

# Self-Represented Litigation Network

## Materials

May, 2007

### Table of Contents

<b>Introductory Note</b>	<b>Page 1</b>
<b>Trends in Self-Represented Litigation Innovation</b>	<b>Page 2</b>
<b>SRLN Current Products, Services and Benefits for States &amp; Courts</b>	<b>Page 6</b>
<b>California Benchguide (Extract)</b>	<b>Page 8</b>
<b>Self Help Centers and Services, Hennepin County, MN</b>	<b>Page 22</b>
<b>Core Materials on Self-Represented Litigation</b>	<b>Page 28</b>
<b>Self-Represented Litigation Network Best Practices (Extract)</b>	<b>Page 35</b>

## **Introductory Note**

These materials have been specially collected and edited to develop and implement strategies for responding to the needs of the self-represented.

The first document, *Trends in Self-Represented Litigation Innovation* reviews the current state of the field, highlighting the range of innovations and their long term implications for courts.

*Self-Represented Litigation Network: Current Products, Services and Benefits for States and Courts*, summarizes the current activities of the Network, with a particular focus on those of immediate benefit to state courts.

The two chapter extract from the California *Benchguide*, just completed by the California Administrative Office of the Courts, with funding from the State Justice Institute, focuses on current knowledge of the needs of the self-represented, and the relationship between judicial neutrality and approaches to meeting those needs.

The next document is a description of the self-help services provided in Hennepin County, Minnesota.

The next document, *Core Materials on Self-Represented Litigation* is designed to be used by states and courts in finding the key resources to support their innovation programs.

The final document, *Best Practices in Court-Based Programs for the Self-Represented*, of which the table of contents and a sample section appears, has been drafted by the Self-Represented Litigation Network as a tool and guide for deployment of innovations. The hope is that the forty one Practices in this document and the detailed discussion of each practice will result in focused adoption of quality innovations that assist in the provision of meaningful access. The full document is online.

## Materials on Self-Represented Litigation

### **Trends in Self-Represented Litigation Innovation By Richard Zorza, Coordinator, Self-Represented Litigation Network\* (Modified from version appearing in *Court Trends 2007*)**

**Trends Statement:** Courts are responding to the increasing demands placed on them by self-represented litigants with an ever widening variety of services and innovations. These services are now more grounded in a detailed understanding of the demographics and needs of the self-represented. It is becoming clear that these changes benefit judges, court staff, attorneys, and both represented and self-represented litigants and improve public trust and confidence in the courts.

#### **What Is the Emerging Perception of the Significance of the Issue of Self-Represented Litigation?**

Court leaders from throughout the country are coming to recognize that self-represented litigants are a large and important part of the customer base for the courts. Further, they have come to see that innovations in practices, procedures, and programs can demonstrably improve both the functioning and reputations of their courts, and that attention to self-represented litigation issues serves the interests of all court users, judges, and staff.

#### **What Services for the Self-Represented Are Becoming Standard?**

The recently published *Directory of Court-Based Self Help Programs* found over 130 programs throughout the country.<sup>1</sup> There is a huge variety of services. Many centers and states routinely provide broad ranges of information resources, and many now provide training for judges in how best to facilitate access for the self-represented. Some courts, such as Utah and Idaho, provide or are planning to provide electronic document-assembly services, while others provide clinics and individual informational services. The broad spread of these services has been greatly facilitated by guidelines, protocols, and codes of ethics governing the appropriate role of court staff in providing informational assistance.<sup>2</sup> The central point of these often-detailed documents is to maintain neutrality and the appearance of neutrality. All the customer surveys of the users of these services show overwhelming levels of satisfaction. Surveys of court personnel support the theory that these services also improve court efficiency and operations.<sup>3</sup>

#### **Is the Judicial View of the Self-Represented Changing?**

In parallel with court-based innovations that help people prepare for their appearances have been equally dramatic changes in the way judges think about the way they handle such cases. Led by reports from the American Judicature Society, the Conference of Chief Justices/Conference of State Court Administrators Joint Resolution of 2002,<sup>4</sup> and, more recently, activity in the American Bar Association's Joint Commission on Evaluation of the Model Code of Judicial Conduct, and reflected in significant academic writing and a growing number of state and national training programs, a very significant change in judicial attitudes is taking place.<sup>5</sup>

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\* Thanks to Bonnie Rose Hough, Esq., of the Center for Children, Families and the Courts of the California Administrative Office of the Courts, and Kathy Mays Coleman, of the Of Counsel Program at the National Center for State Courts, for their suggestions.

<sup>1</sup> Accessible online at <http://www.ncsconline.org/WC/Publications/ProSe/contents.htm>

<sup>2</sup> E.g., Judicial Council of California, Administrative Office of the Courts, *May I Help You? Legal Advice Versus Legal Information: A Resource Guide for Court Clerks* (2003)

<sup>3</sup> For a summary, see "Framing the Issues," in *The Future of Self-Represented Litigation: Report from the 2005 Summit* (Williamsburg, VA: National Center for State Courts, 2005), p. 19

[http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfReplLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfReplLitfinalPub.pdf)

<sup>4</sup> Conference of Chief Justices and Conference of State Court Administrators, Resolution 31, "In Support of a Leadership Role for CCJ and COSCA in the Development, Implementation, and Coordination of Assistance Programs for Self-Represented Litigants" (2002), [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_CCJCOSCAResolution31Pub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_CCJCOSCAResolution31Pub.pdf)

<sup>5</sup> R. Albrecht et al., "Judicial Techniques for Cases Involving Self-Represented Litigants," *Judges Journal* 42, no. 1 (Winter 2003).

## Materials on Self-Represented Litigation

For decades, judges have felt inhibited from conducting their courtrooms in ways that increased access for those without lawyers for fear that any modification of the traditional aloof and disengaged style of judging would be viewed as nonneutral. Now, however, many judges are finding that there are nonprejudicial techniques for eliciting evidence that increase access to justice and facilitate just results, while maintaining both neutrality and the appearance of neutrality. While the detail of these techniques is beyond the scope of this article, it should be noted that they rely heavily on transparency (explaining what the judge is doing and why), on early engagement (explaining what will be done early in a hearing, rather than at the moment at which an action might appear to be result oriented), and on repeated public explanations regarding the goal of access.<sup>6</sup> It is anticipated that as the judicial conversation and judicial experimentation on these issues increases, that the pace of improvement will increase. As of this writing, the ABA Joint Commission on Evaluation of the Model Code of Judicial Conduct has proposed the addition of specific language to the comment to the rule governing judicial neutrality.<sup>7</sup> If this change is approved by the House of Delegates, it is expected to have a significant impact upon practice.

### **What Is the Impact on Court Operations Overall and on the Management View of Courts?**

It is increasingly understood that the way a court manages its self-represented litigation cases has a broad and major impact on every aspect of its operations. Frustrated litigants place heavy time and emotional demands on clerks and others who deal with the public. Judges and attorneys are similarly frustrated when calendars become clogged by unprepared litigants without appropriately completed paperwork.

More and more courts are therefore adapting the now well established and broadly accepted principles of case management to self-represented litigant cases. They recognize that ultimately it is the court, rather than counsel of the parties, who must take leadership in moving the caseload, they develop criteria and timelines for intervention, they focus attention on those cases most in need of resources, and they provide services in support of overcoming litigant blocks. Some states such as California now include attention to such self-represented litigation issues in their overall case management training. Some courts, such as Hennepin County, Minnesota, now place the director of self-help programs on the court's management team, recognizing that almost any significant decision is impacted by, and will have an impact on the self-represented.

### **Is There an Emerging National Response?—The Network on Self-Represented Litigation (SRLN)**

To assist courts in meeting this challenge, the National Center and a wide variety of partners have jointly established the National Self-Represented Litigation Network to promote and share best practices and innovation. The idea for the Network arose from the SJI-funded 2005 National Summit on Self-Represented Litigation, which brought together key stakeholders to identify such best practices and develop a broad agenda for future innovation.<sup>8</sup>

Launched in spring of 2006, the Self-Represented Litigation Network is hosted at the National Center for State Courts and operates under a Memorandum of Understanding that provides both flexibility and continuity. The Network currently receives support from the state court administrative offices of California and Maryland, the National Center, and the State Justice Institute.<sup>9</sup>

The Network currently operates through ten working groups:

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<sup>6</sup> R. Zorza, "The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear *Pro Se*: Causes, Solutions, Recommendations, and Implications," *Georgetown Journal of Legal Ethics* 17 (2004): 423

<sup>7</sup> Canon 2, Rule 2:06, Comment, American Bar Association, "Final Draft Report of the Joint Commission on Evaluation of Model Code of Judicial Conduct" (2005).

<sup>8</sup> *The Future of Self-Represented Litigation* (2005).

[http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfReplLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfReplLitfinalPub.pdf)

<sup>9</sup> The Web site of the Network is [www.srln.org](http://www.srln.org).

## Materials on Self-Represented Litigation

- Information and Outreach
- Research and Evaluation
- Funding
- Overall System Change
- Problem Assessment
- Best Practices in Self-Help Services
- Best Practices in Courtroom Services
- Best Practices in Judicial Education
- Best Practices in Discrete Task Representation (Unbundling)
- Best Practices in Forms, Document Assembly, and Electronic Filing

Each group is developing resources that will be shared through regional conferences on self-represented litigants, as well as the Web site. Almost 100 individuals are involved in one or more of these groups. Participation is welcomed. Those interested in joining the process should contact the coordinator, Richard Zorza, at [richard@zorza.net](mailto:richard@zorza.net).

### **What Is the Key Information-Sharing Resource?**

The National Center for State Courts, working with Pro Bono Net and a broad informal network of groups now operating with SRLN, launched [www.selfhelpsupport.org](http://www.selfhelpsupport.org), which now has over 1,700 members and includes over 1,200 individual online resources. This Web site, which also receives funding from the State Justice Institute, includes online webcasts of workshops, sample materials from self-help programs, training materials, sample job descriptions, guidelines for clerks, electronic document-assembly programs for self-represented litigants, research and evaluation reports, and other materials that allow courts to quickly establish or enhance services.

### **What Are the Early Products of the Network?**

The Network has recently published a *Directory of Court-Based Self Help Programs* with over 130 programs throughout the country. The directory documents a huge variety of services and methods of creating and funding programs. Contact information is available to allow for referrals and to facilitate the sharing of ideas. The Network also operates a mentoring project open to those involved in starting or improving services to the self-represented.

The Network has also published a manual on how to start a self-help center that uses volunteers and technology to help provide services. Focusing on technology-supported centers, it provides practical, step-by-step ways for courts to work with legal services, libraries, and other community partners to expand resources for the self-represented.

### **What Are the Important Judicial Education Tools Being Developed?**

The working group on Judicial Education is working with the California AOC on developing a bench guide for judicial officers on effectively handling cases with self-represented litigants.

This just completed bench guide builds on the experience of judges who have found that there are nonprejudicial techniques for eliciting evidence from all that increase access to justice, and facilitate just results, while maintaining both neutrality and the appearance of neutrality. Techniques include providing a general explanation of how the case will be heard and taking an active role in asking questions of the litigants.

Planning is underway for a national conference on judicial education and self-represented litigation. The goal is to produce a model curriculum for use in educational programs for new judges.

## Materials on Self-Represented Litigation

### **What Are the Important Research Developments and Planned Tools?**

The Network is focusing on, and the State Justice Institute is supporting, two major research/toolkit projects in 2006-07. The first will build a comprehensive set of self-evaluation tools for courts to assess their services and access-to-justice capacity for the self-represented. These tools will include surveys, focus-group tools, and a self-assessment instrument. The second will review videos of hearings to begin the process of developing a better understanding of how judges can improve courtroom communication. The match for both these projects is being provided by California and Maryland through their participation in the Self-Represented Litigation Network.

### **What Are the Emerging Additional Areas of Significant Interest?**

While there are many very valuable models for assisting the self-represented with court appearances and for helping judges to assist the self-represented with obtaining access in the courtroom, there are still relatively few models for how to support litigants in obtaining compliance with the orders that they do obtain. Nor do we know how best to structure proceedings to maximize the chance of the losing party being willing to comply.<sup>10</sup>

We are similarly in need of models and much better understanding of how self-help services can best identify the underlying needs of those who seek court services, and how they can then more effectively refer those litigants who need more intensive assistance or representation to those who can provide it. This problem is exacerbated by the lack of such resources in the community. Current thinking focuses on what is called a “continuum of services” that includes everything from limited informational help, to a Web site, to document-assembly assistance, to discrete task assistance from an attorney, to comprehensive representation when needed. Various courts are working on problem-assessment and intake systems to match cases to the most appropriate resources.

### **What Are the Implications of These Changes for Court and Judicial Leadership?**

Court and judicial leaders are faced every day with the consequences of the flood of self-represented litigants. What is being learned is that with focused attention from good managers committed to an access vision of the courts, the solutions are relatively simple, and less financially and managerially burdensome than might at first appear.

These solutions include the establishment of information-assistance programs to prepare litigants to present their cases, support for discrete task-representation programs to assist those for whom attorney assistance is critical, the use of aggressive case management techniques to identify and support those cases in need of assistance, training in judicial techniques that support access for litigants without lawyers, continued evaluation of the needs of litigants and the success of court programs in meeting those needs, services that support compliance with court orders, and close collaboration with other access-to-justice stakeholders.

Court and judicial leaders who embrace these solutions are finding higher public trust and confidence, more smoothly operating courts, and better relations with stakeholders and the public.

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<sup>10</sup> R. Zorza, “Changing the System so that Self-Represented Litigants Receive Compliance with Judgments and Orders: Where We Are and Where We Should Be Going,” *The Future of Self-Represented Litigation* (2005) [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf).

**Self-Represented Litigation Network  
Current Products, Services and Benefits for States and Courts  
February 2007**

[www.SelfHelpSupport.org](http://www.SelfHelpSupport.org)

- Only national source of information on self representation innovation
- 1,600 materials and 2,000 members continually updated and expanding

***Best Practices in Court-Based Programs for the Self-Represented***

- Forty one practices developed by six Network Working Groups
- Includes Concept, Attributes, and Issues for Exploration
- Critical to expanding and improving programs and collaborations

***“Case For” Advocacy Materials***

- Five focused short documents advocating for innovation in Self help Centers, Unbundling, Judicial Education, Forms, and Courtroom Services
- Effectively makes the innovation case for varied stakeholders – Judges, Administrators, Lawyers, and the public

**Directory of Self-Represented Litigation Programs**

- Over 130 programs listed nationally, with services, contact information, etc.
- Access-limited version also includes direct contact information and mentoring availability
- A critical tool for networking and finding models
- Now available online and in SJI libraries

**Networking and Mentoring Program**

- Connects innovators by subject area, need and jurisdiction type
- Now available by contacting NCSC

**Manual on Starting a Self Help Center**

- Detailed step by step guide, useful for expanding or starting a center
- Strong technology focus
- Now available on website and in SJI libraries

**Regional and National Conference Support**

- Three conferences held/supported in 2006
- Two planned for 2007
- Sessions at other national conferences, including Conference of Chief Justices and Equal Justice Conference

***Problem Assessment Working Paper***

- Problem Assessment is critical to a comprehensive assistance system
- Still largely unexplored, this paper starts the process
- Assists Courts and states conceptualize and integrate services
- Now available in working draft

## Materials on Self-Represented Litigation

### **Judicial Research Process Launch**

- Video of judicial communication, with expert hypothesis testing as to effective communication techniques
- Final product to include model video
- Research approach available upon request
- Additional participation welcomed

### **Judicial Conference, Curriculum and Bench Guide Planning Process**

- Conference planning has commenced for fall 2007 conference
- Approach is “Educate the educators”
- Vision is small state teams
- Customizable new judge curriculum will be product of process
- Customizable bench guide will be product of process
- Participation in planning process welcomed

### **Self Evaluation Tools Development Process Launch**

- Surveys, Tools, Focus Group Guide in preparation
- Additional participation welcomed

### **Networking and Support**

- Ten Working Groups provide ideas, support, networking, and products
- Best Practices, Research and Futures Clusters
- Welcome additional participation into Working Groups
- National Monthly Calls and Briefings

### ***Federal Funding Opportunities for Self-Represented Litigation Innovation Programs and Strategic Planning***

- Critical materials for expanding resources available to states and courts
- Additional ongoing research into strategy expanding federal resources
- Review of federal funding resources now available in early working draft

For Additional Information Contact:

www.Selfhelpsupport Project Director  
Madelynn Herman,  
[mherman@ncsc.dni.us](mailto:mherman@ncsc.dni.us)  
757-259-1549

Network Coordinator  
Richard Zorza  
[richard@zorza.net](mailto:richard@zorza.net)  
202-549-1128

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The Self-Represented Litigation Network was launched in April 2006. It is a broad national network of organizations, is hosted at the National Center for State Courts, and is funded by contracts and funding from the California and Maryland AOC and the State Justice Institute. Opinions are not necessarily those of the funders or members of the Network

# Handling Cases Involving Self-Represented Litigants

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A Benchguide for Judicial Officers

January 2007

(Chapters One and Two Only,  
reformatted)



ADMINISTRATIVE OFFICE  
OF THE COURTS

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CENTER FOR FAMILIES, CHILDREN  
& THE COURTS

# **Chapter One:**

## **Self-Represented Litigants: Who Are They and What Do They Face When They Come to Court?**

### **Introduction**

Many judges have expectations about who self-represented litigants are, why they do not have lawyers, what they want from the court, and how they will behave. These expectations play a powerful role in how the courts treat people who are representing themselves.

While many of these expectations come from experience, some may result from particularly dramatic or intense cases and may not reflect the complex reality of the millions who represent themselves in court each year.

Statistical surveys and court self-help centers have been critical for understanding this reality and for improving our response to the needs of such litigants.

This chapter provides background for judges on the issues set out in this benchguide.

## **I. Why Do Litigants Represent Themselves?**

Most self-represented litigants in civil cases give the following answers when asked why they do not have a lawyer:<sup>11</sup>

1. “I can’t afford a lawyer”; or
2. “My case is simple enough to handle on my own.”

These reasons for not having a lawyer reflect economic and social trends and are not likely to change in the near future.

More than 90 percent of the 450,000 people each year who use self-help programs in California earn less than \$2,000 per month. The majority are working and raising families. Given the high price of hiring a lawyer, even individuals with large incomes are likely to find the cost of counsel represents a substantial burden that can have long-term impacts on family financial stability.

Through 2012, the largest number of job openings will be in primarily low-wage occupations, such as retail salespersons, food preparation and service workers, and cashiers. In fact, 5 of the top 10 occupations expected to add the most jobs during this period pay a median hourly wage of less than \$10, equivalent to an annual salary of \$20,800 for full-time, year-round work. The result will be more, rather than fewer, self-represented litigants.

Legal services programs are unable to meet the need for representation. The State Bar reports that the ratio of poor people to legal aid attorneys in California is 10,000 to 1. Legal needs studies indicate that legal services programs are able to serve only 20 percent of the people needing help.

I am handling a case where the parties really need an attorney to help them out. They keep coming to court, and I keep telling them that they need a lawyer. I finally realized that the only way they’ll be able to get a lawyer is if I come up with the \$5,000 retainer.

—Family law judge

<sup>11</sup> Little systematic data is available for litigants who represent themselves in criminal court. Anecdotal information suggests that as many as 40 percent of misdemeanor defendants represent themselves in California—often to enter a plea. This is likely to vary depending on the availability of public defender services, and many of the suggestions in this guide will pertain to that group. However, the issues of felony or even misdemeanor cases where litigants are generally choosing to represent themselves, rather than have a public defender, are beyond the scope of this benchguide. While they represent a significant concern for judicial officers, they are a relatively small proportion of the millions of self-represented litigants. For additional assistance with these difficult cases, judicial officers are encouraged to review *CJER Benchguide 54: Right to Counsel Issues*; materials regarding *Pro Per Problems and Difficult Defendants* (May 2004), by Judge Jacqueline A. Conner of the Los Angeles Superior Court; and the “Pro Per Courtroom” chapter of *Developing Effective Practices in Criminal Caseload Management* (J. Greacen, 2004), a manual prepared for the Administrative Office of the Courts.

Court-based research and statistics also show that a small number of self-represented litigants could afford an attorney (possibly by making some significant sacrifice) but still choose not to use one. They are part of a larger do-it-yourself social movement to forgo various professional services, including real estate brokers, investment advisors, doctors, and lawyers.

It is important for judges to be aware that the “choice” not to have a lawyer is generally not a choice that litigants wish to make, but that litigants are trying to take care of problems in their lives in the best way that they can.

## **II. Barriers to Self-Represented Litigants in the Court System**

Despite the many efforts at improving access to the courts for the self-represented, they still face many barriers, not all of which are obvious to those who work in the courts.

### **A. The Barrier of Legal Language**

The specialized language of the courts, for example, can act as a barrier. To understand the impact of this barrier, it may be useful to reflect on experiences in hospitals. Hospital patients are often highly confused and intimidated by the many specialized terms that hospital staff use as shorthand. When used without explanation, these terms can be frightening to patients, who are at the mercy of the institution’s procedures. This is heightened by the fact that the underlying problem bringing them to the hospital is usually emotionally charged, and they are scared to be there in the first place.

Even when patients think that they understand what they are being told at the time, it’s easy to be confused later when they try to remember what their doctor said or what actions they were supposed to take.

The experience of self-represented litigants in our courthouses and courtrooms is often similar.

People representing themselves often find it extremely difficult to understand the words used in the courtroom, particularly when the judge and staff use Latin or French terms that lawyers rely on as legal shorthand. This is even more complicated for those who do not speak English as their first language and who come from different cultures.

An obvious example is “pro per,” an abbreviation for the Latin phrase “in propria persona,” meaning “appearing on his or her own behalf,” which is widely used in California trial courts. In fact, it has been said that “many pro pers do not even know that

that is what they are.” To avoid the confusing abbreviation, many judges and staff use “self-represented litigant.”

## **B. The Complexity of the Clerk’s Office**

Litigants often find themselves in court clerks’ offices that are confusing and crowded with lawyers and litigants wanting information and assistance with filling out forms, as well as performing the traditional filing tasks.

In many cases, clerks have in the past been explicitly trained to *never* answer any questions from the nonlawyer public. Such assistance has been perceived as violating the court’s neutrality or as the unauthorized practice of law. Litigants therefore frequently still find their paperwork being refused as inappropriate or incomplete, but are given no help to correct it, no explanation of the problem or how to fix it, or no referral to someone who could help.

Self-represented litigants are often confused about the status of their case, what their next step should be, what the court has ordered, or even how to deal with conflicting orders that they didn’t even know existed.

## **C. Problems With Service**

As every judge and attorney knows, to obtain a court order, not only must the litigant file a motion, but he or she—not the court—is also responsible for seeing that the papers are properly served on the opposing party. This often complex set of requirements has been a major obstacle to self-represented litigants and a major source of delay for the courts for several reasons.

1. The litigants may not understand that the court will not effect, or be responsible for, service.
2. The litigants may not understand that they cannot serve the papers themselves on the opposing party.
3. The litigants may not be able to physically locate the other party that they are required to serve, or to navigate the complex procedural alternatives available.
4. The litigants may not know that they must have a written proof of service form, filled out by the person who effected the service, and that that the written proof must be presented to the court before most orders can be made.
5. Litigants may fill out the required proof of service form incorrectly.

## Materials on Self-Represented Litigation

6. Often the litigants are unaware of the alternative service methods available, what those often highly complex alternatives require, or how to access and make use of them. (How many judges or lawyers have tried to summarize the laws governing service in a few simple sentences?)
7. When litigants appear for their hearing without having successfully accomplished effective service or without a completed proof of service, the case will be postponed until a later date or dismissed. This causes distress and hardship to litigants, delays their ability to enforce important rights, and takes up valuable time for both the litigants and the court.

### **D. Legal Requirements That Are Not Intuitive**

Most legal cases involve technical and sometimes superficially counterintuitive requirements that are confusing—even to lawyers with limited experience in a subject matter. For example, in family law, if there are financial issues of any kind involved, such as child or spousal support, the litigants are required to prepare detailed income and expense declarations prior to the court appearance. Frequently they are not aware of this requirement and fail to prepare the proper documents, which is likely to result in additional delays and frustration for all. In civil cases, defendants must serve an answer before they file it with the court. Some courts may require particular pleadings to be prepared on different colored forms or to comply with other local rules. These requirements are often tremendously frustrating for self-represented litigants.

### **E. Procedural Rules That Vary Between Types of Cases**

California procedural rules in family cases require the parties to request a hearing in order for the case to move forward. The court does not routinely schedule such hearings on its own initiative. Many self-represented litigants are completely unaware of this requirement, which is inconsistent with the way that most nonjudicial institutions function. This can be particularly confusing if litigants have had experience in other types of cases, such as juvenile dependency or domestic violence, in which the court takes a much more active role in setting hearings and managing the cases.

In a San Diego study on why self-represented litigants hadn't finished their divorce cases after five months, 60 percent of such litigants either did not realize that there was anything more that they had to do or just did not know what to do. Nearly 20 percent were waiting to hear from the court before doing anything more.<sup>12</sup>

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<sup>12</sup> J. Greacen, *Developing Effective Practices in Family Law Caseflow Management* (Administrative Office of the Court's Center for Families, Children & the Courts, 2005), p. 25.

## **F. Overcrowded Dockets**

All too often, cases with self-represented litigants are handled on highly crowded dockets. Time constraints and evidentiary issues can prevent litigants from communicating sufficiently, clearly, and comprehensively with the judge. Litigants often do not understand what information the judge needs to make a decision on a given issue and therefore often take court time asking judges and courtroom staff to explain legal terms and procedures to them. Frustration for both litigant and judge occurs when a self-represented party insists, often in good faith, on giving lengthy explanations about matters that he or she does not realize are irrelevant as a matter of law to the issue at hand.

## **G. Courts Often Do Not Prepare an Order After a Hearing**

Each time there is a hearing in a case where the judge makes an order, the order needs to be memorialized in writing. It is usually the attorney's responsibility to prepare the written order after hearing. Self-represented litigants often do not know that this is required, let alone how to prepare such orders in a manner acceptable to the court and to law enforcement. As a result, they leave without written orders to which they can refer, and the court's action is therefore effectively unenforceable. The lack of enforcement of the court's action undercuts the legitimacy of and confidence in the legal system.

Without a written order, it is extremely difficult for litigants to be fully aware of their rights and responsibilities arising from the court's decision. Additionally, lack of a written order leaves the court file with only an abbreviated minute order for the judge to refer to when reviewing the file for future hearings. This makes enforcement of these orders well-nigh impossible.

Because self-represented litigants do not realize that they are generally required to prepare a proposed judgment for the court's review and signature, there may be no order at all, or inaccurate or incomplete judgment paperwork will often be processed and returned repeatedly before final judgment is eventually, if ever, entered. Often, the lack of an order does not come to the court's attention until there is a crisis and the order must be enforced.

## **H. Cases Can Be Dismissed Because of Litigants' Failures to Perform Steps of Which They Had No Knowledge**

When self-represented litigants fail to take the necessary steps to complete their cases, the courts deem them abandoned and will dismiss such cases after several years, on the grounds of "lack of prosecution." As many as one-third of all family law files from the 1980s prepared for archiving in one California trial court lack a final judgment,<sup>13</sup> which

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<sup>13</sup> *Ibid.*

can obviously have serious and irreversible consequences for the litigants and their children.

### **I. Lack of Understanding of Orders and Judgments and How to Enforce Them**

Litigants often do not understand the terms of the court's orders and judgments. Without an attorney, they have no one to help them interpret those terms or their implications. Moreover, litigants often lack an understanding of the legal mechanisms for enforcing the terms of a court's judgment. Many expect the court to enforce its orders on its own. If the other party does not comply voluntarily, they are at a loss as to how to proceed.

### **J. No Right to Interpreters in Civil Cases**

Most courts are unable to offer interpreters in civil cases, and there is no legal right to an interpreter recognized in most civil cases. Thus limited-English-speaking litigants have neither an attorney nor an interpreter to help them navigate or understand the court system or understand and participate in hearings and trials. Family members and friends who may be enlisted to assist might or might not have adequate language skills, especially when it comes to legal terminology, or may have conflicts of interest that make their translation suspect. Judges find it extremely frustrating to hear a non-English-speaking litigant talk for one minute and have it translated as “no”; they find it troubling that they may be making rulings without having all the relevant information. Similarly, litigants who do not know what they or the other parties were ordered to do, or why they were ordered to do it, are likely to fail to comply with the order. They could then be violating a court order without intending to do so, with serious consequences.

## **Conclusion**

Generally, self-represented litigants do not choose to be without lawyers; they want to play by the rules, but they still face a wide and complicated variety of barriers to access.

This information should guide the approach of the courts, judges, and court staff as they seek to make sure that the system as a whole is accessible to all. The remaining chapters of this benchguide seek to serve that goal.

## Chapter Two:

# Expanding Access to the Court Without Compromising Neutrality

### Introduction

Some judges instinctively feel that involving themselves actively in a hearing or trial—as is often necessary if the judge is to obtain needed information from self-represented litigants—may cause one or more of the parties to the proceeding to perceive that the judge failed to maintain judicial neutrality. On the contrary, such active involvement is not only fully consistent with access to justice, and often required by it, but can enhance the court’s neutrality.<sup>14</sup>

The Court of Appeal has explicitly recognized the necessity for, and has approved, such judicial behavior:

We know the litigants, both plaintiffs and defendants, are unrepresented by counsel in the vast majority of cases—as was true here. We also know this fact influences how these hearings should be conducted—with the judge necessarily expected to play a far more active role in developing the facts, before then making the decision whether or not to issue the requested permanent protective order. In such a hearing, the judge cannot rely on the pro per litigants to know each of the procedural steps, to raise objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights.

*Ross v. Figueroa* (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d 289.

This evolving understanding also reflects the findings in the report by the National Center for State Courts, Trust and Confidence in the California Courts 2005, which found that attorneys were most often concerned with fairness in terms of the substantive legal outcomes of cases. Citizens’ views of the courts, however, are heavily influenced by their perceptions of the courts’ ability to deliver a fair process.<sup>15</sup>

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<sup>14</sup> The concepts in this chapter derive in significant part from those developed in R. Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality, When Parties Appear Pro Se*, 23 Georgetown Journal of Legal Ethics, 423 (2004).

<sup>15</sup> Attorneys, interestingly, are more concerned with the fairness of the *outcomes* of the cases than with the fairness of the process by which the outcomes are attained.

## **I. Substantive Justice**

While the public focuses heavily on procedural justice matters, it is imperative that concern for substantive justice be given equal attention in cases involving self-represented litigants.

To decide cases fairly, judges need facts, and in self-represented litigant cases, to get facts, judges often have to ask questions, modify procedure, and apply their common sense in the courtroom to create an environment in which all the relevant facts are brought out.

In short, judges have found as a practical matter that a formalized, noncommunicative role in dealing with cases involving self-represented litigants can lead to serious decision-making problems. Without the additional facts that active judicial involvement brings to light, judges are at risk of making wrong decisions.

## **II. Procedural Justice**

Over the last 30 years, research has repeatedly established that when litigants perceive that a decision-making process is fair, they are more likely to be satisfied with the outcome.<sup>16</sup>

Perceptions of the importance of fairness do not appear to be related to any particular cultural background or other personal characteristic of the litigant, but are universal.<sup>17</sup>

The elements of “procedural justice” that have been established in the research literature closely mirror broad concepts deeply familiar to and heavily ingrained in lawyers and judges from their legal training in procedure and due process.

### **A. “Voice”—the Opportunity to Be Heard**

For litigants to feel that a process is fair, they must feel that they have had a “voice” in the process. They need an opportunity to be heard by the decision-maker. For litigants to believe that they have had an opportunity to participate in the decision-making process, two things must occur:<sup>18</sup>

1. There must be an opportunity for input into the decision-making process; and,

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<sup>16</sup> C. Thibaut and L. Walker, *Procedural Justice: A Psychological Analysis* (Hillsdale, NJ: Lawrence Erlbaum, 1975).

<sup>17</sup> T. Tyler, *What Is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures* (1988) 22 *Law & Soc’y Rev.* 103.

<sup>18</sup> *Cal. Benchguide 54, supra*; Connor, *Pro Per Problems and Difficult Defendants, supra*; “Pro Per Courtroom,” *supra*.

## Materials on Self-Represented Litigation

2. This input must have some effect on the decision-maker. If litigants perceive that their contribution is not heard or considered, then the “voice” is lost.

When self-represented litigants are stumbling in their stories, confused by the foundational requirements of some forms of evidence and unable to get relevant facts before the court, they do not have a genuine voice in their cases. California judges have long been asking questions of the litigants themselves, following up when those questions are answered inadequately, summarizing the law when that is helpful to move the case forward, and answering the parties’ questions about the proceedings when such answers are helpful in promoting understanding and compliance.

### **B. Neutrality**

Litigants expect judges to be honest and impartial decision-makers who base decisions on facts and law. This includes the ability to suppress any bias the judge may have and to avoid showing favoritism.<sup>19</sup> It also involves consistency such that there should be similar treatment across people and time.<sup>20</sup>

Judges always need to be diligent about neutrality issues when interacting with self-represented litigants, just as they are with attorneys; however, the goal is to avoid prejudice and bias—not to avoid communication. Communication between judges and the participants in hearings, particularly hearings without juries, is critical. The ability to conduct impartial and neutral communications comfortably with all courtroom participants is a huge benefit for any judge hearing large numbers of cases involving self-represented litigants.

Conversely, when a judge feels the need to restrict such communication, he or she may risk seriously impeding one or the other side of a self-represented litigant case from adequately presenting its position, thereby creating the appearance of bias and limiting the facts on which the court can base its decision. For example, a judge may hesitate to inform a party that for a document to be considered, a proper foundation must be laid, for fear that giving the litigant this information will be seen as taking sides. Or the judge may hold back from pursuing a line of questioning, even if the answers would provide information needed to decide the case fairly, to prevent the appearance of trying to help the litigant provide the “right” answer. In either case, lack of communication from the judge has potentially hampered one side of the case and inhibited the court’s ability to base its decision on the law and the facts.

As shown in detail in the discussion in chapter 3, both the California Code of Judicial Ethics and the American Bar Association’s Model Code of Judicial Conduct encourage proper unbiased judicial communication that promotes high-quality decision making.

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<sup>19</sup> T. Tyler, “The Psychology of Procedural Justice: A Test of the Group-Value Model” (1990) 57(5) *Journal of Personality and Social Psychology* 830–838.

<sup>20</sup> G. S. Leventhal, “What Should Be Done with Equity Theory?” in *Social Exchange: Advances in Theory and Research* (K. J. Gergen, M. S. Greenberg, and R. H. Weiss, eds., New York: Plenum, 1980).

## Materials on Self-Represented Litigation

There is nothing in the Code of Judicial Ethics, in the reports of disciplinary proceedings, or in the California case law that prohibits such nonprejudicial judicial communication or engagement. Rather, what is prohibited is nonneutrality or bias.<sup>21</sup>

Indeed, we know of no reported cases in which a decision has been reversed or a judge disciplined merely for such nonprejudicial engagement in fact-finding. To the extent that decisions are reversed, or judges disciplined, it is for aggressively biased activity in a case.<sup>22</sup>

### **C. Trustworthiness**

Litigants expect judges to be basically benevolent toward them, to be motivated to treat them fairly, to be sincerely concerned with their needs, and to be willing to consider their side of the story.<sup>23</sup>

Litigants pay close attention to their perceptions of each individual judge's motivation toward them and toward others in the courtroom. If participants believe that the judge was trying to be fair, they tend to view the entire procedure as a fair one. Similarly, if the judge treats people politely, and exhibits a clear concern for their rights, litigants are likely to view the entire process as fair.<sup>24</sup>

When the judge asks questions, explains requirements or the law, and takes steps to move the case along—and does so in an evenhanded manner applied to both sides—the judge's motivations are far easier for the litigants to read than if the judge is noncommunicative. Lack of communication provides little on which an observer can base a judgment of neutrality or other trustworthiness, except the ultimate decision, which may well be subject to a very broad range of interpretation. Litigants may focus on a casual gesture, fleeting facial expression, or perceived inattention to a presentation (e.g., when the judge is reading documents in the file) and may completely misinterpret a judge's motivation toward them.

### **D. Interpersonal Respect**

When litigants are treated as valued members of society, they are more likely to feel satisfied that the process is fair. Litigants must be treated with dignity and respect by judges and courtroom staff.<sup>25</sup>

Interchanges between judges and litigants in a courtroom setting are clearly not conducted in a manner socially familiar to most self-represented parties. If conducted in too formal a manner, the communication style can be legally arcane and seem almost

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<sup>21</sup> The California Code of Judicial Ethics requires, at canon 2, that a judge “avoid impropriety and the appearance of impropriety in all of the judge's activities” and, at canon 3, that he or she shall “perform the duties of judicial office impartially and diligently.”

<sup>22</sup> U.S. cases and decisions are collected and analyzed in Albrecht et al., *Judicial Techniques for Cases Involving Self-Represented Litigants* (Winter 2003) 41 *Judges' Journal* 16; and R. Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications* (2004) 23 *G. J. Legal Ethics* 423, esp. notes 17 and 18 at page 430, and text and notes at pages 448–452. California cases are discussed in chapter 3, below.

<sup>23</sup> Tyler, “Psychology of Procedural Justice.”

<sup>24</sup> Tyler, *What Is Procedural Justice?*

<sup>25</sup> Tyler, “Psychology of Procedural Justice.”

## Materials on Self-Represented Litigation

hostile; if conducted in too informal a manner, there may be a risk of appearing undignified or disrespectful to litigants because they are without counsel, or even seeming too relaxed about attention to their legal rights.

When litigants feel insecure about their own status in a situation, they place increased attention on how they are treated by decision-makers;<sup>26</sup> therefore, self-represented litigants can be expected to pay close attention to the judge in an attempt to see how that judge is regarding them. If a judge is highly resistant to any type of interchange with litigants, there will be little data for them to use to assess the judge's attitude toward them, which may lead litigants to seize inappropriate cues on which to base their conclusion. For example, a judge exercising this type of detachment may be misinterpreted as disliking the litigant or being cold, uncaring, or disrespectful.

Generally speaking, being informed, prepared, and willing to get to the issues in a businesslike and friendly manner demonstrates respect for the litigants. Taking the time to listen to the positions of both sides and to communicate clearly the basis of the ultimate decision can result in a feeling of calm reassurance and stability that is almost palpable in the courtroom. In such circumstances it is not uncommon for even the losing party to leave the courthouse with a sense of satisfaction at being treated with dignity and respect.

### **E. Demeanor of the Proceedings**

Litigants value proceedings that are dignified, careful, understandable and comfortable for them. They have even ranked these factors above “voice” in importance. Therefore, the calm, well-organized management of the proceedings and of the courtroom is extremely important.<sup>27</sup>

There are a variety of steps a judge might take to create a procedurally fair and easily understood courtroom environment. Judges may want to implement structured court procedures so that each side has the greatest possible opportunity to be heard. This is done by being consistent in giving litigants the opportunity to explain why they are in court and what they want.

Judges can make it clear to the litigants that they have read and considered their submitted documents. Judges then have the option of asking for clarification, explanation, or more specific detail as needed. This process does not mean relinquishing control of the courtroom. To the contrary, it will allow judges to more easily limit the information to that which is relevant to their decision.

Judges can make opening statements explaining the process used in the courtroom. During the hearing, judges can break the case up into steps and explain what information

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<sup>26</sup> Tyler, *What Is Procedural Justice?*

<sup>27</sup> E. A. Lind, R. J. Maccoun, P. A. Ebener, W. C. F. Felstiner, D. R. Hensler, J. Resnick, and T. R. Tyler, *In the Eye of the Beholder: Tort Litigants' Evaluations of Their Experiences in the Civil Justice System* (1990) 24 *Law & Soc'y Rev.* 953–995.

## Materials on Self-Represented Litigation

is needed in each phase. Likewise, evidentiary rulings present an opportunity for the judge to explain the basis for a ruling in favor of or against admissibility in plain English.

A judge's decision that follows these precepts will be much more comprehensible, even if the outcome is not what the litigant desired. Probably most importantly, the parties and observers will walk away with a greater understanding of the process as a whole and with a realistic perception of fairness as to the particular decision made by the court.

### **Conclusion**

All litigants deserve to have decisions made on the basis of the facts and the law. The ability of a judge to conduct friendly, businesslike, and unbiased communication with self-represented litigants to obtain the best information on which to base high-quality decision making, and to convey the proper attitude of the court toward them, is an enormous benefit.

## **SELF HELP CENTERS AND SERVICES Hennepin County District Court Fourth Judicial District, Minneapolis, Minnesota**

### **A. Self Help Centers**

Self Help Center employees, volunteer paralegals and law students provide procedural assistance, education, and referrals pursuant to MN Rules of Court, Gen.R.Prac. Rule 110. Volunteer and contract attorneys provide brief legal advice at court locations.

***Goals** of the program are to improve access to court, reduce dismissals and continuances, prepare litigants for hearings, improve the quality of information available to the Judge, achieve fair outcomes, and educate the public about the courts and the role of attorneys.*

There are two Self Help Center Locations: Hennepin County Government Center (Main Courthouse) and Family Justice Center. The Self Help Centers are a division of the District Court, and are funded by the Court. The division is headed by a Sr. Manager/Attorney. Each SHC has a managing attorney. In total, the division staff consists of 7 attorneys, 1 paralegal, and 4 senior court clerks. Both SHCs utilize volunteers on a daily basis. SHC staff have developed a statewide Self-Help website, videos, tutorials, and other tools available on the site.

#### **Family Justice Center Self Help Center**

Hours: M-F 8:00-3:30

- Detailed forms and instructions for divorce, custody, parenting time problems, contempt, paternity, third-party custody, child support, ex parte motions and other issues.
- Screening of completed pleadings by staff attorneys and volunteer paralegal and law students. Explanation of procedures. A local court order requires all pro se motions in family court to be reviewed by SHC staff prior to assignment of a court hearing date. Staff attorneys also create new forms and instructions.
- McKnight Clinic. Free, unbundled legal assistance to litigants with incomes below 125% of Federal Poverty Level with complex issues. 45 minute appointments, one afternoon a week. (Provided by Central MN Legal Services)
- Volunteer Lawyers Network Family Law Clinic. Walk-in brief advice consultations with volunteer family law attorneys. Attorneys are assisted by volunteer law students. Recruitment and scheduling of volunteers is done by Volunteer Lawyers Network and Minnesota

## Materials on Self-Represented Litigation

Justice Foundation. Hours: Monday, Wednesday and Friday 10am-12pm.

- Bilingual staff: Somali, Spanish. Staff assist with filling out forms if necessary.
- Videos: How to Start a Divorce, How to Fill out a Family Court Motion.
- I-CAN! on-line divorce forms, coming 2007.
- Handouts on family law topics and referrals to other agencies.

### **Government Center Self Help Center**

Hours: M-F 8:00-3:30

- **Bilingual staff:** Spanish, Somali, French
  - Liaison service for Somali speaking customers including help filling out forms and filing documents throughout the court.
  - Spanish Hotline telephone service for court-wide questions, 8:30-10:30am daily.
- **Legal Access Point:** Free, brief attorney consultations daily on any topic for all income levels. Law students assist the attorneys. Attorneys are recruited and scheduled by the Hennepin County Bar Association and Volunteer Lawyers Network, a non-profit corporation. Hours at the Gov't Center: M, T, W 9-3; Th,F 9-1; Brookdale Suburban Courthouse Mondays 12-2pm.
- **Help with forms, instructions, procedures** from staff attorneys, court clerks and volunteer law students in matters other than family law. The attorneys also create additional forms and instructions, and make recommendations for streamlining processes.
- **Criminal Expungement Clinic:** One to two times per week law students supervised by a volunteer attorney assist people who are seeking to expunge criminal records. The students help to draft the pleadings, obtain court hearing dates, serve the papers, and assist with filing and other procedures. This clinic supplements the criminal expungement assistance provided by SHC staff.
- **Housing Court Project:** Free, brief legal assistance to low-income tenants and landlords. Advice to landlords is available at Legal Access Point. Advice to tenants is available Tues thru Fri mornings during the 1<sup>st</sup> appearance calendar in a room near the courtroom. Volunteer Lawyer's Network pro bono attorneys and volunteer law students assist Legal Aid attorneys with the tenant consultations. Pro bono attorneys also accept some cases for full representation. Legal Aid provides the assistance through a contract with Hennepin County, intended to reduce reliance on shelters and emergency assistance.
- **Videos/Tutorials:** For viewing at the SHC or over the internet: "How to Start a Divorce", "How to Fill Out a Family Court Motion" , "How to Handle a Conciliation Court Hearing", "Introduction to Criminal Expungement", "How to Fill-Out the Criminal Expungement Forms". For viewing at SHC: "Clearing a Path to Justice", explaining

Materials on Self-Represented Litigation

what is expected of the self-represented litigant; "How to Find Housing" and "How to Get Your Landlord to Make Repairs"

- **"Plain English" and Foreign Language information** on numerous legal topics.
- **Referrals** to legal services and mediation programs.
- **Computers** for public access to web resources and court records.
- **General information** about the court's operations.
- **Self Help Law Book Collection** (in the Law Library.)

**Web site** with forms, procedures, legal information, videos, tutorials, lawyer referral information <http://www.mncourts.gov/selfhelp/>

**4<sup>th</sup> District SHC website:**

<http://www.mncourts.gov/district/4/?page=397>

<b>B. Outcomes</b>
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- **# assisted at Self Help Centers:**

1997 (1 <sup>st</sup> year of operation)	11.5 per day	3,000 annually
2000	65 per day	16,900 annually
2001	90 per day	23,472 (approximately)
2002		26,000
2005		27,000
2006		33,000

**2006 detail:**

Civil Self Help Center: Averaging 1050 per month. 15% request help in Spanish.

Somali liaison: Averaging 343 people assisted per month.

Child Support: Averaging 126 people per month. Many have multiple motions.

All other Family issues: Averaging 1245 per month

Emails: not yet counted

Phone calls: not tracked

Spanish Hotline: not yet counted

- The Judiciary reports that the pro se pleadings have improved and hearings are more meaningful.
- A review of court files indicates that the vast majority of litigants who used the service had their case decided on the merits, and that procedural problems were minimal.
- Court staff in other departments (civil, criminal and family) report substantial time savings due to ability to refer to SHC and due to the

Materials on Self-Represented Litigation

improvement in pro se pleadings and procedural compliance, impacting judicial economy and customer service.

<b>C. Survey of SHC customers</b>
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<b>Service Provided</b>	<b>Number who Used Service</b>	<b>Very Helpful</b>	<b>Somewhat Helpful</b>	<b>Not Helpful</b>
Staff help with forms.	<b>43</b>	<b>83.7%</b>	<b>16.3%</b>	<b>0%</b>
Written instructions for filling out forms.	<b>35</b>	<b>77.1%</b>	<b>22.9%</b>	<b>2.9%</b>
Staff to answer my questions.	<b>58</b>	<b>89.7%</b>	<b>10.3%</b>	<b>0%</b>
Interpretation or translation assistance.	<b>4</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>
Help preparing for a court hearing.	<b>31</b>	<b>77.4%</b>	<b>22.6%</b>	<b>0%</b>
Help following up with court orders.	<b>20</b>	<b>80.0%</b>	<b>20.0%</b>	<b>0%</b>
Educational materials (pamphlets, books, videos).	<b>27</b>	<b>66.7%</b>	<b>33.3%</b>	<b>0%</b>
Information on where to get more help.	<b>40</b>	<b>82.5%</b>	<b>17.5%</b>	<b>0%</b>
Met with an attorney (not court staff).	<b>20</b>	<b>85.0%</b>	<b>15.0%</b>	<b>0%</b>
Referred to an attorney outside the court for legal help.	<b>8</b>	<b>37.5%</b>	<b>50.0%</b>	<b>12.5%</b>
Help using computer to obtain information or prepare documents.	<b>6</b>	<b>66.7%</b>	<b>33.3%</b>	<b>0%</b>
Made an appointment.	<b>19</b>	<b>100.0%</b>	<b>0%</b>	<b>0%</b>
Other	<b>3</b>	<b>66.7%</b>	<b>33.3%</b>	<b>0%</b>

**D. Comments from Volunteer Attorneys**

- Finds people appreciative. People will see an attorney who cares and can get them started.
- Customers seem to just need to hear it from a lawyer. Practical advice given.
- Customers want people who are informed about the system—attorneys. He’s had a great experience. It’s a valuable service. Polishes the image of the bar.
- Wonders if judges know what the attorneys are keeping out of the court room.
- Never had a negative response when he did not know an area of law.
- Customers have done research on their own and are serious about their issues.
- He’s never had the feeling that he’s wasting his time.

**E. Surveys of litigants who met with the Volunteer Attorneys at SHC clinics**

- 87% indicated the lawyer answered their legal questions
- 96% understood the lawyer’s answers
- 83% had a better understanding of their legal rights
- 83% learned what steps to take to resolve their legal issue
- 73% were informed of other services that might be helpful
- 90% would tell a friend or family member about this service

After meeting with the volunteer attorney, litigants were asked: "How will you resolve your legal issue?"

2000/01 Survey		1999 Survey
43%	represent themselves	31%
27%	hire a private attorney	28%
22%	contact Legal Aid	15%
8%	no legal action needed	26%

# Core Materials on Self-Represented Litigation Innovation



Prepared by  
**The Self-Represented Litigation Network**

**December 2006**

## **Table of Contents**

INTRODUCTION	29
I. A QUICK INTRODUCTION	29
II. INFORMATIONAL WEBSITES AND OVERVIEW	29
III. RESEARCH AND EVALUATION	30
IV. SELF-HELP CENTERS AND SERVICES	31
V. FORMS, DOCUMENT ASSEMBLY, AND ELECTRONIC FILING	31
VI. DISCRETE SERVICE REPRESENTATION	31
VII. JUDICIAL TRAINING, EDUCATIONAL MATERIALS, AND NETWORKING	32
VIII. COURTROOM SERVICES	32
IX. PROBLEM ASSESSMENT/TRIAGE	32
X. COMPLIANCE AND ENFORCEMENT	33
XI. OVERALL SYSTEM	33
XII. FUNDING	33
XIII. TECHNOLOGY	34

## Introduction

This list of key resources has been developed by the national Self-Represented Litigation Network as a resource for innovation.

The Self-Represented Litigation Network is an open and growing group of organizations and working groups dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are, therefore, forced to go to court on their own. The Network brings together courts, the bar, and access-to-justice organizations in support of innovations in services for the self-represented. The Network operates under a Memorandum of Understanding, and is hosted by the National Center for State Courts. Additional information on the Network can be found at [www.srln.org](http://www.srln.org).

The list of resources is not intended to be comprehensive; rather, it contains those materials that have been found most generally useful. Approximately 1,000 pieces of relevant content can be found on [www.selfhelpsupport.org](http://www.selfhelpsupport.org).

The categories generally follow the items in the *Action Agenda*, developed out of the 2005 Summit on Self-Represented Litigation, and now the charge of the Working Groups of the Self-Represented Litigation Network.

### I. A Quick Introduction

The *Case for Self-Represented Innovation Introduction Sheets*. These brief introductions to five key areas are an excellent place to start. Now available in final draft on [www.selfhelpsupport.org](http://www.selfhelpsupport.org).

### II. Informational Websites and Overview

[www.selfhelpsupport.org](http://www.selfhelpsupport.org) The main national source of information on self-represented litigation, the site includes over 1,600 resources, and has over 2000 members. Operated by NCSC on behalf of a consortium of groups, with funding from SJI.

[www.lawhelp.org](http://www.lawhelp.org). The access point for access-to-justice websites nationally.

*The Future of Self-Represented Litigation, Report from the March 2005 Summit*, National Center for State Courts (2005). Includes effective practices, ideas for dissemination and future innovations, and several important papers on the state of knowledge and planning for the future. Available at [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf).

*Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers*, Jona Goldschmidt *et al.*, American Judicature Society (1999). Prepared for the seminal 1999 conference. Available at [http://www.ncsconline.org/WC/Publications/KIS\\_ProSeMeetChallenge.pdf](http://www.ncsconline.org/WC/Publications/KIS_ProSeMeetChallenge.pdf). See also, *Meeting*

### Materials on Self-Represented Litigation

*the Pro Se Challenge: an Update*, Kathleen M. Sampson, 84 *Judicature* 326 (May-June 2001). Available at [http://ajs.org/prose/pro\\_sampson.asp](http://ajs.org/prose/pro_sampson.asp).

*California Statewide Action Plan for Serving Self-Represented Litigants*, Judicial Council of California, (February 2004). The most comprehensive plan with a wide variety of components. The national model. Available at <http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/actionplanfinal.htm>.

*Trial Court Performance Standards and Measurement System*, National Center for State Courts. These general standards include an area on Access to Justice. Available at [http://www.ncsconline.org/D\\_Research/tcps/area\\_1.htm](http://www.ncsconline.org/D_Research/tcps/area_1.htm).

*Strategic Planning Initiative*, Utah Committee on Resources for Self-Represented Parties (2006). The most recent overall strategic plan with a strong statewide focus. Available at <http://www.selfhelpsupport.org/link.cfm?6677>.

*Best Practices in Court-Based Programs for the Self-Represented*, Self-Represented Litigation Network (2006). Includes forty-one practices with concept descriptions, suggested attributes, and issues for exploration. Available at [http://www.ncsconline.org/WC/Publications/KIS\\_ProSeBestPracticesSRLN.pdf](http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf).

### **III. Research and Evaluation**

*Framing the Issues for the Summit on the Future of Self-Represented Litigation*, John Greacen (2005) included in the above-listed Report. This paper, prepared for the Summit, includes the best summary of the current state of research knowledge on self-represented litigants and their needs. Available at [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf) at page 19. See also, *Self-Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know*, John Greacen (2002), available at <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/SRLwhatweknow.pdf>.

*California's Model Self-Help Pilot Programs: A Report to the Legislature*, California Administrative Office of the Courts (2005). This evaluation is probably the most comprehensive research report completed. It provides an important methodological model and offers a number of significant research findings and recommendations. Available at <http://www.courtinfo.ca.gov/programs/equalaccess/modelsh.htm>.

*Survey Instruments*, Trial Court Research and Improvement Consortium. These key tested tools can be obtained at <http://www.selfhelpsupport.org/link.cfm?6721>. The report of the testing process, which includes evaluation of self-help programs in nine jurisdictions, is at <http://www.selfhelpsupport.org/link.cfm?6720>. See also, *CourTools*, the National Center for State Courts Performance Measures, at [http://www.ncsconline.org/D\\_Research/CourTools/tcmp\\_courttools.htm](http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm), particularly the first tool that deals with access and fairness.

## **IV. Self-Help Centers and Services**

*Legal Information vs. Legal Advice—Developments During the Last Five Years*, John M. Greacen, 84 *Judicature* 198 (January-February 2001). The follow-up article to the defining piece that pioneered the distinction between legal information and legal advice. Available at [http://www.ajs.org/prose/pro\\_greacen.asp](http://www.ajs.org/prose/pro_greacen.asp). The original article is *No Legal Advice from Court Personnel: What Does That Mean?*, John M. Greacen, *Judges Journal* (Winter 1995).

*Starting a Technology Supported Self Help Center*, Wayne Moore, Bonnie Hough, Richard Zorza, Sherna Deamer, Allison McDermott, and Gigi Amateau, Self-Represented Litigation Network. Available online at <http://www.selfhelpsupport.org/link.cfm?6678>.

*Best Practices for Programs to Assist Self-Represented Litigants in Family Law Matters*, Maryland's Judicial Conference, Committee on Family Law (January 2005). These state general standards will be of use nationally. Available at [http://www.courts.state.md.us/family/bestpractices\\_selfrep.pdf](http://www.courts.state.md.us/family/bestpractices_selfrep.pdf).

*Court Staff Guidelines*. Including guidelines from California (*How May I Help You*), Florida (Supreme Court Rule), Iowa, Michigan, Missouri, New Jersey, New Mexico, New York, North Dakota, Utah, and Wisconsin. Many available on: [www.selfhelpsupport.org](http://www.selfhelpsupport.org) at <http://www.selfhelpsupport.org/link.cfm?6724>.

*Directory of Court-Based Self Help Programs*, Self-Represented Litigation Network. Over 130 programs listed. A valuable resource for networking. Accessible through <http://www.ncsconline.org/WC/Publications/ProSe/contents.htm>

## **V. Forms, Document Assembly, and Electronic Filing**

*The Role of Technology in the Access Solution*, Katherine Alteneder, Michael Genz, Michael Hertz, Bonnie Hough, Harry Jacobs, and Glenn Rawdon (2005). This paper, prepared for the March 2005 Summit, includes the best general analysis of this field. Available at [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf) at pages 81-96.

## **VI. Discrete Service Representation**

*A Roadmap for Implementing a Successful Unbundling Program*, Sue Talia (2005). The national expert lays out the steps. Available at <http://www.selfhelpsupport.org/link.cfm?6725>.

## **VII. Judicial Training, Educational Materials, and Networking**

*Judicial Techniques for Cases Involving Self-Represented Litigants*, Rebecca A. Albrecht, John M. Greacen, Bonnie Rose Hough, and Richard Zorza, *Judges Journal* (Winter 2003), available at <http://www.zorza.net/JudicialTech.JJWi03.pdf>.

*Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, Cynthia Grey, American Judicature Society (2005). A report and model curriculum on the role of judges. Includes hypotheticals for training and discussion. Available at <http://ajs.org/prose/pdfs/Pro%20se%20litigants%20final.pdf>.

*The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, Richard Zorza, 17 *Georgetown Journal of Legal Ethics* 423 (2004). This is the paper that proposed the concept of “transparent engaged neutrality,” as the way for judges to manage cases involving self-represented litigants. Available online at [http://www.findarticles.com/p/articles/mi\\_qa3975/is\\_200404/ai\\_n9401537](http://www.findarticles.com/p/articles/mi_qa3975/is_200404/ai_n9401537).

*Judicial Management of Cases Involving Self-Represented Litigants*, National Center for State Courts, Best Practices Institute (2002). A summary of the key tactics judges should use. Available at [http://www.ncsconline.org/Projects\\_Initiatives/BPI/ProSeCases.htm](http://www.ncsconline.org/Projects_Initiatives/BPI/ProSeCases.htm).

## **VIII. Courtroom Services**

*The Courtroom Environment for the Self-Represented*, Susan Ledray and Deborah Chase (2005). This paper from the 2005 Summit reviews the state of innovations in the courtroom and recommends a number of new ideas for testing. [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf), at page 45

*Community Courts and Family Law*, Deborah J. Chase, Sue Alexander, and Barbara Miller, 2 *Journal of the Center for Families, Children and the Courts* at page 37 (2000). The authors propose a community court model for family law and give examples. Pages 48-49 set out an example of courtroom services to self-represented litigants in a domestic violence court. Available at <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/037alexander.pdf>

*Effective Use of Facilitators in the Courtroom*, Sue Alexander and L. Thomas Surh, *CFCC Update*, California Administrative Office of the Courts (August 2002), at page 9. This article describes how judges can make effective use of court-based self-help attorneys and qualified, supervised staff to provide courtroom services to pro se litigants. Available at <http://www.courtinfo.ca.gov/programs/equalaccess/documents/newsaug02.pdf>

## **IX. Problem Assessment/Triage**

## Materials on Self-Represented Litigation

*Helping People Before the Court: Effective Triage*, Tina Rasnow (2005). This paper, an appendix to the Report of the 2005 Summit, makes the case for triage as critical to effective assistance. Available at [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf), Appendix 3-C.

### **X. Compliance and Enforcement**

*Compliance with Judgments and Orders*, Richard Zorza (2005). This paper from the 2005 Summit offers a number of ideas as to how courts might enhance compliance with their orders. Available at [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf), at page 59.

### **XI. Overall System**

*The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers*, Richard Zorza, National Center for State Courts (2002). A long-term vision for a court that really works for those without lawyers. Available at [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_SelfHelpFriendlyCtPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_SelfHelpFriendlyCtPub.pdf)

*Civil Legal Assistance for All Americans*, Bellow-Sacks Access to Civil Legal Services Project, Jeanne Charn and Richard Zorza, Harvard Law School (2005). This report lays out a broad vision of overall system change, integrating enhanced services for the self-represented with system simplification, a complex mixed-model delivery system, and integrated intake and triage. Available at [www.bellowsacks.org](http://www.bellowsacks.org).

*Final Report of the Joint Task Force on Pro Se Litigation*, Conference of Chief Justices and Conference of State Court Administrators (2002). This report, endorsed by a supportive resolution of COSCA and CCJ, sums up the need and implications for courts. Available at <http://cosca.ncsc.dni.us/WhitePapers/TaskForceReportJuly2002.pdf>.

### **XII. Funding**

*Funding Sources for Pro Se Programs*, American Judicature Society. A list of possible sources. Available at [http://www.ajs.org/prose/pro\\_funding.asp](http://www.ajs.org/prose/pro_funding.asp).

*How to Secure Funding for [California] Court-Based Self-Help Projects*. California Administrative Office of the Courts (2001). This is old and was written for California, but the approach is valuable, because it suggests ways to raise money for projects in other states and serves as a model for how a state might set up its funding mechanisms. Available at <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/SH-tab11.pdf>.

### Materials on Self-Represented Litigation

*Utah Strategic Plan for the Self-Represented.* Listed above on page 2, this document illustrates a valuable approach to developing and legitimizing funding through a comprehensive survey and planning process. Available at <http://www.selfhelpsupport.org/link.cfm?6677>.

## **XIII. Technology**

*The Role of Technology in the Access Solution,* Katherine Altener, Michael Genz, Michael Hertz, Bonnie Hough, Harry Jacobs, and Glenn Rawdon (2005). This paper, also listed above on page 3, was prepared for the March 2005 Summit, and is the most comprehensive analysis of the status and potential of technology to play a role in solving the access-to-justice problem. Available at [http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FutSelfRepLitfinalPub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf) at page 81.

*Washington State Access to Justice Technology Principles,* Washington State Supreme Court (2004). These principles, adopted by the Washington Supreme Court in 2004, are the only legally authoritative general statement of the role of technology in promoting access to justice. Available at [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=am&set=ATJ&ruleid=amatj01order](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=am&set=ATJ&ruleid=amatj01order). (Order) and [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=am&set=ATJ&ruleid=amatj02principles](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=am&set=ATJ&ruleid=amatj02principles) (Principles). Materials in support can be found in the papers of the 2004 Symposium, *Technology, Values, and the Justice System*, available at: <http://www.law.washington.edu/WLR/symposium.html>.

*Meeting the Needs of Self-Represented Litigants: A Consumer-Based Approach,* Chicago Kent College of Law (2003). This is the study that led to the development of the A2J document assembly front end. Available at <http://a2j.kentlaw.edu/a2j/>.

# **Best Practices in Court-Based Programs for the Self-Represented:**

## **Concepts, Attributes and Issues for Exploration**

2006 Edition



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## **PART I. SELF-HELP CENTERS AND SERVICES**

### **Public Information, Training and Assistance Programs**

- One. Courthouse Concierge Desk**
- Two. Self-Help Websites**
- Three: Self-Help Centers**
- Four: Law Library as Resource Center**
- Five. Written Information Including Multi-lingual Information**
- Six. Videos/PowerPoint Slides**
- Seven. Rules in Support of Court Information Programs**

### **Community Outreach and Access Programs**

- Eight. Library and Community Access Points**
- Nine. Community-Education Workshops and Clinics**
- Ten. Mobile Self-Help Centers**

### **Gateway Services in Support of Case Starting / Responding**

- Eleven. Initial Assessment Processes**
- Twelve. One-on-One Assistance**
- Thirteen. Workshops and Training**

## **PART II. FORMS, DOCUMENT ASSEMBLY AND E-FILING**

- Fourteen. Forms and Documents**
- Fifteen. Document Assembly Software**
- Sixteen. Customer-friendly Electronic Filing**
- Seventeen: Rules in Support of Form and Process Standardization**

## **PART III. PRACTICES IN THE COURTROOM**

- Eighteen. Self-Represented Litigant-Friendly Judicial Practices**
- Nineteen. Attorneys Available to Assist and Expedite.**
- Twenty. Immediate Written Order Upon Decision**
- Twenty One. Attorneys Available to Provide Courtroom Settlement Assistance**

## **PART IV. DISCRETE SERVICES, PRO BONO AND VOLUNTEER PROGRAMS**

**Twenty Two. Discrete Services**

**Twenty Three. Volunteer Attorney Involvement in Self-help Centers**

**Twenty Four. Self-help Center Coordination with Pro Bono Attorney Service Programs**

**Twenty Five. Reduced Fee Attorney Programs**

**Twenty Six. Non-Attorney Volunteer Programs**

**Twenty Seven. Rules or Clarifications in Support of Discrete Services**

## **PART V. JUDICIAL ETHICS AND EDUCATION**

**Twenty Eight. Materials and Judicial Guidebooks in Support of Self-represented Litigant-friendly Judicial Practices**

**Twenty Nine. Clarification of Ethical Rules in Support of Self-represented Litigant-friendly Judicial Practices:**

**Thirty. Curriculum and Educational Programs in Support of Self-represented Litigant-friendly Judicial Practices**

## **PART VI. POST-ORDER PRACTICES**

**Thirty One. Compliance and Enforcement Support**

## **PART VII. COURT MANAGEMENT AND EVALUATION PRACTICES**

**Thirty Two: Case Management Integration**

**Thirty Three: Rule and Procedure Simplification**

**Thirty Four. Broad Training of Courthouse Staff**

**Thirty Five. Development of Interpreter Programs**

**Thirty Six. Litigant Satisfaction Surveys**

**Thirty Seven. Data Collection and Evaluation**

**Thirty Eight. Court as Convener for Innovation**

## **PART VIII. JURISDICTION-WIDE STRATEGIC PRACTICES**

**Thirty Nine. State and Local Task Forces on Self-Represented Litigants**

**Forty. Self-Represented Litigant Strategic Plan**

**Forty One. Access to Justice Needs Studies**

## Part IV. Discrete Services, Pro Bono and Volunteer Programs

### Twenty Two. Discrete Services

***Concept.*** The core concept of discrete services, also known as unbundled services or limited scope representation, is that attorneys provide assistance within the attorney-client relationship for only specified tasks or certain portions of the case, with the specific allocation of responsibility being decided jointly by the attorney and the client. This focuses legal assistance on those aspects of the matter in which it provides the greatest benefit, reduces the cost to the client, and facilitates the court's work by reducing continuances and confusion caused by litigants' unfamiliarity with the court process, while providing additional business to the attorney.

*Suggested Attributes.*

Discrete services programs appear to be most effective when they:

- Have judicial commitment to the program and particularly to let the attorney out of the case when the agreed upon service has been completed.
- Have strong bar association support demonstrating the opportunities for lawyers to provide such services profitably within their practices and as an alternative means of providing pro bono services.
- Provide training for attorneys.
- Are supported by court rule and/or practices.
- Receive and provide conduits for referrals from court programs and others.
- Provide training for judges
- Tie in to existing *pro bono* programs to aid in recruitment of volunteer attorneys and to assist in placement of those cases not appropriate for discrete service representation.
- Utilize existing templates for law office forms, court appearance forms and the like to effectively delineate the limitations in scope and reduce misunderstandings about the scope of the attorney's involvement.
- Offer simple explanations of the concept of limited scope and options for apportioning responsibility in simple English, or the native language of the non-English speaking litigants.

*Issues for Exploration and Evaluation.*

Unbundled representation requires additional diagnostic and support skills not necessarily required in full service representation. Similarly, not all cases or clients are appropriate for this form of representation. Based on successful models, additional materials need to be and are being developed to train attorneys in the specialized skills required in limited scope representation, as well as to assure that this form of representation is only used where appropriate under the circumstances.

### **Twenty Three. Volunteer Attorney Involvement in Self-help Centers**

***Concept.* Volunteer attorneys can provide critical support to a self-help program. Operating within the constraints placed on court staff, they can function like highly trained center staff, including providing neutral courtroom services as described in these Best Practices. They can provide workshops, training videos, courthouse consultations and information.**

#### *Suggested Attributes.*

Volunteer attorney programs appear to be most effective when they:

- Have strong bar association support.
- Include an effective training program and training and support materials.
- Utilize existing templates for law office forms, court appearance forms and the like to effectively delineate the limitations in scope and reduce misunderstandings about the scope of the attorney's involvement.
- Include supervision and mentoring by center staff.

#### *Issues for Exploration and Evaluation.*

While pro bono attorney programs have a long history, volunteer staffing of self-help centers is a new concept, and there is need for research into what problems it may create, particularly with perceptions of the attorney's role and the willingness of the attorney to assist within the constraints placed on self-help center staff

## **Twenty Four. Self-help Center Coordination with Pro Bono Attorney Service Programs**

***Concept.* Self-help programs can coordinate with pro bono attorney programs for the self-represented. They can work with bar associations and others to establish a seamless system of referrals to programs in which attorneys provide pro bono or limited scope representation focused on cases not suitable for self-representation. Self-help centers can also work with pro bono attorney services on assessment protocols to identify clients and case-types that need full representation and are not currently being served by legal aid programs due to financial or other capacity issues and attempt to place those cases. This assessment function can substantially improve referrals to pro bono and lawyer referral attorneys, and improve participation and satisfaction by counsel who have received pre-screened cases. Since these programs may create an attorney-client relationship, it is important that the services themselves not be under the direct supervision of the courts self-help center program.**

### *Suggested Attributes*

Pro bono attorney programs facilitated by the self-help center appear to be most effective when they:

- Are clear in the distinction between the pro bono program and the self-help center program and its services.
- Are operated in cooperation with a bar association or similar program.
- Make full use of technology to increase the efficiency of the program.
- Take steps to make sure that the service is available to all sides and that the same attorney does not provide attorney-client services to both sides in the same case.
- Where appropriate are facilitated by rules minimizing imputed conflicts of interest (ABA Model Rule 6.5).
- Include training designed to maintain quality and focus on substantive legal issues, and on ethical issues.
- Are set up so that problems or issues with the pro bono attorneys are ultimately the responsibility of the pro bono program, not the court.
- Are set up so that the nature of the attorney-client relationship is clearly explained in writing and provided to the client.

### *Issues for Exploration and Evaluation*

In some states legal advice programs use space in the courthouse or self-help center and also provide “attorney of the day” services. At least one state has placed limitations on providing legal advice in courthouse settings because of the potential appearance of bias, and other ethical and liability concerns. . There is need for more research and study of

the divergent views on the appropriateness of locating programs that give legal advice services at the courthouse.

It is important to work with the sponsoring bar association or non-profit to develop mechanisms for maintaining quality.

## **Twenty Five. Reduced Fee Attorney Programs**

***Concept.* Reduced fee attorney programs provide flexibility for both attorneys and programs, potentially combining the benefits of pro bono and paid programs, while radically increasing access to justice.**

*Suggested Attributes.*

Reduced fee attorney programs appear to be most effective when they:

- Include clear rules governing fees charged by the attorney.
- Include protections against additional charges for the work agreed to.
- Engage in broad recruitment with judicial support.
- Cover a broad range of legal needs.
- Include training and support materials.
- Utilize existing templates for office forms, court forms and the like.

*Issues for Exploration and Evaluation.*

Whether participation in referral programs generally should require showings of competence by the attorney, and if so in what way, remains a matter of debate.

## **Twenty Six. Non-Attorney Volunteer Programs**

***Concept.* Volunteer programs reduce the costs of access to justice, while providing a range of services not otherwise available through the current delivery system. Under the direction of an attorney, centers can provide referral and make extensive use of volunteer navigator assistance, particularly when combined with technological information and tools. When paralegals assist, they require less supervision and training, and can provide greater levels of assistance.**

*Suggested Attributes.*

Volunteer programs appear to be most effective when they:

## Materials on Self-Represented Litigation

- Have established ethical guidelines for all staff and volunteers working in the self-help centers, and written protocols relating to volunteering in the center.
- Have clear rules as to what roles such volunteers can play.
- Establish guidelines of where greater attorney involvement is indicated in particular situations, as well as referral sources as to where that support may be obtained.
- Have bar engagement.
- Be structured so that the burden on the volunteer is reasonable.
- Include clear training programs, supervision, and quality control.
- Have coordinating staff.
- Are supported by well developed materials and web based tools.

### *Issues for Exploration and Evaluation.*

Keeping volunteers happy and ensuring that their work is of high quality takes significant work. Recruitment must be structured around the capacities and needs of such volunteers, and is significantly improved by limiting the assignment in terms of time or scope.

## **Twenty Seven. Rules or Clarifications in Support of Discrete Services**

***Concept.* Innovation in discrete services is sometimes held back by ungrounded fears that it might violate ethical rules. These fears focus on the appropriateness of the practice itself, perception of increased risk of malpractice exposure, and on the risk of bench officers expanding the scope beyond that originally contemplated, or refusing to allow an attorney to withdraw after completion of the limited scope retention. While these fears are largely unfounded even under existing rules and rule interpretations, innovators have found that enactment of rules or rules clarifications along the lines of those proposed in the ABA Ethics 2000 process can often make a huge difference to removing these fears and advancing adoption of the technique.**

### *Suggested Attributes.*

Such rules or clarifications appear to be most effective when they:

- Provide clarity regarding ethical propriety of this form of representation for lawyers assisting self-represented litigants, lawyers representing parties who oppose self-represented litigants and judges who preside over cases where self-represented litigants appear.
- Provide guidance on how to determine which cases, clients or matters lend themselves to limited scope.

## Materials on Self-Represented Litigation

- Provide guidance on how to effectively limit scope and document the services that are to be provided by the lawyer as well as how to document any changes in scope of services that may later be agreed.
- Affirmatively support document preparation, preferably without the requirement that attorney's identity be disclosed.
- Offer appropriate model retainer, intake and change of scope forms.
- Protect attorneys from being forced by judicial officers to provide services beyond the scope of the agreement with the client.
- Provide appropriate limited appearance forms and facilitate expedited withdrawal from cases where the litigant and lawyer had agreed to limit the scope of services.
- Reduce obligations to check for imputed conflicts of interests where no known conflict exists when providing brief service and advice.
- Use the ABA Ethics 2000 models.

### *Issues for Exploration and Evaluation.*

It is not yet known whether the rules changes or clarification by appropriate bodies provide sufficient reassurance for all judges and attorneys, and what other programs of engagement are most effective in providing that reassurance.

