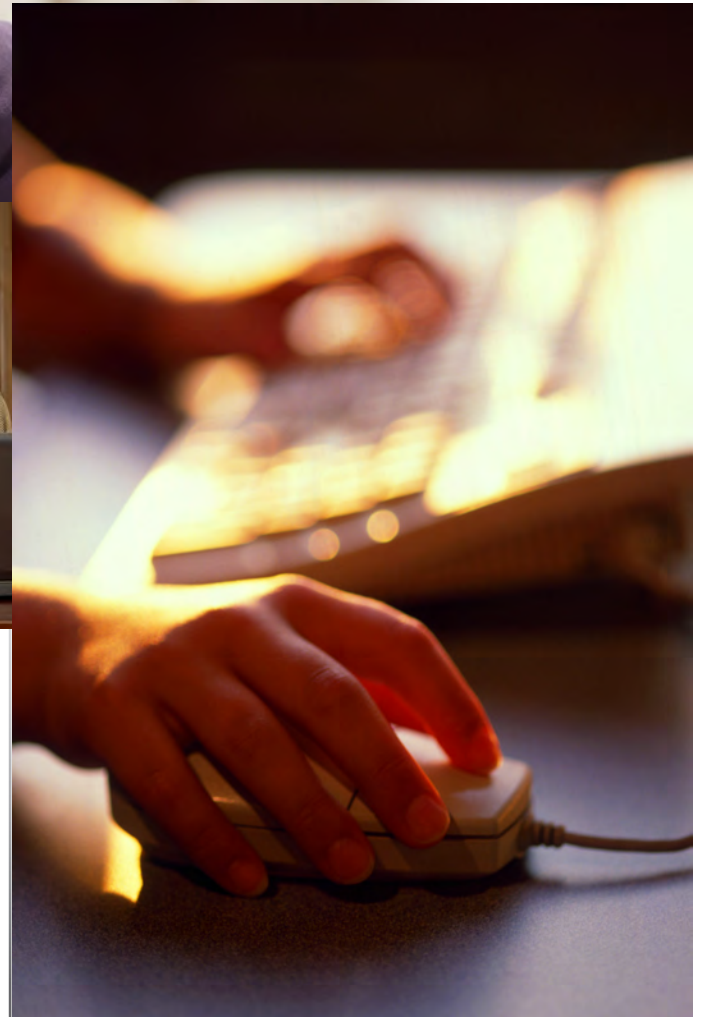


STATE BAR OF MICHIGAN
THIRD ANNUAL JUSTICE INITIATIVES SUMMIT

SOLUTIONS ON SELF-HELP

- Updates
- Opportunities
- Challenges



Summary of Events

April 16, 2012
Lansing, Michigan

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Welcome and Introductions: “Michigan Stakeholders Working Together”

Nearly 50 justice system stakeholders gathered at the State Bar building on Monday, April 16, 2012, to participate in “Solutions on Self-Help: Updates, Opportunities, Challenges.” Participants represented bench and bar leaders, those with experience with self-represented litigants, libraries, and foundations. State Bar President-Elect Bruce A. Courtade welcomed the group. [Summit materials](#) can be found on the Committee on Justice Initiatives’ website.

State Court Administrative Office Perspective: “The Time Has Come”

State Court Administrator Judge Chad Schmucker noted the increase in self-represented litigants and shared observations of how judges handled “pro per” cases in the past, sometimes in a manner not helpful to providing justice. SCAO is focused on trial court performance measures, including public trust and confidence and an appropriate handling of self-represented litigants. It is interested in using data to provide quality customer service with an emphasis on the public. The SCAO website gets 4,000 hits a day with 1200-1300 looking for forms. Judge Schmucker said that the SOS Task Force and the pilot website and self-help centers are the way to improve the court system by providing effective case handling and will aid courts working smarter for a better Michigan. He noted that this is the right thing to do; its time has come.

Morning Plenary

Solutions on Self Help (SOS) Task Force: “A Comprehensive Approach”

Linda Rexer explained the Solutions on Self-Help (SOS) Task Force created in 2010 by then Chief Justice Marilyn Kelly. Its charge was to promote greater centralization, coordination, and quality of support for persons representing themselves in legal matters in Michigan. Over 90 people are involved in 20 work groups, including courts, legal aid, legal assistance centers, libraries, counties, State Bar of Michigan, and SCAO. The Task Force is working in four areas:

- A pilot project with an interactive website and four local self-help centers. The website content is created by paid lawyer developers.
- An education component developing curricula for judges, court staff and libraries. Training will be provided for the self-help center workers.
- A policies and rules component.
- A uniformity and understandability of forms group.

The website will have a soft launch in May and June. Everyone is encouraged to go to the website, use it, and provide feedback. A public launch will be made in July. The four new self-help centers include large urban, small rural, and library-based centers. The website and new centers will address the increase in low-income people representing themselves in Michigan’s courts. In Berrien County 80 percent of litigants in family law matters include at least one SRL. Some 40 percent of users of this self-help center have annual incomes under \$10,000.

SOS Website Demonstration: “A Quality, User-Friendly Resource”

Angela Tripp demonstrated the Michigan Law Helps website. Angela is with the Michigan Poverty Law Program, the website vendor. She has been working with the Task Force, Illinois Legal Aid Online, University of Michigan students, and various consultants. She explained the rigid content production process to assure readable, accurate, and quality information. It involves a content manager, guiding principles, plain language, 6th grade reading level, and involvement of SBM sections for substantive law content in housing, family, consumer defense, and expungement work. The process includes automatic reminders to update key information. The tool kits are the main focus; articles are also available. Lawyer referral service, legal aid and pro bono information, and community organization support are part of the site. An interview process allows users to automatically generate forms. Links to the SCAO forms are also available.

Defining the Practice of Law Proposed Court Rule: “A New and Much Needed Tool”

Chris Hastings is chair of the State Bar Unauthorized Practice of Law (UPL) Committee. He has served on the board of the Grand Rapids Legal Assistance Center and understands that self-help centers are not the enemy but are indeed the solution. He addressed the “Defining the Practice of Law” (DPL) proposal. He was involved in earlier efforts to craft a definition, but it took the development of the Internet, the creation of Legal Zoom, and the 2002 Michigan Supreme Court decision in *Dressel v Ameribank* to create the traction now in place. In the last ten years, six states and DC have adopted a definition. Michigan’s proposed rule provides a definition in (A) and provides certain carve outs in (B), including B7—government or tax-exempt self-help centers so that non-lawyers can assist the self-represented without giving legal advice or legal counsel. If adopted, this will be a new and much-needed tool for UPL in Michigan. The proposed DPL will give self-help programs guidance about how to appropriately assist users.

A View from the Bench: “Embrace Change”

Judge Al Butzbaugh provided a view from the bench, noting that the website will work only if courts accept the forms that are on the website. He thanked SCAO and Judge Schmucker for sending a June 2011 reminder to all courts that they are required to accept SCAO court forms. Judge Butzbaugh reported on the Berrien Self Help Center, patterned on the Grand Rapids Center and funded by the county commissioners. Some centers have community foundation funding. Berrien opened in April of 2009 and has assisted 18,090 people. There are 185,000 people in Berrien County. 7,220 were seen in the last year. This represents 4 percent of the adult population in the entire county. Judge Butzbaugh noted the need to address the unbundling issue, the e-filing challenge, and the natural resistance to change that many judges and lawyers may feel.

National State of the Art and Implications for Michigan: “SOS Puts Michigan in the Mainstream”

The Michigan State Bar Foundation commissioned John Greacen Associates to develop “Resources to Assist Self-Represented Litigants: A Fifty-State Review of the ‘State of the Art.’” That work led to “[The 25 Recommendations from the May, 2011 Greacen Associates Report](#)” which was part of the Summit materials.

Greacen put Michigan's progress into context with national developments in light of a great increase in self-represented litigants (SRLs.) The majority of SRLs are poor, but there are some high-income people. They have a high school education, are women, are petitioners (except for landlord-tenant) and need family law help. They do not have a lawyer because they believe they can't afford one, believe their case is simple enough to handle on their own, don't want to pay a lawyer, or believe that a lawyer will slow everything down, and 2-3 percent just don't trust lawyers. Self-representation is part of the cultural trend toward "disintermediation"—taking the middle person out of a process. We have seen it in pumping gas, fixing homes, selling our own homes, trading stocks without a broker, self-medicating, and home schooling.

Greacen presented data showing that

- Effective communication in the courtroom can be achieved with SRLs.
- Extra hearing time is needed when one party is not represented.
- The time to disposition is shorter when one party is unrepresented.
- Most states today devote significant resources to self-help assistance.
- National organizations like the Legal Services Corporation, Conference of Chief Judges, State Justice Institute, National Center for State Courts, and Conference of State Court Administrators are leading the way on services for SRLs.

He noted that the distinction between legal information and legal advice is now almost universally recognized, with only minor variations from jurisdiction to jurisdiction. The basic principle is that we can provide information and forms and explain alternatives without creating a lawyer-client relationship or violating the court's duty of neutrality. This definitional understanding has greatly expanded the level of assistance to SRLs by courts, legal services, libraries, and other entities.

SRL assistance varies but typically provides web-based substantive and procedural information on multiple case types in plain English and in other languages, standard forms with document assembly and proactive management of SRL cases, particularly in the family law arena. Typical services include substantive and procedural information, triaging cases for referral to legal and social services, assistance in dispute resolution, forms, assistance in preparing for court hearings, and preparation of orders and decrees. In-person assistance includes one-on-one or one-on-many in-person interaction, workshops, and assistance at the time of a court appearance. Remotely delivered services include phone, live chat, hot lines, emails, and video conferencing so that self-help staff in one location can provide information to multiple locations simultaneously.

Greacen also used data to show that self-help services reduce the number of court hearings and the time of staff at the public counter. He also showed that significant costs can be saved.

Lawyer opposition to self-help resources can be expected, but will dissipate because

- SRLs are not potential clients—when they are forced to use lawyers they become accounts receivable.
- Legal services funding will never suffice to provide all of even the poorest SRLs with representation.
- Lawyers can take advantage of SRL services such as standard forms and document assembly processes, SRL workshops for educating their clients, and informational handbooks.
- Lawyers benefit from having fewer SRL cases in the courtroom and better prepared judges and SRLs when hearings are necessary.

- Unbundled or limited scope representation is a source of "good" pro bono activities and of real lawyer revenue, including a new legal specialty.

Judicial opposition also dissipates for all of the above reasons, and because SRL cases take less time than represented cases.

Michigan's SOS efforts put it in the mainstream. It is providing web-based information, following the Illinois Legal Services model and using plain English forms and a document assembly process. It has affirmed the judicial branch requirement that all courts accept SOS forms. It includes pilot self-help centers, with the requirement that they use SOS materials. Michigan is unique in that it is taking advantage of the experience of others and starting with state-of-the-art applications and approaches; using a multi-organizational SOS consortium representing a broad-based support and comprehensive approach, including courts, legal services, the organized bar, libraries, and other social service entities; making a long-term commitment to maintaining current, accurate, and complete materials, recognizing SOS infrastructure in e-filing development. Michigan's proposed "Defining the Practice of Law" rule is potentially a national model. What's missing for Michigan, however, is the lack of a limited scope representation, or "unbundling" rule.

Future national probabilities include expanded use of technology, the potential for proactive court notification of SRLs (and lawyers) of upcoming hearings and deadlines, and the logic models for analyzing cases. Future Michigan challenges include developing a long-term plan for maintenance of the SOS capability created during the pilot project, developing a long-term plan for rolling out in-person SRL assistance throughout Michigan, and developing remotely delivered in-person SRL services.

Lunch Presentations

Unbundling, and the Value of Triage: "All Services as Part of a Continuum"

Terri Stangl explained that assessing an individual's legal needs and understanding who within the system does what for a person in legal need has been the focus of legal aid work for many years. Clients need differing levels of service, from self help to limited help to full representation. Services can be triaged and delivered differently with the website tool and where a state permits unbundling (allowing lawyers to enter a limited appearance or do only discreet tasks rather than assist the client for the whole matter). This can present a challenge for practitioners who are used to the "old model" where a client receives everything, or nothing. SOS is researching how to best approach unbundling in Michigan. The new model creates new business opportunities for lawyers and requires much clarity with clients about where assistance ends.

Turner v Rogers: "U. S. Supreme Court Opens the Due Process Door for the Self-Represented"

Professor Michael Bryce explained the child support case that was decided by the U. S. Supreme court in June of 2011. A dad ordered to pay child support was jailed for failure to pay. He was sentenced to one year, and the issue was whether he was entitled to counsel before being jailed. It was decided that safeguards should have been put in place to assure that this self-represented litigant could provide needed information to help

the court determine ability to pay. The decision has implications for self help because dicta said that going forward other safeguards must be developed.

Educating the Bar and the Public: “The Evolution of Justice”

Candace Crowley noted that information like that just presented on *Turner v Rogers* represents an important part of education of the profession but that education on the SOS website is very broad. It includes standard learning about developments in the law, and learning about the evolution of justice. The Judicial Crossroads Task Force Report excerpt in the materials provides a strategic plan for the evolution of self-help in Michigan which is consistent with the SOS effort. We all have a role in that. The SOS Task Force includes a workgroup on education of the public and the profession.

Breakout Sessions

Summit participants addressed this charge in afternoon breakout sessions:

- Identify three challenges and three opportunities we have at this moment to assist self-represented litigants in Michigan.
- For each challenge, identify what needs to be done for the self-represented, for the SOS pilot project, and for the profession. Who needs to be involved?
- For each opportunity, what needs to be done to maximize the opportunity for the self-represented in Michigan, for the SOS pilot project, and for the profession? Who needs to be involved?

Large Group Reconvenes

The primary and recurring challenges and opportunities were identified in the large group.

Challenges:

- How to market the website so that people will find it, those with appropriate self-help matters will be helped, and proper referrals will be made
- How to educate the profession about need and value of self-help resources
- How to establish an “unbundling” or limited scope representation rule
- How to create understanding of complexity of substantive law and connect self-represented litigants to attorneys when necessary
- How to determine how far we want to expand substantive law topic area
- How to shut down inadequate self-help websites
- How to maintain current information and quality of website
- How to pay for the website and self-help centers in the future

Opportunities:

- Improve access to justice and optimize consistency of case outcomes.
- Develop definition of the practice of law and address larger UPL issues.
- Develop adequate unbundling or limited scope representation rule and create new business opportunities for the legal profession.

- Create more pro bono opportunities for lawyers trained in special areas of practice.
- Allow lawyers to practice at the top of their skill level and allow courts to conserve staff and judicial resources.
- Use libraries, community dispute resolution centers, legal aid, and others to provide information to the community about legal issues; hold workshops at courthouses and self-help centers.
- Develop positive messages about lawyers and judges working together to provide help for the public. “The justice system cares about the public.”
- Collect data from pilot sites and use that to make case going forward.
- Identify what kind of case does or does not need a lawyer.

Who Needs to be Involved?

- SCAO
- MJI
- ICLE
- SBM
- Public and law libraries
- Courts
- Friends of Court
- Court staff
- Media
- Affinity bar associations
- Domestic violence and other community organizations
- MSBF
- Legal aid
- Legal assistance centers

Closing Remarks “Opportunities for Solutions”

Bruce Courtade thanked all for participating and contributing their valuable input. **John Greacen** complimented Michigan on its work but noted the importance of defining for the bar, courts, and others what we are doing, to use the continuum of services and fill all the holes in an ideal continuum. He emphasized the need for an unbundled services rule. Full representation in appropriate cases needs to be available through hired counsel, legal aid, and pro bono. Triage is key: there must be a mechanism to put people in the right level of service. Our current systems are much too complex with court processes, rules, forms—they are set up for the most difficult case, and that’s just not necessary. We need to simplify our processes. We need to figure out data collection. We need to find an e-filing solution. Michigan activities produce an enormous potential for gathering more data.

Justice Initiatives Summit Cabinet

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