her trial. The Pilot Program attorney prepared to raise the CDC Order defense and worked with Client B to assist her in signing the Declaration. Client B's trial was the first trial in Adams County (and first Colorado Legal Services case statewide) after the CDC Order had gone into effect. On September 4, the Adams County Judge continued the trial and asked the Pilot Program attorney to enter an appearance in the case and brief the new law for the Court by September 8 at 8:00 am. The Pilot Program staff spent numerous hours preparing and drafting the brief for the Court. The Pilot Program attorney requested that the court stay Client B's case or that it be dismissed pursuant to the new CDC Order. The Court entered an Order staying Client B's trial through December 31, 2020, over opposing counsel's objections. This first Order set the

precedent for future Adams County cases under the CDC Order. The Pilot Program staff continue to assist Client B in securing rental assistance and negotiating other issues in her case. To date, Client B remains in her housing.

Client B has experienced significant difficulties navigating shifting Court procedures and changes to the law during these unprecedeted and uncertain times. Client B would not have been capable of advocating for her rights independently as the first case under a new federal Order, and she does not have the resources to hire an attorney. She would be homeless had she been evicted. The Pilot Project attorney has advocated for and provided resources to Client B at each step in the proceedings, preventing Client B from experiencing homelessness or unnecessary exposure to Covid-19.

Client C: Client C was a member of the United States Air Force who recently purchased a mobile home for herself and her three children using all her savings. Client C had just left an abusive relationship and was looking for a new start. Less than a year later, Client C had been ordered to active duty and was required to spend several weeks at an Air Force Base in Oklahoma. While Client C arranged to have her children stay with her mother and prepared for the temporary move, Client C had gotten behind on paying her mobile home park lot rent and the mobile home park filed an eviction action against her. Because Client C was about to travel to Oklahoma, she failed to receive, or at least see, the eviction paperwork and did not know of the eviction court date. Client C did not appear in court and a default judgment for eviction was entered against her. It was not until Client C was about to lose her mobile home, and, therefore, any existing equity in the mobile home, which was Client C's entire life savings, that she became aware of the eviction proceedings.

Client C called Colorado Legal Services asking for help and due to the services of the Pilot Program attorney she was able to avoid eviction and the loss of her mobile home. The attorney met with Client C and then immediately contacted the attorney for the mobile home park. The Pilot Program attorney made the attorney for the mobile home park aware of the Servicemembers Civil Relief Act, which gives members of the armed forces several due process rights before an eviction action can be filed against them. These due process rights were not provided to Client C by the park before the park chose to begin the eviction proceedings against her. Ultimately, the Pilot Program attorney was able to reach an agreement on her behalf that allowed Client C to keep her mobile home and make sure that the eviction judgment was vacated and, therefore, would not appear on Client C's credit report. Client C is no longer based in Oklahoma, having her duty transferred to Buckley Air Force Base in Aurora, and Client C now lives full time and safely with her three children in their mobile home.

Client D: Client D had a Section 8 Housing Choice Voucher, a federal housing subsidy, and had lived in the same apartment for the past 16 years. Client D had recently been diagnosed with depression and Client D's medical provider thought it would be most beneficial to Client D's mental health to have a support pet in the home so that the client would not be alone. Client D found the appropriate dog companion and notified the manager of the apartment that, according to

his doctor, it was an emotional support animal. According to federal law, this meant that Client D would not be required to pay a pet deposit fee or a monthly pet rental fee, amounts that Client D could not afford. Unfortunately, this was not what happened and Client D, who only pays \$69 in rent per month, was charged a \$250 pet deposit fee and \$100 in pet rent per month. After begging and borrowing money from family and friends over several months so that Client D could keep his emotional support animal in his home, Client D eventually fell behind in the rent and the landlord filed an eviction case for nonpayment of rent and fees.

The Pilot Program staff first met Client D in a Courtroom at the Adams County Courthouse where Client D relayed to the staff everything that had happened to him prior to coming to court. The Pilot Program attorney filed an Answer, a response and denial to the claims in the eviction, disputing the eviction on Client D's behalf. A trial date then was scheduled less than one week later. In the time leading up to the trial, the attorney met with Client D's Section 8 Housing Choice Voucher technician at the local housing authority to determine the history of Client D's voucher and time in the apartment. The attorney helped the client make an appointment with a mental health specialist. The attorney sent a letter to that specialist detailing what might be most helpful in allowing the client to keep the emotional support animal without paying additional rent. The attorney presented the mental health professional's letter to the attorney for Client D's landlord and argued that the landlord was violating Client D's federal Fair Housing rights and had failed to accommodate Client D's documented mental health needs and disability. Prior to trial, the landlord acknowledged the client's disability, reversed the pet deposit and all pet rent fees and late fees, and waived any claim for attorney fees. The eviction case was dismissed. Client D was no longer at risk of losing the rental assistance voucher and most importantly was no longer at risk of losing his support animal.

Summary:

The funding provided through this Pilot Program and intergovernmental collaboration has enabled hundreds of individuals and families facing eviction or otherwise the loss of their housing to obtain free legal assistance which likely would not otherwise have been available to them. Results to date document the value of the current Pilot Program and its likely value were it to continue.