



### Trends in Self-Represented Litigation Innovation

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**Future Trends Statement:** Courts are responding to the increasing demands placed on them by self-represented litigants with an ever widening variety of services and innovations. These services are now more grounded in a detailed understanding of the demographics and needs of the self-represented. It is becoming clear that these changes benefit judges, court staff, attorneys, and both represented and self-represented litigants and improve public trust and confidence in the courts.

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#### **What Is the Emerging Perception of the Significance of the Issue of Self-Represented Litigation?**

Court leaders from throughout the country are coming to recognize that self-represented litigants are a large and important part of the customer base for the courts. Further, they have come to see that innovations in practices, procedures, and programs can demonstrably improve both the functioning and reputations of their courts, and that attention to self-represented litigation issues serves the interests of all court users, judges, and staff.

## **What Services for the Self-Represented Are Becoming Standard?**

The recently published [\*Directory of Court-Based Self Help Programs\*](#) found over 130 programs throughout the country. There is a huge variety of services. Many centers and states routinely provide broad ranges of information resources, and many now provide training for judges in how best to facilitate access for the self-represented. Some courts, such as Utah and Idaho, provide or are planning to provide electronic document-assembly services, while others provide clinics and individual informational services. The broad spread of these services has been greatly facilitated by guidelines, protocols, and codes of ethics governing the appropriate role of court staff in providing informational assistance.<sup>[1]</sup> The central point of these often-detailed documents is to maintain neutrality and the appearance of neutrality. All the customer surveys of the users of these services show overwhelming levels of satisfaction. Surveys of court personnel support the theory that these services also improve court efficiency and operations.<sup>[2]</sup>

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## **Is the Judicial View of the Self-Represented Changing?**

In parallel with court-based innovations that help people prepare for their appearances have been equally dramatic changes in the way judges think about the way they handle such cases. Led by reports from the American Judicature Society, the Conference of Chief Justices/Conference of State Court Administrators Joint Resolution of 2002,<sup>[3]</sup> and, more recently, activity in the American Bar Association's Joint Commission on Evaluation of the Model Code of Judicial Conduct, and reflected in significant academic writing and a growing number of state and national training programs, a very significant change in judicial attitudes is taking place.<sup>[4]</sup>

For decades, judges have felt inhibited from conducting their courtrooms in ways that increased access for those without lawyers for fear that any modification of the traditional aloof and disengaged style of judging would be viewed as nonneutral. Now, however, many judges are finding that there are nonprejudicial techniques for eliciting evidence that increase access to justice and facilitate just results, while maintaining both neutrality and the appearance of neutrality. While the detail of these techniques is beyond the scope of this article, it should be noted that they rely heavily on transparency (explaining what the judge is doing and why), on early engagement (explaining what will be done early in a hearing, rather than at the moment at which an action might appear to be result oriented), and on repeated public explanations regarding the goal of access.<sup>[5]</sup> It is anticipated that as the judicial conversation and judicial experimentation on these issues increases, that the pace of improvement will increase. As of this writing, the ABA Joint Commission on Evaluation of the Model Code of Judicial Conduct has proposed the addition of specific language to the comment to the rule governing judicial neutrality.<sup>[6]</sup> If this change is approved by the House of Delegates, it is expected to have a significant impact upon practice.

## **What Is the Impact on Court Operations Overall and on the Management View of Courts?**

It is increasingly understood that the way a court manages its self-represented litigation cases has a broad and major impact on every aspect of its operations. Frustrated litigants place heavy time and emotional demands on clerks and others who deal with the public. Judges and attorneys are similarly frustrated when calendars become clogged by unprepared litigants without appropriately completed paperwork.

More and more courts are therefore adapting the now well established and broadly accepted principles of case management to self-represented litigant cases. They recognize that ultimately it is the court, rather than counsel of the parties, who must take leadership in moving the caseload, they develop criteria and timelines for intervention, they focus attention on those cases most in need of resources, and they provide services in support of overcoming litigant blocks. Some states such as California now include attention to such self-represented litigation issues in their overall case management training. Some courts, such as Hennepin County, Minnesota, now place the director of self-help programs on the court's management team, recognizing that almost any significant decision is impacted by, and will have an impact on the self represented.

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### **Is There an Emerging National Response?**

To assist courts in meeting this challenge, the National Center and a wide variety of partners have jointly established the National Self-Represented Litigation Network to promote and share best practices and innovation. The idea for the Network arose from the SJI-funded 2005 National Summit on Self-Represented Litigation, which brought together key stakeholders to identify such best practices and develop a broad agenda for future innovation.[\[7\]](#)

Launched in spring of 2006, the Self-Represented Litigation Network is hosted at the National Center for State Courts and operates under a Memorandum of Understanding that provides both flexibility and continuity. The Network currently receives support from the state court administrative offices of California and Maryland, the National Center, and the State Justice Institute. Additional members range from the Conference of State Court Administrators to the National Association for Court Management, and from the National Association of IOLTA Programs to the Harvard Law School Project on Access to Civil Justice.

The [Network](#) currently operates through ten working groups:

- Information and Outreach
- Research and Evaluation
- Funding
- Overall System Change
- Problem Assessment
- Best Practices in Self-Help Services
- Best Practices in Courtroom Services
- Best Practices in Judicial Education
- Best Practices in Discrete Task Representation (Unbundling)
- Best Practices in Forms, Document Assembly, and Electronic Filing

Each group is developing resources that will be shared through regional conferences on self-represented litigants, as well as the Web site. Almost 100 individuals are involved in one or more of these groups. Participation is welcomed. Those interested in joining the process should contact the coordinator, [Richard Zorza](#).

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## **What Is the Key Information-Sharing Resource?**

The National Center for State Courts, working with Pro Bono Net and a broad informal network of groups now operating with SRLN, launched [www.selfhelpsupport.org](http://www.selfhelpsupport.org), which now has over 1,700 members and includes over 1,200 individual online resources. This Web site, which also receives funding from the State Justice Institute, includes online webcasts of workshops, sample materials from self-help programs, training materials, sample job descriptions, guidelines for clerks, electronic document-assembly programs for self-represented litigants, research and evaluation reports, and other materials that allow courts to quickly establish or enhance services.

## **What Are the Early Products of the Network?**

The Network has recently published a *Directory of Court-Based Self Help Programs* with over 130 programs throughout the country. The directory documents a huge variety of services and methods of creating and funding programs. Contact information is available to allow for referrals and to facilitate the sharing of ideas. The Network also operates a mentoring project open to those involved in starting or improving services to the self-represented.

The Network has also published a manual on how to start a self-help center that uses volunteers and technology to help provide services. Focusing on technology-supported centers, it provides practical, step-by-step ways for courts to work with legal services, libraries, and other community partners to expand resources for the self-represented.

## **What Are the Important Judicial Education Tools Being Developed?**

The working group on Judicial Education is working with the California AOC on developing a bench guide for judicial officers on effectively handling cases with self-represented litigants.

This planned bench guide builds on the experience of judges who have found that there are nonprejudicial techniques for eliciting evidence from all that increase access to justice, and facilitate just results, while maintaining both neutrality and the appearance of neutrality. Techniques include providing a general explanation of how the case will be heard and taking an active role in asking questions of the litigants.

Planning is underway for a national conference on judicial education and self-represented litigation. The goal is to produce a model curriculum for use in educational programs for new judges.

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## **What Are the Important Research Developments and Planned Tools?**

The Network is focusing on, and the State Justice Institute is supporting, two major research/toolkit projects in 2006-07. The first will build a comprehensive set of self-evaluation tools for courts to assess their services and access-to-justice capacity for the self-represented. These tools will include surveys, focus-group tools, and a self-assessment instrument. The second will review videos of hearings to begin the process of developing a better understanding of how judges can improve courtroom communication. The match for both these projects is being provided by California and Maryland through their participation in the Self-Represented Litigation Network.

## What Are the Emerging Additional Areas of Significant Interest?

While there are many very valuable models for assisting the self-represented with court appearances and for helping judges to assist the self-represented with obtaining access in the courtroom, there are still relatively few models for how to support litigants in obtaining compliance with the orders that they do obtain. Nor do we know how best to structure proceedings to maximize the chance of the losing party being willing to comply.<sup>[8]</sup>

We are similarly in need of models and much better understanding of how self-help services can best identify the underlying needs of those who seek court services, and how they can then more effectively refer those litigants who need more intensive assistance or representation to those who can provide it. This problem is exacerbated by the lack of such resources in the community. Current thinking focuses on what is called a “continuum of services” that includes everything from limited informational help, to a Web site, to document-assembly assistance, to discrete task assistance from an attorney, to comprehensive representation when needed. Various courts are working on problem-assessment and intake systems to match cases to the most appropriate resources.

## What Are the Implications of These Changes for Court and Judicial Leadership?

Court and judicial leaders are faced every day with the consequences of the flood of self-represented litigants. What is being learned is that with focused attention from good managers committed to an access vision of the courts, the solutions are relatively simple, and less financially and managerially burdensome than might at first appear.

These solutions include the establishment of information-assistance programs to prepare litigants to present their cases, support for discrete task-representation programs to assist those for whom attorney assistance is critical, the use of aggressive case management techniques to identify and support those cases in need of assistance, training in judicial techniques that support access for litigants without lawyers, continued evaluation of the needs of litigants and the success of court programs in meeting those needs, services that support compliance with court orders, and close collaboration with other access-to-justice stakeholders.

Court and judicial leaders who embrace these solutions are finding higher public trust and confidence, more smoothly operating courts, and better relations with stakeholders and the public.

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<sup>[1]</sup> E.g, Judicial Council of California, Administrative Office of the Courts, *May I Help You? Legal Advice Versus Legal Information: A Resource Guide for Court Clerks* (2003)

<sup>[2]</sup> For a summary, see “Framing the Issues,” in [The Future of Self Represented Litigation: Report from the 2005 Summit](#) (Williamsburg, VA: National Center for State Courts, 2005), p. 19.

<sup>[3]</sup> Conference of Chief Justices and Conference of State Court Administrators, [Resolution 31](#), “In Support of a

Leadership Role for CCJ and COSCA in the Development, Implementation, and Coordination of Assistance Programs for Self Represented Litigants” (2002).

[4] R. Albrecht et al., “Judicial Techniques for Cases Involving Self-Represented Litigants,” *Judges Journal* 42, no. 1 (Winter 2003).

[5] R. 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,” *Georgetown Journal of Legal Ethics* 17 (2004): 423

[6] Canon2, Rule 2:06, Comment, American Bar Association, “Final Draft Report of the Joint Commission on Evaluation of Model Code of Judicial Conduct” (2005).

[7] *The Future of Self Represented Litigation* (2005).

[8] R. Zorza, “Changing the System so that Self-Represented Litigants Receive Compliance with Judgments and Orders: Where We Are and Where We Should Be Going,” *The Future of Self Represented Litigation* (2005).

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