

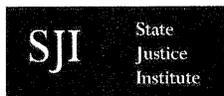


# **Self-Represented Litigation Network**

## **Tour Guide**

### **A Self-Guided Tour of Your Courthouse from the Perspective of a Self- Represented Litigant**

**December 2007**



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## Part A. Introduction to the Tour Guide

This **Tour Guide** is provided to allow either court employees or outside observers to look at a courthouse and court processes from the point of view of a self-represented litigant. The **Tour Guide** can be used by judges or court staff, by volunteers, or by other outside observers enlisted to help the court obtain useful observations about the courthouse, the services provided by court personnel, and courtroom procedures.

There are several different ways to observe a court.

The **Court Observer** comes into the court and attempts to obtain information that a self-represented litigant would need. Ideally, the Court Observer is not a sophisticated court user. The Court Observer provides the court with objective information concerning the ease of getting to and into the courthouse, the ease of navigating within the courthouse, and the availability of information needed by a self-represented litigant.

The **Process Observer** watches actual court proceedings as they occur. The Process Observer is a sophisticated court user. The Process Observer attends court proceedings and, with permission of the court and the parties, talks with self-represented litigants following those proceedings and provides the court with information concerning the ability of self-represented litigants to participate successfully in court hearings and trials.

A court may wish to use either or both of these processes depending on the issues it wishes to address and the resources at its disposal.

These processes may be used in lieu of, or to supplement, other information gathering **Tools** provided by the Self-Represented Litigation Network. Alternatives include:

- **Surveys** of court users to gather data from relatively larger numbers of court users on a limited set of questions.
- **Focus groups** to bring together a selected group of self-represented litigants for a discussion of their court experience.
- **Interviews** of self-represented litigants to obtain in-depth information from individual litigants.

The **Guide to Self Assessment of Court Programs to Assist Self-Represented Litigants** describes these alternative information gathering processes and the strengths and limitations of each.

## ***1. Court Observer***

A court can use the Court Observer process in three different ways. Each has its own advantages and disadvantages.

- a. Have an outside observer come to the court and see the court as an outsider would, similar to a restaurant taster or "secret shopper." The Court Observer could be a community volunteer, a graduate student from a nearby college or university, or a person recruited by a temporary services employer; s/he would not be a law student or anyone else with familiarity with the law or court proceedings. S/he would not be identified to court staff. This approach ensures that court staff would not alter their behavior in interacting with the Court Observer. In addition, the observer would not be influenced by previous experience with the court or with court processes.
- b. Have a judge or court administrator serve as the Court Observer. A court leader may gain a great deal of insight from conducting a tour of his or her own courthouse. S/he may experience the personal impact of the courthouse on self-represented litigants and may be motivated by the experience to make significant changes. There is no greater motivator than personal experience. On the other hand, court staff will respond differently to a judge or administrator than they would to a stranger. And a judge or administrator may not even observe barriers that may exist for uninitiated members of the public in an environment that is so familiar to him or her. For instance, a judge familiar with the layout of the courthouse may not even perceive the inadequacy of signage for a layperson.
- c. Have a judge or court administrator serve as a Court Observer in a nearby court – a similar court within the same state or in a nearby state. Obtaining reimbursement for travel expenses is much easier if the travel is within state. However, if the court is very large, it may be necessary to go to a neighboring state to find a courthouse of comparable size. Touring a different court eliminates the drawbacks of touring one's own court – the likelihood that court

staff will deal differently with the observer and that the observer will not perceive issues that would affect self-represented litigants because of his or her familiarity with the facility and its processes. Of course, the Court Observers would not be gathering information on their own court – the reason for their undertaking this process. But the tour of another facility could sensitize the judge or administrator to the issues facing self-represented litigants, they might observe useful practices in the court they visited, and they would bring home a list of issues and questions to investigate about their own facility. They might then conduct a Court Observer tour of their own facility.

There are limitations to the information that can be obtained through the Court Observer process. The Court Observer is not an actual litigant and will not be able to obtain information on:

- the ease of filing a document;
- the ease of serving a document; or
- the ease of appearing in court as a litigant.

The Court Observer can give feedback on how easy it is to use the court's website, to get to the courthouse, to navigate the courthouse, to find resources and how well the front-line staff provide general information to the public.

## ***2. Process Observer***

The Process Observer sits in on court proceedings and speaks with the litigants following them. The purpose of the observations and interviews is to document for the court the problems encountered by self-represented litigants in the courtroom and in other court proceedings (such as assistance from self help program staff, mediation sessions, or settlement conferences). A court can recruit a lawyer, law professor, court consultant, or staff person from another court – someone very familiar with courtroom procedures and legal issues – to observe actual court proceedings involving self-represented litigants and to interview them following the proceeding. The court will have to authorize the Process Observer to be present in non-public proceedings; in these situations the judge, court staff, or Process Observer should also obtain the consent of the litigants to the Process Observer's presence.

As with the Court Observer process, a judge or court staff member can serve as the Process Observer. The advantages and disadvantages are similar to those affecting the Court Observer. The impact on a judge or court staff member of observing court proceedings from the point of view of a self-represented may be significant. A judge or court staff member can complete both the Court and Process Observer segments of the process – eliminating the need to find two different persons to complete the two different observations. On the other hand, court personnel may alter their performance more in the presence of someone from the court than from the presence of an outsider and a judge or court staff member may not perceive problems that may exist because of their familiarity with the court, its surroundings, and its practices. The alternative of having judges and court staff observe another court of similar size is also a viable approach for the Process Observation. Having the director of the court's self help program serve as a Process Observer may prove very helpful to her or him in helping to shape or refine the services offered by the program. A court staff person should not discuss a court experience with the litigants following a hearing or other court event in order to avoid the possibility of *ex parte* communications.

The Process Observer should attend and observe a sample of court proceedings of different types, observing two or three examples of each type of matter. The Process Observer is a silent observer in the various court processes and – if the Process Observer is not a court employee – attempts to talk with the litigants following the proceeding, asking them about specific events that occurred during the proceeding and open-ended questions to determine whether they understood the proceeding, how they felt about it, and specific problems they may have encountered.

## **Part B. The Court Observer**

The Court Observer – whether a true outsider or a judge or court staff member putting him or herself into the role of an outsider – observes the court as an outsider would, similar to a restaurant taster or “secret shopper.” This person can give feedback on how easy it is get to the courthouse, to navigate the courthouse, and to find resources. They can also report on how the front-line staff works to provide general information to the public.

## **1. Selecting the Court Observer**

Unless the observation is to be conducted by a judge or court staff member, the court should select a person who will not stand out at the court and who has no special knowledge concerning the court or court proceedings. You are looking for a “fresh set of eyes.” It is very advantageous to use a Court Observer who speaks fluently both English and a foreign language frequently spoken in the local community so that s/he can attempt to gain information as a non-English speaker as well as an English speaker.

The materials that follow are based on a commonly occurring scenario – a person contemplating initiating his or her own divorce. If the court wants to find out information concerning other aspects of a court’s services to self-represented litigants (such as small claims or landlord/tenant matters) the court should modify the materials to apply to that type of proceeding. The Court Observer will be trying to obtain basic information about how to file for divorce.

As mentioned above, it is possible for court staff to be the Court Observer assuming that the observer is able to set aside his or her own viewpoint as an employee within the system and to observe the court as a litigant would. Much of the information (about getting to the court, for instance) is not affected by the observer’s identity. The observer should behave as a member of the public – using public parking or public transportation and going through the security screening process rather than using staff parking and building entry privileges. If the observer is from the court, s/he should not pretend to be a litigant or potential litigant but can ask questions hypothetically, e.g., “Assuming I do not speak English, how do I obtain information about the grounds for divorce.” Alternatively, the Court Observer can watch real litigants as they navigate the court system.

## **2. Logistical information**

The self assessment team should provide the Court Observer with minimal information about the process – only the name and case number of a real case for which the litigant is to obtain information.

The team should tell the Court Observer to assemble information on a number of issues so that s/he will be credible at the courthouse:

- the name and original name of the spouse

- whether the spouses are currently separated and, if so, the date of separation
- the date of the marriage
- how long they have lived in the county
- the names, gender and birthdates of any children
- the place of residence, street address, whether it is owned or leased, whether it belonged to one of the spouses before the marriage or was purchased during the marriage, and the current equity in the property
- the nature of employment and income of both spouses
- whether the children have child care and its costs
- whether the children have health insurance and, if so, how it is provided (by the mother's or father's insurance)
- whether there are retirement plans or investments for either or both spouses
- roughly how much the couple have in their checking and savings accounts and the amount of their joint debt.

### ***3. Observation Worksheet***

The observer should be provided with a copy of the **Court Observation Worksheet**, which is **Part C** of this **Tour Guide**. If any part of the worksheet is not applicable to your court, identify those sections as not applicable for the Court Observer or modify them appropriately.

### ***4. Reporting Back***

You should discuss with the Court Observer how you want the observer to report back to you. We suggest that the observer meet with the team of people working on the self assessment immediately following the visit and discuss his or her findings with the team. The team should initially treat the conversation as a "listening session" and only ask questions to hear more from the observer, rather than to have a dialog with the observer. You want his or her unbiased, unedited comments. The team can then ask questions to explore further with the Court Observer his or her experiences and possible changes to court operations that might make them more self-represented litigant-friendly. The self assessment team can discuss their reactions to the observations of the Court Observer after the report has been given.

Some of the concepts of planning a **Focus Group**<sup>1</sup> are helpful here. During the debrief, ask open ended questions that are neutral so as not to lead the Court Observer into answering a question in any one way. The questions should allow the self assessment team to obtain a full understanding of the observations. If the court uses several Court Observers, the team might conduct a focus group with all the observers to get their observations at one time. One member of the self assessment team could act as the facilitator, and the other team members could listen to the group conversation. This can be a particularly effective way to find out whether Court Observers got different answers to the same questions.

The court should be as interested in the Court Observer's emotional reactions as in the facts that s/he reports. For example, it would be really helpful to know that the observer was frustrated by the time s/he got through security and felt confused. The reaction of the Court Observer is likely to be similar to that of self-represented litigants and may explain the court clerk's observation that litigants are frequently already irritated when they reach the front counter.

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<sup>1</sup> A **Guideline for the Use of Focus Groups** is one of the tools provided to courts for conducting self assessments

## Part C. Court Observer Worksheet

The following are guidelines for the Court Observer to follow. The form is created to provide places for the Court Observer to easily record notes on his or her reactions or observations.

### **1. Learn your Court Observer identity**

As you take on your role as Court Observer, we are asking you to put yourself in the shoes of a self-represented litigant. The court is interested in your reactions as a person who wants an issue of personal importance resolved. The Court Observer should memorize all the items of information that an ordinary person should know off the top of their heads.

### **2. Locate information on the court**

Obtain the following information regarding the court. You should first try to find it on the Internet, and then by telephone. If you speak a second language, try to obtain the information first in English and then in the second language.

Question or Task	Answer	Source of Information
What is the address of the courthouse?		
What is its telephone number for general court information?		
Get a map of the area showing where the courthouse is located.		
What are the court's hours of operation?		
Where can you park near the courthouse?		
How can you get to the courthouse using public		

Question or Task	Answer	Source of Information
transportation?		
What should you wear when you come to the courthouse?		
What should you do if you don't speak English well?		

Questions:

- A. Were you successful in finding the court's website? Did it contain answers to these questions?
  
- B. How long did it take to find all of the information?
  
- C. What was your experience in completing this part of the assignment? Did you need to contact the court to find out the information? If so, how were you treated by the court personnel you encountered?
  
- D. Do you have a judgment or opinion of the court at this point? If so, what is it?
  
- E. Did you experience a difference when you were using your second language?

### **3. Locate information about a legal issue without going to the courthouse**

Find the answers to the following questions before going to the courthouse. First try to find the information on the court's website. If you do not find it there, try to find it on another website in your state. If that is not successful, try to obtain the information by telephone from the court. Finally, try to obtain the information from your local law library or public library.

<b>Question or Task</b>	<b>Answer</b>	<b>Source of Information</b>
What do you have to prove in order to obtain a divorce in your state?		
What is the name of the form you need to file to obtain a divorce?		
How much does it cost to file that document in the court?		
If you are poor, do you need to pay the filing fee?		
What do you have to file with the court in order not to pay the filing fee?		

Questions:

- A. Did you find an answer to every question? How easy was it to find? How long did it take you?
  
- B. Do you have a judgment or opinion of the court at this point that is different from, or consistent with, your earlier thinking about the case and the court?

C. Did you experience a difference when you were using your second language?

#### **4. Getting to the courthouse**

Travel to the courthouse so that you will arrive at the beginning of its ordinary hours of operation. Expect to be at the courthouse for at least half a day. If it is possible to get to the courthouse by public transportation, use it. Try to experience the court as the person whose identity you have been given, with the fears, concerns and emotions that would be true in that situation.

Dress casually. If you dress in a suit you will stand out. Take at least \$20 cash with you to the court in case you have to pay for forms or services.

<b>Question or Task</b>	<b>Answer</b>
How hard was it to find the courthouse?	
If you took public transportation, how easy was it to use?	
If you drove yourself, how hard was it to find parking?	
How hard was it to find parking for a half day?	
How much did it cost you for parking?	
How far did you have to walk from your parking place to the court?	
How long did it take you from the time you left your home to the time you got to the courthouse entrance?	
How long did it take you to get through security?	

Question or Task	Answer
Were there any special problems with security (for you or for others)?	
Did you observe any person with disabilities going through security? Did s/he experience special difficulties? (If not, ask a security person how the court would handle a person in a motorized wheelchair.)	

Questions:

- A. What are your general observations about getting to and into the courthouse?
  
- B. How did you feel by the time you got inside the courthouse?
  
- C. Did you experience a difference when you were using your second language?

### ***5. Navigating inside the courthouse***

Find out the following information once you are inside the courthouse.

Information or Task	Answer	Source of Information
How many courtrooms are in the courthouse?		
Actually find the courtroom with the number or letter in the middle (for instance, if there are eight		

Information or Task	Answer	Source of Information
courtrooms, find courtroom number 4 or D).		
Choose one judge and determine where you would find the time and the location of the hearing in that judge's court.		
Obtain a form to complete to file for divorce.		
Obtain a written set of instructions for completing the form to file for divorce.		
Find the office where you would file the completed form.		
Find out the fee for filing that document.		
Find out how many copies of the document you would have to file.		
Find out how to "serve" the document after you file it.		
Find an office where there are staff to help self-represented litigants.		
Obtain written instructions (or view video instructions) for representing yourself in the courtroom.		
Find a staff person who speaks Spanish.		
Find a restroom.		
Find a place to get a drink of water and a snack.		
Find a place to make a phone call.		
Find out where you would pay a traffic ticket.		
Find the office where you would pay a traffic ticket.		
Find a place to sit down and rest.		

Questions:

- A. Is security staff able to answer your questions about where to find particular types of information?
  
- B. Is there an information desk in the front lobby? If so, was the person there helpful in answering your questions?
  
- C. How effective is the signage once you enter the building? Was it easy to locate the courtroom?
  
- D. Was court staff courteous? Were they able to answer your questions?
  
- E. Did you see any obstacles that would be a problem if you were on crutches or in a wheelchair?
  
- F. Were there lines at any of the offices you visited? If you do not wait yourself, ask someone leaving each office how long s/he had to wait in line.
  
- G. Would you describe the courthouse as clean or dirty? Uncrowded or crowded? Quiet or loud?
  
- H. How much did you have to pay for the forms and services you obtained?

## **6. Overall Observations and Recommendations**

Please record your overall comments concerning your visit to the courthouse and any recommendations that you have for improving the experience of other persons using the court's services. Use the back of the page if necessary.

Thank you very much for your assistance to the court.

## **Part D. The Process Observer**

As noted previously, the purpose of the Process Observer is to document for the court the problems encountered by self-represented litigants in the courtroom and in other court proceedings (such as assistance from self help program staff, mediation sessions, or settlement conferences). The Process Observer gets permission both from the court and the litigants to observe and interview the parties. If the Process Observer is a court employee s/he does not interview the parties.

### ***1. Selecting the Process Observer***

A court can recruit a lawyer, law professor, court consultant, or staff person from another court – someone very familiar with courtroom procedures and legal issues – to observe actual court proceedings involving self-represented litigants and to interview the litigants following the proceedings. The court will have to authorize the Process Observer to be present in non-public proceedings; in these situations the judge, court staff, or Process Observer should also obtain the consent of the litigants to the Process Observer's presence.

The Process Observer could alternatively be a judge or court staff member of the court itself. If so, s/he should not attempt to interview litigants following the court proceedings. These interviews produce very valuable information; consequently, using an outside Process Observer is preferable.

### ***2. Logistical information***

There are two possible approaches to process observation – to have the Process Observer follow a few cases from beginning to end or to have him or her observe typical proceedings in different cases. While a court might get more comprehensive information from the former approach, it is usually impractical to conduct the observations in this manner. The Process Observer would have to be available over a long period of time and have a schedule sufficiently flexible to attend court whenever an event in one of the study cases occurred. The court would have to include the Process Observer as an interested party in the case so that s/he would receive notice of all events. The court would have to wait a long time for the results.

For this reason, it is preferable to conduct a series of Process Observations in different cases over a relatively short period of time.

The self assessment team will need to set up the times and events for the Process Observer to observe. This typically requires coordinating with court staff and program staff to set up observations. Court staff will have to identify the types of proceedings to be observed – such as hearings, trials, mediations, settlement conferences, or interactions with self help center personnel. They will then need to identify specific upcoming calendared events meeting the study criteria – e.g., will the Process Observer focus on contested matters, on matters in which one party is represented by counsel? The planning will have to take into account the Process Observer’s meeting with the litigant(s) following each event; planners should therefore anticipate that the Process Observer will be able to observe only every other or every third event on a calendar. With good coordination, the Process Observer can observe many events in a typical week at the court.

The court will also have to establish a process for obtaining the consent of the litigants to be observed if the matters are not public (e.g., mediations, settlement conferences, and interactions with self help center personnel). See **A Summary of Ethical Guidelines for Conducting Interviews and Data Collection**, an additional **Tool** provided as part of the self assessment materials, for guidance concerning informed consent. Researchers have found that litigants and their lawyers are usually willing to have their cases observed.

### ***3. Process Observer Observation Worksheet***

The Process Observer should be provided with a copy of the **Process Observation Worksheet**, which is **Part E** of the **Tour Guide**. If any part of the worksheet is not applicable to your court, identify those sections as not applicable for the Process Observer.

### ***4. Reporting Back***

The self assessment team may wish to follow the debriefing approach set forth above for Court Observers. Alternatively, the Process Observer might submit a written report on the proceedings observed. Process Observers should take great care not to report back to the court any specific information obtained from a litigant that might constitute an *ex parte*

communication or prejudice the litigant in the eyes of the court. Observations about litigants' understanding or reactions should be aggregated so that court self assessment staff will not be able to attribute particular comments or reactions to particular litigants.

## **Part E. Process Observation Worksheet**

The following observation form may be helpful for Process Observers when observing a case. If the event is a settlement conference, mediation or interaction with a self help center staff member, the person conducting the event will be the "officer." The observer should modify questions regarding court procedures as applicable to the situation.

### ***1. Observing individual proceedings***

It is useful to arrange in advance to discuss the matter with one or both litigants following the proceeding. It is preferable to speak with both litigants, if both were unrepresented. However, the Process Observer should proceed with the observation even if one or neither of the litigants is willing to discuss the matter afterwards. You can include your observations in section 2 of the observation form below – overall observations and recommendations.

If both are willing to speak with the Process Observer, it will be necessary to reach agreement concerning which will go first. Because these discussions should not take more than ten minutes, the issue is not of that great significance; however, it needs to be resolved – in advance if possible.

The first table is to be used by the Process Observer as the matter progresses to note events to discuss with the litigant(s) following the close of the proceeding.

Observation location: \_\_\_\_\_

Officer: \_\_\_\_\_

Type of proceeding: \_\_\_\_\_

Date: \_\_\_\_\_

Key Events to Discuss with Litigant(s)	Litigant(s) Comments

After the proceeding and the discussion with the parties, answer the following questions:

Question	Answer
Did the litigant obtain services from the court's self help center prior to this particular court proceeding?	
Were the litigants sufficiently prepared that the proceeding was able to take place?	

Question	Answer
Did the litigants understand the purpose of the court proceeding?	
Did the litigants understand the procedure to be followed?	
Did the litigants follow the ground rules?	
Did the litigants have realistic expectations concerning the outcome of the proceeding?	
Did the litigants understand the language used during the court proceeding?	
Did the litigants understand the court order or other outcome of the proceeding?	
Do the litigants understand the next step that needs to be taken?	
Was information obtained from the self help center useful to the litigants during the proceeding?	
Were the litigants able to able to "tell their story" – to articulate the facts and arguments they wanted the officer to take into account?	
Did they have the witnesses or evidence needed to present their cases?	
Did the litigants believe that they were able to present their positions during the proceeding?	

## **2. Overall observations and recommendations**

Please review your notes concerning all of the proceedings you observed and note your overall comments and any recommendations that you have for improving the experience of unrepresented persons using the court's services. Aggregate your observations so that you do not attribute particular reactions or comments to particular litigants.

Provide the court with feedback concerning each of the questions set forth in the observation form.

Did the litigant obtain services from the court's self help center prior to this particular court proceeding?

Were the litigants sufficiently prepared that the proceeding was able to take place?

Did the litigants understand the purpose of the court proceeding?

Did the litigants understand the procedure to be followed?

Did the litigants follow the ground rules?

Did the litigants have realistic expectations concerning the outcome of the proceeding?

Did the litigants understand the language used during the court proceeding?

Did the litigants understand the court order or other outcome of the proceeding?

Do the litigants understand the next step that needs to be taken?

Was information obtained from the self help center useful to the litigants during the proceeding?

Were the litigants able to able to "tell their story" – to articulate the facts and arguments they wanted the officer to take into account?

Did they have the witnesses or evidence needed to present their cases?

Did the litigants believe that they were able to present their positions during the proceeding?

Consider the following overall questions:

- A. What are the major obstacles or barriers that self-represented litigants encounter during court proceedings?
  
- B. What can court judicial officers and court staff do to eliminate those obstacles or give self-represented litigants the ability to surmount them?
  
- C. What other recommendations would you make to improve the experience of self-represented litigants in the court and the court's operations when self-represented litigants are present?

Thank you very much for your assistance to the court.