

## **Description of California Courts' Programs for Self-Represented Litigants – prepared for meeting of the International Legal Aid Group – Harvard, June, 2003**

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California's courts are facing an ever increasing number of litigants who go to court without legal counsel largely because they cannot afford representation. They are responding with a variety of innovative strategies that may be incorporated into an overall strategy of increasing access to justice. This paper attempts to describe the strategies and the context in which they operate.

California has a total of 58 counties and a population of 33,871,648.<sup>1</sup> The counties vary greatly in size and population demographics. The smallest is Alpine County with a population of 1,208, and the largest is Los Angeles County with a population of 9,519,338, approximately one-third of the state's entire population.<sup>2</sup> It takes eight hours to drive from one courthouse to another in one county. There are mountainous counties where litigants can't get from one end of the county to the other during the winter as their roads are impassable in the snow. There are counties with no private attorneys, let alone legal services programs, and counties with a wide variety of resources that with coordination could be much more effective.

The California court system is the largest in the nation with more than 2,000 judicial officers and 18,000 court employees. It also has one of the least complicated structures. There are three levels of courts in California, trial, appellate and Supreme. There is one trial court in each county with from 1 – 55 court locations, six regional appellate courts and one Supreme Court comprised of seven justices.<sup>3</sup> In 1997, funding for the trial courts transferred from counties to the state. In 1998, trial courts, formerly divided into superior and municipal courts consolidated into a one-tier trial court system. Trial court employees changed from being county employees to court employees in 2001. In 2002, the state began to assume responsibility from the counties for trial court facilities.<sup>4</sup> These efforts are intended to build a strong, accessible, statewide system of justice with consistent and adequate funding.<sup>5</sup>

The decision making body for the California state court system is the Judicial Council. The Council is a constitutionally created 27-member policymaking body of the California courts. The Council is chaired by the Chief Justice who appoints 14 judges; four attorney members appointed by the State Bar Board of Governors; 1 member from each house of the Legislature; and 6 advisory members, including representatives of the California Judges Association and court executives (administrators). The council performs most of its work through internal and advisory committees and task forces.

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<sup>1</sup> U.S. Census Bureau, *United States Census 2000*, DP-1 Population and Housing Characteristics, Summary File 1 (SF1), <http://factfinder.census.gov>, 3/10/03.

<sup>2</sup> *id*

<sup>3</sup> See <http://www.courtinfo.ca.gov/reference/documents/cajudsys.pdf> for additional information.

<sup>4</sup> for a history of judicial administration in California see "Committed to Justice: The Rise of Judicial Administration in California" Larry Sipes, published by the Administrative Office of the Courts, 2003 <http://www.courtinfo.ca.gov/reference/commjust.htm>

<sup>5</sup> See <http://www.courtinfo.ca.gov/reference/documents/profilejc.pdf>

The Administrative Office of the Courts is the staff arm of the Judicial Council. It has slightly over 500 employees. Among its divisions is the 55 member Center for Families, Children and the Courts (CFCC) whose mission is to improve the quality of justice and services to meet the diverse needs of children, youth, families and self-represented litigants in the California courts<sup>6</sup> Staff for the Equal Access Unit of the CFCC work to assist the courts in responding to the needs of self-represented litigants.

The reason for this focus is that there appear to be a growing number of litigants representing themselves in family courts, which leads to a variety of challenges. Courts report that many litigants require additional time at the clerks office and in the courtroom as they do not understand the procedures, nor the limitations of the court. There appear to be a growing number of cases which are filed in different types of proceedings. For example, new cases involving the same family may be filed in family law, domestic violence (both civil and criminal), child support, guardianship proceedings – leading to differing results including the potential judicial determination of different fathers. Some areas of the law in California, such as traffic and small claims, have traditionally been composed primarily of unrepresented litigants and have developed mechanisms to provide for informal procedures to diminish the need for legal assistance. The growth of unrepresented litigants in family law is encouraging a rethinking of how self-represented litigants are served by courts throughout the system.

Nolo Press reports that when “How to Do Your Own Divorce In California” was published in 1971, only 1% of litigants proceeded without attorneys.<sup>7</sup> While there is no statewide data on the number of pro se litigants, it is clear that this number has dramatically expanded. In San Diego, for example, the number of divorce filings involving at least one pro se litigant rose from 46 percent in 1992 to 77 percent in 2000.<sup>8</sup> A review of case files involving child support issues conducted by the Administrative Office of the Courts between 1995 and 1997 showed that both parties were unrepresented in child support matters 63 percent of the time, and that one party was unrepresented in an additional 21 percent. In only 16 percent of the cases were both parties represented.<sup>9</sup> In a similar study of case files from 1999, both parties were unrepresented in 75 percent of the cases, and one parent was unrepresented in an additional 14 percent. In only 11 percent of the cases were both parties represented.<sup>10</sup>

In a recent survey of pro se assistance plans submitted to the Administrative Office of the Courts by 45 of California counties, estimates of the pro se rate in family law overall averaged 67 percent. In the larger counties, that average was 72 percent.<sup>11</sup> In domestic violence restraining

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<sup>6</sup> *Fact Sheet Center for Family, Children and the Courts, Administrative Office of the Courts 1/03*  
<http://www.courtinfo.ca.gov/reference/documents/cfcc.pdf>

<sup>7</sup> *How to Do Your Own Divorce in California*, Ed Sherman, Nolo Press, January 2001, p. 11

<sup>8</sup> *Family Law Information Centers: Benefits to Courts and Litigants*, Deborah J. Chase and Bonnie Rose Hough, in press, Journal of the Center for Families, Children and the Courts, to be published December, 2003

<sup>9</sup> *Review of Statewide Uniform Child Support Guideline, 1998*, Judicial Council of California at page ES-5  
<http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/suppguide.pdf>

<sup>10</sup> *Review of Statewide Uniform Child Support Guideline, 2001*, Judicial Council of California at page 39  
<http://www.courtinfo.ca.gov/programs/cfcc/1058files2001/CH3.PDF>

<sup>11</sup> *A Report and Analysis of Action Plans Throughout California: Integrating Services for Self-Represented Litigants into the Court System*. Deborah J. Chase and Bonnie Rose Hough, June 2003, in press.

order cases, litigants are reported to be pro se over 90 percent of the time. One reason for this large number of unrepresented litigants relates to the cost of attorney fees which are not publicized, but, in one list of attorneys willing to provide unbundled legal services in one suburban community, appear to range between \$175 and \$225 per hour.<sup>12</sup> The median household income in California was \$47,493 per year in 1999.<sup>13</sup> Given that many persons in the midst of a divorce or separation are already facing financial challenges setting up two separate households and otherwise dealing with financial challenges, these rates often seem prohibitive.

California's Chief Justice, Ronald M. George, has made access to justice a key goal and has been extremely supportive of efforts to improve services to self-represented litigants.<sup>14</sup> He regularly focuses a significant part of his State of the Judiciary address to a joint session of the legislature on access to justice and services for self-represented litigants.<sup>15</sup> He regularly attends events such as the opening of the Spanish Self-Help Education and Resource Center in Fresno.<sup>16</sup> As chair-elect of the Conference of Chief Justices, he has also encouraged the leadership of other chiefs in increasing services to self-represented litigants.<sup>17</sup>

It is clear that the Chief's leadership and support has made a huge difference in encouraging courts to expand services and make this issue a priority. In the strategic planning efforts of the Judicial Council, Access to Justice is the first of six goals. In its three-year operational plan, the Council chose four specific objectives regarding increasing services to self-represented litigants. These included developing a self-help website, increasing the number of self-help centers in the courts, developing a statewide action plan for serving self-represented litigants and having each trial court develop an action plan for serving self-represented litigants.<sup>18</sup>

These planning efforts are designed to focus attention on the issue of access to justice and to encourage community partnerships to build upon a framework of services in place in California. They also are designed to encourage a reexamination of existing resources to consider how to enhance their usefulness for self-represented litigants.

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<sup>12</sup> *Attorneys Available For Consultations with "Pro Per" Family Law Litigants*, Superior Court, County of Placer

<sup>13</sup> U.S. Census Bureau, *United States Census 2000*, DP-1 Population and Housing Characteristics, Summary File 1 (SF1), [http://factfinder.census.gov/bf/lang=en\\_vt\\_name=DEC\\_2000\\_SF3\\_U\\_DP3\\_geo\\_id=04000US06.html](http://factfinder.census.gov/bf/lang=en_vt_name=DEC_2000_SF3_U_DP3_geo_id=04000US06.html)

<sup>14</sup> See *Big State, Big Crisis, Big Leadership: With California's poverty population swelling, Chief Justice George sets bold course* Equal Justice Magazine, Spring 2003, Volume 2, Number 1, [http://www.ejm.lsc.gov/EJMIssue4/judicialprofile/judicial\\_profile.htm](http://www.ejm.lsc.gov/EJMIssue4/judicialprofile/judicial_profile.htm)

<sup>15</sup> See for example, *State of the Judiciary* speech, March 25, 2003 <http://www.courtinfo.ca.gov/reference/soj032503.htm>.

<sup>16</sup> See for example, *Remarks at the Opening of Fresno County's Spanish-language Self-Help Education and Information Center* (October 10, 2002) <http://www.courtinfo.ca.gov/reference/speech101002.htm>

<sup>17</sup> See Conference of Chief Justices and State Court Administrators, Resolution 31 – *In Support of a Leadership Role for CCJ and COSCA in the Development, Implementation and Coordination of Assistance Programs for Self-Represented Litigants*. August 2, 2002.

[http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_CCJOSCARResolution31Pub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_CCJOSCARResolution31Pub.pdf). See also Conference of Chief Justices and State Court Administrators *Final Report of the Joint Task Force on Pro Se Litigation*, submitted July 29, 2002, Rockport, Maine

[http://www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FinalReportProSeTaskForcePub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FinalReportProSeTaskForcePub.pdf).

<sup>18</sup> *Operational Plan, Leading Justice into the Future*, Judicial Council 2001-2003 page 2 and 3 <http://www.courtinfo.ca.gov/reference/documents/opplan2k.pdf>.

This paper attempts to describe the current structure in place, and identify some future directions suggested by these planning efforts.

## Forms

California has nearly 600 forms that must be accepted by all courts throughout the state. See [www.courtinfo.ca.gov/forms/](http://www.courtinfo.ca.gov/forms/) for a complete list of forms. Forms adopted for mandatory use must be used in those actions, forms approved for optional use must be accepted by the courts although litigants may craft their own pleadings. Many types of cases are completed solely by completing mandatory forms. These cases include: family law, domestic violence, guardianship, probate, juvenile dependency, and landlord/tenant. California has forms for discovery including form interrogatories and requests for information.

Mandatory forms were initially developed in 1971 with the passage of the Family Law Act which instituted no fault divorce. They were designed to assist attorneys and judges fully plead and decide the elements of cases given the major change in the law. The number of variety of forms has increased dramatically since that time. As a result of these standardized forms, instructional materials, document assembly packages and other methods of assisting litigants can be completed economically. These instructions started in 1971 with the Nolo Press publication “How to Do Your Own Divorce in California.” This book, that provides the basics of California family law and explains how to complete the mandatory forms has sold over 800,000 copies and has sparked a large number of other books and now an extensive website: [www.nolo.com](http://www.nolo.com).

The Judicial Council has also developed a variety of instructional materials to assist litigants with understanding the law and court procedures and in completing these forms: Instructional materials range from a 25 page guide to summary dissolution which contains sample forms and a sample agreement (<http://aocweb/forms/documents/fl810.pdf>) to domestic violence forms (<http://aocweb/selfhelp/dv/dvforms.htm#get>).

Since these forms were designed with attorneys and judges in mind, they were not always easy for litigants to read and understand. While the legislature has specifically directed the Judicial Council to develop certain procedures and forms with self-represented litigants in mind (such as the simplified financial statement<sup>19</sup> and simplified modification of order for child, spousal or family support<sup>20</sup>), the same basic format has been used for the last 30 years. In January 2003, the Judicial Council approved its first major change to that format with the adoption of new plain language domestic violence and adoption forms. These forms were designed for those who read at a 4<sup>th</sup> grade level and include graphics, larger type and are designed to be used without attorneys. The Council undertook user testing of these forms with litigants, court staff and law enforcement. For proof of personal service see <http://www.courtinfo.ca.gov/forms/fillable/dv200.pdf>. For a sample order see: <http://www.courtinfo.ca.gov/forms/fillable/dv110.pdf>. Other forms are being revised in areas of

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<sup>19</sup> California Family Code §4068(b) (<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=3388192995+0+0+0&WAIAction=retrieve>)

<sup>20</sup> California Family Code §3680 (<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=3388653245+0+0+0&WAIAction=retrieve>)

law such as landlord/tenant, small claims and child support where many litigants are representing themselves.

All Judicial Council forms are now fillable on-line using Adobe Acrobat. Additionally, the website links to programs that help litigants complete forms using a simple question and answer format. These programs include the Superior Court of Sacramento County's e-filing program for small claims litigants: <http://www.apps-saccourt.com/scc/>; EZLegal by the Superior Court of San Mateo County that allows for basic filings in family law, small claims, guardianships and landlord tenant matters (see <http://www.ezlegalfile.com/elf-welcome/index.jsp>); and I-CAN! by Orange County Legal Aid that provide question and answer format as well as video (see [http://www.legal-aid.com/I-CAN/ican\\_demo.html](http://www.legal-aid.com/I-CAN/ican_demo.html)). I-CAN has been evaluated by researchers from the University of California at Irvine and found to be very easy for litigants – even those who did not read English – to use.<sup>21</sup> The Administrative Office of the Courts has provided funding for each of these projects and works with them to increase their effectiveness and availability for statewide use.

## Language Access

224 languages are spoken in California's courts.<sup>22</sup> Of the 32% of Californians who speak a language other than English, nearly one in ten speak no English. 26% of Californians are foreign born. 33% of those are from Asia and 56% are from Latin America.<sup>23</sup> From 1990 – 1998, 1,807,953 people legally immigrated to California from other countries. Estimates of undocumented aliens (principally from Latin American countries) who come to California directly or through other states are as high as 225,000 per year.

When litigants with limited or no English proficiency try to access the court system without counsel, they face significant barriers. However, there is no statutory right to counsel in other than criminal and domestic violence cases due to the implications for loss of liberty. The Administrative Office of the Courts has been working to seek funding for increased availability of interpreters and has been actively involved in increasing the number of qualified interpreters.<sup>24</sup>

Funds are also provided to the courts to pay for interpreter services for low income persons in cases involving domestic violence. This funding is based upon an evaluation of a pilot project where such funds were provided which found that interpreter services proved extremely useful in custody and visitation matters.<sup>25</sup>

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<sup>21</sup> *An Evaluation of the Legal Aid Society of Orange County's Interactive Community Assistance Network (I-CAN!) Project* by James Meeker and Richard Uttman, 2002, [http://www.legal-aid.com/I-CAN/ican\\_download.html](http://www.legal-aid.com/I-CAN/ican_download.html)

<sup>22</sup> *Fact Sheet, Court Interpreters*, Administrative Office of the Courts, January 2003, <http://www.courtinfo.ca.gov/reference/documents/ctinterp.pdf>

<sup>23</sup> U.S. Census Bureau, *United States Census 2000*, as reported in *Policy Paper, Language Barriers to Justice in California* in draft by Commission on Access to Justice.

<sup>24</sup> For a description of the efforts including collaboration on training programs see the AOC's website regarding court interpreters at: <http://www.courtinfo.ca.gov/programs/courtinterpreters/>

<sup>25</sup> *Family Law Interpreter Pilot Program, Report to the Legislature*, Administrative Office of the Courts, 2001, <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/FLIPP.PDF>

All domestic violence forms and instructional materials developed by the Judicial Council are now available in English, Spanish, Vietnamese, Chinese and Korean based upon need for interpreters in other languages. Posters and postcards alerting litigants to this information have been developed and circulated to courts, legal services and social services agencies.

A number of courts have translated materials into different languages to reflect the needs in their community. These materials are now being gathered together on the California courts self-help website that is described below.

## Web Site

On July 1, 2001, the Judicial Council launched an updated version of its comprehensive online Self-Help Center found at [www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/) for court users who do not have attorneys and others wishing to be better informed about the law and court procedures. This website provides more than 1,000 pages of information on legal issues that come before state courts with step by step instructions for many common proceedings. It also has over 2,400 links to other resources that provide additional legal information including resources to areas of law, such as bankruptcy and federal claims not covered in state courts. Most Californians (76 percent) use a computer at home, work, or school and 65 percent say they use the Internet.<sup>26</sup>

The site is heavily used as described in the chart below:

Month/Yr	Hits	Views	User Sessions	Avg Time
May-02	1,362,567	358,306	99,328	7:01
June-02	1,396,176	360,541	99,811	7:05
July-02	1,520,421	390,560	99,913	11:13
August-02	1,643,113	440,772	113,244	12:39
September-02	1,529,423	399,666	105,829	13:27
October-02	1,725,080	437,879	116,243	11:40
November-02	1,493,321	377,393	102,394	11:07
December-02	1,482,476	368,539	100,085	11:00
January-03	2,134,175	620,728	128,051	13:04
February-03	2,005,531	702,366	108,967	13:57
March-03	2,064,202	577,798	124,231	12:47
April-03	2,184,476	560,840	129,504	12:42

The entire site was rewritten and redesigned to make it accessible at a 5<sup>th</sup> grade level. A number of features were added including easy access to a service offered by law librarians to assist with basic legal research on-line at no charge. The entire website is being translated into Spanish and the Spanish version of the website will be launched in July, 2003.

A new link will be added at that time for materials available in foreign languages in addition to Spanish to help both litigants and those assisting them, find translated materials easily. AOC staff is now working on templates to assist self-represented litigants in drafting legally enforceable agreements and drafting logical declarations in common cases.

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<sup>26</sup> Fact Sheet, Online Self-Help Center Q&A, [www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/) Administrative Office of the Courts, 1/03 <http://www.courtinfo.ca.gov/reference/documents/selfhelpqqa.pdf>

Many local courts have also developed helpful resources for litigants representing themselves. Examples include: Santa Clara: <http://www.sccselfservice.org/default.htm>; Ventura: <http://courts.countyofventura.org/venturaMasterFrames5.htm>; Los Angeles: <http://www.lasuperiorcourt.org/familylaw/> and <http://www.lasuperiorcourt.org/probate/index.asp?selfhelp=1>, Sacramento: <http://www.saccourt.com/index/family.asp>, <http://www.saccourt.com/index/ud.asp>, and <http://www.saccourt.com/index/smallclaims.asp>; Stanislaus, <http://www.stanct.org/courts/familylaw/index.html> and Shasta: <http://www.shastacourts.com/familylaw.shtml>.

## Family Law Facilitators

Effective January 1, 1997, Family Code section 10002 established an Office of the Family Law Facilitator in each of the 58 counties. The Judicial Council administers the program, providing over \$11 million per year to court-based offices that are staffed by licensed attorneys. These facilitators, working for the superior court, guide litigants through procedures related to child support, maintenance of health insurance, and spousal support. They assist with cases involving the local child support agency, many of which many are public assistance reimbursement cases. In addition, many courts have enlisted volunteer attorneys or provide additional funding that enables facilitators to assist self-represented litigants in other family law areas, including divorce, custody, and visitation.<sup>27</sup>

By statute, family law facilitators provide services to both parties, do not represent any party and do not form an attorney client relationship.<sup>28</sup> This allows the court to provide assistance to litigants without compromising the neutrality of the court. It also limits the level of assistance that can be provided. “Guidelines for the operation of family law information centers and family law facilitators offices” have been developed to assist court based attorneys in this new ethical paradigm that has been followed by the majority of self-help programs operated in the courts.<sup>29</sup>

Facilitator services are available to all self-represented litigants; the act does not require an income qualification test.<sup>30</sup> “However, data from 2000 indicates that 82% of facilitator customers have a gross monthly income of under \$2,000. Over 67% of facilitator customers have gross monthly incomes of under \$1,500. Over 45% of facilitator customers have gross monthly

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<sup>27</sup> *California’s Family Law Facilitator Program, a New Paradigm for the Courts*, Frances L. Harrison, Deborah J. Chase, and L. Thomas Surh, *Journal of the Center for Families, Children & the Courts*, Volume 2, 2000 <http://www.courtinfo.ca.gov/programs/cfcc/pdf/files/061harrison.pdf>

<sup>28</sup> California Family Code §10004 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=33172416778+2+0+0&WAIAction=retrieve>

<sup>29</sup> See Appendix V to California Rules of Court, *Guidelines for the operation of family law information centers and family law facilitators offices* <http://www.courtinfo.ca.gov/rules/appendix/appdiv5.pdf>

<sup>30</sup> California Family Code §10003 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=33172416778+2+0+0&WAIAction=retrieve>

incomes of under \$1,000 and approximately one-fifth report gross monthly income of \$500 or less.”<sup>31</sup> In 2002, facilitators provided assistance to over 450,000 litigants<sup>32</sup>

Family law facilitators provide a range of services based upon the needs in their community and their assessment of what would be most effective.<sup>33</sup> In a survey taken in 1999, all offered assistance with forms and instructions, nearly all provided informational brochures and videos and had staff to answer procedural questions. Two thirds offered domestic violence assistance and nearly one half provided access to copiers, fax machines, and other resources for litigants. “More than half of the facilitators reported that they provided mediation services, in which they meet with both parents and help work out child support issues. Other services reported included interpreters and rural outreach. Many facilitators make presentations to schools, homeless shelters, domestic violence organizations, radio talk shows, public access television, and jails on child support and the services provided by their offices. Facilitators’ methods of providing services range from use of paralegal assistance (34 counties), to use of a legal clinic model (26 counties), to operation of self-help centers (24 counties).”<sup>34</sup> Since the time of that study, it appears that a growing number of facilitators are providing assistance in court to help answer questions, mediate cases, and provide assistance to the court with coordination, case review, calendar call, and referrals.<sup>35</sup>

The Administrative Office of the Courts offers training twice a year for facilitators in both substantive law as well as practical strategies for serving self-represented litigants. Facilitators are mandated to attend at least one of these training sessions<sup>36</sup> and, as a result of this regular contact and active e-mail discussions, they have developed a strong network.

Since family law facilitators are available in every court, they have formed the backbone of self-help activities throughout the state. By statute, they have to have to be attorneys with family law litigation or mediation experience.<sup>37</sup> They are chosen by the judges in their county and, in a survey taken in 1999, facilitators on average had 12 years of experience of law practice. Fourteen of the facilitators (23 percent) have served as judges or commissioners pro tem.<sup>38</sup> Most came

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<sup>31</sup> *California’s Family Law Facilitator Program, a New Paradigm for the Courts*, Frances L. Harrison, Deborah J. Chase, and L. Thomas Surh, *Journal of the Center for Families, Children & the Courts*, Volume 2, 2000, page 76, <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/061harrison.pdf>

<sup>32</sup> *A Report and Analysis of Action Plans Throughout California: Integrating Services for Self-Represented Litigants into the Court System*. Deborah J. Chase and Bonnie Rose Hough, June 2003, in press.

<sup>33</sup> *Pro Pers Find Help In Family Matters*, Janet Byron, *Court News*, Judicial Council, July-August, 1998 <http://www.courtinfo.ca.gov/courtnews/07980898.pdf>

<sup>34</sup> *California’s Child Support Commissioner System: An Evaluation of the First Two Years of the Program*, Administrative Office of the Courts, May 2000, page 43 - <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/cscr2000.pdf>

<sup>35</sup> See *Effective Use of Facilitators in the Courtroom* by Sue Alexander and Tom Suhr, *Center for Families, Children and the Courts Update*, August 2002, Volume 3, Number 2, page 10 <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/newsAug02.pdf>.

<sup>36</sup> California Rule of Court 5.35 *Minimum standards for the Office of the Family Law Facilitator* <http://www.courtinfo.ca.gov/rules/titlefive/1180-1280.15-16.htm#TopOfPage>

<sup>37</sup> California Family Code § 10002 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=33172416778+2+0+0&WAISaction=retrieve>

<sup>38</sup> *California’s Child Support Commissioner System: An Evaluation of the First Two Years of the Program*, Administrative Office of the Courts, May 2000, page 34 <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/cscr2000.pdf>



from private practice and have good connections with their local bar. As experienced attorneys with the respect of both the bench and the bar, they have been able to alleviate many concerns of the private bar about the program and to encourage changes in local rules and procedures to be more accommodating for self-represented litigants.

Customers of the family law facilitators were pleased with the services they had received and reported 99 percent of the time that they would return to the facilitator if they needed help in the future, and that they would refer a friend or family member to the facilitator.

When asked about the quality of service they had received from the facilitator, 96 percent reported that the service was excellent or good.<sup>39</sup> Examples of comments from facilitator customers were:

*“The way the program is presently operated is excellent. There are not many people like you who are willing to help people with our problems the way your program does.”*  
[These comments were from an illiterate man who dictated his responses.]

*“While the whole issue of child support has been one of the worst experiences of my life, this office has provided me with invaluable assistance.”*

*“Really helped us come to an agreement that both of us were happy with.”*

*“Best service I’ve ever experienced with the judicial system.”*

*“I didn’t know where to go for help and I couldn’t afford an attorney or paralegal, and your office provided me with excellent service...”*

*“She [the paralegal] is a light in a very dark tunnel.”<sup>40</sup>*

The facilitators have also been much appreciated by the courts. As one judicial officer reported in a focus group:

*“Since the facilitator has been in effect...you don’t have these long, long lines at the clerk’s office. You don’t have these incredible calendars that go on well into the noon hour because the judges are trying to explain to the pro pers. I think where you can see the cost effectiveness most is in the courthouse, in the clerk’s office, in the judge’s courtroom. It’s cutting down time tremendously.”<sup>41</sup>*

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<sup>39</sup> Satisfaction surveys from April through June 1999 from the Los Angeles County Office of the Family Law Facilitator

<sup>40</sup> *California’s Child Support Commissioner System: An Evaluation of the First Two Years of the Program*, Administrative Office of the Courts, May 2000, page 58  
(<http://www.courtinfo.ca.gov/programs/cfcc/pdf/cscr2000.pdf>)

<sup>41</sup> *California’s Child Support Commissioner System: An Evaluation of the First Two Years of the Program*, Administrative Office of the Courts, May 2000, page 62.  
(<http://www.courtinfo.ca.gov/programs/cfcc/pdf/cscr2000.pdf>)

These efficiencies have also been helpful in encouraging bar support for the facilitator program. The support of the bench for the program, combined with the recognition that the litigants are generally do not have the resources to hire private counsel and the willingness of facilitators to refer to the private bar when appropriate seems to have greatly diminished initial concern about the program.

## **Equal Access Fund**

The Equal Access Fund was first created by the Budget Act of 1999 and has been continued in the Budget Acts of 2000, 2001 and 2002. Each of these budgets allocated \$10 million to the Judicial Council to be distributed in grants to legal services providers through the Legal Services Trust Fund Commission of the State Bar (“the commission”). The budget control language provides for two kinds of grants:

- Ninety percent of the funds remaining after administrative costs are to be distributed to legal services programs according to a formula set forth in California’s Interest on Lawyer Trust Accounts (“IOLTA”) statute.
- Ten percent of the funds remaining after administrative costs are set aside for Partnership Grants to legal services programs for “joint projects of courts and legal services programs to make legal assistance available to pro per litigants.”

101 organizations receive support from the Equal Access Fund according to the IOLTA formula.<sup>42</sup>

The Budget Act contains four essential elements for Partnership Grants:

- Recipients must be organizations that are eligible for a Legal Services Trust Fund Program grant.
- The funds must be granted for joint projects of legal services programs and courts.
- The services must be for indigent persons as defined in the Trust Fund Program statute.
- The services must be for self-represented litigants.

The Partnership Grants span a wide range of substantive, procedural, technical and programmatic solutions. 18 programs have been started in courts throughout the state to assist litigants in cases involving domestic violence, guardianships, family law, landlords and tenants, and general civil assistance. All are required to include the following:

- A letter of support from the applicable court’s presiding judge and the legal services provider’s director.

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<sup>42</sup> For a list of the organizations funded see:  
[http://www.courtinfo.ca.gov/reference/rfp/documents/eaf\\_grant\\_recip.pdf](http://www.courtinfo.ca.gov/reference/rfp/documents/eaf_grant_recip.pdf)

- Agreements between the legal services programs and the courts. As part of the grant process we are require recipients to develop a written agreement with the cooperating court indicating how the joint project, the court, and any existing self-help center, including the family law facilitator as appropriate, will work together.
- Projects must identify plans to provide for lawyers to assist and to provide direct supervision of paralegals and other support staff.
- Projects must establish protocols for use in the event of a conflict of interest, including: what, if any, resources would be available to individuals who cannot be served because of such conflicts; what would be the relationship between the provider and the pro per litigant; and other similar issues.
- Projects must anticipate and meet the needs of litigants who are not within the legal services provider's service area or are ineligible for their services. While this can be a challenge for organizations with limited funding, a number of applicants have developed collaborations with other legal services providers that will facilitate a broad availability of services. These solutions are being studied by the commission for possible applicability to other programs.
- Grant recipients are encouraged to find ways to address the needs of unrepresented litigants who do not meet the financial eligibility requirements (e.g., providing general information in the form of local information sheets, videos, workshops, etc.). Programs that have achieved success in this field are being closely evaluated so that ideas may be gleaned which might be effective for other programs that have yet to establish an effective referrals protocol.
- Projects must clearly state a policy regarding administration of financial eligibility standards, and must establish protocols to observe that policy.

The legislature has required that the Judicial Council report on the efficiency and effectiveness of the Equal Access fund in March, 2005. The Council has hired a researcher to coordinate this evaluation which will include mandatory reporting as well as a toolkit of optional evaluation tools.<sup>43</sup>

## Family Law Information Centers

Effective January 1, 1998, Family Code section 15000 established a Family Law Information Center pilot project. in order to help “low-income litigants better understand their obligations, rights, and remedies and to provide procedural information to enable them to better understand and maneuver through the family court system.”<sup>44</sup> The Judicial Council administers three pilot

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<sup>43</sup> For RFP describing evaluation project see: [http://www.courtinfo.ca.gov/reference/rfp/cfcc\\_eval.htm](http://www.courtinfo.ca.gov/reference/rfp/cfcc_eval.htm)

<sup>44</sup> California Family Code §15000 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=41131628906+0+0+0&WAISaction=retrieve>

project centers in the Superior Courts of Los Angeles, Sutter, and Fresno Counties. The centers are supervised by attorneys and assist low-income self-represented litigants with forms, information, and resources concerning divorce, separation, parentage, child and spousal support, property division, and custody and visitation. Specific services that are offered by the Family Law Information Centers include:

- Information regarding the various types and nature of family law proceedings including, restraining orders, dissolution, legal separation, paternity, child support, spousal support, disposition of property, child custody and child visitation;
- Information about methods available to seek such relief from the court;
- Guidance regarding required pleadings, instruction on how to complete them, and information explaining the importance of the information contained in the papers;
- Assistance in the preparation of orders after hearing;
- Information about the enforcement of orders;
- Referrals to community resources such as low-cost legal assistance, counseling, domestic violence shelters, parent education, mental health services, and job placement programs; and
- Interpreter services to the extent available.

Family Code §15010(k) sets out the standards for evaluation of these pilot projects. The legislation states that the programs will be deemed successful if:

- They assist at least 100 low-income families per year;
- A majority of customers evaluate the Family Law Information Center favorably; and
- A majority of judges surveyed in the pilot-project court believe that the Family Law Information Center helps expedite cases involving pro per litigants.

An evaluation of the project was completed in March, 2003.<sup>45</sup> It demonstrated that these programs were a resounding success. The three pilot Family Law Information Centers provided services to more than 45,000 individuals each year using \$300,000 in grant funding and \$120,000 in trial court funding.

Customers were overwhelmingly pleased with the services they received at the Family Law Information Centers. Many wrote narratives expressing enormous admiration for the staff and

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<sup>45</sup> Family Law Information Centers: An Evaluation of Three Pilot Programs, by Deborah J. Chase, Bonnie Rose Hough and Carol Huffine, Administrative Office of the Courts, March 2003  
<http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/FLICrpt.htm>

gratitude for the assistance they received. A survey of 1,364 customers from the period October 21, 2002 to December 31, 2002, had the following results:

- 95% felt they had been treated with courtesy and respect;
- 93% felt the service was helpful;
- 90% got help with forms;
- 87% felt they better understood their case;
- 82% felt better prepared to go to court;
- 83% believed they have a better understanding of the court;
- 78% reported receiving prompt service; and
- 92% would use the center again.

Typical comments of customers included:

The Family Law Center has helped me every step of the way. I don't know where I'd be without it. The people are very helpful. I'm a single mom w/ low income and without this Center I would not [have] been able to accomplish everything.

Very helpful and informative. I think more fathers would respond to court orders with the help they can receive. [Service was] very directional and friendly, went through step by step process very quickly and with patience even though she had people waiting.

I am grateful that someone is able to help me understand the court process.

Twenty-four judicial officers in the pilot counties were interviewed to document their evaluation of the Family Law Information Center pilots. These judicial officers also expressed a high degree of satisfaction with the service that the pilots provided to both the public and the court, as follows:

- 88% reported that the center helped expedite cases involving pro per litigants;
- 88% reported that the center saved courtroom time;
- 88% reported that the centers helped litigants provide correct paperwork to the court;
- 75% believed that the center helped the litigants come better prepared to court; and
- 67% believed that the center helped people understand how the law and court procedures were being applied in their cases.

Typical comments from judicial officers included the following:

I often cannot even figure out what a case is about when the paperwork is prepared by a pro per without the help of the Family Law Information Center.

They ask fewer questions, are more informed, and they are better able to stay on point.

They are taking a day off work and we want to minimize that. They have families, sometimes two, to support so we want them to keep their jobs.

They get a fair hearing, they feel confident that they are being heard and getting a fair shake.<sup>46</sup>

The majority of the judicial officers interviewed believe that the Family Law Information Centers save valuable time in the courtroom and expedite pro per cases as a whole. Many also expressed the opinion that Family Law Information Centers are an integral part of managing family law cases because pro per litigants are often the parties in the majority of their calendars. Based upon this evaluation demonstrating that both the needs of the public and those of the court are well served by the centers, the Judicial Council has directed staff to develop a budget request for statewide funding of Family Law Information Centers.

## **Five Model Self-Help Centers**

The 2001 State Budget Act provided funding totaling \$832,000 to begin five pilot self-help centers (“Centers”) which would provide various forms of assistance, such as basic legal and procedural information, help with filling out forms, and referrals to other community resources, to self-represented litigants. This project is aimed at determining the effectiveness of court-based self-help programs and providing information to the legislature on future funding needs. The Judicial Council selected one of each of the five (5) following models for funding beginning May 2002. These five (5) programs will provide models for replication in other counties in addition to translated materials and technological solutions.

### **Regional model: Superior Court of California, County of Butte**

**Goals of the model:** This is a regional program that is intended to serve at least two (2) smaller counties. This model will explore how counties that may not be able to afford a full-time attorney at a self-help center can share resources effectively with other counties. What agreements are necessary? What special challenges exist, and what can be done to overcome them?

**Butte County’s program:** Butte County Superior Court is partnering with Glenn and Tehama counties to provide assistance to self-represented litigants in the areas of small claims, unlawful detainer, eviction, fair housing, employment, SSI, enforcement of judgments, guardianships, name changes, family law issues not addressed by the Family Law Facilitator, bankruptcy, criminal appeals, Marsden-Public Defender substitutions, probate, general civil procedures, tax, tenant housing, and senior law issues. An attorney coordinator will conduct workshops and clinics through the use of real-time videoconferencing, enabling self-represented litigants in three counties to receive assistance simultaneously.

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<sup>46</sup> Family Law Information Centers: An Evaluation of Three Pilot Programs, by Deborah J. Chase, Bonnie Rose Hough and Carol Huffine, Administrative Office of the Courts, March 2003, Executive Summary  
<http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/FLICrpt.htm>

***Urban collaboration model: Superior Court of California, County of Los Angeles***

**Goals of the model:** This is a program intended to coordinate self-help centers in a large jurisdiction. In some jurisdictions a number of self-help centers operate in or near the court, often with limited communication or sharing of resources. This is likely to lead to duplication of efforts and confusion for litigants. The urban collaboration model seeks to coordinate resources and provide a more seamless service delivery system for litigants.

**Los Angeles County's program:** Los Angeles County Superior Court's program creates a centralized Self-Help Management Center that will develop partnerships with the court, the local bar, local schools, and local social service organizations; coordinate self-help activities on a county-wide basis; and standardize self-help intake procedures and protocols throughout the county. Services rendered by the center include the provision of informational materials about the court and its proceedings and procedures; instructions on how to complete forms; and the provision of reference materials regarding legal service providers, social service agencies, and government agencies, as well as other educational material. Clients can attend workshops or receive one-on-one assistance.

**Technology model: Superior Court of California, County of Contra Costa**

**Goals of the model:** This is a program intended to emphasize the use of technology in providing services. As the number of self-represented litigants increases, technological solutions are being explored for completion of forms, provision of information, meeting with litigants at a distance, and other needed services. This model will utilize and evaluate the effectiveness of at least two (2) methods of utilizing technology to provide services.

**Contra Costa County's program:** Contra Costa Superior Court will combine and deliver expert information and assistance via the Internet, computer applications, and real-time videoconference workshops to create a Virtual Self-Help Law Center for self-represented litigants with dissolution, child custody and visitation, domestic violence, civil, and guardianship cases. Virtual Self-Help Law Center resources will help parties navigate the court process; complete, file, and serve court forms; handle their court hearings; understand and comply with court orders; and conduct certain mediations at a distance.

**Spanish-speaking model: Superior Court of California, County of Fresno**

**Goals of the model:** The large number of Spanish-speaking litigants in California presents special challenges for self-help programs. This model will seek to provide cost-effective and efficient services for a primarily Spanish-speaking population while exploring techniques for educating litigants about the legal issues and procedures in their cases.

**Fresno County's program:** The Spanish Self-Help Education and Information Center developed by Fresno County Superior Court will serve self-represented litigants in the areas of guardianship, unlawful detainer, civil harassment, and family law. The center will provide daily access to Spanish language self-help instructions, establish a volunteer interpreter bureau,

provide a Spanish-speaking Court Examiner to review court documents, and sponsor clinics with rotating “how-to” lectures for the areas of law specified above.

### **Multilingual model: Superior Court of California, County of San Francisco**

**Goals of the model:** California has a diverse population with a large group of immigrants and litigants who speak many different languages and have significantly different experiences. This model will seek to provide self-help services to litigants who speak a wide variety of languages and develop materials and techniques to address the needs of a multilingual, multicultural population.

**San Francisco County’s program:** San Francisco Superior Court’s program establishes a Multi-Lingual Court Access Service Project which will assist self-represented litigants in family law, dependency mediation, probate, small claims, civil harassment, child support, and other general civil cases. The center will create formal partnerships with community-based organizations that provide services to ethnic populations and those that address legal issues for self-represented litigants. A bilingual attorney will work with clients to ensure adequate services for them within the court and provide referrals to appropriate community and legal agencies. Additional services include the translation of court materials, the development of a multi-lingual computerized self-help directory, and recruitment and coordination of multi-lingual interpreters.

### **OBJECTIVES OF THE EVALUATION**

The primary goal of the research is to measure the overall effectiveness of the Centers in several arenas. The Centers may address several or all of the following outcomes.

- *Increased understanding of, and compliance with, the terms of court orders*
- Self-represented litigants, lacking an attorney to explain the system to them, often misunderstand orders made by the court. Self-help centers are expected to better educate self-represented litigants about the legal system and legal procedures so they will be more likely to understand the court orders and the consequences for noncompliance. They will also be more likely to feel the court has been fair in its decision, leading them to take more responsibility in following its orders.
- *Increased access to justice*
- Much of the target population is unable to penetrate the court system due to geographic/ transportation and language barriers, financial constraints, and a lack of knowledge and resources. As a result, many people who want to bring their cases to court simply cannot, and others may not even be aware that they have legal recourse. The self-help centers seek to bridge these gaps so that self-represented litigants will be better able to navigate and make proper use of the court system.
- *Increased likelihood of “just” outcomes in cases involving self-represented litigants*
- Many self-represented litigants come to court ill-prepared and do not know how to properly present their cases. As a result, the court may lack information or have inaccurate information



upon which to base its rulings. In turn, litigants may not get the outcome they were seeking and end up feeling that the system is unfair. Self-help centers will educate users so that they can present their best case and feel that their voice has been heard.

- *Increased user satisfaction with the court process*
- When self-represented litigants have improved access to the assistance they need, learn how to navigate the court system, and are better prepared to present their cases, the system can respond more appropriately to their needs and they will be more satisfied with their experiences.
- *Increased efficiency and effectiveness of the court system*
- Self-represented litigants often come to court with forms that are improperly filled out, or with the wrong forms altogether. They are uninformed about court procedures and have to ask courts clerks for assistance that should have been solicited prior to court appearance. These types of issues slow down court proceedings and may even cause the matter to be continued. Self-help centers will provide assistance in filling out forms and educate self-represented litigants on procedures so they are better prepared to handle their matters and so their cases will move more smoothly through the system.
- *Increased education for court users so that their expectations are reasonable in light of the law and facts*
- Self-help centers will educate clients on the court system, legal terms, procedures, and their rights and responsibilities. When the mystery is removed from the process, self-represented litigants will have a more realistic view of the merits of their case and potential recourse.

Secondary goals of the research include developing a profile of Center users and determining which services and delivery methods are most helpful/effective.

Though the evaluation is largely intended to measure the impact of the Centers, the fact that these are innovative pilot programs requires that some process evaluation elements be incorporated into the research. This primarily comprises documenting the development of the Centers and tracking changes that might affect outcomes over time; describing program operations, including how the Centers are set up and how services are delivered; and assessing the outreach efforts and visibility of the Centers. Additionally, a key objective of the project is to provide models for replication across the state, so the documentation should be sufficiently detailed to permit replication of the programs in other counties.<sup>47</sup>

## **Other Court-Based Self-Help Centers**

A growing number of courts have established self-help centers in addition to those provided by statute. These centers generally provide assistance with general civil matters as well as family law. While some partnerships were started between courts and local legal services to provide

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<sup>47</sup> For RFP describing evaluation project see: [http://www.courtinfo.ca.gov/reference/rfp/selfhelp\\_pilot.htm](http://www.courtinfo.ca.gov/reference/rfp/selfhelp_pilot.htm)

services in courthouses in the 1980's,<sup>48</sup> the movement to develop these court-based programs began in the 1990's<sup>49</sup> and in 1997, the first center that did not involve staffing by a legal services agency was created in Ventura County. None of these programs charge fees for service and all are open too all members of the public regardless of income, immigration status or other common restrictions on services. Restrictions relate to how much assistance they can provide and the types of law covered.

### **Ventura County Self Help Legal Access Center**

The Ventura program<sup>50</sup> has branches at the two main courthouses in the county as well as in a predominantly latino neighborhood and via a mobile center in a converted 35 foot recreational vehicle. The center provides information on a variety of legal issues including:

- Adoption
- Conservatorship
- Guardianship
- Name Change
- Small Claims
- Unlawful Detainer
- Civil Harassment
- Appeals
- Civil
- Jury Service
- Traffic
- Juvenile
- Probate/Estate Planning
- Enforcement of criminal restitution orders
- Modification of probation
- Petition for Change of Plea or Dismissals

The Family Law Facilitator is available in the same location and provides a broad rage of family law assistance including completing forms for litigants. Information is available in the form of books, videos, sample forms with instructions, brochures and legal sites on the Internet. Trained staff is available to provide informational assistance to people needing help

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<sup>48</sup> For examples of some of these early partnership projects with legal services agencies see *California's Family Law Facilitator Program, a New Paradigm for the Courts*, Frances L. Harrison, Deborah J. Chase, and L. Thomas Surh, Journal of the Center for Families, Children & the Courts, Volume 2, 2000, page 76, (<http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/061harrison.pdf>); see also California Family Code §§20010-20026 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=59348015726+0+0+0&WAIAction=retrieve> and §§20030 – 20043 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=59361416970+0+0+0&WAIAction=retrieve> for two very interesting models for legislative creation of pilot programs. These programs helped provide the framework for the family law facilitator program and have merged into that program in the pilot counties.

<sup>49</sup> *Litigants Without Lawyers Find Assistance at Courts*, Janet Byron, Court News, March-April 1998, Judicial Council, <http://www.courtinfo.ca.gov/courtnews/03980498.pdf>

<sup>50</sup> See Ventura Superior Court self help website: <http://courts.countyofventura.org/venturaMasterFrames5.htm>

understanding the materials or completing court forms. Information is also provided on alternatives to civil litigation.

As the first major civil self-help center in the state, Ventura developed a number of packets and sample forms that are available on its website. These materials have been adapted by other counties. It was also the first center to have a Mobile Center.

### **Nevada County Public Law Center**

Another is the Nevada County Public Law Center which was established in March, 2001. The Center is part of a creative public outreach project undertaken by the court to improve access to justice for all members of the community. It provides information to people who are not represented by attorneys and who have any number of general and substantive legal issues, in the same areas addressed by the Ventura program.

Information is available in the form of books, videos, packets, brochures, computer forms, and on-line research and links. Free clinics and classes are held to explain court procedure, as well as substantive areas of law commonly encountered by people representing themselves ("pro per litigants"). Alternate Dispute Resolution (ADR) is offered as an alternative to litigation. A Small Claims Advisor is available to answer questions about small claims actions. In addition, free tours of the Courthouse are offered to those who may have a court matter now or in the future, to insure that they will feel comfortable about their knowledge of the type and location of relevant court services available to them. The Public Law Center is located in the court's law library. Videoconferencing equipment is used to broadcast workshops offered by local attorneys to other courthouses in this mountainous community.<sup>51</sup>

### **Santa Clara Self Service Center**

Santa Clara County, the home of San Jose and the Silicon Valley started a Self Service Center in 2002. The office is intended to provide the public with a guide to navigate the court system in Santa Clara County. At the Self Service Center, members of the public have access to three computer workstations, which can be used to access legal websites and other law-related resources. An attorney and other staff members at the center are available to help the public. Forms can also be filled out online and then printed. In addition, pamphlets and books are available on topics ranging from divorce to tenants' rights to guidelines for non-parental relatives raising children.

A Self Service CourtMobile travels throughout Santa Clara County, bringing free legal resources and assistance to libraries and community centers within the county. The CourtMobile provides:

- forms and form packets
- computers with Internet access to the court's Self Service website
- a VCR for watching videotapes with legal information
- help filling out legal forms

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<sup>51</sup> See Nevada County Superior Court self help website:  
[http://court.co.nevada.ca.us/services/self\\_help/sh\\_services.htm](http://court.co.nevada.ca.us/services/self_help/sh_services.htm)

- help learning about Court rules and processes
- referrals to other legal resources

Information about the program is available at the court's very comprehensive self-help website.<sup>52</sup>

### **Emerging Self Help Programs**

A number of smaller counties including Lassen, Mariposa, Lake and Inyo have created self-help centers with implementation funds from planning efforts. Many of these programs are built upon the existing family law facilitator program. New programs are being created in Calveras, Alameda, Marin, and a tri-county effort with Santa Cruz, San Benito and Monterey. Each of these programs emphasize partnerships with other community organizations including legal services programs. They are under the direction of an attorney and also use court staff to help support and provide information. This expansion of services is particularly striking in a time of significant cutbacks in court budgets.

Additionally, the Los Angeles County Board of Supervisors has funded the creation of four new self-help centers in the last two years. Following the Ventura model, they provide both family law and limited civil assistance, primarily in landlord/tenant and small claims matters, these centers are operated by legal services organizations in collaboration with and located at the court.

### **Small Claims Advisors**

The oldest of California's self-help programs in the Small Claims Advisors Program. This service, created in 1978, provides free assistance to litigants in small claims proceedings. California's small claims court was created in 1921 to provide a fair, fast, and inexpensive procedure for parties to resolve disputes that have a relatively small monetary value. Since 1990, the jurisdictional limit has been \$5,000. Main features of small claims court include:

- Parties represent themselves; attorneys generally are not allowed at trial.
- There is no right to a jury trial.
- The plaintiff has no right to appeal an adverse decision, but the defendant may appeal. Appeals consist of a trial de novo in superior court.
- Third party assignees are not allowed; only the parties directly involved in the dispute may participate in small claims court.
- No unlawful detainer actions [evictions] may be filed.<sup>53</sup>

There is currently discussion of raising the small claims limits in large part "because of the inability of parties to find attorneys who will handle cases between \$5,000 to \$10,000 for a fee

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<sup>52</sup> See Santa Clara Superior Court self help website: <http://www.scselselfservice.org/default.htm>

<sup>53</sup> *Report of the California Three Track Civil Litigation Study* prepared by Policy Studies, Inc. for the Administrative Office of the Courts, July 31, 2002, page 2

that does not eat up all the potential award. It is often even difficult to find attorneys who will take those cases at all.”<sup>54</sup>

By statute, counties must provide some level of assistance to small claims litigants, however services may (and do) vary in each county in accordance with local needs and conditions. In each county where more than 1,000 small claims actions are filed each year, the following services must be offered:

- Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.
- Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

Adjacent counties may provide advisory services jointly. For counties with fewer than 1,000 filings, recorded telephone messages providing general information relating to small claims actions filed in the county must be available during regular business hours and informational booklets must be made available to litigants.<sup>55</sup>

The statute provides that small claims “Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors may not appear in court as an advocate for any party.”<sup>56</sup>

A recent report commissioned by the Judicial Council indicates that there are significant problems with this approach.

“In Fresno there is a small claims advisory center, using law students. The office is not in the courthouse, but rather in another downtown building. Neither of the two law students whom we interviewed had ever seen a small claims trial, although observing trials has now been added to the required training of the advisors. One advisor told us that the law students were not permitted to give legal advice, but merely advice on the process.

“In San Diego there is a small claims advisor’s office attached to the court, run by a full time attorney, with non-attorney volunteers working under him. The volunteers are able to help people with process questions. The supervising attorney is able to assist the volunteers with legal questions.

In San Francisco, there is a full-time small claims advisor in the court and an advisor available full-time by telephone, paid by the court. Both are attorneys. The advisor located in the court sees about 30 litigants per day.

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<sup>54</sup> id at page 33

<sup>55</sup> California Code of Civil Procedure §116.940 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=59414121704+0+0+0&WAIAction=retrieve>

<sup>56</sup> id

Her office is behind the clerk's counter, and there is a sign-up sheet in the clerk's area. She can advise on filing, on what will be needed at trial. Under California law the small claims advisors are immune from suit for malpractice."<sup>57</sup>

As a result of this report, the standards for small claims advisors and judicial officers are being reviewed as part of the discussion of raising the jurisdictional limits.

## Videos

The AOC offers several videos to help the estimated 94,500 self-represented litigants involved in custody mediation each year learn more about family court procedures. The award-winning *Focus on the Child* orients self-represented parents to court procedures, mediation, child custody evaluation, effective presentation of child-related information to the courts, parenting plans, and supervised visitation. The AOC also has developed videos on how to request a domestic violence restraining order and how to respond to a request for a domestic violence restraining order. These videos are available in English, Spanish, Vietnamese, Chinese, and Korean. Additional videos describe how to prepare court forms for an uncontested divorce and how to prepare for a family law hearing. These videos are available in English and Spanish.

Videos developed by local courts have also been adapted for use statewide and are made available by the AOC. These include videos on step by step instructions for completing forms in paternity and divorce cases, an overview of guardianship procedures, a guide to court proceedings in landlord/tenant cases and an orientation to small claims court.

## Additional Self-Represented Litigant Informational Publications

The AOC develops and distributes a wide variety of materials for self-represented litigants. These include:

- *Summary Dissolution Handbook*: Provides detailed instructions on how to complete forms for a summary dissolution and how to write a marital settlement agreement.<sup>58</sup>
- *Adoption Information*: A handout on how to prepare adoption forms.<sup>59</sup>
- *Emancipation Pamphlet*: A guide for minors on the process for emancipation.<sup>60</sup>
- *What's Happening In Court? An Activity Book for Children Who are Going to Court in California*.<sup>61</sup>

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<sup>57</sup> *Report of the California Three Track Civil Litigation Study* prepared by Policy Studies, Inc. for the Administrative Office of the Courts, July 31, 2002, page 34-35

<sup>58</sup> Judicial Council form FL-810 (also available in Spanish as FL-811)

<http://www.courtinfo.ca.gov/forms/documents/fl810.pdf>

<sup>59</sup> Judicial Council form ADOPT-050 <http://www.courtinfo.ca.gov/forms/documents/adopt050.pdf>

<sup>60</sup> Judicial Council form MC-301 <http://www.courtinfo.ca.gov/forms/documents/mc301.pdf>

<sup>61</sup> For PDF and interactive versions in English and Spanish see:

<http://www.courtinfo.ca.gov/programs/children.htm>

- *Guardianship Pamphlet*: A guide for adults considering becoming a guardian of a minor.<sup>62</sup>
- *Juvenile Court*: A guide for parents of minors charged with crimes.<sup>63</sup>
- *Dependency Court- How it Works*: A guide for parents whose children in dependency care.<sup>64</sup>

## Community Focused Planning Efforts

The Judicial Council established the Task Force on Self-Represented Litigants in 2001 to coordinate the statewide response to the needs of litigants who are representing themselves. The task force has been developing a statewide action plan on serving self-represented litigants. This work builds on an intensive community focused planning process of the trial courts.

In the spring of 2001, the council sponsored four regional conferences to allow courts to discuss different models for providing self-help services and determine how to best meet the needs of self-represented litigants in their communities. Over 600 persons attended these conferences representing 57 out of California's 58 counties.

Welcomes were extended by Chief Justice Ronald M. George and a representative from the State Bar Board of Governors. In each region, a judicial leader gave a keynote speech describing regional characteristics and issues. A plenary session on evaluation was held. Other plenary sessions concerned technology and cultural diversity. A resource center was set up at each conference to showcase innovations and distribute materials.

Thirty workshops were held at each conference. Topics included:

- Unbundling legal services
- The changing role of court clerks and law librarians
- Judicial communication and ethics
- Making the courthouse more accessible for self-represented litigants
- Funding for self-help programs
- Alternative dispute resolution programs
- Providing services to non-English speaking litigants
- Court partnerships with the bar and legal services agencies
- Technological resources to help self-represented persons

Binders with materials for each of the sessions, as well as leading articles on the topic, were prepared for all participants and continue to be ordered by local planning groups.<sup>65</sup>

Three breakout sessions were held for counties to consider specific questions in developing an initial action plan. Facilitators were available for each of the groups. A county action plan packet was developed to help the participants identify:

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<sup>62</sup> Judicial Council form JV-350 (also available in Spanish as JV-355)

<http://www.courtinfo.ca.gov/forms/documents/jv350.pdf>

<sup>63</sup> Judicial Council form JV-060: <http://www.courtinfo.ca.gov/forms/documents/jv060.pdf>

<sup>64</sup> Judicial Council form JV-055: <http://www.courtinfo.ca.gov/forms/documents/jv055.pdf>

<sup>65</sup> Binder contents are available at <http://www.courtinfo.ca.gov/programs/cfcc/resources/selfhelp/list.htm>.

- Resources currently available;
- Challenges facing self-represented litigants;
- Services needed in the community;
- Potential partners for providing services;
- What they were trying to achieve and the strategies they might use to evaluate that; and
- What objectives they wanted to focus on first, and how to accomplish those objectives.

Breakout sessions were also held for professional groups such as facilitators, judges, court administrators, private attorneys, small claims advisors, and others to encourage regional networking and discussion.

In the course of the conferences, most courts developed initial action plans. The level of detail in the plans varied significantly among the counties. To encourage the further development of those plans and to encourage courts to obtain community input on them, the Judicial Council made \$300,000 of Trial Court Improvement Fund available in 2000-2001 to assist courts in developing their action plans. 40 courts applied for and were granted these planning funds. An additional \$300,000 was offered in 2001-2002 and again in 2002-2003 to assist courts that had not yet received planning funds and to provide funding for courts that had created plans to begin implementation. To date, 44 plans have been received, 7 are still being developed, and 7 smaller courts have not developed plans. Each of the completed plans is posted on a password-protected site that is available to court employees throughout the state.

For the courts that developed plans, additional funds were provided for implementation. Projects include those establishing self-help centers in collaboration with local libraries, developing additional information on local Web sites, using computer programs to assist litigants in completing court forms, and reaching out to the community to provide training for volunteers from different ethnic backgrounds on how to assist self-represented litigants.<sup>66</sup>

CFCC is currently developing a series of statewide web-based discussions for those persons involved in the local courts planning committees. These discussions will focus on topics of interest, such as free and low-cost legal assistance, limited scope legal representation (unbundling), technology, and self-help centers. By sharing the most recent information and resources, we hope to promote effective practices and minimize duplication of efforts as well as to maintain momentum for these new programs during lean budget years.

## **Education and Training**

The Administrative Office of the Courts sponsors a number of trainings for judges, court staff, attorneys, advocates, law enforcement and others who work with unrepresented litigants. One project of the AOC that was specifically aimed at self-represented litigants themselves was aimed at foster parents. It produced an educational booklet "Caregivers and the Courts: a

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<sup>66</sup> A short description of each of the implementation projects is available at <http://www.courtinfo.ca.gov/programs/cfcc/resources/grants/selfgrants.htm>.



Primer on Juvenile Dependency Proceedings for California Foster Parents and Relative Caregivers”<sup>67</sup> in English and Spanish to assist caregivers who wish to participate in juvenile court hearings. The booklet gives information about the dependency court process, the law relating to caregiver participation in court hearings, information the court may consider helpful, how to decide whether written reports or court attendance is more effective, tips for caregivers who are called to testify in court, de facto parent status, and local court culture.

Additionally, training was provided to foster parents and relative caregivers groups regarding participation in the dependency court process. The training focuses on general legal concepts and the practical aspects of caregiver participation in court. Research was conducted on the impact of that training impacted caregiver participation in juvenile court hearings and outcomes for children in care. The study also began to explore in a qualitative way what factors determine how information from caregivers is or could be used in decision making, and what effects might caregiver participation have on the well being of children in care. The report indicated that the training was very useful for the caregivers and that they were more likely to participate in hearings as a result. Since they often brought critical information about the children to the court’s attention, the benefits of the training seemed significant.<sup>68</sup>

## Court Clerk Training

In 2001, the Judicial Council adopted a standard form to be posted in court clerks offices in lieu of other signage regarding legal advice to clarify what assistance court clerks can and cannot provide to unrepresented litigants.<sup>69</sup> This form was based upon the analysis by John Greacen in his seminal article “No Legal Advice from Court Personnel! What Does that Mean?”<sup>70</sup> The basic principles of this approach are that:

- “1) Court staff have an obligation to explain court processes and procedures to litigants, the media, and other interested citizens.
- 2) Court staff have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.
- 3) Court staff cannot advise litigants whether to bring their problems before the court, or what remedies to seek.
- 4) Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent.

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<sup>67</sup> *Caregivers and the Courts: A Primer on Juvenile Dependency Proceedings for California Foster Parents and Relative Caregivers*, Judicial Council of California, <http://www.courtinfo.ca.gov/programs/cfcc/pdf/caregive.pdf>

<sup>68</sup> *Caregivers in the Courts: Improving Court Decisions Involving Children in Foster Care*, Administrative Office of the Courts, 2002 <http://www.courtinfo.ca.gov/programs/cfcc/pdf/CaregiverES.pdf>

<sup>69</sup> Judicial Council form MC-800 *Court Clerks Office Signage* <http://www.courtinfo.ca.gov/forms/documents/mc800.pdf>

<sup>70</sup> *No Legal Advice from Court Personnel! What Does that Mean?* John Greacen, *The Judges’ Journal*, American Bar Association, 1995 <http://www.courtinfo.ca.gov/programs/cfcc/pdf/SH-tab3.pdf>

5) Court staff should be mindful of the basic principle that counsel may not communicate with the judge *ex parte*. Court staff should not let themselves be used to circumvent that principle, or fail to respect it, in acting on matters delegated to them for decision.”<sup>71</sup>

A broadcast training has been developed by the Administrative Office of the Courts to help clerks determine the difference between legal information and legal advice and encourage them to be more helpful to the public. The training is one and a half long and includes an introduction by the Chief Justice, presentation by John Greacen on his analysis and a live discussion by court clerks, a judge and attorney regarding taped vignettes featuring court clerks providing legal information.

All California courts now have equipment to receive satellite broadcasts. This enables court staff to receive training and updates without having to travel from their courts. This training was the first offered to court clerks and feedback forms indicated that over 1,000 people watched the supervisor broadcast and 1,500 watched the line clerk broadcast the first weeks it was offered. It’s been offered nine times in the last two years.

## Judicial Training

California’s Administrative Office of the Courts has a nationally respected training arm with long history of providing judicial training. They have offered a number of classes regarding effectively serving self-represented litigants.

AOC staff are currently working to expand the body of research and training resources available for judicial officers regarding self-represented litigants.<sup>72</sup> One article is “Judicial Techniques for Cases Involving Self-Represented Litigants”<sup>73</sup> this spring in the Judges Journal. Other research is being conducted into the procedural justice literature and how it might be used by judicial officers in managing their courts. Another piece is being developed to help judges consider how best to use family law facilitators and other court-based attorneys to assist them in managing a calendar effectively and maintaining a neutral courtroom.

A focus group of judges that are particularly effective with self-represented litigants is being planned to identify techniques and understandings that can be shared. A courtroom observation tool is being developed to identify what types of techniques seem particularly effective from the perspective of the litigants themselves.

Since California has a single trial court system, many judges are transferred to assignments in which they have had no practical experience or legal training. This poses great challenges in a courtroom where neither litigant knows the law either and there are no attorneys to rely on for a

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<sup>71</sup> *ibid*

<sup>72</sup> See for example web materials on *How Judges Can Communicate Effectively with Self-Represented Litigants*, <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/SH-tab4.pdf>

<sup>73</sup> *Judicial Techniques for Cases Involving Self-Represented Litigants*, Rebecca A. Albrecht, John M. Greacen, Bonnie Rose Hough, and Richard Zorza, *The Judges’ Journal*, Winter 2003, American Bar Association, Volume 42, Number 1 <http://www.zorza.net/JudicialTech.JJWi03.pdf>

clear written or verbal presentation of the facts and law. Training both on the substantive law and on practical skills in managing a courtroom of non-lawyers are critical needs.

## **Limited Scope Representation (Unbundling)**

Limited scope representation is a relationship between an attorney and a person seeking legal services in which it is agreed that the scope of the legal services will be limited to specific tasks that the person asks the attorney to perform. This is also called “unbundling” and “discrete task representation.”

At the request of the president of the State Bar of California, the Commission on Access to Justice established a Limited Representation Committee. The committee was composed of representatives from the private bar and the judiciary, legal ethics specialists, and legal services representatives. Their work was informed by legal research and discussion as well as by a series of focus groups that included private attorneys, judicial officers, legal services representatives, insurance company representatives, lawyer referral service representatives, litigants, family law facilitators, and legal ethics specialists. Focus groups and individual interviews were also conducted with current and potential users of limited scope services.

In October 2001 the committee issued a Report on Limited Scope Legal Assistance With Initial Recommendations.<sup>74</sup> The Board of Governors of the State Bar of California approved those initial recommendations on July 28, 2001. Some of the recommendations, categorized by the committee as “court-related,” called for the committee to work with the Judicial Council to adopt rules and forms.

Limited scope representation helps self-represented litigants:

- Prepare their documents legibly, completely, and accurately;
- Prepare their cases based on a better understanding of the law and court procedures than they would if left on their own;
- Obtain representation for portions of their cases, such as court hearings, even if they cannot afford full representation; and
- Obtain assistance in preparing, understanding, and enforcing court orders.

This assistance can reduce the number of errors in documents; limit the time wasted by the court, litigants, and opposing attorneys because of the procedural difficulties and mistakes of self-represented litigants; and decrease docket congestion and demands on court personnel. In focus groups on this topic, judges indicated a strong interest in having self-represented litigants obtain as much information and assistance from attorneys as possible. They pointed to the California courts’ positive experience with self-help programs such as the family law facilitator program, which educates litigants and assists them with paperwork. These programs, however, cannot meet the needs of all self-represented litigants and, because of existing regulations, must limit the services they can offer.

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<sup>74</sup>*Report on Limited Scope Legal Assistance With Initial Recommendations*, Limited Representation Committee of the California Commission on Access to Justice, October 2001  
[http://www.calbar.ca.gov/calbar/pdfs/reports/2001\\_Unbundling-Report.pdf](http://www.calbar.ca.gov/calbar/pdfs/reports/2001_Unbundling-Report.pdf)

The Judicial Council adopted recently adopted forms and rules are designed to help facilitate attorneys providing this assistance as called for in the report of the Limited Representation Committee:

- A rule of court that allows attorneys to help litigants prepare pleadings without disclosing that they assisted the litigants (unless they appear as attorneys of record or seek the award of attorney fees based on such work);<sup>75</sup>
- A form to be filed with the court clarifying the scope of representation when the attorney and client have contracted for limited-scope legal assistance;<sup>76</sup> and
- A simplified procedure for withdrawal for cases when an attorney is providing limited scope assistance.<sup>77</sup>

Some courts in other jurisdictions have expressed concern that providing anonymous assistance to a self-represented litigant defrauds the court by implying that the litigant has had no attorney assistance. The concern is that this might lead to special treatment for the litigant or allow the attorney to evade the court's authority. However, California's family law courts have allowed ghostwriting for many years. Family law facilitators, domestic violence advocates, family law clinics, law school clinics, and other programs and private attorneys serving low-income persons often draft pleadings on behalf of litigants.

Judicial officers in the focus groups reported that it is generally possible to determine from the appearance of a pleading whether an attorney was involved in drafting it. They also reported that the benefits of having documents prepared by an attorney are substantial.

In focus groups, private attorneys who draft pleadings on behalf of their clients revealed that they would be much less willing to provide this service if they had to put their names on the pleadings. Their reasons included:

- Fear of increased liability;
- Worry that a judicial officer might make them appear in court despite a contractual arrangement with the client limiting the scope of representation;
- Belief that they are helping the client tell his or her story, and that the client has a right to say things that attorneys would not include if they were directing the case;
- Concern that the client might change the pleading between leaving the attorney's office and filing the pleading in court;
- Apprehension that their reputation might be damaged by a client's inartful or inappropriate arguing of a motion;
- Concern that they would be violating the client's right to a confidential relationship with his or her attorney; and

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<sup>75</sup> California Rules of Court 5.170 (effective July 1, 2003)

<sup>76</sup> Judicial Council form FL-950 (effective July 1, 2003)

<sup>77</sup> California Rules of Court 5.171, and Judicial Council forms FL-955, FL-956 and FL-958 (effective July 1, 2003)

- Worry that they may not be able to verify the accuracy of all the statements in the pleading, given the short time available with the client.<sup>78</sup>

The Judicial Council approved the logic that the filing of ghostwritten documents does not deprives the court of the ability to hold a party responsible for filing frivolous, misleading, or deceptive pleadings. A self-represented litigant makes representations to the court by filing a pleading or other document about the accuracy and appropriateness of those pleadings. (Code Civ. Proc., §128.7(b).)<sup>79</sup> In the event that a court finds that section 128.7(b) of the Code of Civil Procedure has been violated, the court may sanction the self-represented litigant. The court could also inquire of the litigant who assisted in preparation of the pleading and lodge a complaint with the State Bar about the attorney's participation in the preparation of a frivolous or misleading document, whether or not his or her name is on the pleading. (See Los Angeles County Bar Association, Formal Opinion 502, November 4, 1999)<sup>80</sup>

Under the new rule, an attorney providing limited scope representation must disclose his or her involvement if the litigant is requesting attorney fees to pay for those services, so that the court and opposing counsel can determine the appropriate fees. Awarding attorney fees when a litigant receives assistance with paperwork or preparations for a hearing may also help encourage attorneys to provide this service. Family Code section 2032 states that the court “shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately.”<sup>81</sup> The only counsel many litigants can afford, even with attorney fees awards, is counsel willing to provide limited scope legal services. If a litigant were able to present a case “adequately” through coaching or assistance with preparation of a pleading, an award of fees might also be appropriate.

The Administrative Office of the Courts is also working with the Limited Scope Representation Committee to develop training curricula for judicial officers on the new rules and forms. It has developed an educational piece entitled “Twenty Things that Judicial Officers Can Do to Encourage Attorneys to Provided Limited Scope Representation (or how to get attorneys to draft more intelligible declarations and enforceable orders for self represented litigants)”<sup>82</sup>

## Conclusion

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<sup>78</sup> from Invitation to Comment, Limited Scope Representation, Judicial Council of California, W03-06, Winter, 2003 <http://www.courtinfo.ca.gov/invitationstocomment/documents/w03-06.pdf>

<sup>79</sup> California Code of Civil Procedure §128.7 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=60690128726+1+0+0&WAIAction=retrieve>

<sup>80</sup> *Lawyers' Duties When Preparing Pleadings or Negotiating Settlement for In Pro Per Litigant*, Los Angeles County Bar Association Professional Responsibility and Ethics Committee, Formal Opinion No. 502, November 4, 1999 <http://www.lacba.org/showpage.cfm?pageid=431>

<sup>81</sup> California Family Code §2032 <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=60705328991+1+0+0&WAIAction=retrieve>

<sup>82</sup> *Twenty Things that Judicial Officers Can Do to Encourage Attorneys to Provided Limited Scope Representation (or how to get attorneys to draft more intelligible declarations and enforceable orders for self represented litigants)*, Administrative Office of the Courts, 2002, [http://www.unbundledlaw.org/States/twenty\\_things\\_that\\_judicial\\_offi.htm](http://www.unbundledlaw.org/States/twenty_things_that_judicial_offi.htm)

As described above, California's courts have developed a large number of programs to increase access to justice for self-represented litigants. Many of these have developed creative solutions to long-standing problems regarding the propriety of the court's providing assistance to litigants, others are building upon technology to provide information, others explore fundamental assumptions about courtroom management. All are directed at the very basic concern raised by California's Chief Justice Ronald M. George in his State of the Judiciary speech in 2001: "If the motto 'and justice for all' becomes 'and justice for those who can afford it,' we threaten the very underpinnings of our social contract."<sup>83</sup>

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<sup>83</sup> State of the Judiciary , delivered by Chief Justice Ronald M. George to a Joint Session of the California Legislature, California, March 20, 2001, <http://www.courtinfo.ca.gov/reference/soj0301.htm>