



## Colorado's New Federal Pro Se Assistance Project

BY SABRA JANKO

*"Unable to afford representation, most Americans are going to court alone, and they're losing."*<sup>1</sup>

Scout poured out the details of what happened on a federal district court complaint form exactly as she told her friends about it. She talked about living in her car and being arrested, and about the car being impounded. After being released from jail, she got sick because she didn't have the car to sleep in. Then she talked about how she went to emergency rooms and how the doctors and nurses didn't help her and she got worse.

She decided to go to federal court. One section of the complaint form asked about defendants, and she listed police officers, doctors, nurses, an insurance company, and a county court judge.

Did Scout have meritorious claims? Perhaps, but it's impossible to tell from the 58-page narrative she provided. Still, the case took time to work its way through the court system, and 226 docket entries later, all of Scout's claims were dismissed with prejudice. Even in a simple case, "the inability to secure legal advice may prevent a meritorious claim from ever being presented to a judge."<sup>2</sup>

A new access to justice program in Colorado seeks to improve outcomes for people like Scout. It's called the Federal Pro Se Assistance Project, and it was created to help bridge the gap between unrepresented litigants and the courts, increasing the probability of a case being heard on its merits and minimizing procedural obstacles. This article discusses these procedural obstacles, along with other barriers to successful pro se representation in U.S. civil courts. It then explains how the Federal Pro Se Assistance Project is working to improve outcomes for Colorado litigants and courts through its new pro se legal clinic.

### Access to Justice in America

Much of America, including many in the middle class, cannot afford legal representation in the U.S. civil justice system. In 2016, the World Justice Project ranked the United States 94 out of 113 countries for civil justice affordability.<sup>3</sup> This means that 93 out of 113 countries have more affordable access to civil justice systems than our own.<sup>4</sup> Many individuals are simply priced out of the civil legal services market: the average wage is about \$25 an hour, while

## A LITTLE BIT OF HELP CAN GO A LONG WAY

Some trying to navigate alone in legal territory simply do not know what their rights are or how to find out, and consequently can be taken advantage of. For example, the author assisted “Jim,” a veteran with a service-connected generalized anxiety disorder, whose landlord attempted to fine him for a lease “violation” because of his dog, Lucy. Lucy was Jim’s companion and helped him stay calm. Jim’s lease allowed dogs up to 30 pounds, but Lucy was 40 pounds. When Jim came to Legal Services, he was ready to put Lucy on a diet to lose 25% of her body weight because he could not bear to part with her. Working with his Veterans Administration doctor, we obtained a companion animal letter signed by the doctor and provided it to the landlord accompanied by a letter explaining Jim’s right to have a companion animal in his housing, and the matter was resolved. This is one example of how a little bit of help can go a long way for those who cannot afford the assistance of counsel.

legal representation costs around \$200 to \$300 an hour.<sup>5</sup> As a result, in 70 to 98% of cases in America’s civil courts today, one or both parties is not represented by a lawyer.<sup>6</sup>

According to Magistrate Judge Lois Bloom, who was appointed to hear pro se cases exclusively in the U.S. District Court for the Eastern District of New York, access to justice should include “a court structure that responds fairly and efficiently to claimants who lack the legal

equipment needed to present their cases in an effective way.”<sup>7</sup> But most people are ill-equipped to successfully navigate our complex judicial system without a lawyer. This presents unique challenges to both pro se litigants and the courts trying to serve them.

### **Challenges for Pro Se Litigants**

When litigants come to federal court without a lawyer, they are at a disadvantage.<sup>8</sup> The court system requires presentation of claims and evidence in a very technical way. Nothing in a person’s everyday life prepares them to do this.

Common areas of difficulty for pro se litigants are:

- preparing and filing complaints and responses;
- stating claims in intelligible form;
- responding to motions to dismiss or for summary judgment;
- motions practice;
- knowledge about legal decisions that would help their cases;
- knowing when to object to testimony or evidence;
- knowing legal consequences of actions or inaction;
- filing complete pleadings or submissions; and
- filing timely pleadings or submissions.<sup>9</sup>

Amplifying the complex procedural requirements is the fact that many pro se parties enter the system in a state of panic or anger resulting from the events that gave rise to the litigation. Many also suffer from mental illness or have difficulty with reading comprehension. Others can read court documents but have difficulty understanding them.<sup>10</sup>

In the author’s personal experience assisting low- to moderate-income veterans with their legal issues at Legal Services of the Hudson Valley in New York, many pro se litigants have life challenges that impact their ability to successfully navigate the legal system on their own. Some of these life challenges are:

- They are homeless and have no location to receive court documents.
- They rely on public transportation and find it difficult to make court-related appointments.

- They have spotty cell service or cannot afford a phone, making them unavailable at critical periods.
- They lack access to a computer and/or printer and have difficulty reviewing, drafting, and printing court documents. (Even getting to public computers at the library can pose difficult logistical problems, and many libraries have time limits on computer use.)
- They have a mental illness or disability that causes them to become easily frustrated and even enraged when encountering problems.

### **Challenges for the Courts**

Because pro se litigants are often unfamiliar with standard court procedure and may pursue claims in unpredictable ways, the courts face unique challenges in trying to serve them.

Common challenges for the courts are:

- pleadings or submissions that are unnecessary, illegible, and cannot be understood;
- litigants who file large amounts of unnecessary material;
- litigants who file repeated and frivolous cases;
- litigants who are unreasonable or who have unrealistic expectations of the court; and
- failure to appear or have pleadings served properly.<sup>11</sup>

Judges differ widely on how they interact with pro se litigants. Some adhere to standard procedures, while others modify procedures to attempt to ensure a fair and accurate result in light of the pro se party’s disadvantage.<sup>12</sup> Some have little patience with inexperienced pro se litigants, while others are willing to take the time to help litigants navigate complex and unfamiliar terrain. Many judges modify how they operate with pro se litigants, doing some or all of the following:

- using broad standards in construing pleadings and other submissions;
- accepting letters as motions or pleadings;
- referring pretrial matters;
- providing procedural explanation; and
- allowing flexible deadlines.<sup>13</sup>

### Improving Access to Justice in Colorado

After taking the bench in 2007, U.S. Magistrate Judge Mix observed firsthand the difficulties that pro se litigants have when attempting to navigate the federal court system on their own. She wanted to do something to help litigants and the court system, so she began looking for ways to make the federal court system more accessible to pro se litigants at the U.S. District Court for the District of Colorado.

Judge Mix recalls a case where a litigant filed three improperly drafted preliminary injunction motions for an eviction, and finally on the fourth was able to state her grounds sufficiently enough to progress to a full hearing. Judge Mix had denied each of the first three motions without prejudice, allowing the litigant the opportunity to try again. Judge Mix believes that with a little assistance, the litigant could have successfully

submitted a proper motion much earlier in the process, which would have benefited both the litigant and the court system.

Based on her observations, pro se litigants have substantial challenges with understanding and complying with rules of civil procedure, stating claims, and effectively communicating their legal problem to the court. When Judge Mix has cases with pro se litigants, she always provides them with detailed procedural information at their initial scheduling conference and allows them to ask questions. Although as a judicial officer she cannot provide legal advice to litigants, she does her best to make sure they understand important courtroom procedures at the outset.

In 2010, after reading about the Central District of California Federal Pro Se Project, she became inspired to start one for the District of Colorado. Although the timing was not right in 2010 because the court was fully engaged with

other new initiatives, she kept the idea alive. The project finally came to fruition in 2018, and the court entered into a partnership with the Colorado Bar Association to launch the Federal Pro Se Legal Clinic in Denver. Funding for the clinic was provided through a grant from the federal courts.

#### Colorado's First Federal Pro Se Legal Clinic

The pro se legal clinic began serving parties in June 2018. The clinic is held at the Alfred J. Arraj U.S. Courthouse (just inside of the clerk's office) and is run by the Colorado Bar Association. There are eight other federal pro se clinics across the country, but this is a first for Colorado.<sup>14</sup> Though located in Denver, the clinic is available to assist litigants filing claims in federal court throughout the state.<sup>15</sup>

Pro se parties can make appointments or be seen on the spot for free "limited scope"

## COLORADO LAWYER ASSISTANCE PROGRAM



The Colorado Lawyer Assistance Program (COLAP) is an **independent and confidential** program exclusively for judges, lawyers, and law students.

Established by Colorado Supreme Court Rule 254, COLAP provides assistance with practice management, work/life integration, stress/anger management, anxiety, depression, substance abuse, and any career challenge that interferes with the ability to be a productive member of the legal community. COLAP provides referrals for a wide variety of personal and professional issues, assistance with interventions, voluntary monitoring programs, supportive relationships with peer volunteers, and educational programs (including ethics CLEs).

We would love to share our success stories,  
but they are completely confidential.

For more information or for confidential assistance, please contact COLAP at **303-986-3345**.

Visit our website at [www.coloradolap.org](http://www.coloradolap.org).

## THE PRO SE INTAKE UNIT

Magistrate Judge Gordon Gallagher, U.S. District Court for the District of Colorado, was instrumental to the creation of the new pro se legal clinic. Judge Gallagher is the daily supervisor of the Supreme Court's pro se intake unit, with Senior Judge Babcock addressing all dispositive matters. The intake unit reviews pro se fee waiver cases and all prisoner matters for sufficiency before the cases are assigned to a judge. Judge Gallagher and his staff provide curative orders in pro se cases, with the goal of helping litigants sufficiently state their claims in court without assistance so their cases can be heard on the merits. During a recent interview with Judge Gallagher, he noted the complexity of federal court procedures and explained there are many ways that self-represented litigants can step on a landmine and lose their case. He also pointed out that it would be daunting even for many attorneys to put on a federal case.

legal advice and assistance with drafting their own pleadings. They are able to return to the clinic throughout their cases for assistance at each stage. Traditionally, federal courts have not permitted limited scope representation, so litigants either had full scope representation or were on their own. However, as of December 1, 2016, the U.S. District Court for the District of Colorado began allowing limited scope legal assistance.<sup>16</sup>

While the courts must remain objective and cannot give pro se litigants legal advice, the CBA is playing a limited scope advocacy role. The

advocacy role will benefit both clients and the courts by helping litigants present their cases in ways that allow the court to evaluate them on the merits. Even if the law and the facts are on their side, pro se cases are often dismissed on procedural grounds before the merits are ever addressed—on what some colloquially call “technicalities.” The CBA is taking a client-centered approach that focuses on acknowledging and accommodating the unique needs of pro se litigants while empowering them to handle various stages of their own cases. Services offered include:

- assistance with document preparation;
- advice and counsel;
- document review and instruction;
- assistance with deadlines; and
- help determining next steps.

More information about the pro se legal clinic, including steps clients should take before coming to an appointment, can be found at the clinic's website: [cobar.org/cofederalproseclinic](http://cobar.org/cofederalproseclinic). This website also contains intake forms and a convenient online appointment scheduler.

## Conclusion

Colorado's Federal Pro Se Assistance Project is much needed. Even under the best of circumstances, civil legal systems are not easy to navigate without a guide, particularly when operating under court-imposed procedures and deadlines. Attorneys themselves often spend a long time practicing in a forum before they feel as though they have mastered the law and procedure. The CBA looks forward to bridging some of the justice gap through the new pro se legal clinic, enabling clients to come to court prepared so their cases can be heard on the merits. 



**Sabra Janko** is the project attorney for the Colorado Federal Pro Se Assistance Project, which provides advice and counsel to self-represented litigants in the federal court system. It is run by the Colorado Bar Association with critical support from the U.S. District Court for the District of Colorado.

## NOTES

1. Bergmark, “We Don’t Need Fewer Lawyers. We Need Cheaper Ones,” *Washington Post* (June 2, 2015), [www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones/?noredirect=on&utm\\_term=.33895ce98923](http://www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones/?noredirect=on&utm_term=.33895ce98923).

2. Bloom, “Federal Courts, Magistrate Judges, and the Pro Se Plaintiff,” 16 *Notre Dame J.L. Ethics & Pub. Pol’y* 475, 483 (2002), <https://scholarship.law.nd.edu/ndjlepp/vol16/iss2/11>.

3. World Justice Project, *Rule of Law Index 2016 Report*, [https://worldjusticeproject.org/sites/default/files/documents/RoLL\\_Final-Digital\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/RoLL_Final-Digital_0.pdf).

4. *Id.*

5. *Id.*

6. Bergmark, *supra* note 1.

7. Bloom, *supra* note 2 at 476.

8. U.S. Courts, “Pro Se Centers Help Even the Odds for Litigants Without Lawyers” (Aug. 20, 2015), [www.uscourts.gov/news/2015/08/20/pro-se-centers-help-even-odds-litigants-without-lawyers](http://www.uscourts.gov/news/2015/08/20/pro-se-centers-help-even-odds-litigants-without-lawyers).

9. Stienstra et al., “Assistance to Pro Se Litigants in U.S. District Courts: A Report on Surveys of Clerks of Court and Chief Judges,” 21, 36 (Federal Judicial Center 2011), [www.fjc.gov/](http://www.fjc.gov/)

[sites/default/files/2012/ProSeUSDC.pdf](http://sites/default/files/2012/ProSeUSDC.pdf).

10. Public Counsel Law Center, “The Public Counsel Federal Pro Se Clinic Annual Report February 2009–February 2010” at 5, [www.publiccounsel.org/tools/publications/files/Public-Counsel-Federal-Pro-Se-Clinic-Annual-Report-2009-2010.pdf](http://www.publiccounsel.org/tools/publications/files/Public-Counsel-Federal-Pro-Se-Clinic-Annual-Report-2009-2010.pdf).

11. Stienstra et al., *supra* note 9 at 36.

12. See Bloom, *supra* note 2 at 513 (referencing Marlow, “From Black Robes to White Lab Coats: The Ethical Implications of a Judge’s Sua Sponte, Ex Parte Acquisition of Social and Other Scientific Evidence During the Decision-Making Process,” 72 *St. John’s L.Rev.* 291, 292 (1998), and Goldschmidt et al., *Meeting the Challenges of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers* (National Center for State Courts 1998)).

13. Stienstra et al., *supra* note 9 at 30.

14. U.S. Courts, *supra* note 8; Mix, “Pro Se Clinic to Open in Alfred A. Arraj Courthouse in 2018,” *Faculty of Federal Advocates Newsletter* 4 (Mar. 2018).

15. Interview with Magistrate Judge Kristen Mix, U.S. District Court for the District of Colorado (May 6, 2018).

16. D.C.COLO.LAttyR 2(b)(1).