

Committee on Resources for Self-Represented Parties  
 Strategic Planning Initiative  
 Report to the Judicial Council  
 July 25, 2006

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## 1) Background

The Committee on Resources for Self-Represented Parties is a standing committee established by Judicial Council Rule 3-115. The Committee's purpose is to "study the needs of self-represented parties within the Utah State Courts and propose policy recommendations concerning those needs to the Judicial Council."

The duties of the Committee are to:

(A) provide leadership to identify the needs of self-represented parties and to secure and coordinate resources to meet those needs;

(B) assess available services and forms for self-represented parties and gaps in those services and forms;

(C) ensure that court programs for self-represented litigants are integrated into statewide and community planning for legal services to low-income and middle-income individuals;

(D) recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving how the legal system serves self-represented parties; and

(E) develop an action plan for the management of cases involving self-represented parties.

Since its first meeting in June, 2005, the Committee has been reviewing services provided to self-represented parties in Utah and programs provided in other states. In early 2006, the Committee conducted an empirical study of the experience of self-represented parties in sixteen limited and general jurisdiction trial courts. Based on that study and the Committee's previous investigations, the Committee has developed this strategic plan for investigating, developing and providing resources for self-represented parties.<sup>1</sup>

## 2) Self-Represented Parties in Utah

The data collected present the following picture of self-represented parties and their experiences.

### a) Nature of self-represented parties

1. 52% of self-represented parties appearing at a trial or hearing are between the ages of 25 and 44. 55% seeking assistance from the clerk's office are between 25 and 44.

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<sup>1</sup> The Committee would like to thank Mr. John Greacen, the Center for Court Solutions, the State Justice Institute, the National Center for State Courts, and the Center for Effective Public Policy for their help in preparing this report and in conducting the survey upon which it is partly based.

2. 65% of self-represented parties appearing at a trial or hearing have one or no children in their household. 61% seeking assistance from the clerk's office have one or no children.
3. 47% appearing at a trial or hearing and 41% seeking assistance from the clerk's office report annual household incomes of \$24,000 or less. 60% make \$36,000 or less annually. About 15% make over \$96,000 annually.
4. 19% of self-represented people coming to the clerk's office and 23% of those appearing at a hearing or trial identify themselves as minorities. About 3% identify themselves as Native American. About 12% identify themselves as Hispanic.
5. 95% of clerk's office users and 97% of people appearing for a hearing or trial report English as their primary language.
6. About 75% of self-represented parties are very infrequent court users.

**b) Perceptions by judges, attorneys and court staff of self-represented parties**

1. Judges of both district and justice courts find consistent problems with self-represented parties expecting judges and court staff to provide legal advice, failing to understand rules of procedure and evidence, failing to bring necessary witnesses and evidence to court, and refusing to accept the court's rulings.
2. Attorneys emphasize the parties' lack of reasonable expectations concerning case outcomes and the difficulties attorneys face in negotiating with self-represented parties.
3. Court clerks report that self-represented parties require more time than represented parties, that self-represented parties expect the clerks to provide advice that court staff are not allowed to provide, and they expect court staff to do the work for them.
4. Justice court judges rate the performance of self-represented parties more highly than do district court judges.
5. Justice court judges do not perceive a significant need to reschedule cases due to the lack of preparation of self-represented parties. More district court judges perceive this to be a problem. 63% of the district court judges report that it affects fewer than 25% of the cases.

**c) Services desired or needed by self-represented parties**

1. The district court case types in which people most often appear without counsel are domestic relations matters, small claims, landlord/tenant, probate, other civil, and protective orders, in that order. In justice court the most frequent case types are traffic, parking, and small claims, in that order.
2. Most people coming to the courthouse do so to file a new case, to file papers in an existing case, or to inquire about an existing case.
3. The district court clerks serve primarily plaintiffs or petitioners. The justice court clerks serve primarily defendants or respondents (due to the high volume of people with traffic and parking cases).

#### **d) Legal representation**

1. 18% of self-represented people coming to the clerk's office in district court and 8% of those coming to the clerk's office in justice court have consulted a lawyer beforehand. 27% of people coming to a district court proceeding have consulted a lawyer.
2. About 60% of unrepresented users in justice court are unrepresented because they do not feel their cases are complicated enough to need a lawyer. The second most frequent reason (another 20%) is inability to afford a lawyer. In the district court, about 40% of unrepresented people coming to the clerk's office feel their cases are not complex enough to need a lawyer and about 33% cannot afford a lawyer. Of those appearing without counsel at a district court hearing or trial, about 50% report inability to pay as the reason for not hiring a lawyer and about 33% that their cases were not sufficiently complicated.
3. Another 7% in each court do not want to pay the money required for a lawyer, and about 7% say they have obtained enough information from a lawyer to handle the case by themselves.

#### **e) Other sources of information and assistance**

1. 80% of self-represented people coming to the district court clerk's office seek additional help before coming to the courthouse. About 60% used the court's website. 19% sought help from a friend or relative, 11% from the court clerk, and 7% went to a library. In the justice courts, by contrast, 59% sought no help. Those who sought help went to a court clerk, a friend or relative, or another information source.
2. This changes dramatically at the time of a hearing or trial. Use of the court's website decreases to 17% in the district court and to zero in the justice court, which reflects the website's focus on forms, information and preparing pleadings, rather than in-court assistance. Court clerks, family and friends are the major sources of help beyond legal consultation, which takes place primarily in district court cases.

#### **f) On-line resources**

1. Respondents prefer a personal interaction over web services, rating the web information lower than all other aspects of court services other than the ease of parking.
2. Judges, attorneys and court clerks rate highly the effectiveness of OCAP forms and website information and forms in producing more complete and correct pleadings from self-represented parties.

#### **g) Satisfaction with clerk's office**

1. Litigant surveys rate clerk's services quite highly.

2. Users give the highest ratings to small courts, followed by mid-sized courts, followed by large courts.
3. User comments suggest that the most appreciated services are courtesy, friendliness, quickness of service, and knowledgeable information.
4. Most user complaints arise from parking problems, long waiting times, inefficient processes, and problems with internet forms.

**h) Satisfaction in the courtroom**

1. As with the satisfaction scores for clerk’s office services, the average satisfaction scores for courtroom experiences are inversely proportional to court size. Overall, justice court courtroom satisfaction scores are higher than the scores for district courts. The differences in these scores are insignificant.
2. Self-represented parties reported higher satisfaction scores in uncontested than in contested cases and in cases involving another self-represented litigant than in cases with a lawyer.

**3) The Challenge**

Large numbers of parties appear in our courts without lawyers. The table below shows the percentage of self-represented parties in select case types in cases filed in 2005.

Case type	Filings	Percent w/ 2 Attorneys	Percent w/ 1 Attorney	Percent w/ 0 Attorneys	Percent Self-represented Petitioners	Percent Self-represented Respondents
Divorce	12,828	17%	36%	47%	49%	81%
Protective Orders	5,219	13%	33%	54%	59%	82%
Stalking	898	7%	17%	76%	84%	84%
Evictions	8,251	3%	79%	19%	19%	97%
Small Claims	15,692	0%	2%	98%	99%	99%
Debt Collections	56,733	2%	97%	1%	1%	97%
Guardianship	1,319	1%	41%	58%	59%	2%

A layperson faces obstacles to effective participation in our courts such as the complicated nature of the law and unfamiliarity with complex rules of evidence and procedure. Some parties face additional barriers, such as limited English proficiency, lack of literacy, or less than full mental functioning. As a result of these barriers, an unrepresented litigant may not obtain the same benefits from the courts that a represented litigant does.

An essential component of any program to assist self-represented parties is to inform them of the benefits of legal representation and to refer them to affordable publicly and privately provided legal services. Beyond that, the challenge is to provide self-represented parties with the resources needed to overcome these obstacles. The data collected by the Committee show that most people representing themselves will

not obtain the services of a lawyer because they lack the means to do so or because they believe the matter is relatively simple.

The judicial branch does not stand alone in addressing this resource gap. There are some programs and individuals currently assisting self-represented parties, but the supply is insufficient. This plan provides a structure for supplementing existing resources and pursuing new resources to give self-represented parties the information and assistance needed to participate effectively in court proceedings.

## **4) A Program for Resources for Self-Represented Parties<sup>2</sup>**

### **a) Goals**

The Committee recommends the following goals for programs to assist self-represented parties:

1. To ensure access to the legal system.
2. To increase education of court users about the courts, and to increase education of court personnel and community organizations about self-represented parties' needs.
3. To clarify the court system so that it is understandable by ordinary citizens.
4. To increase the efficiency and effectiveness of the court system by
  - a. reducing the time required of judges and staff to explain court procedures and
  - b. reducing the number of continuances required to give self-represented parties a further opportunity to prepare.
5. To increase understanding of court orders and compliance with their terms.

### **b) Principles**

We recommend the following basic principles applicable to court services described in this plan:

1. Services provided by the court should be equally available throughout Utah. While it will be necessary to develop programs on a pilot basis, the Committee's ultimate goal is to provide the same services to citizens throughout Utah. People in urban areas, for instance, should not receive more, better, or different services than people in rural areas. Programs and services developed by the judicial branch should be equally available in the justice court.
2. Services provided by the judicial branch should be available to all people regardless of income. This principle does not necessarily apply to legal service providers and social service agencies with whom the courts collaborate. Their funding sources and program philosophies often limit their services to indigents.

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<sup>2</sup> This plan does not address resources for self-represented defendants in criminal cases. The Committee limited the scope of its survey and of this report to civil and, in justice courts, traffic cases. The Committee may address criminal cases in the future, as well as the needs of self-represented parties in the juvenile court.

3. Services provided by the judicial branch should be available equally to all parties. Defendants and respondents are as entitled to court services as plaintiffs and petitioners.
4. Court-provided services to self-represented parties are designed to supplement and not to supplant legal representation. Legal representation – either through public legal services programs or through the services of members of the private bar – remains the preferred method for parties to obtain information and advice, and court staff will continue to inform self-represented parties of the value of legal representation and how to obtain the services of a lawyer.

### **c) Conceptual Model**

The Committee envisions a web of services for self-represented parties, some provided by the courts, some by community organizations, some by lawyers. The Committee proposes investigate the details of the proposal that follows, to build pilot programs as appropriate, and to implement those programs that show success as measured by the satisfaction of self-represented parties, judges, clerks and attorneys. Most of our approach to resources for self-represented parties is to build on the successes Utah has already experienced. Based on our work so far, the committee recommends building a pilot program for a self-help support center described below.

### **d) Court-Sponsored Resources**

Much of the work for the court resources plan that follows is possible only because the Judicial Council and the state court administrator had the foresight to have put in place a manager and coordinator for programs involving accessibility to the courts, such as our program for self-represented parties and the program for court interpreters.

#### **i) Self-help support center**

Self-represented parties give very high marks to clerks for their courtesy and respect. And self-represented survey respondent report that the information is itself correct and helpful. The strategic plan here is simple: more of the same. To provide more of the same, the committee recommends a pilot program for a self-help support center. In this pilot phase the self-help center would serve the district and justice courts in one rural and one urban court district. We recommend the Second and Eighth Districts. If the program is successful, it would eventually serve all judicial districts.

The center would be staffed by an experienced attorney, preferably Spanish-speaking. The attorney's duties would include providing a broad range of information and assistance to self-represented parties but not representation. As time is available the attorney would develop and conduct informational workshops and create court forms.

The attorney would provide information and assistance exclusively by toll-free phone number and through video conferencing equipment located in courthouses, subject to the limitations of the existing infrastructure. The attorney would not provide in-person services, so we recommend that the attorney be housed in the State Law Library.

The committee decided on this model for several reasons:

1. Telephone and video conferencing allow efficient delivery of information statewide, ensuring that self-represented parties throughout Utah will receive the same level and type of service regardless of their location.
2. Alaska's study of their telephone help line showed that telephone services are an effective means of communication, require less staff time, and are less stressful for staff.
3. A program in California's Butte, Glenn and Tehama counties has shown that video conferencing is an effective way to conduct workshops simultaneously in several locations.
4. This model is more cost-effective than providing a resident expert in every courthouse, or having a circuit rider who periodically visits each court.
5. The infrastructure to support this program is in place in some locations, but the pilot may be limited to avoid increasing computer response time in locations in which bandwidth is insufficient.

The telephone's computer system should be able to measure the number of calls, lost calls, wait time, talk time, and other metrics that may be useful. In addition to the statistics generated through the computer system, the attorney hired to provide the information should evaluate the types of cases and parties involved, the nature and availability of the information requested, the extent to which the person requests legal advice that cannot be provided, the nature and availability of community resources that can serve the caller, and other metrics that may be useful.

The Committee will submit a detailed budget for the pilot project at the Judicial Council's annual planning meeting in August.

## **ii) Clinics and workshops**

The Committee proposes to spearhead efforts to research and develop materials and resources for clinics and workshops

1. for self-represented parties on topics most commonly of interest to them,
2. for clinic and workshop volunteers; and
3. for court personnel and community organizations on the needs of self-represented parties and the resources that are available.

Held live in one courthouse, a workshop might be broadcast through web technology to anyone interested in "attending" from home or office. In workshops for self-represented parties, the nature of the service provided will depend on the qualifications

of those presenting. A lawyer who donates the time will have different knowledge than for example, a self-help clerk.

### **iii) Assistance from clerks**

To the extent that a court has not already done so, we recommend providing in each courthouse a self-help work space, which would have:

1. a small work space;
2. written materials, such as forms, instructions and informational guides;
3. a computer with internet access and access to the court's public database; and
4. in those courthouses participating in the pilot project, necessary telephone and web conferencing equipment.

We propose to investigate the effectiveness of a clerk assigned to the self-help work space either part-time or full-time. The designation as a self-help clerk should include with it additional pay to recognize the necessary concentration of knowledge and expertise. Some possible duties for a self-help clerk:

1. maintain a high level of knowledge about the issues raised by self-represented parties, maintain familiarity with judicial and community resources, assess the needs of particular court users and refer them to appropriate services, maintain interpersonal skills needed to interact with self-represented parties, instruct on the use of the 211 service in Utah;
2. serve as the court's liaison with the toll-free self-help support center;
3. schedule and promote local court and community-sponsored workshops;
4. ensure that equipment is working; and
5. train other clerks to ensure that self-represented parties receive correct and consistent information.

### **iv) State Law Library**

The State Law Library already serves a significant number of self-represented litigants. More than half of the people who seek library services are representing themselves. Staff are accustomed to walking the thin line between showing people how to help themselves yet not giving them legal advice. The law library should continue to deliver these services in person, over the phone and via its web pages, and work to expand these services statewide.

In addition, the State Law Library should promote statewide access to legal information by:

1. educating academic and public library staff about the resources available for people representing themselves, including the court's website, OCAP and legal clinics;

2. educating academic and public library staff about online legal research resources;
3. providing reference services to staff in academic and public libraries;
4. working cooperatively with the State Library to disseminate information to libraries statewide; and
5. working cooperatively with Utah's academic law libraries to coordinate services to the public.

#### **v) Forms, instructions and information**

Forms and explanatory materials are fundamental resources for people representing themselves. The court has many forms in place and is developing more. Through an interactive web-based interview, the Online Court Assistance Program (OCAP) produces pleadings ready for filing in divorce, landlord-tenant, and cohabitant abuse cases. The court has many more forms on its website that can be printed and completed by hand or copied and completed on a word processor. Under the supervision of the Committee, students at J. Reuben Clark Law School are developing forms for credit. The Committee will evaluate the effectiveness of this program.

The Committee will work cooperatively with other providers to develop new forms and instructions and to review current forms for accuracy, currency and plain language. The Committee also recommends that the Judicial Council mandate court-approved forms for statewide acceptance.

#### **vi) Court website**

The ease of web publication makes it the primary means for providing forms, instructions and information. The court's website has won awards, but survey results indicate self-represented litigants make only modest use of it and their satisfaction is mixed. Paradoxically, website statistics show that the website is heavily used, but apparently not by our target population.

We have begun and we propose to continue to review web information to ensure that it is accurate, up-to-date, well-organized, ADA accessible, relevant, and easy to understand. We propose to undertake a careful review of the resources provided for self-represented litigants on the court's website seeking answers to the following questions:

1. Is the information meeting the needs of self-represented parties?
2. If not, what additional resources are needed?
3. Who will provide this additional content?
4. Is the information organized so that self-represented parties can find the information they need?
5. Is the information written in a way that they understand?
6. What government and organization websites exist with useful information?

We have a substantial web presence now, and the website is the most obvious means of providing even more information. But these questions need to be answered before we simply throw more information onto the website. We will use the results of our investigation to work with the court's webmaster to ensure that we have an effective website.

### **vii) Clerical and judicial training**

The success of our current training effort shows in the survey results. The courts should continue existing efforts to train clerks in distinguishing the help they can and cannot provide and in giving effective help when they can. The essential role for judges is to ensure that a self-represented litigant has an opportunity to present his or her case and to avoid miscarriages of justice without sacrificing the impartiality of the proceeding. We propose to investigate training for judges on techniques for accomplishing these results.

### **e) Community-Sponsored Resources**

Public libraries, law libraries and library bookmobiles, senior centers, ethnic centers, special interest centers, and other community organizations exist to serve the public. They can easily serve as a source or conduit for self-help information. The information and assistance might be generated by the community organization itself, or the organizations might serve primarily as a means to reach the information provided by the courts. Some organizations and individuals may be willing to provide personal support for self-represented parties. In that way, people identified by court staff as unable to represent themselves successfully because of language, literacy, or mental or emotional impairments might be referred to an effective resource. We propose to investigate how to recruit such community organizations as an effective resource.

To support this community effort, we recommend that Rule 1.0, Chapter 13A of the Supreme Court Rules of Professional Practice be amended to permit assistance with court-approved forms generally rather than only harassment and domestic violence forms:

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

...

(c)(3) Providing clerical assistance to another to complete a form provided by a court ~~for protection from harassment or domestic violence or abuse~~ when no fee is charged to do so.

### **f) Lawyer-Sponsored Resources**

Representation, unbundled legal services, and clinics offering legal advice must be achieved outside the judicial branch, and the courts should support these efforts.

Programs already exist, but not in sufficient supply. The Supreme Court has recently approved unbundled legal services, but we have yet to see how this might affect availability for people who are unrepresented. Legal service organizations, lawyers and law firms, law schools and community organizations offer no-fee and low-fee representation and advice and free legal clinics and workshops.

The Committee recommends that a separate structure outside the judicial branch – either an existing entity or one to be established – recruit no-fee and low-fee attorneys to expand the availability of representation, unbundled legal services, and clinics for self-represented parties. The entity should raise and distribute funds to support those lawyers and ensure accountability for the funds.

## **5) Summary**

The Committee recommends:

1. financing a pilot program in two judicial districts to make available by telephone and web communication a lawyer who would provide information and assistance;
2. researching and developing court-sponsored clinics and workshops;
3. setting up a work space in each courthouse to serve as a focal point for providing self-help information;
4. studying the efficacy of staffing such a self-help work space;
5. promoting the state law library as a resource for self-represented parties;
6. continuing to develop forms most needed by self-represented parties;
7. studying how best to meet the needs of self-represented parties through the court's website;
8. continuing training with clerks and studying training with judges on the needs of self-represented parties and effectively responding to those needs;
9. studying how community service organizations can assist in providing self-help information;
10. amending Rule 1.0, Chapter 13A of the Supreme Court Rules of Professional Practice to permit unpaid non-lawyers to complete court forms;
11. promoting clinics and workshops, low-fee and no-fee legal representation, and unbundled legal services among the legal community; and
12. promoting a legal service organization to recruit lawyers to provide such services and to raise and distribute funds to do so.

## **6) Committee on Resources for Self-represented Parties**

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