

.....

maryland judiciary

Clearing a Path to Justice



*A Report of the Maryland Judiciary
Work Group on Self-Representation in
the Maryland Courts*

August 2007

•
•
•
•
•
•
•
•



TABLE OF CONTENTS

The Work Group on Self-Representation in the Maryland Courts 1

Aiding the Self-Represented in Navigating the Judicial System..... 4

Current Efforts and Initiatives..... 4

Recommendations 6

Enhancing the Response of Court Staff to SRLs 8

Current Efforts and Initiatives..... 8

Recommendations 8

Enhancing the Judicial Response to SRLs in the Courtroom 10

Current Efforts and Initiatives..... 10

Recommendations 10

Supporting Improvements in the Legal Services Delivery System..... 12

Current Efforts and Initiatives..... 12

Recommendations 13

A Call to Action: Creating an Access to Justice Commission..... 16

Recommendations 16

Conclusion 20

APPENDICES

Appendix 1: *What Can I Do to Help You? Distinguishing Legal Information from Legal Advice in Serving the Public: A Resource Guide for Non-Judicial Court Personnel in Maryland*..... A-1

Appendix 2: *Welcome to the Maryland Courts - Handout for Court Customers*..... A-2

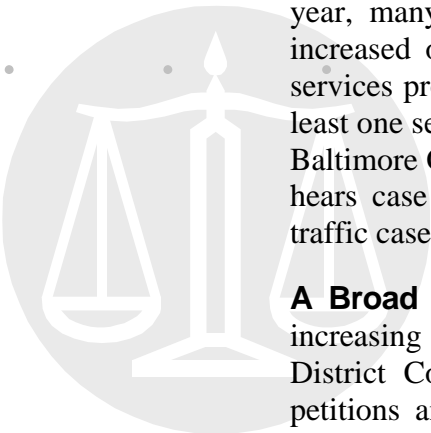
Appendix 3: *Zorza Article: Richard Zorza, "The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations and Implications, GEORGETOWN JOURNAL OF LEGAL ETHICS, VOL. 17: 423* A-3

•
•
•
•
•
•

Clearing a Path to Justice

A Report of the Maryland Judiciary Work Group on Self-Representation in the Maryland Courts

The Work Group on Self-Representation in the Maryland Courts



Thousands of individuals interact with the Maryland judicial system each year, many without counsel. The phenomenon of self-representation has increased over the last decade. Circuit Court family divisions and family services programs report that statewide, 70% of all domestic cases include at least one self-represented litigant at the time the answer is filed in the case. In Baltimore City, that figure increases to 85%.¹ The District Court of Maryland hears case types in huge numbers where litigants are rarely represented – traffic cases, small claims, landlord-tenant cases.

A Broad Range of Responses. Maryland courts have responded to the increasing volume of self-represented litigants in a variety of ways. The District Court maintains a large body of forms litigants can use to file petitions and move their cases forward in that court. The Administrative Office of the Courts' Department of Family Administration maintains Domestic Relations Forms for use in family case types. The Judiciary has developed a website which provides basic information about the court system for attorneys and litigants alike. Some Circuit Courts provide orientation courses, written materials and videos to inform the self-represented about what they can expect and how to proceed. All Circuit Courts operate Family Law Self-Help Centers where the self-represented can receive walk-in assistance from an attorney or paralegal.

The Judiciary has also supported a broad range of programs which enhance the legal services delivery system in an effort to increase access to representation and other forms of legal assistance. Judiciary-funded Protective Order Advocacy and Representation Projects (POARPs) and their ilk provide on-site assistance and representation to victims of domestic

¹ Maryland Judiciary, *Annual Report of the Circuit Court Family Divisions and Family Services Programs – Fiscal Year 2006, January 2007.*

•
•
•
•
•
•
•

violence in many Maryland courts. Family litigants can call a Legal Forms Helpline funded by the Judiciary to receive assistance in using the Domestic Relations Forms.

Many of these efforts were developed to address one aspect of self-representation or one area of the courts. The administration of these efforts are not coordinated and there are some areas where resource management is somewhat stovepiped. In a 2004 study of self-help centers nationwide, a portion of which examined five Maryland self-help centers, consultants noted that Maryland's response to the self-represented would benefit from a more integrated approach.²

Bringing the Pieces Together. To aid the Judiciary in thinking strategically about its response to the self-represented, Chief Judge Robert M. Bell appointed the Work Group on Self-Representation in the Maryland Courts in 2006. The work group, chaired by Court of Appeals Judge Clayton Greene, Jr., included judges, clerks, and court administrators from District and Circuit Courts, as well as the state court administrator.

In its initial meeting, the work group adopted for itself a mission which focused on a four-pronged approach:

The mission of the Work Group on Self-Representation in the Maryland Courts is to plan a strategic and integrated response to the needs of self-represented litigants in Maryland courts. The work group will review the impact of self-representation on Maryland courts and will make recommendations for steps the Maryland Judiciary can take to:

- 1) improve the ability of self-represented litigants to navigate the Maryland judicial system;*
- 2) improve the response of court staff to the self-represented;*
- 3) enhance the ability of judges to respond effectively to the self-represented in the courtroom; and*
- 4) support improvements in the legal services delivery system to promote access to representation and other legal services where appropriate.*

After meeting and reviewing existing responses of the Maryland courts, reviewing the state of the field, and innovations from other states, the work group has prepared some recommended resources and approaches which are

² John M. Greacen, *Report on Programs to Assist Self-Represented Litigants of the State of Maryland. Final Report.* November 14, 2004.

•
•
•
•
•
•
•

presented in this report. The four prongs of the mission provide the outline for this report and recommendations are presented in each of the four areas.

It is the hope of the Work Group on Self-Representation in the Maryland Courts that these recommendations will provide an integrated approach that will enhance the experience of all those who interact with the Maryland judicial system. When the self-represented can move seamlessly through the justice system, can understand and appreciate what is expected of them and what is going on around them, opposing parties, counsel, court staff and judges alike can perform their jobs more effectively and with better results.

**The Members of the Work Group on
Self-Representation in the Maryland Courts**

Hon. Clayton Greene, Jr., Chair

Frank Broccolina

Robert P. Duckworth

Hon. Ann S. Harrington

Rebecca Hoppa

Hon. Miriam Brown Hutchins

Peter J. Lally

Hon. John L. Norton

Joseph P. Rosenthal

Pamela Cardullo Ortiz, Staff



Aiding the Self-Represented in Navigating the Judicial System

Maryland courts offer a number of programs designed to make it easier for self-represented litigants to pursue their legal objectives. These programs and initiatives have won Maryland a national reputation for innovation in serving the self-represented. Despite this clear commitment, the assistance provided might be more effective if minor adjustments were made to ensure these efforts were coordinated and integrated across the state.

Current Efforts and Initiatives

While no single entity within the Maryland Judiciary exists to coordinate resources for the self-represented, there are a number of programs that together form a well-developed spectrum of options to aid those litigating without counsel.

Websites. Many individuals have their first experience with the Maryland court system through the Judiciary’s website, www.mdcourts.gov. A recent name change has made it easier for users to find the court’s online presence. The website is not used solely by litigants, however, and, as a multipurpose site it can be a little more challenging to navigate. Court employees, attorneys, agency partners as well as litigants use the website. Contact information, directions, information on Judiciary initiatives and a broad range of information about the Judiciary is available. The self-represented can find forms for use in the District Court and in family law cases, and basic procedural information is available, along with information and links to other legal resources. For family law litigants a parallel web presence is provided in Spanish which mirrors the English-language version.

The Maryland Judiciary has provided partial funding for the People’s Law Library, a legal content website historically operated and maintained by the Maryland Legal Assistance Network. Litigants can find legal information on a broad range of topics and links to other critical resources.

Forms. Forms for use in District Court are found on the District Court site. Forms and instructions for use in family law case types are found on the Family Administration web pages. The Domestic Relations forms are provided in an English/Spanish bilingual format and instructions are likewise provided in Spanish. Most, but not all, forms are available in fillable field PDF format. Forms cannot be saved by individual users, nor can they be filed electronically. Users can determine what forms they need in family law cases using a simple interface.

•
•
•
•
•
•
•
•

Telephone Help. Users of the Domestic Relations Forms can speak with an attorney and have questions answered about how to use the forms and file their pleadings. The Legal Forms Helpline is an 800 number available live in English and on a call back basis in Spanish. It is operated for the Judiciary under a grant to the Women’s Law Center of Maryland.

Law Libraries. A number of courts have law libraries where users with or without counsel can research the law, use online legal resources, and obtain a wide range of legal tools and other resources. Some law libraries are quite extensive and are staffed so users can obtain the assistance of a librarian. Users also may access the State Law Library in Annapolis and receive assistance from library staff in researching a question. The State Law Library also maintains a presence on the Judiciary website and provides links to Maryland law and court rules.

Public Library Self-Help Centers. The Eastern Shore Regional Library, working with the District Court of Maryland, has established as a pilot project, self-help resource centers in public libraries on Maryland’s Eastern Shore. The libraries house a collection of materials designed to help litigants represent themselves in a range of case types. Public access computers permit users to visit the Judiciary’s website for forms and link to other legal resources including the People’s Law Library. Librarians are receiving training in how to support the self-represented, and in some instances, legal services attorneys will be available in public libraries during certain hours to assist members of the public with their legal problems and guide them in representing themselves.

Family Law Self-Help Centers. All Circuit Courts in Maryland offer walk-in services where self-represented litigants can obtain forms and receive assistance in representing themselves in a family case. In smaller jurisdictions the service might be available only a few hours per week. Larger jurisdictions may have full-time or nearly full-time services. In most courts the service is provided by attorneys. Most courts offer the service by contracting with a local legal service provider or private attorneys; some courts have court-employed attorneys providing the service and a few offer the service using *pro bono* attorneys. In most instances the service is provided on-site, i.e., in the courthouse; in some instances it is provided after business hours in community-based sites. These programs serve approximately 40,000 individuals per year. A document, entitled *Best Practices for Programs to Assist Self-Represented Litigants in Family Cases*, has been adopted by the Judiciary to guide courts in managing these programs.

Recommendations

While the Maryland Judiciary provides a broad range of resources for the self-represented, these resources might be better integrated to leverage and enhance existing resources. The expectations of the public change as new technology is developed, as younger individuals fluent in technology mature and become involved with the justice system, and as the number of self-represented litigants continues to increase. As more members of the general public have access to computer and web-based resources, they have come to expect a faster response and more comprehensive resources at their disposal. The Maryland Judiciary can, with some strategic investments, meet these expectations and thereby enhance the individual's experience and augment public trust and confidence in the courts.

1. The work group recommends the Judiciary develop a web-enabled document assembly interface for court forms. Document assembly technology permits users to interact in a conversational manner with a simple computer interface. The interface asks questions of the user and then uses responses to those questions to identify and complete the forms the user would need to accomplish their goals. In a court context, the technology could be provided on the Internet. Self-represented litigants could go to the site, create an account, and answer questions about what they wanted to do, providing other basic information. The system could then be used to generate completed forms for the user to print and file. Some users might find this preferable to the current interface and text-based instructions. Document assembly applications can ultimately become an interface for e-filing when, and if, that becomes available.

Document assembly technology is resource-intensive and generally requires a dedicated server or access to a server, and specialized authorizing software that can be costly. The Judiciary should explore vendor and public sector options for developing document assembly interfaces to determine which option would provide the best solution for Maryland.

2. The work group recommends the Judiciary provide resources and services for self-represented litigants in languages other than English to ensure access to the justice system for the many non-English speakers that frequent the courts. This may include hiring bilingual staff, translating written and web-based materials into key languages, providing signage in multilingual formats and generally developing a range of multilingual resources.

3. The work group recommends the Judiciary invest in Live Chat technology and engage a provider to enhance forms support by offering questions answered live via a chat feature on forms web pages and other relevant web pages. This technology is currently used by commercial web

•
•
•
•
•
•
•
•

sites and some legal content websites like the legal content website operated in Montana, <http://www.montanalawhelp.org/MT/index.cfm>. This type of service may be operated by engaging a legal services provider to answer live emails, much like a telephone hotline is operated. It could become an online version of the Family Law Hotline or Legal Forms Helpline. The latter is operated by the Women’s Law Center of Maryland under a grant from the Administrative Office of the Courts. Such a program might be redesigned to provide not only telephone help but online help as well.

4. The work group recommends the Judiciary evaluate the Eastern Shore Regional Library Self-Help Pilot for possible replication. The project, described above, represents another way to provide access to legal assistance and information by partnering with public libraries and the local bar. This pilot may represent one way to expand access to self-help centers.

5. The work group recommends the District Court of Maryland investigate the need for and feasibility of developing District Court self-help centers. With a large volume of self-represented litigants, and because it has jurisdiction over many case types which are dominated by the self-represented, the District Court might benefit from self-help centers for its litigants.

6. The work group recommends the Judiciary consider expanding the Family Law Self-Help Centers operated by the Maryland Circuit Courts to serve a broader range of litigants and case types. This existing resource could be broadened to enhance access to justice for all courthouse users.

7. The work group recommends the Judiciary develop a video or video library of materials that can be shown to individuals appearing on their own in Maryland courts. Videotapes could be used to educate litigants about what to expect and how to comport themselves in the courtroom and in interacting with the court. Video projects should: 1) provide basic information to reinforce what individuals have read in instructions or pamphlets and to expose the information to new individuals who may have limited literacy; and 2) to manage litigants’ expectations, for example, by letting them know judges cannot intervene on their behalf during court proceedings, and by letting them know what to expect. Video projects could address both litigant comportment as well as provide basic procedural and legal information. The work group recommends development of a basic video for the entire Judiciary without dated material which might render it obsolete.

Enhancing the Response of Court Staff to SRLs

Court staff have significantly more daily interaction with members of the public and self-represented litigants, in particular, than judges. Litigants who have a positive experience dealing with clerk’s office staff, file room clerks, assignment clerks, custody evaluators and judicial secretaries are more likely to feel that the process they are engaged in is accessible and fair. Public trust and confidence in the judicial system depends upon those impressions.

Current Efforts and Initiatives

Over the last several years, the Judiciary has made a number of efforts to improve staff focus on customer service.

Staff Training and Education. The Human Resource Department’s Training Unit offers a number of courses annually on customer service and related topics. A Court Professional Certificate Program provides clerk’s office employees an opportunity to advance their knowledge of Maryland law and their understanding of the Judiciary.

Recommendations

While the Training Unit offers customer service courses for Maryland court employees, there are few resources that unit can use to educate participants about what level of assistance is permissible as legal information, and when assistance would go too far and constitute legal advice. In educating employees to avoid the unauthorized practice of law, trainers have until now relied on materials from other states. Non-judicial court staff can go further in providing assistance if the boundaries of what is acceptable are made clear and if staff are adequately trained to navigate those boundaries ethically.

1. The work group recommends the Judiciary adopt a clear policy to aid non-judicial court staff in distinguishing legal advice versus information.

The work group has prepared a recommended policy and training tool entitled *What Can I Do to Help You? Distinguishing Legal Information from Legal Advice in Serving the Public: A Resource Guide for Non-Judicial Court Personnel in Maryland*. The work group has also prepared a “one-page wonder” that can be used by court staff to educate the public about what they can and cannot do to assist them. Both documents are included in an appendix to this report.

2. The work group recommends the Human Resources Training Department use these tools to offer training on the topic for all non-

•
•
•
•
•
•
•
•

judicial court staff. The materials should be widely disseminated and provisions made to train county employees of the court not eligible for HR courses. The material could be included as a topic covered in Human Resources training for employees. In addition, the material should be incorporated into all ethics training for non-judicial court staff and the orientation program for new Judiciary employees. Moreover, the materials should be developed for display on video and on Courtnet.

Enhancing the Judicial Response to SRLs in the Courtroom

No experience colors an individual’s perception of the justice system more than his or her experience in the courtroom. Individuals intimidated about “filing court papers” often have little trepidation about appearing in court. They may believe that once they tell their story to a judge or master, they will be able to prevail. Few self-represented litigants fully appreciate how critical it is that they understand and use rules of evidence effectively to convey their story.

Judges with a range of expertise, may be ill-equipped to sift through the uneducated efforts of the self-represented appearing in their courts. Judges may become frustrated that litigants are not “playing by the rules” and behaving in court with the restraint and decorum expected in a formal decision-making forum.

Current Efforts and Initiatives

While many programs have addressed the needs of self-represented litigants in navigating the judicial system, few efforts have been directed at helping judges respond more effectively to the self-represented in the courtroom.

Judicial Education. The Judicial Institute has offered some programs on self-represented litigants in the past. These were electives, when offered.

Recommendations

Some minor modifications to the Maryland Code of Judicial Ethics would aid judges by clarifying those types of engagements with the self-represented in the courtroom setting that are permissible and suggested. Towards that end, the Work Group on Self-Representation in the Maryland Courts recommends the following measures be undertaken to further enhance the manner in which judges respond to the self-represented.

1. **Modify Maryland Rule 16-813.** The work group recommends that the Judicial Ethics Committee consider the following changes to Maryland Rule 16-813, the Maryland Code of Judicial Ethics, as proposed in Richard Zorza’s article, “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,” *GEORGETOWN JOURNAL OF LEGAL ETHICS*, VOL. 17: 423.

•
•
•
•
•
•
•
•

a. **Add the following comment to Canon 3B(6)(a) :**

When one or both parties is proceeding pro se, non-prejudicial and engaged courtroom management may be needed to protect the litigants' equal right to be heard. This may include questioning witnesses, modifying the traditional order of taking evidence, providing information about the law and evidentiary requirements and making referrals to agencies able to assist the litigant in the preparation of the case. A careful explanation of the purpose of this type of management will minimize any risk of a perception of biased behavior.

b. **Add the following comment to Canon 3(A):**

When a litigant is appearing pro se, affirmative, engaged, and non-prejudicial steps taken by a judge who finds it necessary to take such steps, as described in the Comment to Canon 3B(6)(a), to make sure that all appropriate evidence is properly before the court, are not inconsistent with the requirements of Canon 3(A).

2. **Solicit Opinion from Judicial Ethics Committee.** The work group recommends that the Judicial Ethics Committee provide an opinion on the types of affirmative, engaged and non-prejudicial steps judges can take to create an environment in the courtroom, which ensures the neutrality of the procedure by making sure that each side is able to fully present all relevant facts.
3. **Distribute Zorza Article to Maryland Judges.** The work group recommends that the Richard Zorza article be provided to all judges, to heighten judicial awareness of the impact of self-represented litigants on the judicial process and provide judges with some options for how to manage cases involving the self-represented in effective, albeit neutral ways. A copy of the article is included as an appendix to this report.



Supporting Improvements in the Legal Services Delivery System

There are many steps courts can take to improve the experience of the self-represented. Regardless of these resources, programs and aids, there will still be some cases and persons for whom there is no good substitute for representation.

Some individuals are ill-suited for self-representation. Minor parents involved in custody disputes, for example, often go unrepresented. They are disputing a primary right – the right to parent and care for one’s child – without benefit of counsel, when in other legal contexts minors are considered unfit to even waive a privilege or sign a contract. Others are ill-suited because of mental capacity or simply because their temperament or emotional state precludes them from exercising the judgment necessary to proceed effectively on one’s own.

Some cases are likewise too complex or contested for self-represented litigants. Litigants in highly contested cases involving complex discovery or evidentiary issues or litigants involved in domestic violence cases where their safety and that of their children is at risk would often do well to secure the assistance of counsel.

Grantors, legislators and even members of the public often fail to recognize access to legal services as a basic human need. Legal services initiatives are often under-funded and are vulnerable when fiscal resources are scarce. The Judiciary, on the other hand, does appreciate the need for an adequate legal services delivery system and recognizes the impact lack of representation can have on the indigent and on the administration of justice. For this reason, the Judiciary can play an important role by supporting changes that can enhance or support the legal services delivery system.

Current Efforts and Initiatives

The Maryland Judiciary has taken a number of significant steps to advance the legal services delivery system in the state.

Pro Bono Rules and Reporting. The Maryland Judiciary has made a significant effort to promote the availability of *pro bono* attorneys to aid the indigent. The Maryland Court of Appeals adopted Rule 16-901 through 16-903 which established an aspirational goal of 50 hours of *pro bono* service per year for full-time practicing lawyers. Each of the state’s 31,000 attorneys are required to report annually on their *pro bono* service. Each local jurisdiction

•
•
•
•
•
•
•
•
•
•
•
•

has established a local *pro bono* planning committee and drafted a plan to promote *pro bono* service and a Statewide Standing Committee on *Pro Bono* Legal Services coordinates and supports those efforts. A recent Judiciary grant to the *Pro Bono* Resource Center of Maryland will permit local committees to implement pilot programs and initiatives described in their local plans.

Funding. Through its Special Project Grants, the Administrative Office of the Courts, Department of Family Administration, has provided funding for a range of programs that enhance access to the family justice system in the state. Programs supported include:

- ***Protective Order Advocacy Representation Projects and related Domestic Violence Legal Services Programs*** – These provide safety planning, assistance in filing a petition for protection and representation in a final hearing to victims of domestic violence. Programs operate on-site in a variety of District and Circuit Courts around the state.
- ***Contested Custody Representation Project*** – Through a grant to the Legal Aid Bureau, representation is available in a number of jurisdictions to litigants in high conflict child custody matters that meet certain eligibility criteria. The Maryland Legal Services Program collaborates in funding the reduced fee component of the program through grants to additional providers.
- ***Latino Legal Access Project*** – Immigrants have many legal needs but may be reluctant to visit the courthouse to address those needs. Some may have concerns that their immigration status will be called into question; some may be intimidated by the presence of armed sheriff’s deputies; some may have had negative experiences with the judicial system in their native country; still others, not educated in the American system of justice, may misunderstand how courts work or how they can resolve their problem. Through a grant to the Law Foundation of Prince George’s County, the Judiciary supports a program which provides legal services for a range of case types in Spanish in locations in the community.

Recommendations

Despite these efforts, significant gaps remain and many litigants remain, against their wishes, without counsel when their case is really inappropriate

•
•
•
•
•
•
•
•
•
•

for self-representation. To further enhance access to representation for those litigants, the work group makes the following recommendations.

1. **Support efforts to revive a *Judicare*-style legal services model in the state.** In reviewing ongoing efforts in the state, the work group discussed a proposal that at the time was pending before the Maryland Judiciary and the Maryland State Bar Association (MSBA). A study conducted for the MSBA, Delivery of Legal Services Section, by Professor Michael Millemann of the University of Maryland, School of Law, identifies additional gaps in access to counsel in the state, and recommends that the state consider creating a system, modeled in part on the *Judicare* program which operated in Maryland during the late 1970s and 1980s.

Judicare was a voucher-driven legal services delivery mechanism, which operated until the federal funding supporting the program was terminated. Income eligible individuals were provided a voucher by their local department of social services. They could then take the voucher to any private attorney willing to participate in the program. Private attorneys completed their work on the civil matter for the client and then submitted a bill to the Maryland Legal Services Program of the Department of Human Resources. Attorneys were paid a small hourly fee with a cap on total fees.

While the study suggests changes in how such a program might be administered today, a revived *Judicare*-style program could greatly enhance access to representation in a broad range of case types. The work group recommends that the Judiciary support the initiative, that it collaborate with others to fund pilots in several locations around the state, and that efforts be made to secure long-term funding for a statewide project.

2. **Appoint a Bench-Bar committee to explore ways to support discrete task representation.** “Discrete task” or “limited scope” representation can permit attorneys to provide limited assistance perhaps where litigants of limited means most need it. By finding avenues that permit litigants to secure the help of an attorney in limited ways, the self-represented may be better able to respond effectively in their case, they will be better prepared, and courts will be more likely to have the information necessary to make an appropriate decision.

Several states have found ways to promote discrete task representation. Maine, in particular, has developed a retainer agreement that permits litigants to select which portion of a divorce case with which they

•
•
•
•
•
•
•

would like help. Data on *pro se* appearances collected by the Department of Family Administration suggests that litigants often begin the case on their own, retain counsel for a portion of the case, but conclude the case again without benefit of counsel. Discrete task retainer agreements and supporting rules could help the self-represented identify and select attorneys to help them when and where needed.

There are several types of activities that might be included in a discrete task policy or rule:

- “Ghostwriting” - drafting documents for the self-represented to file on their own.
- Limited appearance - permitting attorneys to enter their appearance for a single proceeding or on a single issue.
- Coaching - providing advice to litigants before or after mediation, and in preparation for trial or another court appearance.
- Advising - providing general advice without entering an appearance.

Professor Michael Millemann of the University of Maryland School of Law served as the reporter for the ABA Section of Litigation’s project and publication entitled, *Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force*. Professor Millemann might be an important resource for a group working on this topic.

The work group recognizes that as a small entity with members drawn only from the Judiciary, it was not the proper entity to make recommendations on this topic. In order to properly examine and perhaps promote discrete task representation, the Judiciary should convene a larger stakeholder group that includes members of the Bar.

A Call to Action: Creating an Access to Justice Commission

As a small, internal committee of the Judiciary, the Work Group on Self-Representation in the Maryland Courts was limited in its ability to recommend change that might affect the broad range of stakeholders that, together with the courts, are a part of the justice system. A broader multidisciplinary group should be convened to aid the Judiciary in implementing the recommendations made in this report, and to institutionalize those changes over time.

Other states have established entities that focus on access to justice. The New York Judiciary has appointed a Deputy Chief Administrative Judge for Justice Initiatives, the Honorable Juanita Bing-Newton. She and her staff promote innovations to enhance access to the New York courts, including resources for the self-represented, legal services for the poor, *pro bono* representation and public information about the courts. The California Administrative Office of the Courts has established an Access to Justice Commission as well as designated an access to justice director and staff to support self-represented litigants through its Center for Families, Children and the Courts. West Virginia, Minnesota and Virginia have appointed committees or task forces to develop strategic plans to address access to justice issues or the needs of the self-represented.

Recommendations

The work group makes the following recommendation:

- 1. The Judiciary should establish an Access to Justice Commission to implement the recommendations in this report and to coordinate the Judiciary’s efforts to improve access to justice for the self-represented and those of limited means.**

Activities and Responsibilities. A Maryland Access to Justice Commission could become the focal point for coordinating a range of initiatives and activities. These include:

- forms management
- forms distribution technologies including document assembly
- e-filing
- self-help centers
- multilingual access and resources

•
•
•
•
•
•
•

-
- ADA and physical access issues for Maryland courthouses
 - development of written materials for the self-represented and other litigants
 - development of video materials for the self-represented and other litigants
 - web-based materials for self-represented litigants
 - collaboration with the State Law Library on People’s Law Library
 - collaboration with Judicial Institute on judicial education with regards to self-represented litigants
 - policy and rule development affecting access to justice issues including self-representation
 - education on legal advice vs. information
 - collaboration with legal services delivery partners on Judicare, discrete task representation and other innovations
 - *pro bono* reporting and implementation of *pro bono* plans
 - data collection on self-represented litigation and other access to justice issues
 - administration of funds to support innovative access to justice pilots

Composition. The Maryland Access to Justice Commission will be most effective if its members include a broad range of stakeholders from the Judiciary, the Bar, the legal services community, as well as the public. The work group recommends the following participants, recognizing that some may choose to appoint a designee in their stead:

Judiciary Participants

- Chief Judge of the Court of Appeals
- Chief Judge of the Court of Special Appeals
- Chief Judge of the District Court of Maryland
- Chair, Conference of Circuit Judges
- Chief Clerk, District Court of Maryland

•
•
•
•
•
•
•

-
- Chair, Conference of Circuit Court Clerks
 - Chair, Conference of Court Administrators
 - Chair, Conference of Standing Masters
 - Chair, Judicial Institute
 - Additional District Court judges and administrative clerks as appropriate
 - Additional Circuit Court judges, masters, clerks, or court administrators as appropriate
 - A family support services coordinator, small jurisdiction
 - A family division director, large jurisdiction
 - An examiner
 - Executive Director, Judicial Information Systems, AOC
 - Executive Director, Program Services, AOC
 - Executive Director, Family Administration, AOC
 - Executive Director, MACRO
 - Executive Director, Problem Solving Court Committee
 - State Law Librarian and other law librarian
 - A self-help provider

Non-Judiciary Participants

- A State's Attorney
- The Public Defender
- A representative of the Maryland State Bar Association
- Executive Director, Legal Aid Bureau of Maryland
- Executive Director, Maryland Volunteer Lawyer Service
- Executive Director, Maryland Legal Services Corporation
- Executive Director, *Pro Bono* Resource Center of Maryland

•
•
•
•
•
•
•
•

-
- Executive Director, Women’s Law Center of Maryland
 - Executive Director, Public Justice Center
 - Executive Director, Alternative Directions
 - A representative from the Governor’s Office
 - A Maryland Senator
 - A Maryland Delegate from the House of Representatives
 - A U.S. Senator or Congressional Representative
 - Director, Governor’s Office on Crime Control & Prevention
 - Representative from the University of Maryland, School of Law
 - Representative from the University of Baltimore, School of Law
 - A representative from a paralegal program
 - A self-represented litigant
 - A member of the public

Staffing. It will be critical to adequately staff the commission to ensure that such a large, multidisciplinary group is coordinated and its work is effective. At a minimum, the following positions should be provided initially:

- An executive director
- A deputy director
- Support staff

As the work of the commission develops, the Judiciary should be prepared to add additional staff including:

- Writer/resource developer(s)
- Technology specialist(s)
- Trainer(s)
- Grant managers(s)



Conclusion

Though limited in membership, the Work Group on Self-Representation in the Maryland Courts has outlined a comprehensive vision for how Maryland courts might effectively manage cases involving self-represented litigants. A thoughtful, strategic approach to managing self-represented litigation can also become a vehicle for enhancing public trust and confidence in the courts. The tools and recommendations provided in this report, if implemented, will aid judges, masters, clerk’s office personnel, and court professionals in responding to not only the self-represented but court customers in general. Effective partnerships between the Judiciary, the Bar and the legal services community will enhance access to justice for all Marylanders and perhaps even reduce the numbers of individuals compelled to navigate the justice system without the benefit of counsel.

Maryland has earned a national reputation as a leader for its commitment to access to justice. It is one of only a few states that has adopted a statewide approach to providing self-help centers. The Maryland Judiciary’s willingness to partner and collaborate with the Bar and the legal services community is notable. Imagine how effective that commitment and those partnerships might be when organized under the umbrella of a Maryland Access to Justice Commission. That entity will provide the vehicle through which the Judiciary and its justice system partners can collaborate to create a more thorough, and effective implementation strategy for undertaking key justice initiatives. Maryland is poised to continue and strengthen its role as a national leader in enhancing access to justice.

•
•
•
•
•
•
•
•



APPENDIX 1

***WHAT CAN I DO TO HELP YOU? DISTINGUISHING LEGAL INFORMATION
FROM LEGAL ADVICE IN SERVING THE PUBLIC: A RESOURCE GUIDE
FOR NON-JUDICIAL COURT PERSONNEL IN MARYLAND***



WHAT CAN I DO TO HELP YOU?

DISTINGUISHING LEGAL INFORMATION FROM LEGAL ADVICE IN SERVING
THE PUBLIC *∞* A RESOURCE GUIDE FOR NON-JUDICIAL COURT
PERSONNEL IN MARYLAND

MARYLAND JUDICIARY
2007

WHAT CAN I DO?

As a court employee, you stand at the front door of the justice system. To many individuals – those seeking information, those whose cases will settle or are uncontested – you may be the primary or even the only person they interact with in their dealings with the court.

You are the face of justice in our state. And in their eyes, you may control the key to whether or not they feel they have been fairly treated, whether or not they have access to our state's justice system.

The way you treat them and respond to their questions is critical to ensuring that members of the public honor the law and our system of justice, because if the public feels they have been treated fairly, they are more likely to have trust and confidence in that system.

In many ways you must treat individuals as if you were the court itself. The court must handle cases in a neutral, impartial manner. So too, you must deal with all individuals in a neutral, impartial manner. But being neutral does not mean being cold or unresponsive. You can help educate members of the public as to what you can and cannot do, while treating them with respect and providing them with as much assistance as you can within ethical bounds.

That is how this document can help. The more you know about what help you can and cannot provide, the more comfortable you will feel with the boundaries of proper assistance, and the more complete information you can provide the public without crossing the line. The more you know, the better you can help. And the more you help, the better court customers will feel about their experience in the Maryland courts.

This handbook is designed as a quick and easy reference for the court staff who work directly with members of the public, either over the telephone, at the counter, or in the courtroom. Keep it handy so if you have any questions about how to respond to a court user, you will be able to pull it out and reference it.

Of course, if you are not sure how to respond ethically, feel free to suggest the person consult with an attorney, or speak with your supervisor to clarify how best to respond.





Thank you for all you do to help court customers!

I CAN HELP BY . . . DIRECTING LITIGANTS TO THE SELF-HELP CENTER,
AN ON-SITE DOMESTIC VIOLENCE LEGAL SERVICES PROGRAM, OR THE
COURT'S LAW LIBRARY

Perhaps the most important thing you can do to aid members of the public seeking assistance with a court or legal matter is direct them to a program or service where they can get the help they need. Many Maryland courts have important resources available to aid members of the public, some of whom may not yet have obtained counsel or who may not be able to afford counsel.




Direct Litigants to the Self-Help Center

Many Maryland courts have on-site self-help centers. These centers are staffed by attorneys and paralegals knowledgeable about Maryland law. Self-help center staff can advise litigants whether their case is appropriate for self-representation. They provide forms and aid litigants in completing those forms. They can provide more detailed information about the court process and what litigants can expect. Self-help center staff can also help the self-represented prepare for a hearing and understand or respond to court documents they have received. *Know whether your court has a self-help center and find out:*

-  *Where is the program located in the courthouse?*
-  *What are the program's hours?*
-  *In what types of cases can they provide help?*
-  *Does the program serve all individuals or only those who are income-eligible?*

Direct Litigants to an On-site Domestic Violence Legal Services Program

Many Maryland courts also have domestic violence legal services programs available in the courthouse. The programs provide safety planning for victims, assistance in filing for a petition for protection, and in many cases representation in the protective order hearing. If an individual states that he or she wants to file for protection, or if that person indicates that he or she may have a concern about their safety or may be a victim of domestic violence, refer that person to the program. You do not need to decide whether the person is a perpetrator of abuse or a victim. Refer individuals regardless of their gender or other status, if you think domestic violence is an issue. *Know whether your court has an on-site domestic violence legal services program and find out:*


-  *Where is the program located in the courthouse?*
-  *What are the program's hours?*
-  *Does the program help with peace order cases as well as protective order cases?*


Direct Litigants to a Courthouse Law Library

Many courthouses have their own law library which is open to the public. Law libraries can provide copies of the *Maryland Code*, the *Maryland Rules*, forms books, case law, computers, access to legal search engines and other important resources. Law librarians are

knowledgeable about how to find out additional information and can be a valuable resource for the self-represented. *Know whether your court has an on-site law library and find out:*

 *Who is the law librarian and what hours are they available?*

 *What hours is the law library open?*

 *What resources does the law library provide?*

I CAN HELP BY . . . REFERING LITIGANTS TO LEGAL RESOURCES IN THE COMMUNITY OR ON THE INTERNET

Sometimes there are other legal resources litigants can access in the community or on the Internet. As an employee of the Judiciary you should be aware of resources you can direct individuals to in your community.

Direct Litigants to Legal Resources in the Community

There are over 30 legal services organizations in Maryland. While many of those are concentrated in the metropolitan areas, there are quite a few that operate statewide, and some which may be headquartered in one part of the state but serve other parts as well. There are also many local bar associations in Maryland, many of which operate lawyer referral services. Know what the various types of legal services organizations do:



Lawyer Referral Services will provide litigants with the name of a local attorney who handles a specific type of case. Some lawyer referral services have a program through which the person can pay a very small fee for an initial consultation. The individual can then decide if they want to hire that lawyer. *Know how your jurisdiction's lawyer referral service works and have the number handy to provide litigants or consider posting it in a public area.*

Pro Bono Organizations will assign eligible persons an attorney who will handle their case for free, or in some cases, for a reduced fee.

Legal Services Organizations will often have staff attorneys available who can handle cases for eligible clients for free or, in some cases, for a reduced fee.

Hotlines or Help Lines are telephone-based services. Litigants can call to speak with an attorney and get some brief assistance over the phone. The attorney they speak with will not represent them but can provide some simple advice.

Know what resources are available to litigants in your community and find out:

-  *In what types of cases can the programs help?*
-  *Do the programs help everyone or only those who are income-eligible?*

Even if you know a local program screens litigants for income eligibility, let the litigant know but suggest they call the program themselves to determine if they are eligible. Do not make assumptions about the income level or other circumstance of the person with whom you are dealing, as they may have circumstances of which you are unaware that make them eligible for the service.

Direct Litigants to Legal Resources Online

We are fortunate to have some excellent online resources where Marylanders can obtain forms and legal information, and learn about legal services resources in the state.

Before referring litigants to online resources, ask whether they have access to the Internet from home. If they do not, consider directing them to the public library, or a public-access computer in the courthouse.

Know whether your court provides public-access computers where litigants can view online information or complete and download court forms.

Provide litigants the following web addresses, when appropriate:

www.mdcourts.gov for basic information about the Maryland courts, court-related services, and court forms and instructions.

www.peoples-law.com for more in-depth information on Maryland law and important links to legal services organizations in the state. This site also has a directory of Maryland mediators and self-tests that litigants can take to see if their case is appropriate for self-representation.

I CAN HELP BY . . . EXPLAINING HOW THE COURT WORKS AND BY GIVING
GENERAL INFORMATION ON COURT RULES, PRACTICES AND
PROCEDURES

As an employee of the Judiciary you have an obligation to explain court processes and procedures to litigants and other interested members of the public.

Describe Processes, Define Terms, Detail Options

As an experienced court employee you have information about the judicial system that many individuals do not have. You may share basic procedural information with the public, so long as you are not aiding them in strategizing about their case. You can describe several options open to a litigant, as long as you do not advise them which option would be best.

You can provide information about filing a complaint, about how to file an answer, inform litigants of filing fees and deadlines, define court terms, and direct litigants to court rules, statutes, and regulations that may apply in their case.

Try to provide litigants with enough information so they know the next procedural step they will need to take to advance the case or what they can expect next from the court.

Provide Information on Next Steps

When describing court processes, provide sufficient information so that, at a minimum, the litigant knows what procedural steps he or she may need to take next to keep his or her case moving forward. Also inform the litigant of what next steps the court may be taking in his or her case, e.g., mailing the litigant the petition and summons for service or scheduling a hearing.

Provide complete and appropriate information to both sides in a court case. If you would not feel comfortable providing the information to one party, do not provide it to either.

I CAN	I CANNOT
Describe court processes.	Give information if I am unsure of the answer.
Inform litigants of several options without advising them which is best.	Advise litigants whether to take a particular course of action. (Cannot say what a litigant "should" do).
Direct litigants to applicable court rules and statutes.	Take sides in a case or proceeding pending before the court.
Define key terms and concepts, or describe the role of Judiciary employees who may be involved in the case.	Provide information to one party that I would be unwilling or unable to provide the other.
Provide copies of documents that are matters of public record.	Disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the matter.

I CAN HELP BY . . . INFORMING INDIVIDUALS HOW TO BRING THEIR
PROBLEMS BEFORE THE COURT FOR RESOLUTION

You can and should answer questions about the initial steps litigants must take to get their case before the court. You must do this in a way that is neutral and without telling them what they “should” do. Neutral information tells someone *how* to do something, or whether they *can* do something. If the question begins with “how” or “can,” it is probably okay to answer. If the question begins with “should,” it is probably not an appropriate question to answer. You may discuss several possible options with a litigant, but do not help the litigant strategize which option is best.

Provide Information on How to Get Started

For example, if a litigant appears indicating that he or she wants a divorce, you can indicate that to start a new case before the court, the individual must first file a petition or complaint. You can define those terms and suggest that the person may want to consider obtaining an attorney, or if the individual will be representing himself or herself you may direct that individual to the self-help center, a legal services provider, or to online or hard copy forms. You should tell the person the basic process that is followed in filing a petition so he or she understands the next step to take and inform the person about any filing fees.

I CAN	I CANNOT
Tell a litigant how to bring their problem before the court.	Tell a litigant whether they should bring their problem before the court.
Point a litigant to a relevant law or statute.	Tell a litigant what remedy to seek.
Give out forms and instructions.	Convey information to a judge or master on behalf of a litigant or allow them to speak with the judge or master directly.
Answer clarifying questions to litigants completing forms.	Tell litigants what to put on their forms.

You may ask clarifying questions or look up a person’s case in the court’s information system or in a case file, so that you can answer questions correctly. You may not advise a person, for example, upon what grounds to file the petition. You can, however, point the person to relevant law, or direct the person to instructions that may detail what the possible grounds are.

Provide Information on Fee Waivers

Inform litigants that they may apply for a waiver of court fees if they believe they cannot pay them. Explain the process for applying and receiving a waiver and provide necessary forms upon request.

Offer Information to Victims About How to Protect their Address and Other Information from the Public

Inform litigants that if they are at risk for domestic violence they may ask to have their address shielded from the public. Provide information on the state’s address confidentiality program and other means to protect sensitive information.

I CAN HELP BY . . . PROVIDING INFORMATION IN CASE FILES, DOCKET ENTRIES AND COURT REPORTS THAT IS PUBLIC

Most court files are public records. This means that you can and should provide copies of court files or documents that are public upon request.

Provide Access to Court Files and Docket Information

Court files can be difficult for members of the public to understand. You can show litigants how to find what they want in the court file. You can also answer questions or define terms the litigants do not understand that are referred to in the court file. You should not interpret the legal import of those documents. If someone needs advice on what he or she should do as a result of what is in the court file, direct the individual to consult with an attorney or refer the person to a self-help center or other legal resource.

You can show litigants a printed docket sheet or online docket information and explain what abbreviations, acronyms or key terms mean. You can explain how litigants can review the docket sheet or online docket information.






Know What is Public and What Is Not

Be aware of which case types are *not public*. For example, adoption, termination of parental rights, child welfare (Child In Need of Assistance) and most juvenile delinquency cases are *not public*. This means that only certain individuals may be permitted to access those cases. Sometimes a judge will seal an individual case that would otherwise be a public record.

There are some types of documents which are generally required to be sealed. For example, certain types of evaluations including psychological evaluations are generally sealed. Financial records may also be sealed. Sometimes documents are placed in a court file that should have been sealed, or that the court has sealed but have been left open to plain view. Check with a supervisor, or with a judge or master, if you believe a document has been improperly left open in the court file.

Know and follow your court's policy for handling sealed documents and cases.

Be sure you are knowledgeable about the following before disclosing court records:





-  Which case types are generally closed to the public?
-  Has this particular case been sealed?
-  Who is permitted to review closed case types?
-  Who is the person requesting to review the case file?
-  Are there any documents in the case file that are sealed, or which are supposed to be sealed?

I CAN HELP BY. . . ASSISTING INDIVIDUALS TO COMPLETE FORMS AND UNDERSTAND INSTRUCTIONS

The Judiciary offers many forms that can be used by self-represented litigants in filing and responding to court cases. Many of these forms are available online.

Provide Forms and Instructions

You can aid litigants by:

-  Providing hard copies of forms and instructions.
-  Giving litigants web addresses where they can access online forms and instructions.
-  Directing litigants to a self-help center, forms helpline or other legal service where they can receive help with the forms.
-  Directing litigants to a public access computer where they can access forms and by answering questions on how to the use computer.

You may let litigants know that many court forms are available online free-of-charge. Many commercial sites sell Maryland forms, but most forms accepted by our courts are available on www.mdcourts.gov for free.

Answer Simple Questions About Forms

You can also aid individuals by answering basic information about forms and instructions. You can define terms, or explain what type of information is required. Be sure to do so in a neutral way, without advising the litigant what might be strategically best. Tell them what type of information is necessary without telling them exactly what words to write on the form or specifically how it should be worded.

Help Litigants Use Computers, Websites and Casesearch

You can always answer technical questions about how users can navigate a website or make use of a public access computer.

If litigants are unsure of their case number or the status of their case you can look up case files or case management information and answer those types of questions, provided the information is a matter of public record. You can also direct users to the [casesearch](#) application and answer questions on how to use it.

I CAN HELP BY . . . ANSWERING QUESTIONS CONCERNING SCHEDULES AND ANSWERING MOST QUESTIONS ABOUT DEADLINES OR DUE DATES

Many court events are driven by due dates and deadlines. Some time frames are dictated by statute or court rule, others by individual court orders. While these are public documents they may not be well known by members of the public other than court employees and attorneys.

Provide Accurate Information about Court Schedules

You can always provide information on the docket and court schedules and tell court users how to get something scheduled. Court users may need information, for example, on how to set an uncontested hearing before an examiner or master, or may need information on what they must do next so that a proceeding can be scheduled.

Provide Information about Deadlines, Due Dates

Providing help with court deadlines is a little more complicated. You may answer questions from litigants about when a particular document is due, if that is clear from court documents. You may also answer basic questions about when certain events must take place, or what deadlines are for various types of filings and/or proceedings. You may refer to any public document in providing that information. Be sure the information you are providing is correct, as incorrect information about deadlines and due dates can compromise the litigant's rights and standing before the court.

Statutes and court rules also determine how dates are calculated. You may assist individuals by explaining how court deadlines are calculated and help them in correctly applying those rules, if you know how to do that accurately. If you are unsure of how the deadline is calculated or when something is due, refer the litigant to a supervisor, self-help program, or other legal resource.

Do not attempt to explain the laws and rules governing statutes of limitations to court users. These rules are very complicated and it would be very easy to give incorrect or misleading information.

You can provide information in advance so that the court user can file the document in a timely manner.

I CAN HELP BY . . . OFFERING ADDITIONAL ASSISTANCE TO THOSE WITH SPECIAL NEEDS

Many individuals may need special assistance to effectively access the court and its resources. If you become aware that an individual may have a special need, you must offer them appropriate additional assistance.

Inform Litigants How and When to Request an Interpreter

If you become aware that a person who will be using the court has limited proficiency in using English, or has a hearing impairment, advise that person that he or she may be entitled to an interpreter for court proceedings. If necessary, solicit the assistance of a bilingual employee, if available, or a telephonic interpretation service to communicate directly with the person. Your office may have material in alternate languages that can be used to help identify the language the person speaks.

Provide information to the litigant on how he or she can request and obtain an interpreter. Provide the form users can use to request an interpreter for a court hearing. Be knowledgeable about other resources available for non-English speakers and make appropriate referrals.

Read Materials to Individuals with Limited Literacy Skills, Upon Request Without Interpreting the Document

Individuals with limited literacy skills may also need help reviewing court documents or completing forms. If requested to do so, you may read material to a litigant provided you do so in a manner that does not compromise your neutrality. Read it without providing an interpretation of the document. You may, of course, answer basic questions about deadlines or terms, as aforementioned, to aid the litigant in understanding the document. If the individual requires more detailed information or needs advice on how this affects his or her own situation, refer the person to a self-help center or other legal resource.

Read Materials to Visually Impaired Litigants Upon Request

Finally, some litigants may have a visual impairment that makes it difficult or impossible for them to read court documents or forms. You may read court documents to such persons upon request, again, being careful not to interpret the document.

You may also aid litigants with visual impairments by showing them how to display online information in large type, if that will be of help to them.

Educate yourself about how to display information on public access computers in large type.

•
•
•
•
•
•
•
•



APPENDIX 2

***WELCOME TO THE MARYLAND COURTS –
A HANDOUT FOR COURT CUSTOMERS***



• • • • • • •



WELCOME TO THE MARYLAND COURTS

This is a list of some of the things court staff can and cannot do for you.

We can	direct you to a self-help center where you can receive assistance in representing yourself.	We cannot	tell you whether or not you should bring your case to court.
We can	provide you with the number of a local lawyer referral service, legal services program or other service where you can get legal help.	We cannot	tell you what words to use in your papers. We can, however, check your papers for completeness before you file them.
We can	give you information about law libraries and online resources.	We cannot	tell you what to say in court.
We can	explain and answer questions about how the court works.	We cannot	give you an opinion about what will happen if you bring your case to court.
We can	give you general information about court rules, procedures and practices.	We cannot	talk to the judge for you.
We can	provide you with available court forms and instructions.	We cannot	let you talk to the judge outside of court.
We can	provide court schedules and information on how to get a case scheduled.	We cannot	change an order signed by a judge.
We can	provide you information from your case file.	We cannot	give you information about a judge's decision until the judge makes that decision public.
We can	answer some basic questions about court deadlines and how they are determined.	We cannot	give you information that we would be unable or unwilling to provide the other side in your case.
We can	provide additional assistance in some circumstances to aid you if you have special needs.	We cannot	interpret court documents or tell you what you "should" do.

Since court staff may not know the answers to all questions about court rules, procedures and practices, and because we do not want to give you incorrect information, we will not answer questions if we do not know the correct answer. For additional information, please contact a lawyer or your local law library, self-help center or other legal services program.

Check the Maryland Judiciary website at www.mdcourts.gov for additional information on the courts, and for forms and instructions.

See the People's Law Library at www.peoples-law.com for more information on a range of Maryland law topics, and for information on obtaining a lawyer or mediator.

•
•
•
•
•
•
•
•



APPENDIX 3

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,"

Georgetown Journal of Legal Ethics, Vol. 17:423

• • • • • • • •

