

**Report on the Programs to Assist Self  
Represented Litigants  
of the**

**State of Maryland**

**Final Report**

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**John M. Greacen  
Greacen Associates, LLC**

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## Introduction and Overall Conclusions

This Report is a summary and overview of assessments of five programs to assist self represented litigants in the state of Maryland – in the Circuit Courts for Baltimore City and Harford, Montgomery, Prince Georges, and Worcester Counties. Individual reports for each court have been 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> using an Executive Assessment Tool developed by the Project. This summary evaluation is intended to provide an overall assessment of Maryland’s efforts for the benefit of the leadership of the state’s judicial branch.<sup>2</sup>

This report draws on information obtained in four other assessments completed as a part of the SJI project – in Hennepin County, Minnesota, Maricopa County, Arizona, Miami/Dade County, Florida, and the state of Alaska.

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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 author and not of the State Justice Institute.

<sup>2</sup> This report is the product of John Greacen, the consultant who served as a member of the team for each of the five Maryland TCRIC evaluations. The conclusions and recommendations are his, and do not necessarily reflect the views of TCRIC or of the other members of the teams who assessed the five Maryland courts.

The Maryland judicial branch should take great pride in the progress it has made in implementing programs to assist self represented litigants in its Circuit Courts. In all five Maryland jurisdictions studied there are vital and effective programs addressing the needs of persons pursuing their family law cases without legal representation. These programs share a number of important characteristics:

- they are very highly rated and valued by the litigants who use them. These high ratings are given at the time services are provided and after the litigants have a court appearance in their case.
- the programs have qualified and experienced staff. We observed all of the staff in the five courts assessed interacting with litigants and had very few criticisms of the services and information provided.
- the programs are improving the performance of self represented litigants and easing the burden of these cases on judges, masters, lawyers and court staff.

The programs are remarkably varied in structure and in the services provided. This report describes each of the programs, provides comparative data on them, and recommends a series of steps the state judiciary can take to strengthen the programs statewide.

However, the assessment process has made clear that the issue facing Maryland and each Circuit Court is not how well its programs to assist self represented litigants are working, but rather how well the court as a whole is treating these litigants and how well they are able to obtain the legal relief to which they are entitled under the law and the facts of their situations.

In the main, Maryland should be pleased with its performance on this larger dimension as well. Most Circuit Court judges and masters are now thoroughly familiar with the special needs of these cases and comfortable in accommodating them. Judges and masters receive high ratings from litigants on the fairness of court processes. Most of the circuits we visited provide a host of programs for self represented litigants to facilitate non-adversarial dispute resolution and to provide the court with professional analyses of contested custody and fitness issues. The courts are – for the most part – proactively managing these cases to ensure that they do not “fall through the cracks.” The circuits are all providing excellent services to abused spouses and children.

However, there remain significant numbers of individual judges and lawyers who resent the presence of self represented litigants in the general jurisdiction trial courts, who wish to turn back the clock to a time when they did not exist in large numbers, who believe that self represented litigants are able to perform competently only in simple, uncontested cases, and therefore feel that court-based programs to assist them mislead

citizens into thinking that they can represent themselves in more complicated matters.<sup>3</sup> Other judges express strong reservations about their courtroom role in these cases. We often heard the phrase, “The job of the judge is to call the balls and strikes, not to throw the pitches.” These attitudes do not necessarily translate into mistreatment of self represented litigants in the courtroom. Proceedings we observed, even those conducted by judges with these reservations, were invariably courteous and considerate of the special needs of self represented litigants. Nonetheless, some courts received lower ratings than others for fairness and courtesy of judges in the courtroom. Some of the recommendations of this report address these broader issues as well.

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

The programs to assist self represented litigants in Maryland 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. 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 District Court is much more used to dealing with persons appearing in court without legal representation than the Circuit Courts. The five assessments did not include visits to the District Courts or any investigation of their 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.

Maryland is also fortunate to have the services of the Maryland Legal Assistance Network (MLAN) which has developed the on line Peoples Law Library and is developing a series of additional nationally recognized electronic legal services

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<sup>3</sup> In one court, we interviewed a judge who stated this view. The next day, we observed a contested petition to change custody in which both parties represented themselves in that judge’s court. The following day we spoke again with the judge, who admitted that both parties had done a fully adequate job of presenting the case for decision.

applications. The Women's Law Center and the Baltimore City Legal Aid Bureau staff a full time statewide Family Law Hotline. The Women's Law Center also operates a Legal Forms Helpline – an 800 number litigants can call with questions about the use of the domestic relations forms maintained on the state judiciary website.<sup>4</sup> The Maryland Volunteer Legal Services program provides a statewide pro bono screening and referral system that serves primarily the smaller counties. Maryland Legal Services also provides funding for local legal services programs in some counties to represent a party in a contested custody case when the other side is represented.

The Administrative Office of the Courts has also worked with local domestic violence advocates to develop programs in over a dozen courts to provide safety planning, legal advice, referrals and representing in protective order cases for victims of family violence. The programs have different names, but are referred to generally as Protective Order Advocacy Representation Projects (POARP). We were able to visit and observe the POARP program in Baltimore City, the first such program by the judiciary, and were impressed with the services provided to family violence victims and the effective interactions between the POARP program staff and the court. The judiciary has been able to use federal Violence Against Women Act funding to initiate these programs and then obtain state appropriations to maintain them.

All of these supporting programs did not develop in Maryland by chance. The Maryland judiciary has employed a purposeful, collaborative strategy of involving other organizations in providing many of the services needed by self represented litigants. It has provided financial support to those organizations and worked closely with them to ensure that the services developed effectively respond to the needs they were created to address. Maryland's collaborative strategy has been effective and can serve as a useful model for other states and courts.

### ***Descriptions of court programs assessed***

Here are brief descriptions of the five courts assessed. The first paragraph describes the court's program to assist self represented litigants. All of these programs are housed within the family division of the court and assist self represented litigants with family law matters.<sup>5</sup> The second paragraph describes the broader context within which the court handles family law cases and those brought by persons representing themselves. Readers can find further detail on court and program operations in the five individual assessment reports.

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<sup>4</sup> The state judiciary provides funding for this program; it has recently provided additional funding to support the provision of Spanish language services one half day per week. The judiciary also provided significant support to MLAN for the development of the Peoples Law Library.

<sup>5</sup> The attorneys in Worcester County will deal with other legal issues brought to them by clients, provided they can be addressed quickly and fall within the expertise of the attorneys.

## **Baltimore City**

The self represented litigant assistance program is operated by the Legal Aid Bureau under contract to the court. It operates with one attorney and two paralegals, part-time each day. The program provides legal information only; the staff prepare forms for litigants and answer their questions. The program is means tested. It is not integrated into other functions of the family division but is integrated with the broader legal services program of the Legal Aid Bureau.

The court has three judges assigned full time to family matters. It maintains two separate calendars for family cases. The domestic miscellaneous calendar deals with child support establishment and enforcement. The equity calendar deals with all other family law matters. The court maintains information on these calendars in separate automated systems and the files are maintained by separate, though co-located, units of the Clerk of Court. The court uses three “master examiners” to hear default and other contested matters; they operate from their own private law offices and charge \$125 per case. The Associate Director for the family division reviews and refers family cases to different tracks according to the court’s case management process. The court operates a major POARP program to assist victims of domestic violence. It has a variety of programs to assist children and parents who never lived together as a family (where paternity is established, visitation may be involved, and child support is ordered). It provides classes both for parents and for children involved in divorce; a separate class is presented for parents and children who never lived together as a family. The Clerk of Court family unit provides forms and information to self represented litigants. The court provides custody evaluations, mental health assessments, and mediation services for selected cases. Members of the bar provide free settlement conference services for other cases.

## **Harford County**

The court has three self represented litigant assistance programs in the courthouse and cooperates closely with the Harford County Bar Foundation pro bono program that operates from the legal aid office a few blocks away. Three part-time paralegals, working at the front counter of the Clerk of Court’s civil filing area, provide information and assistance to litigants; they also provide information by telephone. A contract attorney provides legal advice to the paralegals, and to litigants upon referral by the paralegals. Volunteer attorneys provide a Pro Se Conference program which attempts to settle cases involving two self represented litigants. The Harford County Bar Foundation provides pro bono representation for qualified persons. The first three programs are not means tested; the pro bono program is. These programs are very well integrated with the rest of the court.

The court has five judges; all hear family law matters. It has a part-time retired judge who conducts settlement conferences for family law cases two days a week. It has Maryland Report on Self Represented Litigants

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two masters who handle uncontested divorces and *pendente lite* matters involving property (temporary matters involving child support, alimony and use or possession of the home). The masters operate from their own private law offices, which are close to the courthouse, and charge fees of \$100 per uncontested divorce and \$35 per financial calculation. A third master working in the courthouse has recently been assigned to handle family cases two days per week. The Family Division staff review cases and refer them to alternative disposition processes according to the court's case management plan. Family Court Services provide an array of classes, mediation, custody evaluations, psychological evaluations and other services. The Harford County Pro Bono Committee recently published a comprehensive report on public assistance to the poor in Harford County -- . . . *and Justice for All: Opening the Courthouse Door*. The report assesses current bar, court and legal services efforts and makes thoughtful recommendations for improvements.

### **Montgomery County**

The court has three full time attorneys and a paralegal who conduct the Pro Se Project which provides legal advice and forms preparation for self represented litigants. The program is means tested; persons who do not qualify financially are provided with forms and information. The project maintains a conflicts data base; persons in a case in which the other party has been served are seen by a different attorney and are given only legal information. The program provides only in person services in the courthouse. It has two Spanish-speaking staff members who provide extensive assistance to Hispanic residents of the county. The program is exceptionally well integrated with the rest of the court.

The court has six judges assigned full time to family law cases. It has five full time family court masters, all located within the courthouse. The court has a well articulated and thoughtful differentiated case management plan for family cases, which it applies consistently and effectively. The masters hold scheduling conferences in all cases, handle uncontested divorces, and hear contested matters that will take no more than a day to try. A facilitator is on hand in the courthouse to help the parties settle matters in dispute upon referral from a scheduling conference. The court has a group of four case managers who review all case files prior to hearings and trials to make sure that the cases are ready and the paperwork complete. Staff units provide mediation and custody evaluation services. The Clerk of Court is fully committed to the effort to assist self represented litigants; her staff provide forms, answer questions, and make referrals to the Pro Se Project.

### **Prince Georges County**

The court has three self represented litigant assistance programs. Eight paralegals provide legal information and forms to litigants both in person and over the telephone. These staff are located at the public counter serving persons who appear for hearings before the family division. The Law Foundation of Prince Georges County, under a

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contract with the court, hires two part time lawyers to provide legal advice to litigants who do not know what they want to accomplish. That program is means tested (the other Prince Georges County programs are not means tested); conflicts are handled by pro bono volunteer attorneys. The Pro Se Orientation program provides a two hour educational seminar covering divorce law in Maryland and the court process. The program is voluntary. The three programs are extremely well integrated with the rest of the court.

The court assigns nine judges full time to the family division, but any judge of the court can be assigned to hear a family matter when the master calendar so requires. The court has three full time masters, all located within the courthouse, who hear uncontested divorce matters and contested matters that can be resolved within a half day. The court staff conduct scheduling conferences, attempt to resolve issues in dispute, and, when they are successful, refer the matters to a master for hearing and disposition that day. Cases not resolved are scheduled for services and for further court events. The court provides fee-based services for family law litigants, including parenting classes, mediation, custody evaluations and mental health evaluations.

### **Worcester County**

The county contracts with two attorneys who come to the courthouse for five hours every Monday to provide legal information and complete forms for litigants. The two attorneys staff the program on alternating Mondays. The program is not means tested. When one attorney has seen the opposing party, the other party is referred to the second attorney. The program is reasonably well integrated with the rest of the court, with the exception of the Clerk of Court's office which is not involved significantly in assisting self represented litigants. The court also works closely with the Worcester County Bar pro bono program, which works through the Maryland Volunteer Legal Services program.

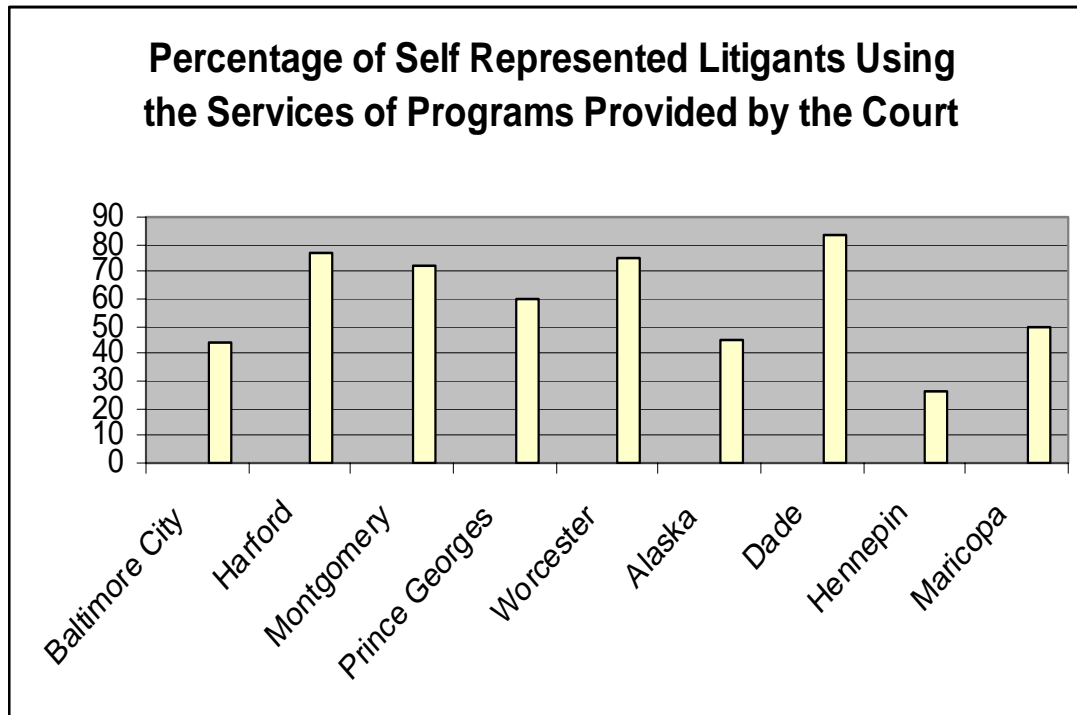
The court's two judges both hear family cases. A part time master, located within the court, conducts scheduling conferences and hears uncontested matters. The court also uses "standing examiners" to take testimony in uncontested divorces for a fee of \$75 per case. The Family Support Services Coordinator reviews all case files and makes referrals to services as appropriate. The county makes referrals to an astonishing array of program services (16 in all) all of which are conducted for the court by outside entities. Mediation is provided by a panel of volunteer local attorneys.

### ***Comparative data***

This section of the report contains summary data for all five courts, and for the other four programs in Alaska, Arizona, Florida and Minnesota.

## Use of programs to assist self represented litigants

In each court we conducted surveys of self represented litigants leaving courtrooms after court appearances. Among the questions asked was whether they had used the court's program to assist self represented litigants. The answers varied among Maryland's five courts, from a high of 77% in Harford County to a low of 44% in Baltimore City. As a whole, the Maryland programs compared favorably to three of the four programs from other states.



## Litigant ratings of programs to assist them and of court processes

The assessments obtained four different types of litigant satisfaction data. The first was their satisfaction with the court's assistance program. This data was collected immediately following a visit to the court's program. Maryland's programs all rated very well – with overall satisfaction ratings from 1.06 to 1.45 on a five point scale; three of the five programs rated above 1.2 in overall satisfaction. There are differences among the programs in a number of areas. Generally, a high overall satisfaction score is reflected in consistently high scores on all questions asked. One exception to that pattern is Montgomery County's lower score for a long wait for services.

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

<b>Question asked of litigants</b>	<b>Balti more City, MD</b>	<b>Harford County, MD</b>	<b>Mont-gomery County, MD</b>	<b>Prince Georges County, MD</b>	<b>Worces ter County, MD</b>	<b>Alaska</b>	<b>Dade County, FLA</b>	<b>Henne pin County, MN</b>	<b>Mari copa County, AZ</b>
Overall satisfaction with program	1.06	1.14	1.16	1.45	1.30	1.42	1.61	1.59	1.26
Information helped me understand my situation	1.30	1.21	1.2	1.52	1.52	1.42	1.72	1.64	1.40
I know what I need to do next	1.32	1.34	1.24	1.49	1.52	1.42	1.65	1.66	1.43
Staff knowledgeable	1.20	1.21	1.12	1.35	1.39	1.31	1.57	1.49	1.24
Staff listened	1.24	1.21	1.16	1.35	1.35	1.25	1.50	1.51	1.21
Staff explained things clearly	1.24	1.28	1.24	1.37	1.35	1.33	1.50	1.54	1.28
Staff treated me with respect	1.14	1.17	1.10	1.35	1.30	1.29	1.48	1.44	1.16
I did not have to wait a long time	1.18	1.59	1.84	1.35	1.52	1.48	1.74	1.77	1.21
I would recommend the program to a friend	1.20	1.31	1.16	1.37	1.17	1.31	1.39	1.48	1.22

The reader 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. On the other hand, the litigant satisfaction ratings correlated very well with our observations. For instance, waiting time for the Montgomery County program was clearly longer than for any other program.<sup>6</sup>

<sup>6</sup> There are a few anomalies. Waiting time in Worcester was clearly longer than in Harford or Prince Georges County, for the basic assistance programs. However, waiting time for Harford's pro se Maryland Report on Self Represented Litigants  
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The second type of data was ratings of specific services provided by the court program. Litigants rated these services as Very Helpful, Somewhat Helpful, and Not Helpful. We converted that data into a 3 point rating. Litigants gave very high ratings to the specific services provided in Maryland. The scores are set forth below.

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

<b>Question asked of litigants</b>	<b>Balti more City, MD</b>	<b>Harford County, MD</b>	<b>Mont-gomery County, MD</b>	<b>Prince Georges County, MD</b>	<b>Worces ter County, MD</b>	<b>Alaska</b>	<b>Dade County, FLA</b>	<b>Henne pin County, MN</b>	<b>Mari copa County, AZ</b>
Forms	3.00	2.96	2.95	2.80	3.00	2.89	2.76	2.84	3.00
Written instructions	3.00	2.83	2.97	2.76	3.00	2.81	2.71	2.72	2.90
Staff answer questions	3.00	2.92	2.94	2.89	2.95	2.88	2.89	2.90	2.90
Translation assistance	3.00	3.00	3.00	2.96	na	2.64	3.00	3.00	2.92
Workshop	na	na	na	2.95	na	2.78	2.75	3.00	2.92
Prepare for court hearing	na	2.63	2.78	2.83	3.00	2.82	2.79	2.77	2.83
Following up with court orders	na	3.00	2.84	2.93	3.00	2.83	2.73	2.80	2.92
Educational materials	na	2.67	2.86	2.80	2.80	2.82	2.86	2.67	2.96
Where to get more help	3.00	2.83	2.85	2.78	2.90	2.82	2.83	2.83	2.93
Met with attorney (not court staff)	na	3.00	2.95	2.68	3.00	2.10	2.00	2.85	3.00
Referred to an attorney	na	3.00	2.77	2.74	3.00	2.42	3.00	2.25	3.00
Help using computer	na	na	3.00	2.75	na	2.85	3.00	2.33	2.93
Made an appointment	na	na	2.00	2.82	na	2.50	2.80	3.00	2.91

The third rating was the litigants’ overall satisfaction with the program as they left the courtroom. Those ratings are shown below. It is clear that litigant satisfaction remained at a very high level for all programs studied, with one exception. But the data for Worcester is suspect because the court was able to obtain only four exit surveys.

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conferences and Prince Georges County’s Bar Foundation legal advice clinic were much longer than for basic information services and may have affected these ratings.

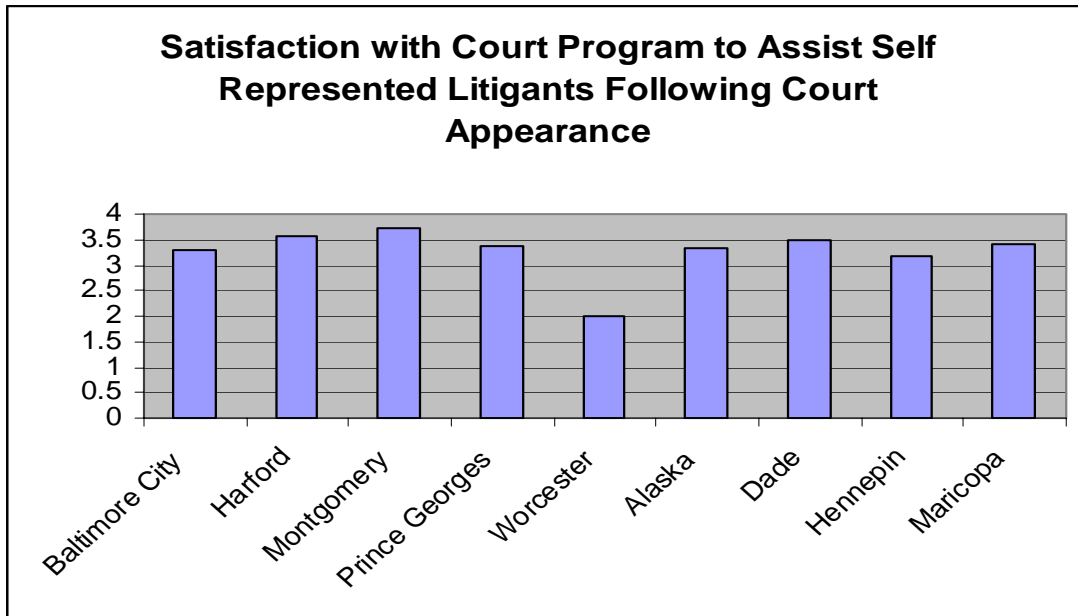
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Maryland's programs fared well compared with those from other states, with Montgomery County's getting the highest rating of all nine jurisdictions studied.



The final litigant satisfaction measures were for the courtroom experience itself. The data below represents the litigants' impressions of their performance in the courtroom and the way in which they were treated by the judge and court staff. The Maryland courts scored relatively well, although there are clear differences among them. Montgomery County excelled; again its ratings were the highest among the nine jurisdictions studied. Harford and Baltimore City had lower than average ratings on some key questions, such as being treated with respect by judges and staff and being treated fairly by the judges. They tended to score toward the bottom of the nine jurisdiction array. The data for Worcester County is based, again, on only four cases. Maryland's courts score relatively well on the basis of this data; they are all within the range of courts nationally. The data does suggest that Baltimore City and Harford could improve their treatment of litigants in the courtroom.

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

<b>Question asked of litigants</b>	<b>Balti more City, MD</b>	<b>Harford County, MD</b>	<b>Mont-gomery County, MD</b>	<b>Prince Georges County, MD</b>	<b>Worces ter County, MD</b>	<b>Alaska</b>	<b>Dade County, FLA</b>	<b>Henne pin County, MN</b>	<b>Mari copa County, AZ</b>
Felt prepared	4.12	4.13	4.63	4.21	3.00	3.60	4.54	4.19	3.57
Judge treated you with respect	4.45	4.36	4.91	4.79	5.00	4.86	4.87	4.66	4.65
Staff treated you with respect	4.47	4.44	4.91	4.91	5.00	4.83	4.77	4.67	4.64
Judge cared about your case	4.25	4.18	4.74	4.52	5.00	4.52	4.53	4.42	4.09
Judge treated everyone in court fairly	4.20	4.44	4.89	4.71	5.00	4.62	4.77	4.60	4.50
Able to tell the judge everything s/he needed to know	4.01	3.72	4.69	4.42	4.25	4.52	4.46	4.18	3.91
Did a good job representing yourself	4.29	4.12	4.74	4.64	4.50	3.63	4.65	4.02	3.65
Understood the words used	4.49	4.38	4.81	4.91	4.00	4.66	4.55	4.61	4.39
Can explain the outcome of the hearing	4.36	4.41	4.81	4.26	4.25	4.64	4.57	4.87	4.09
Outcome favorable	3.74	3.85	4.84	4.53	4.00	4.27	4.67	3.76	3.45
Judge's ruling fair	3.97	4.19	4.89	4.62	4.00	4.64	4.62	4.18	3.77
Satisfied with what happened today	3.81	3.92	4.89	4.48	2.00	4.18	4.61	4.08	3.68
Do you have more respect for the court system	3.73	3.49	4.80	4.09	4.00	4.38	4.33	3.79	3.62

The reader should again 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).

On the other hand, we interviewed some judges in Harford County who had very negative views of self represented litigants, corroborating the lower ratings for that court.<sup>7</sup>

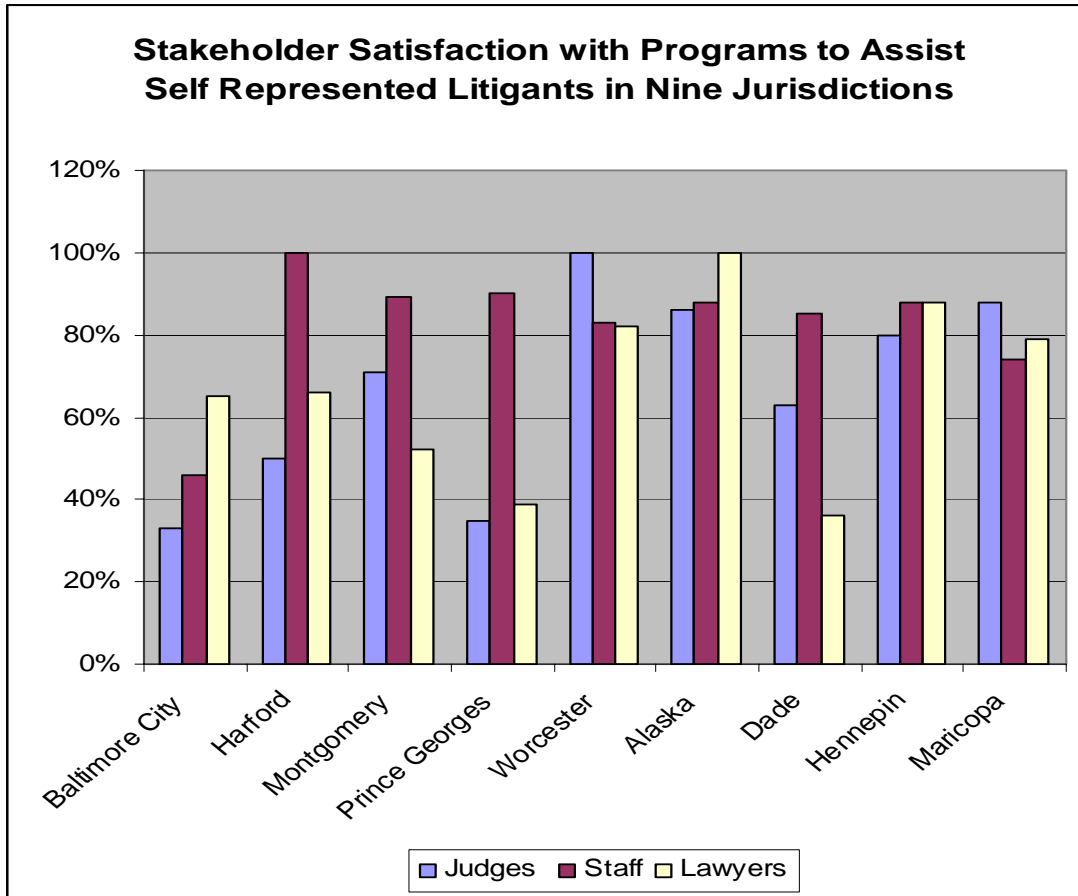
### **Stakeholder satisfaction**

Judges, court staff and lawyers were all asked the same question in surveys they were asked to complete – “How would you rate your overall satisfaction with the contributions of the program in terms of making your job easier?” There was surprising variation in those ratings from jurisdiction to jurisdiction. Only one third of the judges in Baltimore City and Prince Georges County were satisfied with their programs, and only half were satisfied in Harford County. The judges in Montgomery County and Worcester County were highly satisfied. Court staff support the programs everywhere except for Baltimore City, where fewer than half the staff are satisfied. Lawyer satisfaction was highest in Worcester County (82%), Harford County (66%) and Baltimore City (65%), lower in Montgomery County (52%) and lowest in Prince Georges County (39%).

The results are shown in the following chart.

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<sup>7</sup> One of the judges so dislikes dealing with self represented litigants that he has decided not to seek a further term of office.



Having visited each of these courts in Maryland and spoken with the judges, lawyers and staff, I personally believe that stakeholder satisfaction is unrelated to program quality. It has more to do with a program’s outreach to stakeholders and with prevailing attitudes toward self represented litigants and the propriety of the court’s assisting them. Where judges and lawyers were unsatisfied, there was generally a prevailing sentiment that self represented litigants can handle only the simplest of cases and that the court – by providing assistance to them – is misleading the public into thinking that they can handle more complex matters without legal representation.

Neither the Baltimore City nor the Prince Georges County programs – the programs with lowest stakeholder satisfaction – have conducted significant outreach to their bench, bar or communities.



## Judicial resources devoted to family cases

In Harford County and Worcester County, all judges handle family cases. In the other three counties they are handled primarily by judges assigned to the family division.<sup>8</sup> The difference in the percentage of judicial resources devoted to this function is noticeable: 10% in Baltimore City, 30% in Montgomery County, and 39% in Prince Georges County. Baltimore City Circuit Court is devoting a much smaller percentage of its judicial resources to family matters than the other two large courts studied. The difference in caseload per judicial officer is also striking.

Court	Number of family cases (excluding juvenile)	Number of circuit judges	Number assigned to family cases	Number of masters assigned to family cases	Cases per judicial officer
Baltimore City	11027	30	3	3	1838
Montgomery County	11331	20	6	5	1030
Prince Georges County	14698	23	9	3 <sup>9</sup>	1131

## Timeliness of family case disposition

However, Baltimore City's timeliness of disposition (based on data that is over a year out of date) compares favorably with that of Prince Georges County. See the table below for data on both one year and two year disposition data for the three large counties assessed.

Court	Percentage of cases resolved within 12 months (2002)	Percentage of cases resolved within 24 months (2002)
Baltimore City	74%	93%
Montgomery County	91%	99%
Prince Georges County	71%	83%

<sup>8</sup> In Prince Georges County any circuit judge can be assigned a family case for trial if there are more family cases set than family division judges are able to handle.

<sup>9</sup> At the time of our visit, four masters heard family matters. One was scheduled to retire within two months, to be replaced by a master to be assigned to juvenile matters.

Overall, it appears that Montgomery County is realizing the benefits of its devotion of resources to the family division, Baltimore City is getting great value from the low level of resources it is devoting to this function, and that Prince Georges County needs to improve the effectiveness with which it is using its resources. We are aware from our site visit that Prince Georges County is focusing significant energies on this issue.

### **Cost per case**

The cost per case data presented below is very rough. It includes only salaries and benefits for staff. In the case of Prince Georges County, it excludes the staff devoted to answering telephone calls, and the users served by telephone. In Harford County, staff time devoted to answering telephone calls, as well as the users served by telephone, are included in the estimate.

<b>Program</b>	<b>Cost per case</b>
Harford pro bono	\$63.00
Worcester contract attorneys	\$39.50
Montgomery County pro se clinic	\$34.33
Alaska Family Law Self Help Center	\$28.18
Prince Georges orientation	\$25.76
Prince Georges contract attorneys	\$23.84
Hennepin (all programs combined)	\$22.00
Baltimore City LAB	\$19.34
Prince Georges paralegals (not including telephone)	\$17.96
Maricopa Self Service Center	\$14.61
Harford pro se forms assistance	\$12.55

Even though the cost data is very rough, it is clear that the pro bono program in Harford is almost twice as expensive as any other. The attorney staffed programs in Montgomery and Worcester Counties appear to be more expensive than the paralegal staffed programs in Baltimore City, Harford County and Prince Georges County. The least expensive service is in Harford, where service delivery by telephone was included in the calculation. Only Harford and Prince Georges Counties make extensive use of the telephone. Services in the other three counties are provided exclusively on a walk-in, in-person, face-to-face mode.

### **Overall Observations**

Based on my visits in Maryland, Alaska and elsewhere, I offer the following overall observations about programs to assist self represented litigants

## ***Characteristics of cases involving self represented litigants***

There are some overall lessons to be learned about dealing with self represented litigants in the courts.

### **Triaging the cases according to the capabilities of the litigants and the complexities of their cases**

We have tended to think of self represented litigants as if they were all the same – presenting the same challenges for judges and court staff. In fact, they – and their cases – present the court with quite different challenges. Consider the different circumstances presented by the following cases and litigants:

- simple uncontested cases – can be handled by self represented litigants who are given basic forms, instructions and information
- moderately complex matters, including contested issues – can be handled by sophisticated self represented litigants who are given basic forms, instructions and information
- moderately complex matters with unsophisticated litigants and highly complex matters – need the involvement of counsel. Staff and judicial officers must impress upon the litigants at every stage – “This matter is too complicated to be completed without a lawyer. Here are alternative ways to find one.” The court cannot force a litigant to obtain counsel and will end up dealing with self represented litigants in some of these cases.
- any matter involving mentally ill, retarded, or otherwise incompetent persons – need the involvement of counsel or some other supportive service.
- family violence matters are almost without exception pursued without private counsel. These cases present special challenges to the courts, in the need to support the victim in pursuing available remedies and in the need to ensure that the abuser does not dominate negotiated settlements of property, custody and child support matters.

Courts need to structure their programs to distinguish among these different situations and to handle them appropriately.

### **Ensuring that the litigants have the information they need not only to initiate a case but to see it to conclusion**

Maryland courts provide litigants with the forms required to initiate and defend all manner of family law matters. They provide descriptions of the procedures that a case will follow and the steps that the litigant must take at each stage. For the most part, they do not provide the information needed by a self represented litigant to pursue a contested matter to its conclusion – such as information on the elements of the relief a party seeks, the types of evidence that could be used to establish each element, and the processes involved in presenting evidence in court. The Peoples Law Library includes thorough discussions of the law applicable to domestic relations and many other types of cases. Its discussions set forth the criteria that judges will take into account in deciding various issues, such as custody and child support. We did not observe any court staff referring litigants to the Peoples Law Library. Further, the Peoples Law Library materials are designed to explain the basic legal concepts, but not the details of trial preparation – finding and subpoenaing witnesses, analyzing what each witness or exhibit will be able to establish for the judge and how the contribution of each relates to the criteria the judge will use in making a decision. The Alaska court system has developed and provides excellent materials for these purposes. It is all available on the Alaska state court website for use in augmenting the materials currently available on the Peoples Law Library site.<sup>10</sup>

The information must be provided in digestible chunks. Courts frequently provide litigants with full descriptions of the court process at their first contact with the court. At that point, the litigants need only the information required to initiate a case or assert a defense to a claim. They will not absorb or retain more information than they need at that initial stage. At each subsequent stage in the case, the court should provide the next installment of information the litigant needs for that stage. Otherwise the information will not be retained, and the court's process, as well as the litigant's objectives, will be frustrated. Maryland's packets are not broken down in this fashion. Nor is the material on the Peoples Law Library. A joint effort by MLAN and the judiciary could produce material that could be available on the Peoples Law Library and provided in printed form to litigants.

Staff providing this information must take steps to ensure not only that the information has been imparted, but that it has been comprehended. A number of techniques are available for this. I did not observe most Maryland programs using these techniques:

- Review court forms, letters, instructions, and checklists for readability

Readability experts and focus groups of self represented litigants can be used to review and refine court forms and materials.

- Require litigants to confirm their understanding of key points

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<sup>10</sup> <http://www.state.ak.us/courts/selfhelp.htm>

Court staff can use the principles of “active listening” to have litigants summarize the instructions they have just received. For instance, the staff person could ask, “Now, what are you going to do with this form?” Vocalizing the information makes the client retain it much better. This process need not be followed to the extent that the time spent with each litigant is doubled – once for the staff to tell the information to the litigant and again for the litigant to tell it back to the staff. It would be sufficient to use it for key points and to identify litigants who are not grasping anything told them.

- Provide information “just in time”

As noted above, litigants rarely pay attention to information provided in large instruction forms that contain information not needed for the immediately presenting situation. The current “packets” handed out by Maryland courts suffer from this problem. The state should consider “segmented” information sheets.<sup>11</sup>

The information provided needs to alert litigants to the rights they have and the principal ways in which they may be forfeited. Many litigants choose to forfeit significant rights (“I just want him/her out of my life. I don’t care about the [money] [house] [pension] [etc.]”) The court cannot and should not prevent or thwart such decisions, if made knowingly and voluntarily. However, the court must ensure that the parties are aware of the rights involved. Current Maryland family law forms are deficient in this regard. The Peoples Law Library, likewise, does not provide sufficient emphasis on these critical issues; for instance, the discussion of pensions needs to have a bold initial statement that failure to assert rights in a spouse’s pension benefits in the divorce pleadings results in forfeiture of any rights the parties may have. If a party does not raise this issue during the divorce proceeding, s/he will not be able to obtain a portion of pension benefits later when the spouse begins to receive them. The same is true for alimony and monetary awards.

### **Proactively scheduling the necessary events in the life of a case**

The rules of court have been drafted with the assumption that all litigants are represented by lawyers. In the context of cases in which both sides are represented by lawyers, it is possible to place the burden of initiating court action on the parties. Modern case management, however, has the court controlling the pace of all cases, even those

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<sup>11</sup> In some courts, we observed some handouts that had obviously been part of a larger set of materials organized in this fashion in the past; the past had a large number 3 in the upper left hand corner. The paralegals in Harford have developed a very short checklist, which one of them segments into just these sorts of sections when she explains it to a litigant.

involving attorneys on all sides. It is not workable to expect self represented parties to take the initiative to move cases forward. They will fail to take the necessary steps in a sufficiently large percentage of the cases that the court's, as well as the parties,' objectives are stymied.

Consequently courts must actively manage and schedule cases involving self represented litigants. In particular, courts need to identify cases in which service has not been completed after a month or two; the court should contact the plaintiff to determine whether s/he is no longer interested in pursuing the case or needs further information on effecting service. Likewise, the court should monitor closely those cases in which service has been completed but no answer has been filed; it should prompt the plaintiff in those cases to file for default and explain, in detail, the steps needed to complete a default divorce.

### ***Alternative program delivery strategies***

The programs studied in Maryland and elsewhere vary in at least three different dimensions – the services provided, the persons providing them, and the nature of the staff-client interaction.

#### **Services provided**

All programs provide forms and basic information.

Some programs actually complete the forms for the litigants; others answer questions of litigants as they fill out the forms themselves; some leave the parties entirely on their own in completing forms. The most highly rated programs complete forms for the litigants (Baltimore City and Montgomery County). I earlier pointed out that some litigants are not competent to complete their own forms; they do not have the education, sophistication, mental abilities or the language skills needed to complete them themselves. However, some programs enlist the services of family, friends, churches, or community organizations to obtain the necessary help for such persons.

I personally favor a range of services, beginning with paper or automated forms that parties can complete themselves, an opportunity for court staff to review forms completed by the party for completeness, and actual forms completion for those who are not capable of doing so, or for persons needing a form immediately in order to complete a court process the same day. Does this create unequal levels of assistance to different litigants? Yes. Is that a problem? No. Every litigant is provided the assistance needed to present his or her case to the court. There is nothing unfair about requiring litigants to do as much as they can on their own. Unfairness arises when we do not provide sufficient assistance for persons to obtain access to the courts. That sort of unfairness characterized the courts' past practices of refusing to assist persons who could not afford an attorney; as a practical matter they had no access to the court.

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Some programs provide educational sessions to explain the legal process and important legal issues to persons representing themselves in family cases. Most do not. These courses serve a very different purpose from parenting classes that are widely offered and for which attendance is often required by law. The former focus on the legal process; the latter focus on the psychological realities of divorce for children and the behaviors of parents that can be helpful and harmful as the children proceed through the ordeal. Many courts have found that the turnout for their voluntary, legal process educational programs is so low that it does not justify the cost. The Anchorage court mandates attendance at such a class by all parties in contested divorces; attendance is high.

Alaska has developed extensive materials to assist self represented persons to present their cases in court in contested matters. No Maryland program yet does so, although much substantive material is available on the Peoples Law Library website and in a publication prepared by the Women's Law Center and printed by the Maryland Commission on Women.<sup>12</sup>

Some programs go further and make legal advice available to some or all litigants. The difference between information and advice is that the latter consists of suggestions for legal strategies that would be in the client's best interests – that would increase the likelihood that the party would “win.” When legal advice is provided by court-sponsored programs, it rarely includes representation in court.<sup>13</sup> Rather, it consists of giving strategic advice, such as what form of custody to seek, whether to seek alimony or pension rights, or what property division to propose to the other spouse. It is never appropriate for court staff to provide legal advice; as an ethical matter, they must remain neutral and impartial; it can never be appropriate for them to take on a duty of loyalty to one of the parties in a case.<sup>14</sup> It is possible for outside contractors operating within the courthouse to provide legal advice. It is entirely appropriate for the attorneys – both the part-time employees and the pro bono attorneys – of the Law Foundation of Prince Georges County to provide legal advice to self represented litigants from an office in the courthouse. Our report for Worcester County recommends that the contract lawyers there make clear that they are entering into a lawyer/client relationship, albeit for a limited time and purpose. I understand that Legal Aid Bureaus serving as contractors in some other small counties also provide legal advice to their clients.

Many self represented litigants need only legal information. They have already decided what they want from their divorce. They are not interested in obtaining legal help to get the best possible outcome. They only need help in understanding how to

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<sup>12</sup> Women's Law Center of Maryland, Inc, Legal Rights in Marriage & Divorce, Second Edition (2001).

<sup>13</sup> An exception in Maryland and elsewhere, which I consider entirely appropriate, is for family violence proceedings, in which POARP attorneys or advocates often accompany a violence victim into the courtroom.

<sup>14</sup> The Montgomery County program is currently out of compliance with this principle. The court staff enter into an attorney-client relationship with their customers.

present their claims and desires to the court. However, there are some litigants who need more. They do not know what they want, what they should ask for, what is fair or equitable, or what arguments they should make to retain or obtain custody or visitation of their children. Court staff cannot advise them on these matters. They need legal advice. Most of them cannot afford to retain an attorney. Most legal services programs do not provide services in family law cases except for serious domestic violence cases, or, in Maryland, in some contested custody cases in which the other party is represented. In a later section I discuss alternative strategies for courts to make legal advice available. But at this point it suffices to point out that legal advice is a part of the full range of services required by some self represented litigants to obtain the relief that they need, and to which they are entitled. It is necessary for courts to provide legal information, but it is not always sufficient.

Self represented litigant assistance can be provided free of charge to all or it may be provided only to persons of limited means. The latter is referred to as “means tested” services. Based on the assessments undertaken and my experience in other jurisdictions, I recommend that Maryland not means test these programs, for the following reasons:

- Means testing entails extra work. Litigants must fill out financial disclosure forms or staff must conduct financial interviews. Staff must evaluate the results. Records must be made and retained. All of the effort put into the means testing process is taken from the time that staff have available to provide information and other services.
- All the programs we observed were busy. But none were overwhelmed with customers. There does not appear to be a need to impose means testing as a way of allocating a scarce resource that cannot be made available to all who seek it.
- The data gathered by Maryland’s programs shows that – whether or not they are means tested – self represented litigant assistance programs overwhelmingly serve very poor persons. This is documented in the Annual Report for family divisions and family services programs.
- Programs to assist self represented litigants exist not just to serve the litigants. They exist to assist the judges and staff to make the court process more efficient and effective. Having inadequate and incomplete forms and misinformed and incapable litigants wastes the calendar time of busy judges. Having needy litigants with many unanswered questions at the filing counter frustrates Clerk of Court staff and other court customers waiting to be served. Clogged calendars and protracted hearings waste the time of lawyers and litigants waiting for their cases to be called. It is therefore in the court’s best interests to have educated litigants – whether they are rich or poor.



- Litigants representing themselves do not generally turn to lawyers if they are turned away by a court “pro se” clinic. They have already decided that they do not need or want a lawyer. They are part of a much larger “self help” trend in our society.<sup>15</sup> They will merely proceed ahead on their own, producing the inefficiencies discussed above.
- It is much harder to implement means testing of telephonic and Internet-based service delivery processes – those that are most efficient from the court’s standpoint. It is difficult to justify means testing some, but not other, forms of court service.

A full service program would include all of these services – forms, information, assistance in completing forms and in understanding the decisional standards that will be applied, warnings about legal rights that will be forfeited if they are not exercised, written materials that explain how to present contested matters and assistance in understanding them, educational seminars, access to legal advice for those in need of strategic assistance, and either full legal representation or extended assistance for persons who lack the capacity to present their own case to the court.

### **Who provides the services**

Services for self represented litigants are typically provided in Maryland by lawyers or paralegals. In other states, forms, forms completion, and legal information are often provided by experienced court staff who have neither paralegal nor legal training. The litigant satisfaction data suggests that court users give the highest ratings to services provided by lawyers. However, they also give very high ratings to services provided by non-law trained court staff.

While the state of Maryland has chosen not to dictate how these programs should be staffed, the experience to date shows that paralegals and experienced court staff are fully capable of providing sophisticated and adequate legal information services to self represented litigants, if they have access to a law trained supervisor or advisor and regular interaction with and access to judges, masters and law clerks to clarify their understanding of more complex legal issues. Legal advice, of course, can only be given by lawyers.

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<sup>15</sup> This trend is called “disintermediation” by sociologists – the dispensing with the services of professional middlemen. Consider the number of Americans dispensing with plumbers, electricians, and carpenters (Home Depot users), real estate brokers (for sale by owner), the advice of stock brokers (Internet stock traders), doctors (use of the Internet to review medical literature and obtain medications), and public and private school teachers (home schooling). Self represented litigants are merely doing the same thing in the legal system that is occurring throughout our society. The courts did not start this trend and cannot do anything to reverse it.

## Whether staff are court employees or contractors

We observed three courts that use in house staff and two that use contractors. One of the courts using contractors – Worcester County -- is so small that in house staff is not a viable option. Two of the courts using in house staff also use contract attorneys. Prince Georges County has eight paralegals; but it also has a contract with the Law Foundation of Prince Georges County to provide two part-time attorneys to give legal advice. The part-time attorneys are supplemented by pro bono attorneys who provide advice in conflicts cases. In Harford County, there are three part time paralegals, supplemented by a contract attorney who advises them and, on occasion, advises litigants whose questions go beyond the competence of the staff.<sup>16</sup> Harford also has close relationships with the legal services program and the Harford County Bar Pro Bono Program.

Because courts should make it possible for litigants to obtain legal advice, it will be necessary for them to involve attorneys who are not members of the court staff – on a contract basis, a volunteer basis, or a compensated basis through unbundled legal services.

But the basic question facing the Maryland courts is whether their forms, forms completion and legal information dispensing functions should be provided by in house staff or contractors. Based on our experience with the five Maryland courts assessed, I strongly recommend that these services be provided by court staff, except in those courts too small for this to be practical. The advantages of staff over contractors are:

- they are less expensive;
- court employees are more fully integrated into the life of the court, have closer communication with the Clerk of Court, masters, judges and administrators, and therefore are more effective in the services they provide;<sup>17</sup>

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<sup>16</sup> An example is a question about court jurisdiction when one party is in one state, the other is in a second state, children are in a different state, and there are outstanding court orders from a court in one of the other states. Note that this question can be answered without giving legal advice; the inquirer could be told in a brief, straightforward way, which court has jurisdiction to do what. It becomes legal advice when the lawyer makes a suggestion about the most advantageous forum choice for this litigant. It is also true that many court staff do not have sufficient understanding of jurisdictional concepts to provide accurate information on this topic.

<sup>17</sup> The Baltimore City experience with using the Legal Aid Bureau as its contractor serves as a stark example of the communications failures that arise from the staff's primary identification with an outside organization rather than with the court.

- these positions could become part of the career path of court employees, with the most capable, senior court staff being promoted to them;<sup>18</sup> and
- there can be no question of favoritism or partiality towards contract attorneys when they appear before the judges and masters in cases arising from their private practice.

## **How staff and litigants interact**

Alaska's experience with providing services exclusively by telephone and Internet is fascinating. The program provides no in person consultations. As is clear from the litigant satisfaction data for Alaska reported above, litigants rate the telephone services very highly. The Alaska program director reports the following advantages arising from telephone interactions with litigants:

- many parties seem to prefer telephonic to in person interaction because of the increased privacy and interpersonal distance it provides;
- staff can more easily limit the length of an interaction on the phone than when the customer is physically present in the staff person's office;
- in person interactions on average took 45 minutes to complete; telephone interactions take only 20 minutes;
- far fewer persons who are incapable of representing themselves (because of mental illness or mental incapacity) seek assistance by telephone than appear seeking one-on-one in person services in the courthouse.

The Harford County program found that providing one-on-one services in the staff member's office was an unsatisfactory means of delivering services. It moved its Pro Se Forms Assistance Project staff from an office to the front counter of the Clerk of Court's civil filing section. The process is much more efficient there. Harford County also provides more than half of its services over the telephone. It has a very low per case cost.

Baltimore City, Montgomery County, and Worcester County all use an exclusive one-on-one, in person, walk in service delivery model. Harford and Prince Georges Counties provides telephone as well as walk in services. Harford County's process of providing service at the Clerk of Court public counter has the important advantage of allowing one staff person to provide service to multiple persons simultaneously. An

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<sup>18</sup> This is in distinct contrast with the typical practice in most courts to assign the newest staff to the public counter because of the aversion of more senior staff to dealing with the public, particularly with self represented litigants.

educational seminar format offers the same opportunity; after a presentation, a staff person, like a classroom teacher, can be available to answer specific questions as the class members work individually on their own forms.

I recommend that the state encourage programs to move from in person to telephonic services. In person services could be the exception – provided on appointment for persons needing more help than they can get over the phone (for instance actual completion of forms) or at the request of a judge or master to prepare or amend a document needed in order to complete a proceeding on the same court day.

Another alternative model is the full service website. California and Alaska are two states with elaborate web-based information providing processes. In Alaska, the Family Law Self Help Center was not able to serve 70% of its telephone callers before bringing up the website. So many callers' needs were met by the new website that it can use some of its staff time to increase the resources provided electronically. The Maryland Judicial Branch website includes court forms, instructional materials, and a directory of pro se assistance programs. It is intended to work in conjunction with the Peoples Law Library: the judicial branch website will provide forms and procedural information; the Peoples Law Library will provide the substantive legal information. For this separation of functions to fully meet the needs of self represented litigants, particularly in presenting contested matters in court, the two systems need to be augmented in these ways:

- the judicial branch website needs to have a more effective referral/cross reference process to the Peoples Law Library;
- the Peoples Law Library needs full descriptions of the court processes in family law cases, in which hyperlinks to the appropriate forms on the judicial branch website are imbedded; and
- the Peoples Law Library needs to add sophisticated aids, such as Alaska's witness list, offer of proof, and "best interests" affidavit, that address the needs of litigants not only in preparing filings but also in preparing for court proceedings.

### ***Legal posture of lawyer-staffed programs to assist self represented litigants***

A major issue we encountered in Maryland courts was whether staff or contractors were providing full legal advice or merely providing legal information and forms assistance. We recommended that court staff never place themselves in the position of giving legal advice, even when they are lawyers. On the other hand, we recommended in Worcester that the contract attorneys there recognize that their services are creating a lawyer-client relationship, albeit a limited one.

As noted above it is necessary for a full service program to provide both legal information and legal advice.

The major issues that arise with contract attorney or pro bono attorney programs operating under court auspices are:

- conflicts of interest – a lawyer or a law firm cannot represent opposing parties in the same case or a party in a case if s/he or the firm are currently representing the opposing party in another matter, or represented the opposing party in the past. A program that hires multiple attorneys is treated as a law firm; if one of the attorneys counsels one party to the case, all other attorneys in the program are barred from counseling an opposing party (or even giving the other party legal information). This principle, in turn, creates multiple sub-issues:
  - o unless a state has adopted ABA Model Rule 6.5, the program must maintain a list of all prior clients and check – in every case – to ensure that it is not entering into a conflict of interest. If the state has adopted Rule 6.5, the program can provide advice and brief services without maintaining a client list and checking it for conflicts; however, a lawyer still may not provide even advice and brief services if s/he actually knows that s/he or another attorney in the program has provided advice to an opposing party;
  - o maintaining a client list and conducting a conflicts check is expensive and time consuming, detracting from the time that program attorneys or staff have to provide advice; and
  - o it is fundamentally inappropriate for a court to provide services to one party in a case but not to others in the same case. The idea that the court will serve the first party to come into the courthouse but not subsequent parties makes a program unacceptable.
- an appearance of impropriety arising from “too much familiarity” between a contract attorney and the masters and judges when s/he appears before them in a representational capacity in a case arising from her or his private practice. When an attorney interacts very regularly with the judges and masters in the course of her or his duties as a contractor providing services to self represented litigants, other attorneys and their clients may perceive that the attorney has an unfair advantage in cases in which s/he opposes them before the judge or master representing a private client. This result is much more likely to arise from programs in which the contract attorneys provide the full range of services – from forms and information to legal

advice – than from those that are restricted solely to dispensing legal advice.

The implications are as follows:

- it is far preferable to contract with at least two attorneys as independent contractors than to contract with a legal aid agency or county bar or other entity to provide legal advice. One of the attorneys can advise one party; the other can advise the opposing party.
- a Legal Aid Bureau is in the most difficult situation with respect to conflicts of interest. It must be concerned with conflicts arising from all other representation that it is providing or has provided. In Baltimore City, the LAB often represents children in families undergoing divorce. If it were providing legal advice to litigants at the courthouse, it might well be barred from advising either parent in those cases.
- the Law Foundation of Prince Georges County conducts conflicts checks for all clients it serves. When it encounters a conflict, it refers the litigant to a volunteer pro bono attorney who comes into the office for that purpose. If the pro bono attorney remains completely independent of the Law Foundation program, this is an appropriate mechanism. However, if these litigants remain clients of the Law Foundation, the conflict of interest problem remains.
- the Montgomery County program was originally operated by the County Bar Association using pro bono attorneys. Such a program faces the issue raised above. If the persons served are considered clients of the program, rather than of the individual pro bono attorneys, the attorneys would be considered members of the same law firm for conflict of interest purposes. It is important therefore that volunteer attorneys take on the clients as clients of their personal or firm practice to avoid the conflicts issues; this is at odds with the interests of the attorneys and their firms to limit their commitment and liability in these cases. Adoption of ABA Model Rule 6.5 would greatly benefit volunteer attorneys in these situations.
- an alternative means of providing legal advice in these cases is through unbundled legal services. If unbundled services were formally recognized in Maryland, and if every court maintained a roster of attorneys willing to provide legal advice on this basis – that is, through a half hour or hour consultation to provide strategic guidance, Maryland courts could provide the legal advice component of a full service system through this means. It is not clear that litigants would take advantage of this option in sufficient numbers to replace the need for programs like that provided by the Law Foundation of Prince Georges County. Maryland might wish to

experiment with a court-funded unbundled services legal advice program in a large court. Instead of funding a contract service such as that provided by the Law Foundation, the court could pay attorneys to provide legal advice at a set fee per client.<sup>19</sup> If the bar or bench were to insist on means testing for such a service, persons who did not qualify could obtain the same service at the same fee by paying the attorney directly.<sup>20</sup> If Rule 6.5 were in place these services could be provided without conflicts checks, with the understanding that an attorney could not knowingly provide advice to a person whose interests are adverse to one s/he counseled previously.

In sum, Maryland courts should provide forms, legal information and forms completion services, preferably through court staff and through contract services if the court is not large enough to warrant a staff-based program. It should also ensure that legal advice is available to litigants needing it, through one or more of the following alternatives:

- if the court uses a contractor for its legal information services, the contractor could provide legal advice as well. If the contractor is an entity or a single lawyer, a separate legal advice mechanism would be needed to handle conflicts (including known conflicts even if the state has adopted ABA Model Rule 6.5);
- the court could use a separate contract for this purpose, like that between the Prince Georges court and the Law Foundation of Prince Georges County. Again, if the contractor is an entity or a single attorney, a separate mechanism would be needed to handle conflicts;
- the court could recruit attorneys willing to provide advice and brief services on a pro bono basis, preferably operating from an office in the courthouse at prescheduled times every week;
- the court could recruit attorneys willing to provide advice and brief services on an unbundled basis (if unbundled services are authorized by the Court of Appeals). These services could be paid for or subsidized by the court, or the court might conclude that the terms by which unbundled services are offered by the private bar are sufficiently affordable that they are reasonably available to all litigants as a commercial service;

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<sup>19</sup> The model for this is the Montgomery County facilitator program. There attorneys are paid \$75 per client to provide settlement facilitation upon referral by a master following a scheduling conference.

<sup>20</sup> The court could prepare or approve a limited representation agreement that all clients would sign before receiving legal advice services.

- the local legal services program could provide advice and brief services through a hotline or through in person facilitated pro se services, again with some supplementary mechanism for handling conflicts; or
- the state court system might contract for, or the legal services program might provide, a statewide telephone hotline service for advice and brief services. Maryland currently has the Family Law Hotline and the Legal Forms Helpline for this purpose. However, they operate entirely outside the court-operated programs. For instance, there are no signs in the courts that if you want faster service, use this telephone to contact the Family Law Hotline for information about family law issues generally, or the Legal Forms Helpline for assistance in completing forms.

The court might reasonably decide to means test legal advice services even if it provided its forms and legal information services to persons regardless of means. Court-provided legal advice services might provoke stronger opposition from the local family law bar if they were not limited to poor persons.

### ***Inequity of resources in the Circuit Courts of Maryland***

It is striking to a person visiting different Maryland courts to observe the different levels of resources available to them. Worcester County is a small court, serving a small population; its small level of resources is – to my eye at least – proportional to its population and caseload. Baltimore City, on the other hand, has a large population and appears to have far fewer resources to devote to its cases and their parties than the other large counties visited. The Baltimore City Family Division faces a major structural problem with its separate equity and domestic miscellaneous calendars – including separate computer systems – that may require state level assistance to resolve.

### ***Inconsistent support from the Clerks of Court***

It is equally striking to observe the difference among the circuits in the way in which the court and the Clerk of Court interact and in the level of support given to self represented litigants. The extremes are in Montgomery and Prince Georges County. The Clerk in Montgomery County interacts seamlessly with the court administrators, judges and masters; she wholeheartedly supports the court's efforts to provide self represented litigants with the information they need to navigate the system with the least burden on judges, lawyers and staff. By contrast, the Clerk in Prince Georges County – a former family law attorney – operates independently of the court and, because of her interpretation of “legal advice,” instructs her staff to give minimal information to self represented litigants. Thankfully, we found the attitude of her staff to be much more service oriented than that of their leader.



## ***Inconsistent court statistics***

Every circuit submits quarterly statistical reports to the AOC on family court operations and on its program to assist self represented litigants. Those statistics are not consistent from court to court and some courts advised us not to rely on their data.

The most reliable data appears to be basic caseload data. The least accurate appears to be the information on the presence or absence of counsel at different stages of a case. The discussion of this data in the Annual Report of the Maryland Circuit Court Family Divisions and Family Services Programs notes some anomalies in this data – particularly that counsel is more likely to be present at a settlement conference or pretrial hearing than at a contested hearing in the case. It may well be that the peculiar results reflect flawed data collection rather than hard-to-explain practices of lawyers.

Data consistency and quality issues are endemic in state court systems. I understand that Maryland has judicial branch committees addressing issues of common data definitions, that the AOC staff have devoted time and effort to consistency of data entry on some key indicators, and that the quality of data is ultimately in the hands of the local courts and their administrators. I merely note my observations, in working with the same data reports in different courts, that data quality work remains to be done.

## **An Ideal Model for Maryland**

The schematic that follows represents my prescription for an ideal model for serving self represented litigants in family law matters in Maryland. It assumes that the state judicial branch has the resources to develop and support the suggested services and that it concluded that a large portion of the services could and should be provided on a statewide basis. A major issue with that assumption is whether the differences in local practices are so great that staff of statewide hotlines are unable to provide accurate information concerning them.

In the “ideal model” none of the services would be means tested. However, the unbundled legal advice network would be fee based.

This model addresses only Circuit Court level services for self represented litigants. I do not have sufficient understanding of the needs of litigants in the District Courts to suggest how they might be incorporated into this process.

### Statewide Services

**State Judiciary full service website** (providing statutes, court rules, descriptions of legal processes, forms, instructions, fillable and interactive forms, and trial preparation guidance)

**Statewide telephonic self represented litigant assistance service** (800 number that provides legal information and forms completion assistance for all courts, with ability to transfer calls to statewide unbundled legal advice network or to local court assistance programs)

**Statewide unbundled legal advice network** (800 number with credit card billing that connects a caller to a lawyer willing to provide advice and brief services over the phone for a fixed fee)

### Local Court Services

**Court staffed assistance program**  
(providing telephone and limited in person legal information and forms completion services)

**Legal advice program**  
(provided by a combination of legal services, contract lawyers employed by the court, and private practitioners offering unbundled services)

**Mandatory workshops**

**Supportive services for domestic violence victims and for other persons incapable of handling their own cases**

The following graphic gives an overview of the extent to which Maryland's current programs fulfill the components of the model. I use blue shading for components of the model that I believe are fully in place. Green shading shows that the component exists but needs enhancement. Yellow shading is used for components that do not exist.

### Statewide Services

**State Judiciary full service website** (Judiciary website and Peoples Law Library together provide forms, procedural information and substantive law, but need to provide more help for persons preparing for litigation and better integration)

**Statewide telephonic self represented litigant assistance service** (Family Law Hotline and Legal Forms Helpline exist, but are not integrated with local programs)

**Statewide unbundled legal advice network**

### Local Court Services

**Court staffed assistance program**  
(Programs are in place in all Circuits; overall quality is high)

**Legal advice program**  
(Prince Georges County model can be used as an example upon which the rest of the state can build)

**Mandatory workshops** (Prince Georges County has a good workshop but it is not mandatory)

**Supportive services for domestic violence victims and for other persons incapable of handling their own cases** (Family violence programs are excellent; assistance for incapacitated persons is not yet in place)

## Recommendations

The following are the recommendations for the Maryland state judicial branch that arise from the five court assessments and from the above analysis.

### ***Create statewide definitions of legal information and legal advice***

It is clear that court staff in Maryland Circuit Courts use different definitions of legal information and legal advice. I am told that a former Assistant Attorney General for the Judiciary advocated a very expansive definition of what would constitute legal advice. While I could not obtain a copy of any written Attorney General opinion on this topic, one may exist. At the least, Clerks of Court have received advice on this topic at past conferences that is far out of line with contemporary definitions of legal information and legal advice.

Clarification is needed. That clarification can and should come from the state judicial branch. Were the state to promulgate a contemporary definition and provide training to court staff in its use, the public and litigants would receive considerably more help from more sources within the courthouse.

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. I have attached as an appendix to this report a short manual prepared for court staff by the California Judicial Council entitled “May I Help You?”

### ***Train judges on dealing with self represented litigants in the courtroom***

The Judicial Institute has developed program segments on dealing with self represented litigants. They should become a standard part of the orientation for new Circuit Court judges and should 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. It should equip judges with specific techniques they 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.<sup>21</sup>

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<sup>21</sup> For examples of such techniques, 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). See also Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 Georgetown Journal of Legal Ethics 423 (2004).  
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It would be helpful if the Court of Appeals developed a policy statement or supplementary ethical statement covering these issues that judges would be able to rely upon as authoritative. It would also be helpful for judges to understand that most lawyers, particularly those who practice regularly in the family law area, do not object to the judge's proactive steps to obtain from self represented litigants the evidence the judge needs to render a just decision in the case. And they need to know the real problems lawyers perceive with unequal application of discovery rules to represented and unrepresented litigants. Lawyers in several different counties noted that their clients may be disadvantaged by legal representation if courts allow unrepresented parties to testify to facts (such as income and expenditures for child support calculations) without presenting written documentation when represented parties have produced, and are constrained in their testimony by, such documentation.

### ***Adopt a more sophisticated judicial branch forms process***

The Maryland judiciary deserves a great deal of credit for its current forms and instructions. The judiciary web page contains a set of forms for family law cases and instructions for using them. The forms are "fillable" PDF forms; this means that a user can access the form on the Internet, complete it on line, and print out the completed form for filing at the courthouse.

However, there are a number of areas in which the forms should be improved.

#### **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**

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, to obtain alimony, or to obtain a monetary award 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

These warnings should be included in the divorce forms, the instructions accompanying the forms, the summons, and the notice of default, stated in understandable English, notifying both plaintiffs and defendants of the potential legal consequences of divorce proceedings.

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

The AOC regularly revises the statewide forms. That process focuses on issues brought to the AOC's attention by judges, lawyers and court staff. It is probably time to subject the statewide forms to a top to bottom overhaul, based on the services of a readability expert and on the use of self represented litigant focus group feedback. Self represented litigants could be approached in the courthouse when they are waiting for service or have just obtained help from a court program.

This review should reconsider how forms are aggregated into packets. The state currently provides forms in packets. Those packets cover an entire process. We encountered many complaints that litigants "don't read the information we give them." That suggests that the current packets are not optimally organized. Earlier in this report I noted the short attention span of the self represented litigant; s/he does not read or absorb more information than is needed to complete the next step of a process. Consequently, the state should consider creating standard segmented instruction sheets that cover a single stage of the proceedings. We have come across some commonly used court handouts that have this characteristic. Segmented sheets can be distributed to litigants needing information on that process stage (e.g., service of process; obtaining a default order; providing testimony for an uncontested divorce; providing testimony on a contested custody or visitation issue). They can be aggregated for litigants who want a comprehensive overview of the whole process.<sup>22</sup>

## **Translate instructions into other languages**

The AOC has recently awarded a contract to translate all of the statewide forms and instructions into Spanish. The AOC's translation efforts should address the common statewide materials; individual courts can translate their unique local forms.

California has encountered a problem with forms translated into foreign languages. Some litigants are completing (often using the foreign language) and filing those foreign language forms. Maryland may want to concentrate on translating instructions into commonly used foreign languages and on providing detailed instructions in those languages for completing the English forms, but not making the forms themselves available in any form other than English.

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<sup>22</sup> MLAN has given considerable thought to this approach and could develop the materials in conjunction with the AOC.

## **Use a forms advisory committee to identify the need for additional forms**

In our assessments, we asked court staff what additional forms are needed. We received considerable input, which we are unable to evaluate. For instance, we were told that the following forms are often requested and are not available:

- change of name;<sup>23</sup>
- change of marriage license;
- change of birth certificate; and
- guardianship

I have no idea why a person would want to change a marriage license or birth certificate unless the purpose were a name change or the establishment of paternity. However, an advisory committee including Clerk of Court staff who regularly interact with the public, might be able to shed light on the input we obtained.

Some clerks and self represented litigant assistance staff wish there were a statewide standard form for requesting waiver of filing fees.<sup>24</sup>

We did not visit any District Courts. We did ask circuit judges, some of whom had served in the lower court, what forms were needed for District Court cases. Small claims, landlord/tenant, and criminal cases were mentioned. A particular problem in Baltimore City is eviction cases. There are 50,000 evictions in Baltimore per year; 10% of the city's population is evicted annually.

District Courts are accustomed to the appearance of litigants without counsel; the judges have well established routines for ensuring that unrepresented litigants have an opportunity to present their cases in court. 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 more services for unrepresented litigants involved in civil matters in the limited jurisdiction courts. 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 them to the potential consequences of self representation in these matters.

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<sup>23</sup> We encountered considerable confusion about this form. Several Clerk of Court offices do not provide the form. One said it had been taken out of circulation for revision. I have personally located the form on the Maryland Judicial Branch website, along with instructions that are clear except for publication, which apparently differs from county to county.

<sup>24</sup> In Maryland there is a difference between waiver of filing fees and waiver of fees for services. In most states, the same process and standards apply to both types of fees. Perhaps the Maryland AOC could adopt as a legislative objective the reform this process by statutory amendment.

I am reluctant to make any specific recommendations about the expansion of District Court services without knowing more about the District Court process. Instead, I recommend that the AOC rely on an advisory committee process to identify the need for additional forms or other materials and the relative priority of addressing each one.

### **Educate court staff further concerning the existence of an electronic forms environment**

We encountered considerable confusion about forms – what forms exist, what version of a form is current, whether the courts must use the most current versions, etc. We also observed that almost without exception, litigants are given preprinted paper copies of forms for completion. It is clear that the Maryland Circuit Courts are operating in a paper forms environment.

The state judicial branch has moved to an electronic forms environment – in which the “official form” is whatever currently exists on the state web site. However, this message has not been absorbed by the Circuit Courts and their staff. I understand that the AOC is taking steps to make sure that all courts have public access computers from which litigants can access, complete and print their own forms on line. If persons insist on a paper copy of a form it can be printed by staff from the state web site. Inventories of preprinted forms can be drastically reduced.

There are a variety of reasons for the AOC to invest the effort to move Circuit Court staff from their current paper environment to the state-sponsored electronic one:

- Judges, masters and court staff much prefer typed to handwritten court filings. This is one of the major objections judges have to the increased presence of self represented litigants in their courtrooms – they have to struggle to read the pleadings. Having litigants complete forms electronically would produce typed documents.
- There will be no further confusion about what is the most current form.
- Staff will become familiar with the state court website and will be better able to advise litigants in its use – moving large numbers of inquirers from the courthouse to the Internet for information and forms.
- Sooner rather than later the Maryland judiciary will want to convert from paper to electronic court records. That begins with the filing of documents in electronic form. Having litigants and lawyers become familiar with the creation of forms electronically will position the Maryland courts for this future transition.
- There are, and will continue to be, advances in the electronic processes for creating documents. An example is the use of “interactive,” “dialogue,” or



“Turbo” forms, in which the user is asked to answer a series of narrative questions. From those answers the forms application generates the appropriate form for the user’s review and signature. The Maryland judiciary and MLAN have remained in the forefront of those processes. I understand that Maryland has just received a TIG grant from the Legal Services Corporation to create a document assembly software program.

### ***Enhance and better coordinate the judiciary and Peoples Law Library websites***

As discussed above the Maryland judiciary could make some enhancements to the Peoples Law Library website to provide more specific resources for self represented litigants preparing for court hearings in contested cases and better linking that website with the state judicial branch website.

I am aware that providing resources addressing the needs of self represented litigants in contested divorce and custody matters may engender criticism from judges and lawyers who do not believe that citizens can represent themselves in such matters. From my observations in Maryland and elsewhere, I am convinced that self represented litigants can perform satisfactorily in contested family law matters (although clearly not as well as if they were represented competently), that their performance is enhanced with effective trial preparation materials, and that such materials can be developed. The Alaska Family Law Self Help Center website – designed specifically for persons with contested cases – is the best example of useful such materials. The same logic that has supports the development of programs to assist self represented litigants in general – that it is in the best interests of the courts as well as the litigants to educate them – applies equally to contested and uncontested matters. Having the Peoples Law Library as the locus for this material may serve to deflect some of the criticism.

### ***Consider requiring attendance at workshop for cases with property or contested custody issues; develop videotape and on-line workshops that satisfy the attendance requirement***

Many Maryland Circuit Courts have developed and provided workshops for self represented litigants. Most have been discontinued due to lack of attendance. Prince Georges County is the only court we visited that currently has a workshop program in operation. (The workshops referred to are not parenting classes, but rather workshops on the legal process involved in divorce, custody, visitation, child support, etc.)

The Court of Appeals should 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.

The judicial branch should develop a statewide orientation videotape and online presentation prior to the effective date of such a requirement. These orientations should be available at the courthouse at no cost to the litigants.

While imposition of such a requirement would serve as a barrier to access to divorce, it can be argued that the litigant's right of access to the courts should be balanced with his or her interest in not inadvertently forfeiting important legal rights associated not only with property interests but also with interests in a parent's future relationship with his or her children.

### ***Promulgate rules to allow limited scope representation to encourage attorneys to provide limited legal services to litigants***

The Maryland legal services community has provided national leadership in the development and promulgation of models for providing "unbundled" legal services. And yet the Maryland judiciary has not yet formally endorsed this approach through amendment of the code of conduct for attorneys and the rules of civil procedure.

The issue that appears to block approval is whether judges should be required to allow lawyers to withdraw from representation after they have entered a limited appearance in court, based upon an agreement between the litigant and the lawyer to limit the lawyer's representational obligation to a particular hearing or trial. It appears to me that the advantages to litigants from being able to obtain affordable limited legal representation outweigh the risks of abuse of such arrangements by unscrupulous lawyers in the future.

### ***Enact ABA Model Rule 6.5 in Maryland***

The purpose and operation of Rule 6.5 have been explained above. I understand that a proposal to implement it in Maryland has been forwarded to the Court of Appeals and is awaiting action.

## **Conclusion**

Maryland's judicial leadership should take great pride in the steps taken to assist self represented litigants pursuing their family law cases in the Circuit Courts. Each of the five courts assessed has a vital and effective self represented litigant assistance

program. And the judges, masters and court staff have made many other accommodations to the special needs of these litigants.

These steps are paying off for the Maryland Circuit Courts. Cases are moving more efficiently through the court. There are fewer confused and frustrated litigants. It is clear from a nationwide perspective that the phenomenon of self representation in family law cases is not going to abate any time soon. Therefore, investment in these programs, and in the improvements and enhancements suggested in this report, will produce continuing positive returns for the court system as a whole – access to the courts for all citizens, increased public trust and confidence in the court system, and actual savings in court resources as court processes operate more smoothly.

## **Appendix**

### ***California Judicial Council, “May I Help You?”***