

**An Executive Program Assessment  
For State Court  
Projects to Assist Self-Represented Litigants**

**Final Report**

**Submitted to the  
State Justice Institute**

**on behalf of the  
Trial Court Research and Improvement Consortium**

**by the**

**Maryland Administrative Office of the Courts  
Maryland Judicial Center  
580 Taylor Avenue  
Annapolis, Maryland 21401**

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## Executive Summary

Over the past three years, the Trial Court Research and Improvement Consortium (TCRIC) has developed a process for a “quick and clean” assessment of programs to assist self represented litigants. The process uses an Executive Program Assessment Tool, seven survey instruments and a process involving a paid consultant and a volunteer from another court to gather and analyze data, assess program effectiveness, and make recommendations for improvement in a court’s program. This project tested that Executive Program Assessment Tool in nine programs in five states to determine how it would work in practice.<sup>1</sup>

The project was conducted by the Maryland Administrative Office of the Courts on behalf of TCRIC. The participating programs were the Family Law Self Help Program for the state of Alaska, the Fourth Judicial District Court in Hennepin County, Minneapolis, Minnesota, five courts in Maryland – the Circuit Courts for Baltimore City and Harford, Montgomery, Prince Georges, and Worcester Counties, the Maricopa County Superior Court, Phoenix, Arizona, and the Eleventh Judicial District Court in Miami/Dade County, Florida.

The hypotheses underlying the TCRIC “quick and clean” process were:

- an assessment can be conducted quickly – based on a one week site visit preceded by data gathering and interview scheduling, using a standard assessment tool and survey forms, producing a report the following week;
- this sort of assessment is affordable for most courts;
- it will produce worthwhile information for the court assessed; and
- it will produce data that can be used for nationwide benchmarking for courts.

The nine tests showed that all four hypotheses are true.

The process turned out to take more time than expected, in these respects:

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<sup>1</sup> The project was supported by grant number SJI-03-104 from the State Justice Institute to the Maryland Administrative Office of the Courts, Department of Family Administration, which conducted the project on behalf of TCRIC. TCRIC expresses its appreciation to the State Justice Institute for this support.

- the courts expended considerable time and energy administering the surveys, scheduling interviews for the site visit, and working with the assessment team while they were on site;
- the courts were not prepared for the time required for the data analysis step in the survey process. The Hennepin County staff performed extraordinarily well, turning the data around within a day or two once it received the scored survey forms.
- the consultants were able to produce the reports within a week or two following the visit, depending on their work schedule. Immediate production of the reports was not possible when the consultant was doing the assessments back to back (especially with more than one per week).
- more time was consumed by the volunteers in reviewing the reports than by the consultants in preparing them;
- the courts were unable to review the reports within a two week period. Several courts took months to complete their review; some courts never submitted comments on their report.

Nonetheless, it is fair to conclude that the process was much quicker for the courts than most traditional evaluation processes and that the assessment process can be completed by all courts within eleven to twelve weeks.

The process was inexpensive, in terms of the external costs, but more expensive than anticipated in the data gathering and preparation stages.

- The consultants were able to perform their roles for \$7000 per court, plus travel expenses. The volunteers were able to get permission from their courts for time off from their regular duties to participate in the assessments. The Hennepin data analysis cost less than \$1000 per participating court.
- The courts found the survey administration process very burdensome, especially the in-court observations – by staff and by judges. They also found that arranging a week’s interviews also consumed considerable time and effort. The courts on average devoted roughly \$8000 per court in staff time to the assessment process.

The courts report that the assessments were valuable, giving them valid and useful observations on the performance of their programs and perceptive suggestions for improvements and enhancements to be made in their programs.

A summary of the programs assessed, the results of the data collection for all nine jurisdictions, and a summary of the principal recommendations that arose from the assessments is included in this report.

The project produced significant new data on programs to assist self represented litigants:

- that the programs are highly appreciated and rated by litigants, both at the time they use the program's resources and after they leave court hearings;
- that self represented litigants rate the fairness of court proceedings very highly, whether or not they believe they prevailed in the matter;
- that judges report in general surveys that self represented litigants generally are incapable of representing themselves competently, especially in contested matters; however, the same judges when rating the performance of self represented litigants in specific hearings over which they preside, give them satisfactory ratings; and
- that stakeholder satisfaction ratings appear to be more a function of a program's outreach to its constituents than of the quality of the program itself.

The principal recommendations contained in the assessment reports are:

- Expand the scope of the court's efforts from a single program to the entire court
- Expand the scope of the court's efforts to include assistance with contested matters and with trial preparation
- Expand the scope of the court's efforts to provide assistance to self represented litigants in post judgment matters
- Triage cases and ensure the availability of appropriate levels of services for all litigants
- Train judges how to deal effectively with self represented litigants in the courtroom
- Pay more attention to active management of cases involving self represented litigants
- Create statewide definitions of legal information and legal advice, provide training in the application of those definitions, and have supervisors monitor staff performance and correct staff as needed to fully implement those definitions in practice
- Adopt a more sophisticated forms process
- Reduce the reliance on "in person" services and increase the use of telephone, Internet and other delivery modes

- Mandate attendance at workshops and use of programs to assist self represented litigants; develop videotape and on-line workshops that satisfy the workshop attendance requirement
- Enact ABA Model Rule 1.2 to allow limited scope representation to encourage attorneys to provide limited legal services to litigants,
- Enact ABA Model Rule 6.5 that allows pro bono attorneys working in courthouse programs to dispense with conflicts checks, and
- Increase program outreach.

The consultants and observers who conducted the assessments found the data from the surveys very useful. When the data for a court showed significant differences from the national “norm,” they were always able to verify – and explain – those differences through personal observations and interviews.

The project has produced data for nationwide benchmarking. Although the data is accompanied by numerous caveats we believe that it is valid for use by the courts assessed and for other courts desiring a benchmark against which to measure their own performance.

- as noted above, the consultants and volunteers were able to verify and explain significant local variations from national norms during the site visits.
- Greacen Associates conducted a month-long survey of litigant and lawyer satisfaction with the conduct of family law cases in Maricopa County roughly six months prior to the TCRIC assessment survey process. The results from the Greacen Associates study are strongly correlated with the results of the TCRIC surveys.
- The court exit surveys tended to be conducted with litigants leaving uncontested proceedings before court masters or commissioners, not from contested court proceedings. However, the nature of the proceeding was not recorded, so there is no way to gauge the type of proceeding in interpreting the data.
- With the exception of the Fourth Judicial District in Hennepin County, all data collected related to family law cases. In Hennepin County, the data related to a variety of different case types. For nationwide benchmarking, only the family law data from Hennepin County is being used.

The project has produced additional learnings:

- that the focus of these assessments should not be merely on a court’s program to assist self represented litigants, but rather on the

effectiveness of the court as a whole in dealing with cases involving these litigants;

- that the TCRIC Executive Program Assessment Tool is not useful for “self assessments” conducted internally by a court’s own staff;
- that the tool itself needs refinements; and
- that two of the survey instruments – the in-court observation instruments – should be dropped and changes should be made in the remaining five instruments to make them easier to administer and to make their results easier to interpret.

The report ends with a series of recommendations for ways to encourage the further use of the Executive Program Assessment Process and to follow up on some of the more interesting issues disclosed in during the assessments. They include:

- Confirmation of the changes to the tool and survey instruments by the Trial Court Research and Improvement Consortium
- Outreach and promotion
- An assessment resources register
- Future follow up on the impact of the assessments, and
- Following up on new questions raised by the assessment results, such as judge-litigant interactions, integration of self represented litigant issues into standard case management training curricula, studies of the effectiveness of efforts to prepare self represented litigants for hearings and trials, and studies of the causes of non-use of programs by self represented litigants.

Attached to this report are all nine project assessments, the benchmarking data being provided to the National Center for State Courts for posting on its website, and proposed revisions of the Executive Program Assessment Tool, the survey instruments, and the instructions for administering the surveys for further use by TCRIC and courts.

This report is the product of the Maryland Administrative Office of the Courts, the project principal consultant, and the consultants and volunteers who participated in the nine assessments. It incorporates comments received from some, but not all, of the courts assessed. It has not been reviewed or approved by the membership of the Trial Court Research and Improvement Consortium.

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## Background

When it held its first meeting in 2001 in San Jose, California, the Trial Court Research and Improvement Consortium identified programs to assist self represented litigants as its highest priority topic. The group approached the topic from two directions – traditional program evaluation (which has been conducted by the California Administrative Office of the Courts on five pilot projects in California) and an abbreviated “quick and clean” assessment approach referred to as the “Kiefer track” because it was suggested and developed by Peter Kiefer of the Maricopa County Superior Court.

The objective of the Executive Assessment Process is to obtain useful and nationally comparable information for a trial court quickly and cheaply. As compared to the traditional full scale evaluation process, which takes more than a year to complete and costs hundreds of thousands of dollars, the “Kiefer track” is designed to be completed within a two month time period, at a cost of less than \$10,000 in out of pocket costs to a court. This project was designed to test whether the “Kiefer track” produces valuable information for courts and data that can be used nationally to “benchmark” the performance of programs to assist self represented litigants.

The Executive Assessment Process consists of an assessment tool of thirteen pages, seven survey instruments, and instructional memoranda for courts and consultants. The design of the Assessment Process was for court staff to administer the seven survey instruments in advance of a site visit by a consultant and a volunteer from another court’s program to assist self represented litigants. Court staff also prepared an itinerary of interviews and observations for the assessment team for the site visit.

The Fourth Judicial District Court in Hennepin County, Minnesota, provided technical support by preparing the survey instruments for the participating courts, machine scoring the completed surveys, and providing the results to the court and to the assessment team.

The test was to include ten sites – eight with outside assessors (five in Maryland, Hennepin County, Maricopa County, and Miami/Dade County) and two California courts that intended to perform self assessments. The self assessments were to involve the administration of the survey instruments followed by an internal assessment of the court’s programs to assist self represented litigants.

The State Justice Institute provided grant funding to the Maryland Administrative Office of the Courts to support this test of the Executive Program Assessment Tool and process. Each participating court, except for those conducting self assessments, pledged to contribute \$1500 in “hard match” toward the consultant costs and at least \$5000 in “soft match” – the time of their staff devoted to the project. Alaska joined the project after the State Justice Institute grant award and paid the full \$7000 to the consultant plus travel costs for the consultant and a court volunteer.

The assessment visits were to take place over a one week period, with the draft report delivered to the court the following week. The court was to review the report and provide comments within two weeks, with a final report provided shortly thereafter. The whole process – from the beginning of the court’s data gathering process to the delivery of the final report – was to take roughly two months.

## **Process Results**

All nine of the consultant-based assessments were completed. Neither of the two self assessments took place. In Los Angeles County, budget reductions led to a staff reorganization that eliminated the unit that would have conducted the self assessment. In Orange County, the court was not able to muster the effort needed to initiate the self assessment.

The site visits were generally for a full week. Visits in Prince Georges County and Baltimore City were for four days. The visits to Harford and Worcester Counties were scheduled for three and two days respectively, because the jurisdictions were small. Harford County has five full time judges and Worcester County has two.

Each site visit began with an entrance interview during which the assessment team met with key court leaders – at least the presiding judge of the family division, the division court administrator, and the director of the court’s program to assist self represented litigants – to discuss the objectives and process of the site visit and to review the results of the data collection effort, comparing the court’s results with benchmark data from other courts. At this interview, the team was able to convey its need for additional data and to suggest additional interviews that would be helpful. That discussion often helped the assessment team to focus its attention on a few key questions – such as learning why lawyers or judges had an unusually negative view of the program, why litigants considered that they did a poor job representing themselves, or why litigants reported dissatisfaction with the waiting time before they were served.

Site visit schedules were left relatively open on the second to last day or afternoon of the site visit to accommodate additional interviews to address questions identified by the assessment team. Team members usually split up

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following a few initial interviews to increase the amount of information gathered. They conferred in the evenings – usually over dinner – to make sure that they shared all essential information gathered.

Each site visit ended with an exit interview, at which time the assessment team met again with the court's leadership, presenting its findings and recommendations in the form of a PowerPoint presentation, and obtaining immediate feedback from the judges, administrators, and program director.

Each assessment team reported that it had sufficient time to conduct essential interviews and observations, though one team would have liked more time on site. The most difficult scheduling problem was to arrange for team members to observe contested court cases involving self represented litigants. All teams found that so many contested matters settle at the last minute that it is difficult to find a proceeding to observe within a four or five day time period.<sup>2</sup>

Consequently, it should be possible to complete site visits using the assessment tool in most courts within four days. Court staff should work with the assessment team to give priority in scheduling to court observations of contested matters involving self represented litigants. That is, if a contested matter suddenly appears on a court calendar, staff should attempt to reschedule other interviews planned for that time.

The Alaska assessment was of a program with statewide coverage. The Hennepin County assessment included visits with state level officials to obtain their views of the Minneapolis program. Both were completed within five days, but neither could have been completed in a shorter time period.

### ***Timeliness of the assessments***

The process turned out to take more time than expected, in these respects:

- the courts expended considerable time and energy administering the surveys, scheduling interviews for the site visit, and working with the assessment team while they were on site;

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<sup>2</sup> One might conclude from this experience that contested hearings and trials involving self represented litigants are rare. However, in its study of the Family Court Department in Maricopa County, Arizona, Greacen Associates obtained completed survey forms from 963 self represented litigants in proceedings before judges (which were likely to have been contested) over the course of a four week data gathering period. The court had 25 active family department judges at the time, suggesting that each had an average of at least five proceedings involving self represented litigants per week, assuming that each such proceeding included two unrepresented parties. One proceeding per day per judge is not a rare event.

- the courts were not prepared for the time required for the data analysis step in the survey process. The Hennepin County staff performed extraordinarily well, turning the data around within a day or two once it received the scored survey forms.
- the consultants were able to produce the reports within a week or two following the visit, depending on their work schedule. Immediate production of the reports was not possible when the consultant was doing the assessments back to back (especially with more than one per week).
- more time was consumed by the volunteers in reviewing the reports than by the consultants in preparing them;
- the courts were unable to review the reports within a two week period. Several courts took months to complete their review; some courts never submitted comments on their report.

Nonetheless, it is fair to conclude that the process was much quicker for the courts than most traditional evaluation processes and that it can be completed within an eleven or twelve week time period – four weeks for data collection by court staff, one week for data analysis, one week for a site visit, two weeks for preparation of the report, two weeks for court review and comment and one week for incorporation of the comments into a final report.

## **Cost**

The process was inexpensive, in terms of the external costs, but more expensive than anticipated in the data gathering and preparation stages.

- The consultants were able to perform their roles for \$7000 per court, plus travel expenses. The volunteers were able to get permission from their courts for time off from their regular duties to participate in the assessments. The Hennepin data analysis cost less than \$1000 per participating court.
- The courts found the survey administration process very burdensome, especially the in-court observations – by staff and by judges. They also found that arranging a week’s interviews also consumed considerable time and effort.

The eight courts that were part of the Maryland AOC grant reported expending \$63,000 in “in kind” contributions to the project. In sum, the courts donated as much of their own staff time administering surveys, preparing for the site visit, and assisting the assessment team during the site visit as the project

spent on the outside consultants and data analysis. Some of these costs can be eliminated by dispensing with the in court observations. But courts using the assessment process in the future need to anticipate contributing roughly this amount of time to the effort.

### ***Value of the end product***

The courts universally reported that the assessment reports were very valuable. The assessment of program strengths and weaknesses were accurate and insightful. The recommendations were sophisticated and worthwhile. Some courts did not agree with all recommendations, but nonetheless appreciated the reports and the assessment process.

The quality of the reports, which are attached, speak for themselves

## **Substantive Results**

This section of the report describes the nine programs assessed, provides comparative data gathered for those programs, assesses the validity of the data, and sets forth the most frequent recommendations contained in the nine assessment reports.

Combined, this information provides an important overview of the “state of the art” in court services for self represented litigants as of 2004 – including their diversity, their strengths and their weaknesses.

### ***Descriptions of court programs assessed***

Here are brief descriptions of the nine courts assessed. The first paragraph or paragraphs describe the court’s program to assist self represented litigants. Most of these programs are housed within the family division of the court and assist self represented litigants with family law matters.<sup>3</sup> The remaining paragraph or paragraphs describe the broader context within which the court handles family law cases and those brought by persons representing themselves. Readers can find further detail on court and program operations in the nine individual assessment reports. The five Maryland courts are described first.

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<sup>3</sup> The programs in the Fourth Judicial District in Hennepin County, Minnesota are the exception, providing services to unrepresented litigants in multiple case types. Attorneys in Worcester County will deal with other legal issues brought to them by clients, provided they can be addressed quickly and fall within the expertise of the attorneys.

## **Baltimore City Circuit Court, Maryland**

The self represented litigant assistance program is operated by the Legal Aid Bureau under contract to the court. It operates with one attorney and two paralegals, part-time each day. The program provides legal information only; the staff prepare forms for litigants and answer their questions. The program is means tested. It is not integrated into other functions of the family division but is integrated with the broader legal services program of the Legal Aid Bureau.

The court has three judges assigned full time to family matters. It maintains two separate calendars for family cases. The domestic miscellaneous calendar deals with child support establishment and enforcement. The equity calendar deals with all other family law matters. The court maintains information on these calendars in separate automated systems and the files are maintained by separate, though co-located, units of the Clerk of Court. The court uses three "master examiners" to hear default and other contested matters; they operate from their own private law offices and charge \$125 per case. The Associate Director for the family division reviews and refers family cases to different tracks according to the court's case management process. The court operates a major POARP program to assist victims of domestic violence. It has a variety of programs to assist children and parents who never lived together as a family (where paternity is established, visitation may be involved, and child support is ordered). It provides classes both for parents and for children involved in divorce; a separate class is presented for parents and children who never lived together as a family. The Clerk of Court family unit provides forms and information to self represented litigants. The court provides custody evaluations, mental health assessments, and mediation services for selected cases. Members of the bar provide free settlement conference services for other cases.

## **Harford County Circuit Court, Bel Air, Maryland**

The court has three self represented litigant assistance programs in the courthouse and cooperates closely with the Harford County Bar Foundation pro bono program that operates from the legal aid office a few blocks away. Three part-time paralegals, working at the front counter of the Clerk of Court's civil filing area, provide information and assistance to litigants; they also provide information by telephone. A contract attorney provides legal advice to the paralegals, and to litigants upon referral by the paralegals. Volunteer attorneys provide a Pro Se Conference program which attempts to settle cases involving two self represented litigants. The Harford County Bar Foundation provides pro bono representation for qualified persons. The first three programs are not means tested; the pro bono program is. These programs are very well integrated with the rest of the court.

The court has five judges; all hear family law matters. It has a part-time retired judge who conducts settlement conferences for family law cases two days a week. It has two masters who handle uncontested divorces and *pendente lite* matters involving property (temporary matters involving child support, alimony and use or possession of the home). The masters operate from their own private law offices, which are close to the courthouse, and charge fees of \$100 per uncontested divorce and \$35 per financial calculation. A third master working in the courthouse has recently been assigned to handle family cases two days per week. The Family Division staff review cases and refer them to alternative disposition processes according to the court's case management plan. Family Court Services provide an array of classes, mediation, custody evaluations, psychological evaluations and other services. The Harford County Pro Bono Committee recently published a comprehensive report on public assistance to the poor in Harford County -- . . . *and Justice for All: Opening the Courthouse Door*. The report assesses current bar, court and legal services efforts and makes thoughtful recommendations for improvements.

### **Montgomery County, Rockville, Maryland**

The court has three full time attorneys and a paralegal who conduct the Pro Se Project which provides legal advice and forms preparation for self represented litigants. The program is means tested; persons who do not qualify financially are provided with forms and information. The project maintains a conflicts data base; persons in a case in which the other party has been served are seen by a different attorney and are given only legal information. The program provides only in person services in the courthouse. It has two Spanish-speaking staff members who provide extensive assistance to Hispanic residents of the county. The program is exceptionally well integrated with the rest of the court.

The court has six judges assigned full time to family law cases. It has five full time family court masters, all located within the courthouse. The court has a well articulated and thoughtful differentiated case management plan for family cases, which it applies consistently and effectively. The masters hold scheduling conferences in all cases, handle uncontested divorces, and hear contested matters that will take no more than a day to try. A facilitator is on hand in the courthouse to help the parties settle matters in dispute upon referral from a scheduling conference. The court has a group of four case managers who review all case files prior to hearings and trials to make sure that the cases are ready and the paperwork complete. Staff units provide mediation and custody evaluation services. The Clerk of Court is fully committed to the effort to assist self represented litigants; her staff provide forms, answer questions, and make referrals to the Pro Se Project.

## **Prince Georges County, Upper Marlboro, Maryland**

The court has three self represented litigant assistance programs. Eight paralegals provide legal information and forms to litigants both in person and over the telephone. These staff are located at the public counter serving persons who appear for hearings before the family division. The Law Foundation of Prince Georges County, under a contract with the court, hires two part time lawyers to provide legal advice to litigants who do not know what they want to accomplish. That program is means tested (the other Prince Georges County programs are not means tested); conflicts are handled by pro bono volunteer attorneys. The Pro Se Orientation program provides a two hour educational seminar covering divorce law in Maryland and the court process. The program is voluntary. The three programs are extremely well integrated with the rest of the court.

The court assigns nine judges full time to the family division, but any judge of the court can be assigned to hear a family matter when the master calendar so requires. The court has three full time masters, all located within the courthouse, who hear uncontested divorce matters and contested matters that can be resolved within a half day. The court staff conduct scheduling conferences, attempt to resolve issues in dispute, and, when they are successful, refer the matters to a master for hearing and disposition that day. Cases not resolved are scheduled for services and for further court events. The court provides fee-based services for family law litigants, including parenting classes, mediation, custody evaluations and mental health evaluations.

## **Worcester County, Snow Hill, Maryland**

The county contracts with two attorneys who come to the courthouse for five hours every Monday to provide legal information and complete forms for litigants. The two attorneys staff the program on alternating Mondays. The program is not means tested. When one attorney has seen the opposing party, the other party is referred to the second attorney. The program is reasonably well integrated with the rest of the court, with the exception of the Clerk of Court's office which is not involved significantly in assisting self represented litigants. The court also works closely with the Worcester County Bar pro bono program, which works through the Maryland Volunteer Legal Services program.

The court's two judges both hear family cases. A part time master, located within the court, conducts scheduling conferences and hears uncontested matters. The court also uses "standing examiners" to take testimony in uncontested divorces for a fee of \$75 per case. The Family Support Services Coordinator reviews all case files and makes referrals to services as appropriate. The county makes referrals to an astonishing array of program

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services (16 in all) all of which are conducted for the court by outside entities. Mediation is provided by a panel of volunteer local attorneys.

## **Alaska**

The Alaska Family Law Self Help Center is physically located within the Third Judicial District in Anchorage but provides services to self represented litigants throughout the state of Alaska. It differs significantly from the other programs assessed in two major ways – its principal focus is on assisting self represented litigants with contested divorce and child custody matters and it delivers its services exclusively<sup>4</sup> by telephone and the Internet.

The program is staffed by two part-time attorneys and four non-lawyer staff members. The program attempts to keep one staff member who is fluent in Spanish. The program provides five types of services – a webpage containing forms and information, telephone service with a general toll number (available from anywhere in the world) and an in-state toll-free number, self-help workstations in seven court locations, educational classes, and a VAWA funded domestic violence program for Anchorage only. Attendance at the educational classes is mandated by the judges in Anchorage for all self represented litigants with contested divorce or child custody cases. The program offers legal information, not legal advice. The staff who handle most of the interactions are not lawyers. They read a disclosure statement to every first time customer, obtaining a response that the customer understands and agrees to the limitations contained in the statement.<sup>5</sup> The program has always assumed that the litigant would actually complete any court form to be submitted.

The staff have access to the court system's case management information system; they can therefore easily ascertain the status of a caller's case. For courts not yet on the centralized case management system, staff coordinate with local court staff to obtain whatever information or clarification is necessary. If the caller has immediate Internet access, staff often "walk" a user through the FLSHC website to find the appropriate forms and information. If a caller seems to lack the capability to navigate the website, staff help him or her to identify a third party to involve in the discussion. The staff can communicate simultaneously with the litigant and the third party, who can then assist the litigant to find, complete and file appropriate papers.

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<sup>4</sup> The program has one part day/once a month in-person clinic in a community outside Anchorage which is maintained at the request of the local court.

<sup>5</sup> The notification – which seems to us to be entirely appropriate – provides

- (1) that the program is part of the court and therefore has to be neutral and impartial, not taking sides,
- (2) that the staff are not lawyers and are providing only information, not interpretations of laws or strategies for your case,
- (3) that conversations are not confidential, and
- (4) that if the other side calls, the staff will give exactly the same kind of help to him or her as they give to you.

The FLSHC website includes extensive materials for litigants preparing for trial or hearing. It sets forth the elements that the judge will use in deciding a family law matter. It provides a description of how one gets evidence introduced in the courtroom. It provides a witness list and an offer of proof form; if a litigant uses these materials s/he will have thought through the testimony that each witness will be able to give and how it contributes to the case. The website includes an affidavit for the “best interests” of the child, calling for the litigant to state how the custody and visitation plan that s/he supports will meet the statutory elements the judge must consider. It includes a short, clear description of how a hearing or trial is conducted so that a litigant has a better idea of what to expect.

When program staff inquire about the availability of client access to the Internet, roughly 85% reply affirmatively.<sup>6</sup> In addition, the telephone is a much used means of communicating in Alaska, with telephonic hearings widely allowed, even if the party lives within the town in which a hearing takes place.

The telephone process currently in place is the result of considerable experimentation. The Helpline is open for set periods during the week. The current times – put in place very recently – are Monday, Wednesday and Friday from 8:30 am to noon and Tuesday and Thursday from 1:30 pm to 4:30 pm, which totals 16.5 hours/week. When staff make contact with a person, they give out their personal telephone numbers at the program office. For the past year, the program used voice mail for both the Helpline and the personal staff lines. Ironically, analysis of program data showed that the staff actually helped more people with shorter Helpline hours and no voice mail on the Helpline telephone line in 2002 and 2003 than with longer Helpline hours and voice mail in 2004.

Domestic relations cases are handled in the Superior Court – the court of general jurisdiction in Alaska. All judges handle mixed calendars; no judge is assigned to hear family law matters exclusively. Under Alaska law, “dissolution” of marriage is available to parties who consent to all the terms of a divorce. “Divorce” is available for consensual and contested matters, but is designed for contested matters. Dissolution matters are usually heard by masters; divorces are heard by judges. Clerk’s offices provide printed forms for dissolution and refer litigants to the FLSHC for forms and assistance for divorces. Alaska Legal Services provides very limited representation in family law matters; the Alaska Supreme Court has recently approved amendments to the rules of professional responsibility and to the rules of civil procedure officially authorizing lawyers to provide unbundled legal services, which had been approved in a bar ethics opinion a number of years ago. The Alaska Supreme Court has a unique series

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<sup>6</sup> For these purposes, Internet access is defined as having a personal e-mail address. Free, public Internet access is widely available throughout Alaska via libraries, tribal offices and schools.

of legal precedents requiring trial judges to accommodate the reasonable needs of self represented litigants in the courtroom.

### **Fourth Judicial District Court, Hennepin County, Minneapolis, Minnesota**

The Hennepin County program is the most comprehensive program assessed. The court operates two Self Help Centers located in different court facilities. The programs provide assistance on any type of case. The services provided include triaging by staff and volunteer attorneys to identify a litigant's issues and legal remedies available to address them, providing and assisting in completion of forms, providing information about court processes in the form of fact sheets, brochures, booklets and videotapes, assisting litigants preparing for court hearings and trials, and preparing affidavits, motions, and letters generally in response to requests from the judiciary before, during, or after a hearing, and assisting litigants to understand court orders. The court provides a general clinic addressing all case types, and specific clinics for family law, housing law, and criminal expungement issues. Through the use of both court staff and contract and volunteer attorneys, the Centers provide a full range of legal information and legal advice to self represented litigants. Interpreter services are available for persons needing them; the Centers provide interpreters for all court functions, using their own staff and a local non-profit organization. All services are provided in person.

The Centers have a full time director, 7 full-time staff (4 senior court clerks, 1 staff attorney, 1 paralegal, and 1 volunteer coordinator), 1 full-time attorney from Central Minnesota Legal Services through a court funded contract, 17 volunteer paralegals, 18 volunteer law students, 60 volunteer attorneys, a housing law attorney (60% time) funded through a county contract with Legal Aid of Minneapolis, and a family law attorney (20% time) funded through a grant from McKnight Foundation to Central Minnesota Legal Services. The Centers' various programs are managed jointly by the court, the local bar association, and the local volunteer attorney program ("Volunteer Lawyers Network", a non-profit corporation.)

The programs of the Centers are well integrated into the work of the court as a whole. Court clerks provide triage services and refer people to Center programs and community resources. Center staff screen all family law motions as required by local court order. The court provides interpreters as needed for all court proceedings. The court has not focused on the development of Internet-delivered services; the Minnesota judicial system website hosts a variety of forms and information; the Minnesota legal aid community has provided extensive and excellent public legal information through the [www.lawhelp.org/mn](http://www.lawhelp.org/mn) website.

## **Maricopa County Superior Court, Phoenix, Arizona**

When the Maricopa County Superior Court Self Service Center opened in 1995 it provided the model and inspiration for all of the other programs described in this report. The Self Service Center focuses on the provision of forms, checklists and instructions for family law and guardianship matters. Its forms “packets” – containing forms, checklists, and information related to a particular stage of a case, have become highly differentiated over the past ten years. The forms and other materials are now available in both English and Spanish.

The Self Service Center provides these materials in printed form, at a fee of \$4.00 per packet to defray the costs of the program. It also provides the forms in an electronic version on court computers and on the court’s website; access to these materials is free of charge. The forms cannot be completed through the website. The court has maintained a sophisticated telephone tree system of recorded information, containing over six hours of court and legal information, capable of serving up to 120 callers simultaneously. The system suffered a hard disk crash this year, destroying all of the information supporting the system; the court is reconstructing the system. The court provides very little in-person consultation, relying upon litigants to read and understand the materials provided. A program of the local Community Legal Services program called Family Lawyers Assistance Program (“FLAP”) provides volunteer attorneys who are available to provide legal advice to persons meeting a means test.

The Self Service Center now operates from all three of the court’s physical locations, which are widely scattered throughout Maricopa County, one of the nation’s geographically largest urban counties, which includes many small outlying rural communities.

The Self Service Center, in conjunction with the State Bar of Arizona, also pioneered the provision of unbundled legal services. The Center maintains a directory of attorney and mediator unbundled services providers. The State Bar ethics officer provides regular training sessions on providing unbundled legal services; attorneys must complete the training in order to have information on their services entered into the directory.

The Family Law Department of the Superior Court has 25 judges and 8 commissioners. The court has a sophisticated Family Violence Prevention Center, separate from the Self Help Center, that provides more extensive assistance to victims of domestic violence. The FVPC provides “dialog” software that completes domestic violence petitions and electronically populates draft orders for judges and commissioners to use in entering protection orders. The FVPC also has family violence counselors from a women’s shelter available to provide information and to accompany a victim to the courtroom for the hearing on the petition. Two years ago the court created a position of Family Court

“navigator” to provide assistance, mostly over the phone, for litigants encountering difficulties with the court’s procedures.

During 2004, the Family Court Department has begun a number of significant changes to enhance the services of the Self Service Center and to institute court-wide programs designed to assist self represented litigants to navigate the court’s processes more simply and quickly. “E-Court” will use the dialog technology of the FVPC to produce completed forms for litigants, together with a cover sheet providing directions on next steps. Staff assistance will be available to litigants using this software. “E-Decree” will create an electronic divorce decree maintained as part of the court record and completed as each decision in the case is made over time – either by agreement among the parties or by court ruling. When the final decision is made, the decree can be completed and printed for delivery to the parties in court. “Default on demand” allows any party, on one day’s notice, to come to court to obtain judicial approval of a divorce by default; staff provide assistance to prepare or revise any documents needed to complete the process on the day the party comes to court. “Resolution management conferences,” piloted in one of the court’s locations, are now being used throughout the Family Court Department to bring all parties into court 75 days after a response has been filed; at these conferences, court staff attempt to resolve all outstanding issues with the parties and to prepare documents needed for the entry of a decree that afternoon. If agreement cannot be reached, the court advises the parties of the steps that will be required and schedules the case for trial.

### **Eleventh Judicial District Court, Dade County, Miami, Florida**

The Eleventh Judicial Circuit is unique in mandating use of the program by self represented litigants. As an added feature, the Eleventh Judicial Circuit self-help staff use a mobile "Government on the Go-Bus" to bring the program to under-serviced areas of Miami-Dade County on a monthly basis.

The court has one primary program to assist self represented litigants – the Family Court Self Help Program – located in the main courthouse in downtown Miami. The program is staffed by one program coordinator, one full-time attorney, four paralegals and three additional staff members for a total of nine full time equivalent staff. The program provides services in English and Spanish, with regular contract interpreter service provided for Creole. The program provides face-to-face technical assistance, daily classes on how to fill out routine forms, sales of "Forms Packets" containing forms and instructions for various family law filing and processing activities, and some telephone support.

The array of activities performed by the Eleventh Judicial Circuit Family Court Self Help Program includes:

- Providing forms and instructions so that pro se litigants can file legally sufficient/court-approved documents.
- Reviewing all initial filings for completeness and compliance with statutory requirements.
- Explaining the legal process to avoid lack of service, ex parte communications, and non-compliance with orders.
- Providing information and making referrals to legal and social services.
- Performing an intake function to streamline litigation and refer litigants to outside agencies for non-legal issues.
- Scheduling final hearings for self represented litigants.
- Reviewing all notices of hearings, final judgments, and attached marital settlement agreements.
- Referring litigants to pre-filing mediation to address child support issues and issues that need to be formalized in writing.
- Checking all inmate/prisoner mail and filings.
- Checking all out of state/out of jurisdiction filings.
- Performing interagency coordination with the Case Management Unit, Domestic Violence Unit, Family Court Services, Clerk's Office, State Attorney/Child Support Enforcement Division, and the Law Library.
- Notarizing documents for litigants, as required.
- Performing community outreach to increase access to court for residents of hard to reach areas of the community by taking Self Help services and providing information on all court programs on the road with the Government on the Go bus and by special community events.
- Increasing access by making forms available in two branch courts (north and south) and on the Government on the Go bus which serves North Miami Beach, Homestead and West Kendall every month.
- Providing services (such as uncontested divorce hearings) at temporarily closed courthouses on the Government on the Go bus.
- Providing quick and meaningful access to court to all self represented litigants in emergencies.

Frequently, self represented litigants find themselves in a situation where they need the immediate attention of a family judge for emergency relief and they do not know how to access the courts. These emergencies include but are not limited to: kidnapping, immediate danger to a child, death of a custodial parent, medical emergencies that require the consent of a custodial family member, removal of a child from the state or country, foreclosure of the marital home, utility services disconnected from the home, authority to enroll child in school, writs of bodily attachment for failure to pay child support, drivers license suspensions, and change of custody due to marching orders for military personnel/custodial parent.

Many government agencies require court orders before they will take action in an emergency situation. These agencies often refer self represented

litigants to the Self Help Program for emergency assistance to obtain emergency orders from a Judge. The referring agencies include the police, doctors, hospitals, social workers, schools, Social Security Office, Juvenile Division, Probate Division, State Attorney's Office, U.S. Armed Forces, Domestic Violence Unit, Office of Homeland Security, Department of Vital Statistics, and Department of Children and Families. A judge is designated on a rotational basis to consider emergency orders and the Self Help Program will secure an immediate judicial review if needed.

As a result of the screening process performed by the Self Help Program, self represented litigants file all the statutorily required paperwork at the time of initial filing and expedite the legal process. This helps to educate and empower the litigant as well as promote court efficiency.

In addition to the services enumerated above, the Family Court Self Help Program performs numerous case management functions. The Program's staff assist self represented litigants in moving their case along by explaining the legal process, giving instructions on how to have the other party personally served and how to follow up on their case. Follow up appointments enable self represented litigants to file and process motions for default, requests for hearings, and notices of non-jury trials in order to further their case. All self represented litigants participating in the program obtain a final hearing date from staff.

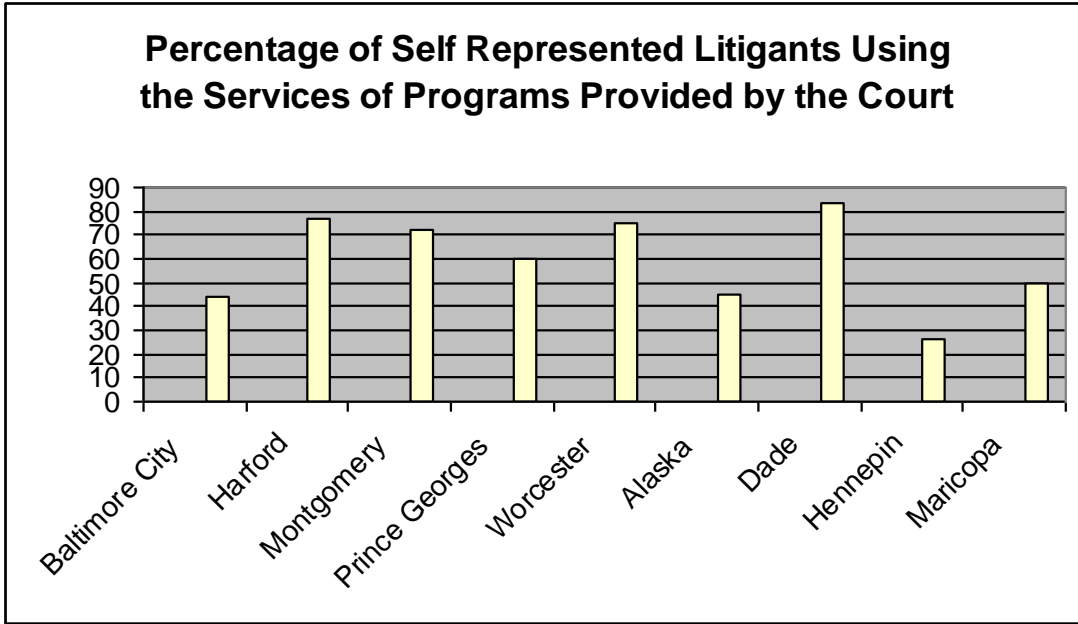
### ***Comparative data***

This section of the report contains summary data for all nine assessment sites.

#### **Use of programs to assist self represented litigants**

In each court we conducted surveys of self represented litigants leaving courtrooms after court appearances. Among the questions asked was whether they had used the court's program to assist self represented litigants. The answers varied from a high of 83% in Miami/Dade County, where use of the program is mandatory, to a low of 44% in Baltimore City. The rating for Hennepin County is aberrational, because the court exit surveys were administered for litigants in a number of case types for which the court does not specifically provide services.

Overall, the assessments suggest that courts should devote more attention to the issue of outreach to litigants because there is such wide variation in the percentage of program use from court to court. They suggest the utility of a mandatory use requirement following the Miami/Dade example.



**Litigant ratings of programs to assist them and of court processes**

The assessments obtained four different types of litigant satisfaction data. The first was their satisfaction with the court’s assistance program. This data was collected immediately following a visit to the court’s program. All programs rated very well – with overall satisfaction ratings from 1.06 to 1.61 on a five point scale. Generally, a high overall satisfaction score is reflected in consistently high scores on all questions asked. However, there are differences among the program scores that differentiate among programs and among various aspects of particular programs. For example, the program in Montgomery County, Maryland ranks at the top on most of the questions. However, it ranks at the bottom on waiting time required before being served. Our observations validated that rating; the court provides services only on an in-person, one-on-one, first come first served basis and on most days has a large number of persons waiting to be served in the court lobby.



**Comparative Ratings of Programs by Self Represented Litigants  
in Nine Jurisdictions  
(5 point scale with 1 being highest)**

<b>Question asked of litigants</b>	<b>Balti more City, MD</b>	<b>Harford County, MD</b>	<b>Mont-gomery County, MD</b>	<b>Prince George s County, MD</b>	<b>Worces ter County, MD</b>	<b>Alaska</b>	<b>Dade County, FLA</b>	<b>Henne pin County, MN</b>	<b>Mari copa County, AZ</b>
Overall satisfaction with program	1.06	1.14	1.16	1.45	1.30	1.42	1.61	1.59	1.26
Information helped me understand my situation	1.30	1.21	1.2	1.52	1.52	1.42	1.72	1.64	1.40
I know what I need to do next	1.32	1.34	1.24	1.49	1.52	1.42	1.65	1.66	1.43
Staff knowledgeable	1.20	1.21	1.12	1.35	1.39	1.31	1.57	1.49	1.24
Staff listened	1.24	1.21	1.16	1.35	1.35	1.25	1.50	1.51	1.21
Staff explained things clearly	1.24	1.28	1.24	1.37	1.35	1.33	1.50	1.54	1.28
Staff treated me with respect	1.14	1.17	1.10	1.35	1.30	1.29	1.48	1.44	1.16
I did not have to wait a long time	1.18	1.59	1.84	1.35	1.52	1.48	1.74	1.77	1.21
I would recommend the program to a friend	1.20	1.31	1.16	1.37	1.17	1.31	1.39	1.48	1.22

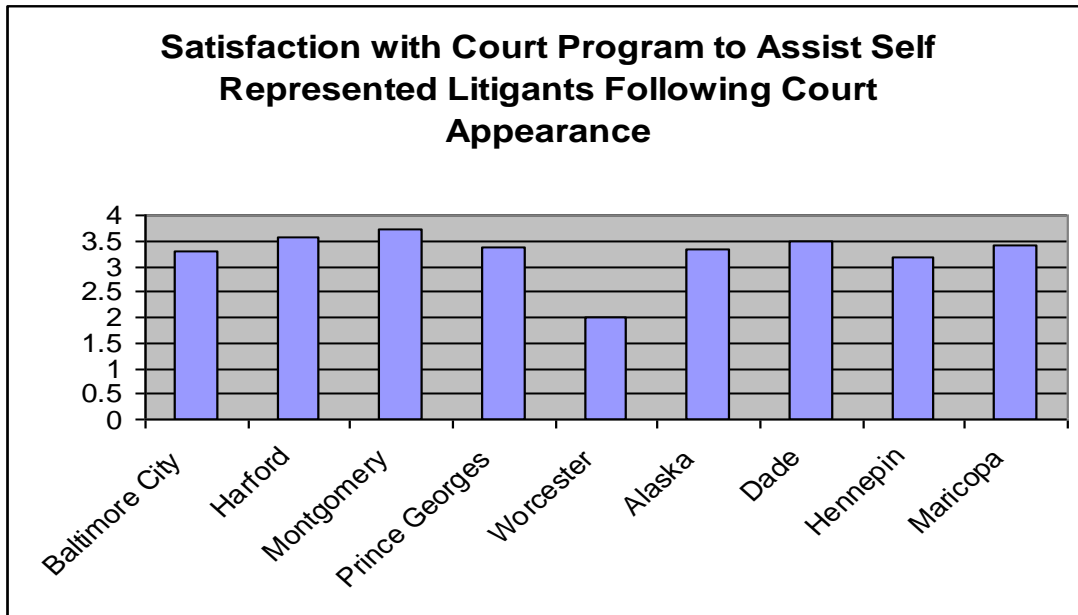
The reader should use caution in using and drawing conclusions from the above table and the table that follows. The results may be affected by the following factors: that the data is drawn from small numbers of surveys (courts were asked to obtain completed surveys from 50 program users, but smaller courts were not able to do so); that some programs provide services only for family law matters and others (e.g., Hennepin County) provide services covering multiple case types; that courts used different data collection methods (who did the interviews, whether they were they identified as court staff members); and that the particular laws and rules of a state impact how complex or simple the forms are, and may therefore impact the customer satisfaction level with the forms and instructions. On the other hand, the litigant satisfaction ratings correlated very well with the observations of the consultants and volunteers.

The second type of data was ratings of specific services provided by the court program. Litigants rated these services as Very Helpful, Somewhat Helpful, and Not Helpful. We converted that data into a 3 point rating. Litigants gave very high ratings to the specific services provided in all nine assessment sites. The scores are set forth below.

**Comparative Ratings of Services Provided to  
Self Represented Litigants in Nine Jurisdictions  
(3 point scale with 3 being highest)**

<b>Question asked of litigants</b>	<b>Balti more City, MD</b>	<b>Harford County, MD</b>	<b>Montgomery County, MD</b>	<b>Prince Georges County, MD</b>	<b>Worces ter County, MD</b>	<b>Alaska</b>	<b>Dade County, FLA</b>	<b>Henne pin County, MN</b>	<b>Mari copa County, AZ</b>
Forms	3.00	2.96	2.95	2.80	3.00	2.89	2.76	2.84	3.00
Written instructions	3.00	2.83	2.97	2.76	3.00	2.81	2.71	2.72	2.90
Staff answer questions	3.00	2.92	2.94	2.89	2.95	2.88	2.89	2.90	2.90
Translation assistance	3.00	3.00	3.00	2.96	na	2.64	3.00	3.00	2.92
Workshop	na	na	na	2.95	na	2.78	2.75	3.00	2.92
Prepare for court hearing	na	2.63	2.78	2.83	3.00	2.82	2.79	2.77	2.83
Following up with court orders	na	3.00	2.84	2.93	3.00	2.83	2.73	2.80	2.92
Educational materials	na	2.67	2.86	2.80	2.80	2.82	2.86	2.67	2.96
Where to get more help	3.00	2.83	2.85	2.78	2.90	2.82	2.83	2.83	2.93
Met with attorney (not court staff)	na	3.00	2.95	2.68	3.00	2.10	2.00	2.85	3.00
Referred to an attorney	na	3.00	2.77	2.74	3.00	2.42	3.00	2.25	3.00
Help using computer	na	na	3.00	2.75	na	2.85	3.00	2.33	2.93
Made an appointment	na	na	2.00	2.82	na	2.50	2.80	3.00	2.91

The third rating was the litigants' overall satisfaction with the program as they left the courtroom. Those ratings are shown below. It is clear that litigant satisfaction remained at a very high level for all programs studied, with one exception. But the data for Worcester is suspect because the court was able to obtain only four exit surveys.



The final litigant satisfaction measures were for the courtroom experience itself. The data below represents the litigants' impressions of their performance in the courtroom and the way in which they were treated by the judge and court staff. The results are very high. Of the 108 scores on the table below (excluding the scores for whether the outcome was favorable, which was included as a control variable), only 17 (16%) fell below a score of 4 on a 5 point scale.

On the other hand, there is considerable variation within the scores from court to court and from question to question within each court. For instance, the Montgomery County, Maryland court again had exceptionally high scores. But it did not have the highest score on every question. Its own scores varied from 4.91 to 4.63 on different questions, suggesting that it could improve its services in preparing litigants for hearings and trials – services that it admits that it does not emphasize today. Maricopa County had a high number of lower scores, suggesting that its judges could benefit from training on techniques for handling self represented litigants in the courtroom.

**Comparative Ratings of Court Processes by Self Represented Litigants  
in Nine Jurisdictions  
(5 point scale with 5 being highest)**

<b>Question asked of litigants</b>	<b>Balti more City, MD</b>	<b>Harford County, MD</b>	<b>Mont-gomery County, MD</b>	<b>Prince Georges County, MD</b>	<b>Worces ter County, MD</b>	<b>Alaska</b>	<b>Dade County, FLA</b>	<b>Henne pin County, MN</b>	<b>Mari copa County, AZ</b>
Felt prepared	4.12	4.13	4.63	4.21	3.00	3.60	4.54	4.19	3.57
Judge treated you with respect	4.45	4.36	4.91	4.79	5.00	4.86	4.87	4.66	4.65
Staff treated you with respect	4.47	4.44	4.91	4.91	5.00	4.83	4.77	4.67	4.64
Judge cared about your case	4.25	4.18	4.74	4.52	5.00	4.52	4.53	4.42	4.09
Judge treated everyone in court fairly	4.20	4.44	4.89	4.71	5.00	4.62	4.77	4.60	4.50
Able to tell the judge everything s/he needed to know	4.01	3.72	4.69	4.42	4.25	4.52	4.46	4.18	3.91
Did a good job representing yourself	4.29	4.12	4.74	4.64	4.50	3.63	4.65	4.02	3.65
Understood the words used	4.49	4.38	4.81	4.91	4.00	4.66	4.55	4.61	4.39
Can explain the outcome of the hearing	4.36	4.41	4.81	4.26	4.25	4.64	4.57	4.87	4.09
Outcome favorable	3.74	3.85	4.84	4.53	4.00	4.27	4.67	3.76	3.45
Judge's ruling fair	3.97	4.19	4.89	4.62	4.00	4.64	4.62	4.18	3.77
Satisfied with what happened today	3.81	3.92	4.89	4.48	2.00	4.18	4.61	4.08	3.68
Do you have more respect for the court system	3.73	3.49	4.80	4.09	4.00	4.38	4.33	3.79	3.62

The reader should again use caution in using and drawing conclusions from the above. The results may be affected by the following factors: that the

data is drawn from small numbers of surveys (courts were asked to obtain completed surveys from 50 program users, but smaller courts were not able to do so, viz Worcester County, MD which collected only four surveys); that the surveys may have been conducted of litigants coming from different sorts of hearings (for instance, the Maryland data came exclusively from family law matters while the Hennepin County data came from multiple case types; further, most Maryland courts focused their data gathering on cases before masters, which are likely to be simple and uncontested); that state laws impact the difficulty of proving a case (e.g., Maryland law requires proof that the parties have been separated for a period of one or two years, without cohabitation or intercourse, and corroboration of that proof; other states require no grounds for divorce; consequently one would anticipate more problems at the hearing for an uncontested divorce in Maryland than elsewhere); and that in a small court, one judge's practices might affect the score for the court as a whole (for instance, the Administrative Judge's practice in Harford to limit testimony in perfunctory matters may produce that court's relatively low score for a litigant's ability to tell the judge everything s/he feels the judge should know<sup>7</sup>).

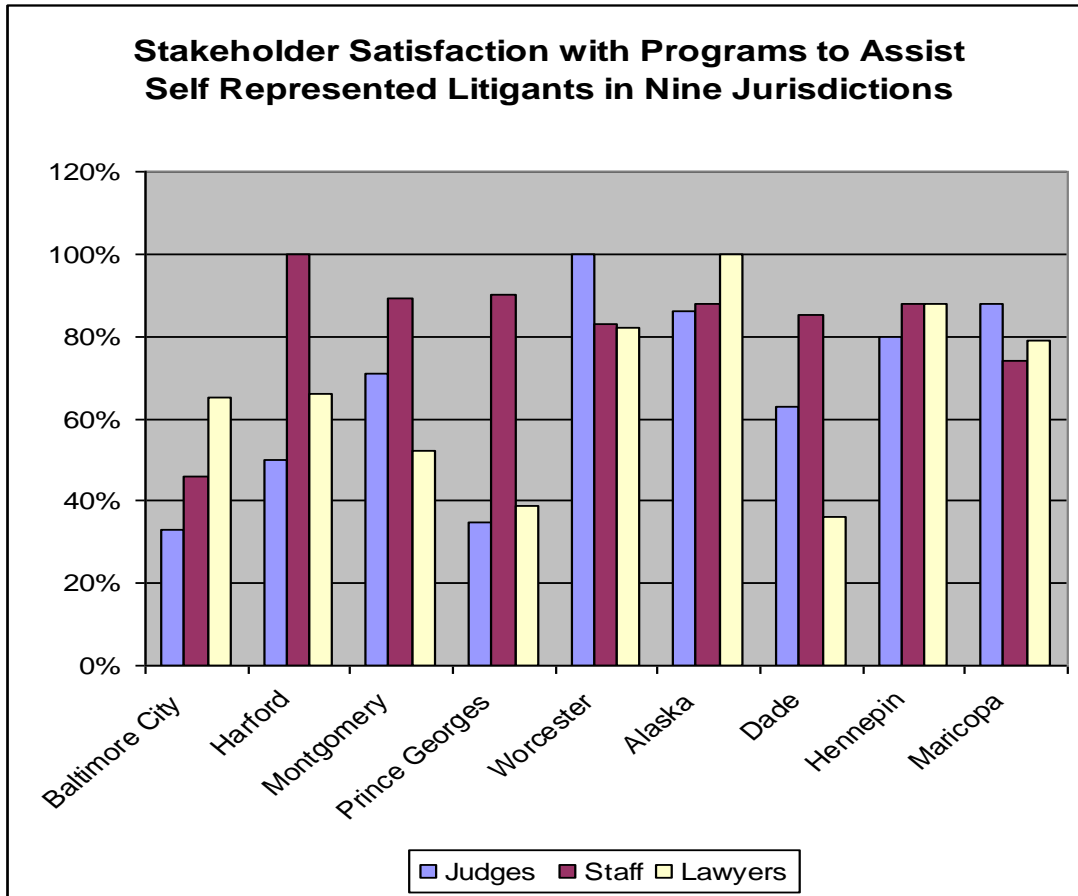
### **Stakeholder satisfaction**

Judges, court staff and lawyers were all asked the same question in surveys they were asked to complete – “How would you rate your overall satisfaction with the contributions of the program in terms of making your job easier?” There was surprising variation in those ratings from jurisdiction to jurisdiction. Only one third of the judges in Baltimore City and Prince Georges County were satisfied with their programs, and only half were satisfied in Harford County, while over eighty percent of judges in Dade County, Hennepin County, Maricopa County and Worcester County were satisfied. Court staff support the programs everywhere except for Baltimore City, where fewer than half the staff are satisfied. Lawyer satisfaction was highest in Alaska, Hennepin County, Maricopa County, and Worcester County (over 80%) and lowest in Prince Georges County and Dade County (lower than 40%).

The results are shown in the following chart.

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<sup>7</sup> On the other hand, we interviewed some judges in Harford County who had very negative views of self represented litigants, corroborating the lower ratings for that court. One of the judges so dislikes dealing with self represented litigants that he has decided not to seek a further term of office.



Having visited the programs themselves, the consultants and court volunteers have concluded that stakeholder satisfaction, in most instances, is unrelated to program quality.<sup>8</sup> It has more to do with a program’s outreach to stakeholders and with prevailing attitudes in the local community toward self represented litigants and the propriety of the court’s assisting them. Where judges and lawyers were unsatisfied, there was generally significant sentiment that self represented litigants can handle only the simplest of cases and that the court – by providing assistance to them – is misleading the public into thinking that they can handle more complex matters without legal representation. Where judges are satisfied, judges tended not to hold such negative views of self represented litigants.

The courts with lowest stakeholder satisfaction have not conducted significant outreach to their bench, bar or communities.

<sup>8</sup> The low rating by court staff in Baltimore City is explained by the lack of regular communication between the program to assist self represented litigants, which is operated by the local legal services program on contract with the court, and the staff of the clerk’s office.

## Validity of project data

The project used seven survey instruments to gather data for use by the consultant and volunteer in conducting the assessments of each court. The instruments are:

- an exit survey of persons leaving the court's program to assist self represented litigants to obtain their perceptions of the utility of the program's services;
- an in-court observation survey completed by court staff to assess the performance of self represented litigants in the courtroom;
- an in-court observation survey completed by the presiding judge to assess the performance of self represented litigants in the courtroom;
- an exit survey of self represented litigants leaving the courtroom following a merits hearing or trial to obtain their perceptions of the effectiveness of the program to assist self represented litigants and their perceptions of the courtroom experience; and
- surveys of judges, lawyers and court staff to obtain their overall impressions of self represented litigants and their satisfaction with their court's program to assist them.

All seven surveys were administered by court staff. The instructions asked each court to obtain fifty completed surveys for each of the seven survey instruments, except for judges and court staff. In those instances, surveys were to be given to all judges and staff who come in contact with self represented litigants. It also asked that the court obtain in-court and exit surveys from the same court events so that the data could be compared; we sought data that would allow us to correlate the performance of litigants in the courtroom with their use of the court's program to assist them. Most courts obtained roughly fifty completed forms for each survey; the data on numbers of surveys completed is set forth in the table below. Maricopa County, Arizona and Worcester County, Maryland were the exceptions. Worcester is such a small court that it could obtain only four courtroom exit surveys in the course of a month long data gathering period. Clearly the data is not valid when the number of surveys collected was that small. Maricopa started the data collection too late and ran out of time, with the site visit coming before the full set of surveys was completed.

The problem encountered in Worcester County suggests a limitation on the use of the TCRIC survey methodology in very small courts. Many small courts do not have 50 court cases involving self represented litigants in the Executive Program Assessment Final Report

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course of a year, let alone a month during which data is collected. In those courts, the court exit data may simply not be available. The revised data gathering instructions suggest that a court dispense with administration of this survey form if it is unlikely that it could collect 20 completed surveys over the period of time during which it is willing to gather data.

**Numbers of completed surveys by court**

<b>Court</b>	<b>Program Exit</b>	<b>In Court Staff</b>	<b>In Court Judge</b>	<b>Court Room Exit</b>	<b>Judges</b>	<b>Lawyers</b>	<b>Staff</b>
<b>Baltimore City, MD</b>	50	46	45	76	4	34	33
<b>Harford County, MD</b>	29	42	42	53	6	31	29
<b>Montgomery County, MD</b>	50	54	52	54	7	37	42
<b>Prince Georges County, MD</b>	113	61	51	68	30	51	30
<b>Worcester County, MD</b>	23	17	16	4	3	13	6
<b>Alaska</b>	48	49	49	29	39	17	51
<b>Dade County, FL</b>	46	51	22	69	17	12	22
<b>Hennepin County, MN</b>	61	74	70	70	30	41	57
<b>Maricopa County, AZ</b>	58	36	24	23	10	10	43

Greacen Associates was able to perform a simple test of the validity of the TCRIC data for the Maricopa County Superior Court. In the spring of 2004, six months before the TCRIC surveys were administered, Greacen Associates conducted a major study of the operations of the court's Family Court Department. As part of that study, it obtained the court's cooperation to administer satisfaction surveys at the close of every court proceeding for a four week period. The court instructed litigants and lawyers to complete survey forms before leaving the courtroom. Surveys were administered for proceedings before judges, before commissioners, before Conciliation Services mediators and assessors, before Expedited Services officers (who conduct hearings principally on child support matters), before judges pro tem who conduct ADR proceedings, and before attorneys and court staff who conduct differentiated case management meetings. Greacen Associates also conducted exit surveys of persons using the Self Service Center in each of the court's three facilities. Greacen Associates used the TCRIC program and court exit survey instruments as the starting point for these Maricopa County litigant surveys.

Consequently, it has been possible to compare the TCRIC results with results from an independent, more exhaustive study of the same topics in the same court conducted only six months apart. The comparisons are not exact.



The questions are in many instances not exactly the same. The scale used for the program exit data is different. TCRIC used a 4 point scale with 1 being highest; Greacen Associates used the same 5 point scale used for the courtroom exit survey with 5 being highest. The courtroom exit survey data is further complicated by lack of specificity of the source of the TCRIC data – from proceedings before judges or commissioners. The court staff estimate that seventy percent of the TCRIC surveys came from proceedings before commissioners (which are much more likely to be uncontested) and thirty percent from proceedings before judges (which are more likely to be contested). To create a comparable data set from the Greacen Associates study, Greacen Associates created a composite 70/30 weighting its data for commissioners and judges respectively. Finally, the Maricopa County data is drawn from a far smaller number of completed surveys than the data for most of the other courts. It is therefore likely that the data from other courts is more reliable than the Maricopa County data.

Nonetheless, the TCRIC results are extremely close to the Greacen Associates study results. The comparable questions and results for self represented litigants only are set forth below.

**Comparison of TCRIC data collected in Maricopa County with data from a one month study conducted by Greacen Associates**

**Program Exit Survey**

<b>TCRIC question</b>	<b>Greacen Associates question</b>	<b>TCRIC score (on a 4 point scale with 1 as high)</b>	<b>GA score(on 5 point scale with 5 as high)</b>
The staff treated me with respect	Did the court staff treat you with respect?	1.16	4.41
Overall, I am very satisfied, satisfied, unsatisfied, or very unsatisfied with the service I received today.	How satisfied were you with your experience today?	1.26	3.95
The staff seemed knowledgeable.	Did the court staff have the knowledge and skills needed?	1.24	4.10

## Courtroom Exit Survey

TCRIC question	Greacen Associates question	TCRIC score (on a 5point scale with 5 as high)	GA score(on 5 point scale with 5 as high)		
			Judges	Commis-sioners	Com-posite
Did the judge treat you with respect?	Did the presiding officer treat you with respect?	4.65	4.46	4.59	4.55
Did the court clerk and other courtroom staff treat you with respect?	Did the presiding officer's staff treat you with respect?	4.64	4.48	4.59	4.56
Did the judge care about your case?	Did the presiding officer care about your case?	4.09	4.10	4.11	4.11
Did the judge treat everyone in court fairly?	Did the presiding judge treat everyone the same way?	4.50	4.25	4.25	4.25
Did you feel you were able to tell the judge everything you thought he/she should know in order to make a decision?	Did you feel you were able to tell the presiding officer everything you thought he/she should know in order to make a decision?	3.91	3.84	4.02	3.97
Did you understand the words used by the judge and other persons in the courtroom?	Did you understand the words used by the Presiding Officer today?	4.39	4.30	4.41	4.38
Are you satisfied with what happened during your hearing today?	How satisfied were you with your court experience today?	3.68	3.83	3.93	3.90
Was the outcome of the case favorable to you?	Was the outcome of the case favorable to you?	3.45	3.63	4.06	3.93

A comparison of the TCRIC data with the Greacen Associates data (the composite score for the courtroom exit data) shows a high degree of consistency in the scores. When the Greacen Associates data is high, so is the TCRIC data, and vice versa. The two instances in which the scores appear to vary is for "Did the judge treat every one in court fairly?" – for which the questions themselves varied significantly<sup>9</sup> -- and "Was the outcome of the case favorable to you?" – for which there is no explanation other than the small number of surveys gathered for the TCRIC assessment.

Greacen Associates conducted tests of statistical correlation of the data from the two data sets – the data collected by Greacen Associates and the data collected for the TCRIC assessment. The correlation between the data is very high. The Pearson correlation for the program exit data is -.991, significant at the .01 level.<sup>10</sup> The significance of the program exit results is diminished by the fact that there are only three data points to compare. The Pearson correlation for the courtroom exit data is .935, also significant at the .01 level. The results demonstrate that the TCRIC data for Maricopa County was highly consistent with the more extensive, thorough data collected by Greacen Associates six months later.

All of the assessment teams found the data useful and reliable. When the assessed court's data deviated from that of other courts, they were invariably able to confirm the data by personal observation and interviews and to learn the reason for the deviation. Because the data was confirmed by direct observation and by the comparison with the Greacen Associates study in Maricopa County, it can be said to be substantiated by "convergent validity" – multiple observations leading to the same conclusion.

The data from all nine assessments suffered from the defect noted for Maricopa County – that there were no controls over the source of the court exit data. Were self represented litigants interviewed after they left contested or uncontested proceedings? What types of cases and hearings were involved? Were the proceedings before judges or before masters/commissioners? Hennepin County interviewed self represented litigants coming from landlord/tenant and small claims matters; all other courts limited their surveys to persons involved in family law matters. It is altogether likely that litigants will rate proceedings before masters/commissioners more highly than those before judges, because they are more likely to be uncontested. The Greacen Associates study in Maricopa County found that ratings following commissioner proceedings were, on average, .2 higher than ratings following judge proceedings, using the TCRIC five point rating scale.

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<sup>9</sup> Greacen Associates concluded that the TCRIC question, which was intended to measure perceptions of bias in the courtroom, was not artfully drafted.

<sup>10</sup> The correlation is negative because the scores in the two data sets are inverted, with one having the highest score as one and the other having the highest score as five.

The proposed revised court exit survey contains questions and instructions address this problem, calling on court staff to record whether proceedings were before judges or non-judicial officers and to record whether the proceedings were contested or uncontested. The instructions call for each court to collect roughly half of its surveys from contested and uncontested proceedings.

## **Generally Applicable Recommendations from the Nine Assessments**

The following are a generalized summary of the recommendations that are included in the nine assessment reports. The reader should recognize that no particular recommendation may apply to every jurisdiction assessed. However, the recommendations in general provide a good assessment of the strengths and weaknesses of court approaches to meeting the needs of self represented litigants throughout the United States today.

### ***Expand the scope of the court's efforts from a single program to the entire court***

The assessment process has disclosed a major flaw in most programs – that the court as a whole is not sufficiently involved in moving the cases of self represented litigants to a conclusion. The Harford County Pro Bono Committee published a report in 2004 on public assistance to the poor in Harford County entitled . . . *and Justice for All: Opening the Courthouse Door*. The title of this excellent report discloses the irony presented by most programs – the court uses its program to “open the courthouse door” but devotes little effort thereafter to ensuring that self represented litigants are able to navigate the corridors and courtrooms of the courthouse and exit with the relief to which they are entitled.

This broader focus needs to include:

- the provision of assistance not only in forms preparation, but also in preparation for hearings and trials and in obtaining satisfaction of court judgments
- the court's focus on contested as well as uncontested matters
- the treatment of self represented litigants in the clerk's office
- the treatment of self represented litigants in the courtroom, including judicial perception of the limitations on their role in eliciting information from self represented litigants

- effective case management of self represented litigant cases, including
  - proactive management of self represented litigant cases by court staff to identify cases that are not proceeding satisfactorily and to proactively schedule hearings for the purpose of moving them along
  - screening of self represented litigant case files by court staff prior to court hearings to identify flaws in filings prior to court hearings
  - court preparation of judgments and orders; it is unreasonable to expect unrepresented persons to be able to prepare acceptable documents for the court, and
  - provision of assistance to unrepresented litigants during post decree processes, such as collecting a judgment awarded.

One interesting implication of this approach is how the court thinks about its staffing decisions. If providing more services to self represented litigants saves time and effort for judges and other court staff, the court is justified in transferring staff from traditional clerk functions to the self represented litigant program. Rather than consider the litigant support program as a separate entity, the court should consider it as an integral part of the court operation.

Another recommendation to integrate the program more fully within the rest of the court's operations is to use written referrals from a judge or court clerk to the program, with the opportunity for the program to send back a response. The referral from the judge would be very short, like a doctor's prescription (but more legible) indicating to the program staff what the litigant needs and when. The referral from a court clerk would be the same. The response would allow the program to provide feedback to the judge or clerk about the referral; in the case of the clerk, to provide feedback to inform his or her future referral decisions; in the case of the judge, to explain why the program staff chose to respond differently than the judge suggested.

Many of these topics are treated separately in more detail below.

### ***Expand the scope of the court's efforts to include assistance with contested matters and with trial preparation***

A significant number of judges and lawyers with whom we spoke during the assessments take the view that self represented litigants are only capable of

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handling their own cases if the cases are simple and uncontested. They therefore believe that court programs should be limited to assisting persons in those circumstances; when a litigant shows that his or her case is not simple and uncontested, court assistance should be limited to direction to obtain legal counsel. Many court programs focus exclusively on the provision of forms and information for simple and uncontested matters – either because that is the area of largest need and therefore the first area addressed, or because of a philosophical position that this represents the appropriate boundary for court assistance.

Court programs must provide assistance for self represented litigants in more complex, contested cases. The rationale was well stated in the Maricopa County assessment report:

However appropriate that perspective [that persons with complex and contested cases should get a lawyer], it is clear that thousands upon thousands of citizens who proceed on their own do not respond by obtaining an attorney's services. If one cannot afford an attorney and does not qualify for Community Legal Services—which was true of 57% of respondents to the SSC exit survey—recognizing the value of legal assistance does not suddenly put money in one's pocket. Understanding the need or value is not sufficient to cause citizens not to self-represent.

The programs in Alaska and Hennepin County, Minnesota also demonstrate that courts can provide effective assistance in more complex matters, and that they can materially assist self represented litigants to present their cases effectively in court in contested matters. In Alaska, the assistance is provided in the form of legal information; in Minnesota it is often provided in the form of legal advice provided by attorneys not on the staff of the court.

### ***Expand the scope of the court's efforts to provide assistance to self represented litigants in post judgment matters***

The processes for collecting or enforcing a judgment are difficult for most lawyers. They are arcane and impossible for most self represented litigants. Few courts today focus on the enforcement phase of court cases. The Minneapolis court is the exception and can serve as an example for other courts.

It has been suggested that if courts would refer self represented litigants back to program staff at the conclusion of a hearing to go over the terms of the judge's order there would be many fewer court filings for orders to show cause for noncompliance with a previous court order or for modifications of such orders. No court, to our knowledge, has conscientiously attempted this approach and monitored the results in terms of reduction in the frequency of post judgment petitions.

***Triage cases and ensure the availability of appropriate levels of services for all litigants***

All self represented litigants are not the same and do not have the same needs. Sophisticated litigants and litigants with simple, uncontested cases can generally function effectively if they are given forms and information. Litigants with complex and contested matters need more information and assistance. Litigants who do not know what they want from the court need legal advice. Mentally ill, retarded, illiterate, non-English speaking persons (especially those from a different culture) and other handicapped persons need additional assistance, in the form of someone (not necessarily a lawyer) to help them through the court process. Community and religious organizations can usually be found in any jurisdiction to provide this additional level of help.

The court should ensure that all levels of service are available as needed to assist self represented litigants. The following graphic depicts a comprehensive model for the provision of services to self represented litigants within a state.

## Statewide Services

**State Judiciary full service website** (providing statutes, court rules, descriptions of legal processes, forms, instructions, fillable and interactive forms, and trial preparation guidance)

**Statewide telephonic self represented litigant assistance service** (800 number that provides legal information and forms completion assistance for all courts, with ability to transfer calls to statewide unbundled legal advice network or to local court assistance programs)

**Statewide unbundled legal advice network** (800 number with credit card billing that connects a caller to a lawyer willing to provide advice and brief services over the phone for a fixed fee)

## Local Court Services

**Court staffed assistance program** (providing telephone and limited in person legal information and forms)

**Mandatory workshops**

**Legal advice program** (provided by a combination of legal services, contract lawyers employed by the court, and private practitioners offering unbundled services)

**Supportive services for domestic violence victims and for other persons incapable of handling their own cases**



## ***Train judges how to deal effectively with self represented litigants in the courtroom***

State court judicial training programs should develop program segments on dealing with self represented litigants. They should become a standard part of the orientation for new judges and should be provided to all judges embarking on an assignment to the family division. The training needs to address the ethical issues that trouble judges in adopting the more engaged judicial role required to deal effectively with these cases. It should equip judges with specific techniques they can use in cases involving two unrepresented parties and in the more difficult situation in which one party is represented and the other is not.<sup>11</sup>

It would be helpful if the court of last resort or judicial council in each state would develop a policy statement or supplementary ethical statement covering these issues that judges would be able to rely upon as authoritative. It would also be helpful for judges to understand that most lawyers, particularly those who practice regularly in the family law area, do not object to the judge's proactive steps to obtain from self represented litigants the evidence the judge needs to render a just decision in the case. And they need to know the real problems lawyers perceive with unequal application of discovery rules to represented and unrepresented litigants. Lawyers in several different jurisdictions noted that their clients may be disadvantaged by legal representation if courts allow unrepresented parties to testify to facts (such as income and expenditures for child support calculations) without presenting written documentation when represented parties have produced, and are constrained in their testimony by, such documentation.

## ***Pay more attention to active management of cases involving self represented litigants***

Modern case management theory calls for the court to actively manage all cases – never leaving the pace with which the case will proceed in the hands of the parties. Unfortunately, many courts assessed do not apply that principle to cases involving self represented litigants. If the petitioner does not effect service,

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<sup>11</sup> For examples of such techniques, see Albrecht, Greacen, Hough and Zorza, *Judicial Techniques for Cases involving Self Represented Litigants*, The Judges' Journal Winter 2003 Volume 42 Number 1, at 16 (American Bar Association). See also Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 Georgetown Journal of Legal Ethics 423 (2004).

file for default, or move to set a case for hearing or trial, the court – after some period of time – will notice the case for dismissal for failure to prosecute. This process creates enormous distress for the litigants, who expected and were waiting for the court to take whatever steps were necessary. It also prolongs the case for the court.

Several courts assessed have active case management processes in place to screen all case files in these cases well prior to a court hearing to determine whether all papers are in order, providing an opportunity to contact the appropriate party to remedy any defect prior to the hearing. Montgomery County, Maryland's program is particularly effective, although it is conducted by court administrative staff unrelated to the Pro Se Program. In Miami, Minneapolis, and Prince Georges County, Maryland, case management functions reside with the same staff that assist the self represented litigants.

Other case management steps that courts need to implement are to proactively follow up with the petitioner if service is not completed within a set period, and to do the same after service if no response has been filed to assist with the preparation of a motion for default and the submission of a default judgment or decree.

***Create statewide definitions of legal information and legal advice, provide training in the application of those definitions, and have supervisors monitor staff performance and correct staff as needed to fully implement those definitions in practice.***

At least a dozen states have drafted and adopted definitions for judges, staff and the public, setting forth in understandable English the activities in which staff may engage and those that they are prohibited from performing. Attached as an appendix to this report is a short manual prepared for court staff by the California Judicial Council entitled "May I Help You?" Such guidance is essential to cause court staff to depart from deeply imbedded cultures that the provision of any information about how the court operates is the provision of "legal advice."

Three of the states in which assessments were performed already have such guidelines, in the form of court rules or court-approved training curricula. However, assessors in most courts found that court staff continue to refuse to answer questions and to provide information on the grounds that they "cannot give legal advice." Changing a deeply rooted culture requires continuing and concerted effort from court managers. Training is needed, but is not sufficient. Court supervisors need to pay close attention to the performance of court staff as they interact with court users to insist that they apply the appropriate standard. Court must also ensure that staff have the knowledge needed to answer litigant questions correctly.

## ***Adopt a more sophisticated forms process***

Every program assessed provides forms and instructions. Many of them have been developed, appropriately, at the state level; there is no justification for every court's devoting the energy needed to create good forms. Most judiciary web pages contain a set of forms for family law cases and instructions for using them. However, those forms in almost every case need to be revised to become truly user friendly. The following areas need attention:

### **Use of document assembly software**

A number of courts provide "fillable" PDF forms; this means that a user can access the form on the Internet, complete it on line, and print out the completed form for filing at the courthouse. However, the current state of the art is the creation of documents based on a "dialog" with the creator. The litigant answers a set of questions and the software enters the information in the appropriate place in the appropriate form, presenting the user with a completed form for review, approval, printing and filing (or filing electronically without the step of printing). This approach is used in the Maricopa County "E-Court" application.

### **Review and revise state forms to include specific warnings about loss of specific important legal rights, e.g., alimony, pensions, monetary awards, and the division of marital property**

Judges and lawyers are concerned that significant numbers of self-represented litigants are forfeiting important legal rights. We recommend changes to state forms and instructions to highlight the following areas:

- Forfeiture of rights to share spousal pensions, to obtain alimony, or to obtain a monetary award if not asserted in the complaint or answer
- Notice of tax consequences of the allocation of marital property
- The consequences of divorce proceedings for alimony and home ownership

These warnings should be included in the divorce forms, the instructions accompanying the forms, the summons, and the notice of default, stated in

understandable English, notifying both plaintiffs and defendants of the potential legal consequences of divorce proceedings.

### **Review forms, instructions and checklists for readability and effectiveness**

Even though judges and court staff have gone to great lengths to write their forms in plain and simple English, they have usually failed. The Maricopa assessment summarized the issue as follows:

Among these [self represented litigants], almost none has legal training or exposure. They do not see the world as lawyers see it and do not understand terms or phrases that lawyers come to believe are commonplace and simple. It therefore is essential if a court wishes to proceed appropriately through the system, that those working on enhancing a court's interactions with the [self represented litigants] think like [self represented litigants] and not like lawyers. The evaluators' experience with e-Court and intelligent, schooled people's reactions to the instructions suggest that the Court's authors are thinking too much like attorneys and not enough like lay people. Either the authors have to make a conscious effort to think like the proverbial "Martian" or they have to talk directly to users about what they understand and how to make it more understandable.<sup>12</sup> Some courts also use linguists to help them simplify wording while retaining meaning.

This review should reconsider how forms are aggregated into packets. Most court information packets cover an entire process. We encountered many complaints that litigants "don't read the information we give them." That suggests that the current packets are not optimally organized. Self represented litigants have short attention spans; they do not read or absorb more information than is needed to complete the next step of a process. Consequently, the state should create standard segmented instruction sheets that cover a single stage of the proceedings. Segmented sheets can be distributed to litigants needing information on that process stage (e.g., service of process; obtaining a default order; providing testimony for an uncontested divorce; providing testimony on a contested custody or visitation issue). The segmented sheets can be aggregated for litigants who want a comprehensive overview of the whole process.

### **Translate instructions into other languages**

Information must be available in the languages in significant use in every state. The United States has experienced a great influx of immigrants from all parts of the world over the last ten years. Unlike earlier immigration waves which

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<sup>12</sup> Another, although not sufficient, tool is the "readability" function in the "tools" area of Word.  
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landed on the coasts and only gradually made their way inland, the new wave has migrated directly to cities and towns throughout the nation. Courts must ensure that these new residents and citizens have access to courts and to court information in the language in which they conduct their daily lives and perform their thinking. The responsibility for translating forms and materials should rest with the state, not with each court individually.

California has encountered a problem with forms translated into foreign languages. Some litigants are completing (often using the foreign language) and filing those foreign language forms. Other states may want to concentrate on translating instructions into commonly used foreign languages and on providing detailed instructions in those languages for completing the English forms, but not making the forms themselves available in any form other than English.

### **Use a forms advisory committee to identify the need for additional forms**

Assessment teams in each jurisdiction were told of the need for additional forms dealing with additional types of cases. Courts have appropriately focused initially on family law forms. As resources are available they should expand the scope of forms and instructions to other subject matter areas, guided by a representative forms advisory committee.

### **Create an electronic forms environment**

We encountered considerable confusion about forms – what forms exist, what version of a form is current, whether the courts must use the most current versions, etc. We also observed that almost without exception, litigants are generally given preprinted paper copies of forms for completion. It is clear that most courts are still operating in a paper forms environment.

The state judicial branch needs to create an electronic forms environment – in which the “official form” is whatever currently exists on the state web site. Each court should have public access computers from which litigants can access, complete and print their own forms on line. If persons insist on a paper copy of a form it can be printed by staff from the state web site. Inventories of preprinted forms can be drastically reduced.

There are a variety of reasons for the state court systems to invest the effort to move from their current paper environment to an electronic one:

- Judges, masters and court staff much prefer typed to handwritten court filings. This is one of the major objections judges have to the increased presence of self represented litigants in their courtrooms –

they have to struggle to read the pleadings. Having litigants complete forms electronically would produce typed documents.

- There will be no further confusion about what is the most current form.
- Staff will become familiar with the state court website and will be better able to advise litigants in its use – moving large numbers of inquirers from the courthouse to the Internet for information and forms.
- Sooner rather than later all courts will want to convert from paper to electronic court records. That begins with the filing of documents in electronic form. Having litigants and lawyers become familiar with the creation of forms electronically will position the courts for this future transition.

### ***Reduce the reliance on “in person” services and increase the use of telephone, Internet and other delivery modes***

One-on-one, in person services, provided in the courthouse, are the most time consuming for court staff and the least convenient for court users. The programs assessed included many examples of more effective and efficient service delivery mechanisms.

#### **Websites**

Many states and courts now have extensive, widely used websites. Alaska has demonstrated how to combine telephone and website use – having the staff person “walk” the litigant through the website to find what s/he is looking for. Alaska’s website has particularly creative and effective tools to guide litigants in thinking through their cases and preparing them for presentation in court. There are significant opportunities for courts to collaborate with the Legal Services Corporation funded access to justice website network, accessible through [www.lawhelp.org](http://www.lawhelp.org), although not all websites are on that platform.

#### **Telephonic services**

Alaska and Harford and Prince Georges Counties in Maryland make extensive use of the telephone to answer litigant questions. Alaska found that telephonic service delivery is superior to in person service in these regards:

- many parties seem to prefer telephonic to in person interaction because of the increased privacy and interpersonal distance it provides;
- staff can more easily limit the length of an interaction on the phone than when the customer is physically present in the staff person's office;
- far fewer persons who are incapable of representing themselves (because of mental illness or mental incapacity) seek assistance by telephone than appear seeking one-on-one in person services in the courthouse.

## **Workshops**

Alaska, Hennepin County, Minnesota, and Prince Georges County, Maryland all provide workshops as a way of presenting a lot of information to a large group of people simultaneously.

Workshops often include having litigants complete forms following instructions provided orally. This incorporates a form of personal assistance with a form of information delivery to a group. It is similar to the technique used in Harford County, Maryland of having self help staff serve multiple litigants simultaneously at the long public counter at the civil division of the clerk's office.<sup>13</sup>

## **Other innovative approaches**

There will undoubtedly be additional innovative ways developed for presenting needed information. Alaska is recording audio instructions that can be played in conjunction with the use of a form on the website. Hennepin County uses videotapes to explain forms and court procedures. Internet delivered "remote learning" programs may include techniques that can be adapted for these programs.

### ***Mandate attendance at workshops and use of programs to assist self represented litigants; develop videotape and on-line workshops that satisfy the workshop attendance requirement***

The Eleventh Judicial District in Miami/Dade County is the only court assessed that requires self represented litigants to use the services of the court's program. The court requires a program stamp on a self represented litigant's document before it will accept the document for filing.

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<sup>13</sup> The Butte County Superior Court in California (not a court included within our assessments) provides workshops in multiple court facilities simultaneously through the court's video conferencing equipment.

The Anchorage court in Alaska mandates attendance at educational workshops by all self represented litigants with cases involving contested divorce and child custody issues.

Each court should consider making attendance at an orientation a requirement for self representation in some types of family law matters, just as the courts are mandating attendance at approved parenting classes. While attendance might be waived for parties with uncontested cases, and certainly could not be required of defendants not choosing to file an answer, all parties could benefit from a basic understanding of the legal rights resolved during divorce proceedings and the basic court procedures involved.

The judicial branch should develop a statewide orientation videotape and online presentation prior to the effective date of such a requirement. These orientations should be available at the courthouse at no cost to the litigants.

While imposition of such a requirement would serve as a barrier to access to divorce, it can be argued that the litigant's right of access to the courts should be balanced with his or her interest in not inadvertently forfeiting important legal rights associated not only with property interests but also with interests in a parent's future relationship with his or her children.

***Enact ABA Model Rule 1.2 to allow limited scope representation to encourage attorneys to provide limited legal services to litigants***

The Supreme Courts in most of the jurisdictions assessed have not yet adopted ABA Model Rule 1.2. The rule explicitly authorizes limited scope representation, which should expand the availability of legal services to persons now representing themselves. Litigants would be able to obtain some advice and drafting services from a lawyer without retaining her or him to handle the entire case.

The issue that appears to block approval is whether judges should be required to allow lawyers to withdraw from representation after they have entered a limited appearance in court, based upon an agreement between the litigant and the lawyer to limit the lawyer's representational obligation to a particular hearing or trial. The advantages to litigants from being able to obtain affordable limited legal representation outweigh the risks of abuse of such arrangements by unscrupulous lawyers in the future.



## ***Enact ABA Model Rule 6.5 that allows pro bono attorneys working in courthouse programs to dispense with conflicts checks***

ABA Model Rule 6.5 would authorize pro bono attorneys providing legal advice in courthouse programs to do so without checking for conflicts of interest with other personal or firm clients. The rule does not allow an attorney to provide legal services to a person if s/he actually knows of such a conflict, however. The rule also would not allow an ongoing legal advice program operating in a court to provide advice to both parties in the same case. Courts need to give careful thought to the structuring of legal advice programs that they establish to ensure that they do not limit their services only to the party who first approaches them. In Worcester County, Maryland, the problem is solved by contracting with two attorneys who provide services on alternate Mondays; when one advises the plaintiff in a case, the other can advise the defendant the following week. In Prince Georges County, Maryland, the county Law Foundation provides legal advice through a contract with the court. It conducts a conflict check for all persons seeking assistance. When a conflict is found, the case is referred to a pro bono attorney who comes to the court for this purpose.

## ***Increase program outreach***

Most programs need to communicate better with the judges, masters or commissioners, court staff, and the local organized bar to convey clearly the program's goals, procedures, and materials, to receive feedback from these key stakeholders, and to increase the program's integration into the day to day workings of the court. Programs also need to provide information about their services to social service agencies, religious and community groups, and local libraries to help the programs reach citizens and residents needing their services.

## **Conclusions concerning the assessment process itself**

The project has produced the following conclusions and recommendations respecting the assessment process, tool, and survey instruments.

### ***Key components of the process***

Based on the project's experience, we conclude that the following are required for a successful assessment:

## **A professional consultant**

The failure of both of the “self assessment” sites, and the testimony of the other nine courts that they would not have gotten as much out of the assessment without the outside consultant’s involvement, shows that the “self assessment” option appears unrealistic.

## **A knowledgeable self help program staff member from another court as part of the assessment team**

Involving a knowledgeable person from another court’s program proved valuable both to the assessment process and to the staff member and participating court who volunteered the staff member.

## **Data analysis support**

The Fourth Judicial District Court in Minneapolis played a crucial role in the process. Future use of the assessment process will have to include the survey printing and data recording and analysis processes conducted by the Hennepin County court. Courts cannot be expected to perform data analysis on their own. While the Hennepin County court performed exceptionally well, the future success of the assessment program does not hinge on that court’s willingness of continue to provide such support. Other consulting organizations have the capability to create and automatically score survey instruments.

## **Willing and cooperative assessment sites**

The pilot courts themselves contributed significant resources to the assessment process. Without their cooperation, the process would not have been successful. It should be noted that the assessment process is therefore suited only for voluntary assessment efforts and cannot be imposed upon an unwilling or disinterested court.

## ***The assessment tool***

The tool’s intended focus on court programs to assist self represented litigants is too narrow; it has been redrafted to focus on the effectiveness of the court as a whole in dealing with self represented litigants. One of the major conclusions of this project is that existing court programs focus on giving self represented litigants access to the courthouse but do not help them sufficiently to

get their case through the court process to a final judgment or decree, or to ultimate enforcement of a judgment or decree awarded.

This focus will require addition of the following topics to the tool:

- the provision of assistance not only in forms preparation, but also in preparation for hearings and trials and in obtaining satisfaction of court judgments
- the court's focus on contested as well as uncontested matters
- the treatment of self represented litigants in the clerk's office
- the treatment of self represented litigants in the courtroom, including judicial perception of the limitations on their role in eliciting information from self represented litigants
- case management of self represented litigant cases, including
  - proactive management of self represented litigant case files by court staff to identify cases that are not proceeding satisfactorily and to proactively schedule hearings for the purpose of moving them along
  - screening of self represented litigant case files by court staff prior to court hearings to identify flaws in filings prior to court hearings
  - court preparation of judgments and orders; it is unreasonable to expect unrepresented persons to be able to prepare acceptable documents for the court
  - provision of assistance to unrepresented litigants during post decree processes, such as collecting a judgment awarded.

The assessments also demonstrated that the tool needs a greater focus on the roles of court staff and contractors – ensuring compliance with prevailing standards of the appropriate ethical limitations on the role of court staff in providing assistance to one side of a controversy.

The tool's treatment of court and program background information, program goals, client groups, and stakeholders are sound, with the exception that the goals discussion should include the court's goals for dealing with self represented litigants, not just the goals of the self represented litigant assistance program.

The emerging practices section is not necessarily a list of “best practices” but served as a helpful checklist of topics for the assessment team to consider. The list has been brought up to date in the revised version of the tool and relabeled “Alternative Program Approaches.” It will be necessary to keep this aspect of the tool up to date. The tool asks users to provide input to John Greacen of Greacen Associates who has agreed to update the tool on behalf of TCRIC for the immediate future.

The management considerations contained in the assessment tool were invariably useful in commenting on the structure and coherence of the court’s program.

A proposed revised Executive Program Assessment Tool is attached to this report. It has not yet been reviewed by the full membership of TCRIC.

### ***The survey instruments***

The project has disclosed a number of problems with the survey instruments.

- All survey scales should be the same – preferably a five point scale with 5 being the best score. The TCRIC instruments were designed with the principal objective of matching the terminology and scales used by the research firm hired to conduct California’s formal evaluation of its five pilot programs. However, it was clear from the confusion caused to users of the survey results that internal consistency of the TCRIC instruments is more important than external consistency of the TCRIC instruments with the survey tools used by the California researchers.
- The program exit survey should be maintained although a standard five point scale should be used for satisfaction ratings of various services provided.
- The in court observations should be eliminated. The value of the information collected does not appear to justify the cost of collecting it. The surveys did disclose three interesting phenomena, but these phenomena were consistent from court to court and need not be re-established for new courts being assessed through this process.
  - o There was a consistent contradiction between the judges’ individual ratings of litigant performance in the courtroom through the judge’s in court survey and their stereotypical assessment of litigant competence in their responses to the

judge's survey. Judges invariably rated litigant performance much higher through the one-by-one ratings of the in court observation survey than they did in their generalizations in the judge's survey.

- Judges and court staff generally reported quite disparate characterization of the outcomes of the same hearings in the judge and staff in court observation surveys. The types of differences relatively consistent from court to court, with judges and staff generally providing very different assessments of which party prevailed, how many cases were continued, and whether the judge entered an order – even though the observations occurred in the same cases. This is a curious result. Even if the observers were in some cases court interns rather than seasoned court staff, one would not expect that they would consistently mischaracterize such basic information. This phenomenon may warrant further research. If courtroom observers consistently mischaracterize the outcomes of court cases, that may suggest an important area of inquiry for attempts to improve public understanding of the workings of courts.
- The Hennepin County staff were able to link the results of the two in court observation surveys with the results of the court exit surveys to relate litigant performance with use or non use of the court's programs to assist self represented litigants. However, there was no evidence that self represented litigants who used court programs were better prepared or performed better in the courtroom than those who did not use them. This is a disappointing finding. However, the explanation lies in the fact that few court programs provide significant trial preparation information or assistance for litigants.
- The stakeholder surveys should be retained, although the information obtained should be converted to a more easily interpreted five point scale. All of the consultants and volunteers found the responses to the open ended questions on these surveys to be quite helpful.
- The court exit surveys should be retained, but the way in which they are administered should be more tightly prescribed, as discussed above.

Data that most courts found most surprising was the large percentage of unrepresented litigants who did not avail themselves of the court's self represented litigant program services. Even in Miami where use of the program

is mandated by the court, only 83% of self represented litigants leaving the courtroom reported using the program. Courts were also surprised at the preponderance of plaintiffs/petitioners over defendants/respondents who use those services. While some such differential is inevitable in case types in which there are large numbers of defaults, courts can take steps to ensure that their services are more fairly available to parties on both sides of cases in which both parties are unrepresented.

Proposed revised survey forms for the five remaining questionnaires – the program and court exit surveys and the judge, staff and lawyer surveys – are attached, together with a revised set of instructions for administering them.

### ***Recommendations for the future of the assessment process***

This project has validated the general “quick and clean” assessment approach, as well as the importance, value, and impact of self represented litigant assistance programs. At the same time it has given us better information than ever before about some areas in which additional work must be done before the full benefits of the approach can be realized. This section offers some options for how to take advantage of the ground that has been gained, while also addressing the newly highlighted areas of unmet need.

#### **Continuing and enhancing the assessment process**

The general validation of the assessment methodology and positive response of the courts assessed to the reports and their recommendations suggest the value of an attempt to enlist other courts in the process. While this assessment of the process has concluded that self-assessment is not realistic, the relatively low cost of the consultant-staffed methodology should make it highly appealing to programs and states.

Confirmation of the changes to the tool and survey instruments by the Trial Court Research and Information Consortium TCRIC needs to meet or use email to discuss and confirm the proposed changes to its Executive Program Assessment. The three sponsoring organizations – Greacen Associates, Justice Management Institute, and the National Center for State Courts – should take responsibility for that process.

Outreach and promotion Following TCRIC approval of the revised instruments, the sponsoring organizations might undertake a systematic outreach campaign to encourage use of the assessment process and tools. Components of such a campaign might include:

- Articles in judicial administration and court management journals

- Presentations at NACM annual and midyear meetings and inclusion in COSCA and CCJ programs
- Discussion at the March 2005 Self Represented Litigants Summit
- Use of [www.selfhelpsupport.org](http://www.selfhelpsupport.org), its mailing list, and the American Judicature Society pro se-admin list serve.

An assessment resources register Potential additional users of the assessment process would be helped by a list of consultants with experience in using the tools and engaging the process, together with a list of courts in which they have already worked as references. The process also requires technical support for producing scannable survey forms, automated scanning of the completed survey instruments, and production of data reports. Hennepin County (if it is willing to continue to provide its services in this fashion) and any other courts or organizations with this capability should be included in the same resources list. The resources list could be appended to the benchmarking data on the National Center for State Courts website.

Future follow up on the impact of the assessments It might be worthwhile for the State Justice Institute to sponsor or undertake a survey of the nine jurisdictions assessed to determine the long term impact of the assessments on those courts and their programs. The survey could be conducted by phone of the presiding judges, court administrators, and program directors. The survey should not be conducted by anyone involved in conducting the assessments. Likely areas of impact include expansions of program scope, changes in outreach, modification of materials and protocols, improvements in active case management of cases involving self represented litigants, and use of the assessment results to maintain or increase program resources.

### **Following up on new questions raised by the assessment results**

Issues raised by the courtroom observations The courtroom observations produced two anomalies – 1) the inconsistency between judge perceptions of the performance of individual self represented litigants and their stereotypical description of self represented litigants as a group, and 2) the inconsistency between the judges' reporting of the outcomes of the hearings and the court staff observer's reporting of the outcomes of the same events. The latter raises the more interesting and intriguing questions. If knowledgeable court staff do not correctly perceive who prevailed and whether an order was entered, how is it possible to expect self represented litigants to do so. It is troubling that there should be a wide gap between the judge's actions and court staff's perception of the meaning of them.

This in turn suggests further studies of judge-litigant interactions in the courtroom, ascertaining what judges are intending by their behaviors and how

litigants are interpreting those behaviors. For instance, what is the judge's purpose in asking a particular question? What do litigants perceive the purpose behind the question to be? What techniques are effective in communicating with litigants and which are not? For instance, is it effective for a judge to ask whether a litigant understands what s/he has just said? Or is it necessary for the judge to further test the litigant's actual understanding of the content and meaning of what has been said?

This might include approaches such as the following:

- Video recording of judges and parties during court proceedings, with intensive follow up interviews with the participants to analyze intent, behavior and perceptions
- Development of judicial training materials based on the generalizations and examples from such a research process

Better integration of self represented litigant issues into standard case management training There should be systematic follow up to this project's insights into the need to integrate the needs and realities of self represented litigants into court case management processes. This might include inclusion of additional components in the Institute for Court Management and National Judicial College case management offerings. One of the assessment consultants is the regular presenter of the ICM case management course; he should have no difficulty integrating the project's learnings into that curriculum. Other project participants could convey the same message to the National Judicial College and to the National Association of State Judicial Educators for inclusion in state judicial and administrative training materials.

An article in the NACM *Court Manager* on this topic could also have considerable impact.

Understanding how to improve self represented litigant performance in the courtroom The assessment process has identified the significance for many judges of their problems in obtaining relevant and probative testimony and evidence from litigants in contested matters. While there is no logical connection between the two, this frustration leads them to oppose programs to assist self represented litigants in their courts. On the other hand, it is clear that most programs do not devote significant resources to assisting litigants prepare for hearings and trials. The court observation data shows that persons who use court programs do not perform better in the courtroom than those who do not.

Yet the assessment process included two jurisdictions – Alaska and Hennepin County – that have invested significant resources in preparing litigants for trials and hearings. Further studies might focus on:



- Intensive study of the effectiveness of those two programs in preparing self represented litigants for court appearances. What are their techniques? Are they effective? What could other courts learn from their experience?
- The development of a court laboratory, linked to a self help center, in which different preparation assistance techniques and different changes in court procedure and process could be tested and evaluated

Lack of use of court programs to assist self represented litigants As noted previously, most courts were surprised to learn that many self represented litigants made no use of the program services provided for them. The reason or reasons for this relative lack of use of programs is not yet known. Possible theories include staff overload and consequent lack of access to the program, lack of outreach to inform litigants of the availability of the program, and lack of user interest in the program for the same reason that they do not retain lawyers – they do not perceive their case to be difficult enough to require help. Studies of this phenomenon might include:

- Interview based research similar to the TCRIC courtroom exit surveys into reasons for non-use of programs, including knowledge of the existence of the program, reputation of the program’s availability, perceived need for assistance, and open ended questions about what program services would have been helpful. These surveys can be conducted by courts today. .
- Promotion of mandatory program use requirements, accompanied by before and after courtroom exit surveys.
- Better physical location of programs to assist self represented litigants on the first floor of courthouses immediately adjacent to clerk filing counters. California is currently incorporating such design principles in a revised statewide facilities planning guide.

## **Use of the project data for benchmarking**

As noted in the presentation of the data for the nine jurisdictions involved in this project, there are numerous caveats that should be presented when this comparative court data is presented.

Because of these caveats, the consultants and court volunteers involved in the project decided to present the benchmarking data without identifying particular courts. The results for the questions on the various surveys found most salient during the assessment process will be presented in two forms:

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- the average value for all surveys obtained for all nine jurisdictions, and
- the range of values (the highest and lowest scores) for the nine different jurisdictions.

The data for Hennepin County has been recomputed to include only the data for family law cases. As a result, the data presented in the benchmarking appendix differs somewhat from the data presented in the body of the report.

The benchmarking data will be presented for use in assessing the performance of courts and programs only in the area of family law matters.

The benchmarking data that will be provided to the National Center for State Courts for posting on its website is included in a separate appendix. This statement has not yet been approved by the full membership of TCRIC.

## **Appendices**

***Final Assessment Reports for Nine Jurisdictions***

***Revised Executive Program Assessment Tool***

***Revised Survey Instruments***

***Revised Guidelines for Data Gathering for TCRIC Executive Assessment Tool for Programs to Assist Self-Represented Litigants***

***Data for Benchmarking the Performance of Courts and Court Programs to Assist Self Represented Litigants In Family Law Matters***

***“May I Help You?” Legal Advice v. Legal Information: A Resource Guide for Court Clerks, Judicial Council of California (2003)***