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TASK FORCE ON SELF-REPRESENTED LITIGANTS

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DIANE NUNN
*Director, Center for Families,
Children & the Courts*

July 29, 2004

Mr. Mark Harrison
Chair, Commission on Judicial Ethics
American Bar Association
541 North Fairbanks Court
Chicago, Illinois 60611

Dear Mr. Harrison:

I write on behalf of the Judicial Council of California's Task Force on Self-Represented Litigants, which I chair.

The task force was established by the Judicial Council as part of its ongoing efforts to examine access to the courts in California and charged to identify and eliminate barriers to access for self-represented, or pro se, litigants. As part of our work, we considered the relationship of the judge's role in the courtroom to the litigant's ability to ensure that his or her case was decided on its merits. Along with other jurisdictions that are reviewing these issues, we have concluded that the judge's role is critical in this regard, and that steps must be taken to assure judges that they act ethically when they ensure that pro se litigants are able to present their cases.

Our *Statewide Action Plan for Serving Self-Represented Litigants* was adopted by the Judicial Council in February 2004. Before its adoption, the plan was circulated to judicial officers throughout California for their review and comment. Among the key recommendations are that:

A formal curriculum and education program be developed to assist judicial officers and other court staff to serve the population of litigants who navigate the court without the benefit of counsel.

The AOC, in consultation with the California Judges Association, provide greater clarification of the extent to which judicial officers may ensure due process in proceedings involving self-represented litigants without compromising judicial impartiality.

We have begun implementing this action plan, and we are working with other projects throughout the country to address this issue.

The ongoing work of which we are aware includes the following projects:

California Administrative Office of the Courts Benchbook

The California Administrative Office of the Courts is developing a benchbook of best practices for judges hearing cases involving self-represented litigants. The process will involve legal research and extensive focus-group work with judges and court staff. The benchbook will address best practices, nonverbal behavior, and race and ethnicity sensitivity issues. The project is likely to include an updated review of the research on procedural justice as well as ethics. A video of successful judicial techniques will be developed. The project is supported by the State Justice Institute (SJI) and California resources. An initial two-day forum that was held in May 2004 to kick off the project generated a wide range of suggestions and ideas.

California's Evaluation of Model Self-Help Centers

The Judicial Council of California will be issuing in March 2005 an evaluation of five pilot self-help centers. This evaluation will include reports of courtroom observations and interviews with self-represented litigants regarding their court experience and preparation for court.

American Judicature Society Research and Curriculum Project

With funding from SJI, the American Judicature Society (AJS) is engaging in research and analysis and plans to release a curriculum for judges on how to handle pro se cases. In addition to substantial legal research, the curriculum will include a discussion of best practices. As part of this project, AJS has surveyed Commissions on Judicial Performance to determine what complaints they receive from and regarding pro se litigants.

American Judicature Society Research on State-Level Services in Pro Se Assistance

AJS is reviewing the status of pro se services in all states. The review includes data gathering on analysis of barriers to improving services to self-represented litigants and may provide data on the relationship between the canons and the role of judicial officers in effectively running courtrooms with self-represented litigants. Respondents are also being asked to identify their pro se assistance plans for the next few years and specify the resources necessary to implement future activities. Here, too, the survey may yield data about judicial support or concerns based on the canons.

National Center for State Courts Pro Se Summit

The National Center is planning, with SJI support, a summit on pro se issues for spring 2005. The summit is planned to review progress, identify promising strategies, work toward consensus on those new strategies, and discuss long-term support systems for innovation.

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Trial Court Research and Innovation Consortium Pro Se Program Assessment

The Trial Court Research and Innovation Consortium (TCRIC), with funding from SJI and state and local courts, is conducting a significant number of assessments of pro se programs in several states, including Maryland, Minnesota, and Alaska. These assessments are using the same instruments and processes and producing comparable data, which will be publicly shared. These instruments include courtroom observations and interviews with self-represented litigants after their court appearances. This information will be useful in understanding the procedural justice implications of judicial behavior.

State Justice Institute Paper on Institutionalization of Pro Se

SJI is funding Richard Zorza's preparation of a "think piece" on potential strategies for long-term institutionalization of support for pro se services. An early draft should be completed by the end of 2004.

State Activities

In addition to the work in California, extensive activity in other states is generating materials in support of innovation. These include a planned set of protocols in Massachusetts and bar activity in Maryland.

We are aware that your commission has not yet incorporated any changes into Canons 1 and 2 that might address these issues, and that you need at this time to begin to consider changes to the other canons. We hope, however, that before you conclude your work and present your final recommendations to the ABA House of Delegates, you will allow us to update you on these many efforts so that you will be able to consider the need for changes to the canons in light of the experiences of these groups.

I will be happy to keep you informed and to collaborate in forwarding proposals to you in this regard. Thank you for your consideration as you move forward with your critical and difficult task.

Sincerely,

Kathleen E. O'Leary
Chair, Task Force on Self-Represented Litigants

KEO/BH

cc: Hon. Ronald M. George, Chief Justice of California