

# Utah Standing Committee on Resources for Self-Represented Litigants

## Materials for Strategic Planning Meeting

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## **Overview of the Strategic Planning Process**

**The process will proceed through five steps:**

**Programmatic Goals – What are the goals the Standing Committee wants to achieve through the strategic plan? Why should the Utah judiciary provide enhanced services to self represented litigants?**

**Environment – What are the special characteristics of Utah that are relevant to the strategic planning process? Is there data from the litigant, judge, attorney and court staff surveys that the Standing Committee needs to keep in mind in designing a program to meet its goals?**

**Services to be Rendered – What services for self represented litigants should the plan provide? The services need not all be delivered by the court system; some may be delivered by other entities.**

**Responsibility for Rendering Services – Who should be responsible for delivering each of the services identified?**

**Delivery Methods and Tools – How should the services be delivered?**



## **Possible Goals for the Strategic Plan for Services to Self Represented Litigants**

- 1. Increase access to justice**
- 2. Increase the likelihood of “just” outcomes involving self represented litigants (Alternative formulation: Increase the likelihood that self represented litigants will obtain legal remedies to which they are entitled under the law and facts pertinent to their case)**
- 3. Increase the efficiency and effectiveness of the court system**
  - **Reduce the time of court staff required to explain court procedures**
  - **Reduce the time of judges required to explain court procedures**
  - **Reduce the number of continuances required to give self represented litigants a further opportunity to prepare**
- 4. Increase understanding of court orders**
- 5. Increase compliance with the terms of court orders**
- 6. Increase education for court users**
- 7. Simplify the legal system so that it is understandable by ordinary citizens**
- 8. Help court users develop expectations concerning the likely outcomes in their cases that are reasonable in light of the law and the facts**
- 9. Increase user satisfaction with the court process**
- 10. Improve public trust and confidence in the court system**



## **Possible Environmental Factors to Take Into Account**

**Demographics of the state, such as**

- **Population and population dispersal**
- **Public transportation**
- **Education and Income dispersal**

**Courts to be included within the plan and their jurisdictions**

**Trends in the numbers and percentage of persons choosing to represent themselves in court**

**Types of cases in which they appear unrepresented**

**Characteristics of unrepresented litigants, including age and gender, size and growth of minority populations, languages spoken, and income dispersion**

**Special groups facing particular challenges in representing themselves**

**Prevailing attitudes within the courts and the bar towards self represented litigants**

**Political support within the Judicial Council, the Governor's office and the Legislature for programs to assist self represented litigants**

**Are there special populations, such as incarcerated persons, for whom special provisions are needed?**



## **Possible Services to be Rendered**

### **Information and court-provided assistance**

- 1. Information needed to locate the courthouse and to find needed services within the courthouse facility**
- 2. Information concerning the scope of court-based self-help services available, and the limitations on those services**
- 3. Information concerning legal rights and remedies available in typically recurring case types**
- 4. Statistical information on outcomes of typically recurring cases**
- 5. Explanation of the meaning of legal terms**
- 6. Identification of the elements of a cause of action for typically recurring case types**
- 7. Description of the successive steps in the legal process, appropriate to each typically recurring case type**
- 8. Free access to basic legal materials (statutes, rules, reported decisions, and treatises) within the local community**
- 9. Court-provided access to the Internet to view on line forms and information**
- 10. Information about filing fees, service charges and other costs, including alternatives available for paying fees**
- 11. Basic, user-friendly form pleadings**
  - whether the forms are statewide or local**
  - whether the forms are available in electronic form**
  - whether the forms are presented in a dialogue (TurboTax like format or merely fill in the blanks format)**
- 12. Notice of the privacy implications for documents filed in a court case**



- 13. Identification for a litigant of the appropriate form to use for typically recurring case types**
- 14. Assistance in completing forms in a manner that is responsive to the input the form solicits**
- 15. Examples of completed pleadings**
- 16. Assistance in completing forms for people with limited English reading and writing proficiency**
- 17. Assessment of the extent to which a self represented litigant can handle his or her own legal matter**
- 18. Assistance in filing a completed form**
- 19. Assistance with verifying pleadings that require it**
- 20. Information about service of process requirements**
- 21. Assistance in completing requests for court approval of alternative methods of service of process**
- 22. Information about mandatory disclosures and optional discovery mechanisms, including the consequences of not complying with discovery requests from the other side**
- 23. Information describing case and courtroom participants and the roles they play**
- 24. Information describing the rules and process for presenting evidence and testimony in court**
- 25. Information concerning the consequences of non-compliance with court orders and rules**
- 26. Information about options for dispute resolution, including mediation services, available**
- 27. Review of pleadings for verification of completeness**
- 28. Notification of deficiencies in documents filed**
- 29. Interpretation for non-English speakers at intake**



- 30. Interpretation for non-English speakers for discussions concerning case management**
- 31. Interpretation for non-English speakers for court proceedings**
- 32. Interpretation for non-English speakers for disposition of court cases**
- 33. Interpretation for non-English speakers for enforcement of court orders and judgments**
- 34. Written information in multi-lingual form**
- 35. Pre-hearing computation of child support guidelines**
- 36. Referral to a source of personal assistance (such as a community organization) in understanding and pursuing a legal matter if the self represented litigant is not able to do so**
- 37. Referral to available legal services, including both unbundled and full service private counsel, pro bono programs, and legal aid agencies**
- 38. Referral to law library and public library services in the community**
- 39. Information about when to arrive at the courthouse and where to go when you arrive**
- 40. Information on appropriate attire for court proceedings**
- 41. Information concerning appropriate witnesses and evidence to bring to court**
- 42. Information on how to address the court**
- 43. Monitoring of the progress of the self represented litigant's case by court staff**
- 44. Action by the court to move the case timely to resolution**



- 45. A written order embodying the court's ruling**
- 46. Explanation of a judge's ruling**
- 47. Explanation of the consequences of non-compliance with a court order**
- 48. Information about the right to seek rehearing or to appeal a ruling to a higher tribunal**
- 49. Information about the process for pursuing rehearing and appellate remedies**
- 50. Advice about enforcement options and related procedures**
- 51. Equal assistance for all parties (plaintiffs and defendants, petitioners and respondents, victims and alleged perpetrators of domestic abuse, etc.)**
- 52. Assistance in dealing with counsel representing an opposing party**
- 53. Referral to public and community based social services**

### **Legal Services**

- 1. Advice about the legal remedies to seek**
- 2. Advice about litigation strategies**
- 3. Assessments of the likelihood of prevailing in court**
- 4. Drafting of legal documents for filing in court**
- 5. Drafting of discovery requests or responses**
- 6. Representation in settlement discussions**
- 7. Representation in court**
- 8. Legal research on available remedies and fact-specific issues**

### **Social Services**

- 1. Assistance in finding employment**



- 2. Assistance in obtaining housing**
- 3. Assistance in obtaining public benefits**
- 4. Drug or mental health treatment**
- 5. Medical or dental treatment**
- 6. Marriage counseling**



## **Issues Concerning Responsibility for Rendering Services**

**Will the court provide services directly or will it ask other entities to provide them?**

**Will court provided services be means tested?**

**Will court services be rendered by court employees or contractors?**

**What qualifications will be required for court employees providing services to self represented litigants?**

**How will the court interact with legal services providers? Will legal services programs be offered space within the courthouse?**

**With the judicial branch, what services will be the responsibility of the individual courts and which will be the responsibility of the Administrative Office of the Courts?**

**Will courts within a community have combined or separate services for self represented litigants?**



## **Delivery Methods and Tools**

### **Service Delivery Issues**

- 1. What is the appropriate level of standardization of forms and other written information (local v. statewide development)?**
- 2. To what extent are services to be delivered on a one-on-one basis? To what extent are they to be delivered in a less personal manner (on line resources, videotaped presentations, workshops)?**
- 3. How are services to be delivered statewide? Individualized assistance can be delivered on a statewide or local basis:**
  - a. One-on-one assistance at counter or in office setting**
  - b. Telephone based assistance**
  - c. Telephone/web-based assistance**
  - d. Videoconference-based assistance**
- 4. Written resources, including mechanisms for form improvement**
- 5. Guidelines for court staff and clerks re: UPL/legal advice/legal information**
- 6. Ensuring appropriate training and supervision for clerk and court employees**
- 7. Fees for forms/services (including language services)**
- 8. Issues regarding information for particular case types**
- 9. Collaboration necessary at the state and community level**
- 10. Issues unique to providing services to incarcerated persons**
- 11. Should services be provided at other than ordinary working hours?**
- 12. Should day care be provided if services are provided in person?**



## **Service Delivery Tools**

- 1. Information can be conveyed through various media:**
  - a. Forms and instructions**
  - b. Written materials, including procedure guides, checklists, etc**
  - c. Disaggregated guides addressing each stage of a proceeding**
  - d. Referrals to legal services available in the community**
  - e. References to legal materials/library available in the community**
  - f. Web-based materials**
  - g. Workshops**
  - h. Video presentations via videotape, DVD, or web-based presentation**
- 2. Services need not be provided by court employees; they can be provided by volunteers**
- 3. Forms can also be provided in multiple forms**
  - a. Printed forms to be completed by pen or typewriter**
  - b. Web- or PC-based fill-in and print forms**
  - c. Dialog or "turbo" forms completed by document assembly software based on litigant responses and information**
  - d. Form translated into a non-English language that produces an English language form for filing in court**
- 4. Legal advice can be provided by:**
  - a. Referral to privately retained counsel**
  - b. Unbundled legal services provided either by private attorneys or by legal services**

- c. Legal services agency for civil cases**
- d. Public defender and other publicly-supported legal services, such as respondents' counsel in dependency actions**
- e. Pro bono legal services**
- f. Court-contracted legal services**

### **Evaluation processes**

- 1. Baseline data has already been collected**
- 2. Specification of a period of time for program implementation and refinement – for instance, two years**
- 3. Collection of operational data to maximize program performance**
  - a. Data on satisfaction with services provided**
  - b. Data on performance of self represented litigants in the courtroom**
  - c. Data on outcomes of cases involving self represented litigants**
- 4. Refinement of program(s) based on operational data**
- 5. Performance of formal evaluation at the end of the implementation period**



# Best Practice Program Descriptions

## I. Self Help Offices and Services

### A. Public Information, Training and Assistance Programs

**Courthouse Concierge Desk:** A staffed courthouse concierge desk service provides welcoming and directing services to all who enter the courthouse. This service is frequently staffed by volunteers and can provide additional assistance services. The service fundamentally changes the face of the court to the world.

**Self-Help Websites:** Well designed and comprehensive self-help websites have proven themselves to be highly effective means of providing the information component of access to justice. After initial development costs, they can distribute information widely with little marginal cost other than ongoing updates and maintenance. They facilitate partnerships with appropriate access points.

**Self-Help Centers:** Self-help centers have proved themselves as highly effective at increasing litigant satisfaction, helping litigants prepare for court, and may improve court functioning. They consist of programs in which court staff and others provide information on a one-on-one basis or in workshops about court procedures and the law. While not providing formal advice, and while not involving the creation of attorney-client relationships, their ability to deal one-on-one with litigants goes way beyond the provision of general information.

**Law Library as Resource Center:** Law libraries have become major sources of assistance and support to self-represented litigants. The staff are often expert in finding the law, and can assist litigants in using tools to find and understand the law.

**Multi-Lingual Written Informational Materials:** A disciplined program to produce a full range of needed general descriptive information materials is a crucial component of any general access to justice program. Such information can be distributed through a wide variety of technologies, makes possible the effective use of volunteers, and helps force consistency on the court itself. They should be multi-lingual and include community resource listings.

**Videos/PowerPoint Slides:** Many programs find that video and PowerPoint training materials are helpful in establishing and maintaining low marginal cost court preparation programs. These materials can show what court is like, introduce the court players, lessen intimidation, and introduce key legal concepts. They are particularly appropriate for those populations for whom written materials are less effective. PowerPoint presentations are less expensive to produce and can be changed more easily than video formats.

**Rules in Support of Court Information 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



## B. Community Outreach and Access Programs

**Library and Community Access Points:** Experience has made clear that many of the materials and programs developed in the court or legal aid context can more flexibly be accessed by many individuals in environments in which there are supportive individuals. Sometimes the issue is simply one of physical access, sometimes of help with the computer, sometimes language, sometimes understanding. A wide variety of community access points can help meet this need, and provide significant leveraging use of materials and on-line information already developed.

**Workshops and Training:** Group help programs, often combined with individual support, have proved a cost effective way of walking individuals through complex paper procedures, and preparing them for relatively simple court proceedings. The design of these programs varies widely, from a simple general presentation, to a multi-part series that includes line by line support for filing in forms and preparing testimony.

**Mobile Self-Help Centers:** A mobile self-help center has proved an effective, although expensive, way of communicating the commitment of a court to community outreach. Carrying materials and staff support to a wide variety of organizations and locations, the message of openness is clear. It allows programs to serve communities that are physically distant from the court.

## C. Gateway Services in Support of Case Starting / Responding

**Initial Assessment Processes:** Initial assessments are increasingly coming to being seen as critical to effective delivery of services. Current models are supported by referral resources at self-help centers.

**One-on-One Assistance:** More experienced self-help centers are using staff and pro bono attorneys to provide more intensive one-on-one assistance. While falling within the limitations governing the particular person providing the help, they are of more assistance than group or counter-based service delivery.

## II. Forms, Document Assembly and E-filing

### D. Additional Gateway Services

**Forms and Documents:** Simple, easy to use and self-help friendly forms and documents are indispensable for an access to justice environment. Such forms and documents facilitate entry into the dispute resolution system, provide better data to decision makers, speed the overall process, and increase comprehension of the whole system.

**Document Assembly Software:** The core concept of document assembly is software that walks users through branching questions to complete forms which are then printed out or filed



electronically. Among the advantages are the ability to provide support as people complete the forms, avoidance of repetitive information, and focus on the areas of information needed.

**Customer-friendly Electronic Filing:** Electronic filing, if correctly implemented, can make it easier for litigants to file pleadings and obtain access to justice. To obtain that result, the electronic filing system must be designed from the ground up for ease of use by lay litigants. A poorly designed system may increase rather than reduce barriers to access. It is noteworthy that most of the state-level electronic filing initiatives that are succeeding are access-oriented systems.

**Rules in Support of Form and Process Standardization:** There is broad agreement that standardization of forms across a jurisdiction is a critical first step in opening the system to those without lawyers. Such standardization makes software and form design investment possible, raises the overall level, allows for instructional information, and facilitates training and program support.

### III. Courtroom Services

#### E. Courtroom Practices

**Attorneys available to assist / expedite:** A courtroom based screening and support program, in which attorneys review the cases of each self-represented person before they appear, can help build a good collaboration between the court and the self-help or legal aid program, and facilitate the functioning of the court.

**Self-represented litigant-friendly judicial practices:** There is increasing understanding that a truly self help friendly court must change not only the processes that lead up to the courtroom, but also the way the courtroom itself is conducted. Judicial officers and those that work with them are beginning to think of ways to manage the courtroom so that neutrality is enhanced by making the systems work for all, regardless of whether they have a lawyer.

**Immediate written order upon decision:** There is emerging agreement that for those without lawyers, it is better if, whenever possible, there is an immediate decision, in writing at the end of the hearing. This makes it easier for the parties to accept finality, and obtain the services they may need for the next step.

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

#### F. Attorney, Paralegal and Volunteer Involvement Programs

**Unbundled Services:** The core concept of unbundled services is that attorneys provide assistance within the attorney-client relationship for only certain portions of the case, portions chosen jointly by the attorney and the client. This reduces the cost to the client, and provides additional business to the attorney, while facilitating the court's work, compared to what would happen if the attorney were providing no assistance.

**Pro Bono Attorney Involvement:** Pro bono attorney assistance can provide critical components in a self help program. Pro bono attorneys can provide "attorney of the day" type services. They can also be available to take over the complex cases not appropriate for self help services, and beyond the financial or other capacity of the legal aid program. They can provide workshops and information in courtrooms.



**Reduced Fee Attorney Programs:** Reduced fee attorney programs provide flexibility for both attorneys and programs, potentially combining the benefits of pro bono and paid programs.

**Paralegal and Volunteer Programs:** Such programs reduce the costs of access to justice, while providing a range of services not otherwise available through the current delivery system. Under the direction of an attorney, centers can provide referral and make extensive use of volunteer navigator assistance, particularly when combined with technological information and tools.

**Rules in Support of Unbundling:** Often innovation in unbundling is held back because of fears that it violates ethical rules. These fears focus on the legality of the practice itself, on conflict of interest requirements, and on the risk of being pulled into court to complete a case. While these fears are largely unfounded, innovators have found that enactment of rules clarifications along the lines of those proposed in the ABA Ethics 2000 process can make a huge difference.

## V. Judicial Ethics and Training

### G. Judicial Support Approaches

**Materials in Support Self-represented litigant-friendly judicial practices:** Judges need materials and scripts that will help them develop personal styles that are consistent with their judicial approach, but supportive of access for those without lawyers.

**Ethical Rules in Support Self-represented litigant-friendly judicial practices:** Judges similarly need clear authorization in governing ethical rules that they can engage in a non-prejudicial way with self represented litigants in order to ensure that all sides are heard.

**Curriculum and Trainings in Support Self-represented litigant-friendly judicial practices:** Judges similarly need clear curriculum and trainings in support of this approach.

## VI. Other Areas

### G. Post-Order Practices

**Enforcement Support:** Many programs agree that they have been better at giving people information at the beginning of the case than they have been at helping them at the end. They are beginning to explore the creation of programs focused on support for enforcement of already issued orders. This will increase overall compliance and satisfaction with the court.

### H. Court Management and Evaluation Practices

**Review of Rule and Procedure Simplification:** Rule and procedure simplification ultimately benefits the court, the self-represented litigant, and counsel and his or her client. While such simplification depends ultimately upon broader rule making bodies, each court can review how it handles cases and assess the need for each practice from the ground up.

**Broad Training of Courthouse Staff:** Self help programs should not be regarded as an “add-on”, but should be considered as a core service. Training should be provided to all courthouse staff so that all feel responsible for the effective functioning of the system for those without lawyers.

**Development of Interpreter Programs:** Interpreter programs, while expensive, are critical to access to justice. The absence of such programs, while harmful to all, is particularly debilitating to those who must proceed without counsel.



**Litigant Satisfaction Surveys:** Litigant satisfaction surveys are a major tool to re-orient the court around the needs of litigants, since they help change the court culture. The process is usually as important as the data.

**Data Collection and Evaluation:** Leading self-help friendly courts find that ongoing data collection and evaluation are critical to success. Ideally such a program is supported by a researcher, but even modification of the case management system so that it provides aggregate data about self represented litigant cases is of great value.

**Court as Convener for Innovation:** Courts are coming to realize their unique power to act as convenors. Their legitimacy is without peer in the community, and their neutrality broadly trusted

## I. Jurisdiction-Wide Strategic Practices

**State and Local Task Forces on Self-Represented Litigants:** Such task forces are in place in many jurisdictions, and are playing a major role in spearheading innovation. High judicial involvement or support is critical.

**Self-Represented Litigant Strategic Plan:** Such task forces find that a multi-component strategic plan assists in maintaining focus and building consensus. Such a plan also facilitates ongoing self-evaluation.

**Access to Justice Needs Studies:** Such studies have helped change the political and financial climate, since they show the breadth of need, and the breadth of the constituencies served by change.

**Access to Justice Impact Statement Requirement for Changes:** An access to justice impact statement is the requirement that any procedural or other change within the authority of a particular decisions maker must be assessed for its impact on access to justice, including on self-represented litigants.



**Effective Practices:**

*Tested Ideas from the Field in Pro Se Access to Justice Innovation*

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## **Introduction**

These "Effective Practices" are offered as an aid to those designing, enhancing, or evaluating self help and pro se assistance programs, particularly those that seek to build collaborations of courts, legal aid and community groups in support of such programs.

The choice of the practices do not reflect formal research, rather they have been informed by the knowledge and experience of a number of groups active at the national and state levels in advancing innovation in self help access to justice. Often we remain at an early stage in understanding how to make these ideas most effective.

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

### ***Forms and Documents***

#### *Concept and Rationale*

Simple, easy to use and self-help friendly forms and documents are indispensable for an access to justice environment. Such forms and documents facilitate entry into the dispute resolution system, provide better data to decision makers, speed the overall process, and increase comprehension of the whole system.

#### *Suggested Attributes*

An effective forms and documents program, and the forms in the program, should:

- Cover all major issues and all sides
- Offer diagnosis of when which form is to be used
- Have forms that are written in easy to understand language
- Have forms that are well laid out
- Offer forms in multiple languages
- Offer forms in large type
- Offer instructions that are linked to the questions and understandable
- Provide instructions on what to do with completed form



Allow hand fill-in of the forms  
Not have any obscure or court specific requirements (colors, size, covers, etc)  
Have forms that are integrated to minimize repeated entry of information  
Make sure that the forms are easy to obtain at the courthouse  
Make sure that the forms are widely accessible, including over the Internet

### *Issues for Exploration and Evaluation*

While there is strong anecdotal evidence of the effectiveness of such forms, as yet no rigorous evaluation has accurately estimated the cost savings. It should also be noted that some jurisdictions have experienced initial reservations on the part of the organized bar; such reservations tend to disappear when the utility of these forms for the bar becomes clear.

## ***Document Assembly***

### *Concept and Rationale*

The core concept of document assembly is software that walks users through branching questions to complete forms which are then printed out or filed electronically (see Electronic Filing, at page 22 below). Among the advantages are the ability to provide support as people complete the forms, avoidance of repetitive information, and focus on the areas of information needed.

### *Suggested Attributes*

An effective document assembly program, should:

Where possible and relevant meet the standards above under  
Forms and Documents on page 20  
Provide an on line diagnostic front end to see if user appropriate  
Use branching logic that reflects real situations  
Use only a limited number of Questions on each Screen  
Have detailed instructions integrated with questions  
Produce instructions on how to file the form  
Provide clear navigation so people do not get lost  
Include Video Help (optimum)  
Be interactive over the Internet

## *Issues for Exploration and Evaluation*

Planners need to be aware that document assembly systems, while very effective, require significant up-front investments to build, particularly on the Internet, and particularly if they are to be user-friendly. (The software tools designed to help in building such applications do not yet do as good a job at building Internet based user friendly systems as they do building standalone attorney oriented systems.)

### ***Electronic Filing***

#### *Concept and Rationale*

Electronic filing, if correctly implemented, can make it easier for litigants to file pleadings and obtain access to justice. However, to obtain such a result, the electronic filing system must be designed from the ground up for ease of use by lay litigant. A poorly designed system may increase rather than reduce barriers to access. It is noteworthy that most of the state-level electronic filing initiatives that are succeeding are access-oriented systems.

#### *Suggested Attributes*

An access-effective electronic filing system should:

- Include document Assembly Front End to assemble documents prior to filing (See Document Assembly on page 19 above)
- Require no fee or allow for waiver of fee for use of system
- Make sure there is no disadvantage to those who file manually
- Be built on a interface that uses a standard web browser
- Have an interface that is easy to use

#### *Issues for Exploration and Evaluation*

There is need to explore how to avoid unfair advantage to those who use electronic filing. There is also substantial uncertainty about the economics of these initiatives. It appears that early private sector enthusiasm for these projects is falling, and that most of the effective programs have moved forward in the context of public access, rather than attorney service.



# Public Information and Assistance Programs

## ***Self Help Web Site***

### *Concept and Rationale*

Well designed and comprehensive self help websites have proved a highly effective means to providing the information component of access to justice. They distribute information very widely at zero marginal cost. They facilitate partnerships with appropriate access points, see Libraries and Community Access Points on page 26.

### *Suggested Attributes*

To be most effective a website should:

- Be well branded
- Have comprehensive and up to date content
- Be organized in lay terms
- Provide multiple language support
- Have diagnostic design in terms of problems not laws
- Include a broad range of support service links
- Be in compliance with national accessibility standards
- Use software that supports easy updating
- Be planned with access-oriented use by community organizations and others in mind

### *Issues for Exploration and Evaluation*

It is particularly important that these websites are planned so that they are made accessible to the less literate, and that there is provision for the costs of making them comprehensive and up to date. There is particular need for collaboration in this area.

## ***Self Help Center***

### *Concept and Rationale*



Self Help centers have proved themselves as highly effective at increasing litigant satisfaction and appear to have generally improved court functioning. They consist of programs in which court staff and others provide information on a one on one basis about court procedures and the law. While not providing formal advice, and while not involving the creation of attorney client relationships, their ability to deal one on one with litigants goes way beyond the provision of general information.

### *Suggested Attributes*

An effective self help center should:

- Be easily accessed
- Be well signed
- Have multiple language staff
- With respect to obligations to clients, have the role of staff clearly defined and well communicated
- Have staff with a high level of knowledge
- Be set up with a well managed flow and queue
- Have supportive informational materials on all major topics
- 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
- Be well integrated into court management
- Meet regularly with other components of the access system

### *Issues for Exploration and Evaluation*

Among the issues as to which there is no agreement as to the most effective practices include whether the staff of centers must be attorneys, what the scope of the obligation to clients is, and whether there should be income eligibility.

## ***Written Descriptive Informational Materials***

### *Concept and Rationale*

A disciplined program to produce a full range of needed general descriptive information materials is crucial component of any general access to justice program. Such information can be distributed using a wide variety of

technologies, makes possible the effective use of volunteers, and helps force consistency on the court itself.

### *Suggested Attributes*

An effective materials program should:

- Cover all major issues and all sides
- Have materials that are fully up to date
- Have materials that use easy to understand language
- Use a non-patronizing tone
- Have materials that are divided into small sections with informational headings
- Have materials that are well laid out
- Offer materials in multiple appropriate Languages
- Offer large type materials
- Make sure the materials are widely accessible, including over the Internet

### *Issues for Exploration and Evaluation*

Most programs find the task of keeping the materials comprehensive and up to date surprisingly burdensome. Some face issues as to whose materials are appropriate for use in the center or program. Updating is particularly expensive in the multilingual context.

## **Training and Support Materials**

### ***Videos/PowerPoint***

#### *Concept and Rationale*

Many programs find that video and PowerPoint training materials are helpful in establishing and maintaining low marginal cost court preparation programs. These materials can show what court is like, introduce the court players, lessen intimidation, and introduce key legal concepts. They are particularly appropriate for those populations for whom written materials are less effective. PowerPoints are cheaper and can be change much more easily

#### *Suggested Attributes*

An effective program using such materials should:

- Have materials that are clearly written and edited



- Offer brief materials
- Offer a generally non-patronizing tone
- Have video and PowerPoints appropriate for a range of verbal skill levels
- Have materials that are concrete rather than general
- Show what happens rather than offer “talking heads”
- Use text to reinforces the audio messages
- Offer multiple appropriate language versions

*Issues for Exploration and Evaluation*

Good videos are expensive, and expensive to change. They also often contain hidden biases which become clear only after substantial investment.

## **Community Outreach/Access Programs**

### ***Libraries and Community Access Points***

*Concept and Rationale*

Experience has made clear that many of the materials and programs developed in the court or legal aid context can more flexibly be accessed by many individuals in environments in which there are supportive individuals. Sometimes the issue is simply one of physical access, sometimes of help with the computer, sometimes language, sometimes understanding. A wide variety of community access points can help meet this need, and provide significant leveraging use of materials and on-line information already developed.

*Suggested Attributes*

An effective access point program should:

- Use centers that are accessible to broad range of people
- Use “neutral” sites
- Have staff/volunteers available to help and inform
- Have technology in place
- Use non-intimidating environments
- Provide safe places
- Provide private spaces
- Use feedback systems to tell how location used and how to improve

*Issues for Exploration and Evaluation*



We are still improving our understanding of how such access points can be most helpful for the access programs to meet their own institutional needs.

## ***Clinics and Trainings***

### *Concept and Rationale*

Group help programs, often combined with individual support, have proved a cost effective way of walking individuals through complex paper procedures, and preparing them for relatively simple court proceedings. The design of these programs varies widely, from a simple general presentation, to a multi evening series that includes line by line support for filing in forms and preparing testimony.

### *Suggested Attributes*

An effective clinics and training programs should:

- Screen users

- Provide appropriate content for the topics it covers

- Provide an appropriate environment for support and privacy

- Pay attention to pacing and division of content

- Provide forms, packets and materials, see Forms and

  - Documents at page 20 and Document Assembly at page 19

- Build in systems to provide support when cases go wrong

### *Issues for Exploration and Evaluation*

Our knowledge of the comparative efficacy of group versus one on one support is still limited. Nor do we fully understand the issues of confidentiality and privilege, although they do not seem to provide practical barriers.

## ***Mobile Self Help Centers***

### *Concept and Rationale*

A mobile self help center has proved a highly effective way of communicating the commitment of a court to community outreach. Carrying



materials and staff support to a wide variety of organizations and locations, the message of openness is clear.

### *Suggested Attributes*

An effective mobile self help center should:

- Be designed to provide secure and confidential conversation environments
- Be designed for distribution of a wide range of materials
- Include capacity to support technology
- Visit sites on a regular basis
- Serve a range of sites and special needs

### *Issues for Exploration and Evaluation*

Such programs are relatively expensive, and have not been compared with other forms of outreach.

## **Attorney Involvement Programs**

### ***Unbundled Services Program***

#### *Concept and Rationale*

The core concept of unbundled services is that attorneys provide assistance within the attorney-client relationship for only certain portions of the case, portions chosen jointly by the attorney and the client. This reduces the cost to the client, and provides additional business to the attorney, while facilitating the court's work, compared to what would happen if the attorney were providing no assistance.

#### *Suggested Attributes*

An effective unbundled services program should:

- Be operated in conjunction with the state bar
- Have strong judicial support
- Provide training for attorneys
- Be supported by court rule and/or practice
- Provide referrals from court programs
- Provide training for judges and court staff

#### *Issues for Exploration and Evaluation*



Unbundled representation requires additional diagnostic and support skills not necessarily possessed by all attorneys. The question is how to make sure that those participating in these programs do so appropriately. Similarly, not all cases or clients are appropriate for this form of representation. We need to figure out how to make sure that this methodology is only used where appropriate.

## ***Pro Bono Attorney Involvement***

### *Concept and Rationale*

Pro bono attorney assistance can provide critical components in a self help program. Pro bono attorneys can provide "attorney of the day" type services at low cost. They can also be available to take over the complex cases not appropriate for self help services, and beyond the financial or other capacity of the legal aid program.

### *Suggested Attributes*

An effective program should:

- Be facilitated by ethical rules allowing for non-conflicted limited services
- Have strong bar association support
- Include a training program
- Provide technology support for remote services
- Include training and support materials

### *Issues for Exploration and Evaluation*

Pro bono programs have a long history. We need additional research into how they best combine with court-based self help to focus on those in the most need.

## **Courtroom Practices**

### ***Attorneys Available to Assist/expedite***

### *Concept and Rationale*



A courtroom based screening and support program, in which attorney review the cases of each person before they appear, can help build a good collaboration between the court and the legal aid program, and facilitate the functioning of the court. Those with simpler cases are given advice; those with more complex cases are passed into the agency's intake system.

### *Suggested Attributes*

An effective program should:

- Have clarity on attorney ethical duties
- Have referrals to full and unbundled available
- Provide services to those on all sides
- Have judicial support and integration

### *Issues for Exploration and Evaluation*

Such programs must be careful to make sure that they are structured so that the court is not supporting one side over the other, such as by making sure that appropriate services are available to all.

## ***Consideration of Pro Se – Friendly Judicial Practices***

### *Concept and Rationale*

There is increasing understanding that a truly self help friendly court must change not only the processes that lead up to the courtroom, but also the way the courtroom itself is conducted. Judicial officers and those that work with them are beginning to think of ways to manage the courtroom so that neutrality is enhanced by making the systems work for all, regardless of whether they have a lawyer.

### *Suggested Attributes*

Such practices should:

- Be grounded in neutral judicial practices that work for those with and without lawyers
- Provide judicial explanation to litigants of what is needed
- Provide judicial protection against witness harassment



Offer neutral judicial techniques to avoid circumstances in which innocent failure to comply with technicalities about evidence becomes outcome determinative  
Provide training to judges and courtroom staff

### *Issues for Exploration and Evaluation*

There remains substantial fear that changing court procedures to be friendly to the self-represented undercuts judicial neutrality. We need to find ways of thinking about court procedures so that these procedures are seen as neutral only when they work equally well for those with and without lawyers.

## ***Immediate Written Minute Order Upon Decision***

### *Concept and Rationale*

There is emerging agreement that for those without lawyers, it is better if, whenever possible, there is an immediate decision, in writing at the end of the hearing. This makes it easier for the parties to accept finality, and obtain the services they may need for the next step.

### *Suggested Attributes*

An effective immediate order program should:

Provide an immediate decision when possible and appropriate  
Provide an order memorialized by clerk and/or software immediately  
Make the memorialized order available immediately to parties

### *Issues for Exploration and Evaluation*

There is no formal research in support of this practice.

## **Post Order Practices**

### ***Enforcement Support Services***

### *Concept and Rationale*



Many programs agree that they have been better at giving people information at the beginning of the case than they have been at helping them at the end. They are beginning to explore the creation of programs focused on support for enforcement of already issued orders. This will increase overall compliance and satisfaction with the court.

### *Suggested Attributes*

An enforcement support program should:

- Have staff to inform litigants of how to obtain enforcement
- Include enforcement systems that minimize needs for independent actions by prevailing party
- Use systems by which the court obtains information to aid enforcement immediately upon decision

### *Issues for Exploration and Evaluation*

It is early in the design of such programs, and they will need careful design and evaluation.

## **Court Management Practices**

### ***Broad Training of Courthouse Staff***

#### *Concept and Rationale*

When self help programs are not limited to the side, but participate in the overall training of all courthouse staff so that all feel responsible for the effective functioning of the system for those without lawyers, the court as a whole functions much better.

#### *Suggested Attributes*

An effective program should:

- Have all staff trained in how to help self help litigants
- Have staff evaluated in part on their effectiveness
- Include training programs and materials clarifying what staff may and may not do in various roles
- Encourage staff to report issues and problems in support of self help staff
- Have court Staff seek advice from self help program staff



### *Issues for Exploration and Evaluation*

We are only at the beginning of the process of learning how to build courts as overall self-learning teams.

## **Jurisdiction-Wide Practices**

### ***Form and Process Standardization***

#### *Concept and Rationale*

There is broad agreement that standardization of forms across a jurisdiction is a critical first step in opening the system to those without lawyers. Such standardization makes software and form design investment possible, raises the overall level, and facilitates training and program support.

#### *Suggested Attributes*

Such standardization should:

- Provide universal forms
- Have forms which meet standards above
- Provide facilitation of support services such as training and software
- Offer forms are directly related to processes and to litigant problems, rather than legal categories

### *Issues for Exploration and Evaluation*

Often there is substantial judicial and bar reluctance to abandon local practices and requirements. We need to know how to engage decision makers with the overall picture.

## ***Rules in Support of Unbundling***

#### *Concept and Rationale*

Often innovation in unbundling is held back because of fears that it violates ethical rules. These fears focus on the legality of the practice itself, on conflict of interest requirements, and on the risk of being pulled into court to



complete a case. While these fears are largely unfounded, innovators have found that enactment of rules clarifications along the lines of those proposed in the ABA Ethics 200 process can make a huge difference.

### *Suggested Attributes*

Such rules should:

- Provide clarity that there is no ethics bar
- Offer appropriate model retainer forms
- Provide appropriate limited appearance forms
- Reduce conflict burdens for brief service and advice
- Use Ethics 2000 models

### *Issues for Exploration and Evaluation*

We do not know whether the rules changes provide sufficient reassurance, and what other programs of engagement are most effective.

## ***Rules in Support of Court Information Programs***

### *Concept and Rationale*

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.

### *Suggested Attributes*

Such rules should:

- Clarify the relationship with users, including nature of relationship
- Clarify the ethical obligations of staff, including confidentiality, etc.
- Clarify the obligation to provide services to all sides

### *Issues for Exploration and Evaluation*

Much work remains to be done on the specifics of these rules, and the advantages of different formulations.



**Trial Court Research and Improvement Consortium  
Executive Program Assessment Tool:  
Assistance to Self-Represented Litigants  
Revised Draft June 19, 2005**

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**Trial Court Research and Improvement Consortium  
Executive Program Assessment Tool:  
Programs to Assist Self-Represented Litigants**

**I. Purpose of the Tool**

This program assessment tool (“tool”) is designed to produce a “snap–shot” assessment of a court’s services to self-represented litigants, including but not limited to a specific program designed to provide information to them (“program”). It is intended to provide management of a court with information on four different levels:

1. Where best to allocate scarce resources (Program Assessment).
2. Where to fill gaps between a program’s mission and its actual process (Gap Analysis).
3. Where to develop the next stage of data analysis (Data Analysis)
4. Where to consider the next stage in program development (Emerging Practices).

This tool is useful for obtaining valid information and advice about a court’s current efforts, for comparing a court’s performance against the performance of other courts that have used the tool in the past, for setting priorities for additional court efforts to improve the handling of cases involving self represented litigants, and for collecting data to demonstrate the benefits of current efforts.

This tool is not intended to marshal data to test particular hypotheses about self represented litigants, to answer fundamental questions about the motivations, needs, and interests of self represented litigants, or to determine in any absolute sense the fairness or appropriateness of court decisions in cases involving them. Those sorts of questions require more structured, long term research.

**II. Use of the Assessment Tool**

The tool is designed to be used in an inexpensive and expeditious manner; experience has shown that it is more likely to produce helpful results if it is used by an outside consultant working with a volunteer from another court. This document assumes that an outside consultant/outside volunteer will perform the assessment. The tool could be used by a court to perform its own internal assessment of its performance or as a source of questions and ideas for a general program review.

This tool is designed to be used as a part of a national effort to obtain consistent information about how courts deal with self represented litigants and how programs to assist self-represented litigants perform. It comes with standard data gathering instruments. If it is necessary to obtain different data for purposes of a local program's needs, please add questions to the instruments rather than changing the standard questions.

The Trial Court Research and Improvement Consortium provides this guide, and the accompanying instruments, with the expectation that all users of it will provide their results to the Consortium so that they can be integrated into the Consortium's compendium of available data for purposes of better understanding these programs, improving their performance on a national basis, and providing individual programs with useful benchmarks for assessing their performance relative to other such programs.

### **III. Assessment Ground Rules**

Clarify the nature and use of the report with the individual who has actually asked for the assessment ("the requestor"). The requestor can conceivably be the program administrator, the court administrator, the presiding judge, the program champion, or the program funder. Issues to clarify with the requestor include: 1) the report format (e.g., formal or informal), 2) the ultimate audience, 3) report confidentiality, 4) the ultimate report deadline, and 5) the types of questions the requestor is trying to answer (e.g., whether to continue the program or simply to determine ways of improving its operation).

### **IV. Assessment Tool Work Product**

After addressing all aspects contained in this tool, the reviewer will have assembled a significant quantity of information. As the tool is being used, the reviewer should focus on developing a report organized in the following manner:<sup>1</sup>

- Program Strengths
- Areas Needing Improvement
- Assessment and Recommendations by Function
  - Goal Alignment
  - Client Groups
  - Stakeholders

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<sup>1</sup> Thanks to Marilyn K. James, Court Evaluation and Planning Officer for the San Diego Superior Court for supplying a copy of the Correctional Program Assessment Inventory, developed by Paul Gendreau and Don Andrews for ideas on this and other areas in this document.

- Alternative Program Approaches
- Statistical and Data Analysis
- Evaluation
- Strategic Planning
- Overall Assessment
- Recommendations

A number of reports have been prepared using this tool. Reviewers should refer to those products for guidance in organizing and presenting the results of their review.

## **V. Assessment Steps and Substance**

### **A. Court Background Information**

The reviewer should obtain background information from interviews as well as the court's website, the state court annual report, the trial court's annual report, the county's or city's annual report, the state's vital statistics, program brochures, and operational flowcharts. Background information includes the following basic information on the court overall:

- jurisdiction,
- number of bench officers
- caseload and filing history
- court organization and structure
- the court's strategic plan
- the state court system's strategic plan
- the court's budget history
- funding sources
- other courts within the jurisdiction
- size of the local bar
- the demographics of the County or District including, population history, age and gender, size and growth of minority populations, languages spoken, and income dispersion
- trends in the numbers and percentage of persons choosing to represent themselves in court and the types of cases in which they appear unrepresented

### **B. Program Background Information**

The reviewer should also obtain similar information on the court's program(s) to assist self represented litigants.

- prospectus including goals, history, scope (case types), types of services offered, and types of clientele served
- organization (within the court or outside)
- type of staff involved (education, experience, training, length of service)
- policies and procedures (including ethical guidelines)
- governance structure
- budget and finance
- space, equipment, and facilities
- information processing systems
- collaborations with other agencies
- service portfolio such as easily understandable forms and instructions, extensive instructions via website, downloadable forms from the web site, access at local libraries, attorneys who provide advice to clients in the courthouse or in the courtroom, workshops, mobile services centers, unbundled legal services, multilingual forms and services, community outreach, training for other court staff
- statistical reports including a description of how the reports are compiled, those reports produced from computer databases, and the degree of integration with the court's overall computer database.
- a formal evaluation component

**C. Court's Goals in Dealing with Self Represented Litigants**

Review the status of the court's goals – overall for handling cases involving self represented litigants and specifically for the court's program(s) to assist self represented litigants -- in accordance with the following.

<b>Issue</b>	<b>Assessment</b>
Are the goals reduced to writing?	If not, recommend written goals that can be disseminated.
Do the goals include those normally occurring in such programs?	If not, review the general goals described and discussed below.
What is the degree of congruence between the program's goals and the court's goals?	If the program goals are not obviously in congruence with the court's goals, recommend review of program's goals and discussion with the court so that the two are in alignment. (note: the court's goals may be too narrow)
What is the degree of congruence between the program's goals, the court's goals, and the strategic plan of the state judiciary ?	If the program goals are not obviously aligned with the state's strategic plan, recommend review of program's goals to make them more congruent with the state judiciary's strategic plan.
Does the program enjoy adequate	If the funding is not adequate and

stable funding?	stable, the program can fail in its goals regardless of how well designed and implemented.
To what degree do the court's or the state court system's policies, procedures, and ethical guidelines support the program goals?	If written program policies, procedures, and ethical guidelines do not exist, or are not aligned with the program's goals, recommend review of policies and procedures to properly align them.

The following are widely accepted goals of programs to assist self-represented litigants. During the initial interviews, ask 1) whether or not the program embraces each of these goals; 2) if not, has the program considered the goal and rejected it; and 3) if the goal was rejected, what was the rationale.

#### Widely Accepted Goals of Programs to Assist Self-Represented Litigants<sup>2</sup>


- Increase understanding of court orders
- Increase compliance with the terms of court orders
- Increase access to justice
- Increase the likelihood of “just” outcomes involving self-represented litigants
- Increase user satisfaction with the court process
- Increase the efficiency and effectiveness of the court system
- Increase education for court users
- Help users develop expectations that are reasonable in light of the law and the facts.

Court wide goals for dealing with self represented litigants are rarely articulated in writing. How those goals are understood can have great impact on self represented litigants and on the court's programs to assist them. The assessment team should ascertain whether the court has written goals and, if not, should suggest that the court articulate a broad, positively stated goal, such as:

The court desires that all matters involving self represented litigants be resolved promptly and effectively, on the basis of the law and the facts applicable to the case.

#### **D. Client Groups**

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<sup>2</sup> Thanks to Richard Zorza, Esq., Evaluation of Access to Justice Innovation—Six Key Questions, and to Greacen Associates, LLC  
 Utah Self Represented Litigants Planning Guide

Review the court's goals and services with respect to its orientation to a variety of client groups. Client groups are the categories of individuals the program is intended to serve.

<b>Issue</b>	<b>Assessment</b>
Has the court statistically identified client groups beyond the generic “un–represented litigants wishing to use the services of the court”?	If the court has not conducted an analysis beyond the most basic, recommend such analysis by criteria including ethnicity, language, age, education, income, gender, physical disability, and issues faced. The court should also determine whether its services are being provided equally to plaintiffs/petitioners and to defendants/respondents.
<p>If the court has analyzed and identified client groups beyond the basic, has the program:</p> <ul style="list-style-type: none"> <li>• Identified the size of each group relative to the size of the population that uses the program?</li> <li>• Analyzed service gaps that the program could fill?</li> <li>• Identified ways to serve each group?</li> <li>• Identified reasons why each client group chooses not to use the program?</li> </ul>	Recommend the court develop estimates of client group size, contact community leaders, and look at other programs service models in order to analyze and fill service gaps.

**E. Stakeholders**

It is important to review the relationship of a court’s program(s) to assist self represented litigants to the court’s stakeholders. Stakeholders are groups who may be either positively or negatively affected by the program or have an interest in the court’s effective operation, but are not necessarily a client group for the program. Interview at least one representative of each stakeholder group.

Stakeholders include:

- Judges
- Program staff
- Other court clerical staff

- Trial attorneys
- Organized bar
- Legal aid program
- County administration
- Staff of the state administrative office of the courts
- Any funding body that may have an influence upon the program, or may be a future funding resource
- Community and service organizations
- State legislators

Interviews should include 1) a review of the group's current relationship to the program; 2) the group's goals vis-a-vis the program, 3) the group's view of the program's success in meeting those goals; and 4) the group's view of the program's commitment to involving stakeholders in its processes.

#### ***F. Appropriate Staff and Contractor Roles***

Assessment teams should ensure that court staff – whether or not they are attorneys – are not providing legal advice. Outside contractors, whether or not supported with court funding, may provide legal advice.

Assessment teams should also ensure that persons providing legal advice under court funding or as part of a collaboration with the court are complying with governing legal ethical principles including those concerning conflicts of interest and that the group of programs providing legal advice is structured as a whole so that advice can be provided both to plaintiffs and defendants and to both parties in a case.

For a review of contemporary understandings about the distinction between legal information and legal advice, see John Greacen's articles on the topic.<sup>3</sup>

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<sup>3</sup> John M. Greacen, "No Legal Advice From Court Personnel: What Does That Mean?" *The Judges Journal*, Winter 1995 (also published in *The Court Manager*); "Legal Information Versus Legal Advice: Developments During the Last 5 Years," *Judicature*, Jan–Feb 2001.

### ***G. Adequate Case Management for Cases Involving Self Represented Litigants***

Many courts expect self represented litigants to become fully familiar with court procedures and rules and to take the initiative to move their cases to conclusion as an attorney would. For instance, if the defendant or respondent does not file an answer or response after being properly served, the plaintiff or petitioner is required to move for entry of default and submit a default judgment, consistent with the contents of the complaint or petition, for execution by the court. Courts often provide instructions to inform self represented litigants of these sorts of obligations; the instructions often provide sample forms.

However, experience has shown that many self represented litigants are not capable of taking the required initiative. The result is that courts dismiss many of these cases for lack of prosecution, creating great frustration for the litigants who were waiting for the court to take the next step. To avoid these results, courts must modify case management procedures for cases involving self represented litigants. In particular, assessment teams should determine whether the court provides:

- proactive management of self represented litigant case files by court staff to identify cases that are not proceeding satisfactorily and to proactively schedule hearings or otherwise provide necessary information and assistance for the purpose of moving them along
- screening of self represented litigant case files by court staff sufficiently in advance of court hearings to identify flaws in filings in time for them to be corrected for the hearing
- court preparation of judgments and orders; it is unreasonable to expect unrepresented persons to be able to prepare acceptable documents for the court.

The assessment team should also ascertain the extent to which the court's case management staff and self represented litigant staff are combined or interact effectively. The team should also ascertain the extent to which the staff of the clerk's office and those persons staffing public counters are trained and integrated into the court's efforts to assist self represented litigants. Often clerk's office staff see the purpose of programs to assist self represented litigants as relieving them of all obligations to interact with them.

### ***H. Assisting Self Represented Litigants with Hearings and Trials***

Courts often limit their support to the provision of forms and information. Some self represented litigants also require detailed information to assist them in preparing for court hearings. They also need extensive information to assist in preparing for trial of contested matters. Finally, they need assistance from the judge in the courtroom, especially if the other side is represented.

Assessment teams should determine the strengths and weaknesses of court programs in these areas.

Approaches available to courts to address these needs include:

- brochures explaining courtroom procedures and etiquette
- modifying court forms to include the information needed by the judge to make a decision in the matter, not just enough to meet technical pleading requirements
- video tapes describing and explaining court hearings and trials
- suggestions that self represented litigants attend hearings and trials to become familiar with how they are conducted
- materials to assist litigants in preparing for contested trials
- training for judges to provide them with ethical guidance and practical tools for obtaining from self represented litigants the information they need for a fair resolution of the matter in the courtroom

### ***I. Assisting Self Represented Litigants with Post Judgment Matters***

Self represented litigants are particularly baffled by the legal processes needed to collect a judgment or enforce the terms of a decree. Child support enforcement and domestic violence prevention programs are examples of well-developed assistance to litigants in enforcing particular types of judgments. Effective assistance in other areas is generally lacking.

Assessment teams should determine the strengths and weaknesses of court programs in this area.

Effective approaches include:

- collection in the courtroom of information that will assist in enforcement
- providing opportunities for both parties to have input into the terms of the order to improve the chances for compliance
- explanation of the terms of judgments and decrees to unrepresented litigants (often to both sides simultaneously if both are unrepresented) upon the completion of a court hearing or trial
- instructions and forms for post judgment matters

- availability of one-on-one information concerning post judgment proceedings
- scheduling of post judgment status conferences when the judge can anticipate problems with compliance with a judgment or decree

**J. Alternative Program Approaches**

The process should include a review of the following list of program approaches used in other courts to determine whether they are germane to issues faced in the court being assessed.

<b>Alternative Program Approach</b>	<b>Benefits/Drawbacks/Applicability</b>
<p><b>Diagnostic Instrument to Help Litigants Decide Whether They Can Represent Themselves Effectively</b>            Maryland’s Peoples Law Library website has a diagnostic tool that alerts litigants to the objective factors about their case and the subjective factors about their own personality that bear on the decision to proceed without counsel in a family law matter.</p>	<p><b>Benefits:</b>            Providing useful information to enable litigants to realize the factors that are relevant to the choice to self represent  <b>Challenge:</b>            Providing such information in an understandable form  <b>Applicability:</b>            Persons who can afford legal counsel; most self represented litigants lack the means to obtain representation.</p>
<p><b>Easily Understandable Forms and Instructions</b>            Forms and instructions written in plain English</p>	<p><b>Benefit:</b>            Improves assistance to litigants wishing to represent themselves.  <b>Challenge:</b>            The benefits must be explained to the local bar, which may feel threatened. It can be difficult to express legal concepts in plain English; special skills may be required.  <b>Applicability:</b>            English speaking, literate clients</p>
<p><b>Inclusion of Warnings in Forms and Instructions</b>            Court instructions inform litigants representing themselves of rights that may be forfeited if not asserted in a timely manner, for example, the right to an equal share of a spouse’s retirement benefits as part of a divorce decree.</p>	<p><b>Benefit:</b>            Warns litigants of legal pitfalls into which they might otherwise stumble unwittingly.  <b>Challenge:</b>            Identifying the most significant such pitfalls and not attempting to warn self represented litigants of all negative consequences of legal actions</p>

<p><b>Interactive Forms</b> Forms completion processes that enable a user to complete them using a computer or webpage. The most sophisticated forms processes use a “dialog” approach in which the user answers questions and the forms software automatically chooses the appropriate form and completes it with the relevant information from the answers provided.</p>	<p><b>Benefits:</b> Greater usability of court-provided forms and improved accuracy and completeness of documents filed with the court <b>Challenge:</b> High development costs <b>Applicability:</b> Usable by clients with a wide variety of literacy and legal capacity</p>
<p><b>Large Type</b> Forms and instructions in larger type.</p>	<p><b>Benefit:</b> Extends assistance to persons with vision problems. <b>Challenge:</b> Persons with vision impairments are only a part of the larger group of persons with disabilities in need of accommodation by the court. <b>Applicability:</b> Senior client group and others</p>
<p><b>Development of a Web Site for Self-Represented Litigants</b> Applicable statutes and rules, extensive instructions written in plain English, downloadable forms, and interactive forms completion programs (where the program obtains the user’s input in response to questions and populates the form appropriately based upon the answers).</p>	<p><b>Benefit:</b> Extends assistance to client groups 24/7/365 <b>Challenge:</b> Applicable client group may be limited unless community organizations are recruited to provide access and training <b>Applicability:</b> Relatively technologically savvy client group and those with access to help from this group</p>
<p><b>Other Languages</b> Easily understandable forms and instructions, translated into Spanish and other languages (including Braille) as designated by the county’s demographics.</p>	<p><b>Benefit:</b> Extends assistance <b>Challenge:</b> Non English speaking litigants may attempt to complete and file the non-English language forms in court; it may therefore be more beneficial to provide instructions in other languages but to maintain all forms in English only. <b>Applicability:</b> Minority client groups with English as a second language.</p>
<p><b>Access at Local Libraries and Community Access Sites</b></p>	<p><b>Benefit:</b> Extends assistance to client group</p>

<p>Website available at public facilities such as public libraries, city halls, and municipal buildings together with assistance in accessing and using the website</p>	<p>without PC access  <b>Challenge:</b>  Enlisting personnel at such facilities to facilitate user access; informing the public of the availability of these services.  <b>Applicability:</b>  Clients without personal PC and Internet access</p>
<p><b>Guidelines to Assist Staff in Understanding the Distinction Between Legal Information and Legal Advice</b>  Many states and courts now provide guidelines for staff and the public explaining what information court staff can and cannot provide.</p>	<p><b>Benefit:</b>  Increases the information and assistance available from court staff  <b>Challenge:</b>  Overcoming prevailing court culture concerning the meaning of the term “legal advice” and providing staff with the knowledge they need to provide accurate legal information</p>
<p><b>Provision of Information over the Telephone</b>  The Alaska program provides services exclusively by telephone and finds the process less time consuming and equally appreciated by litigants</p>	<p><b>Benefits:</b>  Alaska has found that litigants appreciate greater privacy; interactions take half the time of in-person appointments; and mentally disturbed persons are less likely to seek help by telephone  <b>Challenges:</b>  Providing services by telephone involves challenges such as whether to use voice mail, whether to offer 800 services, how to obtain program demographic statistics, and how to view papers in the litigant’s possession.  <b>Availability:</b>  Access to telephone services is universal</p>
<p><b>Attorneys to Provide Legal Advice at the Courthouse</b>  Attorneys employed by an outside agency, or working pro bono provide counsel to litigants to provide assistance (legal advice) that court staff may not provide</p>	<p><b>Benefit:</b>  Some self represented litigants are not able to proceed without legal advice  <b>Challenge:</b>  Attorneys may need to know Spanish and other languages. Issues of attorney-client relationship must be clear.  <b>Applicability:</b>  Most client groups</p>
<p><b>Assistance for Persons with Mental</b></p>	<p><b>Benefits:</b></p>

<p><b>or Cultural Handicaps</b> Some courts identify persons clearly incapable of self representation and refer them to community organizations who can assign volunteers (usually non attorneys) to assist them in pursuing a legal matter.</p>	<p>Some self represented litigants lack the capability to handle their own legal affairs <b>Challenges:</b> Identifying community organizations able to provide volunteers to assist persons with mental or cultural disabilities</p>
<p><b>Workshops</b> Workshops can be either run by video or live presenters.</p>	<p><b>Benefit:</b> High degree of interaction with the client groups (not true for video presentations); ability to assist multiple clients simultaneously; effective communication of legal pitfalls <b>Challenge:</b> Relatively staff intensive and could be cost prohibitive (not true for video presentations); attorneys may need to know Spanish and other languages; getting people to attend workshops. <b>Applicability:</b> Client group must be mobile and have time to devote to the workshops</p>
<p><b>Using Videoconferencing Capabilities to Conduct Workshops in Multiple Locations Simultaneously</b> The family court facilitator in Butte County, California uses video conferencing to conduct workshops in three different court locations simultaneously.</p>	<p><b>Benefits:</b> Delivery of personalized information without requiring extended litigant or staff travel <b>Challenges:</b> Initial costs of installing videoconferencing equipment.</p>
<p><b>Mobile Services Centers</b> Service centers contained in mobile RV units that can be driven to various parts of the jurisdiction</p>	<p><b>Benefit:</b> High degree of interaction with the client groups <b>Drawback:</b> Staff intensive, costly to provide equipment, attorneys may need to know Spanish and other languages <b>Applicability:</b> Rural jurisdictions can find this approach workable, but should be aware of the initial equipment and operating costs</p>
<p><b>Telephone Attendant Decision-Tree Systems</b> can provide legal information</p>	<p><b>Benefits:</b> Can provide extensive legal-</p>

<p>to self-represented clients over the telephone</p>	<p>procedural information 24/7/365 to client groups who may not have PC access  <b>Challenge:</b>  Many find these systems hard to use. Access to forms is still an issue. Expensive to develop and maintain.</p>
<p><b>Training Other Court Staff</b>  Provides a customer service orientation to all public information components of the court.</p>	<p><b>Benefit:</b>  Carries the spirit of client service to all aspects of court operations. Requires full cooperation from court management.</p>
<p><b>Prehearing Screening Process</b>  A court staff member, staff attorney (sometimes called a family law facilitator) or a volunteer attorney (sometimes from legal services) reviews the papers prepared by the parties to determine their readiness for filing or for consideration by the judge. In some courts, judges meet with the parties in a prehearing conference to accomplish the same objective and to help with dispute resolution.</p>	<p><b>Benefit:</b>  Saves the judge and litigants the time and frustration of a failed hearing. Assists parties to identify flaws and gaps in case preparation or in voluntary agreements reached. Provides opportunity to point out the need for legal advice on some topic or issue.  <b>Challenge:</b>  Clarifying the absence of an attorney-client relationship. Expensive to develop and maintain. An excellent opportunity for collaboration with legal services and state and local bar associations.</p>
<p><b>Unbundled Legal Services</b>  Providing access to specific legal services on a limited representation basis -- limited to a specific phase or issue in the case.</p>	<p><b>Benefit:</b>  Could increase legal representation for self represented litigants, improving the quality of filings and improving courtroom efficiency.  <b>Challenge:</b>  Obtaining explicit approval of limited representation from court of last resort through the adoption of amendments to court rules and to the rules of professional conduct and acceptance by trial judges and attorneys.</p>
<p><b>Community Outreach</b>  Providing information about court services and obtaining input from community members about those services and their experiences with the courts.</p>	<p><b>Benefits:</b>  Increases community support for the court system. Could involve other community groups  <b>Challenge:</b>  Initially labor intensive particularly for the bench</p>

	<p><b>Applicability:</b> Access mostly through community groups</p>
<p><b>Customer Friendly E-Filing</b> Court-sponsored forms completion process is linked to electronic filing system so that self-represented litigant can file form as soon as it is completed.</p>	<p><b>Benefits:</b> Improved access to court services; greater ease of use; improved likelihood of client follow through. <b>Challenge:</b> High development costs; requires integration with court systems <b>Applicability:</b> Usable by clients with a wide variety of literacy and legal capacities and in a wide variety of community environments</p>
<p><b>Mandating Participation in Court Programs to Assist Self Represented Litigants</b> In Miami/Dade County and Hennepin County, the court requires a stamp on all filings presented by self represented litigants evidencing that the document was reviewed by the court's assistance program. In Anchorage, Alaska, completion of a workshop is mandatory for all persons with contested divorce and custody matters.</p>	<p><b>Benefits:</b> Ensuring widespread use of court programs <b>Challenges:</b> Having sufficient resources available to serve all self represented litigants; obtaining court support for a requirement that will serve as a hurdle for self represented litigants. Enforcing the requirement for program review of documents prior to filing.</p>

**K. Evaluation**

The review should include an assessment of the program's regular evaluation component, using the following questions.

<b>Issue</b>	<b>Assessment</b>
<p>The program's formal evaluation component:</p> <ul style="list-style-type: none"> <li>• When did the evaluation begin?</li> <li>• When is the evaluation expected to have a report for review?</li> </ul>	<p>If the program does not include a formal evaluation, recommend that such an evaluation be included.</p>
<ul style="list-style-type: none"> <li>• What are the evaluation criteria?</li> </ul>	<p>The program should be encouraged to</p>

<ul style="list-style-type: none"> <li>• Are the criteria congruent with the program goals?</li> <li>• Do they reach all of the “widely accepted” goals of programs to assist self-represented litigants set forth in Part C?</li> </ul>	<p>expand its review and evaluation criteria in accordance with the above goals.</p>
<ul style="list-style-type: none"> <li>• Does the program include a cycle of feedback, review, and continuous improvement?</li> <li>• Describe the last modification to the program based upon continuous improvement.</li> <li>• Does this cycle include stakeholders inside and beyond the courthouse?</li> </ul>	<p>If the program does not include a continuous improvement cycle, recommend that such a cycle be established and that it include appropriate stakeholders.</p>
<ul style="list-style-type: none"> <li>• Does the court’s regular evaluation process extend beyond its self represented litigant assistance effort to address all aspects of how the court handles these litigants?</li> </ul>	<p>If the evaluation program is not sufficiently broad, recommend an expansion of its scope to include the court’s overall effectiveness in providing access to justice for the self represented.</p>

**L. *Statistics and Data Analysis***

Generally, statistics and data collection should be aligned with the court’s programmatic goals – to enable the court to know the extent to which it is meeting its goals. Data collection entails costs – to court staff and to program participants. The data collection instruments supporting this tool include the information considered most important by the Trial Court Research and Improvement Consortium. Assessment teams should review the data routinely collected by the court and the statistical reports generated and used by court staff for program management and strategic planning.

The different sorts of data that courts may collect include the following:

**Data on users of programs to provide information and assistance to self represented litigants**

**Basic data**

- Numbers of users of programs,
- The services they use,
- The issues that brought them to the program,
- How they learned about the program,

- Their demographic characteristics, and
- Their satisfaction with the program and its specific services.

Specific recommended data elements for this basic information are included in the TCRIC program exit and courtroom exit survey instruments supporting this tool.

It is useful to collect routine data on the numbers of program users and the services they use. Experience has shown that it is not necessary to collect the rest of this data – presenting issues, referral source, demographics, and user satisfaction – from all users. Periodic “snapshot” surveys to capture significant changes in these areas are sufficient; collecting and recording such data for all users places unnecessary burdens on users and on court staff to collect and enter that data into statistical databases.

### **More sophisticated data**

- Numbers of users who pursue and do not pursue the matter that brought them to the program
- Why persons choose not to pursue their issues (for instance, they learn that they do not have a redressable legal claim, they obtain the information they need to resolve their dispute without filing an action in the court, they decide that the process is too complicated to pursue, etc.)
- Numbers of self represented litigants who file papers and appear in court without taking advantage of the court’s program
- Why persons do not use the program (for instance, they do not know of its existence, they have obtained assistance from some other source [e.g., legal services program, unbundled legal services, document preparation service], or they have some reason for avoiding the program)?
- More sophisticated categorization of self represented litigants – subdividing unrepresented litigants into groups of persons who had legal counsel at a prior stage of the case, who consulted a lawyer on an unbundled basis, who used legal services assistance to represent themselves, who used a document preparation service, who used court websites to obtain legal information, or who proceeded without any external assistance.

This data is more difficult to collect and interpret. For instance, reports by persons leaving a courtroom as to whether they used a court’s self help program at an earlier time may not be accurate because of faulty memory, amplified by the stress of the court experience. Answering some of the questions above requires linking program data and court data, which is difficult and requires matching by party name and address – data not ordinarily collected by programs to assist self represented litigants. It requires in depth interviews with persons who have used a court’s self help program. Locating such persons requires

collecting name, address and telephone information at the time of program use and successfully contacting them by phone or a home visit.<sup>4</sup> Telephone and in person follow up is generally difficult because of the mobility of persons using court programs for information on family law matters. Experience has shown that mailed questionnaires are returned by so few persons that the information provided is of little value.

In sum, the court will need sophisticated research assistance to succeed in answering these questions and a sufficient research budget to pursue these more complex issues concerning users of court programs to assist self represented litigants. However, answers to these more complex issues are of great importance in improving services to such litigants.

### **Data on the impact of self represented litigants, and on programs to assist them, on court processes**

#### **Basic data**

- Satisfaction of judges, lawyers and court staff with programs to assist self represented litigants
- Self reported experience of judges, lawyers and court staff before and after program implementation or major changes in program services

Specific recommended data elements for this basic information are included in the TCRIC judge, staff and lawyer survey instruments supporting this tool.

It is not necessary to collect this data routinely. Periodic “snapshot” surveys are sufficient.

At least one court has had its clerk’s office and chambers staff maintain logs to record actual time spent assisting self represented litigants in order to more accurately determine the impact of court-provided services to them.

#### **More sophisticated data**

- Average length of hearings involving represented litigants, unrepresented litigants who use the services of the court’s program to assist self represented litigants, and unrepresented litigants who do not use those services.
- Average numbers of court appearances in cases involving represented litigants, unrepresented litigants who use the services of the court’s

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<sup>4</sup> On court has asked program participants to supply the name and telephone number of a parent or other relative who will know how to locate them if they move in the future.

program to assist self represented litigants, and unrepresented litigants who do not use those services.

- Average numbers of “failed” and continued court proceedings in cases involving represented litigants, unrepresented litigants who use the services of the court’s program to assist self represented litigants, and unrepresented litigants who do not use those services.
- Average time from filing to disposition in cases involving represented litigants, unrepresented litigants who use the services of the court’s program to assist self represented litigants, and unrepresented litigants who do not use those services.

This data is more difficult to collect and interpret. It requires detailed record keeping concerning the length of court proceedings, sophisticated record keeping in the court’s case management information system to identify the represented status of all litigants at all stages of a court case, and accurate and consistent assessment of the content of court hearings, continuances, and the reasons for them.

The interpretation of this data is made more difficult by the existence of multiple different scenarios – e.g., both parties self represented, self represented plaintiff/petitioner and represented defendant/respondent, represented plaintiff/petitioner and self represented defendant/respondent, and both parties represented. The represented versus self represented status of a party may change during the course of the case, producing additional complexity in interpretation.

The court will need sophisticated research assistance to succeed in answering these questions.

## **Data on the outcomes of court proceedings involving self represented litigants**

### **Basic data**

- The extent to which self represented litigants are able to present their cases fully.
- The extent to which self represented litigants understand what is happening in court and court orders issued in their cases.
- Satisfaction of self represented litigants with programs conducted by the court to provide services to them.
- Satisfaction of self represented litigants with court proceedings.
- The percentages of cases filed by self represented and represented litigants that are dismissed.
- The percentages of cases filed by self represented and represented litigants that result in court judgments.

Data on the ability of self represented litigants to present their cases fully can be obtained from the judge's in court observation form and from the judge, lawyer and staff survey forms. The in court observation data will be more reliable than the summary impressions reported on the judge surveys and is therefore the preferable source for data addressing the first issue.

Data addressing litigant understanding of proceedings, understanding of court orders, satisfaction with court programs provided to assist them, and satisfaction with the fairness of court proceedings can be obtained from the program exit and court exit surveys provided with this tool. The data on litigant understanding collected in this fashion addresses the litigants' perception of their own understanding – not their true understanding of law, procedure, and what transpired in court and why. It may also be inflated by litigants' reluctance to admit that they did not understand what happened or what a judge's order means.

Data addressing the final two issues may be available from a court's case management information system. If not, it can be gathered from a sample of closed case files. Comparing the data for represented and self represented litigants provides a first level indication of whether self represented litigants are able to present their cases to the court.

Interpretation of the data addressing all six issues is made more complicated by the factors discussed above – the existence of various permutations of represented and self represented litigants and the possibility that a litigant's represented or self represented status may change during the course of a case.

### **More sophisticated data**

- The extent to which the program increases a litigant's or potential litigant's knowledge of the law and court processes applicable to the legal matter bringing him or her to the court.
- The extent to which the program causes a litigant's expectations to become more reasonable in light of the law and facts of the case.
- The extent to which the outcomes for self represented litigants are "just" in light of the law and facts pertaining to their cases.

Survey instruments can ask self represented litigants whether they believe that their understanding of law and procedure has increased. However, that information is subjective. It is far more difficult to determine the extent to which a litigant's legal understanding has actually increased.

Similar difficulties attend the determination of the reasonableness of a litigant's expectations and the extent to which they are changed by the services provided by a court program to assist them.

The most difficult question of all is whether self represented litigants obtain the relief to which they are entitled by the law and facts of their cases. Social science researchers have conducted a few studies comparing case outcomes for parties represented by lawyers with outcomes for parties representing themselves.

The court will need sophisticated research assistance to succeed in answering these questions.

**M. Strategic Plan**

The strategic plan is intended to ensure the long-term viability of the court’s programs to deal with self represented litigants.

<b>Issue</b>	<b>Assessment</b>
<p>The program’s strategic plan for the next three to five years including:</p> <ul style="list-style-type: none"> <li>• Opportunities to expand the court’s service to additional client groups</li> <li>• Barriers and weaknesses that must be overcome in order to provide more effective service to the existing client groups or expand service to new client groups</li> </ul>	<p>If the court does not have a strategic plan for dealing with self represented litigants, recommend that it develop one. A court without such a plan is less likely to be able to adjust to changes in court leadership and resource availability.</p>
<p>Planned collaborations with additional partners</p>	<p>Suggest such partners</p>
<p>The degree of congruence between the court’s strategic plan for self represented litigants and the court’s overall strategic plan and the state judiciary’s strategic plans.</p>	<p>If the court’s plan is not obviously aligned with the court’s overall planning and the state judiciary’s strategic planning, recommend a review of program’s plan to re-craft it to be more congruent with the court’s core direction.</p>

**VI. Assessment Sharing and Building Process**

This process has great value for each court that participates. That value for each of the participants, and for the community of such programs as a whole,

is greatly enhanced if the product of the assessment is shared as broadly as possible.

Assessors are particularly asked, therefore, to address the following general questions in a format that may appropriately be broadly shared:

- What are the lessons learned about effective program design, implementation, and enhancement?
- What are the keys to the most effective integration of court services throughout the courthouse as a whole?
- What are the keys to the most effective integration into the community?
- How should the alternative program approaches listed in this document be modified?
- What are the user needs that current program models are not meeting, and how might they be met?
- What additional services could the court provide that would best enable it to expand its value and effectiveness?

Please provide these findings, together with the assessment report and a summary report of all data gathered, to the Trial Court Research and Improvement Consortium, care of Greacen Associates, [john@greacen.net](mailto:john@greacen.net).

## **VII. Conclusion**

This tool is offered in the hope that it will service individual courts, their programs to assist self represented litigants, the clients of those programs, the national community of courts and court supporting organizations developing programs to assist self-represented litigants, and the cause of a legal system with true access to justice.