

ADDRESSING THE NEEDS OF SELF-REPRESENTED LITIGANTS
IN OUR COURTS

FINAL REPORT AND RECOMMENDATIONS

Respectfully submitted by
The Supreme Judicial Court Steering Committee
on Self-Represented Litigants

November 21, 2008

THE SUPREME JUDICIAL COURT STEERING COMMITTEE

ON SELF-REPRESENTED LITIGANTS*

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Hon. Maura S. Doyle, Clerk of the Supreme Judicial Court for
Suffolk County

Hon. Peter F. Doyle, First Justice, Newburyport District Court

Hon. Geraldine S. Hines, Associate Justice, Superior Court

Hon. Diana H. Horan, First Justice, Worcester Housing Court

Hon. Thomas C. Horgan, Associate Justice, Boston Municipal Court

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* Formerly serving on the Supreme Judicial Court Steering Committee on Self-Represented Litigants were: **Hon. Thomas P. Billings**, Associate Justice, Superior Court; the late **Hon. Lawrence B. Wernick**, Associate Justice, Superior Court; **John H. Cross, Esq.**, Pro Se Coordinator, Probate and Family Court Administrative Office; and **David A. Schwartz, Esq.**, formerly Assistant Register, Suffolk Probate and Family Court.

Introduction

The Supreme Judicial Court Steering Committee on Self-Represented Litigants was established in early 2002 in response to the challenges posed by the growing numbers of civil litigants who appear in our courts without counsel. It is estimated that currently at least 100,000 litigants represent themselves in civil matters in the Massachusetts state courts each year. Based upon past experience and nationwide trends, we can anticipate that this number will only increase in the future. Although the growth in self-representation affects all of our court departments, its greatest impact is felt in the Probate and Family Court, where, depending upon the county, as many as 80% of family law cases involve at least one self-represented party, and in the Housing Court, where self-representation is the general rule among tenants and, increasingly, among landlords.

Studies have shown that, even though there may be other contributing factors, the primary reason for the growth in self-representation is lack of financial resources. Because of budget constraints, legal services programs are forced to turn away many of those eligible for free legal assistance. In addition, significant numbers of working class and even middle class individuals are finding themselves unable to afford the services of private attorneys. Given the current economic downturn, there

is every reason to expect that still more individuals will find it necessary to bring or defend civil cases of great personal importance - involving family, housing, employment, and financial issues - without the benefit of counsel.

The growth in self-representation has grave implications for access to and the delivery of justice, case management, and public confidence in our courts. Cases involving self-represented litigants often require significantly more time from judges and court staff; they put judges and court staff in the difficult and sometimes stressful position of trying to deal fairly with self-represented parties without compromising neutrality; they create ethical and practical challenges for counsel in cases where one side is represented and the other is not; and the inability of some self-represented litigants to understand and comply with court rules and procedures may make it impossible for their cases, however worthy, to be decided on the merits.

Our court leadership appreciates the gravity of this issue and is committed to ensuring meaningful access to justice for the self-represented. Recently, both Chief Justice Margaret H. Marshall and Chief Justice for Administration and Management Robert A. Mulligan formally announced that the challenges presented by the increasing number of self-represented litigants

and by other groups who face barriers in making effective use of the courts will be a major focus of the Massachusetts court management agenda. Individual court Departments already have taken many important steps to better serve the self-represented, such as adopting standardized forms, placing self-help resources on the internet, developing handouts and other educational materials, and coordinating with the bar to establish lawyer for the day and other pro bono programs. A particularly effective innovation has been the growing use of specialized support personnel, such as Housing Court Specialists and Family Law Facilitators. The Trial Court law libraries also have played an essential role in developing print and web-based resources for the self-represented and operating as de facto self-help centers. And, of course, the Trial Court's implementation of time standards and other performance metrics has benefitted self-represented litigants as well as those represented by counsel.

In the final analysis, however, meeting the challenge of the growth in self-representation requires coordinated, system-wide policies and innovations. For that reason, over the past six years, the Steering Committee has endeavored to identify and promote initiatives that have the potential to be useful across Departmental lines. Mindful of the need for the courts to be cost-conscious (even before the present budget crisis), the

Steering Committee has placed particular emphasis upon exploring no-cost or low-cost initiatives.

After doing research into nationwide best practices and specific Massachusetts concerns, and with outreach to interested groups and organizations, the Steering Committee targeted six specific areas for investigation and action: (1) expanding access to legal representation through the use of limited assistance representation; (2) developing judicial guidelines and training programs that foster active, neutral engagement by judges with self-represented litigants, consistent with both the Canons of Judicial Ethics and the fair administration of justice; (3) developing a comprehensive resource and referral guide for self-represented litigants in civil cases; (4) creating a handbook written by and for court staff that sets out principles for distinguishing legal information from legal advice and lays out best practices for serving the self-represented in each of our trial and appellate courts; (5) investigating data collection methods and technological innovations that would help address the challenge of increased self-representation; and (6) investigating physical and programmatic improvements that would make our courthouses more "user friendly."

In view of the impending expiration of the term of the Steering Committee, which is scheduled to "sunset" in February,

2009, we submit this report to summarize the status of the Steering Committee's work in these six areas and to offer recommendations for future efforts. It is our hope that despite difficult economic times - indeed, because of them - our commitment to improving access to justice for all court consumers will remain steadfast.

Acknowledgments

The Steering Committee expresses its deep gratitude to Chief Justice Margaret H. Marshall, the Justices of the Supreme Judicial Court, and Chief Justice for Administration and Management of the Trial Court, Robert A. Mulligan, for placing access to justice for self-represented litigants front-and-center among the courts' priorities. We also are grateful to Appeals Court Chief Justice Phillip Rapoza, former Appeals Court Chief Justice Christopher J. Armstrong, and the current and former Chief Justices of all of the Trial Court Departments, whose support facilitated the work of the Steering Committee.

We appreciate the interest shown in our work by the Court Management Advisory Board and its Chair, Michael B. Keating, Esq. We also recognize the important companion efforts of the Access to Justice Commission and its Chair, former Chief Justice Herbert P. Wilkins, and of the Boston Bar Association Task Force on Expanding the Civil Right to Counsel.

The Steering Committee's initiatives could not have been developed or implemented without the collaboration of countless individuals and groups within and outside the court system. Clerks and Registers throughout the Commonwealth, and their dedicated staff, have been instrumental in developing and implementing our projects. The Judicial Institute and its

Director of Judicial Education, Ellen M. O'Connor, Esq., have played a major role in creating the Steering Committee's publications and training programs. Leaders and members of our state and local bar associations, pro bono organizations, and the legal services community, have been our vital partners. We thank Jayne B. Tyrrell, Esq., Executive Director of the Massachusetts IOLTA Committee, and retired Probate and Family Court Associate Justice Edward M. Ginsburg for their extraordinary assistance with the work of the Steering Committee; and we note with particular pride that the co-chairs of our Expanding Access to Legal Representation Working Group, Attorneys Edward Notis-McConarty and John G. Dugan, received well-deserved recognition when, as a result of their efforts on behalf of the Steering Committee, they were selected in 2008 to receive the John Adams Pro Bono Publico Award from the Supreme Judicial Court.

We have received indispensable advice and counsel from the national Self-Represented Litigation Network and its coordinator, Richard Zorza. Harvard Law School has supplied the Steering Committee with a steady stream of student research assistants enrolled in the Delivery of Legal Services Class taught by Professor Jeanne Charn, Director of the Bellow-Sacks Access to Civil Legal Services Project. The American Judicature Society and the Flaschner Judicial Institute deserve our thanks for

collaborating with us on an ambitious judicial training conference.

We also recognize and express our special gratitude for the important contributions of individuals formerly associated with the Steering Committee. The late Hon. Lawrence B. Wernick served as a member of the Steering Committee and the Subcommittee on Judicial Guidelines before his retirement from the Superior Court. Upon Judge Wernick's retirement, he was succeeded by the Hon. Thomas P. Billings, Associate Justice, Superior Court. Judge Billings ably served several terms on the Steering Committee, as did another former member, Marlene M. Ayash, Esq., Title Examiner II/Administrative Attorney, Land Court. Attorney David A. Schwartz, formerly Assistant Register of the Suffolk Probate and Family Court, and Attorney John H. Cross, Pro Se Coordinator, Probate and Family Court Administrative Office, were also valued members of the Steering Committee. Hon. Elaine M. Moriarty, Associate Justice, Probate and Family Court, played an indispensable role in the work of the Steering Committee as chair of its sub-committee on Judicial Guidelines.

The Steering Committee could not have functioned without able staff support. We thank Attorneys Christine P. Burak, LaDonna J. Hatton, and Karyn F. Franzek, who were instrumental in the early work of the Steering Committee; and we extend our

special thanks to Sandra E. Lundy, Esq., who has been the Supreme Judicial Court Liaison to the Steering Committee since 2005. The accomplishments of the Steering Committee are due in no small part to her dedication and hard work.

Many others, too numerous to identify, contributed time, effort, and ideas to our projects.

We thank them all.

Steering Committee Initiatives

1. Expanding Access to Legal Representation through Limited Assistance Representation.

The Steering Committee's most far-reaching initiative has been to experiment with expanding access to legal representation through Limited Assistance Representation (LAR) (also known as "unbundling"). LAR allows a lawyer and client to agree that the lawyer will assist the client with part of a legal matter, while the client will self-represent on other aspects of the case. For example, the lawyer may limit his or her services to advising the client behind the scenes on court procedures, to providing assistance with document preparation, or to appearing in court on specific occasions or for limited purposes.

Experience elsewhere has shown that LAR is appropriate for use in many categories of cases typically involving self-represented parties and that it is an extremely helpful innovation for several reasons: (1) it allows legal aid and pro bono attorneys to assist more people; (2) it allows people who cannot afford full service representation but who have some funds to pay a lawyer to obtain meaningful assistance with their legal problems; and (3) it has a positive impact on the operations of the courts. In states where this method of representation has been used widely (California and Maine being notable examples) it also has shown itself to be of great benefit to the private bar:

attorneys find that providing limited scope representation connects them with litigants who otherwise would not hire an attorney and that representing clients on a limited assistance basis is professionally satisfying and profitable.

To test the feasibility of adopting LAR in Massachusetts, the Steering Committee recommended to the Supreme Judicial Court that we conduct a pilot project in certain divisions of the Probate and Family Court Department. This recommendation came about as a result of the work of two groups, each of which was comprised of stakeholders from the Judiciary, the private bar, and the legal services community: the Steering Committee's Expanding Access to Legal Representation Working Group,¹ which investigated the "unbundling" concept and designed the pilot project, and the Committee's LAR Advisory Group,² which consulted

¹ Individuals who served on this working group at various times are: Co-chairs John G. Dugan, Esq., and Edward Notis-McConarty, Esq.; Hon. Diana H. Horan, First Justice, Worcester Housing Court; Hon. Gail L. Perlman, First Justice, Hampshire Probate and Family Court; Hon. Judith Nelson Dilday, Associate Justice, Middlesex Probate and Family Court; Marlene M. Ayash, Esq., Title Examiner II/Administrative Attorney, Land Court; Bruce Eisenhut, Esq., Board of Bar Overseers; Jayne B. Tyrrell, Esq., Executive Director, Massachusetts IOLTA Committee; Marnie Warner, Law Library Coordinator, Trial Court Law Libraries; and attorneys Helen Brown Bryant, Richard E. Eurich, Martha J. Koster, Richard J. McMahon, and David A. Schwartz.

² Individuals who served on the Advisory Group at various times are: Hon. Edward M. Ginsburg (ret.), Chair; Mary M. Connolly, Esq., Volunteer Lawyers Project; John H. Cross, Esq., Administrative Office of the Probate and Family Court; Elaine Epstein, Esq.; Leslee Klein, Esq., Community Legal Services and Counseling Center; Lori A. Landers-Carvalho, Esq., Hampden Probate and Family Court; Ilene Mitchell, Esq., Administrative Office of the Probate and Family Court; Samuel B. Moskowitz, Esq.; Pauline Quirion, Esq., Greater Boston Legal Services; Edward P. Ryan, Jr., Esq.; Denise Squillante, Esq.; and Jayne B. Tyrrell, Esq., Massachusetts IOLTA Committee.

with the Working Group and the Administrative Office of the Probate and Family Court on the implementation of the pilot project.

The Supreme Judicial Court accepted the recommendation of the Steering Committee and, on August 1, 2006, issued a Standing Order authorizing the pilot project. Under the Standing Order, an attorney may qualify to participate in the pilot project by completing an information program developed by the Steering Committee. Qualified attorneys are authorized to limit the scope of their representation, so long as the limitation "is reasonable under the circumstances and the client gives informed consent." Qualified attorneys also are authorized to assist clients with the preparation of court documents ("ghostwriting"), provided that the documents include the notation that they were "prepared with the assistance of counsel."

Initially the pilot project was established only in the Suffolk and Hampden Divisions of the Probate and Family Court, but later it was expanded to the Norfolk Division, as well. These courts were chosen both because they are among the busiest courts in a Department where large numbers of litigants appear without counsel, and because they represent a geographic and demographic cross-section of the Commonwealth. The pilot project went into effect on November 1, 2006, in Hampden and Suffolk

Counties, and on September 1, 2007, in Norfolk County. Its original expiration date has been extended, so that, **currently, the pilot project is scheduled to terminate on December 31, 2008.**

Members of the Steering Committee, the Advisory Group and others provided the judges, Registers, and court personnel in the pilot courts with training about LAR. The Steering Committee and the Administrative Office of the Probate and Family Court (in collaboration with the Massachusetts Bar Association, the Boston Bar Association, the Volunteer Lawyers Project, Senior Partners for Justice, and the Hampden and Norfolk County Bar Associations) oversaw the qualification of over three hundred attorneys to participate in the pilot project. With the cooperation of the Registers in the pilot courts, pro bono programs to provide LAR to indigent litigants were established by the Volunteer Lawyers Project, Senior Partners for Justice, and the Boston Bar Association. Legal services attorneys employed LAR to serve eligible clients; and members of the private bar provided LAR services to clients who located them through the Massachusetts Bar Association's referral service, from lists of qualified attorneys maintained in the Registers' offices, and through the attorneys' own marketing efforts (including firm websites).

Recently, the Steering Committee undertook a formal evaluation of the pilot project. We sent surveys to

participating lawyers and judges, conducted structured personal interviews with the Registers of each pilot court, and solicited and received feedback from clients who received LAR services on either a pro bono or fee-for-service basis. In addition, Register Richard Iannella of the Suffolk Probate and Family Court conducted his own informal survey of attorneys participating in the pilot project in his court, which he was kind enough to share with us. The following is a summary of the results of the pilot project evaluation.

Attorneys' survey. Ninety-seven of two hundred attorneys responded to our attorneys' survey. In responses to separate questions, responding attorneys indicated in impressive numbers that they were "very satisfied" or "satisfied" with the overall pilot project training (96.7 %); the standard court forms for limited assistance representation (95.5 %); the response of judges to the pilot project (91.7%); and the response of court personnel (88%). In addition, a significant majority of responding attorneys (75.5 %) responded that they were "very satisfied" or "satisfied" with representing clients on a limited assistance basis. In narrative responses, a number of attorneys stated that they found LAR to be of great value to themselves and their clients, and they expressed the desire to see the pilot project more widely promoted. A number of others requested that

LAR be expanded to other counties and court Departments; and quite a few respondents highlighted the link between LAR and broadening access to justice.³ Appendix A provides a summary of the attorney survey, and Appendix B provides details of certain narrative responses. Appendix C is a copy of the survey conducted by Register Iannella.

Judges' survey. The judges' survey was equally encouraging. The survey originally was e-mailed, in December, 2007, and January, 2008, to the eleven judges then serving in the pilot courts. Nine judges completed the survey in full and two gave partial responses. Because one of the judges indicated that she had not yet had enough experience with the pilot project to respond to our questions fully, we sent the survey out a second time, in June, 2008, to the nine judges then sitting in the pilot courts. This time, six out of nine judges fully completed the survey, and three did not respond. Judges who had responded earlier had the chance to revise their responses in light of additional experience with the pilot project, if they so desired. A total of eleven judges responded to the surveys. We have

³ Some examples of narrative comments : "I have assisted several clients who would not have had any legal assistance without the program;" "it is an opportunity to help litigants and make them feel more at ease in the legal system;" "LAR is LONG overdue in Massachusetts. It's not just indigent citizens who need equal access to justice - it's also the working poor and the middle class . . . ;" "I think it is very important that LAR is available in family law, especially as an alternative for clients who have limited funds."

attached summary copies of each survey as Attachment D.

An overwhelming majority of judges in each survey "strongly agree[d]" or "agree[d]" that the pilot project resulted in more complete/correct written submissions. A majority "strongly agree[d]" or "agree[d]" that clients represented on a limited assistance basis had more realistic expectations about the outcome of their cases. A majority of responding judges also "strongly agree[d]" or "agree[d]" that LAR reduced frivolous motions and led to greater understanding by litigants of rulings from the bench. All of the responding judges reported that they were "very satisfied" or "satisfied" with the standard forms designed for the pilot project, the performance of attorneys representing clients on a limited assistance basis, and the response of court personnel to the pilot project. Judges also expressed a desire to see LAR more widely used. Appendix D provides details of certain of the judges' narrative responses.

Registers' survey. Our interviews with Registers Patrick W. McDermott (Norfolk), Thomas P. Moriarty, Jr. (Hampden), and Richard Iannella (Suffolk), which took place in July, 2008, showed strong support for LAR. Register McDermott indicated that on any given week, about 15-20 litigants in his court are being represented on a limited-assistance basis, for purposes of court appearances or document preparation. His office keeps a list of

LAR-qualified attorneys (121 at the time of the interview), which he personally maintains and makes available to his counter staff to share with potential LAR clients. Register McDermott is particularly pleased with the "ghostwriting" component of the pilot project, and "strongly agrees" that LAR has resulted in more complete/correct written submissions and a reduction in filing errors. He also "agrees" that LAR has resulted in a reduction in the time needed by counter staff to explain court procedures, increased the ability of clients to understand directions of court staff, and enabled court staff to be freed up for other responsibilities. He stated that he is "satisfied" with the standard court forms developed for the pilot project, and "very satisfied" with the response of the attorneys to the pilot project (including the response of his wife, a qualified LAR attorney who has participated in the pilot project). He reports that judges in his court "overwhelmingly accept" LAR. Register McDermott told us that he would like to see more guardianship cases litigated on a limited-assistance basis. He believes that more litigants would take advantage of LAR if they were aware of it, and would like to see more education of the public and of attorneys about this method of practice. He informed us that he will be placing posters in his courthouse informing litigants of the availability of LAR.

Register Moriarty estimated that his court has seen between 40-50 cases brought on a limited-assistance basis, and has a list of 85 qualified attorneys. He told us that most court-based referrals to the pilot project are made by Lori Landers, Esq., the Family Law Facilitator in his courthouse. The practice in his office is to flag LAR files with a special mark, so that judges can make sure to get as much done as possible when counsel appears. Register Moriarty reported that he "strongly agrees" that LAR representation has: increased litigants' understanding of court procedures, led to fewer problems with service of process, resulted in more appropriate demeanor of litigants toward the court and court staff ("they come in loaded for bear and leave saying 'thank you'"), reduced errors in filing, reduced the time needed by court staff to explain procedures and policies, increased litigants' ability to understand directions from court staff, and freed up staff time for other job responsibilities. He thought it particularly beneficial for his office to integrate the pilot project with the work of the Family Law Facilitator, and to administer the program in close cooperation with Western Massachusetts Legal Services and pro bono programs established by the Hampden County Bar and other organizations. Register Moriarty expressed his opinion that without LAR, improving delivery of justice to self-represented

litigants in his court "still wouldn't [get] to first base." He also indicated, however, that for both attorneys and judges, LAR remained something of a "sell." He believes that better publicity, resulting in more widespread use of LAR, will allow the practice to catch on, and that it will be beneficial to attorneys as well as judges, because it works particularly well in the case of marginally indigent litigants who can afford some degree of private representation.

Register Iannella estimated that about 96 cases have been heard in his court on a limited assistance basis. He told us that he has developed a brochure on the pilot project that is available at the counter, and that he intends to start including the brochure in packages concerning paternity, divorce, and other matters. He mentioned that the Volunteer Lawyers Project has been "great" in using LAR, noting that, every Friday, this program stations lawyers outside the courtroom to help litigants on a limited assistance basis. Register Iannella told us that the availability of LAR "probably" has had a positive effect on the operations of his staff and on the administration of justice, but that experience so far has been too limited to draw firm conclusions. While the bar has been very cooperative with the pilot project, he would like to see more people taking advantage of it, and thinks that judges should recommend from the bench

when self-represented litigants come before them. Register Iannella was of the opinion that the Suffolk judges were enthusiastic about the pilot project, but that many litigants were disinclined to take advantage of limited assistance representation unless it was completely free of charge. In general, he believes that LAR can be "very helpful" and would like to see more publicity about the practice so that it will be used more widely.

Clients' survey. Twenty-three pilot project clients with cases in the Hampden and Suffolk Divisions of the Probate and Family Court returned questionnaires asking for feedback on their experiences with LAR. Twenty clients responded that they were "very satisfied" or "satisfied" with being represented on a limited-assistance basis. Cost and incompatibility with counsel were cited by the three clients who were not satisfied with their experience. Appendix E provides copies of all client responses to the survey.

Overall assessment. The pilot project has been well-received by the participants and has demonstrated that LAR is an effective means of expanding access to legal representation for self-represented litigants and promoting the efficient administration of justice. The Steering Committee's thoughts concerning the future use of LAR in the courts of the

Commonwealth are set out below in the **Recommendations** section of this report.

2. Judicial Guidelines and Training.

Another priority initiative of the Steering Committee was the development of comprehensive guidelines for judges to help them in their courtroom interactions with self-represented litigants. This was a particularly challenging project because, at the time we initiated this project, no such guidelines had been promulgated elsewhere.

After an enormous amount of work by a sub-committee chaired by Probate and Family Court Associate Justice Elaine M. Moriarty,⁴ including an e-mail survey of every judge in the system, and many opportunities for input and comment by interested parties, the sub-committee drafted proposed guidelines and accompanying commentary. In December, 2004, the proposed guidelines were vetted with judges at a training program co-sponsored by the Steering Committee, the Flaschner Institute and the American Judicature Society. As a result of feedback received at the training program, the guidelines underwent additional drafting.

⁴ Other subcommittee members were: Hon. Thomas C. Horgan, Associate Justice, Boston Municipal Court; Hon. Peter F. Doyle, First Justice, Newburyport District Court; Hon. Diana H. Horan, First Justice, Worcester Housing Court; and Hon. Thomas P. Billings, Associate Justice, Superior Court. The late Hon. Lawrence B. Wernick, Associate Justice, Superior Court, was a member of the sub-committee until 2003.

In 2006, the Justices of the Supreme Judicial Court formally approved the final product: Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants. The Judicial Institute published the guidelines in booklet form and provided this publication to every judge in the Trial Court. The guidelines also were posted and remain available on court websites.

The Judicial Guidelines have become a national model. The National Center for State Courts' publication, Best Practices in Court-Based Programs for the Self-Represented, identifies them as an example to be consulted; they have been cited on law-related websites, including those of the National Legal Aid and Defender Association and the Harvard Law School blog Self-Help Law ExPress (SHLEP); and they have been discussed and commended in R. Engler, Ethics in Transition: Unrepresented Litigants and the Changing Judicial Role, 22 Journal of Law, Ethics & Public Policy 367 (2008), as a sign of progress in recognizing the need for judges to assist the self-represented within the confines of the ethical rules governing judges.

In addition to the December, 2004, training program co-sponsored by the Steering Committee, the Flaschner Institute and the American Judicature Society, other programs concerning judicial interaction with the self-represented have been held or

are anticipated to be held by various Trial Court Departments. In November, 2007, representatives of the Steering Committee, the Judicial Institute, and each of the Trial Court Departments attended the National Judicial Conference on Leadership, Education and Courtroom Best Practices in Self-Represented Litigant Cases,⁵ which was held at Harvard Law School under the sponsorship of the Self-Represented Litigation Network, the American Judicature Society, the Harvard Law School Bellow-Sacks Access to Civil Legal Services Project, the National Center for State Courts, and the National Judicial College. This conference brought together judges and court administrators from approximately 46 states and territories to explore judicial best practices in interacting with self-represented litigants. As a result of our participation, we were exposed to the latest ideas about judicial training in this area and obtained a model curriculum and practical bench guide that can be adapted for use in Massachusetts.

3. Resource and Referral Guide for Self-Represented Litigants.

A third important initiative was the creation of a

⁵ The members of the Massachusetts delegation were: Hon. Cynthia J. Cohen, Associate Justice, Appeals Court; Hon. Steven D. Pierce, Chief Justice, Housing Court; Hon. Karen F. Scheier, Chief Justice, Land Court; Hon. Patricia E. Bernstein, Associate Justice, Boston Municipal Court; Hon. Peter F. Doyle, First Justice, Newburyport District Court; Hon. Edward F. Donnelly, Jr., Associate Justice, Probate and Family Court; and attorneys John H. Cross, Probate and Family Court Administrative Office; Maria I. Peña, Superior Court; Ellen M. O'Connor, Judicial Institute; and Sandra E. Lundy, Supreme Judicial Court.

comprehensive reference guide for individuals who are considering representing themselves in a civil case. The objective was to collect in one place general information that would be useful to self-represented civil litigants across Departmental lines, e.g.: what is expected of self-represented litigants; where and how to locate a lawyer or other sources of legal assistance; basic facts about the roles played by various people in the court system; a description of the way that civil cases usually proceed; and a glossary of legal terms. Materials of this nature can help self-represented litigants pursue their cases more effectively and also can reduce the time that must be spent by administrative and judicial staff explaining basic court processes.

A working group co-chaired by Ellen M. O'Connor, Esq.,⁶ the Judicial Institute's Director of Judicial Education, and Marnie Warner, the Law Library Coordinator of the Trial Court Law Libraries, spent many months researching, drafting, and organizing the guidebook. The final product, Representing Yourself in a Civil Case: Things to Consider When Going to Court, was approved by the Supreme Judicial Court in 2006, and published by the Judicial Institute. Two copies of the guidebook went to

⁶ Working group members were: Co-chairs Ellen M. O'Connor, Esq., Judicial Institute, and Marnie Warner, Trial Court Law Libraries; Victoria Lewis, Esq., Judicial Institute; Jocelynne Welsh, Esq., Probate and Family Court Administrative Office; and Holly Suozzo, Esq., then-Law Clerk to Justice Cohen.

Clerk-Magistrates and Clerks of Court (civil business) of all Trial Court Departments; Registers of Probate and Chief Probation Officers of the Probate and Family Court Department; the Recorder of the Land Court; and the Chief Housing Specialists of Housing Court Department. Multiple copies also went to the Trial Court law libraries, and the guidebook is available through our court websites.

4. Guidelines and Training for Court Staff.

The Steering Committee's fourth initiative -- one that was envisioned as going hand in hand with judicial guidelines and training and the resource and referral guide for self-represented litigants -- was to develop guidelines and training for court staff. Another working group of the Steering Committee currently is in the final stages of the first phase of this work, preparing a handbook for court staff to give guidance on the distinction between the provision of legal information and the provision of legal advice and to clarify best practices for serving the self-represented in each of our trial and appellate courts. The working group, which is chaired by John H. Cross, Esq. Pro Se Coordinator of the Probate and Family Court and a former member of the Steering Committee, is composed of court staff from every

court level and Department.⁷ It currently is finalizing a draft document for examination and comment by key stakeholders and eventual submission to the Steering Committee for its review. When this process is completed, the Steering Committee will submit the manual to the Supreme Judicial Court for approval. It is hoped that the manual eventually will be published and widely distributed to court staff by the Judicial Institute. The working group hopes that it then can turn its attention to developing practical training materials and programs to complement this publication.

5. Technology Initiatives.

A fifth initiative was directed at technology. The Steering Committee determined early on that having solid statistical information is essential to developing a more accurate understanding of the extent of self-representation throughout the court system and the consequences of self-representation for litigants and court administration. Better data collection also is necessary to target resources where they are most needed and

⁷ Working Group members are: John H. Cross, Esq., Administrative Office of the Probate and Family Court, Chair; Hon. Maura S. Doyle, Clerk of the Supreme Judicial Court for Suffolk County; Sandra A. Caggiano, Esq., First Assistant Clerk-Magistrate, East Boston Division, Boston Municipal Court; R. David D'Attilio, Records Specialist, Appeals Court; Mary K. Hickey, Esq., First Assistant Clerk-Magistrate, Norfolk Superior Court; Paul J. Kenneally, Esq., Legal Assistant, Appeals Court; Thomas R. Lebach, Esq., Clerk-Magistrate, Plymouth County Division, Juvenile Court; Cynthia Campbell, Trial Court Law Libraries; Cynthia A. Robinson-Markey, Esq., Legal Counsel to the Chief Justice, Boston Municipal Court; and William S. Weiss, First Assistant Clerk-Magistrate, Worcester Housing Court.

to establish baselines for assessing the success of programs.

In 2004, a small working group of the Steering Committee⁸ identified the types of information that would be helpful in this regard, and consulted with Appeals Court Justice James McHugh and others involved with the MassCourts project to discuss how best to obtain it. They learned that the implementation of MassCourts should result in significantly improved data collection and reporting. The Steering Committee also provided input into issues relating to e-filing and the wireless courtroom project, to ensure that the adoption of these innovations will take into account the particular needs of self-represented litigants.

The Steering Committee also examined how other states make use of court websites, computerized document assembly, and other technological tools to better serve self-represented litigants. The Steering Committee believes that, although our courts have continually updated their websites to include more information for court users and, in some cases, have adopted computerized forms and document assembly programs, this is an area where much more could be done even at minimal expense.

6. User Friendly Courts.

The sixth initiative that arose from the Steering

⁸ The members of this working group were: Marlene M. Ayash, Land Court; LaDonna J. Hatton, Esq., Supreme Judicial Court; Gene Koo, MassLegal Website Project; Mary K. Ryan, Esq.; Jayne B. Tyrrell, Esq., Massachusetts IOLTA Committee.

Committee's original priorities for action was its "user friendly courts" project. The objective was to investigate ways that space, resources, and systems in our courthouses might be adapted to better serve self-represented litigants and, for that matter, all court consumers. In connection with researching "user friendly" innovations adopted in other states, members of the Steering Committee and representatives of AOTC's Court Capital Projects and the Executive Branch's Division of Capital Asset Management spent a day visiting courts in Connecticut to see how that state has adapted its courthouses and courthouse systems. We met with key court administrators and others and were shown innovations that, by all accounts, have been extremely beneficial, not only to self-represented litigants but also to judges, court personnel, attorneys, and members of the public generally. These include court service centers, information desks, clear signage, self-help materials in multiple languages (including very simply-written, comic book-style manuals for individuals of limited literacy), and a formal system for allocating and coordinating the services available to litigants in Clerks' offices, court service centers, and court law libraries.

In Connecticut, as in many other states, perhaps the most important component of the user friendly courthouse is the court

service center. A court service center is an office in the courthouse, usually headed by a staff attorney and supported by law students, paralegals, volunteer lawyers, or other service providers, who are trained and committed to working with self-represented litigants and others. (In Connecticut, approximately 20% of those who take advantage of court service centers are attorneys.) The typical court service center is outfitted with work tables, a copy machine, printed materials and/or videos describing court processes for different types of cases, access to computers for online instructions and forms, hard copy packets of pre-printed forms and instructions, and information about social service agencies and pro bono, limited assistance and other attorney services. In Connecticut, court service centers have been installed even in small spaces. Some larger court service centers also have supervised play areas for children, to keep them occupied while their parents obtain assistance.

Court service center staff are trained to help visitors identify, understand, and complete the forms that are needed for a particular case. The goal is to better prepare litigants (and their paperwork) before they see a judge and to free Clerks' office staff to spend more time on case flow and processing. The judges and court staff whom we met in Connecticut commented that they could not imagine doing their jobs without these centers.

As a result of our visit, Court Capital Projects and the Division of Capital Asset Management are now including space for court service centers in plans being developed for new courthouses. Substantial additional work is needed, however, to determine the best ways to adapt programs of this type for use in Massachusetts, and to identify sources of funding for them.

7. Other Initiatives and Activities.

a. Amendment to Student Practice Rule.

The Steering Committee proposed, and the Supreme Judicial Court adopted, an amendment to Supreme Judicial Court Rule 3:03 concerning legal assistance by law students to permit properly qualified law students to represent clients in the Probate and Family Court Department under the same terms that such students have been permitted to represent clients in the District, Housing, Juvenile, and Boston Municipal Courts, that is, by written approval of the dean of the student's law school as to the student's character, legal ability, and training.

b. Coordination with Other Judicial Branch Entities.

The Steering Committee has interfaced with the Court Management Advisory Board, the Access to Justice Commission, the Supreme Judicial Court Pro Bono and Alternative Dispute Resolution Committees, the Administrative Office of the Trial Court, and individual Trial Court Departments in order to

facilitate the exchange of ideas and information about the Judiciary's initiatives regarding self-represented litigants; to encourage creative ways of responding to the issue; and to provide advice, assistance, and resources when requested.

c. National Networking and Collaboration.

Because the growth in self-representation is a national concern, the Steering Committee has found it extremely useful to obtain ideas and information from other states and from national organizations devoted to the improvement of the courts. As previously noted, in November, 2007, a Massachusetts delegation attended the National Judicial Conference on Leadership, Education and Courtroom Best Practices in Self-Represented Litigation. Justice Cohen and, to a lesser extent some other Steering Committee members, also participate in regularly-scheduled national conference calls of judges, court personnel, and researchers, sponsored by the Self-Represented Litigation Network.

d. Best Practices Assessment.

Because the Steering Committee is comprised of representatives of all courts and court Departments, it was possible for us to pool our knowledge for purposes of doing a rough assessment of existing Massachusetts programs and policies that serve the self-represented in comparison with those

recommended in the National Center for State Courts' 2008 publication, Best Practices In Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts and Resources, prepared by the Self-Represented Litigation Network. This lengthy document, which is a helpful roadmap for future efforts, is being provided to the Justices and the CJAM under separate cover.

We discovered that in major respects, our courts are at the forefront of innovation (e.g., limited assistance representation, judicial ethics and education, court management practices, effective use of law libraries). However, despite positive efforts by individual Trial Court Departments, we have not made as much headway as other states in adopting more costly innovations (e.g., court service centers and services, technological assistance, frequent and comprehensive staff education, form and process simplification, and resources for self-represented litigants whose primary language is not English).

Recommendations

The Steering Committee makes the following recommendations for sustaining and building upon the initiatives described

above.⁹

1. Expansion of Limited Assistance Representation.

As an initial matter, **the Steering Committee strongly recommends that the current pilot project not be allowed to expire on December 31, 2008.** Our evaluation has shown that it is working smoothly and is resulting in significant benefits to litigants, legal services organizations, pro bono groups, the private bar and the courts. The pilot courts should be permitted to continue to use LAR indefinitely.

We also propose that the Supreme Judicial Court move towards making LAR available for use in all of our courts, on a permanent, statewide basis. Eventually, the Court may wish to follow the lead of other states, such as Maine, California, and New Hampshire, that have made limited scope representation universally available by means of formal rule changes.¹⁰ However, in the short term, the Steering Committee believes that

⁹ The order in which these recommendations are placed tracks the discussion of the initiatives described above and does not reflect the Steering Committee's view of their relative importance.

¹⁰ As part of its Ethics 2000 project, the American Bar Association amended Model Rule of Professional Conduct 1.2(c) in order to, in the Reporter's words, "more clearly permit, but also more specifically regulate, agreements by which a lawyer limits the scope of representation to be provided a client." Prior to the amendment, the Model Rule provided: "A lawyer may limit the objective of the representation if the client consents after consultation." (Massachusetts Rule 1.2 (c) is still so worded.) As amended, Model Rule 1.2 (c) now reads: "A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent."

the better course would be to permit individual Trial Court Departments to adopt LAR in some or all categories of cases, as each Department sees fit, by means of standing orders like the one used in the pilot project. The advantage of this approach would be to permit gradual adjustment to the practice, which depends for its success upon appropriate training of participating judges, court staff, and attorneys. The Steering Committee or another court entity familiar with the essential characteristics of properly designed LAR programs should be enlisted to assist in the drafting of the standing orders and the development of training programs.

We note that Probate and Family Court Chief Justice Paula M. Carey would like to expand LAR to all divisions of that court, Housing Court Chief Justice Steven D. Pierce is particularly eager to employ LAR, and other Department chiefs also have expressed interest in adopting LAR for use in at least some types of cases. We note, too, that the Access to Justice Commission fully supports the expansion of LAR.

2. Judicial Guidance and Education.

To provide further guidance to the Judiciary, the Steering Committee recommends that the Supreme Judicial Court consider revising the Massachusetts Code of Judicial Conduct to include either a rule or a comment consistent with Comment [4] to Canon

2, Rule 2.2, in the revised (2007) version of the American Bar Association Model Code of Judicial Conduct. Doing so would make clear what the Massachusetts judicial guidelines implicitly recognize, namely, "[i]t is not a violation of [a judge's obligation to perform all duties of judicial office fairly and impartially] to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard."

The Steering Committee also recommends that our courts build upon prior judicial training initiatives and the work of the state team that attended the November, 2007, National Judicial Conference on Leadership, Education and Courtroom Best Practices in Self-Represented Litigant Cases, by developing and running education programs in all court Departments based upon the model curriculum and bench guide developed for that conference and available through the Knowledge and Information Service of the National Center for State Courts. Our goal should be to provide all Trial Court judges, new and experienced, with ethics clarification and practical courtroom techniques that foster neutral but active engagement with self-represented litigants.

3. Self-Help Materials.

In general, all court Departments should be encouraged to continue their efforts to adopt simplified forms where appropriate and to develop hard copy and computerized self-help

materials. In addition, a small but useful step would be to place Representing Yourself in a Civil Case: Things to Consider When Going to Court on the web in hyperlinked, rather than PDF format, which would allow the reader to navigate easily to different sections of the document and to other web resources. This publication also must be updated periodically to provide accurate referral information. Because it is aimed at litigants with a fair degree of literacy, it is no substitute for other types of self-help materials. Webcasting, for example, can be a better way to impart information to self-represented litigants who have low literacy or for whom English is not their primary language.

4. Staff Guidance and Education.

The Steering Committee recommends that, after completion and approval of the staff manual currently in progress, our courts, with the active participation of our Clerks and Registers, develop and run training programs for all court staff who interface with the public. The purpose of these training programs would be to give practical guidance on how court staff may provide appropriate information to self-represented litigants while maintaining the neutrality of the court. Approximately one third of the states have such training programs in place. The Steering Committee's Working Group on Staff Guidelines and

Training stands ready to play a role in the development and implementation of staff training programs as soon as it completes the staff manual.

5. Expanded Use of Technology.

The Steering Committee recognizes that ambitious technology initiatives may be impossible at this time because of budget constraints. However, assuming that resources can be found through grants or otherwise, the Steering Committee recommends that we investigate and implement technological innovations, such as more sophisticated websites with multiple language support, greater use of document assembly programs, and other computerized self-help resources augmented by phone-based customer assistance. Experience elsewhere has shown that such innovations can greatly aid self-represented litigants in understanding court processes and preparing adequate court papers.

6. Experimentation with Court Service Centers.

The Steering Committee recommends that one or more court service centers be established on an experimental basis in courthouses that serve multiple court Departments. Recognizing that it may not be feasible to fund such a project out of the court budget, we recommend further that outside funding be investigated and sought and that the experimental court service centers make use of trained volunteer lawyers and law students to

assist paid staff.

Related to this effort, our courts should develop a protocol, like that used in Connecticut, for integrated, complementary assistance to the self-represented and other court users by Clerks' offices, court service centers and our Trial Court law libraries.

7. Volunteer Assistance.

We are fortunate to have a remarkable pro bono culture among the private bar in Massachusetts. However, in addition to encouraging pro bono assistance from the bar, our courts should be looking to other potential sources of volunteer assistance. For example, we could reach out to our local law schools and colleges to provide volunteers to serve in our courts. California has had remarkable success with its JusticeCorps, composed of trained students who assist self-represented litigants under the supervision of designated court staff. Grants from the federal AmeriCorps program pay for the court staff who run the program, for training expenses, and for student stipends.

8. Establishment of a Senior-Level Position within the Administrative Office of the Trial Court to Direct Court-Based Policy and Programs Relating to Access to Justice.

The Steering Committee is composed of individuals whose committee work is in addition to demanding jobs within the

judicial branch. Although the Steering Committee is very proud of its work, the projects that it has undertaken necessarily have been constrained by its lack of institutional authority to make budget decisions, to allocate resources or to provide close coordination with the elected branches of government. Such institutional authority is essential to taking additional steps in keeping with the Best Practices in Court-based Programs for the Self-Represented published by the National Center for State Courts (e.g. self-help centers and services, technological aids, form and process simplification, document assembly and electronic filing, compliance assistance and enforcement support programs, and expanded programs for those not proficient in English).

The Steering Committee therefore recommends, as has the Access to Justice Commission, that the Supreme Judicial Court, in consultation with the Chief Justice for Administration and Management, establish a position within the Administrative Office of the Trial Court to direct and coordinate the Judiciary's response to access to justice issues, including the growth of self-representation. Models for such a position exist elsewhere. In New York, for example, a special administrative judge oversees access to justice initiatives. In some other States, this role is played by a high level administrator who has substantial relevant expertise and the respect of judicial leadership.

Whatever model is employed, however, to be effective, the access to justice coordinator, at least initially, should be a proven court leader who will have the confidence of the Chief Justice for Administration and Management and the various Chief Justices of the Trial Courts. Because of the current hiring freeze, it may be that only a sitting judge or existing high-level administrator can be deployed for this purpose at this time. In any event, the individual selected for this position must have the credibility and leadership qualities needed to break down internal barriers to change, make recommendations for the allocation of resources, coordinate efforts across Departments, and institutionalize the Judicial Branch's commitment to improving the delivery of justice to all court consumers. If the Supreme Judicial Court so desires, the Steering Committee could continue to play a valuable role by transforming into an oversight and advisory committee (still housed in the Supreme Judicial Court) that would meet regularly with the Trial Courts' access to justice coordinator to set priorities, provide ideas, and perform other advisory work.¹¹

We are aware that this recommendation calls for a redeployment of scarce resources. However, in our view,

¹¹ Related court committees, e.g., the Standing Committee on Pro Bono Legal Services and the Standing Committee on Dispute Resolution, and the Access to Justice Commission, also could provide guidance.

anticipated increases in the efficiency of our courts and in public trust in our court system will justify that redeployment. Establishing a central authority for access to justice initiatives also is consistent with the fundamental goal of accountability and transparency in court administration.

Alternatively, if the above model is not considered feasible, we recommend that the Supreme Judicial Court request that the Chief Justice of each Trial Court appoint a judge to serve as the Department's coordinator of services for self-represented litigants, and that such coordinators meet regularly with a member of the Chief Justice for Administration and Management's staff and members of the Steering Committee or a similar successor committee to devise and coordinate services for self-represented litigants.