

The Importance of Effective Triage at the Gateway¹

Courts, particularly through self-help centers, can assess the needs of the self-represented to direct people to the help they actually need. Not everyone coming to court actually needs a court order. For example, a relative caregiver of a minor child may think he or she needs a court order to enroll a minor in school, not realizing that other forms such as a Caregiver Authorization Affidavit, or Power of Attorney—Minor Child will serve the purpose in many states. On the other hand, if the minor would be at risk without a court order granting legal custody to the relative caregiver, the guardianship process can be explained and forms provided.² It is important to stress that the self-help center staff does not tell the relative caregiver whether or not he or she should seek a court-ordered guardianship; rather staff explains the alternatives, what each does and does not do, and armed with this information, the relative caregiver can make an informed decision how to proceed. Staff can also refer the relative caregiver to support groups or nonprofit organizations that can provide assistance to one suddenly faced with the responsibility of raising someone else's child.

Technology provides effective tools for triage. Forms completion programs have been developed to assist not only in the completion of court pleadings, but also in helping people to determine the appropriate pleading or process to accomplish their objective. EZ Legal File, I-CAN, and Hot Docs are examples of successful forms completion programs that incorporate triage as a critical component.³ Some programs conduct triage over the telephone, sometimes using specially drafted scripts and/or trained staff to determine litigants' needs and to explain how to accomplish the task.⁴

Maryland has developed a screening protocol and tools for self-help centers to identify those cases that include family violence issues, thereby making them inappropriate for mediation. The self-help centers work to empower the self-representative to speak up and inform the court as to why mediation may be inappropriate. Sometimes triage can be used to alert self-represented litigants of the need for legal representation. An example would be a medical malpractice case that a plaintiff is trying to bring pro se. A self-help center attorney can explain how medical experts are needed to prove professional negligence, the high cost of such expertise, and the virtual impossibility of prevailing without such expert testimony. The attorney can also explain that these types of cases are

¹ Excerpted from "Where We Are and Where We should Be Going: Helping People before Court," by Tina Rasnow; paper prepared for the March 2005 Summit on the Future of Self-Represented Litigation.

² Some states may not use the guardianship process to award legal custody of a minor to someone other than the natural parent, but in California a court-ordered guardianship does so.

³ See I-CAN program through Orange County Superior Court and Legal Services of Orange County; EZ Legal File through the San Mateo County Superior Court; and Hot Docs program through Kent University School of Law and the Administrative Office of the Courts in California. See <http://www.courtinfo.ca.gov/programs/equalaccess/formcomp.htm> for examples.

⁴ See, for example, scripts for guardianship intake prepared by Suzanne Morlock, Family Law Facilitator of Butte County, California, accessible at <http://www.courtinfo.ca.gov/programs/equalaccess/documents/telephonetriagechecklist-guardianship.pdf>.

generally handled on a contingency basis, thus the plaintiff may not have to pay the attorney in advance.⁵ The plaintiff can be referred to a state bar approved or sponsored Lawyer Referral Service for a free or limited-fee consultation with a medical malpractice attorney.⁶ If the self-represented plaintiff insists on going forward pro se, the self-help center attorney can explain that a plaintiff who loses a case may have to pay costs incurred by the defendant, and those costs could be quite high. While the self-help center has not told the plaintiff whether or not to file the malpractice action, it has explained the need for an attorney in this type of case, provided information how to access an attorney, and at least provided the self-represented litigant with a reality check so he or she does not have unreasonable expectations of success if proceeding pro se.

Much is to be learned from the national legal aid network of hotlines, many of which now perform intake, brief service, and referrals to a range of services. The administrators of these programs face similar triage challenges with limited resources.⁷ In the future, we will be learning how to develop technology-based triage on the web, possibly supported by phone assistance and web co-browsing.⁸ Some additional examples of effective triage that can be accomplished in self-help centers, and to some extent in forms completion programs on the computer, are set forth in the appendix. Using triage in court self-help centers and programs designed to assist self-represented litigants can reduce the incidence of improper or misfiled pleadings, lack of preparedness at court proceedings, and the frustration the public often feels when trying to navigate a system that is completely foreign to them.

⁵ Delaware's experience is that this type of general information can be provided in pre-written materials, and that often when litigants generally understand reasons supporting the complexity of specific legal issues or general reasons for the necessity of having representation, they are at a minimum more likely to consult with an attorney. Once materials are presented in writing, such materials can serve as scripts for nonattorney staff and volunteers when providing assistance. Consequently, the use of attorneys would focus on provision of legal information specific to a person's situation. Contrary to Delaware's experience, it is this author's experience in California that many people do not take the time to read the written information, and decline to believe nonattorney staff when they convey the same information conveyed by the attorney.

⁶ Lawyer referral services vary from state to state, but most charge a minimal fee (\$25 to \$35 for an initial ½ hour consultation), with the attorney remitting the fee back to the referral service.

⁷ See, e.g., Carol Mathews & Jay Allan May, *Legal Hotlines: Best Practice Tips Guide* (AARP 2000).

⁸ The Hennepin County public libraries in Minnesota, among others, have several ways they provide research assistance to the public—in person, over the phone, by e-mail, and by life chat e-mail with web co-browsing capabilities. One example of web co-browsing gives the librarian the ability to control what the patron sees on the patron's computer screen, within the library website. While chatting via email and seeing the same screen, the patron or library or both can complete search requests or fill out forms and both see the work product as it is being generated. The county library system tracks the length of time spent per information request. The web and chat approach takes an average of 15 minutes per patron, compared to five minutes for in-person or telephone assistance, so it is slower, but also has difference capabilities.