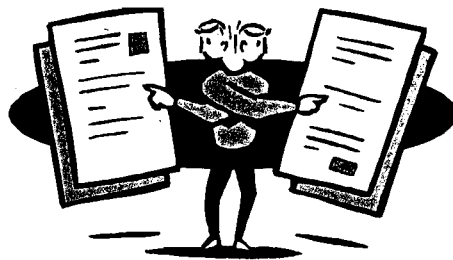


The Future of Self-Represented Litigation: Report From the March 2005 Summit



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**Effective Practices: Tested Ideas from the Field in
Self-Represented Litigant Access to Justice Innovation**

I.	Services in Support of Case Starting/Responding.....	1
II.	Public Information and Assistance Programs.....	3
III.	Training and Support Materials.....	6
IV.	Community Outreach/Access Programs.....	6
V.	Attorney Involvement Programs.....	8
VI.	Courtroom Practices.....	9
VII.	Post Order Practices.....	11
VIII.	Court Management Practices.....	12
IX.	Jurisdiction-Wide Practices.....	12

Introduction

These "Effective Practices" are offered as a brief list of practices and concepts for those states or courts considering the establishment or expansion of programs. They should not be interpreted as suggesting either a mandatory or a comprehensive list of practices. Rather, each jurisdiction should consider its own experiences and needs in developing a strategy or program

The choice of these practices do not yet all reflect formal research, but all have been informed either by such research or by the knowledge and experience of a number of groups active at the national and state levels in advancing innovation in self-help access to justice.

I. Services in Support of Case Starting/Responding

Forms and Documents

Concept and Rationale

Simple, easy to use and self-help friendly forms and documents are indispensable for an access to justice environment. Such forms and documents facilitate entry into the dispute resolution system, provide better data to decision makers, speed the overall process, and increase comprehension of the whole system.

Suggested Attributes

An effective forms and documents program, and the forms in the program, should:

Cover all major issues and all sides

Offer diagnosis of when which form is to be used

Have forms that are written in easy to understand language

Have forms that are well aid out

Offer forms in multiple languages

Offer forms in large type

Offer instructions that are linked to the questions and understandable

Provide instructions on what to do with completed form

Allow hand fill-in of the forms

Not have any obscure or court specific requirements (colors, size, covers, etc)

Have forms that are integrated to minimize repeated entry of information

Make sure that the forms are easy to obtain at the courthouse

Make sure that the forms are widely accessible, including over the Internet

Issues for Exploration and Evaluation

While there is strong anecdotal evidence of the effectiveness of such forms, as yet no rigorous evaluation has accurately estimated the cost savings. It should also be noted that some jurisdictions have experienced initial reservations on the part of the organized bar; such reservations tend to disappear when the utility of these forms for the bar becomes clear.

Document Assembly

Concept and Rationale

The core concept of document assembly is software that walks users through branching questions to complete forms which are then printed out or filed electronically (see Electronic Filing, below). Among the advantages are the ability to provide support as people complete the forms, avoidance of repetitive information, and focus on the areas of information needed.

Suggested Attributes

An effective document assembly program, should:

Where possible and relevant meet the standards above under Forms and Documents

Provide an on line diagnostic front end to see if user appropriate

Use branching logic that reflects real situations

Use only a limited number of Questions on each Screen

Have detailed instructions integrated with questions

Produce instructions on how to file the form

Provide clear navigation so people do not get lost

Include Video Help (optimum)

Be interactive over the Internet

Issues for Exploration and Evaluation

Planners need to be aware that document assembly systems, while very effective, require significant up-front investments to build, particularly on the Internet, and particularly if they are to be user-friendly. (The software tools designed to help in building such applications do not yet do as good a job at building Internet based user friendly systems as they do building standalone attorney oriented systems.)

Electronic Filing

Concept and Rationale

Electronic filing, if correctly implemented, can make it easier for litigants to file pleadings and obtain access to justice. However, to obtain such a result, the electronic filing system must be designed from the ground up for ease of use by lay litigant. A poorly designed system may increase rather than reduce barriers to access. It is noteworthy that most of the state-level electronic filing initiatives that are succeeding are access-oriented systems.

Suggested Attributes

An access-effective electronic filing system should:

Include document Assembly Front End to assemble documents prior to filing (See Document Assembly above)

Require no fee or allow for waiver of fee for use of system

Make sure there is no disadvantage to those who file manually

Be built on an interface that uses a standard web browser

Have an interface that is easy to use

Issues for Exploration and Evaluation

There is need to explore how to avoid unfair advantage to those who use electronic filing. There is also substantial uncertainty about the economics of these initiatives. It appears that early private sector enthusiasm for these projects is falling, and that most of the effective programs have moved forward in the context of public access, rather than attorney service.

II. Public Information and Assistance Programs

Self-Help Web Site

Concept and Rationale

Well designed and comprehensive self-help websites have proved a highly effective means to providing the information component of access to justice. They distribute information very widely at zero marginal cost. They facilitate partnerships with appropriate access points, see Libraries and Community Access Points.

Suggested Attributes

To be most effective a website should:

Be well branded

Have comprehensive and up to date content

Be organized in lay terms
Provide multiple language support
Have diagnostic design in terms of problems not laws
Include a broad range of support service links
Be in compliance with national accessibility standards
Use software that supports easy updating
Be planned with access-oriented use by community organizations and others in mind

Issues for Exploration and Evaluation

It is particularly important that these websites are planned so that they are made accessible to the less literate, and that there is provision for the costs of making them comprehensive and up to date. There is particular need for collaboration in this area.

Self-Help Center

Concept ad Rationale

Self-help centers have proved themselves as highly effective at increasing litigant satisfaction and appear to have generally improved court functioning. They consist of programs in which attorneys and other staff provide information about court procedures and the law. While not providing formal advice, and while not involving the creation of attorney client relationships, their ability to deal one on one with litigants, or in targeted workshops, goes way beyond the provision of general information

Suggested Attributes

An effective self-help center should:

Be easily accessed

Be well signed

Have multiple language staff

With respect to obligations to clients, have the role of staff clearly defined and well communicated

Have staff with a high level of knowledge

Be set up with a well managed flow and queue

Have supportive informational materials on all major topics

Provide diagnosis as to whether limited assistance is appropriate

Offer referrals to full service and unbundled attorney providers

Where appropriate, provide referrals to ADR and social service support systems

Serve all sides

Be well integrated into court management

Meet regularly with other components of the access system

Issues for Exploration and Evaluation

Among the issues as to which there is no agreement as to the most effective practices include whether the staff of centers must be attorneys, what the scope of the obligation to clients is, and whether there should be income eligibility.

Written Descriptive Informational Materials

Concept and Rationale

A disciplined program to produce a full range of needed general descriptive information materials is crucial component of any general access to justice program. Such information can be distributed using a wide variety of technologies, makes possible the effective use of volunteers, and helps force consistency on the court itself.

Suggested Attributes

An effective materials program should:

- Cover all major issues and all sides
- Have materials that are fully up to date
- Have materials that use easy to understand language
- Use a non-patronizing tone
- Have materials that are divided into small sections with informational headings
- Have materials that are well laid out
- Offer materials in multiple appropriate Languages
- Offer large type materials
- Make sure the materials are widely accessible, including over the Internet

Issues for Exploration and Evaluation

Most programs find the task of keeping the materials comprehensive and up to date surprisingly burdensome. Some face issues as to whose materials are appropriate for use in the center or program. Updating is particularly expensive in the multilingual context.

III. Training and Support Materials

Videos/PowerPoint

Concept and Rationale

Many programs find that video and PowerPoint training materials are helpful in establishing and maintaining low marginal cost court preparation programs. These materials can show what court is like, introduce the court players, lessen intimidation, and introduce key legal concepts. They are particularly appropriate for those populations for whom written materials are less effective. PowerPoints are cheaper and can be change much more easily

Suggested Attributes

An effective program using such materials should:

- Have materials that are clearly written and edited
- Offer brief materials
- Offer a generally non-patronizing tone
- Have video and PowerPoints appropriate for a range of verbal skill levels
- Have materials that are concrete rather than general
- Show what happens rather than offer “talking heads”
- Use text to reinforces the audio messages
- Offer multiple appropriate language versions

Issues for Exploration and Evaluation

Good videos are expensive, and expensive to change. They also often contain hidden biases which become clear only after substantial investment.

IV. Community Outreach/Access Programs

Libraries and Community Access Points

Concept and Rationale

Experience has made clear that many of the materials and programs developed in the court or legal aid context can more flexibly be accessed by many individuals in environments in which there are supportive individuals. Sometimes the issue is simply one of physical access, sometimes of help with the computer, sometimes language, sometimes understanding. A wide variety of community access points can help meet this need, and provide significant leveraging use of materials and on-line information already developed.

Suggested Attributes

An effective access point program should:

- Use centers that are accessible to broad range of people
- Use “neutral” sites
- Have staff/volunteers available to help and inform
- Have technology in place
- Use non-intimidating environments
- Provide safe places
- Provide private spaces
- Use feedback systems to tell how location used and how to improve

Issues for Exploration and Evaluation

We are still improving our understanding of how such access points can be most helpful for the access programs to meet their own institutional needs.

Workshops and Trainings

Concept and Rationale

Group help programs, often combined with individual support, have proved a cost effective way of walking individuals through complex paper procedures, and preparing them for relatively simple court proceedings. The design of these programs varies widely, from a simple general presentation, to a multi-part series that includes line by line support for filing in forms and preparing testimony. These workshops can be offered in different locations via videoconferencing, and in a variety of languages.

Suggested Attributes

Effective clinics and training programs should:

- Screen users
- Provide appropriate content for the topics it covers
- Provide an appropriate environment for support and privacy
- Pay attention to pacing and division of content
- Provide forms, packets and materials, see Forms and Documents at page 1 and Document Assembly at page 33
- Build in systems to provide support when cases go wrong

Issues for Exploration and Evaluation

Our knowledge of the comparative efficacy of group versus one on one support is still limited. Nor do we fully understand the issues of confidentiality and privilege, although they do not seem to provide practical barriers.

Mobile Self-Help Centers

Concept and Rationale

A mobile self-help center has proved a highly effective way of communicating the commitment of a court to community outreach. Carrying materials and staff support to a wide variety of organizations and locations, the message of openness is clear.

Suggested Attributes

- An effective mobile self-help center should:
 - Be designed to provide secure and confidential conversation environments
 - Be designed for distribution of a wide range of materials
 - Include capacity to support technology
 - Visit sites on a regular basis
 - Serve a range of sites and special needs

Issues for Exploration and Evaluation

Such programs are relatively highly expensive, and have not been compared with other forms of outreach.

V. Attorney Involvement Programs

Unbundled Services Program

Concept and Rationale

The core concept of unbundled services is that attorneys provide assistance within the attorney-client relationship for only certain portions of the case, portions chosen jointly by the attorney and the client. This reduces the cost to the client, and provides additional business to the attorney, while facilitating the court's work, compared to what would happen if the attorney were providing no assistance.

Suggested Attributes

An effective unbundled services program should:

- Be operated in conjunction with the state bar
- Have strong judicial support

- Provide training for attorneys
- Be supported by court rule and/or practice
- Provide referrals from court programs

Provide training for judges and court staff

Issues for Exploration and Evaluation

Unbundled representation requires additional diagnostic and support skills not necessarily possessed by all attorneys. The question is how to make sure that those participating in these programs do so appropriately. Similarly, not all cases or clients are appropriate for this form of representation. We need to figure out how to make sure that this methodology is only used where appropriate.

Pro Bono Attorney Involvement

Concept and Rationale

Pro bono attorney assistance can provide critical components in a self-help program. Pro bono attorneys can provide "attorney of the day" type services at low cost. They can also be available to take over the complex cases not appropriate for self-help services, and beyond the financial or other capacity of the legal aid program.

Suggested Attributes

An effective program should:

- Be facilitated by ethical rules allowing for non-conflicted limited services
- Have strong bar association support
- Include a training program
- Provide technology support for remote services

Include training and support materials

Issues for Exploration and Evaluation

Pro bono programs have a long history. We need additional research into how they best combine with court-based self-help to focus on those in the most need.

VI. Courtroom Practices

Attorneys Available to Assist/expedite

Concept and Rationale

A courtroom based screening and support program, in which attorneys, often working in conjunction with a Self-Help Center, review the cases of each person before they appear,

can help build a good collaboration between the court and the legal aid program, and facilitate the functioning of the court. Those with simpler cases are given advice; those with more complex cases are passed into the agency's intake system.

Suggested Attributes

An effective program should:

- Have clarity on attorney ethical duties
- Have referrals to full and unbundled available
- Provide services to those on all sides
- Have judicial support and integration

Issues for Exploration and Evaluation

Such programs must be careful to make sure that they are structured so that the court is not supporting one side over the other, such as by making sure that appropriate services are available to all.

Consideration of Self-represented Litigant – Friendly Judicial Practices

Concept and Rationale

There is increasing understanding that a truly self-help friendly court must change not only the processes that lead up to the courtroom, but also the way the courtroom itself is conducted. Judicial officers and those that work with them are beginning to think of ways to manage the courtroom so that neutrality is enhanced by making the systems work for all, regardless of whether they have a lawyer.

Suggested Attributes

Such practices should:

- Be grounded in neutral judicial practices that work for those with and without lawyers
- Provide judicial explanation to litigants of what is needed
- Provide judicial protection against witness harassment
- Offer neutral judicial techniques to avoid circumstances in which innocent failure to comply with technicalities about evidence becomes outcome determinative
- Provide training to judges and courtroom staff

Issues for Exploration and Evaluation

There remains substantial fear that changing court procedures to be friendly to the self-represented undercuts judicial neutrality. We need to find ways of thinking about court procedures so that these procedures are seen as neutral only when they work equally well for those with and without lawyers.

Immediate Written Minute Order Upon Decision

Concept and Rationale

There is emerging agreement that for those without lawyers, it is better if, whenever possible, there is an immediate decision, in writing at the end of the hearing. This makes it easier for the parties to accept finality, and obtain the services they may need for the next step.

Suggested Attributes

An effective immediate order program should:

Provide an immediate decision when possible and appropriate

Provide an order memorialized by clerk and/or software immediately

Make the memorialized order available immediately to parties

Issues for Exploration and Evaluation

There is no formal research in support of this practice.

VII. Post Order Practices

Enforcement Support Services

Concept and Rationale

Many programs agree that they have been better at giving people information at the beginning of the case than they have been at helping them at the end. They are beginning to explore the creation of programs focused on support for enforcement of already issued orders. This will increase overall compliance and satisfaction with the court.

Suggested Attributes

An enforcement support program should:

Have staff to inform litigants of how to obtain enforcement

Include enforcement systems that minimize needs for independent actions by prevailing party

Use systems by which the court obtains information to aid enforcement immediately upon decision

Issues for Exploration and Evaluation

It is early in the design of such programs, and they will need careful design and evaluation.

VIII. Court Management Practices

Broad Training of Courthouse Staff

Concept and Rationale

When self-help programs are not limited to the side, but participate in the overall training of all courthouse staff so that all feel responsible for the effective functioning of the system for those without lawyers, the court as a whole functions much better.

Suggested Attributes

An effective program should:

Have all staff trained in how to help self-represented litigants

Have staff evaluated in part on their effectiveness

Include training programs and materials clarifying what staff may and may not do in various roles

Encourage staff to report issues and problems in support of self-help staff

Have court Staff seek advice from self-help program staff

Issues for Exploration and Evaluation

We are only at the beginning of the process of learning how to build courts as overall self-learning teams.

IX. Jurisdiction-Wide Practices

Form and Process Standardization

Concept and Rationale

There is broad agreement that standardization of forms across a jurisdiction is a critical first step in opening the system to those without lawyers. Such standardization makes software and form design investment possible, raises the overall level, and facilitates training and program support.

Suggested Attributes

Such standardization should:

Provide universal forms

Have forms which meet standards above

Provide facilitation of support services such as training and software

Offer forms are directly related to processes and to litigant problems, rather than legal categories

Issues for Exploration and Evaluation

Often there is substantial judicial and bar reluctance to abandon local practices and requirements. We need to know how to engage decision makers with the overall picture.

Rules in Support of Unbundling

Concept and Rationale

Often innovation in unbundling is held back because of fears that it violates ethical rules. These fears focus on the legality of the practice itself, on conflict of interest requirements, and on the risk of being pulled into court to complete a case. While these fears are largely unfounded, innovators have found that enactment of rules clarifications along the lines of those proposed in the ABA Ethics 2000 process can make a huge difference.

Suggested Attributes

Such rules should:

Provide clarity that there is no ethics bar

Offer appropriate model retainer forms

Provide appropriate limited appearance forms

Reduce conflict burdens for brief service and advice

Use Ethics 2000 models

Issues for Exploration and Evaluation

We do not know whether the rules changes provide sufficient reassurance, and what other programs of engagement are most effective.

Rules in Support of Court Information Programs

Concept and Rationale

Many jurisdictions that create court-based self-help programs have found that it is helpful to enact rules that clarify the precise responsibilities of the staff of these programs.

Suggested Attributes

Such rules should:

Clarify the relationship with users, including nature of relationship

Clarify the ethical obligations of staff, including confidentiality, etc.

Clarify the obligation to provide services to all sides

Issues for Exploration and Evaluation

Much work remains to be done on the specifics of these rules, and the advantages of different formulations.