



# Best Practices for Programs to Assist Self-Represented Litigants in Family Law Matters





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# preface

Maryland courts recognize the increasing participation of self-represented litigants, particularly in family law matters. Although some litigants decline the opportunity to retain qualified counsel, the overwhelming majority of self-represented litigants are constrained from obtaining legal representation by economic, language, or other barriers. It is this latter group that Maryland courts seek to assist.

In recent years, private and public groups throughout Maryland developed a broad variety of programs to assist low-income, disabled, and non-English speaking participants in family litigation. The Maryland Court of Appeals adopted Maryland Rules 16-901 through 16-903 and modified Maryland Rule of Professional Conduct 6.1 to encourage attorneys to represent some low-income clients without compensation. Further, Rule 16-204 requires circuit courts to provide procedural assistance to self-represented litigants in family law matters. To assure that all Maryland courts provide equal access to justice, the Maryland Judiciary adopts these best practices to guide the Maryland courts in developing and operating programs to assist self-represented litigants in family law matters.

This model represents the culmination of substantial efforts by many people over several years, including representatives from private and public entities working with self-represented litigants in Maryland. The Administrative Office of the Courts would like to thank all who participated in developing this document.

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# 1 equal access to justice

The Maryland Judiciary is committed to providing equal access to justice for all individuals. This commitment is reflected in the Judiciary's adoption of both national and state standards for trial courts. The Maryland Judiciary has embraced the *Trial Court Performance Standards* as a measure of court performance. Developed in 1989 by a national commission of judges and court administrators chaired by Maryland's then-Chief Judge Robert C. Murphy, these standards guide the Maryland courts and courts nationwide by articulating values, goals, and measures by which courts can evaluate their effectiveness. The Maryland Circuit Court Family Divisions and Family Services Programs have likewise embraced them by developing a set of *Performance Standards and Measures for Maryland's Family Divisions* that are specifically based on those standards.

Both sets of standards are built around five key performance areas:

- ☆ Access to justice
- ☆ Expedition and timeliness
- ☆ Equality, fairness, and integrity
- ☆ Independence and accountability
- ☆ Public trust and confidence

An increasing number of participants in family litigation appear in court without legal counsel. Yet, services available to self-represented litigants through the courts and private organizations vary greatly among Maryland jurisdictions. The Maryland Judiciary seeks to provide equal access to justice for all, without compromising the court's neutrality or the timely resolution of cases. To do that, and to ensure public trust and confidence in our courts' ability to resolve family disputes, the Maryland Judiciary developed these *Best Practices for Programs to Assist Self-Represented Litigants in Family Law Matters*.

These best practices do not address programs designed to meet the needs of litigants in criminal, juvenile delinquency, or non-family civil matters, nor those designed to assist litigants in emergency matters including domestic violence cases. The Maryland Judiciary recognizes that the needs of these litigants have been, and will continue to be, addressed through other agencies including the Office of the Public Defender, the Legal Aid Bureau, the Protective Order Advocacy Representation Projects, and others. These best practices are not intended to suggest that free public services should be provided to individuals who are financially or otherwise able to retain private counsel, but choose not to do so. Rather, this document is merely intended to guide Maryland courts developing and implementing programs for the self-represented in family litigation in order to provide equal access to justice throughout Maryland.

The best practices articulated below are not minimum standards for programs, but rather goals which all programs should strive to achieve. The Maryland Judiciary hopes these model practices will promote consistent quality programs in each of Maryland's 24 jurisdictions to assure that equal access to justice is provided throughout the state.

## 2

needs  
assessmentensuring access to  
appropriate levels  
of service

Maryland Rule 16-204 provides that, among other things, the Maryland family divisions and family services programs provide information services, including procedural assistance to self-represented litigants as well as information regarding lawyer referral services.

Whether or not a party is represented in a family legal matter can have a significant impact on the case, the litigant, and other family members. There are some case types that are more appropriate than others for self-representation. There are also some individuals whose age, temperament, mental health, or cognitive ability may impede their ability to represent themselves effectively, even in simple matters. It is important that all programs designed to assist the self-represented adopt screening mechanisms to ensure that individuals seeking the program's assistance receive service only if that is appropriate, and, if not, that they are referred to other organizations or services that might better address their needs. To achieve this objective, **good programs will:**

- ☆ Screen participants for financial need to avoid depleting public resources for litigants who can afford private legal representation, using the income eligibility guidelines provided as a "minimum standard for fee waivers" in the current issue of the *Guidelines for Grant Recipients* distributed to all jurisdictions receiving Family Division/Family Services Program grants.
- ☆ Refer those individuals who do not meet those income eligibility guidelines to lawyer referral services or appropriate legal services providers and resources.
- ☆ Assist program users to understand the personal skills they will need to represent themselves effectively.
- ☆ Screen litigant information to determine the nature and complexity of issues involved in pending litigation. Explain the need for additional representation to avoid loss of resources and rights in appropriate cases, and refer those litigants for *pro bono* or other legal services. Strongly encourage litigants with complex legal issues to seek the assistance of counsel, and provide appropriate referrals.

# 3

## service delivery

### 3.1 Scope of Service

To meet the broad range of needs presented by self-represented persons, **good programs will:**

- ☆ Offer a range of types of assistance, which may include the following:
  - ▶ providing copies of forms in hard copy
  - ▶ providing public access computers where users can complete the forms online and print them
  - ▶ providing public access computers where users can access Internet-based legal references and resources, or otherwise provide users with access to technology that can enhance their ability to access the family justice system
  - ▶ providing assistance to users completing the forms
  - ▶ providing verbal or written information about other programs or resources where users can obtain assistance
  - ▶ offering orientation classes for self-represented persons
  - ▶ providing information or offering classes designed to educate the self-represented about what is required at different stages of litigation
  - ▶ educating the self-represented about alternative dispute resolution (ADR)
  - ▶ providing information to assist the self-represented in preparing for a contested trial
  - ▶ providing information about legal rights and consequences before self-represented persons participate in ADR
- ☆ Provide assistance regarding the most common issues in family litigation. Assistance may include descriptions of pleadings, service requirements, case management timelines, evidentiary requirements, and the issues to be resolved at each proceeding before the court.
- ☆ Caution program participants that issues may arise during litigation not contemplated in the limited information provided. Inform all litigants of the availability of *pro bono* and reduced-fee legal services and other appropriate service providers.

### 3.2 Program Ethics

To ensure that court-operated programs are operated in a manner that is ethically sound, **good programs will:**

- ☆ Ensure that all attorneys or other program personnel engage in conduct that is permitted under the Maryland Rules of Professional Conduct for Attorneys.
- ☆ Ensure that non-attorney program personnel are not providing legal advice.
- ☆ Ensure that non-attorney program personnel work under the direction and supervision of an attorney.

### 3.2.1 Conflicts of Interest and Limits on Scope of Service

In working with the self-represented, attorneys, paralegals, or contractual vendors operating programs designed to assist the self-represented may learn specific information about program users, their cases, or the opposing parties. To ensure that program personnel or vendors do not compromise their own neutrality, **good programs will:**

- ☆ Avoid legal representation of program users by program attorneys. Explain that the assistance provided is limited to the issues or questions addressed within the confines of the program and cannot include representation.
- ☆ Use an “informed consent” waiver form to advise program users that the opposing party may also seek and obtain assistance from the program.
- ☆ Ensure that program attorneys do not provide assistance to self-represented persons through the program in their private offices to ensure that litigants are not misled about the scope of the program attorney’s role.

### 3.2.2 Judicial Neutrality

Courts operate programs that assist the self-represented to ensure access to justice for all litigants, and to facilitate the case management process. Courts should structure these programs to ensure that court personnel do not transfer information from program users that could impair judicial neutrality. **Good programs will:**

- ☆ Insulate judges and masters from the services provided to program users.
- ☆ Ensure that court administrative personnel provide direct supervision of the program to preserve the neutrality of the Judiciary.

## 3.3 Program Policies

Court-operated programs to assist the self-represented can avoid many problems by clearly articulating policies on a variety of key issues, and communicating those policies effectively to program participants and members of the court community. Toward this end, **good programs will:**

- ☆ Establish clear eligibility criteria for program participants and post that information in a clearly visible location, and/or otherwise make that information known to participants before or at the time they seek assistance. This may include information about whether the participants must be income-eligible, and if so, what the income guidelines are.
- ☆ Establish clear guidelines about the scope of service available and post that information in locations and by means accessible to the public.

## 4

# program outreach

Programs designed to assist the self-represented will not be successful in enhancing access to justice, unless information about those programs is accessible and easy to understand.

## 4.1 Signage

Because many of these programs are operated on a walk-in basis, it is especially important that information be posted where individuals can clearly see it in the courthouse. **Good programs will:**

- ☆ Post signs in the courthouse near entryways, in clerks' offices, and in other "points of entry" in the courthouse that clearly direct litigants to the location of the self-help program within the courthouse.
- ☆ Provide signage where the program is located clearly identifying the program, in a manner that ensures that the program location can be identified, even during hours when the program is closed.
- ☆ Include in signage: hours of operation, scope of services provided, and information about who is eligible to take advantage of the program.
- ☆ Post in a clearly visible place information about where litigants can turn for assistance when the program is closed, including telephone hotlines, lawyer referral service numbers, online resources, or other locations in the courthouse where they may seek assistance.

## 4.2 Written Information about the Program

Individuals often come to self-help programs for the first time in crisis. It is important to provide written information about the program and policies as, in a time of crisis, they are likely to forget much of what they heard. Toward this end, **good programs will:**

- ☆ Make flyers or written information about the program available to hand to litigants who may need to return to the program at a later date, including information on the hours of operation, the scope of services provided, and information about who is eligible to take advantage of the program.
- ☆ Provide written information in languages prevalent in the jurisdiction to advise non-English speakers of any services available to them and how to access them.
- ☆ Inform program users orally, and in all written materials, that the court's support for the program does not alter the court's neutrality in individual cases.

## 4.3 Statewide Directory and Online Resources

To ensure that current information is available to members of the public seeking information about the program, **good programs will:**

- ☆ Review information about the program posted on online resources including the Maryland Judiciary Web site whenever the program changes its location, hours, or services, but not less than once each year, to ensure that posted information is accurate.

# 5

## access, language and literacy

Court programs assisting self-represented litigants recognize that most program users face economic barriers to legal representation and court access. However, many program users also face obstacles presented by their limited education or literacy, unfamiliarity with English, or disabilities. To help program users overcome these non-economic obstacles, **good programs will:**

- ☆ Provide all information, oral and written, in clear terms, using everyday words and short sentences, understandable to most English-speaking users, and readily translated for non-English speakers.
- ☆ Survey program users to identify their education levels, first languages, and disabilities.
- ☆ Provide signs identifying the program location, hours, and services in English and in all languages spoken by significant numbers of lower-income residents of the community. Include Braille signage, if appropriate.

### 5.1 Literacy

Surveys of existing programs demonstrate that only a small percentage of past program users attained education levels beyond high school, and many do not have a high school diploma or its equivalent. In addition to providing all information in clear terms, **good programs will:**

- ☆ Recognize that low-literacy or illiterate program participants may need more legal assistance to handle simpler matters than would other program participants. Without embarrassing these participants, advise them of the challenges of self-representation and consider referring them to a legal services provider or attorney available within their financial means.
- ☆ Avoid using Latin terms or legal terminology. Define and explain all legal terms that program users may see in court forms or hear in their court proceedings.

### 5.2 Access for Non-English Speakers

Programs designed to assist the self-represented cannot assist persons whose first language is not English unless information about the program, forms, and instructions are available in other languages. To ensure that non-English speakers have equal access to the program, **good programs will:**

- ☆ Provide written information and forms in the language spoken by significant numbers of lower-income residents of the community.
- ☆ Develop a plan to meet the standards established by Maryland law mandating access to public documents and services by state agencies.
- ☆ Employ program staff who are fluent in those languages spoken by significant numbers of lower-income residents of the jurisdiction to the extent needed by program users.
- ☆ Employ qualified court interpreters when feasible to assist non-English speakers, if necessary to supplement staff assistance. Use telephonic interpretation services, e.g., Language Line, when a live interpreter is not available or feasible.

- ☆ Avoid using friends and relatives of non-English speaking program participants to translate for them.
- ☆ Include interpreter services for non-English speakers in budget requirements, in proportion to the need for those services identified by population information from program surveys and other appropriate sources.
- ☆ Recognize that non-English speaking program participants may be afraid or confused about the U.S. legal system because of experiences of others in the community, or in their native country. Train staff to alleviate that fear or confusion through clear explanation of the legal process and judicial system.

### 5.3 Access for Individuals with Disabilities

It is important to offer court-based self-help programs in facilities that enhance the accessibility of the program to individuals with disabilities.

**A good program will:**

- ☆ Provide assistance for self-represented litigants in facilities that are ADA-accessible.
  - ☆ Develop a plan to assist persons with disabilities access the program services and the court.
  - ☆ Identify services available to program users who are sight- or hearing-impaired, both for program services and for court access, and help users obtain those services needed.
- 

## 6

program  
staff

Programs designed to assist the self-represented should employ persons knowledgeable about current law and procedures and able to convey that information clearly and concisely.

## 6.1 Staff Qualifications

To ensure that services are provided in an ethical manner consistent with current law and procedures, **good programs will:**

- ☆ Ensure that attorneys serving the program, at minimum:
  - ▶ are licensed to practice law in Maryland, and are in good standing
  - ▶ are covered by malpractice insurance
  - ▶ have sufficient experience in family law
- ☆ Ensure that non-attorney staff are supervised by an attorney on-site and understand the ethical limits of their roles.

## 6.2 Professional Development

Programs that assist the self-represented should ensure that the information they dispense reflects current law. To assist program staff in dispensing accurate information, **good programs will:**

- ☆ Provide regular educational opportunities for program staff to supplement their knowledge of relevant law, court procedures, and current issues in assistance to self-represented litigants, through continuing education, conferences, and publications.
- ☆ Encourage program staff to participate in local, state, and national conferences and meet with representatives of similar programs to discuss program development, best practices, national trends, changes in law and procedure, and current issues.
- ☆ Provide program staff with access to state and national publications and online resources and professional organizations to enhance continuing education and knowledge of changes in law and procedures.
- ☆ Provide training for program staff on this best practices document.
- ☆ Train program staff in alternative dispute resolution and conflict resolution.
- ☆ Provide program staff with written guidelines on how and when to refer litigants for alternative dispute resolution services.

# 7

## quality assurance

Court-based programs to assist the self-represented need to ensure that materials distributed reflect current law. Programs should also take the time necessary to evaluate program performance.

### 7.1 Quality Materials

Self-represented litigants rely on programs to distribute materials that are up-to-date and reflect current law. Toward this end, **good programs will:**

- ☆ Review all information used in the program regularly to ensure accuracy.
- ☆ Update information promptly after changes in the law.
- ☆ Show the date of publication on all materials used by the program.
- ☆ Prepare a list of all materials with revision dates so that program staff and users will know whether the material accurately reflects current law.
- ☆ Check the Maryland Judiciary Web site monthly, to ensure that program staff obtain and distribute new forms and instructions promptly.

### 7.2 Data Collection and Evaluation

Evaluation is an important component of program management. Regular evaluations can assist the court or program in using resources effectively and identifying the need for additional resources. **Good programs will:**

- ☆ Require all program participants to complete the demographic form developed for statewide use and report survey results to the court and to the Administrative Office of the Courts.
  - ☆ Participate in other efforts to identify state or local trends in participation and services of programs assisting self-represented litigants.
  - ☆ Develop and use a survey or interview of program users, judges, and court staff to assess program strengths and weaknesses.
  - ☆ Identify and apply models for evaluation of similar programs.
  - ☆ Use continuing education, conferences, and publications to identify strategies for continuing improvement of the program.
- 