

SRLN "Case for" Key Innovations to Support 100% Access (2007, 2015 rev.)

Collection of briefing papers prepared by the SRLN in 2007 to help interested parties make the "case for" key innovations.

- The Case for Self-Help Programs
- The Case for Court-Based Forms and Instructions Programs
- The Case for Courtroom Support Process Programs for Self-Represented Litigation Cases
- The Case for Judicial Education on Self-Represented Litigation
- The Case for Public Law Library Services for the Self-Represented
- The Case for The Discrete Task Assistance Program



# The Case for . . . Self-Help Programs:

A Court-Based Solution for the Problems of the Self-Represented

## What is a Self-Help Program?

A self-help program is a service or coordinated group of services that enhance the ability of self-represented litigants to secure access to justice by providing them with legal resources that would otherwise be unavailable to them.

## Why Start a Self-Help Program?

Almost all courts face increasing numbers of self-represented parties. These parties cannot afford lawyers, do not know how to present their cases, and are unlikely to find adequate pro bono support. The result is a threat to the efficiency, quality, integrity, and credibility of the entire civil justice system. These centers provide high customer satisfaction, improve court functioning, enhance the public's overall perception of the courts, and are helpful for all stakeholders (see sidebars).

## What Can a Self-Help Program Include?

A self-help program can include the following:

- An office in the courthouse, often headed by a staff attorney and supported by a court clerk,

### Benefits for Judges and Court Staff:

- Utilizes resources efficiently and effectively by centralizing self-help services and resources in one place so judges and court staff know where to refer the self-represented
- Reduces time spent by administrative and judicial staff screening pro se documents and improves overall court functioning by identifying barriers to access and making process improvements
- Improves the quality of information presented to judges so decisions can be made on the merits

law students, paralegals, volunteer attorneys, or other service providers. A self-help office usually provides printed materials and/or videos describing court processes for various types of cases (especially family law cases), access to a computer for online instructions and

forms, packets of printed forms and instructions, referrals to social service agencies and pro bono, reduced-fee, unbundled, or other attorney services, and review of completed forms before filing.

- Alternatively, some centers provide personal service through telephone and Internet, with services centrally staffed but without face-to-face service.

### Benefits for Attorneys:

- Offers attorneys manageable opportunities to offer pro bono assistance.
- Better ability to work with self-represented parties on the opposing side of the case.
- Expands potential client base through referrals and increase in understanding of need for assistance.
- Enhances credibility of justice system.

- A resource center in a court or library with access to packets of forms and instructions, and

online forms and instructions, perhaps



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including educational videos about court procedures. In-person support may be provided by a staff person or through a telephone hotline.

- Clinics or workshops for self-represented litigants that are conducted either by a court staff attorney or volunteer attorney, addressing a range of issues, such as divorce, child support or visitation. Clinics also may include pre-filing review of completed forms.
- For selected litigants and case types, attorney-led coaching sessions on courtroom procedure so the litigant can effectively present all or part of his or her case.
- Forms and instructions, whether online or in printed packets, in English and other languages.

### What Are the Keys to Starting an Effective Self-Help Program or Center?

An effective center requires:

- Strong judicial buy-in and leadership support.
- A collaborative relationship with the local bar.
- Experienced staff who can interact with and assist the whole court system.
- An accessible and visible location.
- Materials that work for actual user groups.
- Ongoing planning and evaluation.
- Integration into the court's management function.
- An understanding/agreement of what constitutes legal information vs. legal advice.

#### Benefits for Other Stakeholders:

- Responds to the concerns of legislators and county board members by offering their constituents a broad range of assistance and information about court actions
- Provides public-service opportunities for interested law students, paralegals and lay volunteers
- Strengthens position of legal aid organizations by showing value of access to justice for all

#### Overall Benefits:

- Improved access to justice
- Higher quality justice
- Improved public trust and confidence in the courts



# The Case for . . .

## Court-Based Forms and Instructions Programs:

### Cost-Effective Enhancements to Access to Justice and Court Efficiency

#### What Is a Court-Based Forms and Instructions Program?

A court-based forms and instructions program (forms program) is an integrated effort to produce easy-to-use, standardized forms and instructions for the most frequent procedural situations. These forms and instructions are often focused on the self-represented, but they increase efficiency for lawyers and the court in all cases, including those in which the parties are represented. Additionally, the forms and instructions build the foundation for developing more sophisticated on-line tools for the preparation of court documents.

Many states have launched court-based forms and instructions programs and are beginning to see the benefits for judges, court staff, attorneys, and litigants. (See sidebars.)

#### Why Start a Forms Program?

There are many reasons to start a forms program.

First, drafting court pleadings is complicated, particularly for self-represented litigants. They often don't know what they need to tell the court

in the pleading, and once in court have difficulty clearly communicating the necessary information in the form that the court wants. Hence the judge

goes without the necessary and relevant information. Standardized forms and instructions make it easier for litigants to provide the judge with all of the needed information and are better prepared to tell their stories in court.

In addition, regardless of whether a litigant is represented or not, a free-form pleading is slow to read and makes it time consuming to locate the

relevant information. Standardized forms make it easier to locate information faster.

Other programs to assist the self-represented, such as self-help centers, discrete task representation

projects, and educational programs designed to help judges manage self-represented litigant cases, are much easier to operate and much more cost effective when a forms program is in place. Legal aid and court staff are also more efficient, and the use

of forms and instructions lessens the risk that provision of information will be viewed as non-neutral.

#### Benefits for Judges and Court Staff

A forms program means that judges and court staff

- Need less time to explain filing requirements.
- Need less time to file cases.
- Need less time to locate and understand the most relevant information.
- Have all of the needed and relevant information.
- See fewer errors by litigants.
- See additional resource and time savings with the cost-effective creation of document assembly systems and electronic filing programs, which are made possible by standardized form development.

#### Benefits for Attorneys

A forms program means that attorneys

- Close cases more quickly.
- Can more easily provide discrete task representation, such as advice, in-court representation or form review.
- Have a more simple and predictable practice because of the standardization between courts and courtrooms.



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Moreover, without standardized forms it much more difficult and costly to move towards on-line tools for the preparation of court forms or customer friendly e-filing.

### What Tasks Does a Forms Program Include?

A forms program includes the following typical tasks:

- Identifying the most significant forms.
- Consulting with judges, lawyers, court staff, and representatives of the self-represented to identify what information needs to be included on the forms and how to simplify the process of gathering that information.
- Designing the layout of the forms, carefully considering best practices and how to make the form easy to read and easy to complete.
- Drafting instructions for completing and using the forms, including information about what information goes where, what information is appropriate, how to use the completed forms, and what steps the case will go through.

- Analyzing the language used on the form and in the instructions to make sure that the language is accessible for the actual customers.
- Assessing and appropriately accommodating the needs of limited English proficiency (LEP)

customers through multi-language forms and instructions, where permissible.

### What Are the Keys to Starting an Effective Forms Program?

An effective forms program requires:

- Judicial and court support
- A firm position, enforced by rule or equivalent authority, preventing proliferation of local or individual judge forms, processes, and requirements (e.g. color or paper size).
- Insight into what information judges actually need and use, rather than what others think is needed.
- Broad distribution of the forms and instructions.
- Ideally, informational assistance programs that support those filling in the forms.

#### Benefits for Litigants

A forms program means that litigants

- Have an easier time starting cases.
- Are more self-confident and feel less pressure in the courtroom because they know that the forms present the key information.
- Are better notified of the likely positions of the opposing side, leading to better preparation and fewer surprises.
- Make fewer errors and are less confused.
- Can more easily obtain discrete task assistance from attorneys on a pro bono or paid basis than when the tasks in a case are more uncertain.

#### Overall Benefits

Most importantly, a forms program

- Increases access to justice.
- Improves the quality of justice.
- Empowers people to solve their own problems and gives them confidence in dealing with systems.
- Improves the public's trust and confidence in the courts.



# The Case for . . .

## Courtroom Support Process Programs for Self-Represented Litigation Cases:

Enhancing Access, Quality, and Efficiency in the Courtroom

### What Is a Courtroom Process Program for Self-Represented Litigation?

A courtroom process program is designed to enhance courtroom procedures for the self-represented by providing additional support processes within the courtroom for litigants and judges. It should be distinguished from – although may well occur together with and be integrated into – changes in the way the judge engages litigants during the course of the case, and programs designed to help litigants prepare their cases in advance of their courtroom appearance.

### Why Start a Courtroom Process Program?

Courtroom processes are still primarily designed for the era in which every litigant had, or at least was presumed to have, an attorney. It is assumed, for example, that the lawyer has prepared the papers, analyzed the case, and is available to prepare a draft order and judgment for judicial signature and entry. The very different reality of litigants without lawyers puts a huge strain on the judge and courtroom personnel because these functions are as a practical matter no longer performed, and efficiency and the quality of justice suffer.

#### Benefits for Judges, Clerks, and Courtroom Personnel

- Smoother case flow
- Less areas of tension
- Higher work satisfaction
- Fewer cases returning to court for additional processing

#### Benefits for Litigants

- Easier courtroom appearances
- More immediate knowledge of the end result
- Easier to comply to obtain compliance with the court's order

### What Might a Courtroom Process Program Include?

- Among the innovations that have been found to improve courtroom processes for self-represented litigants have been:
- Courtroom screening programs in which legal aid programs provide brief assistance in some cases, and referrals in others;
  - Attorneys in the courtroom to whom the judge can make referrals for assistance when needed;
  - Computer software that helps the judge and clerk prepare immediate written orders to be handed to the litigants, increasing certainty and finality;
  - Courtroom procedures by which litigants provide information which will assist in subsequent enforcement with any orders that are issued; and
  - Additional interpreter programs to assist self-represented litigants for whom English is not a comfortable language in formal or conflict situations.

**What Are the Keys to Starting a Courtroom Support Process Program?**

An effective courtroom support process program requires:

- Analysis of the “blocks” and areas of confusion in the courtroom process;
- Close cooperation with legal aid and the pro bono bar and other sources of additional courtroom services;

<p style="text-align: center;"><b>Overall Benefits</b></p> <ul style="list-style-type: none"><li>• Improved access to justice</li><li>• Higher quality justice</li><li>• Improved public trust and confidence in the courts</li></ul>
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- Close cooperation between judges, clerks, and court administration in defining needed services and establishing roles and division of labor; and
- Rules or guidelines governing the roles that court support staff and lawyers in the courtroom can and cannot play in assisting self-represented litigants.



# The Case for . . .

## Judicial Education on Self-Represented Litigation:

An Opportunity to Enhance Access to Justice, Public Trust and Confidence, and Judicial Satisfaction

### What is a Judicial Education Program on Self Represented Litigation?

A judicial education program on self-represented litigation is designed to assist judges in better handling such cases. It helps judges understand the complex needs of the self-represented in the courtroom, offers ways of thinking about the relationship between judicial neutrality and forms of non-prejudicial engagement, and offers specific suggestions and “scripts” for dealing with the situations that occur in such cases. Such programs have received high satisfaction ratings, and judges report them helpful. They are most effective when combined with state level ethics rule making on the issue.

### Why Start a Judicial Education Program on Self Represented Litigation?

In some courts as many as 90 percent of litigants appear without lawyers, and in many courts a 50 percent non-lawyer case rate is the norm. Yet court procedures and judicial education remain structured around a model that assumes there will be an attorney on each side. As a result of judicial

experimentation and academic writing, we now have both very specific suggestions about how judges can handle such cases, and a firm analytic understanding, supported by a proposed change in the ABA Model Code of Judicial Conduct, of how such engagement does not violate the mandate of judicial neutrality.

#### Addition to ABA Model Code of Judicial Conduct in Comment to Rule 2.2 on “Impartiality and Fairness”

*“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..”*

Adopted 2007.

### What Might a Judicial Education Program on Self Represented Litigation Include?

An education program might include the following typical tasks:

- Exposure to statistics on self representation in the jurisdiction, and in different courts in the state;
- Analysis of judicial neutrality issues, including the fact that engagement is not indicative of non-neutrality;
- Analysis of the laws of evidence as applied in the self-represented litigant context;
- Model scripts for how to start cases, how to deal with evidentiary issues, and to maintain control in counsel and non-counsel situations;
- Extensive discussion of detailed hypotheticals, designed to draw out the issues.

#### Benefits for Judges:

- Less ambiguity and uncertainty in how to handle self represented litigation cases
- Smoother case flow
- More gratifying judicial experience
- More of a sense of “doing justice”



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**What are the Keys to Starting Such an Effective Judicial Education Program?**

**Benefits for Clerks, Attorneys and Other Stakeholders:**

- Smoother case flow for clerks
- Smoother courtroom processes for attorneys
- Less dissatisfaction expressed to other stakeholders such as the legislature

- Sensitivity to calendar pressures, including suggestions on how changes in case processing can be structured to save courtroom time;

An effective judicial education program requires:

- Broad participation of the judiciary in planning the curriculum and materials;
- Integration of local issues and examples with nationally produced materials and models;
- Respect for widely different judicial styles and approaches;
- An emphasis on the extent of judicial discretion, rather than obligation;

**Overall Benefits:**

- Improved access to justice
- Higher quality justice
- Improved public trust and confidence in the courts
- Higher compliance with court orders

- Integration with case management changes in self represented litigation cases, including early case review, additional staff attention, and special calendars
- Integration with other court-based self representation assistance and support services, to which litigants can be referred from the courtroom;
- Integration with changes in governing state ethics rules for judges.



# The Case for . . .

## Public Law Library Services for the Self-Represented:

### An Opportunity to Enhance Access to Justice for All

#### What is the Role of a Public Law Library?

A public law library provides access to current, authoritative legal information for the public and members of the legal profession.

#### What are Critical Functions of a Public Law Library?

Although low cost and free legal information is increasingly available on the web, it is difficult for people who aren't trained in legal research to find and understand applicable law. Public law libraries provide reliable legal information and train users how to verify the accuracy of their information and sources. As the nature and functions of our court systems continue to experience a dramatic evolution, law libraries play a key role in helping their user base keep pace.

#### What Can a Public Law Library Self Help Program Include?

- A resource center with print and online forms and instructions, in English and other languages.

#### Benefits for Judges and Court Staff

Law library services for the self-represented mean that judges and court staff:

- Deal with litigants more likely to have the benefit of expert research assistance and to be aware of current applicable law;
- Can refer litigants to a single place for a broad range of accurate legal information;
- Deal with litigants who have an improved legal understanding and can better present their cases;
- Can spend less time with litigants;
- Judges are able to make decisions based on relevant information and properly prepared and presented cases.

#### Benefits for Other Stakeholders

Law library services meet other stakeholders' needs because they:

- Offer voters a broad range of assistance and information about legal matters, courts and court actions;
- Provide enhanced services for court self-help center customers;
- Ease the burden on other agencies asked to provide legal information;
- Enhance resources across systems;
- Provide public-service opportunities and skills training for interested law students, paralegals and lay volunteers.

- Plain language legal research guides on a variety of legal topics most commonly needed by people representing themselves.
- Phone hotlines and web-chat programs such as Live Help providing legal information and explanations of court processes.
- Classes about legal research, court procedure, and specific areas of law such as divorce, landlord-tenant and bankruptcy.
- Access to online legal research databases and content rich Web sites.
- Legal clinics providing help with forms and court procedures staffed by a court or volunteer attorney.
- Individualized access to pertinent resources, and assistance to understand them.
- Inter-library networking and resource-sharing to increase the extent and nature of services.
- Reference services



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provided by librarians at the reference desk.  
This can include a

wide range of information, from alternatives to going to court to the information needed to get to the appropriate court (state, federal, municipal, etc.)

- Referrals for additional services with local providers such as pro bono programs, legal aid programs, social service agencies and court-based self-help programs.
- Legal research training for public library and court self-help center staff.
- Remote access to services.

**Overall Benefits for Litigants,  
the Public, and the Legal  
System**

Most importantly, law library services:

- Improve access to justice;
- Increase the quality of justice;
- Improve public trust and confidence in the courts

**What are the Keys to Starting an Effective  
Library-Based Self-Help Center?**

An effective Center requires:

- A collaborative relationship with local courts, legal aid & pro bono provider organizations; (and benefits from collaboration on all access to justice initiatives).
- An accessible and visible location.
- Experienced staff capable of interacting with and assisting all users.
- Materials that work for the full range of user groups.
- Computer workstation for drafting documents.
- Networking with public libraries to market court services and provide broad outreach to the public.
- Networking with local agencies and advocacy groups.
- Ongoing planning and evaluation.



# The Case for . . .

## The Discrete Task Assistance Program:

A Low Cost Attorney Assistance Solution for Access to Justice Problems

### What is a Discrete Task Assistance Program?

The idea of “unbundling,” or limited scope representation, is the situation in which an attorney assists a client with part of a legal matter, while coaching the client to self-represent on the simpler aspects. It may be as simple coaching a self-represented litigant on court procedures, ghostwriting or assistance with document preparation, or even appearing in court for a limited purpose.

### Why Start a Discrete Task Assistance Program?

The vast majority of individual litigants cannot afford full service representation. Unprepared litigants increase the burden on the court in the form of incorrect documents, ignorance of procedures, and repeated continuances. Self-represented litigants consume a disproportional amount of staff and judicial time. By providing quality coaching, well-drafted documents and assisting in the more complex aspects of a legal matter,

limited scope attorneys help streamline the process and reduce the burden on courts and their staff.

#### Benefits for Judges and Court Staff:

- Increased ability of judges to make decisions on the merits based on properly drafted pleadings.
- Reduced continuances due to improper service, form or other technical failures.
- Focusing the attorney’s involvement on the more complex or challenging aspects of the legal matter, where such assistance is most helpful to the court.
- Reducing the staff time required to answer litigants’ questions or explain improper process.
- Reduced need to return improper pleadings for correction and clarification, resulting in fewer visits to the filing window
- Enhanced credibility of the legal system.

### What Does a Program Include?

A discrete task assistance program includes:

- Training for attorneys on how to identify those issues, tasks and clients, who lend themselves to limited scope, and to coach self-represented litigants, or to appear in court on a limited basis.
- Courts who allow attorneys to appear for

a single hearing or on a limited issue and be relieved from the case on conclusion of their responsibilities without being required to represent the client on all issues or indefinitely.

#### Benefits for the Public:

- Underscores the public policy that the courts are there to serve all citizens, and not just those who can afford traditional full service representation.
- Enhanced transparency of the legal process and greater public satisfaction.
- Improved access to justice.
- Higher quality justice.

- Sensitivity to the fact that most individual litigants do not qualify for legal aid, but cannot afford full service representation, and a willingness to allow the attorney’s involvement to be limited.
- A method for



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matching litigants with limited scope attorneys, perhaps through a lawyer referral service.

- Procedures for releasing a limited scope attorney from the case at the conclusion of the assigned tasks.
- Safeguards against expanding the scope beyond that which was agreed between the attorney and the litigant.

**What are the Keys to Starting an Effective Unbundled Assistance Program?**

An effective unbundled assistance program requires:

<p style="text-align: center;"><b>Benefits for Attorneys</b></p> <ul style="list-style-type: none"><li>• Lawyers can focus on the more complex (and professionally interesting) aspects of a legal matter and coach the client on the simpler ones.</li><li>• Reassurance that their commitment is limited and they will not be drawn into protracted litigation for which the client cannot pay and from which they cannot withdraw.</li><li>• Attraction of a broadened base of paying clients who can afford to pay for some (but not all) of their services, and who pay at the time service is rendered without building accounts receivable.</li><li>• Increased willingness to volunteer for pro bono since they are assured their involvement is finite and manageable.</li></ul>
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- Strong judicial buy-in and leadership support.

- Strong support by the local bar and reassurance to attorneys that their limitations on scope will be respected by the courts.
- Attorney training.
- Marketing to attorneys and the public.
- Method for referring self-represented litigants to limited scope attorneys.
- Court processes which recognize that an attorney may represent a client on part of a matter while

the litigant retains responsibility for other aspects.