

Services for Self-Represented Litigants in Arkansas

A Report to the Arkansas Access to Justice Commission

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Introduction – A Vision for Arkansas Services for Self-Represented Litigants

The Legal Services Corporation estimates that the funding available for civil legal services in the United States is sufficient to serve only 20% of the civil legal needs of poor people. With the exception of personal injury matters, where the availability of contingency fee contracts in cases with significant potential liability makes attorneys accessible to persons of low and modest means, most Americans of modest means cannot afford the cost of attorney's fees needed for representation in civil matters. The result is an enormous gap between the general expectation that Americans have access to the courts to resolve their civil disputes and the actual reality – that justice in most civil matters is available only to the well-to-do. Poor and middle class Americans are for the most part unable to obtain counsel to seek justice in the courts, or to defend themselves against legal actions brought against them – for instance, in eviction, debt collection, and foreclosure actions. Dissolution of marriage and allocation of parenting rights and responsibilities for children of unmarried couples can only be accomplished through a court order; persons unable to afford a lawyer often have to go without necessary court orders in dividing jointly-owned property and in obtaining services for their children. This state of affairs is referred to as the Access to Justice Gap.

After a generation of efforts to increase the funding for legal services, to expand the types of cases in which indigent civil litigants are entitled to counsel at public expense, and to expand the amount of pro bono services donated by the private bar, it is clear that we will never be able to provide a lawyer for every poor person with an essential civil legal need, let alone every person of modest means with such a problem.

The only realistic hope for bridging the Access to Justice Gap is to make it possible for Americans to pursue their own civil matters in our courts – by “representing themselves.” The civil courts and the procedural rules that govern them in Arkansas and elsewhere in the United States have been designed with the expectation that all parties are represented by lawyers. The procedures are complicated, the rules are strict and often unforgiving, and the jargon used is often incomprehensible to a person without legal training. For persons representing themselves to have a fair opportunity to obtain the legal relief to which the facts and law of their case entitle them requires a significant amount of assistance – in understanding the law and the steps in a legal proceeding, in preparing appropriate legal documents, and in assembling and presenting evidence supporting their positions.

This report documents the services currently available to persons in this situation in Arkansas. It shows that for the most part they are left on their own and flounder.

The recommendations of the report set forth a comprehensive, but relatively inexpensive, set of policy and administrative actions that can bring about dramatic change in the environment for self-represented litigants in Arkansas within the period of one or two years. The plan for universal access to civil justice in Arkansas consists of six components:

Adoption by the Arkansas Supreme Court of policies clarifying the extent to which judges and clerks of court can provide legal information and courtroom assistance to self-represented litigants.

Establishing the Supreme Court Library as a statewide self help center for Arkansans – accessible by phone, Internet, or face-to-face assistance for the provision of legal information.

Where possible, establishing full or part-time courthouse self help services staffed by court staff, legal services staff, *pro bono* attorneys, or volunteer paralegals.

Expanding the legal forms available on line for the most common civil legal matters and ensuring that they remain current.

Encouraging private lawyers to provide limited scope legal representation for persons representing themselves so that they have access to legal advice concerning their cases, review by a lawyer of a document they have drafted, or assistance with a particular court appearance or process.

Linking self-represented persons seeking limited scope legal representation with lawyers willing to provide that form of assistance.

Focusing legal services resources on the gaps in this plan – assisting persons of limited means who are unable to pursue their own cases because of the complexity of their case or special challenges they face, providing limited scope legal representation to persons who cannot afford to pay a private lawyer for limited legal advice, and litigating cases when needed to ensure that courts are according self-represented litigants the services to which they are entitled.

These recommendations also have major implications for the private practice of law in Arkansas. The legal and public press have made much of a number of negative trends for lawyers in the United States. Major corporate law firms are shrinking in size as their clients refuse to pay them to draft boilerplate organizational documents, employment and business contracts, merger agreements, and securities prospecti and other submissions. As many as 45% of law school graduates are not able to find jobs requiring their new law degree. Lawyer income is falling in many parts of the country. Although most Americans cannot afford prevailing attorneys' retainers to commence or defend civil matters, they are regularly paying hundreds of dollars to online legal services providers such as LegalZoom and Rocket Lawyer. They report that they would like to have legal advice to assist them in representing themselves and are willing to pay reasonable hourly rates for that assistance. Arkansas Rule of Professional Conduct 1.2(c) authorizes Arkansas attorneys to provide this form of representation. The House of Delegates of the American Bar Association recently passed a resolution urging attorneys to take advantage of such ethical rules to provide "limited scope representation" to persons representing themselves – as a means of increasing access to justice; the resolution is included in the appendix to this report. This report includes a series of recommendations to encourage members of the private bar of Arkansas to engage in this form of practice and to link self-represented litigants wanting such services (and being willing to pay for them) with attorneys practicing in this manner.

Many of the judges, lawyers and court staff with whom we met in the course of this study consistently link the terms "self-represented (or *pro se*) litigants" and "problem." In fact, last year's study of self-represented litigation cited extensively in this report is titled, "Exploring the Problem of Self-Represented Litigants in Arkansas Civil Courts." The broadest objective of this report is to change this perception – substituting for the word "problem" the notion of "opportunity" for Arkansas to provide universal access to justice in civil cases, for judges and court staff to transform their encounters with these litigants from a "burden" to a source of professional satisfaction, and for attorneys to see self-representation not as a process that deprives them of traditional attorney retainers but rather as the creation of a huge new market for a different, lucrative form of law practice.

This report describes the background of the study undertaken by the Arkansas Access to Justice Commission that produced this plan, the study methodology, the best current information about self-representation in civil cases in Arkansas, the study's findings concerning services currently available to self-represented litigants, the services they need to be able to

bring their cases to a just resolution, the current gaps in those services, and a detailed plan for filling those gaps.

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Study background

The Arkansas Access to Justice Commission was created in 2003 by the Arkansas Supreme Court for the purpose of coordinating statewide efforts to provide equal access to civil justice for all Arkansans. Since its creation, the Commission has worked toward this goal by undertaking initiatives to expand pro bono recruitment and participation, implementing court assistance projects, facilitating changes to statutes and court rules that impact access to justice, educating the public about the need for civil legal aid, and working to increase financial resources available to provide legal assistance to low-income Arkansans. The Commission operates as a committee of the Arkansas Supreme Court.

The Commission's sister nonprofit foundation, the Arkansas Access to Justice Foundation, obtained a grant from the State Justice Institute to retain a consultant to assist the Commission to establish a statewide strategy for addressing the growing number of unrepresented litigants in Arkansas courts by (1) conducting an assessment of resources that currently exist which address or may potentially address the needs of unrepresented litigants in Arkansas; (2) determining which additional resources are most needed to address the needs of unrepresented litigants; and (3) preparing a plan for the development and sustainability of those resources.

The Foundation chose Greacen Associates, LLC. of New Mexico to serve as consultant for the project.

A core objective of the study was to assess the extent to which Arkansas trial courts are following the due process of law requirements set forth in the 2011 United States Supreme Court decision in *Turner v. Rogers*, 131 S. Ct. 2507. In *Turner*, the Supreme Court held that trial judges in civil contempt proceedings arising out of nonpayment of child support must ensure that certain safeguards are in place to avoid wrongful conviction, including (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. Although the findings of that case were limited to the civil contempt context, there are

indications that it may have greater implications for the broader realm of civil self-represented litigation.¹

Study methodology

Between January and April 2013, the consultant and the Executive Director of the Arkansas Access to Justice Commission conducted site visits to five parts of the state of Arkansas – Pulaski County, Benton and Washington Counties, Jefferson County, St. Francis County, and Cleburne County. In each county, we visited the Circuit Court and observed proceedings involving self-represented litigant(s) and interviewed one or more judges, the circuit court clerk and staff members, trial court assistants and bailiffs, and local family law attorneys. In Pulaski County, we met with the court administrator and a local child support enforcement attorney. In addition, we met with Chief Justice Hannah of the Arkansas Supreme Court, AOC Director J.D. Gingerich and several members of his IT department, the staff of the Supreme Court Library, clinical professors at the law schools at the University of Arkansas and the University of Arkansas at Little Rock, leaders of the Arkansas Bar Association, Chief Disciplinary Counsel of the Supreme Court's Office of Professional Responsibility, counsel for Arkansas' largest malpractice insurance carrier, and the directors and staff of both of Arkansas' legal services programs – the Center for Arkansas Legal Services and Legal Aid of Arkansas.

The Arkansas Access to Justice Commission arranged for and advertised two focus groups of self-represented litigants – one in Little Rock and the other in Fayetteville. Four self-represented litigants attended these events. In addition, we were able to interview two other self-represented litigants in Cleburne County.

We gathered empirical information from the legal services programs. Greacen Associates prepared an instrument to measure the extent to which court staff members in Arkansas are willing to provide certain information or assistance requested by self-represented litigants. The Commission's Executive Director administered the instrument to sixteen trial court assistants during a training event in April 2013. The data from those surveys has been compiled and analyzed in this report.

¹ See, e.g., Richard Zorza, *A New Day for Judges and the Self-Represented: The Implications of Turner v. Rogers*, *The Judges' Journal*, Fall 2011, at 16.

Self-representation in Arkansas courts today

Chanley Painter, a student in the University of Arkansas Clinton School of Public Service, conducted a study of self-representation in Arkansas for the Arkansas Access to Justice Commission in 2012.² She gathered court case file data in three counties³ for civil cases closed in late 2010 and early 2011 for thirteen types of cases grouped into three categories – family, financial and housing, and probate. She also conducted an online survey of circuit court judges. Fifty percent of the judges responded. We summarize some of the most salient information from Ms. Painter’s study to provide a context for the information we gathered in the course of our site visits.

We have aggregated the case file data for the three counties. The results are shown in the table below.

Case Type	Percentage of Cases Where Petitioner is Self-Represented	Percentage of Cases Where Respondent is Self-Represented or Does Not Appear	Percentage of Cases Where At Least One Party is Self-Represented or Does Not Appear
Family	39%	91%	99%
Financial and housing	1%	92%	93%
Probate	52%	99%	99%

Ms. Painter did not differentiate cases in which a respondent/defendant appeared without counsel from cases in which a respondent/defendant did not appear. Both categories of cases are treated as self-represented because an attorney did not make an appearance for the respondent/defendant.

The data shows that in those three counties, four in ten family law matters were initiated by a person without an attorney and nine in ten did not have an attorney defending the matter. Almost every family law matter has at least one unrepresented party. For domestic violence cases, the data is even more stark – 94% of those cases are initiated by a person without an attorney and 98% do not have an attorney for the defense.

The picture for financial and housing cases – debt collection, unlawful detainer, foreclosure, etc. – is quite different. These cases are almost

² Chanley S. Painter, *Exploring the Problem of Self-Represented Litigants in Arkansas Civil Courts*, 2011 Capstone Project, University of Arkansas Clinton School of Public Service.

³ Cleburne, Pulaski, and St. Francis Counties

universally initiated by an attorney, but in nine of ten cases no attorney appears for the defendant.

In probate matters, half of the cases are initiated without an attorney and virtually none of them have an attorney appearing for the other side.

Ms. Painter chose case types in which self-representation is most likely to occur. In these three civil case categories, virtually every case involves at least one self-represented party.

In the survey, the circuit judges were asked what percentage of “cases in your court has at least one self-represented litigant?” As posed, the question would include criminal as well as civil cases and all types of civil cases. Roughly 60% of the judges chose “10% or less” and an additional 20% chose “from 11 to 20%.” Only two judges reported “over 50%.” On the other hand, 84% of the responding judges reported that they have seen an increase in the number of people representing themselves. They identified family law matters and debt cases as the types of cases in which they most regularly see self-represented litigants.

Over ninety percent of the responding judges reported that cases with one or more self-represented parties are handled less efficiently than those with attorneys on both sides. Two thirds of the judges believe that cases with self-represented litigants take longer than cases with attorneys to reach disposition.⁴

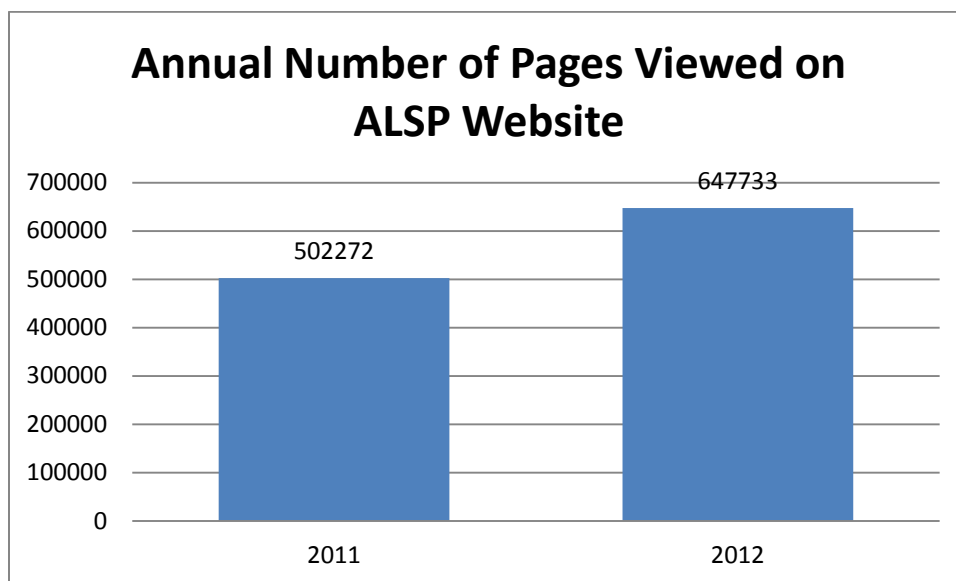
The narrative comments of the judges raise the following concerns about self-represented litigants – that the court has to take time to explain the procedures to them, that they are unable to conduct themselves in accordance with the rules, that self-represented parties are less likely to settle their cases, are incapable of preparing acceptable legal documents (such as property settlement agreements), do not understand discovery, are not prepared, and argue irrelevant matters. The most frequent complaint is that self-represented litigants expect the judge to help them try their cases.

Most alarming, 80% of the judges report that self-representation has a negative impact on case outcomes. One judge reported, “there have been times [SRLs] prevailed, but very, very seldom.”

⁴ Every empirical study of this question conducted in the United States shows the opposite result – cases with two attorneys on average take substantially longer to reach disposition than cases with at least one unrepresented party.

Resources currently available to self-represented litigants in Arkansas

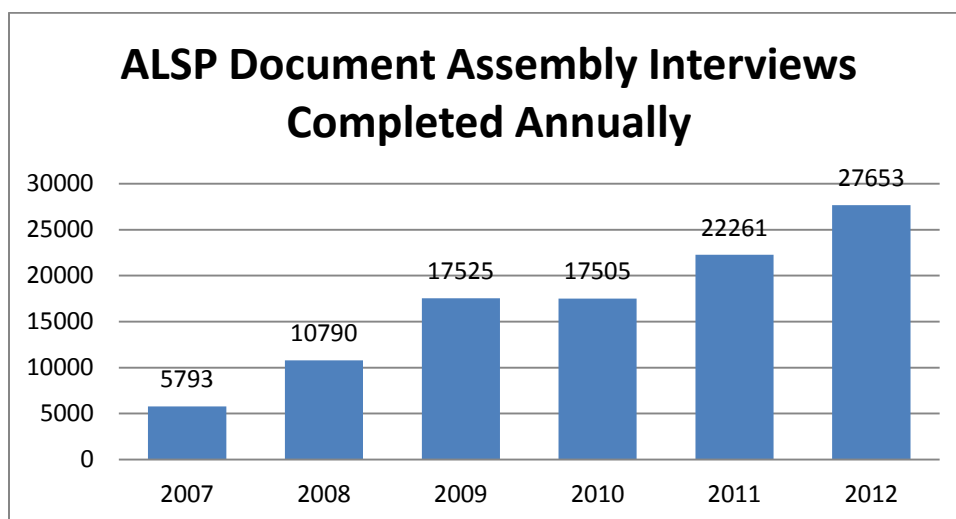
The most extensive assistance available to self-represented litigants in Arkansas comes from the website maintained by the Arkansas Legal Services Partnership – a collaboration between Arkansas’ two legal services programs. The website was launched in 2004. It currently offers over 500 different legal information resources for the public and a number of others for legal services and pro bono attorney advocates. Prior to 2010 it used a software for tracking the use of its website that it now considers provided inflated usage statistics. The graph below shows the number of “page views” on its website for 2011 and 2012 – over one million over the past two years.



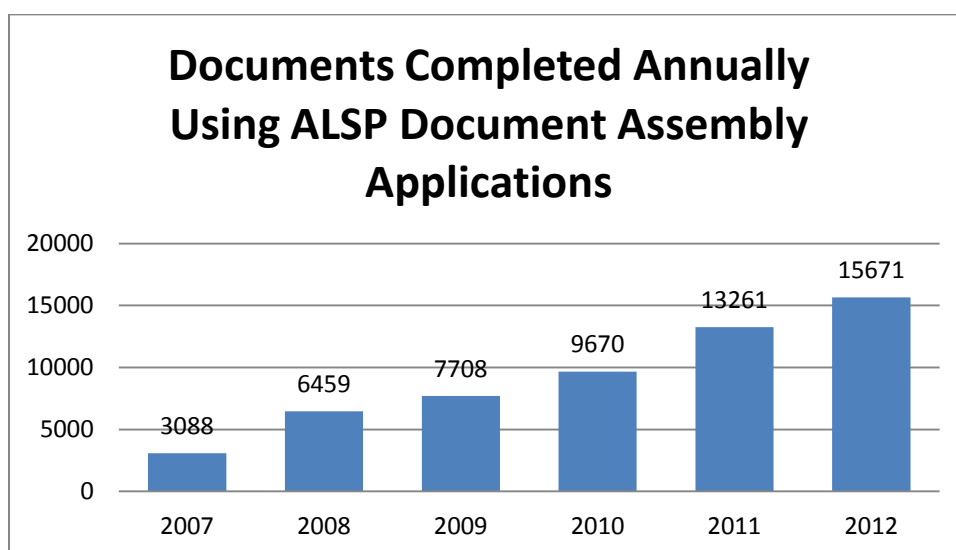
On each of our site visits, we were told by judges and court staff of the value of a second feature of ALSP’s web offerings – the use of document assembly technology to enable Arkansans to create Arkansas court forms by answering questions in an interview. The ALSP website uses two state-of-the-art software packages – Hot Docs and A2J – to build interviews on the Legal Help Interactive (LHI) server provided by ProBonoNet. The user enters the information called for in the interview. The software then chooses the correct form and populates it with the information provided by the user. The software then displays the completed form for review by the user and for printing for signature and filing with the appropriate court.

Judges and court staff particularly appreciate the forms for an uncontested divorce without children – which are frequently used by self-represented litigants. When judges encounter those forms, they feel confident that the litigant’s filing will be appropriate and complete.

These forms are part of 24 LHI interviews available to the public on the ALSP website. An additional 140 Hot Docs templates have been created for legal services and pro bono attorney advocates. The graphs below show the increasing level of use of these resources since they were first introduced in 2007. Arkansas ranks sixth in the nation in the use of LHI forms.



Almost 16,000 Arkansas court documents were completed by self-represented litigants last year using ALSP online resources.

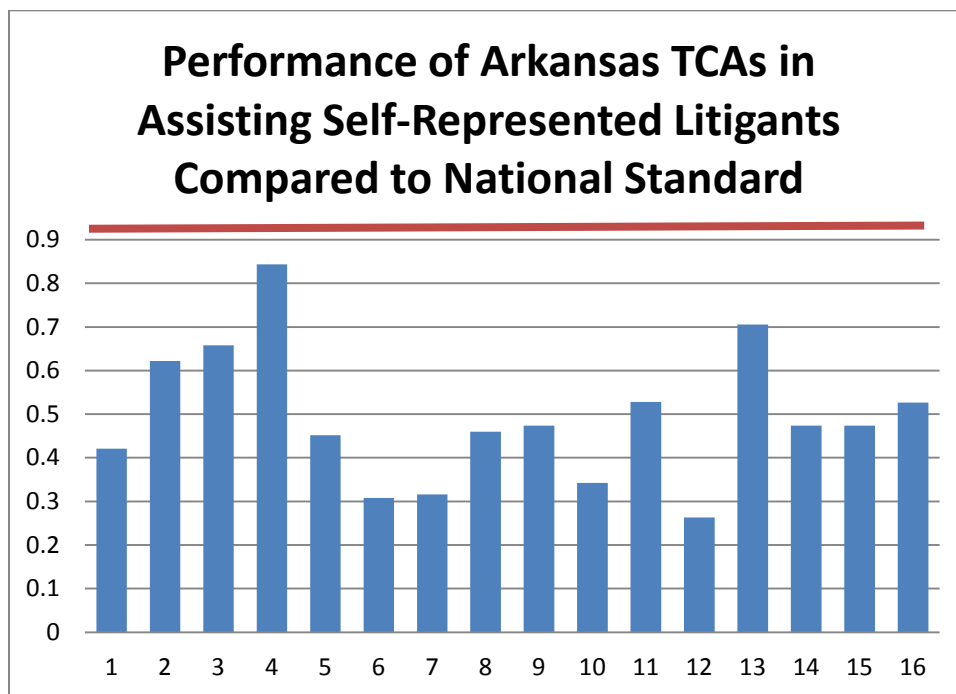


Arkansas' two legal services programs provide services for self-represented persons by hotline conversations and by the provision of written information. To avail themselves of these services, Arkansans must show that they qualify as having incomes at or below 125% of the federal poverty level. Most of the persons assisted call the legal services hotline seeking legal representation. As is true nationally, Arkansas legal services organizations are able to provide representation for only a portion of the persons who qualify for services – just over half of them. Both legal services organizations have policies in place limiting the persons they will serve in family law matters. A major criterion for accepting a family law case is a threat of domestic violence. Most persons seeking help with family law matters are directed to the website and are given other resources to pursue their own cases as self-represented litigants.

The two legal service providers have a total of four pro bono panels statewide that have organized groups of Arkansas attorneys who take cases of needy persons at no charge when referred by the panels. In 2012, *pro bono* volunteers provided over \$1.5 million worth of free representation in such cases.

Very little assistance is available from court clerks and trial court assistants due to their concerns that answering questions from self-represented litigants constitutes the giving of legal advice and, hence, the unauthorized practice of law. With the approval of the court system, the Access to Justice Commission has since 2010 been distributing a pamphlet called "May I Help You?" explaining for court staff the difference between legal information (which they may provide) and legal advice (which they may not). However, that information appears not to have changed the practices of Arkansas court staff. The Executive Director of the Arkansas Access to Justice Commission administered a survey to sixteen trial court assistants attending a training session this spring. The survey asked whether they would provide 38 different forms of assistance requested concerning five different scenarios. The scenarios were filing a domestic violence protection order petition, filing a petition for divorce, filing an action to enforce a child support order, evicting a tenant, and defending oneself against an eviction proceeding. Based on our experience with states that have written policies for court staff distinguishing legal information from legal advice (very similar to the Arkansas Access to Justice Commission pamphlet), trial court assistants in those states would have been able to provide the requested assistance in 35 of the 38 situations, or 92%. Arkansas trial court assistants reported that they would have provided assistance in from 26% to 84% of the situations. The variation of their patterns of assistance from place to

place and from TCA to TCA is shown on the following graph. Ten of the sixteen respondents would have provided assistance in less than half of the situations. The TCA who would provide assistance in 84% of the situations is the exception to the general pattern.



None of the Arkansas TCAs would have provided assistance that would be considered legal advice based on the national standard. All of the TCAs agreed on five other situations – most of which involved referring a court user to a website for information or forms.

Arkansas law – ACA Section 9-15-203(a) – expressly directs the circuit clerk to provide “simplified forms and clerical assistance to help petitioners with the writing and filing of a petition” under the domestic violence protection act. Arkansas TCAs reported that they would provide assistance in 59% of the legally permissible (applying the national understanding explained above) situations relating to filing a domestic violence petition. The percentages for the other five scenarios were 62% for child support enforcement, 60% for initiating an eviction, 45% for initiating a divorce, and 38% for defending against an eviction filing. The instinctive reaction of Arkansas clerks that any inquiry constitutes a request for legal advice is so strong that they do not treat domestic violence petitions differently, even

though they are required by state law to provide “clerical assistance” with respect to those cases.

The data from the TCA survey is confirmed by our interviews with self-represented litigants and from circuit clerks and their staff members.

The conclusion we draw is that the amount of information that clerk’s office and court staff in Arkansas provide to self-represented litigants is much less than is recognized as appropriate in most states. Further, the amount of assistance that a self-represented litigant will obtain depends on where in Arkansas s/he is and whom s/he asks. There is no consistent standard nor consistent practice in this area.

The same can be said for assistance available from the judge in the courtroom. We were specifically asked to determine the extent to which Arkansas trial judges are applying the due process of law standards for civil contempt proceedings set out in *Turner v. Rogers*. We were not able to observe any such proceedings. However, we did cover this type of proceeding in our interviews with circuit judges. We found that roughly half of the Arkansas circuit judges whom we interviewed were not – according to their own description of their courtroom practices in child support enforcement civil contempt proceedings – following the *Turner v. Rogers* procedures. A few judges are very aware of the decision. One sent an email to all family law practitioners in the county apprising them of the decision and urging them not to seek contempt orders if they could not demonstrate the defendant’s ability to pay. But many Arkansas circuit judges are not.

This same disparity applies more broadly to the way in which circuit judges interact generally with self-represented litigants. Some follow what is now recognized best practice around the country by proactively assuming responsibility for the courtroom process – eliciting from the litigants the information that s/he needs to resolve the case appropriately. These procedures are set forth in a second pamphlet printed by the Access to Justice Commission, *Pro Se in the Courtroom: The View from the Bench*. An equal number of judges require self-represented litigants to perform as if they were lawyers; if they do not, they are denied the relief they request. An example that we observed several times was the hearing for a divorce. In some courtrooms, the judge would ask the questions of the petitioner and of the petitioner’s witness to establish the court’s jurisdiction and the grounds for the divorce. In others, the judge required the petitioner to know the questions to ask or information to supply the court; if s/he was unable to do so without prompting from the court, the divorce petition was denied or

the petitioner was granted a continuance to hire an attorney to prove up the case.

Judges we interviewed consistently brought to our attention the disparity of approach to these matters by judges within the same courthouse. Even those judges who referred to themselves as more inclined to assist self-represented litigants in the courtroom told us that they are very unclear what the boundaries for such assistance are.⁵ No judge mentioned the guidance set forth in the Access to Justice Commission pamphlet.

There are four other sources of assistance for self-represented litigants in Arkansas today:

- The Arkansas Supreme Court Library in the Supreme Court Building and other Arkansas law and public libraries. The library staff directs self-represented litigants to available resources. The library staff have published a guide to *Pro Se* Legal Research in Arkansas in the Arkansas Library Association quarterly publication *Arkansas Libraries*.⁶ The UALR Bowen Law School law library and University of Arkansas Law School's Young Law Library provide similar services.
- There are two staffed courthouse self help centers in Arkansas. A legal aid attorney provides assistance on a first-come, first-served basis to self-represented litigants in the Benton County Courthouse on Wednesday mornings and on Friday afternoons in the Washington County Courthouse.
- We are told that a few Arkansas attorneys are providing limited scope representation to self-represented litigants. But it is rare and there has been no effort by the organized bar to encourage such practice. None of the family law lawyers with whom we spoke provides that form of assistance; they all maintain traditional practices in which they either handle a family law matter from start to finish or they

⁵ There are other issues concerning self-represented litigants on which legal standards are not consistent across the state. In Washington County, the circuit judges have directed the circuit clerk not to accept any guardianship or probate petitions submitted for filing by a self-represented litigant because the guardianship or probate estate will constitute a separate entity which only an attorney can represent. This is not the standard anywhere else within the state. Judges with whom we spoke pointed out that the practical result of this policy in Washington County is that persons of poor or limited means are barred from accessing these necessary court services.

⁶ Rod Miller, *What's Up? Docs. Pro Se Legal Research in Arkansas*, Ark. Libraries, Summer 2012, at 14, available at <http://www.arlib.org/arkansas-libraries-summer-2012.pdf>.

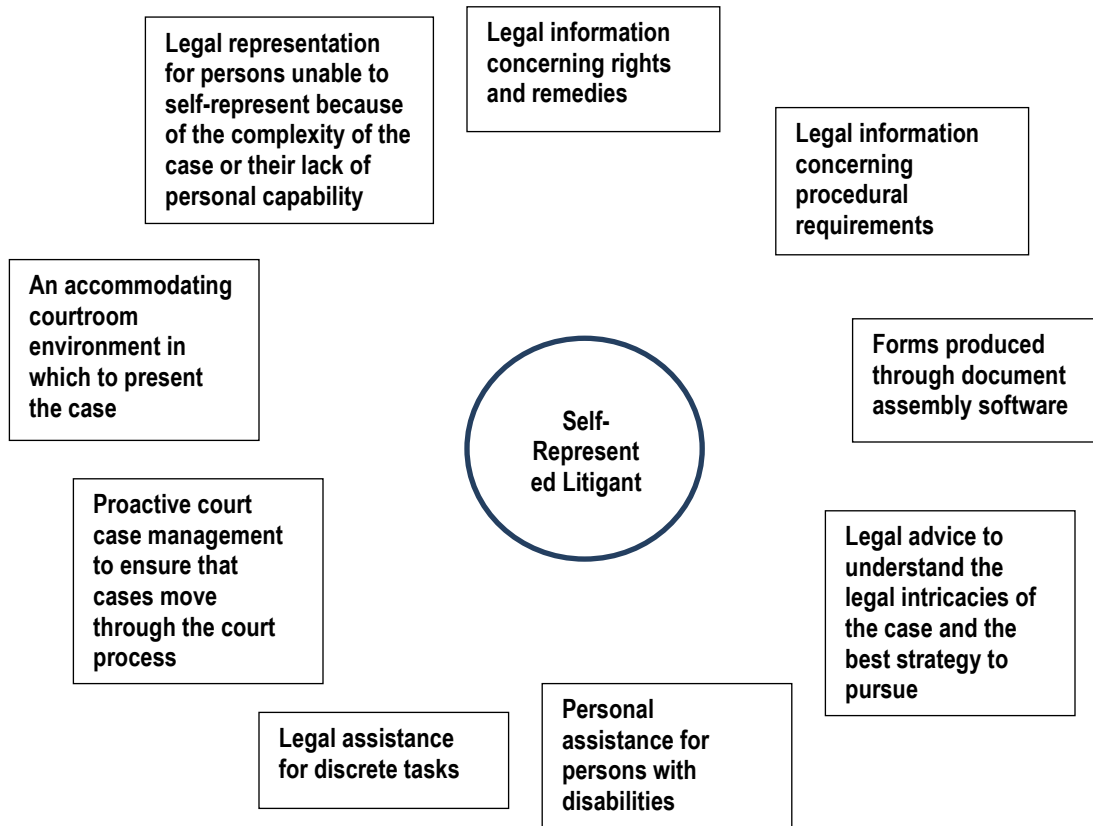
decline the representation. All but one of them, however, expressed interest in providing limited scope representation if they had clear ethical guidance on the topic and if they were assured that judges would not require them to provide full representation despite the terms of their agreement with their client.

- Since 1999 the Arkansas Administrative Office of the Courts has used federal funds from the HHS Office of Child Support Enforcement to fund mediation for family law matters involving custody, visitation and child support disputes. The AOC maintains a list of certified mediators. The mediation services are available in cases in which both parties ask for it or in cases in which the court orders use of the services upon the request of one party. Parties are required to pay for the services of the mediator if they have the means to do so; federal funds are used to pay the remaining costs. Mediation is only available if a family law case is pending. The AOC reports that the program is successful in helping parties reach agreement in these matters.

Resources needed by self-represented litigants in Arkansas

What do Arkansans need to be successful in bringing their own civil legal matters to court? The schematic on the next page shows the answer visually – the constellation of services needed to support most self-represented litigants.

Each of the resource components is discussed in more detail following the schematic.



Legal information concerning rights and remedies

This is the basic information currently available on the ALSP website that is viewed a half million times a year. It explains such topics as the grounds for divorce in Arkansas and defenses to an action for unlawful detainer. Litigants need this sort of information for all commonly sought civil remedies.

Legal information concerning procedural requirements

The ALSP website also provides information on the procedural requirements for accessing legal remedies provided by the courts, including the steps in the process and the meanings of unfamiliar terms and concepts such as service of process.

In the past, courts and legal services providers would assemble all of the information on a legal process, for instance, obtaining a divorce, into a single procedural manual or guide. They have found that court users are only able

to make use of the information pertaining to the current step in their case. Web-based resources are ideal for this purpose – information on all the steps is available, but it can be presented in easily digestible segments.

Web-based resources are also downloadable and printable, so that persons without access to the Internet (and they are an ever smaller percentage of the population) could get printed versions of the resources they need from circuit clerk's offices, legal services programs, or law or public libraries.

These resources need to cover all case types commonly pursued by persons representing themselves.

Forms produced through document assembly software

Arkansas's A2J/Hot Docs/LawHelpInteractive document assembly application has been described previously. It not only ensures that court users obtain the right form for their intended purpose, but also that the form is complete and that it is legible for judges, court staff, and opposing parties.

These applications also contain links to the legal and procedural information on the website. For instance, when the divorce interview requires a user to choose one of Arkansas's grounds for divorce, a pop up button allows the user to switch to the website description of the statutory grounds and their general legal requirements.

Of course, a website needs to provide a full set of forms for all civil case types in which persons represent themselves.

Legal advice to understand the legal intricacies of the case and the best strategy to pursue

We have explained the basic concept of "limited scope representation" earlier in this report. In this continuum of services, we contemplate basic "legal advice" to be a service comparable to a lawyer's initial interview with a potential new client – learning the facts of the matter and the client's objectives, drawing out of the client additional facts needed to assess her or his legal situation, sizing up the client's legal position, explaining possible strategies, and recommending a course of action. This service could be accompanied by a review of a petition prepared by the client using a document assembly interview.

In today's legal practice, an attorney generally does not charge for this initial interview, using it instead as a "loss leader" to obtain a large retainer for handling the whole case. In our vision, the attorney would now charge a reasonable hourly rate for this service – which clients would be willing to pay in order to obtain peace of mind that they are proceeding appropriately with their own case.

For persons who qualify for free legal assistance, this advice could be provided by legal services programs or *pro bono* attorneys associated with them. To the extent that legal services programs do not have sufficient resources to serve all qualifying clients and for persons who do not qualify for free assistance, this service would be provided by the private bar for a reasonable fee.

Personal assistance for persons with disabilities

Persons who are illiterate or not fluent in English, who have physical impairments to sight, hearing, or speech, who function at a low intellectual level, or who suffer from mental illness frequently need the help of a friend, family member, or neighbor to help them navigate a legal process. This help does not need to be provided by an attorney, unless the complexity of the case or other special circumstance of the case dictates otherwise.

Legal assistance for discrete tasks

In addition to obtaining general legal advice for how to proceed with a case, some self-represented litigants may seek the help of a lawyer to perform a specific task in a case, such as drafting a marital settlement agreement or divorce decree. A typical need that exceeds the ability of most self-represented litigants (and most attorneys who do not specialize in this area) is preparation of a qualified domestic relations order (QDRO) to reallocate the resources in a retirement account or pension plan between the divorcing persons. In a complicated case with serious evidentiary challenges, a litigant may want to hire an attorney for the purpose of conducting a trial or critical evidentiary hearing. Or s/he may need an attorney's help to track down the other parent's concealed assets. The cost of these services would be negotiated between the attorney and client and the attorney's obligation would be limited to the terms negotiated.

As noted earlier, these discrete legal tasks can be provided through a mix of free legal services, *pro bono* attorneys, and compensated private bar services.

Proactive court case management to ensure that cases move through the court process

Courts find – and Arkansas judges reported in the survey conducted by Ms. Painter – that self-represented litigants are often not sophisticated enough to pursue their cases to completion without help. Divorce and other cases are often dismissed by the court for failure to prosecute them. In other states, courts monitor cases with self-represented parties, generating computer reports of cases that pass certain time milestones without accomplishing the steps that should have been completed by that time. For instance, a report would identify cases in which there was no proof of service filed within 90 days of filing of a complaint or petition. Or it would identify cases in which an answer was not filed, and a month or two had passed without the filing of a motion for default and a proposed default judgment. Court staff either contact the litigants to tell them what they need to do, or set the matter for a status hearing at which a judge does the same thing (or court staff help them complete the needed paperwork when they come to the courthouse for the hearing).

An accommodating courtroom environment in which to present the case

A set of best practices have developed for dealing proactively with self-represented litigants in the courtroom. They have been embodied in a benchbook for judges in California and a curriculum for judges first presented to teams of judges from 38 jurisdictions at Harvard in 2007. They form the experiential basis for the US Supreme Court's opinion in *Turner v. Rogers*. They are summarized in the pamphlet prepared by the Arkansas Access to Justice Commission for Arkansas judges. In a report based on observations of successful court interactions with self-represented litigants in four courts, Greacen Associates summarized the best practices as:

- Framing the subject matter of the hearing
- Explaining the process that will be followed or guiding the process
- Eliciting needed information from the litigants by
 - Allowing litigants to make initial presentations to the court
 - Breaking the hearing into topics
 - Asking questions to obtain information needed for a fair decision
 - Obviously moving back and forth between the parties

- Paraphrasing
 - Maintaining control of the courtroom
 - Giving litigants an opportunity to be heard while constraining the scope and length of their presentations, and
 - Giving litigants a last opportunity to add information before announcing a decision
- Engaging the litigants in the decision making
 - Articulating the decision from the bench
 - Explaining the decision
 - Summarizing the terms of the order
 - Anticipating and resolving issues with compliance
 - Providing a written order at the close of the hearing
 - Setting litigant expectations for next steps, and
 - Using nonverbal communication effectively

When judges engage actively in a hearing using these techniques, the litigants perceive that they are treated fairly and the judge is able to make a ruling based on the law and facts of the case. These same practices are effective when one side is represented as well as when neither side is represented.

Legal representation for persons unable to self-represent because of the complexity of the case or their lack of personal capability

The final resource need is full legal representation for a limited group of cases in which a particular person will not be able to succeed through self-representation because of the complexity of the case or the litigant's inability to pursue the matter in the court because of disabilities or lack of sophistication. The National Center for State Courts and the Self-Represented Litigation Network have just received a grant from the State Justice Institute to work with several states to develop criteria for identifying these cases.

Current gaps in services for self-represented litigants in Arkansas today

Our study has documented that Arkansas does not provide all of these services for self-represented litigants today.

Legal information concerning rights and remedies

The ALSP website is quite complete. However, the Partnership does not have the resources needed to maintain it. The ALSP website is in danger of becoming outdated both in terms of its content and its technology. The law changes constantly through legislation and new court decisions. The information on the ALSP website needs to be updated regularly to account for those changes. Technology also changes rapidly. The website needs regular updating for that purpose as well.

For example, roughly two-thirds of poor persons nationally use their smartphones as their means of accessing the Internet. In 2012, 16% of total visitors to the ALSP website used a smartphone or tablet. Viewing information on a smartphone requires different formatting from the formatting appropriate for viewing information on a computer screen. The current standard for website design is to be “device agnostic” – presenting information easily used by any access device. Arkansas will need to invest resources to keep up with this standard.

Although both of Arkansas’s legal services programs contribute resources to the Partnership, most of its funding has come from the Legal Services Corporation Technology Initiative Grant program to create new resources and services. That funding is not available to maintain existing resources.

The lack of adequate resources to maintain Arkansas’s ALSP website resources constitutes a serious risk to a vital resource. We identify it as a serious current services gap.

Legal information concerning procedural requirements

The ALSP website is quite robust in this area. However, in the course of our interviews, we became aware that users often access the system through the available forms. Because divorce forms are only available for uncontested divorces without children, self-represented litigants do not have access through the divorce forms to information concerning the procedures

required for contested matters – in particular the preparation of a summons for service of process.

Consequently, the gap identified below in the availability of forms also has consequences for persons seeking information on procedural requirements.

Another major current gap in this process is that court staff will only refer court users to a website; they do not access the website and show court users the relevant information or print it for persons who do not have their own Internet access.

Forms produced through document assembly software

The ALSP website currently offers five types of family law forms –a domestic violence protective order form (including a Spanish version), an uncontested divorce for couples without children form (including a Spanish version), a child support termination form, a power of attorney for minor form, and a minor guardianship form. The website needs to be expanded to include all forms needed for proceedings in which Arkansans regularly represent themselves. The most important current gap is the unavailability of forms for divorces involving children and contested divorce, child custody, and child support matters.

The lack of a full set of family law forms leads to unintended negative consequences. Persons needing a divorce involving children or a contested divorce will often use the only form available – creating serious problems for themselves and for the court.

Court staff and attorneys made us aware of another unintended consequence of current Arkansas family law processes. Poor Arkansans have learned that persons facing domestic violence are eligible for legal representation. They also have easier access to forms for protection orders than for any other family law form. The result is that filing a petition for an order of protection has become a common first step by self-represented persons in family law matters. What is available is what is used. The result is that domestic violence proceedings are commenced in instances in which they are not appropriate, resulting in abandoned court proceedings and a general devaluing of the protection order remedy in cases in which it is warranted.

These examples reinforce the need to eliminate the current gap in the availability of family law forms.

Legal advice to understand the legal intricacies of the case and the best strategy to pursue

This form of limited scope representation is not available to any significant extent in Arkansas today.

Personal assistance for persons with disabilities

Our study did not provide an opportunity to gauge systematically the extent to which persons with disabilities are able to obtain appropriate assistance. We did, however, encounter one self-represented litigant who is dyslectic. Her condition made it very hard for her to understand or prepare court documents. Neither the legal services program she contacted repeatedly nor the court had any awareness of her condition. This litigant was unable to obtain appropriate assistance to overcome her disability.

Legal assistance for discrete tasks

As with generalized legal assistance discussed above, our study showed that discrete task legal assistance is not available to any significant extent in Arkansas today.

Proactive court case management to ensure that cases move through the court process

In at least one county, a circuit judge described to us the process s/he uses to review all pending cases for procedural problems. However, s/he professed to be “powerless” to do anything to correct procedural problems disclosed in that review. In particular, s/he identified a case in which the petitioner had failed to obtain a summons and therefore had failed to effect service of process in a contested child support matter. The only course of action s/he perceived to be available was to allow the case to reach the time for dismissal for failure to prosecute and dismiss it. The judge’s perception is inconsistent with accepted national best practices. In other courts, the case would have been set for a status hearing or the petitioner would have been contacted by court staff and received explanation of the requirements for valid service.

This single incident suggests to us that Arkansas judges may be conducting the case reviews needed for proactive case management in cases involving self-represented litigants, without understanding the appropriate procedures for following up with cases that have stalled.

An accommodating courtroom environment in which to present the case

A serious gap exists in Arkansas between the accepted best practices for judicial handling of self-represented litigants in the courtroom and the actual practices in many circuit courtrooms today. Our study found a number of judges following best practices, but many others not doing so.

The resulting gap is described in the judicial responses to Ms. Painter's survey – that self-represented litigants seldom succeed in Arkansas courtrooms. This is the ultimate gap – a justice gap in the outcomes of civil cases in Arkansas produced simply because some parties are represented and others are unrepresented. That gap is unacceptable.

Legal representation for persons unable to self-represent because of the complexity of the case or their lack of personal capability

Legal services programs in Arkansas and their *pro bono* attorney partners have the resources needed to provide representation to persons incapable of representing themselves successfully, if the conditions in Arkansas were such that most persons of reasonable intelligence and diligence were able to navigate the civil legal process successfully. Arkansas legal services programs do not currently allocate their representation services based on this criterion.

A strategic plan for filling the gaps in Arkansas services for self-represented litigants

This plan addresses the gaps identified in this report. The items in the plan are set forth in the order in which the gaps have been identified, not necessarily in the order of their relative importance to improving services for self-represented litigants in Arkansas.

Maintenance of a comprehensive set of forms for all legal matters commonly pursued by self-represented litigants, using state-of-the-art document assembly technology

Arkansas is currently using state-of-the-art document assembly technology for its ALSP online forms offerings. However, it does not offer a comprehensive set of forms.

- The Partnership will expand the number of forms available, beginning with a comprehensive set of forms for family law matters, including divorces involving children, parenting plans, custody and child support matters. These forms will be appropriate for both contested and uncontested matters.
- The Arkansas Access to Justice Commission, the Administrative Office of the Courts and the Arkansas legal services programs, will collectively obtain the resources necessary not only for expanding the forms available on the ALSP website but for regular updating of all of the information maintained on the website, including the forms and their associated interviews, and maintenance of the technology infrastructure supporting the website.
- The interviews created for each form will continue to include appropriate links to substantive and procedural information contained on the website. The ALSP staff will develop the methodology to add links to attorneys providing limited scope representation when appropriate to the subject matter of an interview. At a minimum, a link to such legal advice providers will be provided at the time a completed form is presented for the user's review.

Promulgation by the Arkansas Supreme Court of policy guidelines for judges on appropriate ways to deal with self-represented litigants in the courtroom and on proactive management of cases involving such litigants

Although the Access to Justice Commission has provided guidance to Arkansas trial judges in handling cases involving self-represented litigants in the form of its *Pro Se in the Courtroom* pamphlet, the judges do not appear to accept that guidance as authoritative.

- The Arkansas Access to Justice Commission will propose to the Arkansas Supreme Court additions to the Arkansas Rules of Judicial Conduct modeled on the Louisiana rules contained in the appendix to this report and policy guidelines modeled on the Delaware Supreme Court guidelines contained in the appendix, modified to make clear that judges, assisted by court staff, should monitor cases involving self-represented litigants to ensure that they proceed through the court process. The guidelines will also ensure access to the courts for self-represented litigants pursuing guardianship and probate cases.

- When the Arkansas Supreme Court has promulgated policies for judges, the Arkansas judicial branch will provide training to all Arkansas judges on the policy guidelines. The training will include application of the guidelines to typical courtroom and other situations, including cases in which one party is represented and the other is self-represented. Training should be provided in part by judges in other states that have successfully implemented such guidelines.
- The Administrative Office of the Courts will determine whether special reports from the Contexte case management information system will be helpful in the proactive management of self-represented litigant cases and, if so, will create such reports in consultation with judges and court staff.

Promulgation by the Arkansas Supreme Court of policy guidelines for court and clerk's office staff, legal services providers, librarians, and any other persons providing self help services on the types of assistance that they can and cannot provide to self-represented litigants

- The Arkansas Access to Justice Commission will propose to the Arkansas Supreme Court policy guidelines modeled on the Colorado Chief Justice Directive included in the appendix to provide court and clerk's office staff and others with authoritative guidance of the services that they can and cannot provide to self-represented litigants.
- When the Arkansas Supreme Court has promulgated policies for court and clerk's office staff, the Arkansas judicial branch will provide training for all trial court assistants and the Arkansas Clerks Association will provide parallel training for all clerks of court and their staff on the policy guidelines. The training will include application of the guidelines to typical situations encountered by court and clerk's office staff.

Repurposing of the Supreme Court Library as the center of a network of court-based services for self-represented litigants

With the advent of automated legal research and the availability of law clerks with expert skills in its use, the Supreme Court Library is no longer the principal source of legal information for the Arkansas Supreme Court and

Court of Appeals. Although assistance to these courts will remain its primary duty, the Library will redirect most of its resources to the development of services for self-represented litigants. This would ideally include some support for developing and maintaining a comprehensive set of forms for matters commonly pursued by self-represented litigants, as described above.

- The Library will provide face-to-face information services for persons coming to the Justice Building for assistance.
- The bulk of assistance, however, will be provided remotely through telephone, email, chat sessions, Internet co-browsing, and other technologies to persons located throughout the state of Arkansas. Courthouses will provide computer and telephonic access to these Supreme Court Library resources.⁷
- The Library will work with trial court assistants and clerks of court and their staffs to establish policies to ensure assistance is rendered by local court staff when requested by self-represented litigants and that matters are referred to the Supreme Court Library only when escalation is necessary, i.e., when a court user needs help that local court staff are unable to provide.
- The services provided by the Supreme Court Library and local court and clerk of court staff will be limited to the provision of legal information authorized by the Arkansas Supreme Court guidelines. Both the Library and local court personnel will encourage persons seeking legal advice to take advantage of limited scope legal services provided by legal services organizations and by the private bar.
- The Library staff will work with local courts to create “courthouse booths” staffed by legal services and private bar attorneys to provide legal advice and assistance in preparing legal documents to self-represented litigants. In major population centers, such programs will have longer hours of operation than in smaller cities and towns. The Library will set a policy on the acceptability of private attorneys

⁷ The Arkansas court system is planning to provide this equipment to support the introduction of electronic filing. See Ark. Sup. Ct. Admin. Order No. 21 (2009). It will be capable of serving both purposes.

charging fees for these services for persons not eligible for free legal services.⁸

- County law library funds, which were identified during this study as a largely unused resource, should be used to support these “courthouse booth” programs, under guidelines established by the Administrative Office of the Courts.
- The Library staff, in collaboration with legal service providers, will also recruit *pro bono* attorneys to assist them in responding to online information requests if the demand for such services outpaces the Library’s resources.

Encouragement of the provision of limited scope representation to persons representing themselves in Arkansas

Arkansas Rule of Professional Conduct 1.2(c) currently authorizes Arkansas attorneys to provide limited scope representation. It is apparent, however, that a number of additional steps will be required to make this form of legal service widely available to self-represented litigants in Arkansas.

- The Arkansas Access to Justice Commission will propose to the Arkansas Supreme Court additional rules based on those adopted in Montana included in the appendix to address a series of issues that currently cause anxiety for attorneys considering the provision of limited scope representation, including:
 - Ensuring that trial judges cannot require attorneys to provide representation going beyond the terms of their agreement with their client
 - Clarifying how they inform the court of the extent of their representation
 - Making clear that an attorney does not have to file a motion to withdraw when the agreed upon representation comes to an end
 - Ensuring opposing counsel that s/he has no obligation to serve papers on an attorney whose representation has ended, and that s/he can contact the opposing party directly.

⁸ The American Bar Association recently gave an award to a program established by a Florida clerk of court in which persons taking advantage of such services were charged \$1 a minute.

- When the Arkansas Supreme Court has promulgated such rules, the Arkansas judicial branch will work with the Arkansas Bar Association and professional liability carriers to
 - develop model limited scope representation agreements and guidelines for delivering limited scope legal services and
 - provide training for all trial court judges and all members of the Arkansas bar on the provision of limited scope legal services.
- The Arkansas Access to Justice Commission will work with the Arkansas Bar Association to create a lawyer referral service for attorneys providing limited scope representation similar to the existing “Find-A-Lawyer” resource. If the ABA is uninterested in providing such a service, the Arkansas Access to Justice Commission will seek Supreme Court approval under A.C.A. Section 16-22-101 to itself establish such a referral service. Regardless of the sponsor of this referral service, it will be linked to the ALSP forms as described previously.
- The Arkansas Access to Justice Commission will undertake additional public education activities to promote public understanding of the benefits of limited scope representation and create an automated Arkansas access portal for the public to use to access these services.
- The Arkansas Access to Justice Commission will encourage the law schools at the University of Arkansas and the University of Arkansas at Little Rock to encourage law students to provide limited scope representation legal services by
 - Teaching students about limited scope representation in legal ethics classes and providing such services in their clinical legal education programs and
 - Creating “incubator” programs that would provide otherwise unemployed law graduates with work space, automation, mentoring, liability insurance, and client referrals to encourage the development of law practices based on a limited scope representation business model.

Alignment of legal services priorities with this strategic plan

This plan will have significant implications for Arkansas legal services programs.

- They will redesign their service priorities to focus on
 - Providing full representation only for cases inappropriate for self-representation,
 - Developing a limited scope representation practice for poor persons representing themselves, and
 - Developing and pursuing a litigation strategy in association with pro bono attorneys and other legal advocacy organizations to ensure that courts and court personnel throughout Arkansas are providing the services to self-represented litigants to which they are entitled under principles of due process of law and Arkansas guidelines and that the current disparity in case outcomes between represented and unrepresented litigants disappears.

Louisiana Code of Judicial Conduct Provisions Concerning Self Represented Litigants

Louisiana Code of Judicial Conduct

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

- (1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge shall maintain order and decorum in judicial proceedings.
- (3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.
- (4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the abilities of all litigants, including self-represented litigants, to be fairly heard, provided, however, that in so doing, a judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person.

COMMENTARY TO CANON 3A(4) (2013)

Steps judges may consider in facilitating the right of self-represented litigants to be heard, and which (they might find) are consistent with these principles include, but are not limited to:

- (1) making referrals to any resources available to assist the litigant in preparation of the case;
- (2) providing brief information about the proceeding and evidentiary and foundational requirements;
- (3) asking neutral questions to elicit or clarify information;
- (4) attempting to make legal concepts understandable by minimizing use of legal jargon; and
- (5) explaining the basis for a ruling.

Delaware's Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants

PREAMBLE

The following Guidelines, which were adopted by the Delaware Supreme Court effective May 11, 2011, are designed to address concerns that Judicial Officers may have regarding balancing self-represented litigants' perceptions of procedural fairness while maintaining neutrality in the courtroom, particularly when one party is self-represented and one has an attorney. Judicial Officers in Delaware have reported that it can be difficult to decide how much and when to intercede when there is a self-represented litigant and there is tension between trying to see that justice is done for the self-represented litigant and not impacting an opposing party who is represented. These Guidelines are not intended to alter the Code of Judicial Conduct or Judges' obligations thereunder, or to create additional standards under which Judges may be disciplined. They should, however, provide guidance to all Judges of the State of Delaware.

1. Principles

- 1.1 It is proper that Judges exercise their discretion to assume more than a passive role in assuring that during litigation the merits of a case are adequately presented through testimony and other evidence. While doing this, Judges shall remain neutral in the consideration of the merits and in ruling on the matter.
- 1.2 In adjudicating cases with self represented parties, as well as attorneys, judges should recognize that neutrality does not preclude communication between the fact finder and the litigants in the courtroom when it is intended to provide self represented parties with the opportunity to have their matters fairly heard according to law.
- 1.3 Asking questions, modifying procedures and applying common sense to obtain the facts necessary to adjudicate cases are tools to assure neutrality and unbiased process of law in the decision making required of all judges in the State of Delaware.

2. General Practices

- 2.1 Plain English: Judges should¹ use plain English and minimize the use of complex legal terms when conducting court proceedings.
- 2.2 Language Barriers: Judges should be attentive to language barriers experienced by self-represented litigants. Judges should take the necessary steps to provide qualified interpreters to self-represented litigants who are not fully conversant in English or who are hearing impaired, pursuant to the policies of the Delaware Court system.
- 2.3 Legal Representation: Judges should inform litigants that they have the right to retain counsel and the right to be represented by counsel throughout the course of the proceedings. Judges should also acknowledge that parties have a right to represent themselves. Judges should confirm that the self-represented litigant is not an attorney, understands the right to retain counsel, and will proceed without an attorney. Judges also may wish to discuss with the litigant what it means to represent oneself in litigation.
- 2.4 Application of the Law: Judges should apply the law without regard to the litigant's status as a self-represented party and shall neither favor nor penalize the litigant because that litigant is self-represented.
- 2.5 Materials and Services for Self-Represented Litigants: Judges should encourage the provision of information and services to better enable self-represented litigants to use the courts. Judges also should encourage self-represented litigants to use these resources.
- 2.6 Opportunity to be Heard: Judges should advise parties that they are afforded the opportunity to state their case in a meaningful way, that they have chosen to do so on their own behalf and that the judge's duty is to apply the law to the facts in a fair, neutral and unbiased manner.
- 2.7 Managing the Case: Judges should alert self represented parties to judicial expectations concerning preparation and conduct during in-court proceedings and manage those proceedings in a manner most likely to provide judges with

¹ The term "should" is used throughout the Guidelines to indicate that the conduct referenced is recommended but not mandatory.

the relevant information needed to make informed and just decisions.

- 2.8 Preparation: Judges should be familiar with the major legal issues likely to arise in cases involving self represented parties.

3. Guidelines for Pre-Hearing Interaction

- 3.1 Trial Process: Judges should make a reasonable effort to ensure that self-represented litigants understand the trial process.² Judges should inform litigants that the trial will be conducted in accordance with applicable evidentiary and court rules.³
- 3.2 Brevity and Consistency: Because providing extensive information on substantive and procedural matters may be confusing to a self represented party, Judges should consider adopting a brief and consistent statement of issues that the Judge wishes to explain prior to the commencement of litigation.
- 3.3 Settlement: In cases in which settlement may be appropriate, Judges may discuss the possibility of settlement. This may occur at any stage in the litigation, but particularly at a case management, pre-trial or status conference.
- 3.4 Alternative dispute resolution (ADR): When a case is appropriate for ADR, Judges should discuss with self represented litigants the availability and benefits of such services in the Judge's particular court. This may occur at any stage in the litigation, but particularly at a case management, pre-trial or status conference.

4. Guidelines for Conducting Hearings

- 4.1 Courtroom Decorum: Judges should maintain courtroom decorum cognizant of the effect it will have on everyone in

² Judges may wish to provide an explanation of substantive and procedural matters at the beginning of court proceedings.

³ When one party is represented by counsel, judges should inform counsel of the potential need to modify courtroom procedure to learn the facts of the case and that if counsel believes that the court is overreaching, an objection should be raised.

the courtroom, including self-represented litigants. Judges should ensure that proceedings are conducted in a manner that is respectful to all participants, including litigants, attorneys, witnesses and Court staff.

4.2 Stress: Judges should be cognizant that self represented parties are generally under stress of unfamiliar environment and should attempt to ease the anxiety in the courtroom so participants are more likely to fully participate in the proceedings.

4.3 Evidence: Judges shall adhere to the applicable rules of evidence, but may use their discretion, when permissible, to provide self-represented litigants the opportunity to meaningfully present their cases. Judges may ask questions to elicit general information and to obtain clarification. Judges should explain why the questions are being asked and that they should not be taken as any indication of the judge's opinion of the case. Judges should explain their rulings, particularly on the inadmissibility of evidence.

5. Guidelines for Post-Hearing Interaction

5.1 Issuing the Decision: Judges should exercise discretion in deciding whether to issue a decision at the close of the hearing while both parties are present, or to inform the parties that the matter will be taken under advisement and that a written decision will be mailed to them. In cases where there is no immediate need to enter an order, the Judge may inform the parties that the Judge wishes to consider their evidence and arguments before making a decision. If possible, the Judge should give a time frame within which the case will be decided.

5.2 Appeals: If asked about the appellate process, Judges may refer the litigant to the appropriate authority.

**SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE**

Directive Concerning Colorado Courts' Self-Represented Litigant Assistance

This directive concerns assistance provided by Clerks, Family Court Facilitators, Self-Represented Litigant Coordinators, and others to litigants or potential litigants in **non-criminal matters**.

Authority for Self-Represented Litigant Assistance

The Colorado Courts provide self-help assistance to Self-Represented Litigants to facilitate access to the courts. The goal is to provide, within the bounds of this directive, assistance to achieve fair and efficient resolution of cases, and to minimize the delays and inefficient use of court resources that may result from use of the court system by litigants who are not represented by lawyers. There is a compelling state interest in resolving cases efficiently and fairly, regardless of the financial resources of the parties.

Definitions

- (a) "Self-Represented Litigant" means any individual who seeks information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court.
- (b) "Self-Help Personnel" means court employees and court volunteers who are performing services as part of the Colorado Courts' Self-Represented Assistance. Self-Help Personnel include court clerks, family court facilitators, self-represented litigant coordinators, law librarians, and others who work to provide Self-Represented Assistance. Those court employees and court volunteers who are licensed lawyers are governed by this CJD in the same way that court employees and court volunteers who are not lawyers are governed. The State Court Administrator's Office and local districts will provide appropriate training to Self-Help Personnel.
- (c) "Court Volunteers" are volunteers who volunteer for the court in helping to provide information to self-represented litigants. Court volunteers are not volunteering as or on behalf of a lawyer, law firm or law practice and as such, consistent with this CJD, do not provide legal advice.
- (d) "Self-Represented Assistance" means support and guidance provided by Self-Help Personnel within the scope and limitations of this Chief Justice Directive, including collaboration and coordination with legal and community resources.

- (e) “Approved forms” means the standardized forms and detailed instructions that have been approved by the State Court Administrator’s Office and appear on the state judicial website, forms printed in the Colorado Supreme Court Rules, and local forms to facilitate following local case-processing procedures.

Role of Self-Help Personnel

(a) Basic Services. Self-Help Personnel may provide the following services:

- (1) Provide general information about court procedures and logistics, including requirements for service, filing, scheduling hearings and compliance with local procedure;
- (2) Provide, either orally or in writing, information about court rules, terminology, procedures, and practices;
- (3) Inform Self-Represented Litigants of available pro bono legal services, low cost legal services, unbundled legal services, legal aid programs, alternative dispute resolution services including mediation and services offered by the Office of Dispute Resolution, lawyer referral services, and legal resources provided by state and local libraries;
- (4) Encourage Self-Represented Litigants to obtain legal advice without recommending a specific lawyer or law firm;
- (5) Explain options within and outside the court system, including providing information about community resources and services;
- (6) Provide information about domestic violence resources;
- (7) Offer educational sessions and materials, as available, and provide information about classes, such as parenting education classes;
- (8) Assist Self-Represented Litigants in selecting the correct forms, and instructions on how to complete forms, based on the Self-Represented Litigant's description of what he or she wants to pursue or request from the court, including, but not limited to, providing forms for the waiver of filing fees. Where no form exists to accomplish the Self-Represented Litigant's request, Self-Help Personnel should inform the litigant of that fact;
- (9) Record information provided by the Self-Represented Litigant on approved forms if that person cannot complete the forms due to disability, language, or literacy barriers;
- (10) Assist Self-Represented Litigants to understand what information is needed to complete filling in the blanks on approved forms;

- (11) Review finished forms to determine whether forms are complete, including checking for signatures, notarization, correct county name, and case number;
- (12) Assist in calculating child support using the standardized computer-based program, based on financial information provided by the Self-Represented Litigant;
- (13) Answer general questions about how the court process works;
- (14) Answer questions about court timelines;
- (15) Provide docket information;
- (16) Provide information concerning how to get a hearing scheduled;
- (17) Inform Self-Represented Litigants of the availability of interpreter and sign language assistance and process requests for such services;
- (18) At the direction of the court, review Self-Represented Litigants' documents prior to hearings to determine whether procedural requirements have been met;
- (19) Assist Self-Represented Litigants with preparation of proposed court orders based upon the parties' agreement or stipulation for signature of judge or magistrate;
- (20) Answer questions about whether an order has been issued, where to get a copy if one was not provided, and read the order to the individual if requested;
- (21) Provide a Self-Represented Litigant with access to information from a case file that has not been restricted by statute, rule or directive, including CJD 05-01;
- (22) Provide assistance based on the assumption that the information provided by the Self-Represented Litigant is accurate and complete;
- (23) Provide the same services and information to all parties to an action, as requested;
- (24) Provide language and/or citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the situation;
- (25) Provide other services consistent with the intent of this Chief Justice Directive and the direction of the court, including programs in partnership with other agencies and organizations.

(b) Prohibited Services. Self-Help Personnel shall not:

- (1) Recommend whether a case should be brought to court;

- (2) Give an opinion about what will happen if a case is brought to court;
- (3) Represent litigants in court;
- (4) Tell a Self-Represented Litigant that Self-Help Personnel may provide legal advice;
- (5) Provide legal analysis, strategy, or advice;
- (6) Disclose information in violation of a court order, statute, rule, chief justice directive, or case law;
- (7) Deny a Self-Represented Litigant access to the court;
- (8) Tell the Self-Represented Litigant anything Self-Help Personnel would not repeat in the presence of the opposing party, or any other party to the case;
- (9) Refer the Self-Represented Litigant to a specific lawyer or law firm for fee-based representation.

Assistance by Self-Help Personnel is not the Practice of Law

The performance of services by Self-Help Personnel in accordance with this directive is not the practice of law, as Self-Help Personnel are to provide neutral information and are not to give legal advice. Information provided by a Self-Represented Litigant to Self-Help Personnel is neither confidential nor privileged. No attorney-client relationship exists between Self-Help Personnel and a Self-Represented Litigant.

Assistance by Lawyers and Nonlawyer Assistants who are not Self-Help Personnel

When Self-Help Personnel refer Self-Represented Litigants to community resources and services, this may include referrals to lawyers and law firms who can provide short-term limited legal services. Lawyers, and their nonlawyer assistants, as that term is used in the Colorado Rules of Professional Conduct 5.3, are guided by the Colorado Rules of Professional Conduct, including, but not limited to Rule 6.5 which addresses court-annexed limited legal services programs.

Availability of Services

Subject to available resources, assistance is available to all Self-Represented Litigants. Self-Help Personnel may direct Self-Represented Litigants to other appropriate services where the inquiry is better addressed. Some limited examples are: the Office of the District Attorney for questions about victims' services; the Americans with Disabilities Act coordinator in the location, for information about accommodations necessary to the Self-Represented Litigant; the collections investigator for information about payment of court costs; the clerk and recorder, for

information about property records; and the Division of Revenue, Motor Vehicle Division, for information about drivers' licenses or state identification.

Copy Costs

Courts may require Self-Represented Litigants to pay the reasonable copying costs of providing forms and instructions to Self-Represented Litigants, provided that the charge for persons who are indigent may be reduced or waived, as required by statute, rule or directive, including CJD 06-01.

Notice to Self-Represented Litigant

Self-Help Personnel shall provide and, if necessary, review with the Self-Represented Litigant, the below "Notice to Self-Represented Litigant." Such notice shall also be available through conspicuous posting and be made available in other languages, as needed.

NOTICE TO SELF-REPRESENTED LITIGANT

Self-help services are available to all persons who seek information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court, within the resources available to Self-Help Personnel.

Self-Help Personnel are neutral information providers and will provide the same services and information to all parties in a case, if requested.

Self-Help Personnel are employees of the court or volunteers for the court and are available to provide information about court procedures, practices, rules, terminology, and forms, as well as community resources and services. They will assist you by providing information in a neutral way, but cannot act as your lawyer or provide legal advice.

Self-Help Personnel will explain the court process, will help you to understand what information is needed to fill in the blanks on a form, and will review your forms for completeness, but cannot tell you what your legal rights or remedies are, represent you in court, or tell you how to testify in court.

Self-Help Personnel will listen to you to help you locate forms and understand the information you need for your case, but because the Self-Help Personnel are court employees or court volunteers, any information you share with them is not confidential or privileged.

No attorney-client relationship exists between Self-Help Personnel and you as a Self-Represented Litigant. If you need a lawyer or legal advice, Self-Help Personnel will help you find community resources and services without recommending a specific lawyer or law firm.

Self-Help Personnel are not responsible for the outcome of your case.

Self-Help Personnel are not investigators and cannot provide investigative services.

Self-Help Personnel are court employees or court volunteers not acting on behalf of any particular judge. The presiding judge in your case may require that you change a form or use a different form. The judge is not required to grant the relief you request in a form.

In all cases, it is best to obtain the assistance of your own lawyer, especially if your case presents significant or complicated issues. If requested, Self-Help Personnel will help you find community resources and services without recommending a specific lawyer or law firm.

For more information about the court's self-help assistance, see Chief Justice Directive 13-01, which is available at

http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm.

(end of notice)

Done at Denver this 12th day of June, 2013.



Michael L. Bender, Chief Justice

AMERICAN BAR ASSOCIATION

**STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES
SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION**

LAW PRACTICE MANAGEMENT SECTION

**STANDING COMMITTEE ON ETHICS AND PROFESSIONAL
RESPONSIBILITY**

STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS

STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE

**STANDING COMMITTEE ON LEGAL ASSISTANCE TO MILITARY
PERSONNEL**

STANDING COMMITTEE ON GROUP AND PREPAID LEGAL SERVICES

COMMISSION ON INTEREST ON LAWYERS' TRUST ACCOUNTS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association encourage practitioners, when appropriate, to consider limiting the scope of their representation as a means of increasing access to legal services.

FURTHER RESOLVED, That the American Bar Association encourage and support the efforts of national, state, local and territorial bar associations, the judiciary and court administrations, and CLE providers to take measures to assure that practitioners who limit the scope of their representation do so with full understanding and recognition of their professional obligations.

FURTHER RESOLVED, That the American Bar Association encourage and support the efforts of national, state, local and territorial bar associations, the judiciary and court administrations, and those providing legal services to increase public awareness of the availability of limited scope representation as an option to help meet the legal needs of the public.

REPORT

I. Overview

Research clearly indicates that a growing number of people are foregoing the assistance of lawyers when confronted with a civil legal issue and are addressing their matters through self-representation. In many instances, people are turning to self-help alternatives, such as document preparation services available over the Internet.

Lawyers who provide some of their services in a limited scope manner facilitate greater access to competent legal services. Limited scope representation has taken on several names, including “discrete task representation,” “limited assistance representation,” and “unbundled legal services.” According to the New York Civil Courts, the provision of “unbundled legal services” involves “a practice in which the lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full service representation. Simply put, the lawyers provide only the agreed upon tasks, rather than the whole “bundle,” and the clients perform the remaining tasks on their own.”

To be clear, limited scope representation is used in pro bono and legal aid settings, but is not limited to free legal services. Lawyers who unbundle their services in the marketplace are able to serve a broader range of clients because the cost per case is more affordable.

The American Bar Association has set out the circumstances under which lawyers may limit the scope of their representation in Rule 1.2(c) of the Model Rules of Professional Conduct. This Rule requires lawyers who limit the scope of their representation to do so only in those cases where the limitation is reasonable under the circumstances and the client gives informed consent to the limitation.

Although Rule 1.2(c) was adopted in 2002 and has been broadly embraced by the states since then, public opinion research demonstrates that a substantial portion of the public is unaware of the option to limit the scope of representation.

Access to competent legal services for those with personal, civil legal problems can be advanced through the ABA’s support of limited scope representation, advancement of the professional obligations of lawyers that provide limited scope representation and encouragement of justice system stakeholders to inform the public about opportunities for limited scope representation.

II. The Growth of Self-Representation

The ABA’s seminal legal needs study from 1994 documented the ways in which those of moderate and low incomes approach the justice system for their legal needs. The survey indicated that 40 percent of low-income households and 46 percent of moderate-income households had at least one new legal problem in the prior year. Less than four out of ten of those in moderate-income households with a new legal problem turned to the civil

justice system to deal with their problems. The clear majority of both low and moderate-income household members handled the problem on their own, took no action or consulted a third party other than a lawyer.

Since this survey was conducted, other research shows that the number of litigants who self-represent has increased in many areas. National data indicates that in family law matters, between 60 and 90 percent of the cases involve at least one self-represented party. In New York, nearly two million litigants self-represent each year. California has over 150,000 divorce cases per year. At least one party is unrepresented in 70 percent of them. A New Hampshire report indicates that in 70 percent of the domestic relations matters there at least one party is self-represented. In Oregon, about seven out of ten litigants in family law matters self-represent. According to a Utah study conducted in 2005, both sides in debts collection cases were represented in only three percent of the cases. In addition, 81 percent of respondents in divorce cases in Utah self-represent, and in evictions, 97 percent of respondents self-represented.

In 2009, the ABA Coalition for Justice surveyed judges to measure the impact of the economic downturn on the courts. Six out of ten judges who participated in the survey reported that the number of self-represented litigant had increased. Just over a third indicated it had stayed the same, but only 3 percent of the judges reported that more litigants were coming to court with representation. In addition, the study found the self-represented litigants were unprepared, with many having an unsatisfactory outcome. High percentages of judges reported that self-represented litigants failed to include important evidence, committed procedural errors and were ineffective in raising objections, examining witnesses and crafting arguments. Nearly two-thirds of the judges reported that the outcomes of self-represented parties were worse than if they had been represented.

The Internet has fueled alternative resources for those who self-represent. The issues are not limited to litigation, but also include the most common transactional matters. Simple search engine probes will lead consumers to scores, if not hundreds, of companies that provide services to the do-it-yourself estate planners or those who seek to incorporate their businesses. Online legal service providers are sometimes backed with millions of dollars in venture capital. One company advertises that over 15 million individuals and businesses have used their services. Another touts that it has over 2 million satisfied customers.

III. Improving Access to Legal Services through Limited Scope Representation

In 2010, then New Hampshire Chief Justice Broderick and then California Chief Justice George joined to publish an Op-Ed in the New York Times entitled “A Nation of Do-It-Yourself Lawyers.” While supporting the goal of a right to counsel in some civil cases, the Chief Justices wrote that it is essential to close the “justice gap” and that “unbundling” is one of the tools to do so. They indicated that lawyers who provide limited scope representation are being responsive to new realities. They stated “... that for those whose only option is to go it alone, at least some limited, affordable time with a

lawyer is a valuable option we should all encourage. In fact, we believe that limited scope representation rules will allow lawyers – especially sole practitioners – to serve people who might otherwise have never sought legal assistance.”

Over the past decade, several states have examined aspects of self-representation and concluded that limited scope representation is a model of delivering legal services that is responsive to problems that arise with self-represented litigants. For example, in 2008, the Massachusetts Supreme Judicial Court Steering Committee on Self-Representation issued a report entitled, “Addressing the Needs of Self-Represented Litigants in Our Court.”

The report states:

Experience has shown that LAR [Limited Assistance Representation] is appropriate for use in many categories typically involving self-represented parties and that it is an extremely helpful innovation for several reasons: (1) it allows legal aid and pro bono attorneys to assist more people; (2) it allows people who cannot afford full service representation but who have some funds to pay a lawyer to obtain meaningful assistance with their legal problem; and (3) it has positive impact on the operations of the court. In states where this method of representation has been widely used (California and Maine being notable examples) it has also shown itself to be of great benefit to the private bar; attorneys find that providing limited scope representation connects them with litigants who would otherwise not hire an attorney and that representing clients on a limited assistance basis is professionally satisfying and profitable.

The Joint Iowa Judges Association and Iowa State Bar Association Task Force on Pro Se Litigation has advanced a similar position. In its 2005 report, the Task Force states:

We believe we must shift from thinking of legal services as a dichotomy of represented/unrepresented, or “all or nothing,” to conceptualizing and facilitating legal services delivery along a continuum... We believe that more prospective clients would seek lawyers’ services if they were free to contract with lawyers for the completion of limited and designated tasks... Limited representation by the private bar offers a way to expand legal services to people of limited financial means. This will leave these litigants better prepared and should relieve judges and other court staff from the pressures of giving advice or advocacy. It can also offer lawyers an opportunity to adapt a law practice that offers “all or nothing” services into one in which they may enter agreements with litigants to limit the scope of their representation to discrete legal tasks, as they often do with their transactional clients.

The 2006 Report and Recommendations of the Supreme Court of Ohio Task Force on Pro Se and Indigent Litigants came to the same conclusions as Massachusetts, Iowa and other states that have addressed this issue. The Task Force took a system-wide look at the needs created by self-represented litigants and concluded that practitioners are uniquely situated to provide a portion of the necessary assistance.

The Report states:

Many, if not most, unrepresented litigants need more than procedural assistance (e.g. what form to use, how to docket their case, what time to appear in court). They also need assistance with decision-making and judgment; they need to know their options, possible outcomes and strategies to pursue their objectives... The task force believes that pro se litigants can, in appropriate cases, optimize their outcomes if they can obtain assistance from a lawyer with discrete limited phases or aspects of their respective cases. The opportunity for limited representation is especially valuable to the otherwise unrepresented individual when that individual cannot afford or otherwise obtain representation with respect to all aspects of a case. Counsel's limited appearance may not only advantage that attorney's client but also may help the justice system operate more smoothly.

While the reports from the state task forces and commissions, along with the Op-Ed from the California and New Hampshire chief justices, all stress the value of limited scope representation as one of the methods of addressing the justice gap and expanding access to legal services, they also all stress the need for sound policies and rules to govern the conduct of lawyers who agree with clients to limit the scope of their representation.

IV. Policies Governing Limited Scope Representation

As a result of the work of the ABA Commission on Ethics 2000, the House of Delegates amended the Model Rules of Professional Conduct to revise Rule 1.2(c). The Rule addresses the conditions under which a lawyer may agree with a client to limit the representation. The Rule states, "A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent."

The reporter's notes on the amendment to this rule indicate that the change is designed to clarify the lawyer's obligations and to expand access to the services of a lawyer. The notes state, in part:

The Commission recommends that paragraph (c) be modified to more clearly permit, but also more specifically regulate, agreements by which a lawyer limits the scope of representation to be provided to a client. Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low and moderate-income persons who otherwise would be unable to obtain counsel.

Forty-one states have now adopted Rule 1.2(c) or a substantially similar rule. Most of those states that have varied from the Model Rule require the client's consent to be in writing. A few have set out a checklist of tasks to be assumed when the lawyer provides a limited scope of representation.

On the one hand, the standards to provide limited scope representation set out in Rule 1.2(c) are easily articulated. On the other hand, those provisions may be challenging to implement in practice.

Rightly so, the Rule places the burden on the lawyer to determine if and when limited scope representation is appropriate. The lawyer must measure the capacity of the potential client to assume the responsibility of the segmented tasks. These tasks may be as simple as filing documents at the courthouse or as complex as negotiating an agreement or bringing a contested matter before a tribunal. The lawyer must both measure the capability of the potential client and the complexity of the legal issue to meet this standard. Consequently, the lawyer must be every bit as competent in the subject matter as a lawyer who exclusively provides full services in that field.

Several states have closely examined the emergence of self-representation in their jurisdiction through task forces or special committees, such as those noted above. Ultimately, these entities have called for changes in rules of professional conduct, rules of procedure and rules of the courts to clarify the obligations of lawyers providing limited scope representation to otherwise self-represented litigants. The issues that have emerged are set out in a white paper published by the Standing Committee on the Delivery of Legal Services in 2002 and updated in 2009, entitled “An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants.” The issues include the communications with opposing counsel, certification of pleadings when providing document preparation, duties to the court when providing document preparation, entry of appearances and limited appearances, and conditions and circumstances governing withdrawal of a matter before a tribunal. Alaska, Arizona, California, Colorado, Florida, Iowa, Maine, Missouri, New Hampshire, New Mexico, Utah, Washington and Wyoming are among the states that have provided clarification of the lawyer’s duties through changes to their rules. Other states are in the process of making these considerations and several more have provided clarification through their interpretations of existing rules by way of ethics opinions.

The ABA has opined about limited scope representation in different settings. ABA Formal Ethics Opinion 07-446 clarifies the lawyer’s responsibilities when limiting the scope of representation to the drafting of pleadings. The opinion indicates that the Model Rules of Professional Conduct permit a lawyer to prepare pleadings without signing them. In addition, ABA Formal Ethics Opinion 08-451 discusses outsourcing legal work. Drawing a parallel between limited scope representation and outsourcing, the opinion indicates that limited scope representation affords the same opportunities to clients as are available to lawyers – the ability to determine which services the attorney will complete in an effort to reduce costs while maximizing attorney capital. Scores of state ethics opinions addressing aspects of limited scope representation have been collected at the ABA Pro Se/Unbundling Resource Center, at http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/ethics_opinions.html.

V. Public Awareness of Limited Scope Representation

Even though substantial changes have been implemented in the policies governing lawyers who provide limited scope representation and the ABA and states have begun to clarify the lawyer's responsibilities when providing limited scope representation, the public remains largely unaware of the unbundling option.

Anecdotal information and some research suggest that there are wide variations from state to state about the usage of limited scope representation. A 2009 California survey of primarily domestic relations lawyers found that half prepared documents without appearing as counsel on the case. Half reviewed documents prepared by the clients. Forty percent coached clients to prepare for hearings and the same percentage made limited scope appearances. Only a quarter of the respondents did not unbundle their services. On the other hand, a former president of the Montana State Bar reported that limiting the scope of representation by drafting pleadings has not caught on in Washington and he doubts that it would in Montana.

Until recently, even less was known about the public's view of limited scope representation. However, in 2010, the Standing Committee on the Delivery of Legal Services commissioned Harris Interactive to conduct a national public opinion survey examining aspects of how people find legal services. One set of questions focused on limited scope representation, which in the survey was referred to as "unbundling."

The Committee assumed that some percentage of people would be unfamiliar with the concept of limited scope representation, or unbundling, and therefore began the series of questions with a statement. Since there was no universal definition of limited scope representation or unbundling, the Committee structured the following statement for the purpose of this survey:

Some lawyers are unbundling their services. "Unbundling" means that the lawyer and the client team up to divide the work between them. Instead of the lawyer doing everything, the lawyer does some of the work and the client does some of the work. For example, a lawyer may give the client instructions on how to fill out the paperwork necessary for court and the client then completes the forms. This would save money on attorneys' fees, but may take a lot of your time.

Survey respondents were then asked how familiar they were with unbundling. The choices were "very familiar," "familiar," "somewhat familiar," and "not at all familiar."

Six percent – just over one out of 20 – of the survey respondents reported they were very familiar with unbundled legal services. An additional five percent reported they were familiar with it. Eighteen percent reported they were somewhat familiar and 70% indicated they were not at all familiar with unbundled legal services. Seven out of ten people across the county reported they are not at all familiar with limited scope representation.

The level of familiarity with unbundling was uniform across the age and economic cohorts, with one exception. Those with household annual incomes less than \$15,000 per

year reported that they were somewhat familiar with unbundling at a rate substantially higher than the respondents as a whole (32% compared to 18%).

The survey then probed the extent to which people were interested in the concept of limited scope representation for their legal matters. Respondents were asked: “If you had a personal legal matter to deal with, how likely would you be to talk to a lawyer about the possibility of unbundled legal services?” About a third of the respondents reported they were very likely to do so and another third reported they were somewhat likely to explore this option. Those of moderate incomes, with family household incomes between \$35,000 and \$50,000 per year, said they were more likely to do so. Half of those surveyed with moderate incomes reported they were very likely to talk to a lawyer about unbundling.

Finally, the survey asked people whether it was important to them if a lawyer they were considering using offered an unbundling option. Sixty-two percent of the respondents indicated it was somewhat or very important that their potential lawyer offer this option. This percentage scaled up as income groups lowered. About half of those with incomes over \$100,000 per year believed it was somewhat or very important that their perspective lawyer offer unbundled services. However, four out of five respondents with incomes of less than \$15,000 per year believed it was somewhat or very important for their lawyer to offer unbundling as an option.

VI. Moving Forward with Limited Scope Representation

We have every reason to believe self-representation will continue at high, if not increasing, levels. Document preparation providers are a well-capitalized alternative to the services provided by practitioners and show signs of becoming high volume, institutionalized entities. For many, the costs of traditional services make the use of a lawyer out of reach. The organized bar has an obligation to use all reasonable resources to assure people have access to the benefits that can only be provided by lawyers. The ABA and several states have made rule changes to better enable lawyers to provide limited scope representation and to clarify the lawyer’s obligations when doing so. Nevertheless, people are unfamiliar with the concept of limited scope representation. When that concept is presented to them, a high percentage of people find this option a possibility they want to explore.

Consequently, it is imperative for the ABA to provide support for the concept of limited scope representation. This support should go beyond accommodation and stimulate discussion, debate and interest among all stakeholders in our system of justice. Likewise, it should employ greater measures to broaden the public’s awareness of this option for legal services. At the same time, the ABA should be the leader in providing clarity to practitioners on the propriety of limited scope representation and assure that lawyers provide these services with obligations no less than those that apply in full representation.

Respectfully submitted,

H. Ritchey Hollenbaugh, Chair

Standing Committee on the Delivery of Legal Services
February 2013

Montana Rules for Limited Scope Representation

These limited scope representation rules were adopted by the Montana Supreme Court on March 15, 2011, effective October 1, 2011.

Rule 1.2 -- Scope of Representation and Allocation of Authority Between Client and Lawyer

[existing subsections (a) and (b)]

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in the writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

[existing subsection (d)]

Rule 4.2 -- Communication with Person Represented by Counsel

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Rule 4.3 -- Dealing with Unrepresented Person

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Rule 4.2 Limited Representation Permitted -- Process.

(a) In accordance with Rule 1.2(c) of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of Rule 5(b) and does not authorize or require the service or delivery of pleadings, papers, or other documents upon the attorney under Rule 5(b).

(c) Representation of the person by the attorney at any proceeding before a judge or other judicial officer on behalf of the person constitutes an entry of appearance, except to the extent that a limited notice of appearance as provided for under Rule 4.3 is filed and served prior to or simultaneous with the actual appearance. Service on an attorney who has made a limited appearance for a party shall be valid only in

connection with the specific proceedings for which the attorney appeared, including any hearing or trial at which the attorney appeared and any subsequent motions or presentation of orders.

(d) An attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.

Rule 4.3. Notice of Limited Appearance and Withdrawal as Attorney.

(a) Notice of limited appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action.

(b) At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance.

Rule 11. Signing of Pleadings, Motions, and other Papers -- Sanctions

) [existing rule]

(b) An attorney may help to draft a pleading, motion, or document filed by the otherwise self-represented person, and the attorney need not sign that pleading motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.