



Self-Represented Litigation Network

Guide

To

Self Assessment of Court Programs

To

Assist Self-Represented Litigants

December 2007



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This document was developed under a grant from the State Justice Institute (SJI-05-N-091-C06-1). Points of view and opinions stated in this document do not necessarily represent the official position or policies of the State Justice Institute. Nor do they represent those of the National Center for State Courts or any funders or participants in the Self-Represented Litigation Network.

Thanks also to the California and Maryland Administrative Offices of the Courts for their support.

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Self-Represented Litigation Network

Guide to Self Assessment of Court Programs to Assist Self-Represented Litigants

I. Purpose of this Guide

This **Guide** describes each of the **Tools**, developed by the Self-Represented Litigation Network (SRLN)¹. These **Tools** are available for court staff who wish to assess their court's effectiveness in working with self-represented litigants. The **Tools** look at the court from a wide variety of perspectives using a broad range of techniques.

Each **Tool** is a stand-alone activity. A court may choose to use one **Tool**, a combination of **Tools**, or all of the **Tools**. It is possible to use one **Tool** one year, a different **Tool** the next, and all of **Tools** every five years. You decide what you need and which **Tools** to use to get you the information you need.

We suggest that you read this document in full to get a sense of the overall uses of the **Tools**. Then form a team to discuss the reasons to assess the court's effectiveness in dealing with self-represented litigants, the specific questions to be answered, and the **Tools** that will provide you with useful information to answer those questions. Finally, we suggest that you outline the step by step process you will use for the assessment and the resources you will need to complete your assessment project.

Some courts may choose to conduct a general "environmental scan" of how your court is doing. For example, you might conduct a survey of court users or a focus group of litigants to understand your court's general strengths and weaknesses. This "environmental scan" could identify specific areas requiring more in-depth examination. You would then select additional **Tools** to use in learning more about the problems litigants encounter in those areas, possible solutions to those problems, and the effectiveness of the solution you decide to implement.

The **Tools** are:

¹ The SRLN is a consortium of national and state organizations that works to improve the treatment of self-represented litigants in the American legal system.

A. **Two Survey Instruments and associated tools.**

- 1 An **Exit Survey** to collect data from all persons leaving a courthouse, with a supplement seeking additional information from self-represented litigants.
- 2 A **Self Represented Litigant Survey Database** which provides a tool for the court to use to enter the data collected from the **Exit Survey** and review reports and interactive queries showing the results of the survey data collected.
- 3 A **Judge and Staff Survey** to obtain court personnel's perceptions of the court's success in dealing with self-represented litigants, their views on problems encountered by self-represented litigants, and actions the court could take to alleviate them.
- 4 **Guidelines for Data Gathering** explaining how to administer the **Exit Survey** and the **Judge and Staff Survey**. Read these guidelines before administering any surveys.

B. **Basic Interview Formats** for use in talking with litigants, judges, court personnel, lawyers, representatives of other community organizations (such as legal aid and social services) about their experiences with self-represented litigants and their perceptions of the needs of these litigants. There are two basic formats – one for litigants and one for all stakeholders.

C. **Guidelines for the Use of Focus Groups** to obtain information from small groups of persons, such as self-represented litigants using the court, a specific minority group that has not traditionally used the court due to cultural barriers, or a group of judges who have a high volume of self-represented litigant cases.

D. A **Tour Guide** to observe your courthouse and court processes from the point of view of a self-represented litigant.

E. A **Best Practices Checklist** for a court to use in assessing the extent to which it is following the procedures and practices that national experts consider optimal in dealing with self-represented litigants.

F. **Model for a Comprehensive Self Assessment** provides a complete model for a court that wishes to fully and completely assess its program from A to Z. A court that undertakes this comprehensive self assessment will end up with a full report on the needs of the court, and the strengths and weaknesses of its programs. The **Model for a Comprehensive Self Assessment** uses all of the other tools listed above as part of its comprehensive review.

G. **A Summary of Ethical Guidelines for Conducting Interviews and Data Collection** provides general guidance for courts conducting self assessments about ethical issues such as obtaining informed consent from persons providing information to the court and maintaining the confidentiality of personal information obtained.

This **Guide** uses the term “self assessment” in the broadest possible sense – any activity by a court to examine its processes for serving self-represented litigants. Self assessment entails a court’s posing two fundamental questions to itself:

How well are we doing in providing our current level of services to self-represented litigants?

What else should we be doing?

There can be no single model for answering these two questions. Court programs to address the needs of self-represented litigants are at different stages of development throughout the United States. Some courts have self help centers that have been functioning for a long time (one for twelve years). Some have programs that have been in place for a short time. Some have no special programs and are asking themselves what sorts of services would be most helpful – to litigants and to the court.

Courts with existing programs will be interested in examining different aspects of their current services – for instance:

- how satisfied are litigants with the services provided?
- do the programs produce paperwork completed correctly?
- do the programs equip litigants with the information needed to present their cases in court in a way that minimizes the workload of judges and staff in the courtroom?
- what is the quality of the information provided from a legal point of view?

Courts have different levels of resources available to devote to self assessment. A few courts have their own research departments. But most courts have to rely on staff who already have full time jobs to gather and analyze self assessment information. Depending on the goals you set for your self assessment, you will determine which of the **Tools** to use for your assessment effort. The decision on the **Tools** you will use should be made considering the time and resources you have available.

II. The Nature of Self Assessment

Self assessment is simply the process of gathering information and analyzing that information to develop or make improvements in a court's operations – in this case, in the court's programs to assist self-represented litigants. These materials are developed to enable a court to conduct an assessment without the help of an outside consultant.² The scope of a court's self assessment will vary depending upon the purpose of the assessment, the maturity of a court's program(s), the issues the court wishes to address, and the time and resources available.

A court that does not currently have a program to assist self-represented litigants can use the techniques described in this **Guide** (and the accompanying **Tools**) to gather information helpful in designing a court response to problems identified by judges, court staff and self-represented litigants. A court that has recently implemented a program may wish to gather information to "fine tune" the program's operation. A court with a longstanding program may wish to collect information to 1) evaluate the performance of its current program, 2) explore alternative ways of delivering its current services, or 3) expand its services to include types of cases for which assistance is not now provided.

At times a court may simply follow the assessment steps set out in Section IV of this **Guide**. For example, a court may choose to focus on a specific problem like petitioners' consistent failure to complete and document the service of process which results in wasted court hearings or the existence of large numbers of self-represented litigants who appear in court without having taken advantage of the services provided by the court's program. Data gathering efforts would focus on this particular problem and options

² Of course, a court may choose to involve an academic researcher or other consultant as a general advisor or to conduct some part of the assessment that the court concludes it cannot complete on its own.

available to the court and to the larger legal community to address it. The court would decide which **Tools** to use in addressing this specific problem.

At other times, a court may wish to conduct a wide-ranging assessment using several of the **Tools**. For example, a funding body may want a comprehensive report on the effectiveness of a court program that it has been supporting in order to decide on its future level of support. The court may decide to use the **Model for a Comprehensive Self Assessment**, the **Tools** supplied with this **Guide** which shows you how to use all of the **Tools** created, to design and carry out such a full scale investigation.

In sum, a court can use this **Guide** to design a self assessment to suit its own goals and resources.

The focus of this **Guide** is not limited to the operation of a specific program, such as a self help center, developed by a court to provide services to self-represented litigants. A self help center cannot address all issues related to self-represented litigants. Such programs, while of great value, must be supported by front counter, courtroom, and case management practices that also address the needs of self-represented litigants.

Self assessments generally address two different dimensions of court assistance to self-represented litigants – the interests of the litigants and the interests of the court itself. What does the court need to do to help self-represented litigants obtain access to the court and to receive legal relief to which they may be entitled? What does the court need to do to make the most effective use of its own resources – and other resources that may be available in its community – in dealing with self-represented litigants? Most courts find that effective programs to assist self-represented litigants address both dimensions – they assist self-represented litigants in obtaining legal relief to which they may be entitled while reducing the time that clerks and judges need to spend on these cases.

III. The SRLN Tools

As mentioned above, the **Guide** comes with a series of resources for use in conducting self assessments which are published as separate documents by the SRLN. The following provides more information on each **Tool** and the possible reasons for using each **Tool**:

A. Two survey instruments, together with Guidelines for Data Gathering explaining how to administer them:

1. An **Exit Survey** to collect data from all persons leaving a courthouse, with a supplement seeking additional information from self-represented litigants.

The Exit Survey collects the following information about all court users:

- o their attitudes about ease of use of the courthouse, the services provided by court staff, and the fairness of any judicial proceeding in which they participated;
- o the type of case that brought them to the courthouse;
- o the purpose of their visit;
- o their frequency of use of the court;
- o data about their race and gender; and
- o general comments about what was most helpful and most frustrating about their visit.

The **Exit Survey** gathers additional data about self-represented litigants:

- o characteristics of the judicial proceeding in which they participated, if any;
- o from whom they received assistance before coming to court;
- o why they do not have a lawyer;
- o their attitudes about a court program to assist self-represented litigants; and
- o their age, number of children, education, and monthly household income.

The SRLN has developed an **Access database** for entering, compiling and reporting the data from the **Exit Survey**. Court staff must enter the data from each completed survey into the database. But once it has been entered, Access will produce standard reports for the court's use. A court must have Access 2007 to be able to use the **Access database**.³

³ If the court uses an outside researcher to analyze its data, s/he may have resources available to enter data automatically into a database and may use more powerful software to analyze the data gathered.

2. A **Judge and Staff Survey** to obtain judicial personnel's perceptions of the success of a court's program to assist self-represented litigants, the extent to which courtroom proceedings have to be rescheduled because of lack of preparation by self-represented litigants, and their views on problems encountered by self-represented litigants and actions the court could take to alleviate them. A court could modify this instrument so that it would be appropriate for gathering the views of court personnel for the purpose of planning a new program.

Court staff can tally the results of the **Judge and Staff Survey** by hand and enter them into an Excel or similar spreadsheet for analysis.

B. Basic Interview Formats for use in talking with litigants, judges, court personnel, lawyers, representatives of community organizations (such as legal and social services) about their experiences and needs. There are two basic formats – one for litigants and one for all stakeholders. A court will usually want to supplement the standard interview formats with questions focused on its own local issues.

C. Guidelines for the Use of Focus Groups to obtain information from small groups of persons. Court staff can use this process to “debrief” self-represented litigants who recently used the court to learn about their experiences. They can also use it gather information from groups of court personnel (instead of surveying or interviewing them in person) or from groups of representatives of community agencies to obtain their views on the barriers faced by persons in their communities in accessing court services.

D. A Tour Guide to observe your courthouse and court processes from the point of view of a self-represented litigant. The Tour Guide can be used by judges or court staff, by volunteers, or by other outside observers enlisted to help the court obtain useful observations about your courthouse, the behavior of your personnel, and your courtroom procedures.

E. A Best Practices Checklist for a court to use in assessing the extent to which it is following the procedures and practices that national experts consider optimal in dealing with self-represented litigants. Best practices have been articulated by various workgroups within the Self-Represented Litigation Network and collected in a single best

practices document. They represent a consensus of the opinions of local, state and national experts – persons who work with self-represented litigants and programs designed to serve them on a regular or full-time basis – concerning programmatic approaches that work well. Best practices are not necessarily appropriate for all courts; some are appropriate only in particular settings.

F. A Model for a Comprehensive Self Assessment sets forth detailed suggestions for a court wishing to undertake a full-blown self assessment. Most courts will not have the resources needed for an effort of this scope. However, courts with more limited objectives may obtain useful ideas in the Model. Section VI of the **Model for a Comprehensive Self Assessment** identifies five areas of special concern in a self assessment:

1. The appropriateness of staff and contractor roles in providing legal information and legal advice.
2. The availability of appropriate referrals for self-represented litigants to obtain legal assistance.
3. The adequacy of court case management processes for cases involving self-represented litigants.
4. The availability of assistance for self-represented litigants preparing for hearings or trials.
5. The availability of assistance for self-represented litigants with post judgment matters.

G. A Summary of Ethical Guidelines for Conducting Interviews and Data Collection provides general guidance for courts conducting self assessments about ethical issues such as obtaining informed consent from persons providing information to the court and maintaining the confidentiality of personal information obtained.

A court may wish to address one or more of these areas in the course of its more limited self assessment and can refer to the **Model for a Comprehensive Self Assessment** for discussions of each area.

These **Tools** produce information of different types for a court assessment.

Surveys gather data on standard questions from a sample of court users and from all judges and court staff who work with self-represented litigants. Because the surveys are answered by a large number of persons, the results

are likely to reflect the views of court users in general.⁴ The surveys can be administered periodically and can provide trend information concerning changes in court user perception over time. They can also be used to evaluate the impact of programmatic changes, comparing the results of surveys conducted before and after the change is implemented.

Interviews present a readily available source of information from persons who can be found in or near the courthouse. Typically, persons from all walks of life appreciate being asked their views. Instead of viewing a request for an interview as an imposition, they are flattered that their opinions are being sought and welcome the opportunity to present their ideas for consideration.

Focus groups obtain more information from a small group of court users or other persons. A focus group discussion does not need to be confined to a predetermined set of questions or topics. Because focus groups involve only a small group of people, the results do not necessarily reflect the views of all such persons. The results of focus groups cannot be compared over time. However, focus groups can provide a much richer source of information than surveys by allowing participants to raise issues not identified in advance, by providing session facilitators the opportunity to probe for additional information on issues of particular interest, and by giving participants a chance to suggest solutions to problems and to vet them with the other members of the focus group.

The **Tour Guide** creates a simulation of the court experience from the point of view of a self-represented litigant. It enables someone from your court, or an outside observer, to see the court with “new eyes,” to experience the courthouse as a stranger would, and to experience the challenges that a self-represented litigant encounters.

The **Best Practices Checklist** gives a court ideas for program initiatives endorsed by national experts. Those practices may or may not be applicable or feasible in the context of a local court operation. But they serve as a source of programmatic approaches that a court might wish to implement or

⁴ The representativeness and validity of a sample depends on a number of factors and these technical issues are beyond the scope of this **Guide** and the **Tools**. A court wishing to insure the adequacy of its survey process from a technical research standpoint will have to obtain expert advice. However, if court staff follow the directions in the **Guidelines for Data Gathering**, the court will get useful information from its survey.

that might serve to stimulate a court's thinking about modifications or adaptations of the suggested approaches that would fit its specific needs.

A court may want to employ all or some of the **Tools**. The **Tour Guide** and **Best Practices Checklist** take the least amount of court time and resources. The **Surveys** consume the most resources, in terms of data gathering, data entry and data analysis. **Interviews** and **Focus Groups** fall in the middle, with the amount of effort required being commensurate with the scope of outreach undertaken. Courts with a need for a full assessment can follow the **Model for a Comprehensive Self Assessment** which gives directions regarding how to use all of the **Tools** and compile a comprehensive report on how a court is handling self-represented litigant issues and how well an existing program is functioning.

IV. The Process of Self Assessment

Successful self assessment does not require a rigid structure. In fact, some issues that interest the court may be investigated without using the **Tools** or any formal process. When a court identifies a question that it wants to answer, it can follow these five basic steps to find an answer:

1. Identifying the issue or issues to be addressed
2. Gathering information concerning the issue
3. Making findings from the data gathered
4. Deciding how to respond to the findings
5. Implementing the decisions

Two examples of courts applying this five step structure are included in Appendix 1 of this **Guide**.

V. Dealing with Common Data Issues

In working with courts nationally, the experts have found that many courts wish to look at the same questions when analyzing issues presented by self-represented litigants. Many courts have come up with ways to look at these common data issues. In Appendix 2, we provide information about how to

look at the following questions in your court, if these are areas of interest to you.

1. In what sorts of cases do self-represented litigants most frequently appear?
2. What problems do self-represented litigants most frequently encounter?
3. What can the court do to help self-represented litigants overcome the obstacles they encounter?
4. How well are our existing court programs working?
5. How well do our facilities work for self-represented litigants?
6. How well does our referral process work? Do self-represented litigants contact law libraries or legal and social services programs to which they are referred?
7. What are the demographic characteristics of self-represented litigants in our court?
8. Why don't self-represented litigants hire lawyers?
9. How well is our court doing on areas of special concern?
10. What impacts do self-represented litigants have on the court?

VI. Turning Information into Programmatic Responses

Once court staff conducting an assessment gathers information, they need to analyze it and develop appropriate recommendations for improving court procedures.

Because of the wide range of data gathering approaches suggested above, it is not possible to set forth a single way to analyze data collected. The **Exit Survey Tool** comes with an **Access database** that will automatically generate analytical reports. For other data, there are three generally applicable steps for analysis – summarizing what you have observed or been told, comparing the summarized information with the ideal result you would

have hoped for, and assessing the extent of difference between what you have observed and been told and what you would have hoped for. The difference gap is a strong indication of the priority that the court should devote to improving a particular process.

Once you have identified a gap between how your court is performing in some area and your ideal for that performance, you will need to develop recommendations for changes in court operations to bring performance closer to the ideal. The **Best Practices Checklist** is a good starting place for solutions that have been implemented successfully in other courts. The website sponsored by the Self-Represented Litigation Network – www.selfhelpsupport.org – contains a wide variety of reports, program descriptions, and references to additional information and resources. The website, too, can serve as a source of programmatic ideas. Focus group participants may suggest ways to solve problems they have encountered. Litigants, lawyers, judges, law librarians and staff may suggest potentially effective solutions in the course of interviews or in responses to surveys. The assessment staff themselves will probably develop good ideas for improvement in the course of their data gathering.

In developing a plan for improvement, it will be necessary first to identify the service to be delivered (e.g., more understandable forms, assistance from staff in filling out forms). Next it will be necessary to identify the way in which that service will be delivered (e.g., printed materials, videotape, online resource, computer application provided in the courthouse, telephone- or video conference-delivered service, in person assistance provided daily at the courthouse, circuit rider visiting the courthouse periodically). It will also be helpful to conduct this planning in conjunction with other organizations in the community (e.g., legal services organizations, bar association pro bono committees, legal referral services, local law schools, public and law libraries, lawyers offering unbundled services) having an interest in serving self-represented persons who can share the burden of providing needed services.

It is generally necessary to present the summary of information gathered, comparison of these findings with the desired ideal (which in many cases may be self-evident), and recommendations for change to court leadership in order to obtain approval of proposed changes. This can be done orally, in writing, or both. Whether presentations are oral or written, it is often useful to present the information summary in some visual fashion – a PowerPoint

presentation, a graph, or a handout containing the principal talking points for the presentation.

VII. Establishing a Continuous Improvement Environment

Self assessment may consist of a single inquiry into an issue of concern to a court staff member or court leader. It may consist of several such inquiries.

An alternative approach would be for a court to institute a program of continuous improvement involving the routine or periodic collection of information pertaining to its services to self-represented litigants. For instance, it could administer litigant satisfaction surveys annually. It could conduct a focus group with self-represented litigants every six months. It could collect litigant demographic information for a week to a month once a year. It could survey or interview its judges and staff with the most contact with self-represented litigants annually.

If the court has a particular concern, such as with the correctness and completeness of forms submitted by self-represented litigants, it could review a sample of a dozen or so forms every month or every other month.

Having data from various points in time provides a court with a much more realistic and nuanced perspective on its performance than it can garner from a single assessment. The court can tell whether its services are improving or deteriorating in the eyes of its customers and in the eyes of its judges and court staff. It can tell whether the applications of additional resources result in improved litigant satisfaction. It can continually adjust and fine tune its services for self-represented litigants – striving always to have higher performance in the future than it has today.

VIII. Sharing the Results of a Self Assessment

This process has great value for each court that participates. That value is enhanced if the products of these assessments are shared with other courts.

Please provide your assessment report to the www.selfhelpsupport.org website and notify the SRLN Research and Evaluation Work Group of any changes that you would recommend in this **Guide** or the **Tools** accompanying it.



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Appendix 1 – Examples of Self Assessment

Successful self assessment does not require a rigid structure. In fact, some issues that interest the court may be investigated without using the **Tools** or any formal process. When a court identifies a question that it wants to answer, it can follow these five basic steps to find an answer:

1. Identifying the issue or issues to be addressed
2. Gathering information concerning the issue
3. Making findings from the data gathered
4. Deciding how to respond to the findings
5. Implementing the decisions

Here are two hypothetical examples of how two courts might apply the five step self assessment process to specific court problems, as referred to in Section IV of the **Guide**.

Example 1: Assessing defects in papers submitted by self-represented litigants

In Family Court A, the judges, courtroom clerks, and counter clerks all complain to the family court administrator about the poor quality of papers submitted by self-represented litigants.

1. Identifying the issue to be addressed. The family court administrator decides to address the issue of improperly prepared paper filings by self-represented litigants.

2. Gathering information concerning the issue. She gathers information in two ways. She interviews three judges, three courtroom clerks, and three counter clerks and the counter clerk supervisor using the **Basic Interview Formats Tool** – asking them what papers most frequently have errors and what the errors are. She asks two chambers to provide her with copies of papers with errors for a two week period, circling the errors or noting missing information in red ink on the copies. In two weeks she obtains only three examples of papers with errors; she asks the chambers to continue the process for another two weeks. Only two other examples are provided during the following two weeks.

3. Making findings from the data gathered. Several persons interviewed note the frequent failure of persons filing petitions to modify child support, or opposing such petitions, to submit the required statements of income and expenses. Follow up discussions with the chambers submitting the copies of papers with errors confirm that the lack of statements of income and expenses are a major source of frustration. The family court administrator decides to focus on this issue.

4. Deciding how to respond to the findings. She develops a new one- page information sheet about income and expense statements stating in very plain English that petitions to modify child support and oppositions to such petitions must have such a statement. She and the counter clerk supervisor discuss how counter staff can address this problem. They hold a meeting with all counter staff and reach agreement on the following process: clerks will check petitions and responses for the presence of the income and expenses statement. If one is not attached, they will provide the filer with a copy of the information sheet and an income and expense form and ask him or her to complete it on the spot, referring him or her to the counter clerk

supervisor for assistance. Counter clerks cannot refuse to accept filings without the required attachment, but will press as hard as possible to obtain the required statements. When filings without the required attachment are submitted by mail, the receiving clerk will call the submitter on the phone and send the information sheet and form by return mail.

5. Implementing the decisions. The family court administrator checks regularly with the counter clerk supervisor during the first month of the new process, learns that self-represented litigants have trouble understanding whether they are supposed to report their gross income or their net take home pay. She adds an instruction to the information sheet and distributes copies of the new sheet. A month later she speaks with the judges and chambers staff of the two chambers that collected data for her; they report that they no longer get child support modification petitions or responses without income and expense statements from self-represented litigants.

Example 2. Assessing the quality of documents prepared with the assistance of self help center staff

In Civil Court B, the court created a self help center with an attorney and two staff members a year ago. The self help center reviews papers prepared by self-represented litigants for filing and prepares orders following court hearings based on check box forms provided by courtroom clerks.

(1) Identifying the issue to be addressed. During a lunch discussion among the court administrator, the presiding family court judge, and the self help center attorney, the attorney asks the judge how well the center is doing in preparing court orders. Do the orders accurately reflect the court's decision? The judge says they seem fine, but she doesn't read them closely, relying on the self help center to get them right. The court administrator and self help center attorney find the discussion unsettling and decide to check the accuracy and completeness of orders drafted by the self help center.

2. Gathering information concerning the issue. They enlist the assistance of two private civil attorneys whom they both admire. They ask the attorneys each to sit in on four hearings involving self-represented litigants during the coming month, take notes on the relief announced by the judge at the close of the hearing, and review the order subsequently drafted by the self help center. The court administrator will identify hearings for them, but the self help center will not know which hearings they observe. The two attorneys do as requested, and make notes on the orders of several discrepancies

between the judge's order as announced from the bench and the contents of the written order.

3. Making findings from the data gathered. The attorneys meet with the court administrator and the self help center attorney and go over the discrepancies identified. The court administrator brings the court files to the meeting. The four of them go over the check box forms provided to the self help center. They find that two of the four discrepancies result from mistakes on the forms – the clerk wrote down something different from what the judge stated. The other two discrepancies result from misreading the clerk's handwriting.

4. Deciding how to respond to the findings. The court administrator and self help attorney meet with the judges and courtroom clerks in the courts observed and present the conclusions of their little study. The clerks state that they often have difficulty keeping up with the judges as they announce their decisions but are not willing to ask the judge to repeat or clarify the ruling. The group explores alternatives and decides that the best solution is for the clerk routinely to read back in open court the decision recorded on the form – for increased comprehension by the litigants as well as for verification by the judge.

5. Implementing the decisions. The court administrator checks back with both chambers after a couple of weeks. The new process is working well. The clerks feel under much less strain. The judges report that they have used the process to identify gaps in their decisions. The court administrator adds this topic to the agenda for the next civil bench meeting and it is adopted as a standard practice by all the judges. The administrator amends the civil court practice and procedure manual to include the read back procedure for check box minute orders in cases involving self-represented litigants.



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Appendix 2 – Alternative Solutions to Common Data Issues

As set forth In Appendix 1, the second step in any self assessment is obtaining information bearing on the issue to be addressed. Here are some suggestions for available sources of information useful in addressing commonly recurring problems, including when the **Tools** might prove helpful:

1. In what sorts of cases do self-represented litigants most frequently appear?

A court's case management information system often contains information on the types of cases in which persons appear without legal representation. In cases in which a party is self-represented, staff typically leave the field for the attorney name blank and enter the litigant's address in the field for the attorney's address. By running a report of all cases in which the attorney name field is empty, the court will be able to obtain a count of the cases in which a party is self-represented. By running a report of all cases in which the attorney name field is empty for both parties, the court will be able to obtain a count of the cases in which both parties are self-represented.

By sorting this information by case type, the court can then learn the relative frequency of self-representation in various types of cases. The court

can also sort the information by party type, learning the frequency of self-representation for plaintiffs/petitioners and defendants/respondents.

The attorney name field data is updated during the life of the case. Reports of self-represented litigants derived from attorney name field data will therefore be accurate as of the date of a report for pending cases. Reports for closed cases will be accurate as of the date of disposition. Neither will be accurate as of the date of filing of a complaint/petition or answer/response. Most automated information systems do not keep a record of the previous information in this field. Thus, it is usually impossible to trace the history of representation during the life of a case. The Maryland Administrative Office of the Court does track this information for Maryland family law cases and the data shows that the likelihood of representation falls during the life of a case; it is more likely that a person will be represented at the beginning of a case than at the end, except for cases that go to trial in which case the likelihood of representation increases.

When automated information systems contain a field for self-represented litigant status, this information is usually entered at the time of case initiation (for the plaintiff/petitioner) or at the time of filing an answer or response or first appearance in court (for the defendant/respondent). The data is frequently not updated if representation status changes. Thus, in these types of court information systems, the data is likely to be correct as of the date of case initiation, answer or first appearance but less accurate for representation status during the life of the case.

2. What problems do self-represented litigants most frequently encounter?

The best source of this information is focus groups with persons who have represented themselves in cases recently completed. Names of persons to invite to such focus groups can be derived from the court case management information system. (Refer to the **Guidelines for the Use of Focus Groups Tool**.)

Alternative sources of this information are:

- interviews with self-represented litigants as they leave courtrooms following hearings, using the **Basic Interview Formats Tool**;

- surveys of self-represented litigants in the courtroom at the completion of hearings, using the **Exit Survey Tool**;
- interviews with self-represented litigants as they leave the filing counter, using the **Basic Interview Formats Tool**;
- surveys of self-represented litigants as they leave the filing counter, using the **Exit Survey Tool**;
- interviews with staff of a court's self help center, using the **Basic Interview Formats Tool** or the **Guidelines for the Use of Focus Groups Tool**;
- interviews with judges and court staff who regularly come into contact with self-represented litigants, using the **Basic Interview Formats Tool** or the **Guidelines for the Use of Focus Groups Tool**;
- surveys of judges, court staff, and lawyers who regularly come into contact with self-represented litigants, using the **Judge and Staff Survey Tool**;
- interviews or surveys of law librarians who regularly come into contact with self-represented litigants, using the **Basic Interview Formats Tool** or the **Judge and Staff Survey Tool**;
- case-by-case observations of the experiences of self-represented litigants in the courtroom recorded by judges or court staff, using the last portion of the **Tour Guide Tool**; and
- review of case files to identify missing documents or problems with documents filed.

The litigants themselves will report the problems they encountered, from their perspective. Examples include difficulties finding and completing forms for filings, difficulties locating needed information, difficulties assembling information and witnesses for court hearings, anxiety about appearing in court, and ignorance of courtroom procedures. Judges and court staff will report the problems that self-represented litigants encounter from the court's standpoint. Some of the observations of judges and court staff will

be of matters that the litigants will not perceive – for instance, the judges and court staff will be able to identify the problems with submitted forms that the litigants thought they had completed correctly. Judges will be able to report on litigant failure to seek available relief. Using multiple information sources will increase the depth of understanding of the problems faced by self-represented litigants.

Courtroom observations pose a series of special challenges. It is difficult to obtain systematic data from these processes because it is difficult for different observers to provide consistent scoring of litigant performance. For instance, how is it possible to obtain consistent ratings of a litigant's nervousness in the courtroom? How valid is an observer's rating of the litigant's effectiveness in presenting his or her case to the judge? How can the court by having a staff person observe court proceedings obtain consistent information on litigants' understanding of the proceedings, understanding of the legal language used during the proceeding, or understanding of the judge's ruling at the close of the hearing?

Ratings by judges of litigant courtroom performance may be more consistent than ratings by other courtroom observers. It is often more valuable to ask observers to record their overall impressions of hearings involving self-represented litigants than to ask them to record numerical or qualitative scores for specific self-represented litigants.

Comprehensive information about litigants' experience in the courtroom has been obtained by videotaping a hearing and going over the videotape with the self-represented litigant immediately following the hearing. This process requires videotaping equipment and the investment of significant time of court staff and of the litigants themselves but produces a very detailed understanding of the experience of the self-represented litigants. However, such interviews cannot be performed by court staff because they represent *ex parte* communications with the parties; this process must be performed by persons who are not court employees.

Court staff gathering data on problems encountered by self-represented litigants should probe for:

The most frequent mistakes in papers submitted by self-represented litigants

Problems encountered by self-represented litigants in presenting their cases in the courtroom

Problems encountered by self-represented litigants in preparing or obtaining orders at the conclusion of a court proceeding

Problems encountered by self-represented litigants in enforcing orders

Language issues encountered by self-represented litigants – both in understanding English and in understanding the legal terminology used in forms, used by court personnel, and used by judges and attorneys during court proceedings.

One weakness of all of the information gathering methods set forth above is that they are not able to reach persons who found the legal process sufficiently intimidating that they chose not to try to file a case, decided to abandon their case, or decided not to answer a complaint or petition. It is difficult for a court to obtain this sort of information. It may be appropriate for the court to partner with a community agency which could devote staff or volunteers to talk with their clients about the barriers they experience or fear in using the court system. They also may be willing to collect systemic data as many agencies see this as a real problem for their clients. Some courts hold community outreach events; it is possible to meet with persons who fall into these categories at such events. It is also possible to talk with legal services program attorneys who come into contact with persons facing the consequences of ignoring court proceedings filed against them, such as eviction actions, divorce, paternity or custody actions, or small claims proceedings. However, this information is likely to come in the form of individual anecdotes rather than systematic data on the experiences of persons who decide not to use the courts or to participate in court proceedings that affect them. Finally, a court could use market research techniques – calling active telephone numbers at random and interviewing persons willing to answer questions over the phone.

3. What can the court do to help self-represented litigants overcome the obstacles they encounter?

Suggestions for possible court responses can be obtained during the same data gathering processes used to identify the problems faced by self-represented litigants discussed above. It is often helpful to ask these

questions immediately following the questions about the problems encountered.

Consequently, the **Guidelines for the Use of Focus Groups Tool**, the **Basic Interview Formats Tool**, the **Exit Survey Tool**, and the **Judge and Staff Survey Tool** can all be used for this purpose.

The **Best Practices Checklist** is also a source of ideas for programs implemented in other courts to address the problems faced by self-represented litigants.

4. How well are our existing court programs working?

The **Guidelines for the Use of Focus Groups Tool**, the **Basic Interview Formats Tool**, the **Exit Survey Tool**, the **Judge and Staff Survey Tool**, and the **Tour Guide Tool** can all be used for this purpose as well.

The court can obtain information about self-represented litigants' satisfaction with court services through focus groups, surveys or interviews. The court can obtain information from judges, court staff and attorneys about the effectiveness of existing programs through focus groups, surveys or interviews.

Staff conducting assessment efforts can use the **Tour Guide Tool** to observe court processes and proceedings and draw their own conclusions about effectiveness, with or without interviewing the self-represented litigant. (See the discussions of courtroom observations in the preceding section of this **Guide**.)

Courts can use experienced attorneys from private practice or from legal services programs to observe court proceedings – such as self help center interactions with litigants, front counter interactions, mediation interactions, and courtroom interactions – and record and report their impressions. Experienced attorneys can also review examples of court papers prepared by self help center staff and comment on their completeness and quality.

Courts have found it useful to focus these sorts of assessment efforts on a variety of different aspects of the court's services:

- on the quality of assistance provided by court staff at the front counter;

- on the quality of assistance provided by self help center staff;
- on the quality of assistance provided in the courtroom by judges, court staff, and other resources such as self help center staff or volunteer attorneys present in the courtroom to provide specialized assistance;
- on the quality of assistance provided in court alternative dispute resolution programs, such as mandatory or voluntary mediation of child custody and visitation issues; and
- on the quality of assistance provided in court law libraries.

A different approach to gauging how well the court's processes are working for self-represented litigants is to determine the percentage of self-represented plaintiffs who complete their cases. The question to be answered is whether plaintiffs/petitioners are able to bring their cases to a conclusion, not whether they are able to prevail. Are they able to complete service of process, schedule the case for a hearing on the merits, and have their case determined on the merits at the hearing?

The principal indicator of lack of success is for the case to be dismissed for a procedural defect or for failure to prosecute. It may be possible to generate a report from the case management system showing the number of cases filed by self-represented parties and the percentage of those cases dismissed prior to or during trial. More nuanced information can be obtained by viewing a sample of case files – identifying not only whether the case failed to reach a resolution on the merits, but also the reason for that failure. Service of process, which is often difficult for attorneys when a party does not want to be found, is even more difficult for self-represented litigants. A case file review will disclose the extent to which this is true in your court.

It is important in conducting this sort of "failure to complete" study to acknowledge its inherent limitations. A party may have other reasons for abandoning a court case – for instance, deciding not to pursue the case (as, for instance, if a spouse has reconciled his or her marital differences with the other spouse) or reaching a voluntary settlement of the dispute. However, in a 2003-2004 study of self-represented litigants in San Diego, these factors explained only 24% of family cases in which the moving party had taken no further action 150 days after the case was filed; 8% were trying to reconcile and 16% were trying to reach agreement with the other party.

Most of the litigants did not know that they had anything further to do or thought that the court would let them know what to do next.

This sort of study also focuses exclusively on the moving party. It does not provide any information on the ability of self-represented defendants/respondents to get their cases heard on the merits. Some information on this issue might be evident from a case file review. However, it is not possible to know whether a default arises from the defendant's lack of interest, prior agreement with the moving party, or inability to figure out how to present a defense in court.

5. How well do our facilities work for self-represented litigants?

The **Tour Guide** is specifically designed to address this question and to identify a variety of possible improvements, from better signage to better use of available space.

A court could also seek this information from interviews or from focus groups. (See the **Guidelines for the Use of Focus Groups Tool** and the **Basic Interview Formats Tool**. The **Exit Survey Tool** also contains four questions pertaining to court facilities.)

6. How well does our referral process work? Do self-represented litigants contact law libraries or legal and social services programs to which they are referred?

Staff conducting assessment efforts can contact law libraries, legal services programs, attorney referral services, and social services programs to which referrals are regularly made and ask them a series of questions:

- Is the court referring the right sorts of persons to these programs?
- Do the persons referred actually contact the program to which they have been referred?
- Do the programs have sufficient resources to provide services to the persons referred?

These sorts of general inquiries may or may not prove useful. For instance, a law library, an attorney referral program or legal aid program may not

know which persons were referred by the court. They will certainly not know how many persons failed to contact them following a court referral. Court staff conducting an assessment may want to ask court staff making referrals to sources of legal assistance or social services (for instance, at the self help center) to make a list of the names of persons referred to particular programs for a week and then follow up with the programs to whom they were referred and ask if those specific persons have contacted the program, if they were appropriate for the program's services, and if they actually received services.

7. What are the demographic characteristics of self-represented litigants in our court?

Most courts use surveys completed by persons seeking help at a court self help center to obtain this information. It is not necessary to ask every person coming to the center to provide this information. That places a heavy burden not only on the court's customers, but also on the court staff who have to enter the data for analysis. It is sufficient to gather such data for a limited time period – from a week to a month depending on the number of persons visiting the center – and repeating the exercise once a year to determine whether the demographics have changed.

Of particular importance to many courts is information about the income of persons representing themselves in court. If the data shows that most of them are poor, stakeholders will be more sympathetic to their situation.

There are other ways to collect this sort of demographic information. The **Exit Survey** is designed to collect this data from persons leaving a courthouse. It can also be used to obtain information from self-represented persons leaving a court filing counter or a courtroom.

We urge courts to use the demographic questions contained in the **Exit Survey** regardless of the method they use for data collection. It is worthwhile to gather this data in a standardized way so that courts can compare their results.

8. Why don't self-represented litigants hire lawyers?

Data from courts throughout the country show three frequent answers to this question – "I cannot afford a lawyer." "My case is not complicated enough to require a lawyer." "I don't want to spend the money it would take

to hire a lawyer.” A few litigants report that they believe a lawyer would slow down the case.

You can obtain answers to this question for your court by including the question in a survey to obtain litigant satisfaction or demographic information. Question 29 on the **Exit Survey** contains standard wording for this inquiry. The court will find it useful to determine the types of cases the litigants are bringing to court to understand the impact of not hiring an attorney.

9. How well is our court doing on areas of special concern?

The **Model for a Comprehensive Self Assessment** identifies five issues identified in evaluations of court programs to assist self-represented litigants that pose particular problems when courts work with self-represented litigants. The five issues are:

1. The appropriateness of staff and contractor roles in providing legal information and legal advice.
2. The availability of appropriate referrals for self-represented litigants to obtain legal assistance.
3. The adequacy of court case management processes for cases involving self-represented litigants.
4. The availability of assistance for self-represented litigants preparing for hearings or trials.
5. The availability of assistance for self-represented litigants with post judgment matters.

Discussions of these issues, and of ways to assess your court’s success in dealing with them, are contained in the **Model for a Comprehensive Self Assessment**.

10. What impacts do self-represented litigants have on the court?

Courts often want to quantify the impact of self-represented litigants on the court – on judges, on chambers and courtroom staff, and on clerical staff. Here are a variety of information gathering techniques a court could employ for this purpose:

- Determining the amount of time required of front counter staff. The court could create a simple form on which front counter staff would record each interaction with a self-represented litigant, noting the length of time required. The court could require staff to use these forms for a week or two and record the information, determining the average time spent daily on self-represented litigant assistance by each clerk and by the court as a whole. It might be interesting to compare the average time spent with a self-represented litigant with the average time for interactions with lawyers or their runners.
- Determining the number of hearings involving self-represented litigants that are continued. The court could record on its printed calendar each self-represented litigant case continued for lack of necessary paperwork or other reason. It would be helpful to record the reason for the continuance as well. Courtroom staff could record this information for a two week period. It would also be instructive to note on the calendar the cases in which lawyers appeared that were continued. At the end of the two week period, a staff member could count up the numbers and percentages of self-represented and represented cases continued and subdivide them according to the reason for the continuance.
- Determining the length of hearings involving self-represented litigants. The court could use the same process suggested above to record the time required for its hearings for a two week period. One of the courtroom attendants could note the start and end times for each hearing on the calendar. At the end of a two week period, a staff member could compute the length of each hearing and compile the information for cases involving two lawyers, one lawyer and no lawyers.