

Self-Represented Litigation Network

2007 Report



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I. Introduction

The Self-Represented Litigation Network is an open and growing grouping of organizations and working groups dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are therefore forced to go to court on their own. The Network brings together courts, bar, and access to justice organizations in support of innovations in services for the self-represented. It operates in a number of Working Groups described below, and is hosted by the National Center for State Courts under a Memorandum of Understanding.

The year 2007, the period covered by this Report has been one of significant achievement, particularly in outreach, research, and judicial education.

Among our signature achievements of 2007 have been the endorsement and participation of the Conference of Chief Justices, the Conference of State Court Administrators, and the American Association of Law Libraries, the launching of the Judicial Curriculums at a major conference at Harvard Law School in November of 2007, and the completion of the research on Judicial Communication described below.

It has also been a period of re-organization, as the Network has adjusted its Working Group configuration, based on experience and available resources, and as the Network continues to figure out a model for long term financial stability.

II. Network Membership

The most important event of the year for the Network was perhaps the vote of the Conference of Chief Justices and the Conference of State Court Administrators to endorse and participate in the Network. This level of validation from the most important organizations in the justice system is a mark of respect for our achievements and has already paid handsome dividends in facilitating our legitimacy and outreach throughout the system. Special thanks to Chief Justice Karla Gray of Montana, whose energy and commitment to access to justice are transcendent.

Additional events of significance were the joining of the American Association of Law Librarians, which also made a \$5,000 grant to the Network, and, most recently, in January 2008, the joining of the National Association of Women Judges.

Current membership is as follows:

- American Association of Law Libraries
- American Judges Association
- American Judicature Society
- California Administrative Office of the Courts
- Conference of Chief Justices

- Conference of State Court Administrators
- Harvard Law School Bellow Sacks Project on the Future of Civil Legal Services
- Law School Consortium Project
- Legal Services Corporation
- Maryland Administrative Office of the Courts
- National Center for State Courts
- National Association for Court Management
- National Association of IOLTA Programs
- National Association of Women Judges
- National Council of Juvenile and Family Court Judges
- State Justice Institute (SJI)

III. The Working Groups of the Network

Following extensive discussions throughout the Network, the Working Group structure has been reconfigured. The groups are now as follows. All these groups are meeting and have input into all of the system-wide products and outreach on which there has been work this year.

- *Information and Outreach Group.* This group deals with the general outreach to the court and access communities, the organizing of presentations, and the development of materials. An important Subgroup is the Librarians Group. Chair: Richard Zorza. Librarians Group Chair: Charles Dyer.
- *Research Group.* This group deals with research and evaluation issues, and is responsible for the maintenance and implementation of the research agenda. It is currently focusing particularly on issues of cost saving and effectiveness of innovations. Chairs: Bonnie Hough and John Greacen.
- *Best Practices in Self-Help Services.* This group deals with innovations in direct self-help services. It assists with materials development and outreach in this area. Its current focus is on an analysis of which services are most needed and effective in what situations. Chairs: Wayne Moore and Katherine Altener.
- *Best Practices in Discrete Task Representation.* This group encourages unbundling. It is a resource for individuals and states developing limited scope programs, and assists with promoting limited scope, training in the ethical and practical issues, and networking. Current focus is on curriculum development and outreach to states considering adopting unbundling rules and programs, or implementing newly adopted limited scope programs. Chair: Sue Talia.
- *Best Practices in Forms and Document Assembly.* This group works on forms, document assembly, and electronic filing. Its current major projects are a detailed

training program in forms design and plain language and updating and reorganizing the Forms section of SelfHelpSupport.org. The group presented a session on Plain Language at the recent NLADA Conference and is hosting a two day training at the upcoming LSC TIG Conference. Future projects include additional such trainings. Chair: Glenn Rawdon.

- *Best Practices in Courtroom Services and Case Management*. This group has been collecting information on, and analyzing the range of innovations in courtroom services and case management. Chair: Deborah Chase.
- *Best Practices in Judicial Education*. This group works on judicial education and ethics issues. In 2007 its work on the ABA Model Code of Judicial Conduct came to fruition with the passage of additional Comment language on the Self-Represented. In addition, the group was responsible for the Curriculums and Harvard Conference described below, and will be focusing on follow up in both areas. Chair: Richard Zorza
- *Compliance Group*. This newly formed group is focusing on limited English proficient barriers and language access issues as an impediment to compliance, and working on pilots to demonstrate solutions. Other issues related to compliance with court orders and enforcement of judgments are also addressed. Chair: Tina Rasnow.
- *Best Practices in Distance Services and Technology*. This group has been meeting informally to explore and share available distance services methods. Chair: Judy Meadows.

IV. Outreach, Information and Education

This year, information and outreach has continued to be a very major activity of the Network – one into which all of the Working Groups contributed, and in which the participants in the Network have played a very major facilitative role. Among the specific events:

- *Conference of Chief Justices*. The Network presented a crucial session at the CCJ meeting in February in New Orleans. The session was supplemented by a session on technology for the self-represented, organized by the National Center. It has led to a significant increase in the legitimacy of the Network – including an explicit reference by the Chief Justice of Alaska to the Network in her State of the Judiciary Speech.
- *Legal Services Technology Conference*. The Coordinator of the Network presented on a variety of SRL-related issues at this Conference in early 2007.

- *South-Central Regional Conference on Self-Represented Litigation.* The Network played a major role in the planning and presentation of this Conference, organized by the American Judicature Society, a Network participant. The Conference played an important role in jump starting innovation in an area of the country in which many states are at an emerging stage of innovation.
- *“Network Day” at Equal Justice Conference.* The “Network Day” included focus on problem solving for the approximately 30 participants and detailed work on 5 separate issues. The discussion resulted in an ultimately funded TIG application, renewed focus on triage issues, and renewed energy in several of the working groups.
- *Equal Justice Conference.* There were several sessions at the Equal Justice Conference for which the Network assisted in the development of the sessions and produced materials, including one on leadership in SRL issues, one on unbundling, one on technology, and one on limited English Proficiency issues.
- *Access to Justice Commissions Conference.* The session organized by the Network included a general summary of the field, and discussions of the strategic role of Commissions in SRL innovation.
- *National Conference on Self-Represented Litigation.* The National Conference included 12 Seminars, and two plenary sessions, as well as networking times during the associated California Conference. Approximately 100 people attended the National Conference itself.
- *American Association of Law Libraries.* The Network, in cooperation with the Librarian subgroup, presented a major session at the AALL Conference.
- *National Council of Juvenile and Family Court Judges.* The Network presented a session to the annual Conference of the Council. The Coordinator also made a brief presentation to the Board
- *Court Technology Conference 10.* The Network presented two sessions, one a general introduction to the use of technology in access to justice, and one dealing with the specific technology of phone support for websites. There was also a session on document assembly, in which those associated with the Network participated. There were perhaps 700 people in total at all these sessions.
- *National Legal Aid and Defender Conference.* The Network facilitated several sessions with a focus on the needs and perspectives of legal aid leaders.

V. Website

The www.selfhelpsupport.org website, operated in cooperation with the National Center for State Courts, continues as the major source of information on self-represented litigation innovation.

It now has over 2,600 participants and over 2,000 pieces of content. In 2007 the site won, for the second time, a *Top Ten Website Award* from JusticeServed.com.

Effective January 2008, and building on its prior staffing of the site, the National Center for State Courts will continue to provide the staffing and will provide the financing for the maintenance of the site.

VI. Research and Evaluation

The year was an important one in research. The Network has now completed its judicial communication research, and the Report and associated DVD are in the final stages of scripting.

The research, conducted by Greacen Associates, with funding from SJI and the California and Maryland AOCs, involved videotaping 15 separate hearings in eight courts, interviewing the self-represented parties and the judge, using the prior video, while videotaping those interviews, and scoring the communications effectiveness of the hearings.

While the conclusions from this process must be viewed in the light of the fact that the courts which agreed to participate were hardly typical, having been in the forefront of innovation in this area, and while both the judges and litigants agreed to participate and were also not necessarily typical, the researchers were deeply struck by the high level of communication that was occurring in these hearings.

Review of the tapes led the researchers to conclude that a number of judicial practices are highly effective and therefore recommended for judges as the basis of the development of their own judicial styles in dealing with the self represented. They were:

- Framing the subject matter of the hearing
- Explaining the process that will be followed
- Eliciting needed information from the litigants by
 - Allowing litigants to make initial presentations to the court
 - Breaking the hearing into topics
 - Obviously moving back and forth between the parties
 - Maintaining control of the courtroom

- Giving litigants an opportunity to be heard while constraining the scope and length of their presentations, and
- Giving litigants a last opportunity to add information before announcing a decision
- Involving the litigants in the decision making
- Articulating the decision from the bench
- Explaining the decision
- Summarizing the terms of the order
- Anticipating and resolving issues with compliance
- Providing a written order at the close of the hearing
- Setting litigant expectations for next steps, and
- Effective use of nonverbal communications

The materials produced from the research, which will include a DVD with examples of courtroom techniques, as well as judicial and litigant comments, go into far more detail about the specifics of these techniques. These techniques are also described and illustrated in the Judicial Curriculum, and the separate accompanying DVD described below. (The materials from the research will be distributed as an SJI-funded product in the early summer, but are available to Network participants upon request.)

In addition to this project, the Research Working Group developed initial materials on the issue of service of process, analyzed general compliance issues, and began an inquiry into procedures for analyzing the cost and quality effectiveness of self-represented litigant innovation.

VII. Tools and Materials Development

In 2007, the Network moved forward on many materials fronts. Described below are some of the most significant of the materials designed for broad audiences.

- *Federal Funding Document.* We completed the now available document that provides a comprehensive description and analysis of federal funding options for self-represented litigant innovation.
- *“Case For” Documents.* The Network completed five of these documents. Work continues on one aimed at Law Libraries. The documents are available online, and will be formally distributed as part of the SJI grant-product distribution.
- *Best Practices Version Two.* The second version of the Best Practices document is now close to completion of the text. We hope in 2008 to take the time to do significant layout and design work. This document has been significantly changed to include Examples, Contacts, and Resources for each of the Best Practices. All the Working Groups have been heavily involved in this process. The new document will include over 100 listings each of examples, contacts and resources, demonstrating the extent of deployed innovation and the breadth of the

network available to provide ideas and support. In addition, one new practice, dealing with video conferencing, has been added to the previous forty one. We believe that this version will be much more powerful than its predecessor, in that it will go beyond ideas to concrete tools needed to bring them to reality. The document is available upon request in draft, and will be formally distributed as part of the SJI grant-product distribution. (The first version of the Best Practices Document was highlighted in the 2007 *Court Trends* publication of the National Center for State Courts.)

- *Self-Evaluation Toolkit*. The toolkit, designed to make it possible for courts to conduct low cost self-directed assessments of how they serve the self-represented, contains the following:

A. Survey Instruments and associated tools.

- 1 An **Exit Survey** to collect data from all persons leaving a courthouse, with a supplement seeking additional information on the self-represented.
- 2 A **Self Represented Litigant Survey Database** which provides a tool for the court to use to enter the data collected and review reports.
- 3 A **Judge and Staff Survey** to obtain court personnel's perceptions of the court's success in dealing with self-represented litigants, their views on problems encountered by self-represented litigants, and actions the court could take to alleviate them.
- 4 **Guidelines for Data Gathering** explaining how to administer the **Exit Survey** and the **Judge and Staff Survey**.

B. Basic Interview Formats for use in talking with litigants, judges, court personnel, lawyers, representatives of other community organizations.

C. Guidelines for the Use of Focus Groups to obtain information from small groups of persons, such as self-represented litigants or judges.

D. A Tour Guide to observe a courthouse and court processes from the point of view of a self-represented litigant.

E. A Best Practices Checklist for a court to use in assessing the extent to which it is following the practices that national experts consider optimal.

F. Model for a Comprehensive Self Assessment provides a complete model for a court that wishes to fully and completely assess its program from A to Z.

G. A Summary of Ethical Guidelines for Conducting Interviews and Data Collection provides general guidance for courts conducting self assessments

about ethical issues such as obtaining informed consent and maintaining the confidentiality.

The full toolkit will be formally distributed as part of the SJI grant distribution.

VIII. Judicial Education

Perhaps the most significant programmatic work of the year was the highly successful National Judicial Conference on Leadership, Education and Courtroom Best Practices in Self Represented Litigation, which took place at Harvard Law School in early November and launched the two Judicial Curricula, *Access to Justice in the Courtroom for the Self Represented*, and *An Overview of Judicial Leadership in Access to Justice for the Self Represented*.

The Conference attracted approximately 155 people in 35 teams from 30 states, the District of Columbia and four territories. A total of five chief justices participated, and subgroups of appellate attorneys and judicial educators also met. The Conference included extensive “learning by doing” activities, and detailed state planning support.

The materials developed for the Conference and Curriculum, which will be distributed as part of an SJI grant product distribution in March, and are generally already available through the www.selfhelpsupport.org website, include:

- *Handling Cases Involving Self-Represented Litigants: A National Bench Guide for Judges*. This Guide is based on the breakthrough document produced in California with support from SJI . This version was extensively modified for national use and state customization. It is anticipated that this Guide will be adapted for use in a wide variety of states.
- *Curriculum on Access to Justice in the Courtroom for the Self-Represented*, including extensive faculty notes for each of the approximately 190 slides.
- *Handbook of Optional Activities for the Curriculum on Access to the Justice in the Courtroom for the Self Represented*
- *Handbook of Resource Materials for the Curriculum on Access to Justice in the Courtroom for the Self-Represented*.
- *Curriculum on Judicial Leadership in Access to Justice for the Self-Represented*, including extensive faculty notes for each of the approximately 80 slides.
- *Handbook of Optional Activities for Curriculum on Judicial Leadership in Access to Justice for the Self-Represented*.

- *Handbook of Resource Materials for Curriculum on Judicial Leadership in Access to Justice for the Self-Represented.*
- DVD: *Judicial Best Practices in Self-Represented Litigation in the Courtroom* (120 minutes of video in 32 clusters with approximately 80 separate segments, each referenced in the faculty notes to the Courtroom Curriculum).
- *Access to Justice in the Courtroom for the Self Represented: An Introduction and Overview for Prospective Presenters and Organizers*, a PowerPoint designed for seminar use by judicial educators in the states. (This is based upon the introductory presentation at the Conference.)

A significant portion of the video was made available over the Internet prior to the Conference, so that participants could prepare their learning by doing presentations. All recipients also received a Pre-Conference Handbook with the planning assignments prior to the Conference.

As of this writing, we know of specific plans or planning for state follow up in sixteen states.

The evaluation from the Conference was highly positive, with the average score, on a nine point scale from 1 to 9, of 8.0, with almost two thirds of the participants completing the evaluation form. We plan a more detailed follow up survey in March.

The Conference and Curriculum were co-sponsored by American Judicature Society, National Center for State Courts, National Judicial College, and the Bellow Sacks Project on the Future of Access to Civil Justice of Harvard Law School. Funding was provided by the State Justice Institute, the Bellow Sacks Project on the Future of Access to Civil Justice of Harvard Law School, donations to the National Judicial College, and the California AOC.

IX. Program Plans for 2008

In 2008, the Network will continue work in all the above areas, with the work continuing to be managed through the Working Groups. Certain initiatives deserve highlighting.

A. Court Administrator Curriculum and Launch Conference

In 2008, the signature project of the Network will be the development and launch of a *Court Administrators, Courts, and Self Represented Litigation: A Leadership Curriculum for Access, Effectiveness and Efficiency*. The development of this curriculum, and its launch, currently planned as a major track of the Court Solutions Conference to be held in Baltimore September 8-10 of 2008, will involve all the Working Groups of the Network.

The curriculum will include a variety of modules dealing with particular challenges and opportunities, and the Conference will use the learn-by-doing and train-the-trainer approaches to prepare attendees to use the curriculum as an outreach. Each module will include a PowerPoint, Faculty Notes, Activity Materials, and Resource Materials. As with the judicial conference, states will be invited to send teams, and support for state planning will be provided. We hope to develop some video to go with the modules.

We believe that these products and process will significantly leverage our prior work, and provide a launching pad to support innovation throughout the nation. A national advisory group has already been recruited, and will soon be meeting.

Initial financing is being provided by Network participants California and Maryland AOCs.

B. Forms and Plain Language Training.

At the end of January, the Network will be co-sponsoring with LSC and SJI a full day Forms and Plain Language Training program in association with the LSC TIG Conference. This will be conducted by the national leader in this work. The collaboration has made possible the participation of 24 individuals from courts and cooperating legal aid programs in 19 states, all of whose states are committed to making use of what is learned to improve their forms.

It is noteworthy that there was a waiting list of eight states that wanted to send people who could not be accommodated. The working group is exploring ways to expand the availability of this training through webinars, additional programs, or other methods to reach these other states' representatives and to continue to process of spreading this important skill and sensitivity to the issues involved.

C. Judicial Conference Follow Up

There will be continued activity completing follow-up to the Judicial Conference. This will include state support, materials production and distribution, and spreading the word about the Curriculum. Consideration is being given to planning a new judicial conference in 2009.

We also hope to continue encouragement of adoption of changes in state codes of judicial conduct of language similar to, or stronger than, that proposed by the ABA. Alternative language has already been circulated by Chief Justice Karla Gray of Montana.

D. SJI Networking Grant Products Completion

As indicated above, there remains some work to complete SJI products from the earlier period of the Network. These include particularly the second version of the Best Practices document, the Research Products, and the Self-Assessment Toolkit.

E. Research

In addition to finalization and possible extension of prior research products, we will be focusing on two primary areas:

- *Cost and Effectiveness Impact of Innovations.* We are already working on a model to collect and predict resource savings from innovations. We deem this a high priority product in a time of increasing fiscal constraints for courts.
- *Compliance.* We have already developed a system of hypotheses and logic model dealing with compliance enhancement, and hope to develop an approach for more formal research.

F. Ongoing Working Groups and Network Activity

Of course, the Working Groups will continue to move forward with their agendas, as described above, with similar activities and products as before.

X. Financial Plans for 2008 and Beyond

In 2008, work will include the extensive work related to the Court Administrator Curriculum and Launch Conference, as well as the ongoing work related to the agenda of the Working Groups. Funding is in place so support these activities.

The financial situation for 2009 remains much more uncertain, and it will remain a major priority for 2008 to either bring to fruition the earlier planned multi-state contribution system, or some equivalent, or to develop an alternative.

XI. Conclusion

The year 2007 was highly productive for the Network. The broad impact that the Network has had on the way the justice system looks at the self-represented is a testament to the wide range of players that work with the Network in the cause of access for the self-represented.

Spreading and Adopting *Best Practices for Court-Based Programs for the Self Represented*

By Richard Zorza, Coordinator, Self-Represented Litigation Network
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Trends Statement: As courts work to respond to the ever increasing challenge of making the system work for the self-represented, they are finding the recently promulgated *Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes and Issues for Exploration* an important tool. The document, developed by the Self Represented Litigation Network, includes forty one Best Practices, and is being used at every level of the system, from statewide planning to program improvement. The publication is posted on the National Center website at: http://www.ncsconline.org/WC/Publications/KIS_ProSeBestPracticesSRLN.pdf.

Why is there a Need for Best Practices in Self Represented Litigation?

As noted in the 2006 edition of *Court Trends*, litigation involving those without lawyers continues to increase, and indeed has a dramatic impact on the entire operations of courts. It is now well recognized that innovation in services for the self-represented improves public trust and confidence in the courts, increases court efficiency, and enhances litigant satisfaction. The importance of this area of work has been noted by at least seven Chief Justices in their *State of the Judiciary* addresses between mid 2006 and mid 2007¹ and was again the subject of a Joint Resolution of the Conference of Chief Justices and the Conference of State Court Administrators in the Summer of 2007.²

However, the extensive innovation and experimentation that is going on in this field is largely uncoordinated and undirected. Innovators in one state often find it hard to discover what others have done, and what information that is available is usually focused on one program or innovation.

What *Best Practices in Court-Based Programs for the Self-Represented* does is brings together in one place the collective wisdom of a national community of self-assessing innovators. That wisdom provides a set of guideposts and suggestions for any court or court system

The Areas of the *Best Practices*

- Self Help Offices and Services
- Forms, Document Assembly and E-filing
- Practices in the Courtroom
- Discrete Services, Pro Bono and Volunteer Programs
- Judicial Ethics and Training
- Post-Order Practices
- Court Management and Evaluation Practices
- Jurisdiction-Wide Strategic Practices

* The author wishes to thank the approximately one hundred individuals who are members of the Working Groups of the Self-Represented Litigation Network, and who thereby contributed to the development of the *Best Practices*. This is the version as submitted for publication.

¹ New Hampshire Chief Justice John Broderick, 2007 State of the Judiciary Address <http://www.courts.state.nh.us/press/textstateofjudiciary.pdf>); California Chief Justice Ronald M. George, 2007 State of the Judiciary Address, Delivered to a Joint Session of the Legislature, Sacramento, CA, February 26, 2007; <http://www.courtinfo.ca.gov/reference/soj022607.htm>; New York Chief Justice Judith S. Kaye, 2007 State of the Judiciary Address; <http://www.nycourts.gov/admin/stateofjudiciary/soj2007.pdf>; Alaska Supreme Court Chief Justice Dana Fabe, 2007 State of the Judiciary Address, February 27, 2007, <http://www.state.ak.us/courts/state07.htm>; Wisconsin Chief Justice Shirley S. Abrahamson, State of the Judiciary 2007, Wisconsin Judicial Conference, <http://www.wicourts.gov/about/pubs/supreme/docs/judaddress06.pdf>; Arizona Chief Justice Ruth V. McGregor, State of the Judiciary 2007, <http://www.supreme.state.az.us/media/archive/2007/SOJprintedfinal.pdf>; Iowa Chief Justice Marsha K. Ternus, State of the Judiciary 2007, <http://www.judicial.state.ia.us/wfdata/frame4096-1706/File3.pdf>

² 2007 Joint Resolution 2, <http://cosca.ncsc.dni.us/Resolutions/PublicTrust/2ResolutionPublicTrust.pdf>

considering the establishment or enhancement of anything from a single program to a statewide initiative.

How Were the *Best Practices* Developed?

The *Best Practices* have a long history. Starting in 2001, following a small conference on collaborations in innovation for the self-represented, supported by the State Justice Institute, the Legal Services Corporation, and the Open Society Institute, an informal working group began to meet and that group produced for discussion a short list of best practices in self-represented litigation innovation. Then, following detailed discussion of that list at the seminal *National Summit on Self Represented Litigation Innovation*, organized by the National Center for State Courts with funding from the State Justice Institute in 2005, the *Report from the Summit* included a more detailed version of the list. When, early in 2006 the Self Represented Litigation Network was established to carry out the Agenda established at the Summit, the *Best Practices* document, with its much greater detail and breadth became an early and important goal and product.

The drafting and comment process involved over one hundred people who are members of the Working Groups of the Network, as well as numerous other leaders in the court and justice communities. Participants in the process included people associated with a wide variety of self help programs and centers, and state court administrative offices. These included the main innovators in the country. The draft was the subject of extensive discussion in the Self Help Offices Working Group, the Marketing and Outreach Group, and Discrete Task Services Group, the Courtroom Services Group, the Forms Group and the Librarians Group of the Network. Comments were received from judges, state court administrators, self-help program directors, access to justice and bar organization staff, and others. The final draft was circulated to the Network and then promulgated in December of 2006, with funding from the State Justice Institute and the

An Example: Concept Description for *Initial Assessment Best Practice*

Initial assessments are increasingly being seen as critical to effective delivery of services. Such assessments and associated referrals make sure that litigants are obtaining services and assistance appropriate both to the case in which they are involved, and to their individual capacities. Such assessment might well take place within the self-help center and would provide referrals to a variety of resources

Network's supporters. The document represents a consensus of practitioners throughout the country in a wide variety of types of organizations and a broad range of states and environments. Given this range of participants, it is remarkable that agreement was achieved on so many practices.

What Kinds of Practices Do the *Best Practices* Include?

The document intentionally includes a very wide range of practices, so that a court can choose those that are most relevant to its problems and immediate situation. They range from those dealing with gateway services at the courthouse to those dealing with the enforcement of orders. They range in scope from statewide taskforces to suggestions for specific services in the courtroom. The eight areas of the *Best Practices* into which the 41 Practices fit, appear in a box.

What Kind of Information Do the *Best Practices* Provide?

Each Best Practice includes three separate and interrelated components: a short description of the concept behind the Practice, a listing of those attributes of the practice that appear to be most important to its success and effectiveness, and a discussion of questions and areas for exploration. This last category is useful in focusing areas of possible research and assessment.

How Are the *Best Practices* Being Used at the State Level?

The most frequent use of the *Best Practices* document at the state level has been in laying out the options for state innovation and assisting in focusing leaders on strategic directions. For example, in Kansas, substantial portions of the document were incorporated in drafts of the state plan for dealing with the self-represented. In Massachusetts the document has similarly been the basis of extensive discussions about which programs should be developed. In Oregon a recent report to the Chief Justice from the State Family Law Advisory Law Committee relied on the *Best Practices* to help in identifying and prioritizing next steps in improving access for the self-represented. The *Best Practices* give decision makers confidence in the effectiveness of the practices, and suggest how to structure new programs.

How Are the *Best Practices* Being Used at the Court Level?

Similarly, the most frequent use of the *Best Practices* at the court level has been as a tool for self assessment and planning. For example, in Orange County, California, the Committee establishing, organizing and expanding the Self Help program in the Court is using the document as a broad guide. The checklist now being developed by the Network from the document will be also be useful. More generally, the document can be an important tool for vision building and creating a sense of possibility for the court.

How Are the *Best Practices* Being Used at the Individual Program Level?

At the program level, the individual suggested attributes provide a checklist which programs can use to assess potential improvements to the program. Similarly, programs can use the *Issues for Exploration* identify areas that they need to explore in their planning process, or may choose to research. The details of the *Best Practices* can be used to assist in staff training, to guide the process of developing job descriptions, in focus groups of users, and for long term strategic program planning.

How Can Courts or States Decide Which *Best Practices* to Focus on

What the *Best Practices* does NOT do, is tell states or courts WHICH innovations and practices they should adopt of the forty one listed. However, those most involved feel that the best way to decide is to look at two factors: what is the most urgent need, and what players are interested in helping move forward. If, for example, the problem is a lack of informed litigants in the courtroom, and it is the clerk or court administrator who is ready to move forward, then the solution may be an educational program for litigants integrated into the clerks office or a self help program. If on the other hand the problem is lack of compliance, and it is the judiciary that is willing to move forward, then a judicial training program on the shaping of orders, or a staff assistant in the courthouse, may be most appropriate.

Sample: Suggested Attributes for Rules in Support of Forms Standardization

- Provides universal forms for the entire jurisdiction.
- Has forms which meet standards in Forms and Documents.
- Provides facilitation of support services such as software that allows courts to provide document assembly services.
- Offers forms directly related to court processes and to the problems litigants face, rather than legal categories.
- Provides processes for updating the forms, while minimizing frequency and cost of revisions.
- Requires, at a minimum, that the standardized forms be accepted in all courts, and that hand completed versions be accepted.

What Will the Next Version of *Best Practices* Include?

Work has already begun on the next version of the *Best Practices* Document. As well as changes to the listed Practices themselves, the next version will include for each practice a listing of one or more example programs, people to contact for information, and resources to aid in the adoption of the practice. It is hoped that this version will become a concrete day-to-day tool for practice implementation.

Self-Represented Litigation Network

Introduction to Judicial Education Curricula: Guide to Materials



I. Introduction

This document is an introduction to the three judicial education curricula dealing with access to justice for the self-represented. These curricula were developed with funding from the State Justice Institute, the Charles H. Stout Foundation, the California AOC and others, and tested and launched at a Conference at Harvard Law School in November of 2007. The curricula and materials are contained in a CD and DVD that accompany this document.

The core idea of the curricula is to provide tools for state judicial leaders and educators to assist judges throughout the state in:

- Developing both the courtroom techniques and skills that will help make sure that the self-represented are fully heard in a neutral courtroom, with the courtroom operating efficiently and effectively.
- Developing the leadership skills and knowledge to support and facilitate a broad range of court and community-based innovations in access to justice for the self-represented.

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The curricula have been developed by the Self-Represented Litigation Network. The Network is an open and growing group of organizations and working groups dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are therefore forced to go to court on their own. The Network brings together courts, bar, and access to justice organizations in support of innovations in services for the self-represented. It operates in a number of Working Groups described below, and is hosted by the National Center for State Courts under a Memorandum of Understanding.

The Curriculum itself has been co-sponsored by the Network, the National Judicial College, the National Center for State Courts, the American Judicature Society and the Bellow-Sacks Project on the Future of Access to Civil Legal Services of Harvard Law School. The project's Advisory Group is listed at the end of this document.

The curricula were developed by national leaders in the field. The techniques suggested in the Judicial Curriculum are derived in part from empirical research on judicial communication conducted by the Network.

The three curricula are titled:

- *Curriculum on Access to Justice in the Courtroom for the Self-Represented*, (two versions included)
- *Curriculum on Judicial Leadership in Access to Justice for the Self-Represented*,
- *Access to Justice in the Courtroom for the Self-Represented: An Introduction and Overview for Prospective Presenters and Organizers*

The Curricula include, where appropriate, faculty notes, activity materials, resource materials, and a video of Courtroom Best Practices. The curricula are designed for customization or “out of the box” use.

The package also includes *Handling Cases Involving Self-Represented Litigants: A National Bench Guide for Judges*, which can be used “as is” in any state, or customized with local law and information.

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Section VI of this document describes the components on the accompanying CD and DVD.

II. The Courtroom Curriculum

This curriculum is available in two versions, a short 60-90 minute version, and a full version. The full version of the Courtroom Curriculum has nineteen modules, which are

described in the PowerPoint itself as Parts. These modules have been designed for use individually, or in combination. Each of the modules has, where appropriate, faculty notes, activities, resources, which are on the CD and Best Practice video, which is on the DVD.

The nineteen modules in the full version are as follows:

1. **Change, Challenge and Opportunity.** This module describes the dramatic increase in the number of litigants who are self-represented, discusses the impact on the courts, and suggests that for many judges there are advantages and benefits to working with the self represented. It highlights the importance of judicial leadership.
2. **The Goal: Ensuring Access to Justice in a Neutral Court.** This module lays out the fundamental goal of ensuring access and neutrality, and describes how the recent changes in the ABA Model Code of Judicial Conduct highlight the discretion judges have in meeting this goal.
3. **The Approach: Forms of Engagement and Techniques That Help Provide Access without Being or Seeming Non-Neutral.** This module lays out the basic approach: helping each judge develop and refine the courtroom techniques that are neutral and engaged – that get the judge the information that he or she needs to make the best possible decision, based on all the facts, while maintaining neutrality and the appearance of neutrality.
4. **The Case Law Environment.** This module summarizes the national law on the issue, emphasizing the scope of judicial discretion, and discussing areas of permitted discretion, prohibited acts, and open areas. Slides are included to assist in integration of state law.
5. **The Stages of the Case.** This module introduces the concept of the Stages of the Case, and suggests that judges will do a better job if they think about how they manage each of the stages, which are discussed in the next Modules.
6. **Before the Hearing -- Creating the Environment.** This module discusses the importance of the pre-hearing experience for litigants, how the staff contributes to that experience, and how judges can educate and lead in the development of an access-friendly court environment.
7. **Courtroom Step One: Setting the Stage.** This module discusses the value of careful judicial stage setting at the beginning of the hearing – putting the hearing in the context of prior events in the cases, confirming the goals of the parties, and clarifying what issues are to be addressed.
8. **Courtroom Step Two: Learning What You Need to Know to Decide the Issue.** This crucial module deals with techniques for getting the information the judge

- needs, including asking questions, probing for detail, focusing litigants, dealing with weak evidence, addressing a missing foundation or a key element, managing settlement offers and using affirmation without endorsing,
9. **Courtroom Step Three: Making the Best Decision.** This module includes engaging the parties with the decision, the value of references to the concerns of the parties, the timing of the decision, and the advantages of immediate printed decisions.
 10. **Courtroom Step Four: Making Sure the Decision or Order Is Understood.** This module includes the explanation of the decision, obtaining confirmation of understanding, and use of court staff.
 11. **Courtroom Step Five: Laying the Groundwork for Next Steps and Compliance.** This module includes the advantages of, and techniques for, obtaining compliance assisting information, identifying and resolving barriers to compliance and preparing the parties for next steps and possible long term outcomes.
 12. **Perspectives on the Rules of Evidence in Non-Jury Trials.** The module shows how the rules of evidence do not stand in the way of judges exercising their discretion to hear the evidence they need to decide cases on the facts. It includes a three step protocol designed to give the judge the information he or she needs to give evidence the weight it deserves.
 13. **Perspectives on Active Listening and Nonverbal Cues.** The module explores how judges can show openness, how they can maintain positive control of the courtroom, and how they can use active listening to get as much information as possible.
 14. **Cases with One Side Represented.** This module describes how judges can allow the attorney to present his or her case without dominating the proceedings, and how to deal with difficult attorneys.
 15. **Limited English Proficiency.** This module explains how issues involving the self-represented are exacerbated for litigants with LEP issues, and explains how to deal with ineffective and inappropriate interpreters, and how to minimize errors when there are no interpreters available.
 16. **Dealing with Other Difficult Situations.** This module includes tips for dealing with mentally ill litigants, angry litigants, litigants who make requests beyond the court's authority, *ex parte* communications, and cases not appropriate for self-representation.
 17. **Introduction to Resources.** This module describes national resources and includes a framework for inclusion of state resources.

18. **Tools for Self and Courthouse Assessment and Improvement.** This module suggests techniques for self-assessment and improving court response to the self-represented.
19. **Conclusions and General Lessons.** This module offers as conclusions the very high range of judicial discretion, importance of the judicial role, the interrelated role of non-judicial innovation, and the implications for improvements for access for all, including beyond the self-represented.

Also included on the CD is *Access to Justice in the Courtroom for the Self Represented: An Introduction and Overview for Prospective Presenters and Organizers*, a PowerPoint which has been designed to assist in planning how to use the Curriculum itself, and might be ideal as a seminar tool for use by presenters and organizers. It was developed by the faculty at the Harvard Conference who developed the underlying Courtroom Curriculum.

The short version of the Courtroom Curriculum has five sections: **Introductory points; the Courtroom Goal, Access to Justice in a Neutral Court; Ten Techniques, Evidentiary Issues; and Broad Impact on the System.** It recommends the use of six short video segments.

III. Leadership Curriculum

The Leadership Curriculum has nineteen modules, which are described in the PowerPoint itself as Parts. These have been designed for use individually, or in combination. Each of the modules has, where appropriate, faculty notes, activities, and resources, which are on the CD.

The nine modules are as follows:

1. **The Challenge and Opportunity of Self-Represented Litigant Innovation and the Need for Judicial Leadership.** This module introduces the topic with a focus on numbers and the impact on the system, and the potential for innovation towards a 100% access to justice system and the need for judicial leadership.
2. **Models and Opportunities for Judicial Leadership within the Court System.** This key module explores a range of specific innovations that judges can support from self-help centers to case management for access, and from problem assessment to staff training.
3. **Models and Opportunities for Judicial Leadership beyond the Court.** This module includes a similar variety of innovations beyond the court itself. These range from promotion of discrete task representation (unbundling) to community outreach and from promotion of access providers to use of pro bono services. It also deals with perceived barriers to judicial participation in such activities and how to overcome them.

4. **Basic Ethical Principles.** This module shows how the 2007 ABA Model Code of Judicial Conduct clarifies the broad range of permitted and encouraged judicial engagement with these innovations.
5. **Issues and Hypotheticals.** This module addresses specific ethical issues such as fundraising, board memberships, domestic violence council participation, and court management participation.
6. **Leadership and the New Judge.** This module explores the special resources that new judges can bring and how court leaders can facilitate their participation.
7. **Setting on the Path to Leadership and Innovation.** This module suggests initial steps for leadership, including problem assessment, partner identification, and creation of ongoing structures.
8. **Resources.** This module lists national innovation resources and provides a framework for the inclusion of state resources.
9. **Conclusion.** The conclusion reiterates the importance of leadership, and underlines the potential to impact the system as a whole. It makes clear that this area of engagement can make the judicial role broader and more fulfilling.

IV. Videos

There are over 80 video segments divided into 33 clusters on the DVD. Each cluster corresponds to a slide in the Courtroom Curriculum. Education planners are encouraged to view all the videos in the clusters that appear in the modules that they will be presenting, and to choose those that are most helpful for their particular presentation.

The videos are described in the document titled *Best Practice Videos for the Courtroom Judicial Curriculum*. Each video is also described in detail in the faculty notes for the relevant slide.

V. National Bench Guide

The National Bench Guide is on the CD distributed with these materials. The Guide can be modified so that it includes more details on state law, procedures, and available support programs. It may, however, be used “as is.”

The chapters are as follows:

1. **Self-Represented Litigants: Who Are They and What Do They Face When They Come to Court?**

2. **Expanding Access to the Court without Compromising Neutrality**
3. **Law Applicable to a Judge's Ethical Duties in Dealing with Self-Represented Litigants**
4. **Solutions for Evidentiary Challenges**
5. **Caseflow Management**
6. **Courtroom and Hearing Management**
7. **Settling Cases**
8. **Special Due Process Considerations**
9. **Communication Tools**
10. **Avoiding Unintended Bias**
11. **Addressing Litigant Mental Health Issues in the Courtroom**
12. **Judicial Leadership in Access to Justice**

VI. Where the Materials Can Be Found

The following materials are on the enclosed CD and have self-explanatory file names. Please note that with the exception of the videos, the most recently updated versions will continue to be available through the www.selfhelpsupport.org website:¹

- *Handling Cases Involving Self-Represented Litigants: A National Bench Guide for Judges.* This Guide is based on the breakthrough document produced in California with support from SJI. This version was extensively modified for national use and state customization. It is anticipated that this Guide will be adapted for use in a wide variety of states.
- *Curriculum on Access to Justice in the Courtroom for the Self-Represented,* including extensive faculty notes for each of the approximately 190 slides.
- *Introductory Curriculum on Access to Justice for the Self Represented.* This is the short version of the Courtroom Curriculum. It should take 60-90 minutes, depending upon the use of video and activities.

¹ The full URL is http://www.selfhelpsupport.org/library/folder.165143-Harvard_Judicial_Leadership_Conference_Nov_13_2007. The site requires registration, but is free.

- *Handbook of Optional Activities for the Curriculum on Access to the Justice in the Courtroom for the Self Represented*
- *Handbook of Resource Materials for the Curriculum on Access to Justice in the Courtroom for the Self-Represented.*
- *Curriculum on Judicial Leadership in Access to Justice for the Self-Represented, including extensive faculty notes for each of the approximately 80 slides.*
- *Handbook of Optional Activities for Curriculum on Judicial Leadership in Access to Justice for the Self-Represented.*
- *Handbook of Resource Materials for Curriculum on Judicial Leadership in Access to Justice for the Self-Represented.*
- *Access to Justice in the Courtroom for the Self Represented: An Introduction and Overview for Prospective Presenters and Organizers, a PowerPoint presentation designed for seminar use by judicial educators in the states. (This is based upon the introductory presentation at the Conference.)*
- *Best Practice Videos for the Judicial Courtroom Curriculum.* This document describes the videos in the order in which they appear on the DVD.

The following is on the accompanying DVD.

- DVD: *Judicial Best Practices in Self-Represented Litigation in the Courtroom* (120 minutes of video in 32 clusters with approximately 80 separate segments, each referenced in the faculty notes to the Courtroom Curriculum).

Appendix: Project Advisory Group

Hon. Karen S. Adam, Pima County Superior Court, Arizona*

Hon. Rebecca Albrecht (retired), Arizona Superior Court

William Brunson, Esq., Director of Special Projects, The National Judicial College*

Hon. Kevin Burke, 4th Judicial District Court, Hennepin County, Minnesota

Kathy Mays Coleman, Of Counsel Program, National Center for State Courts

Hon. Cynthia J. Cohen, Associate Justice, Massachusetts Appeals Court

Larry Cohn, Esq., Executive Director, Alaska Judicial Council

Hon. Gregory J. Donat, Superior Court, Indiana

Hon. Fern A. Fisher, Administrative Judge of the Civil Court of the City of New York

Chief Justice Karla M. Gray, Montana Supreme Court

Cynthia Gray, Esq., Director, Center on Judicial Ethics, American Judicature Society

John Greacen, Esq., Greacen Associates*

Hon Donna J. Hitchens, Superior Court of California, County of San Francisco

Bonnie Rose Hough, Esq., California Administrative Office of the Courts*

Hon. Mark Juhas, Superior Court of California, County of Los Angeles*

Susan Ledray, Esq. Pro Se Services Manager, 4th Jud. Dist. Court, Hennepin Cty., MN

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Honorable Maureen McKnight, Circuit Court Judge, Oregon*

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Robin Wosje, Esq., Chief Academic Officer, The National Judicial College

Hon. Laurie D. Zelon, Associate Justice, California Court of Appeal*

Anne Zimmerman, Esq., State Pro Se Coordinator, State of Wisconsin Supreme Court

Richard Zorza, Esq., Self-Represented Litigation Network*

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Court Leadership and Self Represented Litigation: Solutions for Access, Effectiveness and Efficiency.

The Court Self-Represented Litigation Solutions Package Concept

The Self-Represented Litigation Network, in cooperation with other organizations, is developing a leadership, solutions and education Package aimed at Court leadership teams. The package, designed for a variety of uses at the state and local level, will be launched at a special track at the September 2007 Court Solutions Conference in Baltimore.

The approach of the Package and the Launch Gathering will be to give the members of multi-disciplinary state teams the tools that they can take back to the states to share the vision, the models, and the practical management steps to open their courts and states to access to justice for the self-represented. The Package and the Launch will bring together focuses on the importance of access for the public and its impact on the effectiveness and efficiency of the courts.

There will be a focus on low cost and easy to deploy innovations that will have a speedy and broad impact.

The Launch Gathering

Following the approach of the 2007 Harvard Judicial Conference on Self-Represented Litigation, attendees will leave the Launch Gathering with an educational package customizable for training throughout their state or in their courts, and with experience in using that package. The Package will include the customizable tools and resources for self-assessing courts, and for supporting the multi-disciplinary teams that can then implement the specific innovations that will improve access for the self-represented. Materials and approaches will be pre-tested at prior gatherings.

Attendees will be expected to prepare “learning by doing” activities, in which they will practice with their peers the use of elements of the package to foster leadership and the implementation of specific solutions. It is the philosophy of the project that attention to

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the specifics of solutions in the context of an overall vision, will provide the most effective and convincing tools and leadership for innovation.

The Conference is open to the court and access to justice communities. State court leadership will be invited to send planning teams, and time will be set aside, and support provided for leadership planning activities.

The Solution Package Modules

The Solution Modules will each start with the core concept, give specific examples of successful implementation, describe the impact on access, effectiveness and efficiency, and describe the concrete leadership and implementation steps needed. Each will also include sections on evaluation and on integrating the innovation with the court.

Each Solution Module will include a PowerPoint with presentation notes, and resource and activity materials useful in introducing, planning, and deploying the innovation

Examples of currently planned Solution Modules are as follows:

- Court Self-Diagnosis and Strategies for Getting a Court Moving
- Establishing and Operating Self Help Centers
- Designing and Modifying Physical Space for Access
- Establishing Justice Corps and Volunteer Programs
- Training and Supporting Clerks for Access
- Developing and Deploying Forms and Instructions
- Deploying Automated Forms for Access
- Setting Up Case Management for the Self-Represented
- Working with Judicial Leadership
- Courtroom Staffing and Services for Access
- The Court Role in Establishing and Supporting DTR
- Supporting and Integrating Law Library Services
- Distance Service Technology
- The Limited English Proficiency Challenge
- Developing Systems to Facilitate and Ensure Compliance

For additional information, contact Richard Zorza, richard@zorza.net.

**RESOLUTION PROPOSED BY THE ACCESS TO JUSTICE
COMMITTEE OF THE LOUISIANA STATE BAR ASSOCIATION**

**Adopted LSBA House of Delegates
January, 2008**

**In Support of the Louisiana Supreme Court's Leadership Role in the Development,
Implementation and Coordination of Assistance Programs for Self-Represented Litigants**

WHEREAS, the Louisiana State Bar Association's Access to Justice Committee and the Louisiana Supreme Court Task Force on Pro Se recognize the judicial system works best when all parties are represented by counsel, but are aware there are instances when this is not possible; and

WHEREAS, the Louisiana State Bar Association's Access to Justice Committee and the Louisiana Supreme Court Task Force On Pro Se also recognize that barriers to equal access to justice significantly impair public trust and confidence in the courts; and

WHEREAS, a fundamental requirement of access to justice is access to the courts, and this access extends to both lawyer-represented and self-represented litigants; and

WHEREAS, many low-income individuals and families do not have the income or funds available which would allow them to retain counsel and must choose between pursuing legal claims without lawyers or foregoing legal rights and remedies available to them in the justice system; and

WHEREAS, the increase in the number of self-represented litigants poses challenges for the courts, the bar and self-represented litigants themselves; and

WHEREAS, the Louisiana Supreme Court has recognized pro se as a significant issue and sent state teams to participate in national and regional pro se conferences; and

WHEREAS, participation in these Louisiana Supreme Court Pro Se Teams has allowed members to examine significant national trends in self-represented litigation, including obstacles to access, and existing program models and practices; and

WHEREAS, the Louisiana Supreme Court Pro Se Team members have learned of innovative programs - often in partnership with legal services agencies, state and local bar associations, and community organizations - with potential to dramatically improve access to the justice system for self-represented litigants; and

WHEREAS, the Louisiana State Bar Association's Access to Justice Committee supports development of these innovative pro se programs reported to them by members of Louisiana Supreme Court Pro Se Team and are willing to include these in its ongoing work; and

WHEREAS, the Louisiana Supreme Court Pro Se Team and the LSBA's Access to Justice Committee believe that it is only with continued bench and bar support that major obstacles to future development and expansion of promising pro se assistance programs can be overcome;

NOW, THEREFORE, BE IT RESOLVED that the Louisiana State Bar Association:

1. Recognizes that courts have an affirmative obligation to ensure that all litigants have meaningful access to the courts, regardless of representation status; and

2. Urge Louisiana judges and courts to take a leadership role in their respective jurisdictions to encourage the expansion of successful pro se assistance programs, to identify and develop programs to address unmet needs, and to coordinate the delivery of program services effectively and efficiently; and

3. Supports the establishment of court rules and policies that encourage the participation of judges, court staff, legal services agencies, state and local bar associations, and community organizations in the implementation and operation of assistance programs for self-represented litigants.

Respectfully Submitted,
LSBA Access to Justice Committee

Hon. Sheral C. Kellar, Co-Chair

Brian D. Lenard Co-Chair

Hon. Jerome Barbera, S.Ct Pro Se Team Leader

Resources on Unbundled Legal Services

ABA Materials

From the ABA Standing Committee on the Delivery of Legal Services

Follow the link at www.ATJsupport.org on the Documents and Resources page or go directly to www.abanet.org/legalservices/delivery

White Paper on Unbundling

The ABA Delivery of Legal Services Committee has issued a white paper examining rules that clarify the role of lawyers who assist self-represented litigants, entitled *An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants*. The paper discusses recently adopted provisions of the ABA Model Rules of Professional Conduct, as well as several rules within the states' ethics codes and rules of procedure. Issues include document preparation, limited court appearances and withdrawal procedures and proper communications between lawyers and *pro se* litigants. The paper is designed to assist policy-makers assess the issues and includes a checklist of factors to consider.

Handbook on Limited Scope Legal Assistance

The Handbook, by the ABA Litigation Section Modest Means Task Force, provides direction for both policy-makers and practitioners. It includes case studies of lawyers providing limited assistance as part of their practices, methods to maximize client services and an analysis of the applicable ethics issues. An extensive appendix includes state rules, checklists and sample client agreement forms.

Pro Se/Unbundling Resource Center Updated

The Delivery Committee's [Resource Center](#) provides information to policy-makers charged with the task of advancing the response to pro se litigation. The center includes reports, articles, books, cases, ethics opinions and self-service sites in its effort to serve as an online technical assistance resource to bar leaders, the judiciary and court administrators.

Court Rules (to locate, use "search by state" function)

- California
- Colorado
- Florida
- Maine
- Nevada
- Washington
- Wyoming

Additional resources on unbundling are listed in the materials prepared by the Self-Represented Litigation Network.

State Access to Justice Commission Reports and Recommendations on Language Barriers

California

Language Barriers to Justice in California (2005)

available at http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10176

This link will bring you to 3 possible downloads:

- full report (68 pages),
- a summary version of the report with charts, stories, etc. (16 pages)
- executive summary (4 pages).

Maine

A Report to the Justice Action Group on Access to Maine Courts for Individuals with Limited English Proficiency (January 2005)

Available for download at <http://www.mbf.org/justice.htm>
(scroll down to bottom of page)