Innovations for Self-Represented Litigants

Edited by

Bonnie Rose Hough

and

Pamela Cardullo Ortiz

Association of Family and Conciliation Courts

www.afccnet.org

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AND CONCILIATION COURTS

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PREFACE

Since 1963, the Association of Family and Conciliation Courts (AFCC) has convened a wide range of professionals dedicated to improving the lives of children and families through the resolution of family conflict. AFCC members are bound by their strong commitment to education, innovation and collaboration in order to benefit communities, empower families and promote a healthy future for children. Through educational programs, publications and the Internet, members discuss how best to help families resolve conflict, especially those experiencing separation and divorce.

AFCC's interdisciplinary approach has contributed to it being a leader in the development of initiatives in areas including mediation, custody evaluation, parenting coordination, and parent education. Above all, AFCC members are innovators who are accustomed to sharing their expertise with colleagues. The Innovations Series is designed to enable AFCC members to share practical information about programs, processes and ideas that are emerging in the practice of family law.

Each book in the Innovation Series has been edited, and each chapter written, by thoughtful and experienced practitioners who have given generously of their time in order to contribute. We are deeply honored to have worked with all of them.

We hope that a chapter in this series will spark an idea for a new program in your community or help improve the functioning of an existing program. And, of

course, we hope that you will continue your connection with AFCC by finding ways to share your own innovative ideas with our community through future publications and educational programs. The better our work and the more we learn from one another, the greater our contribution will be to the communities, children and families we serve.

Wendy Bryans, LL.B and Linda Fieldstone, M.Ed.
AFCC Innovations Series Project

INTRODUCTION

Courts throughout the United States and through much of the world have seen a growing number of litigants representing themselves. In many jurisdictions there are more people representing themselves than those that have lawyers. This has prompted a fundamental rethinking of the role of the court and the nature of legal assistance. What does a court need to do to ensure that people are treated fairly and have the opportunity to resolve their issues? What parts of a legal case can litigants handle on their own or with some limited assistance? How can we make sure that litigants have enough information to make a reasonable agreement or to decide which matters can be most appropriately addressed by a judge?

Emerging technologies are altering the way we obtain information and solve a variety of problems. How will changes in technology alter the operation of the courts and the practice of law? What opportunities will emerge as a result and how might courts position themselves to capture the benefits of these evolving practices? Richard Susskind has hypothesized that as technology permits the "commoditization of legal services," attorneys have an opportunity to package their work in ways that may permit them to ultimately reach the "latent legal market," that group of individuals who need legal help but lack the resources or are intimidated about seeking legal help.[1] These are precisely those individuals who would benefit from counsel but are appearing in our courts on their own in increasing number. Can technology be harnessed to provide legal help in a manner that is responsible and that delivers meaningful access to justice?

Attorneys are beginning to respond to the economic strain with a range of options, some of which—fixed fee pricing, a la carte or limited scope services, and value pricing— hold real benefit for the indigent as well. This dovetails with a trend and increasing comfort level with "unbundling," another term for limited scope representation. Most states have, by now, adopted some version of ABA

Model Rule of Professional Conduct 1.2(c) which references limited scope representation and Rule 6.5, which specifically authorizes the type of limited scope practice offered in high-volume self-help centers. Many states have gone farther, adopting rules that specifically define the scope of limited representation, authorize limited court appearances, clarify the rules around "ghostwriting" and address other ethical issues related to the practice.[2] This will likely enable more litigants to get some legal advice and assistance even if they cannot afford counsel for the entire case.

In the meantime, courts and their justice system partners must, of necessity, think critically and comprehensively about what it means that such a large percentage of those who are engaged with the legal system do so without the benefit of counsel. Our goal in this volume is to highlight some court and legal services initiatives that have responded to the overwhelming needs of this population, and the challenging issues raised by the phenomenon of self-representation.

A wide variety of innovations have been created and continue to evolve to provide limited scope legal assistance, and to reconsider the role of judges and court administration in making sure that self-represented litigants are able to complete their cases with the key issues resolved in an appropriate manner. These innovations focus on procedural as well as substantive fairness, and thus also are of assistance to represented litigants who also need to feel that their case was given respectful and adequate attention, and was resolved in an appropriate and timely manner.

This book provides models for a number of these innovations. Courts in rural jurisdictions often feel they lack the funding or efficiency of large jurisdictions. They need not lack the creativity, as evident from the first chapter in this volume. The article by Stacey Marz, "Alaska's Family Law Self-Help Center: A Technology-Enhanced Delivery System for Assisting the Self-Represented," describes the self-help program developed by the Alaska court system to provide legal information via a telephone hotline and website. This program responds to the challenge of providing assistance in a rural and geographically dispersed state. The article contains a sample script for a session between an attorney-supervised, court staff member and a person needing assistance that demonstrates the tremendous assistance that is provided by this program. It describes how the program continues to develop based on feedback from the public and court staff. The use of technology to leverage a centralized, statewide resource is a creative example of

how to harness innovation to address service delivery challenges.

The next chapter provides an example at the other end of the spectrum: how can an extremely large, multi-site city court begin to address the needs of a large, low-income urban population? Kathleen Dixon and Dr. Margaret Little describe a range of approaches that have been adopted by the Los Angeles Self-Help programs in their chapter, "Self-Help Centers—The Approach of the Los Angeles Superior Court." These programs, which are operated by both legal services agencies and the courts, serve over 300,000 persons per year. The Los Angeles programs provide much of their assistance in highly practical workshops, in which the legal concepts are discussed and litigants walk away with completed legal documents and instructions for the next step of their cases. The productivity of these workshops is greatly increased by the use of student volunteers who participate in the JusticeCorps internship program. It also utilizes software to create the necessary legal documents, which is described in more detail in the article on the national legal services document assembly program, LawHelp Interactive.

In the last two decades, as rates of self-representation have increased, so too has the court's reliance on alternative dispute resolution. Courts have come to rely heavily on court-based mediation programs. But how effectively can a litigant participate in mediation if they are not knowledgeable about their legal rights, remedies and risks? Can they truly benefit from mediation without recourse to counsel? Professor Robert Rubinson's chapter, "The Pro Bono Mediation Project: Providing Free Representation to Self-Represented Litigants in Child Access Cases," describes an innovative model that uses volunteer attorneys and law students from the University of Baltimore to provide legal consultations and support to litigants in family law mediation matters. This program, which addresses the concerns raised when one side of the case is represented and the other is not, includes sample forms to limit the scope of the legal assistance that is provided and provides a format for a parenting plan that can be used as a framework for the mediation.

Court forms can be an effective tool for aiding the uninitiated to at least launch or respond to court action. Forms, distributed for years in hard copy, are now generally available online. But while more physically accessible, court forms remain difficult for the uninitiated. When completed incorrectly, they can hamper court efficiency as well. Legal pleadings that are legible, set out the legal issues and identify the positions of the parties are critical for courts handling family

law matters. New technologies and tools are available to aid courts in developing programs that guide litigants through animated "conversations" that help them generate the forms they will need. In her chapter, "Online Document Assembly Initiatives to Aid the Self-Represented," Claudia Johnson describes LawHelp Interactive, a national legal document assembly program that allows courts and legal services to develop programs that ask questions of litigants that are compiled into the appropriate legal format.

Judge Fern Fisher from New York discusses the new models for judicial education that have been developed to assist judges in handling cases with self-represented litigants in her chapter, "Educating the Judiciary on Self-Represented Litigant Issues." These include a national bench guide, curricula designed to be adapted for use in every jurisdiction and many interesting programs that have been developed in different states including experiential and on-line education. The article notes that education regarding the socio-economic issues faced by litigants, English language proficiency and a variety of other topics designed to help judges better understand the lives of the litigants whose cases they adjudicate is critical.

Justice Harvey Brownstone from Ontario, Canada, explains that province's case management system in which litigants receive a variety of services from court-based self-help providers, extensive clerk review of documents, and duty counsel providing limited scope representation that enable matters to be concluded in a timely manner. In "Keeping it Real with Self-Represented Litigants: Ontario's Approach to Case Management in Family Court," he describes rules and judicial techniques that ensure that there is always a "next event" scheduled and cases are not protracted. These include helping parties focus on the key issues that must be resolved.

These models are by no means exclusive and there are a large number of interesting and effective models that could not be included. We encourage readers to contact the editors for other suggestions and to review the website www .selfsupport.org for other models and sample materials. It contains a wide variety of materials including best practices, curricula and other guidance from the National Self-Represented Litigation Network and programs throughout the United States.

We hope that you will find these models and materials of use as you work to address the needs of the families coming to court in the 21st Century—developing

a continuum of services that most effectively address their needs—as well as the needs of the court to have matters resolved in a timely and efficient manner.

Bonnie Rose Hough
Pamela Cardullo Ortiz

NOTES

1. Richard Susskind, *The End of Lawyers: Rethinking the Nature of Legal Services* (2008).
2. See the ABA Pro Se/Unbundling Resource Center site at: http://apps.americanbar.org/legalservices/delivery/delunbundrules.html for a complete list of rules adopted by states in support of limited scope representation.

CHAPTER 1

ALASKA'S FAMILY LAW SELF-HELP CENTER: A TECHNOLOGY-ENHANCED DELIVERY SYSTEM FOR ASSISTING THE SELF-REPRESENTED

Stacey Marz

Imagine living in a village in northwest Alaska with a population of 200. There are no roads connecting your community to any other. The nearest court, attorney or social service provider is several hundred miles away by an expensive plane ticket. Your income is below the poverty level and you have a 12th grade education. Your relationship with your husband has ended and you want to get a divorce. You don't know what to do, there are no lawyers in your community and you don't have any extra money to hire one anyway.

You have a couple of options if you possess some simple technology—a phone and a computer with an Internet connection. You can make a toll-free call to the Alaska Court System's Family Law Self-Help Center (FLSHC or "the Center") Monday through Thursday from 7:30 am to 6 pm and speak directly to a highly trained facilitator about your case. In addition, you can view the FLSHC's website from anywhere with an Internet connection at any time of day and access easy-to-read, comprehensive information about court procedure and forms useful in family

law cases filed in the Alaska Court System. If you call, you would speak directly to one of the Center's facilitators. Ideally, that call would last up to 20 minutes and you would hang up with a good idea of what the court procedure is to move your case forward, and you would receive a plain language form in your email inbox that you would fill out and file in court or you could download that form from the Center's website.

This chapter will explain the special considerations that prompted development of this service delivery model. It will also discuss the history of the Family Law Self-Help Center and describe various aspects of the program. The benefits of having a statewide service from a centralized location—both for the litigants and for the court system—will follow. Despite the different characteristics of Alaska's self-represented litigants and some of the unique circumstances that warranted creation of a phone/Internet based Center, the discussion will demonstrate how this service delivery model can benefit any court system.

HISTORY

The Family Law Self-Help Center opened its virtual doors in 2001 to assist self-represented litigants in family law cases,[1] or at least opened its doors to its inaugural skeletal staff because the Center is not open to customers on a walk-in basis. Prior to the Center's inception, the Alaska Court System's judges and administrators recognized that self-represented litigants were increasing in number and using inordinate amounts of staff time in both clerk's offices and courtrooms. Confused, frightened and emotional litigants in divorce and custody cases were asking customer service clerks questions about how to handle their cases, including whether they should take a specific action, and for forms they could use to file court actions. These litigants would regularly file letters in court that did not comply with the Civil Rules and did not serve the opposing party. This resulted in rejected filings and deficiency notices. Most significantly, this took a lot of time—for the litigants, court staff and judges—and nobody was very happy.

The trial court administrator for Alaska's largest judicial district attended a summit in Scottsdale, Arizona, to discuss the possibility of court-based self-help centers. She returned with the vision and energy to initiate the creation of a self-help center in Alaska. After getting the blessing of the court system's director and

Chief Justice of the Alaska Supreme Court, the trial court administrator hired founding director, Katherine Alteneder. The result was a unique program to meet the needs of Alaska's litigants and the courts.

Court administration gave the Center's founding director a significant amount of freedom to design the FLSHC. Before coming to the court, Alteneder had worked for Alaska Legal Services Corporation as the grant administrator for elder law services. During this time, Wayne Moore of AARP had piloted the use of telephone hotlines to assist seniors, with great success, and legal services programs in places like Washington and California were experimenting with telephone hotlines as a cost-saving delivery model during a period of extreme budget cuts. The early reports of the telephone hotline as a means of efficiently connecting to clients had impressed Alteneder. She saw the tremendous possibly this created for a statewide court self-help center that was charged with serving over 663,000 square miles from a single location. She also visited select courts in Washington and California that were providing self-help at the time, to understand specific challenges that arose for self-help centers and strategies that worked well.

Early in the Center's development, some within the Alaska Court System felt strongly that the self-help center needed to provide in-person services and that a telephone helpline would not work. After much dialogue, the Center initially offered walk-in assistance in Anchorage, along with a statewide telephone helpline. Data was collected on both services, including customer demographics and amount of time spent helping each customer. It became clear quickly that in-person assistance took significantly longer than helping someone over the phone. An in-person contact was approximately 45 minutes and a phone contact averaged 20 minutes. In a center that deals in volume, a phone based service made sense. It turns out that there were many other reasons to focus on an exclusive phone service and drop the in-person assistance.

CONSIDERATIONS FOR CHOOSING THE SERVICE DELIVERY MODEL

Alaska is very large and covers a land mass equivalent to one-third of the continental United States. There are relatively few people compared to the lower 48 states, with a total population of only 682,000. Alaskans are spread out in over

350 villages and communities with small populations throughout the state. There are few urban centers, with Anchorage being the largest and comprising over half of the state's population. Very few roads connect any communities, with the majority being disconnected by road and accessible only by air, boat or snow machine, depending on the season.

Alaska has a unified, centrally-administered judicial system. Municipal governments do not maintain separate court systems. There are 40 courts located around the state. There are 13 Superior Court locations. These are trial courts of general jurisdiction that hear domestic relations cases, including divorce, custody and child support. Only four Superior Courts are accessible from the road system. Rural courts serve many villages with small populations and have relatively small caseloads. Some Superior Court locations have no attorneys located in the community and some have attorneys, but very few, and those are often conflicted out of taking cases due to past representation of opposing parties or due to past employment as public defenders or prosecutors in the same small community. Statewide, 70-99% of dissolution (uncontested divorce), divorce and child custody

cases involve at least one self-represented party, depending on location and case type.

Alaskans also face severe and unpredictable weather conditions. Due to the state's northern latitude, it is dark, very cold, snowy and icy for about half of the year, which is more extreme the farther north you are located. These conditions can cause great barriers to travel, particularly during storms, and air travel is frequently interrupted because of the weather. Even in communities that have courts and roads, car travel can be challenging and certainly inconvenient in inclement driving conditions when it is 40 degrees below zero, with high winds and blowing snow.

Alaskans are a highly mobile and transient population. This is particularly true after a couple ends their relationship; frequently one partner leaves the state to start a new life elsewhere. In fact, over 10% of callers to the FLSHC live outside of Alaska, but have a continuing case in the Alaska Court System so are litigating from afar. As long as the Alaska courts have continuing jurisdiction over minor children who stay in Alaska, the non-residential parent may be involved with a case in Alaska for many years until the children reach the age of majority.

Alaska also has a high population of military service members and dependents. There are several Army, Air Force and Coast Guard installations in the state and high enlistment rates to the National Guard and Reserves by residents of Alaska's rural villages. In fact, Alaska has the highest per capita rate in the United States of military veterans in the general population. In any given month, over 10% of the FLSHC's callers are involved with the military. This population is also mobile and frequently outside of Alaska on deployment, for training, or because they are assigned to another post in another state, but have a continuing case in the Alaska courts.

Despite its remote location relative to the lower 48 states, Alaska ranks first in the United States for people who access the Internet from any location (home, work, public access), at 76.1% according to a study from the US Census Bureau.[2] Alaska ranks second among states for rate of home Internet access. Seventy-eight percent (78%) of Alaskans age three and over lived in a household with Internet access in October 2007, the most recent year for which data is available. Out of necessity, Alaskans have long relied on the Internet to stay connected with family and friends located outside the state, to shop for goods and services that are not available in their community, and to receive information.

These conditions, including land mass and weather conditions, inaccessibility to face-to-face service, and unified judicial system, necessitated a program delivery model that provides services from one centralized location using the phone and Internet. As such, the FLSHC found the Internet to be a successful way to provide information through its website to its customers, with the vast majority of forms sent by email after assistance is received from conversations on the Helpline. This service delivery model is a great equalizer because it allows a litigant access to the Center's services from any location in the world, as long as they have a phone line and/or a computer with an Internet connection. Conversely, a walk-in self-help center would be available only to the litigants who are physically near the center and would not serve the high percentage of litigants who reside outside of Alaska, who are deployed for military service, or who live in rural villages, off the road system. Moreover, the economics of providing a walk-in self-help center do not make sense when the individual courts have very different caseloads, and most do not have the case filing numbers to support their own self-help center.

Alaska has a myriad of unique characteristics that ultimately dictated how to provide services to its self-represented litigants. These lessons and innovations all suggest service delivery solutions for other jurisdictions that, while different from Alaska, may include rural areas, remote populations, transportation barriers, or a transient or military population.

GETTING SUPPORT FOR THE SELF-HELP CENTER

Once the service delivery model was determined, it was critical to obtain support from key stakeholders to ensure buy-in and to attract referrals to the Center. The Center sees itself as serving two primary audiences—not only self-represented litigants, but also judges and court staff. It was recognized early on that the Center must provide value to both the public and the court itself. Court administration already supported the Center because it had the initial vision to provide self-help services. The judges knew first hand that self-represented litigants were coming to court in increasing numbers. The self-represented required large amounts of judicial time because they were unprepared, did not understand the court process and did not know what to file. Some judges were skeptical, however, that self-represented litigants could effectively represent themselves, even with education

and forms from a self-help center.

The Center also serves a third audience—the private bar. The Center found it was critical to build support from private attorneys to avoid having them feel like the FLSHC was competing with them for clients. Thus, the Center's director made great efforts to educate the family law bar about the FLSHC's mission to provide assistance to self-represented litigants by providing legal information, not legal advice, and that the FLSHC staff tells all customers about the importance of seeking legal advice when possible. It is very important that private attorneys recognize the value that the Center provides to self-represented litigants, who may be opposing parties to their clients. More informed self-represented litigants are easier to deal with, file more responsive documents, and are more likely to properly serve copies of filings. The Center is also a place to refer people that private attorneys do not want to take on as clients or whom they cannot represent due to conflicts of interest. Since its inception, FLSHC forms have found an admiring audience with private attorneys who use them with litigants for whom they are providing unbundled or limited scope services. The Center's director attends monthly meetings of the Bar's statewide family law section to develop relationships with family law attorneys, as well as to share program information, and keep an ear to the ground about any issues or concerns raised about the court system and judges. These meetings and informal conversations that follow have been valuable. By creating good working relationships with attorneys, the Center helps build a sustainable foundation of volunteers who help as needed with different projects.

To get initial buy-in and support for the Center, and to tap into the skills of experienced practitioners and forward-thinking court personnel, an advisory committee was created. Committee members, including court employees and private attorneys, were appointed by the Chief Justice of the Alaska Supreme Court. Initially, the membership was selected by court administration. The committee has since been augmented with recommendations from the Center's director. The committee is currently chaired by a Superior Court judge from Anchorage. Another judge from Juneau, one of the state's larger courts, is also a member. Additional court employees include the administrative director of the court system, the trial court administrator of the largest judicial district, and a clerk of court from Fairbanks, the second largest court. Non-court members include the director of Alaska Legal Services, a state Attorney General who represents the

child support services division, three private attorneys, one attorney/mediator who also teaches at the University of Alaska, the staff attorney from Alaska Native Justice Center (a statewide advocacy organization for Alaska Natives) and an attorney who runs the military legal assistance office on a large Army installation.

Meetings occur every one to two years. The FLSHC director drafts an annual report in advance of the meeting, which includes statistics collected since the last meeting on customer demographics and service delivery numbers. The report also discusses new projects completed, partnerships created and visions for the future. The director occasionally calls upon committee members throughout the year when assistance is needed. Committee members may aid in training the staff on areas of the specific committee member's expertise, such as understanding military retirement issues or calculating child support for self-employed obligors. In addition, committee members may be asked to comment on draft forms and instructions or identify any concerns they may have about Center policies or projects. For example, when the director drafted a new set of forms to modify child support, the Attorney General member provided useful comments, asking that the form include the child support agency's address so they could be served. That alerts the agency that the action is pending in court in the event the parties have also filed something administratively. Finally, in order to ensure the non-attorney staff have access to the same services as the public, one private attorney on the committee serves in the unique role of providing procedural information to FLSHC facilitators who themselves may be pro se litigants in a personal domestic relations case. This allows facilitators to receive the same services available to other self-represented litigants without bringing personal legal issues into the office.

OUTREACH

Initial and continued outreach efforts have been very important to create support for the FLSHC services. Outreach is done both inside and outside of the court system to educate court employees and any relevant social or legal service provider about the services offered. Internal outreach is necessary particularly because self-help services are executed from Anchorage, yet the Center serves litigants filing in all courts throughout the state. Thus, it is vital to ensure all court

employees who deal with the public, as well as judges and their staff are well aware of the Center and its resources. Court employees are the number one source of referrals for the FLSHC and provide a direct connection to self-help services. Because the FLSHC is physically located in Anchorage, it is challenging to remind all court employees, some of whom may be located over a thousand miles away, that the Center exists to serve their customers. The director has always endeavored to communicate that the FLSHC is not an exclusive service for the Anchorage Court, but available to all litigants involved in family law cases in Alaska's courts. Center staff must be mindful of language used when talking about the FLSHC's services and be familiar with the particular issues facing customers in different regions of Alaska, as well as the special challenges faced by rural courts. When funding is available, Center staff travel to the different Superior Court locations to meet with court staff and judges to get feedback on the needs of their customers. It is important that staff understand any local practices and hear their suggestions about additional forms or modifications to existing forms, as well as suggestions for additional web content. In lean economic times, it is not always possible to fly to the different courts. When face-to-face interaction is not possible, the Center's director takes advantage of all opportunities to train clerks of court, judicial assistants, judges and magistrates at annual state conferences, often held in Anchorage. She also participates in periodic conference calls with different court departments and communicates by email to maintain contact and relationships with court staff throughout the state. When the FLSHC has new projects or information such as a new form or a video, the director forwards information by email to the relevant audience.

The Center also reaches out regularly beyond the court system to a variety of legal and social service providers. When traveling to different court locations, the director will meet with everyone in a community who may come in contact with the self-represented, to let them know about the FLSHC's services and to learn about their services so the Center can provide its customers with referrals when appropriate. For example, the director may meet with hospital social workers, public health nurses, behavioral health workers, substance abuse counselors, Alaska Native tribal office staff, military family service staff and legal assistance office attorneys, child protective service case managers, child support workers, legal service attorneys, domestic violence shelter advocates, public librarians, public defenders, state Department of Law attorneys and private attorneys. The point

is to contact everyone in a community to give them information about the FLSHC, learn what they do and get feedback about the court system and judges. In addition, the director has presented at conferences for legal and social service providers, including domestic violence legal advocates, Indian Child Welfare Act social workers, the statewide paralegal association, and the family law bar section. These statewide conferences provide an opportunity to talk to large groups at one time about FLSHC services.

Meeting with community providers has proven particularly useful. Individuals who work in the local community where a court is located can share their perception of the court and how the judge handles cases and self-represented litigants. Sometimes it opens up an opportunity for dialogue between the local social and legal service providers. Other times it provides an avenue to discuss a specific practice with the clerk of court or the judge. One theme that has emerged is that the legal and social service community may have a legitimate problem with the way a situation is handled by a judge, but feel constrained about communicating directly with the court. The solution is often administrative and does not involve talking about the specifics of an individual case, so it is appropriate for the provider to meet with the judge. The FLSHC director can be the conduit between the two sides to set up a meeting and engage in dialogue to figure out a solution. For example, a domestic violence shelter was unhappy that a judge was always identifying their legal advocate in court, despite the fact that the victim may not have wanted the perpetrator to know she was seeking services from the shelter. It turned out that the judge was not aware of the possibility of this dynamic; he was so used to seeing the advocate in court, he thought nothing of asking the advocate in open court on the record which party she was accompanying. The FLSHC director explained to the shelter that it was fine to ask to meet with the judge to discuss administrative matters about cases, but not appropriate to have discussions about the facts in a specific case. The director also follows up to evaluate the validity of complaints about individual cases by reading case files, and if substantiated, provides information to appropriate people within the court system to help with future training topics. In sum, the outreach has provided key opportunities to both let relevant people know about the FLSHC and to learn about available community services. An important peripheral benefit has been the insights gained from outside the court system about how people perceive the

courts, judges and specific case outcomes. This feedback has been a productive avenue to improve service delivery and case handling.

FUNDING

The Alaska Court System receives an appropriation from the Alaska Legislature to fund its operations. The FLSHC is funded as part of the court's budget, including salaries and benefits, office space, equipment and supplies.[3] The court system's decision to fully fund the FLSHC recognizes the value that it provides to the growing number of self-represented litigants in family law cases as well as to judges and court staff.

Periodically, the director seeks grants for specific projects, such as to develop videos or to fund pilot projects or positions. The Center has produced domestic violence videos for people representing themselves that highlight issues important to those with children. The FLSHC has also been involved in grants to fund demonstration projects. For example, the FLSHC received federal grants from the Office of Violence Against Women to fund a facilitator position to work with parties in domestic violence cases in the Anchorage court to draft proposed parenting plans. After successfully showing the value of that position, the local court assumed funding for the position.

FLSHC SERVICES

The FLSHC has been recognized nationally for its innovation, quality and efficiency. The FLSHC's core services include a comprehensive website and toll-free statewide telephone Helpline. A staff of non-attorney facilitators answers the telephone Helpline, and an attorney director and half-time staff attorney support the facilitators and develop written materials and website information to support the statewide population of self-represented litigants in family law cases.[4] Helpline services are provided in English and Spanish and selected website information is translated into Spanish, the non-English language most widely spoken by FLSHC customers. In the first year of operation, the Center offered only direct customer service on a walk-in basis in Anchorage for a brief period, and a statewide telephone Helpline. Based on a careful analysis of customer behaviors and needs, the

director designed and launched a comprehensive website that could serve multiple user groups including customers, judges, court staff and the private bar.

The Helpline

The telephone Helpline is staffed by four non-attorney facilitators who speak directly to self-represented callers about their family law cases, including contested cases in divorce, custody, child support, paternity, domestic violence, as well as uncontested matters such as dissolution (uncontested divorce), guardianship and step-parent adoption. These highly trained facilitators provide information about procedure and forms. The FLSHC Director provides intensive initial training to new facilitators on both substantive family law issues, as well as family law case procedures. The training includes information about the court system's organization, legal information versus legal advice, specific forms, local court practices, the FLSHC and court system websites, relevant government agencies, resources for referrals, how to teach classes, how to work with customers and how to collect survey data. The facilitators attend trainings on specific subjects when available, such as how to calculate child support for self-employed workers, domestic violence dynamics, and how to work with difficult people. They also observe various court hearings to understand in practice how different judges manage different proceedings as well as how self-represented litigants and attorneys behave in the courtroom. An important part of the training involves role playing different scenarios to begin to put the information learned into practice. The role playing involves how to focus a caller to provide relevant information, how to show an appropriate level of compassion and understanding, how to answer various questions to provide legal information and avoid giving legal advice and how to provide appropriate referrals. On average, it takes about four months before facilitators are ready to actually interact with customers on the helpline.

When talking to customers on the helpline, the facilitators do not give legal advice or actually fill out forms for people. At the start of every phone call with a customer, FLSHC facilitators tell callers about the type of services and information they can provide, as well as the limitations. Here is a script of what a facilitator says to a caller about FLSHC services:

Before we talk any further, I need to tell you something about where you have called. We are the Family Law Self-Help Center. The most important thing to know about us is that we are part of the court. This means is we have to be neutral and impartial, and we can't take sides in a case.

Also, we can only provide legal information, not legal advice. This means that we can give you information about court procedures or forms, but not advice on how to interpret the law or strategize about your case.

Conversations with us are not confidential the way they would be with an attorney.

We help both sides. So if the other side calls, we will give him/her the same kind of help we give you. Is this ok with you?

Do you have an attorney representing you in this case?

After the scope of service explanation is given, the facilitator, who is well skilled in obtaining relevant information from callers, asks directed screening questions to make efficient use of the caller's time. The facilitator's objective is to understand where the caller is procedurally in his or her case and identify what the caller is trying to accomplish at that time. The facilitator will explain the procedure involved at that stage of the case and identify options for forms to address what the caller is trying to accomplish. She will either help the caller navigate the FLSHC website to find those forms, or email them to the caller. If the caller does not use the Internet, the facilitator can fax or send forms by US mail.

Here is an example of how a call to the FLSHC Helpline may proceed:

Facilitator: *Hello, this is the Family Law Self-Help Center. My name is Judi. How may I help you?*

Caller: *I got these papers from my husband in the mail. He cleaned out our bank account. I have no money and my heat is about to be turned off. I need help.*

Facilitator: *Before we go any further, I need to explain what kind of help I can give you. (She proceeds to give the caution.) Is that OK with you?*

Caller: *Yes, I understand.*

Facilitator: *Do you have an attorney representing you in this case?*

Caller: *No.*

Facilitator: *OK, I need to ask you a few questions to figure out how to best help you. Now you said you received papers from your husband in the mail. Do you have them in front of you now?*

Caller: *No, but I can get them, hold on. OK, I have them now.*

Facilitator: *What kind of papers are they?*

Caller: *They are for divorce.*

Facilitator: *Let me ask you a few questions. Do you have any children with your husband?*

Caller: *Yes, we have three children.*

Facilitator: *How old are they?*

Caller: *4, 6 and 9*

Facilitator: *OK. Can you get on the Internet now?*

Caller: *Yes. Hold on.*

Facilitator: *Go to http://www.courts.alaska.gov/selfhelp.htm. You should be on the FLSHC website. Are you there yet?*

Caller: *Yes.*

Facilitator: *Great. We'll get to that in a moment. I want to explain to you how the procedure works in divorce cases. Everything we will talk about can be found on the website. It discusses the different steps in the case and includes commonly used forms. So when you finish the call, you can go back and review the web pages we discuss on this call. First off, do you agree with what your husband's Complaint says?*

Caller: *No. He says he wants the kids, but he hasn't taken care of them and I want them. He also says I have a drinking problem, but that just isn't true. He's the one who drinks too much.*

Facilitator: *OK. The way divorce cases work is that the person who starts*

the case is called the plaintiff. The plaintiff starts the case by filing a document called a Complaint. What does the paperwork you received from your husband say at the top under the caption where it says his name vs. your name?

Caller: *It says "Complaint for Divorce with Minor Children."*

Facilitator: *OK. So he started the case by filing a Complaint and serving you with it. The court requires that all documents filed in court have to be served on the opposing party. This means he has to give you a copy of everything he files and you have to give him a copy of everything you file. This is called due process, which basically means everyone gets a copy of everything that happens in the case—what each of you files and what the judge orders. That is to make things fair so everyone is aware of what is going on in a case. In a moment we will talk more about service, but first I want to tell you what you can file to respond to his Complaint. The way the process works is you have 20 days from the date you actually received his Complaint to file what is called an Answer, which is your response to what he said in his Complaint. What day did you get his Complaint?*

Caller: *I got it on February 1. It was sitting in my P.O. Box for awhile, but I couldn't get to the post office until Feb. 1 to pick up the certified mail.*

Facilitator: *OK. So if you have 20 days from when you picked up the Complaint to file your Answer; what day is your Answer due in court?*

Caller: *Well, that would be February 21.*

Facilitator: *OK. Mark that date down in your calendar and make sure you file by then because if you don't he can ask the court to issue a default judgment. This means basically that the case would go on without you because by not filing an answer you are sending a signal to him and the court that you either agree with his Complaint or you decided not to participate in the case. If that happens, the case goes ahead based only on what he says and you aren't given notice of future hearings.*

Caller: *I will definitely file something within 20 days.*

Facilitator: *Let me tell you how to find the right form on the website, so we can talk more about how to fill it out properly. (Directs caller to find the Answer on the website.)*

Caller: *OK. I have it open now.*

Facilitator: *Great. First you have to fill out the caption. It should look like your husband's caption. Where it says plaintiff, you fill in his name and where it says defendant you fill in your name. For the rest of this case, the caption will always look the same no matter who is filing the papers in the court. Also, your case number will stay the same throughout this case. Fill that in. So place his Complaint in front of you to your left and put the Answer to the right. Go through each section of the Complaint, which should be numbered and state in the Answer under the matching number whether you Agree or Disagree with what he said. When you get through with that, the next section is called "Affirmative Defenses." (Facilitator offers explanation about Affirmative Defenses.) If you don't have any Affirmative Defenses, you can move on to the next section which is called "Counterclaims." This is where you can tell the judge what you want to happen in the case; go through the form and answer the questions asked. Earlier you said that you want custody of the children. This is the section where you can tell the court what kind of custody you want. (Facilitator describes different options – joint or sole legal custody and primary or shared physical custody). At the end of the form, you sign and date the Answer. (Facilitator discusses other affidavits and clerical forms that are also required and directs to find on the website.)*

Next I want to explain how you serve your husband with a copy of what you file in court. There are two ways you can serve him. You can send him copies by regular first class US mail or you can hand deliver the documents to him. Has there been any domestic violence between you and your husband or is there a protective order in place that says there can't be any contact between you and him?

Caller: *There isn't a protective order, but he did push me when he was drinking when he came to pick up the boys for a visit last month. I don't want to hand deliver anything to him because he has a bad temper.*

Facilitator: *OK, most people mail their service copies to the opposing party, so you can send your Answer in the mail to him. The website has a detailed section on serving the opposing party. (Facilitator explains how to find the correct webpage.) At the end of the Answer form, there is a section called the Certificate of Service, which describes how you need to tell the court how you served him. It is very important to fill out this section completely. If you don't, the case will stop and you will get a deficiency notice from the court telling you that you need to serve him. So in that certificate of service section, state the date you serve him and that you served by mail and sign your name. Once it is all filled out, make two copies. You will file the original papers in court. Make sure you do it within 20 days of getting the Complaint. Keep one copy for your own records. The other copy is for you to send to your husband. Do you have a mailing address for him?*

Caller: *Yes. He is living in the barracks.*

Facilitator: *Is he is in the military?*

Caller: *Yes, he's in the Army.*

Facilitator: *Please get a pencil to write down some information. (Facilitator discusses resources available for military dependents, family services and child support when military family separates, and making contact with his First Sergeant.)*

Earlier, you mentioned that your husband withdrew all of the money from your bank account. Please write down this information about the local food bank and energy assistance funds. (Facilitator provides local food bank information and energy assistance fund information.)

You also said earlier that your husband has a bad temper and that he pushed you. Here is the number for your local domestic violence shelter. (Facilitator provides number.) They have many programs—both for you and your kids—to help with a separating family, particularly when your husband has been violent. Do you feel fearful of him now?

Caller: *Only when he is drinking. I am concerned what he will do when he gets my papers and sees I want custody.*

Facilitator: *(Facilitator discusses domestic violence protective orders.) Let me show you where you can find the paperwork for a protective order if you decide you want to file one. (Facilitator helps navigate to the DV section of the website and points out the link for a video on the protective order process, as well as another link to read section on how to represent yourself in the protective order process.) Also here is the phone number for the legal advocate who works in the courthouse.*

It is a good idea to talk to an attorney about your case if possible. If you can't afford an attorney for full representation, consider talking to an attorney who does unbundled legal services. (Facilitator explains unbundled legal services.) Next I want to take you to the link for the list of family law attorneys who provide unbundled legal services. (Facilitator explains how to get to the link).

Do you have any more questions?

Caller: *No*

Facilitator: *Will you answer a few questions for our survey?*

Caller: *Sure.*

Facilitator: *(Facilitator asks demographic survey questions.) Here is my direct phone number. You don't need to call through the Helpline anymore and can leave me voice mail if I am on the phone. Good luck with your case. Good bye.*

The Helpline, staffed by the four facilitators, is open to callers from Monday through Thursday from 7:30 am to 6:00 p.m. There are approximately 7,200 incidents of contact annually on the Helpline. The Helpline does not have voice mail for callers to leave messages. While it may seem counterintuitive, the Center helps more callers through the Helpline without voice mail. After a six month experiment where the Helpline had a voice mail option, the service delivery numbers declined steeply. This was attributed to a significant amount of facilitator time spent unsuccessfully trying to call back customers. Too many customers left incorrect numbers, numbers that were thereafter disconnected, numbers that they could no longer be reached at, and messages that were not spoken clearly so a

number could not be discerned. So instead of actually helping callers, facilitators spent too much time trying to track callers down. When a caller cannot get through on the Helpline, there is a voice mail message that directs them to the website, provides the Helpline hours and suggests calling back again.

The average call takes approximately 20 minutes and the facilitators try to wrap up a call within that time to make the phone lines available to the next caller. The facilitators try to end every call by ensuring the caller understands their next steps, and has received the forms they need, so that if there is no further contact, the caller is able to move forward. The Center is conscious of making sure that callers do not feel dependent on the facilitator's help or paralyzed to move ahead on their own. That is why the facilitator will show the caller how to navigate the FLSHC website, if possible, so the caller can use the website and take the next steps in their case on their own.

If the caller needs further assistance at the end of the call, however, the facilitator will give the caller a task to do and set up a phone appointment at a later date or tell the caller to call the facilitator's direct line for more help, which includes voice mail. The additional task may be reviewing their file, trying to fill out forms, getting more information, such as finding out how much debt is owed on a house, car or credit card (e.g., for purposes of computing child support), or simply thinking about future arrangements (e.g., what kind of custody and visitation arrangement he/she wants).

Facilitators also provide referral information for both legal and social service resources, depending on the information they hear from the caller. The goal is to identify where the caller may get help—financial support, food, clothing, shelter, legal assistance, counseling, drug and alcohol treatment, parenting classes, etc. For example, they are trained to listen for "red flags," which may indicate domestic violence is present in the relationship, and will provide referral information for domestic violence services in the community where the caller is located. They are familiar with a variety of resources throughout the state, whether the caller is involved in the military or is a member of an Alaska Native tribe. This may mean that the first step of a facilitator assisting a caller is to give non-legal referrals because the caller's problems are so significant that he or she needs to address them before attempting to take action in court. For instance, if an individual called to file for divorce and mentioned that her husband said he would kill her later that day after he gets home, the facilitator would address her safety as a pri-

ority. The facilitator would connect her with local shelter services, even initiating a three-way call with her permission—and would provide her with the divorce complaint, but tell her to call back to discuss the paperwork once she is safe.

Data Collection

At the end of every call, the FLSHC facilitator will ask the customer survey questions and enter their responses in an Access database.[5] The survey questions record anonymous demographic information about the caller, the tasks performed by the FLSHC, and the forms that were discussed and distributed. The data collected helps to inform decisions about the program, including what type of forms and additional web content would be helpful, and where the director should be doing outreach—both by location and specific audience.

For example, survey reports continually showed that the facilitators were helping customers understand how to file motions for telephonic appearances at court proceedings using the FLSHC generic motion packet. After querying the facilitators about whether having a specific motion for that purpose would be helpful, the response was resoundingly positive. Consequently, the director drafted a new motion, affidavit and proposed order to appear and testify by telephone. Now the facilitators provide these specific motion forms, requiring only that the user check boxes and fill in a few blanks. This saves the facilitator time because she no longer has to explain how to customize a generic form, and saves the customer time in completing it.

Historically, survey data shows that the geographic distribution of Helpline callers is proportional to the geographic distribution of domestic relations case filings throughout the court system. This demonstrates that a statewide service can successfully provide equal access for all jurisdictions through a centralized self-help center. In a given time period, however, survey results might show how customer contacts from a particular region have decreased from historical statistics. This will spur outreach efforts to courts in that region to make sure the staff remembers to make referrals to the FLSHC. The Center may also want to run public service announcements on local radio stations and place announcements or ads in newspapers to reinvigorate public awareness of the program.

Finally, the Center has used survey results to identify the need for new website

content. For instance, after adding a survey question about whether a customer is involved with the military, the director learned that approximately 10% of calls come from that population. To respond to some of the family law needs unique to military service members, new website information was developed. Moreover, the FLSHC Advisory Committee membership was expanded to include a representative from the Army, which provides a direct line of communication to address the needs of military service members and their dependents when involved in a family law case.

Collecting data about customers and the use of facilitator time is critical for program development. This data also provides the basis for additional funding and staffing requests and helps to inform policy decisions for other parts of the court system. Survey results show how many customers are assisted, which further supports continuing investments in the program. Data also provide real numbers to show how many customers an individual facilitator helps and aids the Center in extrapolating staffing needs. Furthermore, the FLSHC is virtually the only department that collects data about individual customer demographics; that information is useful when the court system as a whole is making policy choices. For example, survey data about the languages that FLSHC customers speak is used to help identify the top five priority languages for court interpreter training. Thus, collecting data about the program's operations and customers is vital to be able to react to new developments and make appropriate changes within the FLSHC, and also provides information to the state's court system that it may otherwise not have available.

Website

The FLSHC has a comprehensive website that receives approximately 72,000 page views annually and is linked from the Alaska Court System's homepage.[6] It is written in plain language for people who are assumed to have no previous legal education or experience with the court system, including a glossary of legal terms with plain-language definitions. It provides information about the different procedural parts of a case and important topics relevant to family law cases in an easy-to-use, frequently asked question format. Information is provided in manageable bites to make it easier for the user to digest. Each section is designed to provide

only the information on a particular subject based on a specific procedural part of the case—from starting the case, to filing motions, to preparing for hearings and trial, to preparing final documents. It also covers relevant subjects like parenting plans, child support, property, and debt division. It provides links to other relevant websites like the Child Support Services Division, Office of Children's Services, the Public Assistance Office and domestic violence shelters. There is a section on free legal classes given by the FLSHC, Alaska Legal Services and Alaska Native Justice Center, and a section on finding a lawyer and unbundled legal services.

The website is maintained by the Center's director. She makes changes based on new Alaska Supreme Court opinions, statutory changes and changes to the Civil Rules of Procedure. She also makes changes based on what the facilitators learn from callers. These may be substantive changes to add new information on additional subjects, or to clarify existing information. In addition, changes may be navigational, to make it easier for users to find information, or to use pathways that self-help users think make sense.

The success of the FLSHC website has spurred the creation of another self-help website. After seeing an increased number of people filing appeals without attorneys, the Alaska Supreme Court requested that the director create a website for self-represented litigants filing appeals in the Supreme Court. Using what she had learned about communicating effectively with FLSHC customers, the director developed a comprehensive website for people filing civil appeals from Superior Court to the Supreme Court.[7] This website provides information about each step of civil appellate procedure, including how to file an appeal, how to write a brief and present an oral argument. It includes easy-to-use forms written in plain language that were created by the Center's director, with input from Supreme Court justices and the clerk of the appellate courts. Like the FLSHC website, the appeals website is easily modified when necessary due to user feedback, Appellate Rules changes or new Supreme Court opinions.

Forms

The FLSHC creates easy-to-use, fill-in-the-blank, check-box forms written in plain language for common situations that arise in family law cases. Recognizing that

users generally have low literacy levels, the forms are designed for people with a fifth grade reading level. The forms are drafted in Microsoft Word because that is the most commonly used word processing software, making them easily accessible to most computer users. The forms are not locked down, meaning that a user can customize a form to meet their specific needs. Most forms do not have stand alone instructions because people generally do not read instructions. Instead, the forms include questions that are self-explanatory. Where appropriate, answers are provided with check box options. Where narrative answers are required, blanks are provided. Most forms include "other" options for answers, as well as a catch all section at the end where the user can add additional information when appropriate. They are posted on the FLSHC website and embedded in FAQs throughout the website, essentially forcing users to read through information to find the forms. This is because most users "just want the forms" and do not want to read instructions or learn the purpose or use of the forms. There is a list of forms found on the website, but it is not the obvious first place a user would look to find them.

The Center's director creates new forms when the need is common enough in a particular area that it would be useful to many customers. The Center uses the survey administered at the end of each call to identify areas warranting new forms. In addition, facilitators provide direct feedback about information they repeatedly tell customers when there is no existing form, or when an existing form does not address a common situation. For example, facilitators were frequently telling grandparents who wanted to file for custody of their grandchildren how to modify custody complaints that were designed to be completed by parents. After reading numerous survey reports that showed the facilitators discussing the modification of the custody complaint to meet the grandparents' needs, the director created a new complaint for use by grandparents seeking custody.

Once a new form is developed, it goes into "testing" status. This means that it is not posted to the FLSHC website, but provided to the facilitators to explain and distribute to customers. The facilitators provide feedback to the director about the customers' use of the form, including whether they understand the questions and wording and if additional sections are needed. After the form is tested for a sufficient time, usually 3-6 months, it is posted to the website and available to the public. For example, the divorce and custody complaints were modified after realizing that so many customers needed to disestablish or establish paternity to

identify the child's biological father. Forms now include a section to plead the paternity issue on the complaint. This simple addition allowed parties to address this important issue within divorce and custody cases instead of having to file separate paternity actions before these other cases could be resolved. Once the form was used successfully by litigants and received positively by the clerks' offices and judges, the revised form was posted to the FLSHC website.

These forms have been very popular, not only with self-represented litigants but with judges and attorneys. Judges have been very supportive of the forms and appreciate receiving filings that state more clearly what the litigant wants. In fact, many judges use the self-help orders, which were intended for litigants to file as proposed orders, because they are clearly written in plain language and address all of the required issues in family law cases. Judges occasionally request changes to these forms to address specific issues that they regularly write into orders, so they no longer have to add them to each order. Judges also ask for assistance in revising or drafting new forms outside the family law arena, recognizing the director's expertise in writing in plain language. The FLSHC director also seeks feedback from judges when drafting new forms to ensure that they meet the judges' needs. This is particularly true when a new Alaska Supreme Court decision may require a change to forms to reflect the new holding. Discussion with judges provides a helpful perspective on whether a form's change will help litigants move their case forward, given the new case law.

Self-Help Classes

The FLSHC teaches two in-person classes in Anchorage, the location of the state's largest court and majority of the population, to help people understand different issues in family law cases.

Family Law Education Class (FLEC)

This class is taught by FLSHC facilitators and is for people who are representing themselves in divorce and custody cases. It is court-ordered for all self-represented people who file in the Anchorage court, after the Answer is filed, and is scheduled and administered by FLSHC staff. It is voluntary for anyone else to attend, such as litigants who begin to represent themselves after the case has started

because they no longer have attorneys, or for those who are contemplating filing a case. The class is offered two or three times a month and provides an overview of family law cases, using a Powerpoint presentation along with a packet of forms and organizing tools. The facilitators explain court procedure, including information about motions and oppositions, property division, custody, visitation and child support, hearings and trials, and final documents. Importantly, this class introduces all self-represented litigants in Anchorage to the existence of the FLSHC and provides an avenue for people to see the value of using its services including the Helpline, website, forms and the Hearing and Trial Preparation Class.

Hearing and Trial Preparation

This class is taught by volunteer attorneys or the FLSHC staff attorney, also using a PowerPoint presentation and a packet of forms and organizing tools specific to preparing for court proceedings. It is taught twice monthly in Anchorage and is open to anyone who wants to attend. The class focuses on family law hearings and trials and teaches people about:

- what the judge expects
- courtroom demeanor of parties and witnesses
- how to testify
- how to select, prepare, and question a party's witnesses
- how to conduct direct and cross examination
- how to select, mark, and introduce exhibits, and
- the basics of making objections.

As these classes have proven useful to self-represented litigants and to judges in Anchorage, the FLSHC is planning to make the course information available electronically to all litigants regardless of location. The FLSHC has partnered with the Anchorage School District's video production department to produce a series of 1–3 minute video clips on the nuts and bolts of preparing and representing yourself in a hearing or trial. For example, these include information about pre-

senting testimony, questioning witnesses, making objections, introducing exhibits and how to behave in the courtroom. Customers have requested having video materials available on the website. Having the course available via the FLSHC website will accommodate the self-represented litigants who are outside of Anchorage, including rural Alaska, the lower 48 states and outside the United States.

EVALUATIVE MODEL

The three major components of the program— (1) direct customer service through the statewide telephone Helpline, (2) website content development, and (3) drafting new forms and editing existing forms and instructions—work synergistically together. As all components are integrated and coordinated under one roof, this approach to providing meaningful and relevant information has developed into an ongoing evaluative model.

The instant feedback that facilitators gain from callers allows for responsive customer service, and directly translates into what information and links appear on the website and what specific forms are drafted. Indeed, the success of this feedback model was recognized by the State Justice Institute Trial Court Research and Improvement Consortium's (SJI TRIC) 2004 evaluation of the FLSHC. "Part of the credit for the success of the Alaska efforts is attributable to the integration of development and delivery of all parts of the services by a single, talented staff. All lessons on usability of forms and materials are applied to telephone interviewing, website design, and the delivery of educational classes. The content is all consistent. Each component uses and draws upon the other components."[8]

COMMITMENT TO PLAIN LANGUAGE

Recognizing how intimidating legalese can be, as well as the low literacy rates among the majority of FLSHC customers, the Center is committed to writing website content, forms and instructions in plain language. All written content—forms and website information—are drafted for an audience with a 5th grade reading level. All written communications are run through a readability tool,[9] which provides information about grade level, reading ease and the number of sen-

tences written in passive voice. While not always grammatically correct, the information is transmitted using plain language, often reflecting how the customers speak, paying attention to text placement on the page as well as white space.

The various modes of written communication coming from the FLSHC have different objectives, which determine the choice of word usage. For example, the main objective of website content is to educate the viewer about different stages of court procedure and common topics in a family law case. The main objective of written forms is to provide a document that self-represented litigants can use to easily and accurately tell the court what they want. The main objective of an order is two-fold: (1) to clearly tell a litigant what he/she needs to do to comply with the order and meet any stated obligations or responsibilities, and (2) to explain judicial thinking so the litigant understands that the decision was not arbitrary.

POWERFUL SYNERGY OF WEBSITE AND HELPLINE

While the FLSHC website gives self-represented litigants access to information, customers often need the personalized assistance of a facilitator to help frame the question so that they can identify the proper form or procedure, or to reinforce the information posted. Once on the phone, facilitators can teach litigants how to navigate the website so they may be able to help themselves in the future. What the facilitators learn from callers about the information they want and how they navigate the website directly informs how the information is presented on the website. Moreover, facilitators also play a crucial role in helping the public understand the distinction between legal information and legal advice. When people can better identify and define legal questions through the Helpline about information they received on the website, they are more likely to pursue unbundled legal services and limit their litigation expenses.

BENEFITS OF A STATEWIDE SERVICE FROM A CENTRALIZED LOCATION

Serving a statewide audience from a centralized location has many benefits—to the

litigants, to the court system and to the FLSHC staff. Self-represented litigants appreciate the convenience of a phone service that can be accessed from any location. They do not have to find parking or child care and do not have to leave home or work to receive assistance. In fact, people call from all over Alaska, the lower 48 states and even from Afghanistan and Iraq where they have been deployed by the military. Litigants in rural Alaska, where many communities are very small and "everyone knows everyone and their business," value the anonymity of calling the Helpline.

The centralized FLSHC benefits the court system in many ways. Court system employees are able to refer self-represented litigants, who have cases all over Alaska, and will have equal access to services via the telephone Helpline and the website. The FLSHC provides uniform information to self-represented litigants about family law procedure and options for forms, so there is consistency across the state. As the FLSHC is the only department in the Alaska Court System that deals with the details of family law cases in every Superior Court around the state, the FLSHC staff have a unique perspective. They have a big picture view of how each court handles family law cases, including how the clerk's offices and judges handle different situations FLSHC staff are often the first to identify problematic practices in individual clerk's offices, which may be the result of a misunderstanding or a lack of training. When brought to the attention of the clerk of court, it is quickly addressed. Further, the various departments within the court system—judicial officers, law clerks, judicial assistants, clerk's office customer service staff and legal technicians—use the FLSHC as internal consultants for training on issues dealing with self-represented litigants, family law and the use of plain language. As mentioned previously, the FLSHC produces many forms that are used by both litigants and judges. Court staff and judges know that the FLSHC will be responsive to requests for new forms or modifications to existing self-help domestic relations forms. Finally, the FLSHC director acts as an advisor to court administration and Supreme Court committees on self-representation issues, including forms, lack of legal and comprehension literacy, procedural challenges, the court's website, limited English proficiency barriers and disability accommodations. The court has demonstrated its priority to address the specific needs of self-represented litigants through its decision to include the director as part of the administrative senior staff.

Offering centralized self-help services via the phone and the website greatly

benefits the FLSHC staff by creating an ideal environment to provide excellent customer service. It is easy to control the quality of the information provided because the staff is located in one place and provided the same continuous training. They are able to consult with each other easily during the course of a complicated or challenging call. In some situations, the director will assist with the call to demonstrate to the facilitator how to provide specific information. Many callers are involved in traumatic and sad situations, and may express strong emotions such as anger, frustration, sadness, grief, fear and confusion. The phone provides sufficient emotional distance for facilitators, so they do not become overly involved in an individual caller's situation. Customers on the phone may behave more professionally in discussing their case than if they appeared in person. The facilitator is able to control the dialogue more efficiently over the phone and end the call when the time is appropriate. This is less likely if the customer appears in person, when they may be more demanding and may insist on staying for a longer period of time. Such demands of face-to-face customer contact may contribute to a higher burnout rate for the facilitators. Three out of four of the current facilitators have been with the FLSHC over six years, one of whom has worked there since the program began. A fourth facilitator has been on staff for over three years. In a national evaluation funded by the State Justice Institute and conducted in 2004, evaluators noted the positive, compassionate and helpful attitudes of the facilitators. Evaluators attributed the facilitators' excellent demeanor to their ability to provide customer service over the phone, which created a buffer from the challenges of interacting with self-represented litigants in person.

There are also office design benefits from serving the public from a centralized location without in-person assistance. No special space is needed for the public in the office. Nor is there any need for special equipment for the public such as computers, printers, copiers, office furniture or publicly available office supplies. No special security is required since the public does not visit the office. Serving self-represented litigants filing in all of the state's Superior Courts from one location in Anchorage means only one office and its equipment is needed. This avoids duplication of equipment, supplies and personnel, which saves the court system money.

NEXT STEPS

As the FLSHC has been operating successfully since the fall of 2001, it has had several years to develop its core program. The FLSHC has maximized its capacity to assist self-represented litigants with minimal staffing. While the program is constantly evolving, adding additional website content and maintaining and creating new forms, overall it has remained very stable and continues to provide exceptional customer service. The next steps for growth involve developing partnerships to expand the program's offerings.

The FLSHC is particularly interested in advancing the availability of unbundled services for self-represented litigants. Getting legal advice is the critical missing piece for self-represented litigants and complements the offerings of the FLSHC's Helpline and website. As such, the FLSHC is supporting efforts to provide limited legal services where possible. To this end, the FLSHC is working with the Anchorage Court and the Alaska Pro Bono Program (APBP) on an Early Resolution Project (ERP). The FLSHC staff attorney screens all of the newly filed Anchorage divorce and custody cases that involve two self-represented litigants for likelihood of settling one or more issues. Suitable cases are set before a settlement judge who conducts mass calendars twice monthly and hears 6–9 cases in an afternoon. One hearing involves APBP volunteer attorneys who provide unbundled legal services at the hearing. Because of limited availability of volunteer attorneys but sufficient numbers of suitable cases, the other hearing does not involve volunteer attorneys but instead the judge tries to settle the cases. At the hearings with volunteer attorneys, they meet with litigants and provide consultations that include issue spotting, reality checks about possible results, negotiations for settlement with opposing volunteer attorneys, and speaking before the court on behalf of the litigant in some cases. FLSHC facilitators are available to help parties that are in agreement fill out forms, including settlement agreements and final findings of fact and conclusions of law, and to assist with child support calculations. This allows more time for the attorneys to work with the litigants on the issues rather than filling out paperwork. Litigants are satisfied having attorneys available to consult and speak for them at the hearings, and the judge is more satisfied with the efficiency of the hearings and the resulting orders. After hearing 112 cases in ERP since December 2010, over 77% have settled with one or two hearings and usually avoided trial.

The FLSHC is also interested in partnering with a legal service provider to pilot a program where non-profit staff attorneys work in the courts to provide unbundled legal services in domestic violence protective order cases, where parties are almost universally self-represented. The court is willing to provide space for these attorneys to meet with litigants to discuss their cases. During the next year, the FLSHC will explore whether any legal service providers are interested in such a project and how it may be funded.

The FLSHC has begun to produce several short video clips on how to prepare for hearings and trials. The FLSHC is partnering with the Anchorage School District's film production department, which recognizes the shared mission to educate the public, to film and edit the clips. These one to three minute videos will teach litigants how to prepare and present testimony, how to question witnesses, how to be cross-examined, how to select, prepare and introduce exhibits, how to make simple objections, how to behave in court and what to expect during proceedings and from the judge. The video clips are based on the hearing and trial preparation class materials that have been used in Anchorage for several years and that have been well received by litigants and judges. The finished video clips will be posted to the FLSHC website to supplement the current information and accommodate the public's request to receive information in this format. Moreover, the hearing and trial preparation information will be available to all litigants regardless of location.

The FLSHC will be working with Alaska Legal Services Corporation (ALSC) to turn its Family Law Education Class materials into video clips for the FLSHC website. This will help meet the ultimate goal to have comprehensive video content on the FLSHC website to make the information accessible to those with low literacy levels, those who are visual and auditory learners, and for individuals who cannot attend classes taught in-person in Anchorage. By working with ALSC, the FLSHC is able to access different funding sources as well as share resources to serve a common audience. In times of limited financial resources, it is important to seek out both historic and new partnerships.

CONCLUSION

The Alaska Court System has recognized the importance of providing self-help

services to self-represented litigants in family law cases by creating the Family Law Self-Help Center. In 2001, the Alaska Court System's leaders were visionary when they undertook the task of providing self-help services in a state that has many interesting challenges. Instead of seeing them as barriers, they developed a unique program to meet the needs of Alaska's self-represented litigants despite demographic and geographic challenges. The centralized service model using the simple technology of the telephone and Internet has worked extremely well to meet the needs of both litigants and the court. While providing excellent customer service for the self-represented was the program's primary goal, there have been ancillary benefits that were not necessarily intended but have proven to be very valuable. Such benefits include high FLSHC staff satisfaction, having a statewide perspective about what occurs in the various court locations, and having in-house expertise on dealing with self-represented litigants and associated issues.

The FLSHC facilitators express high levels of satisfaction and lack of burn out in performing their job responsibilities despite working with challenging subject matter and sometimes difficult customers. This can be attributed to the buffer that telephone service provides between the facilitator and the customer, which allows the facilitator to thoughtfully respond regardless of the customer's physical demeanor. She may put the customer on hold to seek assistance from someone else in the office or call the customer back with further information; this may not be as easy with someone physically standing before her wanting help. The ability to have physical distance from a litigant also provides a healthy professional distance from the litigant; this helps the facilitator to keep the matter in perspective, and not be consumed by the drama and emotions presented. This is not to say that the facilitator is unfeeling. To the contrary, all FLSHC facilitators make sure to express compassion, respect and understanding, and ensure that the customers ends their calls feeling like someone listened and heard their needs. As reflected in the many expressions of gratitude coming from satisfied customers, thrilled that someone explained how to move their case forward and provided helpful forms and appropriate referrals, the facilitators are doing an excellent job.

In addition, the FLSHC has become a clearinghouse for information about all of the Superior Courts, judges and court staff, because it is the only department in the Alaska Court System that works throughout the state's trial courts. The Center becomes aware of local practices, as well as how an individual case is treated. This helps inform recommendations for making court practice uniform or the

adoption of an individual court's particular practice that makes good sense. The Center is also able to work with an individual court to make needed improvements. Sometimes, the FLSHC director works with a court to develop or modify a form to address their need. Open communication between the FLSHC director and other court system employees is critical to ensure understanding and foster the spirit of cooperation in serving customers. This "big picture" perspective from the FLSHC helps provide central court administration with information in setting policy and making decisions that affect all courts.

Finally, the court system has recognized the FLSHC's expertise in working with self-represented litigants, in providing information in plain language to an audience with low literacy skills, and in understanding family law and family law procedure. Consequently, the FLSHC is regularly involved in training various departments in the court system. Others seek out advice and assistance from the FLSHC director on how to draft a form in plain language, even in areas outside of family law. The FLSHC's experience in working with self-represented litigants and literacy challenges is also useful when the director shares information as a member of court committees that address court rules of procedure.

While the centralized phone-website model of self-help service delivery was developed specifically to meet Alaska's self-represented litigant's needs, it should be considered in other locations that do not necessarily face the same geographic and logistical challenges. The value it provides to litigants and the court system is universal. It is extremely convenient for litigants, as all they need to do is make a phone call to get help. They can make that phone call from anywhere in the world. Moreover, consumer testing revealed that telephonic communications were ultimately more efficient; facilitators need at least 45 minutes to accomplish in face-to-face communications what they could accomplish in about 20 minutes on the phone. The pairing of the telephonic service with the do-it-yourself website means many people are able to help themselves before and after a call to the Helpline. In some situations, website users may help themselves without needing a phone call to speak with a facilitator. Court staff appreciate having an expert department to which they can make referrals, as well as have their own questions answered. From a management perspective, there is only one department to train and supervise, making it easy to ensure quality control. Furthermore, there is only one office to equip and no special security or office design is required.

In sum, this service delivery model sets the foundation for well trained and

happy staff to provide excellent customer service. The staff learns from the people they serve—what they understand and what confuses them, how they navigate the website and how they fill out forms. All of this feedback informs how the information from the FLSHC is delivered. It is a constantly evolving model that is flexible to change as needed, and has benefitted from embracing an ethos of flexibility and creativity. As the SJI TRIC evaluation stated, "In a few short years, Alaska has evolved an alternative model for delivering SRL services of national significance. Given the observations by court staff about the advantages of services delivered over the telephone over in-person walk-in services and the extensive use of the FLSHC website, we believe that other jurisdictions should consider this model for serving their own clientele—even though they do not face the communications challenges of Alaska."[10]

NOTES

1. Family law cases were prioritized for the initial project because they comprise the majority of the Superior Court civil case filings. In FY 2009, the statewide civil case type composition was: Domestic Relations: 23.3%; Probate: 18.6%; Children's Matters: 13.8%; Felony: 30.9%, Other 13.4%. Alaska Court System Annual Report 2009.
2. See "Alaska 2nd in home Internet access, 1st in overall access," Anchorage Daily News, June 4, 2009 (http://www.adn.com/news/alaska/story/819168.html).
3. The court system pays salaries and benefits for two attorney level positions and four facilitator positions, which are similar to paralegals. Those expenses account for 96% of the FLSHC's budget, with approximately 4% being used for supplies, equipment, advertising and travel.
4. The experience and education levels of the facilitators vary. Some are college educated or have some college credits, but a minimum of a high school diploma is required. Most have experience working in other departments within the court system, which is very helpful in understanding how to navigate practically through the court system's internal paperwork handling procedures. The FLSHC has had two directors since its inception; both were former Legal Services attorneys who did family law and domestic violence representation. After Katherine Alteneder became the first director in 2001, Stacey Marz came on as a co-director in 2003 and they worked together in a job-share arrangement through 2007 when Alteneder left employment with the Alaska Court System for private practice. The FLSHC's leadership was reorganized to have Stacey Marz in the director position and a new part-time staff attorney position to assist with teaching classes, special projects and outreach. Due to budgetary restrictions, the staff attorney position was intended to be filled with a less experi-

enced attorney.

5. The initial survey was designed based on the survey used in California self-help centers, which the California Administrative Office of Courts generously shared.
6. See http://www.courts.alaska.gov/selfhelp.htm.
7. See http://www.courts.alaska.gov/shc/appeals/appeals.htm.
8. J. Greacen & K. Stinson. October 2004. State Justice Institute Trial Court Research and Improvement Consortium. Report on the Programs to Assist Self Represented Litigants of the State of Alaska, Final Report at 24.
9. Microsoft Word contains a readability tool that provides the average number of sentences in a paragraph, words per sentence, characters per word and the number of passive sentences. It provides a reading ease score and grade level using the Flesch/Flesch–Kincaid readability tests that are designed to indicate comprehension difficulty when reading a passage of contemporary English. The two tests—the Flesch Reading Easiness and the Flesch–Kincaid Grade Level—use the same core measures (word length and sentence length), but have different weighting factors. The results of the two tests correlate approximately inversely: a text with a comparatively high score on the Reading Ease test should have a lower score on the Grade Level test.
10. J. Greacen & K. Stinson, supra note 7 at 24.

CHAPTER 2

SELF-HELP CENTERS: THE APPROACH OF THE LOS ANGELES SUPERIOR COURT

Kathleen Dixon and Margaret Little[1]

The story of self-help services in Los Angeles is a story about serving many by educating the litigants and respecting their ability to be self-sufficient. It is also about providing legal services without violating the mandate that the court, and all its employees and services, be neutral. These goals are highly compatible and enable the court to provide effective neutral legal assistance. Finally, it is also the story of maximizing resources in three ways: (1) constructing a hierarchy of service providers with varying levels of legal knowledge; (2) matching the level of services provided to the complexity of the case and the ability of the litigant; and (3) forming partnerships with the sophisticated array of community legal aid agencies located in Los Angeles County.

At its core, the Los Angeles Superior Court's (LASC) self-help service model focuses on educating people to navigate the justice system effectively. Navigating the system effectively requires that people understand the options available, so they can make educated choices as they fill out their own documents. Therefore, a central goal of this court's self-help program is to help people develop an understanding of significant legal concepts, as well as legal procedures.

As will be discussed below, this service delivery model is based on core values articulated during the court's development of its self-help program. The model was also developed with an awareness of the challenges inherent in attempting to deliver services to Los Angeles County's very large and diverse population in a cost effective manner.

COMMUNITY CONTEXT

Los Angeles is the most populous county in the nation. It is home to ten million people who speak over 140 languages. It covers 4,061 square miles and public transportation is cumbersome. There are 50 courthouses within the Los Angeles Superior Court (LASC) and 500 courtrooms. Over 15% of the population is below the poverty level.[2] The number of people in Los Angeles County in need of legal assistance who cannot afford to hire private attorneys is staggering. The majority of the 37,000 divorces filed in 2009 in the LASC had self-represented litigants. Almost all of the 18,400 people who filed requests for domestic violence restraining orders in the same year represented themselves, as did the majority of the more than 10,000 people filing for protection under a civil harassment restraining order. One thousand six hundred persons filed for guardianship to care for a minor child without attorney representation.

One might conclude that providing legal assistance to a population as large and diverse as this would be impossible; and it certainly would not be possible through a conventional legal assistance model that focuses on representation or one-on-one assistance without a huge expansion of resources. In response to the needs of the community and the court, Los Angeles developed a model that maximizes self-sufficiency and makes serving this population both possible and cost effective.

Los Angeles Superior Court has been able to establish self-help centers in 12 of the largest civil courthouses in Los Angeles County, with at least one center in 11 of the 12 districts, nearly fulfilling the court's goal to have a legal assistance center in at least one courthouse in each district.[3] Three of these centers are operated by court staff, and nine are operated primarily by community partners. In most centers, community partners and court employees provide services in a coordinated manner, sharing workspace, curriculum and scheduling efforts.

Additionally, the court has been able to expand self-help resources significantly

through an innovative internship program called JusticeCorps. Not only has the creation of JusticeCorps added to the staffing of our self-help program, but it has also greatly expanded the ability of court and legal aid employees to offer self-help services in a range of languages. Many of the undergraduate university students the court recruits into JusticeCorps are proficient in Spanish, Mandarin, Armenian, Korean, and other languages commonly spoken in Los Angeles. Hence, JusticeCorps has been able to augment the language skills of the employees, who also frequently possess the bilingual skills so valuable in providing services in self-help centers.

HISTORICAL CONTEXT

In order to understand the development of the self-help program that currently exists in Los Angeles, one must begin by taking a brief look at the rich history of self-help efforts in Los Angeles County that preceded the current program. The oldest of these self-help projects is the Small Claims Advisor Program operated by the Los Angeles County Department of Consumer Affairs. Small claims matters involve civil actions for less than $7,500 and typically involve contract disputes, and small tort actions such as automobile accidents. Although Small Claims Court was designed for self-represented parties and prohibits attorney representation, many litigants need information about the process and assistance to complete the necessary forms. Therefore, a portion of the filing fees for these cases was dedicated by the legislature to providing advisor services. In Los Angeles County, the Small Claims Advisor Program has been provided since 1982 at the County Hall of Administration adjacent to the central civil courthouse, and expanded to six district courthouses, operating one day per week. The program is not staffed or supervised by attorneys and no legal advice is given. Procedural questions are answered over the phone and in person, primarily by trained volunteers, and instructional information and materials are provided. (This is different than other California counties, which generally have a staff or contract attorney providing these services through in-person sessions, workshops and/or telephone assistance.)

In 1998, following the adoption of the Family Law Facilitator Act by the California Legislature, which mandated that each court in the state establish a Family Law Facilitator's Office to provide free services to self-represented litigants

primarily with child support matters, the Los Angeles Superior Court opened its Family Law Facilitator's Office in 12 courthouses. Title IV-D funding was provided for this service; two-thirds of the funds were provided by the federal government and one-third was provided by the state. In Los Angeles, the model started as a one-on-one service in which paralegals prepared documents for litigants that were faxed to an attorney for review. Over time, this model has evolved to become part of the court's expanded self-help program, providing assistance in child support matters in accordance with the self-help service delivery model described herein, educating and assisting small groups to do their own paperwork. Satisfaction surveys confirmed that parties appreciate the greater understanding about what is happening in their case that they gain through this new model.

In July 2000, grant-funded Family Law Information Centers opened in the Central and Norwalk Courthouses to provide legal information and assistance with general family law matters. These centers were created as pilot projects by the legislature to assist low-income persons with a wider variety of issues than those that could be addressed by the Facilitator, such as with child custody matters as well as support issues. The Facilitator and Family Law Information Centers were the first legal services in Los Angeles Superior Court for self-represented litigants provided by attorneys and paralegals who were court employees.

A significant expansion of services for self-represented litigants in the Los Angeles Court was the November 2000 opening of the Van Nuys Self-Help Legal Access Center, operated by Neighborhood Legal Services (NLS) and located adjacent to the Van Nuys Courthouse. This center was envisioned by Los Angeles County Supervisor Zev Yaroslavsky and funded by the County Board of Supervisors (through the Department of Consumer Affairs). It was implemented through a partnership among court leadership, NLS, and the local Bar Association. The Department of Consumer Affairs contracted with Neighborhood Legal Services to develop and operate the Self-Help Legal Access Center as a place where self-represented litigants could receive assistance with family, landlord/tenant, and some civil cases.

Los Angeles has a rich history of legal services agencies, some of which had previously offered assistance to litigants at the courthouse. For example, help was given to those preparing applications for domestic violence restraining orders, to tenants preparing pleadings in eviction cases and to relatives obtaining guardianships of children. However, each of these services established an attorney-client

relationship and was only available to one side in the litigation process, providing assistance only to petitioners in domestic violence and guardianship cases, and to tenants defending against an eviction. The Van Nuys self-help center was the first court-community collaboration in Los Angeles County to provide general legal assistance for self-represented litigants and was the first attempt to connect general legal aid services directly to a courthouse.

In 2003 and 2004, Self-Help Legal Access Centers were opened in five other locations in the county. These were funded by the County Board of Supervisors and the Equal Access Partnership Grant fund. This fund is a state budget appropriation that provides grant funds to legal services to enable them to provide self-help services at their local court. These Centers were staffed by Neighborhood Legal Services or subcontracted for operation by Legal Aid Foundation of Los Angeles and Legal Aid Society of Orange County (dba Community Legal Services) in courthouses located in Inglewood, Pomona, Compton and Lancaster.

A second major expansion of self-help services occurred between 2002 and 2004, when the court took two major steps that expanded self-help services. First, the court received grant funds from the state to hire an attorney specifically for the purpose of overseeing self-help services and coordinating with community legal aid partners. The creation of this position within the court to coordinate, manage and expand the self-help services was a significant step toward increasing the court's role in the provision of assistance for self-represented litigants.

Second, one of the first products of the court's expanded role in providing self-help services was the creation in 2004 of the nation's first JusticeCorps. JusticeCorps was created through a partnership between the Administrative Office of the Courts and the LASC to recruit and train undergraduate student interns to assist, under attorney supervision, in the self-help centers located within courthouses and at the Small Claims Advisor Program. The purpose of creating JusticeCorps was twofold: (1) to expand legal services to self-represented parties, thus enhancing access to the courts, and (2) to expand the court literacy of college students, which may encourage careers in the justice system. The interns participate in 40 hours of formal training, and further on-the-job training, which enables them to provide significant direct assistance to litigants. The interns make a commitment to serve at least 300 hours during the year, which makes the time invested in their training worthwhile. A small number of interns (10–14 selected at the end of each year) commit to a second year in which they receive more in-depth

training, work full-time as graduate fellows, and are paid a living allowance stipend. The fact that the court's development of a service model for self-represented litigants coincided with the creation of the JusticeCorps facilitated the design of a service model that incorporated this new type of highly trained volunteer with a long-term commitment to the court. The funding and the programmatic framework provided by AmeriCorps has been instrumental in the development of JusticeCorps.[4]

The County Board of Supervisors continued to be committed to the provision of legal services and in 2006 added three more Self-Help Legal Access Centers in district courthouses (San Fernando, Santa Monica, and Long Beach). Additionally, a new partnership was formed with the Los Angeles County Law Library to share space in the Long Beach district courthouse. The only service that had been available at that site was a kiosk designed to help litigants complete court forms. The partnership allowed a self-help center to be fully staffed by a legal aid organization.

The third major expansion of self-help services came after the adoption of California Rule of Court 10.960, which provides that self-help centers, operated under the direction of a neutral attorney, are a core function of the courts and must be budgeted for as core court functions.[5] Funding was provided by the Administrative Office of the Courts to enable all courts to establish or expand self-help centers. This funding was distributed primarily by population and made it possible for the court to hire core staffing with the expertise to design, implement and oversee a comprehensive program to provide resources to self-represented litigants. It not only created core staffing within the court who were focused on the provision of services to self-represented litigants, it also established services for self-represented litigants as a core function for the court system.

Using this new state funding, the court opened its first Resource Center for Self-Represented Litigants in the central civil courthouse in December 2006. The center is staffed by court employees (attorneys, paralegals and clerical staff) and JusticeCorps interns. Subsequently, Resource Centers have been opened in Norwalk and Pasadena, and existing services have been expanded in Compton and Long Beach.

The fourth major expansion of self-help services was the development of a case management protocol for family law matters that capitalized on and coordinated with the self-help services available in LASC courthouses. The development of this case management plan recognized the integral link between self-help services

and operations. It evolved as an iterative process with self-help services being developed and coordinated with the milestones in the case management protocol, and the case management protocol calling for the referral of litigants to self-help services. As will be discussed in more detail below, the structure of the case management protocol further institutionalized self-help services as part of the core operations of the court.

ARTICULATING VALUES AND SETTING PRIORITIES

When designing services for self-represented litigants, choices must be made, including the types of cases to address, the methods of service delivery and the number and expertise of staff required. In making these choices, the court found it essential to articulate its central or core values in relation to a self-help service delivery model. Articulating these core values enabled the court to set priorities, and to explain those priorities in a coherent and consistent manner to its stakeholders. It also helped define the service delivery model. Perhaps of greatest importance, it prevented the court from making random choices based solely upon sudden and often short term changes in funding and staffing, or upon the politics of the moment.

The presiding judge appointed a judicial committee to oversee the development of self-help services. This committee served as a forum in which to explore the values and priorities for the program and to discuss the merits of various approaches. It also brought the self-help program under the umbrella of the judicial leadership of the court and provided the self-help program with a legitimacy that facilitated generating court-wide support.

The core values that were articulated through this committee are:

- The neutrality of the court must be preserved.
- Self-sufficiency benefits litigants and is cost effective.
- Litigants should be assisted in a resource-conserving manner to begin and complete their case.
- The highest priority should be given to matters affecting the well-being of children and families.

1. The Court's Neutrality Must Be Preserved

The purpose of the judiciary in our society is the establishment or determination of rights in line with the rules of law or equity, and it is the fundamental responsibility of the court to make these determinations impartially. In fact, the establishment or determination of rights is entrusted to the court because it is believed to be neutral. A community that does not trust in the neutrality of the court, that believes the court is biased and they will not be treated fairly, is not likely to trust the court to make decisions that impact their rights, freedom, finances, or safety. Whether the matter involves the custody of their children, or the criminal prosecution of a loved one, or one who has injured a loved one, confidence is unlikely to be entrusted to a court perceived as prejudiced and unfair. Hence, preservation of public trust in the court's neutrality must be the utmost priority of the court.

However, the neutrality of the court can only benefit those who come before it and, in civil matters, it is the party who initiates and litigates the case. For the people who cannot afford an attorney to help them navigate the legal system, initiating and litigating a case can be difficult, if not impossible. If people cannot file the required paperwork to get beyond the front door, they cannot benefit from the neutrality of the court.

The development of self-help programs has stemmed from the imperative that for justice to be impartial it must be equally accessible to all. Therefore, preserving the neutrality of the court necessitates that assistance made available by the court cannot be provided in a manner that is (or even appears to be) partial to one party over the other. Consequently, a court cannot provide advocacy or representation for either side. This means that no confidential attorney client relationship can be established in a self-help program that provides services to both parties in a case. Parties receiving assistance must understand that they will not be given strategic legal advice, nor be represented in any hearing. The parties must be continually reminded that they are representing themselves, that they are responsible for making all strategic decisions and following all procedural requirements to guide their case to completion.

Neutrality requires that parties on either side of a case must have access to the same or substantially comparable services, given comparable circumstances. In other words, both sides must have equal access to services that are commensurate with the complexity of the issues and their abilities to understand and address

them.

It can be problematic when court-operated programs treat petitioners seeking protection from domestic violence as presumed victims needing special treatment or when they provide legal assistance to petitioners and deny such assistance to respondents. This does not mean that the courts can shrink from their obligation to make the court a safe place for victims of domestic violence where they can seek protection free from coercion and intimidation. It does mean that a respondent to a restraining order must also be able to trust in the neutrality and fairness of the justice system, as would the defendant in a criminal case.

Providing neutral services in domestic violence cases has forced some changes in long established services. For many years, the Los Angeles County courthouses offered community-based legal aid services for people seeking domestic violence restraining orders. These service providers would only assist the person seeking protection, and generally established an attorney client relationship with their clients. While these services are vital, they conflict with the court's neutrality, and created a need for the court to take steps to balance these services with ones for respondents.

The legal aid partner, Neighborhood Legal Services of Los Angeles, secured partnership grant funding from the California State Bar Equal Access Fund to convert the domestic violence clinics they operate in several of LASC courthouses to a neutral self-help service delivery model. In courthouses where other established providers of domestic violence services have not converted to a model of neutral service delivery (and continue to offer advocacy and assistance only to alleged victims of domestic violence), the court has endeavored to provide substantially comparable services to the respondents in domestic violence restraining order actions. Services have been established in self-help centers to provide assistance to the respondents and to those filing cross-complaints when the opposing party has previously established an attorney-client relationship with the domestic violence clinic in that courthouse.

As will be elaborated below, in Los Angeles Superior Court a conscious decision was made to pursue a service delivery model that supports the preservation of the court's neutrality, and that focuses on education. It was decided that the court's neutrality would be unacceptably impaired if, alternatively, it provided a service model in which strategic advice is given in a self-help center, and thus an attorney-client relationship is created that prevents the self-help center from pro-

viding assistance to any opposing party. To maintain the neutrality of the Los Angeles County court system, it was concluded that services provided by the court must educate, but not give legal advice; must inform, but not be the decision-maker.

2. Self-sufficiency Benefits Litigants and is Cost Effective

The second core value the Los Angeles Superior Court has adopted is to foster self-sufficiency. The level of assistance for each litigant must be commensurate with that individual's capacity to accomplish the required tasks and the complexity of the matter. Ideally, a full spectrum of services would be available in a community ranging from those requiring a high level of self-sufficiency to those needing full professional representation. Nonetheless, Los Angeles Superior Court's self-help model begins with the presumption that litigants have the capacity to make decisions, fill out their own paperwork and make wise choices as to the course of action to pursue. Thus, this service model assumes that most people are more capable than the courts and attorneys, including legal aid attorneys, have traditionally assumed.

To provide assisted self-help commensurate with the litigant's capacity, cases must be assessed or triaged (to borrow a term from the medical profession), so services can appropriately be matched to the assistance needed. Triage must include assessment of the party's aptitude for self-sufficiency, as well as an assessment of the status and complexity of the case. For example, a party with a low literacy level in English, or in another primary language, is necessarily going to require an intensified level of services to complete paperwork. Instructional materials translated into multiple languages may need to be replaced by verbal delivery of information and instructions. An extreme lack of literacy and language skills might warrant preparation of documents by self-help staff rather than by the party. A party with complex case issues along with low literacy and language barriers would be best served by a referral to a legal aid agency or non-profit law firm for full attorney representation or a one-on-one assistance model.

However, it appears that these complex types of situations are the exception rather than the norm. Most often the well-trained, supervised staff and volunteers can listen patiently, answer questions, and bring more difficult inquiries to the

supervising attorney. In this way, information and encouragement can be provided to most parties to aid them in preparing the required documents themselves. What is required for most litigants to prosecute their own cases is education about court procedures, relevant legal concepts, the various legal options available in their case, and the differing requirements and potential outcomes for each option.

Not only is the presumption of the ability of litigants to be self-sufficient consistent with maintaining the court's neutrality, the authors are convinced that it demonstrates respect for the people who come to the courthouse seeking legal assistance. To assume that litigants have the ability to learn to navigate the legal process and make decisions in their best interest is to value their intelligence and judgment. Furthermore, when a litigant cannot understand the legal process, focusing on self-sufficiency forces self-help staff to consider how the process can be made more understandable, rather than assuming the litigant lacks the capacity to understand it.

3. Litigants Should be Assisted in a Resource Conserving Manner to Begin and Complete their Cases

Filing the initial papers is certainly the first step to obtaining access to justice. However, unless the orders sought are granted or denied and the matter resolved, the initial filing accomplishes little for the litigant. Without the ability to complete the action, the litigant has been allowed in the door to the court, but given attenuated access to justice and no means to obtain the relief sought.

In the case of family law matters, in particular, it was apparent that a significant number of cases were initiated and not completed. It was also apparent that many people do not complete their cases because they do not know how or assume they are divorced once the petition is filed.[6] Furthermore, there was much anecdotal information about people who began cases with attorneys, only to exhaust their resources prior to scheduling the first court appearance or prior to filing a judgment, points at which representation may have been more necessary than at the filing of the petition.

So, when the court designed its self-help program, service delivery focused on the various stages of the process: the beginning, middle and end. At each point, in keeping with the program's educational model, workshops were developed to

provide the information that would be needed. Furthermore, at each point, while the primary focus was placed on the immediate step at hand, information was provided to show how that step fit into the timeline or roadmap leading to the conclusion of the case.

The manner in which cases were completed was specifically addressed. Court time is an expensive commodity for self-represented litigants and for the taxpayers, who fund the court system. For the litigant, each trip to the courthouse results in costs, including lost work and personal time, mileage and parking expenses. Each filing, absent a fee waiver, involves a filing fee, which can quickly amount to several hundred dollars or more. All litigation involves the expenditure of some, and more often considerable, emotional energy. For the court, and ultimately the taxpayer, every case involves labor and security costs that increase with the number of documents that have to be processed (and often re-processed) and the time required in a courtroom, as well as various ancillary resources such as interpreters and mediators. It is essential for both the litigant and the court that cases be completed with the most effective and efficient use of resources reasonably possible. Wastefulness is detrimental to both the litigant and the court system and, if unchecked, results in the depletion of the litigant's resources and a court system the community cannot or will not fund.

Fortunately, assisting self-represented litigants with their cases in a manner that moves the cases to completion effectively and efficiently is also likely to be highly cost effective for the court. For this and other reasons discussed below, the Resource Center program is closely integrated with court operations.

4. The Highest Priority Should be Given to Matters Affecting the Well-being of Children and Families

There was a clear need to narrow the parameters for the types of cases to be handled through the court's self-help program. The court had neither the expertise readily available through self-help staff, nor sufficient resources to handle all areas of the law well.

In consultation with the Presiding Judge and the Community Services Committee that he appointed, priority was given very broadly to matters affecting children and families, and matters involving health and safety. Within this broad

mandate, Family Law cases were easily designated as a top priority.

Family Law is one of the most complex areas of litigation in which people are likely to be self-represented, and is an area in which the court plays a vital role in addressing the well-being of children and families. In dissolution matters and many parentage actions, court orders are necessary to stabilize the family; there is no alternative to a court order. (This is not to suggest that litigation is the only way to obtain a court order, only that a court order, regardless of how it is arrived at, is needed.) Children need stable custody and time-sharing arrangements that often only come when the court issues orders. Legal custody orders are needed to establish which parent will have the right and responsibility to ensure that school enrollment, medical treatment and other legal matters are addressed. Child support orders are needed to ensure the children's financial needs are met. Even if there are no children of the marriage, the parties must resolve division of the debts and assets that accumulated during the marriage, and separating couples usually want the emotional closure that comes with the legal dissolution of the marriage.

Furthermore, Family Law is an area in which the court's legal assistance staff had developed an expertise through its Family Law Facilitator program, and the self-help managing attorney is an experienced Family Law attorney. The fact that the development of self-help centers in California has been an initiative of the California Administrative Office of the Courts' Center for Families, Children and the Courts, which focuses on Family Law, also made Family Law an obvious choice as an area of focus.

Similar, and at times more urgent, situations exist in the case of Probate guardianship cases. Traditionally, a guardianship case results from the absence of the biological parents. Guardianship cases increasingly result when the parents are unable or unwilling to provide an adequate level of care for their children, but a relative is willing to step in and fill the vacuum. In many of these situations, returning the children to the home of their biological parents would place the children's health and safety in jeopardy. When the parents are present, they may also need legal information and assistance. Court orders are necessary to establish the legal authority of another adult, often an adult with whom the children are already residing, to oversee the care of and assume legal responsibility for the children. The failure to stabilize the family has broad societal ramifications and can be the crucial factor in determining the well-being of the individual children involved. Therefore, Probate guardianships were designated as a priority case type.

When an elderly or developmentally delayed adult lacks the capacity to care for him or herself, a court hearing is required to determine whether a conservator is needed and to designate that person, when appropriate. Conservatorship cases clearly involve the safety and well-being of a very vulnerable population and can be an essential component of the care plan family members develop. Staff developing the resource centers knew that assisting all parties with these cases met the court's priority criteria. It was also clear that the court's existing staff lacked expertise in this area, and would have to explore ways to provide services in conservatorship matters.

Domestic violence and civil harassment cases involving violence or threats of violence were also identified as a priority. However, in the case of domestic violence, the LASC had services available (albeit often only part time) for petitioners in 22 locations. As noted above, a struggle was less in addressing the need for services than in the need to provide neutral services. Most domestic violence clinics operating in Los Angeles County courthouses are specifically funded to assist petitioners, so expanding their services to assist the other side was not a financial option, and generally not an option from the perspective or mission of agencies providing the services, or of their source of funding.

Housing is also a basic need. However, given the time constraints on responding to these cases and the limitations of resources, this area was not part of the initial focus. The program has primarily looked to its legal aid partners, for whom eviction defense has always been a priority, to provide assistance in housing matters.

THE SERVICE MODEL

Based on the expressed core values, the court could broadly describe the service model it needed to develop. The Los Angeles Superior Court self-help service model would be neutral, foster self-sufficiency, assist litigants with starting and finishing their cases in a resource-preserving manner, and focus primarily on issues with the greatest impact on children and families. Additionally, given the demographics of the county, the model had to be one that would serve large numbers of people living in a vast geographic area, speaking a range of languages.

Education

Given the emphasis on neutrality and self-sufficiency, an essential component of the court's self-help service model is education. The goal is to educate litigants so that they are able to make informed decisions, as well as comply with procedural requirements to navigate their cases through the court system. Education is the central component in all service delivery modes, whether workshops, clinics, or one-on-one sessions. However, it is in the workshops that the emphasis on education is most evident. Accordingly, workshops have become the primary mode of service delivery.

Workshops have several advantages. First, a workshop provides an opportunity for attendees to learn from the questions asked by other workshop participants. Ideally, the workshop format allows for the teaching of legal concepts, as well as how to fill out forms. Second, the classroom-like setting makes it clear that the attendees are not establishing an attorney-client relationship with the self-help staff. Third, it is apparent that people listen differently in a group setting than when working one-on-one with a staff person, because the expectation is clear that the attendee will have to pay sufficient attention to complete the paperwork. The one-on-one setting lends itself to more passive listening and is more likely to create the expectation that the staff person will complete the paperwork. Finally, it is evident that workshops demonstrate respect for people who come to the courthouse seeking legal assistance, because they demonstrate the attendees have the ability to navigate the legal process and make decisions in their own best interest. An unanticipated consequence of the workshops has been the opportunity for peer support to develop, especially when a cohort participates in the same workshop series.

Another benefit of the workshop format for a court the size of the LASC is that it maximizes the number of people who can be helped at once, with a minimum expenditure of staff resources. It would be impossible to provide services to a significant portion of our self-represented litigants with existing resources any other way. Workshops allow the program to expend available funding in the most efficient manner possible. Furthermore, workshops can be scheduled in a manner that meets the needs of people at particular stages in their cases, and includes the case management protocol, discussed below.

Litigants, who begin their family law cases through the workshops, are sched-

uled into a series of trainings to take them from starting a case through all of the steps needed to completion of their judgment, whether by default, settlement, or trial. At the conclusion of the first workshop, participants are given instructions and "homework" to prepare for the next steps, and are given an appointment for their next workshop. Litigants who have started a family law case in these workshops tend to follow through with the entire series to complete their cases.

The size of the workshops varies, depending on the issues to be addressed. An effective starting dissolution workshop can be as large 12-14 people. However, an effective declaration of disclosure workshop (in which extensive financial and property declarations are completed) is best limited to 5-6 people. Some workshops are attended by both parties when they are resolving the matter through agreement. Most of the workshops utilize a computerized document assembly program that fills in the repetitive information automatically on all forms. Other areas of the form are left blank, so the parties can fill them in after they are taught the relevant legal concepts. Staff attorneys and paralegals lead most of the workshops with the assistance of JusticeCorps interns. The most experienced JusticeCorps interns teach some workshops under attorney supervision.

These workshops have benefitted significantly from the development of document assembly technology specifically designed to be used in the workshop setting.[7] As a result, litigants can input information and partially complete forms on the computer in a manner that minimizes the tedious entry of redundant information and maximizes the time available to teach legal concepts. This allows staff to teach about options, choices, procedural and evidentiary requirements, and potential outcomes. Litigants are able to gain a better understanding of what is possible, and what is practical or achievable in their cases. They also learn what may be expected of them in order to attain their goals and to complete their cases.

All of the Resource Centers provide Family Law workshops in Spanish as well as in English. Through partnership with Neighborhood Legal Services at the Pasadena Resource Center, these workshops are also provided in Mandarin. Parties speaking other languages are often paired with a JusticeCorps intern able to assist them in their native language.

Incorporating workshops into this model has been more difficult than one might anticipate. The workshop model is contrary to the training and experience most attorneys and paralegals have, and it has been difficult to resist the tendency to fall into the more familiar individual relationship with a litigant. Also, it can

appear to be (and sometime actually is in the short term) quicker simply to fill out paperwork for a litigant than to teach that litigant to fill out the paperwork. Finally, the public speaking and teaching skills that are needed to lead a workshop are skills that must be acquired by attorneys and paralegals. Thus, the educational workshop model remains a work in progress.

However, these hurdles have not diluted the general enthusiasm for the workshops. Feedback from workshop attendees has been overwhelmingly positive. Litigants report that they understand what is happening in the court process after attending workshops, suggesting that self-sufficiency is an attainable goal. Furthermore, attendees report that they feel they have been treated with respect in the workshop process, underscoring the belief that expecting litigants to be self-sufficient is to show respect for their inherent abilities. The positive response of the litigants has affirmed that this educational workshop model provides such a high quality of service that it would be preferable even if it were not also a cost effective model of service delivery.

Triage

Consider triage as implemented in a hospital emergency room, or in a Mobile Army Surgical Hospital, where the needs of the incoming parties are quickly assessed so that available resources can be most effectively allocated. In this case triage refers to an assessment of the needs related to opening an action or to determining the next steps in an existing case. It also involves assessing what is the most appropriate service delivery mode given language/literacy barriers, the case complexity, the presence of any domestic violence, the legitimate urgency/emergency, and an individual's capacity to absorb and use information. Finally, it means assessing the level of staff expertise needed to deliver those services.

At the initial triage stage for a party who wants to start a case, it is presumed that the party will be enrolled in a workshop unless the triage process reveals a reason not to do so. It is possible for most people to begin their education and case preparation in a workshop setting and then, if necessary, break into a small group or clinic model with individualized attention/assistance when it is most needed. However, the triage process is designed to identify the exceptions for which a different mode of service might be more appropriate from both ends of

the spectrum. There are individuals who require more one-on-one or immediate services, but also those who have the capacity to access resources on computers to prepare pleadings with minimal guidance.

During initial triage, it might be learned that the issues in a particular case are too complex for a self-represented litigant. Such an assessment could lead to a referral for full representation through a community legal aid agency. Alternatively, if a party does not qualify for legal aid representation and is unable to afford representation by a private attorney, he or she may be assigned to a more individualized level of self-help assistance. A paralegal may work one-on-one with the party to prepare necessary paperwork and provide guidance on procedure. Triage might reveal that a particular litigant has a language barrier and requires an interpreter. Similarly, the triage process may reveal an obstacle presented by a litigant's lack of mental or physical capacity. To this end, a JusticeCorps intern might be assigned to scribe for a party found to be functionally illiterate, or unable to complete his/her own paperwork due to vision impairment.

Triage is also effective in identifying the level of staff expertise required to address the needs of the litigant. Some matters can be triaged easily by well trained clerical staff, particularly those recruited for their experience in court operations positions such as filing window or default setting clerks. Other matters can be triaged by experienced paralegals, but some matters are identified even at this early stage as requiring an experienced attorney to sort out the needs of the case and direct the services. Thus, the service delivery model includes interns, clerical staff, paralegals supervised by attorneys, and experienced attorneys. Matching the service needs to the level of expertise necessary requires that the staff know the limits of their abilities and not go beyond their expertise.

Ideally, a full spectrum of services should be available in any community to allow each litigant to have the most appropriate level of legal assistance. Los Angeles enjoys a relative abundance of legal aid and non-profit agencies to which many parties can be referred for full attorney representation or at least for a higher level of assistance than self-help can offer. Unfortunately, even in this large county there is an insufficient number of legal aid or non-profit legal services to meet the demand, and limited scope representation is almost non-existent. The San Fernando Valley Bar Association provides the only limited scope family law referral panel offered through a certified bar association in Los Angeles County. None of the other regional or countywide bar associations have yet responded to

the need for referral panels offering limited scope representation. So, even in a community that is relatively rich in legal services, there are not enough resources available for the majority of litigants identified as parties who would benefit from some level of legal representation, often limited in scope. Consequently, too many litigants remain in self-help, even though they have been identified as persons who would be better assisted if they could be referred to a different service model.

The accurate triage of cases has been enhanced by available technology. When a party with an open family law case comes to a Resource Center, the triage staff will access the case summary on the court's electronic case management system to review the status of the case. Having the file available electronically has proven to be the most expeditious way to triage a case, regardless of the paperwork the litigant may bring. Staff can also search the confidential child index[8] for cases across several litigation types (and different case management systems) for other cases involving that child.

By working through an education model, it is also a goal that the people who come to the self-help program develop an ability to assess their own legal needs and engage in a self assessment or "self-triage" into the appropriate services. At the conclusion of most workshops, the litigant is assisted in determining the next steps to be pursued and the appropriate next workshop or service is determined. For example, at the conclusion of the second workshop for a divorce case, parties are asked to determine whether their case is going to proceed by default, settlement agreement, or contested trial. If the case will proceed by default, the party is enrolled in workshops to prepare an entry of a default and a default judgment. Alternatively, if child custody is disputed, the parties could be scheduled for an appointment with the court's child custody mediation program. If the parties believe they can agree on all issues, they can be enrolled in a stipulated judgment workshop. Alternatively, their case triage might indicate the need to set a trial date and schedule the party for a trial preparation workshop.

Finally, an essential function of triage is to identify true emergencies requiring immediate, sometimes intense levels of direct assistance for quick preparation of pleadings for an ex parte request for emergency orders. An experienced paralegal or attorney will join a clerk in the triage process to assess the urgency of a matter. One or more paralegals and interns might be assigned to expedite the preparation of some documents simultaneously, while others assist the litigant to prepare other

documents and to be ready to present the matter in the courtroom.[9]

More often, the triage process will show that there is not a true emergency, despite the party's request for assistance for emergency orders. It is the litigant's decision whether to file an ex parte motion, but the self-help staff will educate the litigant regarding the level of urgency required for a judge to grant ex parte orders and/or provide an explanation of the burden of proof required to proceed without notice to the other party. A litigant might learn that telephonic notice is an option or learn that the declaration must include a justification for shortened notice or for no notice. Most often the party will learn that the most appropriate action is to file for a fully noticed hearing without requesting ex parte orders in advance. However, if a party still wants to pursue ex parte orders without notice, an instructional packet will be provided and the party will be guided as to how to complete the forms and proceed. If such a litigant has language and/or literacy barriers, the supervising attorney may assign a higher level of assistance regardless of an assessment that there are not true emergency grounds for an ex parte motion to succeed. The litigant will have been educated about the burden of proof, but staff will not have presumed the outcome or made decisions that are the purview of the bench.

INTEGRATION OF SELF-HELP RESOURCE WITH OPERATIONS

There are many benefits to integrating self-help services with the operational units within the court. The documents prepared in self-help centers will be reviewed by operations staff. Thus, workshops focused on preparing filings must be well informed about policies and procedures practiced by the filing window personnel. Filing window staff benefit from the legal expertise of the self-help center attorneys and learn to appreciate the hurdles faced by self-represented litigants. When self-help services are well integrated with operational functions, the operations staff and self-help staff are more likely to view themselves as serving the same goals. Finally, operations staff can more quickly see the advantages self-help brings to their workflow by decreasing the need for rejecting and reprocessing documents and increasing the ability of self-represented litigants to participate in court processes in an informed manner.

In the central courthouse, the self-help center is located adjacent to the filing window. This appears to be the ideal location for a self-help center. The most obvious benefit is that the close proximity decreases the likelihood that parties will mix up or lose documents prepared and organized in the self-help center by the time they get to the filing window. The close proximity also encourages frequent consultations between self-help and operations supervisors to ensure both share the same interpretation of requirements, and to resolve issues that would otherwise result in rejected documents. Staff participate in shared training opportunities and follow the same protocols, because the managers of both the self-help and the family law operations units are part of the same administrative team.

Integration with court operations has also been accomplished through other means:

- **Cross assignments.** There is movement of court staff between operations and self-help, with self-help center support staff being hired from operations and returning to operations.
- **Interns trained by operations staff.** This training approach has been especially successful in processing judgment documents. This approach reinforces efforts to ensure that interns understand court procedural guidelines, but has the added benefits of demonstrating to the operational staff that they are viewed as the subject matter experts and of creating camaraderie that fosters a team approach to problem solving.
- **Administrative structure.** The self-help manager and Family Law and Probate operational managers are supervised by the same administrator. This organizational structure means that self-help managers participate in administrative meetings, placing self-help services solidly within the court structure.

Notably, for Los Angeles, integration with court operations did not entail placing staff in the courtrooms. Offering ample resources outside the courtroom has proven to be an extremely effective and efficient way to provide self-help services.

FAMILY LAW CASE MANAGEMENT

Often self-represented litigants are not aware of the steps required after filing a petition for dissolution or, in fact, whether any additional action is needed at all. Self-represented litigants can only move their cases along to the degree that they understand the process. In order for case management to benefit self-represented litigants, a very robust self-help program is needed.

The case management program benefited from the workshops developed specifically to facilitate effective case management. For example, litigants who have open cases are sent a notice to appear if they fail to file a proof of service 90 days following the filing of a petition. The self-help center operating in the central civil courthouse offers workshops to respond to this notice and assists in explaining service requirements. Some services developed to coordinate with status conferences were designed to utilize the skills of well trained and experienced JusticeCorps Graduate Fellows[10] who work with court operations staff to evaluate case needs, provide assistance and make referrals.

This close collaboration in the development of the case management program benefited both the family law operations unit and the self-help unit. The operations staff learned from the legal expertise of the self-help attorneys and their experience in assisting self-represented litigants. At the same time, the self-help staff was educated in caseflow management.

EFFECTIVE COMMUNITY PARTNERS

The county-wide self-help program has drawn upon the rich service community in Los Angeles County and has led to the creation of some very effective partnerships. The first and foremost legal aid partner, Neighborhood Legal Services of Los Angeles, started the initial self-help centers in our county, which were among the first in the nation. They have led the county's other two largest legal aid agencies to subcontract with them to operate court-based self-help centers. Together they now operate nine of the twelve self-help centers throughout the courthouses. Neighborhood Legal Services also provides a legal aid attorney to co-staff the Pasadena Resource Center, along with a court-employed attorney and other court staff, in a model designed to increase collaboration and share best practices.

Much of what has been discussed in this chapter has been developed in collaboration with Neighborhood Legal Services and other legal aid community partners, including the Legal Aid Foundation of Los Angeles, and Community Legal Services.[11] Nonetheless, the service models that have evolved in the self-help centers operated by legal aid partners differ in some aspects from those developed by the court.

The legal aid partners have different priorities and different legal expertise, resulting in a heavier concentration of services for landlord/tenant cases than in the court's resource centers where Family Law services are dominant. The legal aid self-help centers have been located in district courthouses, containing one to three family law courtrooms and one or a partial courtroom serving housing cases, making a one-on-one mode of service delivery feasible. When the court decided to open its first court-staffed self-help resource center in the central courthouse, with twenty family law courtrooms and three probate courts, it was clear this mode of delivering services would not be feasible. This resource center would not have been able to respond to the 300 litigants daily requesting service or attending pre-scheduled workshops, if it had been designed to rely upon a one-on-one service delivery mode.

Other differences are due to the ability of court-employed self-help staff to integrate with court operations and to work directly with court administration and judicial officers. The court's development of family law caseflow management initiatives in direct coordination with the court's self-help program, for example, has driven a different evolution in the court's self-help service model. Judicial referrals directly from the bench to the resource centers and Family Law Facilitator's Office have also shaped different priorities in the court-operated centers than the more informal referrals from the bench to the self-help centers offered by legal aid partners.

Collaboration has enabled the court to augment, rather than duplicate, the services offered by community partners. Neighborhood Legal Services has created an expansive library of very user-friendly, self-help instructional materials for a wide variety of matters and has generously shared these materials with the court and other legal aid self-help providers. They have perfected the delivery of services in the time-sensitive defense of eviction cases, an expertise court staff did not have. The collaborative operation of the Pasadena Resource Center was designed to facilitate the sharing of practices to find ways of incorporating them into the

centers each partner operates.

The JusticeCorps interns are assigned to every self-help and resource center, whether operated by legal aid or court staff. Not only does this increase the resources available to the community partners, it also solidifies the partnership. The Neighborhood Legal Services self-help manager contributed to the creation of JusticeCorps and has continued to contribute to its success and growth. While operated by the court, with centralized training organized by court program staff, legal aid partners participate as trainers both in centralized training for all JusticeCorps interns, and in the ongoing onsite training and mentoring of the JusticeCorps interns assigned to their centers. The partners share in the joy and pride of the JusticeCorps graduations.

Another partnership that has been invaluable to the development of Los Angeles' self-help services is that with Bet Tzedek Legal Services (House of Justice). Bet Tzedek provides Elder Clinics in the court's three resource centers. Families are provided with expert assistance in conservatorship cases and elder abuse restraining order applications. Neither court resource center staff nor legal aid self-help center staff had the depth of Probate experience to provide these services. The court's mandate to provide services in conservatorship cases would not have been possible without this partnership.

The court has used its partnerships to bring into its Resource Centers other specialized services, which are often funded by Partnership Grants from the California State Bar Equal Access Commission. The Los Angeles Center for Law & Justice has operated under a series of Equal Access Partnership Grants to provide expertise in the development of various self-help services. They were instrumental in developing judgment "fix-it" clinics, which were later incorporated into the court's resource centers. During the first year the court's case management program was implemented, Los Angeles Center for Law & Justice provided an attorney who contributed considerable expertise to the triage and referral processes that were developed. Los Angeles Center for Law & Justice continues to collaborate with the court to identify projects that can benefit from their expertise.

The Court has partnered with Public Counsel to support their operation of the Pro Per Guardianship Clinic in the Central Stanley Mosk Courthouse to provide assistance to parties applying for or objecting to the establishment of guardianship orders. Additionally the Court facilitated a collaborative effort by Public Counsel and the California Administrative Office of the Courts to develop software that

simplifies the completion of the numerous forms required in guardianship cases. The court then organized training for legal aid and court self-help staff to utilize this software to assist parties with guardianship cases in various district courthouse self-help centers.

Finally, legal aid partners bring a complementary but different mandate that provides an independent voice with a different perspective, and often identifies areas of needed change in the court. Regularly scheduled meetings for "Pro Per Service Providers" with the Supervising Judge, Senior Administrator, and court operations managers, respectively, in Probate and Family Law, along with the court's own self-help attorneys, have greatly facilitated such sharing of concerns and solutions. These meetings have also led to an increased level of trust and sense of common mission, which are vital to genuine collaboration. The court is hopeful that these collaborative efforts will result in a seamless referral system for a full spectrum of services through court- and community-based programs court-wide.

CONCLUSION

The Los Angeles Superior Court's self-help program is still in its infancy and is continually working to enhance the program. There is still much to learn from its legal aid partners, colleagues in other jurisdictions, judicial officers and court staff working in operations. Perhaps most of all, there is more to learn from the people who come to the centers for assistance.

The JusticeCorps internship program that the LASC created in partnership with the AOC has been so successful that it has been replicated in eight other California counties. It has also generated a great deal of national, and even international, interest. The JusticeCorps program will likely be improved and modified as it grows.

Additionally, it will be important to improve the data collected regarding the services that are offered. Despite the impressive statistics gathered, the data collection systems have not yet been perfected to capture all of the self-help services provided. Furthermore, it is important to continue to work on evaluating the impact of our services. The Los Angeles Superior Court's self-help program looks forward to addressing this important topic in the years ahead.

NOTES

1. The authors of this chapter are the Los Angeles Superior Court employees largely responsible for the development of the court's self-help program. Margaret Little is Senior Administrator, Family Law and Probate. Kathleen Dixon serves as Managing Resource Attorney and Family Law Facilitator.
2. 2008 Census.
3. The North Central District (comprised of the Burbank and Glendale Courthouses) is the exception. There is only one Family Law Courtroom in the district. Self-represented litigants are assisted by a Family Law Facilitator office in the Burbank Courthouse that has expanded its services to include self-help workshops for divorce and paternity cases, and the Resource Center for Self-represented Litigants in the Pasadena Courthouse is less than 15 miles from Burbank.
4. JusticeCorps is primarily funded through an AmeriCorps Grant, administered through California Volunteers and sponsored by the Corporation for National and Community Service.
5. California Rule of Court 10.960, California Rules of Court.
6. *Developing Effective Practices in Family Caseflow Management*, prepared by Greacen Associates for the California Administrative Office of the Courts, October 2005.
7. This software has been developed by the AOC using the Law Help Interactive system described in another article in this publication by Claudia Johnson.
8. The index was developed through the Unified Courts for Family grant received from the AOC.
9. On the opening day of the Central Resource Center, a Spanish speaking family presented with a small child wearing a homemade cardboard splint on a broken arm, just before the courts would be closing for lunch. The paternity judgment had never been completed, so Dad's medical insurance was denying coverage for the son. The triaging attorney mobilized a team to draft all of the needed paperwork, while another staff member was sent to find a judge willing to wait during the lunch break for the completion of the pleadings. Meanwhile, the noon opening ceremony proceeded in the front area of the Resource Center, while in a back room the documents were completed; thus, the family obtained the emergency ex parte hearing to grant and enter the judgment to satisfy the insurance carrier and obtain immediate medical care for the child.
10. Graduate Fellows are students who completed a year as a JusticeCorps Intern and are recruited to work full time in a Graduate Fellowship following completing their BA degree.
11. Community Legal Services is a DBA name used for services provided in a southeast section of Los Angeles County by the Legal Aid Society of Orange County.

CHAPTER 3

THE PRO BONO MEDIATION PROJECT: PROVIDING FREE REPRESENTATION TO SELF-REPRESENTED LITIGANTS IN CHILD ACCESS CASES

Robert Rubinson[1]

INTRODUCTION

The role attorneys have had in mediation has long been a controversial one. Indeed, one thread in the mediation literature suggests a primary virtue of mediation is that it permits individuals to proceed *without* lawyers and, as a result, provides them a direct voice in resolving their disputes.

At the same time, two other trends suggest that the role of attorneys can be an important one in family mediation. One is the rise of court-annexed or, in some cases, court-mandated mediation. In such systems, mediation "in the shadow of the law" becomes real. Law particularly matters in this context.

A second and related circumstance is the extraordinary number of self-represented litigants in family law cases. Consider that the standard advice mediators

offer when asked to provide legal advice or prior to concluding an agreement is to consult an attorney.[2] While such advice might have meaning if we were in a system that recognizes a "Civil Gideon" where all litigants have a right to counsel, legal counsel is illusory when, as is usually the case, there are not remotely enough lawyers available to offer legal counsel to those who cannot afford to pay for it. This leaves self-represented litigants hanging: mediators recognize the importance of legal counsel, but even an attorney mediator cannot offer legal advice for important and legitimate ethical and strategic reasons, while most self-represented litigants cannot obtain legal assistance.

In order to begin to redress this cluster of issues and provide self-represented family mediation participants with the benefits of having legal advice, the University of Baltimore School of Law ("UB") collaborated with other partners in Maryland, including the Pro Bono Resource Center and Masters in the Family Division of the Maryland Circuit Court for Baltimore City. The project partners envisioned an initiative that would enable otherwise unrepresented parents to prepare for and participate in child access mediation with the benefit of counsel. The "Pro Bono Mediation Project" ("Project") was the result of this collaboration. The Project provides limited representation to self-represented litigants for purposes of mediation only. This is *limited* representation; that is, attorneys participating in the Project do not represent clients beyond the mediation, which typically takes place in one day.[3]

This chapter will discuss the history of the Project, how the Project is implemented, the Project's benefits, and ideas for improvements.

THE NEED FOR THE PROJECT

Maryland is representative of many jurisdictions having to confront the consequences of the limited personal and judicial resources available in family law cases. This all too common situation is as follows: 1) the vast majority of family law litigants cannot afford attorneys; 2) the vast majority of such family law litigants must represent themselves because there are not enough pro bono or legal services attorneys to represent them; 3) family law matters are the category of cases that comprise the highest volume of cases in state courts; 4) Maryland law provides for mandatory mediation in family law cases with only a few defined exceptions;[4]

5) mediators typically are prohibited from giving legal advice.[5]

In light of these circumstances, the Project in its current form was designed in 2007 to enhance the quality of outcomes in family mediation by providing pro bono attorneys to self-represented litigants.

OPERATION OF THE PROJECT: A CHRONOLOGY

Preliminary Logistics

Prior to the day on which the Project will operate, it is necessary that participants apart from the parties—a student attorney, a pro bono attorney, and a pro bono mediator—are available and confirmed to be in court on a given day and time. As elaborated below, it is crucial to develop a list of potential participants so the scheduling can be completed and, in the event of unforeseen scheduling conflicts, last minute substitutions are at least possible. These are not mere logistics, but requirements needed for the Project to even operate. Given how important these tasks are, the Project has one or two individuals who take the lead in these efforts.

Identification of a Case Appropriate for the Project

Masters[6] in the Family Division of the Circuit Court for Baltimore City typically hold scheduling conferences on a specific day. Masters and their clerks review cases on the docket prior to or on the days of the conferences and make preliminary determinations if a case is appropriate for mediation. The court employs the following criteria in selecting cases that are appropriate for the Project:

- Both parties are representing themselves.
- The parties have not yet been able to settle their case.
- The case, after an initial screening at court, does not appear to involve domestic violence or child abuse.[7]
- The case appears to only involve issues relating to child access.[8]
- The parties are amenable to proceed with mediation.

- All parties are present in the courtroom.

Masters are often in contact with one another in order to choose a case that meets the Project criteria. It is relatively rare for there not to be one or more cases that meet the criteria, although this does sometimes happen. Given the number of pro bono attorneys and mediators that are needed, the Project typically is able to provide representation for only one case on a particular day.

Once the court identifies a potential case for the Project, the court briefly describes the mediation process and the Project to the parties and encourages their participation. The pro bono attorneys are in the courtroom at this time. Assuming the parties agree to participate (something that they virtually always do), the court assigns each party one of the attorneys.

Attorney-Client Interviews

Although there is limited time available, the parties' attorneys have an opportunity to meet with their clients prior to the mediation. Such meetings typically last about 45 minutes and are conducted in separate rooms in the courthouse to preserve confidentiality.

While of course attorneys are free to conduct such initial interviews as they see fit,[9] initial interviews would usually involve the following topics:

- An overview of the mediation process, including that it is voluntary and that the mediator acts as facilitator, not fact-finder or decision-maker.
- An explanation that the attorney's representation is for purposes of the mediation only and with the client reviewing and signing a retainer providing for such limited representation.
- An opportunity for the client to discuss his or her goals in mediation and other background information that might be relevant to the mediation.
- A discussion of applicable law and what impact it might have, if any, on the mediation and on subsequent litigation if the mediation fails to produce an agreement.
- A discussion of the roles to be played by the client and attorney in the

mediation.

- A discussion of the posture of the court case and, if available, a review of the court file with the client.

After both attorneys confirm that their separate meetings with their clients are concluded and they are ready to mediate, all participants—mediator, attorneys, and parties—meet in a room in the courthouse designated for mediation.

The Mediation

As with any mediation and as with any representation by attorneys, the conduct of the mediation is contingent on mediator style, parties' outlook and personality, and the approaches of the two attorneys to representation of clients in mediation. Ideally, attorneys are comfortable with taking a more supportive role in the mediation with a minimal or even no speaking role. How active attorneys are in the mediation should, as noted, be the subject of the pre-mediation counseling session. Nevertheless, one of the great values of having representation during mediation is to adjust the nature of an attorney's participation in light of how the mediation is unfolding.

If an agreement is reached, attorneys ensure that the language captures the agreement and is acceptable to the client. This is somewhat simplified in Baltimore City in Maryland, where there is a form "Parenting Plan" that details custody arrangements.[10] This limits the amount of drafting needed to submit to the court.[11]

CONCLUDING THE REPRESENTATION

Assuming the mediation is successful, attorneys and clients appear in court that day and present their proposed order to the court. In stating their appearances for the record, attorneys are careful to explicitly state that their representation is for the purposes of mediation only. In most instances the agreement, with few or no modifications, is approved by the court, and the court will then, on the record, relieve attorneys from acting as their client's counsel. In some cases, the court

requests that an order be drafted by the attorneys, in which case the attorneys do so. This falls within limited representation because the legal services still relate to mediation. The signed order would include language that the attorneys are relieved from representing their clients.

Sometimes parties reach an agreement as to only part of their dispute. If so, the court is likely to set the case for trial to resolve the remaining disputed issues. However, since such a trial would entail attorney representation that is not for purposes of mediation, the court will, after entering the partial agreement on the record, relieve attorneys from representing clients in future proceedings.

Another possible scenario is that the parties believe that a full or partial agreement can be reached if there were more time to mediate. Depending on the availability of the participants of the Project—litigants, attorneys, and mediator—such an additional session or sessions can be scheduled. In this event, the attorneys and litigants would advise the court and, typically, the court would set a trial date far enough into the future to enable parties to continue with mediation.

In the event the mediation is unsuccessful after an additional session or sessions, the attorneys would still appear with their clients in court at the trial date and advise the court of the lack of an agreement. The court would then, as before, relieve attorneys from representation, and hear the case for trial or reschedule the matter. Conversely, if, after additional sessions, the case resolves, the parties and counsel will usually appear on the previously scheduled trial date to present the agreement to the court and, once again, the court on the record will relieve attorneys from representing their clients.

ATTORNEY REPRESENTATION

A core goal of the Project is to provide attorneys for litigants otherwise unable to afford or retain one. A primary challenge, then, is to secure such attorneys. In this regard, both law students and private attorneys play a crucial role.

Participation of Law Students

Currently, in most Project mediations, one side is represented by a student attor-

ney from the University of Baltimore School of Law. These students are enrolled in a Family Mediation Clinic at UB. This Clinic is offered in conjunction with a three credit seminar called *Family Mediation: Theory and Practice*. Clinic students engage in two primary activities in the Clinic: 1) co-mediating family law cases; and 2) representing otherwise unrepresented litigants. The second of these activities is a means to implement at least part of the Project's personnel needs.

Student attorneys in the Clinic are attorneys under the student practice rule of Maryland.[12] Under that rule, they must be supervised by a faculty member who is a member in good standing of the Maryland Bar.[13] Each student undergoes extensive preparation for the representation, including observations, readings, preparation of outlines, and simulations. In virtually all instances, student attorneys provide excellent representation. Nevertheless, the supervising attorney is ultimately responsible for the representation and, on occasion, should or must step in if necessary to ensure competent representation.

Participation of Pro Bono Attorneys

In order for the Project to fulfill its goal of providing representation for mediation participants, the party who is not represented through UB must also have legal representation.[14] Screening and recruitment of these attorneys is crucial to successful implementation of this part of the Project.

Pro Bono Attorney Screening and Assessment

Ethical rules require that all lawyers competently represent their clients,[15] and pro bono attorneys are no exception. While competence can be assessed in a number of ways, the Project requires that pro bono attorneys have substantial family law experience that ordinarily would involve three years of practice in family law.

The Project conducts ongoing assessments to identify attorneys whose practice model or behavior does not contribute to the goals of the Project. These assessments can often be made by University of Baltimore supervisors, who consistently participate in mediations. There are number of problems that might arise. For example, an attorney might maintain an adversarial stance typical of adjudication, which will likely undermine the value of mediation rather than enhance it. Others might profess family law experience, yet display unfamiliarity with the basics of

the law of child access or child support. Equally problematic is when an attorney is unreliable by repeatedly cancelling scheduled dates or placing unreasonable limitations on his or her availability.[16] Given the logistical challenges of the Project, such cancellations and limitations substantially inhibit the implementation of the Project.

Happily, instances of these problems have been rare. Attorneys who volunteer for the Project tend to be self-selecting and familiar with mediation. They thus demonstrate commitment to the mediation process and to the Project. Nevertheless, the need to recruit attorneys to participate in the Project must never overwhelm the need to provide quality representation to litigants.

Pro Bono Attorney Recruiting

Attracting attorneys who are interested in participating in the Project is essential to its successful operation. This can be a challenge. Apart from the need for more attorneys to participate in pro bono work, in this context many attorneys are more interested in being mediators than attorneys in mediation. Nevertheless, there are a number of strategies that can facilitate recruiting.

First, limited scope legal representation is an attractive option for pro bono attorneys. The work has an end date and thus attorneys can plan their schedule well ahead of time and avoid uncertainty as to scheduling and workload entailed by more traditional, "non-limited" representation. This predictability also tends to encourage interested attorneys to be "repeat players" in the Project, thus increasing the number of available attorneys.

Moreover, Project partners have sponsored free mediation trainings which, as a condition for attendance, require attorney trainees to act as pro bono attorneys in the Project. The training also meets some educational requirements for certification to be a court mediator under Maryland law.[17] Such free trainings are attractive to attorneys because comparable trainings are often offered only at substantial cost.

Another means to recruit attorneys builds upon the academic component through which student attorneys participate in client representation. As time passes, more and more former student attorneys who have taken UB's Family Law Clinic, Family Mediation Seminar, and Family Mediation Clinic have graduated and are either familiar with the Project or have participated as student attorneys in

the Project itself. This corps of volunteers will continue to grow and add to the roster of pro bono attorneys interested in participating in the Project. Indeed, a number of former clinic students have represented clients pro bono.

Finally, the University of Maryland School of Law has in the past partnered with UB to provide student attorneys to act both as attorneys in Project mediations and as mediators. Thus, in some instances law students along with supervisors represent both sides in the mediation—a circumstance that experience has shown can be valuable both for clients and for the student attorneys.

LIMITED REPRESENTATION BY PRO BONO ATTORNEYS

Perhaps the most unique element of the Project is its use of attorneys for purposes of limited representation. This section will address the practical issues of how to establish such representation as well as ethical concerns that some have raised.

The Project's Limited Retainer Agreement

All clients represented by Project attorneys sign a retainer agreement that stipulates that the representation is strictly limited for purposes of mediation. It is critical that this boundary be understood and agreed to by Project participants. The limitation meets the Project's core goal, which is to provide attorney representation to self-represented litigants in family mediation.

Of course, in an ideal world all self-represented litigants participating in the Project, or, for that matter, not participating in the Project would be able to retain attorneys. This is not likely to change in the foreseeable future; poverty lawyers and legal services providers will need to explore means to deploy limited legal resources in a way that benefits the huge numbers of self-represented litigants. In this regard, the rise of limited legal services, also called "unbundled legal services," has been an important development.[18] Unbundled legal services provide defined roles that are not the full "bundle" of traditional legal services. A premise of unbundled legal services is that some legal representation has greater value to litigants as compared to no representation at all. The limited legal representation offered by the Project embraces this idea: limited legal representation in mediation is better than no representation at all.

The Ethics of Limited Legal Representation

In training and recruiting attorneys to participate in the Project, some have expressed concern about the ethics of engaging in the limited legal services contemplated by the Project.[19]

A bedrock requirement is a retainer agreement executed by attorney and client that expressly states that the representation is limited to mediation only. It is crucial for attorneys to recognize that this is not boilerplate, but something that must be brought to the attention of the client orally and even repeated, as appropriate, during the mediation if issues relating to taking the case to trial should arise. Indeed, the Model Rules of Professional Conduct[20] require that an attorney obtain "informed consent" as to the limited nature of the representation.[21]

Assuming attorneys adhere to this requirement, the rules of ethics recognize and contemplate limited legal services. For example, ABA Model Rule 6.5, which has in large part been adopted by Maryland, relaxes conflicts rules for certain categories of representation. The title of the Rule summarizes these categories: "Nonprofit and Court-Annexed Limited Legal Services Projects." This title in and of itself legitimates "limited legal services."[22] The text of the Rule itself speaks about standards relating to conflicts of interest as applied to "short-term limited legal services."

Another basis in the Model Rules is Rule 1.2(c), which provides that a "lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent." Thus, this language expressly recognizes the legitimacy of limited legal services.

Finally, the influential Restatement of the Law Governing Lawyers is consistent with Model Rule 1.2(c). It provides for an agreement between lawyer and client that "may specify the services the lawyer is being retained to provide, the services the lawyer is not obliged to provide, and the goals of the representation."[23] It also provides that "[c]ontracts between lawyer and client may concern…the extent of the lawyer's services."[24]

Other Ethical Considerations for Attorneys Participating in the Project

Apart from the basic issue of the ethics of limited representation, there are a num-

ber of other ethical issues that arise relating to participation by attorneys in the Project.

Competence

All legal representation—whether "limited" or not—must also be "competent." According to the Model Rules, competence means having the necessary "legal knowledge, skills, thoroughness and preparation" in order to provide competent representation.[25] This would mean that attorneys volunteering for the Project must have a background in family law. Perhaps this is especially critical in the context of the Project's model of limited legal representation because there is not an opportunity for an attorney to educate him or herself about family law or, ordinarily, collaborate with an experienced family law attorney.[26]

As noted above, a minimum of at least three years practicing family law represents some indicia, at least initially, that an attorney is competent, although a shorter period of time of substantial family law experience might also demonstrate competence. Law students meet this standard because under the Maryland Student Practice Rule, all students must be supervised by an attorney admitted in Maryland. Thus the supervisor furnishes the requisite competence.[27]

Conflicts of Interest

Conflicts checking would be relaxed in most jurisdictions given that these services are provided in the context of a non-profit, court-annexed limited legal services program as contemplated by Model Rule 6.5. This rule applies most conflict of interest rules "only if the lawyer knows that the representation of the client involves a conflict of interest."[28] This actual knowledge standard arguably enables attorneys to forego formal conflicts checks when participating in the Project.

Nevertheless, it is prudent to conduct a conflicts check prior to representing the client if at all possible. Among other reasons, this would resolve potential conflict issues in the unlikely event that a conflict is discovered if the representation extends beyond one day. There is also some disagreement on whether this Project comes under the ambit of Model Rule 6.5, especially since clients formally sign a retainer agreement. However, "limited legal representation" under the rule is defined as "short-term limited legal services to a client without expectation by

either the lawyer or the client that the lawyer will provide continuing representation in the matter"—an accurate description of the attorney-client relationship in the context of the Project: representation would almost always last only from mid-morning to mid-afternoon. The retainer, while formal, clearly sets out this limitation and thus serves as appropriate notice to the client of the limited term of the representation.

Confidentiality

There is a large literature on statutory and contractual issues relating to mediation confidentiality and its importance to successful mediation. It is important to note, however, that the attorney representation entails the confidentiality rules that govern all attorney-client relationships. This would include maintaining the broad confidentiality protections offered by the ethical rules governing attorneys[29] as well as the attorney-client privilege and the work product doctrine. While in many instances exceptions to these rules cohere with well-established exceptions to mediator privilege such as reporting of child abuse, it is worth examining these issues under the law of the jurisdiction in which the mediation is taking place.

BENEFITS OF THE PROJECT

The Project began as an experiment in the hope that it would enhance the quality of the process and results of mediation. In some respects, the Project goes against the conventional wisdom among many in the mediation community that attorney involvement impedes rather than enhances the quality of mediation.[30]

In order to assess the value of the Project, evaluation forms, which have been refined over the years, are distributed to participants. Parties and pro bono attorneys were overwhelmingly positive about the Project. For example, among other things, parties noted that their attorneys brought "more ideas," "gave me a lot of valuable advice," "helped me to understand legal terms and conditions," were "helpful in making great decisions," and "explained things so I understood them."

More specifically, attorneys bring a number of benefits to the mediation process.

Attorneys Diminish Power Differentials

There is a substantial literature about the dangers of power differential in mediation.[31] There are indeed multitude causes of potential power differentials in family mediation, not the least of which may simply be a clash of personalities where one litigant is more confrontational and comfortable with pressing points—a dynamic that might have a long history in the litigants' relationship that would be replicated in the mediation.

The participation of attorneys substantially diminishes or eliminates such power differentials. By training and temperament, most attorneys can support a party either explicitly by speaking in the mediation or by encouraging a party privately prior to or during the mediation. Law students who are acting as attorneys also play this role through extensive training prior to mediation and by close supervision by experienced supervisors present at the mediation who, when appropriate, can step in if necessary.

Attorneys Provide Non-Legal Support

The very presence of an attorney or a student supervised by an attorney can provide crucial support to parties because they know that someone—an attorney no less—is "in their corner." This can encourage parties to participate more directly and comfortably in mediation, especially if the attorney has done his or her job and established a rapport with the client.[32] Attorneys can also, if necessary, articulate the interests of a client if the client is unable or unwilling to do so. While attorneys have had only limited time to meet with their clients, attorneys (or supervised student attorneys) can assess what clients have told them in their meeting and "check in" privately with the client to ensure that the mediation reflects clients' interests. Depending on the context, attorneys can also call a break to do this as well.

Attorneys Can Minimize the Impact of "Bad" Mediation

Unfortunately, anyone who regularly participates in mediation is fully aware that the quality and sophistication of mediators vary widely. "Bad" mediators might

simply be ineffective or, in some instances, downright damaging by favoring one party or by articulating inaccurate, inappropriate, or misleading conclusions about the merits of a party's case.[33]

In the case of a "bad" mediator, attorneys can engage in direct negotiations, thus, in effect, taking a mediator out of the equation. Given the collaborative spirit fostered by mediation and the presence of parties, such negotiations have the potential to be helpful in reaching an appropriate agreement. In the case of potentially damaging mediation, attorneys can neutralize risk through productive counseling and participation in the mediation. Attorneys (or student attorneys and their supervisors) and litigants can choose to engage in negotiations without the assistance of the mediator.

Attorneys as Legal Advisor

It is a common recommendation that when legal issues arise in mediation, a mediator should suggest that a party consult an attorney. This recommendation, however, only has meaning when a party has an attorney. Attorneys can counsel clients about possible results in adjudication, which includes not only assessments of the merits of a client's case in court, but also possible delays, stressors, costs, uncertainties, and so forth.[34] Attorneys can draft and/or review agreements to ensure that their phrasing captures a client's goals and interests. Attorneys can clarify legal issues as they arise in mediation. All of these confer benefits on parties.

Attorneys as Educators about Mediation

A mediator typically devotes a portion of her opening statement to describing the mediation process. An attorney should do the same. This is not a replacement for the mediator's opening statement, but it has a number of benefits for the client and the quality of the mediation. A client might be more willing to ask questions about mediation outside the presence of the other party. More importantly, an attorney can tailor her counseling about what mediation can accomplish to the specifics of his or her client's circumstance. Such specifics can include what the litigation alternative might entail, the anticipated responses of the other party, and

exploration of the clients' interests as opposed to positions.

Attorneys Can Enhance the Durability of Agreements

If parties understand the nuances of an agreement and the substantial downsides to litigation either as to merits or procedure, an attorney may enhance the possibility that an agreement will endure. Moreover, an attorney can also spend time with a client ensuring that a party is comfortable with an agreement, thus neutralizing the rush to reach an agreement that the participants might feel after an emotionally draining multi-hour session.

IMPROVEMENTS AND NEXT STEPS

Organizers of the Project are contemplating a number of steps to enhance its scope and quality.

The first goal is to increase the volume of mediations under the Project. As of now, the volume of cases tracks the academic year and the number of students enrolled in mediation clinics.[35] It should be possible to arrange two pro bono attorneys who are not student attorneys. This could be especially helpful in the summer when the Clinic is not offered.

Second, the Project is currently limited, for the most part, to the trial level court hearing family cases in Baltimore City. The Project has begun to collaborate with a new mediation initiative undertaken by the Maryland Court of Special Appeals—the intermediate appellate court in Maryland.

Finally, the Project is undertaking a thorough review of its assessment instruments. There is no doubt room for improvement, and both qualitative data based on interviews and quantitative data based on evaluations are crucial to identifying these areas.

CONCLUSION

The Pro Bono Mediation Project has, in most instances, enhanced the quality of the mediation process for low-income parties. It resolves the dilemma of the

inability of mediators to offer legal advice when parties have no access to attorneys. It enables parties to better understand the mediation process and prepare for it. It helps to level the playing field in the face of power differentials. It provides legal and emotional support to participants during an emotionally intense and time-pressured experience. It helps to minimize damage from ineffective or unsophisticated mediators.

These benefits do not come easily, given the time commitment of mediators and pro bono attorneys, and the challenges of scheduling and logistics. Nevertheless, even if the Project enhances the lives of a limited number of parents and children facing the challenges of divorce and poverty at the same time, the effort is undeniably worthwhile.

APPENDIX

To access this chapter's appendix, go to http://www.afccnet.org/resources/resources_professionals.asp.

Appendix: Baltimore City Parenting Plan

NOTES

1. Professor of Law and Director of Clinical Education, University of Baltimore School of Law. Many individuals and organizations have made substantial contributions to the success of the Pro Bono Mediation Project described in this Chapter. My colleague, friend, and co-teacher Jane C. Murphy, with her usual energy and intelligence, conceived of the Project in its current form and has overseen its implementation. The Family Division of the Circuit Court for Baltimore City, especially Masters Theresa A. Furnari and Andrea Kelly, Circuit Judge Marcella A. Holland, and Family Law Administrator Sue German, have supported the Project in numerous ways since its inception. Sharon E. Goldsmith of the Pro Bono Resource Center of Maryland contributed her time, the time of her staff, and the scarce resources at her disposal to the Project. The Administration of the University of Baltimore, especially Philip J. Closius, Dean of the School of Law, provided crucial funding and support. Three University of Baltimore Clinical Fellows in the Family Mediation Clinic—Wendy Seiden, Mala Malhotra-Ortiz, and Lydia Nussbaum—were crucial in conceptualizing and implementing the Project. The Mediation and Conflict Resolution Office provided crucial funding for the Project and its Director, Rachel Wohl, has been a long-time supporter of the

Project. Professor Seiden also pursued and succeeded in involving University of Maryland students in the Project. Many pro bono attorneys and mediators contributed a substantial amount of time to the Project. Finally, my special gratitude to the many parties who welcomed and participated in the Project, and who were the ultimate teachers for my colleagues and me.

2. See *Model Standards of Practice for Family and Divorce Mediation* Standard VI (the "mediator shall not provide…legal advice" and the "mediator should recommend that the participants obtain independent legal representation before concluding the agreement"). Symposium on Standards of Practice, Model Standards of Practice for Family & Divorce Mediation (2000), available at: http://www.afccnet.org/pdfs/modelstandards.pdf (last checked 27 July 2011).

3. For a more detailed discussion of the implementation and ethics regarding limited representation, see supra text accompanying notes 19-24.

4. Maryland Rules provide as follows: "If the court concludes that mediation is appropriate and feasible, it shall enter an order requiring the parties to mediate the custody or visitation dispute." Md. Rules 9-205(b) (3) (2010).

5. Maryland defines "mediation" as "a process in which the parties work with one or more impartial mediators who, *without providing legal advice*, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute." Md. Rules 17-102(d) (2010) (emphasis added).

6. Masters are non-judicial court appointees who conduct limited types of court proceedings in family law matters in Maryland. Masters are empowered to rule upon the admissibility of evidence, examine witnesses, conduct hearings, and recommend findings of fact and conclusions of law, inter alia. Md. Rule 2-541. The following types of domestic matters may be referred to masters: uncontested divorce, annulment or alimony, alimony pendente lite, child support pendente lite, support of dependents, preliminary or pendente lite possession or use of the family home or family-use personal property, pendente lite child custody or child access, and other matters as delineated in Md. Rule 9-208.

7. For a discussion of screening protocols relating to domestic violence and an example of a screening questionnaire used widely in Maryland, see Maryland Judicial Conference, Committee on Family Law, *Screening Cases for Family Violence Issues to Determine Suitability for Mediation and Other Forms of ADR* (2005), available at http://www.courts.state.md.us/family/pdf/screening.pdf. The broader issue of screening for domestic violence and whether family mediation is appropriate in the presence of domestic violence has received a great deal of attention. See, e.g., Jane C. Murphy & Robert Rubinson, *Domestic Violence and Mediation: Responding to the Challenges of Crafting Effective Screens*, Fam. L. Q. 53 (2005); Nancy Ver Steegh, *Yes, No, and Maybe: Informed Decision Making about Divorce Mediation in the Presence of Domestic Violence*, 9 Will. & Mary J. of Women and the Law 145 (2003). Maryland law, like many jurisdictions, discourages referral of cases to mediation where "There is a genuine issue of physical or sexual abuse." Md. Rules 9-203(b)(B)(2) (2010).

8. There a number of reasons for this limitation. First, cases involving issues relating to distribution of property or the potential award of alimony would typically involve parties that have enough resources to retain a private attorney or even a private mediator if they wished to do so. Second, the law involved in child access is straightforward and lends itself more to the expertise students bring to the mediation. Third, given time constraints, issues of child access are plausibly resolved in the limited time available for the mediation, something that is much less likely with issues of property distribution.

9. There is an increasing body of literature on an attorney's role prior to, during, and after mediation. For a good practical guide, see Frank V. Ariano, *A Lawyer's Guide to Preparing Clients for Family Law Mediation*, 90 Ill. B.J. 600 (2002). For a more extensive guide published by the National Institute of Trial Advocacy, see Harold I. Abramson, *Mediation Representation: Advocating as a Problem-Solver in any Country or Culture* (2d ed. 2010).

10. The Baltimore City Parenting Plan is an appendix to this chapter and can be accessed at http://www.afccnet.org/resources/resources_professionals.asp.

11. When an agreement is reached in the Project, in practice the mediator might take the lead in filling out the Parenting Plan with language suggested by or approved by parties and their attorneys. Final agreements are reviewed by attorneys and parties. There is a spirited debate about the degree to which mediators can draft agreements without engaging in the unauthorized practice of law, but in the Project both sides have counsel in the mediation session and the mediator acts like a scrivener. For a recent discussion of the issue in the context of unrepresented parties, see A.B.A. Sec. Disp. Resol. Opinion 2010-1 (2010).

12. Virtually all jurisdictions have a student practice rule, although their substance varies. Maryland's may be found at R. Governing Admission to the Bar of Md. Rule 16 (2010).

13. For ease of references, this chapter will refer to both parties' "attorneys," although in one case the client is represented by a student attorney who is supervised by an admitted attorney.

14. The University of Baltimore's involvement can only be to provide one pro bono student attorney. Having the mediator or opposing counsel be associated with the University of Baltimore would constitute a conflict of interest. *Model Rules of Prof'l Responsibility* R. 1.7.

15. *Model Rules of Prof'l Responsibility* R. 1.1.

16. Of course these scheduling conflicts arise for busy practitioners. This raises a concern, however, when the cancellations and limitations happen on a regular basis.

17. See Md. Rules 17-104 (listing qualifications "in general," for "child access disputes" and for "marital property issues.")

18. One helpful resource to learn more about "unbundled legal services" is a website maintained by the American Bar Association's Standing Committee on the Delivery of Legal Services: http://www.abanet.org/legalservices/delivery/delunbund.html (last visited May 18, 2010).

For a leading article on unbundled legal services, see Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 Fam. L.Q. 421 (1994-1995). See also Forrest S. Mosten, "Unbundling Legal Services to Help Divorcing Families," in *Innovations in Family Law Practice* (Kelly Browe Olson and Nancy Ver Steegh, eds., 2008).

19. For a discussion on issues related to limited legal representation in Maryland, see pp. 74-83 of Maryland Access to Justice Commission white paper available at http://www.courts.state.md.us/mdatjc/pdfs/interimreport111009.pdf.

20. Note that the references in this Section are to the ABA Model Rules of Professional Conduct. The ethical rules in a given jurisdiction, which usually (but not always) track the Model Rules, are binding authority and should always be consulted.

21. Model Rules of Prof'l Conduct R. 1.2(c).

22. Maryland Rule 6.5 Comment [1] to Rule 6.5 leaves even less doubt about the ethical legitimacy of limited legal representation in the Project. This Comment expressly notes that the provisions of Rule 6.5 apply to a "Project in which lawyers represent clients on a pro bono basis for the purposes of mediation only." This language is not included in the ABA Model Rules of Professional Conduct. This is thus a "Maryland addition" and the legislative history behind it shows that it was added with the Project in mind.

23. Restatement (Third) of the Law Governing Lawyers § 16 Comment f.

24. Id. § 18 Comment c.

25. Model Rules of Prof'l Conduct R. 1.1.

26. Both of these means to become competent are contemplated by Rule 1.1, Comment [1].

27. Md. R. Governing Admission to the Bar 16.

28. Id. at R. 6.5(a)(1).

29. Model Rules of Prof'l Conduct R. 1.6. The basic rule, albeit with many exceptions, is that a "lawyer may not reveal information related to the representation of a client." Id. at 1.6(a).

30. See, for example, Leonard Riskin, *Mediation and Lawyers*, 43 Ohio St. L.J. 29, 57-59 (1982). Riskin, however, cites as the reasons for the downside of attorney involvement in mediation as due to "how lawyers look at the world, the economics and structure of contemporary law practice, and the lack of training in mediation." Id. This view is not held by all. For a positive account of the role of lawyers in mediation, see Craig A. McEwan, Nancy H. Rogers & Richard J. Maiman, *Bring in the Lawyers: Challenging the Dominant Approaches to Ensuring Fairness in Divorce Mediation*, 79 Minn. Rev. 1317 (1995).

31. For a general discussion with further citations, see Jane C. Murphy & Robert Rubinson, *Family Mediation: Theory and Practice* 149-166 (2009).

32. For a recent discussion about this aspect of an attorney's role in mediation, see Jean R. Sternlight and Jennifer Robbennolt, *Good Lawyers Should be Good Psychologists: Insights for*

Interviewing and Counseling Clients, 23 Ohio St. J. Disp. Resol. 437 (2008).

33. For a disturbing account of appalling behavior by a mediator coupled with appalling behavior by an attorney, see Penelope Eileen Bryan, *Reclaiming Professionalism: The Lawyer's Role in Divorce Mediation*, 28 Fam. L.Q. 177 (1994).

34. Such counseling is an example of the well-known idea of conceiving of a "Best Alternative to a Negotiated Agreement" (or BATNA) introduced by Robert Fisher and William Ury. Roger Fisher and William Ury, *Getting To Yes: Negotiating Agreement without Giving In* 97-106 (2d ed. 1991).

35. For the academic year 2009-2010, 16 mediation sessions were conducted under the auspices of the Project, 11 different volunteer mediators conducted these sessions, 12 volunteer attorneys participated in these mediations, and nine different student attorneys participated. The goal is for each student attorney to participate in two mediations per semester.

CHAPTER 4

ONLINE DOCUMENT ASSEMBLY INITIATIVES TO AID THE SELF-REPRESENTED

Claudia Johnson

WHAT IS ONLINE DOCUMENT ASSEMBLY?

The rise of people going to court without a lawyer is now a well-established phenomenon. In the past five years a number of approaches have been tried by courts and legal service providers working to assist these self-represented litigants. Many are familiar with brick and mortar approaches where a court or legal aid group operates a self-help center for the self-represented to obtain information and forms. Virtual self-help centers have been on the rise, relying on websites and other tools, such as online guided interviews that lead to the creation of complete sets of court forms. Automated online forms can be a critical tool to enhance the work flow of a staffed self-help center, improving the quality and quantity of services in such centers, while at the same time becoming the backbone of an online self-help resource. This chapter will review online document assembly as it is being used to assist those without lawyers in court settings.

Document assembly is used to speed up the production of legal documents (Bladow 2007). Users respond to plain language questions, the answers to which

are inserted into a document in a specific format and style. Document assembly can be used to create simple forms, as well as complex multi-document legal packages. Document assembly applications can be hosted online, so that data is gathered and stored online, and the document can be produced from any web-enabled location. It eliminates the need for the end user to have licensed software installed on their machine and allows the end users to create their own documents remotely, without having to go to a legal office or court to retrieve forms.

Turbo Tax is an example of document assembly software used in a non-legal context for tax form preparation (Bladow 2007). The same principles that enable Turbo Tax users to answer questions and assemble a tax form can be applied in a legal context.

LEGAL EXAMPLES

In the private law firm environment, firms use document assembly applications to aid attorneys and paralegals to quickly produce contracts, employment and benefit manuals, and other complex legal documents. As the willingness of clients to pay hefty fees diminishes, large private firms are beginning to offer online document assembly to allow their corporate clients to create their own legal documents. This allows those clients to reduce the costs of drafting and encourages them to retain the private firms to consult with a legal expert for draft review upon draft completion (Randag 2009). In the private sector many foresee a fundamental restructuring of law practice and perceive online document assembly as a cornerstone of this change (Staudt 2009). Richard Susskind writes about how private legal practice is changing due to improvements in technology and other factors, including the fact that legal knowledge now can be commoditized through technology (Susskind 2008). Stephanie Kimbro, a leader in the virtual practice arena for private practitioners, concurs with Dr. Susskind. She argues that the factors that he identifies will be enhanced by changes in consumer taste. According to Kimbro (2009), the public at large expects better access to more affordable legal services.

In the legal non-profit environment, online document assembly was popularized by I-CAN! ™ in 1999. I-CAN!™ was developed in California by the Legal Aid Society of Orange County. It was designed for the client community, and

interviews and instructions were geared for a fifth grade reading level (Hammond 2006). A number of court systems started using I-CAN!™'s version of document assembly to assist the self-represented court users at a "kiosk" or computer, where people could use a touchscreen to answer questions and produce documents.[1]

The other software option that became popular in the legal non-profit community is HotDocs. HotDocs was originally developed by LexisNexis and was made available for free to recipients of Legal Services Corporation (LSC) funding (Hammond 2006). In 2008, this donation program was expanded to all Interest on Lawyer's Trust Account (IOLTA) programs (Legal Services Corporation 2008).

HotDocs became the software of choice in the legal aid community in large part because, as early as 2001, the Legal Services Corporation and the State Justice Institute supported and nourished LawHelp Interactive. They did so by providing a grant to the Ohio State Legal Services Association to create what at that time was called National Public Automated Documents Online (NPADO) (Legal Services Corporation 2008). NPADO became the delivery infrastructure by which legal aid programs could post online interviews to allow self-represented litigants to create their own legal documents (Staudt 2009; Bladow and Johnson 2008).

NPADO was launched as a pilot project in 2001 (Lauritsen 2004). Initially, the project was a two-year pilot to explore the creation of web-enabled infrastructure that would allow states to create their own interviews and post and share them in a central database (Lauritsen 2004). LSC provided grants to various states so local providers could learn how to use online document assembly tools to author their own forms applications (Staudt 2009).

LAW HELP INTERACTIVE

In 2010, NPADO changed its name to LawHelp Interactive. LawHelp Interactive (LHI) became a project of Pro Bono Net in 2005. Pro Bono Net is a national non-profit organization that works with courts, legal aid groups, and bar associations to increase access to justice using innovative approaches bolstered by technology. LHI refers both to a technical infrastructure developed over the years to meet the needs of diverse and large numbers of self-represented litigants, as well as to a

series of support services for users and contributors that include training, technical assistance, project management, discussion forums and one-on-one support (Bladow and Johnson 2008). LHI assembles documents using HotDocs and, optionally, A2J Author. In the LHI environment, HotDocs and A2J Author have been tightly integrated to work with each other and create a user experience that is simple, easy to understand, and results in assembled legal documents. A2J Author™ is a product from the Center for Access and Technology and the Chicago Kent School of Law that can be used to gather the appropriate information and has a graphic design that was developed specifically for low-literacy communities. In the LHI back end, the data collected by A2J Author is integrated into a HotDocs file that inserts the information into a prepared form that then assembles the documents either in MS Word or PDF format. In addition to the end user experience, LHI has developed an environment where legal non-profits and courts can test, post, and share interviews, and manage their own content. As of the end of 2010, there were slightly over 2,000 online interviews currently available through LHI, being used by hundreds of thousands of users in the U.S. and Canada. LHI created different user profiles that allow court personnel, advocates and self-represented litigants to use the interviews, save them, and then retrieve them so that they can be used to seed new forms. In 2010, LHI became a fully English-Spanish bilingual environment where users can access online interviews in English or Spanish and select the language in which the LHI information and instructions are saved.

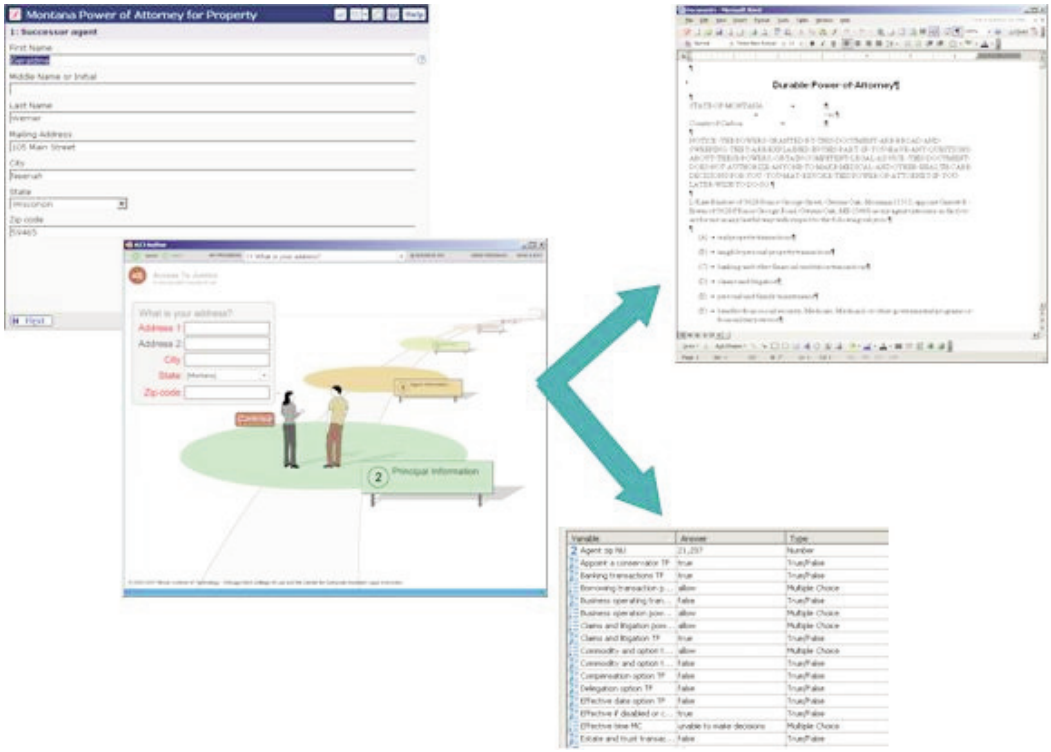
LHI is now a well established project. By the end of 2010, 411,494 "interviews" had been conducted using LHI and users had prepared a total of 217,213 documents as a result. Because not all interviews lead to the creation of a document, the rate of assembly is, on average, 53%[2] (Pro Bono Net 2011).

The most frequent users of LHI applications are self represented litigants who assemble family law pleadings, other self-help forms and relevant correspondence. This may include, for example, letters to landlords. Some self-represented litigants are using the forms to request public benefits or to request administrative appeals. Legal aid attorneys are using the forms to assemble pleadings and reduce the time they spend on routine tasks, freeing some of their time to focus on more complex lawyering tasks, including research, community building or litigation. In addition to public interest lawyers, pro bono attorneys are also using LHI forms to assemble pleadings in areas of law where they are not substantive experts. With

LawHelp Interactive is now available in English and Spanish. Users can select the language of the site, and interviews can be started in either language as determined by the author of the interview. Source: http://www.lawhelpinteractive.org.

support and training from their local pro bono bar and legal aid programs, pro bono attorneys use the LHI forms to produce complete and accurate forms (Hopkins et al. 2009). Another substantial group of users are self-help center staff and volunteers. LHI forms are used by self-help centers in a number of states, as well as in Ontario, Canada, to help litigants prepare their pleadings. Users also receive procedural assistance and other support they may need to effectively represent themselves (Hopkins et al. 2009).

LHI is restricted to linking directly to two types of sites—the statewide access to justice website and mirror advocate website if it exists in that particular state, or, a court website that has a license with Pro Bono Net to link directly to LHI. Statewide legal help websites have existed for approximately ten years. The Legal Services Corporation, via its Technology Initiative Grants, funded legal aid programs to create both client-based websites and advocate based websites (LSC 2003). As of 2010, all state justice communities have at least one client-based statewide website, which provides information and referral to those seeking legal information. A full list of websites can be found at http://www.lawhelp.org. Pro Bono Net operates the websites for 28 states. Other states operate their own



Either HotDocs or A2J Author can be used to ask questions to populate forms in LawHelp Interactive. A2J Author is the more graphical interface that most states use for non-attorney users. HotDocs is the text based interface that attorneys and high volume users prefer to use. They gather information that is then inserted into documents that have been pre-tagged to identify the specific fields where the information should be inserted. At the end of the process, the user receives a document that is fully formatted and contains legible and complete information. Source: (SRLN 2008).

websites, sometimes in collaboration with other states, sometimes alone. LHI-powered forms can be posted in any of the LSC-funded statewide websites. Some of the most active users of online forms are in states not using websites other than Pro Bono Net websites; these include Illinois, Arkansas, and Idaho, all part of the top five states by volume of interviews.

To date, courts can take advantage of the LHI infrastructure and services free-of-charge, when they collaborate with their local legal aid programs. Courts can provide links on their websites to the interviews residing on the statewide legal help website. Recently, some of the most popular templates running from LHI

include small claims templates from Colorado. The courts are linking to the Colorado legal services website, and from there self-represented litigants are preparing their small claims pleadings online. Courts that *prefer* to exercise more control over the interviews that are created, want to direct where they are posted, and want to be more directly involved in serving court users without attorneys may license directly with Pro Bono Net for full access to LHI. They have full control over the creation of content, where and how those interviews are used, and how the online interviews support self-help services provided by the courts. For example, in California, self-help center staff link to LHI from a court-created and hosted webpage that only self-help center staff use. In New York, the courts created their own Do-it-Yourself webpages and forms linked directly to LHI from those pages owned and controlled by the New York courts.[3]

IMPACT OF DOCUMENT ASSEMBLY: EFFECTIVENESS AND EFFICIENCY

Courts

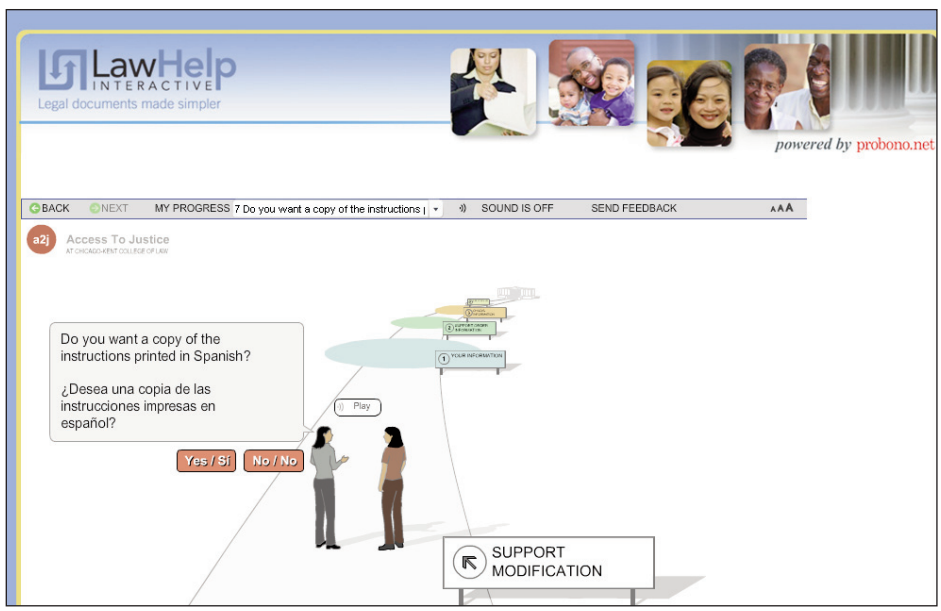
The New York Courts recently released a report on their self-help initiatives (Lippman, Fisher, Pfau, and Klempner 2011). They call their online forms initiative, "Do It Yourself" (DIY). New York reports that 55,000 DIY interviews were used in New York State (Lippman et al. 2011). New York also reports an increase in DIY form filings in family law court. Twenty-two percent (22%) of DIY users reported no Internet connection at home. Of these, 87% use the DIY application from public access computers in the courthouse. The report concludes that, regardless of Internet access at home, most litigants are using the online forms on-site in courthouses, highlighting the need for on-site public access computers (Lippman et al. 2011).

The report also notes that 39% of DIY form users were low income, with incomes below $20,000 per year (Lippman et al. 2011). New York courts have focused resources on training court staff and clerks on the online forms they sponsor. Training significantly increased the utilization of forms. For example, live training on the New York City Affidavit to Vacate Default Judgment—Consumer Debt DIY Form led to a 1,779% increase in courthouse usage of the form

(Lippman et al. 2011).

In addition, New York courts are working on using the online forms to improve court access for Spanish speakers. They recently added Spanish instructions to some of the interviews. For example, in the child support modification interview, the litigant is given the option of choosing Spanish instructions. If the user chooses the Spanish option, the instructions generated with the DIY court form are printed in Spanish, in addition to English.

Idaho Legal Services recently released its evaluation of its online project (Zorza 2010). In Idaho, the courts and legal aid have been working closely together on using online forms for the past four years. The evaluation spanned the length of the project. Judges, clerks, and court assistance officers were surveyed as part of the evaluation. Clerks reported spending approximately 11.8 less minutes with the filers that came in with online forms. Judges reported that those who came in with online forms came better prepared to the hearings. In addition, clerks



In this interview created by the NY Courts Access to Justice Program, the interview asks the user if they want to print out instructions with the form in Spanish as an option. Source: https://lawhelpinteractive.org/groups/NY-NewYork/template.2009-05-21.0133314769/get_interview, screen 7.

reported that those using the online forms were better prepared to present their cases to the judges and increased the amount of information shared with the court. In essence, the online guided interviews have an educational and confidence building effect on those without lawyers (Zorza 2010). Judges reported that they were making more informed decisions in 35% of the cases that used the online forms. Clerks corroborated this by saying that the specificity of the orders had increased by about 25% for those cases using online forms (Zorza 2010).

Over 13 self-help centers in Southern California are actively using online forms to support and enhance their daily work, with centers requesting more pleadings and forms, and new centers exploring online forms (Hopkins, Thomas, and Jacobs 2010). One of the supervising attorneys of those centers reports that using the online forms enables them to serve more people each day, turn fewer litigants away, and provide more workshops than before they were using LHI forms (L. Parish personal communication, April 28, 2009). They note a reduction in mistakes in the forms, a reduction in the amount of time it takes to complete a pleading, and a reduction in litigant stress.

The Self-Represented

LHI regularly receives feedback from those who create their documents using the LHI forms. Users often report that the forms applications have a positive impact on their lives:

> "Your website is a great service to someone on a limited income. Thank you."
>
> "This package was very user friendly, it compiled everything for the end user. Not having any knowledge on how to proceed, this system takes the guesswork out of what needs to be done which makes the process less intimidating. Thank you so much."
>
> "I have waited all these years to file for divorce because I didn't know where to start and the cost. I'm not able to afford a lawyer. Thank you!"

In Los Angeles, the self-help center staff report that the online forms allow liti-

gants to focus on the important aspects of the case, and to stop worrying about filling out the forms. They call it "reducing litigant fatigue." In the past, users had to write information by hand, rewriting their name, address, and case number multiple times. With the online forms, the litigant can enter the information once and that information is replicated throughout all necessary forms. This enables the self-help center staff and litigants to focus on the information required, as well as the background and contextual information they will need.

In Idaho, users reported that LHI forms were quicker to complete than paper forms. They felt the online forms provided much more information and that they understood the process better after using the forms. They also reported that they felt like they were providing more information to the court when using the online guided interview (Zorza 2010).

Other self-help center supervisors report that most litigants are able to use the online forms with little assistance and that many times litigants express pride and self-satisfaction at being able to create their own legal documents.

In rural communities, where distances to the courts can be vast, the availability of online forms allows the self-represented to complete their pleadings without having to take time off from work, travel many miles to pick up paper forms, and then make a return trip to file them. Self-represented litigants can access and complete the interviews online, and then travel to the court one time to file them.

BUILDING A PROJECT

The following section describes the necessary steps to launch an online document assembly project using LHI.

Plan

When starting an online project, the most important activity is the initial planning stage. Some of the questions to ask are:

a) Who is the intended audience? Are they experts or not experts? Are they attorneys or non-attorneys?

b) Where will they fill out the forms? At home? At work? In a courthouse or at a public library computer?

c) What forms will be used most often? Are those forms uniform across the state or do they vary by court or county? What are the most difficult forms?

d) Who will make changes to the forms if the law changes?

e) If the user will be at a public computer, who will provide Internet access? Printer support? Headsets for sound and privacy?[4]

By answering these questions courts and their partners can determine the type of interview to develop, and what level of support users will need, to ensure they find the application easy and convenient.

For example, if the users of the form will be attorneys, self-help center staff, or high volume users, the interview interface may be created only in HotDocs and not in A2J Author™. This is the approach adopted in California. They are creating HotDocs interviews that court staff and volunteers use in court-based self-help centers to populate the forms. Some programs leave sections of the forms incomplete, which will be filled out by the litigant in the course of a workshop that explains the legal concepts in more detail. Others allow supervising attorneys to remotely review the draft pleadings prepared by volunteers in different court locations. California has other document assembly programs that are designed for litigants to complete themselves, focusing on increasing efficiency of staff, volunteers and regular users.

In New York, by way of contrast, the forms are intended primarily for online self-represented users and those visiting the courts and using the forms in kiosks where additional support may not be provided. New York built all of its interviews using A2J Author. The New York interviews are written in plain language and provide many definitions and assisted dialogs that aid the self-represented user to work through the interview from beginning to end.

In all of these projects, LHI forms are made available for free to the end user and cannot be sold. If a pro bono program or bar association wants to make the forms available for its volunteer lawyers, and the program is using LHI to make the forms available online, the pro bono program cannot sell access to the forms to its members. Attorneys who use the forms in their pro bono work are precluded

from using them in their paying cases. Local programs are responsible for enforcing these form use restrictions. Local programs are also responsible for ensuring that in distributing these interviews they are not violating ethical and professional rules of conduct.

The best types of forms to automate using LHI appear to be civil forms primarily used for low-income users. These can be forms that are used in administrative proceedings, or they can be forms that are used in litigation. To date, the forms most often developed for document assembly applications have been family law forms, because that is where courts and legal aid partners have the most demand. The criteria for selection will vary state by state and partnership by partnership. Some of the criteria used to prioritize forms for development might include:

1. Whether the form is uniform or not.
2. Whether the form is accepted.
3. The need for screening before granting access to the form.
4. The level of complexity.
5. Available assistance that might support the use of the form.
6. The percentage of represented opposing parties.

Lack of uniformity need not impede the automation of a project; however, it may affect the willingness of other courts to accept the form. In some states, the advent of online forms has served as the mechanism for promoting the use of uniform state forms. In Idaho, the Supreme Court established a process and dialog regarding uniform forms before online forms were created. Thus, local forms had been eliminated earlier, paving the way for uniform online forms. The Idaho Supreme Court continues to monitor local courts to ensure that they accept forms watermarked as produced by LHI and Idaho Legal Services (Dennard 2007).

Not all states have uniform forms before automation of forms begins. In Illinois, courts that create virtual self-help centers in partnership with Illinois Legal Aid Online voluntarily accept the forms, realizing that their partners are non-profits that do not have the resources to customize each form to each local nuance and requirement. As a result, 38 counties now accept the same form for various types of pleadings. In Kentucky, online forms were first deployed in Jefferson County,

where the Legal Aid Society of Louisville (LASLOU) is the local federally-funded legal aid provider. There are no uniform divorce pleadings in Kentucky to date. Once the other counties learned that in Jefferson County there was an online self-help center where litigants were creating full, complete, and legible forms, other judges began to consider accepting the Jefferson County forms for use in their own proceedings. The adoption of a statewide divorce form for the state of Kentucky is now under consideration. This would not have had happened without the creation of the online pleadings by LASLOU.

Triage is another important form selection criterion. Triage forces the groups working together on access to justice issues to identify the gaps in service and identify where to best refer users that need attorney representation. When there are few resources, there is often a concern that the availability of online forms will encourage litigants who really need the assistance of counsel to proceed self-represented. In reality, people are proceeding on their on whether or not they have access to online forms, because hiring a lawyer is expensive.[5] The fear is that people will find the forms online and use them without fully understanding the implications of their pleadings, placing their own case at risk. This is a very valid concern and one that can best be addressed by careful planning: choosing the most appropriate forms to automate, building in a screening component, and supporting the use of forms in self-help centers and in conjunction with other free or low-cost legal services.

Online interviews can be implemented for in-depth screening using decision trees. At the beginning of an interview, before answering questions to create a document, the person can be asked key questions to ensure that the form is appropriate for their particular type of case and circumstances. Persons who do not meet the requirements for a particular type of action, or may be at risk if they proceed on their own, can be identified and referred to the appropriate resources, including the private bar and legal non-profit organizations. The screening capacity of online interviews requires that the partners know and understand the delivery of legal services locally, as well as the gaps. If there are no referral sources for a certain type of cases, the creation of online forms leads to the identification and discussion of how that gap can be addressed within the continuum of services. In Los Angeles, for example, when a litigant indicates that there is a pension in a divorce case, the staff at the self-help center refers the user to law firms that are willing to prepare special pension pleadings known as Qualified Domestic

Relations Orders (QDROs). Thus, in creating self-help forms, the creation of triage and identification of cases that can benefit from self-help and those that need additional assistance is enhanced by the nature of the interviews themselves.

The other factor to consider when selecting a form for automation is the percentage of litigants in that particular court that are proceeding without a lawyer. If a large number of pleading parties and responding parties are self-represented, the automation of those forms will require that the forms be prioritized for both groups. If primarily the respondents are proceeding on their own, then preparing petitioner pleadings may not be as high a priority as providing a guided interview for respondents. However, courts must be mindful of the importance of providing neutral services for all litigants before the court. If the percentage of self represented litigants is low in a particular docket, but a large number of cases are delayed because parties fail to follow certain court orders or requests, online forms may help increase compliance in those cases.

Launch

The process of automating a form can take anywhere from three to nine months. Once the forms are completed and tested, the time to launch them and make them available to the public at large begins. The time when the forms are being created is the time to start planning and thinking about the launch.

When a form is posted to LHI for public use, it creates with it a great opportunity to attract media attention and to educate the public about the statewide website, where the forms reside, and the programs operated by the partners that created the form. Courts and nonprofits creating online forms should prepare press releases to explain and promote the use of the forms and related resources.

Assess

Before an online forms project goes live, it is important to ascertain that all the necessary components are running properly. It is best to monitor the use of the forms over a period of six months or longer, to ensure that outreach has been effective, and that forms are easy to use and understand.

If a self-help center plans to use the forms inside the center, court IT will need

to provide assistance with Internet access and connectivity, ensuring that the computers have the necessary software to display and print the forms. The center will need to have a policy on how to save answer files, and what type of accounts they want to create on LHI. Managing the answer files of hundreds of self-help center visitors will require some planning and evaluation. If the self-help center uses pro bono lawyers or student volunteers to help prepare or review forms online, protocols will also need to be drafted and discussed prior to deployment.

Before launching the application, the host court should identify how it will evaluate user satisfaction and program impact. In some states, users of online forms are given the opportunity to answer a survey after they complete their forms. In other states, users are encouraged to email feedback directly to LHI or to the statewide website where they found the form.

Another important consideration is to identify how support will be provided to the users of the forms. If the forms are being made available in unstaffed kiosks or from the user's own residence or a public library, how will the user obtain help remotely? If a form is identified as defective, who will be responsible for changing it and uploading it? It is important is to identify the policy that will guide future improvements and investments in the project as utilization increases and new scenarios evolve. Some states are using web chat tools to provide this additional support to remote users. In Montana, users of online forms in LHI can request assistance via online chat provided using the Live Help application. Other states, like Minnesota, are providing remote assistance using other commercial tools.

Essentials for Success

Every access to justice community is different, and every state has a different set of resources and a different level of support from the private bar and the state. Despite these variations, there are some common factors that are key to the success of an online document assembly project. Key factors for success are:

1. Identifying the optimal forms to automate and managing the process.
2. Building the forms in partnership.
3. Planning for sustainability from the beginning of the project.

Forms and Project Manager

Identifying the correct form and building in effective screening and decision trees within the application ensures that users have a positive experience.

In developing a project of this nature, it is important to assemble a planning and oversight team that includes key stakeholders. To ensure that the materials are legally sufficient, you must include lawyers with expertise in the subject matter of the form. You will also need to obtain the buy-in of court administrators and the private bar. A project like this requires a communication strategy that educates and informs the groups that have a vested interest in serving those without lawyers, including pro bono programs and the private bar. Project teams will need to include three or four different types of participants: a) a template developer—the person who automates the form; b) a substantive expert—usually an attorney who reviews the forms and interviews for accuracy and to ascertain that there are no material omissions; and c) court self-help center personnel or court administrators—as these individuals understand who the self-represented are in the court.

Partnerships

Pro Bono Net is an organization that has a strong history of fostering collaboration centered on new ways to use technology tools. The automation of online forms by necessity creates the need to consult and include various groups working with overlapping populations in the same court rooms. For an online form to succeed, it needs to benefit from both the substantive expertise in the chosen area of law (family, housing, consumer), as well as the view points of the private bar, the organized bar, and legal aid communities. When all of these groups work together, forms emerge that everyone can support. Each application should include a certain level of triage with strong referrals for those who do not qualify for the form. If the forms are created in isolation, the project may lack support and may even engender opposition from other groups working in the same area of law. Poorly vetted forms may fail to adequately screen the cases to identify those who are not good candidates for self-help interventions.

Sustainability

Because laws and rules change regularly, it is always safe to assume that at some point the automated forms will need to be updated to reflect changes. From the initial planning stage, those working on document assembly applications need to identify who will monitor the law and rules for changes, who will implement the changes, and how new users will be informed about updates. It is critical to plan for project sustainability from the beginning. Sustainability also includes being able to create forms in new emerging areas of need. For example, divorce forms have been one of the LHI form types in highest demand. In 2010, this shifted, as the use of child support modification forms eclipsed the use of divorce forms. As the economy changes and new needs arise, communities will need to increase the number of developers able to meet the demand for more and more complex forms. Pro Bono Net trains new and experienced developers on how to create forms. Each community will need to allocate resources to make sure that as staff turn over, and as the needs of the community change and grow, they can meet the demand for online forms. Legal non-profits and courts will need to educate funders on how they are using online forms and identify new funding sources for the projects the forms enhance and support. Although traditional legal services funders are familiar with online forms projects, a majority of foundations and traditional funders may not be. Education of future funders will need to be a key activity to continue creating additional forms and projects that address new, growing, or emerging areas of need.

LESSONS LEARNED AND BEST PRACTICES

Triage

Generally, when a project to automate forms is getting started, the most common concern and potential source of opposition is that the online forms may end up being used for the wrong type of case or fact pattern. This is a valid concern and one that practitioners experienced in the self-help realm also must heed. Self-representation is not appropriate for all cases or every litigant. Self-help works well when it targets a particular type of case for a particular type of situation. Selecting

the forms to be automated and the level of complexity that the self-help delivery mechanism will address is crucial.

Fortunately, document assembly interviews allow persons to read information before they begin, so they can understand what they need and what the form requires. This information resides outside of the interview itself, on the "staging page," where the link to the online interview to LHI can be found. In addition, the interview can itself screen for specific scenarios and circumstances that a substantive expert believes may require a different type of intervention. Some states are screening out certain types of cases where self-representation may be inappropriate. When inappropriate, the application does not allow the person to complete the form and provides referrals to other resources that may be able to provide more in-depth legal assistance or representation. A partnership approach can help ensure screening and referrals are effective.

Well-Defined Terms and Plain Language

Because the online forms can be used by anyone from anywhere, it is important to write all the instructions, questions and any definitions in plain language. Utilization of plain language can significantly increase the success in assembling the form, but also the likelihood that the person will know what to do with the form and what to expect out of the process.

A key element of guided interviews is the inclusion of plain language definitions of legal concepts and processes.[6] As guidance is inserted into a form, it is important to stay away from legal terms and definitions and provide the guidance in simple plain English.[7]

Outreach Is a Constant and Ongoing Activity

During the initial period of this process, courts and legal aid groups focus on the forms and on the creation of the form. However, creating a form is not enough. Document assembly project teams need to incorporate an ongoing outreach strategy, and utilize every opportunity to make sure the public at large can easily locate the online forms. Website managers should be encouraged to highlight any new forms that are created every time they do outreach for the website. Online forms

are very valuable content, so highlighting them during regular website outreach is important.

In addition, programs should treat the release of new forms as a press event. Because different groups have been involved in creating the forms, the advent of forms makes a nice story about collaboration to increase access to justice. In a time of cuts and furloughs, a story on automated forms and online tools may highlight that the courts do care about access, despite the budgetary need to reduce services on other fronts. The same applies to legal aid.

Make it Easy to Find, Visible

In a statewide website, post the link to the forms in a place of prominence, perhaps *on the home page*. Some states and courts are creating self-help or form specific portals in their web pages to increase the number of people that benefit from the forms. Some states are using web chat (LiveHelp) to help information seekers quickly find the forms (ABA YLD 2010). Sharing the links to the forms with social service agencies and public libraries is also a good way to ensure that those needing to respond to a legal issue in writing can quickly find help without undue delay.

Highlights From the Field

Many court systems share a deep commitment to grant access to those that cannot afford attorneys. Some of those states use LHI-powered forms as a cornerstone of the court system response to the phenomenon of increased self-representation, and a reflection of their commitment to improve access to justice.

New York

The New York Courts entered into a license with Pro Bono Net to provide direct links to the court's website for online form packages at the statewide level. In New York, the forms are for use by self represented litigants. They use the A2J Author interface and assemble the documents in HotDocs. The forms are served from LHI, and the answer files are stored in LHI. Technical support and user sup-

port is provided by Pro Bono Net.

Idaho

The partnership between Idaho Legal Aid Services Inc. (ILAS) and the Idaho courts is one of the earliest and most enduring partnerships established to develop automated tools to enhance access to justice. The partnership was created in 2004 and 2005 out of a recognition that a large percentage of the family law litigants were going to court on their own. ILAS successfully applied for LSC funding to develop online forms to support the courts in their effort to enhance judicial efficiency and improve their self-help services. From the beginning, the Idaho Supreme Court was a champion of the project, pushing for form uniformity and acceptance across the state. They limited the creation of forms to dockets where self-representation was high. In 2005, the state adopted uniform forms, limiting the use of local forms. Under the leadership of Judge Michael Dennard, the court launched a number of self-help initiatives to complement the use of online forms, including the creation of court self-help center websites. As early as 2001, the Idaho Legislature passed enabling statutes that authorized the Idaho Supreme Court to issue guidance and rules on self-representation. The strong partnership between the courts and ILAS allows thousands of users each year to prepare correct pleadings, even if they do not have access to legal representation. As of 2010, five years later, Idaho continues to be one of the states where LHI forms are most heavily used. In 2005, Idaho users participated in 939 interviews online, 339 of which resulted in the creation of completed forms. In 2009, Idaho users participated in 42,485 interviews, of which 21,801 resulted in the creation of forms. Every year since 2005, utilization of Idaho forms has been robust and increasing (Bladow 2010).

Illinois

In Illinois, as in Minnesota, the legal services group has a technology back-up center that has undertaken the automation of self-help forms. Illinois Legal Aid Online (ILAO) was created in 2001 as a Tech Center, the project of a partnership of 12 legal aid groups and organizations in Illinois. In 2006, ILAO partnered with the Illinois Coalition for Equal Justice to develop and establish technology-based

self-help centers through out the state. Since then, 38 self-help centers have been opened throughout the state, some in partnership with courts and some in partnership with public libraries, and sometimes with both. In Illinois, uniform forms do not exist and courts tend not to have established brick and mortar self-help centers. In those counties where the virtual self-help centers have been created, the courts voluntarily accepted the standard online forms created by ILAO. ILAO takes responsibility for monitoring statewide legislative changes to the law. ILAO has one staff attorney in-house who monitors multiple areas of law to keep the forms current and up-to-date. Illinois has posted the most extensive and diverse self-help content to LHI, with over 50 forms designed for self-represented litigants. The Illinois materials are diverse and cover many areas including those often resolved outside court, including consumer law materials, employment documents, and identity fraud resources, among others. In 2005, Illinois had served 1,650 interviews and assembled 848 documents online. As of the end of 2009, Illinois had served over 52,000 on LHI, with 26,495 documents produced. Like Idaho, Illinois is one of the top ten states in terms of online form utilization using the LHI project. In 2009, ILAO obtained funding to integrate the online document assembly forms with legal aid case management systems. This pilot project can serve as a guide and model to other legal aid programs that want to integrate their client database systems to automatically populate online forms.

California

The online document assembly initiative in California started with the Administrative Office of the Courts (AOC), which dedicated an attorney-technologist to develop templates in conjunction with local court self-help centers. This is one example where the courts, rather than legal aid organizations, drove the project. While legal aid organizations and courts have a long history of collaboration in California, in the area of document assembly, the legal services community has played a lesser role.

In California, as the downtown Los Angeles courthouse self-help center was being established, LHI was also coming into its own. The advent of the first online forms coincided with the launch of the downtown center, which serves 300 litigants per day using Americorps volunteers and paralegal staff under the direction of experienced attorneys.[7] Initially, the LHI forms were used to create

divorce pleadings. Over time, more forms and court locations have been added.

The AOC has also worked with legal services agencies, such as Neighborhood Legal Services (NLS) in Los Angeles, to develop templates for their domestic violence clinics. With LHI, one staff attorney, overseeing three pro bono attorney volunteers per day in different courthouses, is creating approximately 6,000 petitions for domestic violence restraining orders per year.

In 2009, Neighborhood Legal Services (NLS) became the first LSC-funded group in California to successfully submit and receive an LSC TIG grant to create online eviction defense answers, using statewide forms, to be used at the self-help centers NLS manages under contract with the courts. These online forms will be posted on the statewide website and will be available across the state. Court-based self-help center staff will also have access to these templates. The project is proceeding in a collaborative fashion, with the AOC preparing the landlord's petition and NLS preparing the tenant's answer and motions.

The decision to use LHI forms is a local decision and was not mandated or driven by the AOC. Some courts use EZLegalFile, a forms completion program created by the San Mateo, California, court, which is designed for self-represented litigants to use themselves. Since California uses standardized statewide forms for most actions, there are also many commercial forms vendors.

California courts alone have posted over 60 active templates on the LHI platform. As mentioned previously, in California the majority of the templates are used in fully staffed established self-help centers; thus, most of the forms are created in HotDocs, to allow staff users more ease of use during workshops and group sessions. In 2009, California users generated 29,356 interviews on LHI, generating 28,703 completed documents. By far, California has the highest rate of assembly, in large part because the forms are used inside a self-help center, where they benefit from the review for completion by a staff attorney or pro bono lawyer outside of the courthouse and support from an Americorps volunteer. The rate of assembly in California, at 98%, is the highest across the country.

Even though they all are using LHI online forms, each of the self-help centers using LHI in Southern California is different in the way they use the forms to support the center's work flow. In Pasadena, a center that serves a large Asian-Pacific Islander community, the self-help center hired a trilingual attorney who speaks English and two Asian-Pacific Islander languages. Although the forms and interviews are assembled in English, the staff attorney is able to provide one-on-one

sight translation of the online interview to help the litigant answer the questions in their native language, while the staff enters the information in English. A similar process occurs in other Los Angeles courthouses, where most of the Americorps volunteers are fluent in languages other than English and are able to sight translate the interviews for Limited English Proficient clients, while helping them enter the answers in English.

In Los Angeles Superior Court, the self-help center is experimenting with having the forms reviewed by pro bono attorneys who do not come into the courthouse. The LHI platform allows for the sharing of documents and the Los Angeles Courthouse is testing the email feature within LHI to see if it allows them to recruit pro bono lawyers who can work from their own offices.

CONCLUSION

Self-help centers are no longer a novel and new idea. Over 30 states now offer assistance to the self-represented using document assembly applications. Court and provider partnerships are developing and supporting new and diverse applications, ranging from the simple to the complex. Since 2005, LawHelp Interactive has made over one million interviews available and has been used to generate over 630,000 documents (Pro Bono Net 2011).

To promote the use of these technologies, funders and partners will need to address a number of challenges. It is critical that existing projects be thoroughly evaluated to assess the impact of these initiatives on the intended beneficiaries, including the self-represented, courts, pro bono attorneys, and legal aid attorneys. It will also be important for courts and project partners to focus on project sustainability, to ensure the LHI infrastructure remains robust enough to accommodate the many thousands of forms and projects it supports. With planning and funding, new features and functionality can be added to further improve access to justice.

There is, as yet, no uniform measure of success for online document assembly projects. Although some projects use volume or rate of document assembly to measure their impact, it would be better to identify a range of core qualitative and quantitative measures. Ideally, the field would benefit from a complete cost-effectiveness study, which compares outcomes for the unaided self-represented with

outcomes for users who have had the benefit of commercial applications and the LSC-funded LHI applications.

It will be critical for LHI to attract sufficient funding to permit project developers to continue building on the latest technology, and to enable LHI to maintain the level of support it has been able to provide to new and continuing participants of an ever growing number of users and template developers. As the complexity of pleadings increases, and new technologies are harnessed to aid the self-represented, LHI will need to continue modifying its robust infrastructure to accommodate those new developments. Additionally, as the legal aid community moves from print media brochures to video and audio-visual files, LHI will also need to adapt. Future developments may include the need to capture the benefits of mobile and hand-held technology, and to capitalize on the advent of better and more robust search algorithms and data transmission protocols.

Courts will want to build e-filing applications around document assembly technology. Automated forms can become a vehicle through which courts ensure their electronic case management systems remain accessible to the indigent and the self-represented. These are foreseeable developments that bring a host of opportunities and challenges to those working together to increase access to justice. They are also opportunities that bring costs with them and cannot be achieved without resources. Courts will need funding for pilots, testing, evaluation and eventually dissemination of new applications with a focus on long term sustainability.

LHI continues to offer hands-on support to developers and end users, providing training, technology support and monthly phone calls, where the wealth of experience within the wider LHI community can be shared. Each year, new courts and legal aid groups join the collaborative enterprise that makes up LHI. Pro Bono Net is proud to be the steward of an active, collaborative, and engaged national community focused on increasing access to justice for all.

NOTES

1. A description of kiosks and their uses in government and other sectors can be found at LSC 2005.

2. As will be discussed below, some interviews include triage protocols that do not allow the completion of an interview if certain elements in a case are present or missing. In addition, when a new template is posted to LHI, there is always testing that occurs. Testing may

result in incomplete interviews, leading to lower assembly rates.

3. In New York, the forms are also posted in the statewide website http://www.lawhelp.org/ny. In California, the interviews that court self-help center staff use are not posted on http://www.lawhelpcalifornia.org. They are posted on a website for legal services and court-based self-help staff: http://www.courts.ca.gov/programs/equalaccess.
4. The A2J Author interviews provide for the use of a sound file that reads the questions and provides explanations as the user moves along the interview. This is helpful to low-literacy populations. In a public setting, some courts are using speakers attached to the computer to magnify the sound and other locations are using headsets to facilitate privacy. In December 2010, A2J Author 4.0 was released. It allows for the insertion of video in the guided interview. LawHelp Interactive supports A2J Author 4.0.
5. The average national hourly rate in 2009 was reported at $289.00 (Miller, R. 2009).
6. For more information about plain language in legal services please go to http://www.writeclearly.org. This webpage was created with LSC funding by Legal Assistance of Western New York, and includes examples of online interviews before plain language and after plain language editing. See also Marz article this volume supra note [9] as well as www.transcend.net.
7. See chapter in this volume by Dixon and Little on Los Angeles self help services.

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CHAPTER 5

EDUCATING THE JUDICIARY ON SELF-REPRESENTED LITIGANT ISSUES

Hon. Fern A. Fisher

INTRODUCTION

> "The ever-rising tide of self-represented litigants is a national phenomenon, a growing national crisis for state courts . . . . In addressing this new challenge, we not only need to adjust course but we also need to change attitudes and perceptions.[1]

The overwhelming increase of self-represented litigants using courts throughout the country was unanticipated, but is now a well-entrenched phenomenon. Yet, courts have been ill-prepared to change course to respond to the needs of litigants who appear without lawyers. The justice system is an adversarial system dominated by lawyers. As a result, judges, non-judicial court staff and attorneys have all been challenged in responding to self-represented litigants, who do not know the rules of the system and are not trained in adversarial tactics. Many self-represented litigants appear in bread and butter cases, affecting the basic human condition,

such as evictions, foreclosures, divorces, child support, or custody disputes. Many of these litigants have court cases occurring at critical times in their lives and are ill equipped to respond to another crisis. Numerous self-represented litigants have limited reading or language capability, respond uniquely to the justice system due to culture, or are mentally or physically challenged. Courts must educate the judiciary regarding the necessity of handling the cases of self-represented litigants with consideration to their vast individual differences. How can the judiciary sensitize judges to the problems of self-represented litigants? What innovations and resources might assist judges in making changes in their courthouses and courtrooms to create court cultures that better meet the needs of self-represented litigants? This chapter suggests ways courts can aid judges to be more responsive to these litigants' needs.

HOW SHOULD CHANGE CONTINUE IN THE JUSTICE SYSTEM?

As early as the 1980s, courts began to recognize and respond to the phenomenon of self-representation.[2] In some state court systems, the awakening was led by the chief judge or judges of the state's highest tribunal. In other states, trial judges realized the increasing presence of the self-represented first and became the catalysts for change. A local judicial or non-judicial administrator may have spotted the area of concern or an access to justice commission finally defined the challenge.

In 2000, the State Court Administrators recognized the issue.[3] At the 24th Midyear Meeting of the Conference of Chief Justices, all of the nation's chief justices affirmed that "…judicial leadership and commitment are essential to ensuring equal access to the justice system…." The resolution further called for expanded assistance to self-represented litigants and removing barriers to access to justice.[4] As the nation's chief justices grasped the need for change, it became incumbent upon local supervising judges, or policy-making judges, to implement systemic court policy changes. Unless the local supervising judge is on board, trial judges are reluctant or unable to implement many changes. Leadership from local supervising and policy-making judges is key to moving trial judges to change. Trial judges, the front line in dealing with litigants, are in a visible and immediate posi-

tion to make changes readily apparent to litigants forging their way through the justice system. Trial judges are just as important as supervising and policy-making judges in effectuating tangible change.

WALKING IN DIFFERENT SHOES: ENCOURAGING JUDICIAL UNDERSTANDING OF SELF-REPRESENTED LITIGANTS, CULTURAL COMPETENCY AND POVERTY

Self-represented litigants are diverse in gender, race or ethnicity, educational and economic background and abilities. The composition of state judiciaries is changing to include judges that increasingly mirror that diversity. Some judges now have prior employment experience with exposure to diverse populations. However, some court systems are slower to diversify, resulting in judges who are less than familiar with some of the problems diverse self-represented litigants experience. Who the litigant is, and the litigant's ethnicity or culture, may affect how the litigant experiences the court system.[5] Many judges are unaware of those issues. In addition, the legal education and professional training of some judges actually impedes their understanding of how self-represented litigants are faring in their courtrooms. A judge spends many years training to think, speak and write like a lawyer. It is difficult to shift gears to speak and write for non-lawyers. Addressing how to sensitize judges to the lives of self-represented litigants and ensuring that each judge understands the need to have a culturally competent courtroom is a first step to opening the minds of judges to responding to self-represented litigants.[6]

How litigants tell their stories in court and how they perceive the fairness of the process is affected by their economic and cultural backgrounds and their ability to understand the process. Conversely, a judge's perception of a litigant can be affected by their own lack of exposure to diversity and their own biases. A judge who handled eviction cases once indicated to an African-American judge that she did not understand why African-American women wasted their rent money on getting braids put in their hair. Her lament indicated that her bias may be affecting how she determined the outcome of motions to obtain more time to make rent payments, but also reflected a lack of cultural sensitivity and awareness. The African-American judge explained in response that it was often the least expensive

way for a woman of color to groom her hair. This exchange led to the inclusion in New York of a session on cultural competency issues for judges at a summer educational seminar at the New York State Judicial Institute.[7] In the seminar, judges explored their biases and resultant assumptions through exercises and lectures.

Another way to approach the issue of unintentional bias is to provide information to judges on the emerging research on neuroscience and decision-making that shows how brains naturally stereotype groups. There are two online videos produced by the California Courts in collaboration with the National Center for State Courts, which interview experts in judicial ethics and brain function, to help explain this phenomenon. The videos give concrete suggestions for training oneself to become aware of this unintentional stereotyping and take steps to avoid it.[8]

In addition to cultural differences, judges face the challenge of understanding litigants who are living in poverty and how they experience life and the justice system. Thirteen percent of Americans live in poverty, and the spiraling economy's effects are reflected in increasing numbers of the impoverished. The number of food stamp participants has increased since 2007 by more than two million people. Today, there are more than 28 million participants. It is estimated that the program serves only two-thirds of eligible persons, which means that it is likely that there are more than 35 million people eligible for food stamps.[9] Accordingly, there are now more impoverished persons who come into contact with courts. It is important to recognize that people experiencing poverty are not unidimensional. Experts describe different categories of poverty: generational, working class poverty, situational poverty (temporary due to events), immigrant and depression era.[10] Individuals in each of these categories experience the world differently.[11] In particular, litigants who are a product of generational poverty face more challenges and have a far different response to the world than other categories of the impoverished.[12] His or her survival skills are far different from that of a middle class litigant who is experiencing temporary poverty.[13] Therefore, the judge cannot assume, first, that the litigant standing before the bench is poor. Secondly, a judge should not assume that all impoverished persons can be related to in the same way.

The implications of the differences in litigants may be apparent in how they communicate, view relationships or how they view time. For example, a litigant who is the product of generational poverty will more frequently have problems saving rent money, locating records and getting to court on time. Due to the

nature of their lives, these litigants often live in the moment, have trouble seeing the future, are disorganized, and often live in cluttered homes.[14] Families characterized by generational poverty are more likely to communicate orally than in print.[15] Communicating in print versus in writing is characteristic of two distinct learning styles.[16] Therefore, to ensure that a litigant understands court procedures and outcomes, a judge may need to provide oral as well as written court rules or decisions.

Suggested Judicial Education Techniques on Culture and Poverty

1. Seminars or lectures with exercises to explore cultural differences and biases
2. Handbooks and materials on various cultures[17]
3. Walking tours by judges with community members of diverse communities[18]
4. Speakers from different cultural groups[19]
5. Speakers who can speak about poverty[20]
6. Poverty simulations[21]
7. Workshops on unintentional bias

It is imperative to utilize a variety of methods to ensure culturally competent courts and to educate judges on the implications of culture and poverty affecting self-represented litigants. Addressing bias and widening individuals' views on culture is not an easy task. Supervising judges and court educators should consider varied approaches to this issue.

EDUCATING JUDGES ON COMMUNICATING PLAINLY AND EFFECTIVELY WITH SELF-REPRESENTED LITIGANTS

Some litigants respond and understand through oral communication and some are comfortable with written communication, whereas some need both forms of communication to reinforce their understanding. Judges should be educated in both oral and written plain language. Further, judges should be assisted in understanding effective communication through appropriate body language, demeanor and temperament.

Many judges do not realize how their body language is received by persons

before them. We are often unaware of our facial expressions or gestures. A scowling face, rolled eyes, arms folded tightly while conversing, or lack of eye contact can be intimidating to a litigant who is already afraid to be in court. Raising the level of one's voice or using harsh tones may have a similar effect on a litigant. By exchanging familiar pleasantries with the counsel opposing the self-represented litigant, a judge may foster a belief that it is impossible for the litigant to have fair treatment in the courtroom. A judge's choice of words can also be disconcerting to a self-represented litigant. For example, one judge consistently referred to female litigants as "Madame" in a very formal tone. Female litigants were afraid and some thought he was calling them a prostitute. After numerous complaints, the litigants' perception of this practice was brought to the judge's attention. The judge stopped using the salutation.

Some judges need an "aha moment." Seeing oneself on film speaking to a self-represented litigant is often that moment. In New York, judges were filmed speaking to a self-represented litigant played by an actor. Afterwards, the judge then watched the video with a communication specialist. Many judges had eye-opening experiences. Judges can also watch a film of judges role-playing and critique what they see that may be inappropriate when speaking to a litigant.[22] Communication specialists can also point out word usage that may be too sophisticated or unclear to litigants. If budgetary constraints make it difficult to bring in a communication specialist, a graduate student in the field might be a good option. The National Judicial College in Reno, Nevada, offers a webcast on communicating with self-represented litigants, which may be offered as an alternative.[23]

Most judges write like lawyers and many litigants do not understand legal writing. Reading levels vary among litigants, but generally the levels are not high enough to understand legal writing. In 2002, the National Center for Education Statistics reported that "between 40 to 44 million adults nationwide demonstrated skills in the lowest literacy rate defined," which is level 1.[24] This literacy level includes individuals who range from being able to "read relatively short pieces of text to find a single piece of information" to individuals who are unable to enter personal information onto a document or "locate the time of an event on a form."[25] This means that many litigants will fall way below the ability needed to understand legalese. Therefore, plain writing is essential to written communication with self-represented litigants. Experts even urge plain writing when communicating with lawyers.[26] Getting judges to give up a style of writing that they have tried to per-

fect for years, both as lawyers and on the bench, is no easy task. To reach almost all litigants, written decisions, rules and materials would have to be written on a 5th grade reading level.

It can be helpful for judges to remember that they use a special vocabulary by reminding them of the experience of working with a professional in a different field, such as a physician, or of trying to communicate with a computer technician about a software problem. Most fields have developed shorthand to communicate with other experts, but it is seldom effective with non-professionals.

One helpful exercise to illustrate the complexity of legal writing is to show judges a decision written first in legal writing, and then rewritten by a plain language specialist. Examples include can be found at http://www.transcend.net/at/proof.html and http://www.transcend.net/at/exempt.html. Judges can also be given a writing exercise involving writing in plain language. The writing can then be assessed for reading level. Judges can also be shown how to use the feature contained in most word processing programs to identify the grade level of the writing. Group exercises can include trying to explain legal concepts to others using plain language and sharing ideas on how to do that most effectively.

Suggestions for Educating Judges on Plain and Effective Communication

1. Film each judge role-playing and then review with the judge
2. Review a video of an actor playing a judge and have judges or a communication expert critique the judge's communication with the litigant
3. Use a communication specialist to assist with communication exercises, or use a graduate student in communication studies
4. Use webcasts from the National Judicial College
5. Engage judges in plain writing exercises
6. Provide judges with materials or books on plain writing[27]

OVERCOMING JUDGES' CONCERNS ABOUT ETHICAL ISSUES IN SELF-REPRESENTED LITIGANTS' CASES THROUGH EDUCATION

Many judges have indicated to me that they have not or will not change course in their courtrooms and courthouses because of the belief that judicial ethics will not permit change. Judges may be concerned that they may face judicial ethics complaints, or be challenged when facing reappointment, reelection or promotion, if they extend greater deference to or appear to be favoring the self-represented. Although constrained by the ethical obligations of their profession, judges must also ensure their courts fulfill the promise of equal justice for all. To ensure self-represented litigants equal access to justice, judges may need to take an active but neutral role in settlements, hearings and trials. In some jurisdictions, there is emerging caselaw affirming that judges should be more proactive in asking self-represented litigants pertinent questions to get the facts they need to decide cases on the merits. Judges can enhance the experience of the self-represented in a variety of ways without compromising their neutrality by directing litigants to legal assistance resources, explaining elements of cases and procedures, construing pleadings liberally and allowing liberal amendments, and asking questions to elicit facts and clarify evidence.[28] Judges may resist suggestions of change. The perception that steps to assist the self-represented litigant are non-neutral and unethical can be ingrained not only in one judge in a jurisdiction, but in numerous judges. In this regard, local judicial administrators and judicial ethics educators may need to be the instruments of change.

Ethics experts have addressed the issue of the judicial role when dealing with self-represented litigants. Generally, there is support for the position that judges may play an active role in ensuring access to justice for self-represented litigants in settlements and trials or hearings.[29] Judges should be educated and assured of what judicial ethics codes and decisions or opinions allow them to do in their courtrooms with regard to self-represented litigants. Judges are best assured by hearing from experts in ethics. In New York, an entire afternoon in 2008 was devoted in the summer judicial education seminars to self-represented litigant topics. Two law professors addressed judicial ethics as part of that program.

In thinking about who should give these presentations, courts may want to make sure that the presenters understand the issues facing trial court judges with

self-represented litigants. For law professors, trial court judges who are in complex civil areas, or many appellate justices, the issues often seem remote and they may not have thought beyond the standard adage that people acting as their own attorneys are held to the same standard as attorneys. It is clear in review of case law on this point that there is tremendous judicial discretion in this area and that issues of fairness and access to the court generally dictate that appellate courts will support judges in efforts to get the information they need to make a decision on the merits of the case. The suggestions in the box below may assist in addressing the ethical concerns of judges.

Suggestions for Addressing the Judicial Ethics Concerns of Judges

1. Ask ethics experts who are sensitive to these issues to provide lectures and articles to judges
2. Ask for advisory opinions from ethics commissions or advisory bodies on unsettled issues
3. Develop videos of actors role-playing scenarios that raise ethical issues
4. Distribute *Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers*, which has an ethics section[30]
5. Distribute *Reaching Out or Overreaching*, which is focused on these ethical issues and potential solutions[31]
6. Give judges an opportunity to have a conversation about different scenarios with ethical experts present
7. Use Judicial Curriculum developed for Conference at Harvard on ethics issues[32]

PROVIDING JUDGES GUIDELINES AND SUGGESTIONS ON LAW AND PROCEDURE AFFECTING SELF-REPRESENTED LITIGANTS

Supervising judges walk a tenuous line both with court users and judges when addressing legal issues and court procedures affecting self-represented litigants.

Judicial administrators are responsible for implementing policies and directives in courthouses. They are also charged with facilitating other systemic changes and with guiding judges. Often change is not popular, particularly if those arguing for one side of an issue are perceived as the beneficiaries. For example, in New York, changes in the Housing Court were perceived by some property owners and their attorneys as benefiting self-represented tenants. The same was true when changes were made with the handling of default judgments in consumer credit cases.[33] An attorney representing debt collection agencies complained to me that it was unfair that we were implementing new policies to assist self-represented litigants. The attorney complained that he paid good money for his legal education and that litigants should either go to law school or get an attorney. Local judicial administrators who have the support of their chief judges will find it easier to implement systemic changes. Convincing supervising judges of their role in encouraging trial judges to implement change is crucial to making major change in court systems. Educating judicial administrators should be continued on the national level through forums that allow judges and administrators to communicate with one another on common issues and concerns. Jurisdictions can learn from each other and find support for making change through efforts that are occurring nationally.[34]

Supervising judges and administrators must encourage change in judges under their watch so that laws are enforced and procedures are adopted that will assist self-represented litigants to achieve just outcomes. This effort has to be accomplished without overstepping the boundaries of judicial independence. Supervising judges and administrators typically do not have much authority to enforce policies unpopular with the judges they supervise. They do not have the same enforcement abilities as supervisors in other professions.[35] Therefore, supervising judges must effect change through creative and persuasive leadership. All of the tools and resources discussed in this chapter should be considered. If one effort does not seem to work, another avenue should be tried.

As an initial matter, ensuring that judges take an active role in applying laws in cases involving unknowledgeable self-represented litigants is the most sensitive area in which to effect change. Judicial interpretation of laws and case law will vary. Judges must be free to interpret laws independently and should not be directed on interpretation. Encouraging judges to ensure that self-represented litigants have access to understanding what laws affect their cases, and what they have to prove in order to prevail, does not infringe on a judge's interpretation of the

law. In this respect, it may be effective to persuade judges to start cases with explanations to all parties on what each must prove to prevail.[36] In some instances, when judges are overlooking laws or case law, advising judges on prevailing law and case law can be appropriate.[37] Self-represented litigants are most often unable to present the law in their cases. Attorneys for adversaries of self-represented litigants may not be forthcoming on laws or case law that has a negative impact on their cases. Therefore, sometimes judges are not aware of legal developments in an area of law. Regardless of circumstance, it is inappropriate for any supervising judge to direct a judge on legal issues. Here, discussion and advice are the only methods available to supervisors to encourage judges on substantive legal issues. Judicial seminars or discussion groups can provide opportunities to discuss laws and case law with judges. Some jurisdictions have adopted or issued advisory notices on law or case law developments. Others provide broadcast updates on changes in the law, and encourage email updates by judges to their colleagues.[38]

Suggestions for Encouraging Supervisory and Trial Judges to Enforce Laws and Implement Procedural Changes Affecting Self-Represented Litigants

1. Ensure that supervising judges maintain communication with other court systems and stay in tune with national developments. Supervising judges should be encouraged to attend national conferences, join national list-servs, and utilize informational websites
2. Supervising judges should receive training in self-represented litigant issues and leadership skills on influencing those that they supervise[40]
3. Encourage trial judges to enforce laws and make procedural changes through discussion groups and seminars
4. Issue information, guidelines or advisory notices concerning laws, case law and courtroom procedures affecting self-represented litigants to trial judges

The second area requiring change in the handling of self-represented litigant cases involves courtroom procedures used by judges in settlements, hearings, and trials.[39] Many judges will consider suggestions on how they handle their cases as

an interference with their judicial independence. Since most suggestions of reform in courtroom procedures are not just ministerial, supervising judges cannot mandate the necessary changes. Advisory notices and/or suggested guidelines can be useful to encourage change. In New York, Housing and Civil Court judges were advised to review and explain court agreements to ensure that self-represented litigants understand what they sign, but also to ensure that their claims and defenses are addressed.[41] Massachusetts issued guidelines for judges on conducting hearings involving self-represented litigants.[42] A few other jurisdictions have also adopted guidelines.[43] Again, leadership through education and persuasion is required to get judges on board.

METHODS, TOOLS AND RESOURCES AVAILABLE TO EDUCATE JUDGES ON SELF-REPRESENTED ISSUES

There are many methods available to educate judges on self-represented litigant issues. One or more methods may be useful in conveying ideas and suggestions to judges. For many judges, self-represented litigant issues are not perceived as important, or are considered too warm and fuzzy for judicial consideration. Supervisory and judicial educators have to be creative and flexible in their approach to tackling this area. While written materials should be used, reliance on written communication alone will not ensure that judges have bought into the concepts. Judges have to first be interested in the topic and also feel that they will not be alone in making changes in their approaches to self-represented litigants' cases. Educating judges in group settings allows for the exchange of experiences and ideas. In group settings, judges can hear from others what they are doing in their courtrooms. Interactive exercises maintain interest and engage judges in the topic.[44] Finally, all state courts are overwhelmed with cases, leaving judges little time to participate in educational efforts. Therefore, education through technology can be useful. Below are suggestions for written educational materials, interactive exercises or activities, and education using technology. Also offered are suggestions of websites and conferences that may provide support for supervising judges in leading their courts in making needed change.

Written Educational Materials

Self-Represented Litigation Network Curriculum

The Self-Represented Litigant Network (SRLN) is a group of organizations dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are therefore forced to go to court on their own.[45] The SRLN has developed a curriculum to educate judges on self-represented litigant issues. That curriculum was showcased at a national conference held at Harvard Law School in November, 2007.[46] It was attended by judges from thirty states, the District of Columbia, the Commonwealth of Puerto Rico and one United States territory.

The program includes three curricula entitled:

1. Curriculum on Access to Justice in the Courtroom for the Self-Represented (short and long version)
2. Curriculum on Judicial Leadership in Access to Justice for the Self-Represented
3. Access to Justice in the Courtroom for the Self-Represented: An Introduction for Prospective Presenters and Organizers

These curricula can be used as is without making changes, or customized by each court system. Included in each curriculum are faculty notes, activity materials, resource materials and a video showing judges in the courtroom engaging self-represented litigants using best practices.

Wisconsin, California and New York are examples of states that have used the curricula. Wisconsin announced their intention to adopt the curricula shortly after the Harvard Leadership Conference.[47] Wisconsin has indicated that parts of each curriculum have been used and are well-received by judges. Support for the use of the curricula and all efforts in the self-represented area emanates from the very top in Wisconsin, Chief Justice Shirley S. Abrahamson.[48]

In New York, the curricula were adapted into a program used for training at three separate summer seminars offered to judges. Almost a full day was devoted

to self-represented litigant issues. Other course offerings were kept to a minimum to encourage attendance. In the morning, a keynote speaker addressed the judges, followed by a presentation by a law professor on ethical issues involving self-represented litigants. Judges were broken into smaller groups where the SRLN curriculum including some of the videos and activities were used. Included in the afternoon was also a presentation on plain writing. The keynote speakers served to inspire the judges and to open their thinking. The discussions on ethics topics resolved some of the judges' concerns. Both the keynote speaker and the ethics discussion and presentation set the stage for the presentation of the course that followed. The small sessions were well attended, and participation was interactive. Parts of the curriculum have also been used to train judges' law clerks, who interact often with litigants.

The National Bench Guide

In 2007, the California Administrative Office of the Courts, Center for Children and Families produced a bench guide for judicial officers on handling self-represented cases.[49] The guide addresses numerous topics relating to self-represented litigants and provides sample scripts. The first of its kind, this bench guide served as the model for the national version, *Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers*,[50] which was developed by Richard Zorza, of Zorza Associates, and a leader on self-represented litigant issues, the Self-Represented Litigant Network, the National Judicial College, the National Center for State Courts and the American Judicature Society.[51] The National Bench Guide provides tools and techniques for judges in dealing with self-represented litigants. The guide is generic and able to be used in any jurisdiction, but can be supplemented with information specific to a jurisdiction by each state. In New York, the guide was distributed to judges statewide. Based on comments, some sections are being updated to include New York Law.[52] Similarly, in Montana the National Bench Guide was adapted to the state's needs by adding Montanan information throughout the guide.[53]

Some jurisdictions have experienced budget restrictions making it difficult to print the National Bench Guide.[54] The distribution of hard copies of the Bench Guide is optimum to ensure all judges have a copy. Offering a version online for judges is a cost-saving measure and will, at a minimum, reach judges who have an

interest in the subject.

Exercises and Activities

Using Technology to Educate

Most court systems are experiencing budget tightening, resulting in cutbacks on judicial training seminars. In addition, having judges travel to a training site can be time-consuming and takes away from the time that judges are in their courtrooms handling cases. By using online training programs, webinars, webcasts, or podcasts, expense and judicial time can be conserved. Judges can remain in their courthouses or at their desks in chambers to receive information.

Online training allows for the provision of an entire course of training online through a written presentation. Judges can be provided access to statutes and case law as part of the training. In addition, pop-up windows can be used to highlight aspects of the training that should be brought to a judge's attention.[55] Online training may be favored by judges who prefer to learn through written media. The use of this form of training makes it easier to offer a written course without the cost of distribution or copying. In addition, judges can choose a convenient time to take the training. The California courts have developed online training modules for judges on handling cases with self-represented litigants, as well as on substantive legal topics.

Webinar is the short for the term web-based seminars that allow information to be transmitted through the Internet. Seminars and presentations can be given using webinars. The webinar allows some limited interactive participation by participants.[56] New York has used the webinar format to introduce judges to new do-it-yourself interactive computer programs developed for self-represented litigants to assist them in filling out court forms and learning more about legal topics. During webinars, judges sit at their desks, and utilize their computers and a telephone.

Webcasts allow for the transmission of live or pre-recorded video via the Internet similar to a television. Universities are using this medium for online classes. This medium does not allow for interaction by participants.[57] However, arrangements can be made for participants to submit questions in advance or to transmit questions by email or fax to the presenters during live webcasts.

Organizations, Websites and Conferences that May Be Helpful to Supervising Judges and Judges

National Center For State Courts, www.NCSC.org, is an independent, nonprofit court improvement organization that works closely with the Conference of Chief Justices and the Conference of State Court Administrators. It serves as a clearinghouse for information, provides research, education, and consulting services for courts.

American Judicature Society, www.AJS.org, is a national non-partisan organization that is interested in the administration of justice. The organization seeks to maintain an independent court and to increase public understanding of the justice system.

American Bar Association Delivery of Legal Services Committee, www.abanet.org/legalservices/delivery/home.html, is devoted to access to justice issues involving moderate income individuals.

American Bar Association Standing Committee for Legal Aid and Indigent Defense "SCLAID," www.abanet.org/legalservices/sclaid/atjresourcecenter/atjmainpage.html, examines issues relating to the delivery of civil legal services to the poor, and criminal defense services to indigent persons.

Self-Represented Litigant Network, www.SRLN.org, is a grouping of organizations and working groups dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are therefore forced to go to court on their own. The Network brings together courts and access to justice organizations in support of innovations in services for the self represented.

SelfHelpSupport.org is a site that is designed to be a virtual meeting place for people involved with providing pro se assistance or directing pro se and self-help programs. Through the site, the members can access the over 2,000 documents in the virtual library, as well as take advantage of several groups or listservs, receive a monthly newsletter, and network with other professionals through their extensive roster, network calls, and webinars.

Equal Justice Conference is sponsored by the American Bar Association, www.abanet.org. The Equal Justice Conference focuses attention on the growing need for improving access to justice for all Americans and attracts lawyers, judges and advocates representing all aspects of the civil justice system.

California offers webcasts that can be accessed by judges when they have the time to watch.[58] New York uses video conferencing during lunchtime to offer judges seminars while they eat their lunch. These seminars, called "Lunch and Learn," are quite popular.

Podcasts allow for the transmission of digital files of audio or video via an iPod or similar digital MP3 player. Some universities are beginning to use this medium as a method of education. This medium may have potential to be used by court systems in the future.

CONCLUSION

The face of democracy is mirrored by the justice system. Lack of confidence in the justice system, when it does not respond to stressed unrepresented litigants with life-affecting cases, results in lack of trust in government. The justice system and court cultures must change to respond to the needs of the self-represented litigant. The path to change begins with judges who make policy for court systems and handle these cases. The time to address these critical issues is now.

APPENDIX

To access this chapter's appendix, go to http://www.afccnet.org/resources/resources_professionals.asp.

Appendix: Self-Represented Litigation Network Introduction to Judicial Education Curricula: Guide to Materials

NOTES

1. John T. Broderick Jr., State of New Hampshire, Supreme Court Chief Justice, Remarks to the National Association of Court Management (March 10, 2009) (transcript available at http://www.courts.state.nh.us/press/CJ-Brodericks-March-10-2009-speech-to-NACM.pdf).
2. See Jona Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers*, 1998 American Judicature Society. See also Dixon, Kathleen

and Little, Margaret, "Self-Help centers—The Approach of the Los Angeles Superior Court," supra at 51.

3. See Conference of State Court Administrators, *Position Paper on Self-Represented Litigants* (Aug. 2000), at http://cosca.ncsc.dni.us/WhitePapers/selfreplitigation.pdf.

4. See Conference of State Court Administrators, *Resolution 23*, at http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html.

5. See David B. Rottman, Ph. D., *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys, Part I: Findings and Recommendations*, 6 (2005), at http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf (providing that "African-Americans tend to perceive the highest levels of outcome unfairness for Latino/Hispanic Americans, African-Americans, and low-income people").

6. See John A. Martin et al., *Becoming a Culturally Competent Court, Part II* (Mar. 20, 2007), at http://www.courtinfo.ca.gov/programs/equalaccess/documents/selfrep07/FromFirst/CultComp.pdf (discussing why culture matters in becoming a culturally competent court).

7. http://www.nycourts.gov/ip/judicialinstitute/index.shtml.

8. The Neuroscience and Psychology of Decisionmaking: A New Way of Learning. http://www2.courtinfo.ca.gov/cjer/aoctv/dialogue/neuro/index.htm.

9. See Coalition on Human Needs, 2000-2007 *State-by-State Total Poverty Rates, American Community Survey* (Aug. 26, 2008), at http://www.chn.org/pdf/2008/ACStotalpov.pdf. See Food Research and Access Center, *Current News and Analyses* (2008), at http://www.frac.org/html/news/fsp/2008.05_FSP.htm (estimating that, "[f]or June 2008, the maximum food stamp allotment for a family of four was 8.5 percent or $46.20 short of the amount the government estimates is needed to purchase even the minimally adequate diet outlined in the Thrifty Food Plan market basket"); see also Food Research and Access Center, *Hunger in the U.S.* (Sept. 2008), at http://www.frac.org/pdf/hunger_resource.pdf (setting forth the definition of the "Thrifty Food Plan" as "the USDA's estimate of what it costs to purchase a minimally adequate diet" and "the basis for the amount of food stamp allotments").

10. See Donna M. Beegle, *Breaking Barriers: Concrete Communication Tools for Working With People in Poverty*, at http://www.nhchc.org/Com_tools_working%20w_%20pov.pdf.

11. See Donna M. Beegle, *Overcoming the Silence of Generational Poverty*, 15 Talking Points 1, at 17 (Oct./Nov. 2003).

12. Id.

13. See Communication Across Barriers, *Generational Poverty Skills*, at http://www.combarriers.com/SurvivalSkills.

14. See Stacy Vogel, Families in Generational Poverty Form Their Own Culture (August 25,

2008), at http://gazettextra.com/news/2008/aug/25/families-generational-poverty-form-their-own-cultu/.

15. See Donna Beegle, *Oral and Print: Two Distinct Communication/Learning Styles* (2006), at http://www.oregonread.org/Beegle/OralPrintHandoutforORA.pdf.

16. Id.

17. See Workplace Spanish for Judges: A look at the Language and Culture 2007, Workplace Spanish For Judges 2005, Commonwealth of Massachusetts Judicial Institute.

18. Some judges have never been to the communities their decisions affect or have had no exposure to diverse litigants.

19. For example, in the New York City Housing Court, a representative of a Muslim women's group spoke to the judges about how Muslim women uniquely experience the court.

20. The New York State Unified Court System invited Dr. Donna Beegle, an expert on the topic of poverty, to speak to judges about generational poverty and communication styles. Dr. Beegle's biography is available at http://www.combarriers.com/WomansJourney. Ruby K. Payne, Ph.D., author of *A Framework For Understanding Poverty* (4th ed., aha Process, Inc. 2005), is also a distinguished expert on poverty issues.

21. The New York City Housing Court sponsored a poverty simulation for 50 judges and their law clerks, using a program called the Community Action Poverty Simulation (CAPS) developed by the Missouri Association for Community Action. The judges participated in role-play and experienced the lives of low income persons and families. Learn more about CAPS at http://www.communityaction.org/Poverty%20Simulation.aspx.

22. See Self-Represented Litigation Network, *Judicial Education Curriculum Project Report and Evaluation*, at http://www.selfhelpsupport.org/library/item.259761-Judicial_Education_Curriculum_Project_Report_and_Evaluation.

23. See http://www.judges.org/certificatedispute.html.

24. See National Center for Education Statistics, *Adult Literacy in America: A First Look at the Findings of the National Adult Literacy Survey* (April 2002), § I, at 16, at http://nces.ed.gov/pubs93/93275.pdf.

25. Id.

26. See Richard C. Wydick, *Plain English for Lawyers* (5th ed., Carolina Academic Press 2005).

27. As part of preparation for the bench, the New York State Unified Court System provides new judges with a copy of the book *Plain English for Lawyers* (See Wydick, supra note 26).

28. See Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants, American Judicature Society and State Institute* (2005), at http://ajs.org/prose/pdfs/Pro%20se%20litigants%20final.pdf. See also Self-Represented Litigation Network, *Handling Cases Involving Self-Represented Litigants: A National Bench Guide for Judges* (2008), at

http://www.selfhelpsupport.org/library/folder.223112-Documents_Created_by_the_SRLN, Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 Geo. J. Legal Ethics 423 (2004).

29. See Gray, supra note 28; See also New York County Lawyers' Association, *Best Practices For Judges In The Settlement And Trial Of Cases Involving Unrepresented Litigants in Housing Court* (Aug. 2008), at http://www.nycla.org/siteFiles/News/News59_2.pdf; see also Self-Represented Litigation Network, supra note 28.

30. Available at: http://www.courtinfo.ca.gov/reference/documents/benchguide_self_rep_litigants.pdf.

31. Available at: http://www.ajs.org/prose/pdfs/Pro%20se%20litigants%20final.pdf.

32. See this chapter's appendix at http://www.afccnet.org/resources/resources_professionals.asp for a summary of the Harvard curriculum.

33. See New York City Civil Court, *Civil Court Directive* (Dec. 24, 1997), at http://www.courts.state.ny.us/courts/nyc/civil/directives/DRP/drp150.pdf; See also New York City Civil Court, *Directive and Procedures* DRP-182 (May 13, 2009), at http://www.nycourts.gov/courts/nyc/civil/directives/DRP/drp182.pdf; 22 NYCRR § 208.42 (i). In New York City Housing Court, 90% or more of tenants are self-represented. Conversely, more than 80% of owners are represented. Similarly, more than 98% of consumers in consumer debt case are self-represented, while all of the plaintiff debt collectors are represented.

34. See Self-Represented Litigation Network, supra note 22.

35. In some court systems, non-judicial personnel handles judicial education, making effectuating change by judges on legal issues and procedures even more sensitive.

36. See Gray, supra note 28.

37. See New York City Civil Court, *Advisory Notices*, at http://www.nycourts.gov/courts/nyc/civil/directives.shtml#advisorynotices (addressing topics, including allocutions of stipulations in landlord tenant cases, settlements in proceeding involving a Guardian Ad Litem, default judgments in proceeding involving a Guardian Ad Litem and consumer debt cases).

38. Id.

39. See Gray, supra note 28; See also New York County Lawyers' Association, supra note 29; Self-Represented Litigation Network, supra note 28.

40. Civil Court of the City of New York, *Advisory Notice AN-1* (April 6, 2007), at http://www.courts.state.ny.us/courts/nyc/civil/directives/AN/allocutions.pdf.

41. The Massachusetts Court System Judicial Institute, *Judicial Guidelines for Hearing Involving Self-Represented Litigants* (Aug. 2006), at http://www.mass.gov/courts/admin/ji/judguideselfrep_intro.html.

42. Idaho, Minnesota, and Iowa have adopted guidelines for judges. Kansas intends to issue guidelines. See Susan Valdez, *Addressing the Pro Se Litigant Challenge in Kansas State Courts*, The Journal of the Kansas Bar, at 25 (April 2009).

43. See Self-Represented Litigation Network, supra note 22.

44. The training sessions for new judges of the New York State Unified Court System involve an exercise designed to open up discussion about self-represented issues. One group of judges receives a question with an answer code that assists in determining the answer. Another group of judges receives just the same question without the answer code. The judges are then instructed to raise their hands when they obtain the answer. The group with the answer code raise their hands within minutes, while the other half of the room is unable to figure out the answer. When told that the other side had an answer code, judges without fail indicate that the game is not fair. The session is then opened with me welcoming the judges into the world of the self-represented litigant in which most often the adversary in the case has an attorney who knows the rules and the non-attorney litigant does not. The exercise begins to challenge judges' feelings about justice received by litigants who do not have lawyers.

45. SRLN is hosted by the National Center for State Courts. The website is www.SRLN.org.

46. See Self-Represented Litigation Network, supra note 22, at 1.

47. http://wicourts.gov/news/thirdbranch/current/prose3.htm.

48. Email from Ann Zimmerman, State Pro Se Coordinator, State of Wisconsin Supreme Court, to Emily Morales, Deputy Chief Counsel to the Deputy Chief Administrative Judge of the New York City Courts, (Feb. 23, 2010, 12:10:00 EST) (on file with the author).

49. Judicial Council of California/Administrative Office of Courts, *Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers* (January 2007), at http://www.nlada.org/DMS/Documents/1176151729.08/CA%20pro%20se%20Benchbook.pdf.

50. http://www.selfhelpsupport.org/library/folder.42614-Curriculum_Training_Materials.

51. Self-Represented Litigation Network, supra note 28.

52. There was particular concern that the ethics section reflect New York developments.

53. Email from Beth McLaughlin, Court Services Director, The State of Montana, to Emily Morales, Deputy Chief Counsel to the Deputy Chief Administrative Judge of the New York City Courts, (Feb. 26, 2010, 11:25:00 EST) (on file with author).

54. Some jurisdictions indicated this difficulty in conversations or emails with author.

55. For examples of online training, visit http://www2.courtinfo.ca.gov/protem/index.htm.

56. To learn more about webinars, visit http://www.webopedia.com/term/w/webinar.html.

57. To learn more about webcasts, visit http://www.webopedia.com/TERM/W/Webcast.html.

58. To view a California webcast, visit http://www2.courtinfo.ca.gov/cjer/aoctv/dialogue/neuro/index.htm.

CHAPTER 6

KEEPING IT REAL WITH SELF-REPRESENTED LITIGANTS: ONTARIO'S APPROACH TO CASE MANAGEMENT IN FAMILY COURT

Mr. Justice Harvey Brownstone[1]

INTRODUCTION

In recent years, family courts throughout North America have become inundated with self-represented litigants attempting to represent themselves in emotionally-charged disputes with their ex-partners over custody, access, support and property issues. Because most self-represented litigants are unfamiliar with their substantive rights and obligations, as well as the rules of procedure and laws of evidence, their cases can take longer to resolve. Without the assistance of an attorney serving as a skilled intermediary and counsellor, they frequently find it difficult to negotiate with each other in a realistic, child-focused and fair-minded way. Consequently, their cases can become more "high conflict" than those involving lawyers. In large, high-volume courts with high numbers of self-represented litigants, it has become essential to develop and implement effective case management strategies in order to prevent the accruing of huge backlogs.

Effective case management uses a strategic combination of the following opera-

tional factors: (1) practical rules of procedure that equip judges to make decisions how and when they need to be made; (2) allocation of court staff and judicial resources, and organization of support services, in such a way as to maximize the opportunities for settlement; and (3) establishing a "make something happen at every court appearance" culture to minimize and hopefully eliminate wastage of valuable court time. This formula is not only remarkably effective in cases with self-represented litigants, it is beneficial in *every* family law case, whether or not the parties are represented, since it assists children by helping parents to resolve their conflicts as quickly as possible.[2]

While the success of the case management strategy advocated in this article is due in large part to the Ontario Family Law Rules, which apply to all family cases in all Ontario courts, not every court in Ontario is utilizing all of the practices described in this article. Ontario is an immense, vastly diverse province comprised of large urban centers, mid-size cities and towns, and extremely remote rural areas that are barely navigable at certain times of the year. Some judges preside only in family court and others hear a variety of different cases in civil and criminal law in addition to family law cases. It may not be possible, or even desirable, to design one model of family justice service delivery capable of meeting the needs of every community in every locality. Family courts everywhere do their best to devise caseflow management policies and processes that are responsive to the needs of their users, within the practical limitations imposed by geography, available resources and local culture. The suggestions in this article are likely most applicable to other court locations trying to respond effectively to high numbers of self-represented litigants.

THE ONTARIO FAMILY LAW RULES

Primary Objective

There can be no question that the single most important factor enabling Ontario family court judges to manage their heavy caseloads in a practical and efficient way is the exquisitely progressive set of procedural rules contained in the Ontario Family Law Rules.[3] The Rules provide a procedural framework that facilitates the efficient resolution of disputes at the earliest possible opportunity, by focusing

valuable court time on the substantive issues in a way that best meets the needs of the parties and especially their children.

The primary objective of the Rules is to enable the court to "deal with cases justly,"[4] and it is the responsibility of the court, the parties and their lawyers to promote this primary objective at every step of the proceedings.[5] Dealing with a case justly includes:

a) ensuring that the procedure is fair to all parties;

b) saving expense and time;

c) dealing with the case in ways that are appropriate to its importance and complexity; and

d) giving appropriate court resources to the case while taking account of the need to give resources to other cases.[6]

The court is required to promote the primary objective by active case management of cases, which includes:

a) at an early stage, identifying the issues, and separating and disposing of those that do not need full investigation and trial;

b) encouraging and facilitating use of alternatives to the court process;

c) helping the parties to settle all or part of the case;

d) setting timetables or otherwise controlling the progress of the case;

e) considering whether the likely benefits of taking a step justify the cost;

f) dealing with as many aspects of the case as possible on the same occasion; and

g) if appropriate, dealing with the case without parties and their lawyers needing to come to court, on the basis of written documents or by holding a telephone or video conference.[7]

The above provisions set the tone for the conduct of family court litigation in Ontario, and provide a results-oriented, common sense philosophy for resolution of family law disputes. What this means in practical terms is that procedural

issues should be resolved in such a way as to allow family law disputes to be resolved in a fair, but expeditious, manner.[8] Judges frequently refer to the primary objective to justify procedural decisions, such as: eliminating unnecessary steps in a case;[9] adding appropriate steps in a case to facilitate conflict resolution;[10] ordering that two related cases be heard one after the other;[11] refusing to allow someone to be added as a party;[12] fashioning disclosure orders in such a way as to save time and expense in child protection cases where the child protection agency's files are voluminous.[13] The primary objective is also invoked to rectify procedural irregularities with minimum cost and inconvenience.[14] Simply put, family court judges should ensure that the cost of every procedural step in a case does not outweigh the benefits,[15] and that wherever possible, cases should move forward on their merits and not be delayed or complicated by insignificant procedural irregularities.[16]

The primary objective also means that not every case needs or deserves an unlimited trial. Many disputes are simply not important or complex enough to justify the time, expense and stress (to the parties and the system) of allocating several days (or more) of scarce court time in order to be resolved. Discretion must be exercised by the court to send to trial only those cases that warrant the expenditure of those resources.[17] Often a brief summary hearing, with appropriate procedural safeguards to ensure fairness to all, will be sufficient to dispose of an issue. Both the parties and their lawyers have a duty to comply with the prime objective. Litigation should be proportionate to the importance and the complexity of the case. The procedure to be followed will be tailored to the needs of the case, and must of course be determined on a case-by-case basis.[18]

Sometimes the court will refuse to entertain a dispute because it is simply too trivial. For example, in one case the court dismissed an application regarding ownership of a dog on the basis that the case was a waste of time.[19] Similarly, motions disputing the possession and disposition of household contents should be discouraged, as the cost of the proceeding often outweighs the value of the contents in issue.[20]

Even if a trial is being held, the primary objective has been used to require parties (especially child protection agencies) to present their evidence in chief by way of affidavit rather than have social workers give lengthy oral testimony.[21] The primary objective has also been invoked to limit the duration of trials that are dragging on by imposing strict time limitations on cross-examinations. Sometimes

people forget that court proceedings come at a large cost to society, as well as the parties, and a court room should not be allowed to become a litigant's personal playroom.[22]

Active Case Management

The concept of "active case management," which was introduced when the Rules came into effect in 1999, constituted a major shift from the previous practice of allowing the parties to dictate how and when a case should proceed. In an active case management system, the judge takes control of the proceedings, and conducts case conferences, motions, settlement conferences and trial management conferences,[23] all with a view to identifying, narrowing and resolving the issues without the necessity of hearing costly and contentious motions. In fact, with the exception of child protection cases,[24] it is mandatory that a case conference be held before a motion can be heard,[25] unless the moving party can establish a situation of urgency or hardship.[26] Early intervention by a judge can often resolve interlocutory and even final issues without formal motions and the consequent affidavit wars, which so often set parents up to remain bitter enemies for life.

The purposes of a case conference include:

a) exploring the chances of settling the case;

b) identifying the issues that are in dispute and those that are not in dispute;

c) exploring ways to resolve the issues that are in dispute;

d) ensuring disclosure of the relevant evidence;

d.1) identifying any issues relating to any expert evidence or reports on which the parties intend to rely at trial;

e) noting admissions that may simplify the case;

f) setting the date for the next step in the case;

g) setting a specific timetable for the steps to be taken in the case before it comes to trial;

h) organizing a settlement conference, or holding one if appropriate; and

i) giving directions with respect to any intended motion, including the preparation of a specific timetable for the exchange of material for the motion and ordering the filing of summaries of argument, if appropriate.[27]

The purposes of a settlement conference include:

a) exploring the chances of settling the case;

b) settling or narrowing the issues in dispute;

c) ensuring disclosure of the relevant evidence;

c.1) settling or narrowing any issues relating to any expert evidence or reports on which the parties intend to rely at trial;

d) noting admissions that may simplify the case;

e) if possible, obtaining a view of how the court might decide the case;

f) considering any other matter that may help in a quick and just conclusion of the case;

g) if the case is not settled, identifying the witnesses and other evidence to be presented at trial, estimating the time needed for trial and scheduling the case for trial; and

h) organizing a trial management conference, or holding one if appropriate.[28]

The purposes of a trial management conference include:

a) exploring the chances of settling a case;

b) arranging to receive evidence by a written report, an agreed statement of facts, an affidavit or another method, if appropriate;

c) deciding how the trial will proceed;

c.1) exploring the use of expert evidence or reports at trial, including the timing requirements for service and filing of experts' reports;

d) ensuring that the parties know what witnesses will testify and what other evidence will be presented at trial;

e) estimating the time needed for trial; and

f) setting the trial date, if this has not already been done.[29]

Ideally, there should be a case management judge assigned to each case at the time the file is opened, and the parties should appear before the same judge every time they come to court.[30] A different judge should adjudicate the matter if a contested hearing will be held following a settlement conference at which the case management judge has already expressed an opinion on the likely outcome of the case.[31] However, in many court locations the unfortunate realities of judicial scheduling do not permit a "one family, one judge" case management system. Nevertheless, the concept of active case management still applies: judges make every effort to identify and resolve issues in a fair, but expeditious, manner. This not only makes sense for unrepresented litigants; it makes sense for every litigant. The case conferencing system gives the parties direct input into the process and provides a form of mandatory conciliation. Judges are expected to identify the issues in dispute and ensure that only those issues that need further processing move forward. Judges also encourage and facilitate the use of alternative dispute resolution.[32]

Making Orders Without a Trial

Orders at Case Conferences

One of the most innovative and revolutionary tools available to Ontario family court judges is the power to make meaningful orders at case conferences, settlement conferences and trial management conferences. At a conference, the judge may, if it is appropriate to do so:

a) make an order for document disclosure, examinations for discovery or filing of summaries of argument on a motion, setting the times for events in the case or giving directions for the next step or steps in the case;

a.0.1) make an order respecting the use of expert witness evidence at trial or the service and filing of experts' reports;

a.1) order that the evidence of a witness at trial be given by affidavit;

b) if notice has been served, make a temporary or final order;

c) make an unopposed order or an order on consent; and

d) on consent, refer any issue for alternative dispute resolution.[33]

The power to make not only procedural orders, but also substantive[34] temporary or final orders (see item b in paragraph above), is immensely useful in managing cases with self-represented litigants; an entire layer of time-consuming litigation—motions—is eliminated in many cases. Of course, the rules of fairness apply and parties must comply with the notice requirement. A party seeking to have an order made at a conference must give the other party fair and adequate notice that the order will be sought at the next court appearance, so the responding party can fully respond.[35] Usually the notice takes the form of a case conference brief, which is a prescribed form under the rules,[36] but it is also possible to give notice by way of a letter, or by making it clear at a court appearance that the order will be sought on the next court date. Sometimes the judge is the one who notifies the parties by way of court order that one or more specific issues (for example, temporary or final custody, access or child support) will be resolved at the next court appearance. In such cases, both parties have been put on notice that on the next court date they should come to court prepared to give the judge all of the evidence and submissions necessary for the court to make a substantive temporary or final order.[37]

What evidence does the court rely on to make substantive orders at case conferences? Judges rely on sworn financial statements and attached financial disclosure, as well as affidavits; these may have been filed by the parties with the application[38] or in support of emergency motions, which may have been brought prior to the case conference. In many cases, the judge relies on admissions made by the parties in their written pleadings, case conference briefs, or oral submissions at the case conference. One thing is clear: it can only be "appropriate" to make an order at a case conference if the court has sufficient evidence before it to justify such an order.[39] Usually the types of orders that are made at case conferences are temporary custody, access, support and restraining orders where the facts are simple and not seriously in dispute. Where there are significant facts or issues in dispute, and the evidence available at the case conference is so conflicting that a court could not

reasonably make the necessary findings to support a substantive order, then no substantive order should be made.

It should be clearly understood that the authority to make substantive orders at case conferences does not depend on the consent of the parties. The Rule provides that if it is appropriate to do so (in other words, if the evidence clearly establishes that this is the order that would invariably be made if a motion were brought), and if proper advance notice has been given, then the court may make the order. However, not all judges agree that it is appropriate to make substantive orders at case conferences without the parties' consent. Many judges insist on proper motions being brought, supported by affidavit evidence. Others remain steadfastly committed to the concept of eliminating unnecessary litigation and simply "getting on with it" whenever possible, as this is generally what most litigants want. If the parties at the case conference have made it clear that the court would not be receiving any further evidence through a motion than what has already been presented at the case conference (and this is almost always the case), then it is not clear what the benefit is to the parties or the court in insisting that a motion be brought at some later date. Such postponement would leave the parties without a decision, engendering further expense, delay and stress to them before the issue is resolved in court.

Eliminating Unnecessary Court Appearances

In Ontario, it is not always necessary to attend court in person to get the work done. As pointed out above, one of the ways identified for judges to promote the primary objective is to, whenever possible, "deal with the case without parties and their lawyers needing to come to court, on the basis of written documents or by holding a telephone or videoconference."[40] The Rules contain provisions for the scheduling of such procedures.[41] Although few family courts have videoconferencing facilities at this time, the use of telephone conference calls has for many Ontario judges become a regular part of the way we do business, particularly in remote rural areas where it may be costly and inconvenient for the parties to travel long distances to attend court, especially for minor matters. However, many judges would not feel comfortable conducting telephone conference calls with self-represented litigants unless the calls were recorded, so that a transcript could be produced if necessary.

Another very useful way to avoid unnecessary court appearances is to allow the parties to resolve procedural, uncomplicated or unopposed matters by way of a paper process called a "Form 14B motion."[42] These motions are used to request substitutional service, orders dispensing with service, extensions of time to serve and file materials, or to obtain consent orders or adjournments on consent. Form 14B motions are filed at the court office or faxed to the court and given to the case management judge in chambers. The judge adjudicates on the motion on the basis of the written materials attached, and writes an endorsement, which is either faxed or mailed back to the parties—usually on the same day that the motion was received. In a busy urban court, each judge typically deals with at least ten Form 14B motions every day.

Summary Judgment

Another important power available to Ontario family court judges is the authority to make final orders (except a divorce[43]) without a trial, by way of "summary judgment," in any case where there is no genuine issue requiring a trial.[44] Summary judgment motions provide a just and expeditious procedure for the court to take a hard look at the merits of the case and identify and dispose, in whole or in part, of those matters that do not require a full hearing with oral testimony. The onus on the moving party is to satisfy the court that there is no genuine issue of material fact requiring a trial for its resolution. The responding party cannot just rest on mere allegations or bald denials; they must put their best foot forward, showing that there is a genuine issue for trial.[45] Not every disputed fact or question of credibility gives rise to a genuine issue for trial; the fact must be material.[46] The court may either dismiss the motion (if there is a genuine issue for trial), or grant the motion in whole (if there are no triable issues) or in part (if there are only certain issues requiring a trial), and give directions on how any triable issues are resolved.[47]

Summary judgment motions are most often brought in child protection cases. In the typical scenario, the child protection agency is seeking to terminate the parents' parental rights and the parents will not consent to such an order. The agency will bring a summary judgment motion to dispose of the case without a trial where the evidence supporting the order they are seeking is so strong as to make the outcome a virtual foregone conclusion. The phrase "no genuine issue"

has been equated with "no chance of success" or "plain and obvious that the action cannot succeed" or "manifestly devoid of merit."[48] As one judge wrote in an oft-quoted decision, "no genuine issue for trial exists where there is no realistic possibility of an outcome other than that as sought by the applicant."[49] Once the court has determined that there is no genuine issue requiring a trial, the court must grant summary judgment. The court does not have the option of ordering a trial because it would be therapeutic for the family or an airing of the issues would make the parties feel better.[50]

Managing Difficult Litigants

Unfortunately, some self-represented litigants can become problematic by reason of their lack of understanding of and failure to comply with procedural rules or court orders, or because they are excessively and inappropriately litigious due to the volatile and emotional nature of high conflict family disputes. The Ontario Family Law Rules provide judges with a plethora of tools to manage such situations efficiently and fairly, not only to protect parties who are victimized by such litigants, but also to ensure that precious court resources are not used inappropriately.

First and foremost, if a respondent in an application or change motion (in some jurisdictions called a variation or modification application) has not served and filed responding materials within the required time (usually 30 days), the respondent can be noted in default—which means that he or she has no further standing in the case—and the matter can proceed in the respondent's absence on an uncontested basis.[51]

Secondly, if a party fails to comply with the Rules or with any court order, the court may make any order that it considers necessary for a just determination of the matter, on any conditions that the court considers appropriate.[52] For example, if a party has failed to provide the required disclosure, his or her pleadings may be struck and the action can be dismissed or the proceeding may be disposed of on an uncontested basis.[53] It is even possible to impose similar sanctions against a party who has failed to comply with an interlocutory order in the proceedings, such as an order for temporary support.[54] This being said, it should be emphasized that an order striking pleadings should be a remedy of last resort that should only be uti-

lized in the clearest of cases involving serious and repeated violations of court orders.[55] In particular, in custody and access cases where the best interests of children are at stake, the court should be loathe to strike pleadings, because it is important and highly desirable to receive the best possible evidence and submissions of both parents so that the judge can make the most informed and best possible decision for the child.[56]

The Rules contain comprehensive provisions[57] granting judges the broadest possible discretion to make costs orders which foster three fundamental purposes: (1) to indemnify successful litigants for the cost of litigation; (2) to encourage settlements; and (3) to discourage and sanction inappropriate behaviour by litigants.[58] Of particular relevance to the self-represented is the court's wide discretion to order costs against parties who have acted unreasonably. For example, where a party's conduct or inaction has wasted the other party's (and the court's) time by not being adequately prepared for a conference—for example, by failing to serve a conference brief or to provide the required disclosure—the court is actually *required* to make a costs order against the offending party.[59] Judges routinely order costs against litigants who fail to comply with orders to provide financial disclosure.[60] Costs orders can be persuasive deterrents when judiciously imposed against litigants who "clearly delay and fail to make reasonable efforts to resolve" their cases.[61]

Sometimes litigants file documents that may delay or make it difficult to have a fair trial or that are inflammatory, a waste of time, a nuisance or an abuse of the court process. The Rules allow the court to strike all or part of such documents from the court record.[62] Some litigants bring repeated applications and motions seeking to persistently relitigate the same issues endlessly and without merit. The Ontario Superior Court has the statutory authority to prohibit "vexatious" litigants from commencing any proceedings without leave of the court.[63] However, all Ontario family courts have the authority to stay or dismiss a proceeding as an abuse of process.[64] In addition, if a party tries to delay a case or add to its costs or in any other way to abuse the court's process by making numerous motions without merit, the Rules allow the court to order the party not to make any other motions in the case without the court's permission.[65] Although depriving a litigant of the right to invoke the assistance of the court is a serious restriction of a basic right,[66] this sanction has been invoked in a number of cases involving unreasonably litigious self-represented litigants who persisted in raising the same issues over and

over again.[67] In one legendary reported case, the parties had been locked in a high-conflict custody and access dispute for almost a decade. The judge wrote, "The parties have gorged on court resources as if the legal system were their private banquet table; it must not happen again." He then made an order prohibiting *both* parties from commencing any further proceedings without leave of the court.[68]

In cases where the court has ordered a party to do something, and he or she has failed to comply, it may be appropriate (rather than imposing a blanket prohibition on commencing any further proceedings) to prohibit the party from taking any further steps in the case until they have complied with the order in question. A frequently recurring example is where a support payor is seeking to reduce the amount of child support but has failed to provide the required financial disclosure. A court can stay the payor's proceeding until such time as the disclosure order has been satisfied. Similar orders are often made where a party has failed to comply with a costs order[69] or failed to convey property to the other party.[70]

ALLOCATION OF COURT STAFF AND JUDICIAL RESOURCES

Even the best set of procedural rules in the world will only go so far if a court is not well-organized and well-run. A busy courthouse trying to respond to a high percentage of self-represented litigants must organize its intake and case management operations in such a way as to maximize the effectiveness of scarce resources—especially precious court time—while at the same time maximize the potential for settlement at every opportunity. From the moment that a litigant enters the court building, he or she should be steered towards the ultimate goal of resolving his or her case in the most expeditious and efficient way that meets the needs of the parties and their children. While every courthouse operates somewhat differently according to local needs, for the purpose of this article, the optimum model is proposed.

Family courts in Ontario have Family Law Information Centers (FLIC), which range in resourcing from a fully-staffed information counter in the larger urban courts to an unstaffed pamphlet rack in the smaller courts. The FLICs provide parents in conflict at the intake stage with information about Legal Aid, parenting

education programs, and alternative dispute resolution resources in the community. Legal Aid also provides free legal advice counsel at most courts to advise low income parents[71] of their rights and obligations even before a court case has been started. And in those cities that have a Faculty of Law,[72] there is a Pro Bono Students program in which second and third year law students assist self-represented litigants in filling out court forms and drafting affidavits.

Some Ontario courts have parent education programs available to explain the litigation process and alternative dispute resolution options, with a special emphasis on enlightening parents regarding the impact of parental conflict on their children. In some locations, on a pilot project basis, the parent education programs are mandatory, and so far the results of such programs are promising. In addition, some family courts have on-site free mediation services, where parents of all income levels in conflict can obtain assistance even without being referred by a judge—and in fact, even without having to commence a court case.

All applications and originating motions are submitted to a "first appearance clerk," who is a court employee, functioning as prescribed in the Rules[73] by checking the pleadings to:

a) confirm that all necessary documents have been served and filed;

b) refer the parties to sources of information about the court process, alternatives to court (including mediation), the effects of separation and divorce on children and community resources that may help the parties and their children;

c) schedule a case conference if all responding materials have been served and filed, and the case is "judge ready," schedule a case conference;

d) or, if no responding materials have been served and filed, send the case to a judge for an uncontested decision (which is made on the basis of a form completed by the applicant[74]).

The first appearance clerk adjourns the case him or herself until the pleadings are in order for the judge. Judges thus only deal with cases that are "judge ready," so that valuable court time is utilized for cases where a judge's input is both required and most beneficial to the parties.

The first appearance court is a crucial component in the success of a high vol-

ume court populated by large numbers of self-represented litigants. Legal Aid provides free duty counsel to assist low-income self-represented litigants[75] appearing before the first appearance clerk. Referrals to parent education programs and mediation services are made at the earliest opportunity by legal aid, the first appearance clerk and the staff at the Family Law Information desk. In one court using this model, in eighty percent of all cases the parties agreed to a procedural order (e.g. extending the time for serving and filing documents and/or an order for financial disclosure) and/or an order for temporary or final substantive relief (e.g. custody, access, support, restraining order). Moreover, in twenty-five percent of all cases, a final order is made on consent without the parties ever having to appear before a judge. The consents are drafted by the duty counsel and the court staff type and issue the orders. All of this is possible because a "culling" of the caseload occurs at the intake stage and at the very first appearance, long before the involvement of a judge is contemplated, so that those cases, that can be easily diverted and/or settled, can be identified and appropriately resolved by the duty counsel or mediation without the involvement of a judge. With these cases out of the way, the judges have time to devote to cases necessitating the exercise of judicial expertise and discretion, such as child protection matters, Hague Convention cases, mobility cases, contempt motions, support enforcement cases, and high conflict disputes.

CHANGING THE CULTURE

The final component in the formula is perhaps the most difficult to obtain, because it has to do with the judicial mindset and the courthouse culture among judges, staff and the lawyers who do business at the court. Everyone needs to embrace the concept that "every court appearance must achieve something."

Unfortunately, there are many courts where multiple court appearances occur for no reason and with no ascertainable result. In every family court case, there is usually at least one party who benefits from delays in the process if he or she has an interest in maintaining the status quo. Where parties are unrepresented, the risk of undue delay is high for two major reasons: (1) the parties are not familiar with the substantive law and procedural rules, and do not know how to make the case move forward in a meaningful way; and (2) the parties are often unable or

unwilling to communicate with each other, so no negotiations or progress in the case occurs between court appearances. This means that in many cases with self-represented litigants, all of the "business" in the case gets done at the courthouse, and often in the courtroom. This is a very expensive and time-consuming way for family law disputes to be resolved, so every effort should be made to accomplish as much as possible at each court appearance. After all, many litigants have to take a day away from work (often without pay) to attend court—and their employers are not usually willing to give them unlimited amounts of time off so they can litigate without end. We owe it to our litigants and their children to make every effort to resolve their disputes as efficiently and fairly as possible, with the least possible disruption to their lives. After all, what is the point in dragging out a child support case if the support payor ends up losing his or her job (and therefore can no longer pay support) because he or she could no longer continue to take time off work to attend court?

Hence, the "achieve something at every court appearance" approach is crucial. What does this mean in practical terms? Quite simply, no case should be unnecessarily adjourned. When a case is adjourned the parties should be given clear, explicit directions setting out what is to be accomplished by each person before the next court date (disclosure, assessments, etc.). Strict timelines should be established for the serving and filing of documentation and for the completion of every task that each party is to accomplish. Consequences should be identified—and actually imposed—for failure to adhere to these timelines, so that everyone knows what is expected of them and what is likely to happen if they fail to comply with court orders.

In addition, every court appearance should be seen by the judge, the parties and their lawyers (if they have them) as an opportunity to settle the case. A judge can explain that in his or her court, *every* court appearance is a settlement conference, whether called that or not. Even if the parties are attending court to deal with an isolated issue (for example, whether to order an assessment or to appoint counsel for a child), or a temporary issue (for example, how the children's Christmas school vacation will be divided between the parents), the judge should do what he or she can to get the parties to "look at the big picture" and try to find long term solutions to bring the underlying conflict to an end. At every court appearance, the parties can be asked what it would take for the case to be successfully resolved. The answer helps the judge assess, on an ongoing basis, how far

apart their positions are, and this invariably leads to an exploration of the possibilities for compromise. Most litigants do not enjoy coming to court and really do want the litigation to end. This is an important motivator in settlement discussions. No case is allowed to languish. Every case must be adjourned to a specific return date.

There can be no question that one of the most challenging and difficult aspects of family court adjudication is the fair and efficient management of cases involving self-represented litigants. However, this multi-faceted approach used in many Ontario family courts can go a long way towards providing meaningful and accessible family justice services for pro se litigants.

NOTES

1. Mr. Justice Harvey Brownstone appointed to the Ontario Court of Justice in 1995, and presides exclusively in Family Court at the North Toronto Family Court, in Toronto, Ontario, Canada. He is the author of *Tug of War: A Judge's Verdict on Separation, Custody Battles and the Bitter Realities of Family Court* (ECW Press, 2009), which is the first and only book by a sitting judge to become a national best seller. He is also the host of the first and only internet legal education show hosted by a sitting judge. The show is called *Family Matters* and can be seen free of charge at www.familymatterstv.com.
2. The opinions expressed herein are strictly my own, as I would not presume to speak on behalf of the Ontario Court of Justice, the Ontario Superior Court or any of my colleagues. That being said, I know that many judges share my perspective and deal with family law cases in the way being suggested here.
3. Ont. Reg. 114/99 as amended.
4. R.2(2).
5. R.2(4).
6. R.2(3).
7. R.2(5).
8. *Children's Aid Society of Toronto v. B.(S.)* (2002), 27 R.F.L.(5th) 299 (Ont.C.J.).
9. *Children's Aid Society of Hamilton-Wentworth v. R.(C.)* (2002), 27 R.F.L.(5th) 293 (Ont.S.C.).
10. *Baird v. Taylor*, [2000] O.J. No. 3980 (Ont.S.C.), additional reasons at [2000] O.J. No. 3981 (Ont.S.C.); *Children's Aid Society of Kingston & Frontenac County v. S.(J.M.)* (2004), 1 R.F.L.(6th) 56 (Ont.S.C.).

11. *Children's Aid Society of Niagara Region v. P.(D.)*, [2002] O.J. No. 4015 (Ont.S.C.) .
12. *Robinson v. Robinson*, 2001 CarswellOnt 2234 (Ont.Div.Ct.), additional reasons at 2001 CarswellOnt 2235 (Ont.Div.Ct.).
13. *Children's Aid Society of Peel Region v. K.(M.)* (2004), 5 R.F.L.(6th) 255 (Ont.C.J.).
14. *Huazarik v. Fairfield* (2004), 48 R.F.L.(5th) 275 (Ont.S.C.).
15. *Noik v. Noik* (2001), 14 R.F.L.(5th) 370 (Ont.S.C.).
16. *Carpenter v. Carpenter* (2000), 11 R.F.L.(5th) 281 (Ont.S.C.).
17. *Merko v. Merko* (2008), 50 R.F.L.(6th) 439 (Ont.C.J.).
18. *Figurado v. Figurado*, 2009 ONCJ 134 (Ont.C.J.).
19. *Warnica v. Gering*, [2005] O.J. No. 3655 (Ont.C.A.), additional reasons at (2007), 2007 CarswellOnt 673 (Ont.C.A.) .
20. *McLeod's Ontario Family Law Rules Annotated 2009*, by Vogelsang, Siegel and McSorley; Carswell, Toronto, 2009, p.83.
21. *Catholic Children's Aid Society of Toronto v. S.(S.)* (2008), 55 R.F.L.(6th) 460 (Ont.C.J.) at para. 5. Note that quite apart from the primary objective set out in R. 2, R. 23(20) allows a party to present evidence by way of affidavit at a trial if the parties consent, or if the witness is unavailable, or if the evidence is minor or uncontroversial, or "if it is in the interests of justice to do so." And, a judge at a case conference, settlement conference or trial management conference may, if it is appropriate to do so, order that the evidence of a witness at trial be given by affidavit: R.18(8)(a.1). This power has been upheld by appeal courts, which by and large have reaffirmed the trial court's right to control the conduct of a trial: *Kenora-Patricia Child & Family Services v. M.(A.)* (2004), 3 R.F.L.(6th) 368 (Ont.S.C.), affirmed (2004), 5 R.F.L.(6th) 96 (Ont.C.A.).
22. *F.(J.) v. C.(V.)*, 2000 CarswellOnt 2370 (Ont.S.C.); McLeod's Ontario Family Law Rules Annotated (2009), Carswell, p.80.
23. In some courts, the practice is for the case management judge to also conduct the trial management conference. In others, the trial management conference is conducted by the trial judge.
24. R.17(1.1).
25. R.14(4).
26. R.14(4.2).
27. R. 17(4).
28. R.17(5).
29. R.17(6).

30. R.39(5).

31. R.17(24).

32. *McLeod's Ontario Family Law Rules Annotated 2009*, Vogelsang, Siegel and McSorley; Carswell, Toronto, 2009, p.83.

33. R.17(8).

34. There is one reported decision in which the right to make substantive orders at case conferences is called into question, but the issue is not resolved: *Berry v. Ollerenshaw* (2003), 47 R.F.L.(5th) 254 (Ont.S.C.). In every other reported case reviewed, the issue was not whether substantive orders could be made, but rather, whether adequate prior notice had been given to the party against whom the order was made OR whether there was sufficient evidence before the court to make the order. See endnotes 33, 35 and 37.

35. *Robinson v. Morrison*, [2000] O.J. No. 2973 (Ont.S.C.); *Whelan v. Whelan* (2007), 43 R.F.L.(6th) 274 (Alta.C.A.); *Hoque v. Mahmud* (2007), 44 R.F.L.(6th) 159 (Ont.S.C.); *Tran v. Moussavi*, [2009] O.J. No. 430 (Ont.S.C.).

36. Forms all prescribed under R.l7.

37. *Merko v. Merko* (2008), 59 R.F.L.(6th) 439 (Ont.C.J).

38. In Ontario, every person seeking a custody or access order must serve and file a detailed affidavit setting out his or her parenting plan: R.35.1.

39. *Chern v. Chern* (2006), 22 R.F.L.(6th) 78 (Alta.C.A.).

40. R.2(5)(g).

41. R.14(8).

42. R.14(10).

43. R.16(2).

44. R.16(4).

45. *Children's Aid Society of Toronto v. T.(K.)*, [2000] O.J. No. 4736 (Ont.C.J.).

46. *Children's Aid Society of the Regional Municipality of Waterloo v. H.(T.L.)*, [2005] O.J. No. 2371 (Ont.C.J.).

47. R.16(9).

48. *Prete v. Ontario* (1993), 16 O.R.(3d) 161 (Ont.C.A.), leave to appeal refused (1994), 17 O.R.(3d) xvi (S.C.C.); K.(J.) v. B.(A.), [1996], O.J. No. 2641 (Ont.C.J.).

49. *Children's Aid Society of the Niagara Region v. C.(S.)*, [2008] O.J. No. 3969 (Ont.S.C.).

50. *Jewish Family and Child Service v. A.(R.)*, 2000 CarswellOnt 5169 (Ont.C.J.), affirmed [2001] O.J. No. 47 (Ont.S.C.).

51. R.10(5) and R.15(14).

52. R.1(8).

53. R.13(17), R.19(10).

54. R.14(23) and R.15(27). Note that it would not be appropriate to strike pleadings for failure to pay temporary child support in a case where the payor has shown an inability to pay for valid reasons: *Higgins v. Higgins*, [2006] O.J. No.3913 (Ont.C.A.). Where a temporary support order is filed for enforcement with the government support enforcement agency, and the payor's conduct has not rendered the support uncollectible, his failure to comply with a temporary support order does not justify striking his pleadings: *Dickinson v. Dickinson* (2008), 63 R.F.L.(6th) 104 (Ont.S.C.). Where pleadings have been struck by reason of a default in payment of temporary support, there has been a willingness on the part of appeal courts to give the payor one more chance by restoring his pleadings if the arrears are paid by a specific date: *Stein v. Stein*, [2003] O.J. No.2288 (Ont.C.A.).

55. *Giancoulas v. Aetna Life Insurance Co. of Canada*, 2002 CarswellOnt 1366 (Ont.C.A.); *Mader v. Hunter*, [2004] O.J. No.748 (Ont.C.A.); *Vogl v. Vogl*, 2007 ONCA 303 (Ont.C.A.); *Davis v. Morris*, [2006] O.J. No.1043 (Ont.C.A.).

56. *Sleiman v. Sleiman* (2002), 28 R.F.L.(5th) 447 (Ont.C.A.); *Murano v. Murano* (2002), 32 R.F.L.(5th) 410 (Ont.C.A.); *King v. Mongrain* (2009), 66 R.F.L.(6th) 267 (Ont.C.A.).

57. R.24, R.12(3) and (4), R.13(16), R.14(23(c), R.16(10), R.16(11), R.17(18)(a) and (b), R.19(10(5), R.26(7) and (8), R.18(14), (15) and (16).

58. *Fong v. Chan* (1999), 46 O.R.(3d) 330 (Ont.C.A.).

59. R.17(18).

60. R.13(16), R.14(23)(c), R.17(8)(a) and (b), R.19(10(5).

61. *Margie v. Akogyeram*, 2006 CarswellOnt 2399 (Ont.S.C.).

62. R.14(22) and R.15(27).

63. Courts of Justice Act, R.S.O. 1990, c.C.43 as amended, s.140.

64. Courts of Justice Act, R.S.O. 1009, c.C.43 as amended, s. 140(5).

65. R.14(21).

66. *Premi v. Khodeir*, 2008 ONCA 313 (Ont.C.A.).

67. *Church v. Church* (2003), 40 R.F.L.(5th) 43 (Ont.S.C.), additional reasons at (2003), 42 R.F.L.(5th) 35 (Ont.S.C.); *Read-Trottier v. Trottier*, 2000 CarswellOnt 5179 (Ont.S.C.); *Millard v. Cargoe*, 2004 CarswellOnt 962 (Ont.S.C.); *Spencer v. Scarlett*, 2005 ONCJ 300 (Ont.C.J.); *DuQuesnay v. Scrivens*, 2007 ONCJ 257 (Ont.C.J.); *Fish v. Leung*, 2006 ONCJ 112 (Ont.C.J.); *Spears v. Haugen*, 2007 ONCA 568 (Ont.C.A.).

68. *Geremia v. Harb* (No.5), [2008] O.J. No.1716 (Ont.S.C.).

69. *Opach v. Lesnik* (2006), 30 R.F.L.(6th) 459 (Ont.C.J.); *Walsh v. Walsh* (2006), 29 R.F.L.(6th) 164 (Ont.S.C.); *Gordon v. Starr* (2007), 42 R.F.L.(6th) 366 (Ont.S.C.); *Hargreaves v. Eidt*, 2005 ONCJ 105 (Ont.C.J.); *Opach v. Lesnik* (2006), 30 R.F.L.(6th) 459 (Ont.C.J.); S(S.) v. S.(M.), 2007 ONCJ 95 (Ont.C.J.); *Kardaras v. Kardaras*, 2008 ONCJ 493 (Ont.C.J.); *Susin v. Chapman*, 2004 CarswellOnt 143 (Ont.C.A.); *Laue v. Laue*, [1996] O.J. No.4224 (Ont.C.J.); *Amediku v. Amediku*, 2003 CarswellOnt 2947 (Ont.C.J.).

70. *Martin v. Martin* (2005), 20 R.F.L.(6th) 326 (Ont. S.C.).

71. Only persons satisfying a financial eligibility test—in other words, persons with relatively low income—are permitted to access this service.

72. Ottawa, London, Toronto, Windsor and Kingston.

73. R.39(5) or R.40(4), depending on which level of court the proceedings is occurring in.

74. Form 23C.

75. Only persons satisfying a financial eligibility test—in other words, persons with relatively low income—are permitted to access this service.

CONTRIBUTORS

Mr. Justice Harvey Brownstone was appointed to the Ontario Court of Justice in 1995, and presides exclusively in Family Court at the North Toronto Family Court, in Toronto, Ontario, Canada. He is the author of *Tug of War: A Judge's Verdict on Separation, Custody Battles and the Bitter Realities of Family Court* (ECW Press 2009), which is the first and only book by a sitting judge to become a national best seller. He is also the host of the first and only internet legal education show hosted by a sitting judge. The show is called *Family Matters* and can be seen free of charge at www.familymatterstv.com.

Wendy Bryans has been a lawyer with the Canadian Department of Justice in the area of family law policy for the past twenty years. She has worked on numerous bills that amended the federal Divorce Act. She is a former chair of the Federal-Provincial Committee on Family Law, board member of the Association of Family and Conciliation Courts and recipient of the Queen's Jubiliee Medal for leadership on family law policy within the Canadian government.

Kathleen Dixon serves as Managing Resource Attorney and Family Law Facilitator for the Los Angeles Superior Court. Leaving private practice after 25 years in family law, Ms. Dixon joined Los Angeles Superior Court in 2002 to focus on the development of collaborations for the Court with legal service providers, community organizations, and schools to leverage resources to expand and enhance services for self-represented litigants throughout Los Angeles County. Her work has included collaboration with three legal aid agencies to facilitate their operation of nine court-based self-help centers, and with these and other legal aid agencies to facilitate additional targeted partnership projects; co-creation of the JusticeCorps internship program in 2004 and its subsequent management in Los Angeles; and development and management of the Los Angeles Superior Court's three Resource Centers for Self-Represented Litigants. Since June 2008, management of the Family Law Facilitator Office has been added to these other responsibilities. Ms. Dixon has since led the Facilitator program into unification with the court's self-help program, and is increasing its collaboration with the legal aid self-help programs. Ms. Dixon has been a frequent presenter on JusticeCorps and self-help related topics in local, state and national venues.

Linda B. Fieldstone is Supervisor of Family Court Services of the 11th Judicial Circuit in Miami-Dade County Florida and a Florida Supreme Court Certified Family Mediator. She has worked with high-conflict families since 1990 within the court system as a parenting coordinator and was instrumental in the development of the parenting coordination program for the circuit. Ms. Fieldstone has provided numerous trainings regarding intervention with high conflict families and parenting coordination throughout the state and nationally. She served on the AFCC Task Force to develop *Guidelines for Parenting Coordination* and on two Florida Supreme Court committees on the subject. She is Past President of the Florida Chapter of the Association of Family and Conciliation Courts (AFCC) and serves as the current President of the Board of Directors of AFCC.

Honorable Fern A. Fisher serves as Deputy Chief Administrative Judge for New York City Courts and is also charged with state-wide responsibility for access to justice issues as the Director of the New York State Courts Access to Justice Program. Justice Fisher's career started in the Civil Court as a Legal Services attorney practicing in Manhattan Housing Court. Justice Fisher served as Deputy Director of Harlem Legal Services, Inc. and as an Assistant Attorney General of the New York State Department of Law. For four years, she provided pro bono legal services to Harlem-based community organizations as a project director of the National Conference of Black Lawyers. In 1989, she was appointed Judge of the Housing Part of the Civil Court, and in 1990 was elected to the Civil Court where she served as Deputy Supervising Judge. Justice Fisher was elected in 1993 to the Supreme Court of the State of New York, where she was assigned to the City and Matrimonial Parts. In December 1996, she was appointed Administrative Judge of the Civil Court of the City of New York, where she served until March 2009, at which time she was appointed to her current position. Justice Fisher contributes to the views from the bench in *Residential Landlord-Tenant Law in New York*, a practice guide by Lawyers Cooperative Publishing. She served as the host of a series of television shows on housing issues for Crosswalks, New York City's public service cable television network currently known as nyctv. Justice Fisher is a founding member of the Metropolitan Black Bar Association and is a member of Judicial Friends (an affiliate of the Judicial Council of the National Bar Association), the Association of the Bar of the City of New York and the New York County Lawyers' Association. Justice Fisher also served as the Chair of the Housing Court (Judges) Disciplinary Committee and Chair of the Anti-Bias Committee of the New York County Supreme Court. In 2006, she was the recipient of the Harvard Law School Gary Bellow Public Interest Award. She received her B.A. *summa cum laude*, Phi Beta Kappa in 1975 from Howard University, and a J.D. in 1978 from Harvard Law School.

Bonnie Rose Hough is the Managing Attorney for the California Administrative Office of the Court's (AOC) Center for Families, Children & the Courts, where she has been employed since 1997. The focus of her work is on helping courts meet the needs of self-represented litigants. She staffs the Shriver Civil Counsel Implementation Committee and the Task Force on Self-Represented Litigants. Her unit coordinates the California Courts Self-Help Website, which provides over 1,400 pages of legal and procedural information and referrals and has been translated into Spanish. She oversees five grant programs providing funding for legal services and court-based self-help programs. Ms. Hough also assists the Elkins Family Law Task Force and the Family and Juvenile Advisory Committee with family law forms, rules and procedures. Prior to joining the AOC, she was in private practice in family law. She was also a co-founder of the Family Law Center, a nonprofit legal services organization in Marin County, and served as its executive director for six years. Ms. Hough received a J.D. from Hastings College of the Law, an M.P.A. from San Francisco State University, and a B.A. from the University of California at Santa Cruz. She is a fellow with the Harvard Law School's Bellow-Sacks project.

Claudia Johnson is the Program Manager for LawHelp Interactive, a national initiative that provides online forms to low-income persons and their attorneys. Since 2005, LawHelp

Interactive has made available over one million easy-to-use interviews that help those without lawyers create complete legal documents. Prior to working at Pro Bono Net, Ms. Johnson was a member of the management team of Bay Area Legal Aid, CA. She created and led the Legal Advice Line, a multilingual team of attorneys using technology to provide on the spot legal advice in five languages. While at the Bar Association of San Francisco, Ms. Johnson was a Supervising Attorney overseeing all the intake and placement of pro bono cases. She supervised and trained the eviction defense panel and worked on self-help initiatives with other partners. She started her career in Philadelphia, Pennsylvania, as a Skadden Fellow, focusing on language access in the mandatory managed care context and she was a staff attorney and creator of the Language Access Project at Community Legal Services. Ms. Johnson resides in eastern Washington State.

Margaret Little has been the senior administrator for the Superior Court of Los Angeles County since 2003, and is currently the senior administrator for family law and probate. Her responsibilities include family law and probate operations in the Central District, domestic support, family court services and probate investigations, self-help programs, the family law facilitator office, and child waiting rooms. Dr. Little began her career at the Superior Court of Los Angeles County as a site researcher for a national study on divorce mediation in 1982 and began working for the court in 1986 as a child custody evaluator. She has also held the positions of division chief of the child custody evaluations office and manager of family court services.

Stacey Marz is the Director of the Alaska Court System's Family Law Self-Help Center. The Center provides legal information and forms to self-represented litigants across Alaska in family law cases. Ms. Marz also trains judicial officers and court staff on communicating effectively with self-represented litigants, writing for a low literacy audience, and how to provide legal information and not advice. She has presented on these issues at conferences at the local, state and national levels. She authored the self-help center curriculum for the Self-Representation Litigation Network's national conference for court administrators. Prior to working for the Alaska Court System, Ms. Marz was a staff attorney for Alaska Legal Services. She clerked for the Alaska Supreme Court from 1993-1995, after graduating from the University of Oregon School of Law.

Pamela Cardullo Ortiz is the Executive Director of the Maryland Access to Justice Commission. The Commission was appointed by Maryland Chief Judge Robert M. Bell in 2008 to enhance access to the civil justice system for all Marylanders. Ms. Ortiz staffs the Commission and its committees, and works with the state's many justice system partners to improve access to the courts and to justice for the indigent and those facing critical barriers. She has also served as an adjunct professor at the University of Baltimore, School of Law. Prior to assuming her current position, Ms. Ortiz served as the Executive Director for Family Administration at the Maryland Administrative Office of the Courts from 1999 to 2008. She served as the Family Law Administrator at the Circuit Court for Anne Arundel County from 1996 to 1999. She had a public interest law practice in domestic and juvenile cases prior to 1996, serving first with the Maryland Legal Aid Bureau, and later as the managing attorney for the Anne Arundel Bar

Foundation Pro Bono Program. Ms. Ortiz holds a law degree from Georgetown University, a master's degree from the University of Chicago, and a bachelor's degree from St. Mary's College of Maryland.

Robert Rubinson is Professor of Law and Director of Clinical Education at the University of Baltimore School of Law. Professor Rubinson graduated *summa cum laude* from Columbia University in 1984 and from New York University School of Law in 1988, where he was also previously a faculty member. Professor Rubinson focuses his scholarship and teaching on mediation and professional responsibility. His articles on mediation have addressed attorneys' role in counseling clients about mediation, how revisions to the Lawyers' Rules of Professional Ethics have had an impact on lawyers involved in mediation, the role mediation plays in redressing issues relating to access to justice, and protocols for screening domestic violence cases when referring cases to mediation. He teaches Mediation Skills, Family Mediation Seminar, ADR seminar, the Family Mediation Clinic, and Professional Responsibility. He is co-author of *Family Mediation: Theory and Practice*, which is the first law school text on family mediation. He has served as Reporter for the Maryland Court of Appeals Select Committee to Study the ABA Ethics 2000 Amendments. Prior to his academic appointments, Professor Rubinson practiced at Cahill Gordon & Reindel and the Legal Aid Society's Brooklyn Office for the Aging, both in New York.

ASSOCIATION OF FAMILY
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_____	*	IN THE
_____	*	
_____	*	CIRCUIT COURT
PLAINTIFF	*	
	*	FOR
V.	*	
_____	*	BALTIMORE CITY
_____	*	
_____	*	Case No.: _____
DEFENDANT	*	

* * * * * * * * * * * * *

PARENTING PLAN

I. GENERAL INFORMATION

This Parenting Plan sets forth all of the agreements that _____ and _____ reached concerning their child(ren) during mediation.

1.1 This Parenting Plan is:

[ ] A final parenting plan ordered by the court.

[ ] A temporary parenting plan.

1.2 This parenting plan applies to the following child(ren):

Name(s)	Birth date

II. AFFIRMATION

We, _____ and _____ affirm that we are the parents/legal guardians of the above-named child(ren) regardless of our marital status.

2.1 Voluntary Agreement

We enter into this agreement in order to better meet our responsibilities as parents and to safeguard our child(ren)'s future development and well being regardless of any conflicts that we may have. We recognize that the child(ren)'s welfare can best be served by our mutual cooperation as partners in parenting and by each of us providing a home in which our child(ren) are loved, and to which they belong – their mother's home and their father's home.

2.2 Good Faith

We agree that we have developed this parenting plan with the assistance of _____ _____, in good faith and on behalf of the best interest of our child(ren).

2.3 Type of Agreement

[ ] We acknowledge that this is a temporary agreement that is binding upon us and enforceable by either of us after it is submitted to the Court for approval and entered as an Order and signed by a Judge.

[ ] We acknowledge that this is our final agreement and that it will be binding upon us and enforceable by either of us after it is submitted to the Court for approval and entered as an Order and signed by a Judge.

2.4 Review of Mediation

The parties agree and understand that their mediators, _____ and _____, are neutral third parties and that we are responsible for all decisions reached in this mediation.

III. COMMUNICATION

3.1 Access to Information

[ ] Does not apply.

[ ] Both parents will have equal access to all information pertaining to the child(ren)'s:

[ ] Health care

[ ] Education

[ ] School events and extra-curricular activities

[ ] Other: _____

[ ] Each parent will be entitled to duplicate information from either the third party provider or the other parent, if the provider will not provide duplicate information pertaining to the child(ren)'s:

[ ] Health care

[ ] Education

[ ] School events and extra-curricular activities

[ ] Other: _____

[ ] Each parent may initiate contact with:

[ ] Heath care providers

[ ] Teacher and school personnel

[ ] Other: _____

[ ] Each parent shall provide any information regarding the child(ren) and/or his/her/their activities to the other parent immediately upon receipt of such information.3.2 Communication between Parents

[ ] Does not apply.

[ ] Each parent will keep the other informed of a current residential address, mailing address (if different), home and work telephone numbers (or other numbers at which the parent may be reached during the day or at night).

[ ] Both parties agree that if either has any knowledge of any illness, accident, incident or other circumstances seriously affecting the health and/or welfare of their child(ren), he/she will promptly notify the other of such circumstances.

[ ] All court related and financial discussions shall occur at a time when the child(ren) is/are not present. These discussions shall not occur at times of exchange of the child(ren) or during telephone visits with the child(ren).

[ ] The parents shall communicate with each other as follows:

[ ] Set schedule as follows: _____
_____
_____

[ ] Mother may communicate with Father by [ ]Phone [ ]Email [ ]Written

[ ] Father may communicate with Mother by [ ]Phone [ ]Email [ ]Written

3.3 Communication with the Children

[ ] Does not apply.

[ ] The parent with whom the child(ren) does (do) not reside shall have telephone access with the child(ren) as follows:

[ ] Set schedule as follows: _____

_____

_____

[ ] Parent may call child(ren) at any time.

[ ] Child(ren) may call parent at any time.

IV. RESIDENTIAL SCHEDULE

These provisions set forth where the child(ren) shall reside each day of the year and what contact the child(ren) shall have with each parent.

This parenting plan shall begin on the following date: _____

4.1 Pre-School Schedule

[ ] There are no children of preschool age.

[ ] Prior to enrollment in school, the child(ren) shall reside with

[ ] Mother [ ] Father, except for the following days and times when the child(ren) will reside with, or be with, the other parent: _____

_____

_____

_____

4.2 School Schedule

[ ] Does not apply.

[ ] Upon enrollment in school, the child(ren) shall reside with

[ ] Mother [ ] Father, except for the following days and times when the child(ren) will reside with or be with the other parent: _____

_____

_____

_____

4.3 Schedule for Holidays

	With Mother (Specify Whether (Odd/Even, Every or Other)	With Father (Specify Whether Odd/Even, Every or Other)
New Year's Eve		
New Year's Day		
Martin Luther King Day		
President's Day		
Easter		
Memorial Day		
Mother's Day		
July 4th		

Father's Day		
Labor Day		
Halloween		
Veteran's Day		
Thanksgiving Day		
Christmas Eve		
Christmas Day		
Religious Holidays (as follows):		
Mother's Birthday		
Father's Birthday		
Child's Birthday		
Child's Birthday		
Child's Birthday		

[ ] For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times): _____

_____

[ ] Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

4.4 Schedule for Winter Vacation

[ ] Does not apply.

[ ] The child(ren) shall reside with [ ] Mother [ ] Father during winter vacation, except for the following days and times when the child(ren) will reside with or be with the other parent: _____

_____

_____

4.5 Schedule for Spring Vacation

[ ] Does not apply.

[ ] The child(ren) shall reside with [ ] Mother [ ] Father during spring vacation, except for the following days and times when the child(ren) will reside with or be with the other parent: _____

_____

_____

4.6 Schedule for Summer

[ ] Does not apply.

[ ] Upon completion of the school year, the child(ren) shall reside with

[ ] Mother [ ] Father, except for the following days and times when the child(ren) will reside with or be with the other parent: _____

_____

_____

4.7 Vacation with Parents

[ ] Does not apply.

[ ] The schedule for vacation with the parents is as follows: _____
_____
_____

[ ] Each parent is to notify the other of his/her respective vacation plans with the child(ren) as follows: _____
_____
_____

4.8 Priorities under the Residential Schedule

[ ] Does not apply.

[ ] Neither parent shall schedule activities for the child(ren) during the other parent's scheduled residential time, unless the parents agree in advance to include the activity in the child(ren)'s schedule.

[ ] For purposes of this parenting plan the following days have priority: _____
_____

[ ] Vacations and holidays shall have priority over the residential schedule.

[ ] Other: _____

_____

_____

4.9 Restrictions

[ ] Does not apply.

[ ] The following restrictions shall apply when the child(ren) spend(s) time with the

[ ] Name of Parent/Guardian: _____

_____

_____

[ ] Name of Parent/Guardian: _____

_____

_____

4.10 Transportation Arrangements

[ ] Does not apply.

[ ] Transportation arrangements for the child(ren), other than costs, between parents are as follows: _____

_____

_____

4.11 Changes to Residential Schedule

[ ] Does not apply.

[ ] Requests to change the residential schedule shall be submitted by the parent requesting the change to the other parent:

[ ] In writing

[ ] In person

[ ] By telephone

[ ] Other: _____

[ ] Requests shall be made at least:

[ ] 24 hours in advance

[ ] One week in advance

[ ] Two weeks in advance

[ ] Other: _____

[ ] Response to the request shall be made by the parent receiving the request:

[ ] In writing

[ ] In person

[ ] By telephone

[ ] Other: _____

[ ] Response shall be made within:

[ ] 24 hours in advance

[ ] One week in advance

[ ] Two weeks in advance

[ ] Other: _____

4.12 Additional Child Care

[ ] Does not apply.

[ ] The parent requesting the additional care shall first contact the other parent who will have the first right of care for the child but is not obligated for such care as a result of the change of schedule.

[ ] The parenting requesting the additional care shall be responsible for any additional child related expenses (for example, day care) incurred by the other parent as a result of the change of schedule.

[ ] Other: _____
_____
_____

V. DECISION MAKING

5.1 Day-to-Day Decisions

[ ] Each parent shall make his/her own decisions regarding the day-to-day care and control of each child while the child(ren) is/are residing with that parent. (Some day- to-day decisions might involve the treatment of minor health problems, injuries, diet, TV, house rules and discipline.)

[ ] Exceptions are as follows: _____

_____

_____

[ ] We agree to refrain from doing anything to undermine the other parent's household rules and instead, we agree to support the other parent's rules in his/her household by explaining to our child(ren) that they are expected to follow rules in each parent's household.

5.2 Major Decisions regarding each child shall be made as follows:

	Name of Parent/Guardian	Name of Parent/Guardian	Joint/Together
Education Decisions			
Extra-curricular activities			
Child care			
Associations			
Non-emergency health care			
Mental Health treatment			
Religious upbringing			
Other:			

5.3 Emergencies

[ ] If the child(ren) require(s) emergency care, the parent who is responsible for the child(ren) at that time will immediately arrange for that care and will then notify the other parent immediately thereafter.

VI. FURTHER DISPUTE RESOLUTION

6.1 Dispute Resolution Process

[ ] Does not apply.

[ ] No dispute resolution process, except court action, shall be ordered because of limiting factors.

[ ] Disputes between the parties shall be submitted to (list person or agency):

[ ] Counseling by _____

[ ] Mediation by _____

[ ] Other: _____

6.2 Cost of Dispute Resolution Process

[ ] Does not apply.

[ ] The cost of this process shall be allocated between the parties as follows:

[ ] _____ % mother _____% father.

[ ] based on each party's proportional share of income according to the child support guideline worksheets, if available.

[ ] as determined in the dispute resolution process.

6.3 Initiation of Dispute Resolution Process

[ ] Does not apply.

[ ] The counseling and/or mediation process shall commence by notifying the other party by [ ] written request [ ] certified mail [ ] other: _____

6.4 Procedures to be Used

[ ] Does not apply.

[ ] In the dispute resolution process:

[ ] Preference shall be given to carrying out this Parenting Plan.

[ ] Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.

[ ] A written record shall be prepared of any agreement reached in counseling or mediation and shall be provided to each party.

[ ] If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court may award attorney's fees and financial sanctions to the other parent.

[ ] The parties have the right of review of the dispute resolution process to the Circuit Court.

VII. FAIRNESS OF THE AGREEMENT

7.1 Review by Independent Counsel

[ ] Does not apply.

[ ] The parties agree that each will consult his/her own attorney to review this Agreement. Upon legal review, any recommendation for substantial change or restructuring of this Agreement shall be referred back to mediation.

7.2 Decisions Made are Voluntary

[ ] The parties mutually agree that in entering into this Agreement, each party signs this Agreement freely and voluntarily for the purpose of, and with the intent to, determine and permanently/temporarily settle the issues of custody and visitation relating to the child(ren).

7.3 No Undue Influence

[ ] The parties acknowledge that this Agreement is a fair and reasonable agreement and that it is not the result of any fraud, duress, or undue influence exercised by either party upon the other, or by any person or persons upon either party.

VIII. FURTHER ASSURANCES

8.1 Further Assurances

Each of the parties agree to sign such other and further documents and to perform such acts as may be reasonably required to effectuate the purpose of this Agreement.

I (We) declare that this plan has been submitted in good faith.

[Parent Name]	Date
[Parent Name]	Date