

DELAWARE SUPREME COURT

DELAWARE COURTS: FAIRNESS FOR ALL TASK FORCE



REPORT

September 1, 2009

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EXECUTIVE SUMMARY OF THE DELAWARE COURTS: FAIRNESS FOR ALL TASK FORCE REPORT

The Delaware Courts: Fairness for All Task Force was created by Chief Justice Myron T. Steele in Administrative Directive 168 issued on June 12, 2008. The Directive charged the Task Force with studying the perceptions of fairness and the needs of self-represented litigants in civil cases in the Delaware courts, and with making recommendations and overseeing implementation efforts to address the needs identified.

The Task Force studied these issues using public and agency hearings and surveys of self-represented litigants, judicial officers, court staff and attorneys. Through the information gathered, the Task Force made the following findings:

FINDINGS

- I. Existing services for self-represented civil litigants are providing needed assistance for many individuals.
- II. In spite of the existing resources for self-represented litigants in civil cases, judicial officers, court staff, attorneys, and testifying agencies report that self-represented litigants continue to have problems representing themselves and that self-represented litigants cause concerns regarding the proper balance between justice for self-represented litigants and fairness to both parties when one party is represented by an attorney.
- III. Many self-represented civil litigants do not use the existing assistance available to them for the following reasons:
 - A. Lack of awareness of available resources
 - B. Lack of computer access and/or skills
 - C. Functional illiteracy and developmental disabilities
 - D. Language and cultural issues
 - E. Some self-represented litigants find existing resources difficult to locate and/or use
 - F. Unwillingness/inability to take the time to read existing materials
- IV. Self-represented civil litigants indicate that additional ways to obtain assistance and additional types of assistance may be helpful to them.

- V. The majority of self-represented litigants surveyed in the Justice of the Peace and Family Courts said that they could not afford an attorney.
 - A. However, 84% of Justice of the Peace Court respondents said that they did not believe an attorney was necessary for their case...
 - B. In contrast, only 51% of respondents in Family Court indicated that they believed an attorney was not necessary for their case.
 - C. Although many individuals, particularly in the Justice of the Peace Court, can successfully represent themselves using information provided by the courts and others, the Task Force was told in hearings that, in many types of cases, and for many individuals, representation by an attorney remains essential.
- VI. Most self-represented civil litigants responding to the Task Force surveys in the Justice of the Peace and Family Courts were satisfied with the way they were treated and the way that their cases were handled in court. However, many of the persons attending the public hearings expressed concerns about the handling of their cases, particularly with regard to Family Court.

RECOMMENDATIONS

The Task Force made the following recommendations:

INCREASING PROCEDURAL FAIRNESS AND THE PERCEPTION OF FAIRNESS IN THE DELAWARE COURTS/ADDRESSING ETHICAL ISSUES

- I. The Supreme Court should consider adopting an Administrative Directive, or other appropriate means of providing guidelines to court staff in distinguishing legal advice from legal information.
- II. The Administrative Office of the Courts should work with all of the Delaware courts to provide training for court staff on assisting self-represented litigants without giving legal advice using the directive or other material adopted by the Supreme Court
- III. The Supreme Court should consider appointing a committee to address concerns that judicial officers may have regarding balancing self-represented litigants' perceptions of procedural fairness while maintaining neutrality in the courtroom.
- IV. Going forward, the Judicial Branch should consider additional ways to further procedural fairness and the perception of procedural fairness for self-represented litigants through discussions among judges and judicial education programs.

- V. The Judicial Branch should increase outreach efforts to the community.

INCREASING ASSISTANCE TO SELF-REPRESENTED LITIGANTS

- I. The Judicial Branch should expand the ways in which information is provided and the types of information available to assist self-represented litigants.

The Judicial Branch should consider:

- A. Exploring ways to increase the use and ease of use of their informational web sites
- B. Using interactive forms to assist self-represented litigants
- C. Finding ways to make existing materials more understandable to self-represented litigants
- D. Expanding the subject matter of the information available to self-represented litigants
- E. Expanding the media through which materials for self-represented litigants are available

In addition to using their web sites, courts should consider using/updating the following media:

- 1. Booklets and brochures.
 - 2. Videos and/or slide shows
 - 3. Notices
- F. Increasing the number of locations where court information is available.
- G. Creating a call-in line to provide procedural information and/or additional self-help centers or a partnership with local libraries
- II. The Judicial Branch should provide more information and assistance for persons with limited English proficiency.
- III. Going forward, the Judicial Branch should explore ways to address the needs of self-represented litigants in courts beyond the Justice of the Peace and Family Courts.

INCREASING ACCESS TO LEGAL ASSISTANCE

The Judicial Branch and others, including the bar should support ways to improve access to attorneys.

- I. The Judicial Branch and others, including the bar should seek adequate funds for low income legal services providers.
- II. The Judicial Branch and the bar should consider ways of expanding limited assistance by attorneys to self-represented civil litigants.
 - A. The Supreme Court should consider appointing a Bench-Bar committee to review the Delaware Rules of Professional Conduct and determine whether any changes should be made to further encourage the use of discrete task representation in appropriate cases
 - B. The Administrative Office of the Courts should consider the feasibility of expanding the existing limited pro bono assistance program.
 - C. The courts should consider additional calendaring of cases of the same type to enhance the provision of assistance by legal services providers.

REPORT OF THE DELAWARE COURTS: FAIRNESS FOR ALL TASK FORCE

BACKGROUND

Existing Efforts to Address the Challenges of Self-Represented Litigants

The challenge presented by self-represented litigants in providing access to justice has been a topic of concern on a national level and in Delaware. It is estimated that 75% of civil litigants in the Delaware Family Court are representing themselves. In the Justice of the Peace Court, it is also more usual for individuals to be self-represented than to have an attorney. Increasing numbers of self-represented litigants are appearing in the other courts as well, though not in as substantial percentages as in the Justice of the Peace and Family Courts.

Ideally, parties will be represented by attorneys because of the complexity and difficulty associated with presenting one's own case. However, the reality is that many individuals cannot afford to hire an attorney while others believe that an attorney is not necessary for their case. Given the extremely limited resources for legal services organizations that provide legal services at no charge and the belief on the part of many individuals that they can handle their own case, even if they can afford an attorney, the Delaware courts have stepped up to the challenges presented by providing assistance to self-represented litigants through a variety of means as discussed below.

Family Court

The Family Court provides services to self-represented litigants in a variety of ways. It has resource centers in each county which provide information and assistance to self-represented litigants. Included in the materials provided at the centers are court forms with instructions, informational brochures on Court procedures, legal and other reference materials, directories of lawyers and brochures of other professionals, reading tables and individual computer workstations that provide access to the Court's web site and research tools, a copy machine, a fax machine, and notary services. Staff members are available at each center to provide information on court procedures.

The Court's informational materials and form/instruction packets (including sample forms) are available on the Court's web site, as well as in the resource centers, and cover a myriad of topics, including:

- Divorce and annulment
- Custody and custody modification
- Visitation
- Guardianship and permanent guardianship

- Termination of parental rights
- Adoption
- Registration of foreign custody and protection orders

In addition, the web site contains other information, such as:

- Court rules
- How to prepare for a court hearing
- Fees
- Hours and locations of the courts
- Glossary of legal terms
- Frequently asked questions in English and Spanish

The Court is currently developing additional instruction booklets as well as creating videos to complement the instruction packets and has been active in developing desk reference books for pro bono attorneys volunteering in the area of family law. The Court also holds seminars periodically on topics of interest to self-represented litigants. Finally, the Court is in the process of working with the nCourt Company to develop automated forms for self-represented litigants.

Justice of the Peace Court

The Justice of the Peace Court has information for self-represented litigants on its web site on a number of topics including:

- Filing and defending a civil action
- Filing and defending a landlord tenant action
- Rules of evidence
- Filing a certificate of representation
- Collecting a judgment
- Starting or contesting a garagekeeper's lien
- Appeals and other post-judgment procedures
- How to prepare for and what to expect at trial
- All forms and sample complaint forms
- Frequently asked questions
- Court Rules
- Other, such as Fees; Hours and Locations of courts; Glossary of terms

In addition, the Justice of the Peace Court has informational brochures and has worked with the Administrative Office of the Courts, Community Legal Aid Society, Inc., and Delaware Volunteer Legal Services to hold community-based seminars on the Landlord Tenant Code and court procedures for landlords and tenants.

Other Courts and the Administrative Office of the Courts

All courts have web sites that contain court forms, court rules, hours and locations, and related information of help to self-represented litigants. The Court of Common Pleas, in particular, has a great deal of information for self-represented litigants on its web site including material on such topics as civil actions, name changes, appeals from the Justice of the Peace Court, and mediation. Other materials on the Judicial Branch web site of note for self-represented litigants include a handbook for guardians in the Court of Chancery and the Citizen's Guide to Filing an Appeal in the Supreme Court of Delaware.

In addition, the Administrative Office of the Courts administers a limited pro bono assistance program, with support from Delaware Volunteer Legal Services that helps Family Court litigants. The program uses volunteer attorneys to provide free legal assistance for specific questions of self-represented litigants in the Family Court.

The Administrative Office of the Courts also operates an information desk in the New Castle County Courthouse which provides information for persons coming into the courthouse, as well as a self-help center which provides a space in addition to the Family Court Resource Center for self-represented litigants to make copies, check the internet or reference materials, or obtain other assistance. The Self-Help Center is currently starting a pilot project assisting guardians filing paperwork in the Court of Chancery. The Administrative Office of the Courts also operates the Court Interpreter Program which certifies and provides interpreters for court proceedings.

Formation of the Task Force

While the courts have individually undertaken substantial efforts to assist self-represented litigants, there has not yet been a truly integrated, system-wide strategic approach to these issues. As a result, some aspects of the challenges posed by self-represented litigants have not been fully addressed. These include such diverse concerns as litigants' perceptions of procedural fairness, ethical issues posed by self-represented litigants for judicial officers and court staff, and addressing the needs of those who are functionally illiterate or who have limited English proficiency.

Procedural fairness, in particular, is an area to which attention has recently been turned on a national level and has been shown by recent research to be a crucial factor in public perceptions of the Judicial Branch. As stated in a 2007 publication of the American Judges Association by Judges Kevin Burke and Steve Leben, entitled "Procedural Fairness" A Key Ingredient in Public Satisfaction¹:

¹ The publication can be found online at: <http://aja.ncsc.dni.us/htdocs/AJWhitePaper9-26-07.pdf>

Judges can alleviate much of the public dissatisfaction with the judicial branch by paying critical attention to the key elements of procedural fairness: voice, neutrality, respectful treatment, and engendering trust in authorities². Judges must be aware of the dissonance that exists between how they view the legal process and how the public before them views it. While judges should definitely continue to pay attention to creating fair outcomes, they should also tailor their actions, language, and responses to the public's expectations of procedural fairness. By doing so, these judges will establish themselves as legitimate authorities; substantial research suggests that increased compliance with court orders and decreased recidivism by criminal offenders will result. Procedural fairness also will lessen the difference in how minority populations perceive and react to the courts.³

Ethical issues relating to self-represented litigants arise when judicial officers are faced with determining how much and what types of assistance can be provided to self-represented litigants with telling their side of the case in the courtroom while maintaining neutrality for all in the case. Ethical issues also arise for court staff who are asked to assist self-represented litigants while not providing legal advice.

In order to develop a more fully integrated approach to the many challenges posed by self-represented litigants, Chief Justice Myron T. Steele created the Delaware Courts: Fairness for All Task Force by Administrative Directive 168, issued on June 12th 2008. (See Appendix 1) In the Directive, the Chief Justice noted that fairness and the perception of fairness for all, regardless of economic circumstances, through equal access to justice are goals of the Delaware Judicial Branch and that while self-represented litigants frequently have difficulty navigating the court system, the Judicial Branch can help to promote fairness and the perception of fairness by addressing the needs and concerns of self-represented litigants. The Directive charged the Task Force with studying the perceptions of fairness and the needs of self-represented litigants in the Delaware courts, with a focus on those trial courts with the highest percentages of self-represented litigants. The Task Force was further charged with making recommendations and overseeing implementation efforts to address ways to solve the challenges of self-represented litigants in the Delaware courts.

² The White Paper uses the following definitions of these elements:

Voice: the ability to participate in the case by litigants expressing their viewpoint

Neutrality: consistently applied legal principles, unbiased decision maker, and a “transparency” about how decisions are made;

Respectful treatment: individuals are treated with dignity and their rights are obviously protected;

Trustworthy authorities: authorities are benevolent, caring, and sincerely trying to help the litigants – this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants' needs.

³ *White paper* at 6, citing Tom R. Tyler, *Why People Obey the Law* (2006).,
³ *White paper* at 3.

Members of the Task Force

In addition to appointing the Honorable Alan G. Davis, Chief Magistrate and Patricia W. Griffin, Esq., State Court Administrator, as co-chairs, the Chief Justice appointed the following members to the Task Force:

The Hon. Calvin L. Scott, Superior Court
The Hon. Peter B. Jones, Family Court
The Hon. Charles W. Welch, III, Court of Common Pleas
The Honorable James Tull, Justice of the Peace Court
Michael A. Barlow, Esq., Office of the Governor
The Hon. Melanie G. Marshall, Delaware House of Representatives
Richard Carter, Delaware State Senate
Miranda D. Clifton, Esq., Delaware State Bar Association
Janine N. Howard O'Rangers, Esq., Delaware Volunteer Legal Services
Michael P. Morton, Esq., Apartment Owners Association

The Task Force was staffed by Christine H. Sudell, Esq. and Stephanie J. Symons, Esq., both of the Administrative Office of the Courts

Mission Statement

The Task Force adopted the following mission statement at its initial meeting:

To study the perceptions of fairness and the needs of self-represented civil litigants in the Delaware State Courts, with a focus on those trial courts with the highest proportion of self-represented litigants and to recommend and oversee efforts to improve perceptions of fairness and assist self-represented civil litigants.

Methodology

The Task Force determined that it should employ a variety of methods to study the challenges raised by and needs of self-represented litigants. These included: public hearings, hearings for testimony by representatives of agencies involved with the court system, and surveys of judicial officers, court staff, attorneys, and self-represented litigants. In addition, the Task Force reviewed detailed information prepared by the Self-

Represented Network concerning best practices in addressing the challenges of self-represented litigants.

The following is a more specific description of the methodologies employed by the Task Force:

1. Public Hearings

In order to obtain information on the needs of self-represented litigants and their perceptions of the civil justice system, the Task Force held a series of public hearings. Prior to each of the hearings, flyers in English and Spanish were distributed to a wide range of community centers, social service agencies, churches, and other organizations that serve the community. Hearings were scheduled in the evening in order to enable more individuals to attend. Announcements were also sent to local radio and television stations. Interpreters were provided for both Spanish speakers and deaf and hard of hearing individuals. Prior to the actual start of each public hearing, the Task Force provided time for an informal discussion with Task Force members and other court representatives so that any individuals with specific questions could have them answered personally. When the actual hearing began, the Task Force provided a brief overview of the court system and efforts to assist self-represented litigants. (See Appendix 2 for summaries)

Public hearings were held as follows:

- Hick Anderson Community Center, Wilmington – March 26, 2009, 6:00 p.m.
- DelDot, Dover – April 6, 2009, 6:00 p.m.
- County Council Chambers, Georgetown – April 13, 2009, 6:00 p.m.

2. Agency Hearings

Hearings were held with agencies serving self-represented litigants in order to obtain their input on the challenges facing self-represented litigants and the ways in which the courts can best improve their services to these litigants. Hearings were held during the day and agencies were provided with an approximate time slot for their presentations so as to not take too much time out of their day. (See Appendix 3 for summaries)

Agency hearings were held as follows:

- DelDOT, Dover – February 20, 2009

The following agencies testified at the February 20th meeting:

Delaware Apartment Association
Delaware Commission on Women
Developmental Disabilities Council
Delaware Manufactured Homeowner's Association

Governor's Advisory Council for Hispanic Affairs
Neda Biggs, immigration attorney

- New Castle County Courthouse – March 27, 2009

The following agencies testified at the March 27th hearing:

American Civil Liberties Union
Center for Community Education
Child, Inc
Coalition for Literacy
Coalition Against Domestic Violence
Community Legal Aid Society, Inc.
Delaware Department of Justice
Delaware Volunteer Legal Services
Family Court
Hicks Anderson Community Center
Legal Service Corporation of Delaware

3. Surveys

Surveys of attorneys, judicial officers, court staff, and self-represented litigants were undertaken by the Task Force in order to learn more about the problems and needs of self-represented litigants and what the courts could do to more effectively assist self-represented litigants. The survey methodology and implementation was completed in-house and should not be considered scientific surveys. Therefore, they should be viewed as representing only the opinions of the individuals surveyed and not as an accurate measure of the views of the groups they represent.

a. Attorney Survey

The Task Force survey for attorneys was distributed to all Delaware attorneys through the bar association listserv in January 2009. A total of 122 attorneys responded. (See Appendix 4)

b. Judicial Officer Survey

A survey of judicial officers was distributed to all Delaware judges, commissioners, and justices of the peace by e-mail in February 2009. (See Appendix 5)

c. Court Employee Survey

A survey of court employees was distributed to all Delaware court staff by e-mail in February 2009. (See Appendix 6)

d. Self-Represented Litigant Survey

As Administrative Directive 168 directed the Task Force to focus on those courts with the most self-represented litigants, the surveys of self-represented civil litigants were undertaken only in the Justice of the Peace and Family Courts. focusing on these courts also helped the Task Force to obtain a sufficient number of respondents within a prescribed time period. The litigant surveys were undertaken during April and May with AOC staff, assisted by court staff, distributing questionnaires for two days in each county for each of the two courts being surveyed. (See Appendix 5)

4. Review of best practices

The Task Force also reviewed best practices for assisting self-represented litigants using the publication of the Self-Represented Litigation Network, “Best Practices in Court-Based Programs for the Self-Represented 2008”, and other sources.

FINDINGS

In accordance with Administrative Directive 168, the information gathered by the Task Force focused on those courts with the highest percentages of self-represented litigants – the Justice of the Peace and Family Courts. However, many of the findings and recommendations that follow apply equally to the needs of self-represented litigants in the other Delaware courts. Using the information from its surveys, public hearings, and agency hearings, the Task Force makes the following findings.

I. Existing services for self-represented litigants in civil cases are providing needed assistance for many individuals.

Surveys of self-represented litigants in the Justice of the Peace and Family Courts showed that many self-represented litigants were availing themselves of assistance provided by these courts and found them to be helpful.

Justice of the Peace Court

In the Justice of the Peace Court, 45% of respondents said that they had used either the court's web site or printed materials. Over 95% of respondents who reported using the web site reported that it was very or somewhat helpful, with 44.4% of respondents reporting that it was very helpful and 51.1% reporting that it was somewhat helpful. Most respondents also found the printed materials to be helpful with 45.7% saying that they were very helpful and 48.6% saying that they were somewhat helpful.

If you used self-help materials how helpful were they?

How Helpful	Web Site	Printed Materials
Very	20 (44.4%)	16 (45.7%)
Somewhat	23 (51.1%)	17 (48.6 %)
Not	2 (4.4%)	2 (5.7%)
Total	45 (100%)	35 (100%)

Among those who reported not using the Court's web site, almost two-thirds of respondents (64.7%) said that they did not know the Court had a web site. In contrast, only about one-fifth (21.6%) of responding litigants said that they did not use the web site because they don't use a computer.

Family Court

In the Family Court, slightly less than one-third of respondents (31%) reported that they had used one of the Family Court Resource Centers. The vast majority of respondents who used one of the Resource Centers found it to be helpful, with more than half (51%) saying that they found it to be very helpful, 45% saying it was somewhat helpful and only one individual saying that it was not helpful.

Only 11% of respondents (12 individuals) reported using either the web site or printed materials⁴. Therefore, the number of respondents rating the usefulness of the web site and printed materials was quite small (12 individuals for each). Keeping this in mind, again the vast majority of these respondents reported that the web site and printed materials were helpful with more than half (58%) of respondents saying that both the web site and printed materials were very helpful, one-third (33%) saying that they were somewhat helpful and only one individual saying that they were not helpful.

If you used the Family Court Resource Center, web site or printed materials, how helpful were they?

How Helpful	Resource Center	Web Site	Printed Materials
Very	18 (51.4%)	7 (58.3%)	7 (58.3%)
Somewhat	16 (45.7%)	4 (33.3%)	4 (33.3%)
Not	1 (2.9%)	1 (8.4%)	1 (8.4%)
Total	35 (100%)	12 (100%)	12 (100%)

Among those reporting not using the web site, 58% said that they did not use the web site because they did not know that the Court had a web site and 42% said that they did not use it because they do not use a computer.

II. In spite of the existing resources for self-represented litigants in civil cases, judicial officers, court staff, attorneys, and testifying agencies report that self-

⁴ Family Court provides packets with forms and explanations for a wide variety of types of cases. It is possible that many respondents did not view the packets as informational materials when responding to this question. During FY 2009, in addition to packets downloaded from the internet, 6,288 packets were sold. (This does not include packets on child support and preparing for your court hearing that are distributed for free.) Packets that were sold were distributed by topic as follows:

Packet	Number Sold in FY 2009
Custody	1,717
Custody Modification	484
Divorce	2275
Answer to Divorce	127
Adoption	30
Termination of Parental Rights	49
Visitation	284
Visitation Modification	240
Guardianship	1,043
Permanent Guardianship	28
Answer to Guardianship	11
TOTAL	6,288

represented litigants continue to have problems representing themselves and that self-represented litigants cause concerns regarding the proper balance between justice for self-represented litigants and fairness to both parties when one party is represented by an attorney.

In spite of the existing programs for providing assistance to self-represented civil litigants, many of these litigants continue to experience problems in representing themselves. The results of the Task Force surveys of judicial officers, court staff and attorneys, as well as the testimony at hearings, highlighted continuing problems that self-represented litigants face and that these issues raise concerns for all of those involved in the process, as well as the self-represented litigants themselves.

A. Judicial Officers

Many judicial officers responding to the Task Force survey expressed concern that self-represented litigants are not familiar with trial procedures, including evidence, the necessity of witnesses and cross examination. They reported that self-represented litigants frequently do not know what documents to bring to court. In addition, they frequently do not understand the legal issues involved in the case and, at times, the quality of their filings is so poor that it is difficult to understand what they are seeking.

When self-represented litigants do not know how to proceed in court, judicial officers report that it can be difficult to decide how much and when to intercede and that there is a tension between trying to see that justice is done for the self-represented litigant, while balancing the effect on the opposing party who is represented. The degree to which the court should impose sanctions on pro se litigants for repeated failure to comply with court rules was also cited by one judicial officer as a concern. Another judicial officer indicated that he believed that there is a disparity between judicial officers' views as how to best handle cases involving a self-represented litigant so that there is no set standard.

B. Court Staff

Court staff responding to the Task Force survey reported that self-represented litigants sometimes expect court staff to fill out forms for them and do not understand that court staff cannot provide legal advice.

C. Attorneys

Attorneys who responded to the Task Force attorney survey were asked what problems or concerns, if any, they had when litigating civil cases against self-represented individuals. The most frequently mentioned problems they described were their beliefs that:

- Courts are too lenient with self-represented litigants

- Self-represented litigants cause delays and additional expenses for their clients; and
- It is difficult for attorneys to balance being fair or not looking too tough with a self-represented litigant against the attorney's responsibility to his or her client

Other problems mentioned were the perceptions that: it is more difficult to reach a settlement with a self-represented litigant; pleadings are difficult to understand; self-represented litigants try to get legal advice from opposing counsel; it is more difficult to communicate with self-represented litigants; the attorney ends up doing a disproportionate share of the work when there is a self-represented litigant; self-represented litigants do not follow the rules of procedures, such as responding to discovery; self-represented litigants do not always act ethically; and some seem to be getting legal help in the background, while seeking leniency from the court.

In addition, attorneys responding to the attorney survey emphasized that self-represented litigants did not know court procedures and how to present a case. Approximately, two-thirds of attorneys responding cited procedural problems – the lack of knowledge of court rules and the rules of evidence - as major problems for self-represented litigants. Other concerns that were mentioned were: not understanding the law, failing to respond to discovery, not knowing how to file or draft documents, and unfamiliarity with legal language.

One attorney appearing at a hearing to represent the Delaware Apartment Association reported that there is a perception that justices of the peace sometimes go too far on behalf of tenants and believe that landlords have deep pockets. In addition, she said, there is a perceived lack of consistency among justices of the peace both as to the law and as to how parties are treated. Another representative of the Association mentioned that most landlords are represented in court by managers who are not attorneys but who, nevertheless, are held to a higher standard than tenants.

D. Agencies

Agencies testifying before the Task Force also noted similar problems experienced by self-represented litigants. Many of the agencies praised the work done by the Family Court Resource Centers in helping self-represented litigants file cases, but noted that there is a need for further assistance thereafter. For example, Community Legal Aid noted that, after filing their cases, Family Court litigants frequently do not know what to do next and they are unfamiliar with court procedures once they enter the courtroom. Legal Services Corporation told the Task Force that pamphlets on testimony, evidence and what to bring to court would be very useful for self-represented litigants in many courts and that some crucial information could be included on court notices.

According to agency representatives, litigants in certain types of cases particularly need assistance. Provision of attorneys and other assistance for PFAs was cited as one area of particular need by the Coalition Against Domestic Violence, Delaware Volunteer Legal Services, and Child, Inc. Information on what to include in the filing and what to bring to court for PFAs was particularly noted as needed by self-represented litigants. Other areas specifically mentioned were mortgage foreclosures, Family Court guardianship cases, and education law.

III. Many self-represented litigants in civil cases do not use the existing assistance available to them.

In the survey of self-represented litigants, 55% of Justice of the Peace Court litigants responding said that they had not used either the web site or the printed materials that are made available by the Court. In the survey of Family Court self-represented litigants, 69% of respondents reported that they had not used one of the Family Court Resource Centers and 89% reported that they had not used either the web site or written materials prepared by the Court.

There appear to be several reasons that litigants do not avail themselves of existing self-help assistance. These are:

A. Lack of awareness of available resources

In many instances, litigants are not aware of these resources. This appears to be particularly true with regard to use of the Courts' web sites. Among those self-represented litigants in the Justice of the Peace Court who reported not using the Court's web site, almost two-thirds said that they did not use the web site because they did not know that the Court had a web site. Similarly, in the Family Court, 58 % said that they did not use the web site because they were unaware of the Court's web site.

B. Lack of computer access and/or skills

Others are unable to access some of the available information – on the courts' web site - because they do not use a computer. In the Justice of the Peace Court, about one-fifth (21.6%) of self-represented litigants who responded to the Task Force survey said that they did not use the web site because they don't use a computer. In the Family Court, 42% of responding self-represented litigants said that they did not use the courts web site because they do not use a computer.

Many of the agency representatives who testified told the Task Force that self-represented litigants continue to need brochures and other printed materials, both because many do not use a computer and because they sometimes need access to information when they are in the courthouse.

C. Functional illiteracy and developmental disabilities

The Task Force also learned that some self-represented litigants face the additional barrier of functional illiteracy. The Coalition for Literacy testified that over 13% of the population does not have a high school diploma or GED and that functional illiteracy is common. Navigating the civil justice system presents particular difficulties for these individuals. Courts should be aware of these needs if they want to provide effective assistance, according to the Coalition and Delaware Volunteer Legal Services speakers. The Family Division of the Attorney General's Office and the Disabilities Council suggested that more education is needed for frontline staff to help them assist those who are illiterate and can't fill out forms, as well as the developmentally disabled. Finding ways to serve these individuals is a critical piece of assisting self-represented litigants. One way of doing so - the use of videos or other visual media - was suggested by agency representatives, including the Delaware Commission on Women, Hicks Anderson Community Center, the American Civil Liberties Union, and Delaware Volunteer Legal Services

D. Language and cultural issues.

A growing population of persons with limited English proficiency in Delaware is creating a subset of individuals who face particular difficulties in interacting with the court system. The courts have addressed this need, in part, by providing court interpreters for criminal cases and for many types of civil cases. From fiscal year 2004 to fiscal year 2009, the increase in spending on interpreters (with Spanish accounting for the largest language need) increased by 118% - demonstrating the growth of this population. Although the courts have taken the initiative in providing interpreters for court proceedings, the Task Force learned of other needs for those with limited English proficiency.

Representatives from the American Civil Liberties Union and the Governor's Council on Hispanic Affairs told the Task Force that those with limited English proficiency face a variety of both language and cultural barriers in representing themselves in court. A member of the Governor's Council on Hispanic Affairs handed out a form in Spanish to the Task Force and went on to also explain in Spanish what needed to be done so that Task Force members could experience first hand the difficulties faced by those with limited English proficiency in dealing with the judicial system. Others told the Task Force that there was a shortage of interpreters for civil cases and for communicating with court staff in the resources centers and elsewhere to obtain needed information since, due to funding limitations, the courts do not fund court interpreters in all civil cases, or outside of actual court proceedings. In addition, the Task Force was told that signage using universal symbols and/or Spanish can help make the courthouse more accessible for those with limited English proficiency.

The Task Force also learned that not only are individuals with limited English proficiency functionally illiterate when it comes to accessing information and completing filings that are in English, many come from cultures in which the court systems are problematic and therefore, do not trust the court system to operate fairly for them. Others are afraid to call attention to themselves because they fear that, by coming to court, they or relatives will have immigration issues according to testimony by the American Civil Liberties Union and an immigration attorney. As a result many persons with limited English proficiency simply do not use the court system, even when they have been a victim of fraud, are involved in a landlord tenant dispute, or have other serious legal issues.

E. Some self-represented litigants find existing resources difficult to locate and/or use

Comments made in the survey of self-represented litigants pointed to several areas in which self-represented litigants had difficulties in finding and/or using existing materials. These focused on the following:

- In the Justice of the Peace Court, web site litigants said that it was difficult to find needed materials, especially forms
- In the Family Court, several litigants requested that information in Spanish be provided
- In both courts, a number of litigants felt that information and forms should be simplified and that less legal terminology should be used. Court staff responding to the survey concurred and indicated that some forms are difficult for self-represented litigants to understand and that they believe that there are additional existing forms for which instructions could be prepared and that some forms could be simplified and put into language that is more understandable for self-represented litigants.
- Additional mechanisms for distributing information are needed for some litigants – for example, while much information is on the courts’ web sites, individuals who do not use computers or are not aware of the web sites do not see this information. In addition, court clerks commented that many self-represented litigants find it more convenient to be able to simply pick up materials when they are in the courthouse and will not take the time to check the web site.

F. Unwillingness/inability to take the time to read existing materials

Apart from individuals who are functionally illiterate or who have limited English proficiency, many self-represented litigants appear unable or unwilling to devote time to reading detailed information. One self-represented litigant responding to the Task Force Survey commented that most people do not want to spend more than 5 minutes reading material. Similarly, an agency representative told the Task Force that, although the Family Court has a booklet on evidence, explaining generally what is permissible in court, this is not usually read and

petitioners in Protection from Abuse proceedings think that they can bring the police report to court as evidence.

IV. Self-represented litigants in civil cases indicate that additional ways to obtain assistance and additional types of assistance may be helpful to them.

Self-represented litigants in the Task Force surveys in the Justice of the Peace and Family Courts were asked what additional types of assistance could be helpful to them. The responses were broken down by Court as follows:

Justice of the Peace Court

A call-in line to obtain information on court procedures was the potential new assistance most frequently mentioned by responding litigants as being very helpful (83.9%). Other types of assistance mentioned by more than half of responding litigants as being very helpful were: more brochures (71.6%); being able to talk with an attorney about a specific question (69.6%); a self-help center (64.6%); videos on court procedures (58.1%); and court information and forms at your public library (54.8%).

The following table shows responses by type of assistance:

Please indicate how helpful you believe each of the following could be to you.

(Percentages are based on those responding to each question)

Type of Assistance	Very Helpful	Somewhat Helpful	Not Helpful
More brochures	68 (71.6%)	18 (18.9%)	9 (9.5%)
Info. on how to find an attorney	41 (43.2%)	33 (34.7%)	21 (22.1%)
Seminars on court procedures	41 (44.1%)	33 (35.5%)	19 (20.4%)
Self-help center	62 (64.6%)	27 (28.1%)	7 (7.3%)
Videos on court procedures	54 (58.1%)	24 (25.8%)	15 (16.1%)
Call in line for court procedures	78 (83.9%)	8 (8.6%)	7 (7.5%)
Be able to talk with attorney about a specific question	66 (68.6%)	23 (24.0%)	7 (7.3%)
Be able to hire an attorney just to do your court paperwork	40 (44.4%)	32 (35.6%)	18 (20.0%)
Court information and forms at your public library	51 (54.8%)	31 (33.3%)	11 (11.8%)

Family Court

The types of assistance most frequently mentioned as potentially very helpful were a call in line for information on court procedures (67.0%), being able to talk with an

attorney about a specific question (66.3%), additional brochures (63.3%), self-help center (57.0%) and information on how to find an attorney (52.8%).

The following table shows the responses for each type of assistance.

Please indicate how helpful you believe each of the following could be to you.

(Percentages are based on those responding to each question)

Type of Assistance	Very Helpful	Somewhat Helpful	Not Helpful
More brochures	57 (63.3%)	22 (24.4%)	11 (12.2%)
Info. on how to find an attorney	56 (52.8%)	36 (34.0%)	14 (13.2%)
Seminars on court procedures	38 (39.6%)	39 (40.6%)	19 (19.8%)
Self-help center	53 (57.0%)	30 (32.3%)	10 (10.7%)
Videos on court procedures	31 (39.2%)	27 (34.2%)	21 (26.6%)
Call in line for court procedures	59 (67.0%)	19 (21.6%)	10 (11.4%)
Be able to talk with attorney about a specific question	59 (66.3%)	20 (22.5%)	10 (11.2%)
Be able to hire an attorney just to do your court paperwork	34 (45.3%)	23 (30.7%)	18 (24.0%)
Court information and forms at your public library	43 (47.8%)	31 (34.4%)	16 (17.8%)

In addition to providing additional ways to obtain assistance, additional types of information were mentioned as being useful to self-represented litigants. Although many of the courts provide a myriad of information on topics needed by self-represented litigants, these litigants, as well as judicial officers, court staff, and agency personnel identified areas in which they felt more information is needed.⁵ These include:

- What to bring to court
- How to dress and behave in court
- Testimony
- Evidence
- Substantive law relevant to specific types of cases
- Knowing what needs to be included for a filing to be complete
- Knowing what needs to be done after a court hearing

⁵ In some cases, this information may, in fact, be available, on the courts' web sites, but may be mentioned because it may not be readily accessible to many self-represented litigants who do not use the web sites or do not look at them in depth.

V. The majority of civil self-represented litigants surveyed in the Justice of the Peace and Family Courts said that they could not afford an attorney.

The Task Force surveys of Justice of the Peace and Family Court self-represented litigants found that the majority of self-represented litigants said that they could not afford an attorney. Seventy percent of respondents in the Justice of the Peace Court and 75% of respondents in the Family Court reported being unable to afford an attorney. (Similar results for Family Court litigants were found in evaluations submitted by Family Court litigants using the Limited Pro Bono Assistance Program, with 76% of the 201 litigants using the program between July 1, 2008 and June 30, 2009 reporting that they could not afford an attorney.)

A. 84% of Justice of the Peace Court respondents said that they did not believe an attorney was necessary for their case.

The inability to afford an attorney appeared to be less of a burden for responding self-represented litigants in the Justice of the Peace Court than in Family Court. In the Justice of the Peace Court, 84% of respondents said that they did not believe an attorney was necessary. Since this percentage was even higher than the percentage reporting that they could not afford an attorney, it appears likely that relatively few of these litigants felt burdened by not being able to afford an attorney.

B. In contrast, only 51% of respondents in Family Court, indicated that they believed an attorney was not necessary for their case.

In contrast, in the Family Court, the percentage reporting that they thought an attorney was not necessary – 51% - was substantially lower than in the Justice of the Peace Court. In addition, unlike in the Justice of the Peace Court, the 51% in Family Court saying that they believed that an attorney was not necessary was substantially lower than the percentage saying that they could not afford an attorney. Thus, Family Court litigants perceive a greater unmet need for representation by an attorney than do self-represented litigants in the Justice of the Peace Court.

C. Although many individuals, particularly in the Justice of the Peace Court, can successfully represent themselves using information provided by the courts and others, the Task Force was told in hearings that, in many types of cases and for many individuals, representation by an attorney remains essential.

In the agency hearings, many agency representatives told the Task Force that self-represented litigants have difficulty successfully representing themselves, particularly in certain types of cases or when the litigant is functionally illiterate, developmentally or mentally disabled, or has limited English proficiency. In these situations, agency representatives said, litigants are best served by having an

attorney rather than trying to represent themselves. For these situations, legal services need to be available at low or no cost. However, with the current economic climate, the need for such services has grown and become more urgent, but, at the same time, funding limitations for legal service providers makes such services even less accessible to the public.

VI. Most self-represented civil litigants responding to the Task Force surveys in the Justice of the Peace and Family Courts were satisfied with the way they were treated and the way that their cases were handled in court. However, many of the persons attending the public hearings expressed concerns about the handling of their cases, particularly with regard to Family Court.

The Task Force survey asked self-represented litigants in the Justice of Peace and Family Courts about their perceptions of fairness in the way that they were treated and their cases were handled in court. Respondents in both courts indicated a great deal of satisfaction with their treatment in court and by court employees. More than three-quarters of respondents in the Justice of the Peace Court agreed with the statements that the handling of their case was fair and that the judge listened to their side. In the Family Court, more than two-thirds agreed that the handling of their case was fair and more than three-quarters agreed that the judge listened to their side. Respondents were even more satisfied with their treatment by court employees, with more than 97% in the Justice of the Peace Court agreeing that court employees were polite and that they were helpful and more than 82% of Family Court respondents agreeing with these statements.

The following tables show the responses to each question concerning self-represented litigants perceptions of their treatment, by court.

JUSTICE OF THE PEACE COURT

Please indicate the degree to which you agree with the following
(Percentages are based on those responding to each question)

	Strongly Agree	Agree	Disagree	Strongly Disagree
Handling of case was fair	37 (50.7%)	23 (31.5%)	4 (5.5%)	9 (12.3%)
Judge listened to my side	34 (50.7%)	20 (29.9%)	8 (11.9%)	5 (7.5%)
I was treated same as others	34 (48.6%)	29 (41.4%)	3 (4.3%)	4 (5.7%)
I know what to do next	25 (35.2%)	38 (53.5%)	6 (8.5%)	2 (2.8%)
Ct. employees were polite	39 (51.3%)	35 (46.1%)	1 (1.3%)	1 (1.3%)
Employees helpful	37 (50.0%)	35 (47.3%)	1 (1.4%)	1 (1.4%)

FAMILY COURT

Please indicate the degree to which you agree with the following
(Percentages are based on those responding to each question)

	Strongly Agree	Agree	Disagree	Strongly Disagree
Handling of case was fair	21 (26.6%)	33 (41.8%)	12 (15.2%)	13 (16.5%)
Judge listened to my side	27 (34.6%)	33 (42.3%)	12 (15.4%)	6 (7.7%)
I was treated same as others	21 (26.9%)	35 (44.9%)	16 (20.5%)	6 (7.7%)
I know what to do next	20 (26.0%)	35 (45.4%)	18 (23.4%)	4 (5.2%)
Ct. employees were polite	28 (36.8%)	35 (46.1%)	7 (9.2%)	6 (7.9%)
Employees helpful	29 (37.1%)	35 (44.9%)	7 (9.0%)	7 (9.0%)

Although the survey produced largely positive responses concerning the treatment of respondents in court, a small minority of respondents did express dissatisfaction and in the public hearings, many of the individuals testifying expressed concerns regarding the handling of their cases, particularly with regard to Family Court. Perceptions regarding Family Court that were expressed by self-represented litigants that were presented at the public hearings included:

- Judicial officers treated self-represented litigants in a condescending manner.
- Inconsistent rulings were made and judges did not review documents related to the case.
- PFAs were unfounded.
- Perjured testimony was accepted.
- Service of process was not sufficient.
- The process for interstate child support does not work well.
- An in forma pauperis application was denied as being incomplete and having insufficient evidence, without further explanation.
- The judge let a request to modify a visitation order escalate into an expensive custody battle.
- The judge was not sensitive to the problems of an autistic child.

The following perceptions were expressed at the public hearings regarding the Justice of the Peace Court:

- The case was postponed at the request of the attorney on the other side without checking with the self-represented litigant and without a reason given or a new date assigned.
- The judge was abusive and wouldn't let him say anything because the landlord litigant did not comply with the five-day notice.

RECOMMENDATIONS

The Task Force found that, although the Delaware courts have made significant strides in addressing the needs of self-represented civil litigants, the courts and self-represented litigants continue to face challenges. Self-represented litigants can raise ethical issues for judicial officers in finding the appropriate balance between the need to remain impartial and the duty to provide a hearing in which a self-represented litigant can fully present his or her case. For court staff, who are faced with numerous requests for assistance, self-represented litigants pose the challenge of being responsive to requests for information without crossing the line into providing legal advice. In addition, the Task Force found that, for many self-represented litigants themselves, navigating the court system remains difficult, in spite of the many services offered by the Delaware courts to assist them and that although most self-represented litigants surveyed indicated they believed they were treated fairly, others surveyed or speaking in the public hearings expressed concern about the way they were treated in court.

With the charge of finding additional means to address these issues, the Delaware Courts: Fairness for All Task Force seeks to make recommendations for ways in which the court system can further address the needs of self-represented litigants and to increase the fairness and perception of fairness for all in the Delaware courts. Recognizing the severe fiscal constraints under which the court system and all of Delaware State government are currently operating, the following recommendations focus on ways to address these issues without substantial increases in costs. However, the Task Force wishes to emphasize that, although the report focuses on assistance to self-represented litigants, for many litigants, the services of an attorney are crucial, making it critical to find ways to ensure access to representation by an attorney for these litigants.

INCREASING PROCEDURAL FAIRNESS AND THE PERCEPTION OF FAIRNESS IN THE DELAWARE COURTS / ADDRESSING ETHICAL ISSUES

I. The Supreme Court should consider adopting an Administrative Directive, or other appropriate means of providing guidelines to court staff in distinguishing legal advice from legal information.

While training sessions for court employees on the topic of providing assistance without providing legal advice can (and have been provided), they have been based on materials adapted from other states without any specific Delaware authority. In order to ensure that any new training that is done is appropriate in Delaware, it would be helpful for this topic to be addressed in an Administrative Directive or other appropriate format. It is further recommended that the Task Force develop a draft for consideration by the Chief Justice and the Supreme Court in consultation with the other courts.

II. The Administrative Office of the Courts should work with all of the Delaware courts to provide training for court staff on assisting self-represented litigants without giving legal advice using the directive or other material adopted by the Supreme Court.

Sessions addressing this topic have been sponsored in the past by the Administrative Office of the Courts, but have not been held for several years. It is recommended that, using the guidelines implemented by the Supreme Court for Delaware, training on providing information without giving legal advice be included in all orientation sessions for new employees and that mandatory sessions be held periodically for all court employees to ensure that they are familiar with appropriate guidelines for providing assistance. As part of these sessions, working with self-represented persons with physical and mental disabilities, as well as those with limited English proficiency and those who are functionally illiterate should also be covered.

It should be noted that the Task Force survey of self-represented litigants showed that the overwhelming majority of self-represented litigants surveyed were pleased with the services provided by court staff as they agreed with the statements that court staff were polite and that they listened to them and were helpful. Such high rating of customer satisfaction with court staff is certainly something about which the courts and court employees should be justly proud. The additional training in providing assistance without providing legal advice should serve to build upon the excellent customer service already being provided.

III. The Supreme Court should consider appointing a committee to address concerns that judicial officers may have regarding balancing self-represented litigants perceptions of procedural fairness while maintaining neutrality in the courtroom.

Many judicial officers responding to the Task Force survey reported that it can be difficult to decide how much and when to intercede when there is a self-represented litigant and that there is a tension between trying to see that justice is done for the self-represented litigant and not impacting the opposing party who is represented. Methods which might be considered to support flexibility for judicial officers who have concerns about accommodating self-represented litigants while not impacting represented parties include appointing a committee to focus on this issue or requesting an ethics opinion from the Judicial Ethics Advisory Committee. Consideration might also be given to adopting comment 2.2 from the 2008 Model Code of Judicial Conduct which clarifies that judges are permitted “to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard,” or other changes or comments that may be considered helpful.

IV. Going forward, the Judicial Branch should continue to promote procedural fairness and the perception of procedural fairness for self-represented litigants through discussions among judges and judicial education programs.

Efforts in this area already undertaken have included the hosting of a Mid-Atlantic meeting of the Council of State Court Administrators (COSCA) by the Delaware Administrative Office of the Courts to discuss procedural fairness issues, as well as the distribution of the COSCA white paper on procedural fairness to all judicial officers. In addition, a discussion of procedural fairness in self-represented cases will be held at the Judicial Conference meeting to be held in the fall of 2009 and it is anticipated that this will serve as a forum for further discussion of this topic, along with any clarifications developed as discussed in recommendation 3 above.

V. The Judicial Branch should expand outreach efforts to the community

The Task Force was told by agency representatives that many people are afraid of the court system and that reaching out to the community is a vital part of ensuring access to the courts. To this end, the Task Force recommends that the Administrative Office of the Courts increase its outreach to schools and community groups to ensure access to justice by providing information on the court system. The AOC has initiated some efforts in this regard as part of the Racial and Ethnic Fairness efforts led by Justice Henry duPont Ridgely and Chief Judge Alex Smalls. It is recommended that such efforts be continued on a regular basis to promote better understanding of the court system by the public and the community perception that the court system provides fairness for all.

INCREASING ASSISTANCE TO SELF-REPRESENTED CIVIL LITIGANTS

I. The Judicial Branch should expand the ways in which information is provided and the types of information available to assist civil self-represented litigants.

While it is usually best for parties to be represented by attorneys because of the complexity and associated difficulty associated with presenting one's own case, many individuals cannot afford to hire an attorney. Even with efforts to increase the availability of free legal services or to reduce legal costs through discrete task representation, the reality is that cost will continue to make access to an attorney prohibitive for many individuals and others will represent themselves because they believe that an attorney is not needed. Thus, courts will continue to see large numbers of self-represented individuals. The Task Force recommends the following to help self-represented litigants navigate the judicial system:

The Judicial Branch should consider:

A. Exploring ways to increase the use and ease of use of their informational web sites

The Task Force surveys revealed that substantial percentages of self-

represented litigants did not use the courts' web sites because they were unaware the web sites existed. Since these web sites contain a great deal of useful information for self-represented litigants, it is important that these litigants be aware that this information is available. Some approaches that might be considered include:

- Putting a notice with the web site address on all court forms and notices
- Placing signs in the courts advertising the existence of the web site
- Sending flyers with web site addresses to state service centers, community groups, churches, advocacy agencies, etc.

In addition, making the web sites easier for self-represented litigants to use will help to ensure their usefulness. In the Task Force survey of self-represented litigants, concerns were mentioned with regard to being able to locate materials. Courts should explore ways to make their web sites more user-friendly with regard to locating materials and the use of an organizational tool such as iCourtClerk, which is being used by the Superior Court, may be considered.

Consideration could also be given to using kiosks that would contain web-based information in the courthouses and other locations, such as state service centers, with such kiosks providing a "one stop shopping" format to assist litigants, with similar information available on home computers.

B. Using interactive forms to assist self-represented litigants

Interactive forms help users determine whether a form is appropriate for them and, if so, walk them through the process of filling out the form by asking questions and then using the answer to automatically fill in the form. When interactive forms are used, self-represented litigants are also prompted to use all of the forms that are required to file their case. For example, the form can ask the litigant if they can afford the filing fee and, if not, can assist them in filling out an application for a fee waiver.

While interactive forms can be used directly by persons on the internet, they can also be used in the context of a self-help center or with the assistance of a help desk that can assist with any questions that arise.

In addition to commercial vendors that can provide interactive forms to litigants for a fee, the internal creation of forms, using A2J Author and Hotdocs, along with the free services of NPADO server should be considered, when possible. The Administrative Office of the Courts has purchased Hotdocs software and two staff members are in the process of learning how to use it with the intent of making their services available to assist courts in this process.

C. Finding ways to make existing materials more understandable to self-represented litigants

In this age of the sound bite, many individuals are not used to reading detailed materials, so that finding ways to simplify the information provided on the web sites may make these web sites and printed materials even more useful to self-represented litigants. Of course, there is always a degree of tension between simplifying information while ensuring that there is sufficient information available. Ways should be sought to balance the detail that is necessary with the ability to understand in order to ensure that the information is not too lengthy or complicated for the average user. Keeping language at a simple level - a fifth grade reading level is often recommended - can help those who have difficulty reading and trouble absorbing more complicated explanations. The Self-Represented Litigation Network recommends dividing materials into small areas of text with informational headings and using graphics, white space, and fonts to maximize comprehensibility of printed materials and web sites. In addition, it is helpful to have materials tested by those in the community that will be using them.

D. Expanding the subject matter of the information available to self-represented litigants

Although many of the courts are already providing a great deal of information, the Task Force learned that users would like more information to be available with regard to what happens after a case is filed. According to agency personnel who testified, as well as judicial officers who responded to the Task Force survey, many self-represented litigants think that the main hurdle that they have to overcome is to file the paperwork and believe that once they get in court, they can simply tell their story and be heard. They do not know of the existence and/or understand the importance of following the rules of court with regard to discovery or deadlines, or understand that they must follow the rules of evidence when in court. Many appear for their hearings without bringing the necessary evidence or witnesses. Information that addresses these issues in a simple and clear manner could be of great benefit to self-represented litigants.

Another area mentioned by agency personnel as well as judicial officers, was lack of knowledge by self-represented civil litigants of the substantive law relevant to their cases. While it is unrealistic to expect that most self-represented litigants will be able to conduct legal research or will even need to for most cases filed, information on applicable statutes and related important substantive information, as well as a brief description of legal research, as is contained in some United States District Court materials (such as the United States District Court for the District of Idaho Pro Se Handbook) could be provided to Delaware state court users.

E. Expanding the media through which materials for self-represented litigants are available.

While web sites are an invaluable tool, they may not provide the best method of providing information in every instance. Courts should consider the following additional media:

1. Booklets and brochures. The courts should continue to provide or expand the availability of paper information in the form of booklets or sheet handouts for civil self-represented litigants.

Court staff responding to the Task Force survey, as well as agency personnel, noted that booklets or handouts available in the courts can serve a useful purpose for those who either want to fill out their paperwork on the spot or do not use a computer.

2. Videos and/or slide shows - The Administrative Office of the Courts, working with a committee, should prepare a general video and/or video segments applicable for all courts covering such topics as how to prepare for court (rules of evidence, witnesses), what will happen in court, and behavior in court.

The Task Force further recommends that short segments of video, separated by topic (similar to the format utilized by some of the United States Bankruptcy Courts) be produced and placed on the Judicial Branch web site to enable litigants to go directly to the information on the part of the process that is of most interest to them at the time.

In addition, to written materials, videos and/or slide shows can be of assistance to individuals who have difficulty absorbing written materials or with functional illiteracy or developmental disabilities. Use of such formats was suggested by many of the agency representatives who testified. Visual formats can also demonstrate for self-represented litigants what will happen in court so that self-represented litigants are better prepared when their day in court arrives. These formats can be used in self-help centers, distributed to legal service providers, community centers, public libraries, and others who serve the community, or, to the degree possible, distributed directly to self-represented litigants to take home with them. The Task Force understands that the Family Court is currently in the process of creating new videos on a number of topics and believes that this is a very worthwhile endeavor on the part of the Court. The Justice of the Peace Court created three videos on criminal, civil, and landlord tenant proceedings which are no longer readily available but which some users in the past found to be helpful.

3. Notices. Courts should consider placing information on court notices, forms, and mailings

Several agency representatives who testified suggested that some critical information could be placed on court notices to parties. Consideration should be given to the feasibility of incorporating such information as the court's web site address or the legal help link phone number or similar types of information on notices or forms.

F. Expanding the locations where court information is available.

Providing information about the courts in community locations beyond the courthouses can help to make the courts more accessible to all members of the public. State service centers provide one location at which court booklets or other materials could be distributed to ensure access to information about the courts for all Delawareans. Other locations could include community centers, churches, recreational facilities, etc. Information for non-English proficient individuals should be included in these materials.

G. Creating a call-in line to provide procedural information and/or additional self-help centers or a partnership with local libraries

In the surveys of self-represented litigants in the Justice of the Peace and Family Courts, a call in line to ask questions about court procedures was the assistance most frequently mentioned by respondents in both courts. Such a call-in line could relieve court staff from the numerous questions that are currently directed at them, saving them time to focus on necessary case processing. However, consideration would need to be given to the volume of calls that are likely to occur and whether existing resources would be sufficient to handle such volume and, if so, whether there would be a way to clearly delineate limitations on the type of assistance that would be available.

One possible approach would be to have an automated call-in system that would allow the caller to choose a topic and then would provide procedural information concerning that topic. It might also be possible to have an option to speak with a live person, if questions are not answered by the automated system. Using the Administrative Office of the Courts information desk staff as part of the process is an option that could be considered.

Another possibility that could be explored, most likely as an alternative to a call-in line, would be the provision of self-help centers in the Justice of the Peace Court. A pilot project in Court 13 could explore whether a self-help center (most likely during a designated time period) would be feasible and useful to self-represented litigants in the Justice of the Peace Court.

Yet another alternative that could be explored would be the provision of self-help assistance through local libraries as is being provided through the Eastern Shore Regional Library Self-Help Pilot Project. (See http://www.peoples-law.org/self_help/district_court/plaintiff/before_court/clerks.htm for further information.)

II. The Judicial Branch should provide more information and assistance for persons with limited English proficiency.

The Task Force learned that language and cultural barriers prevent some Delawareans from obtaining access to the courts. The translation of more informational materials for non-English speakers would be a way to begin to address these barriers. Translation of forms is not always encouraged, because many of the forms require written statements apart from simply filling out name and address and yes or no answers. However, translation of informational materials, including information on finding an attorney and resources to help persons with limited English proficiency, into Spanish and other languages determined to be appropriate, can help to ensure access to the justice system for the many individuals with limited English proficiency in the State. Other types of assistance, such as hiring bilingual staff for some frontline positions, should also be considered. Use of signage that includes universal symbols and/or Spanish would also help to make the courts appear more accessible to many of those with limited English proficiency. Recognizing budgetary constraints, consideration should also be given to providing court interpreters for additional civil cases and for assisting in filling out forms and other procedural matters.

III. The Judicial Branch should explore ways to address the needs of self-represented litigants in the other courts.

Although the Task Force's focus was on needs in those courts with the highest percentages of self-represented litigants, self-represented litigants do appear in all of the other courts, as well. Finding additional ways to assist these litigants in the other courts, even though they are less numerous, should also be considered. In this regard, as previously mentioned, a pilot project is currently underway to provide assistance to self-represented guardians in the Court of Chancery. Further areas of needs in the various other courts should be identified and assistance provided, as appropriate.

INCREASING ACCESS TO LEGAL ASSISTANCE

I. The Judicial Branch and others, including the bar, should seek adequate funds for low income legal service providers.

In many cases, self-representation is simply not a viable option for individuals. Litigants with complicated cases, and especially those who are functionally illiterate, who have mental disabilities, or have limited English proficiency, may simply be

unable to handle their cases on their own no matter how much information and assistance is provided. With the decline in the economy, the need for legal services has increased as individuals face unemployment and/or decreased incomes and resulting critical legal problems such as foreclosure, eviction, bankruptcy, and related matters.

At the same time, funding for legal services has significantly decreased as the result of cutbacks in government funding for such programs and lower interest rates on IOLTA (Interest on Lawyers' Trust Accounts) funds which have traditionally helped to fund legal services for low income persons. Because current sources of funding have proven not to be stable during difficult economic times – the very times when legal services are most needed by low income individuals – innovative solutions should be sought to provide stable and long-term sources of funding that are resistant to downturns in the economy so that legal services remain available at such times.. In addition, although many attorneys have generously donated their time for pro bono service, ways to broaden the number of attorneys involved in pro bono services should also be explored.

II. The Judicial Branch and the bar should consider ways of expanding limited assistance by attorneys to self-represented civil litigants

While the courts can do much to assist self-represented litigants by providing information, they cannot provide legal advice. In many instances, individuals are able to represent themselves to some degree, but also need some assistance from an attorney concerning particular aspects or stages of their case. Two possible ways of providing such assistance currently exist in Delaware: a limited pro bono assistance program and discrete task representation. Expansion of each of these types of assistance should be considered.

A. The Supreme Court should consider appointing a Bench-Bar committee to review the Delaware Rules of Professional Conduct and to determine whether any changes should be made to further encourage the use of discrete task representation in appropriate cases.

Discrete task representation, sometimes known as “limited scope” representation or “unbundling” of legal services permits attorneys to provide specific services without being responsible for representation in the entire case. This can help otherwise self-represented litigants by providing them with the specific type of assistance that they most need, be it preparing paperwork to file the case, recommending approaches to take, answering specific legal questions, or representing the litigant at a specific hearing in court.

Although Delaware has adopted the ABA recommendations for changes in the Code of Professional Conduct with regard to discrete task representation, many attorneys responding to the Task Force attorney survey said that they believed that such representation would cause ethical and/or malpractice issues. Several other

states have addressed such concerns by adding additional rules or comments which clarify the types of discrete task representation that are appropriate and offer “safe harbors” for attorneys providing such services by adopting sample letters of engagement that spell out specifically the services that the attorney will be providing when engaged for discrete task representation.

To assist in this endeavor, the Task Force has prepared a summary of rules and forms from other states. (See appendix 7)

B. The Administrative Office of the Courts should consider the feasibility of expanding the existing limited pro bono assistance program

A limited pro bono assistance program is currently operated by the Administrative Office of the Courts, in conjunction with Delaware Volunteer Legal Services and the Delaware Paralegal Association. The program operates for two hours per week in the New Castle County Courthouse and provides a free 15 minute consultation with an attorney for Family Court self-represented litigants.

Expansion of the program to the other two counties and/or additional days or topics should be considered as approximately two-thirds of responding self-represented litigants in the Justice of the Peace and Family Court surveys reported that they would find this helpful. Given that more Family Court self-represented litigants than Justice of the Peace Court litigants responding to the Task Force survey felt that an attorney was necessary (49% in the Family Court versus 16% in the Justice of the Peace Court), the Task Force recommends that the program focus on expanding services to Family Court litigants, at least initially.

C. The courts should consider additional calendaring of cases of the same type to enhance the provision of assistance by legal services providers.

Several legal service providers mentioned that expanded assistance could be provided to litigants, particularly in landlord tenant cases, if such cases were set on a regular schedule. Consideration should be given to the feasibility of doing so while addressing any concerns that the Court may have in establishing such a schedule.