

**TRIAL COURT RESEARCH AND  
IMPROVEMENT CONSORTIUM**

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

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## Introduction and Overall Conclusions

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

This report is prepared early in the process of the eleven court assessment program and includes comparative data for only five additional courts. As more data is gathered around the country, the conclusions drawn in this report may need to be modified. The authors reserve the right to revisit their assessment and conclusions in light of the comparative data collected. However, a comparison of the performance of programs in Worcester County with those in Hennepin County Minnesota and in Montgomery, Prince Georges, and Harford Counties and Baltimore City in Maryland shows that litigants make significant use of the services in Worcester County and rate the services provided, and the performance of the court as a whole, very highly.

The Worcester County Bar has a long tradition of public service. It has received the Maryland State Bar Association pro bono service award on several occasions.

Worcester County is the smallest of the courts to be assessed to date. It has a single program to assist self represented litigants – the Pro Se Family Law Project. The program enlists the services of two contract attorneys to provide brief advice and forms preparation services for five hours each Monday. The attorneys provide an array of services – from assessment of the legal problem facing the client, to advice for dealing with the problem, to advice whether the client is capable of handling the problem without counsel, to referral to sources for obtaining paid and free legal assistance, to preparation

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

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

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

of forms (including proposed orders) to be filed in court, to information on next steps to be taken in pursuing resolution of the matter. The attorneys do not provide representation in court and do not provide extensive counseling on trial preparation in contested matters. The programs provide services valued highly by the litigants at the time of delivery of services but not as highly after court hearings.<sup>3</sup> Litigants also rate highly the performance of the judges and staff in court hearings and trials.<sup>4</sup> Both judges and in-court observers rate positively the ability of self represented litigants to handle their cases in the courtroom.

The program is supported unanimously by the judges and master; it also has very high levels of support from the court staff and the lawyers. The lawyer support is the highest found in Maryland to date.

The Pro Se Family Law Project is an effective program for a small court. By having two contract attorneys working on alternative Mondays, the project has effectively solved the problem of conflicts and made its services available to all citizens – at least all who can get to the Worcester courthouse on Mondays. All agree that the project is providing useful and effective services to poor litigants with simple cases that involve no property and in which there is no conflict over custody of children. The program does not attempt to provide extensive assistance to litigants with complex or contested matters.

For a very small county, the Worcester Circuit Court has an astonishing array of services available to families with divorce, custody and child support problems. It has not instituted case management procedures focused on family law cases involving self represented litigants.

Pro Se Assistance Programs in Maryland receive significant support from the Maryland Court of Appeals, its Chief Judge, and the Administrative Office of the Courts. The Worcester County Family Division is particularly in need of additional resources.

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

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

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<sup>3</sup> So few surveys were done of persons leaving the courtroom (4) that the latter finding can be accorded little credence. The small number of surveys was due to difficulty scheduling someone to conduct the courtroom exit interviews.

<sup>4</sup> The small number of surveys administered, as noted above, suggests that little confidence can be accorded this data. In addition, the authors were not able to observe any family division proceedings, as none were scheduled during the visit. However, data from other courts suggests that litigants generally rate the judges and the court proceedings positively.

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

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

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

Worcester County is one of the smallest counties in Maryland in terms of its permanent population of about 49,000. Its population is growing at the rate of roughly 2.25% per year. The county has a relatively low per household median income of less than \$41,000 per year, and almost 10% of its population lives on incomes below the federal poverty guideline. Only 5% of the population speaks a language other than English in the home. Fewer than 2% of the county's population consider themselves to be of Hispanic or Latino origin. The inclusion of Ocean City, MD within the county boundaries produces a seasonal anomaly. During the summer months the population of the county is roughly 300,000 because of tourism and temporary workers to support it.

### **Need data on family law case filings (family non-juvenile) for past five years**

We have reviewed the court's data on the percentage of persons choosing to represent themselves. The data suggests that roughly 65% of all domestic relations cases have at least one self represented party. That number is lower than other Maryland jurisdictions studied to date.

The Family Division. The Circuit Court has two full time judges and one part-time master who also serves an adjoining county. Trials in family cases are distributed equally among the judges.

In 2002, the court resolved 84% of family cases within one year, compared to the state standard of 90% of cases resolved within that period. However, only 1% of cases remained pending after two years – better than the state standard.

Master Kent holds scheduling conferences in every case in which an answer is filed. The Family Support Services Coordinator reviews every file after an answer is filed. She prepares an order over the judge's signature setting a scheduling conference and making referrals to Kidshare, co-parenting classes and mediation (if both parties are represented). The Kidshare program helps the children in a divorce to develop coping skills to reduce the negative impacts on them; the program is provided by the County Health Department at no charge. The Co Parenting education program provides six hours of instruction to parents with children on how to minimize the negative impact of divorce on their children; this program is also provided by the County Health Department, at a charge of \$50 per person with a sliding scale available. Mediation services are provided by a panel of volunteer lawyers from the local bar.

At the scheduling conference, the master assesses the issues in dispute, attempts to resolve them, takes testimony and prepares a proposed order completing the divorce if all issues are resolved, makes referrals to other social services as appropriate, and schedules future events in the case (including a separate pendente lite hearing if necessary). The court makes referrals to 16 different programs – most of which are provided by outside contractors or organizations at a fee set with the court's approval.

Uncontested matters may also be resolved through a "standing examiner" – a person designated by the court to take testimony in uncontested divorce cases for a fee of \$75. The parties (or the plaintiff in the case of a default) appear before the standing examiner with their corroborating witness. The standing examiner hears the testimony, records it should any issue arise, and files a report with the court. In these cases, no further court appearance is required.

The master and family support services coordinator share a full time secretary. The three of them constitute the Family Division in Worcester County.

The court has created an ADR Advisory Committee consisting of the master, the family support services coordinator, a representative of the Pro Se Family Law Project, volunteer lawyer participants in other Family Division programs, and members of the Worcester County Bar Association. They meet quarterly and make recommendations to the Administrative Judge.

The Pro Se Family Law Project. The project provides assistance in completing forms and information about court procedures to persons proceeding without counsel. The program literature states that assistance is provided with the following types of cases: divorce, custody, child support, visitation and name change. Litigants wishing to meet with the attorney come to the Family Division office on Monday morning and sign-in on a clip board on the counter. The sign-in sheet explains the purpose and parameters of the program. The family support services coordinator, the secretary, and the contract attorney are located in the Family Division office and are available if questions arise, but the program is structured as a "self-serve" check-in process.

The program does not screen litigants on the basis of their financial means. The program has been in existence for six years. It has had the same two contract attorneys for that entire time.

Services are provided in the courthouse in the conference room of the Family Division. The contract attorneys have a movable file cabinet containing forms and information sheets which they bring up to the conference table. Clients are seen on a first come first served basis. If too many appear on a day, the late comers will be advised to return on another day. Sessions typically last from five to thirty minutes. The attorney obtains information about the client's legal problem, gives him or her an assessment of legal remedies available, fills out the appropriate form if one exists, and advises the client of the further steps needed to complete the court process. If the attorney thinks the client will not be successful at self-representation, the attorney provides lawyer referral information, including information on obtaining retained counsel or pro bono representation through the Maryland Volunteer Lawyer Service. The clients are required to sign a release form and to provide the demographic information required by the Maryland AOC of all the self-help programs.

The program attorneys do not maintain a formal listing of clients served, but pay attention to whether they have provided services to an opposing party in the same case previously. If an attorney has previously advised another party in the same case, s/he will suggest that the litigant return to the courthouse on the next Monday to talk with the other contract attorney.

Most of the litigants have issues included in the scope of the program – family law and name change. Some litigants sign-in for help with other legal issues. The program does not attempt to pre-screen those who sign in. If the contract attorney has a program client with an issue that is not within the scope of the program, the attorney will attempt to briefly help the person if the attorney has expertise in that area. The contract attorneys are unable to provide forms except in family and name change situations.

The contract attorneys do not provide on-going representation to the persons they see in the course of the program – referring them instead to other attorneys in the county should they seek retained counsel.

Although the contract attorneys invite clients to return for further advice at later stages of the case, the program generally does not provide advice on trial preparation in complex or contested matters. When the contract attorneys identify cases with complex or contested issues, they will refer the litigants to the Maryland Volunteer Lawyer Service – a statewide pro bono program. The MVLS conducts financial screening and refers qualifying cases to a volunteer lawyer who serves as coordinator for referrals in that county. Worcester County has only 30 to 40 active lawyers; of those active lawyers, only six practice family law. However, the county pro bono coordinator has been able to place all but three pro bono cases referred in the past year.

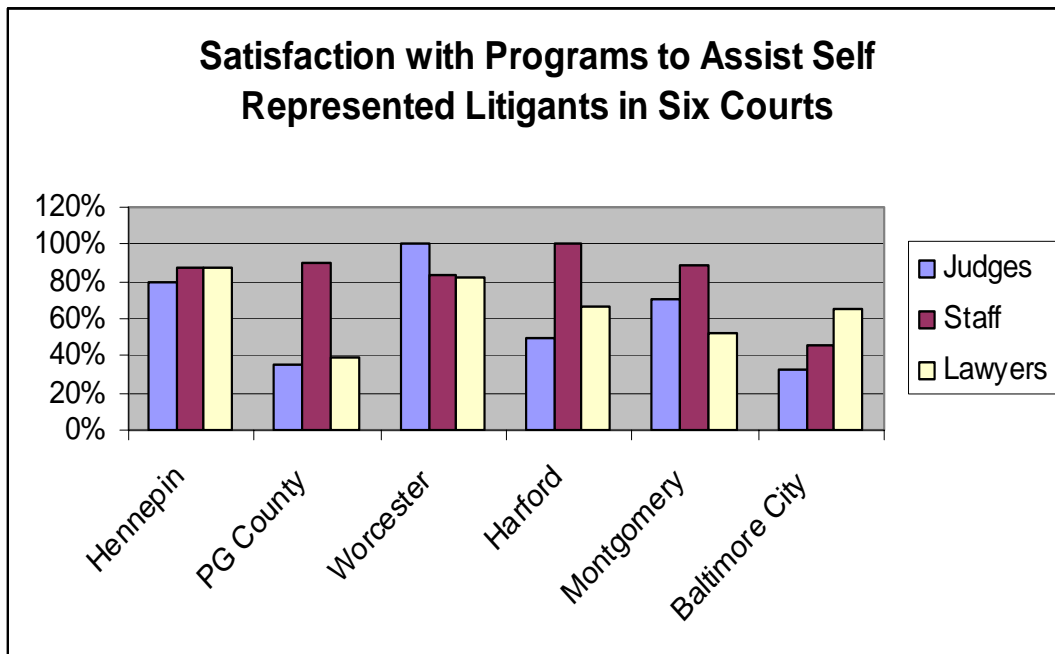
The program is available from 9:30 am to 2:30 pm on Mondays. The program attorneys saw 418 persons last year, or roughly eight persons per day. On heavy days an attorney may deal with 14 or 15 persons. A litigant who returns to the program for a second or third consultation is counted as an additional person each time.

The cost of the Pro Se Family Law Assistance Project is \$16,500. Last year it served 418 persons, with a cost of \$39.50 per case.

## Results of Stakeholder Research and Data Gathering

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

- The court’s judicial and administrative leadership, staff, bar leadership and bar in general strongly support the Pro Se Family Law Project. The scores on surveys of judges, staff and lawyers had high ratings of satisfaction with the program when compared to other programs we have assessed in Maryland. They are the highest scores for judges and lawyers and above 80% satisfaction for court staff. The scores are shown in the table below:



- Court staff support the programs and believe that they have made their work easier. The clerk of court has adopted a definition of legal advice that allows the staff to provide very little information to the public. The staff very much appreciate the opportunity to refer SRLs to the Pro Se Family Law Project.



- Judges reporting observations of SRLs in the courtroom generally reported that they provide completed forms, present evidence and witnesses required, are able to “tell their stories,” and more or less have reasonable expectations. Most of these observations were conducted by the master.
- While the judges are concerned that SRLs are often unable to present their cases in court, and therefore require assistance from the judge which the judge feels squeamish about providing, they nonetheless are very satisfied with the program.
- Self represented litigants themselves report highly favorable ratings of the services provided at the time they are received. The overall satisfaction rating after the litigant has been to court is lower, but the data on which this rating is based is so limited that the data is not reliable. See discussion below.

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

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

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

impact how complex or simple the forms are, and may therefore impact the customer satisfaction level with the forms and instructions.

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

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

- The litigants also give high ratings to the judges for the hearings and trials conducted, although the data from which these ratings is derived is too limited to be reliable.

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

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

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

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

- Lawyers report in the surveys that SRLs do not perform well in the courtroom but that the programs have improved their performance on most dimensions measured. 82% of the lawyers surveyed are satisfied or very satisfied with the programs; this is the highest lawyer satisfaction rating in any Maryland county we have visited to date.
- The Family Support Services Coordinator perceives the program as critical to the effective resolution of Family Division cases.
- The Clerk of Court strongly supports the aims of the program, and advocates that court staff provide maximum service to the public. The Clerk, who took office after the program was developed, does not feel involved in decision making about the program.
- As a general matter, the programs are perceived as most useful in distributing the correct forms to litigants, and making sure that these forms are appropriately completed. The programs are perceived as least useful in preparing SRLs for the litigation of complex cases, in familiarizing them with court rules and procedures, and in providing them with reasonable expectations about the likely outcomes in their cases.
- Court observations and exit interviews confirm that the court as a whole is achieving excellent results in terms of the satisfaction of its users who do not have lawyers, as well as treating those litigants well in the courtroom, and apparently creating an environment in which they are able to tell their stories to the judge.
- Seventy-five percent of the litigants interviewed following a court proceeding reported that they had used the court program to assist SRLs. This is the second highest usage of any court assessed to date, although it is based on a sample of only four cases.

The summary of these observations is highly positive. The program is strongly supported by the judges, the staff and the bar. It is very much appreciated by the litigants themselves.

## **Program Strengths**

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

The judges have a strong commitment to maintaining the program.

The Pro Se Family Law Project contract attorneys are highly admired within the local bar, have served the program for six years, and have refined their procedures to the point that they provide forms and assistance very efficiently.

The program enjoys very strong ties with the leadership of the family law bar in Worcester County, resulting in large numbers of willing and able volunteers to help resolve cases.

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

- Stable, reliable funding. We are assured that the legislature’s commitment to continuing support for these programs is solid and reinforced by the Chief Judge’s and state judiciary’s advocacy on their behalf.
- Mandatory pro bono reporting. The Court of Appeals last year required all members of the Maryland bar to report annually the number of hours devoted to pro bono services. While bar members are under no obligation to perform pro bono work, the new requirement is expected to have a positive impact on the amount of pro bono activity within the bar. When asked if the requirement has increased pro bono activity in Worcester County, the county pro bono coordinator stated that the requirement did not have a noticeable impact in the local bar, due to a long-standing tradition of strong pro bono service.
- Statewide fillable forms. The judiciary’s website contains statewide forms, instructions and information sheets for common family law matters.
- Statewide best practices. The AOC is developing a report recommending best practices for Family Divisions throughout the state.
- Peoples Law Library. This website, developed by the state’s legal services community, includes extensive materials for the SRL, including an innovative assessment instrument to gauge the likelihood that a person can successfully represent him or herself in a family law matter.

## **Suggestions for Improvement and Enhancement**

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

All staff need an authoritative definition of the distinction between legal information and legal advice. All clerical staff are concerned that they not “step over the line.” However, there is no common understanding of where the line is. Most staff refuse to provide information that they should be allowed to provide. If there were a clear

understanding, litigants could obtain more information and assistance from the Clerk of Court – a service that is needed given the availability of the contract attorneys only one day a week.

The contract attorneys should reconsider the role that they are playing and revise the consent form completed by clients – and the way they handle cases when both parties come to the program at the same time – to reflect the fact that they are entering into an attorney-client relationship (albeit a limited one). A clearer definition could improve the understanding throughout the courthouse of the services provided, and of the ways in which other parts of the court can better coordinate their activities with those of the project attorneys.

The project could operate more efficiently if the contract attorneys had a paralegal or secretary who could complete forms under their direction and supervision. We suggest that the court seek a volunteer – perhaps a retired legal secretary – to perform this role. The court could also provide access to computers – both for the contract attorneys and for the litigants themselves – to encourage the filing of typed rather than hand-written forms.

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

- Training of judges on dealing with SRLs. The judges voiced concern about the change in their role with the advent of large numbers of SRLs in the courtroom.
- Better protecting SRLs against themselves. Judges and lawyers are concerned that SRLs are forfeiting significant legal rights in these cases. An example is the right to a portion of a spouse’s retirement. If that right is not asserted during the course of a divorce proceeding, it is forfeited. With the retirement of large numbers of Baby Boomers in the next few years, they dread the prospect of a number of needy former spouses being unable to obtain support to which they would have been entitled if they had retained counsel to represent them. In Worcester County these concerns are not prominent, because litigants have an opportunity to obtain free legal counsel on these matters.
- Giving SRLs more guidance for contested matters. The program currently focuses heavily on providing assistance with documents. A similar effort is needed for presentation of cases in the courtroom. The current statewide instructions already describe the witness needed to establish the grounds for a divorce in Maryland. Instructions could be created to describe the sorts of evidence needed to address the legally relevant factors in various family law matters. The Women’s Law Center of Maryland and the Maryland Commission for Women have prepared a manual entitled *Legal Rights in Marriage and Divorce*<sup>5</sup> which sets forth

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<sup>5</sup> Second Edition 2001.

concisely the elements required to establish entitlement to various types of relief in family law cases.

The court could improve the management of cases involving self represented litigants in significant ways. The Pro Se Family Law Project could develop and provide short procedural checklists appropriate to a specific stage of a case. The Clerk of Court could provide earlier advisory letters to litigants who have failed to accomplish service or have failed to seek an order of default if the defendant has not answered within the time allowed by law.

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

## **Specific Programmatic Characteristics**

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

### ***Goal Alignment***

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

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

Family Support Services has a purpose statement, but it does not address the goal or goals of the Pro Se Family Law Project. The court could either modify the existing purpose statement or create a supplementary statement articulating the goals for self represented assistance activities.

### ***Client Groups***

The program collects the demographic information required by the State AOC. It does not collect any additional information about client groups. The county has a very small group of Spanish speaking citizens. It has a large number of Eastern European

immigrants who come to Ocean City to work in the tourism industry. These immigrants generally speak very good English, however. At this time, the program does not use the demographic information to analyze whether groups are being underserved, or why groups might be choosing not to use the program, or for any type of gap analysis, outreach, or expansion planning.

We note that the services of the Worcester County program are provided to five plaintiffs for every one defendant. While this is a lower disparity than in many programs we have observed, there is nonetheless a need to assure defendants that staff assistance is available them.

## ***Stakeholders***

We have discussed the data relating to various stakeholders previously.

The Clerk of Court is the only stakeholder requiring additional attention. The court should involve him more extensively in program planning concerning services to self represented litigants. In turn, his staff need to provide more information, advice and forms to the public as part of a court-wide effort.

We did not have an opportunity to meet with county or state elected officials, or community and service organizations other than the bar and therefore are unable to report their views of the Pro Se Family Law Program.

## ***Emerging Practices***

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

<b>Emerging Practice</b>	<b>Worcester County Status</b>
<b>Easily Understandable Forms and Instructions</b> Forms and instructions written in plain English	The statewide forms process provides a wide variety of family division forms and instructions written in plain English. We make some recommendations for their improvement below.
<b>Large Type</b> Forms and instructions in larger type.	Such forms are not formally available, but they could be printed out if requested.
<b>Development of a Web Site for Self-Represented Litigants</b> Applicable statutes and rules, extensive	The court does not have its own website but does include a description of its programs on its webpage on the state



instructions written in plain English, downloadable forms, and interactive forms completion programs (where the program obtains the user's input in response to questions and populates the form appropriately based upon the answers).	judicial website.
<b>Other Languages</b> Easily understandable forms and instructions, translated into Spanish and other languages (including Braille) as designated by the county's demographics.	The AOC is providing Spanish translations of forms and instructions.
<b>Access at Local Libraries and Community Access Sites</b> Website available at public facilities such as public libraries, city halls, and municipal buildings together with assistance in accessing and using the website	The state court website and the Peoples Law Library are available in public libraries and anywhere that Internet access is available. They are not available to the public within the courthouse, however.
<b>Attorneys in the Courthouse</b> Attorneys either employed by the court, employed by an outside agency, or working pro bono counsel litigants prior to court appearances	The Pro Se Family Law Project provides this service and provides referrals to the Maryland Volunteer Lawyers Service for pro bono representation.
<b>Attorneys in the Courthouse</b> The judge may send litigants out of the courtroom to meet with attorney advisors in order to expedite calendars.	The services of the Pro Se Family Law Project are available for referral from the courtroom. However, services are available only on Mondays.
<b>Workshops</b> Workshops can be either run by video or live presenters.	The court provides parenting education workshops through the County Health Department. These workshops do include some discussion of court procedures.
<b>Mobile Services Centers</b> Service centers contained in mobile RV units that can be driven to various parts of the jurisdiction	There is no mobile service center, and the evaluators do not recommend one. However, transportation is a major barrier to access to legal and court services. The court may wish to provide additional information on public transportation connecting the courthouse with communities throughout the county.
<b>Telephone Attendant Decision–Tree</b> Systems can provide telephone assistance to self–represented clients	There is no automated phone service, and the evaluators do not recommend even exploring one. The Clerk of Court and the Family Support Services Coordinator provide adequate phone assistance.
<b>Training Other Court Staff</b> Provides a customer service orientation to all public information components of the	There is a significant need for better coordination among the Pro Se Family Law Project, the Clerk of Court and the judges'

court.	chambers so that everyone is clear about the responsibilities of other offices.
<p><b>Prehearing Screening Process</b> A court staff member, staff attorney (sometimes called a family law facilitator) or a volunteer attorney (sometimes from legal services) reviews the papers prepared by the parties to determine their readiness for consideration by the judge. In some courts, judges meet with the parties in a prehearing conference to accomplish the same objective and to help with dispute resolution.</p>	Not all self represented litigant forms are prepared by the Pro Se Family Law Project. The Family Support Services Coordinator screens cases before the scheduling conference. We do not know whether the judges' law clerks perform this function prior to other hearings and trials to identify defective pleadings or procedural failures that will defeat the purpose of the hearing.
<p><b>Unbundled Legal Services</b> Providing access to specific legal services on a limited representation basis -- limited to a specific phase or issue in the case.</p>	The Pro Se Family Law Project provides unbundled legal services. Although the Maryland judiciary has not formally endorsed this form of legal practice, it is widely available. It would be helpful for the state judiciary to give its formal approval.
<p><b>Community Outreach</b> Providing information about court services and obtaining input from community members about those services and their experiences with the courts.</p>	The court has a flier describing the Pro Se Family Law Project. It should make sure that copies are provided to all other county and nonprofit social service and community organizations.
<p><b>Fully Interactive Forms with on line or otherwise simultaneous Video Help</b></p>	The state court website provides fillable forms on line. Videos and interactive help assistance or not available as part of the forms.
<p><b>Customer Friendly E-Filing</b> Court-sponsored forms completion process is linked to electronic filing system so that self-represented litigant can file form as soon as it is completed.</p>	The court is not discussing electronic filing at this time. Initiatives will likely originate at the state level. The state judiciary's interactive forms could be used as the basis for an electronic filing process for self-represented litigants.

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

The court appears to make a consistent effort to gather demographic statistics on the Pro Se Family Law Project. Little use is made of the demographic information. The Court does not appear to make use of case management data to monitor and management cases involving self represented litigants.

## ***Evaluation***

There is no regular, systematic evaluation of the court's programs to assist self represented litigants, or method for regular user feedback. This assessment is the first such effort by the court. The court does conduct an annual evaluation of its domestic and non-domestic mediation programs.

Given the high marks received by the program, we do not perceive the need for a formal annual evaluation. The resources could be put to better use for program expansion. We do recommend that the ADR Advisory Committee conduct an annual review of all the programs of the Family Division in conjunction with the preparation of the Division's Annual Report. Next year's assessment would be an appropriate time to review the program's progress in acting on the recommendations contained in this report.

In addition, providing litigants with a way to provide feedback might produce continuing insights into problems encountered by litigants that call for better coordination of efforts among the clerk's office, program staff, judicial staff, and pro bono attorneys. The feedback could also be used to evaluate the effectiveness of using a secretary or paralegal to assist the contract attorneys with forms completion, if the Court decides to try that approach.

## ***Strategic Planning***

Strategic planning is evident at the state level. The annual report of the Family Division sets forth the court's plans for program enhancements. Those plans are limited, however, to a justification of budget increase requests made to the state. The annual Family Division assessment suggested above would provide an opportunity to set forth specific plans for needed changes and enhancements to the court's programs in the future.

## **Overall Assessment**

We find that the court provides an effective process for a small court to provide self represented litigants with assistance in completing forms and giving them general information about court procedures and case status. It advises litigants with complex matters to obtain legal advice and representation and coordinates with the Maryland Volunteer Lawyers Service to locate pro bono attorneys for cases that qualify for free or reduced fee representation.

The current program is highly effective for persons with simple cases – i.e. those without property or contested custody issues. The program is not as effective in helping litigants deal with more complex cases. It does not attempt to improve their understanding of the rules of evidence, or the rules of procedure at the hearing stage. The program attorneys do coach people on evidence they will need to prove their case, if the

situation is fairly straightforward, and explain the difficulties of proving their case with complex matters.

As the Pro Se Family Law Project has matured over the years, it has developed inconsistent processes and materials defining the nature of the relationship between the contract attorneys and their clients.

With the assistance of state judicial leadership, Worcester County now needs to address the next level of challenges for courts in providing truly meaningful access to justice. The major steps required to meet those challenges are:

- A statewide definition of legal information versus legal advice
- Better articulation of and training for judges to deal with the changed judicial role in the general jurisdiction trial court required to address these cases; and
- Increased assistance to self represented litigants with complex contested family law matters.

## **Recommendations**

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

### ***Create statewide definition of legal information v. legal advice***

It is clear from the very different definitions used by the Clerk of Court and the Family Support Services Coordinator that clarification is needed. That clarification needs to 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. We can provide the AOC with examples. We recommend particularly the materials developed by the California Judicial Council.

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

Forms, instructions, and operational programs are now in place for persons who choose to represent themselves in family law matters. The AOC has also devoted considerable attention to assistance of abused spouses and children in obtaining orders of

protection. The state could usefully apply the lessons learned in these efforts to providing similar materials for small claims, landlord/tenant, and criminal cases in the District Courts.

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

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

### ***Train judges on dealing with SRLs in the courtroom***

The Judicial Institute has developed program segments on dealing with self represented litigants. We recommend that they become a standard part of the orientation for new circuit court judges and be provided to all judges embarking on an assignment to the Family Division. The training needs to address the ethical issues that trouble judges in adopting the more engaged judicial role required to deal effectively with these cases and with specific techniques that judges can use in cases involving two unrepresented parties and in the more difficult situation in which one party is represented and the other is not.<sup>6</sup> It would be helpful if the Court of Appeals could develop a policy statement or supplementary ethical statement covering these issues that judges would be able to rely upon as authoritative.

### ***Develop guardianship forms and instructions***

No statewide forms and instructions are available for these cases.

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<sup>6</sup> For an example of suggested 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).

## ***Provide higher level of resources for Worcester County Family Division***

The Worcester County program is making the most of a minimal budget. Its contract attorneys are unable to see all the litigants who want and need their advice on busy days. Additional resources are warranted to maintain the current level of service to the public. Expansion of the program to any extent will require even more additional resources.

## ***Review and revise state forms in conjunction with the staff of the circuit courts and readability experts and revise instructions to eliminate instructions for straightforward questions (e.g. name and address) and add instructions for legally significant check boxes (e.g. divorce complaint selection of issues you want the court to address)***

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

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

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

## ***Clarify the role of contract attorneys***

There are a number of aspects in which the role of the contract attorneys is not sufficiently clear to themselves, to the litigants or to the court.

As we observed the role performed by the contract attorneys, we conclude that they are entering into an attorney-client relationship with the persons they serve. The program collects information on persons served and refers parties in a case in which the other side has already been helped to the other contract attorney; this is consistent with, and only necessary for, instances in which an attorney-client relationship is created. However, the release form that the project uses does not describe the relationship in this

way. Rather, it states that the person served is receiving only “procedural” information and assistance.

We recommend that the release form:

- State that the attorney and the assisted person are entering into an attorney-client relationship and that such a relationship requires the attorney not to disclose to anyone else what the assisted person says during the meeting unless the information is placed in a form to become a public record;
- That the relationship is limited to a single meeting;
- That the attorney will not appear in court on behalf of the assisted person but will only provide forms, advice and information;
- That the advice given and the forms prepared are based on the information provided by the assisted person and that the attorney has not and will not obtain any other information about the case on the assisted person’s behalf; and
- That the assisted person may return to the project for additional assistance at a later date, but that a new relationship will be established on that occasion.

We further recommend that the form be provided to the assisted person, explained briefly by the attorney, and signed by the client at the beginning of the session. A limitation on the attorney-client relationship must be imposed at the beginning of the relationship to be legally effective.

We also recommend that the two contract attorneys discuss and agree upon the procedure to be followed when both parties to a family law matter appear together. We strongly prefer the process of advising the parties that the attorney will represent only one of them – the plaintiff, that they need to decide which of them will be the plaintiff, that the plaintiff must decide whether to allow the other party to be present during the consultation, the defendant is advised to return to the courthouse on the following Monday to receive legal advice concerning his or her rights from the other attorney, and that, in any event, the defendant be excused from the room at the end of the session so that the attorney can explore with the plaintiff any matter that s/he may not have wished to discuss in the presence of the other party. The attorney may provide forms to the unrepresented party (such as an answer) but should not fill them out in any way – making clear that the attorney is providing no representation.

Finally, we recommend that the contract attorneys, having greater clarity that they are acting as attorneys for their clients, should advise them very straightforwardly about the likelihood of their obtaining the relief that they seek. One of the jobs of an attorney is to give his or her client realistic expectations about the outcome of a legal process; unrealistic expectations is a common complaint that judges, court staff and lawyers have

concerning self represented litigants. The Worcester County program has an opportunity to attempt to remedy this problem, understanding of course that a client may utterly disregard the advice provided by the attorney and that the attorney therefore cannot be held responsible for a client's continuing misperception of his or her likelihood of success.

***Provide the assistance of a paralegal or legal secretary to the contract attorneys to prepare forms for litigants.***

The attorneys could be more productive if they were able to diagnose the needs of cases, identify forms that need to be completed, and turn the matters over to the party and a paralegal or legal secretary to prepare the forms on a computer (perhaps even using the fillable forms on the AOC website.) This process would produce more legible forms as well. The contract attorneys could review the forms when completed and turn them over to the litigant for filing. It is altogether possible that Worcester could identify a retired legal secretary who could perform this function on a volunteer basis.

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

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

Until statewide materials are available, court staff can take advantage of existing materials – such as the manual prepared by The Women's Law Center of Maryland and the Maryland Commission for Women cited at footnote 5 – to assist litigants to better prepare for hearings and trials involving contested matters.

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

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



- Sending a letter to the plaintiff after failure to file affidavit of service after an appropriate period of time, for instance 30 days;
- Sending a letter to the plaintiff after the time for filing an answer has expired, alerting them to the procedure for obtaining a default;
- Creating short checklists for particular stages of a case. Persons assisted at the Pro Se Family Law Project are given more information than they can absorb and retain after hearing it once. Having short written explanations of procedures – tailored to each phase of the case – would assist both the litigant and the court. For instance, one handout would address only the issue of service of summons. Another would address obtaining an order of default. A third would address the procedure for obtaining an uncontested divorce by employing the services of the “standing examiner,” including the information contained in the statewide instructions on what the parties must be prepared to address and the topics on which a corroborating witness must be able to testify. Another could be given out at the scheduling conference describing the services to which referrals have been made. Another could describe the factors that a court will take into account in awarding custody and types of proof that a litigant could adduce to address each.
- Improve screening of filings submitted by self represented litigants. Some courts have staff review all files in these cases prior to hearings to insure that the papers are in order and that the case is in a posture to proceed at the hearing. This process can avoid wasting the valuable time of the court and the parties for fruitless appearances.
- Monitoring of these cases at all stages. Some courts have created positions called case managers with the responsibility to make sure that all family division cases proceed according to state time standards and that none “fall through the crack.”
- Regular Rule 2-507 review of open cases. This is not the most effective way to manage cases involving self represented litigants. By the time Rule 2-507 dismissal is appropriate, significant time has already been lost. But it is a necessary step to clear the court’s docket of inactive cases.

One of the contract attorneys told us that the attorneys could begin drafting these documents on Mondays when fewer persons came to the courthouse seeking their services.

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

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

### ***Increase the amount of information provided by the Clerk of Court staff to litigants***

As noted above, having a clear and authoritative definition of legal advice would free staff of the Clerk of Court to provide additional information to the public. Many members of the staff have worked for the court for many years and are fully knowledgeable about the court's procedures. They are not allowed to convey that information today. There is confusion about what information is appropriate to provide to the public, resulting in different levels of service at different times.

We believe that the Pro Se Family Law Project should coordinate its directions more closely with the Clerk of Court. We observed an instance in which the contract attorney told a client that the Clerk of Court would explain the process for publication of a proposed name change. When the client filed the name change application, the clerk's office employee had no idea that she was expected to explain that procedure. If an observer had not been present, the client would have left the court with no guidance on that essential matter. Because of the observer's intervention, a supervisor came to the counter and provided the client with an oral description of the process to be followed. It would have been helpful to have been able to give the elderly gentleman a written set of those instructions.

### ***Increase public awareness of services available to SRLs***

We suggested above that the court take steps to make sure that fliers about the services of the Pro Se Family Law Project be provided to county and nonprofit social services and community organizations, with the hope that the staffs of those offices will make referrals in appropriate cases.

### ***Enhance availability of automation to litigants and provide link to statewide forms and statutes and to Peoples Law Library and publicize toll-free forms hotline***

We understand that the Family Support Services Coordinator is attempting to obtain a public access computer, with access to the Internet, for use by members of the public seeking forms and information at times that services of the Pro Se Family Law Project are not available.

## Conclusion

The entire Worcester County legal community should be proud of what it has achieved in its services to self-represented litigants. The court has an effective program for providing legal advice, legal forms generation, and general procedural information. The bar has a tradition of public spirited donation to the good of the wider community that is reflected in the long term service of the contract attorneys (who could make much more money in their private practice than in these positions) and in the volunteer service of local attorneys in the various mediation programs of the Family Division.

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