A Roadmap for Reform
A Continuum of Interventions for Access to Justice in Oklahoma

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Lobeck Taylor Family Advocacy Clinic (FAC) students, Joe Lang, Cybil Rajan, and Bethany Jackson (the FAC Team), developed this report for the Oklahoma Access to Justice Commission (ATJ Commission) in the fall of 2015. The Project Team’s findings and recommendations are based on research into the legal, policy, and programmatic aspects of access to justice and related interventions, including conversations with national experts and stakeholders in Oklahoma, as well as a review of existing empirical research on the civil justice system. The FAC Team conducted research between August and December of 2015.

THE FAMILY ADVOCACY CLINIC
The Lobeck Taylor Family Advocacy Clinic (FAC) at The University of Tulsa College of Law offers student attorneys the opportunity to explore the ethical, strategic, and theoretical dimensions of legal practice by solving real-life legal problems in a structured learning environment. FAC students serve the community by providing representation that increases access to justice for low-income individuals and families, as well as advocacy, capacity-building, and systemic reform on behalf of non-profit organizations and community groups.

OKLAHOMA ACCESS TO JUSTICE COMMISSION
The Oklahoma Supreme Court established the Oklahoma Access to Justice Commission in March of 2014. The Commission’s members are appointed by the Governor and include leaders from the bench and bar. The Commission seeks to identify, support, and expand initiatives designed to increase access to justice and improve civil legal services delivery systems in Oklahoma. Among other objectives, the Supreme Court has charged the Commission with assessing existing civil legal needs and developing a strategic, statewide plan for delivery of civil legal services.
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INTRODUCTION

The crisis in civil access to justice is shocking in its breadth and depth. The effect of the crisis is most visible in our state court systems where many low- and middle-income Americans attempt to navigate the complexities of litigation without the help of a lawyer. States report that 70 to 90 percent of cases in family law, housing, small claims, and domestic violence involve at least one unrepresented litigant.\(^1\) Although we lack empirical data on the precise number of unrepresented litigants in Oklahoma’s state courts, anecdotal observations suggest the lack of representation is no less dramatic in this state. Currently, the key provider of legal services to low-income individuals, Legal Aid Services of Oklahoma, has the resources to serve only half of those who request services and are eligible under income guidelines.\(^2\)

The large number of people who appear in court without a lawyer is all the more striking given that only 14 percent of those with justice problems seek a lawyer’s assistance.\(^5\) Thus, civil justice problems are common, they cascade, and they deeply affect individuals and communities.

The vast majority of people who have justice problems never seek assistance from a lawyer or a court

This report was prepared for the Oklahoma Access to Justice Commission by a team of law students from The University of Tulsa College of Law’s Lobeck Taylor Family Advocacy Clinic (FAC Team). The report offers a framework for the Commission’s efforts to address access to justice in Oklahoma, the “access to justice continuum.” The report also assesses two particular access to justice interventions of interest to the Commission: limited scope representation (LSR) and court navigator programs, and suggests other promising interventions for consideration.

Through discussions with national experts, conversations with Commission members, and a comprehensive review of existing research, the FAC Team concludes that a number of interventions designed to increase access to justice can be implemented in Oklahoma. However, it is clear that there is no single access to justice problem, no simple way to define this complex issue, and thus, no one-size-fits-all solution to achieve access to justice in Oklahoma. In response, each of the interventions proposed in this report are designed to address specific problems within the access to justice continuum.
This report suggests initiatives and programs that would make Oklahoma’s civil justice system more accommodating to the needs of the people it serves. To that end, this report summarizes the following three stages of the access to justice continuum:

(1) the point of conflict—when a justice problem first arises;

(2) preparing to go to court—when a person has decided to take their problem to court; and

(3) entering the court—when an unrepresented person attempts to navigate the courthouse.

For each stage of the continuum, this report suggests discrete interventions. For the first stage, the FAC Team recommends co-locating lawyers in non-traditional settings, such as hospitals, where they can help individuals identify and make appropriate choices about managing a justice problem. For stage two, we recommend simplified and unified court forms for use by the public. For stage three, the FAC Team recommends a pilot project—LSR in the Courthouse—as a court-based intervention and a way to build momentum for LSR practice in Oklahoma.
THE ACCESS TO JUSTICE CONTINUUM AND PROPOSED INTERVENTIONS

The term “access to justice” encompasses a broad set of challenges people face in resolving justice problems. Given the complexity of access to justice problems, the FAC Team developed the concept of an access to justice continuum as a framework to guide the Commission’s understanding of access to justice issues and to assist the Commission in designing and implementing appropriate interventions and reforms in Oklahoma.

The continuum breaks access to justice problems into three stages that broadly represent the different ways that people experience justice problems and the justice system. As this report discusses, the nature of access to justice problems, and the potential interventions to address those problems, are different at each stage of the access to justice continuum.

It is our hope that the continuum provides a framework to facilitate conversations about access to justice that are goal-driven and intentional. Each intervention proposed in this report is a necessary, but not sufficient, condition for greater access to justice, and it is through multiple interventions working in tandem that Oklahoma’s justice system will become more accessible and accommodating to the public it serves.

Before continuing to the report, it is important to note that the framework provided in this continuum is a starting point for reform. Inevitably, further research must be done to understand the multiple layers of access to justice in Oklahoma, such as researching the problems that people encounter in rural courts versus urban courts or understanding the particular challenges facing tribal nations. As the Commission grows in its understanding of access to justice problems, it will be able to develop a more complete and nuanced continuum of interventions.
Access to Justice Continuum

PROBLEM

Stage 1: Point of Conflict

Stage 2: Preparing for Court Without a Lawyer

Stage 3: At the Courthouse

INTERVENTION

How people understand and manage their problems

Co-location, Internet Outreach

How people can be given a meaningful opportunity to be heard in courts

Simplified Court Forms, Court Form Instructions

How people can connect with court services

Court Navigator Programs, Courthouse Services, Limited Scope Representation
Stage 1: Point of Conflict
THE PROBLEM:
POINT OF CONFLICT

It is easy to assume that access to justice is mainly about the swelling number of self-represented litigants in state courthouses, but a recent study reveals that people’s experiences of justice problems and reactions to them are much more complex than conventional wisdom suggests. When people experience a justice problem, most do nothing or fail to seek help from others in resolving the problem. The reason? People do not understand their problems to be legal. Because so many people do not understand the legal aspects of the problems they face, they cannot make informed decisions about how to resolve justice problems.

Thus, access to justice interventions need to do more than help the people who actually make it to the steps of a courthouse. Interventions must also reach the vast majority of people who have legal problems but never seek assistance. Accordingly, this section describes how people understand and manage their justice problems, and based on these insights, proposes a way for the Commission to help Oklahomans connect with legal services and make good, informed decisions about their justice problems. Specifically, two interventions—co-location and internet services—are two ways to reach out to people who may not recognize that they are facing a legal problem.

How People Understand and Manage Their Justice Problems

Research tells us that two critical factors shape what people do when they have a justice problem. Dr. Rebecca Sandefur, who leads the American Bar Foundation’s access to justice research initiative, finds that how people understand their justice problems and the reasons people give for how they manage their justice problems are keys to unlocking the mystery of why so many people never make it to court.

The way an individual understands their justice problem forecasts their response to it. A recent study showed that the vast majority of people (56%) described their justice problem as “God’s plan or part of life,” while 21 percent described their problems as “private.” Only 9 percent described their problem as “legal.” Most revelatory, when people described their problem as “legal,” they sought the help of an attorney 39 percent of the time. When they described their problem as anything other than “legal,” they sought the help of an attorney only 14% of the time.

The reasons people give for how they managed their justice problems reveals that
many people make a clear-headed choice not to seek advice from other people—to manage their problem on their own or to do nothing at all. Seventy percent of the people who did not seek help from others in managing their justice problems cited “no need” or “makes no difference” as their reason for not seeking advice. Only 17 percent said that money was the reason they decided not to seek advice from an attorney. 

INTERVENTIONS

Research suggests that the best way to reach individuals who would not otherwise seek help from a lawyer or court is through delivery of timely, trustworthy, and targeted information about a specific legal issue. When a justice problem arises, people need relevant information from a trusted source that is targeted to the specific justice problem the individual faces.

CO-LOCATION OF LAWYERS

One way to deliver timely, trustworthy, and targeted information is co-location of attorneys. Co-location programs place attorneys in non-traditional settings as a way to reach people where those people normally encounter or manage their justice problems. There are three common models for co-location around the country.

THREE CO-LOCATION MODELS

One co-location model provides problem-specific treatment by housing professionals from multiple disciplines under one roof. This type of co-location strategically places an attorney in practice areas where non-legal problems often have legal consequences. Treatment of veterans returning from combat, for example, require a range of services, such as physical therapy, counseling, housing, and government benefits. Such programs are being developed around the country, placing social workers, psychologists, psychiatrists, and attorneys under one roof, where the veterans can receive support for all of their needs.

Medical-legal partnerships are a common example of co-located professional services, where medical providers, trained by a lawyer to recognize the legal aspects of a given medical condition, can refer patients to an on-site attorney for immediate and relevant assistance. For example, patients suffering from asthma may not be aware of the fact that their condition is exacerbated by a cockroach infestation or asbestos in their apartment or house. If the patient is a renter, she may not be aware of her rights as a tenant. By placing an attorney in a hospital, doctors can refer patients with such issues to the onsite attorney as part of the patient’s treatment.

Another co-location model is a partnership between an attorney and a community organization. Generally, these partnerships are successful where people seek non-legal assistance in managing their justice problems, such as religious institutions and community-based organizations. By educating religious or community leaders about the potential legal issues encountered by members of their community, those leaders can refer members to legal assistance. For example, the Tennessee Access to Justice Commission created a partnership with the Tennessee Conference of
the United Methodist Church—funded through a Faith-Based Initiative grant—where an attorney partners with a religious leader, who then refers members of her congregation with justice problems to an attorney.25

The third model for co-location places attorneys in locations where people with justice problems are likely to go.26 This co-location strategy focuses on understanding where people with specific justice problems might go and providing outreach at those locations. One example of this is libraries, where homeless people go to care for basic needs and where many Americans access the internet.27

LIMITS OF CO-LOCATION

Co-location is not a one-size-fits-all intervention for delivering timely, trustworthy, and targeted information. First, co-location relies on having either a large population in one specific location or a community with significant need.28 Dr. Sandefur notes that this is particularly problematic for individuals who are homebound or have justice problems that do not fit in a specific community or location, such as wage theft.29 Second, co-location ventures are more challenging in rural communities compared to urban centers because of the differences in population density and professional services available.30

CO-LOCATION IN OKLAHOMA

Oklahoma has a growing co-location infrastructure thanks to the work of Legal Aid Services of Oklahoma (LASOK). Specifically, Oklahoma has civil attorneys in several different co-location sites including hospitals, drug rehabilitation programs, prisoner reentry programs, and tribal nations.31 However, Oklahoma has not developed co-location opportunities in churches, schools, or other community-based locations. The majority of Oklahoma’s co-location services are in either Oklahoma County or Tulsa County.32 Many of these co-located services will not reach Oklahomans in a majority of counties. Thus, while co-location is a promising intervention for offering Oklahomans timely, trustworthy, and targeted information, its utility may be limited in Oklahoma due to population and resource challenges.

INTERNET OUTREACH

Internet-based information is one way to reach individuals and communities where co-location is not a feasible intervention.33 However, one recent study conducted in the United Kingdom suggests that the potential benefits of the internet are tempered by a radical disconnect between how people research their legal rights and the delivery of legal information through the internet.34

HOW INDIVIDUALS SEARCH FOR ONLINE LEGAL INFORMATION

The United Kingdom study found that most individuals use the internet to search for information related to resolving a legal problem—as opposed to searching specifically for advice, services, or attorneys.35 When asked to research information about a legal problem, roughly 80 percent of 18-24 year-old participants researched information about how to resolve the issue. That number stands in stark contrast to the 12 percent who were able to find all of the information they
needed. While the study participants older than 24 were slightly less inclined to research information on finding a resolution to a legal problem, they were even less successful in finding all of the information they needed.

The study also found that Google search results matter. While most of the study participants—especially those aged 18-24—were unable to recall the websites they used for understanding the legal information, the vast majority searched Google to find the website they used. And despite the fact that the participants were asked 6 questions relating to the legal issue they researched, participants only performed 4 searches on average. Finally, 44 percent of participants used a search engine exclusively to find the information about their legal problem, 35 percent predominantly used a search engine and occasionally browsed websites, and only 8 percent of participants read through the content of websites.

HOW TO IMPROVE THE RESULTS

The study reveals several useful insights about how to make reliable content more accessible. First, the internet can serve as a powerful diagnostic tool that can inform individuals when they have a justice problem and where to seek advice about resolving that problem. Second, having a reliable source of legal information available online is imperative. Most users are not able to discern between reliable and unreliable online legal information, thus, providing a greater number of reliable sources of information on Oklahoma law will increase the odds that people can find such information. Third, internet-based information is best delivered in question and answer format. Question and answer content is ranked higher in internet search results (users see this content first) and it is the format that users prefer.

INTERNET OUTREACH IN OKLAHOMA

In a non-scientific study on Google results related to child custody in Oklahoma, the FAC Team found that of the five most queried searches in Oklahoma, only 2 searches that yielded a non-commercial result in the first page of the results. The most common websites that appeared in search results were nolo.com, singleparents.about.com, and divorcenet.com. Although this is a small sample size and non-scientific, it reveals the kinds of information Oklahomans likely view when turning to the internet for legal information.

Aside from the issues related to content delivery, nearly 35 percent of Oklahomans do not have access to the internet at home. Thus, while the internet holds significant promise in reaching out to people with justice issues, Oklahoma currently has connectivity and delivery issues.

RECOMMENDATIONS

• The Commission should support and expand on the co-location program initiated by LASOK by identifying funding opportunities
and more areas for growth in co-located services. Specifically, the FAC Team recommends the Commission look into federal Faith-Based Initiative funding to begin providing co-location services with religious organizations.

- The Commission should enhance the delivery of reliable legal information over the internet. The FAC Team recommends that the Commission conduct a thorough review of internet legal information delivery in Oklahoma, and based on that review, investigate ways to improve the information available to Oklahomans over the internet.
Stage 2: Preparing for Court Without a Lawyer
THE PROBLEM: PREPARING FOR COURT WITHOUT A LAWYER

If a person experiences a justice problem and decides to pursue a remedy through the courts, it is likely that she will not have an attorney to assist in her preparation of the court forms that will help her be heard by the court. Estimates place the number of cases in state courts with at least one self-represented litigant at 70 to 90 percent. Thus, the problem at this stage in the continuum is that many people prepare to go to court without a lawyer, which includes preparing litigation-related documents.

In response to the access to justice crisis, a number of jurisdictions have helped self-represented litigants by providing simplified court forms that include clear, easily understandable instructions, along with easy-to-navigate websites that provide guides on how to prepare forms and file them with the court. This section surveys the techniques used in other jurisdictions and suggests ways the Commission might adopt these ideas in Oklahoma.

“Forms are not a radical or even new idea. They are simply a fundamental necessity where a pro se litigant has little hope of redress.”

-Texas ATJ Commission

When Forms Matter Most

The number of cases with self-represented litigants in state courts is staggering, but not all civil cases have the same rate of self-represented litigants. Although we lack Oklahoma-specific data, based on reports from other jurisdictions, there are certain areas in where self-represented litigants appear in high numbers, including family law and housing cases.

FAMILY LAW

Recent reports from other states indicate that 80-90 percent of family cases have at least one self-represented party. Additionally, research shows that individuals are actually more likely to seek help from a third party, such as an attorney, when encountering “relationship breakdown” problems. Thus, those that are self-represented in family court are likely people that truly lack the resources to hire an attorney, but desire an attorney’s assistance.

HOUSING

One jurisdiction reported self-representation rates as high as 97 percent among defendants in housing court cases. California indicated that over 90 percent of the defendants in housing court cases were unrepresented.

NOT SELF-REPRESENTED BY CHOICE

The states reporting on the rates of self-represented litigants noted that many parties are not self-represented by choice. Rather, studies reveal that a large portion of the tide
of self-represented litigants are impoverished. New York found that 57 percent of litigants in housing and domestic cases lived in homes with incomes less than $20,000 per year, and 83 percent had incomes of less than $30,000 per year. Statistics from California reveal that more than 90 percent of the self-represented litigants using its self-help programs made less than $2,000 per month.

CONCERNS ABOUT EFFICIENCY AND HARM TO LITIGANTS

In response to concerns that simplified and unified court forms may increase administrative burdens for courts and potentially harm litigants or the public, the Texas Access to Justice Commission sent out a survey to states in 2012 requesting information regarding those two concerns. The Texas Commission received responses from 19 jurisdictions that offer online forms, and all 19 reported overwhelming success with the forms. No states reported observing harm to litigants or to the public. Most states indicated that simplified forms increased judicial efficiency. The Texas Access to Justice Commission succinctly stated their conclusion on the issue: “Forms are not a radical or even new idea. They are simply a fundamental necessity where a pro se litigant has little hope of redress.”

INTERVENTIONS

In providing impoverished litigants an opportunity to be heard when preparing for court, states from the Texas survey suggest two specific interventions: simplified court forms and court form instructions.

SIMPLIFIED COURT FORMS

Responses to the Texas survey stressed the improvements in judicial economy that resulted from adopting simplified forms. Jurisdictions noted that simplified forms made it easier for judges to manage cases and eased pressure on court clerks. Some states noted that fill-in-the-blank style forms were the easiest for litigants as well as and judges.

Although there is limited empirical data on the effectiveness of simplified court forms, one study found that a majority of people using simplified court forms were able to identify claims and defenses, provide relevant facts, and fill out, file, and serve pleadings using the simplified forms.

SIMPLIFIED FORMS IN OKLAHOMA

Currently, Oklahoma does have a simplified form for protective orders, and this form is accepted by courts across the state. Many forms can be found on OSCN, and some forms are available on the websites of LASOK, the Tulsa County District Court, the Oklahoma Department of Human Services, Oklahoma’s Workers Compensation Courts, and from a number of third-party vendors. Aside from the protective order forms, very few of Oklahoma’s court forms are fillable, and none allow litigants to fill in the blank.

Based on the experiences of other jurisdictions, the lack of a coordinated, simplified court forms may contribute to a lack of judicial economy and may be a significant barrier to access to justice in Oklahoma.
COURT FORM INSTRUCTIONS

One of the most common observations by states in the Texas survey was the benefit of instructions accompanying a simplified court form. Many states noted that this reduced harm to the litigant because a litigant who has instructions is more likely to complete a form correctly. States also noted the benefit to court efficiency, as court personnel were able to hand litigants the instructions, rather than try and walk them through filling out the form. 61

COURT FORM INSTRUCTIONS IN OKLAHOMA

Although Oklahoma has a majority of necessary civil court forms available on OSCN, there are no instructions on how to complete the forms, what forms are necessary for a particular type of case, and where to file the forms. The forms available on OSCN may be helpful for lawyers, who know what the forms mean and what they are intended for, but they are not designed for self-represented litigants. That said, LASOK’s website does offer several court forms and instructions on how to fill them out, as well as a link to lawhelpinteractive.org, which provides a Turbo-Tax-like experience in filling out court forms. The LASOK website shows great promise; however, it currently offers a small number of forms. Aside from what is available on the LASOK website and third-party vendor sites, the FAC Team is not aware of any instructions on what forms are necessary for a particular case, how to complete the available forms, and where to file the forms.

RECOMMENDATIONS

- The FAC Team recommends the Commission work with the judiciary to select one area of law, begin identifying the necessary forms for that area of law, and to develop the forms along with instructions.
- The FAC Team further suggests that family law or housing forms are the best starting points for creating court forms, given the high rates of self-representation and financial need in these areas.
Stage 3: At the Courthouse
THE PROBLEM: AT THE COURTHOUSE

This stage of the continuum focuses on what happens when a person who is experiencing a justice problem actually makes it to the courthouse. While courts are familiar places to many lawyers, for most people, the courthouse is a source of intimidation, confusion, or even fear.

Many people in Oklahoma, and across the nation, go to court without the assistance of a lawyer, whether because they do not know they need a lawyer, do not understand how a lawyer could help, or want a lawyer but cannot afford one. The cases where people are most likely to be unrepresented are those that implicate the most basic and critical human needs, including family relationships, finances, and housing. Courts are places where families face losing their homes, parents face losing their children, and victims confront abusive partners.

The interventions offered in this section are designed to address the needs of litigants who cannot afford the cost of full scope legal representation. These interventions focus on making the courthouse more responsive to the needs of self-represented litigants, and as a corollary, making the administration of justice more efficient and fair.

The Commission has expressed particular interest in two interventions—court navigator programs and limited scope representation or LSR. In response, this section discusses court navigator programs and other types of court-based services, it then discusses LSR.

Courts are places where families face losing their homes, parents face losing their children, and victims confront abusive partners.

The section concludes with a suggested court-based intervention for Oklahoma: Limited Scope Representation in the Courthouse—a pilot project designed to support LSR in Oklahoma and assist self-represented litigants in the courthouse.

In a perfect world, each person entering a courthouse would have an advocate. Decades of research have made clear that represented parties fare better than those who are unrepresented. But resource restrictions mean that full representation is not a realistic solution to the growing crisis of self-representation. As an alternative to full representation, courts around the country have developed new court-based services to accommodate the many self-represented litigants that come through courthouse doors.

INTERVENTIONS

Court-based interventions are many and varied, ranging from advocacy-type interventions, including court navigators or LSR, to training court staff on how better to assist self-represented litigants.
COURT NAVIGATOR PROGRAMS

A court navigator is a person who assists self-represented litigants in a court-based service. The legal assistance provided by a court navigator is limited to legal information, emotional support, or both; court navigators, unlike attorneys, do not provide legal advice. Although court navigators are not licensed, in the court navigator programs currently under development, there is significant training and oversight for the court employees or volunteers who staff court navigator programs.

One of the most comprehensive court navigator programs is in New York, where a three-tiered pilot project is underway in the Kings County Housing Court. Each tier in the program offers a different range of services. The most basic navigators are “Housing Court Answers” (HCA) volunteers who provide basic intake and emotional support to litigants who qualify for the program. The second tier, “A2J Navigators,” are court-trained and approved navigators who provide emotional support for the litigants throughout the litigation and respond to certain factual inquiries by the judge. The last tier, “University Settlement,” are court-employed navigators who offer comprehensive legal assistance—such as answering factual inquiries and providing social services—for complex cases. The Kings County Housing Court program offers a good snapshot of the various types of court-based navigator programs taking place around the country. For more information on court navigator programs in other jurisdictions, see Appendix A.

As of this writing, an evaluation of the New York programs is underway but not yet released. However, based on existing information, there is reason to believe that the HCA navigator program is modestly successful. For example, a study of the HCA court navigator program found that 85 percent of litigants strongly believed the HCA navigators answered their questions. Fifty-one percent strongly agreed that the court navigators helped litigants understand what was going on in their case, and forty-nine percent strongly agreed that court navigators helped them feel that progress was being made in their case. Case outcomes show that tenants who were receiving court navigator assistance paid an average of $54 less than what the landlord originally demanded. On the other hand, litigants who did not receive assistance generally paid an average of $121 more than what the landlord originally demanded. Additionally, litigants tended to assert more defenses with court navigator assistance in their cases.

OTHER COURTHOUSE SERVICES

Aside from Court Navigator programs, a majority of states have implemented other alternative court-based services. The idea of court-based services is simple: a court should provide tools for people to help them understand their case and move towards resolution. We suggest the following interventions as potential court-based services,
below, we provide an explanation of each intervention:  

- Court Service Center
- Courthouse Map/ Posters
- Legal Workshops
- Hotlines
- Remote Services
- Computer Kiosks
- Law Library

A **court service center** typically includes staff who are well-trained in treating all court users with courtesy and in providing basic legal information. Non-lawyer court staff need training in how to provide basic information without giving legal advice. Some stages have addressed ethical concerns by clarifying the difference between legal advice and information.  

**Courthouse maps and posters** help with the physical navigation of the courthouse and might include maps of the courthouse, program referrals, and other basic information.  

Some courts hold regular **legal workshops** to provide information on relevant areas of law and are an environment where litigants can ask basic questions.  

**Hotlines** can be used to connect litigants with legal services or with court personnel. For example, Contra Costa County, California, uses hotlines to overcome the geographic and transportation barriers preventing litigants from receiving help. The hotline attorney identifies the litigant’s issues, determines the litigant’s needs, and provides substantive information on the litigant’s needs.  

Remote services are similar to hotlines in that technology is used to provide legal services, or even to allow litigants to appear in court proceedings. States like California have used videoconferencing as a low-cost solution where an attorney in a single location is available to “provide workshops, supervise staff, answer questions, and support paraprofessional staff in other locations.”  

**Computer kiosks** contain computer programs that assist people in providing the information for completing specific court forms or describe the process that people will go through as they pursue a claim.  

Finally, **law libraries** are areas in the courthouse where self-represented litigants can research legal issues, obtain referrals for services, and obtain court forms and instructions.  

**LIMITED SCOPE REPRESENTATION**

Limited scope representation, or LSR, is a **la carte** legal representation that allows the client and the attorney to choose which services the attorney will provide. LSR can be practiced by Legal Aid and pro bono attorneys, those providing free services, to benefit low-income clients and can be practiced by private attorneys, for a fee, to benefit middle-income clients.  

Although LSR is not the ultimate solution to access to justice, as it does not necessarily provide an appropriate resolution for all clients and is not advisable under all circumstances, it is a meaningful intervention that provides reduced cost or free legal assistance for clients who
LSR, which is already widely-practiced by Legal Aid Services of Oklahoma, can be ethically practiced by Oklahoma attorneys under the Oklahoma Rules of Professional Conduct, particularly Rule 1.2 (c), which expressly permits limited scope representation. In addition, Rule 6.5 excuses attorneys’ obligation to check for conflicts of interest when participating in nonprofit or court programs offering limited legal services where there is no expectation of continuing representation.

**Defining the Scope of LSR**

In LSR, also known as unbundling or limited assistance representation, an attorney breaks down the tasks related to a client’s legal needs and represents the client for only a portion of her legal matter rather than providing full scope representation. LSR requires a clear understanding between the attorney and client as to what the legal representation will entail, such as what tasks the attorney will perform and what responsibilities will be left to the client to complete. Three common categories of LSR are: document preparation, representation in court, and advice and counsel.

LSR can include:

- Ghostwriting
- Drafting pleadings, briefs, declarations or orders
- Document review
- Conducting legal research
- Negotiating
- Making limited appearances
- Advising on court procedures and courtroom behavior
- Coaching on strategy or role playing
- Preparing exhibits
- Organizing discovery materials
- Drafting contracts and agreements
- Providing legal guidance or opinions
- Providing direction to resources such as local and state rules
- “Collaborative lawyering”

**Competently Performing LSR Services**

It is the attorney’s responsibility to determine whether providing LSR services is appropriate and reasonable under the circumstances presented by the client. LSR should not be offered as a second-class service, as the attorney is still required to provide the client with competent representation. Thus, LSR is more appropriate in some areas of law than others. For example, LSR works well with transaction-based or document heavy practices, such as, estate planning, intellectual property, immigration, business, or family law. Whereas, other areas of practice, such as, criminal law or
complex custody dispute, are not as suitable for LSR services. LSR is more suitable when ongoing legal representation is not required from beginning to end in order to competently assist the client.

**Benefits of LSR**

LSR merges the interests of providing clients with adequate, affordable representation, while also allowing attorneys to ethically serve those needing legal services at a reasonable compensation rate. LSR can be convenient and cost-effective for both clients and attorneys. For example, LSR provides access to legal services for those who cannot afford or do not desire full legal representation. Utilizing LSR may give a traditional law firm a competitive advantage by marketing its law practice to an entirely new client base who would not normally be able to afford legal representation.

**Convenience of LSR**

In addition, LSR can be a convenient option for attorneys and clients alike, as it may be offered in-person or through online delivery methods. In some circumstances, the attorney may want to limit interaction with the client to methods of communication that keep LSR practices efficient. For example, the attorney might desire to have an initial client meeting in person and thereafter communicate with the client online, through either secure email or a portal, which would provide the client with access to his or her case file.

**Professional Responsibility and LSR**

The FAC Team concludes that Oklahoma attorneys can ethically practice LSR under the existing Rules of Professional Conduct, particularly Rules 1.2(c) and 6.5. Rule 1.2(c) expressly permits limited scope representation while Rule 6.5 allows pro bono and legal services attorneys to provide LSR without a conflict check. Our cross-jurisdictional research revealed that other states that have adopted the same or a similar version of Rule 1.2(c) are practicing LSR without amending their rules.

Of course, even ethical LSR practice raises potential challenges, such as the interaction of Rule 1.2(c), which permits LSR, Rule 1.1, which governs attorney competency, and court rules requiring attorneys sign and certify pleadings. Another challenge is the requirement of Rule 4.2, which bars attorneys from communicating with represented parties. These and other potential challenges of LSR, along with potential solutions that could be implemented in Oklahoma, are discussed in more detail in Appendix E and in a 2014 American Bar Association (ABA) Report on the ethics of LSR, *An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants*.

To test the feasibility of LSR as an access to justice intervention in Oklahoma, and to familiarize the bar and judiciary with LSR, we propose the Commission develop a pilot project of Limited Scope Representation in the Courthouse. The pilot project can serve as a starting point to educate attorneys and judges on LSR practice, determine whether the ethical rules need to be amended, and assess the effectiveness of LSR as an access to justice intervention in Oklahoma.
Effectiveness of LSR

We note that existing research is both limited and inconclusive on the overall effectiveness of LSR. This is not necessarily because LSR is not effective, but because little research has been conducted to date. Little is known to what extent LSR affects litigants experiences, case outcomes, or the administration of justice. 91 Access to justice scholars Jessica Steinberg and Rebecca Sandefur recently conducted an empirical case study assessing the effectiveness of LSR services provided to tenants facing eviction. The study found that LSR had a positive impact on procedural justice (increasing parties access to courts, reducing defaults, assisting parties in asserting valid defenses) but its impact on substantive outcomes was very limited (parties who received services did not secure more actual relief that those who went pro se). 92

RECOMMENDATION

• The FAC Team recommends that the Commission implement the pilot project proposal, Limited Scope Representation in the Courthouse, as a way to provide court-based services using volunteer attorneys while building momentum for LSR practice in Oklahoma.
Pilot Project: Limited Scope Representation in the Courthouse
LIMITED SCOPE REPRESENTATION PILOT PROJECT INTRODUCTION

Based on the Commission’s interest in building momentum for LSR practice in Oklahoma, the FAC Team proposes the Commission implement a pilot project called **Limited Scope Representation in the Courthouse (LSR in the Courthouse)**. This pilot project is a low cost, low risk, way to promote LSR in Oklahoma as an access to justice intervention by providing limited scope, court-based legal assistance for self-represented litigants. This pilot project was inspired by a similar project in Massachusetts as well as the Courthouse Access Program (CAP) that Tulsa County Special Judge Millie Otey started in the Tulsa County District Court’s forcible entry and detainer docket. While this project requires support from state court judges, the private bar, non-profit sector attorneys, and other stakeholders, the Commission is in an ideal position to build the necessary support for this project.

LSR PILOT PROJECT GOALS

The pilot project goals are four-fold. First, the pilot project can increase attorney participation in LSR by creating a referral program for LSR attorneys and providing a supportive setting for attorneys to begin LSR practice. Second, the pilot project can educate attorneys and judges on LSR practice. Third, the project can provide basic legal assistance to self-represented litigants by offering procedural and substantive advice to people referred to the pilot project attorney. Fourth, the pilot project will promote LSR in Oklahoma, and an evaluation of the project will help determine what—if any—Rules of Professional Conduct should be changed going forward.

LSR PILOT PROJECT ROLES

The LSR in the Courthouse pilot project would involve the following roles:

Judge: The pilot project’s success requires the support of at least one judge who is willing to have attorneys practice LSR in cases on that judges’ docket. The court docket would ideally be one with a large number of self-represented litigants, such as landlord/tenant, family, or probate. There should be support from a judge willing to open his or her docket to the pilot project.

Access to Justice Commission, Oklahoma Bar Association, and Pilot Project Judge: Before launching the pilot project, the Commission, the Oklahoma Bar Association, and the pilot project judge should raise awareness and build enthusiasm about the program among the attorneys that could be participants in the pilot project. The court hosting the pilot project should begin by locating attorneys who are interested in participating.

Participating Attorneys: In order to participate in the pilot project, an attorney must meet the following criteria:

1. **LSR Certification:** The participating attorneys must complete a LSR training and will receive a LSR Certification. The training may be provided via video, in writing, or through a class. The LSR training guide should cover topics such as performing a diagnostic interview, avoiding ethical
conflicts, and providing attorney referrals. The FAC Team recommends that attorneys be given CLE credit for the training.

a. **Volunteer:** The participating attorneys must volunteer at the courthouse as “Liaison Attorney.”

b. **Referral List:** Each participating attorney should be encouraged to provide their contact information for a referral list of LSR Certified attorneys.

**Hosting Court:** The court hosting the pilot project should provide a private room in the courthouse suitable for confidential meetings between the Liaison Attorney and litigants.

**Court Staff and Personnel:** The court staff and personnel will be critical in directing self-represented litigants in need of assistance to the LSR in the Courthouse pilot project. They should be informed of where the pilot project is located and the areas of law in which a litigant can receive assistance.

**Liaison Attorney:** This is a volunteer attorney who performs the essential functions of the project. The following are the Liaison Attorney’s roles:

1. **Financial Assessment:** When a self-represented litigant is referred to the Liaison Attorney, the first task for the Liaison attorney is to perform a financial assessment. This will determine whether the litigant qualifies for the program. Although the court implementing the program has the discretion to establish the means test for eligibility, one possibility is to match the Legal Aid Services of Oklahoma cut-off of 125 percent of the Federal Poverty Level. If the litigant is above the means test for eligibility, then they are not eligible for in-court LSR, but the Liaison Attorney will offer the litigant a referral to a LSR-trained attorney. If the litigant is below the means test for eligibility, then the litigant qualifies for the LSR in the Courthouse program.

   a. **If BELOW the Means Test for Eligibility, LSR in the Courthouse:** If the litigant is below the means test, then the litigant qualifies for the LSR in the Courthouse program. First, the Liaison Attorney will perform a diagnostic interview. If the Liaison Attorney believes the litigant will need full-scope representation, the attorney will refer the litigant to Legal Aid of Oklahoma or another pro bono legal service provider; otherwise, the Liaison Attorney will provide LSR in the Courthouse for the litigant in the form of the following legal assistance: identifying claims and defenses; document preparation; and understanding court procedure.

   b. **If ABOVE the Means Test for Eligibility, Referrals and Legal Information:** If the litigant is above the means test for eligibility, the Liaison Attorney will provide a referral list (LSR Referral List) of attorneys trained in LSR practice. If the litigant needs immediate support, the Liaison Attorney may offer basic legal information related to their need. Otherwise, the litigant should seek legal advice and assistance with his or her case from an attorney on the LSR Referral List.

**Family Advocacy Clinic:** As the pilot
project expires, the Lobeck Taylor Family Advocacy Clinic is willing to provide an evaluation of the project. Possible topics for evaluation include: whether litigants not eligible for LSR in the Courthouse followed through with referrals from the pilot project; litigant satisfaction, attorney satisfaction, case outcomes for LSR in the Courthouse litigants, and what changes—if any—should be made to the Rules of Professional Responsibility regarding LSR practice.

**BENEFITS OF THE PILOT PROJECT**

This pilot project is a low-risk option for promoting LSR in Oklahoma. From our conversations with stakeholders in the Oklahoma access to justice community, the FAC Team heard a shared concern about potential issues with the Rules of Professional Conduct and LSR practice. In response to those concerns, this program is a way to ensure that attorneys who practice LSR have good information—from a trusted source—about how to ethically practice LSR. Furthermore, this program will help evaluate what, if any, rules might change, and—most importantly—why the rules should change.

This pilot project will also show the high-reward that LSR offers. Although there is an understandable concern that LSR could congest court dockets and mislead judges, the pilot project can help to assess the effects of LSR, including its effect on judicial efficiency. Finally, this program offers the two ways LSR can provide a benefit—as a court-based legal aid service or as reduced-rate legal services offered by private firms.

The FAC Team anticipates this program will see strong participation from attorneys because it offers a three-fold benefit to participating attorneys. First, there is a financial incentive for practicing attorneys: They will have their name on the Referral List, which will be given to the litigants who are above the means test for eligibility. Second, there is a philanthropic benefit for attorneys participating in the pilot project, as they can occasionally serve as a volunteer Liaison Attorney, which could be publicly recognized by the Commission and the Oklahoma Bar Association. Third, there is an administrative benefit for the participating attorneys, as they will receive CLE credit for their LSR certification training.
Limited Scope Representation in the Courthouse

Self-represented litigant → Court personnel → Liaison attorney

Financial assessment

Litigant is below 125% of the federal poverty line?

Yes → LSR in courthouse

No → Legal information and referral
ENDNOTES

1 Jessica Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 Conn. L. Rev. 3, 742 (2015).
2 As of December 8, 2015, Legal Aid Services of Oklahoma accepted 8,343 cases in 2015, as of that same date, they received 8,344 applications from otherwise eligible people who were unable to serve due to lack of staffing and funding. Email from April Merrill, Legal Aid Services of Oklahoma, December 8, 2015. Notes on file with author.
4 Rebecca Sandefur, *Accessing Justice in the Contemporary USA: Findings From the Community Needs and Services Study*, 6, 9-10 (2014). Based on the research findings from The Community Needs and Services Study conducted by Dr. Rebecca Sandefur, through the American Bar Foundation and the University of Illinois at Urbana-Champaign.
6 Fifty-two percent of people either do nothing or resort to self-help when encountering a justice problem. This phenomenon is most visible in cases involving employment, government benefits, and insurance problems, where people are most likely to do nothing (28%, 21%, and 21%, respectively). What is perhaps most surprising is that money had little to do with their decision not to seek outside help or the courts for redress. See Sandefur, *ACCESSING*, supra note 4, at 11-12.
7 Id.
8 See Rebecca Sandefur, *Bridging*, supra note 3.
9 Id.
10 Id.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id.
16 Id.
17 Id.
18 Id.
19 Id.
21 Id.
22 Sandefur, *Bridging*, supra note 3. See also Why doctors are prescribing legal aid for patients in need, (PBS television broadcast Sept. 2, 2015) (discussing how legal aid can save time and resources in treating patients with asthma by removing environmental hazards associated with poor housing).
24 Id.
26 Sandefur, *Bridging*, supra note 3.
27 Id.
28 Id.
29 Id.
30 Id.
32 For example, only 2 counties in Oklahoma have one of the 3 medical-legal partnerships currently in operation in Oklahoma. See Id.
33 Sandefur, Bridging, supra note 3.
34 Id. See also CATRINA DENVIR, WHAT IS THE NET WORTH? YOUNG PEOPLE, CIVIL JUSTICE, AND THE INTERNET, 108 (2014).
35 Id.
36 Sandefur, Bridging, supra note 3. (discussing the findings of the UK study in relation to the challenges the internet poses in delivering reliable legal information).
37 Denvir, WHAT IS THE NET WORTH? supra note 34.
38 Id. at 181.
39 Id. at 189.
40 Id. at 239.
41 Id. at 241.
42 Id.
43 Queries were based on Google Trends 5 most common search queries for child custody in Oklahoma since 2004. They include: “child custody”; “Oklahoma child custody”; “joint custody”; and “Oklahoma custody laws.” See GOOGLE TRENDS, https://www.google.com/trends/explore#geo=US-OK&q=custody (last visited Dec. 6, 2015). The decision to use child custody is based on the large rate of self-represented litigants in family law issues. Non-commercial includes any website that is not OSCN, ODCR, OKDHS, OBA website, or LASOK website, or .gov domain.
46 DOCUMENTING THE JUSTICE GAP IN AMERICA, LEGAL SERV. CORP., 24-26 (2009).
47 Sandefur, ACCESSING JUSTICE, supra note 4, at 11.
49 Id.
50 Id.
51 Id.
52 Id.
53 Use of Self-Help Forms, NAT’ L CENT. FOR STATE COURTS SURVEY ON FORMS (2012), http://www.texasatj.org/sites/default/files/NatlCenterforStateCourtsSurveyonForms.pdf. For more information regarding the survey, see Appendix B.
54 Id.
55 Id.
56 Id.
57 Id.
58 Id.
59 Michael Millemann et al., Rethinking the Full-Service Legal Representational Model: A Maryland Experiment, 30 CLEARINGHOUSE REV. 1183 (1997).
61 Use of Self-Help Forms, supra note 53.
62 Jessica Steinberg, Demand Side Reform, supra note 1, at 742.
64 While the definition of “legal information” varies from jurisdiction to jurisdiction, many courts that have implemented court navigator programs have clarified legal information, thereby making it easier for such programs to exist. For more information on how other jurisdictions are clarifying legal information, see Appendix C.
66 Id.
67 Id. at 7
68 Id
69 Id. at 4. See Appendix D.
70 If applied to all housing court cases, the difference of $175 per case could potentially save $10 million per year for tenants. COMMITTEE ON NONLAWYERS Id.
71 Id.
73 For a non-licensed court service center staff, it is necessary to design an optimum training technique to develop the skills. See Id. Ethical implications for courthouse service centers can be addressed by clarifying the rules regarding what court personnel can and cannot say. See John M. Greacen, Legal Information vs. Legal Advice Developments During the Last Five Years, 84 JUDICATURE 4, 2-3 (2001).
74 See SELF-REPRESENTED LITIGATION NETWORK, BEST PRACTICES, supra note 72.
75 Id.
76 JUDICIAL COUNCIL OF CALIFORNIA, MODEL SELF-HELP PILOT PROGRAM, 6 (2005).
77 Id.
78 Over half of states (59%) have at least one program that places computer kiosks in court-houses to assist unrepresented civil litigants in pursuing their claims. As of 2009, Oklahoma has computer kiosks in superior courts. Sandefur, Access Across America, supra note 4, at 104.

79 Travis County in Austin, Texas, is a city where a court service desk is supervised by the law library. They provide maps, brochures, and other general information. Self-Represented Litigation Network, supra note 72, at 15 (2008).

80 Okla. Rules of Prof’l Conduct, R. 1.2 (c).

81 Okla. Rules of Prof’l Conduct, R. 6.5.


85 ABA Standing Comm. on the Delivery of Legal Services, An Analysis of Rules, supra note 82.

86 Kimbro, Serving the DIY Client, supra note 84, at 7.

87 Id. at 33–34.

88 Okla. Rules of Prof’l Conduct, R. 1.2 (c), R. 6.5.

89 Telephone interview with Richard Zorza, Independent Consultant, Author of Accessstojustice.net (Oct. 6, 2015); telephone interview with Jessica Steinberg, Associate Professor of Clinical Law, George Washington University (Oct. 7, 2015); telephone interview with Rebecca Sandefur, Faculty Fellow, American Bar Foundation (Oct. 9, 2015); telephone interview with Russell Engler, Professor of Law & Director of Clinical Programs, New England Law Boston, (Oct. 16, 2015); telephone interview with Trish McAllister, Executive Director, Texas Access to Justice Commission, (Oct. 27, 2015).


92 Ultimately, LSR did not produce a more favorable impact on the substantive outcomes, as tenants receiving LSR fared no better than unassisted tenants. The tenants receiving LSR services lost their homes just as often, faced just as few days to move out, and made payments to their landlords with the same frequency, and in similar amounts. Further, tenants receiving negotiation assistance did not fare better than tenants who received ghostwriting only services. By contrast, tenants who received full representation achieved outcomes far superior to either the unbundled or unassisted tenant groups. However, the case study findings indicated that LSR services did have favorable procedural outcomes, as tenants receiving unbundling services significantly outperformed unassisted tenants in both evading default judgment and in asserting valid, doctrinally cognizable defenses to their eviction actions. However, when those procedural gains were re-evaluated to test their impact on substantive outcomes, the apparent gains were minimized considerably. Id. at 482.

93 Mass. Supreme Judicial Ct. Steering Comm. on Self-Rep. Litigants, Addressing the Needs of Self-Represented Litigants in our Courts (2008) [requesting Committee to delay the pilot project expiration because of its popularity among project participants]; James Proszek, Grant Application for Courthouse Access Program of Tulsa County Bar Association and Legal Aid Services of Oklahoma: Cap Expansion (Oct. 14, 2015) (unpublished manuscript). The FAC Team would like to extend to Judge Otey and Professor Russell Engler for their willingness to share the materials on the programs in Tulsa and Massachusetts, respectively.

94 Statistically, housing, probate, and family courts maintain the highest rates of self-represented litigants. See Documenting the Justice Gap, supra note 46, at 24–26.

95 The number of attorneys necessary to begin the pilot project is a matter of the court’s discretion, although it should be roughly twenty. This will be enough to fill the Liaison Attorney position with a different attorney for each day of a given month. See infra “Liaison Attorney”. For discussion on requirements for participating attorneys, see infra “LSR Certification”.

96 Jurisdictions with similar programs have used varying media for their training. A Massachusetts LSR program required that participating attorneys watch a YouTube video with instructions on how to properly practice LSR. Telephone interview with Russell Engler, supra note 89. Although not related to LSR, in a Fed court program currently underway in Tulsa, the Courthouse Access Program (CAP), participating attorneys receive a training manual on eviction claims and defenses and receive one hour of CLE for completing the packet. See James...
While the FAC Team has not provided the exact content of the training, the Team makes these recommendations based on the LSR training program in Massachusetts. Furthermore, given the findings from Michael Millemann’s research on LSR practice, the Team suggests that any attorney producing the training should—at the very least—be experienced in the area of LSR, if not in the applicable area of substantive law. See Millemann, Rethinking, supra note 59, at 1182.

While the amount of credit hours will depend on the length of the training, the FAC Team believes that two hours is enough to accrue an administrative benefit as well as provide adequate training for LSR practice.

For more information, see infra “Liaison Attorneys”.

For more information, see infra “Referral List”.

This is based on the Legal Aid of Oklahoma means test for eligibility.

While there is an understanding that litigants at the courthouse will likely need immediate assistance, for which a referral will not immediately provide, the FAC Team imagines that there will be a number of litigants in need of assistance. According to Millemann’s family court study, a diagnostic interview and LSR assistance can take upwards of one hour to complete. Millemann, Rethinking, supra note 59, at 1182. The fact that litigants above the means test indicates that they can afford representation at a reduced cost—which makes the Referral list an effective tool for generating out-of-court LSR practice. Finally, the FAC Team decided against allowing for paid LSR in the Courthouse because the Team wanted to avoid a protracted conflict of interest check. By keeping the Liaison Attorney a volunteer position, the Liaison Attorney position falls under the purview of Rule 6.5 of the Oklahoma Rules of Professional Conduct, which provides that an attorney is exempt from Rules 1.7 and 1.9, unless the Liaison Attorney “knows the representation of the client involves a conflict of interest.” Okla. Rules of Prof’l Conduct, R. 6.5 (2008). Thus, the FAC Team concluded that the interaction with litigants above the means test should be minimal, in the interest of serving the needs of the litigants unable to receive services otherwise.

See Millemann, supra note 59, at 1182 (noting that diagnostic interview by an experienced practitioner in the applicable field of law is “critically important” for LSR because the attorney will have the ability to determine whether the litigant needs full scope representation).

Additionally, even though a full diagnostic interview template is provided, as a rough sketch of a diagnostic checklist, it should assess: (1) if the litigant needs procedural and/or substantive assistance; (2) the relevant facts of the litigants legal matter; (3) whether the litigant has a court form and if the form is filled correctly; (4) if the litigant needs assistance prepping for courtroom procedure; (5) assessing if the litigant needs assistance asserting legal claims or legal defenses; (6) assessing the litigants financial resources; and (7) assessing the litigants self-help capacity and availability of useful self-education resources to further pursue their legal matter beyond LSR in the Courthouse.

Although the decision of what LSR services are provided is ultimately up to the discretion of the court hosting the project, the FAC Team recommend these three basic services, which are based on Millemann’s LSR study. The study found that clients receiving assistance in identifying claims and defenses, filling out court forms, and understanding court procedure were generally satisfied with the assistance they received—scoring their satisfaction 8.8 out of ten in their post-hearing survey. Millemann, Rethinking, supra note 59, at 1186.

The legal information provided by the Liaison Attorney should be completely discretionary. Mindful of the immediate needs of non-eligible litigants, the FAC Team concluded that providing legal information will be the most efficient means for resolving their needs. For more information on what legal information entails, see Appendix C.

A case comparison between LSR clients receiving limited assistance and fully represented litigants on the same housing docket revealed that there was no difference in the administrative burden on the court between the fully represented group and the LSR group. See Greiner et al., The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future, 126 Harv. L. Rev. 901, 932-34 (2013).

The rate of self-represented litigants in family law courts who do not meet the means test for the pilot project may be larger than one would expect. In Millemann’s study, he found that 62 percent of the litigants in his study were above the means test for legal aid eligibility in Maryland. Moreover, he found that many of those seeking advice and assistance would have gladly taken LSR at a reduced rate if given a referral. See Millemann, supra note 59, at 1182 (n. 14), 1187 (n. 28).
Appendix A

Statewide Forms

Texas Access to Justice Commission
### APPENDIX A: STATEWIDE FORMS

Executive Summary

- Total states + D.C. with standardized forms: 49
- Total states requiring courts to accept forms if used by litigant or lawyer: 37
- Total states with family law forms: 48
- Total states with divorce forms: 37

(of divorce of rms, 31 states have divorce with children, 30 have divorce with real property, 33 have forms for custody matters, and 39 have forms for child support matters)

- Total states with forms available online: 49
- Total states which limit access to forms to low-income litigants only: 0
- Total states with a self-help website: 39

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATE-WIDE FORMS</th>
<th>COURT-REQUIRED ACCEPTANCE</th>
<th>SUBJECT-MATTER</th>
<th>FAMILY LAW FORMS</th>
<th>DIVORCE FORMS</th>
<th>DIVORCE + KIDS</th>
<th>DIVORCE + REAL PROPERTY</th>
<th>FORMS AVAILABLE ONLINE</th>
<th>INCOME RESTRICTIONS?</th>
<th>STATE SELF-HELP WEBSITE</th>
</tr>
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<tbody>
<tr>
<td>Totals</td>
<td>49</td>
<td>37</td>
<td></td>
<td>48</td>
<td>37</td>
<td>31</td>
<td>30</td>
<td>49</td>
<td>0</td>
<td>39</td>
</tr>
<tr>
<td>Alabama</td>
<td>Yes</td>
<td>-----</td>
<td>State Bar created 25 forms and 20 Court approved forms: landlord/tenant, SAPCR, divorce</td>
<td>Yes</td>
<td>Yes</td>
<td>-----</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
<td>-----</td>
</tr>
<tr>
<td>Alaska</td>
<td>Yes</td>
<td>-----</td>
<td>18 different categories of forms including appeals. SRL forms issued in past 12 years</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Arizona</td>
<td>Yes</td>
<td>Yes (protective order kit only)</td>
<td>12 categories of forms: divorce, small claims, appeals, eviction protective order, etc. &amp; 16 Family Procedure Forms 01/2009</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Yes</td>
<td>-----</td>
<td>Protective order and some probate forms are approved by the Supreme Court. Other form kits for SRLs are provided by the ATJ Commission in collaboration with legal aid. While these forms are not court ordered, they are supported by the Court and widely accepted.</td>
<td>Yes- protective order Kit</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
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</tr>
<tr>
<td>California</td>
<td>Yes</td>
<td>Yes</td>
<td>Hundreds of forms in existence for over 30 years. Forms are accepted and required by all courts in the state.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Colorado</td>
<td>Yes</td>
<td>-----</td>
<td>Adoption, family, domestic relations, appeals, probate, protective order, small claims, water, juvenile, criminal, civil, paternity, misc.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>State</td>
<td>State-Wide Forms</td>
<td>Court-Required Acceptance</td>
<td>Subject-Matter</td>
<td>Family Law Forms</td>
<td>Divorce Forms</td>
<td>Divorce + Kids</td>
<td>Divorce + Real Property</td>
<td>Forms Available Online</td>
<td>Income Restrictions?</td>
<td>State Self-Help Website</td>
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<tr>
<td>-------------</td>
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<tr>
<td>Connecticut</td>
<td>Yes</td>
<td>Yes</td>
<td>Administrative, civil, criminal, family, general, housing, juvenile, probate, small claims, appellate, protective order</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Delaware</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, family, criminal, traffic, appeals</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>D.C.</td>
<td>Yes</td>
<td>Yes</td>
<td>Family, domestic relations, protective order, civil, small claims, landlord/tenant, criminal, probate. Additional family law forms, including divorce forms, are provided on the Bar website</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Florida</td>
<td>Yes</td>
<td>-----</td>
<td>Family, probate, landlord/tenant, small claims, guardianship</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Georgia</td>
<td>Yes</td>
<td>-----</td>
<td>Juvenile, probate, protective order, criminal, domestic relations</td>
<td>Yes - protective order Kit</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Yes</td>
<td>-----</td>
<td>Family, civil, small claims, landlord/tenant, traffic, criminal, protective order</td>
<td>Yes</td>
<td>Yes***</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Idaho</td>
<td>Yes</td>
<td>Yes</td>
<td>Family, landlord/tenant, name change, small claims, protective order, judicial consent to abortion.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<td>Illinois</td>
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<tr>
<td>Indiana</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, criminal, and appellate matters. Started 10 years ago.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Iowa</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, small claims, family, divorce, protective order, commitments.</td>
<td>Yes</td>
<td>Yes</td>
<td>-----</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Kansas</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, family, landlord/tenant, probate and juvenile. 20+ categories. 100+ forms.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Yes</td>
<td>Yes</td>
<td>Probate and protective order form appear to be available for use by non-attorneys. All other forms (wide variety) available on Court's website appear to be for lawyers only. Bar provides ongoing divorce self-help clinics.</td>
<td>Yes - protective order Kit</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
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<td>DIVORCE + REAL PROPERTY</td>
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</tr>
<tr>
<td>Louisiana</td>
<td>Yes</td>
<td>Yes</td>
<td>Protective order forms available for attorneys and nonattorneys/victims of domestic violence.</td>
<td>Yes - protective order Kit</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>------</td>
</tr>
<tr>
<td>Maine</td>
<td>Yes</td>
<td>Yes</td>
<td>Consumer, civil, criminal, family, foreclosures, money judgment, protective order, small claims, protective custody, appeals.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Maryland</td>
<td>Yes</td>
<td>Yes</td>
<td>Family, landlord/tenant, small claims, traffic, protective order, and more. Started 20+ years ago.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Yes</td>
<td>------</td>
<td>Family, limited scope representation, probate, small claims, landlord/tenant, municipal courts.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Michigan</td>
<td>Yes</td>
<td>Yes</td>
<td>Adoption, civil, criminal, guardianship, protective order, name change, emancipation, parental consent, juvenile, mental commitment, probate.</td>
<td>Yes</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Yes</td>
<td>Yes</td>
<td>33 categories including divorce, protective order, traffic, small claims, bankruptcy, etc. Packets started being developed in mid1990's. Court and Bar studied and concluded forms were needed.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Mississippi</td>
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<tr>
<td>Missouri</td>
<td>Yes</td>
<td>Yes</td>
<td>Family: divorce, modification of protective order and custody, name change and paternity. SRLs MUST USE these forms.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Montana</td>
<td>Yes</td>
<td>------</td>
<td>Over 50 categories of forms including family law, discovery, appeals, protective order, landlord/tenant, probate, taxes, small claims.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes-Bar</td>
</tr>
<tr>
<td>STATE</td>
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<tr>
<td>Nebraska</td>
<td>Yes</td>
<td>Yes</td>
<td>Appeals, court records, children and family, estates, financial/medical, parental consent waiver, general trial procedure, guardianship, name change, small claims, worker’s comp and protective order.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Nevada</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, protective order, family, guardianship, landlord/tenant, appellate, divorce.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Yes</td>
<td>Yes</td>
<td>Appeals, divorce, domestic relations, child welfare, juvenile, adoption, estates, guardianship, probate.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, criminal, family, municipal, landlord/tenant, tax, appellate, foreclosures, small claims, juvenile, protective order.</td>
<td>Yes</td>
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<td>-----</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>New Mexico</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, criminal, municipal, landlord/tenant, guardianship, domestic relations.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>New York</td>
<td>Yes</td>
<td>Yes</td>
<td>Family law, divorce, protective order, criminal, and variety of civil forms. Civil forms have been used for decades.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Yes</td>
<td>-----</td>
<td>Criminal (88), civil (131), protective order, child support, paternity, juvenile. Divorce packets and self-help center provided at local district court level.</td>
<td>Yes</td>
<td>Yes</td>
<td>-----</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>North Dakota</td>
<td>Yes</td>
<td>Yes</td>
<td>Appeals, child support, visitation, guardianship, probate, protective order, small claims, simple divorce.</td>
<td>Yes</td>
<td>Yes</td>
<td>-----</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Ohio</td>
<td>Yes</td>
<td>Yes</td>
<td>Protective order and some custody &amp; support forms. Other domestic relations forms, including simple divorce forms, are provided by local courts.</td>
<td>Yes -protective order Kit</td>
<td>-----</td>
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<td>Yes</td>
<td>No</td>
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<tr>
<td>Oklahoma</td>
<td>Yes</td>
<td>Yes</td>
<td>Protective order, child support, civil, appeals, criminal appeals.</td>
<td>Yes</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Oregon</td>
<td>Yes</td>
<td>Yes</td>
<td>300+ family law forms, small claims, landlord/tenant, some criminal. Coalition of family law lawyers sought legislative mandate to create forms.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>------</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Yes</td>
<td>------</td>
<td>Probate, foreign adoptions, appeals, civil, landlord/tenant, expungements. Other forms including family law and divorce forms are provided at local court level.</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>Yes</td>
<td>No</td>
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</tr>
<tr>
<td>Rhode Island</td>
<td>Yes</td>
<td>Yes</td>
<td>Administrative appeals, civil, family, landlord/tenant, traffic, pre-trial. Limited family law forms. Criminal and small claims forms are &quot;coming soon.&quot;</td>
<td>Yes</td>
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<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Yes</td>
<td>Yes</td>
<td>Some civil and simple divorce created for SRLs. Divorce forms: uncontested, no kids, no property. But the SRL can modify the forms to include kids and property and contested matters. Also a lot of court-approved forms that are geared to attorneys.</td>
<td>Yes</td>
<td>Yes</td>
<td>------</td>
<td>------</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Yes</td>
<td>------</td>
<td>Protective order, divorce, name change, parenting time, civil</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Yes</td>
<td>Yes</td>
<td>Divorce no kids, no property were approved by the Supreme Court in 2011. They are the only Court approved forms. Tennessee’s OCA has developed other forms available to lawyers and nonlawyers, but they have not been approved by the Court. These OCA forms include: protective order, child support, criminal, probate, small claims, traffic.</td>
<td>Yes</td>
<td>Yes</td>
<td>------</td>
<td>------</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Texas</td>
<td>Yes</td>
<td>Yes</td>
<td>Protective Order Kit in 2005</td>
<td>Yes-protective order Kit</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>Yes</td>
<td>No</td>
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<td>STATE</td>
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<tr>
<td>Utah</td>
<td>Yes</td>
<td>Yes</td>
<td>Divorce, child support, enforcement, protective order, landlord/tenant, guardianship, parentage, probate, small claims, expungement.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Vermont</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil, small claims, family, protective order, criminal, probate, name change, guardianship, partner adoption.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Virginia</td>
<td>Yes</td>
<td>Yes</td>
<td>Protective order, traffic, paternity, child support, juvenile, mental health, civil.</td>
<td>Yes</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>Yes</td>
<td>No</td>
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</tr>
<tr>
<td>Washington</td>
<td>Yes</td>
<td>Yes</td>
<td>Divorce, custody, child support, protective order, juvenile, title, financial, criminal, adoption.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Yes</td>
<td>Yes</td>
<td>Divorce, family, appeals, child support, custody, protective order, guardianship,</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Yes</td>
<td>Yes</td>
<td>Divorce, family law, small claims, name change, juvenile, probate, protective order, appeals.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Yes</td>
<td>Yes</td>
<td>Divorce, child support, child custody.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Appendix B

State Courts Survey on Use of Self-Help Forms

National Center for State Courts Survey on Forms
Appendix B: State Courts Survey on Use of Self-Help Forms

The following chart represents a number of states’ responses to simplified forms and online self-help.¹

The following two questions are reflected in the responses below based on the use by self-represented litigants of state-approved forms for matters such as uncontested divorce:

1. Have you seen evidence that using the forms has harmed individuals or the public?

2. What is the impact of using the forms on judicial and court efficiency?

¹ Use of Self-Help Forms, NAT’L CENT. FOR STATE COURTS SURVEY ON FORMS (2012), http://www.texasatj.org/sites/default/files/NatlCenterforStateCourtsSurveyonForms.pdf. For more information regarding the survey,
<table>
<thead>
<tr>
<th>State/Respondent</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska/Stacey Marz</td>
<td>I am the Alaska Court System Director for the self-help program and draft the forms for use by self-represented litigants so Christine Johnson asked me to respond to the questions about usage of self-help forms.</td>
</tr>
</tbody>
</table>

1. **Have you seen evidence that using the forms has harmed individuals or the public?**

No, we have seen no evidence that using self-help forms has harmed individuals or the public. The Alaska Court System has been providing self-help forms for many years. Our self-help center was created in 2001 and began producing many forms to be used specifically by self-represented litigants. See [www.courts.alaska.gov/shcforms.htm](http://www.courts.alaska.gov/shcforms.htm) for a list of family law forms designed for self-represented litigants and [www.courts.alaska.gov/shc/appeals/appealsforms.htm](http://www.courts.alaska.gov/shc/appeals/appealsforms.htm) for a list of forms for civil appeals to the Alaska Supreme Court. The court system also provides forms in other case types: [www.courts.alaska.gov/forms.htm](http://www.courts.alaska.gov/forms.htm). These forms have increased the ability of self-represented litigants to access the courts to resolve their legal matters.

2. **What is the impact of using the forms on judicial and court efficiency?**

Judges report that filings are more complete and include more relevant information about the issues in the case. In fact, in custody family law cases, the judges regularly issue final findings and conclusions of law and decrees on forms designed to be filed by self-represented litigants. Judicial officers routinely use other self-help orders designed for self-represented litigants. They appreciate the fill-in-the-blank and check box formatting and the inclusion of all necessary provisions. Judges have also reported that filings on self-help forms are sometimes better than those drafted by attorneys.

Court clerks report a reduced need to issue deficiency notices because the fill-in-the-blank forms address many common problems (they are formatted correctly and include certificate of service sections) that historically have caused documents to be deemed deficient filings because of non-compliance with court rules.
Arizona/Dave Byers

I have never heard of any instance of harm due to the forms....Of course regardless of the forms, pro pers can make mistakes in filings and what they request (e.g. not asking for a portion of a pension)
The impact of the forms on the court are all positive...They are legible. Instructions help make forms more complete...

California/Bonnie Hough

I am responding to the question you posed regarding the usage of self-help forms on behalf of Mr. Ronald Overholt, Interim Administrative Director of the Courts.

California has used standard forms since the 1970’s. We currently have about 1,400 forms that have been approved by the Judicial Council including translations of those that are most commonly used by self-represented litigants. For a list of all forms and link to each, please see: http://www.courts.ca.gov/forms.htm The procedure for adopting a rule or form is attached.

The Judicial Council adopts legal forms in one of two ways. Under Government Code section 68511, the council may "prescribe" certain forms. Use of those forms is mandatory. The council may also "approve" forms. Use of an approved form is not mandatory, but the form must be accepted by all courts in appropriate cases (rule 1.35). Forms thus are "adopted" for mandatory use and "approved" for optional use.

Some forms are for information only (including all translations). Most forms can be downloaded to a local computer and filled out. They are also available at clerks’ offices, law libraries, and self-help centers. Parties can also print any form and fill it out by hand. See the section on the website re: "How to fill out court forms."

We have no evidence that forms have hurt litigants in any way.

Judges, clerks and practicing attorneys generally find them extremely helpful as they know where to look on forms for the information they need and do not have to worry about basic issues not being set out before the court. Self-represented litigants can prepare appropriate pleadings – often with the guidance of an attorney. Cases such as divorce, child support, domestic violence, small claims, guardianship, conservatorship, probate, adoption and a wide variety of other matters precede primarily using forms. It saves a huge amount of time in training and judicial review
to know that the key elements are set forth in the forms. We have a relatively small number of judges given our population and I think that part of the reason that the system works is because of standardized forms.

While we have a large number of self-represented litigants in California, our figures do not seem to be different than in most other states that report that data. We also have many litigants who may not be able to afford an attorney for the entire case, but are able to get help with a portion of the case, including completion or review of forms.

Guam/Geraldine Amparo Cepeda

The inquiry was the effects of the use of state-approved forms by self-represented litigants. Here is the response from the Judiciary of Guam:

The Judiciary of Guam has self-help computer kiosks that allow self-represented litigants to complete pre-approved forms, which are then printed and filed by these litigants.

Have you seen evidence that using the forms has harmed individuals or the public?

No, the court has no evidence that the use of the self-help kiosks and forms has resulted in any harm. Those who cannot afford an attorney but do not qualify for assistance from Guam Legal Services are able to generate court filings for less complex court proceedings, such as guardianships and uncontested divorces.

What is the impact of using the forms on judicial and court efficiency?

The impact on members of the public who use the kiosks and the forms has been positive. They are able to represent themselves in less complex court proceedings, and save money. The impact on efficiency in the court system has been positive as well, because the court documents generated by the kiosk are correct and in proper format for filing. As a result, there is no hold up in the filing process.
<table>
<thead>
<tr>
<th>1. <strong>Have you seen evidence that using the forms has harmed individuals or the public?</strong></th>
</tr>
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<tbody>
<tr>
<td>No. We try and limit our forms to court proceedings which are not complex, although that is difficult to do in family law cases which have the greatest need for assistance and the greatest inability to retain legal counsel. While there might be an occasional circumstance where instructions are not followed, or errors occur, the same thing happens in cases where the parties are represented by attorneys. Our goal is to provide access to the courts for citizens of limited means who are unable to retain legal counsel. If there were adequate resources for these people to assist them in retaining counsel, we would not have to provide this kind of assistance for self-represented parties. But the reality is, there is no other option. The “harm” to the public would be to provide no help for those unable to retain an attorney. For those who have dealt with this issue for many years, the argument that providing access to justice through court approved forms “harms” the public is very disingenuous.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. <strong>What is the impact of using the forms on judicial and court efficiency?</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>If statistics are examined for the past 10 to 15 years, in particular in family cases, one will see an extremely high and consistent rate of self-representation. This is not the result of any action or inaction on the part of the courts, but driven by the high cost of legal representation in proceedings where parties have no choice but to go to court. Prior to our use of court approved forms, these parties were trying to create their own forms, or using inadequate or inappropriate forms they found from a variety of sources, which did nothing but frustrate court staff and judges who had to deal with the problems created by those documents. By having correct forms and instructions approved by the courts, these issues have diminished greatly. Less time is spent correcting or redirecting the self-represented litigants by court staff and judges, and matters are resolved more quickly and efficiently. But the greatest “impact” on the judiciary, however, is the appreciation expressed by the public and the public’s very appropriate perception that everyone is ensured access to justice in our courts.</td>
</tr>
</tbody>
</table>
Here are several responses from Indiana per your request to the COSCA listserv:

In response to your email dated February 8, 2012, to Indiana Supreme Court Division of State Court Administration Executive Director, Lilly Judson, I forwarded the survey questions to our SRL Committee for response. Our Committee is comprised of judges, lawyers, court librarians, legal service organizations, court clerks, law schools, and pro bono organizations. Below you will find the responses received from several of the Committee members:

From judges........

People tend to use the forms without a full understanding of what they are supposed to be used for. They also think that once they file the forms their relief will either be automatically granted or the Court or court staff will assist them through the process. Many people do not bother to read or follow the directions that accompany the forms. They become frustrated when they cannot get the relief they are requesting.

The impact on the Court and judicial efficiency is that court staffs are glad to be able to refer people to the website for forms. However, the staff is not sufficiently aware that there are not forms available to fit all situations. The litigants return to the court frustrated that they cannot find the correct forms or resort to using the wrong forms just to get something on file. We often go in to Court to hear an emancipation only to discover that the moving party is seeking modification of custody or some other relief. I don’t think the answer is creating forms to fit more situations. Litigants need to understand the limitations of the website.

The forms help separate the simple cases that can be done with little or no professional assistance, from the more complicated matters that genuinely require legal specialist and other professional guidance.

Please allow me to respond to your questions in reverse order.

The forms generally save the court time in two ways. First, they are recognizable as pleadings, which mean I do not spend as much time guessing what the litigant wants. Second, the forms are a huge improvement over handwritten pleadings because they are much easier to read.
I do not believe that the forms have harmed individuals or the public. Litigants are harmed by incomplete forms, missing important information or issues, and lack of understanding the legal process. As long as people are self represented, that is not likely to change. The existence and use of the forms is incidental to that problem. That said, having the forms may give some persons a false sense of security that can be risky. The philosophical question of whether it is better to let people engage in legal combat where they may be overmatched and "outgunned" or not let them get into the fray at all is for those wiser than me.

From a court clerk:

Have you seen evidence that using the forms has harmed individuals or the public? no

What is the impact of using the forms on judicial and court efficiency? Our Courts really appreciate the forms. Without them pro-se litigants turn the Court and Clerk staffs into interpreters.

From pro bono organizations:

Harm? I don't believe that I have ever seen the forms themselves result in harm to litigants that would not have occurred regardless. Certainly, litigants misuse the forms sometimes, use them for the wrong reasons, or try and modify them to fit a situation that they aren't designed to address, but they would likely do that regardless of the existence of our court forms(using forms from the internet or other sources or no forms at all). There are times when litigants don't read the directions or understand the implications of court actions, but that is not the fault of the forms. That is the fault of a society that doesn't have adequate access to counsel – which is a different issue entirely. I do think litigants are sometimes frustrated that our forms cannot work the magic they hope and pray for.

Efficiency? The forms have absolutely improved judicial and court efficiency, especially since the advent of the new versions that help litigants only use the appropriate forms for their specific situation (no more filing for both and final hearing and a waiver of the final hearing because they are in the same packet). When combined with pro se assistance, we have seen the number of continuances in litigated matters drop substantially with litigants completing matters more quickly and with fewer scheduled hearings.
Have you seen evidence that using the forms has harmed individuals or the public?
I have not seen any such evidence. All feedback to me has been positive.

3. What is the impact of using the forms on judicial and court efficiency? I do not work in the courts but the pro bono plan administrators’ observation is that the forms increase court efficiency and access to justice.

Iowa/John Goerdt on behalf of David Boyd

David Boyd asked me to respond to this inquiry. The Iowa courts have offered a form for filing a small claims case for at least 15 years. In 2007, the Iowa courts began offering forms and instructions for self-represented parties in a divorce that does not include children. In 2008, our courts also began providing forms and instructions for parties involved in a proceeding to modify child support only. The committee that developed these forms expects to complete the forms and instructions for a divorce involving children sometime during 2012.

You can find the forms and instructions for domestic relations cases on the Iowa courts' website at:


1. Have you seen evidence that using the forms has harmed individuals or the public?

We have not received any complaints or feedback from the public or judges that use of these forms has harmed any individuals. Many or most of the people who have used the forms and instructions developed by the Iowa judicial branch would have found forms someplace (e.g., on the internet or at Walmart) -- and those generic forms often do not meet some specific requirements under Iowa law. By using the forms and instructions approved by the Iowa Supreme Court, parties and judges can be confident that the forms and instructions meet the requirements of Iowa law. Consequently, the forms and instructions probably prevent harm, rather than cause harm.

It should be noted that at approximately the same time when the forms and instructions for divorce without children were released (in 2007), the supreme court amended the Code of Professional Conduct for attorneys to allow them to handle just part of a case (i.e., unbundled legal services), rather than requiring them to handle everything in a case from start to finish. The instructions that accompany the forms for self-represented litigants encourage the parties to consult with an attorney whenever they have questions about a form or procedure described in the instructions.
2. What is the impact of using the forms on judicial and court efficiency?

Under the Iowa Court Rules, a self-represented party who uses forms in any case for which the supreme court has made forms available must use the approved forms. The forms are very simple and clearly explained by the instructions. Use of these forms almost certainly increases the likelihood that self-represented parties provide the type of information judges need to make decisions and move the case to the next step. Judges also know exactly where to find the information they need on the forms because the forms are standardized. Consequently, the forms and instructions have almost certainly increased the courts’ efficiency in handling cases involving self-represented parties.

Massachusetts/Kim Wright
Your inquiry to Listserv members regarding questions from Carl Reynolds regarding self help forms has been referred to me relative to a question about Probate and Family Court forms. We have a court promulgated form for filing an uncontested divorce, a Joint Petition, but we do not provide a form for the agreement that must be submitted with it that contains all the substantive information about the parties agreement relative to custody, visitation, child support, property division etc. We have various other complaint and petition forms for other case types available at our courthouse and some on our website. Please feel free to contact me with further questions.

Michigan/Amy El Garoushi
I am responding from Michigan. We have not yet started using court-approved forms for divorce proceedings in Michigan. We are in the process of developing them now for use with a pilot website being developed by the Michigan Poverty Law Program through a project funded by the State Bar Foundation and overseen an advisory group established by the Solutions on Self Help Task Force. The use of these forms and the website will be evaluated for effectiveness and impact on the judiciary in the upcoming year. If you would like more details, you can contact Angela Tripp of the Michigan Poverty Law Program. Feel free to contact me for more information.
<table>
<thead>
<tr>
<th>Missouri/Greg Linhares</th>
<th>Missouri has no survey or other empirical data to determine if the public or individuals have been harmed by our forms, nor do we have such information to determine impact on court efficiency. Anecdotal evidence suggests both benefits and drawbacks to use of such forms in Missouri, with improved access to court process for pro se litigants being identified anecdotally as a benefit, and improper use of forms or improper attempts to represent oneself when an attorney should be used being identified anecdotally as a drawback.</th>
</tr>
</thead>
</table>
| Montana/Erin Farris    | I am responding to this message on behalf of the Montana Supreme Court Court-Help Program. As the current Program Administrator, these comments are a reflection of the feedback I receive from clerks of court and judges statewide regarding the State’s provision of forms for self representation.  

1. **Have you seen evidence that using the forms has harmed individuals or the public?**

I cannot report a single incident where the use of self represented forms created and distributed by the State has harmed a self represented litigant. Although form development is challenging, especially in light of legal progress, obstacles encountered by self represented litigants are only made easier by the State’s provision of forms. 

A large contributing factor to Montana’s success in form development and distribution is the administrative safeguards in place. The Montana Supreme Court has a Commission on Self Represented Litigation. One of the purposes of the Commission is to approve form development and revisions. The Commission has a process of determining what materials are most appropriate for self representation and endorses the development of only those forms. The Commission also delegates legal experts to review form content. The decision of whether to provide forms on a particular subject often hinges on whether the materials might put the litigant at risk of harm due to predictable or unpredictable legal outcomes. 

An example of near harm created by self representation forms was due to a litigant’s utility of a form found from a foreign online source. The forms used were not provided by the State. This was only a situation of near harm because the presiding judge was able to identify the unfamiliar form and consult community and State resources about its inappropriateness. Through the provision of well defined state approved forms and communication with the court, Court based legal programs act as a safeguard to the multitude of misinformation available to people through various online legal resources.  

2. **What is the impact of using the forms on judicial and court efficiency?**

Prior to the provision of forms, litigants were largely undirected. Given the relative unpreparedness of an individual attempting to navigate the court system, court staff had a very difficult time administering justice. Judges found
themselves in uncomfortable positions in the court room; making difficult decisions in answering litigant questions and instructing litigants on filing. Clerks of court similarly had to regularly instruct litigants on filing requirements.

Judges observations are that the State’s provision of forms dramatically increased court efficiency by enhancing the effectiveness of scheduling and completing effective court hearings. However, complaints about forms are ongoing. Judges complain the “one size fits all” approach to form development results in overly lengthy forms. Judges have also complained that the forms are unconstructively vague. However, the solution in those jurisdictions has not been to abandon forms. Rather, judges developed county or district specific forms to address their concerns.

Clerks of court are extremely appreciative of state wide form provision. Prior to form development, clerks of court would receive multiple visits from self represented litigants in their jurisdictions and found it very difficult to manage their time and avoid instructing individuals on filing instructions from the counter. Many clerks describe the ability to direct individuals to state forms as an option they couldn’t do without. Some clerks have fully endorsed forms to the extent of actually providing printed forms to litigants at the clerk counter.

I hope this brief description of our experience is helpful to your research. Feel free to contact me if you have additional questions.

For a complete list of Commission endorsed self representation forms see: http://courts.mt.gov/library/topic/default.mcpx

For more information on the Commission on Self Represented Litigants see: http://courts.mt.gov/supreme/boards/self_represented_litigants/default.mcpx
| New Hampshire/Don Goodnow | **Have you seen evidence that using the forms has harmed individuals or the public?**  Assuming "state-approved" refers to forms created by the judicial branch which are made available to the public, we have not seen any evidence that the use of these forms has harmed individuals of the public.  

**What is the impact of using the forms on judicial and court efficiency?**  Our pre-made forms include spaces for individuals to include information set forth in statute or court rules and thus they provide a compliance roadmap for any filing party. The use of these forms increase efficiency because they reduce the explanation time required by clerical staff to the filing party, and both clerical and judicial staff know immediately where on the form to look for specific information to screen and review. These forms are updated by the court, thereby reducing the likelihood that they will have to be returned to the party for the inclusion of information newly required by law or court rule. |
| New Mexico/Arthur Pepin | **1. Have you seen evidence that using the forms has harmed individuals or the public?**  

NM introduced statewide uncontested divorce forms over ten years ago. The main problem with the form was that people did not understand the difference between contested and uncontested (no matter how clearly that was addressed in the form) and would try to file uncontested forms for contested matters. Because the need for pro se forms is so severe in NM, the NM Supreme Court is seeking to establish forms for use in both contested and uncontested cases through the interactive format of the LawHelp website.  

**2. What is the impact of using the forms on judicial and court efficiency?**  

The initial impact was confusion on the part of court staff and judges, but continued use resulted in familiarity and suggestions to streamline the process. There has never been a major push to pull the forms off the shelf once they were introduced, only to improve them. The forms improve court efficiency because court staff has forms and/or referrals to give to pro se litigants, who otherwise clog up the lines and phones with questions and requests for legal advice that court staff cannot give. Trained on the difference between legal advice and procedural information, and equipped with available, approved referrals, court staff are able to provide access to the courts to pro se litigants rather than turn them away with no help. |
North Carolina/Todd Nuccio on behalf of Judge John Smith

Judge Smith forwarded the below email to my attention for comment and direct submission. I am the court administrator in Mecklenburg County, NC and we generally have the widest use of self-help forms and services in the state. Please let me know if you need any further clarification regarding the below responses. Thanks.

**Q. Have you seen evidence that using the forms has harmed individuals or the public?**

A. We have not seen any evidence which indicates the use of legal form packets by pro se litigants has harmed individuals or the public. To use the example of absolute divorce, litigants who wish to file for absolute divorce are required to meet all the same legal standards as an attorney filing for absolute divorce. A judge is assigned to review all documents filed by the individual in the case and determine that all legal standards have been met prior to signing the order granting an absolute divorce.

The Mecklenburg County SelfServe Center has developed step by step instructions and local county forms that require the litigant to answer all of the legal requirements for filing for absolute divorce, child support, custody and other claims for relief. These forms have been reviewed and approved for distribution by various Family Court Judges in Mecklenburg County. We have found that these and the other steps mentioned below have helped in reducing harm to individuals and the public. In fact, the standardized forms actually assist in reducing errors, increasing efficiency and improving litigant satisfaction.

In addition to forms and instructions, we provide supplemental services which further reduce any potential harm. One additional service is providing a list of attorneys willing to provide “unbundled services.” This term is used to describe the wide range of discreet tasks that an attorney might provide without providing full representation. Unbundled services allow the litigant to seek assistance for those tasks that are beyond either their educational means, financial means or both. As such, they can elect to use an attorney for their entire case or just a particular phase of the case. Other measures we have implemented which reduce any potential harm to individuals or the public include the offering of educational workshops (clinics) for pro se litigants. In partnership with the Charlotte School of Law and the Latin American
Coalition we conduct clinics in both English and Spanish during the lunch hour, in the evening and on weekends. These clinics cover the legal standards required and increase the accuracy and completeness of the forms. After attending a legal clinic, the litigant, if financially qualified, may also sign up for an Attorney for the Day appointment. This is a 30 minute consultation with a licensed North Carolina attorney. These attorneys have also attended a continuing legal education (CLE) on assisting self-represented litigants navigate the court system. The Mecklenburg County SelfServe Center hosts, on average, three (3) days per month where an attorney conducts up to six (6) consultations per day. This allows 18 litigants per month to have their documents reviewed for accuracy, completeness and the ability to ask additional questions about the divorce process.

Q. What is the impact of using the forms on judicial and court efficiency?

A. Each week one judge is charged with reviewing up to 135 divorce files. The judges have openly expressed their preference in reviewing and processing local template forms. Their preference is expressly based on uniformity, the ability to review the information at a glance for completeness, and the formatting of the documents. In fact, for ease in processing, most judges first separate the divorce files into two piles, local forms and other pleadings. The time spent processing the template forms is minimized greatly in comparison to those drafted by members of the Bar. The same preference is true for handling forms dealing with other case types. The completeness and uniformity serve to ensure that the Court has what it needs to address the relief being sought.
| North Dakota/Sally Holewa | 1. **Have you seen evidence that using the forms has harmed individuals or the public?** We have not done a study on this. Anecdotally, some judges and lawyers have raised this as an issue, but have not provided any specific examples.  
2. **What is the impact of using the forms on judicial and court efficiency?** Judges and court staff frequently raise this as an issue, but we have not done any type of study to determine whether that is actually the case or whether not having forms available for self-represented litigants would make the process more efficient. |
<table>
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<tbody>
<tr>
<td>Ohio/Jo Ellen Cline on behalf of Steve Hollon</td>
<td><strong>Have you seen evidence that using the forms has harmed individuals or the public?</strong> None to our knowledge. <strong>What is the impact of using the forms on judicial and court efficiency?</strong> Allowing the use of standardized forms has a significant impact on judicial economy both in terms of administrative matters and case processing. Ohio uses standard forms in domestic relations cases, civil protection order cases, and in probate matters extensively.</td>
</tr>
<tr>
<td>Oklahoma/Mike Evans</td>
<td>Occasionally the Oklahoma legislature has directed that the Administrative Office of the Courts prepare subject matter forms that are available to judges and litigants; however, these forms are not designed or specifically designated for use by self-represented litigants only. These forms have been used on a very limited basis. I am not aware of any particular concerns with their use in any Oklahoma trial court.</td>
</tr>
</tbody>
</table>
| South Carolina/Cody Lidge | 1. **Have you seen evidence that using the forms has harmed individuals or the public?**

No, but SC Court Administration has learned of isolated events where individuals have attempted to sell the SelfRepresented Litigant Divorce Packet to litigants even though the packet is offered free of charge.

2. **What is the impact of using the forms on judicial and court efficiency?**

Our forms are easily accessible on the website and, in some cases, provided in the Clerks of Court offices for a nominal fee. When the court forms are used correctly, they benefit all players and help judicial proceedings run smoothly. |
| --- | --- |
| Utah/Jessica Van Buren on behalf of Dan Becker | The answers provided are based on anecdotal experience.

1. **Have you seen evidence that using the forms has harmed individuals or the public?**

We have not. We have, however, seen people harmed by **not** using the free court-approved forms. For example, people who pay for divorce packets that don't include vital forms, like the petition.

2. **What is the impact of using the forms on judicial and court efficiency?**

There has been a positive effect on clerical and judicial efficiency. The court-approved forms are also used by clinic staff and practicing attorneys. |
Appendix C

Legal Information vs. Advice

State Bar of Arizona
## APPENDIX C: LEGAL INFORMATION VS. ADVICE

This chart, compiled by the FAC Team, shows how a number of states have clarified the difference between legal advice and legal information.

<table>
<thead>
<tr>
<th>State</th>
<th>Legal Information</th>
<th>Legal Advice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona¹</td>
<td>• Factual information regarding the law and court procedures</td>
<td>A written or oral statement that:</td>
</tr>
<tr>
<td></td>
<td>• Factual information regarding court record, forms or pleadings, informational pamphlets, copies of statutes</td>
<td>• Interprets aspects of law, court rules, procedure, or recommends a certain course of action a litigant should take</td>
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<tr>
<td></td>
<td></td>
<td>• Applies law to factual cases</td>
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<tr>
<td></td>
<td></td>
<td>• Requires the person giving advice to have knowledge of the law</td>
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<tr>
<td></td>
<td></td>
<td>beyond court requirements and procedures</td>
</tr>
<tr>
<td></td>
<td>• Explains and answer questions about how the court works, and check forms for completeness</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Provide referrals to outside legal services</td>
<td>• Advising whether a litigant should bring a case to court</td>
</tr>
<tr>
<td></td>
<td>• Provide general information about court rules, procedures, and practices</td>
<td>• Explain what words to use in court documents or what to say in court</td>
</tr>
<tr>
<td>California²</td>
<td>• Provide information on a litigant’s case file</td>
<td>• An opinion about the outcome of a litigant’s case</td>
</tr>
<tr>
<td></td>
<td>• Provide court forms and instructions</td>
<td>• Talk to the judge on behalf of the litigant or change an order signed by a judge</td>
</tr>
<tr>
<td></td>
<td>• Answer questions about court deadlines and how to calculate them</td>
<td></td>
</tr>
<tr>
<td>Idaho⁴</td>
<td>• Provide information contained in court dockets</td>
<td>• Giving information when you are unsure of the correct answer</td>
</tr>
<tr>
<td></td>
<td>• Answer questions concerning court rules and procedures</td>
<td>• Advising litigants to take a particular course of action</td>
</tr>
<tr>
<td></td>
<td>• Provide examples of forms to guide litigants</td>
<td>• Provide information to one party that you wouldn’t provide to another</td>
</tr>
<tr>
<td></td>
<td>• Answer questions on the completing forms</td>
<td>• Disclose the outcome of a case before it becomes public record</td>
</tr>
<tr>
<td></td>
<td>• Explain legal terms</td>
<td></td>
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<tr>
<td></td>
<td>• Answer questions about court deadlines</td>
<td></td>
</tr>
<tr>
<td>Michigan⁵</td>
<td>• Providing legal, procedural definitions and court statutes and rules</td>
<td>• Legal interpretations, procedural advice, statutory research and interpretation</td>
</tr>
<tr>
<td></td>
<td>• Providing public information and general information on courts</td>
<td>• Providing court confidential information or opinions on a litigant’s case</td>
</tr>
<tr>
<td></td>
<td>• Providing referrals</td>
<td>• Encouraging litigation</td>
</tr>
<tr>
<td></td>
<td>• Providing forms and instructions on how to complete the forms</td>
<td>• Recommending a specific attorney</td>
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<tr>
<td></td>
<td></td>
<td>• Giving advice or completing a litigant’s forms</td>
</tr>
<tr>
<td>State</td>
<td>Legal Information</td>
<td>Legal Advice</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| North Dakota | • Explain court rules and procedures  
• Explain how to file a case  
• Providing pamphlets or information on how to present evidence in court  
• Providing information of precedent rulings  
• Provide statutes  
• Recommending the use of attorneys  
• Providing forms and instructions on how to complete the forms | • Recommending a certain rule or procedure to follow or applying facts to rules  
• Advising on whether to file a case, and what arguments to make regarding a litigant’s case  
• Advising what questions to ask in court, what techniques to present evidence to 
• Recommending objections  
• Predicting an outcome of a case  
• Interpret statutes or performing legal research for a litigant  
• Recommending a specific lawyer  
• Suggesting the information that should be entered on forms |
| Utah      | • Providing public information like court records, dockets, deadlines  
• Recite statutes and rules and explain the general nature of courts  
• Refer litigants to law library or court websites  
• Explain legal terms and definitions | • Recommending whether to file a pleading, how to fill out content on a form, and asserting specific claims related to a litigant’s case  
• Recommending objections, evidence, or advising whether or not to settle a case  
• Interpret statutes and application of facts to law  
• Perform legal research and predicting outcomes of cases. |

4 EMPLOYEE GUIDE TO LEGAL ADVICE, MICH. JUDICIAL INST., 6 (2008); page 6, table 1
6 LEGAL INFORMATION VS. LEGAL ADVICE: GUIDELINES AND INSTRUCTIONS FOR COURT STAFF WHO WORK WITH SELF-REPRESENTED LITIGANTS IN UTAH'S STATE COURTS, UTAH JUDICIAL COUNCIL, 5-6 (2010), pg. 5-6
Appendix D

Court Navigator Analysis Across the Country

FAC Team
APPENDIX D: COURT NAVIGATOR ANALYSIS ACROSS THE COUNTRY

This chart, compiled by the FAC Team, is based on and heavily borrows from Sandefur and Clarke’s *Designing the Competition: A Future of Roles Beyond Lawyers? The Case in the USA*.¹

<table>
<thead>
<tr>
<th>Program</th>
<th>Provider Compensation</th>
<th>Training and Certification</th>
<th>Jurisdiction Practiced</th>
<th>Service Funder</th>
<th>Services Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Navigators²</td>
<td>Most are volunteers; may receive course credit; some are paid</td>
<td>3-8 hours of training and service commitment; or, paid occupation</td>
<td>New York</td>
<td>Courts, philanthropies</td>
<td>See the following for an analysis: COMMITTEE ON NONLAWYERS AND THE JUSTICE GAP, NAVIGATOR SNAPSHOT REPORT, 2-3 (2014).</td>
</tr>
<tr>
<td>Courthouse Facilitators³</td>
<td>Paid</td>
<td></td>
<td>Washington</td>
<td>Clients through fees, courts</td>
<td>• Referral to alternate resolution resources;</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>• assistance in calculating child support;</td>
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<td>• process interpreter requests;</td>
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<td></td>
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<td>• assistance in instructions for court forms;</td>
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<td>• explanation of legal terms;</td>
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<td>• information on basic court procedures including requirements;</td>
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<td>• review of completed forms;</td>
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<td>• previewing pro se pleadings prior to hearings to determine whether procedural</td>
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<td></td>
<td>requirements have been complied with; and</td>
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<td></td>
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<td></td>
<td>• Assist the Court with pro se matters.⁴</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>• Are supervised by the Family Courthouse Facilitator Advisory Committee</td>
</tr>
<tr>
<td>Justice Corps⁵</td>
<td>Educational Grant</td>
<td>30 hours of training and service commitment;</td>
<td>California</td>
<td>Court system, AmeriCorps</td>
<td>• Assist self-represented litigant with forms</td>
</tr>
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<td></td>
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<td>• Provide referrals</td>
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<td>• Assist with language services</td>
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<td>• Spend time observing the courts and explain judicial orders to litigants.</td>
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<td>• Assist court staff with legal workshops⁶</td>
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<td>Program</td>
<td>Provider Compensation</td>
<td>Training and Certification</td>
<td>Jurisdiction Practiced</td>
<td>Service Funder</td>
<td>Services Provided</td>
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| Domestic Violence Advocate<sup>7</sup>       | Volunteer or Paid     | Training provided by nonprofit advocacy groups | North Carolina, Oregon | Philanthropy   | • Provides Information on protective orders.  
• Make contacts with clients, assist on court dates, provide emotional support throughout court proceedings<sup>8</sup>  
• Paid advocates create referrals and procedurally guide self-represented litigants, prepare correspondence for litigants, assist litigants by providing information on what to expect at court hearings  
• Paid advocates explain post-judgement hearings and contact litigants for future court dates  
• Paid advocates collect and maintain reports for litigants who qualify for the program<sup>9</sup> |
| Council of Parent Attorneys and Advocates<sup>10</sup> | Paid                  | 40 hours of advocate training | Any state that permits advocates in court.<sup>11</sup> | Client         | • offer non-legal services to special education parents and students  
• provides legal information in accordance to state rules  
• Helps negotiate and resolve disputes  
• Some states allow advocates to represent parties in due process hearings, but no state allows an advocate to represent you in state or federal court  
• Some are supervised by attorneys |
Appendix E

Overview: Ethics of Limited Scope Representation

FAC Team
Overview: Ethics of Limited Scope Representation

This section offers a brief overview of professional responsibility policy issues associated with limited scope representation (LSR), along with potential responses. For an in-depth and comprehensive analysis of LSR’s ethical challenges and possible responses, see the American Bar Association’s report, *An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants* (2009).

The Oklahoma Rules of Professional Conduct were revised in 2008 and now include ABA Model Rule 1.2 (c), which explicitly authorizes attorneys to limit the scope of representation. As a result, attorneys in Oklahoma can currently provide limited scope services without the need for any revision of the Rules of Professional Conduct. Other states, including Massachusetts and Texas, have also adopted Rule 1.2 (c) and have embraced and promoted LSR as an access to justice intervention without making any modifications to Rule 1.2 (c).

However, Oklahoma does have the option of making changes to certain aspects of the Rules of Professional Conduct or issuing new or revised procedural rules, two steps that have been taken by a number of other states with the goal of providing additional guidance on LSR and encouraging more attorneys to provide limited scope services. Based on an American Bar Association analysis of the LSR-related rules, policies, and practices of across the country, the most important potential areas for clarification include:

a. **How to define the scope of representation;**

b. **The boundaries for communications between counsel and self-represented parties;**

c. **The lawyer’s role in document preparation;**

d. **The role of entry of appearances and withdrawals; and**

e. **Whether and when conflict checks are excused in LSR.**

Two ethical rules clearly implicated by LSR are Rule 1.2 (c), which allows limited scope services, and Rule 1.1, which requires attorneys to provide competent representation. Read together, these two rules suggest that Oklahoma attorneys must focus on clarity when they define the scope of representation (ensuring that the client understands the scope), reasonableness (ensuring that the scope is reasonable under the circumstances, as required by
Rule 1.2 (c)), and competency (Rule 1.1’s basic requirement that an attorney provide competent representation).

A key policy question raised by the interaction between Rule 1.2 and Rule 1.1 is the extent to which a lawyer can provide basic legal information—which Rule 1.2 allows—without conducting a full inquiry into the legal and factual nature of a client’s problem as required by Rule 1.1. If lawyers are required to conduct a full inquiry prior to providing legal information, lawyers’ ability to compete with nonlawyer legal information services is severely constrained.

Oklahoma could address this issue by revising the Comments to Rules 1.1 and 1.2 (c) to “clarify that a lawyer and client may agree to limit the representation to nothing more than legal information when that is all the client wants the lawyer to provide, and that in those instances accurate information is deemed competent without the requirement of the lawyer to make further inquiry or analysis.”

b. Communications between Counsel and Parties

LSR implicates Oklahoma Rules of Professional Conduct 4.2 and 4.3, which protect represented parties from communications with opposing party attorneys. These rules do not explicitly contemplate a situation where a self-represented litigant has received limited services from an attorney and do not provide guidance to attorneys who may need to communicate with such self-represented individuals. In response to this challenge, the ABA has recommended that states consider additional rules explicitly imposing an obligation on a represented party’s attorney to determine the scope of the limited representation; further, only communications outside of that limited scope should be made directly to the unrepresented party.

c. Document Preparation

The parameters of an attorney’s role in document preparation, commonly called ghostwriting, is another issue raised by LSR. Oklahoma’s Rule 1.2 (c) appears to allow a lawyer to limit the scope of representation to document preparation. However, where procedural rules require attorneys to sign pleadings, an attorney may be called into court despite the expectation of limited representation under Rule 1.2.

States across the country have addressed ghostwriting in three key ways. First, some states have kept the requirement that lawyers who prepare pleadings must sign those pleadings...
but have also developed rules that allow a lawyer’s signature to represent a certification of their understanding of the facts of the case as provided by the client, as opposed to a certification that the lawyer has conducted a full and independent inquiry into the factual and legal claims.\(^5\) Second, where an attorney’s certifying signature is not required, there is a concern that courts will be misled by a lack of information about an attorney’s involvement. In response, some states have required lawyers disclose their name and contact information, while other states simply require the court to be advised that the litigant had a lawyer’s assistance.\(^6\) Finally, in situations where the procedural requirement to sign a pleading has the effect of entering an attorney’s appearance in a case, a number of states have created exceptions that explicitly exempt a lawyer providing LSR from any obligation to provide services beyond the limited scope agreement.\(^7\) A number of states, such as Kansas, have implemented such changes via supreme court rules.\(^8\)

d. **Entry of Appearance and Withdrawal**

Under the traditional model of full representation, a lawyer who enters an entry of appearance becomes the attorney of record and is presumed to be the litigant’s representative for all matters within that case. Thus, a party can only be represented or unrepresented in the eyes of the court; there is no in-between status. In response, a number of states have revised ethical rules or issued new supreme court rules that address this concern in three key ways. First, some states permit a lawyer to enter a limited appearance notifying the court of the nature of the limitation. Some states provide standardized forms for this purpose.\(^9\) Second, some states require an attorney practicing LSR to notify the opposing counsel of the fact and nature of the limitation.\(^10\) Third, states have implemented clear procedures governing expedited withdrawal from a case.\(^11\) For example, Wyoming Rule 102 states: “An attorney who has entered a limited entry of appearance shall be deemed to have withdrawn when the attorney has fulfilled the duties of the limited entry of appearance.”\(^12\)

e. **Conflict Checks: Special Rules for Non-profit and Pro-bono Services**

Whether and when an attorney must conduct a conflict check is a final issue raised by LSR. In response to this policy concern and in the context of access to justice initiatives, Oklahoma has adopted Rule 6.5, which addresses the conflict check question and other LSR issues for attorneys volunteering for a nonprofit organization or court sponsored program to provide
short-term limited legal services. Rule 6.5 excuses attorneys’ obligation to check for conflicts of interest when participating in nonprofit or court programs offering limited legal services where there is no expectation of continuing representation. However, the ABA suggests that attorneys should always consider a full conflict check with the lawyer’s firm as a best practice. If an attorney knows that the representation of a client involves a conflict of interest, or if the attorney knows that another attorney associated with the attorney in a law firm is disqualified, it is inappropriate for the attorney to provide short-term limited legal assistance under Rule 6.5.

Notes

1 OKLA. RULES OF PROF’L CONDUCT R. 1.2 (c) (2007).
2 ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE PRO SE LITIGANTS (2009).
3 Id. at 8.
4 Id. at 12.
5 Id. at 12-14.
6 Id. at 13-16.
7 Id. at 16.
9 ABA STANDING COMM., AN ANALYSIS OF RULES, supra. note 2, at 17-21.
10 Id. at 21-23.
11 Id. at 23-27.
12 UNIF. RULES FOR DIST. CTS. FOR THE STATE OF WYO., R. 102 (2002).
14 ABA STANDING COMM., AN ANALYSIS OF RULES, supra. note 2, at 28.