Task Force Background

At the 2000 Annual Meeting in Rapid City, South Dakota, the Policy and Liaison Committee of the Conference of State Court Administrators (COSCA) presented a "Position Paper on Self-Represented Litigation". The purpose of the paper was to generate discussion and debate by the COSCA membership about taking a policy position on self-represented litigation. The position paper concluded with 11 recommendations including the formation of a joint task force of the Conference of Chief Justices (CCJ) and COSCA to develop an action plan to address the remaining 10 recommendations and other measures as appropriate.

Pursuant to that recommendation, the CCJ and COSCA Boards appointed individuals from their respective membership to a Joint Task Force on *Pro Se* Litigation (Task Force). Chief Justice Margaret H. Marshall (Massachusetts) and Stephanie Cole (Alaska) were designated as co-chairs of the Task Force. The full membership of the Task Force is listed in Appendix A.

The Task Force met via teleconference on May 23, 2001 to discuss its mission and to plan its activities. At that meeting, the Task Force agreed that its primary mission was to secure an affirmative stamp by the CCJ and COSCA on the right of individuals to represent themselves in court. This view was supported by the Task Force members' agreement that the constitutional and historical framework of the American justice system recognizes that a fundamental requirement of access to justice is access to the courts and that this access must be afforded to all litigants – those with representation and those without. A more proactive response from the courts is necessary to meet the needs of litigants who exercise their right to self-represent.

At the May 23 meeting, the Task Force members also outlined the anticipated scope of their activities. They proposed to develop a Report and Recommendations to be submitted to their respective memberships at the 2002 Annual Meeting in Rockport, Maine. To develop those recommendations, they invited national experts with extensive experience in various aspects of self-represented litigation to brief the Task Force about significant trends, model programs and practices, obstacles to access, and opportunities for leadership by CCJ and COSCA . To supplement the conclave presentations, NCSC staff prepared materials on existing literature and provided a status update on initiatives related to the COSCA Position Paper recommendations. These presentations took place during the first day of a 2-day conclave in Washington, DC on November 14, 2001. On November 15, the Task Force convened for private deliberations about the presentations and to formulate its recommendations for CCJ and COSCA. After the conclave, the Task Force also proposed to organize an educational session on the topic of self-represented litigation for the CCJ/COSCA 2002 Annual Meeting, the planning for which was conducted at a Task Force meeting held in conjunction with the CCJ Midyear Meeting on January 20, 2002 in Tucson, Arizona.

This report summarizes the findings of the Task Force based on its review of current trends and initiatives related to self-represented litigation. Briefly, the Task Force found that recent increases in the number of self-represented litigants – although limited primarily to family law, small claims, and misdemeanor cases – make significant demands on both court resources and on the ability of judicial officers and court staff to

provide an opportunity for a fair hearing while maintaining ethical requirements of judicial neutrality and objectivity. Some state and local courts have developed various models of assistance programs that appear to improve access for self-represented litigants, including self-help centers (many with one-on-one assistance from court staff or specially trained volunteers), programs and court rules to encourage the private bar to increase the availability of "unbundled" legal services, technological improvements in the delivery of legal information, and collaborative programs with Legal Services/Legal Aid agencies, private bar associations, and community organizations. But much remains to be done, especially in terms of evaluating the effectiveness of *pro se* assistance programs, integrating and expanding successful programs, and overcoming bench and bar concerns about improving access for self-represented litigants.

The report concludes with a number of recommendations concerning the appropriate role of the CCJ and COSCA in the development and implementation of *pro se* assistance programs. Most important is the legitimacy that CCJ and COSCA can bring to these efforts by endorsing the positive steps that state and local courts have already made in this area. Those states that have not already done so should consider appointing a statewide commission or task force and provide its members with appropriate levels of administrative support and authority. The commission or task force should be charged with examining the existing state resources that are available to self-represented litigants, making policy recommendations about extending successful programs to address unmet needs, and educating judges and court staff about the importance of improving access for litigants regardless of their representation status. Individual members of CCJ and COSCA should also devise strategies to address bench and bar resistance to improving access for self-represented litigants, especially through judicial and legal education about the current constraints faced by these litigants. Chief justices and state court administrators should focus their future efforts in this area on designing court processes with the needs of self-represented litigants in mind. Finally, the Presidents of CCJ and COSCA should appoint representatives of their respective organizations as liaisons to the network of national organizations that are involved in the development, implementation and evaluation of *pro se* assistance programs. These liaisons should provide leadership and guidance to this informal network and keep CCJ and COSCA informed of its ongoing efforts.

Respectfully submitted this 29th day of July, 2002

Margaret H. Marshall
Chief Justice
Supreme Judicial Court of Massachusetts

Stephanie Cole
State Court Administrator
Alaska Supreme Court

What Is Known About Self-Represented Litigation

The topic of self-represented litigation has garnered unprecedented attention from the courts' community in recent years. As early as 1996, attendees at the National Conference on the Future of the Judiciary reported that open access to the justice system was one of the top five issues facing the courts.[1] The 1999 National Conference on Public Trust and Confidence in the Courts ranked the high cost of access to the justice system as the second most pressing issue affecting public trust and confidence.[2] The 1999 National Conference on *Pro Se* Litigation brought together judicial policy makers, Legal Services/Legal Aid and private bar attorneys for the first time in history to consider more effective approaches to meeting the needs of rapidly growing numbers of self-represented litigants, especially in domestic relations and small claims cases.[3]

A number of social, economic and political factors – especially the rising cost of legal representation relative to inflation, decreases in funding for legal services for low-income people, and increased desire on the part of litigants to understand and to actively participate in their personal legal affairs – are believed to be at the root of the increase. Regardless of the underlying causes, however, the trend toward self-representation reflects a significant deviation from a fundamental assumption by courts – namely, that litigants are represented by licensed attorneys who are trained in applicable law and court rules.[4] The influx of large numbers of litigants who may not be informed about law and court procedures poses significant implications for the administration of justice – especially, demands on court staff and resources and ethical dilemmas about how to compensate for self-represented litigants' lack of knowledge without jeopardizing judicial requirements of neutrality and objectivity.

A typical scene at the Clerk's Office provides an illustrative example of the kinds of demands that self-represented litigants place on court staff and resources compared to attorney-represented litigants. Self-represented litigants often expect the filing clerk to provide them with the relevant forms necessary to file a case, which may or may not exist. They also assume that verbal or written instructions will accompany the forms to facilitate the process. Where forms and instructions do not exist, or are difficult for lay people to understand, litigants often turn to court clerks for suggestions on what and how to file. At times their requests for assistance may cross the gray line between legal information and legal advice.[5] In some instances, court staff may reject filings by self-represented litigants, once or even several times, due to procedural requirements.

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[1] CONFERENCE PROCEEDINGS [OF THE] NATIONAL CONFERENCE ON THE FUTURE OF THE JUDICIARY (1996).

[2] Steven Leben, *Public Trust and Confidence in the Courts: A National Conference and Beyond,* CT. REV. 4 (Fall 1999).

[3] In states that do not guarantee court-appointed counsel for indigent defendants in misdemeanor cases, there are also reports of growing numbers of misdemeanor defendants appearing *pro se.*

[4] *See generally* RICHARD ZORZA, THE SELF-HELP FRIENDLY COURT: DESIGNED FROM THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS (2002).

[5] The latter is prohibited under Unauthorized Practice of Law statutes in most states. *See* John M. Greacen, *Legal Information vs. Legal Advice: Developments During the Last Five Years*, 84 JUDICATURE 198 (Jan.-Feb. 2001); John M. Greacen, *No Legal Advice from Court Personnel! What Does That Mean?* 34 JUDGES' J. 10 (Winter 1995).

Language and cultural barriers can exacerbate miscommunication between litigants and court staff.

Administrative and procedural errors committed by self-represented litigants can add to the burden on court staff even after initial pleadings are successfully filed. Failure to file responsive pleadings or supplemental documents in a timely manner creates additional paperwork and postage costs for court staff in the form of reminders or notices of dismissals for failure to prosecute. Failure to arrange for service of process on opposing parties can require numerous scheduling adjustments to court calendars, creating inefficiencies in the use of court time. Incomplete or indecipherable court documents make it difficult for judges to determine the relief requested or even whether the claim has a legally cognizable basis. The pervasive problem of litigants' failure to appear for scheduled hearings causes uncertainty for court staff about the number of cases to schedule on any given docket, resulting in unnecessary delay in other cases.

Equally problematic is the ethical dilemma that self-represented litigants pose for judges. Judicial canons of conduct require that judges maintain impartiality toward all parties,[6] which some judges interpret as a prohibition on providing self-represented litigants with assistance during court hearings, especially for cases in which the opposing party is represented. Canons of conduct also require judges to "accord every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."[7] Many judges find it difficult to reconcile the requirement to provide self-represented litigants with an opportunity for a fair hearing with the requirement to remain impartial. [8]

The larger legal community is also ambivalent about court-based efforts to improve access to justice for self-represented litigants. Increasing, lawyers recognize that the cost of legal services falls beyond the reach of many low-income and even moderate-income households, and that the private bar has never adequately met the needs of these individuals through pro bono legal services. But many members of the private bar view self-represented litigants as an annoyance, at best, that clog court dockets and consume unnecessary amounts of court time and attention. Many lawyers dislike participating in court proceedings when the opposing party is self-represented, as they often find it awkward to represent their clients' interests without appearing to take unfair advantage of the self-represented litigant's relative lack of knowledge and experience and risking the animosity of the trial judge. In areas of law that were traditionally the purview of the private bar (e.g., domestic relations), lawyers also tend to see the increase in self-represented litigation as a threat to their economic livelihood.

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[6] *See* ABA CANONS OF JUDICIAL CONDUCT Canon 3(B)(5)("A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by word or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.").

[7] ABA CANONS OF JUDICIAL CONDUCT Canon 3(B)(7).

[8] Jona Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance,* FAMILY CT. REV. 40 (2000).

Litigants, of course, have a very different perspective about the legitimacy of their demands for greater assistance from the courts in pursuing their claims. A 1999 national opinion survey found that 68% of the American public disagree with the statement that it is affordable to bring a case to court, and 58% believe that it would be possible to represent themselves in court if they wanted to so.[9] These figures are consistent with court-administered surveys of self-represented litigants, the vast majority of whom cite one of two reasons for filing their cases without a lawyer: they do not believe that they can afford legal representation or they believe that their case is relatively simple and thus legal representation is unnecessary.[10] A sizeable number of anecdotal reports support the notion that the bulk of cases filed by self-represented litigants are factually and legally uncomplicated, and that the major difficulty that litigants face is the procedural complexity of the court system itself. Indeed, the few empirical studies examining case outcomes and litigant satisfaction suggest that self-represented litigants often fare at least as well, and generally have higher levels of satisfaction with their court experience, than attorney-represented litigants.[11]

Promising initiatives

A critical third factor behind the decision to self-represent is the change in how the American public views the accessibility of the government institutions, including the justice system. Citizens now demand much greater accountability from publicly supported institutions, and they are much less tolerant of government agencies that cannot deliver services or explain their institutional functions in ways that are comprehensible to people of average intelligence and education. These new demands for public accountability have forced courts to become more responsive to non-lawyer users of the court system by developing court-based programs to assist self-represented litigants.

The willingness to develop these programs itself is a major shift in thinking by the court community. Historically, court personnel have been reluctant to provide assistance to self-represented litigants. Rather than take the risk that assistance might be construed as the unauthorized practice of law, many court policies and practices advised staff to err on the side of caution and not provide any assistance at all. In 1995, however, John Greacen published an article in *Judge's Journal* that dramatically reframed the definition of legal information and legal advice in the context of assistance for self-represented litigants.[12] In response to Greacen's challenge to provide more meaningful assistance to

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[9] HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY 22-23, 25 (NCSC 1999).

[10] *See, e.g.,* Paula Hannaford-Agor & Nicole L. Mott, *Examining Pro Se Litigation: Seeing and Jumping the Methodological Hurdles,* JUST. SYS. J. (*forthcoming*).

[11] For a comprehensive summary of the empirical literature on court-based self-help programs, see John Greacen, "Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know" (report prepared for the Center for Families, Children & the Courts, California Administrative Office of the Courts, July 2002).

[12] John Greacen, *No Legal Advice from Court Personnel! What Does That Mean?,* 34 JUDGES' J. 10, (Winter 1995);

self-represented litigants, several courts developed guidelines that delineate the kinds of information that court staff can, and should, provide to the public[13] and provided training for staff on the use of those guidelines. The substance of these guidelines provides the philosophical basis for many of the more promising models of court-based *pro se* assistance programs that are now in operation around the country.

Self-Help Centers

Perhaps the most dominant model of a *pro se* assistance program is the "Self-Help Center". As the name implies, self-help centers provide self-represented litigants with various resources and reference materials so that they can represent themselves more effectively in court.

Typically, the resources available to self-represented litigants include model or standardized court forms and detailed instructions for common types of cases (e.g., uncontested divorce, modification of child support, guardianship, landlord/tenant matters). Reference materials may include publications about various areas of substantive law, videos or other instructional media on substantive topics or appropriate conduct in court. Most centers provide lists of local attorneys who have volunteered to provide legal assistance on a reduced-fee or unbundled services basis. A well-known example of this model is the Maricopa County (AZ) Superior Court Self-Help Center.

Self-help centers are usually housed within the court facility, however some communities partner with local bar organizations to offer these services off-site. A few communities have "mobile self-help centers" (Ventura County Superior Court) or temporary centers that can be set up and dismantled quickly in a variety of locales (11th District Court of New Mexico).

Many of the courts that have paved the way in the area of self-help innovation have developed sample forms and instructions, brochures, reference materials, and videos on specific legal topics that may be handled similarly in other jurisdictions. Courts that are just beginning these efforts can save time and resources by adapting existing materials for their own jurisdictions rather than recreating them from scratch. Courts are encouraged to share resources that they have developed by posting them at the Self-Help Practitioners Resource Center at www.probono.net/selfhelp.

One-on-One Assistance

As courts accepted the idea that court staff can provide legal information to self-represented litigants, they supplemented the self-help center with one-on-one assistance by court staff or trained volunteers. The staff assigned to the self-help center or court library staff typically fulfill this role. Their duties can include directing self-represented litigants to appropriate resources, helping them complete forms, and explaining court procedures. In some courts, this assistance is limited to certain types of cases (e.g., domestic violence, family law).

Other models of one-on-one assistance are less formal. In the 20th District Court of Colorado (Boulder), for example, the most senior and experienced court clerks staff

[13] John M. Greacen, *Legal Information vs. Legal Advice: Developments During the Last Five* Years, 84 JUDICATURE 198 (Jan.-Feb. 2001).

the filing windows and the public telephone lines. That court recognized that the clerk's office is generally the first place that self-represented litigants go for help, so they reasoned that it was more efficient and more customer-friendly to provide litigants with access to personnel who were most knowledgeable about the court's policies and procedures. Other courts have designated a "pro se" or "pro per" filing window for the same reasons.

California has taken the one-on-one assistance model to a higher level through the creation by statute of the "family law facilitator" position in all of the state superior courts. The family law facilitator is an attorney who is employed or contracted by the court to provide legal advice to self-represented litigants.[14] The position is unique in that the facilitator is exempt from confidentiality and conflict-of-interest provisions of lawyer ethics. No lawyer-client relationship is created by providing this assistance. The family law facilitator position was originally created to assist litigants only with child support matters, and was funded with Title IV-D funds. A number of the California Superior Courts have supplemented the funding, however, and now provide legal assistance on all family law matters.

"Unbundled" Legal Services

Despite the apparent success of many *pro se* assistance programs, including those that offer one-on-one assistance, most judges and court staff still prefer that litigants obtain competent legal advice before attempting to represent themselves in court. This has led to greater demands on the private bar to offer "unbundled" legal services – that is, paid legal representation for a discrete task or aspect of a court case rather than full service representation that is the predominant model for delivery of legal services. Under this model, a self-represented litigant can contract with a lawyer to assist with various parts of the case (e.g., advising the client on a strategy, drafting documents, reviewing client-drafted documents, coaching for in-court appearances, in-court representation) without incurring the cost of full representation.[15]

The private bar has been slow to embrace this new model, due to concerns about legal malpractice (e.g., will lawyers be held responsible for the mistakes of their clients, even if they didn't advise them on that aspect of the case) and perceptions about the willingness of the trial bench to permit limited scope representation (e.g., ghostwriting). Recent modifications to the ABA Model Rules of Professional Conduct now make it explicit that unbundled legal services are ethically permissible,[16] which may make this model more palatable to private practitioners – assuming, of course, that these rules are adopted by the states and, more importantly, that lawyers and judges are encouraged to incorporate limited scope representation as part of their legal service delivery model.

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[14] CAL. FAM. L. §§ 10000-10015.

[15] The Maryland Legal Assistance Network (MLAN) sponsored a national conference on unbundled legal services in October 2000 that explored the ethical and practical aspects of unbundled legal services. MLAN has posted many of the conference materials and state and local initiatives and progress on the conference website located at http://www.unbundledlaw.org/.

[16] *See* Model R. Prof. Conduct, Rule 1.2 cmt.

Technological Innovations

As courts have become more reliant on the Internet, they increasingly offer *pro se* assistance materials to litigants through their websites. For the most part, the models are the same as those offered through the self-help center model. Litigants can download model forms and instructions, and link to on-line resources and local lawyer referral services. To date, the most comprehensive Self-Help website is the one recently unveiled by the California Administrative Office of the Courts at http://www.courtinfo.ca.gov/selfhelp/, which features more than 900 web pages of information organized topically by area of law.

A small number of courts have used Internet technology to extend the kinds of resources that are available to self-represented litigants. The Delaware Family Court, for example, has its child support software online so that litigants can calculate the amount of child support that will be ordered. The Utah Administrative Office of the Courts has developed an interactive Web application that uses information provided by self-represented litigants to prepare pleadings in uncontested divorce and landlord/tenant cases (located at http://168.177.211.91/html/ListOfApplications.html. The San Mateo County Superior Court (California)[17] and the Waukesha County Circuit Court[18] have extended this approach to other types of cases and to other types of court filings.

Courts have also experimented with online self-assessment tools to help prospective litigants determine the advisability of proceeding without a lawyer. These tools take into account case characteristics that might indicate a higher degree of legal complexity (such as the existence of a pension in a divorce case) as well as the litigant's own personality traits, organization skills, knowledge of legal concepts, and motivation for pursuing the case.[19]

One complication that technological assistance adds to the delivery of self-help materials is that they require a uniform approach statewide. In many states, variations in local court rules and judicial preferences concerning the content and design of court documents make it very difficult, if not impossible, to provide these materials over the Internet. If new technologies are to become an integral component of *pro se* assistance programs, local courts and judges must be persuaded to forego parochial interests in favor of greater statewide consistency and uniformity.

Collaborative Programs

The most recent trend in pro se assistance programs is the development of collaborative programs by state and local courts, Legal Services/Legal Aid agencies, local bar organizations, and community organizations. Pooling local resources and distributing the costs of programs among a variety of local organizations and individuals helps the participating organizations move beyond many of the ideological barriers concerning their respective institutional roles and concentrate on meeting the actual needs of the litigants. The Legal Services Corporation has provided strong incentives for this

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[17] Located at http://www.ezlegalfile.com.

[18] Located at http://www.courtselfhelp.waukeshacounty.gov.

[19] Examples of these tools can be found at http://www.peoples-law.org and http://www.courtselfhelp.waukeshacounty.gov.

model by conditioning its highly coveted Technical Innovations Grants on the involvement of courts and community organizations in project planning and activities. In addition, the 1999 National Conference on Pro Se Litigation (Scottsdale, AZ) and a smaller workshop on collaborative pro se assistance programs (New Orleans, LA) both encouraged this model by inviting multi-institutional and multi-disciplinary teams to attend. The Self-Help Practioners Resource Center, located at www.probono.net/selfhelp, is a national collaboration of the American Judicature Society, the California Administrative Office of the Courts, the Legal Services Corporation, the National Center for State Courts, ProBono.net, the State Justice Institute, and Zorza Associates that provides resource materials for self-help program managers.

Areas in Need of Improvement

Although the court community has made a great deal of progress in developing programs to improve access for self-represented litigants, state and national experts agree that there is significant room for improvement, especially in three key areas: integration of services, judicial education, and program evaluation. Many of the existing programs were developed originally as local efforts in response to particular needs of self-represented litigants in those communities. Often these programs focused exclusively on one area of law (e.g., domestic violence, family law, landlord/tenant). In some communities, programs were implemented by the court and others were sponsored by the local bar association, by the local Legal Services/Legal Aid Office, or by another community organization. As a result, some communities had several programs operating independently from one another and often without any awareness of the services available through other programs. While the intent is laudable, the existence of multiple programs in some communities (and the absence of programs in others) poses obvious problems such as the needless duplication of existing services and the risk of disseminating inconsistent or inaccurate information. It is clear that courts need to do a better job of coordinating existing programs to provide services more effectively. This does not suggest that courts should seek to absorb non-court programs, but rather should take a leadership role in coordinating those programs and encouraging the development of new programs to respond to unmet needs.

The different models of *pro se* assistance programs appear to be quite successful at helping litigants overcome the initial hurdle of filing a case in court (which consequently reduces the administrative burden on front-line court staff). But these programs are not designed to help litigants successfully resolve cases once they have been filed. Few courts have thought critically about how to help litigants prepare for and conduct themselves in court proceedings, both of which necessarily require the active support and participation of trial judges. To secure the cooperation of the trial bench in these endeavors, judges should be given adequate tools (e.g., judicial guidelines, recommended practices and procedures) with which to structure their interactions with self-represented litigants in the courtroom. The discussion of what these guidelines might entail has only just begun in a handful of states, and to date there is no clear consensus of where the lines should be drawn between appropriate and inappropriate

judicial assistance for self-represented litigants.[20] The sooner that the topic is placed on the table for discussion, the sooner that judges can begin to formulate concrete ideas for improving the in-court experience of self-represented litigants.

Finally, the development of programs to meet the needs of self-represented litigants is so new that only a few courts have implemented fields in their case management systems to permit tracking of these cases on any systematic basis. When asked how many litigants file *pro se,* most judges and court staff will answer "too many", but few can give an accurate estimate and none are able to say with any certainty what happens to those litigants after they file their cases. As various programs proliferate and costs increase, programs must be prepared to demonstrate their effectiveness through more rigorous empirical evaluation including comparisons against a baseline. These evaluations must focus on the precise objectives that programs are intended to achieve (e.g., removing procedural and administrative barriers, reducing or diffusing the effects of high volumes of self-represented litigants, and improving case outcomes for self-represented litigants).

Recommendations for CCJ and COSCA

We have found that a number of courts have made tremendous progress in the past decade in developing and implementing programs that improve access to justice for self-represented litigants. These programs reflect not only hard work and good motivation, but also some very critical thinking about the role of the courts in providing equal access to litigants regardless of their representation status. Most of these programs developed as local initiatives focused on fairly discrete areas of law or problems. But as demands on resources by self-represented litigants grew not only in the courts but also in the Legal Services/Legal Aid agencies, many of these programs became significantly more sophisticated and comprehensive in scope. Much still remains to be done, however, especially in terms of overcoming bench and bar resistance to these programs. The time is ripe for the CCJ and COSCA to take a leadership role in encouraging the expansion of successful programs and establishing state policies and court rules that encourage the participation of judges, court staff, Legal Services/Legal Aid and private lawyers, and community organizations in their implementation and operation.

Set the tone for an affirmative response to self-represented litigants.

Judges, court staff and the greater legal community look to their respective chief justices and state supreme courts for direction about how to respond to the needs of self-represented litigants. The members of CCJ and COSCA should set the tone for an affirmative response by making it clear that courts have an obligation to ensure that self-represented litigants have access to the courts. At minimum, this requires direct, clear, and repeated statements of support for these efforts by the chief justice and state court administrator. But this message can also be conveyed in a number of additional ways.

One method is to encourage statewide implementation and coordination of self-help programs and services. One way to do this is by appointing a statewide task force or

[20] *See* RICHARD ZORZA, THE SELF-HELP FRIENDLY COURT: DESIGNED FROM THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS (2002).

commission composed of judges, court staff, lawyers, and other interested individuals who can examine the existing *pro se* assistance infrastructure, make policy recommendations, propose changes to court rules or practices, and most importantly serve as a vehicle for educating and encouraging their respective colleagues to participate in and support these efforts. For this reason, it is important that the members of the task force be well-respected individuals who are genuinely committed to the concept of improving access to justice for self-represented litigants. To complement the work of the task force, the administrative office of the courts should appoint a dedicated staff person to oversee statewide coordination of *pro se* assistance programs. This person should not only staff the *pro se* task force, but should also be made responsible for identifying gaps in existing services, proposing future initiatives, and administering state funding for programs.

In all of their activities, task force members should be encouraged to share information among themselves and with non-task force members to the greatest extent possible. As Maryland learned in its task force activities, the availability of concrete information about the problems associated with self-represented litigation and the options available to address those problems helps to foster a decision making environment that enables judges and court staff to assume leadership roles.

Statewide funding can also be a powerful incentive for encouraging the development of *pro se* assistance programs as well as a strong indication of support by the chief justice and state court administrator. Moreover, the funding amounts do not necessarily have to be substantial. Seed money for pilot programs can yield a tremendous return on investment, particularly when recipient courts are encouraged to seek matching funds or in-kind contributions from local government and private organizations including the local bar.

Develop methods to overcome bench and bar resistance to self-help initiatives

Much of the resistance from the bench and bar to court-based self-help initiatives stems from perceived threats to the institutional integrity of those communities. Both lawyers and judges are concerned that court-based *pro se* programs represent a fundamental departure from the traditional commitment to full legal representation for all litigants, thus creating a two-tiered system in which litigants without lawyers receive substandard justice. To overcome this fear, it is important to educate both judges and lawyers about the current constraints faced by self-represented litigants. Too many still maintain an unrealistic belief that the answer to access to justice is simply to provide more lawyers for low-income and moderate-income people. After more than a decade of struggles to increase lawyer participation in pro bono programs and funding for legal services, the evidence is clear that we have not come close to meeting the demand for affordable legal services. If we have a single-tier justice system, it is only because so many individuals lack the financial wherewithal to enter it at all.

At this point, it is critical to impress on both judges and lawyers the importance of using existing legal resources as effectively as possible. This does not mean that CCJ and COSCA should abandon their support for funding for legal services or for pro bono programs by the private bar. But they should recognize that equal access to the justice system will be best accomplished by providing self-help assistance for those litigants who

are capable of pursuing their cases on their own without full legal representation and reserving scarce legal services for litigants with more complex cases or who lack the cognitive or emotional ability to represent themselves.

Lawyers are also concerned about the economic implications of making self-representation a more feasible option for litigants, and judges are concerned about how increasing numbers of self-represented litigants in their courtrooms will affect their ability to manage case in an ethically appropriate manner. For both of these core constituencies, the challenge will be to develop ways to change the vision of court-based self-help initiatives from a threat to an opportunity. Judicial and legal education will be a key component in this initiative.

For lawyers, this change in vision may require the development of incentives to encourage unbundled legal services as part of the standard legal services delivery model. To the extent possible, individual members of CCJ and COSCA should implement rules that make it explicit that limited scope representation is permissible. Moreover, they should ensure that lawyers are informed about their ability to provide limited scope representation and that judges and court staff are apprised of rules and will respect the agreements that lawyers make with their clients to perform discrete legal tasks. Similarly, the judges must be provided with judicial guidelines and recommended practice tips for conducting in-court proceedings with self-represented litigants. Education of judges and lawyers will be important to show them that these changes will improve, rather than impair, their respective abilities to manage in an environment where self-represented litigation is a commonplace occurrence.

Designing court processes to work for self-represented litigants

Many courts that have implemented self-help programs have come to recognize that the court process itself is inherently unfriendly to non-lawyer users. This realization has prompted them to move toward greater reliance on sample/model forms, and to periodically revise those forms and their instructions to make them more comprehensible to laypersons. This trend should continue. Individual members of CCJ and COSCA should develop model criteria or standards, which define plain language, forms and encourage their legitimization by rule, much as the 8-1/2 x 11 inch paper standard was adopted in many states. In addition, state Supreme Courts and Judicial Councils should be encouraged to use their rule-making authority to advance the use of standard forms and uniform court rules for common procedures. To the extent that Internet-based technologies (e.g., interactive forms, e-filing) can facilitate this process, they should be explored and implemented by courts as widely as possible.

Because court resources for such initiatives are scarce, courts should share the fruits of their efforts (e.g., examples of forms and instructions, resources including educational materials, translations of materials to other languages, and technology applications) freely with other jurisdictions. This can be accomplished by encouraging courts to submit materials to the Self-Help Practioners Resource Center at http://www.probono.net/self-help.

Ongoing national collaborations

One of the most enduring products of the 1999 National Conference on *Pro Se* Litigation was the development of a loose network of individuals and institutions that are actively involved in identifying needs and national trends in the area of self-help assistance programs. This network includes representatives of the American Judicature Society, the California Administrative Office of the Courts, Greacen Associates, the Justice Management Institute, the Legal Services Corporation, the National Center for State Courts, the Open Society Institute, the State Justice Institute, the Trial Court Research and Improvement Consortium, and Zorza Associates. It would be useful for both CCJ and COSCA to have institutional mechanisms to participate in the ongoing work, both to keep the membership of CCJ and COSCA informed about national trends and initiatives and to provide leadership and guidance to these agencies and individuals. The Task Force recommends that the Presidents of CCJ and COSCA appoint individuals from their respective membership to function as liaisons with this network.