

The Honorable Jorge Labarga, Chair  
Chief Justice, Supreme Court of Florida

Ramón A. Abadín  
President-Elect, The Florida Bar

R. Alexander Acosta  
Dean, College of Law,  
Florida International University

John A. Attaway, Jr.  
Senior Vice President and General Counsel,  
Publix Super Markets

The Honorable Jeff Atwater  
Chief Financial Officer, State of Florida

Martha Barnett  
Attorney at Law, Tallahassee

The Honorable Pam Bondi  
Attorney General of Florida

The Honorable Rob Bradley  
The Florida Senate

The Honorable Nikki Ann Clark  
Appellate Judge, First District Court of Appeal

Gregory W. Coleman  
President, The Florida Bar

The Honorable Timothy J. Corrigan  
Judge, United States District Court,  
Middle District of Florida

Jeffrey S. Craigmile  
Chief Counsel, Walt Disney Company

Marshall M. Criser, III  
Chancellor, State University System

The Honorable Linda Doggett  
Clerk of Court, Lee County

Thomas S. Edwards, Jr.  
Attorney at Law, Jacksonville

Benjamin J. Gibson  
Assistant General Counsel,  
Executive Office of the Governor

The Honorable C. Robert Hilliard  
County Judge, Santa Rosa County

James A. Kowalski, Jr.  
Executive Director,  
Jacksonville Area Legal Aid

Dominic C. MacKenzie  
President-Elect, The Florida Bar Foundation

The Honorable Charles McBurney  
The Florida House of Representatives

Kathleen Schin McLeroy  
Attorney at Law, Tampa

Byron Russell  
Chairman and Chief Executive Officer,  
Cheney Brothers

The Honorable Bertila Soto  
Chief Judge, Eleventh Judicial Circuit

The Honorable Emerson R. Thompson, Jr.  
President, The Florida Bar Foundation

Robin Hassler Thompson  
Attorney at Law, Tallahassee

William A. Van Nortwick, Jr.  
Attorney at Law, Jacksonville

Gwynne Young  
Past President, The Florida Bar



# FLORIDA COMMISSION ON ACCESS TO CIVIL JUSTICE

**May 15, 2015**

## **Florida Commission on Access to Civil Justice Meeting**

Attached are the documents for today's meeting.

- Agenda
- Outreach Subcommittee Report
- Access to and Delivery of Legal Services Subcommittee Report
- Continuum of Services Subcommittee Report
- Technology Subcommittee Report
- Funding Subcommittee Report

The next Commission meeting will be held on Friday September 18, 2015, in Tampa Florida at the Tampa Airport Marriott; Tampa International Airport, 4200 George J. Bean Parkway Tampa, FL 33607.

### **ATJ Commission**

ATTN: Francisco-Javier Digon-Greer, Esq.  
The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300

Website: [www.flaccessjustice.org](http://www.flaccessjustice.org)

Email: [flaccessjustice@flabar.org](mailto:flaccessjustice@flabar.org)

**Agenda**  
**Florida Supreme Court Commission on Access to Civil Justice**  
**May 15, 2015**  
**Tampa Airport Marriott**

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- 1:00 – 1:15      Welcome and opening statement - Chief Justice Jorge Labarga
- 1:15 – 1:30      Unveiling of the Commission’s Knowledge Base and comments about the National Meeting of State Access to Justice Chair – Gregory Coleman, President of The Florida Bar.
- 1:30 – 5:30      Subcommittee reports
- a) 1:30 – 2:15      Outreach – Chief Justice Labarga
  - b) 2:15 – 3:00      Access to and Delivery of Legal Services– William A. Van Nortwick
  - c) 3:00 – 3:45      Continuum of Services – Judge Bertila Soto on behalf of Judge Nikki Ann Clark
  - d) 3:45 – 4:00      Break:
  - e) 4:00 – 4:45      Technology – Judge C. Robert Hilliard
  - f) 4:45 – 5:30      Funding– Judge Emerson R. Thompson, Jr.
- 5:30 – 5:45      Closing remarks; Adjournment – Chief Justice Labarga



# FLORIDA COMMISSION ON ACCESS TO CIVIL JUSTICE

## SUBCOMMITTEE COMMISSION REPORT

Subcommittee:	Outreach
Date:	May 8, 2015
Prepared By:	Chief Justice Jorge Labarga, Chair
Members: Chief Justice Jorge Labarga, Chair; Florida Bar President-elect Ramón Abadin; CFO Jeff Atwater; Attorney General Pam Bondi; Sen. Rob Bradley; Rep. Charles McBurney and Ad Hoc members Talbot “Sandy” D’Alemberte and Bentina C. Terry.	
The subcommittee’s charge is to: (1) Determine strategies to educate various target audiences on access to justice issues and the need for a strong civil legal assistance program, including: <ul style="list-style-type: none"><li>➤ the general public;</li><li>➤ the judicial, legislative and executive branches;</li><li>➤ Florida Bar members and law students;</li><li>➤ civil legal service providers and the pro bono community;</li><li>➤ the business community;</li><li>➤ funders;</li><li>➤ the media; and</li><li>➤ other stakeholders.</li></ul> (2) Ensure consistent communications messaging from the commission and all of the subcommittees regarding study, progress, reports and recommendations; and (3) Identify possible outreach partner organizations for distribution of information and discussion forums.	

The subcommittee met on March 2, 2015, and April 20, 2015.

During the March 2 meeting, members reviewed civil justice messaging research findings, a summary of outreach activities by other commissions, and outreach tools already deployed to educate target audiences on the establishment of the commission. Members also discussed methods and messaging for the Florida Commission.

The research findings were from a 2013 Public Welfare Foundation/Kresge Foundation national study to assess knowledge of civil legal aid among voters, and to develop messaging that can be used to build

awareness and support. In 2014, strategic messaging was tested among lawyers to determine if a different communications strategy was needed for lawyers than for voters. Findings revealed:

- There is little awareness of civil legal aid among likely voters.
- It's important to connect with voters' values and to give examples of services provided.
- Lawyers are familiar with and passionate about civil legal aid.
- Lawyers believe that civil legal aid protects vulnerable populations.
- Words that work for both: Civil legal aid, fairness.
- Value-based messaging: Assuring equality and access to justice for all.

A summary of outreach activities by access commissions highlighted strategies such as:

- "Listening conferences" and hearings in locations around the state; in California the hearings were cosponsored by the chamber and bar.
- Releasing findings of an analysis of economic benefits to the state and other needs-related findings.
- Videos including two in Texas narrated by Bill Moyers and Dan Rather.
- Outreach activities to lawyers, law students and the business community.
- Development of clear and consistent messaging and delivery via a communications plan with tactics for target audiences.

Outreach strategies already deployed by the Florida Commission:

- Website at [www.flaccessstojustice.org](http://www.flaccessstojustice.org)
- Social media - Facebook, Twitter and YouTube
- Florida Channel broadcasts/tapings on the Florida Supreme Court's Gavel to Gavel website at <http://wfsu.org/gavel2gavel/>.
- News releases, press conference for the signing of the administrative order, op-eds, media availability before and coverage of full commission meetings, and editorial board meetings.
- Speaking opportunities (see attached schedule of the Chief Justice's presentations).

A discussion on methods and messaging was held. Highlighting the legal needs of the middle class as well as vulnerable populations and the types of cases that are particularly difficult without legal representation is essential to outreach efforts. A survey of judges in Massachusetts reported problems due to lack of representation by practice area: 61% housing; 53% family matters; 50% consumer; 35% public benefits; 18% prisoner cases; 16% immigration; 16% other; 11% employment; 11% healthcare; and 9% education. There are mind-sets and perceptions that will need to be addressed in messaging, particularly the perception that civil legal aid funding goes to trial lawyers.

Presentations on the Commission by the Chief Justice have included one to the Florida House of Representatives Judiciary Committee, arranged by the Chair Rep. Charles McBurney. Rep. McBurney said that lack of access to civil justice is a much larger problem than most first thought it was. It affects everyday people, including family, friends, neighbors and co-workers. The Chief Justice and Bar President Greg Coleman will continue to make presentations to spread the word about the Commission's work.

Social media has been successfully used in outreach efforts by the Attorney General's offices. Sharing of Commission postings by other organizations' social media will provide wider distribution.

In addition to trying to localize messages and tactics of other commissions, the subcommittee can also look at the outreach efforts of providers of other critical resources for quality and life and consider modifying those.

A communications plan will be developed and in order to ensure consistent communications messaging by the Commission and Commissioners, staff will draft key messages and talking points for review by the subcommittee members at the next meeting.

At the April 20 meeting, subcommittee members honed in on the various target audiences and strategies to reach them.

Statistics and stories of litigants of various ages and with moderate, fixed or low incomes, including self-represented litigants, will be key to communicating about the Commission. Also, sharing the perspectives of lawyers, judges and employers will be beneficial in outreach efforts.

The Chief Justice includes remarks about the importance of access to civil justice and the Commission's work in his speaking engagements and he conducts interviews with reporters as he travels. The Florida Bar's incoming president offered to extend his travels to meet with lawyers, law students, civic leaders, business leaders and others regarding the gap in access to civil justice and work of the Commission. The subcommittee will work on a presentation that can be used by all Commissioners to advance such outreach efforts.

The need to involve and educate the business community on business-related issues (productivity, work-life balance of employees, etc.) was emphasized, as well as the importance of communicating that the Commission will continue its work and will deal with issues as they arise beyond the initial two-years.

Subcommittee members reviewed draft messages and talking points for distribution to Commission members at the May 15 meeting. These include frequently asked questions about access to civil justice and the Commission and an elevator speech/brief description of why the Commission exists and its goals. The final version of the messages for Commission members' use as of May 11, 2015 is attached.

Further messaging is to be developed that will illustrate why lack of access to civil justice is a societal problem, pointing out the impact on communities and collateral issues such as preventing crimes and deterring emotional problems. The possible use of online and social media advertising was also discussed as well as the possible production of videos.

Media coverage to-date was reviewed and coverage of the May 15 Commission meeting will be sought. An informational report on access commissions' accomplishments from 2000-2014 by the ABA Resource Center for Access to Justice Initiatives was provided and is being distributed to the other subcommittees.

The subcommittee will continue to meet over the next few months to develop strategies to fulfill its charge.

Chief Justice Jorge Labarga's Speaking Opportunities Regarding Florida Commission on Access to Civil Justice

Date	Event Name	Presenter(s)
May 2014		
30	Judicial Management Council Meeting	Labarga
June 2014		
30	Passing of the Gavel Ceremony	Labarga
July 2014		
1	Florida Bar Journal	Labarga
Sept 2014		
8	State of the Judiciary Address to Conference of DCA Judges	Labarga
Nov 2014		
24	Administrative Order Signing Ceremony	Labarga, Coleman, Thompson, Abadin
Dec 2014		
9	Judicial Management Council Meeting	Labarga
12	Annual Judicial Branch Leadership Meeting	Labarga, Coleman
Jan 2015		
	Op/Ed Piece (distribution)	Labarga, Coleman
15	Interview with Al Ruechel, Bay News 9	Labarga
16	Press availability at first Commission meeting	Labarga, Coleman
23	National Legal Services Corporation Panel Discussion	Labarga, VanNortwick
27	Interview with Beth Switzer, Florida Channel	Labarga
28	Associated Press Annual Statewide Editors Meet	Labarga

Chief Justice Jorge Labarga's Speaking Opportunities Regarding Florida Commission on Access to Civil Justice

30	Interview with Tom Tryon, Sarasota Herald Tribune	Labarga
Feb 2015		
4	House Judiciary Committee	Labarga
20	Keynote Address, Brevard County Legal Aid Annual Pro Bono Awards and Recognition Gala	Labarga
March 2015		
April 2015		
9	Supreme Court Justices Portrait Presentation Ceremony	Labarga
10	ADA 25th Anniversary Proclamation	Labarga
14	Legal Services Corporation White House Forum	Labarga
15	Legal Services Corporation Congressional Briefing	Labarga
17	Speak at Volusia County Bar Association dinner; talk with Daytona Beach News-Journal reporter	Labarga
25	Keynote address, Florida Blue Key tapping ceremony	Labarga
-	Column for the Florida Supreme Court Historical Society Newsletter	Labarga
May 2015		
1	Okaloosa County Law Day Luncheon, evening reception, and meeting with local business leaders	Labarga
1	Interview with Tom McLaughlin, Northwest Florida Daily News	Labarga
1	Interview with Sue Straugh, WEAR TV	Labarga
3	Commencement Address, FSU Law School	Labarga
8	Luncheon, Clay County Bar Association (invited by Senator Rob Bradley)	Labarga
8	Interview with Heather Crawford, First Coast News	Labarga
14	Highlands County Law Day luncheon and award ceremony	Labarga
14	Interview with Gary Pinnell of Highlands Today	Labarga
15	"Fireside Chat" at ABA Young Lawyer Division Conference	Labarga and Abadin
17	Commencement Address, UF Law School	Labarga
28	Interview with Ybeth Bruzual, News 13	Labarga
July		

Chief Justice Jorge Labarga's Speaking Opportunities Regarding Florida Commission on Access to Civil Justice

2015		
16	Keynote Address, Seminole County Bar Association luncheon	Labarga
Aug. 2015		
7	Labarga Luncheon, Palm Beach County Hispanic Bar Association	Labarga

**FLORIDA COMMISSION ON ACCESS TO CIVIL JUSTICE**  
**Outreach Subcommittee**  
**Messaging for Commission Members' Use**  
**May 11, 2015**

**ELEVATOR SPEECH**

The Florida Commission on Access to Civil Justice is working to find ways to increase meaningful and informed access to civil justice, especially for Floridians who are disadvantaged, indigent and are among the working poor who have legal needs that must be addressed. People with landlord-tenant, divorce, child custody, and consumer issues who can't get legal assistance have their health, safety, housing and employment threatened. Access to civil justice is a societal problem and this commission is bringing the public and private sectors together to improve existing programs and identify innovative solutions.

**KEY MESSAGES**

The current civil justice system is broken. Legal aid has only been able to address about 20% of the needs of low-income citizens. Moderate income Floridians without the resources to hire a lawyer or to effectively represent themselves also experience a civil justice access gap. Civil legal needs can tear apart a person's life and lead to and compound other serious problems.

Access to civil justice is a societal problem with every day consequences. Civil legal needs include family matters such as divorce and child custody, veterans' benefits and needs, landlord-tenant disputes and consumer problems among others. Vulnerable populations such as children, the elderly, persons with disabilities, domestic violence victims and others have unique and often complex civil legal needs, but they are traditionally underserved or not served at all.

The civil legal services gap affects every citizen in our state, and the collective experience and broad perspectives of the members of this commission will be focused on developing solutions through a coordinated, collaborative and holistic approach.

## TALKING POINTS ON ACCESS TO CIVIL JUSTICE

- National studies have shown that one in four poor persons have a significant legal need on an annual basis.
- The unmet legal needs of low-income and other vulnerable and underserved populations involve a broad range of matters that can and do happen during the course of a lifetime.
- A large number of moderate income people are effectively excluded economically from access to justice because they cannot afford to hire a lawyer and they do not qualify for legal aid.
- People who try to represent themselves are at a serious disadvantage particularly when the other party is represented. Self-represented litigants are frequently unprepared for the rigors of presenting evidence, following rules of procedure and other aspects of civil cases. This can cause significant delays in resolving the cases.
- Most legal aid and legal services programs are limited to serving clients with income below 125% of poverty guidelines: a single person may make no more than \$14,588 annually; a family of four's annual income may not exceed \$29,813.
- A 2009 Legal Services Corporation survey showed that nationally 50% of those who request legal assistance are turned away due to a lack of resources.
- Historically, legal aid has only been able to address about 20% of the legal needs of low-income citizens.
- Vulnerable populations – children, elders, persons with disabilities, veterans, domestic violence victims, victims of human trafficking, limited English proficient persons, and others - require access to the civil justice system to address their unique needs, but are traditionally underserved, or not served at all. They are likely to have more, and more complex, legal problems.
- Middle class families tend to face cases involving landlord-tenant, traffic, family law, and consumer issues. As with the poor, the inability to obtain legal assistance often threatens their health and safety, undermines their family structure, and puts at risk their housing and employment.
- Florida's courts have worked to simplify court forms and processes and Florida lawyers contribute more than a million hours of pro bono services as well as millions of dollars in contributions to legal aid, but the judiciary and legal profession cannot solve this problem alone.

## TALKING POINTS ON THE COMMISSION

- The first Access to Justice Commission launched in Washington State in 1994 and there are now 38 commissions across our nation. The experience of Access to Justice Commissions over the last two decades has been one of progress in the recognition of fundamental barriers to access to civil justice for low income and moderate income Americans, matched with significant efforts to break down those barriers.
- The Florida commission with 27 members brings together representatives from the public and private sectors to focus on developing innovative and creative ways to close the civil legal assistance gap.
- Members include representatives of the judicial, legislative and executive branches of government, business leaders, legal aid providers, private attorneys and leaders of The Florida Bar and the Florida Bar Foundation.
- The commission will:
  - Provide a forum for discussion about issues affecting access to civil justice
  - Identify and examine barriers that impede access
  - Determine how to promote coordination of legal services delivery for optimum efficiency and effectiveness
  - Examine ways to leverage technology in expanding access to civil justice
  - Identify and build partnerships
  - Examine how available resources might be maximized and identify how additional resources might be procured to provide stable funding
- The commission has formed five subcommittees to meet frequently between the full commission meetings to accomplish these important tasks.
- The commission will issue an interim report in October 2015 and a final report in 2016.

# QUESTIONS AND ANSWERS ABOUT THE COMMISSION

## **What is the civil legal services gap?**

While low-income Floridians may qualify for legal aid, legal aid has only ever been able to address about 20 percent of their legal needs. Meanwhile, many Floridians earn too much to qualify for legal aid but still do not make enough to afford a private attorney. Vulnerable populations – children, elders, persons with disabilities, veterans, domestic violence victims, victims of human trafficking, limited English proficient persons, and others - are traditionally underserved, or not served at all and they are likely to have more, and more complex, legal problems. Without access to civil legal assistance, they all live in a legal services gap.

## **What are Access to Justice Commissions and how are they operating in other states?**

Access to Justice Commissions are blue-ribbon entities that bring together the courts, the bar, civil legal aid providers and other stakeholders in a coordinated effort to identify ways to expand access to justice for low-income, moderate-income and vulnerable citizens. There are now 38 commissions across the nation. Primary activities relate to planning, education, resource development, coordination, delivery system enhancement and oversight. The commissions meet on a regular basis and have ongoing responsibility for carrying out their work.

## **Why is the business community engaged on this issue?**

Members of the business community are excellent resources for forward-thinking problem-solving. Their expertise is in spotting consumer needs and trends and devising solutions, products, and systems to address those needs and trends. The business community also has a major stake in access to justice because of the impact on its workers. Civil justice issues, such as divorce, child custody and child support, foreclosure and landlord-tenant disputes can adversely affect the productivity of employees, particularly when these issues go unresolved.

### **How can a workplace be affected by this issue?**

The lack of access to legal help can lead to individual and family instability that ultimately affects the workplace. Take just one issue – domestic violence – as an example: Nearly a quarter of employed women report that domestic violence has affected their work performance at some point in their lives. Each year, an estimated 8 million days of paid work are lost in the U.S. because of domestic violence. Legal help is often a critical element in extricating a woman from a violent relationship, especially if she lives in the legal services gap.

### **What have the other state commissions accomplished?**

Access to Justice Commissions have been successful in many of the following areas: increasing public awareness of the need for expanded access to justice; increasing attorney pro bono service; simplifying court processes and forms for self-represented litigants; increasing collaboration and coordination among legal aid providers; promoting changes in the delivery of legal services; identifying additional funding sources for civil legal assistance; and addressing related issues.

### **Why does the administrative order set a two-year term for the commission?**

Most commissions and committees appointed by the Florida Supreme Court are established for two-year terms and can be reappointed for additional terms, at the Court's discretion. The administrative order sets forth specific tasks the commission is expected to accomplish within its initial two-year term, including a directive for the commission to make recommendations on the need for the establishment of a permanent commission in Florida.

### **How were the members selected?**

Chief Justice Jorge Labarga appointed the commission members after looking at the body of knowledge from existing access to justice commissions regarding the most effective size and composition, and after consulting with the leadership of The Florida Bar, The Florida Bar Foundation, the courts, the executive and legislative branches, and others. Members were selected based upon their experience within the Florida justice system and their anticipated

commitment. The members offer a diversity of perspectives and expertise that will enable the commission to fulfill its mission and objectives.

**How often will the commission meet and how will we be able to follow its work?**

The commission is expected to meet quarterly, and its task-specific subcommittees will meet frequently via videoconferences, teleconferences and online communities. Initially, the commission will have a website at [www.flacesstojustice.com](http://www.flacesstojustice.com); will use social media including Facebook, Twitter and YouTube; and will have a central email address for input, suggestions, questions and comments. Additional communications are likely to include news release updates to the media as well as news conferences at meetings, public television programming, and distribution of printed and electronic materials.

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For more information on the Commission, please contact:

Craig Waters, [watersc@flcourts.org](mailto:watersc@flcourts.org); 850-414-7641

Francine Walker, [fwalker@flabar.org](mailto:fwalker@flabar.org); 850-561-5762, 850-321-7846

Nancy Kinnally, [nkinnally@flabarfndn.org](mailto:nkinnally@flabarfndn.org); 407-960-7000, 40375-2264



# FLORIDA COMMISSION ON ACCESS TO CIVIL JUSTICE

## **SUBCOMMITTEE COMMISSION REPORT**

Subcommittee:	Access to and Delivery of Legal Services
Date:	May 15, 2015
Prepared By:	Subcommittee on Access to and Delivery of Legal Services

### Introduction:

The Subcommittee on Access to and Delivery of Legal Services met by conference call on March 13, 2015, and in person in Orlando on May 12, 2015.

At its first meeting, the Subcommittee reviewed its charges:

Identify and examine barriers that impede access to civil justice for disadvantaged, low income, and moderate income Floridians. Determine how to promote coordination of legal services delivery to low income Floridians, for optimum efficiency and effectiveness. Identify and build partnerships among the courts, members of the private bar, providers of legal services, and other stakeholders who are engaged or interested in expanding access to civil justice for disadvantaged, low income and moderate income Floridians.

At its March 13 meeting, the Subcommittee reviewed and discussed the presentations that were made at the first meeting of the Commission relating to the state of access to justice in Florida and the current barriers to access. At the request of the Subcommittee chair, staff Melissa Pershing Moss discussed the websites providing valuable data from other Access to Justice Commissions and from other organizations, such as the American Bar Association.

The Subcommittee agreed to focus its initial efforts on the second sentence of the charges: Determine how to promote coordination of legal services delivery to low income Floridians, for optimum efficiency and effectiveness.

The Subcommittee formed three working groups with the following make up and charge:

- 1) Subgroup 1. Chaired by Donny Mackenzie, with Jim Kowalski and Bill Van Nortwick, Jr. as members. To study and make recommendations on models or best practices for intake systems for providing legal services for the poor and middle class.
- 2) Subgroup 2. Chaired by Kathy McLeroy, with John Patterson and Kristen Lentz as members. To study and make recommendations on models and best practices for the assignment and coordination of matters identified in the intake process.
- 3) Subgroup 3. Chaired by Judge Vance Salter, with John Attaway and Judge Tim Corrigan as members. To study and make recommendations on the tools, training, and techniques that will be necessary to provide high quality legal services in a timely and efficient manner.

Each working group met several times either in person or by telephone conference and submitted written reports and recommendations to the Subcommittee. Those reports and recommendations were discussed at the Subcommittee meeting on May 13, 2015. The Subcommittee adopted the recommendations, as amended at the meeting.

#### Recommendation to Create a Centralized Intake System :

The working group and the Subcommittee reviewed a plethora of resources provided by Melissa Pershing Moss at the Florida Bar Foundation and conducted other research and review based on the materials provided. The initial objective was to attempt to survey and review best practices regarding intake efforts. Similarly, worst case practices were also reviewed. It became apparent fairly quickly that Florida's legal aid providers use an antiquated intake model which lacks efficiency and possesses little consistency. In fact, Florida appears to be the only state without a centralized intake system.

A short review of centralized intake systems ensued. In general, there seems to be several commonly understood principles:

1. Intake is the threshold to access to justice. Indeed, it is the doorway to effective access to courts. Unfortunately, if not properly constructed, it can be a barrier that impedes access to civil justice for disadvantaged, low income, and moderate income Floridians. Effective intake general requires:
  - a. Outreach and education (the public needs to know what is available

- and where).
- b. Effective communication (in addition to applicant-to-provider communications, provider-to-provider communication must be clear and concise); and
  - c. Discernment of need.
2. Traditional, "human to human" intake is less efficient, more expensive, and inconsistent.
  3. Triage is a complex process that relies heavily on the intelligent identification of resources and teamwork. There are multiple factors involved, some of which include:
    - a. Case complexity;
    - b. Whether the other party is represented;
    - c. The adversarial nature of the proceeding;
    - d. The availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case;
    - e. Language issues;
    - f. Disability access issues;
    - g. Literacy issues;
    - h. The merits of the case;
    - i. The nature and severity of potential consequences for the potential client if representation is not provided; and
    - j. Whether the provision of legal services may eliminate or reduce the need for and cost of public social services for the potential client and others in the potential client's household.<sup>1</sup>
  4. There is a need to integrate intake systems operated by the Courts and the systems operated by the legal aid community. Currently, both systems work independent of each other with little or no interfacing or

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<sup>1</sup> Richard Zorza, *The Access to Justice "Sorting Hat": Towards A System of Triage and Intake that Maximizes Access and Outcomes*, Denver University Law Review, Vol. 89:4 at 860, n. 7 referring to The California Shriver Pilot Statute.

interaction.<sup>2</sup> Indeed, as Richard Zorza points out, "The practical reality is that without an integrated well-designed, transparent, and intellectually defensible triage system, there is simply no chance of achieving either improvements in court efficiency or significant expansion in access, let alone the 100% access that is the only defensible ultimate goal."<sup>3</sup>

5. Documentation and data collection is vital in order to track outcomes, resources, and facilitate follow up and supplemental services if available or necessary.
6. A centralized intake system, while supplementary to existing, local intake efforts, should be available and accessible to all legal aid providers as well as the courts of this State.

#### RECOMMENDATION:

It became obvious early in the process that the most effective and impactful thing that can be done with respect to improving intake and triage in Florida is to create and implement a centralized intake system.

As such, the work group and Subcommittee recommend that efforts be undertaken to create and implement a centralized intake system designed to be used by both the courts and the legal aid service providers. This system should have the following characteristics<sup>4</sup>:

1. It will be integrated and accessible to both the courts and the legal aid providers, at least for monitoring, data collection and outcome measurements;
2. It will incorporate existing best practices identified from other successful centralized intake systems;
3. It will use the most current and user-friendly technology available;
4. It will consider and incorporate as warranted the criteria identified by The

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<sup>2</sup> Richard Zorza points out, "It is an interesting question why we know so little about these systems. In part, our lack of knowledge about this issue is just a consequence of the general lack of research on civil aspects of the court system. There may, however, be a different force at work. A focus on triage would, and indeed, will, require honesty about the consequences of scarcity, not just as a general matter, but in concrete cases, and that can be difficult for those in charge of the systems to deal with." Zorza, *The Access to Justice "Sorting Hat": Towards A System of Triage and Intake that Maximizes Access and Outcomes*, Denver University Law Review, Vol. 89:4 at 859, n 2.

<sup>3</sup> *Id.* at 861.

<sup>4</sup> This list is not exhaustive. Moreover, the work group recognizes that to the extent a centralized intake system is being designed by others, including the Florida Bar Foundation using funds loaned from the Florida Bar, duplication of effort and expenditure of resources should be avoided.

California Shriver Pilot Statute referenced above.

5. It will be flexible enough to determine not only the existence of legal issues and problems, but also ascertain if an applicant has the ability to resolve his/her issues without legal assistance (i.e. self-help; forms provision, advice and counsel, etc.); and also identify non-legal resources which may effectively resolve an issue without court intervention or legal assistance.
6. It will require input and documentation from all providers and maintain data collection in order to track outcomes, monitor resources, and facilitate follow up and supplemental services if available or necessary.
7. Initially, it will supplement and not supplant local intake efforts. However, it is understood that all providers will access the system in all instances in order to input intake and triage information into the system, so that the system can perform the tasks identified in #6, above.
8. It will be structured to "flag" emergency situations that require immediate assistance.

It is understood that this relatively simple recommendation is in reality a very large and challenging undertaking. And that there are many details and components required in order to accomplish this goal. However, it is apparent to the work group and the Subcommittee that the current state of affairs regarding Florida's intake and triage efforts requires the proverbial "sea change" in this regard.

The work group and Subcommittee were impressed with the amount of resources and information from which to draw and takes comfort in the fact that, with these resources, together with the amount of dedication, intelligence and wisdom the Commission has assembled, this recommendation can become a reality.

#### Recommendation for Models and Best Practices on Assignment of Matters:

This subgroup was tasked with making recommendations regarding best practices for the assignment of cases and coordination of resources after a legal problem is identified in the intake process. The task begins after a poor or middle class Floridian ("User") accesses the centralized intake system proposed by Subgroup One.

After the intake system screens the User for an identifiable legal problem, financial eligibility for legal services and whether the legal problems falls into the restrictions/priorities of the legal services program in the Users area, what should happen next?

The following Proposed Recommendations are based on a review of a number of resources including the ABA Standards for Providers of Civil Legal Services to the Poor (2002), LSC Report of The Summit on the Use of Technology to Expand Access to

Justice (Dec. 2013), A Technology Planning Framework for Florida (Oct. 2014), posts by the Legal Services National Technology Assistance Project (LSNTAP) and relevant reports from legal services providers in Illinois and Washington. A review of these resources identified a number of common practices used to efficiently assign cases and coordinate available resources thereby routing Users to the appropriate level of assistance required to address their legal problem.

### The Use of Technology and Standardized Protocols

Based on the LSC Report of The Summit on the Use of Technology to Expand Access to Justice, technology is the key to providing an integrated service-delivery system. The Report identified five main components to creating effective assistance to poor and middle income Users. The three most applicable to this subgroup's task are the creation of a centralized online intake system, the use of document assembly software and the use of business process analysis to map efficient and standardized systems for handling cases. Item one, the creation of a centralized online intake system, was addressed by Subgroup One. Items two and three are addressed below.

### Document Assembly and Knowledge Management

Document assembly software provides user-friendly document assembly and facilitates the creation of standardized templates for certain types of legal proceedings. The software is helpful in the assignment of cases and coordination of resources in three ways: it enables the system to route Users to self-representation materials that will be easy to utilize and require no (or little) attorney or paralegal assistance, it provides a collaborative structure for legal services attorneys to work with pro bono attorneys new to a particular area of law and it can streamline the time spent on a particular case for legal services providers. In addition to being a benefit to pro bono attorneys and legal services providers, standardized automated documents would be a useful tool for courts to have on websites for use by self-represented litigants.

The use of document assembly software combined with a knowledge management system enhances the coordination of resources among legal services providers. An online knowledge management system would make easily accessible brief banks, practice guides, automated document templates and standardized case protocols. This could be available to both legal services advocates as well as pro bono or volunteer attorneys. The combination of automated documents and a knowledge management system has led to an increase in the services delivered in states such as Illinois and Washington. Florida's LegalServer case management system has the capacity to be integrated with document assembly software and a knowledge management system.

## Business Process Analysis and Mapping Protocols

Business process analysis involves the disciplined mapping of how a task or function is performed. The goal is to identify the process that will best address the needs of the stakeholders based on existing resources and organizational structures. The process typically involves hiring an outside consultant to identify “problem” processes, map the entire process with stakeholders, improve the process to make it more efficient and then identify the outcomes. Business process analysis can be used to review current protocols and map standardized statewide procedures for case acceptance, assignment of cases in-house vs. private attorney and protocols for handling common areas of legal services practice.

The Illinois legal services system used business process analysis to evaluate multiple areas including client screening/intake, practice group case handling (e.g. housing, consumer and family law) and maintenance of its statewide website. As a result of mapping and improving its standardized protocols, Illinois legal services increased the number of legal services intakes and case assignments by up to 89%. Illinois paid for the cost of the business process analysis with a mix of receiving a one-time special grant, receiving pro bono hours from the consultant, and working with students from the business school at Northwestern University. The consultant was Lisa Damon, a partner from Seyfarth Shaw and leader of the Seyfarth LEAN program.

### Proposed Recommendations

- (1) Create a standardized protocol for case acceptance including clear direction regarding which types of cases should be kept in-house by local legal services and which types of cases should be referred for assistance outside of legal services (e.g. pro bono counsel, clinic, self help resources).
- (2) Consider engaging in business process analysis to map the standardized protocol for case acceptance as well as to map best practice protocols for handling common legal problems/cases.
- (3) Legal Services providers should use a uniform case management system (i.e. LegalServer). This will allow for easy e-transfer of cases to the appropriate legal services provider or pro bono attorney.
- (4) Consider system-wide integration of the case management system with a knowledge management system (e.g. SharePoint) to provide a knowledge base for advocates, volunteers and pro bono attorneys.
- (5) Initiate system-wide use of document automation software (e.g. HotDocs or A2J Author) to create template pleadings for use by advocates and self-represented Users.

## Questions for Further Discussion

- What happens if the User has an “emergency” legal situation?
- What happens if the User is from a vulnerable population?
- Should the Florida Bar consider amending its Rules regulating unlicensed practice of law as it may relate to volunteer attorneys wishing to provide legal services as part of a clinic provided by legal services organizations?

## Recommendations Regarding Changes to Rules Regulating The Florida Bar:

During our Subgroup’s presentation at the Subcommittee Meeting on May 12, 2015 in Orlando, we discussed the prospect of changes to The Rules Regulating The Florida Bar to eliminate barriers to pro bono representation and, thereby, enhancing access to justice. Our suggestions fall into three categories. First, we suggest changes to Rule 12 of the Rules Regulating The Florida Bar, the Emeritus Attorneys Pro Bono Participation Program to potentially increase the number of participants in the program and expand the permitted scope of work of emeritus attorneys. Second, we suggest the adoption of a conflict rule, consistent with ABA Model Rule 6.5, in order to reduce barriers to participation by Florida attorneys in pro bono limited scope representation matters through nonprofit or court-annexed limited legal services programs. Finally, we suggest changes to the rules relating to the unauthorized practice of law in order to increase the number of volunteers available to address the unmet legal needs of underserved Floridians. John Patterson will separately report on the issues relating to the unauthorized practice of law.

## Rule 12 of the Rules Regulating The Florida Bar -- Emeritus Rule

At least 38 jurisdictions have adopted some form of emeritus rule. I have attached a chart outlining the various emeritus rules. Rule 12 of the Rules Regulating The Florida Bar permits persons who are retired from the practice of law or authorized house counsel to engage in certain activities under the supervision of a supervising attorney from an approved legal aid organization.

Florida’s definition of “Emeritus Attorney”, as set out in Rule 12-1.2(a) limits this emeritus privilege to persons who have engaged in the active practice of law for a minimum of 10 of the prior 15 years. However, this definition precludes certain constituencies, for example, retired judges, and law professors (whether active or retired) from qualifying as emeritus attorneys.

In addition, permissible emeritus activities, as set out in Rule 12-1.3(a) are quite narrow. While Rule 12-1.3(a) permits emeritus attorneys to appear in court and provide services associated with a pending case in which the emeritus attorney is engaged, the Rule does not appear to allow emeritus attorneys to provide advice outside of those cases. As such, it appears that emeritus attorneys are not permitted to

provide advice in legal clinics such as pro se clinics or undertake brief advice matters that do not culminate in litigation. Finally, the Rule does not permit emeritus attorneys to sign pleadings and electronically file pleadings in cases in which they participate.

We suggest changes to Rule 12 to permit retired judges, law professors, both retired and active, to serve as emeritus attorneys. In addition, we suggest that the scope of work in which emeritus attorneys can engage be expanded to permit emeritus attorneys to provide advice and assistance to clients whose legal problems are not subject to litigation.

#### Non-profit and Court-annexed Limited Services Program Rule

We note that many attorneys express concern about participating in clinic programs or intake screening events for fear of the prospect of ethical/conflict of interest issues. Specifically, attorneys express concerns that while participating in an intake session, they may provide general advice that could be used against an existing client. To alleviate these perceived concerns, the American Bar Association ("ABA") adopted a narrow rule designed to address this specific ethical concern and facilitate attorney participation in limited scope representation matters through nonprofit or court-annexed limited legal services programs. Most states have adopted some form of rule incorporating the spirit of ABA Model Rule 6.5.

Accordingly, we propose that Florida consider an addition to The Rules Regulating The Florida Bar that incorporates the concept set forth in ABA Model Rule 6.5 that will remove any perceived conflicts of interest obstacles arising from participation in pro bono limited scope representation matters through nonprofit or court-annexed programs. The text of ABA Model Rule 6.5 follows.

Rule 6.5 of the ABA Model Rules

#### Nonprofit And Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Recommendations on Work Plan to Develop Tools, Training and Techniques to Provide High Quality, Timely and Efficient Legal Services :

The context of the work plan is straightforward:

- The mission of the Florida Commission on Access to Civil Justice ("AJC") is explained at <http://www.flaccessstojustice.org/>. It will "study the unmet civil needs of disadvantaged, low-income, and moderate-income Floridians, considering Florida's legal assistance delivery system as a whole: staffed legal aid programs, pro bono services, innovative technology solutions, and other models and potential innovations." The AJC is statewide, inclusive of lawyers, the business community, the judiciary, the legislative and executive branches, and legal educators.
- Our Subcommittee's charge from Chief Justice Labarga is to "examine barriers that impede access to civil justice for disadvantaged and low income Floridians and determine how to promote coordination of legal services delivery for optimum efficiency and effectiveness."
- Our Working Group's scope of work is a subset of these tasks, "to study and make recommendations on the tools, training, and techniques that will be necessary to provide high quality legal services in a timely and efficient manner" on civil matters to disadvantaged, low-income, and moderate-income Floridians.

The good news is that many states established access to civil justice commissions before Florida did so, and to that extent we can avoid "reinventing the wheel" and can build on the ideas developed by others.

With these thoughts as background, a draft work plan for Working Group 3 follows.

1. Find and compile the research done by access to justice commissions in the 37 other states that have such commissions, regarding our working group's "tools, training, and techniques" assignment. Two useful starting points are the websites established by the National Center for State Courts,

<http://www.ncsc.org/microsites/access-to-justice/home/Topics/Access-to-Justice-Commissions.aspx>,

and by the American Bar Association's website on such commissions,

[http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource)

[center for access to justice/state atj commissions.html](http://centerforaccessjustice.com/state-atj-commissions.html)

2. Consult pertinent Florida census, demographic, and case data to understand the civil legal needs and abilities of the “disadvantaged, low-income, and moderate-income Floridians” who are our focus. By “abilities” we may include these underserved clients’ understanding of the legal system generally; language skills; ability to navigate online websites and self-help guides; and transportation/distance issues affecting courthouse access, particularly in rural areas.

3. Summarize the existing resources (and gaps in resources) available to address such civil legal needs, including:

(a) “Tools”—websites providing guidance on available sources of legal assistance and “frequently asked questions;” webinars; self-help information provided telephonically or via screening desks in local courthouses; “Lawyers in Libraries”; in-person seminars offered by non-profit legal service providers and voluntary bar associations; kiosks; outreach by law students in clinical programs; and self-help forms. Which of these tools are most efficient and deliver the “biggest bang for the buck” for prioritizing access to scarce funds?

(b) “Training”—using classroom and distance teaching methods to train the presently-underserved clients themselves, law students, pro bono volunteers, paraprofessionals, court staff, judges, and existing non-profit legal services entities. What methods are best calculated to bring business/transactional lawyers and other “non-litigation” pro bono volunteers a level of comfort and ability sufficient to assist the target clients with their unmet legal needs?

(c) “Techniques”—methods of outreach to the prospective clients; recruitment of attorney (including “retired” attorneys) and paraprofessional volunteers; “limited scope representation” agreements; recognition events for volunteers (Law Day, “Celebrate Pro Bono Week”); updating Circuit voluntary bar association referral lists and procedures. Regarding other disciplines serving low-income communities (medical clinics, social workers, social services offices), how can we help those professionals refer patients or clients with unmet legal needs?

4. For each of these resource areas, focus on those practices best calculated to provide “high quality legal services in a timely and efficient manner.”

Some of these initial steps in a work plan may have some overlap with other AJC committees and subcommittees, particularly those discretely addressing technology. We can monitor that as we proceed.

Attachments:

Attached to this report is a spread sheet of State Emeritus Pro Bono Practice Rules and a memorandum on the Application of Business Process Analysis to Legal Services.

# State Emeritus Pro Bono Practice Rules

Updated July 2014

American Bar Association  
Commission on Law and Aging  
David Godfrey  
Senior Attorney  
[David.Godfrey@AmericanBar.org](mailto:David.Godfrey@AmericanBar.org)

Emeritus pro bono practice rules encourage retired and inactive attorneys to volunteer to provide pro bono assistance to clients unable to pay for essential legal representation. At last count, 38 jurisdictions have adopted emeritus pro bono rules waiving some of the normal licensing requirement for attorneys agreeing to limit their practice to volunteer service. The following chart contains essential details of the current rules.

For more information see:

**No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs**

[www.americanbar.org/content/dam/aba/migrated/aging/docs/V2\\_pro\\_bono\\_emeritus\\_brochure\\_3\\_5.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/docs/V2_pro_bono_emeritus_brochure_3_5.pdf)

and

**Emeritus Attorney Programs: Best Practices and Lessons Learned**

[www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/emmeritus\\_best\\_practices\\_9\\_27.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/emmeritus_best_practices_9_27.pdf)

State (Adopted/Amended)	Age Restriction	Years of Practice Required	Attorneys Eligible (Retired, Inactive, Other)	Out-of- State License Allowed	Dues Waived	MCLE Waived	Required to Work with a Certified Legal Services Program	Direct Supervision Required	Malpractice Insurance Mentioned in the Rule	Contact
Alabama (2008) <u>Rule 6.6</u> <u>Rules of Professional</u> <u>Conduct Rule 6.6</u>	None	None	Inactive	No	Reduced	No	Yes	No	Yes (required)	Linda L. Lund, Director Volunteer Lawyers Program Alabama State Bar P. O. Box 671 Montgomery, Alabama 36101 334-269-1515 <a href="mailto:linda.lund@alabar.org">linda.lund@alabar.org</a>
Alaska (2007) <u>Bar Rule 43.2</u>	None	None	Retired or inactive	No	Yes	n/a	Yes	No	Yes (legal service organization must provide malpractice coverage.)	Krista Scully Pro Bono Director Alaska Bar Association 907-272-7469 <a href="mailto:scullyk@alaskabar.org">scullyk@alaskabar.org</a>
Arizona (2009) (2012) Supreme Court Rule <u>38(e)</u>	None	At least 5	Retired, inactive, or otherwise not able to practice law in the state of Arizona	Yes	Yes	Yes	Yes	Yes	Yes (must disclose existence and extent of malpractice coverage)	Lara Slifko Resource Development Director Arizona Foundation for Legal Services and Education 602-340-7235 <a href="mailto:Lara.Slifko@azflse.org">Lara.Slifko@azflse.org</a>
Arkansas (no emeritus rule as of June 2014)										
California (2011) <u>Title 3 Division 2 Chapter</u> <u>6</u>	None	At least 3 with 3 of last 5 in CA	Inactive	No	Yes	No	Yes	"Adequate supervision required"	No mention	Michael Dayao State Bar of California 415-538-2328 <a href="mailto:michael.dayao@calbar.ca.gov">michael.dayao@calbar.ca.gov</a>
Colorado (2007) <u>Chapter 18 Rule 223</u>	None	None	Inactive for in-state license; Active or inactive for out-of-state license	Yes	Yes (Out-of-state attorneys must pay one- time administrative fee of \$50.)	No mention	No (Must work under the auspices of a non-profit legal aid or pro bono program. Does not require approval of program by Bar.)	No	No mention	Kathleen M. Schoen Director, Local Bar Relations & Access to Justice Colorado Bar Association 303-824-5305 <a href="mailto:kschoen@cobar.org">kschoen@cobar.org</a>

State (Adopted/Amended)	Age Restriction	Years of Practice Required	Attorneys Eligible (Retired, Inactive, Other)	Out-of-State License Allowed	Dues Waived	MCLE Waived	Required to Work with a Certified Legal Services Program	Direct Supervision Required	Malpractice Insurance Mentioned in the Rule	Contact
Connecticut <u>Emeritus Project</u>	None	None	Active	No	Occupational tax is waived if attorney is only performing pro bono work	No mention	Yes	No	Yes (must be provided by agency)	Melissa Wyckoff Pro Bono Associate Committees Coordinator Connecticut Bar Association 860-612-2036 <a href="mailto:mwyckoff@ctbar.org">mwyckoff@ctbar.org</a>
Delaware (2003) <u>Supreme Court Rule 69</u>	65 or older (or, waiver granted by Supreme Court)	None	Inactive	No	Yes	Yes	No (any nonprofit organization (\$501(c)(3)))	No	No mention	Cathy Howard Clerk Delaware Supreme Court 302-739-4155 <a href="mailto:Cathy.Howard@state.de.us">Cathy.Howard@state.de.us</a>
District of Columbia (2011) <u>Court of Appeals Rule 49(c)(9)(10)</u>	None	None	Inactive for DC license	Exception for the first 90 days if licensed in any jurisdiction, and working for Legal Aid	No	N/A	No	No (out-of-state license must be supervised)	No mention	Monika Kalra Varma Pro Bono Program Director The District of Columbia Bar 202-737-4700 ext. 290 <a href="mailto:mkvarma@dcbar.org">mkvarma@dcbar.org</a>
Florida (2012) <u>Bar Rule 12</u>	None	10 of the last 15	Retired	Yes	No	No (limited exception for certification reporting)	Yes	Yes	No mention	Terry Hill Pro Bono Legal Services The Florida Bar 850-561-5700 <a href="mailto:thill@flabar.org">thill@flabar.org</a>
Georgia (1995) <u>Bar Rule 1-202(d)</u>	70 or older	25	Retired	No	Yes	Waived at age 70	Yes (either a pro bono agency or nonprofit legal service program)	No	No mention	Michael Monahan Pro Bono Director State Bar of Georgia 404-527-8762 <a href="mailto:mike@gabar.org">mike@gabar.org</a>
Hawaii (2007) Supreme Court Rule 20 <a href="http://www.courts.state.hi.us/docs/court_rules/rules/rsch.htm#Rule_20">http://www.courts.state.hi.us/docs/court_rules/rules/rsch.htm#Rule_20</a>	None	None	Inactive	No	Yes (reduced to inactive rate)	N/A	Yes	No	Yes (legal service organization must provide malpractice coverage)	James Branham Staff Attorney Hawaii Supreme Court 808-539-4747 <a href="mailto:James.L.Branham@courts.state.hi.us">James.L.Branham@courts.state.hi.us</a>  Patricia Mau-Shimizu Executive Director Hawaii State Bar Association 808-537-1868 Ext. 212 <a href="mailto:patms@hsba.org">patms@hsba.org</a>

State (Adopted/Amended)	Age Restriction	Years of Practice Required	Attorneys Eligible (Retired, Inactive, Other)	Out-of- State License Allowed	Dues Waived	MCLE Waived	Required to Work with a Certified Legal Services Program	Direct Supervision Required	Malpractice Insurance Mentioned in the Rule	Contact
Idaho (2010) <u>Bar Rule 228</u>	None	10 of the last 15	Retired or not engaged in the active practice of law	Yes	Reduced	No	Yes	Yes	Yes (legal service agency must disclose existence and extent of coverage)	Diane Minnich Executive Director Idaho State Bar 208-334-4500 <a href="mailto:dminnich@isb.idaho.gov">dminnich@isb.idaho.gov</a>
Illinois (2013) <u>Supreme Court Rule 756 (J) (1)</u> <a href="https://www.iardc.org/rule/ssct.html#Rule%20756">https://www.iardc.org/rule/ssct.html#Rule 756</a>	None	None	Retired, inactive, or licensed in another state	Yes	Waived for retired;Reduc ed for inactive	Yes (must agree to participate in training by sponsor)	Yes	No	Yes (must be provided by the legal service agency)	Kelly Tautges Director of Pro Bono The Chicago Bar Foundation 312-554-8356 <a href="mailto:ktautges@chicagobar.org">ktautges@chicagobar.org</a>
Indiana (no emeritus rule as of June 2014)										
Iowa (2013) <u>Rule 31.19</u>	None	None	Retired, inactive, or active	Yes	Waived	Yes (waived only for the year in which the lawyer is first certified under Rule 31.19)	Yes	"General supervision "	No mention	Dave Ewert Assistant Director for Attorney Discipline Office of Professional Regulation 515- 725- 8029bar.admissions@iowac <a href="http://courts.gov">ourts.gov</a>
Kansas (2013) <u>Rule 208</u>	None	None	Retired or inactive	No	Yes (for retired attorneys age 66 or over on or before July 1)	No	Yes	No	No mention	Marilyn Harp Executive Director Kansas Legal Services, Inc. 712 S. Kansas, Suite 200 Topeka, KS 66603 785-233-2068 <a href="mailto:harpm@klsinc.org">harpm@klsinc.org</a>
Kentucky (no emeritus rule as of June 2014)										
Louisiana (no emeritus rule as of June 2014)										
Maine (2005) <u>Bar Rule 6(d)</u>	None	None	Inactive (filed notice to discontinue the practice of law)	No	Reduced	No	Yes	No	No mention	Jacqueline Rogers Executive Director Maine Board of Overseers of the Bar 207-623-1121 <a href="mailto:board@mebaroverseers.org">board@mebaroverseers.org</a>

State (Adopted/Amended)	Age Restriction	Years of Practice Required	Attorneys Eligible (Retired, Inactive, Other)	Out-of- State License Allowed	Dues Waived	MCLE Waived	Required to Work with a Certified Legal Services Program	Direct Supervision Required	Malpractice Insurance Mentioned in the Rule	Contact
Maryland (1997) <u>Ct. App. Rule 16-811.5</u>	None	None	Retired or inactive	No	Waiver of client protection fund	N/A	Yes	No	No mention	Sharon Goldsmith Executive Director Pro Bono Resource Center of Maryland 410-837-9379 <a href="mailto:sgoldsmith@probonomd.org">sgoldsmith@probonomd.org</a>
Massachusetts (2013) <u>Supreme Court Judicial Rule 4:02(8)</u>	None	None	Retired or inactive	No	Yes for retired; Reduced for inactive	N/A	Yes	No	No mention	Office of Bar Counsel Mass. Board of Bar Overseers 617-728-8750
Michigan (no emeritus rule as of June 2014)										
Minnesota (2013) <u>State Board of Continuing Legal Education Rule 14</u>	None	None	Retired	No	Yes	No	Yes	No	No mention	Emily Eschweiler Assistant Director Minnesota Board of Continuing Legal Education 651-201-2719 <a href="mailto:eeschweiler@mbcle.state.mn.us">eeschweiler@mbcle.state.mn.us</a>
Mississippi (2007) <u>Appellate Procedure Rule 46(f)</u>	None	None	Inactive or licensed in another state	Yes	No	No	Yes	Yes	Yes (required)	James Clark Deputy General Counsel Mississippi Bar Association 601-948-4471 <a href="mailto:ogc@msbar.org">ogc@msbar.org</a>  Shirley Williams Executive Director Miss. Volunteer Lawyers Project (601) 960-9577 <a href="mailto:swilliams@msbar.org">swilliams@msbar.org</a>
Missouri (no emeritus attorney rule as of June 2014)										
Montana (2006) <u>Bar Rule Art. 1 §3(g)</u>	None	10 of the last 15	Retired or inactive (and must complete 25 hours of pro bono per year)	No	Yes	10 hours instead of 15 Waives a filing fee for CLE	Yes (25 hour minimum per year)	No	<i>No mention</i>	Janice Doggett Equal Justice Coordinator State Bar of Montana 406-447-2201 <a href="mailto:jdoggett@montanabar.org">jdoggett@montanabar.org</a>

State (Adopted/Amended)	Age Restriction	Years of Practice Required	Attorneys Eligible (Retired, Inactive, Other)	Out-of- State License Allowed	Dues Waived	MCLE Waived	Required to Work with a Certified Legal Services Program	Direct Supervision Required	Malpractice Insurance Mentioned in the Rule	Contact
Nebraska (no emeritus rule as of June 2014)										
Nevada (2008) <u>Supreme Court Rule 49.2</u>	None	None	Inactive in state; Active or inactive out of state; Clinical law professors	Yes	Yes (based on inactive status)	Yes (waived for inactive and retired members (214))	Yes	No	Legal Service spogram must disclose if they have coverage)	Angela Washington Director, NV Supreme Court Access to Justice Commission State Bar of Nevada 702-317-1404 800-254-2797 Toll Free <a href="mailto:angelaw@nvbar.org">angelaw@nvbar.org</a>
New Hampshire (2003) <u>By-Laws of the New Hampshire Bar Association Article II Section 8</u>	None	None	Not otherwise engaged in the practice of law	No	Reduced at least 90%	Yes	No	No	No mention	Ginny Martin Legal Services Director New Hampshire Bar Association 603-224-6942 <a href="mailto:gmartin@nhbar.org">gmartin@nhbar.org</a>
New Jersey (2006) <u>Rule 1:21-3(C)</u> *License is limited to 2.5 years	None	None	*Active out- of-state license <i>only</i>	Yes, out-of- state license <i>only</i>	No	No	Yes (an organization described in R. 1:21-1(e) Legal Assistance Organizations )	No	No mention	
New Mexico (2012) <u>Rule 15-301.2</u>	None	None	Inactive in state; Active or inactive if licensed in another state	Yes	Reduced	No	Yes	No	No mention	Sarah Singleton Co-Chair, New Mexico Access to Justice Commission 505-455-8160 <a href="mailto:ssingleton@montand.com">ssingleton@montand.com</a>



State (Adopted/Amended)	Age Restriction	Years of Practice Required	Attorneys Eligible (Retired, Inactive, Other)	Out-of- State License Allowed	Dues Waived	MCLE Waived	Required to Work with a Certified Legal Services Program	Direct Supervision Required	Malpractice Insurance Mentioned in the Rule	Contact
Rhode Island (no emeritus rule as of June 2014)										
South Carolina (2012) <u>Supreme Court Rule 415</u>	None		Retired or inactive	Yes	Reduced or Exempt	Yes	Yes	Yes	No mention	Gayle Watts Deputy Clerk for Bar Admissions SC Supreme Court 803-734-1080  Robin Wheeler Executive Director South Carolina Access to Justice Commission 803-576-3808 <a href="mailto:rwheeler@scbar.org">rwheeler@scbar.org</a>
South Dakota (2008) <u>Supreme Court Rule SDCL 16-17.4.1.</u>	None	None	Retired	No	Yes (for inactive)	No	Yes	No	No mention	Tom Barnett Executive Director State Bar of South Dakota 605-224-7554 <a href="mailto:Thomas.Barnett@sdbar.net">Thomas.Barnett@sdbar.net</a>
Tennessee (2010) <u>Supreme Court Rule 50A</u>	None	5 out of the last 10 or engaged in the active practice of law for 25 years	Inactive	Yes	Yes	No	Yes	Yes	Yes (legal service agency must disclose the existence and extent of coverage)	Anne-Louise Wirthlin Access to Justice/ Coordinator TN Administrative Office of the Courts Nashville City Center, Ste. 600 511 Union Street Nashville, TN 37219 615-741-2687 <a href="mailto:Anne.louise.wirthlin@tncourts.gov">Anne.louise.wirthlin@tncourts.gov</a>
Texas (2008) <u>Bar Rule Article XIII</u>	None	5 of the last 10	Retired	Yes	Yes (If over the age of 70)	Yes (XII 4-G)	Yes	Yes	Legal service program must disclose "The existence and extent of malpractice insurance which will cover the emeritus attorney"	Texas Lawyers Care 512-427-1855 800-204-2222, ext. 1855 <a href="mailto:tlcmail@texasbar.com">tlcmail@texasbar.com</a> <a href="mailto:probono@texbar.com">probono@texbar.com</a>



State (Adopted/Amended)	Age Restriction	Years of Practice Required	Attorneys Eligible (Retired, Inactive, Other)	Out-of- State License Allowed	Dues Waived	MCLE Waived	Required to Work with a Certified Legal Services Program	Direct Supervision Required	Malpractice Insurance Mentioned in the Rule	Contact
<u>Wyoming (2013)</u> <u>State Bar Bylaws Article I</u> <u>§ 3 (h)</u>	None	None	Retired (Had been engaged in active practice)	No	Yes	(7 hours per year includi ng at least / 1 hour of ethics	No	No	Yes (must at a minimum accept coverage provided by emeritus program)	Cathy Duncil Admissions Director/Pro Bono Coordinator Wyoming State Bar 307-432-2105 <a href="mailto:cduncil@wvomingbar.org">cduncil@wvomingbar.org</a>

## MEMORANDUM

To: William Van Nortwick, Jr., Chair – ATJ Subcommittee on Delivery of Legal Services

From: Kristen Lentz, Ad Hoc Subcommittee Member (Subgroup Two)

Re: Business Process Analysis and Its Application to Legal Services

Date: May 13, 2015

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### Introduction

Business process analysis involves the disciplined mapping of how a task or function is performed. The goal is process improvement. The purpose of business process analysis is to identify the process that will best address the needs of the stakeholders based on existing resources and organizational structures. The process typically involves hiring a consultant to identify “problem” processes, map the entire process with stakeholders, improve the process to make it more efficient and identify the outcomes.

The concept was born in manufacturing departments as a quality control mechanism. Many companies started using this process to develop business strategies, improve financial and business reporting as well as drive systemic and cultural changes within the companies. Seyfarth Shaw, LLP is at the forefront of bringing this process into the legal setting through its Seyfarth*LEAN* program.

### Seyfarth*LEAN* Program

Seyfarth Shaw, LLP developed the Seyfarth*LEAN* program as a way for its firm to engage in the more efficient delivery of legal services, increase quality work by advocates and provide better value for the fees being paid by clients. The program implements business process analysis and process-driven methodologies to meet these goals.

Seyfarth*LEAN* engages in a five-part analysis known as the “DMAIC Process.”

- (1) Define: Define what the client values.
- (2) Measure: Measure and collect data that will determine the factors that influence how we design our delivery of legal services to meet the client’s values.
- (3) Analyze: Analyze information and assess how best to create solutions that meet or exceed the client’s value expectations.
- (4) Improve: Implement solutions, evaluate benefits and make improvement to service delivery.
- (5) Control: Monitor performance, communicate and incorporate conclusions.

The bulk of the work comes in the form of “process mapping” – a process by which each system or repetitive process used in the firm was broken down step-by-step and put back together in a way that created more efficiency. Ultimately, by mapping and improving its systems, the firm improved communication, collaboration and efficiency among its legal services providers.

### **Application of SeyfarthLEAN to Illinois Legal Services**

SeyfarthLEAN worked with the Illinois legal services system to improve efficiency and effectiveness of the legal services provided to clients. Over a two-year period, a consultant from SeyfarthLEAN worked with Illinois legal services providers to improve multiple systems including client screening/intake, practice group case handling (e.g. housing, consumer and family law) and maintenance of its statewide website.

At the conclusion of process mapping and the implementation of the new systems, the providers compared data for the cases accepted and assigned via the centralized intake system for the six months prior to and the six months following the changes in process. The results included:

- For the intake process - a dramatic increase in the number of cases handled via the centralized intake system as well as a decrease in the time required to get the cases assigned. Illinois legal services increased the number of intakes and case assignments by up to 89%.
- For the case referral and acceptance process – improvement in the transfer of cases to the appropriate level of resources or appropriate legal services provider as the result of a new uniform case acceptance and referral policy.
- For the practice group case handling protocols - a dramatic increase in advocates’ use of the case management system, an increase in the ability to do extended representation for clients who needed it and the creation of a standard approach to particular kinds of cases (e.g. bankruptcy or eviction).
- For website maintenance – the creation of a process that facilitated the routine and timely updating of substantive legal materials on the website as well as updated forms for use by clients and advocates.

Illinois paid for the cost of the business process analysis with a mix of receiving a one-time special grant, receiving pro bono hours from the consultant, and working with students from the business school at Northwestern University.

### **Business Process Analysis and Florida’s Access To Justice Concerns**

Business process analysis can be used to review current protocols and map standardized statewide procedures for intake, case acceptance, assignment of cases to the appropriate provider and protocols for handling common areas of legal services practice. Creating more efficient and standardized systems could increase the number of clients able to access the system as well as allow legal services providers to be more efficient in their work.

There may be opportunities for Florida to engage one or more large corporations with in-house business process analysis staff to provide pro bono consultation services.



## SUBCOMMITTEE COMMISSION REPORT

Subcommittee:	Continuum of Services
Date:	May 15, 2015
Prepared By:	Continuum of Services Subcommittee

### Introduction

The Continuum of Services Subcommittee met four times subsequent to the last Commission meeting in January. The Subcommittee met on March 10<sup>th</sup>, March 31<sup>st</sup>, April 21<sup>st</sup>, and May 5<sup>th</sup>.

At the initial meeting, the Subcommittee discussed and attempted to determine the scope of the Subcommittee's charge. The Subcommittee noted that the charge requires the Subcommittee to examine the demographics of those in need of services, including income, education, and ethnicity. Along these lines, the Subcommittee noted that one overriding principle of the Subcommittee's work should be continuing acknowledgement of the needs of those in poverty. The Subcommittee concluded that the charge requires looking at all civil law issues. This includes any legal problem that is not criminal in nature.

Also at the initial meeting, the Subcommittee discussed and developed a "spectrum" along which self-represented persons are in need of services in navigating the legal system. This spectrum includes methods of outreach whereby affected persons are made aware of services that are available. The second level of the spectrum is the assessment of the individual and the individual's legal needs. The next level of the spectrum involves, perhaps most importantly, a determination of the resources available to the individual. Finally, there must be an assessment of the needs of self-represented individuals in the conclusion and post-resolution phase of their legal problem.

After the initial meeting, the Subcommittee formed sub-groups to address the various levels of the COS spectrum. These sub-groups are Outreach, Assessment, Resources, and Conclusion/Post-Resolution. The sub-groups proceeded to research their particular areas with a goal of determining what the current lay of the land is with respect to services available to self-represented individuals. At subsequent meetings, the sub-groups reported back to the Subcommittee on their findings. Those initial findings are discussed *infra*.

Throughout the Subcommittee's initial work, there were several overarching issues that were noted. A primary concern for the Subcommittee is that legal services for the poor not be compromised by the Subcommittee's work. The Subcommittee is critically aware of the importance of legal aid and the need for those services to continue unabated. The Subcommittee discussed on several occasions the importance of considering language capabilities with respect to services available. This is especially important with Florida's multi-ethnic, multi-national population. Additionally, and related to the language issue, is the issue of literacy. Any consideration of services available to self-represented persons must take into account the literacy level of affected persons. Also, the Subcommittee noted that not all persons have the same technological proficiency or aptitude. This is especially important considering that many of the services available involve online, interactive methods that require some minimum, or greater, level of proficiency in this regard. The Subcommittee also expressed, on multiple occasions, a need to give special consideration to the needs of veterans who are engaging the legal system. Further, the Subcommittee noted that, in a broad sense, heightened consideration should be given to the personal safety of persons engaging the legal system in a self-represented capacity. This is especially true in many family law contexts.

An issue that was especially prevalent during the Subcommittee's initial work is the unlicensed practice of law. Many of the services provided to self-represented individuals involve interaction with non-lawyers in the delivery of those services. Those non-lawyers include, but are not limited to, librarians, clerks, paralegals, and social workers. The Subcommittee discussed the fact that those interactions often involve activities that may be on the cusp of violating prohibitions on unlicensed practice. Often, non-lawyers are hesitant to provide what would otherwise be a maximum level of service because of feared exposure to penalties for engaging in the unlicensed practice of law. The Subcommittee expressed the notion that there needs to be more clarity on what activities involve unlicensed practice in order to effectively deliver the greatest level of services to self-represented individuals. The Subcommittee agreed that it may be beneficial to have staff from The Florida Bar Unlicensed Practice of Law Department provide guidance to the Subcommittee on the subject of UPL.

Several members of the Subcommittee expressed the notion of changing the rules with respect to limited scope representation. Although Rule 4-1.2(c), Rules Regulating the Florida Bar, does permit limited scope representation, the rules may need to be amended to allow greater flexibility in this regard.

Also noted at various points during the Subcommittee's initial work is the goal of greater participation by lawyers. Whether it is by providing pro bono legal assistance or taking on work at reduced rates, greater participation by the approximately 100,000 lawyers in this state should be encouraged.

### **Outreach**

The outreach sub-group focused on methods of informing the public regarding resources, recourse, and remedies that are available to self-represented persons.

The sub-group examined ways in which available resources are marketed, both locally and at the statewide level.

### **Local Tools of Outreach**

- Local law libraries throughout the state
- Local public library systems
- Local Bar Associations (especially websites)
- Local Legal Aid
- Community Service Providers
- Local Businesses
- Circuit Court websites
- Office of State Court Administrator (OSCA) website
- Clerks of Court
- Local governmental entities
- Senior Centers
- County Health Departments
- Other Social Service Providers

### **Statewide Tools of Outreach**

- The Florida Bar website
- Florida Department of Library and Information Services
- MyFlorida website portal
- Other governmental websites
- Radio and Television Public Service Announcements
- Education Courses at the Florida Judicial College
- CLE courses for lawyers

The outreach sub-group also considered methods by which to further “spread the word” about resources available to the self-represented. One way to do this is by providing information about available services to those individuals and entities that service the self-represented. Also, there should be sharing of information among those who service the self-represented. The sub-group also considered the idea of creating educational materials for dissemination via video sharing sites like YouTube. Like with other sub-groups, there was consideration of how outreach could be accomplished via web-based interactive tools. Also considered was the use of conventional media outlets for informing the public about available resources.

The outreach sub-group also considered what can be characterized as “questions or concerns,” some of which are consistent with concerns expressed by the other sub-groups. Initially, there is a concern of who will be responsible for ensuring outreach. Funding is also a prevalent concern that must be addressed. The sub-group was also concerned with promoting a customer-oriented approach that assists the self-represented with engaging the legal system. Further, there was an overarching concern with promoting resources that are updated and reliable. Finally, the sub-group noted the need to look at other Access to Justice entities in an effort to develop successful strategies for outreach.

The sub-group also was concerned, like other sub-groups, with unlicensed practice of law, ADA compliance, language and educational barriers, and technological proficiency.

## **Assessment**

The charge for the Assessment subgroup was to discuss and further develop ideas about assessing a person's legal problems. Assessment of a person's legal issues will determine what resources may be available. The more complete the assessment, the more comprehensive the legal assistance will be, whether or not that assistance or advice comes from a lawyer or not. The sub-group starts from the premise that many people seeking legal advice (regardless of their incomes) may not know the nature or extent of the legal issues they face. Some of the ideas for assessing an individual's legal problem include:

**Initial screening-** Some initial screening should be done to spot legal issues. Some libraries and legal service organizations use an intake screening manual that allows volunteers (who are often non-lawyers) to ask questions that direct the volunteer how to spot legal issues. The volunteer has a check list that will help identify legal issues.

**Frequently Asked Questions Guides-** FAQ guides can be utilized to assist the volunteers in assessing frequently occurring problems. Though unique to that person, the legal issue assessed is commonly-occurring.

**Phone Screening-** Much of the intake can be accomplished via phone screening. This is particularly relevant in areas of the population that lack access to reliable transportation, including rural areas, underserved urban areas, the elderly, and those in poverty.

**Online/Interactive-** The sub-group discussed the feasibility of internet-based, interactive intake screening. The sub-group noted and recognizes that not all people will have reliable access to computer technology. However, given the breadth of recent technological advancement, this is a tool that should certainly be explored.

**Recognition of Emergencies-** Critical to the assessment process, no matter what assessment tools are utilized, is the necessity to recognize emergencies that require immediate attention. A comprehensive assessment should determine if the individual or the individual's family is facing immediate personal safety issues, has been served with legal papers, or has lost or is about to lose property.

**Appropriate Referrals-** Once an assessment of an individual's legal issues are completed, appropriate referrals are made. These referrals may include, but are not limited to, referrals to lawyers, attorney referral services, legal services organizations, self-help classes (often sponsored by local voluntary bar organizations or by legal service providers), libraries, clerk's offices, and internet web sites.

The sub-group noted that among the problems that should be addressed when developing a comprehensive assessment plan are language barriers, technology gaps (access to technology as well as comfort level with using technology), varying levels of reading comprehension, and transportation issues.

## **Resources**

The Resources sub-group researched and compiled a list of resources available currently in Florida and nationally. The sub-group also looked at some resources that could be developed in the future. At this initial juncture, the list of available and potential resources is incomplete. The sub-group continues to gather information. The sub-group noted that it will be necessary to determine whether resources are truly available to underserved populations in Florida. These populations include, but are not limited to, those who lack English proficiency, the elderly, and those living in rural populations.

The sub-group also made special note that in cases where there is potential or actual danger posed to a litigant, such as in cases of domestic violence, stalking, and sexual assault, these resources may not provide needed protection and security to the litigant and affected children and should not be recommended.

The sub-group noted the following available and potential resources:

**Public Libraries-** Legal Self Help Centers are being introduced in public libraries all over the country. These are technology based kiosks that are being placed in the libraries and then librarians staff the kiosks. Training is offered to the public librarians by law librarians and lawyers. The resources include forms, legal research methods, self-help tips, and lawyer referral information.

**Lawyer for a Day-** Many courts are addressing the gap by instituting “Lawyer for the Day” programs. Volunteer lawyers spend the day in family court or consumer docket days and assist pro se applicants in understanding the procedure and offering valuable legal advice.

**Navigator Programs-** New York State has introduced a Navigator Program to assist pro se clients in landlord-tenant cases and consumer debt cases. Court Navigators are not lawyers but are trained to assist the litigant with paper work, explain the procedure and in some cases accompany the litigant to court and respond to questions from the judge. A Navigator Program could be also be used to assist litigants looking for post-judgment assistance.

**CLE Credits-** Offering CLE hours for Pro Bono work is another way to encourage pro bono participation by Florida lawyers.

**The Florida Bar Referral Service-** The Florida Bar currently operates a referral service in forty-seven Florida counties. The remaining counties are served by the local bar association referral service. Members pay an annual fee of \$125 to participate in the service. Lawyers listed agree to provide an initial consultation for \$25, local bar associations can charge up to \$50 for the initial consultation. The consultation is thirty minutes. If the lawyer takes on the case, the lawyer makes financial arrangements with the client. If the lawyer receives a fee as a result of the referral, the lawyer is obligated to remit 12% of the fee to The Florida Bar. The Florida Bar Referral Service also has two specialty panels, the Low Fee panel and the Elder Law panel. Lawyers listed on these

panels agree to provide a free thirty minute consultation. Thereafter, if the attorney takes the case, The Florida Bar suggests that the member charge a fee lower than their usual fee such as half the usual fee. Lawyers on the two specialty panels are not obligated to remit 12% of the fee. There are 681 lawyers registered on The Florida Bar's referral service. On the Low Fee panel, there are 1,426 lawyers registered. On the Elder Law panel, there are currently 1,352 lawyers registered. One consideration is to encourage lawyers to join the low fee panel by reducing or eliminating the membership fee, but then requiring the panel members to charge a legitimately low fee for assistance, not the vague suggestion of half their usual fee.

**Ask-A-Lawyer-** Currently throughout Florida, public libraries offer a program called Ask-A-Librarian. The program allows Florida residents to access reference services through live chat and text messaging from 10 a.m. to midnight Sunday through Thursday and from 10:00 a.m. to 5 p.m. Friday and Saturday. Email is available 24 hours a day, seven days of week. The service has live chat features to statewide library patrons and local patrons and text messaging to statewide patrons. Typically, two to five librarians are available during the live chat hours to answer questions. The State Library of Florida has assisted the sub-group in making a connection with the Tampa Library Consortium which administers the program. An add-on program "Ask a Lawyer" is possible in collaboration with the libraries.

**The Florida Bar Foundation-** The Florida Bar Foundation is creating the new position of Director of Pro Bono Partnerships. The new director will seek to expand representation of low income Floridians and work to develop partnerships with organizations, law firms and law schools to promote access to justice. This is an opportunity to contribute to the vision and mission of the new Florida Bar Foundation program.

**Non-lawyer Participation-** There is a great need for non-lawyers to contribute with civil legal assistance. Paralegals, civil legal assistants (e.g., domestic violence centers that provide lay advocates to help victims apply for injunctions), clerks, and Board of Immigration Appeals "accredited representatives" are all examples of professionals currently assisting lawyers. These professionals may not be clear on unlicensed practice of law issues. For instance, there is a wide disparity among clerks as to what advice they can provide to people seeking an injunction. Much like the work done by physician's assistants and certified nurse practitioners, the legal profession needs both greater clarity and, potentially, an expansion of the role non-lawyers can play in providing legal assistance.

**National Resources-** There are many national resources that can assist civil litigants in Florida with their legal needs and Florida lacks a single point of contact or directory of these available services. A few of these resources include Stateside Legal at [www.statesidelegal.org](http://www.statesidelegal.org) (for veterans); the National Center for Full Faith and Credit at [www.fullfaithandcredit.org](http://www.fullfaithandcredit.org) (for interstate enforcement of domestic violence protection orders and child custody matters); and Asista at [www.asistahelp.org](http://www.asistahelp.org) (civil legal help for immigrant victims of gender violence).

**Florida Law Help-** [www.Floridalawhelp.org](http://www.Floridalawhelp.org) is a resource for low-income Floridians. It contains information about a legal problem, booklets and brochures, legal forms, and referral information. Most of the resources are available in Spanish and some are available in Creole. Law Help also powers [www.immigrationlawhelp.org](http://www.immigrationlawhelp.org) which has similar information for those who need help regarding immigration issues.

**Disability Rights-** [www.disabilityrightsflorida.org](http://www.disabilityrightsflorida.org) is a website and program open to any Floridian with a disability related issue. An individual can apply for services either online or by phone.

**Legal Hotlines-** Currently, several legal hotlines and helplines are operating in Florida. There is a Senior Legal Helpline for Florida residents age 60 and older. Also, there is the Domestic Violence Legal Statewide Hotline for victims of domestic violence. The Prescription Drug Helpline provides assistance to Medicaid and Medicare beneficiaries whose necessary medications have been denied.

**Florida Courts Online-** The Florida Courts website at <http://www.flcourts.org/resourcesandservices/familycourts/familylawselfhelpinformation/> has an array of self-help forms and instructions for matters ranging from adoption and name changes to probate and small claims. These resources are mandated by the Florida Supreme Court and vary county by county.

### **Conclusion and Post-Resolution**

The Conclusion/Post-Resolution subgroup determined that there was little information about issues facing the self-represented that are exclusive to this context. However, there were a couple of findings to note. Especially in family law matters, courts have continuing oversight of cases subsequent to final judgement. Additionally, the sub-group noted that many legal aid organizations do not cover post-judgement matters because of budgetary concerns. Finally, many of the issues facing the self-represented in other areas of the spectrum would also be present in the conclusion and post-resolution context.

### **Future Work**

The Subcommittee looks forward to further research and development of ideas regarding the Continuum issue. In particular, the Subcommittee would like to further research what services are currently available to those that fall in the gap between qualifying for legal aid and being able to afford legal representation. Following up on this research, the subcommittee would look to develop ideas about new or additional services not currently available. The Subcommittee plans to continue developing ideas about how to assess self-represented persons in order to ensure the most appropriate services are delivered. Finally, realizing that outreach is a key component, the Subcommittee will continue to consider the best ways to inform self-represented persons about the services that are available.



Subcommittee:	Technology Subcommittee
Date:	May 10, 2015
Prepared By:	Judge Robert Hilliard, Subcommittee Chair

## **Florida Access to Civil Justice Technology Subcommittee Report**

### **Technology Subcommittee Charge**

Examine ways to leverage technology in expanding access to civil justice for disadvantaged, low income, and moderate income Floridians.

### **Technology Subcommittee Membership**

#### Subcommittee Members (Commission members)

- Judge Robert Hilliard, Subcommittee Chair – Milton, Florida
- Gregory Coleman, President of The Florida Bar – West Palm Beach, Florida
- Clerk Linda Doggett – Ft Myers, Florida
- Thomas Edwards – Jacksonville, Florida
- Ben Gibson – Tallahassee, Florida

#### Subcommittee Members (Ad Hoc)

- Judge Ross Goodman – Pensacola, Florida
- Mac McCoy – Tampa, Florida
- James Haggard – Rockledge, Florida

Technology Subcommittee Support Staff

Terry Hill, The Florida Bar – Tallahassee

Jenna Rogers, Office of the State Court Administrator – Tallahassee

Scott Higgins, Office of the State Court Administrator – Tallahassee

Melissa Pershing Moss, The Florida Bar Foundation – Maitland, Florida

Chuck Hays, The Florida Bar Foundation – Maitland, Florida

**March 11, 2015 Technology Subcommittee Meeting Summary**

- Review the charge of the Subcommittee and the makeup of the group
- General discussion of technology in the legal profession
  - as it relates to law offices
  - as it relates to the courts
  - as it relates to the public and self-represented litigants
- Overview of the A2J Arthor software and forms, the Judicial Management Council access workgroup, and the DIY Florida (Do it Yourself) forms project.
- Open brainstorming session and discussion on expanding access using technology.

**April 14, 2015 Technology Subcommittee Meeting Summary**

- Introduction to the newly created Technology Resource Guide
- Introduction to the statewide Tech Center
- Expanded DIY Florida self-represented litigant forms project discussion
- Discussion of a proposed national Tech Tour of technology-related access projects
- Discussion on the expansion of access to justice to low and moderate income Floridians.

**May 4, 2015 Tech Tour webinar of Access-Related Projects**

At the request of the Technology Subcommittee and under the direction and assistance of Joyce Raby and Jimmy Midyette, The Florida Bar Foundation recorded four demonstrations of access to justice technologies that have been developed, are in-use, and for the most part, are available for substantial replication in Florida. The fourth recording was recording during a live online tour and demonstration to the Technology Subcommittee. The links to these recordings are shared below and these recordings are between 17 and 43 minutes in duration.

Recorded Demo #1

Massachusetts Legal Services - Legal Resource Finder: a very basic online intake/triage system targeted to the public.

Featuring: Rochelle Hahn: Director, Massachusetts Law Reform Institute, Inc.

Click on the link for the recorded demo (about 17 minutes): <https://vimeo.com/125840683>

Password: ATJ2015

Recorded Demo #2

Idaho Legal Aid Services - Virtual Law Office (Clio): an attorney/client communication and service support system

Featuring: Steven J. Rapp: Technology Project Developer, Idaho Legal Aid Services, Inc.

Click on link for the recorded demo (about 27 minutes): <https://vimeo.com/126381034>

Password: ATJ2015

Recorded Demo #3

Arkansas Legal Services Partnership - Automated Forms and Intake/Triage

Featuring: Vince Morris, Director and Victor Richardson, Associate Director, Arkansas Legal Services Partnership

Click on link for the recorded demo (about 30 minutes): <https://vimeo.com/126420707>

Password: ATJ2015

Recorded Demo #4

CARPLS - Knowledge Management System

Featuring: Al Schwartz, Executive Director, CARPLS

Click on link for the recorded demo (about 43 minutes): <https://vimeo.com/126829492>

Password: ATJ2015

**May 5, 2015 Technology Subcommittee Meeting Summary**

- Summary and discussion of the Tech Tour videos and live webinar
- Introduction to the ATJ searchable knowledge base
- Other access-related initiatives utilizing technology
- Substance and form of the first subcommittee report

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**Judicial Management Council, JMC Access Workgroup, and DIY Florida**

Thomas Edwards and OSCA staff's Jenna Rogers provided information and an update on the work of the Judicial Management Council (JMC), the JMC Access Workgroup, and the DIY (Do It Yourself) Florida forms project. The Judicial Management Council report/recommendations that were approved by the Court in April 2014 and the DIY Florida Implementation Plan for carrying out the project are included as exhibits to this report. The Court continues to meet with the FCCC to advance this project. The Judicial Management Council access workgroup is serving in an oversight capacity and provided the below update to the full Council on February 27, 2015.

## **JMC Access Workgroup**

The access workgroup continues to serve in a general monitoring and oversight capacity to the DIY Florida project. OSCA staff has been working with the chair of the family law forms workgroup on the identification of which forms will work in an interview process (e.g., dissolution of marriage without property or minor/dependent children). The family law forms workgroup, staffed by OSCA, and with membership including judges, magistrates, attorneys, and a county court clerk, will soon delve into the substance of the current family law forms with the intent of developing questions and answers for the DIY Florida project. In areas where additional subject matter expertise may be needed (e.g., domestic violence forms) the family law forms workgroup will reach out to those subject matter experts before finalizing any decision tree/question flow. The family law forms workgroup will also assess the sufficiency and usability of any family law interviews that have already been developed. To that end, OSCA staff has also met with the FCCC staff to discuss content already developed and determine how best to proceed. Staff from OSCA has provided updates to the ePortal Authority Board and the Florida Courts Technology Commission on the DIY Florida project.

Tom Edwards, chair of the workgroup, also serves on the Access to Civil Justice Commission. Tom serves on the commission's technology subcommittee and will continue to help to provide linkage on the DIY Florida initiative and those that may be discussed by the various workgroups of the access commission. The JMC access workgroup also provided a preliminary visual to the full Council last week, which included a draft flow chart and sample interview questions for the dissolution of marriage without property or minor/dependent children, including information on screening questions, information needing to be hyperlinked, defined, etc. All created within Excel simply to provide some context for the JMC.

## **Technology Subcommittee Resource Guide**

At the request of Subcommittee Chair Judge Hilliard, Chuck Hays with The Florida Bar Foundation prepared a detailed Resource Guide for the Technology Subcommittee to use during the course of subcommittee work that includes information on links on integrated service delivery considerations; technology platforms utilized to expand access; and examples of access initiatives utilizing technology to expand access for clients, pro bono, and court document assembly, and eFiling. This seven page guide is embedded with a series of links to technology-related access resources, information, and examples. A copy of the guide is included as an exhibit.

## **Florida Justice Technology Center Business Plan**

The information contained in this report pertaining to the Florida Justice Technology Center was extracted from the comprehensive business plan document for the Florida Justice Technology Center Plan. The complete business plan document contains footnotes and references that are omitted from this report due to space constraints. The introduction portion of the business plan is included as an exhibit to this report.

### **Florida Justice Technology Center**

The impetus to create the Florida Justice Technology Center (FJTC) came about as multiple key factors – both within Florida and nationally – converged over the last several years.

- The Federal Legal Services Corporation’s (LSC) investment in Technology: 15 years and \$45 million resulting in more effective use of program staff time; increased services to self-represented litigants; and literally thousands of dollars leveraged to create more effective and efficient systems through court, bar, and legal services partnerships. The Legal Services Corporation provides grant funds to legal aid organizations around the country, including 7 organizations within Florida all of whom are eligible to apply for these technology grants.
- The Florida Bar Foundation’s investment in technology: 2008 implementation of a standard case management system (LegalServer) offered to all legal services programs bringing the benefits of a cloud-based system to the Florida legal services community.
- National Center for State Courts Grant: In April of 2014, The Florida Bar Foundation (Foundation) was awarded a technical assistance grant from the National Center for State Courts. This grant sponsored a visit to Chicago in order to evaluate the success of Illinois Legal Aid Online (ILAO). ILAO is an award winning model program designed to provide interactive assistance and legal information to those seeking legal aid and legal services providers. ILAO works seamlessly within the access to justice community in Illinois through partnerships with:
  - Federal and IOLTA funded legal services programs in Illinois by hosting legal information and education websites on their behalf;
  - Illinois Equal Justice Coalition and Illinois Courts by assisting with the creation and implementation of court based self-help systems in every county and public library in Illinois; and

- Illinois Pro Bono Programs by providing interactive case assistance and document assembly services to volunteer attorneys as well as legal services staff advocates.

The Florida delegation represented a diverse group from the civil justice community – a judge, a member of the clerk’s office, key members of The Florida Bar, members of the Foundation’s Board of Directors, the Deputy Director of the Office of the Court Administrator, and the Chair of the Florida Court Technology Commission. This visit served as a catalyst for many delegates to re-invigorate the justice community in Florida.

- The Florida Statewide Technology Planning Framework: On November 3, 2014 The Florida Bar Foundation published a statewide technology planning framework. The framework articulates the current state of technology in the Florida community and, as a basis of comparison, includes national benchmarks and best practices for nonprofits in the use of technology. The Framework illustrates that while many innovative efforts using technology exist around the state, for the most part, they operate in silos benefiting only their local communities.

In 2014, The Florida Bar Board of Governors voted to support a bridge loan to The Florida Bar Foundation. A portion of the loan was restricted in use to create:

“an independent statewide nonprofit entity with an organizational mission to increase access to justice to Floridians through the use of innovative technology and to train and support legal aid providers and pro bono attorneys in its use”.

The Florida Justice Technology Center (FJTC) will be an Administration of Justice (AOJ) grantee of The Florida Bar Foundation. It is anticipated it will incorporate in the summer of 2015.

The Florida Justice Technology Center will identify, develop, and use innovative and effective technology solutions to provide accessible and easy-to-use systems that address the legal needs of the end user. These solutions will integrate with and complement existing systems like those of the courts, the private bar, the pro bono community, and legal services programs. The FJTC will:

- Serve as a collaborative partner to ensure a statewide approach to technology planning, implementation, and integration among multiple existing local and statewide systems.

- Adopt a consumer-oriented, results-driven “no wrong door” approach.
- Support data collection and analysis methods to support strategic decision making by stakeholders

### **Mission**

The Florida Justice Technology Center identifies and implements technology solutions that increase the capacity of Florida’s civil justice system stakeholders to provide information, support self-help and to deliver services.

### **Guiding Principles**

Guiding principles for the Florida Justice Technology Center have emerged from the initial listening sessions and other feedback gathering events hosted at the Legal Services Corporation’s Technology Initiative Grant conference and at major cities around the state<sup>43</sup>. The Guiding Principles are meant to serve as a sort of checklist for Center initiatives to help ensure projects stay on mission:

1. Technology solutions are meant to complement and support other types of service currently offered by legal aid programs and others as well as to create opportunities for service for those not currently able to receive assistance;
2. The Florida Justice Technology Center will solve problems and propose solutions that seek to reduce or relieve current workloads in the civil justice community;
3. The Florida Justice Technology Center will foster throughout the civil justice community an environment that supports and encourages innovative uses of technology and disseminates those efforts that surface as best practices to the benefit of everyone;
4. The Florida Justice Technology Center will take into account all barriers to access to justice including but not limited to barriers based on income, disability, education, and language when developing and implementing solutions.

These principles will continue to be expanded and refined as additional stakeholder feedback gatherings –currently in the planning stages for May and June of 2015- are held.

Some **Operational Guiding Principles** have also emerged through conversations with a wide ranging group of individuals in Florida, they are:

1. All products and solutions created by the entity would need to integrate seamlessly with existing systems and technologies to the extent reasonable and practical

2. The Florida Justice Technology Center needs to be mindful of varying stakeholder capacity. Some capacity building of the civil equal justice system may be necessary.

### **The Technology Subcommittee Looking Forward**

The Technology Subcommittee continues to explore technology projects and initiatives that have potential for adoption in Florida to expand access and respond to the unmet legal needs of low and moderate income and disadvantaged Floridians. The next steps for the subcommittee are to identify a laundry list of potential in-person and online resources and to study those resources to select the ones with the furthest reach across the population and the ones with the highest probability of success in serving the unmet needs. This study will be multifaceted and multipronged and will include identifying potential solutions such as:

- the placement self-help kiosks for self represented litigants in clerks offices, court hours, and public libraries;
- working with the newly created Florida Justice Technology Center (FJTC) on a statewide initiative for the triage, intake, and referral of legal matters involving low and moderate income Floridians;
- expanding self-help and do-it-yourself forms projects from various entities to have further reach throughout the population;

Tangentially, the subcommittee will also look at potential obstacles or barriers to implementing the potential solutions such as:

- the costs associated with the expanding the technology
  - equipment
  - software, subscriptions, licenses
  - staffing
  - space limitations
- initial and ongoing training
- awareness and promotion
- technological difference between the potential providers of the legal services and the potential customers of the legal services

Thus far, it appears that the primary obstacle and potential barrier will be funding for the technology and infrastructure that would potentially expand access to enable the Commission and the legal profession to respond to the unmet legal needs of low income, moderate income, and disadvantaged Floridians. The Technology Subcommittee will work to identify technology solutions and will use the resources available from The Florida Bar, OSCA, the Foundation, and

the Foundation's consultants to identify and provide recommendations for the full Commission to consider.

**Exhibits:**

- Access to Justice: Providing Self Represented Litigants with Access to Web-Based Interactive Forms (5 pages)
- DIY Florida: Implementation Plan for providing web-based interviews to self represented litigants (1 page)
- Technology Resource Guide for the Technology Subcommittee of the Florida Commission on Access to Civil Justice (7 pages)
- Florida Justice Technology Center Business Plan (6 pages)

## **Access to Justice:**

### Providing Self Represented Litigants with Access to Web-Based Interactive Forms

In March 2013, Chief Justice Polston formed an Access Workgroup of the Judicial Management Council (JMC) to focus on the identification of potential crisis situations and develop strategies to address them. At its May 17, 2013 meeting, the JMC's Access Workgroup identified a number of hurdles associated with delivering services to low income and self-represented litigants in Florida, not the least of which is the reduction of funding to legal aid service providers throughout the state.<sup>1</sup> As a result of these funding reductions, Florida may soon experience a self-represented litigant crisis, with fewer available attorneys and greater numbers of litigants either finding they must represent themselves in court, or forego access to the court altogether. Complicating matters is Florida's geographic diversity, disparate technology resources by county, a large and varied limited English proficiency population, and a dearth of accurate self-help data or information capturing the extent of the problem.

The Access Workgroup identified three major access categories for continued consideration: funding, technology, and service delivery. Each category has its own unique set of challenges, and this proposal seeks to address all of them in some capacity. The chronic lack of free or low-cost legal assistance, coupled with the economic downturn, has led to a crisis in the courts. The crisis is reflected by the mounting numbers of cases with unrepresented parties and the burgeoning numbers of filings in areas of the law that affect every day people's lives, such as bankruptcy, foreclosure, consumer debt, custody, divorce and landlord-tenant. The judiciary cannot ignore the inequality that unrepresented litigants experience when they are required to submit court forms concerning life-affecting legal issues. The simple act of filling out forms raises unique challenges that many of these litigants have trouble overcoming. A court system can use Document Assembly Programs<sup>2</sup> to help unrepresented litigants create the court documents they need.

Document assembly software uses a litigant's answers to questions to generate a completed personalized form that can be printed and filed manually or electronically. Document Assembly Programs lead the litigant through a logical series of question screens. The path taken depends on the user's answers to the questions – users do not see a question screen unless it applies to their situation; do not need to repeatedly input information as is required on paper forms; answer files

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<sup>1</sup> See [March 1, 2012 Florida Bar News Article](#)

<sup>2</sup> The commercially sold TurboTax and ImmigrationPro are examples of Document Assembly Programs.

can be saved if users want to return and make changes or complete the program later; and the programs are easy to navigate even for first time users with novice computer skills.

### Recommendation

On February 28, 2014, the Judicial Management Council convened and unanimously approved the following recommendation:

**The Florida Court Clerks and Comptrollers (FCCC) have obtained licensing for A2J software. The Judicial Management Council (JMC) Access Workgroup recommends that, in collaboration with The FCCC, it continue to work with the ePortal Authority Board, The Florida Bar, and other identified stakeholders, to conduct an analysis and begin prioritizing which court approved forms should be made interactive and web-based. The JMC Access Workgroup should also work with The Florida Bar, or other identified group(s) with subject matter expertise, to ensure that interactive forms meet the needs of self-represented litigants. The JMC Access Workgroup recommends that The FCCC be responsible for programming the requisite interview questions and decision trees using the A2J software.**

**The JMC Access Workgroup recommends that Family Law Forms, already approved for statewide use by the Supreme Court, be the first forms developed in an interactive format. Further, the JMC Access Workgroup recommends the Family Law Forms Committee (comprised of members of The Florida Bar and staffed by the OSCA) work on the development of interview questions and decision trees.**

**The JMC Access Workgroup recommends that the Florida Courts Technology Commission (FCTC) be charged with completing the prioritization of additional forms by case type that should be integrated into the statewide eFiling Portal. The FCTC should also recommend when The Florida Supreme Court should make a referral to the appropriate substantive law committee(s) of The Florida Bar for the development of interview questions and decision trees. The appropriate Florida Bar substantive law committee(s) shall submit the final recommended questions and decision trees to The Florida Supreme Court for approval prior to being added to the statewide eFiling Portal for filers to access and complete.**

## Background

In May 2013, the Office of the State Courts Administrator (OSCA) received a technical assistance grant from the Center on Court Access to Justice for All<sup>3</sup> to conduct a site visit with the New York State Courts in New York City to learn about their self-help program and gain specific expertise on implementing an access to justice program, practice or service. Based upon review of the model utilized by the New York state courts, a viable option for Florida has been identified: State Courts System collaboration with the Florida Court Clerks and Comptrollers (FCCC) to utilize a document assembly program and create interactive web-based forms for self-represented litigants<sup>4</sup>. Staff observed that the Access to Justice (A2J) Author<sup>5</sup> guided interviews remove many of the barriers faced by self-represented litigants, allowing them to easily complete and print court documents that are ready to be filed with the court system.

OSCA staff also learned, by visiting three separate courts – family, housing (landlord/tenant), and probate – in two different boroughs of New York City, that when guided through processes that are foreign to them, litigants who use court produced Document Assembly Programs more often prepare legally sufficient pleadings and present greater information to the bench, leading to an increased chance of success on the merits and fewer applications for the same relief. With document assembly, litigants understand legal procedures better, more fully understand their rights, have greater access to information at convenient times and locations, and are more likely to complete the process faster and more frequently.

Citing to a Best Practices guide that they produced, New York judges and court staff also reported that Document Assembly Programs also improve court operations by creating legible papers for review and legally sufficient papers that reduce recidivism and paperwork. The legal information built into the programs helps alleviate the burden on court staff by decreasing time spent answering litigant

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<sup>3</sup> A project of the National Center for State Courts

<sup>4</sup> Chapter 29.004, Florida Statutes, defines the elements of the state courts system. The creation, implementation, and review of filed forms are tasks that support the case management element. The Supreme Court has the active responsibility to approve the content of “basic legal materials” and forms made available to users through a court based program, including materials provided by the clerks of court. These functions are distinctive from that of the clerk. Clerks are responsible for case maintenance types of elements as described in Chapter 28, Florida Statutes. These recommendations allow clerks and courts to continue operating as prescribed by statute and court rule.

<sup>5</sup> Access to Justice (A2J) Author, produced by LawHelp Interactive, is a flash-based software tool used to create a simple user interface that utilizes a question and answer format that results in a completed form. LawHelp Interactive is a subsidiary of [Probono.net](http://Probono.net). Pro Bono Net is a national nonprofit organization dedicated to increasing access to justice through innovative uses of technology and increased volunteer lawyer participation.

questions. With Document Assembly Programs, courts run more efficiently and effectively, judges have better drafted paper and can more often decide disputes on the merits. Most important, providing quality Document Assembly Programs enhances public trust and confidence in the court, and litigants perceive that they have received fair and equitable justice.<sup>6</sup>

This proposal provides for a technology-based solution that is affordable, manageable, can be used statewide across circuit and county lines, is compliant with established E-Filing protocols, and builds upon established Supreme Court approved court forms. The proposed solution will assist court clerks in processing cases and carrying out their functions in a more uniform and expedited fashion, as well as assist the judiciary by ensuring access to more reliable case data and allowing for cases to be processed in a completely electronic environment.

Simply put, the solution will provide self-represented litigants with better access to the court system through the use of web-based interactive forms. The foundation of the project is specifically designed to assist citizens throughout Florida who do not have access to, or cannot afford a lawyer. A2J Author creates the “front-end” experience for the user. Every program has the same attractive graphic appearance with a guide walking the litigant step by step along a path that leads to the courthouse. As the litigant answers questions, A2J Author collects the user’s information. A “back-end” assembly engine<sup>7</sup> is required to complete the process. While initially a technology-based solution, this plan can be expanded to provide self-help computer terminals in Florida’s courthouses and be fully integrated into a larger vision that would encompass in-person self-help services at the local level.

## Implementation

Preliminary estimates to fully implement the project include hiring two full-time equivalent (FTE) positions, which may cost approximately \$161,000 annually<sup>8</sup>. It is anticipated that two FTEs would assist the identified committee of The Florida Bar with interview question and decision tree development for both trial and

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<sup>6</sup> Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author; Access to Justice New York State Courts, June 2013 Edition.

<sup>7</sup> HotDocs software by HotDocs Ltd., is used to create the form template that is the basis for the finished document. HotDocs merges the information collected in A2J Author into a completed personalized court form.

<sup>8</sup> Annual salary (base rate) plus benefits for one Senior Attorney I position is calculated at \$80,089.08. It is possible that a different staffing complement will be needed, but it is not anticipated to exceed the level of a Senior Attorney I.

appellate courts, review statistical data, respond to inquiries, revise/update forms as the law changes, promote the automated forms, and support other related tasks. Additional cost considerations include clerical support, interpreting/translating forms, plain language review, audio, informational video clips, and training. While this plan could be implemented beginning in Fiscal Year 2014-15 or 2015-16, in all likelihood this will be an ongoing, multi-year effort.

It is recommended that the automation of any court form have statewide application. Hence, the Judicial Management Council recommendation identifies the family law forms as the best area to begin implementation for the trial courts, and recommends the Supreme Court task the Florida Courts Technology Commission with completing the prioritization of additional forms by case type that should be integrated into the statewide eFiling Portal.

As part of the implementation effort, the Florida Courts Technology Commission (FCTC) should also be consulted to ensure that any forms developed are compatible with established E-Filing protocols and standards. Where possible, the state courts system should consider partnering with outside agencies/entities, such as law schools, public libraries, law libraries, etc. to provide greater access to the public through existing public resources. Examples of these resources include, but are not limited to, computers at public libraries, as well as assistance from the librarian if the user has trouble navigating the program.

Once the self-help forms have been automated and tested, it is important to generate a public information campaign to spread the word of their availability. This may be done via public service announcements, radio and television interviews, newspaper ads and a prominent web presence. Outreach to all legal aid programs, public libraries, law libraries, and law schools will also be conducted.

# DIY Florida: Implementation Plan for providing web-based interviews to self represented litigants

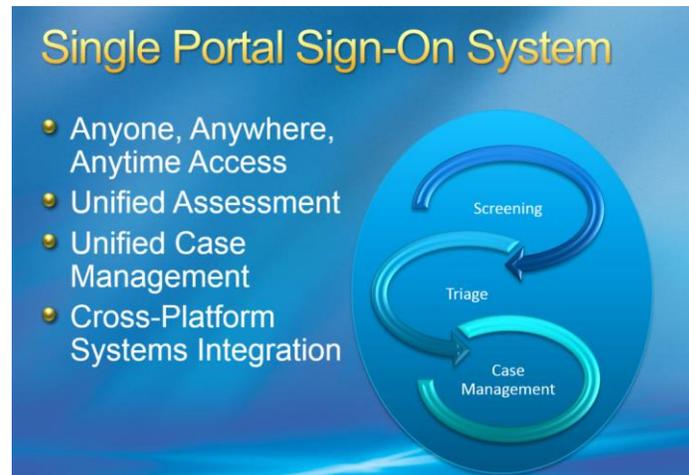


**Technology Resource Guide  
for the Technology Subcommittee  
of the Florida Commission on Access to Civil Justice**

**Table of Contents**

Integrated Service Delivery Considerations .....3  
    Denver University Law Review .....3  
    Pew Research Center .....3  
    Legal Services NTAP (National Technology Assistance Project) .....3  
    Legal Services Corporation .....4  
    Harvard Journal of Law & Technology .....4  
    National Center for State Courts (NCSC) Library .....4  
    Results: The Impact of Technology .....4  
Technology Platforms Examples .....5  
    Pro Bono Net .....5  
    A2J Author (Software) .....5  
    eFiling Service Providers Examples .....5  
Online Examples and Initiatives: Client and Pro Bono .....6  
    Florida Courts .....6  
    Center on Court Access to Justice for All .....6  
    Washington State .....6  
    Illinois Legal Aid Online .....6  
    Michigan Legal Help .....6  
    California Courts Online Self-Help Center .....6  
    Legal Aid Queensland (Australia) .....6  
    Pro Bono Technology Resources .....6  
Online Examples and Initiatives: Court Document Assembly and eFiling .....7  
    Florida Courts .....7  
    Other Courts: National Center for State Courts (NCSC) .....7  
    New York DIY Forms .....7  
    LSC TIG Resources and Initiatives .....7

## Integrated Service Delivery Considerations



### [Denver University Law Review](#)

#### (PDF) [The Access to Justice "Sorting Hat"](#) (Article in Vol. 89:4)

- ☑ From the main suggestions:
  - ⇒ "Recognize and design around the fact that there are two different triage processes: one dealing with how a court will handle a case and one dealing with how litigants will obtain the services they need to interact with the court and other players." (861)
  - ⇒ "Develop an agreed upon set of core principles that would guide the design of triage processes." (861)
  - ⇒ "Consider, as one possibility, a process in which a trained assessor makes recommendations for both sets of triage based upon relatively general protocols." (861)
  - ⇒ "Consider as an alternative system one in which an algorithm makes the recommendations based upon information provided by litigants, the court, and access providers to a web gateway, while being sensitive to the risks of non-human decision-making." (861)
  - ⇒ "In either possible system, the decision about the track to which a court assigns a matter should be based upon the kind of tasks the court will need to do, rather than the case type." (861)
  - ⇒ "In either possible system, the decision about the services the litigant will receive should be based upon the tasks the litigant will need to perform in the track to which she has been assigned, and her capacity to perform those tasks given the kinds of services provided." (861)

### [Pew Research Center](#)

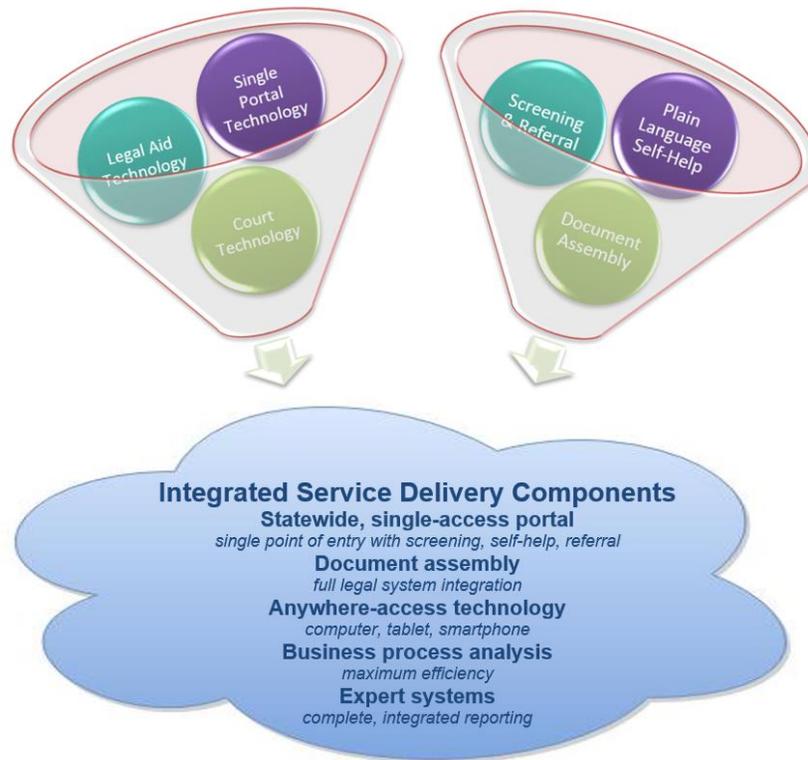
#### Technology use by different income groups (Presentation Slides)

- ☑ Key stats: Low income adults' technology use (less than \$30K annual household income):
  - ⇒ Internet: 73%, Broadband at home: 47% (Slides 4-5)
  - ⇒ Cell phones: 85% (Slide 6)
    - 43% do most of their online browsing using the cell phone (Slide 8)
    - 78% use their cell phone for texting (Slide 20)
  - ⇒ Desktop or laptops: 59%, Tablets: 26% (Slides 10-11)

### [Legal Services NTAP \(National Technology Assistance Project\)](#)

#### Content Example: [Trends in Technology Use](#)

Content Example: [Sources for Data and Statistics about Use of Technology](#)



## [Legal Services Corporation](#)

Content Example: [Report of The Summit on the Use of Technology to Expand Access to Justice](#)

- ☑ “Technology can and must play a vital role in transforming service delivery so that all poor people in the United States with an essential civil legal need obtain some form of effective assistance...
- ☑ The vision for achieving this is every state will create a statewide access portal that provides an easy way for a person to obtain assistance with a civil legal issue.”
- ☑ Also from the LSC Report: [A Vision of an Integrated Service-Delivery System](#)

## [Harvard Journal of Law & Technology](#)

Content Example - Article (2012): (PDF) [Using Technology to Enhance Access to Justice](#)

*Highlights:* Overviews of Available technologies for legal services delivery; Issues to consider; Mobile strategies; Tech-supported triage; Overcoming barriers

## [National Center for State Courts \(NCSC\) Library](#)

Document: [Triage Protocols for Litigant Portal: A Coordinated Strategy Between Courts and Service Providers](#)

## Results: The Impact of Technology

Attachment: [RESULTS\\_The Impact of Technology Revised Draft 31MAR2015 2.pdf](#)

- ☑ Introduction from Florida Justice Technology Center business plan

## Technology Platforms Examples

### Pro Bono Net

#### Widely-Used Examples: Self-Help and Pro Bono Platforms

*Overview:* The non-profit organization Pro Bono Net developed and maintains 2 website platforms that 30 states use in some combination:

- ☑ [ProBono.net](#): (From the [FAQ page](#)) “lawyer-based site... resources designed to help pro bono and public interest lawyers...”
  - ⇒ [Sites](#): Regional, national, and international sites powered by ProBono.net
  - ⇒ [Florida’s site](#)
- ☑ [Pro Bono Manager](#): A pro bono practice management solution developed by ProBono.net with initial support from The Bill & Melinda Gates Foundation and The Booth Ferris Foundation. Used by over 17,000 lawyers across 15 leading international law firms.
- ☑ [LawHelp.org](#): (From the ProBono.net [FAQ page](#)) “client-based site... designed to offer the public easy access to legal information... including referrals and legal self-help.”
  - ⇒ [Partner list](#): (From the webpage) “...a network of 25 statewide information portals... developed and maintained in partnership with hundreds of nonprofit legal aid, pro bono, court-based programs and libraries across the country...”
  - ⇒ [Interactive state map](#) (links to each state’s help resources)

### [A2J Author](#) (Software)

#### Overview: [Description & Examples](#), [History & Research](#)

- ☑ Developed by the IIT Chicago-Kent College of Law [Center for Access to Justice & Technology \(CAJT\)](#) and [The Center for Computer-Assisted Legal Instruction \(CALI\)](#)
- ☑ From the CALI [website](#): “A2J Author helps legal aid attorneys create computer-based, self-guided A2J interviews for use by unrepresented litigants and others in need. The A2J interviews walk users through a step-by-step question and answer process, which, in the end, creates an (often otherwise confusing) legal form.”
- ☑ From [2010 Blog Announcement](#): Used “in 36 states, the U.S. Virgin Islands, Guam, England, Australia, Canada and Singapore.”
- ☑ From the [CAJT Overview](#): “A2J Author® is available for free to interested courts, legal service organizations, and members of the HotDocs development community for non-commercial use.”
- ☑ Kentucky [YouTube video](#) of A2J Author instructions

### eFiling Service Providers Examples

#### Example: [e-Filing Service Providers Comparison Table](#)

- ☑ Background: Texas began selected, mandatory e-filing of court documents in 2014. Participants may select from among multiple services providers authorized to file through the portal. Texas created a [Service Provider Comparison Table](#), an excellent resource for viewing major providers (in general).

#### Example: [NCSC Technology Vendors](#)

## Online Examples and Initiatives: Client and Pro Bono

### Florida Courts

Webpage: [Florida Courts Self-Help](#)

Webpage: [Florida Courts Self-Help Centers Directory](#)

### Center on Court Access to Justice for All

Content Example: (PDF) [Access Brief: Self-help Services](#)

Overview of state initiatives for self-help services (from 2012), including technologies used.

### Washington State

Self-Help Portal: [Washington LawHelp](#)

Webpage: [Links](#) for the [CLEAR Hotline](#) (Coordinated Legal Education, Advice and Referral) and [online intake](#)

- Both considered “Gold Standard” examples

### Illinois Legal Aid Online

Webpage: [Latest Innovations](#)

- Examples: Interactive learning content, Statewide Online Access with intake, Chat Live Help, Self-Help Centers

Webpage: [Research and Development](#)

- Examples: Spanish website, Mobile apps, Statewide Online Access System components
- Document example: [User Scenarios](#) of how the system could be accessed
- Document example: Use Cases (specifications...for...different users of the system)

### Michigan Legal Help

Webpage: [Print Overview download page \(#2\)](#)

Webpage: [Michigan Legal Help Evaluation Report download page](#)

- Purpose: Jan, 2015 report to evaluate website efficacy

### California Courts Online Self-Help Center

- From the main page: “Self-Help will help you find assistance and information, work better with an attorney, and represent yourself in some legal matters.”
- Self Help Centers: Note the link to an [interactive Google map](#) of Self Help Centers and Family Law Facilitators throughout the state
- Law Librarian Live Chat: Note the link to [Ask a Law Librarian](#).

### Legal Aid Queensland (Australia)

Document Example: [Process flowchart: Legal information, referral and advice](#)

### Pro Bono Technology Resources

LSC Report (PDF): [Report of the Pro Bono Task Force](#)

- Highlights: pp14-18 include technology recommendations

LSC webpage: [LSC Awards First Pro Bono Innovation Fund Grants](#)

- Highlights: Information on the 11 grant recipients, some of which include technology solutions

Pro Bono Net webpage: [LSNTAP/PBN Webinar: Innovations in Technology-enabled Pro Bono](#)

## Online Examples and Initiatives: Court Document Assembly and eFiling

### Florida Courts

**Webpage:** [Court Technology](#)

- ☑ Webpage: [Current Projects](#) highlights
  - ⇒ Webpage: [Electronic Filing Court Records Portal \(ePortal\)](#)
    - Webpage: [eFiling](#) (system overview)
    - Highlights: Statewide standards; implementation of XML file sharing for systems integration
  - ⇒ Status overview: [Florida Bar News Article](#)

**Other Courts:** [National Center for State Courts \(NCSC\)](#)

**Webpage:** [Electronic Filing State Links](#)

- ☑ Highlights: Page links plus state-by-state implementation status information

### New York DIY Forms

**Webpage (Review):** [The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's "DIY" Forms](#)

- ☑ Highlights: Describes in detail New York's development process, experience, and ongoing review process with background information about forms automation in other locations and the A2J Author software.

### LSC TIG Resources and Initiatives

**Example (PDF):** [Principles and Best Practices for Access-Friendly Court Electronic Filing](#)

**Example (PDF):** [Document Assembly Best Practices Guide for Court Systems](#)

## INTRODUCTION

*“The key to our future success as legal service providers lies in our ability to identify the specific lawyering areas in which we can be replaced and those in which we cannot be replaced. The most prosperous law practices in 2020 will be those that are able to successfully adjust their business models to use artificial intelligence–type tools while at the same time promoting and delivering the part of the legal service value proposition that the machines are not able to provide.”<sup>1</sup>*

Technology has made a profound difference in the practice of law generally. Technology has also made a profound operational, administrative and substantive impact on nonprofit law firms across the country which provide staff and volunteer civil legal assistance to low-income and vulnerable populations.

The impact of multiple investments in access to justice technologies, including: the 15 year, \$45+ million investment of the federal Legal Services Corporation (LSC)<sup>2</sup> in technology initiative grants (TIG), more than a decade of national legal aid technology (TIG) conferences<sup>3</sup>, LSC’s Summit on the Use of Technology to Expand Access to Justice Technology report<sup>4</sup> as well as funding and project development by IOLTA and legal aid programs<sup>5</sup>, the courts, state and local bar foundations is beginning to show measurable results.

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<sup>1</sup> Blair Janis, How Technology Is Changing the Practice of Law, Vol. 31 No. 3, GPSolo, ABA Solo, Small Firm and General Practice Division

[http://www.americanbar.org/publications/gp\\_solo/2014/may\\_june/how\\_technology\\_changing\\_practice\\_law.html](http://www.americanbar.org/publications/gp_solo/2014/may_june/how_technology_changing_practice_law.html)

<sup>2</sup> <http://tig.lsc.gov/about-us/tigs-impact> including National Network of LawHelp Websites, Automating Legal Form and Document Preparation, Using Technology to Support Pro Bono, The A2J Law School Clinic Project, Enhancing the Legal Services Gateway with Online Intake (including triage systems), launching StatesideLegal.org - for members of the military, veterans, their families and advocates.

<sup>3</sup> LSC has sponsored an annual legal aid technology (TIG) conference since 2000. Presentation materials from the 2007 – 2015 conferences are archived here. <http://tig.lsc.gov/tig-conference/past-conferences>

<sup>4</sup> The Summit on the Use of Technology to Expand Access to Justice, <http://www.lsc.gov/media/in-the-spotlight/report-summit-use-technology-expand-access-justice> A Vision of an Integrated Service-Delivery System has five main components: 1) Creating in each state a unified “legal portal” which, by an automated triage process, directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process. We use the term “triage” as it is commonly used today, including in the access-to-justice community, to characterize a range of strategies for allocating scarce resources most effectively. 2) Deploying sophisticated document assembly applications to support the creation of legal documents by service providers and by litigants themselves and linking the document creation process to the delivery of legal information and limited scope legal representation, 3) Taking advantage of mobile technologies to reach more persons more effectively, 4) Applying business process/analysis to all access-to-justice activities to make them as efficient as practicable, and 5) Developing “expert systems” to assist lawyers and other services providers.

<sup>5</sup> In 2008, The Florida Bar Foundation invested in a web-based case management system (LegalServer) used by 27 of its 30 general support grantees. LegalServer is one of the most widely used CMS (case management system) in the national legal aid. The Foundation also funds WestlawNext user licensing for its grantees.

Access to Justice technologies supporting a broad spectrum of information, self-help and professional services for Americans with a legal need are clearly not just stop-gap measures to be explored only in the face of insufficient funding or as an alternative to the lack of a civil right to counsel<sup>6</sup>.

### INCREASED SERVICES

- **Illinois** implemented a knowledge management system resulting in significant increases in services delivered.

*Result: The Coordinated Advice and Referral Program for Legal Services (CARPLS)<sup>7</sup> experienced significant increases in the delivery of services due to the creation of a knowledge management system, going from 12,000 cases to almost 50,000 cases handled by advocate staff, and 800 to 8,900 volunteer closed cases in a single year.*

- **Montana** implemented a centralized case management system.

*Result: Montana Legal Services Association<sup>8</sup> was able to increase the number of accepted intakes by 55% per intake worker, or from 333 to 515 in one year.*

### TIME SAVINGS

- **Ohio** implemented an online intake system.

*Result: An evaluation of an online intake system for Legal Aid of Western Ohio<sup>9</sup> found that the system saved an average of 10 - 15 minutes per intake, or a staff savings equivalent to 1.0 - 1.5 FTEs over the course of a year. More clients are served without an increase in staff.*

### EFFECTIVE ADVOCACY STRATEGIES

- **New Mexico** implemented a statewide data capture system which has had multiple impacts on programmatic focus and litigation strategies showing that:

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<sup>6</sup> Charn, Jeanne. "Celebrating the "Null" Finding: Evidence Based Strategies for Improving Access to Legal Services." Yale Law Journal 122.8 (2013); 2206-234. Yale Law Journal Web. 16 Dec. 2013

<sup>7</sup> CARPLS is a legal aid hotline and court-based advice desk located in Illinois and serving Cook County (the Chicago Metropolitan Area) which resolves over 85% of all cases in-house by providing information, advice and brief services including the preparation and review of legal documents. Clients with more complex needs are referred by CARPLS to a network of specialized legal and social service providers.

<sup>8</sup> Montana Legal Services Association (MLSA) is a statewide LSC funded legal aid program with 13 full-time case handling attorneys and fewer than 40 total staff to serve the entire state. There are no other legal aid programs in Montana.

<sup>9</sup> Legal Aid of Western Ohio is an LSC funded legal aid program serving 32 northwest and west central Ohio counties through offices in Dayton, Defiance, Findlay, Lima, Sandusky, Springfield and Toledo. Like Florida, Ohio has LSC and non-LSC funded general legal aid programs and a state support center.

- The high-poverty Gallup area accounts for almost 12% of car repossession cases from all areas of the state, even though the Gallup area has only 3.5% of the state's population. Further analysis indicated that repossession cases also clustered disproportionately high during the first four months of the year, when clients are most likely to be using a tax refund check to buy a used car.

*Result: This information helped New Mexico Legal Aid<sup>10</sup> fashion a new consumer protection outreach strategy and case priorities for the Gallup area during the first four months of 2015. The data also suggested a correlation between car repossession cases and evictions in the 87301 zip code in the Gallup area, meaning the program will now give higher priority to assisting car repo clients who are also living in rental housing within that zip code.*

- An eviction spike in one county correlated with an upswing in evictions within the zip code that included the county's highest concentration of Spanish speaking clients.

*Result: A re-assessment of Spanish language tenant educational materials used in that region of the state.*

- Out of all clients seeking help for a divorce during the first year that the data system was operational, the data sets for that problem code showed that 79% of all new applicants were women. Of the divorce clients who were men, new cases came disproportionately from the state's two largest urban areas - Albuquerque and Las Cruces - while rural areas tended to account for proportionately higher numbers of women seeking divorce.

*Result: NMLA's statewide family law practice group will use this information to evaluate how outreach strategies and case priorities should vary for both gender and location.*

- A report for clients seeking help with domestic violence protection orders showed that women applied for help with such cases at a rate eight times higher than men. For the male clients in this category, the urbanized city of Las Cruces area generated a surprisingly small number of cases, while the much smaller city of Gallup was linked to a disproportionately high number of cases. Gallup also has the highest poverty rate of any community in the state, and one of the highest percentages of off-reservation Native American population.

*Result: Cross-training between domestic violence advocates and NMLA's Native American Program attorney advocates who serve the Gallup area.*

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<sup>10</sup> New Mexico Legal Aid (NMLA) is the statewide LSC funded legal aid program. NMLA is considered to be a national leader in rural delivery and access to justice technology. Established in 1953 as the Legal Aid Society of Albuquerque, NMLA merged with the Santa Fe, Las Cruces and Pueblo Nations legal aid programs to form a statewide legal aid program in 2003. In 1998, a statewide telephone-based intake system was implemented, named Law Access New Mexico. This function is used to conduct intake calls, assess cases and provide brief services to New Mexico residents. New Mexico's poverty rate is 21.9%, the second highest percentage in the nation, according to Census Bureau figures released in September 2014.

**EFFECTIVE USE BY SELF REPRESENTED LITIGANTS<sup>11</sup>**

- **Utah** The courthouse-based Self Help Center<sup>12</sup> shows dramatic increase in use without any on-site assistance available. The Center offers telephone and Live Chat assistance upon request--staffed by a mix of lawyers and non-lawyers.

*Result: The average number of contacts per day during 2007, the first year of operation, was 8.47 contacts per day. For 201, it was 85.86 contacts per day.*

- **Michigan** – Michigan Legal Help Program consists of two components – an interactive website and affiliated Self Help Centers that provide legal information assistance to individuals representing themselves. The Michigan Legal Help website was assessed by an independent consultant<sup>13</sup> for its efficacy in helping self-represented litigants successfully<sup>14</sup> navigate the divorce process.<sup>15</sup>

*Result: 74% of litigants using the website obtained a judgment of divorce, a rate virtually equal to that of other self-represented litigants and attorney represented litigants<sup>16</sup>*

*Result: Self-represented litigants conclude the divorce process in less time than attorney represented litigants with those using the website concluding slightly more quickly than self-represented litigants who did not use the website. This finding is true even when controlling for other factors, such as complexity.*

- **New York** – Using A2J Author interviewing software,<sup>17</sup> a graphic interface designed for low-literacy users, and HotDocs the New York State Courts Access to Justice Program produces attractive, user friendly document assembly programs known as DIY (Do-It-Yourself) forms that address pro se needs and alleviate many of the challenges

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<sup>11</sup> <http://www.pewinternet.org/2013/09/25/>  
<http://www.lsc.gov/media/news-items/2014/sandman-rawdon-highlight-use-technology-aid-self-represented-litigants>

<sup>12</sup> <https://www.utcourts.gov/selfhelp/contact/>

<sup>13</sup> Kerry Sheldon, Founding Partner, Bridgeport Consulting. Michigan Legal Help Evaluation Report, January 2015  
<http://www.mplp.org/Taskforces/technology/michigan-legal-help-evaluation-report-1-15.pdf>

<sup>14</sup> Success was defined as reaching a judgment within a reasonable amount of time. The experience of Michigan Legal Help was compared to that of other self-represented litigants (those without attorney representation who do not use the website) as well with attorney-represented litigants.

<sup>15</sup> Divorce was chosen because the Divorce With or Without Children interview “currently accounts for 64% of all completed interviews available through the Michigan Legal Help website. Divorce pleadings derived from the website are also easily identifiable as such” p. 5

<sup>16</sup> In Michigan in 2013, 48% of divorce cases were filed by self-represented plaintiffs and 68% of cases had one or more self-represented litigants. 42% of divorce cases had no attorney involvement at all.

<sup>17</sup> Created in 2004 by the Center for Computer Assisted Legal Instruction (CALI) and the IIT Chicago Kent College of Law Center for Access to Justice and Technology (now Illinois Legal Aid Online—the national award-winning independent nonprofit access to justice technology program).

unrepresented litigants face when creating their court papers.<sup>18</sup> Completed programs are hosted on Pro Bono Net's national online document assembly project, Law Help Interactive. Unrepresented litigants can access the New York programs on the internet<sup>19</sup> or in terminals in court clerk's offices, Help Centers and Public Access Law Libraries. Considerable outreach and training on the DIY forms programs are done with court personnel. Note: The New York Court System does not yet have e-filing.

*Result: In 2012, over 100,000 court documents were assembled from the 24 programs<sup>20</sup> used in different case types in different courts throughout the state.<sup>21</sup>*

*Result: Staff training dramatically increases usage of DIY forms. In 2013, 73.19% of DIY Form users state that court personnel referred them to the programs.<sup>22</sup>*

*Result: The usage statistics show a steady rise from year to year.*

*Result: User survey data indicates the DIY forms programs are extremely popular and beneficial for litigants.<sup>23</sup>*

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<sup>18</sup> Klempler, Rochelle, The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's "DIY" Forms, May 27, 2014 Fordham Urban Law Journal, Fordham University

- It is impossible to fully access the legal system without completing and filing written court papers.
- Templates for the preparation of court documents are generally the first resource requested by unrepresented litigants and the first task taken on by court systems.
- Most state court systems have promulgated statewide uniform forms...yet standardized forms are not enough...unless the forms address the other obstacles that unrepresented litigants often encounter.
- Many court systems and many local courts have placed forms online.
- Plain language forms increase unrepresented litigants access to the legal system. A 2013 report from Canada, The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self Represented Litigants found that one of the most consistent complaints unrepresented litigants have is difficulty reading and understanding the forms due to confusing and complex language. According to the National Assessment of Adult Literacy, twenty-one percent of Americans read below a fifth grade reading level. [http://nces.ed.gov/naal/kf\\_demographics.asp](http://nces.ed.gov/naal/kf_demographics.asp)

<sup>19</sup> The NYS Unified Court System's website for unrepresented litigants is known as CourtHelp <http://www.nycourthelp.gov>. Most of the programs are also available through the New York LawHelp site [www.lawhelpny.org](http://www.lawhelpny.org) (all 50 states have LawHelp or Legal Help sites, see also [www.floridalawhelp.org](http://www.floridalawhelp.org) )

<sup>20</sup> See DIY Forms, New York State Courts Access to Justice Program, <https://nycourts.gov/ip/nya2j/diyforms.shtml> listing programs by case type and court and providing links to programs landing pages

<sup>21</sup> The Access to Justice Program follows a set of Best Practice Guidelines for the development of DIY Form programs.

- All programs are developed with input from developers groups comprised of court personnel throughout the state who volunteer their time.
- Programs are also sent to stakeholders from public interest groups, private practice and legal aid organizations.
- Every program is sent to a plain language specialist to simplify the text.
- Every program receives extensive testing before it is released to the public
- Once a program is live, considerable outreach and training is done with court personnel.

<sup>22</sup> Usage of the DIY Forms programs are tracked through statistics supplied by Law Help Interactive, the court's case management system and user surveys completed by litigants.

Result: *DIY Form programs save court clerks time and improve court efficiency in a number of ways:*

- *Court personnel spend less time answering litigant questions when the litigant has already been guided step-by-step through the process by a document assembly program.*
- *More accurate and complete forms lead to fewer rejection of pleadings.*
- *Court employees in the Court Help Centers and Clerk's Offices find they can serve more litigants in a shorter amount of time at a faster pace by employing the DIY Forms programs.*
- *Court congestion is potentially eased as access to DIY forms is available beyond business hours and saves litigants trips to the courthouse when self-help is available at all times.*

Result: *The DIY Form programs also minimizes litigant frustration.*

***“The most compelling reason for court systems to invest their energies in production of document assembly programs is the potential to eliminate filing trips to the courthouse though e-filing, which sends the litigants information directly to the court's case management system. Integrating the document assembly program with the courts case management system eliminates hours and hours of data entry time and is a major improvement in courthouse efficiency.”***

- Klempner, The Case for Court-Based Document Assembly Programs:  
A Review of the New York State Court System's "DIY" Forms, p. 1217

NEW YORK DOES NOT HAVE E-FILING. FLORIDA DOES.

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<sup>23</sup> Common themes appear over and over in the optional comment section: gratitude, appreciation, ease of use of programs and how simple they are to complete. Litigants who saved money using DIY forms or who could not afford legal fees also expressed their appreciation.



## SUBCOMMITTEE COMMISSION REPORT

Subcommittee:	Funding Subcommittee
Date:	May 8, 2015
Prepared By:	Judge Emerson R. Thompson, Jr., Subcommittee Chair

The Funding Subcommittee met three times by conference call on 12 March, 7 April and 21 April 2015. Three working subgroups were created to focus on these initiatives: Cy Pres Rules or Statutes; Legislative Funding; and Developing Financial Support in the Legal and Business Community. Guest speakers included Attorney John Yanchunis, who introduced Subcommittee members to the concept of cy pres awards, and Meredith McBurney, Resource Development Consultant to the ABA Resource Center for Access to Justice Initiatives. She explained the resources and research on funding strategies the Center could offer.

The three subgroups have not held separate working meetings, but the following information gathering has taken place to prepare for future meetings and to implement initiatives:

**Cy Pres Rules/Statutes:** Eighteen states have legislation or court rules providing for legal aid to receive class action residuals. The ABA Center for Access to Justice Initiatives has supplied a synopsis of provisions in the eighteen states' rules or statutes. The Subcommittee also reviewed the March 2014 Virginia Journal of Social Policy and the law article "Class Action Settlement Residue and Cy Pres Awards: Emerging Problems and Practical Solutions."

**Legislative Funding:** Attorney Belvin Perry explained in detail Florida's legislative funding process. Materials from the ABA Center for Access to Justice Initiatives described the historic and current state-by-state comparative data on legislative funding for legal aid.

**Developing Support in the Legal and Business Community:** Commission member Byron Cheney Russell has asked that information regarding the direct and indirect costs to companies when employees' civil legal needs are left unmet be researched and developed for an awareness campaign. He has offered to conduct an informal survey of Cheney Brothers employees to determine the legal issues confronting them and the impact their legal issues have on their morale and productivity at work.

Next steps: The subgroups will begin meeting.

Attachments:

- Introduction to cy pres (John Yanchunis)
- 2-page direct/indirect costs to employers of employees' unmet civil legal needs (Melissa Moss)
- Sample questions that might be used in an informal survey by an employer (Melissa Moss)
- Court Related Revenue Collected by Clerks of Court FY 2014-2015 Pie Chart (Kristine Slayden)
- Potential GR Revenue Sources Spreadsheet (Kristine Slayden)

## I. Introduction

Courts approving class action settlements often review how the parties have provided for settlement funds that either (1) cannot be distributed to individual class members because, for example, proof of individual claims is burdensome or distributing damages is costly; or (2) remain unclaimed following distribution to class members who make claims.<sup>1</sup> There are several ways in which such funds can be distributed, including pro rata distribution to class members; reversion to the defendant; escheat to the government; or cy pres distribution.

## II History of Cy Pres

The cy pres doctrine originated as a rule of construction to save a testamentary charitable gift that would otherwise fail, allowing ‘the next best use of the funds to satisfy the testator’s intent as near as possible.’<sup>4</sup> The phrase “cy pres” comes from the Norman French expression “cy prescomme possible,” meaning “as near as possible.”

## III General requirements of Prevailing case law

Cy pres beneficiaries must be carefully chosen to account for (1) the nature of the lawsuit, (2) the objectives of the underlying claims; and (3) the interests of silent class members, including their geographic diversity.<sup>23</sup> For example, the Ninth Circuit requires a cy pres award be “guided by (1) the objectives of the underlying statute(s) and (2) the interests of the silent class members, and must not benefit a group too remote from the plaintiff class.” In the Ninth Circuit, there must be a nexus—an actual connection—not just between the class and the cy pres beneficiary, but between the claims alleged in the case and the cy pres beneficiary.

## IV Some states require that cy pres awards be directed to legal aid organizations

Examples , North Carolina , Washington

## V The next step to bringing Florida into this Group

## THE IMPACT OF EMPLOYEES “LEGAL LIFE EVENTS” ON THE WORKPLACE-Two Studies

"MEASURING THE EFFECTS OF EMPLOYEE FINANCIAL AND LEGAL WOES" Russell<sup>SM</sup> Research, March 2012. <https://www.aragroup.com/assets/documents/newsroom/arag-white-paper-legal-woes.pdf> The study reported that:

- Seventy-four percent of Americans dealt with one or more legal life events in the past 12 months.
- Among those who experienced an event, 40 percent experienced four or more legal life events in the past year. This number rose dramatically from 28 percent in 2007.
- Fifty-five percent of employees who experienced a legal life event reported it impacted their work. This number is up from 45 percent in 2007.
- In the past 12 months, employees with legal issues, on average, spent 17 hours at work and took 9.5 days off work to deal with legal life events.

Eighty (80) percent of individuals surveyed don't believe attorneys are affordable or accessible. In fact, less than half of all people experiencing a legal life event used an attorney. Survey participants expected to pay \$141 per hour for legal services, less than half of the average ACTUAL cost. Research participants reported they paid more than \$1,700 for legal services in 2012 to address their legal woes, a 33% increase from the \$1,297 respondents paid in 2007.

Some legal life events, such as purchasing a car or signing a warranty contract, may seem simple enough, yet millions of Americans find themselves the victims of consumer fraud each year. In 2011, the Federal Trade Commission received 1.8 million consumer fraud and identity theft complaints.

Family related legal life events such as child support or visitation issues, domestic abuse or a child in legal trouble were the most stressful and had the biggest impact at work.

### QUANTIFYING THE WORKPLACE IMPACT OF EMPLOYEES' PERSONAL LEGAL MATTERS<sup>1</sup>

[http://www.fbmclearningcenter.com/static/media/uploads/Hyatt\\_Legal\\_WP.pdf](http://www.fbmclearningcenter.com/static/media/uploads/Hyatt_Legal_WP.pdf)

70% of Americans have at least one new or ongoing legal issue each year and half of the population doesn't have a will. Legal issues can cause stress, which in turn, not only may erode an employee's health, but also his or her work performance. About half of those whose work performance suffered said there were repercussions, with a poor review cited as the leading result. One respondent who reported that his productivity was down about 50% said "all I could think about were my issues and getting away from work."



<sup>1</sup> This survey was conducted online within the United States by Harris Interactive on behalf of Hyatt Legal Plans, Inc., between January 6 and February 7, 2011 among 846 working Americans who were employed full time within the past two years. The research, entitled "The Impact of Legal Matters on Today's Workforce," involved both quantitative and qualitative data. Researchers analyzed the experience of individuals who had at least one targeted legal issue arise in the past five years (e.g., foreclosure, adoption, bankruptcy, divorce). Respondents were placed in three categories: those who handled the matter on their own, those who hired an attorney on their own, and those who hired an attorney through a group legal plan offered by their employer.

## THE COST OF DOMESTIC VIOLENCE and ACCESS TO LEGAL SERVICES

Studies suggest that **ACCESS TO LEGAL SERVICES** can be a critical tool in helping victims escape from abusive relationships and that **ACCESS TO COUNSEL HAS HELPED TO DECREASE THE NUMBER OF VICTIMS BY AS MUCH AS 21 PERCENT.** In order to escape successfully and permanently from these relationships, domestic violence survivors must navigate multiple and diverse legal systems, ranging from securing a protective order against their abuser to complicated family law issues, including child custody disputes and accessing safe housing.

**FORBES, DECEMBER 2013: DOMESTIC VIOLENCE COSTS \$8.3 BILLION IN EXPENSES ANNUALLY: A COMBINATION OF HIGHER MEDICAL COSTS (\$5.8 BILLION) AND LOST PRODUCTIVITY (\$2.5 BILLION).**

Domestic violence reduces productivity, leads to absenteeism and drives up health care costs. In the U.S., 24 percent of adult women and 14 percent of adult men have been physically assaulted by a partner at some point in their lives. It is the most common cause of injury for women ages 18 to 44. And it leads to an increased incidence of chronic disease: Abused women are 70 percent more likely to have heart disease, 80 percent more likely to experience a stroke and 60 percent more likely to develop asthma. Nearly a quarter of employed women report that domestic violence has affected their work performance at some point in their lives. **Each year, an estimated 8 million days of paid work is lost in the U.S. because of domestic violence.**<sup>2</sup>

### CORPORATE ALLIANCE TO END PARTNER VIOLENCE

[http://www.caepv.org/getinfo/facts\\_stats.php?factsec=3](http://www.caepv.org/getinfo/facts_stats.php?factsec=3)

In the fall of 2002, Liz Claiborne Inc. released their 2nd Corporate Leader Survey regarding domestic violence, benchmarking the results of their 1994 survey. The 2002 survey found that:

- Sixty-eight percent (68%) of corporate leaders said a company's financial performance would benefit if domestic violence were addressed among its employees.
- Fifty percent (50%) reported that domestic violence has had a harmful effect on their own organization's insurance and medical costs and
- One-third (32%) said their company's bottom line performance has been damaged.
- Ninety-one (91%) believe that domestic violence affects both the private lives AND the working lives of their employees.
- Many report that domestic violence has had a harmful effect on their own organization's staff, specifically on their psychological well-being (60%), their physical safety (52%), their productivity (48%) and their attendance (42%).

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<sup>2</sup> Domestic Violence: The Secret Killer That Costs \$8.3 Billion Annually, Robert Pearl, M.D., Forbes

<http://www.forbes.com/sites/robertpearl/2013/12/05/domestic-violence-the-secret-killer-that-costs-8-3-billion-annually/2>

## POTENTIAL EMPLOYEE SURVEY QUESTIONS

- 1) In the last year, did you face any non-criminal legal life events? (yes or no. give common examples: divorce, child custody, debt collection, foreclosure)
- 2) In the last year did you have any times when you wished you could had some legal advice? (yes or no. give common examples: purchase/lease of car, sale of car, hiring a contractor, refinancing, care of an aging family member)
- 3) Did you try to find a lawyer? (yes or no)
- 4) Were you successful in finding a lawyer? (yes or no)
  - a. If not, why not? (multiple choice and other)
- 5) Did you try to handle things yourself? (yes or no)
  - a. If yes, why (multiple choice and other)
- 6) Did you have to take off work to handle your problem?
- 7) Did you feed stressed or less productive at work because you had a problem?

Additional questions of interest? from <http://www.legalplans.com/resources/legal-needs-test.aspx>

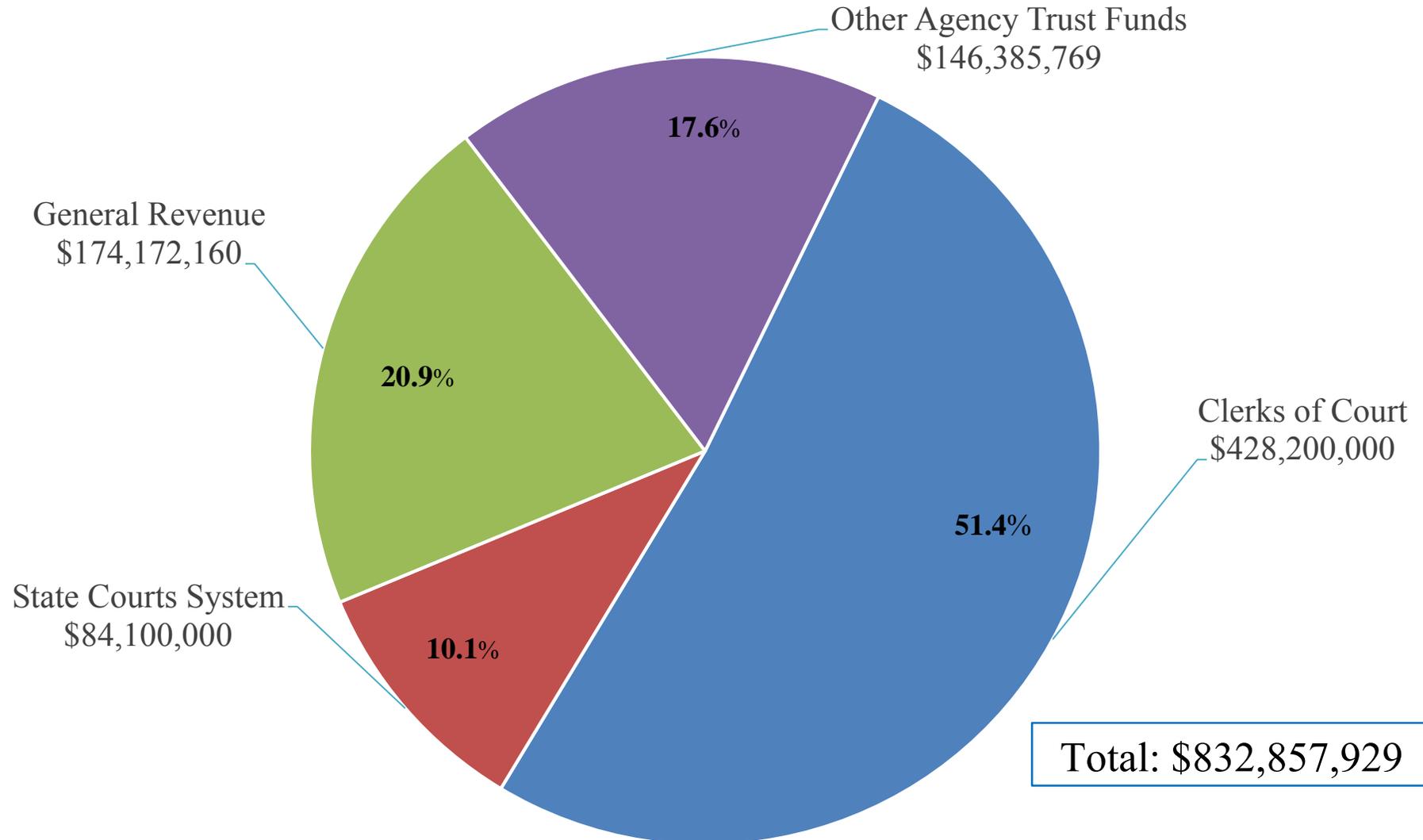
### Find out within minutes by taking our legal needs test.

To better understand how helpful and valuable a legal services plan can be for you and your family, take this quick test on some of the most basic legal needs. How prepared are you? The answer can be surprising. After submitting your answers, you can view an analysis and learn how Hyatt's group benefit services can help.

#### What are your legal needs?

- 1: Do you have a professional to talk to when any legal issue arises?  
 Yes  No
- 2: Do you have a will to protect your family and assets?  
 Yes  No
- 3: Have you named a legal guardian to take care of your children?  
 Yes  No
- 4: Are you able to fully understand personal, legal documents you receive?  
 Yes  No
- 5: Do you have a power of attorney for your spouse, children or parents?  
 Yes  No
- 6: Do both your family and doctor know about your healthcare wishes?  
 Yes  No
- 7: Do you know your rights as a tenant?  
 Yes  No
- 8: Can someone sign legal documents for you if you become disabled?  
 Yes  No

# Court Related Revenue Collected by the Clerks of Court FY 2014-15 Estimates



Totals may not be exact due to rounding.

Source: Revenue as reported by the February 17, 2015 Article V Revenue Estimating Conference, and the Florida Department of Revenue for revenue sources not tracked by the Conference.

Possible GR Revenue Sources - Article V REC

Grouping	Revenue Source	Actual Revenue Received					Minimum Revenues Collected	Average Revenues Collected	Maximum Revenues Collected	% Difference between Min. and Max.
		FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14				
Circuit Family	\$25 of additional \$32.50 charge for petitions for dissolution of marriage	\$1,994,443	\$1,932,223	\$1,853,488	\$1,714,524	\$1,667,509	\$1,667,509	\$1,832,438	\$1,994,443	19.6%
Circuit Foreclosure	\$195 in filing fees for circuit civil action relating to real property or mortgage foreclosure	\$4,833,251	\$3,155,467	\$3,927,610	\$4,515,188	\$3,206,281	\$3,155,467	\$3,927,559	\$4,833,251	53.2%
	\$700 in filing fees for circuit civil action relating to real property or mortgage foreclosure	\$157,772,656	\$69,878,100	\$82,033,292	\$82,517,757	\$44,059,639	\$44,059,639	\$87,252,289	\$157,772,656	258.1%
	\$930 in filing fees for circuit civil action relating to real property or mortgage foreclosure	\$80,882,928	\$35,812,763	\$38,577,466	\$39,136,897	\$19,209,254	\$19,209,254	\$42,723,861	\$80,882,928	321.1%
Counterclaims	\$295 or \$395 counterclaim filing fee for circuit civil action	\$3,940,676	\$3,709,557	\$3,771,100	\$4,339,573	\$4,704,429	\$3,709,557	\$4,093,067	\$4,704,429	26.8%
	\$395 / \$900 / \$1,900 counterclaim filing fee for circuit civil action	\$2,633,863	\$1,885,120	\$1,438,483	\$616,836	\$596,980	\$596,980	\$1,434,256	\$2,633,863	341.2%
	\$295 counterclaim filing fee for county civil action	\$588,724	\$497,066	\$489,721	\$452,989	\$272,635	\$272,635	\$460,227	\$588,724	115.9%
Appellate	First \$80 of \$280 (or \$80) appellate filing fee	\$434,242	\$396,332	\$413,217	\$358,837	\$560,263	\$358,837	\$432,578	\$560,263	56.1%
	Supreme Court & DCA filing fees & service charges - Pro Hac Vice	\$13,600	\$15,800	\$20,600	\$19,000	\$18,830	\$13,600	\$17,566	\$20,600	51.5%
	Supreme Court & DCA filing fees & service charges - Other	\$1,947,952	\$2,012,312	\$1,993,080	\$1,982,013	\$2,129,541	\$1,947,952	\$2,012,980	\$2,129,541	9.3%
Additional Revenue pursuant to Ch. 2008-111	DUI	\$2,468,144	\$2,348,204	\$2,210,397	\$2,164,000	\$2,248,322	\$2,164,000	\$2,287,813	\$2,468,144	14.1%
	Issuance Summons	\$25,775,399	\$15,632,521	\$16,694,796	\$16,040,795	\$11,541,250	\$11,541,250	\$17,136,952	\$25,775,399	123.3%
	Traffic Administration (\$12.50)	\$29,162,106	\$29,500,037	\$29,124,711	\$29,445,847	\$27,493,459	\$27,493,459	\$28,945,232	\$29,500,037	7.3%
	All other	\$34,424,648	\$32,780,951	\$32,879,694	\$32,448,338	\$30,970,444	\$30,970,444	\$32,700,815	\$34,424,648	11.2%
Traffic	Remaining \$30 of \$158 civil penalty for violation of ss. 316.075(1)(c)1 or 316.074(1)	N/A	\$1,142,407	\$1,460,155	\$2,250,587	\$2,297,432	\$1,142,407	\$1,787,645	\$2,297,432	101.1%
	20.6% of remainder of civil penalties received pursuant to Ch. 318	\$19,963,098	\$18,227,043	\$16,387,912	\$15,084,846	\$14,663,996	\$14,663,996	\$16,865,379	\$19,963,098	36.1%
Adjudication Withheld	Fine imposed when adjudication is withheld	\$4,998,063	\$5,394,733	\$5,554,035	\$5,302,020	\$4,672,711	\$4,672,711	\$5,184,312	\$5,554,035	18.9%
Miscellaneous	\$25 additional fee upon receipt of application for marriage license	\$3,190,427	\$3,157,731	\$3,197,598	\$3,100,000	\$3,234,227	\$3,100,000	\$3,175,997	\$3,234,227	4.3%
	\$100 fee for attorneys appearing pro hac vice in circuit court	\$156,086	\$163,129	\$151,857	\$130,000	\$140,546	\$130,000	\$148,324	\$163,129	25.5%
	\$100 fee for attorneys appearing pro hac vice in county court	\$9,502	\$2,088	\$1,647	\$10,000	\$2,075	\$1,647	\$5,062	\$10,000	507.2%
	75% of any amount recovered by state attorney for fraudulent indigency claims in criminal proceedings*	\$195,786	\$26,826	\$2,162	\$130,000	\$1,554	\$1,554	\$71,266	\$195,786	12498.7%
	75% of any amount recovered by state attorney for fraudulent indigency claims in civil proceedings*	\$175,498	\$231,768	\$236,394	\$10,000	\$268,049	\$10,000	\$184,342	\$268,049	2580.5%
	Up to \$10,000 civil penalty assessed against persons found to have committed deceptive and unfair trade practices	N/A	\$6	\$4,401	\$5,391	\$6,950	\$6	\$4,187	\$6,950	115926.7%
	<b>Total</b>		<b>\$375,561,092</b>	<b>\$227,902,182</b>	<b>\$242,423,817</b>	<b>\$241,775,437</b>	<b>\$173,966,378</b>	<b>\$170,882,905</b>	<b>\$252,684,148</b>	<b>\$379,981,632</b>

Note: Shaded rows represent revenue associated with fees for attorneys appearing pro hac vice.

\* FY 2012/13 revenue collected within these sources have not been verified by the Department of Revenue.