

# THE EFFECT OF STATE & LOCAL LAWS ON EVICCTIONS

APRIL 2022

## Effective Volunteer Partnerships The Critical Role of Pro Bono Attorneys in Eviction Defense

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With volunteer actions, individual lawyers and law students can make an enormous difference in ensuring access to justice and minimizing the impact of evictions on individuals, families and communities, as well as landlords, during this critical time.

American Bar Association  
President Reginald M. Turner,  
August 30, 2021<sup>1</sup>

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LEGAL SERVICES CORPORATION

Approximately one-in-three renter households will experience a housing-related civil legal problem such as eviction in a year,<sup>2</sup> yet the vast majority of tenants will receive little or no help in navigating the complex and fast-paced<sup>3</sup> nature of eviction laws and procedures. A recent study of the justice gap<sup>4</sup> in South Carolina found that 99.7% of eviction defendants across the state were unrepresented.<sup>5</sup> Nationally, landlords are four times more likely than tenants to be represented in eviction/ landlord-tenant cases,<sup>6</sup> and in many jurisdictions these imbalances are far more significant.<sup>7</sup> The legal needs of tenants are, in almost all evictions, simply unmet.

At the direction of Congress, the Legal Services Corporation (LSC) launched the [Effect of State & Local Laws on Evictions Study](#) to investigate the unmet legal needs surrounding the eviction crisis in the United States. Congress also urged LSC “to explore opportunities for increasing access to eviction-related legal aid...through LSC’s Pro Bono Innovation Fund.”<sup>8</sup>

Pro bono assistance from lawyers, government attorneys, in-house counsel, law graduates, law students and even non-lawyers is a key strategy to addressing the justice gap, and thousands of volunteers across the country provide pro bono services to low-income people each year.<sup>9</sup> LSC grantees work with pro bono partners and other volunteers to leverage their limited resources to provide civil legal services. There is a great deal of competition for pro bono volunteers which greatly limits the pro bono assistance available to low-income tenants at risk of eviction. Pro bono attorneys provide free legal assistance on more than

four times as many cases in family law than housing;<sup>10</sup> even though issues related to rental housing are one of the most common civil legal problem areas.<sup>11</sup>

When pro bono attorneys assist low-income tenants on housing cases, it is generally limited to providing advice or preparing documents, rather than representing the tenant in court or assisting throughout the eviction process.<sup>12</sup> There are a variety of challenges that make it difficult to engage volunteers in providing legal assistance for low-income eviction defendants, which have been exacerbated by the pandemic.

This brief describes model practices of pro bono eviction defense projects developed by legal aid organizations and their partners, highlights initiatives that serve as examples for those seeking to develop effective pro bono eviction defense projects in their communities and explores the challenges associated with implementation.

## **Model Practices for Pro Bono Eviction Defense Programs**

Since its inception in 2014, LSC's Pro Bono Innovation Fund has invested over \$30 million in funding towards the design and implementation of effective legal aid pro bono partnerships, including housing and eviction defense projects across the country.<sup>13</sup> State and local governments, private funders and foundations have made similar investments in pro bono eviction defense programs. While it is important to develop standards and best practices for the growing number of pro bono eviction defense programs, such programs should not be one-size-fits-all. What works in one community or court setting will not necessarily work in another. The following section highlights model practices.

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### **1 Set clear programmatic goals**

Housing advocates must navigate their programs within an environment where the housing market, community partnerships, available resources and housing laws and policies routinely change. Effective pro bono eviction defense programs engage with multiple stakeholders to develop clear goals and tenant outcomes. The plans for these programs can change over time and vary from system-wide solutions (e.g., a comprehensive program that provides staff and pro bono assistance at each stage of the evictions process) to more focused, targeted efforts (e.g., security deposit theft, crafting conditional dismissals for tenants, etc.).

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### **2 Create well-directed volunteer opportunities**

It is vital to determine where and when to engage pro bono volunteers to prevent or fight evictions. Advocates with experience in housing law help evaluate issues and recommend where pro bono attorneys and non-attorney volunteers can provide practical assistance that leverages staff resources and matches the volunteer's availability, interests and skills.

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### **3 Aim to create a steady cohort of diverse volunteers**

Pro bono eviction defense programs rely on a committed and stable cohort of volunteers to function. Though programs continually recruit and train a wide pool of volunteers (e.g., attorneys, paralegals, law students, law graduates), they can achieve their most substantial results when they have volunteers committed to staying with the program over time.

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### **4 Provide adequate staffing for training, mentorship and supervision**

Programs serve tenants more effectively when they are staffed with dedicated pro bono professionals focused on effective volunteer engagement and oversight and experienced housing litigators to provide mentorship and assist in the development of training and resources. Programs with dedicated housing experts can give volunteers real-time consultations and mentorship as their pro bono cases develop and timely assistance when issues arise that can impact the outcome of a tenant's case.

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**Offer comprehensive volunteer support and resources**

Develop a full suite of updated, user-friendly and substantive training materials, housing resources, checklists and practice guides for volunteers. This can include training and resources on the history of housing laws and their impact on communities of color, cultural competency training and other skills necessary to serve a diverse population of tenants facing the loss of their homes.

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**Provide ready access to other housing supports for tenants**

Preventing evictions requires more than providing legal representation in court. Staff and volunteers can obtain better legal and housing outcomes for tenants when the program actively collaborates with other direct service providers and agencies that can offer tenants immediate access to rental and other cash assistance, affordable housing, social services and other critical care supports.

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**Establish strong relationships with key partners**

Cultivate long-term relationships with institutional partners such as tenant organizations, health and social service providers, human service agencies, law firms and courts. This allows the program to refine goals, target resources and coordinate project evaluation and improvement. It also creates clear and open communication among partners, which has allowed many programs to maintain services for tenants amid constant changes in operations, resources and policies during the pandemic.

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**Create efficient systems for clients, advocates and volunteers**

Programs organize their operations around well-defined workflow and clear roles for staff, volunteers and partners. They offer in-person and virtual options for pro bono assistance that incorporate digital equity principles to ensure clients can readily obtain help and volunteers can provide that help effectively.

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**Stay flexible and adapt programs to meet community needs over time**

Programs should be flexible in their operations and partnerships. Many programs have ongoing discussions with law firms, bar associations, courts and community partners to determine whether the program is effective and solicit suggestions for improvement. If aspects of the program are not working, they are willing to try something different. Programs that conduct evaluations and obtain critical data on program performance can also have an advantage in securing support and ongoing funding to sustain the program.

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### Innovative Pro Bono Eviction Defense Programs

The five case studies profiled below highlight different legal aid pro bono partnerships that incorporate model practices to effectively run tenant-centered pro bono eviction defense programs. They operate in both urban and rural communities and engage a wide range of partners including law schools, global and regional law firms, individual practitioners, housing advocates, social service agencies, social scientists and the courts.

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Prior to the start of the EDP, less than 1% of tenants were represented. Over two years, **tenant representation saw more than a five-fold increase** (2016: 0.83%, 2017: 3.46%; 2018: 4.63%) through the work of the EDP.<sup>14</sup>

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#### The Eviction Defense Project

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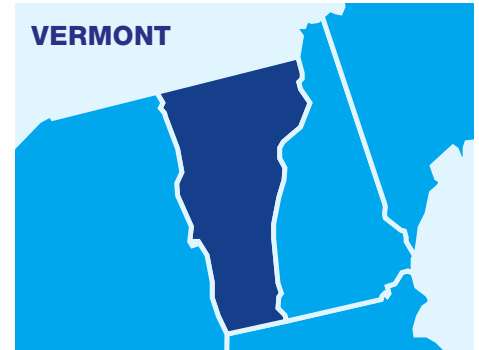
Professor Matthew Desmond's field research<sup>15</sup> prompted Legal Action of Wisconsin (LAW) to launch the **Eviction Defense Project** (EDP) in 2017, a court-based pro bono partnership with Quarles & Brady LLP, the Milwaukee Justice Center, Marquette University Law School, the Legal Aid Society of Milwaukee and the Milwaukee County Court. Pro bono volunteers and staff from partner organizations provide assistance to tenants at every stage of the eviction process in the two counties with the state's highest eviction rates. Volunteers receive trainings, practice resources and onsite mentors. Volunteers provide a range of services including: advice and document drafting assistance for tenants at the court's self-help desk, limited scope in-court representation, or legal assistance to seal clients' eviction records from the court's online database (which protect tenants' access to housing by preventing landlords from using the eviction record to screen out potential renters). These services can be accessed by tenants on their court day through the project's walk-in clinics. LAW engaged the University of Wisconsin–Milwaukee to evaluate the program's services. The surveys indicated that clients' court experiences were improved due to representation and their interactions with EDP attorneys were viewed as beneficial. Ninety percent of the clients surveyed reported dismissal of the eviction, either via stipulation or court order. Volunteers indicated a significant improvement in their professional and mentoring skills and cultural awareness.<sup>16</sup>

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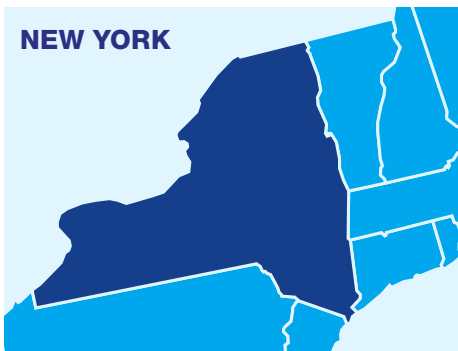
### The Pro Bono Clinic Project

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In 2017, Legal Services Vermont (LSV) expanded its **Pro Bono Clinic Project**, which originated in Chittenden County, to include Rutland, Addison and Washington counties. The project provides limited scope representation to tenants at the rent escrow hearing—the initial court appearance that significantly impacts the case's outcome because it provides an opportunity to settle or identify important interests to each side. Vermont's Civil Division Courts and the state's other legal aid provider supported the expansion to additional counties. The court block schedules rent escrow hearings for times when pro bono attorneys volunteer at the courthouse. Judges periodically attend volunteers' eviction trainings, which provide three free Continuing Legal Education (CLE)<sup>19</sup> credit hours. To ensure volunteers receive the training and resources needed to effectively handle a rent escrow case, LSV created a comprehensive toolkit. The toolkit includes PowerPoint presentations; relevant statutes; a selection of frequently used, unpublished trial court cases; common forms; county-specific lists of community resources and tips for working with interpreters. Volunteers are also encouraged to shadow clinics or co-counsel until they feel ready to take on a case. The extensive set of materials coupled with the opportunity to observe clinics ensures volunteers feel confident in their ability to provide quality legal services and motivates continued participation.



Over the course of three years (2017-2019), LSV saw an **average increase of 51% in clients served** through the clinic.<sup>17</sup> The University of Vermont's study found the pro bono clinics reduced the length of time that housing cases were pending before the court, produced more positive outcome for clients and increased the courts' efficiency.<sup>18</sup>



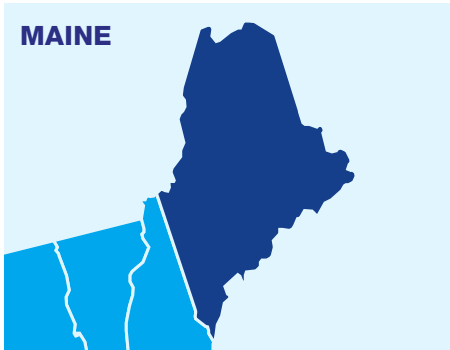
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### The Housing Court Homelessness Prevention Project

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Legal Services of the Hudson Valley (LSHV) piloted the **Housing Court Homelessness Prevention Project** in 2015, with initial support from the law firm Patterson Belknap Webb & Tyler LLP, to provide comprehensive legal support to tenants in the Hudson Valley. LSHV expanded the project to cover all seven counties immediately north of New York City. Volunteers provide full, direct court representation to clients in landlord/tenant matters, but may also provide advice, counsel and limited services over the phone. The range of volunteer opportunities available allows volunteers with a limited schedule to participate and assist clients. The project's phone-based services have reduced LSHV's high call volume and freed up staff to address other client needs. The creation of video trainings has streamlined training and enhanced recruitment. The project's success has resulted in new partnerships with 13 large NYC-based global and regional law firms. These partnerships allow LSHV to recruit and train cohorts of litigation associates to take housing and eviction defense cases for full representation, which affords associates with an early-career opportunity to get courtroom experience. Dedicated LSHV housing law attorneys provide on-call weekly assistance to volunteers, and courts ensure tenants have ample time to obtain representation through the project.

Tenants represented by the project's pro bono attorneys had **over a 90% chance of delaying or avoiding eviction**. Over two years (2018-2020), volunteer attorneys provided over 1,000 hours of free legal services to more than 221 individuals and families.<sup>20</sup>



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Since its launch in October 2019, this project has closed 76% of its cases; over 80% are full representation. **Ninety-eight percent of full representation cases closed were resolved with outcomes favorable to the client.**<sup>21</sup>

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### The Eviction Defense Project

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The **Eviction Defense Project (EDP)**, piloted in 2019, utilizes a practice group approach to effectively funnel Pine Tree Legal Assistance's (PTLA) in-house expertise to train and mentor volunteers with forcible entry and detainer (FED) proceedings, Section 8 vouchers and other housing subsidy issues in the Lewiston and Portland areas. PTLA collaborates with law firms, individual practitioners, the Maine State Bar Association and other stakeholders on coordination, networking and outreach. The eviction defense training includes a panel of experienced attorneys who present an overview of landlord tenant laws, common defenses, court procedures and several hypotheticals. Volunteers receive at least two- and a half free CLE credit hours for participating. In exchange, they agree to accept one full representation case within the year or join a small cohort of pro bono attorneys who consider pro bono eviction referrals on a biweekly to monthly basis. Volunteers receive malpractice insurance, structured support and mentorship from dedicated PTLA staff through weekly contact. The small, informal office hours cover broader issues impacting clients' lives, including poverty, poor housing conditions and disabilities, which in turn often inspires volunteers to achieve more for clients. PTLA's staffing choices have allowed the organization to develop systems for EDP that are fully integrated into PTLA's intake and case acceptance processes. It also enables EDP to make a significant investment in developing a range of volunteers, from newly admitted to retired attorneys.

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### The Housing Law Program

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Since early 2000, the Volunteer Lawyers Network (VLN) **Housing Law Program** has worked in partnership with other legal service organizations to operate a legal clinic at the housing court in Hennepin County. VLN's Housing Program has expanded to include volunteers providing services through phone clinics, housing court clinics and full representation in eviction, record sealing and rent escrow cases in Hennepin, Ramsey and Anoka counties. The variety of opportunities increases volunteer participation and the number of tenants served at multiple stages of the eviction process. VLN has partnered with local legal aid organizations and other housing court service providers to develop case management and triaging systems that ensure consistent services for clients. The clinics have monthly "service providers" meetings with court staff, lawyers/volunteers, financial experts and mediators to discuss updates, share progress and problem-solve. Dedicated VLN staff are on-site at the clinics to conduct intake, provide consultation and advice to volunteers and serve as backup attorneys for advice services to keep potential clients from waiting. "Shadowing" experienced attorneys supports volunteers apprehensive or unfamiliar with the process. Volunteers receive a comprehensive set of training videos, seminars and materials to support them in representing tenants and understanding the complex nature of housing laws. Many of the trainings are eligible for at least one CLE credit.



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From 2017-2020, over 6,500 housing services were provided with private landlord/tenant issues making up 77% of all cases.<sup>22</sup> Through a study, VLN and its Legal Aid partner saw **96% of fully and 83% of limited represented tenants win or settle their cases** (those *without* legal services won or settled 62% of time).<sup>23</sup>



### Challenges to Implementing Pro Bono Eviction Defense Projects

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Organizations must address a unique set of obstacles to implement an effective pro bono eviction defense project. The pandemic has exacerbated these hurdles. The projects profiled above successfully addressed many of these challenges.

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#### SPECIALIZATION

Although the policies and procedures that govern evictions vary widely across jurisdictions, all are complex and require expertise that many volunteers lack. Additionally, many lawyers and other volunteers are not litigators in their regular jobs, so they may feel uncomfortable representing a tenant in court. These factors create more demand for pro bono volunteers than work on other legal issues.

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#### TIMING

It is essential to have a cadre of skilled volunteers ready to quickly respond to tenants' legal needs because in most jurisdictions the eviction process moves incredibly fast.<sup>24</sup>

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#### EMOTIONAL STRESSORS

Low-income families facing housing instability and eviction are under tremendous stress. Working with clients in eviction proceedings requires a high level of interpersonal skills from volunteers, including patience, humility, responsiveness and connection with clients and client communities.

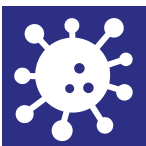
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#### INTENSIVE VOLUNTEER SUPPORT

Recruitment, retention and support of volunteers for eviction work is resource-intensive and requires cultivation over time. In-person contact at events and hands-on training and volunteer development is time consuming but one of the most effective means to secure reliable and experienced volunteers.

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#### COVID-19

Eviction moratoria extensions and court implementation of virtual hearings made fast-moving processes unpredictable and more time-consuming for all parties. A simple limited scope engagement for a pro bono attorney can now stretch over weeks. The move from in-person events to a virtual or socially distanced environment has impacted the recruitment and retention of existing volunteers, and the ability to stay in touch with clients throughout their case. Many pro bono volunteers are also coping with the prolonged effects of the pandemic in their personal and professional lives, limiting their ability to volunteer and willingness to do so in a stressful area of practice. The competition for volunteers has also intensified as new crises have emerged.

### Conclusion: The Need for Pro Bono

### An effective pro bono eviction defense program is tenant-centered.

Addressing the scope of the evictions crisis requires immediate resources and a sense of urgency for long-term change. Effective and tenant-centered pro bono eviction defense programs are a critical resource in addressing the unmet legal needs surrounding the eviction crisis in the United States. Typically, they offer a range of services, ensure clients can access those services and use evaluation to continuously improve. These well-designed services are made possible by a pool of well-trained and well-supported volunteers. The volunteers are engaged at every stage of the eviction process, delivering a range of services from limited to extensive types of service. Partnerships strengthen the model and make it sustainable, such as law schools and law firms that produce volunteers or courts that streamline schedules and processes for eviction defense cases.

Each community will face different opportunities and challenges in building an effective pro bono program. The case studies above illustrate the variations in effective implementation. Legal aid programs can and should leverage volunteers and partnerships to meet the increased demand for eviction assistance.

### Acknowledgements

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### Suggested Citation

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### Endnotes

- 1 Garland, G. M. (2021). *Statement of ABA President Reginald M. Turner Re : ABA appeals to legal community on evictions crisis*. 28–29.
- 2 Legal Services Corporation (2017). *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, D.C. Retrieved from <https://lsc-live.app.box.com/s/6x4wbh5d2gqxwy0v094os1x2k6a39q74>.
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- 4 LSC defines the justice gap as the difference between the civil legal needs of low-income Americans and the resources available to meet those needs. Legal Services Corporation (2017). *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, D.C. Retrieved from <https://lsc-live.app.box.com/s/6x4wbh5d2gqxwy0v094os1x2k6a39q74>.
- 5 Chambliss, E., Dillard, W., & Honeycutt, H. (2021). *Measuring South Carolina's Justice Gap*. Retrieved from <https://www.scaccesstojustice.org/the-sc-justice-gap>.
- 6 Hannaford-Agor, P., Graves, S., & Spacek Miller, S. (2015). *The Landscape of Civil Litigation in State Courts*. National Center for State Courts. Retrieved from [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/13376/civiljusticereport-2015.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf). Unpublished data provided to LSC.
- 7 Representation rates on eviction cases in the following states highlight these imbalances: in Alaska, 58% of landlords vs. 1% of tenants are represented; in Arkansas, 81% of landlords vs. 2%

of tenants are represented; in Hawaii, 68% of landlords vs. 1% of tenants are represented; in Massachusetts, 81% of landlords vs. 9% of tenants are represented; in North Dakota, 90% of landlords vs. 1% of tenants are represented; in Utah, 89% of landlords vs. 5% of tenants are represented. Legal Services Corporation, *Fiscal Year 2022 Budget Request*, Table 5: Represented Parties in State and County Courts. Legal Services Corporation (2021). LSC FY22 Budget Request. Retrieved from <https://www.lsc.gov/our-impact/publications/budget-requests/2022-budget-request>.

8 See Consolidated Appropriations Act, FY 2020, P.L. 116-93. <https://www.congress.gov/bills/116th-congress/house-bill/1158/text>.

9 In 2020, for example, 14,980 pro bono attorneys worked with LSC grantees to close civil legal cases, along with hundreds of law students and paralegals. Lim., L., Layton, J., Abdelhadi, S., Bernstein, D., Ahmed, R. (2021). LSC By the Numbers: The Data Underlying Legal Aid Programs (2020). Legal Services Corporation, Washington, D.C. Retrieved from <https://lsc-live.app.box.com/s/amlce75n3jdgjgw6omzjewm61eghavzt/file/872174451862>.

10 Compared to housing cases, pro bono attorneys more often provide representation for family, criminal, estate planning/probate, immigration, non-profit organization, contract, and real estate cases. American Bar Association. (2018). Supporting Justice: A Fourth Report on the Pro Bono Work of America's Lawyers, Figure 10. Retrieved from [https://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/lsc\\_pb\\_supporting\\_justice\\_iv\\_final.pdf](https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lsc_pb_supporting_justice_iv_final.pdf). Furthermore, in 2020, only 5,235 of 55,787 cases closed by private attorneys for LSC grantees concerned landlord/tenant issues. Meanwhile, more housing-related cases were closed by the staff of LSC grantees than any other legal problem category (32%). Private attorneys were more likely to work on family law cases than housing cases (43% versus 15% of cases, respectively). The lower attention to eviction cases is even more stark considering that "Housing" includes not only eviction but also federally subsidized and public housing, mobile homes, mortgage foreclosures, and other issues. Lim., L., Layton, J., Abdelhadi, S., Bernstein, D., Ahmed, R. (2021). LSC By the Numbers: The Data Underlying Legal Aid Programs (2020). Legal Services Corporation, Washington, D.C. Retrieved from <https://lsc-live.app.box.com/s/amlce75n3jdgjgw6omzjewm61eghavzt/file/872174451862>.

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landlord/tenant cases closed by LSC grantees with help of private attorneys were limited to counsel and advice, and another 9% on other limited services. Lim., L., Layton, J., Abdelhadi, S., Bernstein, D., Ahmed, R. (2021). LSC By the Numbers: The Data Underlying Legal Aid Programs (2020). Legal Services Corporation, Washington, D.C. Retrieved from <https://lsc-live.app.box.com/s/amlce75n3jdgjgw6omzjewm61eghavzt/file/872174451862>.

13 On January 17, 2014, the President of the United States signed P.L. 113-76, the Consolidated Appropriations Act of 2014, which included \$2.5 million for LSC to establish the Pro Bono Innovation Fund. The fund has received increased funding almost every year since its creation. In the last appropriation, the fund received \$4.75 million to fund new ideas for engaging pro bono assistance and strengthen existing pro bono programs.

14 Legal Action of Wisconsin. (2019, January 16). *Pro Bono Innovation Fund Final Report*. Archives of the Legal Services Corporation. Washington, D.C.

15 Desmond, M. (2016). *Evicted: Poverty and Profit in the American City*. Penguin Books.

16 Christensen, K. & Fereiburger, T. (2018, December 17). *Eviction Defense Project Evaluation*. Archives of the Legal Services Corporation. Washington, D.C.

17 Legal Services Vermont. (2021, February 8). *Pro Bono Innovation Fund Final Report*. Archives of the Legal Services Corporation. Washington D.C.

18 Kelsey, A., Wang, W., and Kolodinsky, J. (2021, January). *An Evaluation of the Rutland County Pro Bono Innovation Clinic 2016-2019*. Archives of the Legal Services Corporation. Washington, D.C.

19 Continuing legal education (CLE) is continuing professional development and education for attorneys after initial admission to the bar that may be mandatory in some jurisdictions.

20 Legal Services of the Hudson Valley. (2020, November 30). *Pro Bono Innovation Fund Final Report*. Archives of the Legal Services Corporation. Washington, D.C.

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22 Volunteer Lawyers Network. (2021). *Annual Reports*. Retrieved from <https://www.vlnmn.org/about-vln/annual-reports>.

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