

**TRIAL COURT RESEARCH AND  
IMPROVEMENT CONSORTIUM**

**Report on the Programs to Assist Self  
Represented Litigants  
of the  
Harford County Circuit Court  
of the State of Maryland**

**Final Report**

**November 2004**

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## Introduction and Overall Conclusions

This Report is an evaluation of the programs to assist self represented litigants in the Circuit Court of Harford County, Maryland. The Report was prepared as part of the Trial Court Research and Improvement Consortium *Pro Se* Assessment Project, funded in part by the State Justice Institute,<sup>1</sup> and uses an Executive Assessment Tool developed by the Project. This individual evaluation is intended to provide concrete feedback and suggestions to the management of the Harford County Circuit Court, to be part of an assessment of the Family Law Pro Se Assistance Projects of the Maryland judicial branch, and to be part of creating a general picture of *pro se* litigants and *pro se* innovation throughout the country produced from similar assessments in nine courts in five states.<sup>2</sup>

This report is prepared early in the process of the nine court assessment program and includes comparative data for only five additional courts. However, a comparison of the performance of programs in Harford County with those in Hennepin County Minnesota and in Montgomery, Prince Georges, and Worcester Counties and Baltimore City in Maryland shows that litigants make significant use of the services in Harford County and rate the services provided, and the performance of the court as a whole, very highly.

The Harford County Circuit Court was a pioneer of programs to assist self represented litigants in Maryland; it was the first court to use the newly developed statewide forms for family law matters and began its services in 1995. The Harford County Bar has a long tradition of public service. It has a mandatory 20 hour pro bono service requirement for membership. Just last month, the Harford County Pro Bono Committee published a report on public assistance to the poor in Harford County -- . . . *and Justice for All: Opening the Courthouse Door*. One of the court's masters, Cornelius Helfrich, will be president of the Maryland State Bar this coming year.

The county has three programs to assist self represented litigants – the Pro Se Forms Assistance Project, the Pro Se Conference Program, and the Harford County Law Foundation Pro Bono Project. Two are operated by the Circuit Court, the other by the

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<sup>1</sup> The Project is funded by SJI grant no SJI-03-N-104. Opinions expressed are those of the authors and not of the State Justice Institute.

<sup>2</sup> This evaluation was conducted by John M. Greacen, an independent consultant, and by Susan Ledray, who is an attorney and Pro Se Services Manager for the Hennepin County District Court in Minneapolis, Minnesota.

The two evaluators spent three working days at the court. The observations and stakeholder interviews they conducted were supplemented by extensive staff-conducted surveys of litigants, judges, court staff, and users of the programs to assist self represented litigants. Court observations were also conducted by judges and court staff.

local bar association. These programs provide an array of services – from forms to information to brief legal advice to free or reduced fee representation – for self represented litigants. The forms assistance project is integrated with the counter services of the Clerk of Court. It provides full time services five days per week in person and by telephone. The programs provide services valued highly by the litigants – both at the time of delivery of services and after court hearings. Litigants also rate highly the performance of the judges and staff in court hearings and trials. Both judges and in-court observers rate positively the ability of self represented litigants to handle their cases in the courtroom.

The majority of lawyers surveyed support the court’s programs, the leadership of the family law bar are heavily involved in the programs, and the County Bar Foundation has over 130 lawyers on its referral panel. The judges and masters, however, are ambivalent about the program. The Administrative Judge is a strong supporter of the programs; some of the other judges are skeptical of the impact and value of the programs. A number of court staff members – including those most intimately involved in serving self represented litigants – are suffering from “burn out” and hold negative and cynical views about the capability of self represented persons to follow even the simplest instructions. The results of the staff and judicial in court observations, on the other hand, suggest that self represented persons are doing an effective job of representing themselves in hearings and trials.

All agree that the court is providing useful and effective services to poor litigants with simple cases that involve no property and in which there is no conflict over custody of children. There is disagreement about whether the court can or should provide services addressing the remainder of the family caseload.

The court has not instituted case management procedures focused on family law cases involving self represented litigants.

Pro Se Assistance Programs in Maryland receive significant support from the Maryland Court of Appeals, its Chief Judge, and the Administrative Office of the Courts. However, the administrators of the programs in Harford County feel that they are underfunded and financially insecure in that county. The Administrative Judge is seeking county funding to absorb some of staff support and to allow the court to expand its services.

## **Overall History and Description of Programs**

The programs to assist self represented litigants (SRLs) in Harford County have developed in the context of significant revisions in the way in which family cases are handled. Over fifteen years ago the Maryland legislature considered creating a separate family court with judges and staff dedicated exclusively to family and juvenile cases. The Maryland judiciary opposed the creation of separate courts, but reached a compromise with the legislature – the Court of Appeals would through internal orders direct each court to establish a Family Division appropriate to the needs of its county.

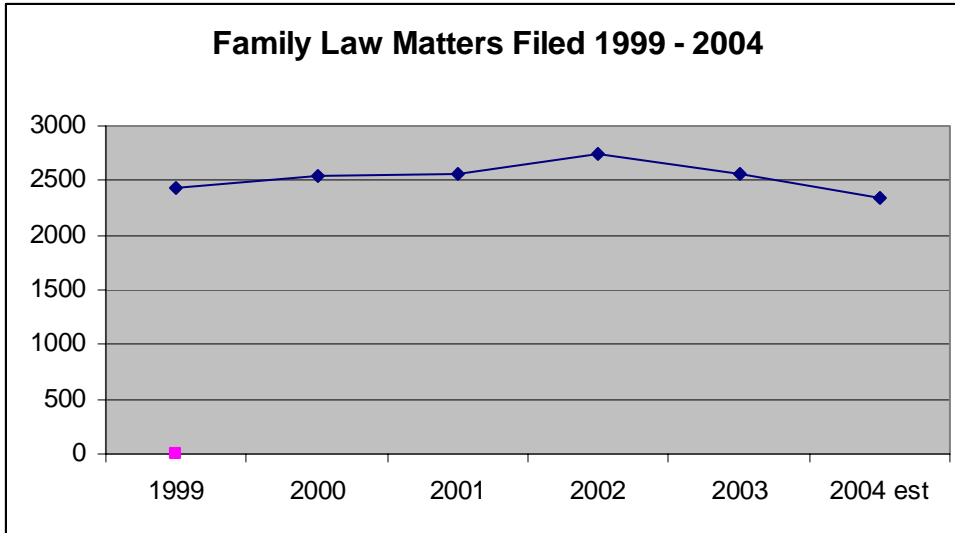
Family Divisions came into being in 1998. Significant additional state funding has been provided by the legislature and funneled by the AOC to each circuit to assist in enhancing family court services. During this same time period, reorganization of the child support enforcement program within the state has created a strengthened executive branch entity with the authority to hold administrative hearings on child support modification and enforcement, reducing somewhat the burden of these cases on the state courts. The Foster Care Court Improvement Project has simultaneously focused attention on juvenile dependency and neglect cases.

Most domestic violence matters and landlord/tenant and small civil matters involving amounts in controversy up to \$30,000 are handled in Maryland's court of limited jurisdiction, the District Court. The authors did not visit the District Court to view its operations.

In 2002, the Maryland Judiciary marked the maturing of the Family Divisions by publishing Performance Standards and Measures for Maryland's Family Divisions. The Maryland AOC Department of Family Administration produces an annual report of the Maryland Circuit Court Family Divisions and Family Services Programs. The authors have benefited from the opportunity to review these documents.

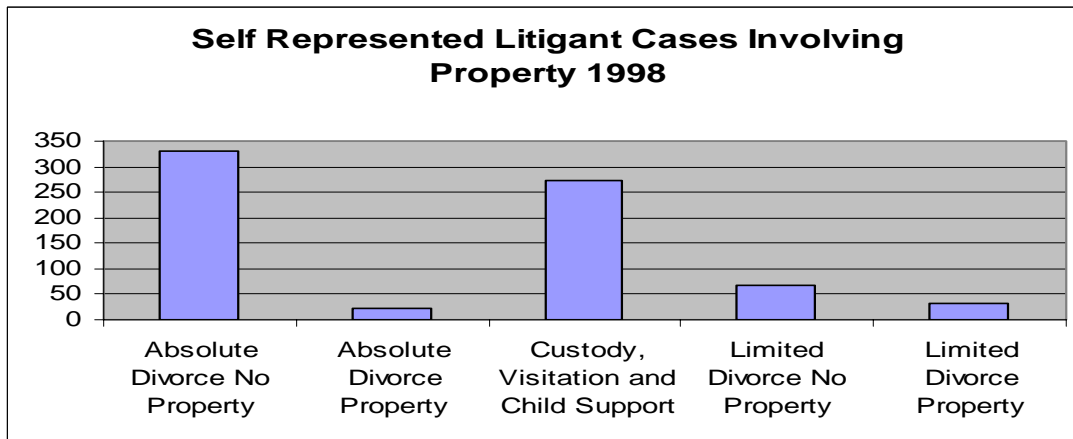
Harford County has a population of 228,000. Its population is growing at the rate of roughly 2% per year. The county has a relatively high per household median income of over \$57,000 per year, and only 5% of its population lives on incomes below the federal poverty guideline. Only 6% of the population speaks a language other than English in the home. Fewer than 2% of the county's population consider themselves to be of Hispanic or Latino origin. The county is therefore a relatively well to do community with a smaller than average (for the state of Maryland) poverty and special needs population.

Maryland has five large counties. Harford is one of the two largest "second tier" counties. The table below shows, however, that the number of new and reopened family case filings has been gradually decreasing in recent years. The only explanation that we can observe for this phenomenon is that although the county has been growing at a rate of roughly 2% per year, the population has been growing older. While not exclusively the province of the young, divorce and other domestic relations matters primarily affect the young. If this trend is in fact occurring, it has implications for the Family Division in Harford County Circuit Court.



We have reviewed the court's data on the percentage of persons choosing to represent themselves. The data suggests that roughly 75% of all domestic relations cases have at least one self represented party. Court staff warned us that they do not consider the data reliable, and we concur. Nonetheless, we believe that at least this proportion of domestic relations cases in Harford County have one or more unrepresented party at some point during the life of the case.

In 1999, the court staff conducted an analysis of all cases involving self represented litigants filed the previous year. The data is set forth in the table below.



In 1998, 53% of divorce,<sup>3</sup> custody, visitation and child support cases were initiated by a person without an attorney. Of those 741 cases, only 55 involved property.<sup>4</sup> At that time, very few self represented litigants were initiating domestic relations cases involving

<sup>3</sup> The chart showing the results of the study includes data for a "Limited Divorce". A limited divorce establishes certain legal responsibilities while the parties are separated but does not end the marriage.

<sup>4</sup> In Maryland, a "No Property Divorce" means that the parties have not asked the Court to divide or award the property. It does not necessarily mean that the parties have no property.

property issues. The court does not have comparable data for subsequent years; this is understandable given the large amount of resources required to conduct this sort of research.

There are three programs to assist self represented litigants in the Harford County Circuit Court – the Pro Se Forms Assistance Project, the Pro Se Conference Program, and the Pro Bono Program of the Harford County Bar Foundation. To understand their operation, it is important to view them in the context of the Family Division’s overall operation.

The Family Division. The Circuit Court has 5 full time judges. Trials in family cases are distributed equally among four of the judges. The Administrative Judge, a retired judge who works two days per week, and two part-time masters handle emergency, uncontested, and pretrial and settlement hearings. Next month the court will expand the time of a third master who has been handling juvenile matters. Master Hart will add two days; current plans are for him to deal with child support cases during this additional time.

The circuit judges are on a master calendar system. Their assignments are made by a central calendaring unit. Cases may be permanently assigned to a judge but this is not the norm. In 2002, the court resolved 82% of family cases within one year, compared to the state standard of 90% of cases resolved within that period. 4% of cases remained pending after two years – twice the state standard. The court has a policy of oversetting the calendar by scheduling two or even three cases for every available hour of trial or hearing time. In 2003, 37% of such cases were postponed on the date set for trial, suggesting that the court was not providing reliable trial settings. The court is paying careful attention to the scheduling of domestic relations matters. One judge has been assigned to handle all motions for continuance. The court now tracks all cases set on its civil calendar (without distinguishing domestic relations cases from other civil cases). It records how many cases are heard, settle, continued at the instance of the parties or continued by the court. This data for March, April and May of this year suggests that the court still over schedules the calendar too much. In those months, the court had to postpone 13 of 120, 13 of 106, and 11 of 108 cases respectively on its own motion.

Because of the shortage of space in the courthouse, the two current Family Division masters operate out of their own law offices and provide their own support staff. They receive 75% of a master’s salary from the state. They receive fees from the parties - \$100 per uncontested case and \$35 for each financial calculation – to offset their office and staff expenses. The masters are appointed by the court. Masters have only the power to recommend decisions for approval by the circuit judges. They do not wear robes in the courtroom. They do not have the power to sanction persons for contempt. However, they hear all uncontested divorces and *pendente lite* matters involving property (temporary matters involving child support, alimony and use or possession of the home). Their staff schedule the uncontested divorces and other matters, and prepare orders at the time of hearings for matters other than those the master takes under advisement; most litigants leave a master’s office with a proposed order in hand. An unsatisfied litigant can



take exception to a master's proposed order within ten days. Otherwise the order becomes final and is signed by a circuit judge. The staff for one master report spending 10 to 25 minutes scheduling each hearing involving self represented parties, because they explain in detail what the party needs to bring to the hearing and answer many questions. They nonetheless report that many appear without the necessary witness or other evidence.

The staff of the Family Division review all cases after an answer has been filed and refer them – based on the issues in the case and whether the parties are represented or unrepresented – either to the retired judge for a scheduling/settlement conference, to a master for hearing of an uncontested matter, to the pro se conference program, to a judge for referral to a master for a hearing on a pendente lite matter, to Family Court Services (see below), or to a judge for a custody/visitation conference.

Referrals made to Family Court Services are for a custody investigation, a psychological evaluation, or mediation. Most of the professional staff work on a contract basis. Their reports are usually made orally to the retired judge. If the matter is not settled, they may prepare a written report for use in a trial. The court provides monthly parenting education classes conducted by a contractor. The programs include two three-hour seminars, are held in the courthouse, and cost each participant \$75 (although fee waivers and adjustments are granted upon request to the court). A judge frequently introduces these classes. Parties in contested matters involving children are required by the court to attend these classes; others may attend voluntarily. The court provides a variety of other services such as seminars, children's groups and facilitated visitation.

The court has also developed a special program to address high conflict divorces. To date, these cases have all involved represented parties.

The court has a Family Law Advisory Committee, involving judges, masters, staff, and members of the bar, which meets monthly to review the programs and policies of the Family Division. It also holds an annual Family Law Conference.

The Pro Se Forms Assistance Project. The project provides assistance in completing forms and information about court procedures to persons proceeding without counsel. The program does not screen litigants on the basis of their financial means; anyone requesting services is provided services.

The program began in 1995. It has gone through two stages in its service delivery approach. During its first four or five years the program was staffed by one paralegal who worked from an office on the second floor of the courthouse, seeing litigants one-on-one on a first come-first served basis. Litigants would be referred from the Clerks Office to the second floor where persons seeking assistance would form a queue. Program staff would work with a litigant in the office while the litigant completed appropriate forms. All other persons seeking help waited in the hallway outside the office. Because the litigant was completing the forms in the office and the paralegal was sitting with the litigant as s/he was writing, this resulted in long waiting times for some litigants.

Several years ago, the staff moved its operation into the Clerk's Office. Staff occupy a desk at the back of the civil division of the Clerk's Office and provide service at the main filing counter. Everyone who approaches the civil division counter is asked to sign in and answer these questions: Name, Case Number, Do You Need Pro Se Assistance (Yes/No), Do you have an Attorney (Yes/No), Do You Just Need Forms (Yes/No), What Do You Need. If the person checks Yes to Need Pro Se Assistance, program staff are called to assist.

Program staff serve persons in the order they sign up, providing them with forms, instructions on completing the forms, and information about their cases and standard court procedures. Staff advise persons with complex matters or cases involving significant amounts of property that they should retain counsel, making referrals to the Lawyer Referral Service, the Legal Aid Bureau and the Bar Foundation pro bono program when appropriate. The staff are able to serve multiple persons simultaneously, leaving some to complete forms while they are assisting others. Staff typically do not complete forms for the litigants; they will review forms prepared by litigants for completeness and note areas requiring additional information. Program staff do not review filings by self represented litigants submitted without their assistance or involvement (such as forms downloaded from the state website or forms provided by Clerk's Office staff). The Clerk's Office staff do not refuse incomplete or inappropriate filings if the parties insist on filing them.

The staff also provide significant services by telephone. The program brochure states that calls are returned within 24 to 48 business hours. The number of phone calls and in person assistance is tracked, and a majority of customer contacts are by phone. Staff will provide information on the status of a case, answer questions on the next steps required, and give general guidance on preparing for court proceedings. Although staff state that they do not help with preparation for a hearing, evidence, or subpoenas, they do provide some guidance on what witnesses and documents will be required. Staff also reply to correspondence, especially from inmates, inquiring about family court issues and actions.

The program staff work very closely with the staff of the Clerk of Court. The Clerk's office staff provide straightforward information – in person and over the phone – to court users. They refer more complicated matters to the Pro Se Forms Assistance Project staff. The project staff assist the Clerk's Office staff with docketing whenever they have time available. Through their interactions, project staff increase the knowledge and skills of Clerk's Office staff and vice versa. The phone calls placed to program staff also relieve the workload on the Clerk's Office staff. Many of the questions asked in the phone calls are matters the clerks would address absent the program staff. Examples of such questions are: What is the status of my case? Where is my file? Why does it take so long? Has the other party been served yet? Program staff believe the phone service is a valuable part of the program because the complexity of the questions frequently escalates and the calls would then be referred to them anyway.

The program staff are currently allowed to use one desk in the civil filing area. It has been made clear to the staff that the desk is available due to a vacancy in the Clerk's office. If the vacancy is filled, the program staff will be without a desk. Program staff like their current location because the court files are located there and it is easy to pull and review a file, the public come to the civil filing counter for help and do not have to go to another location, the program staff and clerks support each other, and staff have a dedicated telephone extension on which to receive calls and from which to return them. When two program staff members are present, they may use another phone in the Clerk's Office.

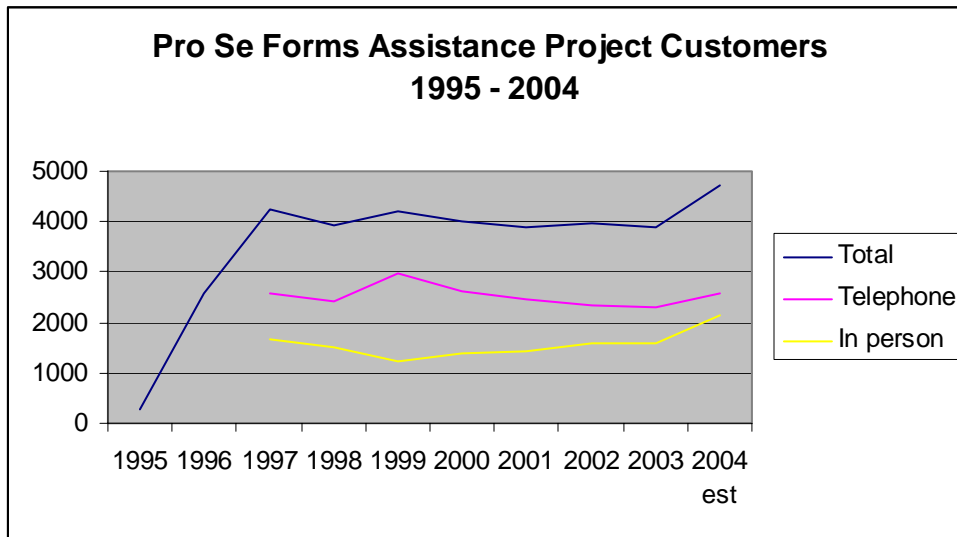
Each month, project staff attend orientation programs for WAGE – the Maryland program for providing temporary cash assistance to needy persons, many of whom are single mothers. The staff provide a brief presentation on the need for single mothers to obtain legal determinations of the paternity of their children and the status of their relationships with the children's fathers, describe the services provided by the Pro Se Forms Assistance Project and provide one-on-one consultation with program attendees.

The Pro Se Forms Assistance Project is currently staffed by three part-time paralegals, all serving on a contract (not employee) basis. Their total time amounts to the equivalent of two full time employees. They arrange their hours so that one of them is available at all times when the courthouse is open. The most senior paralegal serves as the project director – training and assisting the two junior staff members who provide the bulk of services to the public. The director is also responsible for keeping statistics and preparing a report for the program grant from the AOC, selecting cases and preparing case summaries for the Pro Se Conference program, for keeping statistics on a separate grant dealing with domestic violence cases, and other research and reporting duties as assigned by the Administrative Judge. The director currently spends little time working directly with the public.

The project also includes a contract attorney who is under contract to the court to provide legal advice and interpretations to the project staff and to provide assistance to individual litigants when their questions exceed the knowledge of program staff or require legal advice. Typically the attorney will answer questions about jurisdiction and venue in complicated fact situations. Litigants may only contact the attorney upon referral by program staff. Most often the contract attorney provides advice by phone although he will see litigants in his office if necessary.

The numbers of persons assisted has remained relatively constant over recent years, with a surge in the current year. The program serves roughly two persons for every family law case filed. The program's statistics track the number of contacts with persons obtaining services, not the number of different persons obtaining services. Many persons using the program obtain services on multiple occasions. Roughly sixty percent of customer contacts are by telephone and forty percent in person at the Clerk's Office counter. The total number of telephone inquiries dropped steadily from 1999 to 2003 while the number of in person inquiries has grown over the same period. Both appear to

be rising during 2004. The estimate for 2004 projects the telephone and in person workload by different formulas for the final eight months of this year.<sup>5</sup>



The Pro Se Forms Assistance Project had approximately 3892 litigant contacts last year, with a staff of three part time paralegals and the attorney advisor, at an annual cost of \$ 48,831<sup>6</sup>, and a per user cost of approximately \$12.55.

The Pro Se Conference program. Beginning in March of 2003, volunteer attorneys, staff from the Pro Se Forms Assistance Project and staff from Family Court Services have been conducting monthly conferences with self-represented litigants. The program is organized by the contract attorney for the Pro Se Forms Assistance Project. The Pro Se Forms Assistance Project director prepares written summaries of each of the cases for quick reference by the other professionals participating in the conferences.

Typically ten cases are conferenced each month; the conferences last two hours, with five cases scheduled for each hour. The attorneys will conduct a short introduction for the parties in all five cases and then meet with the parties in each case individually. One of the volunteer attorneys will conduct the conference for each case, with input from the other participants. The attorney identifies with the parties the matters in dispute, provides them with information on the legal issues involved (such as the difference between physical and legal custody), helps them to reach agreement on the issues, and calculates the amount of child support called for by the child support guidelines. If a settlement is reached, the attorney goes with the parties to a judge's chambers or courtroom where the agreement is placed on the record. If the parties have brought a corroborating witness to court, the divorce can be completed that day. If agreement is not

<sup>5</sup> For the past three years, average monthly telephone inquiries have been 6% higher during the first four months of the year; conversely, average monthly in person contacts have been 4% lower during the first four months of the year.

<sup>6</sup> This figure includes salary costs for the three part-time paralegals and the contract attorney advisor. The paralegals do not earn benefits, and office expenses are not included in this figure.

reached, the parties are usually referred to Family Court Services for mediation or a custody evaluation. This referral is effected through a court order given to the parties before they leave the courthouse.

The program has been very successful, with as many as eight of the ten cases being resolved. Over the course of the program, it is estimated that one third to one half of the cases have been settled. The process produces early settlements for the parties and saves a good deal of court time in settlement and scheduling conferences.

The project has no budget. It is supported by contributed time of local attorneys and the effort of court staff funded through other projects and budgets. At this time the local attorneys are very supportive of the project. Attorneys are scheduled through the end of the current calendar year. Reasons cited for supporting the project are a belief that the conferences help attorneys and the court system, educate the litigants about the law and how the system is working for them (not against them), successfully brings together the knowledge of the social workers and lawyers to find the best resources and solutions, provides greater access to courts, and affords a sense of collegiality among the lawyers who are volunteering.

The Harford County Bar Foundation. The Harford County Bar Foundation administers a pro bono legal services program for persons of low or limited means. It is housed with the Legal Aid Bureau and uses Legal Aid's financial screening process. All cases that Legal Aid declines – on financial or other grounds – are referred to the Bar Foundation for placement with a volunteer attorney. Referrals are made on a free or reduced fee basis depending on the means of the potential client. The Bar Foundation maintains a panel of over 130 volunteer attorneys; this represents over half of the members of the local bar. The local bar association has a mandatory 20 hours per year pro bono requirement for membership. The Bar Foundation executive director reports that the program has been able to place all but three cases referred to it for representation in the past year.

The Bar Foundation will provide periodic workshops for persons seeking child support modifications in lieu of providing representation.

The Bar Foundation also has a contract with a family law attorney to provide brief services and advice to persons with family law issues. The attorney used is different from the court's contract attorney. However, the two of them work cooperatively, accepting questions for each other when one is not available.

The program handled 525 cases last year – 406 in house<sup>7</sup>, 114 pro bono, and 5 reduced fee.

Half of the cases referred involve family law matters. Other areas with large numbers of cases include consumer finance, employment, housing and wills, powers of attorney, and trusts.

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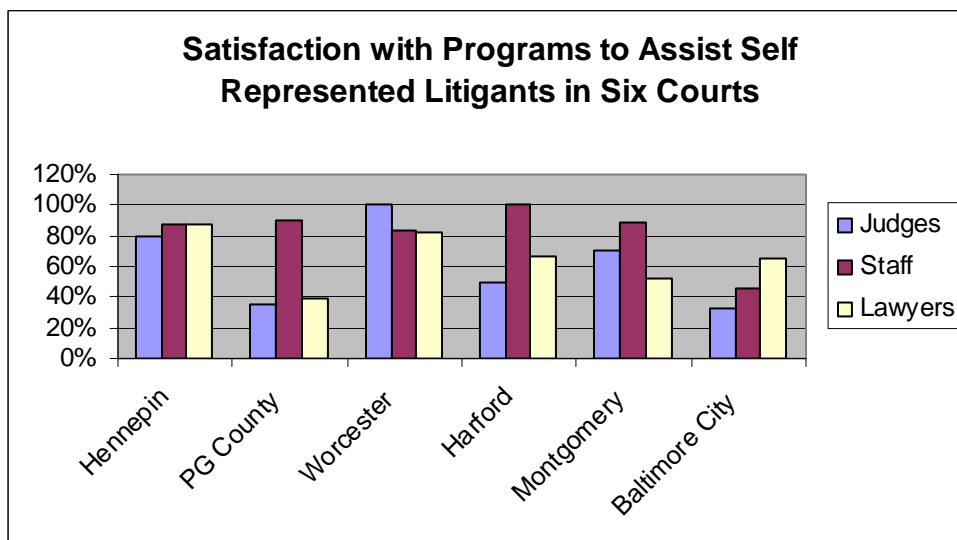
<sup>7</sup> Including referrals to the contract attorney for brief advice and information.

The Bar Foundation program is funded by an annual grant from the Maryland Legal Services Corporation in the amount of roughly \$33,000, or roughly \$63 per case.

## Results of Stakeholder Research and Data Gathering

Approximately 25 stakeholder interviews, of judges, masters, clerks, bar association partners, court administrators, program staff and bar volunteers, as well as a variety of surveys completed by judges, court staff and lawyers, support the following conclusions:

- The court’s judicial and administrative leadership and bar leadership strongly support the programs to assist SRLs.
- Judge, staff and lawyer satisfaction with the programs, compared to satisfaction levels in other courts, is shown on the following chart:



- Harford has the highest level of staff satisfaction in the six courts studied to date. Court staff support the programs and believe that they have made their work easier. However, several of the project’s staff and other court staff who regularly come in contact with self represented litigants appear to be suffering from burnout – expressed through cynical and stereotypical characterizations of those litigants in very negative terms, such as conclusions that they never read what they are given or listen to what they are told. So long as staff hold to these negative views, it is unlikely that they will make the effort to diagnose why their efforts to communicate are falling short or to develop fresh approaches that might be more likely to succeed.
- Lawyers report in the surveys that SRLs do not perform well in the courtroom but that the programs have improved their performance on most dimensions

measured. Two thirds of the lawyers surveyed are satisfied or very satisfied with the programs. This is a very high level of lawyer satisfaction for Maryland.

- Judges reporting observations of SRLs in the courtroom generally reported that they provide completed forms, present evidence and witnesses required, are able to “tell their stories,” and more or less have reasonable expectations. Most of these observations were conducted by masters.
- Judges responding to questionnaires reported generally that SRLs fail consistently to perform the above functions competently and that the programs to assist SRLs had not improved the judges’ lives. The judges are ambivalent about the program. Some support it while others oppose it. Opposition comes from a sense that the program is good only for simple, uncontested cases involving limited or no property and a perception that the court is representing by sponsoring the program that persons are able to handle more complicated cases without legal representation. Judges opposed to the program also feel that the presence of self represented litigants in the courtroom requires them to depart from their traditional role in the general jurisdiction trial court as a passive arbiter of presentations made by counsel; they also believe that their departures from the traditional role are resented by lawyers. Support comes from the perception that greater access to the court is positive and that providing better filings materially helps the court by saving time that would otherwise be spent in wasted hearings that could not proceed because filings are defective.
- Self represented litigants themselves report highly favorable ratings of the services provided, both at the time they are received and after a court hearing. The ratings of particular services compare very favorably with those in other courts assessed – generally falling within the top two or three courts surveyed in each category.

**Comparative Ratings of Programs by SRLs in Six Courts  
(5 point scale with 1 being highest)**

| <b>Question asked of litigants</b>            | <b>Hennepin County, MN</b> | <b>Prince Georges County, MD</b> | <b>Worcester County, MD</b> | <b>Harford County, MD</b> | <b>Montgomery County, MD</b> | <b>Baltimore City, MD</b> |
|---|----------------------------|----------------------------------|-----------------------------|---------------------------|------------------------------|---------------------------|
| Overall satisfaction with program             | 1.59                       | 1.45                             | 1.3                         | 1.14                      | 1.16                         | 1.06                      |
| Information helped me understand my situation | 1.64                       | 1.52                             | 1.52                        | 1.21                      | 1.2                          | 1.30                      |
| I know what I need to do next                 | 1.66                       | 1.49                             | 1.52                        | 1.34                      | 1.24                         | 1.32                      |
| Staff knowledgeable                           | 1.49                       | 1.35                             | 1.39                        | 1.21                      | 1.12                         | 1.20                      |
| Staff listened                                | 1.51                       | 1.35                             | 1.35                        | 1.21                      | 1.16                         | 1.24                      |
| Staff explained things clearly                | 1.54                       | 1.37                             | 1.35                        | 1.28                      | 1.24                         | 1.24                      |
| Staff treated me with respect                 | 1.44                       | 1.35                             | 1.3                         | 1.17                      | 1.1                          | 1.14                      |
| I did not have to wait a long time            | 1.77                       | 1.35                             | 1.52                        | 1.59                      | 1.84                         | 1.18                      |
| I would recommend the program to a friend     | 1.48                       | 1.37                             | 1.17                        | 1.31                      | 1.16                         | 1.20                      |

Readers should use caution in using and drawing conclusions from the above table and the table that follows. The results may be affected by the following factors: that the data is drawn from small numbers of surveys (courts were asked to obtain completed surveys from 50 program users, but smaller courts were not able to do so); that some programs provide services only for family law matters and others (e.g., Hennepin County) provide services covering multiple case types; that courts used different data collection methods (who did the interviews, whether they were they identified as court staff members); and that the particular laws and rules of a state impact how complex or simple the forms are, and may therefore impact the customer satisfaction level with the forms and instructions.



**Comparative Ratings of Services Provided to SRLs in Six Courts  
(3 point scale with 3 being highest)**

| <b>Question asked of litigants</b>  | <b>Hennepin County, MN</b> | <b>Prince Georges County, MD</b> | <b>Worcester County, MD</b> | <b>Harford County, MD</b> | <b>Montgomery County, MD</b> | <b>Baltimore City, MD</b> |
|-------------------------------------|----------------------------|----------------------------------|-----------------------------|---------------------------|------------------------------|---------------------------|
| Forms                               | 2.84                       | 2.80                             | 3.00                        | 2.96                      | 2.95                         | 3.00                      |
| Written instructions                | 2.72                       | 2.76                             | 3.00                        | 2.83                      | 2.97                         | 3.00                      |
| Staff answer questions              | 2.90                       | 2.89                             | 2.95                        | 2.92                      | 2.94                         | 3.00                      |
| Translation assistance              | 3.00                       | 2.96                             | na                          | 3.00                      | 3.00                         | 3.00                      |
| Workshop                            | 3.00                       | 2.95                             | na                          | na                        | na                           | na                        |
| Prepare for court hearing           | 2.77                       | 2.83                             | 3.00                        | 2.63                      | 2.78                         | na                        |
| Following up with court orders      | 2.80                       | 2.93                             | 3.00                        | 3.00                      | 2.84                         | na                        |
| Educational materials               | 2.67                       | 2.80                             | 2.80                        | 2.67                      | 2.86                         | na                        |
| Where to get more help              | 2.83                       | 2.78                             | 2.90                        | 2.83                      | 2.85                         | 3.00                      |
| Met with attorney (not court staff) | 2.85                       | 2.68                             | 3.00                        | 3.00                      | 2.95                         | na                        |
| Referred to an attorney             | 2.25                       | 2.74                             | 3.00                        | 3.00                      | 2.77                         | na                        |
| Help using computer                 | 2.33                       | 2.75                             | na                          | na                        | 3.00                         | na                        |
| Made an appointment                 | 3.00                       | 2.82                             | na                          | na                        | 2.00                         | na                        |

- The litigants also give high ratings to the judges for the hearings and trials conducted, although the ratings are generally in the lower range of courts surveyed to date. The court got a particularly low rating for the ability of a litigant to tell the judge everything that s/he thought the judge needed to know. The Administrative Judge believes that score derives from his personal practice of limiting testimony in perfunctory matters. Of concern also should be the ratings for the perception that the judge cared about the litigant's case and the perception that the litigants were treated with respect by the judges and staff. Although most ratings are above 4 on a 5 point scale, they are lower than some other courts surveyed.

**Comparative Ratings of Court Processes by SRLs in Six Courts  
(5 point scale with 5 being highest)**

| <b>Question asked of litigants</b>                    | <b>Hennepin County, MN</b> | <b>Prince Georges County, MD</b> | <b>Worcester County, MD</b> | <b>Harford County, MD</b> | <b>Montgomery County, MD</b> | <b>Baltimore City, MD</b> |
|---|----------------------------|----------------------------------|-----------------------------|---------------------------|------------------------------|---------------------------|
| Felt prepared   | 4.19                       | 4.21                             | 3.00                        | 4.13                      | 4.63                         | 4.12                      |
| Judge treated you with respect                        | 4.66                       | 4.79                             | 5.00                        | 4.36                      | 4.91                         | 4.45                      |
| Staff treated you with respect                        | 4.67                       | 4.91                             | 5.00                        | 4.44                      | 4.91                         | 4.47                      |
| Judge cared about your case                           | 4.42                       | 4.52                             | 5.00                        | 4.18                      | 4.74                         | 4.25                      |
| Judge treated everyone in court fairly                | 4.6                        | 4.71                             | 5.00                        | 4.44                      | 4.89                         | 4.20                      |
| Able to tell the judge everything s/he needed to know | 4.18                       | 4.42                             | 4.25                        | 3.72                      | 4.69                         | 4.01                      |
| Did a good job representing yourself                  | 4.02                       | 4.64                             | 4.50                        | 4.12                      | 4.74                         | 4.29                      |
| Understood the words used                             | 4.61                       | 4.91                             | 4.00                        | 4.38                      | 4.81                         | 4.49                      |
| Can explain the outcome of the hearing                | 4.87                       | 4.26                             | 4.25                        | 4.41                      | 4.81                         | 4.36                      |
| Outcome favorable                                     | 3.76                       | 4.53                             | 4.00                        | 3.85                      | 4.84                         | 3.74                      |
| Judge's ruling fair                                   | 4.18                       | 4.62                             | 4.00                        | 4.19                      | 4.89                         | 3.97                      |
| Satisfied with what happened today                    | 4.08                       | 4.48                             | 2.00                        | 3.92                      | 4.89                         | 3.81                      |
| Do you have more respect for the court system         | 3.79                       | 4.09                             | 4.00                        | 3.49                      | 4.8                          | 3.73                      |

Readers should use caution in using and drawing conclusions from the above. The results may be affected by the following factors: that the data is drawn from small numbers of surveys (courts were asked to obtain completed surveys from 50 program users, but smaller courts were not able to do so, viz Worcester County, MD which collected only four surveys); that the surveys may have been conducted of litigants coming from different sorts of hearings (for instance, the Maryland data came exclusively from family law matters while the Hennepin County data came from multiple case types; further, most Maryland courts focused their data gathering on cases before masters, which are likely to be simple and uncontested); that state laws impact the difficulty of proving a case (e.g., Maryland law requires proof that the parties have been separated for a period of one or two years, without cohabitation or intercourse, and corroboration of that proof; other states require no grounds for divorce; consequently one would anticipate more problems at the hearing for an uncontested divorce in Maryland than elsewhere); and that in a small court, one judge's practices might affect the

score for the court as a whole (for instance, the Administrative Judge’s practice in Harford to limit testimony in perfunctory matters may produce that court’s relatively low score for a litigant’s ability to tell the judge everything s/he feels the judge should know).

- The Administrative Judge and Family Court Services Coordinator perceive the program as critical to the effective resolution of Family Division cases
- The Clerk of Court is uncomfortable with the presence of the staff of the Pro Se Forms Assistance Project at the Clerk’s public counter. He feels that he has no control over their performance and that any failures on their part might be attributed to his office. However, because the current arrangement predated his term of office, he has not taken any steps to change it.
- As a general matter, the programs are perceived as most useful in distributing the correct forms to litigants, and making sure that these forms are appropriately completed. The programs are perceived as least useful in preparing SRLs for the litigation of complex cases, in familiarizing them with court rules and procedures, and in providing them with reasonable expectations about the likely outcomes in their cases.
- Court observations and exit interviews confirm that the court as a whole is achieving excellent results in terms of the satisfaction of its users who do not have lawyers, as well as treating those litigants well in the courtroom, and apparently creating an environment in which they are able to tell their stories to the judge.
- Seventy-seven percent of the litigants interviewed following a court proceeding reported that they had used one of the court programs to assist SRLs. This is the highest rate of any court assessed to date.

| <b>Court</b>                       | Hennepin County, MN <sup>8</sup> | Prince Georges County, MD | Worcester County, MD | Harford County, MD | Montgomery County, MD | Baltimore City, MD |
|------------------------------------|----------------------------------|---------------------------|----------------------|--------------------|-----------------------|--------------------|
| <b>% use reported by litigants</b> | 26%                              | 60%                       | 75%                  | 77%                | 72%                   | 44%                |

The summary of these observations is highly ironic. Self represented litigants and other court staff give very high marks to the services provided by program staff; however, the court staff providing those services have a very low regard for the persons they are serving and believe that they are failing to absorb the very information that the litigants appreciate receiving. Lawyers have as high a level of support for the programs

<sup>8</sup> The low rate shown for Hennepin County is influenced by a data collection process that targeted self represented litigants in all types of cases, including some for which the court provides no program.

in Harford County as anywhere in the state – a two thirds majority in favor of them; however, some judges oppose the programs because they feel that lawyers resent the way in which the judges deal with self represented litigants in the courtroom. Perhaps this report will serve to correct these misimpressions.

## **Program Strengths**

We have identified a number of strengths of the programs in the Harford County Circuit Court.

The court has a tradition of innovation and creativity. The Administrative Judge has a strong commitment to improving access to justice for all members of society.

The Pro Se Forms Assistance staff are integrated with the staff of the Clerk of Court and together provide a broad continuum of service to the public. The court has dramatically reduced the problem of service bottlenecks that existed with the one-on-one service delivery model using the 2<sup>nd</sup> floor office and one staff person. The program staff have a variety of referral sources for self represented litigants with questions and cases requiring legal representation – the contract attorney, the Bar Foundation, and the pro se conference program. The result of all three programs is a continuum of services ranging from information and assistance in completing forms to limited representation to full representation on a free or reduced fee basis.

The program is able to provide full time service during all hours that the courthouse is open to the public. A high percentage of self-represented litigants take advantage of the services offered. The program enjoys very strong ties with the leadership of the family law bar in Harford County, resulting in large numbers of willing and able volunteers to help resolve cases. The staff are experienced and have developed significant expertise in the law and procedure involved in family cases.

The programs enjoy strong support from lawyers and court staff. They also enjoy strong state level support from the Court of Appeals, from the Chief Judge, and from the Administrative Office of the Courts. That support is reflected in

- Stable, reliable funding. We are assured that the legislature’s commitment to continuing support for these programs is solid and reinforced by the Chief Judge’s and state judiciary’s advocacy on their behalf.
- Mandatory pro bono reporting. The Court of Appeals last year required all members of the Maryland bar to report annually the number of hours devoted to pro bono services. While state bar members are under no obligation to perform pro bono work, the new requirement appears to have increased the amount of pro bono activity within the bar. The Harford County Bar does require 20 hours pro bono service annually as a condition of membership.

- Statewide interactive forms. The judiciary’s website contains statewide forms, instructions and information sheets for typically used family law matters
- Statewide best practices. The AOC is developing a report recommending best practices for Family Division programs in Maryland.
- Peoples Law Library. This website, developed by the state’s legal services community, includes extensive materials for the SRL, including an innovative assessment instrument to gauge the likelihood that a person can successfully represent him or herself in a family law matter. At this time, program staff report that litigants learn about the Harford County program through the Peoples Law Library, but that they do not use the site extensively as a resource for their clientele. The site has out-of-date information on the Harford County program, despite program staff efforts to update the information.

The Pro Se Forms Assistance Project has developed a short, clear and useful checklist for self represented litigants to use to track the progress of their cases that could serve as a beginning point for state level efforts to develop such materials.

The Pro Se Conference program is an innovative, collaborative program integrating lawyers, Pro Se Forms Assistance Project staff, Family Court Services and judges in an effective approach to early resolution of cases involving two self represented parties.

## **Suggestions for Improvement and Enhancement**

We have identified a number of general areas in which we believe that improvement is possible. Most of these are amplified in the detailed recommendations appearing at the end of this report.

All staff need an authoritative definition of the distinction between legal information and legal advice. All staff are concerned that they not “step over the line.” However, there is no common understanding of where the line is. Most staff refuse to provide information that they should be allowed to provide. We observed that staff of the Pro Se Forms Assistance Project occasionally exceed the proper limits on their interactions with litigants – suggesting that they pursue a particular legal strategy that the staff member perceives would be in the litigant’s best interests.

It would be helpful if the court were able to use an English language phrase to refer to self represented litigants, abandoning the term “pro se.” This is of particular concern with the sign up sheet at the civil filing counter. The sheet asks the person to indicate if s/he needs "pro se assistance." It is possible that more people would check "Yes" and be referred to program staff if the terminology used was expressed in English rather than Latin.

Court staff in regular contact with self represented litigants need help in recovering from burnout. The converse of the benefit of longevity of court staff is their gradual loss of patience and enthusiasm for working with their customers. Burned out court staff would benefit from regular feedback from the judges both on the successes and failures of the self represented litigants receiving services. Their work would be made easier if the judges were able to agree on standard means for handling recurring procedural issues.

The judiciary – at both the state and local levels – need to address the lingering concerns of judges and lawyers about these programs

- Training of judges on dealing with SRLs. A number of the judges with whom we spoke voiced concern about the change in their role with the advent of large numbers of SRLs in the courtroom. They feel that they can no longer play the passive role they are used to – merely “calling the balls and strikes.” But they do not feel comfortable in a different role. They need to be assured that a new role is not only necessary but is ethically appropriate. They also need to be taught new skills for dealing effectively with SRLs in the courtroom. Most difficult for them is the situation in which one party is represented and the other is not.
- Ensuring a level playing field for represented litigants. The lawyers with whom we spoke were not concerned about the judges’ new role. However, they do believe that self represented litigants receive favorable treatment in some regards – such as access to judges to present emergency petitions. We do not believe that these perceptions are accurate; however, the judges should address that issue openly with the lawyers when an opportunity presents itself.
- Better protecting SRLs against themselves. Judges and lawyers are concerned that SRLs are forfeiting significant legal rights in these cases. An example is the right to a portion of a spouse’s retirement accruing during the period of the marriage. If that right is not asserted during the course of a divorce proceeding, it is forfeited. With the retirement of large numbers of Baby Boomers in the next few years, some dread the prospect of a number of needy former spouses being unable to obtain support to which they would have been entitled if they had retained counsel to represent them. Another example is the enforceability of agreements made between divorcing parties concerning property rights. If the agreement is incorporated into the divorce judgment it can be subsequently enforced in court. There is little to warn the self represented litigant who files a "no property divorce" and has side agreements with the spouse that those agreements are not enforceable unless incorporated or subsequently reduced to a judgment.

- Giving SRLs more guidance for contested matters. The programs currently provided focus heavily on providing assistance with documents. A similar effort is needed for presentation of cases in the courtroom. The current statewide instructions already describe the witness needed to establish the grounds for a divorce in Maryland and the topics the witness must be able to address. Instructions could be created to describe the sorts of evidence needed to address the legally relevant factors in various family law matters. Information on concepts like "voluntary impoverishment" could be provided as appropriate in child support, alimony and other relevant situations. This could improve the preparation level of the litigants. The Women's Law Center of Maryland and the Maryland Commission for Women have prepared a manual entitled *Legal Rights in Marriage and Divorce*<sup>9</sup> which sets forth concisely the elements required to establish entitlement to various types of relief in family law cases. Targeted information sheets might also help reduce the time spent by the masters' staff in answering questions and scheduling hearings.

We encourage the court to consider ways to make the availability of brief legal advice more apparent to the litigants. It is commendable that the program has a contract attorney for brief advice, and referral sources. However, the Pro Se Forms Assistance Project one-page disclosure form which the litigant signs states: "**I understand that I will not be provided an attorney or legal advice**, but that I will be provided standard forms for my own use and may be directed to other possible resources for assistance in my case." In fact, the program can offer legal advice through the contract attorney, and could consider expanding this resource by tapping into the successful attorney recruitment efforts of the Pro Se Conferences. It may be that people do not expect help beyond the mere completion of the forms, and therefore will not bring up issues of concern to them. The present referral system depends for effectiveness on several factors: the litigant must express an issue or need, and the staff person must recognize the need and feel it is important enough to refer to the contract attorney. Some staff members expressed hesitation to burden the contract attorney with questions. Options for opening up access to attorney advice at the earliest stages of the proceeding should be considered. A standard checklist for screening for complicating factors in various types of actions could help people to self-diagnose a need for legal advice, with reinforcement by program staff.

The court could improve the management of cases involving self represented litigants in significant ways. It could improve the screening of documents filed by self represented persons; it could improve the calendaring process for trials before the judges; it could improve the screening of emergency petitions.

The court could improve its outreach to the public, as recommended in the report of the Pro Bono Committee.

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<sup>9</sup> Second Edition 2001.

Litigants would benefit from a physical space with more privacy and quiet for the completion of forms and the receiving of information.

The participation of the County Law Librarian and other librarians within the county would be beneficial.

Staff of the Pro Se Forms Assistance Project do not currently receive fringe benefits. The court might consider recruiting community volunteers to assist with some of the more routine parts of the program's activities. If volunteer attorneys lose interest in conducting the pro se conference program, the court might consider other options for performing the same function.

The court imposes master fees not imposed in some of the other courts we have visited. They represent an additional financial burden on litigants.

The state of Maryland should consider the possibility of providing SRL services to litigants in the District Courts. Large numbers of persons represent themselves in domestic violence matters, small claims disputes and landlord/tenant eviction matters. We are told that large numbers of persons facing serious criminal charges are also choosing to represent themselves in District Court, notwithstanding the government's obligation to provide appointed counsel in any criminal matter in which the defendant faces the possibility of imprisonment upon conviction. This may be an additional instance where persons contemplating self representation need to be protected from themselves.

## **Specific Programmatic Characteristics**

The TCRIC Executive Assessment Instrument identifies eight specific areas on which this assessment must focus attention.

### ***Goal Alignment***

Goal alignment is the extent to which everyone within the court agrees upon the same purposes, objectives, and values for serving self represented litigants, and pursues them consistently in the course of their everyday work.

The program does not have written goals. Such goals have been articulated at the state level in the Performance Standards and Measures document.

The Family Court Division has impressive Mission, Vision and Values statements which are set forth in the annual report. These statements do not pertain directly to the assistance of self represented litigants. The court could either modify the existing statements or create supplementary statements articulating the goals for self represented assistance activities.



## ***Client Groups***

The report of the Pro Bono Committee includes a thorough review of demographics for Harford County. It appears that Spanish, Korean and Vietnamese speakers may constitute special needs populations. The court should consider the possibility of recruiting bilingual staff to provide information to these populations. Although the project staff do not report a significant language problem at this time, other courts have discovered that recruiting bilingual staff brings limited or non English speaking persons to the courthouse. This experience suggests that the lack of language services may preclude people from even attempting to use the court's services.

The outreach to the WAGE seminars is impressive. The Pro Bono Committee report recommends a concerted effort to inform all social services and community organizations of the various ways in which county residents can get access to legal services; it is a useful idea which the court could help realize.

We note that the services of the Harford County programs are provided to two plaintiffs for every one defendant. While this is the lowest disparity of any program we have observed, there is nonetheless a need to ensure that defendants in family law matters are aware that staff assistance is available to them.

## ***Stakeholders***

We have discussed the data and observations of various stakeholders previously.

The Clerk of Court, the County Law Librarian, and the judges are the stakeholders to whom the programs need to accord greater attention. Private attorney concerns about perceived advantages that pro se parties gain should also be addressed.

## ***Emerging Practices***

The assessment tool developed by the Trial Court Research and Improvement Consortium includes a number of Emerging Practices against which a court's program should be compared. The table below summarizes the Emerging Practices identified by TCRIC and our observations concerning Harford County's use of them. We note that the Maryland judiciary is developing its own Best Practices document addressing Family Divisions as a whole.

| <b>Emerging Practice</b>   | <b>Harford County Status</b>  |
|--|---|
| <b>Easily Understandable Forms and Instructions</b><br>Forms and instructions written in plain English | The statewide forms process provides a wide variety of forms and instructions written in plain English. We make some recommendations for their improvement below. |
| <b>Large Type</b>  | Such forms are not formally available, but  |

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| Forms and instructions in larger type.   | they could be printed out if requested.  |
| <p><b>Development of a Web Site for Self-Represented Litigants</b></p> <p>Applicable statutes and rules, extensive instructions written in plain English, downloadable forms, and interactive forms completion programs (where the program obtains the user's input in response to questions and populates the form appropriately based upon the answers).</p> | The court does not have its own website but does include a description of its programs on its webpage on the state judicial website.   |
| <p><b>Other Languages</b></p> <p>Easily understandable forms and instructions, translated into Spanish and other languages (including Braille) as designated by the county's demographics.</p>   | The Law Foundation is planning to translate the forms and instructions into Spanish. The AOC has recently let a contract to accomplish this objective for the whole state; Harford County need not use its resources for this purpose.   |
| <p><b>Access at Local Libraries and Community Access Sites</b></p> <p>Website available at public facilities such as public libraries, city halls, and municipal buildings together with assistance in accessing and using the website</p>   | The state court website and the Peoples Law Library are available in public libraries and anywhere that Internet access is available.  |
| <p><b>Attorneys in the Courthouse</b></p> <p>Attorneys either employed by the court, employed by an outside agency, or working pro bono counsel litigants prior to court appearances</p>   | The Pro Se Forms Assistance project and the Law Foundation both employ attorneys to provide brief advice by telephone or in person to litigants needing legal advice. Program staff refer self represented litigants to the Pro Se Forms Assistance project legal adviser. One limitation of this assistance is that the attorney is available to litigants only if program staff recognize an issue and make the referral. The Law Foundation places cases with pro bono attorneys. The Pro Se Conference program brings self represented litigants together with attorneys to resolve outstanding issues in their cases. |
| <p><b>Attorneys in the Courthouse</b></p> <p>The judge may send litigants out of the courtroom to meet with attorney advisors in order to expedite calendars.</p>  | The services of the Pro Se Forms Assistance project and the Law Foundation are available for referral from the courtroom. We did not observe such referrals during our short visit to the court.   |
| <p><b>Workshops</b></p> <p>Workshops can be either run by video or live presenters.</p>  | The court provides parenting education workshops. In the past it offered workshops on court procedures for persons representing themselves in family law   |

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|   | <p>matters; the sessions were poorly attended and discontinued.</p>  |
| <p><b>Mobile Services Centers</b><br/>Service centers contained in mobile RV units that can be driven to various parts of the jurisdiction</p>  | <p>There is no mobile service center, and the evaluators do not recommend one. However, the Pro Bono Committee identified transportation as a major barrier to access to legal and court services. The court might consider additional outreach, similar to its staff's attendance at the WAGE seminars in Aberdeen, to take its services to places more convenient to court users.</p>  |
| <p><b>Telephone Attendant Decision-Tree</b><br/>Systems can provide telephone assistance to self-represented clients</p>  | <p>There is no automated phone service. The majority of litigant contacts for the Pro Se Forms Assistance project take place over the phone, and most callers leave a message and get a return call. This process appears sufficient for the current level of inquiries.</p>   |
| <p><b>Training Other Court Staff</b><br/>Provides a customer service orientation to all public information components of the court.</p>   | <p>There is significant informal cross training of staff of the office of the Clerk of Court due to the presence of the staff of the Pro Se Forms Assistance project at the public counter. The cooperation among the two staffs is highly beneficial. It might be helpful to provide additional training to judicial staff regarding the assistance provided by the project, to foster greater feedback and coordination between the program and the judiciary.</p> |
| <p><b>Prehearing Screening Process</b><br/>A court staff member, staff attorney (sometimes called a family law facilitator) or a volunteer attorney (sometimes from legal services) reviews the papers prepared by the parties to determine their readiness for consideration by the judge. In some courts, judges meet with the parties in a prehearing conference to accomplish the same objective and to help with dispute resolution.</p> | <p>There is no prehearing screening process for cases involving self represented litigants. Even though staff of the Pro Se Forms Assistance project may assist a litigant in preparing forms, they do not perform a quality control function in reviewing the documents actually prepared by their clients.</p>   |
| <p><b>Unbundled Legal Services</b><br/>Providing access to specific legal services on a limited representation basis -- limited to a specific phase or issue in the case.</p>   | <p>Both the Pro Se Forms Assistance project and the Law Foundation provide unbundled legal services in the form of brief legal advice. We urge the Maryland judiciary to formally endorsed this form of legal</p>  |

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|  | practice.   |
| <p><b>Community Outreach</b><br/> Providing information about court services and obtaining input from community members about those services and their experiences with the courts.</p>                  | <p>The Pro Se Forms Assistance project staff attend the weekly seminars of the WAGE program – providing information about family law matters to women obtaining public assistance. The Pro Bono Committee report calls for additional outreach to governmental and nonprofit agencies to publicize the availability of services for self represented litigants.</p> |
| <p><b>Fully Interactive Forms with on line or otherwise simultaneous Video Help</b></p>  | <p>The state court website provides “fillable” forms on line that can be printed or downloaded.</p>   |
| <p><b>Customer Friendly E-Filing</b><br/> Court-sponsored forms completion process is linked to electronic filing system so that self-represented litigant can file form as soon as it is completed.</p> | <p>The court is not discussing electronic filing at this time. Initiatives will likely originate at the state level. The state judiciary’s fillable forms could be used as the basis for an electronic filing process for self-represented litigants.</p>   |

## ***Statistical and Data Analysis***

The court appears to make a consistent effort to gather and use statistics to monitor the performance of its programs. It could improve the statistics on the frequency of self representation. It might also help to provide self represented litigants with a way to provide feedback to the court on its services – through a suggestion box or short postcard-sized service evaluation form. The court staff who assisted in conducting the in court observations for this assessment report that they identified a number of ideas for improvements in the information they give to litigants. Providing litigants with a way to provide feedback might produce continuing insights into those sorts of opportunities for better coordination of efforts.

## ***Evaluation***

There is no regular, systematic evaluation of the court’s programs to assist self represented litigants. This assessment is the first such effort by the court. We recommend that the court conduct its own annual assessment of the performance of the Family Division as a whole. The assessment would be grounded in the written goals suggested earlier and would make use of available data. We recommend that its scope be limited; it is easy for such projects to turn into long reports that consume staff time and provide little helpful information. An annual assessment would also serve as the vehicle for annual planning for changes and enhancements to the programs.

## ***Strategic Planning***

Strategic planning is evident at the state level. The annual report of the Family Division sets forth the court's plans for program enhancements. The report of the Pro Bono Committee is an excellent strategic plan for the provision of legal information and services to county residents. The annual Family Division assessment suggested above would provide an opportunity to set forth specific plans for needed changes and enhancements to the court's programs in the future.

## Overall Assessment

We find that the court provides an effective process for providing self represented litigants with assistance in completing forms and giving them general information about court procedures and case status. It advises litigants with complex matters to obtain legal advice and representation. The services of the contract attorney and the Bar Foundation pro bono program are available for persons of limited means to obtain the advice and representation recommended.

The current program is highly effective for persons with simple cases – i.e. those without property or contested custody issues. The court has improved the process of assisting people, to make it more likely that assistance can be provided to multiple persons simultaneously and reduce waiting times (except for the accumulation of call back messages for telephone services). However, program staff still feel pressured by the number of customers and the phone call backlog and this impacts the morale and level of assistance provided. The program reaches a higher percentage of self represented litigants than anywhere else we have visited.

The program is not as effective in helping litigants deal with more complex cases. It does not systematically alert litigants to their potential property rights or attempt to improve their understanding of the rules of evidence, necessary proof required to obtain various forms of relief, or the rules of procedure at the hearing stage.

With the assistance of state judicial leadership, Harford County now needs to address the next level of challenges for courts in providing truly meaningful access to justice. The title of the Pro Bono Committee's report symbolizes the first and subsequent challenges facing the courts in every state. *Opening the Courthouse Door* is the first objective – one that the Harford County Circuit Court has achieved. The remaining challenge is to ensure that self represented litigants are able to effectively work their way through the procedures they encounter within the courthouse and exit from the back door with the legal relief to which the merits of their cases entitle them. The major steps required to meet those challenges are:

- A statewide definition of legal information versus legal advice
- Better articulation of and training for judges to deal with the changed judicial role in the general jurisdiction trial court required to address these cases; and

- Increased assistance to self represented litigants with complex contested family law matters.

## **Recommendations**

Our recommendations are made both to the AOC and state court leadership and to the leadership of the Harford County Circuit Court. The first recommendations need to be addressed at the state level.

### ***Promulgate a statewide definition of legal information versus legal advice***

At least a dozen states have drafted and adopted definitions for judges, staff and the public, setting forth in understandable English the activities in which staff may engage and those that they are prohibited from performing. We can provide the AOC with examples. We recommend particularly the materials developed by the California Judicial Council.

### ***Review and revise state forms to include specific warnings about loss of specific important legal rights, e.g., alimony, pensions, monetary awards, and the division of marital property***

As noted earlier, judges and lawyers are concerned that significant numbers of self-represented litigants are forfeiting important legal rights. We recommend changes to state forms and instructions to highlight the following areas:

- Forfeiture of rights to share spousal pensions if not asserted in the complaint or answer
- Notice of tax consequences of the allocation of marital property
- The consequences of divorce proceedings for alimony and home ownership

We suggest that the state consider changes to the divorce forms, the instructions accompanying the forms, the summons, and the notice of default to include clear warnings, stated in understandable English, notifying both plaintiffs and defendants of the potential consequences of divorce proceedings.

### ***Review and revise state forms in conjunction with the staff of the circuit courts and readability experts and revise instructions to eliminate instructions for straightforward questions (e.g. name and address) and add instructions for legally significant***

## ***check boxes (e.g. divorce complaint selection of issues you want the court to address)***

The current statewide forms are revised regularly to resolve problems brought to the attention of the AOC. However, the basic forms have been in place for almost ten years. The time has come to review the forms in a comprehensive fashion, using a team of court staff who work with litigants on a daily basis, a professional readability expert, and a process of field testing of new draft forms with focus groups of actual court users. The courts have identified additional forms that should be included in the statewide forms set.

The current instructions contain detailed directions concerning name and address. These seem unnecessary; they may give the impression that the instructions are trivial and deter users from reading further. The instructions provide no guidance on the property issues that the litigant needs to ask the court to address.

## ***Address SRL needs in other case types***

Forms, instructions, and operational programs are now in place for persons who choose to represent themselves in family law matters. The judiciary has also devoted considerable attention to assistance of abused spouses and children in obtaining orders of protection. The state could usefully apply the lessons learned in these efforts to providing similar materials for small claims, landlord/tenant, and criminal cases in the District Courts. The Ventura County Superior Court in California has particularly good forms for landlord/tenant cases.

District Court judges are accustomed to the appearance of litigants without counsel; they have well established routines for ensuring that they have an opportunity to present their cases in open court. Consequently, there has been far less clamor for materials in the types of cases that arise in these courts.

Nonetheless, the jurisdictional limit of the District Courts has been increased to \$30,000 recently. This suggests that the potential consequences for litigants have become more serious and that the state judiciary should consider providing at least more written materials for litigants involved in civil matters in the limited jurisdiction courts. As noted above, there are also reports that growing numbers of persons are choosing to represent themselves in criminal cases in these courts. While they have a constitutional right to do so, the judiciary should consider preparing strong advisory materials that will alert such litigants to the potential consequences of self representation in criminal matters.

## ***Consider mandating attendance at an orientation program for self represented litigants (if video or online option is available)***

We urge the Court of Appeals to consider making attendance at an orientation a requirement for self representation in some types of family law matters, just as the courts

are mandating attendance at approved parenting classes. While attendance might be waived for parties with uncontested cases, and certainly could not be required of defendants not choosing to file an answer, all parties could benefit from a basic understanding of the legal rights resolved during divorce proceedings and the basic court procedures involved.

We would recommend that a statewide orientation videotape and online presentation be created prior to the imposition of such a requirement and that these orientations be provided at no cost to the litigants.

While imposition of such a requirement would serve as a barrier to access to divorce, it nonetheless seems to us to be an appropriate balance of the litigant's rights to access with his or her interests in not inadvertently forfeiting important legal rights associated not only with property interests but also with interests in a parent's future relationship with children.

### ***Training of judges on dealing with SRLs in the courtroom***

The Judicial Institute has developed program segments on dealing with self represented litigants. We recommend that they become a standard part of the orientation for new circuit court judges and be provided to all judges embarking on an assignment to the Family Division. The training needs to address the ethical issues that trouble judges in adopting the more engaged judicial role required to deal effectively with these cases and with specific techniques that judges can use in cases involving two unrepresented parties and in the more difficult situation in which one party is represented and the other is not. It would be helpful if the Court of Appeals could develop a policy statement or supplementary ethical statement covering these issues that judges would be able to rely upon as authoritative. Judges are troubled by the language in appellate decisions holding self represented litigants to the same standards as lawyers.<sup>10</sup>

### ***Develop guardianship forms and instructions and reissue forms for name change***

We are told that there are no statewide forms and instructions for guardianship cases but that a need exists. The name change forms were withdrawn from circulation by the AOC; there remains a need for those forms.

The remaining recommendations are addressed to the Harford County Circuit Court.

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<sup>10</sup> For an analysis of such cases and examples of suggested techniques that judges can use, see Albrecht, Greacen, Hough and Zorza, *Judicial Techniques for Cases involving Self Represented Litigants*, The Judges' Journal Winter 2003 Volume 42 Number 1, at 16 (American Bar Association).



## ***Enhance services for Spanish speaking citizens, including the hiring of bilingual staff***

The court should pay attention to the need for bilingual staff and otherwise make its services culturally accessible to Hispanic families and individuals.

## ***Eliminate use of term “Pro Se”***

Self represented litigants find the use of obscure legal terms a barrier to accessing court services. The term “pro se” is one such term; litigants confronting it for the first time have no idea what it means. The court should try to find a substitute for its forms and everyday language. In particular, the reference to “Pro Se Services” on the sign in form at the public counter in the Clerk of Court’s office is confusing to persons seeking forms and information.

## ***Address burnout of staff in regular contact with self represented litigants***

As noted above, we observed that the senior staff of the Pro Se Forms Assistance Project exhibit classic signs of severe burnout. We observed the same phenomenon among the staff of the masters who deal every day with self represented litigants. The effectiveness of these valuable staff members is compromised by the behaviors that come with burnout – cynicism, negative stereotyping of self represented litigants, and over reaction to often heard phrases or attitudes (“nobody told me that I had to . . .” “They’ told me that I could do it this way.”) We suggest that the court consider taking the following steps:

- Consciously monitor the language used by staff. Supervisors can provide immediate feedback to staff when they hear them lapsing into cynical and stereotyping language. In time, staff can learn to monitor their own language. The use of negative language reinforces negative beliefs which in turn produce negative behaviors.
- Provide training in communications skills. Staff report that litigants often fail to follow the written and oral instructions given to them. We observed communication behaviors by staff that undermined their education efforts, and note that the work environment (talking over the counter) is not always conducive to focused communication and listening by both staff and the litigants. Communication techniques should be reviewed with staff. Good communication requires allowing the party to focus on one task at a time, using methods to encourage, not discourage, parties from carefully reading the paperwork, and not rushing parties through the process. Effective communication includes a feedback loop – asking the person to whom

information is imparted to summarize what s/he has heard. This reinforces the information itself and gives the imparter an opportunity to correct misimpressions. This may require more staff time, and would benefit from improved facilities.

- Rotate staff assignments to provide a respite from daily public contact. It is not clear to us that the Harford County Circuit Court has enough positions at comparable pay grades to be able to do this.
- Enlist the skills of the Office of Family Court Services to introduce other stress relieving activities into the court workplace. Family Court Services professionals face issues of burnout, although the causes are somewhat different from those encountered by persons dealing with large numbers of members of the public every day. Mental health professionals and social workers are trained to recognize and deal effectively with burnout. They could provide useful tips for program staff, secretaries, and front counter clerks including harmless ways to express frustration.
- Create a mechanism for judges to provide regular feedback to staff. Knowing that your efforts are producing positive benefits is one antidote to burnout. The judges could be helpful in letting court staff know of instances in which litigants have performed well and of instances in which they needed additional information. In the past, the staff of the Pro Se Forms Assistance Project tried various means of alerting judges to their involvement in the preparation of particular filings. However, those efforts – such as making a notation or affixing a stamp to documents they helped prepare – proved of little use because litigants fill out the forms themselves, following or ignoring the advice and direction provided by staff. Therefore, judicial feedback should not assume that a particular form resulted from staff inattention or lack of understanding. Nonetheless regular communication with the judges – on an incident by incident basis or periodic meetings – would serve to boost staff morale and improve their understanding of the judges’ objectives and expectations.

### ***Increase consistency of judicial approach to matters dealing with self represented litigants***

We became aware of two instances in which greater judicial consistency would be helpful to court staff. The judges apparently apply different standards to the sufficiency of an affidavit of service – must each document served be separately identified in the affidavit? A consist approach would enable staff to provide more helpful information to litigants on completion of these documents. Further, some judges will deny routine applications for relief without identifying the defect that causes them to be unacceptable. This is frustrating for self represented litigants seeking to refile such documents and for court staff who spend time reviewing the rejected document with the litigant and speculating about improvements that might cause it to be acceptable.

### ***Draw parties' attention to cautions in statewide forms regarding alimony, pensions, monetary awards, and other property and about including agreements in divorce orders***

When appropriate documents have been created, court staff can routinely remind litigants obtaining court forms to pay attention to the cautionary language contained in the forms and instructions. Until such forms are developed, judges introducing co-parenting classes could take a few minutes to emphasize the typical areas in which legal representation is particularly required, such as the existence of pension rights acquired during a marriage.

### ***Provide litigants with contested hearings notice of the issues to be addressed and the sorts of evidence needed to prove them***

There are a number of steps that the court could take to better prepare SRLs for court appearances, including basic courtroom protocols, lists of the legal elements that must be proven to obtain relief and the sorts of evidence that can be used to prove them, and suggestions that litigants observe hearings and trials in other cases. Some courts have videotaped proceedings for this purpose.

Until statewide materials are available, court staff can take advantage of existing materials – such as the manual prepared by The Women's Law Center of Maryland and the Maryland Commission for Women cited at footnote 9 – to assist litigants to better prepare for hearings and trials involving contested matters.

### ***Provide enhanced case management for cases involving self represented litigants***

The basic procedures for family cases have been designed with the expectation that lawyers will be representing both parties. Obtaining relief requires initiative from one or both parties. Across the country, courts have learned that they cannot assume that self represented litigants will take the required initiative and have instituted procedures to alert them to the steps needed to move their cases forward. Examples of such steps that could improve case processing in Harford County are:

- Sending a letter to the plaintiff after failure to file an affidavit of service after an appropriate period of time, for instance 30 days;
- Sending a letter to the plaintiff after the time for filing an answer has expired, alerting them to the procedure for obtaining a default;
- Screening of filings submitted by self represented litigants. Some courts have staff review all files in these cases prior to hearings to insure that the papers are in order and that the case is in a posture to proceed at the hearing. This process can avoid wasting the valuable time of the court and the parties in fruitless court appearances.

- Monitoring of these cases at all stages. Some courts have created positions called case managers with the responsibility to make sure that all \Family Division cases proceed according to state time standards and that none “fall through the crack.”
- Rule 2-507 review of open cases. It has been several years since the Harford Circuit Court conducted a Rule 2-507 review of open cases to identify those that are eligible for dismissal for failure to effect service or for failure to prosecute. This is not the most effective way to manage cases involving self represented litigants. By the time that Rule 2-507 dismissal is appropriate, significant time has already been lost. But it is a necessary step to clear the court’s docket of inactive cases.
- Improving emergency petition screening. Some lawyers perceive that self represented parties have greater access to judges for consideration of emergency custody petitions than those represented by counsel because counsel restrain their clients from seeking such relief except in the most extreme situations. Court staff provide litigants with information about the standard used by judges in deciding whether an emergency exists; they cannot, however, prevent parties from filing petitions that do not conform to that standard. Judges might be relieved of some of these cases by adding screening layers. For instance, persons seeking to file emergency petitions might be required to speak to Mike Hickey or emergency petitions might be reviewed for the judges by their law clerks. In the latter case, the judge could receive an oral report on the matter from the law clerk and be able to act on the petition without reading it.

### ***Improve calendaring process***

Attorneys complained to us about the number of times that family cases set for trial are postponed because of overbooking of the calendar. After discussing the process with staff in the Assignment Office, we have become aware of the efforts the court has expended in the past year or so to reduce or eliminate postponements due to motions from the parties for a continuance or due to the inability of the court to reach all matters scheduled to be heard. However, the data set forth above show that the court has not yet achieved fully dependable trial dates.

When calendars are overset, family cases are particularly disadvantaged because of the preferences given to criminal, workers compensation, adoption, medical malpractice, and specially designated cases with a “right of way.” In addition, it appears that cases with older case numbers are given preference over cases with newer case numbers – with the result that modification of custody or child support in an older case takes precedence over trial of a contested case for absolute or limited divorce.

### ***Provide quiet, more private space for litigants to complete forms and receive information***

It would be helpful if litigants had a place other than the public counter to complete forms and obtain information from court staff. We do not recommend a return to consultation in a private office in a one-on-one setting. However, we do suggest that the process would work better if space very near the front counter could be set aside for a program staff member to work with multiple litigants simultaneously in completing forms. This same space could be equipped with computers for the use of litigants who preferred to use fillable forms from the state court website rather than handwriting their documents on paper forms.

### ***Consider less resource intensive model for pro se conferences***

In Prince Georges County, court staff perform the same function that the pro se conferences serve in assisting litigants to reach agreements and presenting those agreements to masters for entry on the record and issuance of a proposed order. In Montgomery County, the function is performed by a single attorney facilitator paid a modest stipend per case reviewed. Should the willingness of Harford County volunteer attorneys to continue the pro se conference process flag in the future, the court might consider these alternative models for maintaining the process.

### ***Review forms, instructions, letters, and checklists for readability***

The court should periodically review its internally generated forms and form letters for readability, using the process suggested above of submitting them to focus groups of real litigants for review and comment.

### ***Increase community outreach, as suggested by the Pro Bono Committee***

The Pro Bono Committee has suggested that the bar and the court ensure that information on the availability of legal services is available at all social service and community organizations.

### ***Have more participation from the Clerk of Court, the County Law Librarian and other libraries***

We observe that the Clerk of Court and County Law Librarian have not been involved significantly in strategic planning efforts for assisting self represented litigants. We suggest that the court seek their fuller involvement in the future.

### ***Provide benefits for staff***

Program staff for the Pro Se Forms Assistance Project serve on contract – not as county or state employees. Consequently they do not receive benefits. The court should attempt to find a way to offer them employment status.

### ***Recruit community volunteers to assist with program***

The Pro Se Forms Assistance Project has a number of routine tasks that could be performed by a community volunteer. Many courts have found that retired community members welcome the opportunity to be of service as court volunteers. They could assist with the program in a variety of ways, relieving paid staff to perform the more sophisticated aspects of the job.

## **Conclusion**

The entire Harford County Circuit Court should be proud of what it has achieved in its services to self-represented litigants. The court has a sophisticated array of programs addressing multiple aspects of the needs of self represented litigants. It has a tradition of innovation and creativity on which to build in considering the suggestions made in this report for improving and expanding the services to self represented litigants and further improving access to justice for all members of the Harford County community. The program will be an important resource for the rest of the state as Maryland takes its programs to the next level of sophistication.

The Harford County programs would benefit from additional state and county resources to accomplish the enhancements recommended. The deployment of such enhancements will be cost effective and will save the state and county resources in the long run.