Resources to Assist Self-Represented Litigants

A Fifty-State Review of the "State of the Art"

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Greacen Associates, LLC

National Edition, June, 2011

Forward to the National Edition:

Though this report was commissioned by the Michigan State Bar Foundation to assist Michigan's Solutions on Self-Help (SOS) Task Force, it may be of value to other jurisdictions working to enhance support for the self-represented. Its information and ideas may benefit those just starting such work as well as programs that have been underway for a while. It is relevant to both court-based and other self-help programs.

So, don't think that its references to Michigan make this report less useful to your state. It is a gold mine of resources for self-represented litigants (SRLs) from all fifty states. And it is not just a huge listing of those resources (though the large compendium of knowledge and links in its appendices is a truly incredible reference). The report itself is a thoughtful presentation of tools and programs worthy of replicating, essential information about key issues related to assisting SRLs, and creative and innovative approaches that may position us for greater success in the future.

One other remarkable feature of this report is the astute commentary throughout by its author, John M. Greacen. Mr. Greacen offers ideas about how issues and practices may affect persons attempting to represent themselves. He also discusses how both the court system and extra-judicial partners can promote a coordinated and comprehensive approach in which SRLs have access to a range of tools that can help them conduct their case or are pointed to how they can find a lawyer when needed. Mr. Greacen even includes a "triage" graphic to emphasize this continuum of services.

In the "Michigan Edition" of this report, Mr. Greacen included 25 specific action recommendations (this can be viewed at http://www.msbf.org/selfhelp/GreacenReportMichiganRecommendationsMay2011.pdf). Indeed, the only major difference between the "Michigan Edition" and this "National Edition" is that those recommendations have been moved from the body of this report to become one of its appendices. That is appropriate inasmuch as the recommendations were specific to the work plans of Michigan's SOS Task Force and, as such, may not cover every issue others may want to act on in other states. However, I hope you will look at these 25 recommendations to see how at least one state may act on the information in this report. Michigan has found these recommendations very effective catalysts not only to address the individual topics in each one but as a map that may help us achieve a comprehensive approach when they are all knit together. The various work groups in Michigan's SOS Task Force will each examine how to address the recommendations related to its area. My SOS Task Force Co-Chair, Lorraine Weber and the Michigan Supreme Court's liaison to this project, Justice Marilyn Kelly, who established the SOS Task Force, join me in acknowledging the importance and credibility of Mr. Greacen's work for our efforts to enhance assistance for the self-represented in Michigan.

I also suggest that you read the appendix that contains Mr. Greacen's resume because knowing about his experience and abilities will help you see why this report is so substantive and wise. Almost immediately upon being retained to do this study for Michigan, Mr. Greacen asked if the approach could be broad enough so that the product could be helpful to others states as well. That has surely been the result, with lessons both from and for all fifty states. Mr. Greacen's request also mirrors another theme in the report – the importance of collaboration among the range of those who encounter the self-represented, particularly leaders in the courts, the bar, legal aid and the broader justice system, and of continuing to share what we learn with one another. In that spirit, I am delighted that this rich resource will be available to anyone interested anywhere. So, even if you are not from Michigan, happy reading!

Linda K. Rexer
Executive Director, Michigan State Bar Foundation
Co-Chair, Michigan's Solutions on Self-Help (SOS) Task Force, June,2011

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California's "May I Help You" brochure
http://www.courts.ca.gov/documents/mayihelpyou.pdf

Guidelines for the Operation of Self-Help Centers in California Trial Courts
http://www.couts.ca.gov/self_help_center_guidelines.pdf

Resume: John M. Greacen, J.D.

Introduction – A Continuum of Services

The Michigan State Bar Foundation commissioned this study of current programs, policies and services provided by state courts to support persons representing themselves in pursuing legal remedies in court. This research and analysis will be used by Michigan's Solutions on Self-Help (SOS) Task Force to develop programs to help the self-represented. The report is structured in two parts to reflect areas being examined by two of the Task Force's work groups: 1) how forms and information are provided for the self-represented and 2) how justice system rules and policies affect the ability of persons to represent themselves effectively. In addition, the report explores how judicial and extra-judicial partners collaborate on these issues.

There are many good non-court-based resources to assist the self-represented developed by legal services programs and state bar associations. While those programs are sometimes mentioned in this report, it is primarily focused on resources through or connected with courts. The methodology for this study has involved review of all state judicial branch websites to identify forms and information provided, followed by a survey sent to each state court administrator to verify the information obtained from the websites and to learn of additional policies and services in the state.[1]

The review has confirmed Justice Kelly's observation in her "Charge to the Solutions on Self-Help (SOS)] Task Force" that "self-help is not a substitute for counsel. Rather, it is part of a continuum in which some matters can be resolved effectively by self-help, some need ADR or other forms of limited representation and some need full representation by a lawyer." The bench and bar need to help assure the availability of that full range of services to ensure that persons representing themselves obtain the results that the facts and law applicable to their cases warrant. The body of this report contains the detailed information concerning forms, information, policies, rules and other activities currently provided to assist the self-represented. This introduction provides a conceptual context for the information in this report – a context that may prove useful to the Task Force as it crafts a proposal for a comprehensive program of self-help services for the people of the state of Michigan and a policy framework within which they will be provided.

Self-represented litigants and their cases present an endless variety of situations, ranging from highly educated and capable persons seeking to obtain the simplest forms of court relief (such as a change of name) to persons with limited education, limited English capability, and other handicaps (ranging from hearing and sight impairment to mental illness) seeking to obtain relief in the most complex sorts of legal proceedings (such as dissolution of long term marriages with minor children, a dependent spouse, and large amounts of marital assets in a variety of personally owned or controlled businesses or civil litigation arising from negligence, product liability or professional malpractice requiring expert testimony). Some litigants can obtain all the assistance they need to vindicate their legal rights from court-provided forms and information. Others need limited legal advice to enable them to represent themselves. Others

[1] Twenty-eight of the state court administrators' offices responded to the survey; three other offices responded to the information provided concerning the state court website.

need full legal representation because of the complexity of the factual or legal issues involved in their cases or because of their lack of the basic skills needed to present them to a court.

Despite the concerted efforts of courts and bar leaders over many decades, it is clear that the public is unable or unwilling to underwrite the costs of providing lawyers in all cases in which they are needed (even for indigent persons except for criminal, delinquency and dependency and neglect matters where they are a matter of constitutional right), the bar is unable or unwilling to provide sufficient free services to meet the need, and litigants themselves are often unable or unwilling to pay for the services of a lawyer.

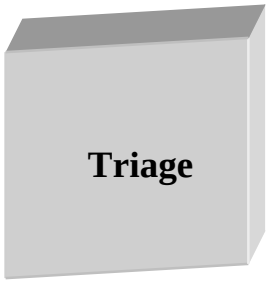
Throughout society, there is a trend toward "do-it-yourself" behavior which has become so familiar that we had a new acronym for it – "DIY." The elimination of professional "middleman" services in a variety of fields has been labeled "disintermediation" by sociologists. All of us are familiar with real estate signs "For Sale by Owner." Chain hardware stores provide advice and classes for people to make repairs or improvements to their homes without hiring carpenters, electricians, and plumbers. Stock brokerages now offer online stock transaction assistance that does not entail interaction with, or advice from, a stock broker. Many medical websites allow persons to diagnose their own ailments and purchase non-prescription medications to treat them. Hundreds of thousands of Americans now "home school" their children – bypassing professional educators. We should not be surprised to see the same pattern emerge in law – with large numbers of persons choosing to handle their own court cases – bypassing the legal profession.

While there was some doubt several decades ago about how the courts would respond when self-represented litigants began appearing in large numbers in general jurisdiction courts where they "did not belong," it is clear that there is current consensus within the judicial branch and the legal community that the courts have an obligation to ensure that self-represented persons have the best possible opportunity to obtain a court decision reflecting the facts and law of their situations.

The graphic below shows – in the left column – the continuum of information needed by the self-represented person to ensure this outcome. The right column shows the continuum of sources from which the information or assistance can be obtained.

A Continuum of Information Needs of Self-Represented Litigants

- Information concerning available legal remedies and the elements needed to establish them
- Information concerning court and other processes (e.g., ADR) to be followed to obtain a particular legal remedy
- Forms and information needed to initiate or respond to a court proceeding
- Guidance for preparing for and presenting evidence and argument in a court hearing, if one is needed
- Preparation of a default or stipulated judgment, or a judgment embodying a court decision
- Post judgment remedies needed to collect on or modify a judgment



A Continuum of Information Sources for Self-Represented Litigants

- Electronic or written materials made available by courts, law libraries, public libraries or non-court self-help program
- Access to court records – in person or electronically
- Assistance from general court staff – in person, by phone, or by electronic means
- Assistance from specialized staff in a court of other self-help program
- Limited or "unbundled" legal advice or assistance from an attorney (private counsel or legal services)
- Dispute resolution services provided by self-help program staff or court-annexed or other alternative dispute resolution programs
- Full representation from an attorney (private counsel or legal services)

Not all self-represented person need all of the information in the left column or all the services in the right column. Providing a particular litigant with needed information from the most appropriate source is the function referred to as "triage." This is the least well-developed function within current state self-help programs. For the most part, triage is left to the litigant. Courts typically encourage litigants in every instance to obtain the services of a lawyer – in information provided, in personal conversations with staff, and by formal advisements from the

judge in the courtroom. A few states (as described in the full report) provide assessment tools for litigants to assess their own skills and personality traits to determine their likelihood of successfully representing their own interests in court. But the triage function generally devolves to the staff of a court or other self help program or (when there is no such program available) to the clerical staff at the court's filing counter.

The merit of a person's case is highly relevant to triage decisions. Lawyers always make merits-based assessments of possible claims before proceeding with them. They are ethically required to do so. Lawyers – including legal services lawyers – simply refuse to pursue unsupportable claims when their clients are potential plaintiffs and advise their clients who are defendants when they have no viable defenses to the claims brought against them. This is a more difficult issue for self-help center or court staff (whether or not they are lawyers) because of the prohibition on their giving legal advice. Making merits-based judgments about cases and making procedural recommendations based up those judgments falls within the ambit of giving legal advice. It is an obvious role for *pro bono* attorneys or attorneys providing limited scope representation.

This report explores each of the information needs of self-represented litigants and the service delivery options available to Michigan for providing that information. It addresses both a continuum of issues involved in providing forms and other information and a second continuum of issues involved in policies, rules and practices that maximize the likelihood that self-represented litigants will have a fair opportunity to present their cases and have them resolved on their merits. Those continua are set forth below to provide the reader with a preview of the topics to be discussed in the body of the report.

The appendix to this report includes spreadsheets describing the forms and information provided on the state court websites for all 50 states and the District of Columbia, together with a matrix showing at a glance some of the more important features of the websites. The appendix also contains a variety of other resources that may be of interest to the Task Force.

Twenty-five recommendations for the Task Force's consideration are set forth in the body of the report in conjunction with the information collected about practices in other states.

Continuum of Issues Involved in Providing Forms and Other Information

Provision of forms is the foundational task of every program that begins to provide assistance for persons representing themselves. It is the first resource requested by litigants. While necessary for litigants to assert their rights, forms by themselves are not sufficient to ensure that self-represented litigants will be able to assert those rights effectively. The forms must be part of a more comprehensive process that provides accessible, understandable information about topics related to the person's legal issue, including substantive and procedural instruction that assist persons in completing the forms they need to use.

To explore how such information and forms can best be used to assist the self-represented, this report addresses the following areas:

- What information will be provided to help a potential self-represented litigant to decide whether to pursue a legal remedy?

- Will the court or self-help program provide potential litigants with assistance in deciding whether to represent themselves?

- What case types will be covered by forms and information?

- What basic information about legal remedies provided by courts for that case type will be presented?

- What forms will be provided?

  - will the forms be limited to pleadings (complaints/petitions, answers/responses, and varieties of counter and cross claims and their responses)?
  - will the forms include standard disclosure requirements?
  - will the forms include discovery and motion practice?

- What is the legal status of the forms provided? Must courts within the state accept filings submitted using the forms? Are attorneys and parties required to use the forms or may they substitute their own preferred formats for presenting the same information?

- What technology will be used in providing the forms?

- What instructions will accompany each form?

- How will the court or self-help program maximize the self-represented litigant's understanding of the forms and the terms used in them?

- Will the court provide (or ensure that some other entity within the community provides) educational opportunities for persons wishing to initiate or defend legal actions, such as workshops for persons preparing petitions for domestic violence restraining orders?

- What information will be provided to assist a litigant in preparing for a court hearing?

- How will judgments embodying the outcome of court proceedings be prepared?

- How will information concerning post-judgment proceedings be conveyed?

Continuum of Issues Involved in Establishing Policies, Rules and Practices that Maximize the Likelihood that Self-Represented Litigants Will Have a Fair Opportunity to Present Their Cases and to Have Them Resolved on Their Merits

Historically, American courts have been divided between those of limited jurisdiction – handling matters such as traffic and ordinance violations, small claims, landlord-tenant disputes, conflicts

between neighbors, misdemeanor prosecutions and preliminary felony case proceedings, and routine probate proceedings to administer estates – and those of general jurisdiction – handling felony trials and all serious civil, family, and probate matters.

Courts of limited jurisdiction typically refer to themselves as "the people's court;" they expect most litigants to appear without counsel and have processes designed for those situations. The exception is criminal proceedings in which the defendant is entitled to legal representation at public expense if s/he cannot afford to hire an attorney.

Courts of general jurisdiction have traditionally operated under rules of procedure that assume that all parties will be represented by counsel. These include divorce and other family law matters. When litigants began coming into the general jurisdiction court without attorneys, the reaction of many judges and court staff was that the litigants were behaving inappropriately. Though they had a right to represent themselves, they were not expected to do so. Neither the rules nor court processes were designed to accommodate them. Self-represented litigants sometimes encountered a hostile atmosphere – from judges and staff and from lawyers waiting in the courtroom or at the filing counter who felt that these litigants were taking up their time inappropriately.

The courts in many states have taken steps to replace this atmosphere of hostility with one of welcome and assistance – where persons representing themselves are treated the same way in both general and limited jurisdiction courts. This report addresses the steps that state court systems have taken to ensure that self-represented litigants have the same ability to present their cases – and to obtain the results called for by the facts and law applicable to their cases – as parties represented by counsel.

To explore policies, rules and practices related to assisting the self-represented, this report addresses the following areas:

- Do state courts adopt rules of professional conduct for lawyers authorizing and encouraging the provision of unbundled or limited scope representation legal services?

- Do they enact judicial ethics rules or commentary (or issue court rulings or advisory committee opinions) to encourage judges to provide appropriate assistance to self-represented litigants in the courtroom?

- Are there appellate court rulings approving judicial assistance for self-represented litigants or reversing judgments where the lack of such assistance impaired the decision making process?

- Does the state provide, or do the courts allocate, funding for court-based or other self-help centers or programs to assist self-represented litigants to prepare forms and documents and to prepare for court appearances?

- Does the court provide certified or other interpreters for self-represented litigants whose primary language is not English
  i) in self-help centers?
  ii) at clerk's office counters?

- Are there guidelines and policies for staff on what they can and cannot do to assist self-represented litigants?

- Has the state judicial branch adopted principles governing the adoption of advanced technology by courts to ensure that such technologies can be accessed by self-represented litigants?

- Has the judicial branch implemented other statewide practices to support the participation of self-represented litigants in the legal process?

- Are there any other policies or practices designed to improve the experience of self-represented litigants, or having a beneficial impact on them?

- Are there mechanisms other than appellate review for ensuring compliance with state judicial branch rules and policies concerning self-represented litigants?

Collaborations

Finally, how do the courts, the bar, legal services organizations and others work collaboratively to provide the continuum of information and services identified above? Quality self-help information and services can help both self-represented litigants and the courts – by reducing or eliminating additional document processing and courtroom time arising from incomplete or incorrect documents or unprepared litigants.

Because services delivery models differ widely, this report focuses primarily on the nature of the information and services delivered – not on the specific structure by which the services are delivered. However, the discussion of self-help center structures does recognize that services for self-represented litigants are provided by bar associations, legal services organizations, law libraries and public libraries, and a variety of other organizations. The report discusses the growing use of centralized telephone- and internet-based service delivery models in state court systems, following the model of "hotlines" that legal services programs have employed for some time.

This study has also demonstrated that courts and legal organizations often collaborate in the development and delivery of forms and legal information. Those collaborations are described in the final section of the report.

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Report

Background and Methodology

In June 2010, Chief Justice Marilyn Kelly of the Michigan Supreme Court, convened a Solutions on Self Help (SOS) Task Force to work with a wide range of justice system partners (including courts, legal aid programs, libraries, bars and others) to implement actions to promote greater quality and coordination of support for self-represented litigants in Michigan. The Michigan State Bar Foundation commissioned this study to assist the Task Force in assembling information and recommendations, particularly for two of its Work Groups examining 1) how forms and information are provided for the self-represented and 2) how justice system rules and policies affect the ability of persons to represent themselves effectively.

Greacen Associates, LLC reviewed each state's judicial branch website and viewed and catalogued the information contained on it. They then sent this information to each state court administrator for verification, along with a set of questions on the existence of other policies concerning self-represented litigants in that state. The state court administrators had the option of responding by phone, email or fax. The Conference of State Court Administrators gave Greacen Associates access to the list of its members' email addresses and telephone numbers to facilitate the study. We appreciate that accommodation.

This survey was conducted during the end of 2010 and the beginning of 2011. The information contained in this report changes frequently. Readers should not rely on the descriptions of materials provided on individual websites as representing the current state of those websites. Also, the process we used did not identify forms and information packets provided only in printed form. The response rate from the states was not as high as we might have wished. Because of the lack of response, Greacen Associates assembled data on some topics, such as rules on unbundled or limited scope legal representation, from other sources.

The opinions contained in the report are the subjective assessments of Greacen Associates, LLC, made without the construction of any particularized criteria concerning the topics covered, such as the extent to which forms are presented in "plain English."

We have included examples of very good practices in many states in this report. There are undoubtedly a number of very good practices that we have overlooked. We congratulate the organizations and individuals who have been responsible for creating the resources that we mention in the report. We apologize to those whose equally worthy accomplishments have escaped our attention.

Forms and Other Information Provided on State Judicial Branch Websites

Provision of forms is the foundational task of every court and every state that begins to provide assistance for persons representing themselves. It is the first resource requested by litigants.

While necessary for litigants to assert their rights, forms by themselves are not sufficient to ensure that litigants will be able to assert those rights effectively. The forms must be part of a more comprehensive information process that provides accessible, understandable information about topics related to the person's legal issue, including substantive and procedural instruction that assists persons in completing the forms they need to use.

What case types will be covered?

The case types for which forms are provided on state court websites are listed in the descriptions of each state's website included in the appendix.

The most common case types for which forms are provided on state court websites are those in which self-represented litigants are most likely to appear -- family law (including divorce, paternity, child support, child custody and visitation, adoption, and domestic violence matters), small claims, and landlord-tenant. Many courts provide forms and information going well beyond this core subject matter area – including general civil matters, employment cases, discrimination and other civil rights matters, probate (including administration of estates), guardianship and conservatorship, water law, tax, and other specialized legal matters.

A few states, such as Alaska, have focused their efforts exclusively on one case type (family law matters in that instance). Many other states began with that area (because it represented the area in which self-represented litigants needed the most assistance) but have now added additional areas as their resources allowed.

What basic information will be presented about legal remedies provided by the courts for a particular case type?

The most significant conclusion of this study has been the realization that forms are necessary but not sufficient to meet the needs of self-represented litigants. The form identifies the information needed to request a particular form of legal relief, but does not provide the litigant with the ability to assess whether s/he has adequate grounds to obtain that relief, how to pursue the matter within the court once it has been filed, or how to obtain satisfaction or enforcement of a judgment if one is obtained. In effect, the provision of a form enables a litigant to open the front door to the courthouse, but does not help her or him to decide whether to open that door or, if the door is opened, how to proceed through the courthouse and to exit the court with an enforceable remedy.

A number of courts have realized the need to provide the information context needed to use forms effectively.

A number of states include substantive information about the law, procedural information about the court process, the appropriate forms to file at each stage, and links to the forms in a single document posted on line.

Domestic Relations

An excellent example is Connecticut's Do It Yourself Divorce Guide, which can be found at http://www.jud.ct.gov/Publications/FM179.pdf . This single document includes a glossary of terms, discussion of legal concepts (for instance the difference between joint and single custody, the difference between custody and visitation, and the various forms of visitation, and a general discussion of alimony, including a warning that if it not requested by the final hearing it cannot be obtained in the future), a complete explanation of the procedure to be followed and the forms that must be completed at each stage. Links to the forms are imbedded in the procedural discussion.

Another example is from the California Self Help website. For each case type, the website provides basic information about the applicable law, outlines the steps in the court process required to obtain relief (e.g., filing, service of process, and obtaining a default judgment or conducting a contested hearing), and presents the forms within the context of that information. For instance, the section on divorce explains the differences between dissolution, separation, and annulment, paternity issues, legal and physical custody, separate, mixed and community property, and the factors that a judge will take into account in deciding a request for spousal support. There is also a discussion of the court process to be followed and instructions for completing each form. The link to that set of instructions is:
http://www.courtinfo.ca.gov/selfhelp/forms/documents/fl100instructions.pdf

Oregon's instructions accompanying its divorce forms perform the same function – listing the forms to be completed at each stage and providing even more guidance to the substantive and procedural law applicable to a contested divorce case.
http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/Instructions-1B-Ver12.pdf

Utah has several such well-integrated information/forms resources. See the following:

Getting a divorce in Utah
http://www.utcourts.gov/howto/divorce/

Establishing Court-Ordered Paternity: A Guide for Unmarried Parents
http://www.utcourts.gov/mediation/cpm/docs/CMP-Paternity-Unmarried_Parents_Guide.pdf

Wisconsin generates county-specific guides to divorce and separation in that state. The user enters the name of the county and the website generates a Basic Guide to Divorce/Separation in ___ County. The county-specific guides include local court requirements and procedures, contact information for local court offices, and lists of local agencies and their contact information as well. Here is a link to one for LaCrosse County.
https://prosefamily.wicourts.gov/pages/interview/print-concat-pdf?document=package-48C7C7A0ADB41AC3AFBD87BC8B4DF10B-1304142279342

Guardianships

Oklahoma's A Handbook for Guardians http://www.oscn.net/forms/aoc_form/adobe/Guardian.-Guardianship-Handbook.pdf uses the same comprehensive approach – explaining the law governing guardianships, the legal standards for appointing a guardian, the processes for contested and uncontested guardianship proceedings, and detailed explanations of the duties of guardians, how they are to perform, and their reporting obligations to the court.

Small Claims

Many states provide handbooks or guides for the small claims process. Here is the link to the Colorado guide.
http://www.courts.state.co.us/userfiles/File/Media/Brochures/smallclaimsweb.pdf

Colorado goes further by providing a user guide to local court small claims practices. We did not find any other similar resource. By showing the different processes in place throughout the state, this guide demonstrates graphically the obstacles that self-represented litigants face in discovering this information and the challenges facing a court system in providing it.
http://www.courts.state.co.us/Self_Help/Local_Small_Claims.cfm

Finding the Right Court

New Hampshire provides an excellent guide for identifying the court in which to seek relief. New Hampshire's court system has a large number of trial courts with varying jurisdictions. The website provides the following chart to assist litigants to find the right court.

What is your case about?	Court to contact
adoption	Probate Court and Family Division
appeals (from Superior Court verdicts or orders)	Supreme Court
child custody, visitation and support	Superior Court or Family Division
criminal cases	Superior Court (felonies-punishable by more than 1 year in prison) District Court (misdemeanors-punishable by less than 1 year in prison)
divorce	Superior Court or Family Division
domestic violence	Superior Court, District Court, or Family Division
estates	Probate Court
guardianship of adults	Probate Court

guardianship of minors	Probate Court, Family Division,or Superior Court
involuntary commitments	Probate Court
juvenile delinquency	District Court or Family Division
juvenile dependency	District Court or Family Division
landlord/tenant claims	District Court
legal separation	Superior Court or Family Division
sexual assault	Superior Court
small claims	District Court
termination of parental rights	Probate Court or Family Division
traffic tickets	District Court
trusts	Probate Court
wills	Probate Court

The complete guide can be found at http://www.courts.state.nh.us/selfhelp/find_your_court.htm

Statute of Limitations

Most states shy away from providing information on statutes of limitations. California is an exception. Here is the statute of limitations information provided for small claims cases. California's example shows that every state can provide this same level of information. The link to this information is http://www.courtinfo.ca.gov/selfhelp/smallclaims/scbasics.htm#toolate

When is it too late to file a claim?
It's not easy to figure out if it's too late to file. If you're not sure, file your case and let the judge decide.

Here are some tips:

- If you are suing because you **got hurt**, you can file a claim for up to two years after you were hurt.
- If you are suing because a **spoken agreement** was broken, you have 2 years to file after the agreement was broken.
- If you are suing because a **written agreement** was broken, you have 4 years to file after the agreement was broken.
- If you are suing because your **property was damaged**, you have 3 years to file after your property was damaged.
- If you are suing because of **fraud**, you have 3 years to file after you find out about the fraud. Fraud is when you lose money because someone lied to you or tricked you on purpose.
- If you are suing a **government or public agency**, you have 6 months to file a claim with that agency. They have 45 days in which to make a decision. If no decision is made with 45 days then it is deemed denied. If they reject your claim, you have 6 months to file a claim with a small claims court. Click here to learn more about suing a government agency.

An alternative and highly effective method for providing this sort of information is within the context of a document assembly dialogue. We discuss this approach in more detail in the section on the use of technology.

Elements Required for Relief

Self-represented litigants need a listing of the elements required for relief. While this information is most critical at the trial preparation stage, it is also necessary for assessing the viability of a claim when a litigant is deciding whether to pursue a matter in court. A number of courts address the grounds for divorce in their divorce forms. We have noted examples where states provide information bearing on the criteria a judge will use in deciding alimony or spousal support. Some landlord-tenant guides explain both the types of tenant conduct that constitute grounds for eviction and those that do not, as well as the factual situations that provide tenants with grounds to defend against an eviction action.

However, to our knowledge, no court provides a resource that explicitly defines the elements required for recovery for all of the case types for which forms are provided. This information is available in every state that has uniform jury instructions. The elements could be extracted from each of the appropriate UJIs and posted in an appropriately labeled section of the court website for self-represented litigants.

Will the court provide potential self-represented litigants with a tool for deciding whether to represent themselves?

Most states provide some sort of warning against representing yourself in court. Most urge that all litigants obtain the advice of an attorney. Here is the Colorado guide to self-representation as an example of a state's providing more information and guidance to individuals deciding to handle their own cases. This fact sheet is also available in Spanish.
http://www.courts.state.co.us/userfiles/File/Self_Help/pro%20se%20sheet%20Word%2009%202009.pdf

Some states provide a checklist or self-assessment instrument that a potential litigant can use to help decide whether to proceed without an attorney.

Here is the information provided by Kansas

Should I represent myself

There are times when people choose to represent themselves in a Kansas court. The following questions are designed to help you with your case without the assistance of a lawyer. Most people come to court because something is affecting their lives, maybe in stressful and emotional ways. Learning the law and court processes can also be difficult and stressful. In fact, sometimes when people act as their own lawyer in complicated cases, they need to hire a lawyer later to "fix" mistakes. Hiring a lawyer after the fact could cost more than using a lawyer from the start.

1. Are you on time for meetings and deadlines?

- The court expects you to be on time (a little early is better) for hearings and paperwork.
- Use a daily calendar with reminders of your court "to do's."

2. Can you make it to the courthouse during the day (during business hours)?

- You will need to arrange your work schedule and transportation to get to court a few times, both to file paperwork and be at hearings.

3. Do you fill out and file your own income tax returns?

- Court forms can be complicated, much like income tax returns.
- Reading instructions, following steps, and paying attention to detail are necessary to complete court forms.
- You must be organized and prepared to successfully file the proper court forms.

4. Are you comfortable doing research in a library or on a computer?

- Most people do not know the laws and rules that control their cases. Many people are also unsure what forms and documents need to be filed with the court to start and continue their cases.
- Learning the laws and rules for your case is required to be successful. While the court may provide forms for you to fill out and file, you will likely have questions. Court staff can only give you limited answers to your questions because of their duty to be fair to all parties.
- If you do not take the time to learn the laws and rules of your case, you are unlikely to be successful. You may also feel frustrated and unfairly treated because you do not understand what is happening.
- You can hire a lawyer just to do the research. It may save you lots of research time, because a lawyer is already trained to know the laws and the rules that control your case. A lawyer may do some research on specific concerns in your case to make the best argument. Without using a lawyer, you may miss some of the arguments you could make.

5. Are you likely to be clear and calm when you stand up and speak in court?

- Representing yourself means you must attend all the scheduled appearances with the judge. At these appearances you will be required to speak clearly and logically while presenting your case.
- If the other party has a lawyer and you do not, you cannot count on the other lawyer to help you or speak for you. You must speak to the court yourself.

6. Do you easily get angry under stress?

- Coming to court can be difficult and stressful. Because you have something to gain or lose in your case or you are angry or upset at the other party, you may find it more difficult to control your emotions in the courtroom and while speaking. You may also find that your good judgment is clouded by your stress or anger.
- You must be courteous at all times to court staff, the judge, and the other party to your case. You cannot interrupt the other party, the judge, or others while they are speaking.

7. Are you often frustrated by rules you think are unfair or should not apply to you?

- All types of cases are controlled by rules and procedures. These rules and procedures are in place to give everyone a level playing field. Though a rule may seem silly or wrong, the rule must be followed to make sure your case is fairly handled.

8. Can you make decisions and stick to them?

- Most court processes are formal and lasting. Once you make a claim, a statement, or a filing it is difficult to make changes. Any doubts or questions should be considered and answered before you start.

9. Can you live with your mistakes?

- If you represent yourself, you are likely to make some mistakes. If you regret decisions or often dwell on actions you have taken, you may cause yourself stress and anxiety. You may also hurt your ability to be successful in your case.

10. What is at stake in your case? Do you and the other party get along?

- Every case is important, but some cases may have a bigger effect on you because of the large amount of money, property, or other people involved (such as children). Cases involving large amounts of money or a number of people are more complicated.
- If you and the other party had a relationship that included physical or emotional abuse, you may have trouble keeping a steady emotional state. Being calm and logical is necessary to make good decisions in your case.
- If you feel the other party is good at "hiding" money or property (such as on tax forms), or if you have no idea about the other party's financial status, using a lawyer may be helpful in locating the other party's financial assets and collecting on a judgment or settlement.

Limited Representation

You can hire an attorney to do parts of your case or to advise you depending upon how much assistance you can afford. A lawyer can advise you of issues that you will need to be aware of. Hiring an attorney to provide limited assistance may help with you representing yourself so that your rights are protected and that you know what to do at different stages of your case. The court clerk will have a list of those lawyers who agree to provide limited representation.

Wisconsin uses the identical set of questions. It is not clear from the websites whether Kansas adopted Wisconsin's material or vice versa.

Maryland's self-assessment tool is an on line quiz with eleven questions. The user answers the questions and then gets a score, a prediction of her/his likelihood of successfully handling her/his own case, and feedback on each of the questions. The quiz can be located at http://www.peoples-law.info/node/139/take?quizkey=01cd17b7ae25feb483cef1d32163d138

Missouri includes the elements from Kansas and Maryland and more, totaling eighteen questions about the litigant and the intended litigation. The link to its instrument is http://www.selfrepresent.mo.gov/page.jsp?id=4092

None of these instruments has been tested empirically. So, we have no way of knowing whether the elements listed in these questionnaires predict greater or lesser likelihood of success as a self-represented litigant. The items listed appear logically related to likelihood of success and the

process appears useful as an educational opportunity to stress for potential self-represented litigants the time and effort required to complete a court process. None of these tools asks whether the other side has an attorney – which would appear to be the most important predictor of success or frustration.

What forms will be provided?

Many courts organize their forms into packets, which include all of the forms required for some purpose, such as initiating a divorce. The packets usually enclose both a set of instructions that pertain to all of the forms in the packet and a checklist for the filer to use in ensuring that all of the necessary forms have been completed and contained in the filing. The packet concept originated in the paper world, but has been carried forward into the world of on line information.

These packets are far superior to the early printed forms packets that included all forms for all stages of a particular type of case – those pertaining to the respondent as well as those for the petitioner. The packets could contain 60 to 100 pages of material. Few people have the patience to read through such tomes.

The principle that forms providers have learned over time is to provide "just in time" information – the information needed for the next step in the legal process. Self-represented litigants will read and digest that information because its relevance is clear. This principle can be implemented in an on-line environment by providing information in a series of logically sequenced discussions that follow the steps of the court process, imbedding links to forms pertinent to each stage of the litigation process.

A number of states limit the forms they present based on a belief that persons should not pursue more complicated cases without the assistance of counsel. For example, New Mexico, New York and North Dakota provide divorce forms only for uncontested divorces. Nebraska forms and instructions for divorce are limited to cases in which custody is not disputed, one of the spouses is father of all the children, the wife is not pregnant, the parties do not have real property, pensions or retirement plans, and neither spouse is requesting alimony. Parties with any of these fact situations are referred to an attorney. The instructions inform users of the option of limited scope representation.

All of New Jersey's divorce forms are in a section of the website reserved for forms created for attorneys and judges. Self-represented litigants are told that they may use these forms, but warned that (unlike forms designed for their use) the forms use legal language and do not include any instructions.

Neighborhood Legal Services of Los Angeles provides self help services in many of the courts in Los Angeles County, with funding provided by the County of Los Angeles. Several of the NLSLA centers focus on domestic violence restraining orders; others provide full service self-help covering multiple case types. These centers have developed an automated document assembly application that is available only within the physical confines of the self-help center. The application allows litigants to enter basic identifying information, but requires them to stop

and obtain personal assistance from a staff member before entering data on parts of the form that the staff consider too important to let the litigants complete without information conveyed in a one-on-one dialog with a staff member. An example would be the date of separation in a marriage dissolution action; this date has legal significance for determinations of community and separate property and the award of spousal support; staff want self-represented persons to be familiar with those implications before they provide a date of separation in the dissolution petition. They do not consider this interaction to constitute the giving of legal advice – merely the provision of legal information pertinent to the completion of those critical questions. We are not aware of any other program that follows this approach. One of its major consequences is that the document assembly software will not be made available on line; it must be used where staff assistance is available.

Will the forms be limited to complaints and petitions?

When courts first began developing forms for self-represented litigants, they focused first on the documents needed to initiate a court case. It quickly became apparent that provision of forms for one party (the plaintiff or petitioner) without providing corresponding forms for the other side (the defendant or respondent) was inherently unfair. Virtually every court site we visited included forms for answers and responses as well as forms for complaints and petitions.

The issue takes on peculiar dimensions in two areas – domestic violence and landlord-tenant matters. Some courts have relied on advocacy groups to develop their domestic violence restraining order forms, and some of them rely on advocacy groups to provide assistance in the courthouse for persons needing to fill out forms to seek court protection. Advocacy groups are, for the most part, unwilling to serve alleged batterers. In order to maintain a neutral stance, courts have had to find other ways to assist persons against whom domestic violence petitions have been filed.

The same situation prevails in landlord-tenant situations where the court, legal services, or a neighborhood housing coalition will provide forms and assistance to tenants only, not realizing that there are many poor persons who take in a boarder and then need to evict her or him and lack the means to hire an attorney. Many courts now provide self help materials for landlords as well as for tenants. One court self help center we visited in the past year actually provided more assistance to landlords than to tenants.

Typically, a website will contain distinct forms packets for each side in a particular matter.

Will the forms include standard disclosure requirements?

Many divorce processes require the parties to disclose financial affidavits. Forms for those affidavits are usually contained in divorce packets and instructions.

Will the forms include discovery and motion practice?

Some websites, such as Maricopa County's, are so extensive that they include sample discovery and motion practice forms. Typically, however, courts appear to assume that self-represented litigants are unlikely to take advantage of these techniques for obtaining information from the other party in a case because they do not include forms or templates for preparing interrogatories, requests for production of documents, requests for admissions, or offers of judgment.

Alaska provides a resource on motions practice. It shows just how complicated a typical court motions process is. http://www.courts.alaska.gov/motions.htm

What is the legal status of the forms provided? Must courts within the state accept filings submitted using the forms?

While many courts' websites are not explicit in this regard, we are told that for the most part all courts within a state will accept a form prepared at the state level for use by self-represented litigants. There are exceptions. For instance, the Arizona judicial branch website warns users of its domestic violence restraining order forms that some courts in the state will require the use of their own local forms. The site says to take the completed state form with them to the local court because all of the information required on the local form will be contained in the state form! Ironically, Arizona AOC staff report that statewide acceptance of its domestic violence orders is required by order of the state supreme court.

Our judgment, based on our review of state websites, is that twenty-nine states require local courts to accept state-created forms while six do not. An example of a Supreme Court rule requiring acceptance of state-developed forms by all courts within the state is Missouri Supreme Court Rule 88.09, effective April 1, 2009.

In Nebraska, local courts are required to accept the statewide forms for domestic violence, small claims, fence disputes, garnishment, and guardianship; local courts retain discretion to refuse to accept other forms made available on the state website.

Washington has a longstanding state level forms development process with five different forms drafting committees. The committees decide whether to designate particular forms as mandatory or as "model forms," which local courts and individual attorneys and litigants are free to use or reject at their discretion. Increasingly, the legislature is requiring that forms be mandatory on both sense of the term – attorneys must use them for filing and courts must accept them when filed.

Are attorneys and parties required to use state-approved forms or may they substitute their own preferred formats?

The previous section addressed the question "are local courts required to accept a state-approved form if a party or attorney presents it for filing." The next question is whether parties and attorneys must prepare all pleadings using state-approved forms if they have been promulgated.

From our review of the state websites, it is our judgment that six states require all persons filing forms to use those developed at the state level. The reasons for requiring the use of standard forms is so that judges, attorneys, and court staff know where, on any commonly filed document, to find a particular piece of information.

In California, all court users – attorneys as well as self-represented litigants – are required to use state forms. There are now over 700 of those mandatory forms.

Missouri Supreme Court Rule 88.09 requires use of the approved forms for every party not represented by counsel, unless waived by the trial court.

In Washington, the state forms drafting committees decide whether use of a particular form is mandatory or discretionary ("model forms").

What technology will be used in providing the forms?

The SOS Task Force has made the decision in awarding its contract for a statewide website that forms will be generated by using the LawHelpInteractive document assembly application. Forms are provided in numerous technical formats in other states. This information is provided for the benefit of persons other than the members of the SOS Task Force who may read this document and be interested in the range of choices available.

Downloadable PDF

The most rudimentary format is a downloadable PDF. The form is printed by the recipient, filled out by hand and filed with the court. All PDF functions that do not involve creation of a PDF document can be performed using Adobe Reader – free software downloadable from Adobe on the Internet. Most users of PDF – particularly when they have to function in an electronic filing environment requiring that all filings be in PDF format – purchase the most current version of Adobe Acrobat, which is available for several hundred dollars. (PDF is technically an open technical standard and there are open source products available for creating PDFs; very few persons use them because Adobe's products are affordable, reliable, and universally accepted.) So, using PDFs created with Adobe products does not necessarily impose a software purchase cost on the user of a form.

Word Processing Applications

Some courts provide their forms in Word, Word Perfect or Rich Text Format (readable by most word processing applications). Word allows a form creator to include check boxes and text boxes (which appear as grey squares the height of a line about one inch long) in a form they create. A user can type any amount of text into the box and it will appear at the place in the document where the text box was located. Typically, the forms are provided in a "locked" format – the recipient of the form cannot change the form; s/he can only enter data in existing text boxes and select among available check boxes. This can prove frustrating for a user whose

response is not one of the options provided. Alaska has chosen to provide its forms in "unlocked" Word format so that users can modify them if they choose to do so.

Fillable PDF

The most prevalent format used on current court websites is a fillable PDF. The user sees a form with a number of blank lines and is able to type in the required information on line. The form is then printed on the user's printer. It cannot be saved as an electronic document on either the form provider's or the user's computer. If the user needs to make changes in a document s/he has created, s/he must start over and create the whole document again. This feature makes this solution awkward for the user. Because the user cannot save her or his filing in electronic form, this solution is not one that will function in an electronic filing environment.

A few state court websites provide guidance on how to use and download PDF files and how to convert documents to PDF. Here is a tutorial of easy to follow instructions for converting existing electronic documents into PDF for online filing and other distribution. http://www.azcourts.gov/Portals/2/EDSERV/DLU/JIT/Forms%20Wizard.pdf

Adobe Reader Extensions

Adobe sells a product called "reader extensions" which allows the user to save the document on her or his computer in electronic form, maintaining both the form and the information inserted into it. Addition of this feature makes Adobe fillable PDFs saveable as electronic documents on the user's computer, which would allow them to be completed or modified in a later session and to become functional in an electronic filing environment. It merely costs the form provider more for the software used to create the forms. Some courts have gone to this additional cost to provide more flexibility and services for their litigants.

Document Assembly Software

Document assembly software is usually described by reference to TurboTax – a tax return preparation software application that is very popular because of its ease of use. Document assembly software leads the user through a set of questions. The user enters information in response to the question, usually in the form of text boxes and check boxes. When the information is complete, the application chooses the appropriate form (or forms), inserts the information provided in the appropriate places in the form(s), and displays the completed documents for review and printing by the user.

The document assembly dialogue process provides the court with an opportunity to insert information concerning the law or the process to be followed whenever it is most appropriate. For instance, before a litigant chooses whether or not to seek spousal support, the application can present the definition of spousal support (including the circumstances that terminate it), the criteria the court will use in awarding it, and warnings, such as that if you do not request it in your petition you will not be allowed to seek it later in the proceeding or in any future court action.

Using the information provided by the user, the application:

- Screens the litigant for eligibility for the form of relief sought
- Identifies the forms needed for the user's circumstances
- Prepares all of the forms, using the information provided by the litigant (the litigant enters the information only once, even though it appears in multiple places on multiple forms in the set of forms produced)

There are four principal sources of document assembly software:

- LawHelpInteractive developed and supported by ProBonoNet (with the assistance of the Chicago-Kent School of Law). LHI was developed for the legal services community. It is currently used by the court systems of Idaho, New York, and Vermont by agreement with those states' legal services communities. In each state, there is an automatic link from the state court website forms section to the legal services LHI application, into which the court's forms have been loaded. Massachusetts, with the assistance of the Berkman Center at Harvard, is developing a document assembly application using at least the A2J component of the LHI system; the first product will be a module for child support, followed by similar modules for domestic violence and harassment protective order forms and small claims.

  The LHI application has a particularly effective process for allowing the user to obtain additional information pertinent to a question to be answered. While this report focuses mainly on court-based resources, it is also worth noting that LHI is used by many legal services programs such as Illinois Legal Aid Online (www.illinoislegalaid.org) which populates court forms after users enter information in response to questions, provides additional explanatory information in "Guide Me" modules, supports many affiliated self-help centers, and uses pro bono law students to help users navigate the site via 24/7 live chat assistance.

- I-CAN! Developed and supported by the Orange County, California, Legal Aid Society. It is currently being used for the Virginia state court website.

- Vendor-provided applications, the most noted of which is EZ Legal File (also known as Turbo Court), which is widely used by trial courts in California and is being used to create an integrated document assembly/efiling system for Arizona, and

- "Home grown" applications, such as Maricopa County's "E-Court" application, built using standard Word tools, and Utah's OCAP forms application – the first state application of document assembly technology. Home grown applications can be tailored to a court's specific requirements, but are risky to deploy because the staff who built the application may leave for other employment. IT staff rarely document their work adequately enough for others easily to assume maintenance, support, and enhancement functions. The Utah judiciary is

converting its homegrown OCAP forms to HotDocs, the document assembly application underlying the LawHelpInteractive application.

Turbo Court is a proprietary application for which users pay to create documents. We did not actually experiment with the Turbo Court application for that reason. We found the home grown applications very easy to use and complement the court systems that created them. Our assessment is that the LawHelpInteractive is the most effective document assembly tool currently available. We therefore believe that Michigan made the right decision in choosing this application for its new website.

What instructions will accompany each form?

Instructions typically include line by line definitions or explanations or directions concerning the information to be included on the form. Some courts include the instructions in the documents themselves – increasing their length and complexity. Most courts provide a separate instructions document to be used as companion pieces with the forms. Document assembly eliminates the need to choose between these alternatives.

New Jersey is unique in including examples of the language that one would use in a motion to modify child custody or child support to request a specific type of relief.

How will the court maximize the self-represented litigant's understanding of the forms and the terms used in them?

Typical forms used in general jurisdiction courts have always used legal language familiar to attorneys and judges. When court systems began to develop standardized forms, they simply adopted the approach used by attorneys. The influx of self-represented litigants into the general jurisdiction courts has exposed the limitation of these traditional documents – they are difficult if not impossible for persons without legal training to understand.

In our review of state court websites, we found that virtually every state has made a serious, well-intentioned attempt to simplify the language of their forms. There are exceptions; New Jersey appears to have intentionally not simplified forms for contested divorces because the state does not want to encourage persons to represent themselves in these cases.

We are not qualified to create and apply a "plain English" scale or rating to each state's forms. Where it is apparent that a state has made an effort to reduce the use of legalese in its forms, we have rated that state as having "plain English" forms. Best practice is said to be to write forms in language understandable by persons with a third grade education. We have not come across specific standards articulated in court rules or statements of objectives for forms development. There is a federal government website http://www.plainlanguage.gov/ that articulates such standards and provides guidance for government agencies preparing forms for use by the public. Massachusetts reports that the chief justices of its seven trial court departments adopted Forms Principles and Goals this year calling for the adoption of uniform, plain English, translated forms in all trial court departments.

In our experience, state level forms committees made up of judges and attorneys are incapable of achieving the objective of third grade forms comprehension without the assistance of language experts. Even when they obtain such advice, forms drafting committees find it difficult to accept the advice proffered. They seem inevitably drawn toward complication of forms and preservation of the use of legal terminology despite their best intentions to simplify them. As forms are revised, they have a tendency to become longer and more complex, as drafting committees attempt to address within the forms an ever-increasing range of infrequently occurring factual situations. The inherent bias of legally trained professionals is towards the use of familiar and precise legal terminology because specific legal terms are used in statutes and case law and have acquired an accretion of accepted meaning and nuance that seems difficult or impossible to convey in a few words of plain English. The legally trained mind seems invariably to favor precision in legal meaning over general understandability when choosing the words to use in a form.

The most easily understandable form that we found in our state website survey is New Mexico's uncontested divorce form. The form can be accessed at http://www.nmcourts.gov/cgi/prose_lib/index.htm

We include the entire form in the body of this report so that readers can appreciate the extent to which it departs from normal practice. The form was developed with substantial input from a language expert, which the drafters were, in this instance, willing to accept. The form is designed for the simplest type of divorce – no children and agreement among the parties on all issues. Even this very understandable form contains one sentence that self-represented litigants will have difficulty understanding – the sentence concerning venue in paragraph 1 which uses the legal terms "venue" and "caption." Nonetheless, we found it notable in its effective use of very ordinary language.

4A-301. Petition for dissolution of marriage (no children).

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT
_____, Petitioner
v. No. _____
_____, Respondent

PETITION FOR DISSOLUTION OF MARRIAGE1
(no children)

I, _____ (*person listed as petitioner above)*, am the petitioner in this case and I am married to _____ (*person listed as respondent*).

We are married and wish to get a divorce. We ask the court for a Final Decree of Dissolution of Marriage ("final decree") granting us the divorce.

(Use applicable alternatives and complete.)

1. [One of us has] [Both of us have] been living in New Mexico for at least the past six (6) months. Husband lives in _____ County. Wife lives in _____ County. Venue is proper because one of us lives in the county listed in the case caption above.

2. We were married on _____ *(date)*. We are now incompatible.

3. We have thought carefully about our property, debts and our duties to each other.

4. We know that we are making very important decisions that affect our rights and obligations. Both of us have completed and signed a Verified Marital Settlement Agreement ("agreement") and ask the judge to accept our agreement. We understand that once the judge signs the final decree, we will be ordered to do the things we agree to do in the agreement.

5. We each have gotten the help we thought was needed in order to sign this document.

6. We each have copies of all documents we are filing with the court. No one needs to serve any of the documents on us. We agree that this court has power to make orders about us in this case.

7. We do not have minor children from this marriage and none are expected.

8. The agreement is a fair and complete division of our property and debts.

When I sign below, I am telling the judge that I have read this document and agree with everything in it. I state upon my oath or affirmation that this document and the statements in it are true and correct to the best of my information and belief.

_____
Petitioner's signature
Address: _____
_____
_____
Telephone: _____

_____
Respondent's signature
Address: _____
_____
_____
Telephone: _____

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this _____ day of _____, _____ by _____, the petitioner.

My commission expires: _____
_____ Notary Public

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me this _____ day of _____, _____ by _____, the respondent.
My commission expires: _____

_____ Notary Public

USE NOTE

1. Use this form if the husband and wife have no minor children born of this marriage. Use Domestic Relations Form 4A-302 if the parties have minor children or a child under nineteen years of age attending high school. *See* 4A-204 NMRA for an explanation of the forms required to be filed in an uncontested divorce when there are no children. Print or type the information required to be completed on this form. This form may be downloaded from either of the following judicial web sites: *www.supremecourt.nm.org*, click on *"legal forms"*, and then click on *"domestic relations forms"* or *www.nmcourts.com*, click on "*Family Law Forms*".

2. After completing this petition, both husband and wife must sign their names before a notary prior to filing the petition with the court. A completed Domestic Relations Information Sheet (for self represented people), Domestic Relations Form 4A-102 NMRA must also be filed with this form.
[Approved November 15, 2002.]

Some court websites take a different approach. They focus not on eliminating legal terms, but rather on including definitions of legal terms used in a form. Sometimes the definitions are included in the form itself. A number of courts provide a glossary of legal terms on the state court website. A few courts include a glossary of terms in each forms packet, limiting the list to the terms used in the legal process for which the forms were developed.

An example of a glossary is from Alaska – where the glossary includes links to forms and other resources related to many of the legal terms defined http://www.courts.alaska.gov/glossary.htm

The LawHelpInteractive application has a particularly effective means of dealing with this issue. Whenever a legal term is used in a question, a box can be made to appear asking if the user needs the term defined. Clicking on the box brings up the definition. Persons already understanding the term do not have to read through unnecessary information.

One might take the position that document assembly programs provide a compromise that allows forms developers to bypass the language simplification process – the questions in the dialog portion of the application can be in the plainest, most easily understood language and the

information can be inserted into forms employing traditional legal terminology. The litigant does not need to fully understand the form itself; it is sufficient that s/he trust that the information provided is presented in the correct legal phraseology.

We do not subscribe to that point of view for two reasons:

1. We have recommended previously that printed forms be made available when requested from the LawHelpInteractive application. If those forms include large amounts of legalese, they will not work well for self-represented litigants.

2. In the LawHelpInteractive forms preparation process, the completed forms are presented to the user for review, acceptance and printing. If the user cannot comprehend the legalese used in the form(s), s/he cannot verify that the form is complete and correct and accurately sets forth her or his representations and requests for relief.

Will the court provide (or ensure that some other entity within the community provides) educational opportunities for persons wishing to initiate or defend legal actions, such as workshops for persons preparing petitions for domestic violence restraining orders?

Many self-help programs provide workshops or seminars on specific topics, such as beginning your divorce, beginning a paternity action, preparing for a contested family law court hearing, or preparing your final judgment. The sessions may be held in the courthouse, in a library or in some other facility with appropriate accommodations.

Alaska's Family Law Self Help Center was created to help self-represented litigants prepare for court appearances in contested family law cases. It has long had extensive hearing preparation materials on its website. The trial court in Anchorage requires self-represented litigants to attend a seminar presented by the Self Help Center before their hearing.

State law in many states requires divorcing couples with children to complete a parenting class focused on the difficulties children experience during and after a divorce before they are eligible for a divorce judgment.

Missouri requires every litigant representing her or himself in a family law case to complete a Litigant Awareness Program, which is presented locally in many parts of the state but also available on line on the judicial branch website. A Certificate of Completion of that course must be filed with the court clerk when a self-represented litigant files paperwork initiating a case.

Workshops provide a cost-effective alternative to one-on-one assistance to self-represented persons. One or two staff persons can assist a dozen or more customers simultaneously. Workshops can be used even in rural areas by linking participants together by videoconference. Four counties in California have used this process successfully for a number of years.

The Downtown Los Angeles court-based Self Help Center uses a mixed workshop format. Participants prepare and enter most of the information on forms in the workshop setting but meet with staff one-on-one to complete the most legally sensitive information.

What information will be provided to assist a litigant to prepare for a court hearing?

In the past, a number of courts purposely heard family law matters with attorneys first on their calendars – partly as a courtesy to the bar but also as a model for self-represented litigants to follow. Many of those courts have now concluded that they do not want self-represented litigants to model the contentious style of the family law bar. They find that self-represented litigants often comport themselves more courteously in the courtroom than the attorneys.

The Alaska Family Law Self Help Center provides the most extensive material for preparing for a contested hearing or trial. The materials provided include forms for trial briefs, extensive explanations of the hearing process, and description of the rules of evidence. See http://www.courts.alaska.gov/shctrial.htm

The Alaska Center is currently preparing a series of thirty short video clips (one to three minutes in length) that address a specific issue in trial procedure – such as introducing an exhibit or cross examining a witness. Those videos will be on the Alaska judicial branch website by the summer of 2011. The Center staff have learned that litigants learn best when the materials are narrowly tailored to a specific issue on which they seek information.

One of the forms that we find most practical is a simple trial preparation matrix on which the litigant lists the elements that s/he has to establish, how s/he intends to prove that element, the evidence that s/he will present to provide that proof, and the exhibits and witnesses needed to introduce that evidence. This document no longer appears on the Alaska website, but is included in the attachments to this document.

California also provides trial preparation information. To see the material provided for preparing for a small claims trial, see http://www.courtinfo.ca.gov/selfhelp/smallclaims/getready.htm

Oregon's How to Prepare for Your Civil Trial is found at
http://courts.oregon.gov/OJD/docs/selfhelp/CIVILTrialBrochureFINAL2.pdf
It is a general introduction to trial preparation and the conduct of a trial; it introduces the idea of the elements needed to obtain relief, using the example of a contract action.

That state's How to Prepare for Your Divorce, Legal Separation, Custody or Support Trial (http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/TrialBrochureFINAL1-12-06.pdf) adapts the basic guide for family law proceedings and gives the litigant a great deal of information about the factors that a judge will use to decide a variety of issues, including custody, visitation, spousal support, and property division. It is an excellent example of a resource that combines substantive and procedural information.

The Connecticut Divorce Guide goes one step further by incorporating the forms themselves within the context of substantive and procedural guidance covering the entire divorce process.

Appellate court guides are relatively rare, although we found at least a dozen examples of them on state court websites today. Tennessee's is particularly thorough, including forms and examples of the different sections of an appellate brief. http://www.tsc.state.tn.us/geninfo/Publications/ProSe/ProSeLitigantFilingGuideRevised10-1-07.pdf

How will judgments embodying the outcome of court proceedings be prepared?

Following the model established when most general jurisdiction court cases involved attorneys representing all parties, many general jurisdiction courts still require self-represented litigants to prepare judgments embodying the court's decisions. Many courts include forms for default judgments, stipulated judgments, and final judgments among their forms. Some courts also provide workshops to assist litigants in completing them.

Many courts and non-court based self-help programs have detailed checklists that their staff use to review proposed default judgments to ensure that the party is entitled to a default judgment and that all of the items included in the judgment match the corresponding prayers in the petition. We did not find any of those checklists posted on courts' websites with their judgment forms. They would be helpful for self-represented litigants and would reduce their frustration when proposed documents are rejected and they are required to redo them.

Requiring self-represented litigants to prepare their own judgments without assistance is an exercise in ongoing frustration for both the litigants and the courts. The court repeatedly rejects submitted judgments because they do not meet accepted standards for legal practice. The litigants repeatedly revise and resubmit them, attempting to perform as attorneys when they are not. Many California courts now involve self-help center staff in the courtroom to prepare judgments at the time of court decision when prompt issuance of the judgment is imperative, e.g., for domestic violence restraining orders. They also refer all self-represented litigants in other types of cases to the self-help center for assistance in preparing a judgment. Self-help staff use minutes from the court hearing or the contents of a docket entry for the proceeding for guidance in drafting the judgment, using a standard order template. This service benefits the court as well as the litigants.

How will information concerning post-judgment proceedings be conveyed?

Some courts include forms for processes to collect a judgment, such as garnishment, attachment, etc. However, they are rarely integrated into and included with the forms and instructions for family and civil practice – where self-represented litigants are most likely to encounter the need to collect on a judgment. It would be helpful for self-help programs to include this information with their other substantive and procedural information about a type of judicial relief.

Alaska is an exception, providing a useful resource devoted exclusively to collecting a family law judgment as a part of its family law information.
http://www.courts.alaska.gov/collectionsfaq.htm

The California Self Help website also includes collection of a judgment in its information topics for each case type. See the following link for the information concerning collection of a small claims judgment. http://www.courtinfo.ca.gov/selfhelp/smallclaims/collect.htm

Use of other media to provide information to self-represented litigants

Many courts use videos to convey information to self-represented litigants. Here is the URL to a Delaware video on preparing for a court hearing or trial.
http://courts.delaware.gov/Help/Proceedings/fc_CourtHearing.stm

We were particularly impressed with the Virtual Courthouse Tour prepared by the Phoenix Municipal Court to show visually to a litigant the steps in the process that s/he will go through to obtain a temporary domestic violence order of protection. It consists of a series of pictures of various locations in the courthouse, with text describing what takes place at each location. This format appears to be an inexpensive way to provide useful information with appropriate visual content – likely to be more effective than the typical "talking head" video. The URL for this resource is http://www.azcourts.gov/domesticviolencelaw/DomesticViolenceInformation.aspx

Maryland's plans to develop multimedia tools are available at
http://mdcourts.gov/mdatc/pdfs/annualreport2010.pdf

Kansas has taped six videos which address the major areas currently listed on the judicial branch website.

Alaska's 30 short videos on hearing and trial subjects are described in the report section on resources for hearing and trial preparation. It may be particularly effective to use videos to show litigants actually performing in the courtroom.

Policies and Practices that Maximize the Likelihood that Self-Represented Litigants Will Have a Fair Opportunity to Present Their Cases and to Have Them Resolved on Their Merits

What rules of professional conduct for lawyers authorizing and encouraging the provision of unbundled or limited scope representation legal services have been adopted by state courts?[2]

[2] Greacen Associates are indebted to Sue Talia of Danville, California, an expert and teacher on this topic, for her assistance in assembling the information provided in this section of the report.

Roughly forty states have adopted amendments to their Rules of Professional Conduct implementing in one form or another ABA Model Rule 1.2(c) which authorizes attorneys to limit the scope their representation if the limitation is reasonable and the client gives informed consent.

The ABA Standing Committee on the Delivery of Legal Services maintains an updated listing of the status of unbundling rules in every state.[3] The link to the listing is http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html

California, Kansas and Massachusetts have engaged in particularly thorough implementations of unbundled legal services in their states, with pilot projects followed by evaluations and amendments to their attorney ethics rules based on the results of the evaluations.

Massachusetts' experience is summarized in this excerpt from an article that appeared in the Chicago Bar Association Record, available on the ABA website at http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/feature_eaton.authcheckdam.pdf

> Massachusetts first experimented with such rules in 2006, when it established a "limited assistance representation" pilot project in several probate and family courtrooms around the state. The state's high court created rules and procedures for lawyers to make limited appearances and prepare documents. The 300 lawyers who participated received indepth training, and accepted client referrals on a rotating basis. The foremost benefits of the project were the assistance provided to *pro se* litigants and its impact on the courts, according to Judge Cynthia J. Cohen of the Massachusetts Appeals Court. Cohen oversaw the development of the pilot as chair of the Supreme Judicial Court's Steering Committee on Self-Represented Litigants. "Limited assistance representation has proved to be an effective response to the challenges created by the growing numbers of self-represented litigants," Cohen explained in an interview. Citing a formal evaluation of the project, Cohen said, "Judges reported that as a result of limited assistance representation, they saw better pleadings from self-represented litigants, the litigants were more realistic about their cases, the filing of frivolous motions was reduced, and the litigants understood the process better." The positive impression was not confined to judges. Court staff also viewed limited representation favorably. "They discovered that they didn't have to spend as much counter time with self-represented parties," according to Cohen. Seventy-five percent of the lawyers who responded to a survey reported a high level of satisfaction with representing clients on a limited basis. Many cited the value of providing assistance to clients who otherwise would go without representation.
>
> In an interview, John Dugan, co-chair of Massachusetts Bar Association Probate Law Section and co-chair of the committee that studied the feasibility of limited representation, agreed that limited representation fills an important gap. "Limited representation is a glass-half-full scenario, in that it gives some clients some representation, rather than nothing." Dugan cautioned that limited representation is not suitable for everyone. It is important for the lawyer to exercise professional judgment regarding whether the individual client and the circumstances of the case are appropriate for limited representation. This includes assessing the likelihood that the client can follow up on the work done by the lawyer and finish up on their own, according to Dugan. "Limited representation is best where the client can competently watch out for his or her own interests," Dugan explained. In his experience, limited assistance works particularly well in cases like post decree domestic relations matters (such as modification or contempt proceedings) where the client

[3] The site lacks information on Georgia, Texas and West Virginia.

has some understanding of the system and the legal issues are narrowly defined. But Dugan said he knows lawyers who initiate relatively simple divorce cases by gathering information, organizing the file, preparing and filing the complaint, and then appearing at the initial hearing where the key property distribution issues are addressed in a temporary order. Then the limited assistance lawyer gets out. This points to one of the best parts of limited assistance for lawyers and clients, according to Dugan. "Clients don't have to pay $10,000 when they need $5,000 worth of work. And lawyers are protected from situations where they get a retainer and file a general appearance in a case, only to see the client's retainer become depleted and monthly fee payments stop." Many limited assistance clients pay their fees up front. In a worst-case scenario, where fees are unpaid, a limited assistance lawyer doesn't have an open-ended commitment to the case, Dugan said.

Massachusetts' experiment with limited representation was so successful that the high court has permitted each of the state's trial court departments to allow limited representation. Cohen summed up the Massachusetts' experience with limited representation: "We've discovered that this is really a win-win for the bar and for self-represented litigants. It is a terrific way to reconnect self-represented litigants with lawyers." She reiterated that limited representation is a win for the efficient operation of the courts. "Our experience has shown that even limited assistance from a lawyer can significantly reduce missteps that otherwise would consume the time and energy of court staff and judges."

The Kansas Bar Association issued Legal Ethics Opinion No. 09-01 in November of 2009. The opinion indicates that unbundled legal services are permitted under the Rules of Professional Responsibility, so long as (a) the limited scope of representation and the client's consent are clearly communicated to the client (b) any document prepared by the attorney is marked "Prepared with the Assistance of Counsel," and (c) the attorney complies with all other applicable ethical rules. Five pilot projects were implemented to test various limited representation procedures and forms. Those pilots were completed in December of 2010. The pilots were evaluated and a report submitted to the court. The court immediately changed Rule 1.2 to indicate that the consent of the parties must be in writing. The court is considering other recommendations included in the report and it is expected that they will soon approve limited representation procedures and forms.

Current state ethical rules developments concerning limited scope representation have focused on five major issues:

1. Must an attorney obtain the client's consent to limited representation in writing? ABA Model Rule 1.2(c) does not require the consent to be in writing. Many state courts now require written consent, which is an obvious best practice for lawyers, except in circumstances (such as telephonic consultation) in which it may be infeasible.

2. When an attorney prepares a document for a client without appearing for that client in court, what disclosure is required? There are three competing positions on this issue: California requires no disclosure, on the grounds that the fact of legal representation is covered by the attorney-client privilege. Colorado takes the opposite view, requiring disclosure to the attorney's name, contact information and bar number, on the grounds that withholding of the fact of a lawyer's involvement in preparing a document misleads the court into believing that the litigant prepared it her or himself. New Hampshire takes

a middle ground: a paper prepared by an attorney must contain the statement that it was prepared with the assistance of a lawyer licensed to practice in New Hampshire. The purpose of this disclosure is to distinguish assistance provided by New Hampshire lawyers from assistance obtained from an internet website such as We The People or Legal Zoom.

3. When an attorney makes a limited court appearance, how does s/he withdraw from the case? California's procedure is burdensome – requiring a motion to withdraw and court approval. The Nebraska process is far simpler.

> Upon completion of the limited representation, the lawyer shall within 10 days file a "Certificate of Completion of Limited Appearance" with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer's withdrawal of appearance which shall not require court approval.

California is in the process of revising its rules in this regard.

4. Will court rules address practical issues faced by attorneys providing limited scope representation, including when opposing counsel are required to communicate with the limited scope attorney, and the application of Rule 11 of the Rules of Civil Procedure on papers prepared on behalf of a limited representation client?

5. Is there a way within the Rules of Professional Responsibility to protect limited representation clients from unscrupulous attorneys? The prevailing wisdom is that rules cannot prevent unethical attorney behavior in the provision of limited scope representation any more effectively than in any other area of the practice of law, that the risks of attorney misconduct are no greater in limited scope representation than in any other type of practice, and that the attorney discipline process is the only realistic remedy for the abuses that will undoubtedly occur. Every unethical act cannot be prevented, but unethical practitioners will ultimately be identified and disbarred or subjected to remedial sanctions.

The current "Gold Standard" for unbundled practice rules are the Montana rules adopted by its Supreme Court on March 15, 2011, effective October 1, 2011, which address each of these issues in a manner now considered to represent the "best practice" for protecting clients while encouraging attorneys to engage in limited scope representation by minimizing the complexity of the process.

The Montana rules are set forth below. They can be found at http://supremecourtdocket.mt.gov/view/AF%2009-0688%20Rule%20Change%20--%20Order?id=%7bDF5F0047-A741-4BE0-A672-04051EF478E1%7d

> **Rule 1.2 -- Scope of Representation and Allocation of Authority Between Client and Lawyer**
> [existing subsections (a) and (b)]

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.
(1) The client's informed consent must be confirmed in writing unless:
(i) the representation of the client consists solely of telephone consultation;
(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or
(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.
(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:
(i) the representation is limited to the attorney and the services described in the writing; and
(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.
[existing subsection (d)]

Rule 4.2 -- Communication with Person Represented by Counsel
(a) [existing rule]
(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Rule 4.3 -- Dealing with Unrepresented Person
(a) [existing rule]
(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Rule 4.2 Limited Representation Permitted -- Process.
(a) In accordance with Rule 1.2(c) of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.
(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of Rule 5(b) and does not authorize or require the service or delivery of pleadings, papers, or other documents upon the attorney under Rule 5(b).
(c) Representation of the person by the attorney at any proceeding before a judge or other judicial officer on behalf of the person constitutes an entry of

appearance, except to the extent that a limited notice of appearance as provided for under Rule 4.3 is filed and served prior to or simultaneous with the actual appearance. Service on an attorney who has made a limited appearance for a party shall be valid only in connection with the specific proceedings for which the attorney appeared, including any hearing or trial at which the attorney appeared and any subsequent motions or presentation of orders.
(d) An attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.

Rule 4.3. Notice of Limited Appearance and Withdrawal as Attorney.
(a) Notice of limited appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action.
(b) At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance.

Rule 11. Signing of Pleadings, Motions, and other Papers -- Sanctions
) [existing rule]
(b) An attorney may help to draft a pleading, motion, or document filed by the otherwise self-represented person, and the attorney need not sign that pleading motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

In Missouri, a Joint Pro Se Implementation Committee established by the Missouri Supreme Court and the Missouri Bar developed Suggested Best Practices for Trial Judges in Pro Se Litigation, which provides 38 guidelines for Missouri trial judges. This resource has been used at multiple judicial colleges in the state.

California offers a three hour on-line ethics training session for attorneys on delivering unbundled services. The course is available at no cost. A number of other states provide similar training programs. A number of these programs are available on line.

The Utah Bar webpage allows a person to search the lawyer database by who offers limited scope representation according to specific areas of the law. The Maricopa County Superior Court in Phoenix, Arizona has since 1995 maintained a loose leaf notebook containing advertisements prepared by lawyers providing unbundled services who have completed an ethics course provided by the Arizona State Bar ethics counsel. The advertisements include the attorney's areas of practice, physical location, and fee schedule.

What judicial ethics rules or commentary (or the issuance of court rulings or advisory committee opinions) have state supreme courts promulgated to encourage judges to provide more assistance to self-represented litigants in the courtroom?

In 1992 – almost two decades ago – the American Bar Association included within its Standards Relating to Trial Courts, the following admonition for trial judges:

> **Standard 2.23: Conduct of Cases Where Litigants Appear Without Counsel**
> When litigants undertake to represent themselves, the court should take whatever measures may be reasonable and necessary to insure a fair trial.

In 2007, the ABA adopted an amendment to the commentary to MODEL CODE OF JUDICIAL CONDUCT CANON 2 as follows:

> ***Canon 2: A Judge shall perform the duties of judicial office impartially, competently, and diligently***
> ***Rule 2.2: Impartiality and Fairness*** A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.
>
> Comment:
>
> [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded…
> ***(New 2007) [4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.***

Former Chief Justice Karla Gray of the Montana Supreme Court offered the following alternative language for consideration by state supreme courts:

> "… a judge's discretionary non prejudicial procedural steps to provide self-represented litigants the opportunity to have their cases fully heard do not raise a reasonable question about the judge's impartiality."

California amended Canon 3B(8) of its Code of Judicial Ethics in 2008 to state:

> (8) A judge shall dispose of all judicial matters fairly, promptly and efficiently. **A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.** (new text in bold)
>
> Advisory Committee commentary:
> The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience**. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard**….
>
> (new text in bold).

Nebraska's amended Code of Judicial Conduct is more restrictive:

> **NEBRASKA REVISED CODE OF JUDICIAL CONDUCT** (**Effective January 1, 2011)** § 5-302.2. Impartiality and fairness.
>
> A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*
>
> *COMMENT: [4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard. On the other hand, judges should resist unreasonable demands for assistance that might give an unrepresented party an unfair advantage.*

The Indiana Judicial Branch has a regular information service on its website home page referred to as the Indiana Courttimes. One of the recent feature articles is the second of four features on best practices in dealing with self-represented litigants. The link to the feature is http://indianacourts.us/times/2011/02/best-practices-in-dealing-with-self-represented-litigants/

In introducing a new rule authorizing attorneys to provide unbundled legal services, the New Mexico Supreme Court reiterated its longstanding rule that "[i]n New Mexico courts, attorneys and self-represented litigants are held to the same standards." But it then gave that statement a wholly new gloss: "New Mexico courts are lenient with both attorneys and self-represented litigants when deemed appropriate so that cases may be decided on their merits."[4]

Vermont Judge David Suntag has compiled a 26 page summary of ethical rules, caselaw rulings, and judicial discipline decisions from all 50 states and some federal courts. His compilation, entitled SAFELY SAILING THE LEGAL/ETHICAL WATERS OF SELF-REPRESENTED LITIGANT CASES: CASE LAW/AUTHORITIES, was presented to the Michigan Judicial Conference in September 2010. Judge Suntag has consented to our inclusion of his compilation in the appendix to this report.

Two states have adopted comprehensive guidelines for judges in dealing with self-represented litigants.

In April 2006, the Massachusetts Supreme Judicial Court promulgated Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants. The Guidelines were developed by a Subcommittee on Judicial Guidelines established by the Supreme Judicial Court Steering Committee on Self-Represented Litigants. The purpose of the Guidelines was explained as follows:

> While the legal and ethical constraints upon the courts and the judiciary, such as those contained in the Code of Judicial Conduct, apply with equal force to cases involving self-represented litigants, judges have broad discretion within these boundaries. These guidelines have been developed to assist judges in recognizing the areas in which they have discretion and to assist them in the exercise of that discretion.

[4] New Mexico Supreme Court, Proposed amendments to Committee commentary for 16-303 NMRA, New Mexico State Bar Bulletin, Volume 43, No. 43 at page 15 (October 28, 2004).

The Guidelines are presented in four segments:

1. General Practices

1.1 Plain English. Judges should use plain English and minimize the use of complex legal terms when conducting court proceedings.

1.2 Language barriers. Judges should be attentive to language barriers experienced by self-represented litigants. Judges should take the necessary steps to provide qualified interpreters to self-represented litigants who are not fully conversant in English or who are hearing impaired.

1.3 Legal representation. Judges should inform litigants that they have the right to retain counsel and the right to be represented by counsel throughout the course of the proceedings. Judges should also acknowledge that parties have a right to represent themselves. Judges should confirm that the self-represented litigant is not an attorney, understands the right to retain counsel, and will proceed without an attorney. Judges also may inquire into factors relevant to an understanding of self-representation.

1.4 Application of the law. Judges shall apply the law without regard to the litigant's status as a self-represented party and shall neither favor nor penalize the litigant because that litigant is self-represented.

1.5 Materials and services for self-represented litigants. Judges should encourage the provision of information and services to better enable self-represented litigants to use the courts. Judges also should encourage self-represented litigants to use these resources.

2. Guidelines for Pre-Hearing Interaction

2.1 Trial process. Judges should make a reasonable effort to ensure that self-represented litigants understand the trial process. Judges should inform litigants that the trial will be conducted in accordance with applicable evidentiary and court rules.

2.2 Settlement. In cases in which settlement may be appropriate, judges may discuss the possibility of settlement. This may occur at any stage in the litigation, but particularly at a case management, pretrial, or status conference.

2.3 Alternative dispute resolution (ADR). When a case is appropriate for ADR, judges should discuss the availability and benefits of such services. S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, Rule 6, 427 Mass. 1309 (1999). This may occur at any stage in litigation, but particularly at a case management, pretrial, or status conference.

3. Guidelines for Conducting Hearings

3.1 Courtroom decorum. Judges should maintain courtroom decorum cognizant of the effect it will have on everyone in the courtroom, including self-represented litigants. Judges should ensure that proceedings are conducted in a manner that is respectful to all participants, including self-represented litigants.

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

3.3 Right of self-representation. In jury trials, judges should ask self-represented litigants whether they want a right to self-representation instruction.

3.4 Approval of settlement agreements. Judges should review the terms of settlement agreements, even those resulting from ADR, with the parties. Judges should determine whether the agreement was entered into voluntarily. If there are specific provisions through which a self-represented litigant waives substantive rights, judges should determine, to the extent possible, whether the waiver is knowing and voluntary.

4. Guidelines for Post-Hearing Interaction

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

4.2 Appeals. If asked about the appellate process, judges may refer the litigant to the appropriate authority.

Early this month, the Delaware Supreme Court adopted Judicial Guidelines modeled on, but somewhat broader than, the Massachusetts Judicial Guidelines. They, too, are included in this report in their entirety.

PREAMBLE

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

1. Principles

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

2. General Practices

2.1 Plain English: Judges should[1] use plain English and minimize the use of complex legal terms when conducting court proceedings.
2.2 Language Barriers: Judges should be attentive to language barriers experienced by self-represented litigants. Judges should take the necessary steps to provide qualified interpreters to self-represented litigants who are not fully conversant in English or who are hearing impaired, pursuant to the policies of the Delaware Court system.
2.3 Legal Representation: Judges should inform litigants that they have the right to retain counsel and the right to be represented by counsel throughout the course of the proceedings. Judges should also acknowledge that parties have a right to represent themselves. Judges should confirm that the self-represented litigant is not an attorney, understands the right to retain counsel, and will proceed without an attorney. Judges also may wish to discuss with the litigant what it means to represent oneself in litigation.
2.4 Application of the Law: Judges should apply the law without regard to the litigant's status as a self-represented party and shall neither favor nor penalize the litigant because that litigant is self-represented.
2.5 Materials and Services for Self-Represented Litigants: Judges should encourage the provision of information and services to better enable self-represented litigants to use the courts. Judges also should encourage self-represented litigants to use these resources.
2.6 Opportunity to be Heard: Judges should advise parties that they are afforded the opportunity to state their case in a meaningful way, that they have chosen to do so on their own behalf and that the judge's duty is to apply the law to the facts in a fair, neutral and unbiased manner.
2.7 Managing the Case: Judges should alert self represented parties to judicial expectations concerning preparation and conduct during in-court proceedings and manage those proceedings in a manner most likely to provide judges with the relevant information needed to make informed and just decisions.

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

3. Guidelines for Pre-Hearing Interaction

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

4. Guidelines for Conducting Hearings

4.1 Courtroom Decorum: Judges should maintain courtroom decorum cognizant of the effect it will have on everyone in the courtroom, including self-represented litigants. Judges should ensure that proceedings are conducted in a manner that is respectful to all participants, including litigants, attorneys, witnesses and Court staff.
4.2 Stress: Judges should be cognizant that self represented parties are generally under stress of unfamiliar environment and should attempt to ease the anxiety in the courtroom so participants are more likely to fully participate in the proceedings.
4.3 Evidence: Judges shall adhere to the applicable rules of evidence, but may use their discretion, when permissible, to provide self-represented litigants the opportunity to meaningfully present their cases. Judges may ask questions to elicit general information and to obtain clarification. Judges should explain why the questions are being asked and that they should not be taken as any indication of the judge's opinion of the case. Judges should explain their rulings, particularly on the inadmissibility of evidence.

5. Guidelines for Post-Hearing Interaction

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

[1] The term "should" is used throughout the Guidelines to indicate that the conduct referenced is recommended but not mandatory.
[2] Judges may wish to provide an explanation of substantive and procedural matters at the beginning of court proceedings.
[3] When one party is represented by counsel, judges should inform counsel of the potential need

to modify courtroom procedure to learn the facts of the case and that if counsel believes that the court is overreaching, an objection should be raised.

New Jersey's long range calls for the development of these sorts of guidelines for judges. A subcommittee of Tennessee's Access to Justice Commission is drafting a Pro Se Benchbook and there will be a session on how judges can assist self-represented litigants at the June 2011 trial judges' conference.

Are there appellate court rulings approving self-represented litigant-friendly policies or striking down self-represented litigant-unfriendly policies?

Alaska has the most extensive set of appellate precedents providing guidance to trial judges in handling matters involving self-represented litigants. A 28 page summary of that case law as of 2010 is attached. For example, Alaska requires its judges to inform self-represented litigants of the proper procedure for accomplishing what they clearly are attempting to do. It requires the court to inform a party against whom a motion for summary judgment has been filed that s/he must file a response raising a material issue of disputed fact or risk having judgment entered against her or him.

Also attached is the chapter of the California judges' bench book summarizing California appellate precedents as of the time it was published two years ago. Since then, the California Supreme Court decided Elkins v. Superior Court, 41 Cal.4th 1337 (2007), striking down a local court rule requiring all testimony in family law matters to be presented in the form of written declarations and reversing the court's refusal to let a self-represented litigant testify orally at the time of his hearing because he had not followed that requirement.

Judge Suntag's compilation of precedents from many states includes a number of rulings affirming judges' taking special steps to enable self-represented litigants to present their cases. The compilation includes numerous references to Michigan appellate caselaw. None of the Michigan cases cited provide significant encouragement for Michigan trial judges to take active steps to ensure that self-represented litigants are heard.

The Indiana Court of Appeals ruled in February that the summons in a dissolution action must be sufficiently explicit to make the served party aware of the risk of default in the event s/he fails to appear or respond to the complaint. Cotton v. Cotton, case number 43A03-10050DR-325 (February 24, 2011).

Do states provide, or do the courts allocate, funding for self-help centers or programs to assist self-represented litigants to prepare documents for filing and to prepare for court appearances?

While we do not have a full count of the states that today budget for these services, we believe that roughly two-thirds of them support self-help centers to one extent or another.

In many states, self-help services are provided by court staff operating within the courthouse (or in some cases, due to lack of space within the courthouse, in nearby facilities). In California, approximately $25 million is provided to the trial courts each year for this purpose.
A number of other states, including Connecticut, Maryland, New York, and Washington, have similar statewide court-based self-help center programs. New Jersey has three self-help centers in the state and has a staff "ombudsman" in every courthouse whose primary responsibility is to assist self-represented litigants to navigate the courts.

There are other models for delivering self-help services.

Self-help information and services can be provided either within the courthouse or outside it by non-court organizations, such as legal services programs, law or public libraries, bar association funded or volunteer lawyer programs, and community and senior citizen centers. Each of these organizational settings provides benefits and drawbacks as the locus for self-help center activities.

Courthouses are typically where potential and current litigants come for assistance and court staff are knowledgeable concerning court processes and requirements. Court staff may provide a great deal of legal information but, because the courts must remain neutral, may not give legal advice to any party to a case.

Legal services programs have for at least the last two decades included assisted self-help as a significant category of client services. When clients are deemed capable of pursuing their own matter, legal services staff provide them the forms and information described in this report. Legal services staff are able to provide the same sort of legal information without establishing a lawyer/client relationship but retain the further option of giving legal advice and providing limited scope or full representation when circumstances warrant. But they are often limited by their funding sources to providing services only to indigent persons and are chronically under-resourced to meet the legal needs of the poor people in their communities.

Self-represented litigants are primarily poor persons; however, many middle class persons also choose to represent themselves, and comprehensive self-help programs have to extend services to self-represented litigants regardless of their financial means. Libraries (including both law libraries and public libraries) are uniquely equipped with automation and research materials to provide self-help information and services – and are used to serving all types of customers. However, many public librarians are unfamiliar with legal proceedings and are reluctant to provide the range of services – such as selection of appropriate forms and assistance in completing them – that are at the core of the self-help function.

Programs based on the use of volunteers, including volunteer attorneys, are often not able to provide consistent and predictable levels of service. Volunteer attorney programs are, like legal services programs, capable of providing a range of service, from legal information to limited scope legal advice to full representation (although attorneys are loath to take on the burden of full representation as a result of a volunteer engagement).

The structure of successful self-help efforts take many shapes – responding to the levels of resources and interest of various parts of the community in a particular jurisdiction. Some models rely exclusively on court employee-staffed programs located in the courthouse. Others focus on outside programs – libraries and legal services. The American Association of Retired Persons has sponsored pilot programs located in churches and other community centers with trained volunteers. Many programs represent collaborative efforts. For instance, in Prince Georges County, Maryland, paralegals employed by the court provide legal information to self-represented litigants in family court matters. When a litigant asks a question calling for legal advice, the paralegals refer her or him to a free legal service maintained by the local bar foundation staffed with two full-time attorneys (and a group of volunteer attorneys who handle conflict cases where both parties in a legal proceeding seek legal advice from the program). A number of courts contract with the local legal services program to provide self-help services in the courthouse. Because they are court-sponsored, these programs do not provide legal advice. But because the funding is from the court, the legal services staff do not means test persons seeking assistance. In Los Angeles County, as noted earlier, Neighborhood Legal Services of Los Angeles staffs self-help centers in many of the outlying courthouses in the county, with funding from the county. These programs do not provide legal advice, but limit themselves to providing legal information. Los Angeles also has a unique appellate drop-in clinic operated by the pro bono public interest law firm Public Counsel (which also operates the self-help center in the US District Court for the Central District of California). It is staffed three days a week by an experienced appellate attorney.

In Nebraska, the organized bar funds and staffs three self help centers. In the District of Columbia, court self-help centers are staffed by volunteer attorneys. The New York court system unbundled legal services programs for unrepresented litigants overseen by the NYS Courts Access to Justice Program: http://www.nycourts.gov/attorneys/volunteer/vap/index.shtml. These court-based programs are either lawyer for the day or brief advice programs in areas such as housing, consumer debt, family law, foreclosure, and uncontested divorce. Due to recent state budget cuts, funding for a number of these programs has been cut and the court system is struggling to continue these services.

Numerous courts provide space in the courthouse for domestic violence advocates to assist alleged victims of domestic abuse. Those courts make sure that court staff are available to give the same level of assistance to persons defending themselves against such allegations. Legal services program staff often appear in landlord/tenant calendars to assist tenants. Courts make sure that complementary services are available for landlords who cannot afford a lawyer. In some communities the courts have established collaborative programs with legal services, libraries and other agencies, such as mental health programs, child protective services and child support services, and make referrals to those other organizations in appropriate cases as a result of their triaging of the cases and persons seeking assistance in the courthouse.

Most self-help centers provide their services at no cost, although many generate revenue by charging for forms and materials. Clerks of court in two Florida jurisdictions (Pinellas County and Palm Beach), and court administration in Miama/Dade County, are offering self-help services on a fee for services basis. These programs charge $1 per minute, with a minimum of fifteen minutes and a maximum of sixty minutes. The Pinellas County program received the

2011 Louis H. Brown Award from the ABA Standing Committee on the Delivery of Legal Services for this innovation.

One of the more interesting developments of the past half dozen years is the development in several states of centralized court self help service delivery processes. Legal services organizations have for many years provided information and brief advice through "hotlines." The courts are beginning to adopt the same model.

Alaska provides assistance from the trial court in Anchorage to all Alaskans (and non-residents asking about Alaska law or Alaska court cases) by telephone and internet access to the self-help website. Persons in Anchorage seeking assistance are treated the same as those located elsewhere – they call the self-help center and receive service over the phone.

The Fourth Judicial District Court in Hennepin County, Minnesota has long been one of the national leaders in developing and providing self-help services. Instead of attempting to replicate its services throughout the state, the state judicial branch provided the court with the resources needed (three additional full-time staff) to provide telephone-based self-help assistance to the rest of the state.

Utah has designed and is gradually implementing a similar process, with statewide self-help services being provided telephonically and by videoconferencing by staff located in the state law library.
The recent Florida Self Help Work Group report recommends a statewide telephone self-help service staffed by the Office of the State Court Administrator to complement local self-help centers. The Washington Strategic Plan contains a similar recommendation.

The New Hampshire legislature recently approved consolidation of the current district, probate, and family courts into a single circuit court. The circuit court will use a central call center to provide information to those who call the courts.

Maryland's limited jurisdiction courts – the District Court – is getting ready to launch a "virtual self help center" that will field inquiries statewide via phone, email, Skype and live chat.

Four rural California counties share a single family law facilitator who provides workshops and assistance using the video conferencing equipment with which all California courts are equipped.

Both California and Minnesota have promulgated guidelines for the operation of self-help centers. The California guidelines are included in the appendix. The Minnesota guidelines can be found in Rule 110 of the Minnesota Rules of Practice for District Courts.

Do self-help centers provide certified or other interpreters for self-represented litigants whose primary language is not English?

The provision of court interpreters in court proceedings is not within the scope of this study.

But persons with limited English proficiency encounter the same barriers in using self help programs as they encounter in the courtroom. There is no due process right to the services of a publicly-compensated interpreter at a self help center. But self help centers have found ingenious ways to overcome language barriers.

a) Translated Forms The most widely used approach is to translate all self help materials into the primary languages spoken by local residents. Minnesota has the current record – providing materials in seven languages – Hmong, Somali, Russian, Cambodian, Lao, Ormo, and Vietnamese. The District of Columbia and Maryland each provide materials in six other languages. Of course, this process has its limits, because court documents must all be presented in English.

b) Multi-lingual Staff A second approach is to hire bi- or multi-lingual staff. Courts find it more valuable to train persons with language skills about court processes than to train persons with court skills in other languages. Utah provides a "second language stipend" for bi-lingual employees in recognition of the additional skill level they bring to the workplace and to eliminate any possible feeling that they might otherwise have of being imposed upon.

c) Shared Resources Alaska and New Mexico maintain directories of bi-lingual staff in all of the courts of the state. When staff in a court encounter a person needing to communicate in a language none of them speak, the court can call a staff person fluent in that language working in another court, who can translate for the needed interaction.

d) Certified Court Interpreters. Some courts send their regular court interpreters to their self help center if they are not engaged in interpretation in a courtroom. In some California courts interpreters are hired to work in the self help center.

e) AT&T Language Line or CTS Language Link. Self help centers call these commercial services to obtain the same sort of telephonic interpretation described above for bilingual court staff from another court. While this service is not cheap, it is far better than the alternative of trying to communicate with a parent using a young child as the interpreter.

Are there guidelines and policies for staff on what they can and cannot do to assist litigants?

The majority of state court systems today provide a policy or rule intended both for court staff and for court users establishing the boundaries between the assistance that court staff can and cannot provide. This is an example from Colorado, which is posted on its website self help page. http://www.courts.state.co.us/userfiles/File/Self_Help/LegalAdvice.pdf

California's policy is available at http://www.courtinfo.ca.gov/forms/documents/mc800.pdf

The Massachusetts policy is entitled Serving the Self-Represented Litigant: A Guide By and For Court Staff. http://www.mass.gov/courts/serving-self-rep-guide.pdf/

The Minnesota policy can be found at http://www.mncourts.gov/selfhelp/?page=404

Every state's guidance to court staff uses the distinction between legal information and legal advice. When a state provides comprehensive substantive and procedural information on its website, it becomes clear to staff that they can supply that same information to self-represented litigants without fear that the provision of that information constitutes the giving of legal advice.

New Mexico's policy has strengths and weaknesses. It explicitly grants court staff immunity from liability for the information they provide, but one of the guidelines adopted prohibits staff from "indicating, orally or in writing, what the self-represented litigant should do or needs to do," which would appear to prohibit staff from answering the frequently asked question, "what is the next step in the process?" – one of the most important pieces of information needed by litigants to pursue their matters successfully in the court.

The state of Washington had a bench/bar committee a few years ago which studied the topic of the unauthorized practice of law. The committee concluded that court staff constitute a third category in the UPL analysis -- between lawyers and non-lawyers. Court staff need to be able to give out information and there is very little risk to the public associated with their doing so. The public has a very real need for information from court staff; otherwise they are not able to use the court system effectively. Court staff have significant training in the law and court procedure as a result of their jobs and significant oversight from the court administrator and the court.

The result is that the current Washington State rule on UPL excludes court clerks and court staff authorized to provide information to the public by Supreme Court rule and "courthouse facilitators" acting pursuant to "court rule." See Washington Supreme Court General Rule 24 (2001, amended 2002).

The Washington State UPL argument should not be confined to self-help staff who are employed in a court. It should be applied to staff of self-help centers operated by bar associations, libraries, legal services programs and other entities. Staff in those centers are often as knowledgeable as court staff and are often working under the guidance of an attorney.

In reality, we are not aware of attacks on self-help programs based on unauthorized practice of law theories. Virtually all self-help programs operate under the legal information not legal advice model. That is the model that is enshrined in the court rules concerning the information and services court staff can and cannot provide. Those same guidelines have been adopted by libraries and legal services organizations when they host self-help centers. Bar association programs do not face this restriction and generally operate as full legal service providers assuming the existence of the attorney/client relationship, operating under the relaxed rules regarding conflicts checks established by ABA Model Rule 6.5 which has been widely adopted by the states.

California has an additional set of ethical guidelines for family law facilitators and self help attorneys. See Guidelines for the Operation of Family Law Information Centers and Family Law Facilitators Offices which can be found at http://www.courts.ca.gov/appendix_c.pdf

The NYS Courts Access to Justice Program published a Best Practices Guide for Court Help Centers and Programs to Assist Unrepresented Litigants in December 2009: http://www.nycourts.gov/ip/nya2j/pdfs/NYSA2J_BestPracticesHelpCenter.pdf.

Many courts provide training on the distinction between legal information and legal advice at the time of initial orientation for the new staff and as a part of ongoing staff training. The California Administrative Office of the Courts has produced a pamphlet entitled "May I Help You?" which is accompanied by a video explanation of the California guidelines on the topic. The pamphlet is contained in the appendix to this report.

Has the state judicial branch adopted principles governing the adoption of advanced technology by courts to ensure that such technologies can be accessed by self-represented litigants?

The Washington Supreme Court in 2002 adopted a set of "Access to Justice Technology Principles" designed to serve as a template against which to test the appropriateness of new court technologies to ensure that they did not have a negative impact on self-represented litigants. http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=am&set=ATJ&ruleid=amatj02principles

The California judicial branch is currently considering a draft of a similar product.

Maryland has included access to justice and services to self-represented litigants as core values in the development of a request for proposals for a new statewide electronic case management information system.

The Berkman Center at Harvard prepared a 61 page report on Best Practices in the Use of Technology to Facilitate Access to Justice Initiatives for the courts of Massachusetts and their Access to Justice iniative. It can be accessed at http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/A2J_Report_Final_073010.pdf

Kansas is incorporating the needs of self-represented litigants in its planning for a statewide electronic filing process.

Michigan's 2011 Judicial Crossroads process calls for more integrated technology systems, in part to support wider and easier court access.

Has the judicial branch implemented other statewide practices to support the participation of self-represented litigants in the legal process?

Maryland has promulgated a general policy on self-representation. See http://www.mdcourts.gov/publications/pdfs/selfrepresentation0807.pdf It is working on a statewide policy and practices on fee waivers.

In California, there is a significant amount of training for judicial officers on handling cases with self-represented litigants. All judicial officers receive a hard copy and have access to the on-line version of *Handling Cases Involving Self-Represented Litigants Benchguide*. There is an on-line class on this topic and another one, involving more difficult cases such as where the other side is represented, or the litigant has mental health problems, is in development. There have been a number of broadcasts on the topic which are available on-line. Additionally, there are a number of in-person classes which focus on ethics and practical strategies in handling cases involving self-represented litigants. Some of these involve videotaping role plays of judges.

California has a series of three 1 1/2 hour broadcasts entitled *May I Help You?* which is designed for court clerks on working with self-represented litigants.

A proposed rule regarding case management is circulating for comment in California. It is designed in large part to assist self-represented litigants complete their family law cases.

Like California, Minnesota recognizes that changes in court case processing practices can ensure that self-represented litigant cases do not "fall through the cracks." It has implemented Initial Case Management Conferences in family law cases, adopted streamlined rules for judgments and decrees in joint petition cases, created a centralized court payment center for on line payment of fines, and implemented uniform rules throughout the state.

The Nebraska Supreme Court has organized and appointed the Nebraska Supreme Court Implementation Committee on Pro Se Litigation (committee on self-represented court litigants) whose purpose is to engage in continuing analysis and study of the challenges which pro se litigation poses for court staff, the judiciary, and the practicing bar; to continue assessment of the challenges to the right of self representation which the judicial system currently presents; to propose solutions or improvements in response to such challenges to the Nebraska Supreme Court; and to implement the recommendations of the Pro Se Committee which the Nebraska Supreme Court approves. http://www.supremecourt.ne.gov/commissions/cicopsl.shtml

The Missouri judicial branch has developed a Judge's Toolkit on Pro Bono Legal Assistance to foster the wider availability of volunteer legal services. http://www.courts.mo.gov/page.jsp?id=4975 Michigan also has developed a Pro Bono Toolkit for Michigan Judges. http://www.michbar.org/programs/ATJ/pdfs/probonotoolkit.pdf

The Washington judiciary works to ensure that persons of limited means, whether or not they are represented, have the opportunity request a waiver of court filing and other fees.

New York has amended its attorney registration rules to create an attorney emeritus program to facilitate participation of retired lawyers in volunteer attorney programs, including court-based unbundled legal services programs. The Order can be found at: http://www.nycourts.gov/rules/chiefadmin/118_amend.pdf . For more information on the Attorney Emeritus Program see: http://www.nycourts.gov/attorneys/volunteer/emeritus/index.shtml

Are there any other policies or practices designed to improve the experience of self-represented litigants, or having a beneficial impact on them?

The California, Florida, Maryland, New Jersey and Washington state judicial branches have recently developed and adopted statewide planning documents that set out a series of planned steps to improve services to self-represented litigants.

The Maryland report reviewed Maryland's extensive existing programs to assist self-represented litigants and made recommendations for developing document assembly forms completion and live chat technologies, expanded self-help centers, expanded training for judges and court staff, amendments to the commentary to the Maryland judicial canons, revival of a "Judicare" model for legal services delivery in the state, enhanced pro bono and limited scope representation, and creation of an Access to Justice Commission. The report is included in the appendix and can be found at http:/www.mdcourts.gov/publications/pdfs/selfrepresentation0807.pdf

The New Jersey judicial branch report, Ensuring an Open Door to Justice; Solutions for Enhancing Access to the Courts for Self-Represented Litigants, contains a comprehensive set of 25 recommendations for improving the courts' response to self-represented litigants. The recommendations include calls for a statewide education and outreach program, a central information desk in every Superior Court and a self-help center in every vicinage, training for judges and staff, development of guidelines for judges in handling self-represented litigation, forms simplification, website enhancements, use of multi-media techniques in providing information, and more systematic gathering of data on the prevalence of self-represented persons in various types of cases within the state. The full report is included in the appendix and can be found at
http://www.judiciary.state.nj.us/pressrel/Ensuring%20an%20open%20door%20to%20justice%20Oct%202009.pdf

In California the Report of the Elkins Family Law Task Force arose from the decision in Elkins v. Superior Court which struck down a local rule in Contra Costa County requiring all family law litigants to submit all testimony in the form of written declarations. Declaring that this practice placed an unwarranted burden on self-represented litigants, Chief Justice George, writing for the court, asked the California Judicial Council to create a task force to identify any other similar barriers throughout the state. California reports that the Task Force's work has borne fruit:

> The Elkins Family Law Task Force had, as a main focus, looking at family law practices that impacted the ability of self-represented litigants to participate in the family law process. There are a number of recommendations that are being circulated for implementation in rules of court and forms now.
>
> We are proposing in new rules of court that all litigants receive some very basic information about the divorce process when they file for divorce or are served with pleadings. We anticipate that this will probably be extended to other case types. We are circulating a one page, double sided information sheet with basic information about the process and resources for help. It refers to the self-help website for more in-depth resources for each stage of the process.

Based on the Elkins recommendations, the legislature enacted an enabling statute within 5 months of acceptance of the report. The statute provides that parties be allowed to provide live testimony at court hearings, rather than merely submit the matter on the pleadings and have relatively little time to provide argument. The rules implementing this statute have just been adopted. This complements the initial holding of our Supreme Court in the *Elkins* case that family law litigants have the same rights as civil litigants to be able to offer testimony at trial. In the Elkins case, a self-represented litigant was unable to comply with local rules regarding submission of all direct testimony in writing before the trial as well as providing foundational documents for introduction of evidence in advance of the trial.

Many other Elkins recommendations are on target to be implemented in January 2012. We anticipate adoption of statewide rules of court that are more comprehensive and encourage consistency between the counties. There are also new forms to enable parties to request attorney fees from the other party to equalize the litigation playing field early in the case, and allow self-represented litigants to obtain counsel when the other side has sufficient resources. Standard and simplified provisions to allow parties to obtain uncontested or default dissolution judgments based solely on the proceedings have been proposed based on a working group of court clerks, self-help center staff and judicial officers.

Case management rules which have a strong emphasis on appropriately addressing cases with self-represented litigants are also circulating for comment.

In addition to family law, the standard advisory committees of the Council now generally try to examine the impact of proposed rules and forms on self-represented litigants. The appellate advisory committee developed a series of rules and forms for filing appellate cases that are designed to make that easier for self-represented litigants. They provided guidance on a new appellate section of the self-help website and short video for that website on the appellate process.

Civil and Small Claims has adopted many rules and forms that are designed for self-represented litigants. In addition to simplifying small claims forms, civil harassment and other procedures often used by self-represented litigants, they sponsored the rule that courts not reject pleadings merely because they are handwritten.

The Probate Committee adopted a simplified set of guardianship forms for cases where there is only a request for guardianship of the person, not the estate.

The Florida report, which has not yet been approved or adopted by the Florida Supreme Court, was commissioned by the Chief Justice and developed under the auspices of two of the major standing committees of the Florida judicial branch. It involved surveys of judges and court staff throughout the state and surveys of self-represented litigants to determine their level of satisfaction with the services provided. (Consistent with other studies, self-represented litigants are overwhelmingly grateful for the services they receive, with the exception of having to pay for forms and copying.) The report makes ten recommendations:

1. A standing committee at the state level to coordinate programs to assist self-represented litigants
2. Local coordinating committees in each judicial circuit to ensure the availability of services for self-represented litigants and to eliminate duplication of effort
3. Uniform statewide forms and processes
4. Creation of Plain English forms
5. Streamlining the forms approval process

6. Filling gaps in service to ensure that litigants receive help not only in filing their initiating papers, but also in completing the court process and obtaining post judgment relief
7. Creating a statewide website
8. Providing education and outreach so that the public knows of the availability of court assistance
9. Training for litigants and court staff
10. Development of guidelines for litigants to help them understand when it is most appropriate to seek legal advice.

In its funding recommendations, the Florida report calls for most financial support to go to local courts, except for funding for the Office of the State Court Administrator to provide a "centralized call-in center which would provide statewide support to the counties/circuits."

The Washington report is a long range strategic plan for improving the experience of self-represented litigants in that state developed by the Washington State Access to Justice Board, the Administrative Office of the Courts, and the Office of Administrative Hearings. The Plan calls for the development of a robust technology-based system in Washington State to assist pro se litigants who are navigating the civil justice system on their own. The first phase of the project calls for creation of an online Self Help Center focused on family law with plain-language forms, instructions and information and housed within the existing WashingtonLawHelp website. Trained and knowledgeable Self Help Facilitators will be available to respond to online or telephone based inquiries from self-represented litigants who are challenged by the online Self Help Center. The second phase of the project will link the Self Help Center with existing onsite courthouse facilitators. The final phase will expand the Self Help Center to other substantive civil legal issues as well as additional court forums.

The Maryland report was issued in 2007, New Jersey report in 2009, the California and Washington reports in 2010, and the Florida report in 2011.

Do state courts have mechanisms other than appellate review for ensuring compliance with state judicial branch rules and policies affecting self-represented litigants?

California has used the judicial discipline process to reprimand and even remove judges for abusive behavior towards self-represented litigants. Judge Suntag's materials include judicial discipline cases from other states.

California reports the following additional steps to ensure compliance:

> With self-help centers, we have quarterly reports where we ask about activities and their compliance with guidelines. These guidelines are mostly effective because funding is tied to compliance. Since the guidelines are long, we ask different questions in each report to allow them to focus and update any materials that are required. When the guidelines were first adopted, we provided two day regional training sessions with one day focused on the guidelines, where we reviewed the issues and the reasons for them.

We had table discussions to discuss how courts were addressing or could address the issues. The courts were also given worksheets and time to start to develop the plans required (such as a plan for addressing persons with limited English proficiency, for appropriate referrals to legal services, for effective training of volunteers, etc.). This seemed to be a real help in allowing the courts to understand and comply with the requirements.

For domestic violence, we have developed a Domestic Violence Safety Partnership tool that we provide to all the trial courts each year. It sets out all the requirements for courts that are set forth in statutes and rules of court in addressing cases that involve domestic violence. It allows each court to check whether they are in full compliance or working on an issue to be in full compliance. There is also a section for best practices in handling these cases which again allows courts to review their efforts. These forms do not have to be submitted to the AOC unless the court requests funding to address identified issues. Grant funding has been secured to provide assistance to those courts that want to take some action to enhance compliance. Courts complete a simple application for assistance such as funds for a trainer on a specific issue, or scanners to allow their restraining orders to be entered into our new electronic system, or funding for a meeting of key players on an issue. This tool has proven to be very helpful for the courts to understand what their requirements are – all in one place. We find that there are always people in the courts who want to fully comply and will take leadership to take action on any deficiencies once they are identified. We are currently working on a comparable tool for child custody cases and plan to do others in family law once the new rules have been adopted.

Our Commission on Judicial Performance is pretty user friendly and easy to access. We provide information on how to contact them on our website. We have seen some very strong opinions from the CJP about the need to be respectful and courteous to self-represented litigants.

We are working to build a culture where compliance is expected. That comes about largely through education, both of individual judges and staff members which is readily available, but also through education of supervising and presiding judges.

It also involves trying to ensure that if new requirements are put on the court in terms of offering programs or adding new requirements for the bench, that those are matched by funding, education and technical support. This is more difficult in this budget environment, but there appear to be many fewer concerns about "unfunded mandates" than there were before statewide trial court funding in the late 90's. Our leadership and governmental representatives have driven home the importance of providing resources to allow compliance, and that seems to be helpful. There is nothing like being told to do something that seems impossible without any supporting resources to make one feel resentful of rules and disdainful of requirements.

While there are some issues, such as ensuring a greater voice for children in divorce proceedings, that are a dramatic change of culture – frankly taking things that have been taught for years and asking that they all be reexamined, that raise strong responses, in general, those strong responses usually subside as implementation goes into effect. We try to have opportunities for judges who are complying with requirements, who do handle cases with self-represented litigants well, etc. to talk with their peers about how they do it.

For example, we offer a workshop on judicial ethics in handling domestic violence cases. It's a two day class that recognizes that the largest portion of the calendar will be self-represented litigants and focuses on communication skills and ethical issues based on our Benchguide. It then has a long segment allowing the judges to roll play difficult cases. They are videotaped and individual feedback is provided privately by judges with a deep commitment and great skill in working with self-represented litigants. All judges are

welcome and presiding judges are notified that this is a good opportunity for those who need additional assistance. We have offered similar courses that focus more generally on self-represented litigants. The judges participating in the workshop reported that having the opportunity to hear about the "new normal" and develop practical skills in handling difficult cases really helped them in their day-to-day work on the bench. One judge wrote to the workshop staff person the week after the class and said that his calendar had gone immeasurably better that week due to what he had learned in the class.

Another positive way to model good behavior is through awards. The Commission on Access to Justice, California Judges Association and Judicial Council offer a joint award each year in the name of Benjamin Aranda for a judicial officer who has made a strong commitment to access to justice. Having this high level award provides encouragement for these efforts. Interviews with the recipient are videotaped and made available on the internet and receive a lot of court attention. Similarly, the Kleps awards recognizing innovations in judicial administration often recognize programs assisting self-represented litigants. The excellent programs and their judicial sponsors receive well-deserved recognition and other courts get ideas about how to implement these creative solutions.

Collaborations

We consider it worth noting the extent of collaboration reflected in the materials provided in a number of states. Access to Justice Commissions have been instrumental in bringing together representatives of the bench, the organized bar, and legal services entities to pursue joint efforts not only to increase the availability of legal services for the poor, but also to improve the resources available to persons choosing to represent themselves.

For explanations of the basic law in any area, the Oregon Judicial Branch website links to the materials prepared and maintained by the Oregon State Bar. A member of the bar, who is named at the end of the legal summary, is responsible for deciding how to present the basic structure of the law for each subject matter area, to write it in understandable English, and to keep it up to date with changes in the statutory and case law in the area.

The Texas judicial branch website consists essentially of links to Texas Law Help, materials prepared by the legal services community of Texas.

Forms and materials for simple divorces in South Carolina were developed by a state bar/legal services committee. The website also contains links to the legal services website for substantive legal content. It also links to a listing of seminars being presented by legal services throughout the state.

In Kansas, the Office of Judicial Administration is working with Kansas Legal Services (KLS) on several projects to assist self-representing litigants with preparing documents for filing and preparing for court appearances. KLS implemented an on-line document preparation software system for domestic case filings using the domestic forms that the Supreme Court ordered to be used statewide. KLS is also working to provide a call-in service to assist parties with preparing their forms.

One of the most wide-ranging collaborations is the Michigan Solutions on Self-Help (SOS) Task Force itself. There are 70 persons who are either members of the main SOS Task Force or serve on its various work groups. Of these, 16 are judges (circuit, district probate, appellate and including MSC Liaison Justice Marilyn Kelly), 1 is a referee, 3 are local court clerks, 2 are local court administrators, 1 is a local court reporter, 3 are SCAO or MSC staff, and 1 is MJI staff for a total of 27 persons from the Michigan court system. The remaining members reflect: local, specialty and state bars; legal assistance centers; legal aid programs; corrections personnel; legal educators; law and public libraries; counties; law schools; private lawyers and private citizens. The main SOS Task Force has 34 members who also serve, along with 36 additional people, on 12 subgroups assigned to work on specific goals and tasks. The subgroups are managed by 4 main Work Groups addressing 1) the statewide web site, 2) forms issues, 3) rules and policies, and 4) education for those who encounter the self-represented.