

Addressing the Needs of Self-Represented Litigants in Alabama State Courts

Final Report

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INTRODUCTION

In 2007, the Alabama Supreme Court's Chief Justice appointed the Access to Justice Commission (hereinafter "Access Commission"). Since its formation, the Access Commission has formed several subcommittees to address access to justice issues facing Alabamians. Among them is the Pro Se Subcommittee, chaired by Henry Callaway, Esq. It is this subcommittee that has undertaken several measures to address the increasing challenges posed by self-represented litigants, and requested this report in order to develop initial steps to address access to justice for self-represented litigants throughout the state.

It is the intent of the Pro Se Subcommittee that this report address current barriers to provide services for self-represented litigants and propose strategies for addressing these barriers, drawing upon expertise developed in other states, while keeping in mind the uniqueness of Alabama's legal system and culture. For that purpose, this report includes a discussion of the current state of legal services delivery in Alabama, together with a brief overview of efforts to date in addressing self-representation in the state.

Following a discussion of the unique challenges presented by self-represented litigants and their impact on court operations, and traditional attorney and judiciary roles, this report will offer suggestions for shifting the paradigm of the legal system in Alabama. It will also provide specific recommendations to begin addressing the many aspects of the provision of services to self-represented litigants, with an understanding that, given limited resources and nationwide financial crisis, the initial focus will have to be placed on those measures which can be implemented with minimum cost and within existing infrastructure.

Interviews with Access Commission members

Much of the information regarding the current state of service delivery in Alabama was compiled after extensive interviews with several members of the Access to Justice Commission and others. The following individuals participated in interviews for this project: the Honorable Jack Lowther, District Court judge in Jefferson County; Corinne T. Hurst, Circuit Clerk for Lee County; Henry Callaway, Attorney at Law and Chair of the Pro Se committee of the Access Commission; Tracy Daniel, Executive Director of the Alabama Law Foundation and staff liaison between the State Bar and the Access Commission; Linda L. Lund, Director of the Volunteer Lawyers Program of the Alabama State Bar; Judge John Carroll, Dean of Cumberland School of Law and Chair of the Delivery of Legal Services committee of the Access Commission; Dean Hartzog, Staff Attorney and Public Information Officer with the Administrative Office of the Courts; Jimmy Fry, Executive Director of Legal Services Alabama and member of the Delivery of Legal Services committee; Stephen Stetson, legal analyst with Alabama Arise and member of Pro Se committee of the Access Commission; and Cassandra Adams, Director of the Cumberland Community Mediation Center & Public Interest Project and professor at Cumberland School of Law.

Their thoughts, observations and suggestions are incorporated throughout this report and, in particular, inform the discussions regarding strategies for addressing institutional and cultural resistance to efforts to address self-representation in Alabama. They also provide invaluable input as to the likelihood of development and implementation of the suggested ideas in the near future, and have helped shape the priorities stated here.

PART 1. SELF-REPRESENTED LITIGANTS AND ALABAMA'S SYSTEM OF DELIVERY OF SERVICES

I. Self-representation in Alabama and nationally

Courts in the past decade have experienced a dramatic increase in the number of filings by self-represented litigants. As discussed in more detail later in this report, the increase in self-representation has created significant challenges for state courts and the justice system as a whole. Court leaders throughout the country have begun to take significant steps to address this crisis, recognizing that self-represented litigants are a large and important part of the customer base for the courts. The appointment of Alabama's Access Commission and formation of the Pro Se subcommittee is one such step by Alabama's Chief Justice.

Alabama's efforts to improve access for self-represented litigants and address existing obstacles to its citizens' ability to seek legal redress will undoubtedly yield the positive results other state court systems have already enjoyed. Specifically, Alabama will too recognize what those courts that have taken action have realized, namely that innovations in practices, procedures, and programs can demonstrably improve the functioning of their courts, and that attention to self-represented litigation issues serves the interests of all court users, judges, staff, and the legal system as a whole. In fact, court and judicial leaders in states which have embraced these solutions have found higher public trust and confidence, more smoothly operating courts, and better relations with stakeholders and the public.

There are a number of social, economic and political factors causing the trend toward self-representation. The increasing number of poor and near poor, the rising cost of legal services relative to inflation, decreases in funding for legal services for low-income people, and greater public desire for understanding of and active involvement in their personal legal affairs – are all at the root of the increase in self-representation. All these factors are at play in Alabama.

II. Overview of Alabama's demographics, poverty rates and legal services

Alabama has a population of over 4.6 million. Of this number, approximately 71 percent are White, and 26.5 percent are African American.¹ Four percent of Alabama residents speak a language other than English at home, with approximate 2.4 percent of inhabitants having been born outside the U.S.²

Alabama has the seventh highest poverty rate in America at 16.1% of its population and its median household income ranked ninth lowest.³ Poverty in Alabama disproportionately affects children. The poverty rate statewide among children 17 and under is nearly 22 percent.⁴ For families with a female head of household, the rate is nearly 45 percent.⁵ Poverty rates are substantially worse in Alabama's rural areas. Many rural counties have poverty rates over 30

¹ 2007 U.S. Census.

² 2000 U.S. Census.

³ *Poverty in the United States*, 2002, U.S. Census Bureau

⁴ James L. Evans, *The picture of poverty in Alabama* (Jan. 2006) available at <http://www.annistonstar.com/opinion/2006/as-insight-0127-0-6a26q5303.htm>.

⁵ *Id.*

percent.⁶ For example, Wilcox, the state's poorest county, has nearly 40 percent of residents living below the poverty line, including 47 percent of the children living in the county.⁷

By conservative estimates, there are over 723,000 persons living below the federal poverty level in Alabama and the numbers increase each year.⁸ Also negatively affecting poverty rates is the fact that, according to 2007 U.S. Census data, Alabama's high school graduation rate – 75% – is the second lowest in the United States (after Mississippi).

Alabama currently ranks behind all other states, the District of Columbia and Puerto Rico in funding per poor person for access to justice in civil matters. Fewer than 20 percent of the civil legal needs of Alabama's poor were served in 2007.⁹ In fact, according to the soon to be released study by the Alabama Law Foundation, 84 percent of the civil legal needs of low-income households are unmet. These figures concord with the findings of the federal Legal Services Corporation in its report, *Documenting the Justice Gap in America*, which confirms the continued existence of "a major gap between the legal needs of low-income people and the legal help that they receive." According to the LSC, "[A]t least 80 percent of the civil legal needs of low-income Americans is not being met. Moreover, 50 percent of the eligible people seeking assistance from LSC-funded programs in areas in which the programs provide service are being turned away for lack of program resources."¹⁰

III. Causes of self-representation

Cost of legal assistance is increasingly beyond reach

Many self-represented litigants proceed without a lawyer because they lack sufficient income to hire one. As numerous studies nationally reveal, high proportions of self-represented litigants reported that they could not afford a lawyer. Additionally, many cases filed by self-represented litigants involve only small amounts of money, making it difficult to find lawyers willing to take the case on a contingency basis.

Resorting to self-representation has become an economic necessity, not just for indigent individuals, but also for large numbers of middle class litigants who find the cost of legal representation prohibitive. In fact, it is not just poor Alabamians who are unable to seek assistance for their legal needs. Moderate-income people are also unable to fully participate in the legal system. The ABA Comprehensive Civil Legal Needs Study in 1994 showed that the legal needs of moderate-income people are similar to those of poor people, and that moderate-income people are similarly vulnerable, with many finding themselves an illness or a divorce away from falling into poverty.¹¹ With the current financial crisis, dramatic increase in foreclosures, and high rates of unemployment, the realities regarding the inability to access legal assistance have become all too prevalent.

⁶ Id.

⁷ Id.

⁸ Alabama State Bar Volunteer Lawyers Program website.

⁹ President's Page, *The Alabama Lawyer*, Jan. 2008 at p. 7, available at http://www.alabar.org/publications/articles/Jan08/pres_page.pdf.

¹⁰ *Documenting the Justice Gap in America*, by Legal Services Corporation (September 2005), available at http://www.abanet.org/media/issues/civiljustice/civiljustice_lscreport.pdf.

¹¹ *Findings of the Comprehensive Legal Needs Study*, ABA Division of Legal Services (1994) available at http://www.algodonesassociates.com/legal_services/assessing_needs/abalegal.htm.

Legal services programs in Alabama are unable to meet the legal needs of low-income Alabamians.

Alabama's high poverty rates, increase in income inequality and issues affecting the growing poor have severe implications for legal services providers. Federal funding through the Legal Services Corporation (LSC) has decreased over the last 25 years; Alabama is last among all 50 states in the amount of funding per poor person for civil legal aid. Consequently, legal services programs can handle only a small fraction of the cases that qualify for assistance; in fact, as stated above, estimates are that 84 percent of low income Alabamian's legal needs remain unmet.

Although the problem of inadequate access to legal services is not limited to low income communities, the poor and near poor often experience more urgency in addressing their legal issues, with severe consequences such as loss of housing or loss of a job if they are unable to obtain assistance. In addition, the poor and near poor are less likely to have the educational levels and skills necessary to handle legal problems without any assistance. Vulnerable groups such as children, the elderly, homeless people, immigrants, and persons with disabilities among others, are in particular need of services.

As described in more detail below under the current state of legal services delivery in Alabama, the free legal services offered to Alabama's low income population are very limited, often restricted to programs of representation for domestic violence victims or seniors, on-line self-help guides, or brief advice and counsel through volunteer attorney programs. As a result, individuals facing crises that may affect everything from their ability to earn a livelihood to their right to care for their children, have no choice but to navigate a legal system that is largely designed for and by lawyers and judges. At worst, they are forced to stand outside the justice system, ignorant of or intimidated by the first steps they need to take to avail themselves of its services.

An increased number of people choose self-representation

The data shows that most people representing themselves will not obtain the services of a lawyer because they lack the means to do, but there have also been increases in people choosing to represent themselves because they believe the matter is relatively simple. Combined with technological innovations that have expanded the services that individuals can obtain quickly and cheaply through the internet or computer software, the result has been a vast array of information, advice, document preparation assistance and dispute resolution processes for individuals who want to take law into their own hands.

In addition, studies reveal an increased desire on the part of litigants to understand and actively participate in their personal legal affairs. Citizens now demand much greater accountability from publicly supported institutions, and they are much less tolerant of government agencies that cannot deliver services or explain their institutional functions in ways that are comprehensible to people of average intelligence and education. These new demands for public accountability have forced courts to become more responsive to non-lawyer users of the court system by developing court-based programs to assist self-represented litigants.

Regardless of the underlying causes, the trend toward self-representation reflects a significant deviation from a fundamental assumption by courts – namely, that litigants are represented by licensed attorneys who are trained in the law and court rules. The influx of large numbers of litigants who may not be informed about law and court procedures poses significant implications

for the administration of justice, especially demands on court staff and resources and ethical dilemmas about how to compensate for self-represented litigants' lack of knowledge without jeopardizing judicial requirements of neutrality and objectivity.

IV. Current delivery of legal assistance to low-income Alabamians

Legal Services Alabama

There is one primary direct legal services agency in Alabama, Legal Services Alabama (LSA), which receives most of its funding from the Legal Services Corporation (LSC). Legal Services Alabama is a statewide nonprofit organization, charged with providing access to justice and civil legal assistance to Alabama's low-income community. LSA has ten offices located in: Anniston, Birmingham, Dothan, Florence, Huntsville, Mobile, Montgomery, Opelika, Selma and Tuscaloosa. LSA is a relatively new organization, formed in 2004 after the merger of Alabama's three main legal services providers: Legal Services Corporation of Alabama, Legal Services of Metro Birmingham and Legal Services of North-Central Alabama.

LSA primarily assists Alabamians by providing legal representation in civil and administrative hearings; providing brief advice and counsel; providing community education; and developing and distributing legal educational materials. Given its funding limitations and LSC-imposed requirements, LSA does not handle criminal matters, cannot accept fee-generating cases, and is prohibited from collecting attorney's fees and from pursuing class actions, lobbying, or representing prisoners and undocumented immigrants. As is the norm with legal services programs, clients must meet strict income eligibility guidelines to qualify for services.

LSA faces an ever-increasing demand for services with minimum funding. As is the trend nationally, Legal Services Alabama is unable to meet the overwhelming demand for legal assistance and LSA offices are forced to turn away many more potential clients than they are able to assist.

In addition to its direct representation and brief advice and counsel, LSA has focused many of its services on public education. It has developed a number of informational materials, posted at www.AlabamaLegalHelp.org in several areas of law, from domestic relations, consumer law, and housing, to protection from abuse and probate. These materials provide a tremendous amount of very useful and relevant information; however, strategies for their better distribution and availability are needed, as well as plans to translate them into other languages, especially Spanish.

Volunteer Lawyers Programs (VLP)

There are four volunteer lawyers programs in Alabama. Three of them are sponsored by local bar associations in Mobile, Jefferson, and Madison counties; the Alabama State Bar VLP serves the remaining 64 counties. The VLPs provide pro bono legal services in civil, non-fee-generating matters to low-income persons who cannot afford an attorney. VLP clients have a wide range of legal problems such as consumer, domestic, housing, and probate matters. The VLPs are funded by a variety of sources, including IOLTA funds from the Alabama Law Foundation and the Alabama Civil Justice Foundation, subgrants from LSA, the state bar association, United Way, and lawyer contributions. Twenty-three percent of the state's lawyers provide pro bono services through one of the four VLPs.

Attorneys volunteering through the various VLPs gain a great deal of client and courtroom experience through their pro bono cases. VLP also offers more experienced attorneys the ability to mentor newer lawyers. Volunteer attorneys are recognized for their service through certificates of appreciation, annual awards, and other special events highlighting pro bono activities in the state. They also receive free training seminars for CLE credit. In addition, VLP provides malpractice insurance coverage to those volunteer attorneys handling pro bono cases through VLP.

The Alabama Law Foundation

The Alabama Law Foundation (hereinafter “the Foundation”) is the primary 501(c)(3) statewide organization that supports programs providing civil legal aid to the poor. It uses funds from the interest on Lawyers’ Trust Accounts (IOLTA) Program for law-related charitable projects that are in line with the Foundation’s mission to meet the need for civil legal assistance for low-income Alabamians.

In 2008, the Foundation had \$473,000 in IOLTA funds to distribute to grantees that provide legal services for the underserved. LSA received \$200,000 for technical assistance and four new attorneys. The Alabama State Bar Volunteer Lawyers Program, the Mobile Bar Association Volunteer Lawyers Program and the Birmingham Volunteer Lawyers Program received \$200,000 combined to continue providing volunteer legal services to low-income clients. The remainder was awarded to a new program focused on rural areas. For 2009, LSA has been awarded \$335,000.

Other legal services providers

There are other agencies in the state that provide legal assistance to Alabama’s poor. The Alabama Civil Justice Foundation, the other IOLTA program in Alabama aside from the Alabama Law Foundation, was created by the Alabama Trial Lawyers Association as a charitable philanthropy committed to civil justice, and in 2008, they awarded LSA \$50,000. Alabama Arise focuses on advocacy and legislative work to address issues disproportionately affecting low income residents of the state. Some agencies are very limited in the assistance provided, such as the Alabama Coalition against Domestic Violence, which provides information to victims of abuse. Other providers include the Birmingham YWCA, Birmingham Legal Aid, and law school clinics.

It is important to note that there are surprisingly few non-profit legal services providers in Alabama. LSA is the only major direct services provider and significant gaps in services exist throughout the state. Given funding and resource limitations at LSA, many legal matters that do not involve domestic violence go largely unaddressed, and with no other providers to take on the burden, those with any other type of legal issue only have VLP volunteer attorneys as a resource. Although VLP continues to promote pro bono work and recruit volunteer attorneys, it cannot come close to filling the service gaps created by the inability of LSA to serve those who are otherwise eligible for their services.

V. Overview of Alabama’s efforts to address self-representation

Given its relatively new arrival into proactively addressing the needs of self-represented litigants, it is not surprising that Alabama’s legal system has not yet implemented significant concerted measures in this regard. There are consumer information pamphlets with legal information in

several areas published by the Alabama State Bar and by Legal Services Alabama in particular, all of which are available online. These materials address key concerns for Alabamians in the justice system but are not widespread nor uniformly and consistently distributed throughout the state and the courts. Though potentially very useful, these materials were not developed as part of a broader statewide coordinated effort to address the need for public legal education, and their use appears to be ad hoc. When developing a system wide effort to address self-representation issues, these already developed materials must become part of the effort for public education.

The Pro Se Forms committee of the Alabama State Bar did undertake an important effort to develop plain language forms and instructions in areas of law predominantly faced by self-represented litigants. After a process of identifying useful forms and information, a plain language consultant was retained to help develop several court forms and informational sheets, and the diverse members of the committee were involved in reviewing these forms and ensuring their appropriateness. These forms were not formally adopted by the AOC (and thus not promulgated by the court), but they appear to have been accepted by many clerk's offices and judicial officers. Although the particular forms selected for this first effort were in part chosen because they were the least likely to encounter opposition from the private bar, their development constitutes a very important step in facilitating access to the courts by self-represented litigants. The need for further efforts in this regard will be discussed later in this report.

In addition to plain language forms and instructions, members of the Access Commission have engaged in some initial conversations to explore the possibility of a pilot self-help center in the Birmingham District Court. As will be explored in much more detail later, self-help centers are a key strategy for providing services for self-represented litigants, and specific recommendations will be offered as to development and implementation.

VI. Challenges self-represented litigants pose for the court system

Court and judicial leaders are faced every day with the consequences of the flood of self-represented litigants. These litigants pose special challenges for courts: they demand staff time to answer questions and provide general assistance, create problems caused by procedural errors, cause delays in court proceedings, and challenge the court's ability to preserve the fairness of proceedings when at least one litigant is not represented by a lawyer. The demand of pro se litigants for assistance is creating important ethical dilemmas for clerks of court, court personnel, and judges.

Self-represented litigants place a strain on the limited resources of our judges and court system

Self-represented litigants can place heavy time and emotional demands on clerks and others who deal with the public. Increases in the number of self-represented litigants make significant demands on court resources. Court clerks report that self-represented parties require more time than represented parties, that they expect the clerks to provide advice that court staff are not allowed to provide, and that they expect court staff to do the work for them.

Administrative and procedural errors committed by self-represented litigants can add to the burden on court staff even after initial pleadings are successfully filed. Failure to file responsive pleadings or supplemental documents in a timely manner creates additional paperwork and costs for court staff. Failure to arrange for service of process on opposing parties can require numerous

scheduling adjustments to court calendars, creating inefficiencies in the use of court time. Incomplete or indecipherable court documents make it difficult for judges to determine the relief requested or even whether the claim has a legal basis. The pervasive problem of litigants' failure to appear for scheduled hearings causes uncertainty for court staff about the number of cases to schedule on any given docket, resulting in unnecessary delay in other cases.

Judges and clerks find consistent problems with self-represented parties expecting them to provide legal advice, failing to understand rules of procedure and evidence, failing to bring necessary witnesses and evidence to court, and refusing to accept the court's rulings. In fact, Judge Jack Lowther expressed the same frustration heard from judicial officers around the nation: having to rule against a self-represented litigant not because they did not have a strong and possibly winning case, but because they did not know how to prove their case or their damages. The result, apart from the significant potential for failure to find redress for legitimate legal claims, is wasted judicial and staffing resources.

Ethical dilemmas for judges, clerks and court personnel

The ethical dilemma that self-represented litigants pose for judges and court clerks and staff is similarly a challenge for the legal system. Many judges and court staff find themselves in the difficult position of trying to provide meaningful access to justice without violating the court's fundamental obligation to maintain neutrality toward all litigants.

An important difficulty is the potential entanglement of judges into pro se litigants' cases in such a manner as to violate or give the appearance of violating the judicial duty of impartiality. Although some judges attempt to prevent exploitation of the ignorance of a pro se party, others decline to do so out of concern that such efforts will compromise their impartiality or encourage more individuals to proceed without attorneys.

For court clerks and court personnel, as supported by Corinne Hurst, Circuit Clerk for Lee County, one of the primary difficulties in dealing with self-represented litigants is the prohibition against the unauthorized practice of law. Some court personnel who are not lawyers fear that any advice or counsel provided to a pro se litigant may constitute the unauthorized practice of law. Others fear that, while some forms of pro se assistance may be lawful, there is still a threat of getting drawn deeper and deeper into the litigant's problems in ways that may eventually constitute the unauthorized practice of law.

Alabama has seen the challenges faced by clerks in assisting self-represented litigants first hand when, after providing assistance to a pro se litigant, a clerk was sued by a private attorney for providing legal advice and thus, according to the complaining attorney, engaging in the unauthorized practice of law. This lawsuit, whether with merit or not, has had, according to several of the Access Commission members interviewed, a chilling effect on the willingness of court clerks to provide self-represented litigants with any information. Reports suggest that court clerks were much more willing to assist a litigant with information, but once this complaint was filed, clerks throughout the state felt it necessary to severely restrict their engagement with self-represented litigants. It appears that the reaction to this complaint swung the pendulum to the extreme opposite position and very little, if any, information was provided to litigants. The sense is that the pendulum has swung back slightly, but the fear is still widespread of crossing the line between legal information and legal advice.

Given these difficulties, many courts have shied away from providing any form of pro se assistance. However, this approach is also problematic. If every citizen has a constitutional right to access the court and the right to self-representation, then courts have a responsibility to make those rights meaningful by providing access and assistance.

VII. The need to address the self-represented litigant “problem”

As described, self-represented litigants can be a drain on court resources, judicial efficiency and effectiveness, and pose serious problems to the court’s obligation to maintain neutrality and impartiality. However, to ignore the problem hoping it will go away, or that eventually everyone will hire an attorney, has already proven to be a failing proposition. Not only have self-represented litigants not gone away, they have been increasingly accessing our courts and requesting the access to justice to which they are entitled.

Therefore, courts and the legal system as a whole must together decide to proactively address self-represented litigants and the challenges they present to a system not originally designed to welcome self-representation.

Access to justice is a right

No principle is more essential to a democratic society such as ours than equal access to justice. Access to justice is a fundamental right; it ensures the long-term preservation of our core constitutional and common law values and fosters respect for the rule of law by all segments of society. While the law increasingly permeates every aspect of our lives, not all members of society enjoy full access to the courts, the institution in which the law is administered, interpreted, applied and enforced. Without meaningful access to justice, the constitutional right of Americans to seek redress from legal wrongs becomes illusory.

Courts are not accessible

A layperson faces obstacles to effective participation in our courts such as the complicated nature of the law and unfamiliarity with complex rules of evidence and procedure. Some parties face additional barriers, such as limited English proficiency or lack of literacy. As a result of these barriers, a self-represented litigant may not obtain the same benefits from the courts that a represented litigant does.

Exacerbating the situation is the fact that the American justice system is not historically a “user-friendly” environment. It appears an intimidating and sometimes hostile environment for many self-represented litigants. Often, forms are unintelligible, and processes are intimidating. Extended delays, inconvenient hours and locations, apparently non-sensical rules and procedures cause many pro se parties to spend an entire day waiting for their case to be called, or to lose even more time shuttling between various courts to address related needs. Self-represented parties are also at a severe disadvantage when negotiating a settlement with an opponent who has counsel, and many are misled into giving up crucial rights and remedies. Access to court records is cumbersome and time-consuming, and signage in court offices is often inadequate or confusing.

Although Alabama's court system is unified, the reality is that procedures can vary tremendously from county to county, from court to court, and sometimes even from judge to judge. Thus, information that a self-represented litigant obtains about one court cannot necessarily be relied upon when dealing with another court.

Erosion of public trust and confidence in the courts affects legitimacy of system

Perhaps most importantly, public trust and confidence in the judicial process are undermined when justice is delayed or appears to be completely inaccessible to litigants who do not have access to legal help. The widespread distrust and low level of public confidence are very damaging to the legal system as a whole.

Self-represented litigants who are disenchanted and cynical about the justice system are less likely to avail themselves of information, advice and help they consider suspect, and are more likely to first try to make their own way through the legal system. For increasing numbers of litigants, a lack of English fluency and diverse cultural backgrounds makes the American justice system even more unfamiliar, exacerbating the level of distrust and intimidation.

Not only are distrust in the system and lack of confidence troublesome, but they concurrently bring a lack of legitimacy to the entire legal system. This in turn results in failure to respect court orders and a failure to resort to the rule of law to resolve disputes, which is a crucial element of our democratic society.

Providing assistance to self-represented litigants leads to a more efficient court system

Among the reasons for the courts' reluctance to provide assistance to self-represented litigants is the fact that, if the court provides this assistance through additional personnel or equipment, the court will bear the cost of such resources. If the court attempts to provide such assistance through its existing personnel, the court will bear the cost of having its existing personnel distracted from other duties. Either way, it is a cost.

However, fiscal benefits to the courts produced by pro se assistance programs have already been documented in terms of savings in courtroom time; improvement in the quality of information given to judicial officers, reduction of inaccurate paperwork, inappropriate filings, unproductive court appearances and resulting continuances; and increases in expeditious case management and settlement services.¹² The success of these programs is critical for courts as they attempt to deal with current budget conditions. It is imperative for the efficient operation of today's courts that well-designed strategies to serve self-represented litigants are incorporated throughout the full scope of court operations.

Judicial and legal policy makers have gradually come to the realization that there will never be enough affordable legal services to meet the demand for full legal representation for all eligible

¹² For program evaluations of measures to assist self-represented litigants that have resulted in court savings and more efficient utilization of judicial resources, see for e.g. *Self-Help Pilot Programs - A Report to the Legislature*, Administrative Office of the Courts, March 2005, available at <http://www.courtinfo.ca.gov/programs/equalaccess/modelsh.htm>, and *Family Law Information Centers: An Evaluation of Three Pilot Programs*, Administrative Office of the Courts, March 2003, available at <http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/FLICrpt.htm>.

individuals. Given existing budgetary constraints, a 400% increase in funding for legal services to allow it to serve everyone in need and eligible for services is highly unlikely. Similarly unlikely is a dramatic increase in pro bono activity by lawyers, or a dramatic decrease in legal fees. Therefore, many states have taken action in two primary areas, one within the legal and court community about what constitutes meaningful access to justice and how to ensure it, and another within the legal community about how best to deliver legal services.

The remainder of this report will explore both of those avenues for Alabama: on the one hand, how to work toward creating a judicial and legal system that is truly accessible to all Alabamians; on the other, what can the different components of the legal services delivery system do to improve the delivery of services to those who need assistance.

PART 2. WORKING TOWARD MEANINGFUL ACCESS TO JUSTICE IN ALABAMA

I. Addressing Institutional Resistance

The consensus among those participants interviewed for this project is that without a significant shift in culture in the primary institutions that make up Alabama's legal system, any program for self-represented litigants would at best be short-lived and at worst, would fail from the start.

Institutional barriers and resistance to change are traditionally the greatest obstacles in shifting views and finding new approaches to issues presented by self-represented litigants. Overcoming this resistance is key if Alabama wants to ultimately create a court system that is accessible to all its citizens. Although other efforts to improve access for self-represented litigants can and should be implemented in spite of institutional resistance, long-term efforts to address access to justice will not be successful until some measure of buy-in is achieved from all key stakeholders.

Court resistance

For judges and court staff, the initial concern regarding self-representation was how to address the ethical and practical implications of increased numbers of self-represented litigants. As discussed above, the departure from the traditional model of litigants represented by competent attorneys posed enormous challenges for courts in terms of both increased staff time and administrative costs as well as perceived restrictions on the ability of judges and court staff to offer meaningful assistance.

An early response by many courts was to vigorously maintain existing barriers to self-representation—for example, by strictly enforcing “no legal advice” policies for court staff and holding self-represented litigants to the most exacting procedural standards—in hopes that these efforts would discourage litigants from seeking legal recourse in the courts without first obtaining competent legal representation.

Over time, however, many courts have changed their minds about the wisdom of this approach—in part, because it was largely ineffective and ultimately counter-productive. In spite of barriers, the number of self-represented litigants has continued to rise, and the failure of courts to offer them any assistance has not only exacerbated logistical problems but also undermined public trust and confidence in the courts as effective and responsive social institutions. An even more important consideration is the growing realization that the majority of self-represented litigants had legitimate legal problems that could only be resolved through judicial intervention.

Private Bar resistance

Lawyers are particularly concerned about the economic implications of making self-representation a more feasible option for litigants and many are ambivalent about court-based efforts to improve access to justice for self-represented litigants. It appears that in Alabama, many members of the private bar view still tend to see the increase in self-represented litigation as a threat to their economic livelihood.

Although this is the case throughout the country, in those states where significant steps toward services for self-represented litigants have been taken, lawyers increasingly recognize that the cost of legal services falls beyond the reach of many low-income and even moderate-income households, and that the private bar has never adequately met the needs of these individuals through pro bono legal services.

In addition to these institutional barriers specific to the court and the bar respectively, these two institutions share common concerns in considering access for self-represented litigants. Much of the resistance from the bench and bar to self-help initiatives stems from perceived threats to the institutional integrity of the legal system. Both lawyers and judges are concerned that programs for self-represented constitute a fundamental departure from the traditional commitment to full legal representation for all litigants.

It is crucial, therefore, to educate judges and lawyers about the constraints faced by self-represented litigants. Many in the legal profession still maintain an unrealistic belief that the answer to access to justice is simply to provide more lawyers for low-income and moderate-income people. However, after more than a decade of struggles to increase funding for legal services and lawyer participation in pro bono programs, it is clear that we have not come close to meeting the demand for affordable legal services. Judges and lawyers should recognize that equal access to the justice system will be best accomplished by providing self-help assistance for those litigants who are capable of pursuing their cases on their own without full legal representation and reserving scarce legal services for litigants with more complex cases or who lack the cognitive or emotional ability to represent themselves.

For both groups, the challenge will be to develop ways to change the vision of self-help initiatives from a threat to an opportunity, and to find solutions to promote access to justice while at the same time limiting the burdens self-represented litigants place on the administration of justice. In order to achieve this, judicial and legal education will be a key component and resources for these education campaigns are offered in the section devoted to recommendations.

Undoubtedly, the transition from the traditional framework of full-service legal representation to new models of access to legal information and legal advice will be unsettling for the courts and for the legal community in Alabama, as it has been and continues to be in other states that have begun this journey. In the long run, however, these models provide better access to justice for far greater numbers of people than was previously possible, allow courts to operate more efficiently and effectively, and promote better accountability of the courts and the legal community to the people they serve.

II. Re-examining the role of the components of Alabama's legal system

In order to achieve access and to meet basic client needs, all the components of the legal services delivery system will have to form creative partnerships; courts and legal services program should collaborate with and effectively utilize the private bar. As with all efforts to institute significant systemic change, it is important that all components of the system work together toward a common goal. Specific recommendations below will address some of these suggested efforts in much more detail. However, initially, it is important to have an overview of

how each component of the legal services delivery system, from legal aid to state bar to the courts, must adjust in order to create a legal system more accessible to every Alabamian.

Access to Justice Commission

The Access Commission is a key component to addressing all the recommended changes in this report. The Commission represents all of the providers and partners involved in the legal system. It must continue to engage in a planning process to address in detail how it will achieve a comprehensive, integrated state system for the provision of legal assistance to low income persons. The ongoing planning process should determine the purpose for, and identify the components of, the state delivery system and provide for the integration of all of the components, providers and programs into a single, coordinated system. The planning process should also develop incentives for integration and innovation and ensure that the state delivery system capitalizes on opportunities to secure new sources of funding, provide new kinds of services, form new partnerships, and serve new groups of clients. High-level judicial involvement and support is also critical.

The Access Commission, through its committee work, can examine the existing pro se assistance infrastructure, make policy recommendations, propose changes to court rules or practices, and most importantly serve as a vehicle for educating and encouraging their respective colleagues to participate in and support these efforts. By bringing together a wide range of stakeholders and maintain a strategic focus on the needs and energies of these stakeholders, the Commission can be successful in establishing concrete goals, and it can work hard to replace turf issues with a common set of principles that stakeholders as a whole can act on.

In order to clearly state its goals and delineate the planning process and strategies to address self-represented litigants, the Access Commission may find it useful to draft a concrete plan that addresses all of these different aspects, as well as the coordination required within the legal services delivery system. Appendix 1, Additional Resources, provides a link to the California Self-Represented Litigant Action Plan, which is a useful example of a statewide plan to develop, implement and coordinate services for self-represented litigants. The Appendix also includes templates for agencies and individual counties and courts to create their own Action Plans under the leadership of, in Alabama's case, the Access Commission.

The Judicial Branch

Judges, court staff and the greater legal community look to their respective chief justices and state supreme courts for direction about how to respond to the needs of self-represented litigants. At minimum, this requires direct, clear, and repeated statements of support for these efforts by the Chief Justice and state court administrator. Alabama's Chief Justice and Director of State Courts are both committed to relaying this message and their efforts should be commended.

The Chief Justice's appointment of a statewide organization such as the Access Commission is a crucial step in further conveying her commitment to addressing the needs of low income Alabamians. The Access Commission with its diverse membership representing all of the stakeholders in Alabama's legal system, is poised to be the organization behind much of the push for reform, changes and education, and its central role is discussed below.

However, it is the Chief Justice and Director of State Courts themselves through the work of the AOC that have the required respect and leadership position to drive much of the effort toward institutionalizing efforts to improve access to justice by self-represented litigants. The Administrative Office of the Courts (AOC) should appoint a dedicated staff person to oversee statewide coordination of pro se assistance programs. This person should not only staff the Pro Se Committee of the Access Commission, but should also be made responsible for identifying gaps in existing services, proposing future initiatives, and administering state funding for programs.

By taking a more active role and joining with the Chief Justice in promoting access to justice in Alabama courts, the AOC can encourage courts throughout the state to overcome deeply rooted reluctance to provide assistance to self-represented litigants.

The AOC, led by the Director of State Courts and the Chief Justice, is the logical leader to:

- implement clear guidelines of what clerks are allowed and not allowed to do with respect to court users, and provide and encourage training for court staff,
- promote policies of simplification and standardization of court forms and procedures,
- develop and promote the acceptance of standardized forms throughout the state,
- establish standards for operation of court-based self-help programs, and
- promote rules of court to allow limited scope representation and encourage judicial officers to accept unbundling in their courtrooms.

Specific detail on each of these goals are provided below under Part 3.

It has been noted by a small number of the participants in interviews leading up to this report that the Alabama AOC not only has limited resources, but would not be institutionally receptive to taking such a leadership role in ensuring access for self-represented Alabamians. There is concern that judges will be resistant if the AOC becomes too active in what they see as “promoting” self-representation, seeing any activities promoted by the AOC as the judiciary’s encouragement of self-representation. The participants conveying these concerns are themselves intimately connected to the AOC and the judiciary branch, and it is likely they are right in their assessment.

However, it is important to note that the same resistance has been the case in other states where ultimately, the AOC and Chief Justice have been instrumental in securing buy-in from individual courts, judicial officers and court staff for programs to assist self-represented litigants, as well as gaining legitimacy vis a vis the private bar. Whether Alabama will be able to overcome this resistance is unclear, but it must be noted that those states that have found success implementing access to justice strategies in their courts, have done so because of the leadership of their judiciary. Best practices models throughout the country emphasize the importance of this cultural shift in the judiciary’s role in providing access to the court system for all citizens.

Judicial encouragement of pro bono by lawyers is also an important step judicial officers at every level of the court system can take. Much of the involvement of the judiciary in encouraging pro bono appears to be episodic and there have been limited opportunities for the judiciary to play a systematic role in encouraging pro bono. Courts should develop programs, in collaboration with state and local bar associations, pro bono programs and legal services offices, to encourage, facilitate and recognize pro bono representation of indigent parties in civil cases. In so doing, the judiciary can have a more sustained impact on pro bono participation in Alabama.

Institutional resistance and limited resources may make it impractical to institute some of the recommendations provided in this report in the near future. However, many strategies to serve self-represented litigants can begin to be developed and implemented at the local level and it is quite possible that change may “trickle up” to the AOC before long-standing attitudes and beliefs begin to give way at the leadership level of the judiciary branch. The success of results at the local level that demonstrate to the branch that efforts to provide access to self-represented litigant benefit everyone, combined with the powerful leadership already demonstrated by Alabama’s Chief Justice, can make an Alabama judiciary branch actively committed to access to justice a reality.

Trial Courts

In Alabama’s courts, there are some basic principles should apply to court services for self-represented litigants:

1. Services provided by the court should be equally available throughout Alabama. While it will be necessary to develop programs on a pilot basis, the ultimate goal should be to provide the same services to citizens throughout Alabama. People in urban areas, for instance, should not receive more, better, or different services than people in rural areas, although particular cultural and community characteristics of different regions should be taken into account in program design and service provision. Programs and services developed by the judicial branch should be equally available in the municipal, district and circuit courts.
2. Services provided by the judicial branch should be available equally to all parties. Defendants and respondents are as entitled to court services as plaintiffs and petitioners.
3. Court-provided services to self-represented parties should be designed to supplement and not supplant legal representation. Legal representation – either through public legal services programs or through the services of members of the private bar – remains the preferred method for parties to obtain information and advice, and public education campaigns and service providers should continue to inform self-represented parties of the value of legal representation and how to obtain the services of a lawyer.

State bar and private lawyers

Bar associations have a general responsibility to develop ways to improve access to justice and as such, they should take the lead in educating all lawyers regarding the importance of addressing the growth in pro se litigation. Moreover, lawyers have a general responsibility to make legal services more available and affordable to the average resident of the state, and to provide creative ways to assist the poor in accessing justice.

There remains significant capacity for the Alabama legal community to provide more pro bono legal services. To help close the gap of those unable to get assistance from legal services, not only must the number of pro bono volunteers increase, but the amount of pro bono service that lawyers provide should also increase.

Pro bono opportunities should continue to expand so that pro bono lawyers can become involved in a range of assistance including self-help centers, brief service clinics, extended individual representation and impact litigation and advocacy. Lawyers should assist pro se litigants either

by providing direct legal services or by participating in the pro se assistance programs of their bar associations or other organizations. Pro bono attorney assistance can provide critical components in a self-help program. Volunteer lawyers can provide "attorney of the day" type services at self-help centers or other pro se programs; they can assist with mediation in cases with self-represented parties; they can provide assistance in the courtroom with explaining a judge's order, helping draft orders, or explaining the reason behind procedural decisions such as continuances. They can also be available to take over the complex cases not appropriate for self-help services, or beyond the financial or other capacity of the legal aid program.

It is crucial that, as the Volunteer Legal Program of the Alabama Bar demonstrates, any successful pro bono program have strong bar association support, include a training program, provide technology support for remote services and include training and support materials. However, it is also important to note that greater engagement of the legal community in the delivery of pro bono legal services is not just the responsibility of the State Bar; the Access to Justice Commission, Legal Services Alabama, the AOC, judicial officers, and the Chief Justice should all continue to encourage lawyers to do more to address the justice gap that exists in the state.

There are other strategies that the State Bar can pursue to increase the pool of pro bono attorneys. The promotion and encouragement to inactive lawyers to participate in the newly enacted Alabama Rule of Professional Conduct, Rule 6.6 Special Membership for Pro Bono Services,¹³ would increase the availability of attorneys willing and able to do pro bono work. This rule allows retired or inactive lawyers to become "special members of the Alabama State Bar" and use their legal skills in volunteering their services while adding to the number of volunteer lawyers from which legal services and pro bono providers can draw. The Bar can also consider granting partial CLE credit for pro-bono related activity such as training or mentoring of pro bono attorneys (as long as it is clear that no CLE credit be provided for the actual provision of legal services to low-income clients).

The Alabama State Bar can also provide support for the formation of "moderate income panels" at the local bar level to address the ever increasing legal needs of moderate income Alabamians, for whom, as described above, full legal representation is financially unattainable and yet, their income places them out of reach for legal aid eligibility. And, it can support "unbundled" legal services, sometimes called "limited attorney services" or "discrete services representation" which can add significantly to efforts to provide access for pro se litigants. A more detailed discussion of limited scope representation is provided below in Part 3, as a specific recommendation for encouraging unbundling.

Legal Services

A growing number of legal services programs throughout the country have sought independence from federal limitations on the types of assistance and qualifications of those assisted, and have cobbled together support from states, localities, bar associations, court filing fees, private donors, and IOLTA. However, legal services programs can handle only a small fraction of the cases that qualify for assistance.

Legal aid offices must work toward greater coordination and collaboration with other service providers, as well as more innovative delivery structures. Efforts in this direction are already

¹³ Alabama Rule 6.6 Special Membership for Pro Bono Services, available at http://www.sunethics.com/al_6_6.htm.

underway through LSA, yet more is needed to reach all low-income individuals and to provide specialized expertise for particularly underserved groups, including elderly, disabled, immigrant, rural, migrant, and homeless people. Centralized intake structures, mobile self-help centers for rural areas, and telephone hotlines in multiple languages are among the necessary innovations. Greater reliance on new technologies could also enable LSA to provide more web-based assistance to clients, along with additional resources and training for providers.

Legal Services Alabama has made inroads in these areas through its well-developed web presence on www.Alabamalegalhelp.org. However, the information on this site is fairly static and more can and should be done to make sure this information reaches its intended audience, as well as to create interactive programs that allow low-income Alabamians to access frequently asked questions, forms, and appropriate intake and referrals. In addition, alternative ways of directing funds toward remote areas for legal assistance should be explored since it appears there may be more efficient ways of utilizing resources to fund legal services than having to contract with private attorneys to provide services at high private attorney rates.

LSA should also cooperate with courts to provide self-help services. Partnerships with courts have proven very successful in other states. In California, for example, several counties' court-based self-help services are actually provided by legal services agencies, entering into formal partnerships and Memoranda of Understanding with the court administration. Legal services agencies find themselves able to serve higher number of clients with fewer resources by locating within the court and working on service delivery for self-represented litigants. This model would provide LSA the ability to properly triage those requesting services, as well as identify cases in particular need of representation for referral to their offices, while offering those able to represent themselves tools to better navigate the system and pursue their legal recourse.

In addition to the need for more efficient provision of legal services, LSA is faced with the same difficulties legal services throughout the country confront: the ability to recruit and retain dedicated and talented lawyers. According to a national survey of legal services attorneys under the age of 35 undertaken by the National Legal Aid and Defender Association (NLADA) in the fall of 2006, nearly 90 percent of the respondents reported that they graduated from law school with educational loan debt, and of these, 46 percent graduated with a debt of at least \$90,000.¹⁴ This level of debt makes it practically impossible for legal services organizations, only able to offer salaries well below those offered by other public sector employers and at a fraction of what private firms provide, to attract attorneys to provide legal services to low-income populations.

Loan repayment programs for attorneys going into legal services should be explored at the state level, and efforts should be made to increase salaries and benefits for legal services attorneys to a level that will enable staff to pay off student loans and enjoy a reasonable standard of living. Without increased funding, this may seem unrealistic, but with a system of increased compensation, there should ultimately come some savings from reduced turnover rates. Unless significant changes such as these are implemented, legal services will continue to struggle to attract and retain staff.

¹⁴ Doug German, Kate Lang and Tara Veazey, *It's the Salaries, Stupid! ... and Much More: The Developing National Crisis in the Delivery of Legal Services* (2007), available at http://www.nlada.org/News/News_Pubs/Publications/Cornerstone_Issues/Cornerstone%20January-April%202008%20Issue.

Law schools

Law schools are also a component of the legal services delivery system and play a crucial role in encouraging pro bono service from their students as well as promoting careers in the public interest and creating socially conscious lawyers committed to providing access to justice to the poor throughout their legal careers. The ABA Standards for Legal Education state that, as part of its curriculum, “[a] law school shall offer substantial opportunities for . . . student participation in pro bono activities.”¹⁵ In addition, the Standards emphasize the requirement that law schools ensure students receive substantial instruction in the responsibilities of the legal profession and of its members, which, under the ABA Model Rules of Professional Conduct Rule 6.1 includes the notion that pro bono work is essential to the justice system and the responsibility of every lawyer.

Law schools should provide their students with adequate resources, training, support and rewards for doing pro bono legal work. Surveys at several schools with pro bono requirements find that most students report that public service experience has increased their willingness to contribute pro bono service after graduation.¹⁶ Law school clinical programs can be very effective ways to instill public service ideals and commitments, and also train students in crucial skills needed to work with clients. To the extent possible, such clinical programs should involve real clients, not only because this helps fill real legal needs but also because of the greater impact on the students involved. The Recommendation in Part III to develop a pilot self-help center involves such a clinical program with Cumberland Law School, whose leadership shows a true commitment to training its students to become responsible and committed members of the legal profession.

The components of the service delivery system must develop new strategies to address the justice gap in Alabama. Without additional funding, some of these efforts will not be able to be implemented yet; however, many of the suggested innovations can be realized without significant additional funds and must be put into action so ensure that the delivery of services be effective and cost efficient. Innovative approaches such as limited-scope representation, partnerships between legal services programs, courts and the bar, technology developments and self-help centers must be developed. Further, an effective and comprehensive system of appropriate referrals between programs is essential, as is the need for all of these institutions working for access for self-represented litigants to the legal system to work together, in a coordinated manner responsive to client needs.

¹⁵ See ABA Section of Legal Education and Admissions to the Bar, Chapter 3: Program of Legal Education, Standard 302(b)(2) at <http://www.abanet.org/legaled/standards/chapter3.html>.

¹⁶ Deborah L. Rhode, “Cultures of Commitment: Pro Bono for Lawyers and Law Schools,” 67 Fordham L. Rev. 2415 (1999)

PART 3. RECOMMENDATIONS

Following, are specific recommendations that can be implemented in order to move towards the ultimate goal of providing access to Alabama courts by all residents of the state. While some recommendations in this report can be implemented immediately others are longer-term and will take extensive coordination between key stakeholders and a significant commitment to make them a reality.

1. Developing Standardized Forms and Informational/Instructional Written Materials

Simple, easy-to-use forms are fundamental resources for people representing themselves; they are essential for self-help programs and benefit both litigants and courts. Litigants who use forms prepare legally sufficient pleadings more often, understand the system better, and complete the process faster and more frequently. When forms are available and used, courts run more efficiently and effectively, can decide disputes on the merits more often, and can present better data to decision makers.

Standardizing forms across a jurisdiction is a critical step towards opening the system to those without lawyers. Standardized forms make investing in form design as well as document assembly and e-filing software more economical; increase the overall quality of forms and processes; allows for instructional information; and facilitate training and program support. As states devoting resources to development of forms have found, jurisdiction-wide rules are necessary in order to standardized forms. While these forms have the potential to be a great resource for litigants and courts, their effectiveness will be short-lived unless they have institutional support to ensure that they stay up to date.

In order to have a successful from development and implementation program, the Alabama Supreme Court and AOC should:

1. Introduce court rules in support of standardized statewide forms and involve the Access to Justice Commission, State Bar and the judiciary in the adoption of plain language forms, prioritizing those areas of law where there is a higher incidence of self-representation, such as domestic relations, domestic violence, child support, small claims, unlawful detainer and traffic.
2. Use a forms advisory committee to identify the need for additional forms.
3. Review and revise state forms to include specific warnings about loss of specific important legal rights, e.g., spousal support, pensions, monetary awards, and the division of marital property.
 - Judges and lawyers are concerned that significant numbers of self-represented litigants are forfeiting important legal rights. For example, warnings should be included in the divorce forms, the instructions accompanying the forms, the summons, and the notice of default, stated in understandable English, notifying both plaintiffs and defendants of the potential legal consequences of divorce proceedings.

4. Translate instructions into languages in significant use in the state. Courts must ensure that these new residents and citizens have access to courts and to court information in the language in which they conduct their daily lives and perform their thinking. The responsibility for translating forms and materials should rest with the state, not with each court individually.
5. Develop document assembly software.
 - Alabama provides “fillable” PDF forms; this means that a user can access the form on the Internet, complete it on line, and print out the completed form for filing at the courthouse. However, the current state of the art is the creation of documents based on a “dialog” with the creator. The litigant answers a set of questions and the software enters the information in the appropriate place in the appropriate form, presenting the user with a completed form for review, approval, printing and filing (or filing electronically without the step of printing).
 - The advantages of document assembly include providing additional informational support to people who complete the forms, eliminating the repeated entry of information, and focusing a user on the information that they need to fill out the form. The process of filling out the forms also educates the litigant on what is relevant to their claim and should therefore be presented in court. This approach is used in the Maricopa County “E-Court” application, in Orange County, California with I-CAN and through programs such as www.ezlegalfile.com.

Individual courts, self-help programs, the AOC, the State Bar and LSA can work together to:

1. Create and make available to court clerks and judicial staff one-sheet instructions on frequently asked questions, such as service of process, judgment collection, restraining orders, etc. that they can hand out to customers seeking assistance.
 - There are a number of written materials that should be developed to better prepare self-represented litigants for court appearances, including basic courtroom behavior, checklists for presenting evidence, and other trial preparation materials. Written materials that include these guidelines and better prepare litigants to present their case before a judge, would ultimately result in more efficient court calendars and a more satisfied public.
2. Create uniform resource referral handouts to both court self-help programs and outside agencies. Ensure that all clerks, judicial officers and self-help programs have them available, and that the information is up to date. This referral form should be translated to at least Spanish.

RESOURCES

Rules Supporting Standardized Forms

- Information about rules supporting standardized forms is available on SelfHelpSupport.org at [http://www.selfhelpsupport.org/library/folder.126849-Court Rules Statutes and other Authority Regarding Standardized Forms](http://www.selfhelpsupport.org/library/folder.126849-Court_Rules_Statutes_and_other_Authority_Regarding_Standardized_Forms).
- Petition to amend the Supreme Court rules to allow the court records committee to make more forms available and designed specifically for self-represented litigants in Wisconsin. <http://www.wicourts.gov/supreme/docs/0502petition.pdf>.

Forms Library

- SelfHelpSupport.org has a library of forms with examples from a variety of states at http://www.selfhelpsupport.org/library/folder.126853-Drafting_Forms.
- [SelfHelpSupport.org](http://www.selfhelpsupport.org) has many, many resources and examples. For multi-lingual examples, see the dedicated library folder on Cultural, Language, and Internationally Issues. See especially the library sub-folder on translated materials/websites at <http://www.selfhelpsupport.org/library/folder.42553>.
- The NCSC links to many court forms, including self-help forms, at <http://www.ncsconline.org/WC/CourTopics/statelinks.asp?id=64&topic=ProSe>.
- California form approval process <http://www.courtinfo.ca.gov/invitationstocomment>.

Sample document assembly programs

- What Is Document Assembly? At www.selfhelpsupport.org/library/attachment.86640.
- I-CAN EIC User Guide at www.selfhelpsupport.org/library/attachment.76530.
- www.EZLegalFile.org.

Additional resources

- The Case for Court-Based Forms and Instructions Programs, available at www.selfhelpsupport.org/library/attachment.137487.
- Additional information on Forms and Plain Language, including suggestions for development and deployment of forms at [http://www.selfhelpsupport.org/library/folder.223117-forms and Plain English](http://www.selfhelpsupport.org/library/folder.223117-forms_and_Plain_English).

2. Establish a pilot self-help center in Jefferson County's District and Circuit Courts

Perhaps the most dominant model of a pro se assistance program is the Self-Help Center. As the name implies, self-help centers provide self-represented litigants with various resources and reference materials so that they can represent themselves more effectively in court.

The possibility of developing a pilot self-help center as a collaborative between Cumberland Law School and the Jefferson County courts was a key part of the discussions with several Access Commission members. Although the initial discussion was limited to a self-help center program at the Jefferson county District Court, upon further discussion, it became clear that a similar pilot project could and should also be implemented at the Circuit Court, in particular focused on domestic relations matters. Dean John Carroll and Judge Lowther were both excited about the prospect of such a project and willing to work on the details necessary to make such a program succeed. Further conversations with Cassandra Adams, a professor at Cumberland and likely project lead, to institute these pilot projects revealed that the Circuit court would also not just greatly benefit from this service, but its judicial officers and court administrator welcome such a project.

Jefferson County Pilot Self-Help Center

Given the demonstrated willingness of Cumberland Law School and of the judicial officers in Jefferson County's District and Circuit Courts, Jefferson County, and in particular, the Birmingham court locations, appears to be the perfect location for a pilot court-based self-help center. In addition to the openness to a project of this type, the high volume of filings, many of them by self-represented litigants, and the relative availability of resources in and around Birmingham, make this location ideal to be the pilot site. Each of the courthouses has space available to hold the center. Judge Lowther has also expressed his belief that the private bar will be very receptive to a self-help center at the district court. If their support is gained through this project, the Access Commission will have an important ally in the struggle to overcome bar resistance to assistance for the self-represented.

The pilot project would consist of the establishment of two self-help centers, one at the District courthouse and one at the Circuit courthouse in Birmingham. Each center would be open for a pre-determined number of hours on a given number of days per week. The exact dates and times will be determined by carefully assessing the times of highest need, based on court calendars and congestion in the clerk's office. Judge Jack Lowther expressed his belief that 2 hours per day on two days per week at the District Court would probably meet the initial need for services. However, once these services become known to the public, it is likely the need will be much higher, so, although starting slow is often a good strategy, those involved in the planning process should take into consideration increased demand as clerks, judicial officers and the public become more aware of the services and referrals to the center increase. This warning similarly applies to the Circuit Court.

Cassandra Adams would initially be the attorney supervising these centers. With the help of law students from Cumberland Law School, she would initiate and staff these centers. The hope is that soon after, volunteer attorneys can also provide staffing, but it is important to have a staff person who is, at all times, responsible for the project. Cassandra Adams would serve this role. The opportunity to volunteer at a self-help center is often ideal for pro bono attorneys who can commit to a discrete task on a regular basis, knowing that once their work at the center is contained to the hours they volunteer. Law students will also relish the opportunity to work with

“real people” in real life situations, and be mentored by attorneys. In addition, the opportunity to work with the court, judicial officers and clerk, is an invaluable experience for any law student.

A project of this nature will give the Access Commission an opportunity to see how these services are received, what formats for delivery are most successful in each situation, and how to best market these efforts so they are received openly by attorneys, judges and court staff, as well as the public. It will also provide the opportunity to study the effect of these services on court operations and determine whether in fact providing this type of assistance at the outset, reduces the burden on court resources throughout the life of the case. It is also often a result of these types of projects that there is a reduction in the number of frivolous filings, as litigants become educated regarding the law and the viability of their cases. Because it is crucial that this project serve as a model for replication throughout the state and that the legal system as a whole recognize its value, it is important that it be evaluated carefully. In the “Resources” section below, there are links to evaluation tools that can help make this process more efficient.

Although every court must design a self-help center that is responsive to its needs and that of its constituents, there are enough programs throughout the country that have been evaluated to provide some general guidance to Alabama as it embarks on this exciting project. Below is some general information that program developers should keep in mind when designing this pilot center.

Overview of a self-help center

Self-help centers provide neutral, non-confidential information to all court users and must always be available to all sides in any court action. They consist of programs in which staff (court staff or staff from a partner agency) provide information on a one-on-one basis or in workshops about court procedures and the law. Such centers do not provide legal advice nor create attorney-client relationships. They can, however, be more engaged on a one-on-one basis with litigants than merely providing general information in written format or than a clerk is able to do at the public counter.

Most well-established self-help centers use staff and pro bono attorneys to provide varying degrees of one-on-one assistance to self-represented litigants. Some self-help centers rely exclusively on one-on-one assistance, whereas others rely on workshops or a combination of the two. Workshops combined with individual support have proved a cost effective way of walking individuals through complex paper procedures, and preparing them for relatively common and simple court proceedings. According to evaluations performed in states where self-help centers have been employed, self-help centers are highly effective at increasing litigant satisfaction and have generally improved court functioning.

Courts have chosen different models for their self-help center programs. Some have chosen a format wherein all court users, regardless of income and financial ability, can be assisted at the center. Others have instituted methods to screen participants for financial need to avoid depleting public resources for litigants who can afford private legal representation. From conversations with members of Alabama’s Access Commission, this latter format seems to be preferred, but it is a decision that must be made carefully. Those self-help programs that have chosen to require users meet income eligibility requirements, refer those individuals who do not meet those income eligibility guidelines to lawyer referral services or appropriate legal services providers and resources. When the availability of these types of service is limited, as is the case with Alabama, these referrals become meaningless, and the result is continued lack of access. If the Access Commission decides to institute income guidelines for self-help centers, it should consider

expanding assistance to moderate income and middle class Alabamians, who, even if able to utilize some resources for legal assistance, cannot afford full representation.

In addition to providing substantive and procedural information to self-represented litigants from before filing of a case through disposition, self-help centers must fulfill other functions. Self-help programs must assist users to understand the personal skills they will need to represent themselves effectively, screen litigants' cases to determine the nature and complexity of issues involved in their legal matters, explain the need for additional representation to avoid loss of resources and rights in appropriate cases, and refer those litigants for pro bono or other legal services.

Evaluations and assessments of successful self-help centers throughout the country have revealed that, in order to be effective, self-help centers should:

- Be easily accessed and have bilingual staff.
- Establish clear eligibility criteria for program participants and post that information in a clearly visible location, and, when possible, make that information known to participants before or at the time they seek assistance.
- Establish clear guidelines about the scope of service available and post that information in locations and by means accessible to the public.
- Clearly communicate the role of staff with respect to obligations to clients.
- Have staff with a high level of knowledge about court process, self-represented litigants, judicial and community resources.
- Be set up with a well-managed flow and queue.
- Have substantive information about legal remedies, legal options and consequences of certain actions.
- Provide diagnosis as to whether limited assistance is appropriate.
- Offer referrals to full service and unbundled attorney providers.
- Where appropriate, provide referrals to ADR and social service support systems.
- Serve all sides of a dispute.
- Be well integrated into court management and local or statewide organizations working on access issues.

Moreover, court programs assisting self-represented litigants must recognize that, in addition to economic barriers to legal representation and court access, many self-represented litigants also face obstacles presented by their limited education or literacy, unfamiliarity with English, or disabilities. Therefore, self-help centers must provide all information, oral and written, in clear terms, using everyday words and short sentences, understandable to most English-speaking users, and readily translated for non-English speakers. They must also recognize that low-literacy or illiterate program participants may need more legal assistance to handle simpler matters than would other program participants. Without embarrassing these participants, successful self-help centers advise them of the challenges of self-representation and consider referring them to a legal services provider or attorney available within their financial means.

Many of the courts that have paved the way in the area of self-help innovation have developed sample forms and instructions, brochures, reference materials, and videos on specific legal topics that may be handled similarly in other jurisdictions. Courts that are just beginning these efforts can save time and resources by adapting existing materials for their own jurisdictions rather than recreating them from scratch. There are links to existing materials from other courts below, under "Resources".

Other considerations in developing a self-help center

It is important for self-help center staff to have consistent contact with judicial officers on a more structured basis, to allow for exchange of ideas, feedback and thoughts for improvement. Since self-help program staff do not go in the courtroom with their customers, they cannot be aware of any issues that arise in the courtroom that could be corrected or improved when the customers come to the self-help program. Similarly, if self-help program staff do not know about particular procedure changes in a courtroom or other issues that may arise, they cannot adequately prepare litigants. It may also help standardize procedures in different court sites thus allowing self-help program staff to better prepare litigants regardless of which courthouse they file their case or appear in court.

In addition, self-help centers should consider providing workstations for litigants with, at minimum, a computer, to assist self-represented litigants in accessing and processing specific information from either the computer's memory or from the Internet. Through the workstation, the pro se litigant can access laws and regulations, forms, checklists, process charts, step-by-step instructions on court procedures, the court's public database and other useful resources. Through the workstation, the litigant can also print or e-mail and input information for later use.

Centers should strongly consider having users requesting services sign a disclosure before receiving services that informs them of the lack of confidentiality and attorney-client relationship, and the limitations on assistance the self-help program can provide. It is important that this disclosure be available in the languages more commonly spoken in the county. There are examples of these forms in the "Resources" section below.

Mobile Self-Help Centers

In a state such as Alabama, with a high number of residents living in rural areas, the possibility of a mobile self-help center should be considered. Mobile Self-Help Centers are custom-built mobile homes or buses equipped with furniture, equipment, and law-related materials that can travel to remote and legally underserved areas of a state or areas to provide law-related education or pro se assistance. They may allow self-help programs to reach distant parts of the county that have traditionally remained underserved. The mobile self-help center of the Superior Court of Ventura County, California travels around the county on an established schedule, visiting communities that are geographically remote from the County courthouse. It is also used to participate in educational forums in response to special requests from schools, health care agencies, and community-based law enforcement programs. The Georgia Mobile Law Unit (MLU) is based on a modification of the Self-Help Office model developed by AARP in Washington D.C. In the Atlanta metropolitan areas, the MLU focuses its efforts on reaching elderly and persons with disabilities in senior centers and high-rise apartment complexes. In greater Georgia, the mobile units are sent to public libraries in remote rural areas. The Georgia MLUs use a well designed website as a central information source and an on-site staff to assist users in finding the information they need.

RESOURCES

Sample rules, protocols, and ethical guidelines for self-help programs

Many jurisdictions that create court-based self-help programs have found that it is helpful to enact rules that clarify the precise responsibilities of the staff of these programs. Courts with successful self-help centers have instituted rules that clarify the relationship between the center staff and the user, clarify the ethical obligations of staff, including confidentiality and neutrality, and clarify the obligation to provide services to all sides.

Idaho Rules

- <http://www.isc.idaho.gov/rules/icar53.txt>

Florida Rules

- Florida Rule 12.750: Family Self Help Programs can be found at http://phonl.com/fl_law/rules/famlawrules/famrul12750.htm.

Minnesota Rules

- Minnesota Rule 110: Self Help Programs can be found at <http://www.mncourts.gov/rules/general/GRtitleII.htm#g110> or <http://www.courtinfo.ca.gov/programs/equalaccess/documents/selfrep07/EducationGuidance/Rule110.pdf>.

California Self-help Program Guidelines

- Guidelines for the Operation of Self-Help Centers in the California Trial Courts http://www.courtinfo.ca.gov/reference/documents/self_help_center_guidelines.pdf

Self-Help Center Planning

- Starting a Self Help Center for the Self Represented: 12 Core Resources at www.selfhelpsupport.org/library/attachment.102465
- Minimum Standards and the Best Practices for Court-Based Self-Help Center at www.selfhelpsupport.org/library/attachment.66719
- [Checklist for Starting a Court Based Project to Assist Self-Represented Litigants](http://courtinfo.ca.gov/programs/cfcc/pdffiles/SH-tab18.pdf) at <http://courtinfo.ca.gov/programs/cfcc/pdffiles/SH-tab18.pdf>
- [Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration](http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf) (2006 Edition) Distributed by the Self-Represented Litigation Network at http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf.

Self-Help Center Sample Program Forms

- Multilingual Disclosure for Self Help Center services (San Francisco superior Court) at http://courtinfo.ca.gov/programs/equalaccess/documents/ML_Disclosure.pdf
- How can Access help you? Guide to self-help services at the Superior Court, at <http://courtinfo.ca.gov/programs/equalaccess/documents/access.pdf>
- Santa Clara Self Service Center <http://courtinfo.ca.gov/programs/equalaccess/documents/TRIFOLDhandout-ssc.pdf>

Self-Help Center Evaluation Tools

- [Guide To Self Assessment of Court Programs To Assist Self-Represented Litigants](http://courtinfo.ca.gov/programs/equalaccess/documents/guidesa.doc) (DOC, 144 KB) This Guide describes all the tools and how to use them, by the Self-Represented Litigation Network at <http://courtinfo.ca.gov/programs/equalaccess/documents/guidesa.doc>
- [Evaluation Planning Workbook: How to Use Focus Groups and Other Evaluation Methods to Improve Court Based Self-Help Centers](http://www.courtinfo.ca.gov/programs/equalaccess/documents/selfrep07/EvalPlanning/EvalPlanning.pdf), available at <http://www.courtinfo.ca.gov/programs/equalaccess/documents/selfrep07/EvalPlanning/EvalPlanning.pdf>
- [Tools for Evaluation of Court-based self-help centers](http://courtinfo.ca.gov/programs/equalaccess/toolseval.htm), at <http://courtinfo.ca.gov/programs/equalaccess/toolseval.htm>
- Many more evaluation tools at <http://courtinfo.ca.gov/programs/equalaccess/research.htm#eval>

Additional resources

More information on pro se programs nationwide at http://www.selfhelpsupport.org/library/folder.39777-Pro_Se_Assistance, with links to court rules, court programs, sample materials, courtroom services, handbooks and guides, funding issues, articles and publications, etc.

3. Promote Limited scope Representation in Alabama

What is limited scope representation?

“Limited scope representation” or “unbundling” is an important strategy for enhancing access to justice. Under this approach, a lawyer and client agree to limit representation to discrete, specified tasks. The specific allocation of responsibility, decided jointly by the attorney and the client, focuses legal assistance on those aspects of the matter in which it provides the greatest benefit. It 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.

Common forms of unbundled assistance involve court appearances or trial representation; telephone, internet, or brief in-person advice; and assistance with negotiations, pretrial discovery, or document preparation. In those states where unbundling has become more common, lawyers provide these limited services through group plans, pro se clinics, and court referral arrangements. A growing number of attorneys are also offering this option in conventional small firm or solo practice settings. If given the opportunity, a growing number of clients are choosing unbundled representation. To these individuals, less is more; less assistance means more savings, more control, and more knowledge about how to prevent or resolve related legal problems in the future. It has become a way for moderate income litigants, who are unable to afford full legal representation, to nevertheless retain an attorney for those portions of their case that present the biggest challenges. It has also been received well by judicial officers and court staff who, even with successful programs for self-represented litigants, still prefer that litigants obtain competent legal advice before attempting to represent themselves in court.

Resistance to unbundling

The private bar has been slow to embrace this new model. Part of the resistance is financial. Less may be more for clients, but less may be simply less for attorneys. Sharing tasks is unappealing unless lawyers have greater demand for their assistance than they can handle or can use unbundling to attract a larger volume of new work.

A second reason for resistance is the concern about legal malpractice (e.g., will lawyers be held responsible for the mistakes of their clients, even if they did not advise them on that aspect of the case). Many lawyers worry that clients who do not successfully handle their legal problems may claim that limited assistance was too limited and amounted to professional negligence. Some practitioners are also concerned about the willingness of the trial bench to permit limited scope representation or respect limited representation agreements, including concerns that once they enter a court appearance for a limited purpose, courts may be reluctant to allow their withdrawal from further representation.

There is similarly judicial resistance to unbundled services, in particular to "ghostwritten" legal documents: i.e., papers that an attorney drafts or reviews but does not acknowledge or sign. Judicial officers have two main concerns. One is that clients who purchase these services will receive the same leniency sometimes granted to pro se litigants who are proceeding without such assistance. A second concern is that attorneys will be shielded from accountability for their assistance, particularly if the claim turns out to be frivolous or the documents include material misrepresentations.

Addressing concerns regarding unbundling

These are valid concerns, but they can be addressed in ways that will promote the availability of unbundled services. First, recent modifications to the ABA Model Rules of Professional Conduct make it explicit that unbundled legal services are ethically permissible provided that they are reasonable under the circumstances and that the client gives informed consent to the agreement. These ethical rules may make unbundling more palatable to private practitioners, especially if Alabama adopts these rules and lawyers and judges are encouraged to incorporate limited scope representation as part of the legal service delivery model in the state.

The ABA Model Rules of Professional Conduct can, together with carefully drafted written retainer agreements, help to preempt malpractice liability. To reduce malpractice exposure further, bar associations can provide model retainer agreements as well as training and educational materials concerning the selection of appropriate unbundled services. In fact, in states such as California where the practice has become widespread and the Judicial Council has promulgated court forms to support it, extensive risk management materials have been created and are provided in the Resource section below. In addition, insurance companies can offer malpractice coverage and protocols for limited representation, as is in fact the case in California.

With respect to ghostwriting, courts and bar ethical rules can require disclosure that an attorney has assisted preparation of a document without imposing on the attorney the full responsibility of legal representation. Federal courts have consistently held that it is improper for attorneys to engage in “ghostwriting” for parties who purport to appear *pro se*.¹⁷ Although some state courts, like California, have broken away from this prohibition on ghostwriting, a majority of state courts, appear to follow the lead of the federal courts and have not allowed ghostwriting. Discussions with participants in preparation for this report revealed that, at least as far as members of the Access Commission are concerned, the preference is that Alabama prohibit ghostwriting if it is to adopt any limited scope representation rules.

With regard to lawyers’ financial concerns in accepting unbundling, the findings in states that have accepted the practice is that limited scope representation has actually resulted in income for lawyers that they would not have otherwise enjoyed. Many people who cannot afford the full price of legal representation can afford to pay something less. The choice for many individuals needing representation is not between full representation and limited scope, since full representation is way beyond their financial means; the choice for them is between unbundled representation or no representation. Therefore, litigants who would otherwise not retain an attorney at all, are willing to spend money for a discrete portion of their matter. To further make unbundling financially viable for attorneys, more courts and bar associations can sponsor referral services and public education programs designed to increase the client demand for such assistance. Moderate income panels in bar associations as discussed above are a successful strategy for bringing business to those attorneys willing to take on limited scope representation.

¹⁷ See, e.g., *Duran v. Carris*, 238 F.3d 1268 (10th Cir. 2001) (ghost writing of plaintiff’s brief by his former attorney constituted misrepresentation to court by litigant and his attorney); *Washington v. United States*, 2000 U.S. App. LEXIS 17464 *4, n.1 (10th Cir. 2000) (“an attorney who “ghost writes” a brief for a pro se litigant may be subject to discipline both for a violation of the rules of professional conduct and for contempt of court.”); *Laremont-Lopez v. Southeastern Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1079-80 (E.D. Va. 1997) (finding ghostwritten pleadings “inconsistent with procedural, ethical, and substantive rules” of the court); *Clarke v. United States*, 955 F. Supp. 593 (E.D. Va. 1997) (ghostwritten pleadings are a deliberate evasion by the attorney of Rule 11 of the Federal Rules of Civil Procedure).

The Alabama Supreme Court should enact ABA Model Rule 1.2 to allow limited scope representation to encourage attorneys to provide limited legal services to litigants

Limited scope representation and other modest-means programs not only reduce fees for eligible clients and thus broaden access – they also expand practice opportunities for attorneys, and enable them to become part of the “solution,” helping provide access for those who would otherwise not have it. Given the benefits of limited scope representation in improving access to justice, Alabama should enactment of rules along the lines of those proposed in the ABA Model Rules. By enacting and clarifying these rules, the Alabama Supreme Court can make a huge difference in advancing adoption of limited scope representation and reducing resistance and fears from lawyers and judicial officers.

Based on best practices established in those states where limited scope representation has been adopted and has been successful, rules or clarifications regarding unbundling are most effective when they:

- Provide clarity regarding the ethical propriety of limited scope representation for lawyers.
- Provide guidance on how to determine which cases, clients or matters lend themselves to limited scope representation.
- Provide guidance on how to effectively limit scope of representation and how to document the services that are to be provided by the lawyer as well as how to document any changes in scope of representation that may later be agreed.
- Offer appropriate model retainers and change of scope forms.
- Protect lawyers 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.
- Provide a mechanism for the attorney to withdraw at the end of the limited scope representation.

The judiciary and State Bar should encourage attorneys to enter into limited scope representation agreements.

The judiciary (including court staff and administration) should be educated on the benefits to the courts of limited scope presentation and the particular issues and rules governing limited scope representation, and should be encouraged to implement specific rules and policies designed to encourage limited scope representation in their courts.

The State Bar and local bar associations should promote the expansion of limited scope representation, providing private attorneys education regarding the benefits of a law practice offering unbundled legal services, as well as training, risk-management materials, and other support (both at the regional/local level and statewide) regarding ways to offer limited-scope legal assistance in a competent and ethical manner.

It is also important to have a coordinated bench-bar effort to educate the public on the availability of affordable legal assistance through limited scope representation, and the benefits of obtaining unbundled legal services, as well as information about what their role will be in a limited scope situation, and when such representation may not be appropriate.

RESOURCES

Rules in Support on Limited Scope Representation

- The ABA Standing Committee on the Delivery of Legal Services has issued a white paper entitled “An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants,” at <http://www.abanet.org/legalservices/downloads/delivery/prosewhitepaperfeb2005.pdf>
- The ABA Pro Se/Unbundling Resource Center provides links to state rules, ethics opinions, cases and articles, at <http://www.abanet.org/legalservices/delivery/delunbund.html>
- Unbundling Rules State Links. This National Center for State Courts document provides links to many of the states that have adopted court rules to allow for unbundling. See: <http://www.ncsconline.org/wc/CourTopics/statelinks.asp?id=67&topic=ProSe>
- Washington State Unbundling Legal Services Rules, available at http://www.selfhelpsupport.org/library/folder.127866-Washington_State_Unbundling_Legal_Services_Rules.
- Selfhelpsupport.org's library on rules nationally in support of limited scope representation at <http://www.selfhelpsupport.org/library/folder.46669-Rules>

Resources for implementing an unbundling program

- A Roadmap for Implementing a Successful Unbundling Program, Sue Talia. The national expert lays out the steps. Available at <http://www.selfhelpsupport.org/link.cfm?6725>.
- Ethics Primer for Limited Scope Representation at http://calbar.ca.gov/calbar/pdfs/ethics/COPRAC/COPRAC_02-0005_11-17-04.pdf
- Limited Representation Panel: Description and Mission Statement at www.selfhelpsupport.org/library/attachment.87877
- 20 Things Judicial Officers Can Do to Encourage Attorneys to Provide Limited Scope Representation at [http://www.selfhelpsupport.org/library/item.115049-20 Things Judicial Officers Can Do to Encourage Attorneys to Provide Limited Scope Representation](http://www.selfhelpsupport.org/library/item.115049-20_Things_Judicial_Officers_Can_Do_to_Encourage_Attorneys_to_Provide_Limited_Scope_Representation)

Risk Management materials

- Civil limited scope risk management materials at:
<http://www.courtinfo.ca.gov/programs/equalaccess/documents/selfrep07/Unbundling/MgmtMaterials.pdf>.
- Family law limited scope risk management materials at
http://calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf.

Sample court forms regarding unbundling

- Application to be relieved as counsel upon completion of limited scope representation (CA)
<http://www.courtinfo.ca.gov/forms/documents/fl955.pdf>.
- Notice of limited scope representation at <http://www.courtinfo.ca.gov/forms/documents/fl950.pdf>.

Additional Resources

- Additional Resources available at SelfHelpSupport.org at
http://www.selfhelpsupport.org/library/folder.39778-Unbundling_Limited_Scope_Representation.
- Sue Talia, national expert on unbundling, operates an extensive website at
www.unbundledlaw.org.

4. Create clear statewide definitions of legal information and legal advice and guidelines applicable to clerk offices. Provide training in the application of those definitions.

Traditionally, rather than take the risk that assistance might be construed as the unauthorized practice of law, many court policies and practices advised staff to err on the side of caution and not provide any assistance at all. In Alabama, as discussed earlier in this report, the threat of a lawsuit for unauthorized practice of law was realized, having a chilling effect throughout clerk's offices in the state. Unfortunately, by not providing any assistance, clerk's offices have effectively albeit unwittingly denied access to the courts to self-represented litigants.

In 1995, John Greacen, a national expert on issues of guidelines for court clerks, published an article in *Judge's Journal* that dramatically reframed the definition of legal information and legal advice in the context of assistance for self-represented litigants¹⁸. In response to Greacen's challenge to provide more meaningful assistance to self-represented litigants, several courts developed guidelines that delineate the kinds of information that court staff can, and should, provide to the public and provided training for staff on the use of those guidelines.

There was consensus among all the participants interviewed for this report that court staff need clear guidelines in order to be able to provide assistance to self-represented litigants while maintaining court neutrality and keeping within ethical guidelines. A couple of participants referenced a training last summer in which Court Clerks were informed and trained on their responsibilities and constraints within the law. Those in attendance reported that a similar training or at least the information provided should be available statewide to all court staff working in clerk's offices.

Alabama should follow the precedent set by many states that, taking the principles provided by John Greacean, have drafted and adopted definitions for judges, staff and the public, setting forth in understandable English the activities in which staff may engage and those that they are prohibited from performing. Attached as Appendix 2 to this report is a short manual prepared for court staff by the California Judicial Council entitled "May I Help You?" Such guidance is essential to encourage court staff to depart from deeply imbedded culture that the provision of any information about how the court operates is the provision of "legal advice."

Changing a deeply rooted practice requires continuing and concerted effort from court managers. Training is needed, but is not sufficient. Court supervisors need to pay close attention to the performance of court staff as they interact with court users to insist that they apply the appropriate standard. Court must also ensure that staff have the knowledge needed to answer litigant questions correctly. There are several training resources provided at the Self-Represent Litigant Network and links are provided in the Resource section below.

¹⁸ John Greacean, *No Legal Advice from Court Personnel- What does that Mean?* (1995)

RESOURCES

Guidelines regarding legal information and legal advice

- Guidelines for Missouri Court Clerks and Court Staff at www.selfhelpsupport.org/library/attachment.107253.
- Guidelines and Instructions for Clerks Who Assist Pro Se Litigants in Iowa's Courts at www.selfhelpsupport.org/library/attachment.107217.
- Guide to Court Customer Assistance: Legal Advice - Legal Information Guidelines for AZ Court Personnel at www.selfhelpsupport.org/library/attachment.98613.
- Legal Information and Legal Advice: Developments during last Five Years, by John Greacean at www.selfhelpsupport.org/library/attachment.104728.

Training resources

- The Michigan courts provide online courses on the topic of legal information and legal advice as well as serving the self-represented litigant. See http://courts.michigan.gov/mji/resources/model_curriculum/curr_legal_terminology.htm.
- SelfHelpSupport.org provides examples of other trainings available for court staff on issues relating to self-represented litigants. See <http://www.selfhelpsupport.org/library/folder.42608-Curriculum>.
- Ethical Guidelines for Clerks and Court Staff: Legal Information versus Legal Advice, prepared by the Self-Represented Litigation Network, as part of Court Leadership and Self-Represented Litigation: Solutions for Access, Effectiveness, and Efficiency (2008) available at www.selfhelpsupport.org/library/attachment.137477.
- Question and Response Handbook, prepared By The Arizona Supreme Court Task Force Report On Legal Advice-Legal Information (March 2007) available at www.selfhelpsupport.org/library/attachment.98616.

5. Use Technology to Provide Services for Self-Represented Litigants

Technology can be an instrumental tool in providing services for self-represented litigants. Different technologies can be used toward different goals, such as: (1) delivery of legal services to clients by attorneys or other advocates; (2) support and information for attorneys and other advocates; and (3) assistance to individuals who choose to or must attempt to access the legal system without an attorney or other advocate.

Technology has tremendous potential to educate clients about their rights, help them understand when they could benefit from accessing the legal system, and help them find a lawyer or proceed pro se. Interactive technologies have shown great promise to help people represent themselves. For example, people can fill out standard forms and pleadings on computer kiosks available in courthouses or other social services agencies, or through the Internet, and can access libraries and other substantive resources.

At the same time as technology presents enormous opportunities, it also has the potential to disadvantage low-income people disproportionately, and the any legal services delivery system must develop the capacity to address these issues. Similarly, as clients are increasingly required to access courts, government agencies, and private sector businesses through telephone menus and computers, providers must ensure that these systems can accommodate people with limited access to computers and limited educational backgrounds and must be alert to unintended consequences of computerization. Finally, providers must work with the larger community to ensure that low-income people have equal access to computers and computer training through public libraries, schools, and social service agencies.

Alabama has successfully utilized technology for distributing legal information through AlabamaLawhelp.org. However, many are not aware of this website, and, even for those who routinely access it, the information is of limited use as static written information that does not allow litigants to interact or ask questions.

Other technologies which are increasingly used to provide self-help services can be utilized in Alabama using existing infrastructure where available. Below is a brief discussion of some of these technologies, including the experience of those states which have been successfully using them to address access for the self-represented.

Videoconferencing

Video conferencing technology is proving a powerful and cost effective way of providing remote services to court and community locations that would otherwise go unserved. It can be used to interview and provide direct assistance to the self-represented, to provide clinics and workshops, and for senior staff to monitor remote locations. The technology can also be used by the court to provide separated mediation services, and even for remote court appearances.

Video conferencing, subject to the limitations of a court's existing infrastructure, would allow for the efficient delivery of information throughout the a county, ensuring that residents receive the same level and type of service regardless of their location in the county.

Videoconferencing can be very useful in serving urban counties. By partnering with urban courts, legal information one-on-one or through workshops can be provided in remote rural areas,

providing a service that would otherwise be unavailable to residents of rural counties. In fact, videoconferencing has been a very effective way to conduct workshops simultaneously in several locations in California's Butte, Glenn and Tehama counties. The counties have highly rural areas and transportation to the courthouse is often a challenge for many residents. Held live in one courthouse, a workshop might be broadcast through web technology to anyone interested in attending from another court location, community center or public library.

Court websites

Many states and courts now have extensive, widely used websites. As courts have become more reliant on the Internet, they increasingly offer pro se assistance materials to litigants through their websites. For the most part, the models are the same as those offered through the self-help center model. Litigants can download model forms and instructions, and link to on-line resources and local lawyer referral services.

Alaska has demonstrated how to combine telephone and website use – having the staff person “walk” the litigant through the website to find what s/he is looking for. Alaska's website has particularly creative and effective tools to guide litigants in thinking through their cases and preparing them for presentation in court. The Alaska self-help website can be accessed at <http://www.state.ak.us/courts/selfhelp.htm>.

To date, the most comprehensive Self-Help website is the one recently unveiled by the California Administrative Office of the Courts at <http://www.courtinfo.ca.gov/selfhelp/>, which features more than 1100 web pages of information organized topically by area of law.

Telephonic services

Alaska's study of their telephone help line showed that telephone services are an effective means of communication, require less staff time, and are less stressful for staff. Alaska and Harford and Prince Georges Counties in Maryland make extensive use of the telephone to answer litigant questions. Alaska found that telephonic service delivery is superior to in person service in these regards:

- many parties seem to prefer telephonic to in person interaction because of the increased privacy and interpersonal distance it provides;
- staff can more easily limit the length of an interaction on the phone than when the customer is physically present in the staff person's office;
- far fewer persons who are incapable of representing themselves (because of mental illness or mental incapacity) seek assistance by telephone than appear seeking one-on-one in person services in the courthouse.

Telephone hotlines can be very useful in providing services to those areas of the state that are traditionally underserved. They also allow for providing multi-lingual assistance, and, as alluded to above, can be great tools for helping individuals navigate websites.

Other innovative approaches

There will undoubtedly be additional innovative ways developed for presenting needed information. Alaska is recording audio instructions that can be played in conjunction with the use of a form on the website. Hennepin County uses videotapes to explain forms and court procedures. Internet delivered “remote learning” programs may include techniques that can be adapted for these programs.

The civil legal assistance system of the future will have to use the most up-to-date technology to ensure efficiency and effective communication, coordination and collaboration, to access a broader base of knowledge, work more efficiently, and reach more clients. Thus, legal providers take full advantage of existing and innovative technologies and maximize the use of technology to deliver high quality legal assistance.

RESOURCES

- The use of technology in the delivery of Legal Services, at www.selfhelpsupport.org/library/attachment.102590.
- Technology Planning Resources, at www.selfhelpsupport.org/library/attachment.85365.
- Technology and the Access to Justice Crisis: Analysis, Models, and Approaches, at www.selfhelpsupport.org/library/attachment.111135.
- Technology and Court Based Pro Se Programs: Opportunity and Challenge, at www.selfhelpsupport.org/library/attachment.76536.
- Additional Resources at SelfHelpSupport.org at <http://www.selfhelpsupport.org/library/folder.32175-Technology>.

6. Additional Recommendations for further exploration by the Access Commission

- More widespread and innovate use of volunteers

Volunteers can provide critical support to a self-help program. Volunteer programs reduce the costs of access to justice, while providing a range of services not otherwise available through the current delivery system. Volunteers have become essential for many self-help programs throughout the country, given the lack of resources courts face in trying to meet the need of self-represented litigants. Volunteers can perform a variety of tasks, from walking people from location to location, to helping go through lines to make sure only those who have to wait in line do, walking people from courtrooms to self-help programs, developing instructions, translating materials, interpreting for litigants at self-help programs, and many other tasks.

Law Students: Many law students come to law school with an interest and initial commitment to assisting low-income persons with their legal problems. Law schools should offer a range of opportunities to serve the poor, leverage human resources and inspire the next generation of lawyers to give back to the community. Through increasing numbers of partnerships, law schools and legal services offices can collaborate to create clinical and law student pro bono programs, and create new courses – sometimes taught by legal services lawyers – that address the legal problems of the poor.

College students: Given the shortage of law schools and therefore law students in all areas of the state, it is important to recognize the usefulness of other students, community college and university students in serving self-represented litigants. A very successful program implemented in some California counties, JusticeCorps, draws upon this great resource to help assist overburdened courts and self-help centers in highly overcrowded courts such as Los Angeles, San Jose, or Oakland. JusticeCorps, a program of AmeriCorps, provides students with exhaustive training and supervision, and in return for their service, students receive a stipend toward their college tuition and experience working at a courthouse, meeting judges, attorneys and other court staff, and learning the ins and outs of the legal system. For more information on Justice Corps, go to: <http://www.courtinfo.ca.gov/programs/justicecorps/>.

- Community Legal Education

Community education in the form of outreach, workshops, clinics, classes and group help programs provide a cost effective way of educating litigants regarding the law and court procedures, and of preparing them for the court system. Such programs are also effective at general legal education of the community at large, so that informed community members are then more likely to avoid legal problems or can at least enter the legal system better prepared. These programs may consist of a general educational or informational presentation; or they may be provided in more targeted clinics in which court proceedings and legal issues in a particular area of the law are explained and in which individual assistance is then provided to answer litigants' more specific questions.

CONCLUSION

Any new self-help assistance program will not be created overnight. The need for innovation and fundamental change has to build on what has worked as well as overcome barriers that stand in the way of achieving equal justice for all. The existing system has, in many places, developed skilled staff with expertise on the problems of the poor and programs with effective relationships with the bar, the low-income community and the community generally. Thus, the challenge is to innovate, transform and re-engineer the current delivery system through preserving what works while at the same time ensuring that the delivery system also promotes the necessary innovation and fundamental change.

To meet the challenge will require creative, innovative and risk-taking leadership. All of those engaged in efforts to increase access to the legal system, whether as providers or partners, must recognize that the system cannot succeed unless everyone works together.

APPENDIX 1

ADDITIONAL RESOURCES

Access for Self-Represented Litigant Generally

2008 edition of Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources, available at www.selfhelpsupport.org/library/attachment.137471.

Ayn Crawley, Helping Pro Se Litigants to Help Themselves, available at <http://courinfo.ca.gov/programs/cfcc/pdffiles/HelpThemselves.pdf>.

Paula Hannaford-Agor, Helping the Pro Se Litigant: A Changing Landscape, Court Review (Winter 2003), available at www.selfhelpsupport.org/library/attachment.76258.

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, Conference of Chief Justices-Conference of State Court Administrators (August 2002) available at http://www.ncsconline.org/WC/Publications/Res_ProSe_CCJCOSCAResolution31Pub.pdf.

California [Statewide Action Plan for Serving Self-Represented Litigants](http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/actionplanfinal.htm) (2004) available at <http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/actionplanfinal.htm>.

Richard Zorza, [The Self-Help Friendly Court: Designed From the Ground Up to Work for People Without Lawyers](http://www.zorza.net/Res_ProSe_SelfHelpCtPub.pdf) (2002), available at http://www.zorza.net/Res_ProSe_SelfHelpCtPub.pdf.

Legal Services Corporation Pro Se Projects at http://www.lri.lsc.gov/sitepages/ps/ps_projects.htm.

John Greacen, Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know (Aug. 2002) at http://lri.lsc.gov/prose/articles_pubs_detail_T156_R7.asp.

Court Rules and Standards, available at http://www.selfhelpsupport.org/library/folder.100606-Court_Rules_Standards.

Federal Funding Opportunities For Self Represented Litigation Innovation Programs, A Resource Guide Developed for State and Local Courts and Others, prepared by the Funding Working Group of the Self Represented Litigation Network (2008), available at www.selfhelpsupport.org/library/attachment.127933.

Program Management

Template for [Action Plan to Assist Self-Represented Litigants Template](#), available at <http://www.courtinfo.ca.gov/programs/equalaccess/documents/actionplan-stump.pdf> with [Instructions](#), available at <http://www.courtinfo.ca.gov/programs/equalaccess/documents/actionplan-stump-inst.pdf>.

Information, materials and ideas for starting, operating, and managing a self-help center program with intake forms, triage tools, program brochures, and staff and volunteer training materials, at <http://courtinfo.ca.gov/programs/equalaccess/progmgmt.htm>.

Reaching Untapped Networks- Partners in Knowledge: Legal Services Websites and Libraries, National Conference on Community-based Access February 18-20, 2004, San Francisco, CA, available at <http://courtinfo.ca.gov/programs/cfcc/pdffiles/reachingUntapped.pdf>.

Judicial Management of Cases Involving Self-Represented Litigants, National Center for State Courts, available at http://www.ncsconline.org/Projects_Initiatives/BPI/ProSeCases.htm.

Plain Language Forms:

Maria Mindlin, Is Plain Language Better, at http://www.transcend.net/pdf/Comp_Read.pdf .

Information on developing Plain Language materials, available at: http://www.selfhelpsupport.org/library/folder.55547-Plain_Language

Information on Legal Advice vs. Legal Information

Ethical Guidelines for Clerks and Court Staff: Legal Information versus Legal Advice, prepared by the Self-Represented Litigation Network, as part of Court Leadership and Self-Represented Litigation: Solutions for Access, Effectiveness, and Efficiency (2008)

Question and Response Handbook, prepared By The Arizona Supreme Court Task Force Report On Legal Advice-Legal Information (March 2007)
www.selfhelpsupport.org/library/attachment.98616.

Mobile self-help centers

Taking It To The Street: Developing A Mobile Law Unit Project, Mobile Law Project: The Basics available at <http://www.selfhelpsupport.org/library/attachment.67483>.

Mobile Self-Help Legal Access Centers (Ventura, CA) available at http://www.ventura.courts.ca.gov/mobile_shlac.htm.

Limited-Scope Representation/Unbundling

Handbook on Limited Scope Legal Assistance, A Report Of The Modest Means Task Force, American Bar Association, SECTION OF LITIGATION (2003) available at <http://www.abanet.org/litigation/taskforces/modest/report.pdf>

The Court Role in Supporting Discrete Task Representation, prepared by the Self-Represented Litigation Network as part of Court Leadership and Self-Represented Litigation: Solutions for Access, Effectiveness, and Efficiency (2008) available at www.selfhelpsupport.org/library/attachment.131309.

APPENDIX 2

May I help you?

Legal Advice vs. Legal Information

*A Resource
Guide for
Court Clerks*

Judicial Council of California
Administrative Office of the Courts
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Form MC-800, Court Clerk's Office: Signage



WELCOME TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF

WE ARE HAPPY TO HELP YOU IF WE CAN. HOWEVER, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS, SINCE WE MUST BE FAIR TO EVERYONE.

This is a list of some things the court staff can and cannot do for you.

- We can** explain and answer questions about how the court works.
- We can** provide you with the number of the local lawyer referral service, legal services program, family law facilitator program, and other services where you can get legal information.
- We can** give you general information about court rules, procedures, and practices.
- We can** provide court schedules and information on how to get a case scheduled.
- We can** provide you information from your case file.
- We can** provide you with court forms and instructions that are available.
- We can** usually answer questions about court deadlines and how to compute them.

We cannot

We cannot

We cannot

We cannot

We cannot

We cannot

We cannot

tell you whether or not you should bring your case to court.

tell you what words to use in your court papers. (However, we can check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number, and presence of attachments.)

tell you what to say in court.

give you an opinion about what will happen if you bring your case to court.

talk to the judge for you.

let you talk to the judge outside of court.

change an order signed by a judge.

Since court staff may not know the answers to all questions about court rules, procedures, and practices, and because we don't want to give you wrong information, we have been instructed not to answer questions if we do not know the correct answers. For additional information, please contact a lawyer or your local law library, or check the California Courts Self-Help Center Web site at www.courtinfo.ca.gov/selfhelp.

Court Clerk's Office - signage

INTRODUCTION

In recent years, courts throughout the country have identified an increase in the number of cases filed by individuals without the assistance of counsel. Because court users are unfamiliar with legal processes, they often look to you, court staff, for answers to questions about the legal system.

The Code of Ethics for the Court Employees of California requires you to “furnish accurate information as requested in a competent, cooperative, and timely manner” but to avoid “giving legal advice.” You may already know that you are not supposed to give “legal advice” to court users. However, you may not know exactly what that term means and thus may be unsure of yourself in an important area of your daily work. As a result, when people ask questions where the line between legal information and legal advice is blurry, you may avoid giving appropriate information about court procedures because you don’t want to violate the Code of Ethics. Meanwhile, court users don’t get the information they need and may become frustrated; more significantly, if they don’t follow the right procedure, they may be denied access to the courts.

In an effort to address these concerns, the Judicial Council of California recently approved form MC-800, *Court Clerks Office: Signage*, for display in court clerks’ offices throughout the state. The form is designed for posting at the clerk’s counter or public window at each court location so that court users can read and understand the guidelines that you are required to follow.

This handbook is a quick and easy reference. It is specifically intended for the use of court staff who provide telephone and counter assistance as a major part of their job duties. It is recommended that you keep it in a place where it is easily accessible while you perform these tasks.

Of course, this handbook and the guidelines cannot anticipate all the possible questions that court users may ask. When new questions arise, consult your supervisor. Keep in mind, too, that many court users would benefit from legal counsel. When you are uncertain whether you are being asked to give legal advice, do not hesitate to suggest that they consult an attorney.

YOU CAN EXPLAIN AND ANSWER QUESTIONS ABOUT HOW THE COURT WORKS AND GIVE GENERAL INFORMATION ABOUT COURT RULES, PROCEDURES, AND PRACTICES.

You have an obligation to explain court processes and procedures to court users. Certainly they will find sample pleadings and information packets useful, but you will also need to answer individual questions.

What happens at the arraignment?

At this hearing people are told about the charges that have been filed against them. They are also informed of their rights, including the right to an attorney, and bail is usually discussed.

You also have an obligation to inform litigants and potential litigants about how to bring their problems before the court for resolution. This includes referring them to applicable state and local court rules, explaining how to file a lawsuit or request a hearing, explaining court requirements for documents requesting

relief, and supplying sample forms. If there are court-based self-help centers in the county, you should inform litigants of their availability. The fact that such information may help a litigant does not mean it is improper. Instead, providing this kind of information is an important part of your responsibility to provide service to the public.

One good way to tell whether it is all right to answer a question is to ask yourself whether the information requested will help someone figure out how to do something. Most of these questions contain the words “Can I?” or “How do I?” Telling someone how to do something is almost always appropriate.

How do I get out of jury duty?

On the back of the jury summons you can find a list of the reasons for which the court may excuse you from jury service.

How do I evict my tenant?

If you are going to represent yourself, I can get you the packet of forms you need. You can also get information about evictions at our law library or from the Online Self-Help Center, located at www.courtinfo.ca.gov/selfhelp.

DO NOT TELL A LITIGANT WHETHER A CASE SHOULD BE BROUGHT TO COURT OR GIVE AN OPINION ABOUT THE PROBABLE OUTCOME.

Analyzing a litigant's particular fact situation and advising him or her to take a certain course of action based on the applicable law is a job for a lawyer, not for court staff. Advising a party what to do, rather than how to do something that party has already chosen to do, is not permitted.

Even though you may have processed hundreds of similar types of cases, you are not in a position to know what is in a litigant's best interest. Only litigants or their attorneys can make that determination. Your role is to provide information about

the court's systems and procedures so that a litigant can know enough to make his or her own decision about how to proceed with a case.

What sentence will I get if I plead guilty?

I cannot predict what the judge will do. The judge will decide what sentence to impose based on the facts and the law that apply to your case.

Even though you cannot answer these types of questions directly, there are a lot of ways that you can still help the court user. In many cases, you can point out various options that the person can consider in making his or her decision. You can also provide information about legal services, such as the local bar association or legal aid society, but you should not make a referral to private attorneys or a private agency. You can also refer the person to the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp) and to any court-based self-help center in the county.

My friend's dog bit me. Should I sue him?

You need to decide that for yourself. You may want to talk to a lawyer to help you make that decision. If you decide to file a lawsuit on your own, I can give you a packet of information on how to file a civil action, along with the necessary forms.

Most of the questions that ask whether to take a particular course of action contain the words "Should I?" So whenever you hear the word "should," the court user may be asking for advice that you cannot provide.

Should I get a lawyer?

You are not required to have a lawyer to file papers or to participate in a case in court. I cannot advise you whether you should hire a lawyer in your case. Only you can make that decision. Here is a list of organizations in this area that you can call for free or low-cost legal help if you qualify.

PLEASE PROVIDE COURT USERS WITH INFORMATION FROM THEIR CASE FILES, AS WELL AS COURT FORMS AND INSTRUCTIONS.

You can provide case information to a court user that is public, including the material in most court files. Court files can be very difficult for many people to read and understand, so you may need to provide assistance. It is always appropriate to answer questions about the court procedures and legal terms reflected in public court files and to assist the court user in finding the specific information he or she is seeking.

I want to see my daughter more than the old court order allows. How do I get more time with my daughter?

It sounds like you want to obtain an order from the court modifying your present custody order. Here is an Order to Show Cause form that is usually used to bring that issue before the court, as well as a packet of information on how to fill it out.

Some court files contain confidential information that should never be disclosed. There are many reasons that material in court files may be designated as confidential, including safety and privacy concerns. Disclosure of confidential information could also give an unfair advantage to one side of a case. If you are not sure whether a record is considered public or confidential in your court, check with your supervisor.

It says “relief requested” next to this blank on the form. What do I put there?

I can't tell you what words to use, but you should write in your own words what you want the court to do. If you have any question about the kind of remedies that may be available in your case, you should consult an attorney.

Providing court forms and, when available, written instructions on how to fill out those forms is an important part of a clerk's job. Often court users will not know what forms to request in order to bring their matters before the court. When this happens, you should identify and provide forms that may meet the court user's needs.

Court forms can be confusing, so people frequently ask for help in filling them out. If a court user cannot figure out how to fill out a required form, he or she may be denied access to the court. You can answer questions about how to complete court forms, including where to write in particular types of information and what unfamiliar legal terms mean. You cannot, however, advise a court user on how he or she should phrase responses on a form.

Can I see the Kramer adoption file?

I'm sorry. Adoption files are confidential and may not be viewed by the public.

D O NOT TELL A LITIGANT WHAT WORDS TO USE IN COURT PAPERS OR WHAT TO SAY IN COURT.

You can always answer questions about how to complete court papers and forms. You cannot, however, tell a court user what words to put on the forms. You threaten the court's impartiality if you fill out a form for a court user using your own words. If someone asks you what to say in a form, you should tell the person to use his or her own words to state the information requested.

Would you look over this form and tell me if I did it right?

You have provided all the required information. I cannot tell you whether the information you provided is correct; only you can know that.

You can also check a court user's papers for completeness. This includes checking to make sure that he or she has completed each line that is required to be filled in. Also, you can check for such things as signatures, notarization, correct county name and case number, and the presence of attachments. If the form is incomplete, you should inform the person completing the form of the specific problem and how to fix it.

My form got sent back to me from the court because it was incomplete. What is wrong with it?

It looks like you did not include all the information requested on the back of the form. Once you have filled that out, I'll be happy to file the form for you.

What should I say to the judge when he calls my case?

I can't tell you what arguments to make in court. You will need to decide that for yourself. Here is a handout on effective ways to present your case in court. You can also view a videotape on this subject at our law library.

Sometimes a court user will be unable to fill out a form without assistance because of a disability or illiteracy. In these limited situations, you may fill out a form for a court user, writing down the specific words that the he or she provides. The fact that you provided such assistance should be noted on the form itself.

I have a disability that prevents me from filling out this form. Would you fill it out for me?

In that case I can fill out the form for you, but you have to tell me what information to put down. I will write down whatever you say and read it back to you to make sure what I have written is correct.

Litigants often ask what they should say in court. You cannot give advice about specific arguments a person should make while in court or tell people what you think would be the best way to handle a court appearance. You can give out general information about appropriate courtroom behavior. Many courts have informational packets on how to prepare for court hearings that you can give to the litigant.

YOU CANNOT TALK TO A JUDGE ON BEHALF OF A LITIGANT OR ALLOW THAT PERSON TO TALK TO THE JUDGE OUTSIDE OF COURT.

You should always remember the basic principle that neither parties nor attorneys may communicate with the judge *ex parte*. Be sure that you do not violate this restriction by carrying a mes-

I want to see the judge. Where is the office?

The judge only talks with all parties to a case at the same time. You would not want the judge to be talking to the other side about this case if you were not present. The judge will speak to you at your hearing.

sage from a party to a judge or by speaking to a judge on behalf of a litigant. To do so could give one side in a case an unfair advantage.

Many self-represented litigants feel that they have a right to see the judge in the judge's chambers to explain their situations and problems. When a litigant asks to meet with the judge, you should explain that the judge can see a party only at the hearing or trial, when the other side is also present. While you are explaining this rule, it sometimes helps to ask litigants how they would feel if the judge had a private meeting with the other side in their case. You can also explain procedures, such as a motion, that would allow the litigant to properly bring his or her concerns to the court's attention.

What is an "ex parte"?

It is a Latin term that refers to one-sided contact with the court. In most cases ex parte contacts with the court are not allowed.

Some courts delegate certain decisions to clerk's offices, especially on procedural matters and on cost and fee awards. You should avoid *ex parte* contacts while making such decisions. Be sure that you have heard from both sides before deciding an issue and avoid even the appearance of giving one party an advantage in the process.

I know that I can't talk to the judge. But you're nice—could you please take her this message for me?

I'm sorry, I can't do that for you. It wouldn't be fair for me to present your concerns to the judge when the other side in your case is not there. But I can help you schedule a hearing with the judge so that both sides in your case can be present.

YOU SHOULD PROVIDE COURT USERS WITH SCHEDULES AND INFORMATION ON HOW TO GET A CASE SCHEDULED. YOU CAN ALSO ANSWER MOST QUESTIONS ABOUT COURT DEADLINES AND HOW TO COMPUTE THEM.

You can always give out information on court calendar settings and tell court users how to get matters placed on calendar. This is one of the most important things you can do to make sure people have access to the courts. When court users cannot figure out how to get a case scheduled for hearing, they cannot even begin the process of getting a judge to decide the case.

It is often helpful to provide court users with written court schedules and information packets dealing with how to get a case set for hearing. Many courts now have this information on their court Web site, and there is a good general discussion of this topic in the Online Self-Help Center, at www.courtinfo.ca.gov/selfhelp.

When do I have to file my opposition papers on this motion?

Unless the court has ordered otherwise, the law requires that all papers opposing this kind of motion must be filed and served on the opposing party 10 calendar days before the hearing. If you like, I can give you a handout on motion filing deadlines and how to calculate them.

What is the last day I can file my lawsuit?

The time for filing your case can vary depending on the particular facts involved. Determining the last day for filing a lawsuit is very difficult to do. You should consult a lawyer to help you figure this out.

in counting the number of days. Court staff should help court users correctly apply these rules. Remember, if you are not sure what the filing deadline is on a particular matter, it is always appropriate to say, "I don't know."

On the other hand, you should not attempt to explain the statute of limitations to court users. Those rules are very complicated, and it would be very easy to give incorrect or misleading information.

When it comes to court deadlines, a good rule to remember is that if you can reject a document as untimely, then you can assist a court user in understanding why it was untimely. You can also explain how to calculate the deadline for filing that type of document in advance so it can be filed in a timely way.

Providing assistance with court deadlines is a little more complicated. You can help court users calculate routine filing deadlines associated with most court hearings. Court rules state when weekends and holidays are included and when they are excluded

I figured out that I have to file my papers 10 days before the hearing, but that day falls on a holiday when the court is closed. What do I do?

Your situation falls within an exception to the 10-day rule. You must file and serve your papers by the end of court business on the next day that the court is open following the holiday.

YOU CAN PROVIDE PHONE NUMBERS FOR THE LOCAL BAR ASSOCIATION REFERRAL SERVICE, LEGAL SERVICES PROGRAM, FAMILY LAW FACILITATOR PROGRAM, AND OTHER LEGAL INFORMATION SERVICES.

It is the policy of the California courts to encourage litigants to use lawyers because court cases often involve legal issues beyond the understanding of the ordinary person. You can always make general referrals to associations and public agencies that provide legal services or information. A good place to start

How do I get my ex to pay child support?

You can start by visiting the family law facilitator in Room 210. You can talk to the family law facilitator for free. The facilitator is an attorney who works for the court and helps people with support issues. He or she can help you fill out the forms and understand more about your case and what your options are.

Since court clerks must remain neutral and impartial at all times, you cannot make referrals to a specific lawyer, law firm, or paralegal service.

Many courts have prepared handouts that include contact information for local legal services organizations. Such written materials are very useful to court users and can provide you with a handy list of appropriate referral organizations.

You can also tell court users that they can ask friends or colleagues for the name of a lawyer or even find one by checking the yellow pages of the phone book. Many of them are surprised to learn that lawyers will often give an initial consultation at no cost and that some will agree to provide limited representation—giving advice or preparing particular papers—at a reduced fee.

Could you check to see if there are any liens on my property?

We don't have those kinds of records in this office. You can find that information at the County Recorder's office. It's located only a few blocks from here. Let me show you how to get there on this map of local government buildings.

is with the local bar association referral service. You should explain that although this is a free service, the lawyer will charge a fee. You can also provide information regarding other public legal services programs that may meet the needs of court users and refer them to any court-based self-help center in the county.

I need a good lawyer. Who is the best?

I can't refer you to an individual lawyer because the court must always remain neutral in all matters. I can give you information on the local bar association's lawyer referral service if you want help in finding a lawyer who specializes in your kind of case. You might also want to check out the Web site for the State Bar of California, www.calbar.ca.gov, which includes a section on ways to find a good lawyer.

Sometimes people call the court when they don't know whom else to call about their problems. Keep a list of contact numbers for local government agencies and departments so you can point people in the right direction.