

Agenda

Utah Judicial Council's Standing Committee on Resources for Self-represented Parties

September 6, 2019
12:00-2:00 p.m.

Education Room (3rd Floor, inside Admin. Office)

Scott M. Matheson Courthouse
450 South State Street
Salt Lake City, UT 84111

Welcome and approval of minutes	Tab 1	Judge Barry Lawrence, Chair
Discussion of dress code resolution and draft rule	Tab 2	Judge Barry Lawrence, Nancy Sylvester
Update from the Utah State Bar's Access to Justice Commission and demonstration of new online resource	Tab 3	Justice Christine Durhan, Rob Jepsen
Discussion of COSCA Resolution 3 regarding cell phones	Tab 4	All
Discussion of COSCA Resolution 5 regarding implementation of clear communications and streamlined procedures	Tab 5	All
Subcommittee updates <ul style="list-style-type: none"> • Education • Outreach • Rural Services • Self-Help Center/Non-lawyer Assistance/Court Updates Subcommittee 	Tab 6	<ul style="list-style-type: none"> • Judge Lawrence to update on legal outreach • Sue Crismon or designee to update on community outreach efforts • Susan Griffith or designee to update on local/virtual clinics • Nathanael Player, Jessica Van Buren, and Nancy Sylvester to update on court initiatives and rules
Other Business		All

2019 Meeting Schedule: Matheson Courthouse, 12:00 to 2:00 p.m. unless otherwise stated: September 6, November 1, January 3, 2020

Tab 1

**Utah Judicial Council's Standing Committee on
Resources for Self-Represented Parties Meeting Minutes**

Matheson Courthouse
Large Conference Room A
May 3, 2019
12:30 PM – 2 PM

Members	In attendance	Excused	Via phone conference
Judge Suchada Bazzelle	X		
Sue Crismon	X		
Monica Fjeldsted	X		
Leslie Francis	X		
Nicole Gray		X	
Susan Griffith		X	
Carl Hernandez			X
Judge Catherine Hoskins	X		
Jacob Kent	X		
Judge Barry Lawrence - Chair	X		
Shawn Newell		X	
Nathanael Player	X		
Judge Brook Sessions		X	
Charles Stormont	X		
Peter Strand		X	
Virginia Sudbury		X	
Judge Doug Thomas		X	
Janet Thorpe	X		
Jessica Van Buren	X		
Guests	In attendance	Excused	Via phone conference
Heidi Anderson	X		
Jymn Edwards	X		
Ryan Steffensen	X		
Amy Hernandez (ex officio)	X		
Nick Stiles (ex officio)	X		
Kara Mann (ex officio)		X	
Amy Sorenson (ex officio)		X	
Staff	In attendance	Excused	Via phone conference
Nancy Sylvester	X		

(1) Welcome and approval of minutes

Judge Lawrence welcomed the committee members and guests to the meeting and asked for a motion on the minutes. A motion was made and seconded and the minutes were approved.

(2) Exploring the possibility of a remote access pilot program

Heidi Anderson, IT Director, and her staff demonstrated how Zoom would work for a remote access pilot program. The technology allows participants to have private conversations (client-attorney) and also participate with the court. It also allows the sharing of documents. The set up that was demonstrated is a 2nd District media cart that costs about \$20,000. . The 2nd District media cart was purchased for remote witnesses, video conferencing, etc. The committee discussed that a pilot program could start with pro se domestic calendars. Judge Hoskins said Commissioner Conklin doesn't have enough attorneys for her pro se calendar, so perhaps that could be a pilot site. It noted that with any pilot, an important consideration is protecting the record and fit with the judge (someone who is willing to try this) and the courtroom itself. The quickest fit will be a room that is already video conferenced. Ogden District Court has a video conferenced room. Commissioner Morgan has a pro se calendar in Farmington and the media cart is going there (but this would have to be cleared with leadership). IT can set up a trial run with the help of the Self-Help Center and Law Library. Judge Lawrence is going to find out which judge is the most enthusiastic about this. Janet Thorpe (St. George Justice Court) mentioned that ODR is doing really well and that may obviate the need for this technology in debt collection cases. Ms. Anderson will send Judge Lawrence a list of the courtrooms that are best suited for a pilot.

(3) Update on FAQ videos, website proposal

Judge Lawrence explained the proposal from the Supreme Court to create FAQ videos and redesign the website. The consensus of the working group formed to address the request was that if there are resources to be used for those projects, they should go to the Self-Help Center, which wasn't funded last year. The group was concerned about the impact on IT and others; there are already many projects going on. Adding FAQ videos to ODR is a smaller task, but that request needs to be clarified. The committee discussed that resources would also be better spent on getting courtroom video conferencing up and running so that people can have representation. Heidi said that if the website were to be redesigned, it would have to go through the RFP process and the courts would hire someone that is involved in the user experience (UX). That's not the skill set of people already working in IT and it would take people away from the more important projects they are working on.

(4) Update from the Access to Justice Commission

Nick Stiles said he got funding to hire another attorney for his office. Nick will focus more on policy.

(5) Update on Rule 55 Form

Judge Lawrence, Charles Stormont, and Nancy Sylvester met with debt collection lawyers regarding a proposed Rule 55-complaint form for purposes of a uniform process.

The form proposed wasn't what the debt collection lawyers liked. There will be more conversations about the form. The debt collection lawyers' perspective that all the judges do things differently is compelling and the bench would like something uniform, too.

(6) Draft Resolution Regarding Open Access to the Courts

Judge Lawrence introduced the draft resolution he'd like to see the Judicial Council adopt. At the justice court conference last week, this topic was discussed and judges said they ask litigants to take off their coats, for example, for safety reasons. The safety concerns may be taken care of by the draft decorum paragraph. The committee discussed updating the memo to include those who aren't litigants yet (those with business in the courthouse). Judge Hoskins asked that a safety provision be added to the decorum paragraph. Judge Bazzelle asked about adding language regarding impartiality, and freedom from bias and undue influence, or necessary to further the appearance of the administration of justice. Judge Lawrence will rework the language.

Mr. Stormont moved to approve requesting the Judicial Council to issue a resolution on open access to the courts. Judge Hoskins seconded the motion. The motion was approved unanimously.

This will go to the Management Committee of the Judicial Council first.

(7) Subcommittee updates

a. Education:

Judge Lawrence mentioned that he will be talking at the district courts conference next week. Judge Lawrence asked what the committee would like to have him discuss at the district court conference. He mentioned cell phones and child care. Jacob Kent mentioned that he has seen answers affirmatively denying (but done on notebook paper) being rejected by judges. Janet Thorpe mentioned that an FAQ on arraignment (1 minute video) would be super helpful. She says a lot of defendants look like deer in the headlights. They don't know when they get to tell their story. Jessica Van Buren mentioned that there is a new rights of defendants video, but it needs to be redone in one section based on legislation that passed this year. Judge Hoskins raised service vs. other animals as another possible topic. Ms. Sylvester mentioned that the General Counsel office has guidance on that.

b. Outreach:

Shawn Newell and Elizabeth Bevington have gone to NAACP, some local council meetings, and others. They are trying to educate the community leaders on how to access court resources. Sue Crismon said if anyone has other ideas on people to reach, please let her know. Ms. Van Buren has booked Living Traditions and a few others over the summer for outreach.

c. Rural Services:

Timpanogos Legal Clinic has quite a few new clinics around the state. The rainbow law clinic also has started using skype (University of Utah) to access people needing help in rural areas.

d. Self-Help Center/Non-lawyer Assistance/Court Updates Subcommittee

The Self-Help Center did not get funded at the Legislature but it is going to ask for one-time money from the Judicial Council. Rule 5 of the Rules of Civil Procedure has changed as of May 1 to allow service by email (after initial filing). The Forms Committee is working on LPP's being able to use OCAP. This will go to the Council in June. A workshop on process is now happening before pro se clinics (landlord/tenant) in Matheson.

(8) Adjourn:

With no additional items to report, the meeting adjourned at 1:47 pm. The next meeting will be held on June 28, 2019.

Tab 2

1 **Rule 4-411. Courthouse attire.**

2 **Intent:**

3 To ensure that Utah's courts are open in accordance with Article 1, Section 11 of the Utah
4 Constitution while balancing the need for decorum in court proceedings and safety of all persons having
5 business in Utah's courthouses.

6 **Applicability:**

7 This rule applies to all Utah justice courts, district courts, juvenile courts, and appellate courts.

8 **Statement of the Rule:**

9 **(1) Open courts, personal attire, and judicial officer decision-making.**

10 (1)(a) Except as provided in paragraphs (2), (3), and (4), no person having business in any court
11 shall be denied access to a courtroom or courthouse based on the person's manner of dress or
12 appearance.

13 (1)(b) All courthouse or courtroom access decisions made in accordance with this rule shall be
14 done by a judicial officer on a case-by-case basis. Judicial officer includes a judge or court
15 commissioner.

16 (1)(c) The role of a court bailiff, court security, or court staff in decisions made under this rule is
17 limited to enforcement.

18 **(2) Minimum personal attire standards.**

19 (2)(a) A person may be denied access to a court if the person is not wearing a shirt, pants, and
20 shoes or equivalent attire that adequately covers genitalia, buttocks, and breasts at or below the top
21 of the areola.

22 (2)(b) Equivalent attire includes articles of clothing such as dresses, tank tops, skirts, shorts, and
23 sandals.

24 (2)(c) A breastfeeding mother shall be given special consideration in the enforcement of this
25 paragraph with respect to the covering of breasts.

26 **(3) Health and safety.**

27 (3)(a) A person may be denied access to a court if the person has, or appears to have, a
28 communicable disease that could jeopardize the health and safety of other persons having business
29 at the court.

30 **(4) Integrity of court proceedings and decorum.**

31 (4)(a) A person may be denied access to a courtroom if, in the opinion of the judicial officer
32 having control of the courtroom, the person's attire would jeopardize the integrity of the court
33 proceedings by:

34 (4)(a)(i) detracting from or disrupting the proceedings;

35 (4)(a)(ii) introducing prejudice to any party to the proceedings; or

36 (4)(b)(iii) introducing safety concerns generally.

37 (4)(b) The judicial officer shall enter a decorum order when the judicial officer is concerned that
38 the integrity of the court proceedings may be jeopardized due to the above, or similar, circumstances.

39 **(5) Contrary statements.**

40 (5)(a) All statements contrary to this policy are hereby rescinded, including those expressed in
41 any courthouse, courtroom, website, or policy manual, and shall be removed.

42

DRAFT

MEMORANDUM

To: The Utah Judicial Council
From: The Committee on Resources for Self-represented Parties
Date: May 6, 2019
Re: Request for Resolution Regarding Open Access to the Courts

This letter is written on behalf of the Committee on Resources for Self-represented Parties. Ours is a standing committee tasked with “study[ing] and mak[ing] policy recommendations to the Judicial Council concerning the needs of self-represented parties.” UT R J ADMIN Rule 3-115(1). Part of our statutory duties are to “recommend measures to the Judicial Council, the State Bar and other appropriate institutions for improving how the legal system serves self-represented parties.” Rule 3-115(2).

Recently, an issue has come to our attention that we find extremely troubling. We have learned that people have been denied access to courthouses and courtrooms based on their appearance and/or dress. Frankly, when the issue was raised, we thought it was an anachronism from days long passed. However, much to our chagrine, we have confirmed recent instances where bailiffs have prevented people from entering courthouses, and judges have prevented people from entering their courtroom – based on their appearances or dress. *Let me be clear, our Committee feels strongly that under no circumstance should a person who has legitimate business in the Court be prevented access from a courtroom or courthouse based on dress or appearance.*

I remind this Council of our State’s Constitution, which provides:

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

UT CONST Art. 1, § 11. (Although there has been much written about the substantive implications of this provision, it appears to express -- clearly and unambiguously -- that people shall not be denied access to a courthouse or courtroom to protect or assert their legal rights.)

We have many serious concerns about these practices. First and foremost, our committee is concerned about the disproportionate impact such a policy has on underprivileged citizens, who may not have the means to dress in a manner appropriate for an idiosyncratic bailiff, clerk, or judge; or, who lacks the understanding of the court process and the need to present oneself a certain (subjective) way. (Not to mention the inherent fairness that a person who is showing up at court to contest an eviction, may be closed out of their premises and wearing the only clothes they have.) Excluding a person from a courthouse or courtroom may also result in distrust of the judiciary, and unneeded embarrassment of a person who is simply showing up to protect their rights.

Second, such a practice, where bailiffs and judges – primarily males – make determinations regarding appropriate attire, “decency” and “modesty” is inherently sexist. We have learned of various instances where this has happened; *all* have involved women being denied access to the courthouse or courtroom by male judges and bailiffs. (In fact, at least one judge acknowledged preventing a woman from coming into their courtroom because she was wearing a halter top, which he deemed to be “immodest.”)

Third, such a practice has the potential for bringing into play biases and prejudices which may be racially, culturally, and ethnically based. Although, we are aware of no instance where this has happened, we simply point out the danger of having a decision made affording people rights and denying people rights, based on their appearance. Utah is increasingly becoming more diverse – racially, ethnically, and culturally. What might be acceptable cultural dress for one person might be deemed inappropriate by another. No one should be denying access to people based on that subjective determination. These are dangerous practices that should not be countenanced by this branch of government.

Accordingly, we ask this body to issue a Resolution to all courts and court personnel in this state, and to all citizens of this State, as follows:

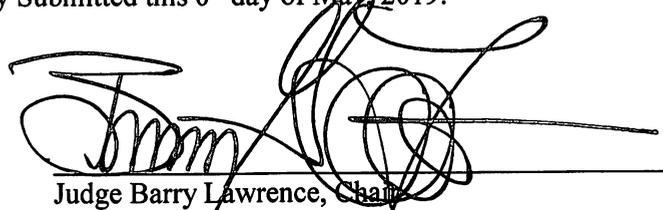
“NO PERSON (INCLUDING ANY PARTY, WITNESS, VICTIM, JUROR, OR LAWYER) WHO HAS BUSINESS IN ANY COURT, SHALL BE DENIED ACCESS TO A COURTROOM OR COURTHOUSE BASED ON THEIR MANNER OF DRESS AND/OR APPEARANCE.”

We believe that this body should support and adopt this Resolution. Upon that happening, it would be our hope and intent that it be implemented by the Courts as follows:

1. Rescind all contrary statements. Any statements in any policies, including those expressed in any courthouse, or courtroom, or those stated on any website or policy manual, should be taken down. And, at the entrance to each courthouse in the State, there should be a sign with the above language on it.
2. All Bailiffs and Law Enforcement personnel working in courthouses shall be notified and trained of the Resolution and shall not deny access to people from courthouses and courtrooms.
3. All Court personnel shall be notified and trained of the Resolution and shall not deny access to people from courthouses and courtrooms.
4. All Judges shall be notified of the Resolution. Nothing in this Resolution impacts or dictates the manner in which a Judge responds to a person that he or she perceives is inappropriately dressed or whose presence they deem sub-par; a judge simply must afford these persons access to the courtroom and process. Similarly, this does not impact the manner in which a Judge may set appropriate decorum and/or safety standards for his or her courtroom, and does not prevent a judge from acting as he or she sees fit to further the administration of justice and/or as a matter of fairness to the parties. The Resolution simply states that every person has a right to physical access to the courtroom; and that right cannot be denied based on dress or appearance.

We sincerely hope the Council will adopt this simple and common sense measure for ensuring open access to the courts in this State as promised by our State's Constitution.

Respectfully Submitted this 6th day of May 2019.

A handwritten signature in black ink, appearing to read "Barry Lawrence", is written over a horizontal line. The signature is stylized and somewhat cursive.

Judge Barry Lawrence, Chair
Committee on Resources for Self-represented Parties

Tab 3

Have you ever wondered where to send someone for legal help?

Learn about legal services, networking, and growing your organization...

at the

UTAH ACCESS TO JUSTICE SUMMIT

**October 22, 2019
8:00 am – 1:00 pm**

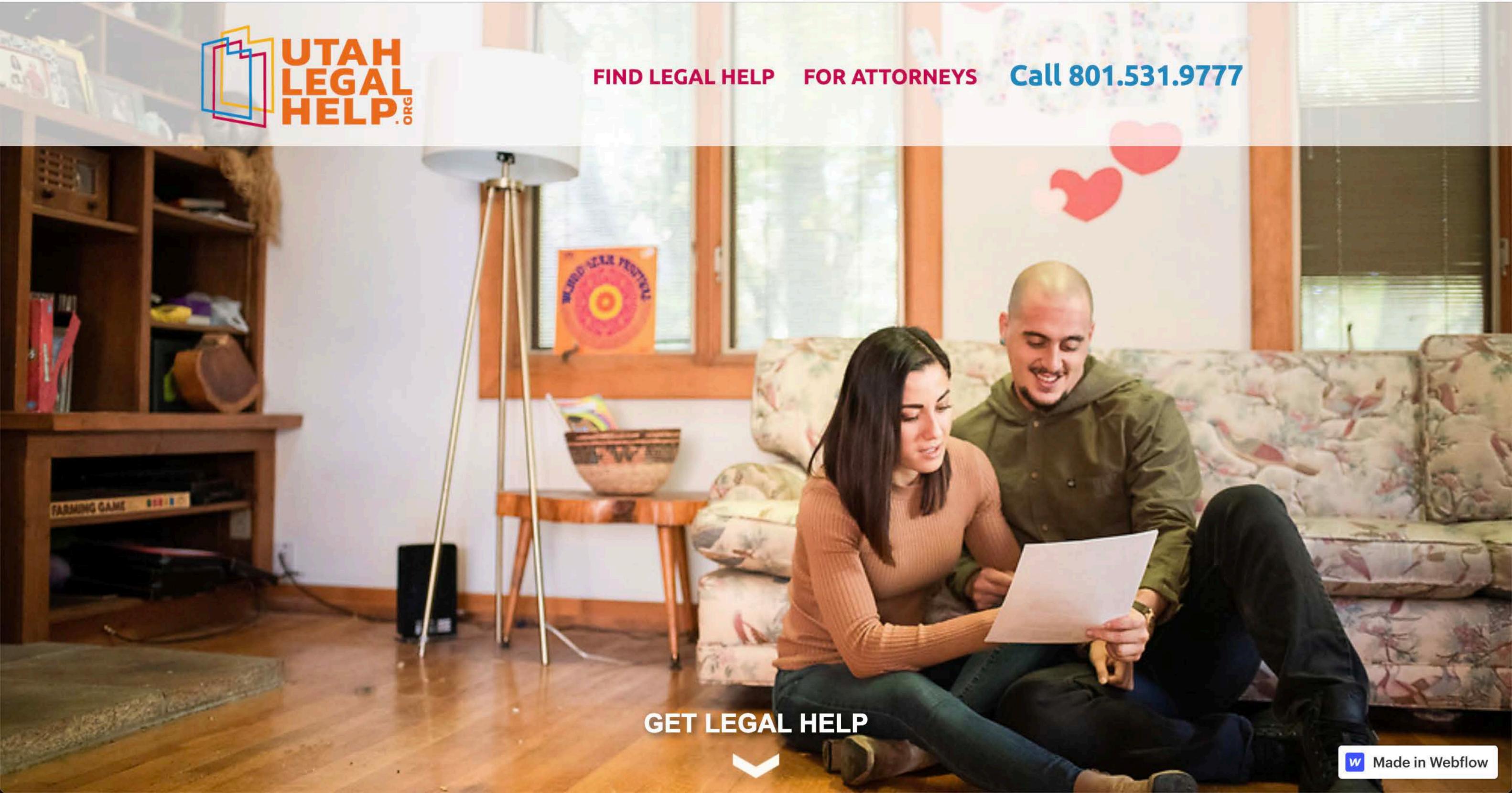
Utah Law & Justice Center
645 South 200 East, SLC



Sponsored by: The Utah State Bar, The Utah Bar Foundation, and The Lund Family Foundation.



FIND LEGAL HELP FOR ATTORNEYS Call 801.531.9777

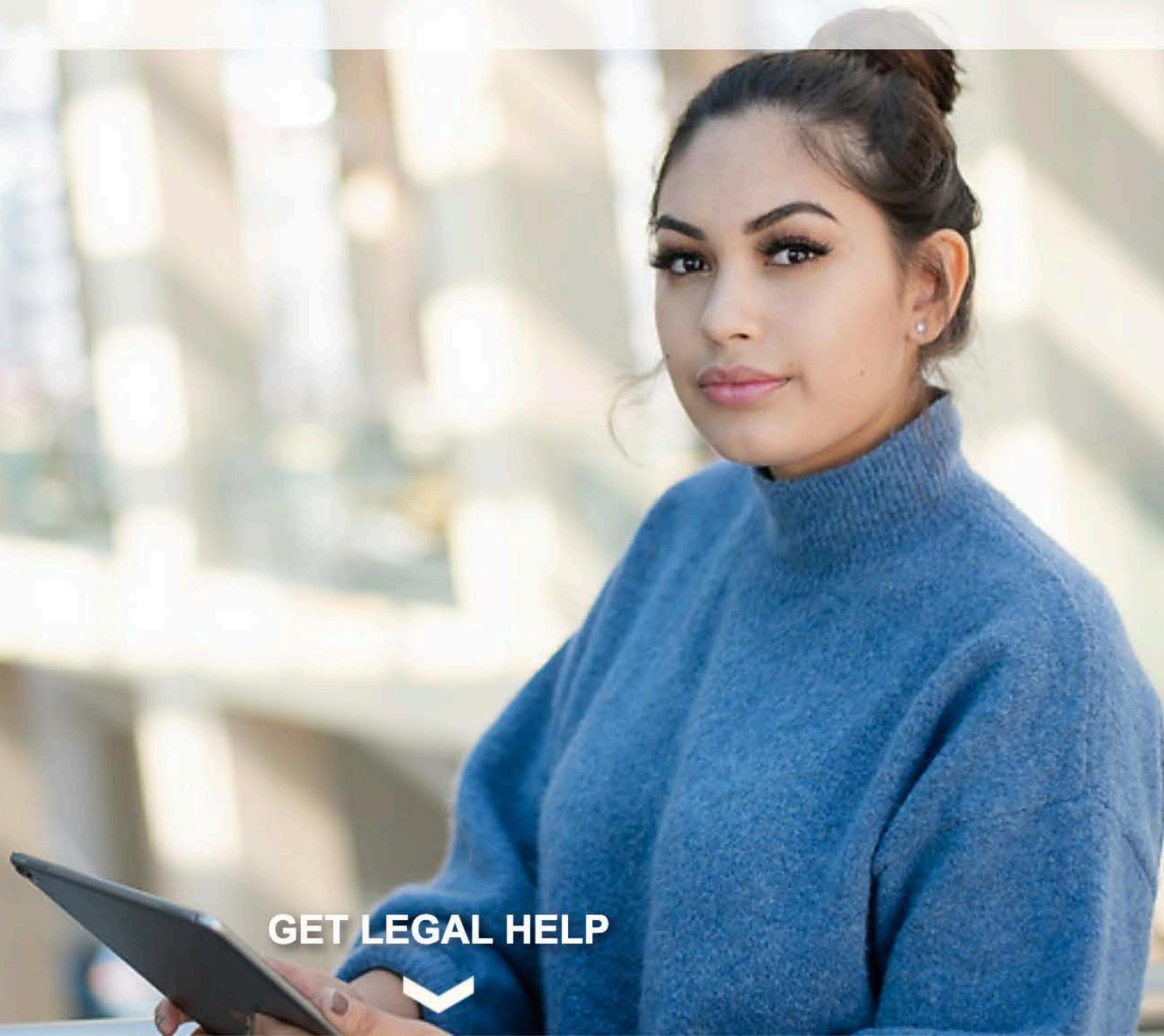


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GET LEGAL HELP



Price Range

- Free Help
- Reduced Cost
- Private Attorney
- Do it Yourself

Where are you located?

- Northern Utah
- Weber / Davis
- Salt Lake Area
- Utah County Area
- St. George Area
- Southcentral Utah
- Southeastern Utah
- Northeastern Utah
- Statewide Resources
- Any / All

What do you need help with?

- I'm not sure / See All
- Family Law
- Protective Orders
- Landlord/Tenant
- Debt Collection
- Employment
- Immigration
- Criminal
- Small Claims
- Tax

Tab 4

**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

Resolution 3

Admission of Evidence from Cell Phones and Other Personal Electronic Devices

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators (Conferences) have long supported the expansion of meaningful access to the justice system for all; and

WHEREAS, in 2018 the Conferences adopted Resolution 7, which urged their members to carefully review and assess their policies with respect to cell phone use in courthouses, so as to appropriately balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented; and

WHEREAS, in 2018 the Conferences, in the process of adopting Resolution 7, recognized that cell phones have become an integral part of daily life for many litigants, serving as an essential tool for communication, research, information storage, and safety; and

WHEREAS, the Conferences recognize that this trend is not limited to cell phones and that other types of personal electronic devices (PEDs), including laptop computers and tablets, also have become an integral part of daily life for many litigants;

WHEREAS, the Conferences recognize that, as a result of this trend, litigants with increasing frequency are seeking to show judges material that is stored on cell phones and other PEDs during judicial proceedings, and are asking that it be admitted or treated as evidence; and

WHEREAS, the evidence litigants are seeking to present on cell phones and other PEDs comes in many forms, including but not limited to photographs, call logs, text and short message service messages, emails, video recordings, voice mail messages and other audio recordings, social media posts, and satellite map images; and

WHEREAS, this growing trend is particularly evident during certain types of judicial proceedings, which, by their nature, tend to involve large numbers of self-represented litigants, such as landlord-tenant eviction actions, child custody hearings, and restraining and harassment order hearings; and

WHEREAS, the Conferences recognize that judges presented with evidence on cell phones or other PEDs during judicial proceedings are often faced with the difficult task of striking the appropriate balance between adherence to the rules of evidence, which must be

maintained in proceedings where such rules apply, and facilitating the ability of all litigants, including self-represented litigants, to be fully and fairly heard; and

WHEREAS, the Conferences recognize that this task can involve resolving both practical issues, such as whether the judges themselves should physically handle the cell phone or other PED to observe the evidence, and issues of an evidentiary nature, such as assessing the authenticity of the evidence, whether other evidence (e.g., the full text message exchange) should be admitted for purposes of completeness, and whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice or some other danger; and

WHEREAS, the Conferences recognize that litigants, particularly those who are self-represented, often appear in court without additional copies of the evidence on their cell phones or other PEDs, thereby giving rise to issues such as the adequacy of notice to an opposing party (where the proceedings are not ex parte) and the need properly to preserve the evidence for the record and appeal; and

WHEREAS, the Conferences recognize that judges have not always been provided with adequate guidance to assist them in dealing with these and other issues that can arise when a litigant seeks to present evidence on a cell phone or other PED; and

WHEREAS, the Conferences recognize that courthouses, often due to budgetary limits, are not always equipped with the technical equipment or resources that might better assist judges and litigants, especially self-represented litigants, in the presentation, consideration, and preservation of evidence on cell phones and other PEDs;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to consider adopting policies or protocols to guide and assist judges in dealing with the many practical and evidentiary issues that can arise when a litigant, particularly a self-represented litigant, seeks to present evidence on a cell phone or other PED.

Adopted as proposed by the CCJ and COSCA Access and Fairness Committee at the 2019 Annual Meeting on July 31, 2019.

Tab 5

**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

Resolution 5

**In Support of Implementation of Clear Communications and Streamlined
Procedures in the Courts**

WHEREAS, for more than fifty years the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have worked to promote access to justice for all individuals; and

WHEREAS, legal language and court processes are complex and historically designed by and for legal professionals; and

WHEREAS, suggestions to improve the clarity of court communications and to streamline court procedures have been offered by various groups and scholars including the National Association for Court Management, which has published the *Plain Language Guide*; and

WHEREAS, the judiciary has an obligation to be accessible to, and communicate clearly with, all who use the courts; and

WHEREAS, court users include diverse groups of individuals with different cultural and educational backgrounds and linguistic capabilities, including people with limited literacy, with limited English proficiency, and with learning, cognitive, physical, and other disabilities; and

WHEREAS, courts at all levels must communicate court procedures and legal requirements clearly and effectively to all individuals so that they may be full participants in the justice system; and

WHEREAS, courts should provide appropriate training for court staff in order to accomplish these goals and to assist the public in effectively navigating the justice system; and

WHEREAS, where court procedures and legal requirements are streamlined justice can be more accessible to all and accomplished in a more cost-effective manner;

NOW, THEREFORE, BE IT RESOLVED that Conference of Chief Justices and Conference of State Court Administrators urge courts, when drafting policies, procedures, and protocols, as well as associated documents, forms, and other information, (1) to write in a manner that is clear, concise, and easily comprehensible to all court

users; (2) to make them publicly available online and in physical locations where they are readily accessible to court users; and (3) where possible, to make them uniform statewide within the court system; and

BE IT FURTHER RESOLVED that Conference of Chief Justices and Conference of State Court Administrators urge courts to explore other ways, in addition to plain language, to help court users navigate the justice system, including: visual prompts (design features, infographics, symbols and signage); online services (web content, social media, explanatory videos, audio content, live chat platforms); and other public information tools (kiosks, public service campaigns, applications for mobile electronic devices and other technologies); and

BE IT FURTHER RESOLVED that Conference of Chief Justices and Conference of State Court Administrators urge courts to consider, where appropriate and practicable, streamlining court procedures and legal requirements; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices and Conference of State Court Administrators urge the National Center for State Courts and other national organizations to provide assistance to states working toward these goals.

Adopted as proposed by the CCJ/COSCA Access and Fairness Committee at the 2019 Annual Meeting on July 31, 2019

Nonlawyer Navigators in State Courts: An Emerging Consensus

A survey of the national landscape of nonlawyer navigator programs in
state courts assisting self-represented litigants

by
Mary E. McClymont
The Justice Lab at Georgetown Law Center

Project Advisory Board:
Katherine R. Alteneider, Tanina Rostain, & Rebecca L. Sandefur



June 2019

**A project of The Justice Lab at Georgetown Law Center
With the generous support of the Kresge Foundation**

About The Justice Lab

The Justice Lab works to address the justice gap in the United States. The Lab's activities include developing and assessing new approaches for expanding access to the justice, such as the use of non-lawyers and new technologies, creating curricula and programming to engage law students on the problems of access to justice and inequality, and serving as a resource for legal aid organizations, access to justice commissions, and courts on the implementation of new technologies. Drawing on its location in Washington D.C., a center of access to justice initiatives, the Justice Lab regularly convenes meetings and conferences for bar leaders, community members, and stakeholders on the effects of lack of access in entrenching inequality.

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Acknowledgments

This research project and report would not have been possible without the wonderful contributions of many individuals. Many thanks to the Kresge Foundation for its generous support, especially to Sandy Ambrozy and Ari Simon who believed in, and cheered on, the project from the start.

The Project Advisory Board, namely Katherine Alteneder, Tanina Rostain, and Rebecca Sandefur lent their special expertise and wise counsel on every aspect of the work. This dream team served as full partners and patient mentors every step of the way, always generous with their intellectual engagement and time.

A special acknowledgment also must go to a giant in our field, Richard Zorza, who was the primary source of encouragement for the project at its inception and who continued to be the driving inspiration behind the project.

Research assistance during the course of the project was critical, given the level of outreach, interviews, and data collection required. Thanks to Lisa Dewey and Annie Helms of DLA Piper, who graciously arranged for the wonderful pro bono help of Kristen Micek throughout the project, as well as the assistance of Wendy Novotne and Christine Yang in the initial interview phase of the work. The research also benefitted from the valuable aid given by Georgetown law students Rachel Wehr, throughout the project, and Anna Stone, in its early stages. In addition, Kaethe Carl provided important assistance in the initial phase of the project as did Renee Danser and Eduardo Gonzalez.

For crucial administrative support, report production and editorial assistance, I was most fortunate to have the dedicated and patient help of Josh Perry, Katja Ericson, Christine Carlson, Alina Schmidt, and Diane Camper.

Insights were offered by an array of access to justice experts, all of whom I cannot name here. A special nod for their discrete contributions at various points in the study goes to Martha Bergmark, Tom Clarke, Judge Fern Fisher, Mary Lavery Flynn, Danielle Hirsch, Bonnie Hough, William Hubbard, Karen Lash, Mary McQueen, John Pollock, Erika Rickard, Jim Sandman, Fern Schair, Judge Dan Taubman, David Udell, and Justice Laurie Zelon.

Most importantly, all of us involved with this project are deeply grateful to the many program managers, creators, and supporters who shared their observations, insights, and knowledge with us by participating in surveys or interviews, and without whom this project simply could not have been done. We hope that the report that has emerged, based on their valuable contributions, will help other trailblazers find new ways to improve access to justice for self-represented litigants throughout the country.

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Executive Summary

Background

The access to civil justice crisis looms large. A stunning 86% of the civil legal problems of low-income Americans receive inadequate or no legal help and an estimated 30 million people each year are reported to lack legal representation in the state courts. Without legal assistance, these individuals are at risk of suffering dire consequences for their families, their homes and their livelihoods.

A full spectrum of approaches is required to mitigate this crisis. The chief justices and top administration officials of the state courts affirmed this concept, calling in 2015 for “100% access to effective assistance for essential civil legal needs...through a continuum of meaningful and appropriate services.”

One important approach to help solve the puzzle is the use of “nonlawyer navigators” who come from outside the state courts to assist self-represented litigants (SRLs) with their civil legal problems.

This survey of the current national landscape identified and analyzed 23 programs in 15 states and the District of Columbia. It is based on extensive outreach and interviews with more than 60 informants who created, oversee or manage nonlawyer navigator programs in court settings. The report describes program features and offers practical considerations for creating and implementing such programs.

The programs use nonlawyer navigators who are not court staff, operate physically within a court, and provide direct “person to person” assistance to SRLs. Navigators in the study are defined as individuals who do not have full, formal legal credentials and training (i.e., a law degree), who assist SRLs with basic civil legal problems. They do not act or operate under an attorney/client relationship and they are part of a formal program and institutional auspices that provides specialized training.

Findings

There is a breadth of creative activity within programs using nonlawyers to assist SRLs in the state courts. There is also strong potential for further experimentation and taking these programs to every state and, ultimately, to scale.

Navigator programs advance a number of goals. They:

- enhance the effectiveness of, and build public trust in, the courts;
- facilitate access to justice for SRLs by helping them understand and navigate their cases;
- provide an additional way for justice advocates to supplement their own client services and allow lawyers to operate “at the top of their licenses”; and

- enable an array of community actors to better understand the plight of SRLs and help them manage the often unfamiliar and daunting court process.

Programs show significant variations in their features and characteristics with no “one size fits all” model. Court context matters and program managers are adapting programs to optimize operations according to their particular circumstances.

The programs have been initiated by multiple champions, often in partnerships, including the judiciary, official bodies like state access to justice commissions or specially appointed task forces, discerning nonprofit and legal aid lawyer leaders, bar foundations, and creative court staff. These trailblazers have brought a range of diverse resources and strategies to help meet the SRL demand and have created programs without major regulatory reform or rule changes.

Navigators work on a range of case types such as family, housing, debt collection, domestic violence, conservatorship, and elder abuse.

Programs demonstrate that well-trained and appropriately supervised navigators can perform a wide array of tasks. For example, they help SRLs find their way around the court; get practical information and referrals to other sources of assistance; or complete their court paperwork. Navigators also accompany SRLs to court to provide emotional back-up, help answer the judge’s factual questions, or resolve a matter with opposing counsel. Program managers are mindful of admonitions against nonlawyers providing legal advice and take the need for quality assurance measures seriously.

Navigators come from a range of backgrounds, including paid staff, AmeriCorps members, and volunteers, among them college and graduate students, recent graduates, and retirees. The diversity of backgrounds and skill sets show the potential for using many more of these individuals, as well as for recruiting new types of community actors as navigators.

The institutionalization and longer-term sustainability of programs is an overriding concern. Although program leaders have been creative in securing resources to run programs, and in-kind support from court staff along with volunteer service is valuable to a number of operations, the patchwork funding of many programs poses real obstacles to their long-term viability. Adequate resources are crucial to staff up programs; to bolster training, supervision and recruitment; to measure progress and outcomes; and to expand efforts.

Some programs have an integrated system using both lawyers and navigators, who complement each other’s work. Further integrating the navigator programs into ongoing court operations and/or with other legal providers can foster institutionalization of programs, enhance court efficiency, and provide an improved system in which to serve SRLs.

Recommendations

1. Champions of all stripes have gone to bat to create these programs and they should work to secure needed financial resources to sustain them. Help is out there to guide innovators toward funding opportunities.
2. Creating pilots is a good way to explore and refine navigator program operations, as well as to secure buy-in from judges and court staff, the bar, and other relevant stakeholders.
3. Court leaders should consider utilizing navigators' experiences and learning from SRLs, which offer untapped resources for courts as they work to identify opportunities for simplification, as well as gains in efficiency and customer service.
4. Securing good data to measure and determine the results of navigator programs is vital to making wise program decisions and sustaining or expanding operations. Both financial resources and leadership commitment are needed to make this happen.
5. As new solutions, such as unbundled services, right to counsel, and navigator programs continue to emerge to meet the SRL demand, it is important to connect these components with each other as well as with other existing ones. Stakeholders should study their own ecosystems and strategize together on melding these elements to facilitate access to justice and optimize service for SRLs.
6. Key national networks and organizations in the justice field, like the Self-Represented Litigation Network, should consider creating a community of practice to share lessons and insights among current and future program leaders. They should build toolkits for courts to create partnerships with nonprofits and to help navigator programs measure and report on progress.
7. Independent research is needed to make the best use of navigator efforts, including evaluations of individual programs to demonstrate program outcomes, impact, and cost savings; studies to help determine when best to use nonlawyers to provide assistance; and surveys of best practices in community-based programs using nonlawyers to help unrepresented people.

I. INTRODUCTION

A. Background

In 2017, a study by the Legal Services Corporation (LSC) found that 86% of the civil legal problems reported by low-income Americans in a given year receive inadequate or no legal help.¹ According to the American Bar Association, “[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need.”² It is estimated that in the state courts at least one party is self-represented in approximately three-quarters of civil cases.³ Another estimate indicates that more than 30 million people per year appear without legal representation in America’s state courts, handling matters on their own that result in court orders determining such things as where they can live and when they can see their children.⁴ Without legal assistance, these litigants are at risk of suffering dire consequences for their families, their homes, and their livelihoods.⁵

In response to this ongoing justice crisis, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) issued a resolution in 2015 calling for “100% access to effective assistance for essential civil legal needs...through a continuum of meaningful and appropriate services.”⁶ As the CCJ/COSCA resolution underscores, no one tool or innovation alone exists to mitigate the crisis. Instead, a full spectrum of approaches is needed. These types of approaches have been described by various bodies.⁷ Highlighting a number of reform initiatives on the spectrum to ameliorate the crisis, Professor Deborah Rhode noted recently: “Never has there been a more receptive climate for access to justice issues.”⁸

¹LEGAL SERVICES CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 14 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

²ABA COMM’N ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 5 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

³NATIONAL CENTER FOR STATE COURTS, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS iv (2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

⁴*SRLN Brief: How Many SRLs?* (SRLN 2019), Self-Represented Litigation Network, <https://www.srln.org/node/548/srln-brief-how-many-srls-srln-2015> (last visited May 21, 2019).

⁵See LEGAL SERVICES CORP., *supra* note 1, at 25.

⁶CONFERENCE OF CHIEF JUDGES AND CONFERENCE OF STATE COURT ADMINISTRATORS, RESOLUTION 5 REAFFIRMING THE COMMITMENT TO MEANINGFUL ACCESS TO JUSTICE FOR ALL (2015), <https://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07252015-Reaffirming-Commitment-Meaningful-Access-to-Justice-for-All.ashx>.

⁷See ABA COMM’N, *supra* note 2, at 5–7; NATIONAL CENTER FOR STATE COURTS, JUSTICE FOR ALL STRATEGIC PLANNING GUIDANCE MATERIALS 1–6 (2016), <https://www.ncsc.org/~media/Microsites/Files/access/Justice%20for%20All%20Guidance%20Materials%20Final.ashx>; ABA STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES, AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS 1–4 (2014), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.pdf; LEGAL SERVICES CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 1–4 (2013), https://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf; Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, 94 JUDICATURE 157 (2011); SELF-REPRESENTED LITIGATION NETWORK, BEST PRACTICES IN COURT-BASED PROGRAMS FOR THE SELF-REPRESENTED: CONCEPTS, ATTRIBUTES, ISSUES FOR EXPLORATION, EXAMPLES, CONTACTS, AND RESOURCES (2008), <https://www.srln.org/system/files/attachments/SRLN%20Best%20Practices%20Guide%20%282008%29.pdf>.

⁸Deborah L. Rhode, *What We Know and Need to Know about the Delivery of Legal Services by Nonlawyers*, 67 S.C. L. REV. 429, 436 (2016).

This study investigates one important tool along the “continuum of services” to help solve the justice crisis puzzle: the use of “nonlawyer navigators” in the state courts to assist self-represented litigants with their civil legal problems. Nonlawyers have been used to help fill gaps in a variety of different settings.⁹ Professor Rebecca Sandefur summarizes the trend this way: “As research shows in a range of contexts, lay people can and do accurately and successfully perform some parts of lawyers’ work. . . Across a number of common justice problems—for example, disputes about evictions and custody of children, disputes over public benefits with government agencies—nonlawyer advocates and unrepresented lay people have been observed to perform as well or better than lawyers.”¹⁰

Other common law countries have long adopted practices using nonlawyers to assist people with civil legal problems.¹¹ In the United States, the health care field uses paraprofessionals widely, including as patient navigators and community health extenders.¹²

Outside of court settings, two states have recently created models that establish licenses for trained legal practitioners, who do not hold traditional law degrees, to give legal advice in designated practice areas and within a limited scope of service. In 2012, Washington State was the first to create this model, called “Limited License Legal Technicians” (LLLT). Authorized by the Washington Supreme Court, LLLTs are licensed to practice on certain matters in the family law area. Numerous articles and reports have been written describing and assessing this model.¹³ A similar model, called “Licensed Paralegal Practitioners” (LPP), is being established in Utah. The first group of LPPs will reportedly complete their training and be licensed to practice in

⁹See ABA COMM’N, *supra* note 2, at 19–24; Richard Zorza & David Udell, *New Roles for Non-lawyers to Increase Access to Justice*, 41 FORDHAM URB. L. J. 1259, 1270–1287 (2014); Rebecca L. Sandefur & Thomas M. Clarke, *Designing the Competition: A Future of Roles Beyond Lawyers? The Case of the USA*, 67 HASTINGS L. J. 1467, 1471 (2016).

¹⁰ Rebecca L. Sandefur, *Access to What*, 148 DAEDALUS 49, 52 (2019).

¹¹ See Herbert M. Kritzer, *Rethinking Barriers to Legal Practice*, 81 JUDICATURE 100, 100–01 (1997) (discussing English Citizen's Advice Bureaus with trained nonlawyer volunteers); Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 LAW & SOC’Y REV. 765, 773–87 (2003) (discussing the long history of nonlawyer lay advisers in the UK); Ivan Mitchell Mellow & Madeleine Dusseault, *Non-lawyer Legal Services: An International Round-up*, Ontario Bar Ass’n (June 22, 2017), https://www.oba.org/JUST/Archives_List/2017/June-2017/Non-lawyer-global-3; THE LAW SOCIETY OF UPPER CANADA, REPORT TO THE ATTORNEY GENERAL OF ONTARIO PURSUANT TO SECTION 63.1 OF THE LAW SOCIETY ACT 50 (2012), <http://lawsocietygazette.ca/wp-content/uploads/2012/07/Paralegal-5-year-Review.pdf>.

¹²See BENJAMIN H. BARTON & STEPHANIE BIBAS, REBOOTING JUSTICE: MORE TECHNOLOGY, FEWER LAWYERS, AND THE FUTURE OF THE LAW 174–177 (2017); MARY-BETH MALCARNEY ET AL., COMMUNITY HEALTH WORKERS 2–7 (2015), https://hsrc.himmelfarb.gwu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1010&context=sphhs_policy_workforce_facpubs.

¹³See Rebecca Donaldson, *Law by Nonlawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice*, 42 SEATTLE UNIV. L. REV. 1, 1 (2018); THOMAS CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF WASHINGTON’S LIMITED LICENSED LEGAL TECHNICIAN PROGRAM (2017), http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf; WASHINGTON STATE BAR ASS’N, REPORT OF THE LIMITED LICENSED LEGAL TECHNICIAN BOARD TO THE WASHINGTON SUPREME COURT: THE FIRST THREE YEARS (2016); Robert Ambrogio, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, ABA J. (2015); Barbara Madsen, *The Promise and Challenges of Limited Licensing*, 65 S.C. L. REV. 533 (2014).

certain areas of law in 2019. Under both models, the practitioners are regulated by their respective state bars and, at this stage, are restricted from representing people in court.¹⁴

A number of other states are exploring the possibility of instituting programs that would permit nonlawyers to assist self-represented litigants.¹⁵ Minnesota, for example, is developing a pilot project that would permit “legal paraprofessionals” to provide legal advice, and in some cases, represent a client in court when under the supervision of a Minnesota attorney.¹⁶ Similarly, a sub-committee of a body of the Colorado Supreme Court has recommended the implementation of a pilot project to enable trained nonlawyer advocates to assist tenants in eviction cases. Under the proposal, these advocates could negotiate on behalf of tenants, confer at counsel table with clients, and answer the judge’s questions.¹⁷

As Sandefur and Clarke underscored in the first in-depth evaluation of programs providing nonlawyer assistance for unrepresented litigants, “[t]here is now a major movement in the United States to expand the use of appropriately trained and supervised individuals without full formal legal training to provide help to people who would otherwise be without legal assistance of any kind.”¹⁸ The authors noted that their evaluation “provides important evidence that these initiatives can influence the experiences of unrepresented litigants in positive ways and can also shape the outcomes of court cases, including legal and real life outcomes.”¹⁹ They emphasized that, “[t]he New York City courts are among the most chaotic and overloaded in the United

¹⁴ LPPs are authorized to practice in the limited areas of certain family law matters, forcible entry and detainer and debt collection. See Catherine J. Dupont, *Licensed Paralegal Practitioners*, 31 UTAH BAR J. 3, 16 (May 2018) (reviewing the role of the LPP); 2019 State of the Judiciary Chief Justice Matthew B. Durrant, UT Courts Recent Press Notifications (Jan. 28, 2019), <https://www.utcourts.gov/utc/news/2019/01/28/2019-state-of-the-judiciary-chief-justice-matthew-b-durrant/>.

¹⁵ See Patrick McGlone, *Can Licensed Legal Paraprofessionals Narrow the Access-to-Justice Gap?*, ABA J. (Sept. 6, 2018), http://www.abajournal.com/news/article/can_licensed_legal_paraprofessionals_narrow_the_access_to_justice_gap; C. J. Tani G. Cantil-Sakauye, State of the Judiciary Address to a Joint Session of the California Legislature (Mar. 19, 2018), <https://newsroom.courts.ca.gov/news/2018-state-of-the-judiciary-address> (discussing the possibility of developing a program using “legal Wayfinders” who could personally assist people who come to court without an attorney).

¹⁶ In re Implementation Committee for Proposed Legal Paraprofessional Pilot Project, No. ADM09-8002 (Minn. Mar. 8, 2019), <http://macsnc.courts.state.mn.us/ctrack/document.do?doView=&document=e254ca3cdd8d2509ee21734e81ec789cd7cd1c17490561975d90507ea37e5ab0>.

¹⁷ Telephone Interview with Judge Daniel M. Taubman, in his capacity as a member of the Subcommittee on Providers of Alternative Legal Services (PALS) of the Colorado Supreme Court’s Attorney Regulation Advisory Committee (May 20, 2019).

¹⁸ REBECCA L. SANDEFUR & THOMAS CLARKE, ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECTS 3 (2016) [hereinafter ROLES BEYOND LAWYERS], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2949038. The projects in the New York court used nonlawyers who were authorized to provide to self-represented litigants factual information, assistance in obtaining and completing simplified court-required forms, attendance with them at settlement negotiations, and accompaniment into the courtroom. The navigators also were authorized to respond if the judge addressed them with a direct factual question.

¹⁹ *Id.* at 3–4.

States. That the pilot project showed evidence of the positive contributions in such environments suggests that such programs could be effective in a wide range of jurisdictions.”²⁰

Programs where court staff have provided self-help services to self-represented litigants are well established.²¹ This study describes the evolution of these services to include nonlawyers who are not court staff. This new type of assistance supplements self-help efforts in the courts and expands the services available to address the increasing demand created by self-represented litigants.

Recognizing this emerging trend, we sought to survey the national landscape to explore what programs were underway in jurisdictions where nonlawyers from outside the court are helping self-represented litigants (hereinafter “SRLs”)²² with their civil legal problems. The research focused on several key questions: Where and how are nonlawyers being used in the courts? What can be learned about the characteristics or features of the programs that can be shared with others who might wish to design and undertake similar programs? Besides court staff, what other leaders are implementing these programs? What kinds of hurdles are program creators experiencing? What information and insights about the programs are their leaders gathering? How do the leaders believe their programs are being seen and received by their fellow stakeholders—judges, court staff, legal aid lawyers, or private bar members, not to mention the SRLs themselves?

B. Goals, Parameters, and Methodology

Goals and Parameters. The goals of the research and this report are to describe the current landscape of programs underway that use nonlawyers in the state courts to expand and extend resources available to SRLs; to discuss the characteristics of these programs and offer practical considerations to those who wish to design their own; and to encourage cross-pollination between and among current program creators and implementers.

Upon completion of an initial scoping exercise to gauge the wide range of activity underway to assist SRLs by court staff, we further refined our research parameters to include **only** programs that use nonlawyers who are not court staff;²³ are physically situated in or operated out of a court; and which provide direct “person to person” assistance to SRLs. Although nomenclature varies across the programs, for purposes of this research and report, we chose the term “navigator,” which resonated with many of the informants and experts with whom we spoke. We define navigators as individuals who:

²⁰*Id.* at 4.

²¹See *SRLN Brief: Evolution of Court Staffing for SRLs*, Self-Represented Litigation Network (2019), <https://www.srln.org/node/1393/srln-brief-evolution-court-staffing-srls-2019>.

²²We use the term “self-represented litigant” or “SRL” to capture the range of terms used to identify persons appearing in court without a lawyer, such as pro se, court patron, court customer, court user, and unrepresented party.

²³The Self-Represented Litigation Network (SRLN) is conducting a comprehensive survey of county-level court self-help services (to be completed in 2019) that will include information about court self-help center staffing patterns. In addition, the SRLN Library Working Group issued a survey on self-help in libraries in 2013 and is resurveying the field in 2019. Survey: SRLN Library Working Group National Self-Help in Libraries Survey, <https://www.srln.org/node/551/survey-srln-library-working-group-national-self-help-libraries-survey-srln-2013>.

- are without full formal legal credentials and training (i.e., a law degree), but who are trained specially to assist SRLs with basic civil legal problems, one party or side of a case at a time;
- do not act or operate under an attorney/client relationship, with no “traditional professional liability” accruing to the navigators, the entities under which they operate, nor to their supervisors, even if the supervisors happen to have law degrees; and
- are part of a formal program and institutional auspices, and not acting in their individual capacity.²⁴

To chart this space, we sought to discover and describe programs based on information provided by the individuals who created, oversee, or manage the programs. To do so, we devised a set of features or characteristics of the programs about which we sought to gain information in order to then analyze them in the aggregate. It was not our goal to conduct evaluations of any individual programs.

The intention of the survey was to be expansive, but in the end, we know it cannot be comprehensive. The navigator role is relatively new in the state court context with a "brand" that is not yet widely recognized. In the end, we believe we have discovered and report on much of what falls within our scope and exists across the country. The hope is that other program leaders will add to and further refine the initial collection of programs we found.

Methodology. To undertake our analysis, we have drawn largely on informant interviews and documentation publicly available or provided by the programs. The programs include those we discovered during an eight-month period (May-December 2018) that were in place or were fully planned and soon to emerge. (See the Appendix for a listing of the programs and relevant contact information.)

To start identifying relevant programs in the courts and beyond, we distributed a brief research query in collaboration with three major civil justice networks: Voices for Civil Justice Advocacy Network, with 1,500 advocates, including legal services executive directors, lawyers and access to justice commission staff; more than 100 individuals in the IOLTA network; and the 400-plus activists in the working group listservs of the Self-Represented Litigation Network (SRLN). We then used a snowball sampling method to identify from one to five informant contacts per state that we believed would have the most knowledge of nonlawyer programs in their own state. By email and telephone, we engaged with informants in all 50 states and the District of Columbia

²⁴ There are many programs using nonlawyers that do not fall with the scope of this research. We did not include, for example: those that primarily use technology-based tools to assist SRLs remotely, such as through hotlines or live chat; those using paralegals operating under an attorney, often based in legal aid offices; law school clinics that use attorney-supervised second- or third-year law students who are authorized to form attorney-client relationships; or mediation programs that serve two opposing SRLs simultaneously.

For example, a program falling outside the scope of this study is the Volunteer Court Navigator Program in the Seventeenth Judicial District in Adams County, Colorado. This program uses nonlawyer navigators to help both the landlord and tenant SRL simultaneously, in what they call a facilitated discussion. Several elements of their program design and operation, among others, merit a close look by those who wish to pursue this kind of approach using nonlawyers to assist SRLs: strong judicial and court staff leadership; clarity of goals; training materials; and data collection and outcome reporting.

(about 150 telephone conversations). Through this outreach process, we located initial respondents who then led us to others with deeper knowledge about the programs falling within our research parameters.

To derive information about the relevant programs themselves, we talked with over 60 informants. These are individuals who created, oversee, or manage the programs, including mostly judges, court staff, nonprofit leaders, and legal aid lawyers. We used a detailed interview protocol to collect information about program origins, features, and basic operations. Informants were advised that we would not directly name or attribute to them opinions they shared with us unless we were given permission to do so. In the report, we ascribe to any identified program only factual data that came from interviews and/or was provided through publicly available documents.

Relevant judicial directives or court guidelines, state statutes, program websites, or program documents requested and provided by informants have supplemented the interviews.

In addition to key informants, we consulted with some 20 experts and leaders, including court observers, access to justice advocates, legal aid lawyers, private bar members, court staff and members of the judiciary to help inform the study generally. We also visited several program sites to conduct interviews and observe programs firsthand.

II. OVERVIEW

The analysis that follows is based largely on interviews with informants who have created, oversee, or manage the 23 programs we discovered in the research. Some are within a larger program or initiative of which the nonlawyer navigator component is a part.²⁵ As described in the following sections, informants reported on observations, lessons, and insights about features of their programs and we offer potential considerations for creating a nonlawyer navigator program in court settings. This guidance should prove useful to those who wish to design and implement their own programs.

This section (II) provides an outline of the report. Additional sections describe in more detail the program characteristics and components: Section III covers primary program objectives; Section IV examines navigator roles, including case types, specific tasks, how the work is organized in the various settings where navigators operate, and their training and supervision. Section V outlines program implementation, including program origins, staffing and funding, and data collection and assessment practices. Section VI highlights examples of program impact from key informants. The final section (VII) is the conclusion, including opportunities, challenges, and recommendations.

²⁵ In some instances, larger programs also use trained lawyers who typically provide brief legal advice on a pro bono basis, often in or near the same court space where the nonlawyers are working. The analysis here focuses only on the part of the program using nonlawyer navigators.

Because the movement to make use of nonlawyers as navigators more widely in court settings is relatively new, many programs have been established recently. More than half of the programs have started since 2014, with many of those beginning operation in just the last two years. The remaining programs were founded since 2002, except for one program that dates back to 1981.

The 23 programs are established in more than 80 locations in 15 states and the District of Columbia. Over 60% operate only in a single locale or courthouse, while the remainder are based in multiple settings in cities or regions across a state. Most programs are operating in courthouses, though several are in nearby locations, such as law libraries. Many programs operate in high volume urban courthouses, but some are in smaller cities across a state.

Very few programs have formal authorization to deploy navigators in the court, such as a judicial order, regulation or statute. Rather, they have been initiated (and are often currently managed) by the actions and impetus of multiple champions and supporters, including the judiciary, official bodies like state access to justice commissions or specially appointed task forces, discerning nonprofit and legal aid lawyer leaders, bar foundations, and creative court staff. These same entities often partner with others to create or manage programs under various arrangements.

In all the programs, navigators come from a range of backgrounds, such as paid staff, college or graduate students, recent graduates or retirees. They undertake a wide array of tasks on behalf of the SRLs, such as helping them physically navigate the court; get practical information and referrals; or complete their court paperwork. Navigators also accompany SRLs to court to provide emotional support, help answer the judge's factual questions, or aid in resolving a matter with opposing counsel. They work on a variety of case types.

The programs show significant variations in their design. Despite common patterns of certain sets of features, there appears to be no clear coalescence around discrete models. The variation in key program elements reflects the range of creative ways program managers and leaders have found to move forward based on circumstances within their own particular court environments. They have shown adaptability and flexibility in designing their programs to operate in different contexts.

As to broad patterns found, the court is in the lead management/supervisory role in about half of the programs, sometimes in partnership with other entities, and the programs operate in self-help centers (SHCs)²⁶ or similar locations in courts. In these programs, navigators are frequently volunteers, lightly compensated staff, or AmeriCorps members who are trained to undertake a variety of tasks for SRLs, often on multiple case types. Navigators in these programs are mandated to serve either side of a matter, reflecting the neutral posture of the court. Typically, even those programs charged with serving either side provide services to only one side, e.g., tenants as opposed to landlords, who are usually represented by an attorney.

The other half of the programs are overseen by nonprofit organizations, also sometimes in partnership with other entities. Rather than serving multiple types of cases, these programs often focus on one kind of case, such as nonpayment proceedings, conservatorships, elder abuse, child

²⁶ We use "self-help center" or "SHC" to capture the range of terms used by informants, such as self-help law center, self-help resource center, or self-help service center.

custody petitions, or debt collection. Navigators in these programs may be paid staff or volunteers and typically are based at a designated table or desk, an assigned room or office, or can be found in or near relevant courtrooms. Some of these programs are serving SRLs on only one side of a matter.

Within this second cluster of programs, there are several that provide assistance in the area of domestic violence. These advocacy programs have existed for many years, share a major source of federal funding, and are widespread across the country. Many domestic violence advocates are not attorneys. Rather than including every such program, this report focuses on three programs that are illustrative of those found in various states.²⁷

III. PROGRAM OBJECTIVES

Clear objectives are critical when initiating any new program.²⁸ Drawing on publicly available information and descriptions by key informants of the goals of their work, we identified three principal objectives: 1) enhancing court effectiveness; 2) facilitating “access to justice” for SRLs; and 3) providing a positive and rich experience for navigators.

One-third of the programs pursue multiple objectives, while the remainder focus on a single core objective. Informants often emphasized the complementary nature of the benefits that accrue to the court, SRLs, and navigators themselves. One senior court manager with long experience in court self-help services who works with volunteer navigators captured a perspective that was conveyed by many informants: “If you enhance court efficiency, it naturally helps [SRLs].” Similarly, a senior judge in another court observed that a “by product” of facilitating access to justice for SRLs is that it makes court processing more efficient. And another highly experienced court manager summed it up well, saying, “There is an advantage to courts to have navigators who help provide accurate forms, save time, mitigate the volume, bring fresh perspective, and improve procedural justice.”

Enhancing court effectiveness. More than one-third of the programs highlighted the goal of efficient or streamlined court processing, as reflected in a few comments: “Diminishing the workload of court staff given the overwhelming number of SRLs;” helping create “accurate and

²⁷ See NATIONAL NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS: 12TH ANNUAL CENSUS REPORT 3, 17 (2017), <https://nnedv.org/content/domestic-violence-counts-12th-annual-census-report/> (reporting in this most recent version of the annual census that more than 1500 domestic violence (DV) programs in the United States provide nonlawyer court or legal accompaniment/ advocacy to DV survivors).

²⁸ According to Judge Fern Fisher (ret.), “[c]learly identifying the goals and objectives of a Navigator program is important to accomplish from the start and will shape the roles of the Navigator. . . [as well as] the types of funding that might be available for the program, whether volunteers or more trained navigators should be used, as well as other operational decisions.” Fern Fisher, *Navigating the New York Courts with the Assistance of a Non-Lawyer*, 122 DICK. L. REV. 825, 833–834 (2018).

complete forms to ease judges' workloads and save time for all court staff;" and creating a "smoother operation in the court." Several program leaders believe that these programs promote public trust in the courts, or as one manager put it, they help "bring the court closer to the community."

Facilitating "access to justice" for SRLs. One aim of the programs is to equip SRLs "to understand their legal issues and navigate the court system by providing high quality practical information." Another version of this idea was expressed as, "serving the many individuals who lack representation and helping them overcome obstacles in resolving their legal matters." Some informants described the purpose of the navigators as helping SRLs "file appropriate forms;" "pursue their legal cases more effectively than when they go it alone;" or "become educated about their legal options and potential outcomes." One program director observed that many SRLs are "functionally illiterate." The navigators "give them information [with which] at least they can do a better job and be more prepared than if they didn't have information from us." Another program offered the following goal: "In the short term [SRLs] are better prepared to move forward with their cases while in the long term this assistance will help litigants move to a place of stability."

As their main objective, more than one-third of the programs focused on helping SRLs navigate a specific case type/practice area such as eviction proceedings, child custody cases, or filing for conservatorship or elder abuse restraining orders. Some specifically seek to assist victims of domestic violence to obtain civil orders of protection, while another works to help homeowners secure diversion from foreclosure so they can stay in their homes.

Many programs also aspire to increase the procedural fairness that SRLs experience in the court. Some informants saw this as happening through "empowering the SRLs to tell their own stories" or giving them "more confidence" to represent themselves. Several informants say their programs aspire to make the process less "intimidating" and "confusing" for SRLs.

Providing a positive and rich experience for navigators. A number of the programs, especially those utilizing student navigators, emphasized helping the individuals working as navigators gain life and leadership skills, such as getting "real life experience," even while "they are helping people in need." Others stressed the importance of students learning more about the legal profession and/or how the court system works. Several informants emphasized that their aspiration was to help law students gain from the experience now while they are in law school, which would benefit them throughout their careers.

Some informants also aspire to have a broader impact than enhancing the experiences of navigators, court staff, or SRLs. These informants spoke of "strengthening the broader community" with higher aims, such as helping improve housing conditions or preventing homelessness.

IV. NAVIGATOR ROLES

A. Legal Advice vs. Legal Information

Informants emphasized a deep respect for the importance of ensuring that nonlawyer navigators understand and abide by the critical distinction between legal information and legal advice. By all reports, program leaders exercise an abundance of caution and show deference to this difference. Accordingly, the admonition against giving legal advice is firmly embedded in all program materials, such as training guides, volunteer handbooks, mission statements, state court directives, policies or guidelines, “do's and don'ts” sheets or cards, as well as in disclosure forms or waivers signed by the SRL. Distinctions between communicating with SRLs about what they “can” do rather than what they “should” do are prevalent in many of the materials.

One senior court administrator underscored the need for a “safe harbor policy,” meaning guidance on the legal advice versus legal information distinction. She noted that it is very useful to advancing the adoption and implementation of a nonlawyer navigator program. Several states where programs operate already have clear court or judicial guidelines that underscore the advice/information distinction, not only for court employees, but also for volunteers.

A majority of programs use some kind of waiver, disclaimer or disclosure form, often as part of an intake form that all SRLs must sign. Such a form typically tells the reader that the nonlawyer status of the navigator precludes the giving of legal advice, or creation of an attorney- client relationship. These documents also usually inform the SRL that there is no confidentiality in the context of court-provided services in self-help centers where navigators may work. The exception to this no-confidentiality policy is in domestic violence advocacy programs.

Our informants reported no official charges or complaints of unauthorized practice of law (UPL) filed with relevant disciplinary bodies concerning navigators. Support from the judiciary and official legal bodies have helped overcome some initial concern expressed about UPL or other skepticism. According to informants in one program, for example, an early concern about UPL was mitigated by the support of a formal committee and its two co-chairs, one of whom was a senior judge in the court where the effort would be based. The judge reports that there have been no complaints about UPL as, he notes, “[i]t is very clear the navigators are not practicing law. They are providing education to [SRLs].”²⁹

B. Nomenclature

Existing programs use a variety of names, with no particular “brand” yet dominant. That is not surprising, given the variations in their functions, the type of personnel used, and their relatively recent vintage. Nonetheless, the term “navigator” seems to strike a chord and is evocative of the type of role undertaken by these individuals.

²⁹ Another judge, Fern Fisher (ret.), recommends reaching out early on to bar associations to assuage concerns and perhaps secure their support. *Id.* at 834.

Title of Navigators	Programs Using	Title Distinctions
Navigator	7 (30%)	Navigator, <i>Volunteer Court Navigator</i> , <i>Court Navigator</i> , <i>Courthouse Navigator</i> , <i>Legal Navigator</i>
AmeriCorps Member ³⁰	5 (22%)	AmeriCorps Member, AmeriCorps <i>Fellow</i> , AmeriCorps <i>Advocate</i>
Volunteer or Intern	5 (22%)	<i>n/a</i>
Advocate	5 (22%)	<i>Advocate</i> , <i>Supportive Advocate</i> , <i>Legal Advocate</i> , <i>Court Advocate</i> , <i>Family Self-help Center Advocate</i>
Housing Counselor	1 (4%)	<i>n/a</i>

C. Case Types

Across programs, navigators work on a wide range of case types. Several informants shared their views about the appropriateness of nonlawyer assistance in different areas of law. Some held the view that navigators should work on certain case types they deemed less complex. On the other hand, one senior program manager, who is a lawyer and oversees student volunteers, expressed a different view: “Case type and complexity are less significant as long as volunteers are well-trained and supervised.” Several other managers, also trained as lawyers, echoed that view.

Navigators within the programs are assisting SRLs on a number of case types, with a primary focus on one or two types as the table below reflects.

In slightly under half of the programs, navigators work a single case type. In those programs that focus on two or three case types, program leaders preferred exercising caution at the start of their programs, waiting to deploy navigators in more than one case type only when navigators became well-versed and comfortable with the initial assignment. Even in the programs where navigators work in settings like self-help centers that address multiple case types, their actual work tends to be predominantly on one case type -- most typically family law matters -- and navigators are overseen with dedicated (most often lawyer) supervision.

³⁰ In two states— Illinois and California— the group of AmeriCorps members serving SRLs are called “JusticeCorps.”

Focus of Programs	Case Types & Number of Programs
One case type (11 programs)	<ul style="list-style-type: none"> • Family Law <ul style="list-style-type: none"> ○ Child Custody (1) ○ Uncontested Divorces; Name Change; Modifying/Enforcing Court Orders (1) • Housing <ul style="list-style-type: none"> ○ Nonpayment Proceedings (2) ○ Landlord / Tenant (1) ○ Mortgage Foreclosure Diversion (1) • Filing for Elder Abuse Restraining Orders (1) • Petitioning for Conservatorship (1) • Filing for DV Civil Protection Orders (3)
Two to Three case types (3 programs)	<ul style="list-style-type: none"> • Habitability (Rent Escrow); Debt Collection (1) • Landlord / Tenant; Debt Collection (1) • Landlord / Tenant; Debt Collection; Non-family Temporary Restraining Order (TRO) (1)
Multiple case types (9 programs)	<ul style="list-style-type: none"> • Family Law (<i>*in 7 programs predominantly</i>) <ul style="list-style-type: none"> ○ Child Custody; Uncontested Divorce; Visitation; Child Support • Also may include: <ul style="list-style-type: none"> ○ petitioning for domestic violence civil protection orders; landlord-tenant; temporary restraining orders; debt collection or small claims matters

D. Tasks Performed by Navigators

As defined here, navigators help only one SRL at a time. However, by mandate, about 75% of the programs offer their services to either side of a matter (e.g., tenants and landlords or either spouse in a family law matter). In the remaining 25% of programs, navigators provide assistance to one side only. However, among those programs that do serve both sides, a number indicate that most of their services aid only one side because the other side—for example, landlords in eviction cases—often already has a lawyer to represent them.

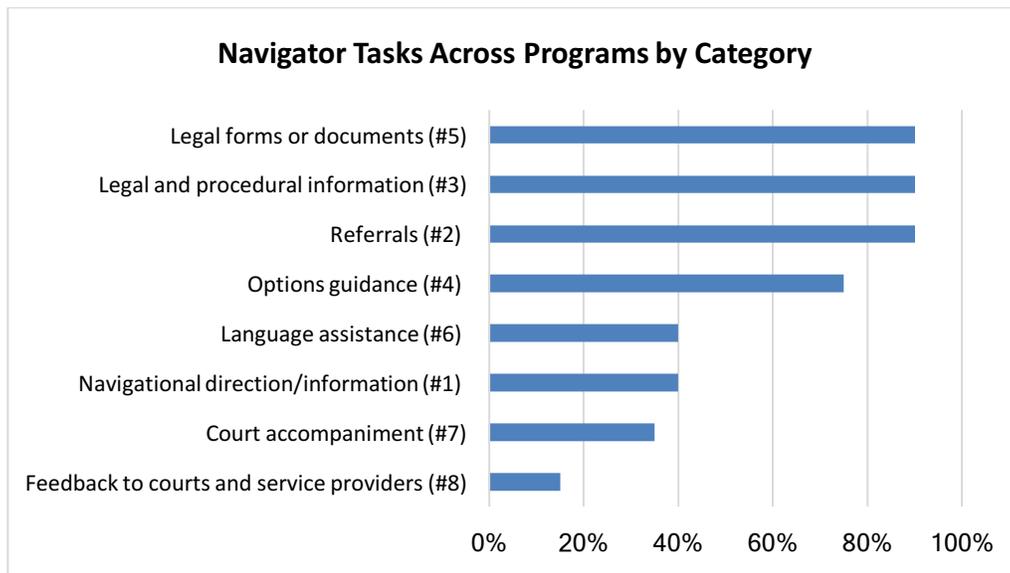
Virtually all the navigators are “navigators for the day,” i.e., they do not help an SRL beyond one day of service. Across all the programs studied, navigators generally perform eight distinct kinds of tasks: helping people physically navigate the courthouse; referring SRLs to other sources of assistance; providing legal and procedural information; sharing options with SRLs; assisting SRLs with forms or other documents; translation and other language assistance; accompanying SRLs through different activities in court; and, offering feedback to courts and service providers based on navigator experiences working with SRLs. Programs vary in how many categories of tasks navigators perform, and in how the different specific tasks are bundled together.³¹

CATEGORIES OF NAVIGATOR TASKS	
1. Navigational direction/information	
<ul style="list-style-type: none"> • Verbally direct SRL to a specific office or place in or surrounding the courthouse (clerk’s office, courtroom) • Provide information about where to go in the courthouse or basic procedural information (correct courtroom, checking court computer terminal) • Physically escort SRL to a court location (“Let me take you where you need to go.”) 	
2. Referrals	

³¹ These categories do not exhaustively include every individual task highlighted by informants.

<ul style="list-style-type: none"> • Provide information about appropriate referral options for further assistance outside court (e.g., legal aid or pro bono lawyers, non-legal/social services resources; distributing brochure/listing of services, sharing website or online information) • Provide information about obtaining available court services (such as self-help center, clerk’s office, interpreter or mediation services) • Connect SRL directly to legal aid provider/pro bono lawyers on site with whom navigator is working (make an announcement or encounter SRL during the court docket call or during intake at a help desk; direct to the particular lawyers)
<p>3. Legal and procedural information</p>
<ul style="list-style-type: none"> • Provide information about the courthouse, courthouse rules and protocol, roles of courtroom personnel, answers to frequently asked basic questions (verbally or through specific brochures or fact sheets) • Assist SRL in understanding procedural posture of his/her case • Prepare SRL for what to expect at his/her court hearing • Assist in using web-based resources, including assistance with self-guided research or self-help materials. • Facilitate workshops or provide materials on discrete subject matter areas • Provide information about required next steps in the process, e.g., court scheduling, requesting a hearing, filing a fee waiver or securing another type of post-hearing service
<p>4. Options guidance</p>
<ul style="list-style-type: none"> • Conduct initial assessment of SRL needs (listen to concerns, basic intake and screening, sometimes by reviewing completed intake survey or through initial meeting at the front desk) • Share available options about practical and process information to make informed decision (but not identify or suggest option to influence); make appropriate referral if needed. Instruction: “you can do this” and not “you should do this.” This activity is often coterminous with reviewing forms with instructions or done by giving prepared brochures.
<p>5. Assistance with legal forms or documents</p>
<p>Assist in:</p> <ul style="list-style-type: none"> • Gathering and organizing SRLs’ documents • Identifying, referring to, or printing out/providing correct legal forms or packet • Preparing, completing, and copying legal paperwork • Reviewing forms/paperwork for completeness • Providing access to and helping use computers that produce forms
<p>6. Language assistance</p>
<ul style="list-style-type: none"> • Assist SRLs in their native or first language
<p>7. Court Accompaniment</p>
<ul style="list-style-type: none"> • Accompany SRL during court appearance to take notes on judge’s orders; post-hearing, share notes to help SRL understand what happened and to undertake necessary follow-up • Accompany SRL to meet with judges, court attorneys, or other side’s attorney (in hallway or in courtroom); take notes to help SRL understand what happened in meeting and to assist with factual inquiries • Accompany to courtroom and be present to provide SRL emotional support (including sitting at counsel table with or standing beside SRL) • Accompany to court appearances and answer factual questions as needed that are addressed to SRL by judge or court attorney • Assist SRL during negotiations with counsel on the other side in a conciliation conference
<p>8. Feedback to courts and service providers</p>
<ul style="list-style-type: none"> • Observations and suggestions for changes in broader court/legal practices based on experiences

Categories of navigator tasks used by the programs overall identified in the table above breakdown approximately as follows below:



As reflected in the bar graph above, in 90% of programs, navigators provide the following sets of tasks: referrals; legal and procedural information; and assistance with legal forms and documents. In 75% of programs, they share information on available options. In 40% of programs, they give navigational direction/information as well as offer language assistance. In 35% of programs, they provide court accompaniment, while in another 15%, they give feedback to courts and service providers.

Across many programs, supervisors either review all documents created with the assistance of navigators for accuracy and completeness, or they rely on specific written instructions or preapproved forms to guide navigators' work on this task. Informants also stress their belief that navigators are well-trained to understand that they may only explain to the SRL what she "can" do, rather than what she "should" do. Program managers also emphasize that navigators add significant value by assisting SRLs with computer-related activity, particularly on completion of forms

In certain programs, the ability of navigators to speak a language in addition to English is a significant attribute. In a recent snapshot survey by California JusticeCorps, for example, 29% of the SRL responders noted that their encounters involved assistance provided in languages other than English. As noted earlier, a number of programs emphasized that they consciously recruit individuals with diverse language skills.

While navigators in many different programs assist SRLs in moving their matters forward through the process, it is rare that navigators accompany SRLs into the courtroom for the purpose of helping them understand the judge's order and the next steps after the hearing. Several informants who have run programs for many years noted that they believe that this task is critical, and they would like to build it more fully into their programs.

Few programs draw on the experiences of navigators to help improve court process or procedures. Informants from those programs that do use navigator feedback indicate that this has been helpful in modifying court practices to better serve SRLs.

E. Connecting with SRLs in the Courthouse

The particular tasks carried out by navigators often comport with a particular space in the courthouse where they work. For example, providing information about where to go happens mostly at security entrances or help desks located in the court, while assistance with forms is often undertaken in a central location like a self-help center.

The spaces in courts where navigators work differs from program to program. Informants report that having assigned space where navigators can work is important for a range of reasons. Dedicated space can provide a clear location to connect with SRLs; the navigators' work can be facilitated by providing areas where they can sit with SRLs and go over paperwork or other matters together; and, legitimacy is conferred on the program in the eyes of SRLs, judges and court staff. Navigators in many programs also signal their status by wearing badges, lanyards or special uniforms.

In most cases, navigators are primarily stationed in one location, about half in a court self-help center or, on occasion, in the clerk's office or a law library. Among the other half, programs that are often led by a legal aid or nonprofit organization have been assigned a designated office within the courthouse, such as an intake center for domestic violence programs or at a table in a lobby area or near a courtroom where navigators work. Several programs have not been assigned a specific space, at least in one instance, because no space is available.

Clear signage that directs visitors to various court locations and services is essential, but often not sufficient. Several program leaders emphasize that it is critical to meet SRLs "where they are," or "where you find them." For example, one judge noted that SRLs "get lost," stressing that "a shocking number of people" are literally unable to find their courtroom, even leading to default on their cases. Another program leader noted that "we want to be where the [SRLs] are. This is part of the navigator's job."

Several programs also believe it is critical to proactively install navigators in a variety of locations or near where the SRLs will need to transact their business. For example, the PACS program in Arizona stations navigators at information desks and security checkpoints at the courthouse entrance and deploys them to 'roam' the courthouse looking for SRLs. This program also places navigators where they do their main work assisting SRLs with documents—the self-help center, which is co-located in the law library. Navigators in the Hawaii-based Volunteer Court Navigator Program can be found at the security checkpoint in the courthouse or stationed near relevant courtrooms where they will meet SRLs. In New York City, the court navigators may be based in courtrooms or a self-help center, and they also seek out SRLs waiting in line near the clerk's office.

F. Training and Supervision

As noted above, program managers believe that the necessary level of training and supervision is a function of the tasks the navigators perform and their level of experience. Training and supervision, as well as dedicated and appropriate backup, are critical and are elements of the design of all the programs.

Training. Informants believe that the training navigators require is determined by what they would be doing and the knowledge and experience they bring to those tasks. Many informants emphasized the importance of “on the job” training, which often includes “shadowing” or observing the work of others or of court proceedings. In addition, several informants underscored the importance of follow-up training beyond the initial orientation for those navigators who work over an extended period of months.

Programs undertake varying combinations of training topics, methods, and phases highlighted in the table below.

EXAMPLES OF TRAINING COMPONENTS	
Content	<ul style="list-style-type: none"> • Distinction between legal information and advice • Descriptions of court system, personnel, basic rules, operations, and glossary of relevant legal or court terms • Substantive Law - case types or issues navigators will be assisting with (substance and steps in the process of relevant housing law, debt collection, etc.) • Common fact patterns that might arise • Relevant legal and social services resources and references • Pertinent job skills, such as ethical concerns etc. • Communications skills and how to work with different types of SRLs
Methods	<ul style="list-style-type: none"> • Webinars modules/videos /online lessons • Written training manual/materials including information sheets • Role playing exercises • Completion of forms exercises • Post-training testing and periodic quizzes
Phases	<ul style="list-style-type: none"> • Initial on-site orientation • On the job, hands on training at specific sites • Shadowing and observing colleague or supervisor • Observation of relevant court hearings or matters • Mandatory follow-up training sessions during the course of a year

As with the tasks navigators undertake, program training models combine these elements in different ways. For example, many of the AmeriCorps member programs incorporate a variety of training components such as a detailed training manual or handbook, a full orientation that varies in length along with training or shadowing on site, followed by mandatory refresher or supplemental trainings during the year. In two domestic violence programs, advocates undergo an initial 40 hours of training on a range of relevant topics. In another program, university students are enrolled in course work for credit and are required to do 5 online lessons with quizzes to assess their command of the material. They then engage in a face-to-face training at the courthouse that includes role playing and observation followed by a test to ensure their readiness to be navigators. Before they begin service, they also receive a detailed manual for reference.

Supervision. Supervision helps navigators stay within the scope of their duties and feel more confident in their work. Many program leaders stressed the importance of dedicated, ongoing supervision on site by qualified staff to help navigators with questions, support and consultation. Yet, depending on the circumstances, leaders also show flexibility regarding supervision, in light of the variety of training and skill levels the different navigators bring to their jobs, the roles navigators perform, and the environment in which they work. Several program leaders express a clear desire for more resources to enhance program supervision on site. And, in one-third of the programs where leaders say they wish to expand their programs, whether in volume or in case type, additional resources will be needed.

Almost 75% of the programs have dedicated supervision on site where navigators work, with all but three providing supervision at all times. When supervision is not continuous, two programs are spread between several locations for which there is not always on site supervision covering all locations at all times. In another program, supervisors provide intensive guidance on site when navigators are new to the role, but, thereafter, provide periodic supervision, observing navigators as they assist SRLs and providing feedback to ensure they are following the protocols. All supervisors in these instances are available for phone or email backup and support.

In a few of the programs that rely on nonprofit staff, a variety of arrangements assure backup and support if no dedicated supervisor is on site. As examples, in two programs the navigators are nonprofit staff who have been trained and observed by supervisors for a considerable time during their initial tenure before being allowed to operate on their own. In these programs, the navigators come to the job well-versed in the subject matter on which they are providing information. The supervisor makes visits on site several times a week to check in and is available by phone and email. In another program, for example, a certified housing counselor assists an SRL homeowner through a process seeking diversion from foreclosure including a conciliation conference at the court with opposing counsel for the lender. The housing counselor may consult, as needed, with a legal aid lawyer on site (and throughout) to address any concerns or questions that might arise.

In other programs where there may be no direct dedicated supervision, trained volunteers can turn to court employees for questions, as needed. In one of those instances, the navigators also meet weekly with their program manager to discuss questions or problems that have come up.

In more than half of the programs, an individual trained as a lawyer provides the supervision, consultation and support.³² In the remainder of the programs, experienced nonprofit or court staff, who may or may not be lawyers, are designated as supervisors.

V. PROGRAM IMPLEMENTATION

³² As noted earlier, even when there is a lawyer acting in a supervisory role, the navigator is not representing the SRL in an attorney-client relationship.

A. Program origins

Several informants stressed the utility of initiating programs as pilots, with 40% starting as such. Of the pilots, 50% have now become “permanent,” with two of those having expanded to new sites within their respective states. Informants report that pilots have allowed for experimentation on how best to serve SRLs within a given court context, helping to secure court buy-in, and “working out the kinks” in program operations.

Very few of the programs secured, let alone required, formal authorization for the role of navigator in the program in order to begin operations, such as a judicial order, certification, state statute or specific regulation. Rather, several informants stressed that the need for formal authorization is largely determined by the particular court culture or context, with one senior court administrator offering that it depends “on how we do things here.” As one judge noted, for example, “we already have a number of pro bono activities in the court, so why wouldn’t we permit this one?”

Of those programs surveyed, two were officially authorized by way of judicial order. For example, the chief judge in New York proclaimed the establishment of one program in his annual judiciary speech and it was later codified by an order of the chief administrative judge in the state. The Hawaii Supreme Court authorized the navigator role in the other program by an order that spelled out the program’s contours.

In the Philadelphia foreclosure diversion program, the “housing counselors” are certified by the city’s housing department and must meet certain training and testing requirements. This program started as a pilot in 2008 during the housing crisis and the certification process was developed subsequently.

Finally, two of the domestic violence programs cited in this study operate in jurisdictions where “domestic violence advocates” are within a “domestic violence program,” both terms defined by state statute. In one of these states, the statute explicitly authorizes nonlawyer advocates to assist victims in the preparation of their civil protection orders and allows them to attend court proceedings and “sit at counsel table and confer with the victims unless otherwise directed by the court.”³³

Apart from any formal authorization, the impetus for these programs has come from the actions of multiple champions and supporters. These include the judiciary, official bodies like state access to justice commissions or specially appointed task forces (which have often issued recommendations or reports in support of the idea that has helped tip the balance to start the programs), discerning nonprofit and legal aid lawyer leaders, bar foundations and creative court staff. Programs have often emerged through partnerships among these different entities. Such support seems to be a critical component in order to secure “buy in” from court and bar stakeholders and to overcome any initial obstacles or concerns.

Here are some examples.

³³ 750 ILL. COMP. STAT. 60/205(b)(3). Further, the statute at 60/205(b)(4) specifically states advocates are “not engaged in the unauthorized practice of law when providing assistance of this type.”

Judicial or access to justice commission support has played a key role in at least one-half of the programs. For example, a senior judge in Hawaii led a task force of the access to justice commission recommending a volunteer court navigator program which led to a state supreme court order authorizing it. The access to justice commission in Illinois is part of a collaboration of groups (including the Chicago and Illinois Bar Foundations) that guides the Illinois JusticeCorps program.

Legal aid or nonprofit leaders have spearheaded programs as a result of their recognition of the great volume of SRLs in their particular practice areas and their belief that a new approach was needed. In other instances, court staff played an important role in pushing forward use of nonlawyer navigators.

Across the board, partnerships have proven instrumental, serving as the driving force behind programs. Nearly half of the programs reportedly started as collaborations and they continue to see themselves as such, with a variety of arrangements in play—whether between and among the judiciary, bodies like access to justice commissions, and/or legal aid and nonprofit groups.

Some program leaders reported that inspiration to start a program came from programs in other states. Several informants specifically mentioned that their programs were inspired by the New York navigator projects and the 2016 evaluation of them, *Roles Beyond Lawyers*.³⁴ Similarly, several of the AmeriCorps programs and court self-help center-based volunteer programs were inspired by learning of a program elsewhere. For example, a judge from Maricopa County, Arizona saw the California JusticeCorps program and returned to his jurisdiction to help spawn an AmeriCorps program there.

B. Navigator staffing³⁵

1. Paid or Salaried Staff

Eight of the 23 programs utilize employees of nonprofits to take on the navigator role. Seven of these programs use individuals who bring to the role knowledge or training in a specific case type given the nature of the nonprofit for which they work, *e.g.*, housing, domestic violence, or family law. They are recruited through the standard process used by their respective organizations.

Most of these navigators are full-time staff, although some may not be deployed in the court full-time. Instead, they work at their court site mainly when it is “open for business,” typically at the busiest times to meet and work with SRLs.

Examples of paid staff include the housing counselors in Philadelphia who appear at court conciliation conferences on a particular day having assisted the SRL homeowner through the foreclosure diversion process. Another example is a nonprofit that uses nonlawyer staff seated at tables in housing court to connect with SRLs and assist them with their answers, largely in nonpayment proceedings.

³⁴ ROLES BEYOND LAWYERS, *supra* note 18.

³⁵ This section refers solely to the navigators per se, and not to their supervisors who have a different compensation structure.

2. AmeriCorps Members

In the 15 programs using non-salaried staff, there is a variety of types of individuals, tasks or services performed, commitments made, and incentives or compensation provided. Programs often use a combination of several types of individuals to provide assistance.

Five programs use AmeriCorps members. They are not paid staff, nor are they considered to be traditional volunteers.³⁶ Funded in large part by the federal Corporation for National and Community Service (CNCS), with a match from the relevant grantee in the locale (such as courts or nonprofits), these programs use mostly undergraduates or recent college graduates, in some cases deploying the latter in the role of “fellows.” There are designated eligibility requirements spelled out for these opportunities.³⁷

Members typically commit to 300 hours over an academic year or a semester (minimum time), with some giving “half time” at 900 hours, and, in one program, “quarter time.” The AmeriCorps fellows may serve as team leaders or mentors to other members. They gain full-time status serving 1,700 hours during one year and may return for another year of service.

Understandably, program managers largely favor the fellows who can provide full-time service, bring at least one previous year of experience with strong knowledge of the court processes, and can perform more advanced tasks in addition to helping mentor other members. One program leader adds that, in his program, it is better to get a two-year commitment to avoid the turnover problem. Yet, program leaders acknowledge that fellows require a higher level of resources.

In exchange for their service, members typically receive a small cash stipend or living allowance, depending on their status, as well as some kind of post-service educational award or credit. The fellows are also often able to garner certain benefits such as childcare, health insurance or deferral of student loan payments. Members are typically recruited from college campuses, with the JusticeCorps in California, for example, maintaining a formal partnership with 16 universities.

California’s JusticeCorps is also the largest and oldest of the AmeriCorps member cohorts, which vary in size. As of this writing, California has 312 members (274 minimum time members and 38 fellows), who work in three regions across 27 sites, Arizona’s Maricopa County program has 70 minimum time members, while the Illinois JusticeCorps has 13 fellows and 43 members working in 13 courthouses. In their court-related programs, the Montana and Hawaii programs have six and seven members, respectively.

There is now considerable experience with AmeriCorps member programs working in the courts, with California, for example, having initiated its first site in 2004.

³⁶ *Introduction to AmeriCorps Members: A Presentation for AmeriCorps Grant Applicants*, Corp. for National and Community Service 4, https://www.nationalservice.gov/sites/default/files/documents/Intro%20to%20AmeriCorps%20Members%20Final_tagged.pdf (last visited May 21, 2019).

³⁷ *Id.* at 6; AmeriCorps, *Become a Member*, Corp. for National and Community Service, <https://www.nationalservice.gov/programs/ameri-corps/ameri-corps-state-national/become-member> (last visited May 21, 2019).

3. Volunteers and Interns

The type of volunteers most commonly deployed are undergraduate or graduate students. Others include law students, retirees or adults from the community who may be changing careers or simply wish to help, as well as, less frequently, paralegals, paralegal students, and community college students.³⁸

Some programs secure students through formal arrangements with law schools or college campuses in their respective communities. They have created internship or externship programs where the students can gain educational credit or, in the case of law students, meet their voluntary pro bono pledge. In other programs, students are responsible for securing their own arrangements with their respective schools.

Of course, time commitments of volunteers vary. Some work on a periodic shift basis where they agree to assist in a self-help center at designated times, with several programs requiring a specific commitment of hours. In several programs, volunteers are required to be present when certain substantive court dockets occur during a week or month. Another program uses undergraduate and graduate students to serve as navigators as part of a university course for which they obtain three hours of educational credit. Each of those students commits to at least one four-hour shift during the week consistent with the times most opportune to serve SRLs.

Informants offered useful perspectives about engaging volunteers.

Recruitment and retention concerns. Informants report that they recruit volunteers in various ways such as attending career fairs or other events to speak to students; distributing flyers; or posting notices on their websites. Some informants discussed the “ups and downs” of recruitment and retention. Of course, programs are keen to secure returnees who require less staff supervision or training upfront. They also carry out their activities with more confidence and they help mentor the new recruits.

Informants from more rural states commented on the difficulty of finding student volunteers, especially since no colleges or universities, let alone law schools, are in the vicinity. At the same time, one of the program leaders in a major urban area noted that it can be difficult to recruit and retain individuals from local colleges because their program seeks students who bring diverse language capacity. She indicated that many of the students, however, often need to find paid work. In two other programs, supervisors noted that volunteers “may come and go” and they have difficulty reaching the desired consistency and ongoing commitment from the volunteers who sign up for only a limited duration of service.

A number of programs do not have a staff person who is responsible for recruitment. Many supervisors noted the significant benefit a staffer assigned to recruit volunteers would bring to their programs, helping find not only more, but more diverse navigators.

Incentives. Several informants commented on the importance of providing some kind of incentive for volunteers, whether a small cash stipend or educational credit similar to what

³⁸ Several of the volunteer programs also use on occasion volunteer attorneys or a retired judge, but usually these individuals are providing a separate set of services, such as offering brief advice or pro bono counsel on a matter.

AmeriCorps members receive. A number are seeking to set up more formal arrangements with universities/law schools whereby students can secure credit for, say, an internship or externship type of program.

Volunteer limits and strengths. Program leaders express an ongoing appreciation for the kinds of matters on which they permit volunteer navigators to provide assistance. As an example, in two programs, closely supervised high school students are engaged under public service programs. One senior program leader said that high school students can help “bring a fresh perspective,” but she readily notes that she supervises the students closely and would only allow them to undertake certain kinds of tasks. On the other hand, a manager in another program was wary of using these students, although she had no direct experience in doing so.

Some court managers lament that they are unable to use law students because there are no law schools in the area, while in another program, managers are seldom able to recruit law students because the navigator activities do not fall within the scope of the relevant pro bono requirement that could provide the necessary incentive to students. In other programs, managers express wariness about recruiting law students. Their concern is that the students may become overly involved, going beyond the prohibition held firmly by all the programs that no legal advice may be provided by the navigators.

Several of the programs are occasionally able to recruit social work students, with at least one of the programs actively seeking to make an arrangement with their schools or departments. They believe that social work students relate well to individuals who comprise much of the SRL population.

Some program leaders expressed a preference for engaging “adults” or retirees, desiring “life experience.” They believe these are the best individuals with whom to test out a navigator program. Program managers have secured professionals with diverse experience, such as someone completing a paralegal studies program, or a former sheriff, college professor, and/or librarian who has retired.

C. Program funding and structural support

Despite the best efforts of program personnel, many programs lack the institutional commitment to garner necessary resources for longer-term program sustainability, let alone expansion. Availability of resources is a critical issue and, unfortunately, in a number of the programs, funding is relatively patchwork and ad hoc. Many informants described their persistent concern about the difficulty of maintaining programs without dedicated funding. Even with their current funding in place, several informants underscored the challenge of having steady multi-year funding because they cannot count on a line item in the budget, and instead, must depend on less reliable sources such as private grants.³⁹

³⁹ One of the most promising efforts was a New York City navigator project evaluated and reported in ROLES BEYOND LAWYERS. This program achieved very impressive outcomes for SRLs in housing court. It was carried out jointly by two nonprofits, Housing Court Answers and University Settlement. ROLES BEYOND LAWYERS, *supra* note 18, at 4–5; Unfortunately, this collaborative project is no longer operating in the way and at the level it was as

There is of course a relationship between the availability of ongoing funding and the ability to support adequate program infrastructure which often helps assure quality and demonstrates a level of institutional commitment to programs. Although 60% of the programs have some management personnel beyond the immediate supervisor(s) for navigators, few have clear formalized organizational structure. A number of programs lack human resources functions that could provide more robust training, recruitment and application processing or other structural support, such as communications and the capacity to collect and analyze data.

In a number of situations, programs are reliant on in-kind support, such as supervision, which is added on to the existing duties of already busy court staff. Some informants explained that being short-staffed prevents them from leveraging staff and being able to train more volunteers, while others aspire to having more help to undertake concerted volunteer recruitment.

Several court staff also expressed concern about diverting money from legal aid lawyers to do their work. Some program managers discussed their hope and belief that the court should and would fund more of these kinds of programs.

Despite fundamental concerns about their sustainability, program leaders have been creative in seeking funding, as well as in deciding to launch initiatives in pilot form, perhaps without “every ‘I’ dotted or ‘T’ crossed” in order to begin to demonstrate the potential of their concept. Because many programs are volunteer-based, to the extent funding is provided, it is largely to support staff supervision.

In short, programs often rely on a variety of individual and combined funding sources to support navigators. Below is a summary of primary funding sources that informants reported, along with some illustrative examples.

Federal, state, and/or city funding.⁴⁰ Eleven programs indicated that their main source of funding comes from the federal government. These funds often flow through or are directly administered by a state entity and/or may require a match from a state, local, nonprofit or court entity. Federal

described in ROLES BEYOND LAWYERS due to, among other reasons, loss of city and private funding. Fisher, *supra* note 28, at 834–835.

⁴⁰ See the Justice in Government Project Toolkit for descriptions of state-administered federal block and formula grants that allow states to include spending on legal services, including some of the sources tapped by a number of the programs in this study. To obtain the most recent version of this matrix, visit the following link and select “Grant Matrix PDF.” The Justice in Government Project, *Module 2: Funding Civil Legal Aid*, Am. U School of Public Affairs, <https://www.american.edu/spa/jpo/toolkit/module-2.cfm> (last visited May 21, 2019). For information about federal grants involving federal funds applicants apply for directly from federal agencies, see *Civil Legal Aid Federal Funding Resources*, National Legal Aid Defender Ass’n., <https://legalaidresources.org/> (last visited May 21, 2019). Given the breadth of family law matters that navigator programs address, program leaders might consider exploring also the use of Title IV-D child support and establishment of paternity funds, which state child support directors may choose to use for self-help services, as reported in the Toolkit’s Grants Matrix and the Self-Represented Litigation Network Title IV-D Funding Resource Guide. See <https://www.srln.org/node/53/resource-title-iv-d-funding-resource-guide-srln-2014> (last visited May 21, 2019).

sources include: CNCS (for AmeriCorps programs); and, largely for domestic violence programs, the Violence Against Women Act (VAWA); Services, Training, Officers, and Prosecutors (STOP) or Justice for Families grants; and Victims of Crime Act (VOCA) funds. One navigator effort is part of a large partnership of nonprofits which is funded partially through a city housing department and the federal Community Development Block Grant (CDBG) program. Another nonprofit partnership that uses navigators was initially funded by the city council and is now supported by the mayor's budget.

Private funding. Seven programs secure funding or in-kind support from private or nonpublic sources. Three of these receive grants from private foundations. Several programs have been able to use state bar funding or IOLTA funds. Another program has been able to initiate operations recently and make use of supervisory support from a lawyer who received a one-year post-graduate fellowship. An additional program has been able to capitalize on the fact that the university professor who runs the program, along with the adjunct professor who assists her, are compensated as faculty and supervise the navigators as part of their regular professorial responsibilities.

Court funding. Five programs rely primarily on different forms of court support. In one instance, the court contracts with a nonprofit to undertake a navigator program. In the second example, court funding is provided for a coordinator for the court-managed navigator program. In the remaining three programs, court staff participate as part of, or in addition to, their regular duties by supervising the navigators who are volunteers.

Leaders from at least one-third of the programs indicate that they intend to expand their efforts, either geographically to more locations or by providing navigator assistance on additional case types. They contemplate expansion, often because of the affirmative support of those in and around the programs who observe them in operation, including judges, court staff, and legal aid and nonprofit groups. Still, additional investments will be required to pursue these aspirations.

D. Data collection and assessment practices

There is a clear correlation between the availability of financial and human resources and a program's ability to measure its progress or inform its decision-making. Managing and analyzing data is a challenge. Without adequate resources, it is difficult to secure good data, and, without data, it is difficult to make the case for new resources and/or maintain current funding.

The life tenure of the 23 programs varies, which in part may explain the degree and type of data collected. Some have clear systems in place and an array of collection tools and approaches, while newer programs report working deliberately to determine the best methods to use to measure their progress.

Although several programs have sought to devise goals and collect outcome data, most programs primarily gather records of service or “output” data. The type of data collected can be described generally.

EXAMPLES OF DATA COLLECTION TOOLS & APPROACHES
Intake type forms <i>(most common)</i>
Forms that collect basic data on SRLs served; forms often include demographics, geographic location served, type of service provided (assisted with computer, assisted with forms, etc.), type of legal matter addressed, language or other special assistance required, duration of activity with SRL, user type (new or repeat).
Navigator activity logs or tally sheets.
Running logs or tallying of instances of service or assistance, types of service, time spent with SRL, etc. over specific time periods.
SRL Satisfaction Surveys
Exit-surveys that collect data on the level of satisfaction about the experiences of SRLs and their perceptions concerning service delivery.
Snapshot surveys
Periodic surveys to collect feedback from SRLs or to measure certain services conducted by navigators.
Navigator Feedback and Observations
Sessions with volunteer navigators to collect their respective feedback and observations from experiences in the court to help identify systemic concerns.
Progress reports
Routine reports utilizing aggregated data regarding court patron satisfaction, types of services provided by navigators, numbers served, etc., often produced and/or analyzed on a monthly, quarterly or annual basis.
Measurement framework
Setting goals and performance metrics that measure progress related to outputs and outcomes of the program.
Independent program evaluations
Outside consultant/firms contracted to implement evaluation activities that measure intended outcome or impact.

VI. PROGRAM IMPACT EXAMPLES

Although it was not our intention to collect in a systematic fashion outcome or impact data from the programs, we offer here examples of how informants perceive their progress, along with some of the results they are achieving. The views of many of our informants align with the intended objectives of the programs, as noted in Section III above. Additionally, we highlight here perspectives from legal aid lawyers and nonprofit leaders, and we offer stakeholder comments about strengthening court communications and program integration.

A. Informant perceptions and achievements that align with objectives in Section III

Enhancing Court Effectiveness. Navigators leverage staff to meet the SRL demand. Numerous examples from court staff underscore the importance of utilizing volunteers to supplement their work, given the high volume of SRLs encountered daily. Staff mention gaps experienced when student volunteers are not present in the summer or during holiday periods and emphasize that they could deploy many more student volunteers if they had more time to train them. For example, one program leader reports that AmeriCorps members have made it possible to increase staffing of a court information desk. That has resulted in more information provided to SRLs by navigators and thus, as noted by some court staff and judges, fewer instances when SRLs have failed to appear.

One program manager put it succinctly: “Without volunteers, we can assist only a fraction of the cases” involving SRLs. Another program manager who works with AmeriCorps members said that without their help “most help centers would be open only part-time.” Said another, “AmeriCorps members are an integral part of the self-help law program.”

Navigators enhance accuracy and completion of forms. Several program managers commented on how SRLs are better prepared to file more accurate documents and thereby streamline the court process when they have been assisted by navigators. Specific examples of this result were reported by two of the AmeriCorps programs.

The Illinois JusticeCorps conducted interviews as part of an independent evaluation to gather data about the impact of the navigator program from the perspectives of court staff and legal aid providers. Of those interviewed, 90% believed that navigators improved the completeness and correctness of documents filed by SRLs, 82% felt SRLs were better prepared for court proceedings and over 70% felt navigator assistance saves the time of court clerks. Moreover, 88% of stakeholders said they had a very positive interaction with the JusticeCorps members.⁴¹

The California JusticeCorps recently undertook a pilot study of court filings to assess their court readiness, seeking to learn if SRLs assisted by the program would be better prepared to make their court filings. The sample included forms completed by 257 SRLs, 25% of whom were served by the JusticeCorps and 75% of whom received no assistance. Clerks were asked to rate accuracy and completeness of paperwork. On a 4-point scale, 92% of the paperwork assisted by the JusticeCorps members rated at the top of the scale for being completely accurate. Those who had received no help rated significantly lower with an average score of 2.3.⁴²

⁴¹ Illinois JusticeCorps & Philliber Research and Evaluation, *The Impact of the Illinois JusticeCorps Program on the Courts, Court Users, and Legal Aid Organizations Summary Report (2015)* (unpublished report) (on file with Illinois JusticeCorps).

⁴² Philliber Research and Evaluation, *2017–2018 JusticeCorps Program Evaluation Final Summary Report 21–22 (2018)* (unpublished report) (on file with California JusticeCorps).

In his 2017 State of the Judiciary speech, Montana Chief Justice Mike McGrath underscored the kind of benefit a court help program, which uses AmeriCorps navigators, can bring, “[O]ur judges agree this program does significantly increase judicial efficiency and does reduce court backlog.”⁴³

Facilitating “access to justice” for self-represented litigants. Data from two programs show the kinds of benefits programs can deliver. One program reported that its volunteers (60% to 70% of whom are reported to be nonlawyers) assist with 1,500 SRL conservatorship filings each year (which constitutes 75% of those in Los Angeles County). An impressive 90% of the filings are successful.

The Philadelphia Residential Mortgage Foreclosure Diversion program assigns a nonlawyer housing counselor to every SRL homeowner looking for relief from foreclosure. Over the course of a decade, 11,800 SRL homeowners were able to save their homes through the diversion process, for a 55% success rate.⁴⁴

Many informants cited successful examples of addressing procedural fairness concerns. They collected and aggregated data from surveys or exit interviews to get SRL feedback about their court experiences after being assisted by navigators. SRLs report how much better prepared they are for their next step, how their anxiety level was reduced, how they felt less confused and worried and how much more trust they have in the process. Importantly, they express satisfaction about “being heard and being able to tell their stories.”

Here are some examples.

The Illinois JusticeCorps shared its results from a two-week snapshot survey. SRLs were asked to rate services received, with measurements including courtesy and politeness, information provided in the language needed, overall rating of assistance, amount of time spent, questions answered, and an explanation of legal process or procedures. They were also asked to rate the extent to which their views changed after their visit to gauge the impact of the service provided. Among the respondents, 81% reported feeling much better prepared to proceed with their legal issue and 82% were much clearer on what they needed to do next. The overall rating of assistance exceeded 3.9 on a 4.0 scale (with 1 as “poor” and 4 as “excellent”).⁴⁵

⁴³ C. J. Mike McGrath, MT Supreme Ct., State of the Judiciary Address at Montana’s 64th Legislative Session 7 (Jan. 11, 2017) (transcript available at the MT Standard), <https://bloximages.chicago2.vip.townnews.com/mtstandard.com/content/tncms/assets/v3/editorial/8/cf/8cf24e0f-6b61-5f5f-a31b-0015ad5ab7dd/58880d0373ece.pdf>.

⁴⁴ Caitlin McCabe, *In One Chaotic Courtroom, Free Counselors and Attorneys Have Saved 11,000 Philly Homes from Foreclosure*, PHILADELPHIA INQUIRER (July 19, 2018), https://www.philly.com/philly/business/real_estate/residential/philadelphia-foreclosure-mortgage-diversion-program-rizzo-city-hall-courtroom-sheriff-sale-20180719.html.

⁴⁵ Illinois JusticeCorps, Illinois JusticeCorps Program Court Patron Feedback Survey Results Aggregate Report for all Sites (2015) (unpublished report) (on file with Illinois JusticeCorps).

The California JusticeCorps undertook a one-week snapshot satisfaction survey in 2018. They asked SRLs to complete a brief form about why they were seeking services and what was their level of satisfaction. In response, 83% said they were seeking services because they were unable to afford a lawyer. After receiving help, 98% of litigants reported feeling more confident that they understood the legal steps in their cases; 97% knew what to do next in their cases; and 95% felt able to prepare and file their court forms. Overall, 97% of the litigants reported that the service received was very helpful.⁴⁶

Another program offered a representative sample of the comments received from SRLs who were served by court navigators: “Very useful, it helped a lot and [the Navigator] made us comfortable.” “Felt at ease after talking to [the Navigator].” “Super helpful. I felt out of my element and [the Navigator] helped put me at ease.” “Reduced my anxiety about court.” “Very helpful in explaining where I should be.” “Way more info than I got from anyone else.” “Made court less confusing & intimidating.” “[The Navigator] was informative, factual and very centering for me.” “Compassionate — and to the point.” “Needs were answered according to my case.” “Thanks for your enthusiasm.” “What a great service.” The program informants report that no one rated the navigators lower than “excellent” which was the highest rating on the program evaluation form.

Indeed, many informants commented on the utility of navigators being available to “listen to peoples’ stories.” Said one, they “listen to people and are more patient,” while another offered that the SRLs want “to have their say and be heard. They need to talk and tell their story and the judge doesn’t need to hear all the details.”⁴⁷ She added that if the SRL has been able to talk to a navigator first, “it shaves 20 minutes off what the judge will require.” Another program leader echoed the same perspective. By speaking to the navigators, SRLs can “tell their stories more clearly when they get to court because they will have already told the story once, to the [navigator].” Another informant noted that, “[I]t is very important to have the volunteers sit down and hear stories. It’s important to take time with people.”

One manager said that navigators “calm litigants down” so they can better interact with the court, especially when they go before the judge. She added that SRLs “better understand what is happening,” they are less “upset,” and they “can go to court without thinking the system is against them.” Another informant observed that the help from navigators “calmed down” all the court actors involved.

The value of such results was emphasized by a professor, formerly a legal aid lawyer, who runs a program deploying university students. After an independent evaluation that measured student

⁴⁶ Philliber Research and Evaluation, *supra* note 42, at 25.

⁴⁷ This echoes the findings in ROLES BEYOND LAWYERS. For one of the navigator projects evaluated in that study, Sandefur and Clarke found that “litigants who receive the help of any kind of navigators were 56% more likely than unassisted litigants to say they were able to tell their side of the story.” ROLES BEYOND LAWYERS, *supra* note 18, at 4.

perceptions of program impact as well as their own training, the professor said that she learned the importance of “procedural justice,” meaning, as she put it, that navigators are able to help SRL’s “handle stress better and understand what is happening to them.” Like many informants, she hopes to conduct further assessments to collect more outcome data to strengthen the program.

Providing a positive and rich experience for navigators. According to one AmeriCorps coordinator, members themselves benefit in many respects from the navigator experience, including being better prepared for leadership. Engaging students also increases their potential for contributing to access to justice in their careers. In a recent report of another program, the vast majority (81%) of California JusticeCorps members reported they plan to pursue a Ph.D., law, or other professional degree.

Another AmeriCorps program director notes that the members are exposed to “real world problems” and gain experience and job skills in working with people who can be challenging given their dire circumstances. An Illinois JusticeCorps program leader shared this view. “By design, our members will have received practical training and experience prior to applying to law school or graduate programs, so they will be better informed decision-makers regarding their educational path. After completing their term of service, members will have a strong foundation on which to build their formal education and they leave the program having developed critical thinking and analytical skills.”

B. Perspectives of legal aid lawyers and nonprofit leaders

Additional support for navigator programs comes directly from legal aid lawyers and nonprofit leaders managing or observing navigator work. They recognize the value of navigators in helping to handle the heavy volume of SRLs and express confidence in what the navigators have the capacity to take on.

For example, a senior legal aid lawyer who works with housing counselors in the Philadelphia Mortgage Foreclosure Diversion Program noted that, “[W]ithout the housing counselors, the program to assist unrepresented homeowners in their cases could not function.”

Yet another lawyer, who also serves in senior management with a major legal nonprofit group, feels “supremely confident” in the ability of the volunteers to handle the matters—conservatorship filings and elder abuse restraining orders—addressed in the clinics his organization runs on behalf of SRLs.

A nonprofit lawyer, who oversees other lawyers providing limited pro bono help in a court space where navigators also provide assistance, believes the navigators are very helpful in filling gaps because there are not enough lawyers to answer all the SRL questions. The navigators distribute brochures that have very detailed information and help answer questions that SRLs have pre-and post-hearing.

Other legal aid lawyers who oversee newer programs aspire to elevate the navigator's role in due course. As one noted, once the program is better acclimated and integrated into the court environment and the role of the navigators is better understood by judges and court staff, she hopes that navigators will be able to do more than only distribute basic information to SRLs.

In sum, navigator program leaders have met with no serious concerns or pushback in terms of receptivity by stakeholders in and around the court. Informants note that the longevity of their programs alone suggests acceptance. For example, Housing Court Answers in New York has been in operation since 1981 and the California JusticeCorps program since 2004. Over the years, many programs have secured and maintained a variety of funding sources which clearly recognize the merit in this work. One senior legal aid lawyer involved with a navigator program, for example, notes that after a decade, the program not only retains its public funding, but relevant officials are considering whether to use navigators to help with additional case types in their jurisdiction.

C. Perceptions about strengthening court communications and program integration

Various stakeholders underscore the need for good communications and understanding within the court about navigator programs. They stress the importance, whenever possible, of better integrating the navigator work into overall operations of the court, as well as the utility of integrating navigator efforts with existing assistance programs. As one senior manager put it succinctly, “[y]ou need buy-in from the court and the judges. They need to own the program. It is critical to have the program integrated into the core operation of the court.” Several court managers also echoed the need to accustom the court to the navigator presence.⁴⁸

One legal aid leader, who oversees a new program, reports that she has begun getting initial positive feedback about the value of the navigators from the court manager in the self-help center and the clerks in the court. She understands the importance of building relationships with court staff and judges alike and feels her program is “off to a good start.” Similarly, another nonprofit program leader expressed her own desire to work in a more focused way on the relationship and coordination with the court staff. And a senior legal aid lawyer, who helped start a navigator program, thinks navigators are doing well and are capable of more advanced work like accompanying SRLs in the court to help them answer factual questions by the judge. He also wishes judges would refer SRLs to the navigators more regularly, but he appreciates that both of his aspirations will first require a better understanding of the program by the judges.

And a senior judge who was instrumental in helping start one navigator program believes it is very important to develop and maintain good relations among judges, court staff, and navigators.

⁴⁸ The authors of *ROLES BEYOND LAWYERS* made a similar observation, noting that “[t]he legitimacy of the Navigator program could be enhanced by better communication with litigants, judges, court attorneys, court officers, court clerks, and the landlords and debt-buyers bars about what Navigators are and what they can do.” *ROLES BEYOND LAWYERS*, *supra* note 18, at 49.

He believes the navigator program in his court is helping SRLs, but he sees the need to better educate all the judges about the navigators' work and their relationship with the bench.

VII. CONCLUSION

We offer here a summary of opportunities and challenges gleaned from the research, and we share recommendations to help develop and strengthen nonlawyer navigator programs.

A. Opportunities

There is a breadth of creative activity within programs using nonlawyers to assist SRLs in the state courts. There is also strong potential for further experimentation and an opportunity to take these programs to every state and ultimately to scale.

Albeit nascent in many places, the work is underway in numerous states across the nation— from Mississippi to California and Oklahoma to Massachusetts. Nonlawyer navigator help is emerging as a viable option for courts to amplify and enrich their ongoing services to meet the overwhelming demand from SRLs, as well as for justice advocates to supplement their work and allow lawyers to operate “at the top of their licenses.”

Navigator programs advance a number of goals. They enhance the effectiveness of, and build public trust in, the courts; facilitate access to justice for SRLs by helping them understand and navigate their cases; provide an additional way for legal aid lawyers and nonprofit leaders to supplement their own client services; and enable an array of community actors, students, and retirees alike, to better understand the plight of SRLs and help them manage the often unfamiliar and daunting court process.

Many forward-leaning leaders, often in partnership, including judges and court staff, access to justice commissions and similar bodies, legal aid lawyers and nonprofit leaders, and bar foundations, have brought a range of diverse resources and strategies to meet the SRL demand. These trailblazers have discovered ways to create navigator programs without the need for major regulatory reform or rule changes.

Nonlawyer navigators in the courts are performing a variety of roles without raising concerns of unauthorized practice of law. Program leaders and managers are fully mindful of admonitions against nonlawyers providing legal advice and they take the need for quality assurance measures seriously.

Programs show significant variations in their features and characteristics with no “one size fits all” model, suggesting considerable potential for further innovation ahead. Court context matters

and program managers are adapting programs to optimize operations according to their particular circumstances.

Importantly, programs are demonstrating that well-trained and appropriately supervised navigators can perform a wide array of tasks and could undertake even more elevated tasks along the spectrum. Indeed, jurisdictions exploring the use of navigators should recognize that they can adapt and deploy a broad range of navigator tasks depending on the needs of their own environments.

More community partners—including paid nonprofit staff, AmeriCorps members, and a rich cadre of volunteers who come from many walks of life—are appreciating the role they can play. Their diversity of backgrounds and skill sets show the potential for using many more of these individuals, as well as for recruiting new types of community actors as nonlawyer navigators.

B. Challenges

The institutionalization and longer-term sustainability of programs is an overriding concern that program leaders face on various fronts. Although in-kind support from court staff along with volunteer service is abundant and valuable to many operations, the patchwork funding of many programs poses real obstacles to their sustainability. Resources are crucial, not only to staff up programs to bolster training, supervision and recruitment, but also to measure their progress and outcomes. These are necessary investments to help programs convince stakeholders and donors to support or fund their efforts.

Some programs have an integrated system using both lawyers and navigators, who complement each other's work. Further integrating the navigator programs into ongoing court operations and/or with other legal provider efforts can be difficult, but it remains an important goal. This process can foster institutionalization of programs, enhance court efficiency, and provide an improved system in which to serve SRLs.

Without a common understanding from the start about the navigator programs and their objectives, and absent regular communications with judges and court staff about program progress, tensions and misunderstandings can arise between all parties. Relationship-building and ongoing communications among the parties is key to achieving smooth operations.

There is minimal sharing of information let alone best practice among navigator programs across the country. A number of program leaders expressed their interest in learning about what other navigator programs exist across the country, and how they are overcoming obstacles and strengthening their respective programs to meet the need.

C. Recommendations

1. Funding streams that support legal assistance of various types, including court-based navigator work, are diversifying. Champions of all stripes have come to bat to create these programs and

they should work to secure resources to sustain these programs. They should explore new, and encourage the appropriate redirection of existing financial resources to keep these programs going. Help is out there to guide innovators toward funding opportunities, as highlighted earlier in this report.

2. Creating pilots is a good way to explore and refine navigator program operations, as well as to secure buy-in from judges and court staff, the bar and other relevant stakeholders.

3. Court leaders should consider utilizing navigators' experiences and learning from SRLs, which offer untapped resources for courts as they work to identify opportunities for simplification, as well as gains in efficiency and customer service.

4. Securing good data to measure and determine the results of navigator programs is vital to making wise program decisions and sustaining their full staffing and expansion, as desired. Both financial resources and leadership commitment are needed to make this happen.

5. As new solutions and approaches, such as unbundled services, right to counsel, or navigator programs, continue to emerge along the continuum of services to meet the SRL demand, it is important to connect these components together with each other and with other components that may already exist. Stakeholders should study their own ecosystem and strategize together on how to meld these elements to facilitate access to justice and optimize service for SRLs.

6. Key national networks and organizations in the justice field, such as the Self-Represented Litigation Network (SRLN), should consider creating a community of practice to share lessons and insights on design and implementation of programs. These networks and organizations should also build toolkits for courts to create partnerships with nonprofits, including a curriculum of how to understand court process, as well as to help navigator programs measure and report on progress.

7. Independent research is needed to make the best use of navigator efforts. Evaluations of individual programs, such as *Roles Beyond Lawyers*, can demonstrate program outcomes, impact, and cost savings. And more studies can help determine when best to use nonlawyers to provide assistance. Funders should also support research that surveys and shares best practice about the wealth of community-based programs using nonlawyers to help unrepresented people, both in nonprofits and legal aid offices across the country.

APPENDIX

Program Contact List

This appendix lists nonlawyer navigator programs which are described in this study. In several cases, the navigator program component falls within a larger organization or initiative. Contacts are current as of May 2019.

Alaska

Legal Advocacy

Abused Women's Aid in Crisis ("AWAIC")

<http://www.awaic.org/get-help/legal-advocacy>

Contact: Marjorie M. Thayer, Advocate, 907-264-0790, marjorie_t@awaic.org

Arizona

Providing Access to Court Services (PACS)

Superior Court of Arizona in Maricopa County

Contact: Shawn Haught, Director, Law Library Resource Center, 602-506-3464, haughts@superiorcourt.maricopa.gov

California

California JusticeCorps

Judicial Council of California (in partnership with CA Superior Courts)

<http://www.courts.ca.gov/justicecorps.htm>

Contact: Nicole Claro-Quinn, Senior Analyst, Judicial Council of California, 415-865-4504, Nicole.claro@jud.ca.gov

Elder Abuse Restraining Order Clinic

Bet Tzedek

<https://www.bettzedek.org/events/elder-abuse-restraining-order-clinic-4/>

Contact: Dani Kaiserman, Staff Attorney, 323-549-5837, dkaiserman@bettzedek.org

Self-Help Conservatorship Program Clinic

Bet Tzedek

<https://www.bettzedek.org/events/self-help-conservatorship-clinic-first-time-visitors-norwalk/>

Contact: Erikson Albrecht, Managing Attorney, 323-939-0506, ealbrecht@bettzedek.org

District of Columbia

Supportive Advocacy

DC SAFE

<https://www.dcsafe.org/our-programs>

Contact: Ana Natalia Otero, Executive Director, 202-506-2901, notero@dcsafe.org

Georgia

Legal Navigators

Southwest Georgia Legal Self-Help Center

www.dougherty.ga.us/lawlibrary (new website currently under development)

Contact: Lauren Alford Kelly, Executive Director, 229-446-2750 and 229-431-2133, lkelly@dougherty.ga.us

Hawaii

Project Kaulike

AmeriCorps Program with Legal Aid members serving in Hawaii Judiciary Self-Help Centers www.legalaidhawaii.org,

https://www.courts.state.hi.us/general_information/access_to_justice_rooms_self_help_centers

Contact: Angela Lovitt, Deputy Director, Legal Aid of Hawaii/AmeriCorps Program Director, 808-527-8003, angela.lovitt@legalaidhawaii.org

Volunteer Court Navigator Program

Second Circuit, Maui, Hawaii

<https://www.courts.state.hi.us/wp-content/uploads/2018/08/flyerVolunteerCourtNavigator.pdf>

Contact: Joseph E. Cardoza, Chief Judge, Second Circuit, 808-244-2860, joseph.e.cardoza@courts.hawaii.org

Illinois

Illinois JusticeCorps

Illinois Bar Foundation (in partnership)
<https://www.illinoisbarfoundation.org/illinois-justicecorps>

Contact: Stacey Jonas Weiler, Program Operations Director, 312-920-4693, sweiler@iljusticecorps.org

Legal Advocacy Program

Family Rescue, Inc.
<https://familyrescueinc.org/programs-services/legal-advocacy-program/>

Contact: Himagiri Sarma, Program Director, Legal Advocacy, 312-325-9309, h.sarma@familyrescueinc.org

Maryland

Court Navigator Project

The University of Baltimore
<http://www.ubalt.edu/academics/prelaw/court-navigator-pilot-project.cfm>

Contact: Michele Cotton, Associate Professor, Division of Legal, Ethical and Historical Studies (LEST), 410-837-5320, mcotton@ubalt.edu

Massachusetts

Court Service Center

Massachusetts Trial Court
www.mass.gov/courts

Contact: Sheriece M. Perry, Acting Co-Director, Department of Support Services, 617-878-0338, sheriece.perry@jud.state.ma.us

Mississippi

Justice Court Navigator Program

Mississippi Center for Justice
Contact: Samuel Reese, Harvard Legal Fellow, 769-230-0529, sreese@mcenterforjustice.org

Montana

Justice for Montanans

AmeriCorps program based at Montana Legal Services Association and partnered with the Montana Supreme Court Help Program

<https://www.mtlsa.org/americorps-state-justice/>,
<https://courts.mt.gov/selfhelp>

Contact: Meghan Scott, AmeriCorps Program Manager – Justice for Montanans, 406-442-9830 (ext. 143), mScott@mtlsa.org

Contact: Nolan Harris, Court Help Program Administrator, 406-841-2975, Nharris2@mt.gov

New York

Court Navigator Program

New York State Courts
<https://www.nycourts.gov/courts/nyc/housing/rap.shtml>

Contact: Alina Vargas, Coordinator, Court Navigator Program, 646-386-4016, amvargas@nycourts.gov

Contact: Angela Redman, Special Counsel for Office of Justice Initiatives, 646-386-3824, aredman@nycourts.gov

Housing Court Answers

<http://housingcourtanswers.org/>
Contact: Jenny Laurie, Executive Director, 212-9624795 x206, jennyl@hcanswers.org

Ohio

Hamilton County Municipal Help Center

<http://cincyhelpcenter.org/>
Contact: Rob Wall, Director, 513-946-5732, wallrj@ucmail.uc.edu

Oklahoma

Cleveland County Courthouse Navigator Project

Legal Aid Services of Oklahoma, University of Oklahoma College of Law, and Oklahoma ATJ Commission (in partnership)

Contact: Rebecca Hamrin, Associate Director of Pro Bono and Public Interest, University of Oklahoma College of Law, 405-325-4785, rhamrin@ou.edu

Pennsylvania

Family Court Help Center

Philadelphia Legal Assistance

Contact: Susan Pearlstein, Family Law Unit Supervising Attorney, 215-981-3861, spearstein@philalegal.org

Philadelphia Eviction Prevention Project (PEPP)

Community Legal Services of Philadelphia (Lead in PEPP partnership)

<http://www.phillytenant.org/pepp/>

Contact: Barrett Marshall, Director, PEPP, 215-981-3714, bmarshall@clsphila.org

Residential Mortgage Foreclosure Diversion

Program (First Judicial District of Philadelphia)

Partnership of the Philadelphia Court of Common Pleas and the City of Philadelphia Department of Housing and Community Development (in conjunction with local non-profit housing counseling agencies and local legal / legal aid providers)

Contact: Michelle Brix, Paralegal, Homeownership and Consumer Rights Unit, Community Legal Services of Philadelphia, 215-981-3764, mbrix@clsphila.org

Wisconsin

Self-Help Family Forms Clinic

Milwaukee Justice Center

<https://www.milwaukeejusticecenter.org/services-hours-location.html>

Contact: Mary L. Ferwerda, Executive Director, Milwaukee Justice Center, 414-278-4271, Mary.Ferwerda@wicourts.gov

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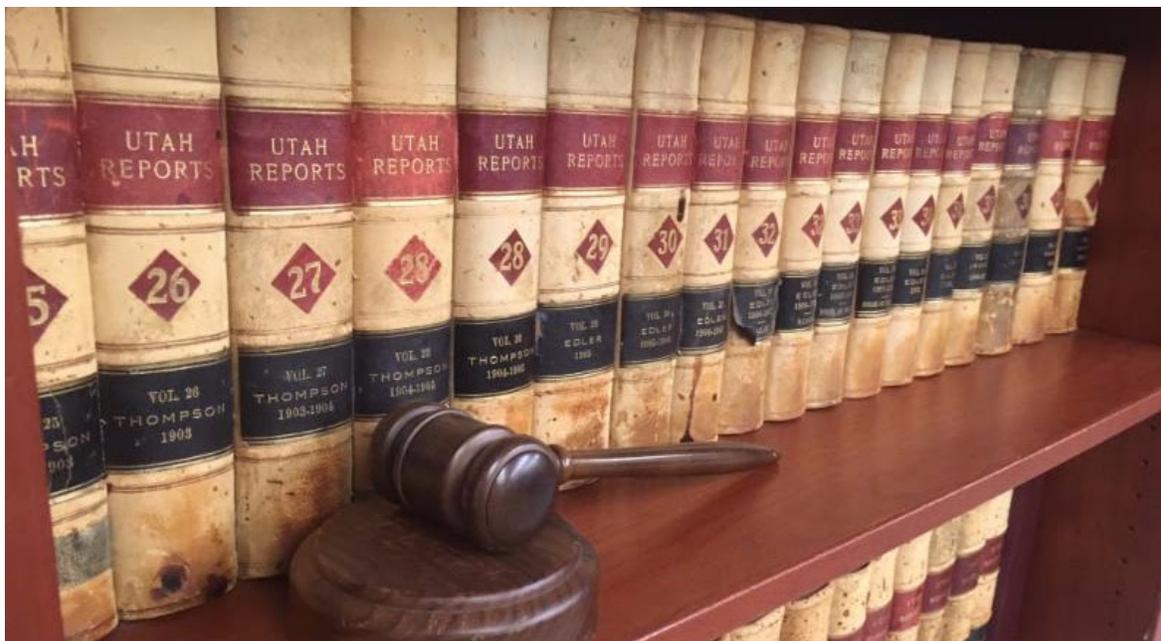
Nancy Sylvester <nancyjs@utcourts.gov>

Workgroup on Regulatory Reform Releases Report

1 message

Herm Olsen <holsen.barpresident@utahbar.org>
Reply-To: holsen.barpresident@utahbar.org
To: nancyjs@utcourts.gov

Mon, Aug 26, 2019 at 2:31 PM



Task Force Releases Report on Narrowing the Access to Justice Gap by Changing Regulatory Structure for Legal Services

Lawyers play a unique and important role in our democracy. We have been at the forefront of protecting the rights and liberties of the underdog throughout history. Our Bar has worked tirelessly to provide pro bono legal services and to promote and support programs to serve the legal needs of our community within the framework we have. However, more needs to be done. Chronic access to justice issues in Utah and across the country remain. People can't afford lawyers and go it alone. The courts are clogged with unrepresented litigants. People perceive lawyers as being too expensive or unnecessary and are not getting the legal help they need.

In the latter part of 2018, the Supreme Court charged Justice Deno Himonas and former Bar President John Lund with organizing a task force to study and make recommendations to the Court about optimizing the regulatory structure for legal services. The task force includes local and national experts on the regulation of legal services.

It was charged with exploring ways to optimize regulation in a manner that fosters innovation and promotes other market forces to increase access to and affordability of legal services.

Many of you heard Justice Himonas and John Lund present at the Bar's Summer Convention in Park City. For those of you who did not, the task force is proposing sweeping changes to the way lawyers and legal services are regulated in Utah. The

task force hopes its proposed changes will solve some of the issues facing the public and the courts. Utah is not alone. California and Arizona are considering changes similar to those being proposed in Utah. [The Report and Recommendation from the Utah Work Group on Regulatory Reform was released today and can be found here.](#)

The reforms proposed by the task force include loosening restrictions on lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing, and providing for broad-based investment and participation in business models that provide legal services to the public, including non-lawyer investment and ownership of these entities. It is hoped that these changes will allow lawyers to partner with non-lawyers to offer expanded or innovative services to clients.

Importantly, the task force also proposes creating a “regulatory sandbox” in which participants can temporarily test innovative legal products or services on a limited basis without otherwise being permanently licensed or authorized to act under the rules which have traditionally governed the practice of law in Utah. If the products or services tested in the sandbox prove to solve or ease some of the problems with our current legal system, without undue risk to the public, the product or service may get the go ahead to operate on a permanent basis.

The Bar looks forward to partnering with the Court to develop an innovative and forward-looking regulatory system for legal services that will foster more access to the courts and streamline legal processes while still appropriately protecting the public, and at the same time, preserving a meaningful role for the Utah State Bar.

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