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Self-Represented Litigants in Family Law: the Response of California's Courts

Bonnie Hough[†]

Approximately 200,000 divorce petitions are filed annually in California. Seventy percent of those cases involve at least one self-represented litigant at the beginning of the case.¹ That figure increases to 80 percent by the time of

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Her unit coordinates the California Courts Self-Help Website (www.courtinfo.ca.gov/selfhelp) which provides over 1,200 pages of legal and procedural information and referrals, and has been translated into Spanish (www.sucorte.ca.gov); oversees grant funds for court based self-help centers and legal services programs; and works to develop educational materials for judges and court staff to assist them in handling cases with self-represented litigants. She also assists the Family and Juvenile Law Advisory Committee of the Judicial Council in drafting family law rules and forms.

Prior to joining the AOC, she was in private practice in family law. She was also a co-founder of the Family Law Center, a nonprofit legal services organization in Marin County, and served as its executive director for six years. Ms. Hough received a J.D. from Hastings College of the Law, and an M.P.A. from San Francisco State University. She is a fellow with the Harvard Law School's Bellow-Sacks project. She is the recipient of the Faye Stender Award from California Women Lawyers, Opening Doors to Justice Award from the Public Interest Clearinghouse, Dale Sipes Spirit of Justice Award and the Public Service Award from Central California Legal Services.

1. JUDICIAL COUNCIL OF CALIFORNIA, STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS 2 (2004) (hereinafter JUDICIAL COUNCIL, STATEWIDE ACTION PLAN), available at http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/Full_Report_comment_chart.pdf.

judgment.²

This is not simply a California issue. Utah, for example, reports that 49 percent of petitioners and 81 percent of respondents in divorce cases are self-represented.³ In New Hampshire's superior court domestic relations matters, almost seventy percent of cases have one self-represented party.⁴ Indeed, national data indicates that 60 to 90 percent of family law cases nationally involve at least one self-represented litigant, while 5 percent or fewer of cases in general civil dockets include a self-represented litigant.⁵

These self-represented litigants are embarking upon civil litigation of matters that are often legally and factually complex, such as child custody, child and spousal support, and property division, including partition of homes, businesses, pension plans, and stock options. The litigants are often under tremendous emotional and financial stress.

Why, then, do the litigants represent themselves? All too often the answer is that they have no choice. To obtain a divorce in California (or in any other state), one must file a court action. As the United States Supreme Court noted in *Boddie v. Connecticut*, "resort to the state courts is the only avenue [private citizens have] to dissolution of their marriages Resort to the judicial process by these plaintiffs is no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court. For both groups, this process is not only the paramount dispute-settlement technique, but, in fact, the only available one."⁶

Moreover, there is currently no right to appointed counsel in family law matters. Given tremendous funding limitations, legal services agencies in California are able to serve few persons with family law issues. Generally, only victims of domestic violence can be provided representation, and far too few of those victims can be served.

The cost of private counsel is prohibitively high for many litigants. The average family law attorney in California charges over \$300 per hour and requires a retainer of approximately \$5000.⁷ However, the average Californian

2. *Id.*

3. COMMITTEE ON RESOURCES FOR SELF-REPRESENTED PARTIES – STRATEGIC PLANNING INITIATIVE, REPORT TO THE UTAH JUDICIAL COUNCIL 5 (2006), *available at* <http://www.utcourts.gov/resources/reports/Self%20Represented%20Litigants%20Strategic%20Plan%202006.pdf>.

4. STATE OF NEW HAMPSHIRE JUDICIAL BRANCH, CHALLENGE TO JUSTICE: A REPORT ON SELF-REPRESENTED LITIGANTS IN NEW HAMPSHIRE COURTS, FINDINGS AND RECOMMENDATIONS OF THE NEW HAMPSHIRE SUPREME COURT TASK FORCE ON SELF-REPRESENTATION 2 (2004), *available at* <http://www.courts.state.nh.us/supreme/prosereport.pdf>.

5. JOHN GREACEN, SELF REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS—WHAT WE KNOW (2005), *available at* <http://www.courtinfo.ca.gov/programs/cfcc/pdf/SRLwhatweknow.pdf>.

6. *Boddie v. Connecticut*, 401 U.S. 371, 376–77 (1971).

7. ELKINS FAMILY LAW TASK FORCE, DRAFT RECOMMENDATIONS, INVITATION TO COMMENT (2009), *available at* <http://www.courtinfo.ca.gov/jc/tflists/documents/draft-finalrec.pdf>.

earns \$47,363, or \$22.77 per hour, before taxes.⁸ As an increasing number of families find themselves with negative equity in their homes, diminished pension benefits, and no paycheck, retaining counsel has become an unrealistic option for many Californians.

California's courts have responded to the new reality of family law litigation with a variety of strategies designed to ensure access to the courts. While every person facing the challenge of a divorce proceeding would ideally be provided with an attorney to assist them, the courts are developing solutions that attempt to provide as much assistance to court users as possible, in as cost-effective manner as possible.

As the Judicial Council of California's Task Force on Self-Represented Litigants notes, there is "a unity of interest between the courts and the public with respect to assistance for self-represented litigants. Lack of legal assistance is clearly an enormous barrier for the public. It also creates a structural gap for courts which are designed to work with litigants who are represented by attorneys."⁹ In response to this critical situation, the Task Force has developed a comprehensive statewide plan which recommends a full menu of approaches to meeting the needs of the public and the courts.

I

INFORMATION ON THE LAW AND PROCESS

One of self-represented litigants' most critical needs is information about the law and how the court process works. The Judicial Council has developed a wide variety of materials to explain family law proceedings and has made them available to the public on the California courts' self-help website.¹⁰ These materials include handbooks on summary dissolution, a guide to the process for regular dissolutions, informational sheets on custody, child support, property, and adoption, and extensive resources on domestic violence, including video and audio recordings. The website, which is available Spanish,¹¹ also provides links to a wide variety of resources, including self-help centers, legal aid agencies, lawyer referral programs, and governmental and community agencies.

Over four million visitors use the self-help website each year. While online information will not reach everyone, most Californians (76 percent) use a computer at home, work, or school, and 65 percent say they use the Internet.¹²

8. U.S. CENSUS BUREAU, STATE MEDIAN FAMILY INCOME BY NUMBERS OF EARNERS IN FAMILY (2007), <http://www.census.gov/hhes/www/income/statemedfaminc.html> (last visited Feb. 2, 2010).

9. JUDICIAL COUNCIL, STATEWIDE ACTION PLAN, *supra* note 1, at 1.

10. *See* Self-Help Center: California Courts, <http://www.courtinfo.ca.gov/selfhelp> (last visited Feb. 2, 2010).

11. *See* Centro de Ayuda de las Cortes de California, <http://www.sucorte.ca.gov> (last visited Feb. 2, 2010).

12. ADMINISTRATIVE OFFICE OF THE COURTS, FACT SHEET: ONLINE SELF-HELP CENTER, QUESTIONS AND ANSWERS 1-2 (2003), *available at* <http://www.courtinfo.ca.gov/reference/>

Online information allows for access twenty-four hours a day, which is often critical for people who are in the midst of a family crisis and need information during times when courts and legal assistance programs are closed.

Recognizing that many individuals find it easier to obtain information via video than by reading, the Administrative Office of the Courts (AOC) distributes a number of videos developed by the AOC and local courts that help explain family law concepts. The award-winning *Focus on the Child*, for example, orients self-represented parents to court procedures, mediation, child custody evaluation, effective presentation of child-related information to the courts, parenting plans, and supervised visitation. The AOC also has developed videos on requesting a domestic violence restraining order and responding to a request for a domestic violence restraining order. These videos are available in English, Spanish, Vietnamese, Chinese, and Korean. Additional videos describe how to prepare court forms for an uncontested divorce and how to prepare for a family law hearing. These are available in English and Spanish.

II FORMS

A key challenge to presenting a case in court is the preparation of pleadings that establish jurisdiction, set out the elements of the case, and provide sufficient facts. In California family law practice, the majority of pleadings are based upon forms. These mandatory forms were initially developed in 1971 upon the passage of the Family Law Act,¹³ which instituted no-fault divorce. These forms were designed to assist attorneys and judges fully plead and decide the elements of cases after this major change in the law. The number and variety of forms has increased dramatically since that time. As a result of these standardized forms, the courts can create instructional materials, document assembly packages, and other methods of assisting litigants at a low cost.

The Judicial Council has also developed a variety of instructional materials to assist litigants understand and complete these forms. Instructional materials range from a twenty-five page guide on summary dissolution that contains sample forms and a sample agreement¹⁴ to domestic violence forms and instructions.¹⁵

Since these forms were initially designed with attorneys and judges in mind, they are not always easy for self-represented litigants to read and understand. In January 2003, the Judicial Council approved its first major

documents/factsheets/selfhelpqa.pdf.

13. 1969 CAL. STAT. 3314–44.

14. FL-810: Summary Dissolution Information, available at <http://www.courtinfo.ca.gov/forms/documents/fl810.pdf>.

15. See Forms for Domestic Violence Cases, Self-Help Center: California Courts, <http://www.courtinfo.ca.gov/selfhelp/protection/dv/dvforms.htm> (last visited Feb. 2, 2010).

formatting change, with the adoption of new plain-language domestic violence and adoption forms. These forms, which include graphics and larger type, are designed to be more accessible to non-attorneys, and are able to be filled out online.¹⁶ Additionally, the California courts website links to programs that help litigants complete forms using a simple question and answer format. These programs include EZ Legal File by the Superior Court of San Mateo County, which allows for basic filings in family law, domestic violence, small claims, guardianships, and landlord/tenant matters,¹⁷ and I-CAN!, created by Orange County Legal Aid, which offers a question and answer format and instructional videos.¹⁸

III

SELF HELP CENTERS

While some people are able to adequately understand their case and prepare the necessary pleadings with information and forms, many people have additional questions, find it difficult to complete forms, or need some other form of assistance. Over the last ten years, the California courts have piloted and evaluated the concept of attorney-supervised self-help centers. In its Action Plan, the California Task Force on Self-Represented Litigants found that “court-based staffed self-help centers, supervised by attorneys, are the optimum way for courts to facilitate the timely and cost-effective processing of cases involving self-represented litigants, to increase access to the courts and improve delivery of justice to the public.”¹⁹

Effective January 1, 2008, the Judicial Council adopted California Rule of Court 10.960, which provides that court-based self-help centers are a core function of the California courts.²⁰ Self-help centers are located in or near the courthouse and are staffed by attorneys and other qualified personnel under the attorneys’ direction to provide information and education to self-represented litigants about the justice process. Self-help center staff also work with the court to provide effective management of cases involving self-represented litigants.²¹ Court self-help centers must provide “neutral and unbiased” information and education and their services must be available to all sides of a case.²² Rule 10.960 required the AOC to develop guidelines for the operation of

16. For a sample proof of personal service, see Form DV-200, *available at* <http://www.courtinfo.ca.gov/forms/fillable/dv200.pdf>. For a sample temporary restraining order, see Form DV-110, *available at* <http://www.courtinfo.ca.gov/forms/fillable/dv110.pdf>.

17. See EZ Legal File, California Superior Court, <http://www.ezlegalfile.com> (last visited Feb. 2, 2010).

18. See I-CAN! Legal Evaluations, <http://www.icandocs.org/newweb/eval.html> (last visited Feb. 2, 2010).

19. JUDICIAL COUNCIL, STATEWIDE ACTION PLAN, *supra* note 1, at 1.

20. CAL. R. CT. 10.960(b).

21. *Id.* 10.960(c).

22. *Id.* 10.960(d).

court self-help centers to address topics including attorney and other staff qualifications, scope of services, ethics, language access, and efficiency of operation.²³ These guidelines were adopted in February 2008.²⁴

Commencing in 2008, the Judicial Council made \$11.8 million in funding available to the trial court to establish or expand self-help services. Programs are now available throughout the state. Self-help centers now serve over 450,000 Californians each year.²⁵

Given the tremendous need for assistance in this area, all California state courts provide family law assistance as a core part of their self-help services. Self-help centers provide assistance in a variety of ways, including workshops and one-on-one assistance in-person and over the telephone. Some rural courts provide assistance by utilizing videoconferencing equipment, so that an attorney in one location can teach a class or answer questions posed from remote locations.

Many self-help centers are combined with the family law facilitator program in their court. Effective January 1, 1997, Family Code section 10,002 established an Office of the Family Law Facilitator in all 58 California counties.²⁶ The Judicial Council administers this program, and funds these court-based offices. These offices are staffed by licensed attorney facilitators who work for the superior court and guide litigants through procedures related to child support, maintenance of health insurance, spousal support, and public assistance reimbursement cases. The facilitators assist parties with forms, court procedures, and support calculations, and provide workshops and referrals to community agencies that assist parents and families.

Other self-help centers are operated in the court by legal services agencies working collaboratively with the court. The Judicial Council works in partnership with the State Bar's Legal Services Trust Fund Commission to provide funding for legal services agencies to provide representation and to establish self-help services in the courts for low-income litigants. Thirty programs are currently funded, including the nation's first appellate self-help center. Many of the funded programs also provide assistance with family law and domestic violence matters.

23. *Id.* 10.960(e).

24. ADMINISTRATIVE OFFICE OF THE COURTS, GUIDELINES FOR THE OPERATION OF SELF-HELP CENTERS IN CALIFORNIA TRIAL COURTS (2008), *available at* http://www.courtinfo.ca.gov/reference/documents/self_help_center_guidelines.pdf.

25. ADMINISTRATIVE OFFICE OF THE COURTS, FACT SHEET: PROGRAMS FOR SELF-REPRESENTED LITIGANTS (2009), *available at* <http://www.courtinfo.ca.gov/reference/documents/factsheets/proper.pdf>.

26. CAL. FAM. CODE § 10,002 (West 2005).

Evaluations conducted of pilot self-help programs in 2003 by the Judicial Council and the AOC demonstrated these programs' effectiveness. The evaluations documented tremendous efficiencies and an overwhelmingly positive response by both litigants and the courts.²⁷ The following client comments were typical:

"The Family Law Center has helped me every step of the way. I don't know where I'd be without it. The people are very helpful. I'm a single mom w/ low income and without this Center I would not [have] been able to accomplish everything."

"Very helpful and informative. I think more fathers would respond to court orders with the help they can receive. The service was very directional and friendly, went through step-by-step process very quickly and with patience even though she had people waiting."

"I am grateful that someone is able to help me understand the court process."²⁸

Typical comments from judicial officers included the following:

"I often cannot even figure out what a case is about when the paperwork is prepared by a pro per without the help of the Family Law Information Center."

"[Self-help center clients] ask fewer questions [than other pro per litigants], are more informed, and they are better able to stay on point."

"[Self-help center clients] get a fair hearing, they feel confident that they are being heard and getting a fair shake."²⁹

IV

JUSTICECORPS

In order to expand the availability of in-person assistance in self-help centers, the California courts have developed the innovative JusticeCorps programs. JusticeCorps recruits and trains 250 diverse university students annually to augment court and legal aid staff who are assisting self-represented litigants in court-based self-help programs in select locations throughout California. These highly motivated and well-trained students provide in-depth and individualized services to self-represented litigants, often in the litigants' own languages. JusticeCorps volunteers assist litigants complete appropriate and accurate pleadings, written orders, and judgments under attorney supervision. In the process, the litigants gain a better understanding of the court system.

27. ADMINISTRATIVE OFFICE OF THE COURTS, JUDICIAL COUNCIL OF CALIFORNIA, A REPORT TO THE CALIFORNIA LEGISLATURE: FAMILY LAW INFORMATION CENTERS: AN EVALUATION OF THREE PILOT PROGRAMS (2003), available at <http://www.courtinfo.ca.gov/programs/cfcc/pdf/FLIC-full.pdf>.

28. *Id.* at 1, 61.

29. *Id.* at 69-77.

The California courts first launched JusticeCorps as a pilot program in Los Angeles County in 2004. The program trained one hundred volunteers and placed them in ten legal self-help centers and at the county small claims advisor's office. JusticeCorps members commit to serving 300 hours in the self-help centers and receive approximately thirty hours of training and a \$1000 education award when they complete the program. Based on the success of the Los Angeles pilot, the JusticeCorps Program expanded to the San Francisco Bay Area in Fall 2006 and to San Diego in Fall 2007.

V

SUPPORT FOR REPRESENTATION

While an expanding number of litigants can be assisted with the addition of self-help centers, clearly some will need actual representation. Thus, the California courts are also working to encourage representation by attorneys. Chief Justice Ronald M. George is nationally recognized for his work to encourage funding for legal services programs, to establish pilot projects for full representation in family law matters, and to support pro bono efforts by the bar. The courts and the State Bar have also worked closely to expand resources for legal services agencies. Currently, over \$16 million of the judicial branch's budget is distributed annually to legal services agencies through the Equal Access Fund.

California's courts have also taken a leadership role in allowing private attorneys to provide "unbundled" or limited scope assistance. Limited scope representation is a relationship between an attorney and a person seeking legal services in which the scope of legal services is limited to specific tasks that the client asks the attorney to perform. This allows litigants who cannot afford or choose not to have full representation to obtain the help of an attorney. In 2003, the Judicial Council adopted forms and rules designed to help facilitate attorneys' provision of this type assistance in family law.³⁰ These were among the first rules in the country enabling attorneys to clearly make an appearance for a portion of a case without being committed to representing a party for the duration of the litigation – allowing attorneys to provide lower-cost services for those litigants who can handle portions of the case on their own.

VI

CHANGES IN COURT PROCESSES

Through the Elkins Family Law Task Force³¹ and efforts by local courts, the Judicial Council is reexamining many of the ways that the courts do business in family law in California. The Council is reexamining procedures to

30. CAL. R. CT. 5.70, 5.71; Judicial Council Forms FL-950, FL-956, FL-958, *available at* <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>.

31. Relevant documentation on file with author.

assess whether they pose unnecessary barriers for self-represented litigants or attorneys. The Council's goal is to simplify family law procedures to allow all persons to handle their cases in a timely manner, while preserving due process guarantees.

One key part of this examination is the development of case management strategies for family law. Courts have not traditionally established timelines for family law cases, to avoid the appearance of encouraging divorce. However, in the San Diego Superior Court Status Conference Initiative, all parties in family law cases were ordered to a status conference 150 days after case filing. In cases where both parties were self-represented, the parties first met with the family law facilitator. The facilitators asked why the parties had not taken steps to complete their cases. Only 8 percent were trying to reconcile, while over 60 percent simply did not know how to proceed to get their case completed.³²

A growing number of courts are establishing programs to assist litigants not only to get access to get into court, but also to also get out of court by finishing their case. Identifying cases where no subsequent pleadings have been filed, trying to finalize matters that are set for hearings, providing settlement assistance to allow litigants to work out agreements are all strategies that California courts are using to ensure that litigants do not fall between the cracks.

Courts are developing systems to ensure that litigants leave the courtroom with a written order, to maximize compliance and minimize the need for rehearing on the same issues. The courts are exploring ways to provide explanations to litigants of what the orders mean and how to enforce them.

VII

EDUCATION AND TRAINING

Courts are also rethinking the role of court staff and judicial officers in handling cases with self-represented litigants. In 2001, the Judicial Council adopted a standard form to be posted in court clerks' offices to clarify what assistance court clerks can and cannot provide to self-represented litigants.³³ The courts have offered extensive training on how staff can effectively provide legal information without violating the neutrality of the court by providing legal advice. In 2007, the AOC published a "Benchguide on Handling Cases Involving Self-Represented Litigants." The Benchguide provides information to judges on ethics, courtroom and case management, communication skills, evidence and other key topics, and has now been adapted for national use.

32. Francis Harrison & Deborah Chase, *Shrinking the Family Law Docket: San Diego Program Cuts Disposition Time for Pro Per Litigants*, CAL. COURT NEWS 7 (2004), available at <http://www.courtinfo.ca.gov/courtnews/novdec04.pdf>.

33. Form MC-800, available at <http://www.courtinfo.ca.gov/forms/documents/mc800.pdf>.

Research conducted by the AOC and the National Self-Represented Litigation Network on communication between judges and self-represented litigants demonstrates that when litigants have assistance from self-help services, and judicial officers take an active role in courtroom management, litigants understand and are satisfied with the courtroom process. This research is informing new curriculum being developed for judicial education, which is intended to assist judicial officers develop their skills in handling cases with self-represented litigants.

VIII

CONTINUING NEED FOR COUNSEL

As courts continue to try to address the needs of self-represented litigants through a variety of methods – including providing attorneys in self-help centers, it is clear that many litigants truly need full representation. There are cases and procedures that are simply too complex as well as litigants who do not have the capacity to represent themselves in court due to limited English proficiency, illiteracy, mental illness, and a variety of other personal challenges. Recently enacted AB 590 (Feuer), October 2009, which was strongly supported by Chief Justice Ronald M. George, authorizes the Judicial Council to establish pilot projects to provide representation in areas of critical human need – such as in custody cases.³⁴ These pilot projects are scheduled to start in fiscal year 2011–2012 and promise great opportunities to serve litigants in critical need as well as to develop data on who to effectively identify those litigants who need full representation and what services seem to be most effective.

CONCLUSION

While the task of providing meaningful access to litigants without resources for counsel is a great one, it is clear that the California courts, under the leadership of Chief Justice Ronald M. George, are making tremendous strides in responding to the new realities of family law courts.

34. Assembly Bill 590, 2009 Cal. Stat. 457, available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0551-0600/ab_590_bill_20091011_chaptered.pdf.