

MEMORANDUM

TO: Access to Justice Commission

FROM: Anthony M. Doniger

RE: Self-Help Centers

DATE: November 2012

I. Introduction:

In considering whether, and if so how, to advocate for the establishment of Self-Help Centers (“SHC”) in Massachusetts, it is helpful at the outset to remember the context in which the issue is framed. It goes without saying that over the recent decades, our courts have experienced a dramatic increase in the number of self-represented litigants (“SRL’s”) in the legal system. That SRL’s are a permanent and in many Massachusetts courts dominant portion of the courts’ consumers, presents obvious challenges to the judicial system. The ability of a judicial system to provide efficient and effective administration of justice is compromised when large numbers of litigants are generally ill – or not at all - informed about applicable law and procedures, are linguistically unable to understand the law and process, and are extremely disadvantaged when it comes to asserting or defending their rights. Massachusetts and other states committed to improving access to justice and the quality of court services have developed multifaceted approaches to these challenges. From simplifying and translating court forms and procedures, developing web-based technological tools to inform and assist litigants, providing volunteer lawyers, hot-lines and other legal assistance resources, and partnering with the bar and legal services providers, efforts to improve access to the courts have taken many forms. Many of

these resources are already available in Massachusetts, albeit in strained and disparate and uncoordinated forms. Bar associations, access to justice organizations and legal services providers regularly consider what more can be done. But there can be no doubt that the crisis continues unabated.

To improve the ability of SRL's to navigate the legal system and to improve the courts' ability to deliver effective access, many states have focused on the development of self-help centers which in their full glory are court-based or court-centered programs that are attorney-supervised and staffed by court employees who initially assess a SRL's needs and then provide ongoing assistance throughout the court process. Self-help centers take many different forms in different states, in large part because they are not created in a vacuum but instead arise in the context of various resources already available. That these centers have different attributes in different states is the result in part of different needs, different geographical concerns, different number and location of courts, and above all the different resources already in existence. However, putting their shapes and sizes aside, there are concepts common to all self-help centers. At bottom, "[s]elf-help centers provide neutral, non-confidential information to all court users and must always be available to all sides in any court action. They consist of programs in which court staff and others provide information on a one-on-one basis or in workshops about court procedures and the law. Such centers do not provide legal advice nor create attorney-client relationships. They can, however, be more engaged on a one-on-one basis with litigants that merely providing general information in written format."¹

¹ Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts and Resources, National Center for State Courts, 2008 Ed., at p. 8.

Massachusetts has many programs, both virtual (i.e., providing web-based court and legal information)² and real (for example, Lawyer for the Day programs, hotlines, court-based information centers), to provide legal support and information to SRL's. However, a comprehensive program to provide assistance to self-represented litigants needs to develop self-help centers to improve access to justice as well as to improve the effective and efficient functioning of the judicial system. This has already been acknowledged by the Supreme Judicial Court Steering Committee on Self-Represented Litigants, which in 2008, after observing self-help centers in Connecticut, recommended that "one or more court service centers be established on an experimental basis in courthouses that serve multiple court Departments."³ The need for such measures was confirmed in the results of the Access to Justice survey for trial court employees undertaken in 2009 and reported in the January 2010 Interim Report on Access to Justice Initiatives in the Trial Court. This report revealed that court employees at all levels prioritized certain needs traditionally served by self-help centers, such as better linguistic services (including multi-lingual staff, court forms and materials), improved access in courthouses to web-based resources (including forms to be completed on-line), and other self-help materials.

² The primary Massachusetts court and court-related websites are the Trial Court website, www.mass.gov/courts (which includes websites for specific court departments, e.g. the Housing Court's website at www.mass.gov/courts/courtsandjudges/courts/housingcourt), and the Trial Court law library website, www.lawlib.state.ma.us; both sites provide on-line materials, guidance and information relative to the legal process. In addition, there are over 35 other Massachusetts websites, many tied to legal services' organizations, that provide information, forms and other materials, and guidance regarding legal rights, remedies, and process.

³ The Brooke Courthouse Information Center was established as a direct result of this recommendation.

II. A Model Self-Help Center:

In considering how and where Massachusetts might develop self-help centers and of what they might consist, a starting point is to consider what a robust model program would look like. Such a program has staffing, geographical, technological, and obviously fiscal implications (consideration of how much such a program would cost in Massachusetts is beyond the purview of this memo). However, considering what might be provides a useful backdrop to consider, in the context of the programs and services already available in Massachusetts and the reality of the Massachusetts court system, the manner in which self-help centers might be developed here, in a pilot program or otherwise.

The key components of an exemplary self-help center system are as follows:

A. Staffing: Self-help centers should be supervised by attorneys and knowledgeable, legally trained support staff who receive on-going training, whose roles are clearly communicated to users, and who are well-informed about the greater legal services community and bar-generated programs; this is the key component. Virtually all writers on the subject agree that SRL's consistently report that the most beneficial service courts can provide is staff/lawyers available to answer their questions. While web-based programs can provide useful legal information and other technological tools can increase the efficiency and availability of legal assistance, nothing appears to be a substitute for the direct participation of attorneys or self-help center staff (even though such staff and attorneys, working under the state's auspices, cannot provide legal advocacy or advice). Obviously, many SRL's are not literate or familiar with technology and need personal assistance and support from staff to help them appreciate their legal predicament and process the legal information they have available to them. It is crucial that

staff and litigants have access to the internet at the self-help center, which requires a commitment to make computers and programs available. It is obviously important that the lawyers/staff providing the services at the center be well informed about court procedures, the law and about available legal and social services and resources, as well as the likelihood that governmental agencies may be the place where a given SRL's problems should be dealt with. Written materials, instructions, forms, and web-based technology are invaluable support tools, but none alone are a substitute for personal assistance by self-help center attorneys and staff, whose role is limited to providing information, assistance and referrals, but not legal advice or advocacy. This personal assistance can, of course, be provided in ways other than one-on-one conferences. In addition to individual assistance, self-help centers use workshops, telephone hotlines, video conferencing, e-mail communications, and other tools. SRL's need to be able to ask questions when reading materials, searching the internet, filling out forms or using computer programs, and they need to have concepts explained and receive appropriate referrals.⁴ While volunteer attorney/staff can provide helpful supplemental support, the most durable and reliable models utilize permanent core lawyer and staff. Programs based solely on the use of volunteers, whether staff or attorney, are less reliable and consistent, and are not the best alternative.

B. Geography: As courthouses are naturally the places where potential and current litigants first come for help, self-help centers should presumptively be located in or very near courthouses, with a view to making the centers' functions most readily available where they are most likely to be directly needed (satellite offices and mobile centers are in some systems useful

⁴ In a California survey of courts to determine needs for funding for self-help assistance, the courts reported that if fully funded, more than 80% of their funds would be used for staff to assist SRL's. Three quarters of this staff funding would be allocated to attorney time. Staff in this context includes paralegals and other trained court staff, working under the direction of an attorney.

supplements but not sufficient solutions). Obviously a state's geography and the number and location of courthouses will constrain the development and type of self-help centers (thus while residents of Alaska, with relatively few courts per square mile, are principally dependent on telephone and internet access to the self-help website in Anchorage, the relatively large number (by any metric) of Massachusetts courts more than mileage or remoteness, may be the more significant issue in designing an exemplary Massachusetts self-help center plan). Libraries are increasingly important providers of web-based legal information, but they cannot substitute for a full-fledged self-help center. Thus a key planning question for Massachusetts is in or near which courthouses to site the self-help centers.

C. Language: Self-help center staff should be multilingual, as should signage and informational materials.

D. Services: Self-help centers should provide various on-site services and be able to provide referrals to legal services providers, agencies, alternative dispute resolution mechanisms, and to provide available technology and assist the SRL in using the available technology. At bottom, self-help centers should serve as a fulcrum point for consumers of court services to obtain information about relevant court processes, applicable law, court procedures, forms, and operations; and court-based self-help centers with staff supervised by attorneys are unquestionably the best way to increase meaningful access to the courts for SRL's. Such full-service self-help centers would provide a better understanding of judicial processes and procedures, would provide assistance with the individual needs of a given SRL, would provide written materials and other technological support to help an SRL better prepare for and understand the court process. In addition, self-help center attorneys can determine whether a

SRL should be directed to an agency or other governmental sources of assistance/benefits, given the nature of the issue. Assistance can be provided with respect to mediation or other alternative dispute resolution mechanisms, through either a court-sponsored program if available or to non-court based programs. When language is an issue, staff can provide appropriate and available translated materials or direct the SRL to technological aids. Depending on the nature of the problem and the complexity of the case, referrals can be made to legal services organizations, to available hotline resources, Lawyers for the Day, and pro bono services (whether bar related or independently organized), to ensure that individuals are directed to the best legal resource for the type of legal assistance they require. Staff should also be able to direct SRL's to related community services for their related personal and legal issues that need to be addressed.⁵ Some self-help centers might offer limited child-care resources.

E. Court Integration: Self-help center staff should be familiar with all aspects of court functions and operations and court-based assistance programs and SRL policies/practices, and get feedback from court administration and judges on program function and unmet needs. There should be regular (quarterly) assessments of case flow, impact, functioning and what on-going modifications are necessary.

III. Court Benefits:

From the perspective of the court system, benefits are bound to flow from the availability of self-help centers. By having better informed litigants who have a better understanding of the legal system, the demands on court staff are lessened, freeing up their time to work on case

⁵ It is important to remember that as court-employees, self-help center staff or attorneys cannot provide advocacy or other case-preparation advice.

processing. Cases may be more efficiently prepared and presented, which should result in cases being handled more efficiently and which may eliminate multiple court appearances. A court-based self-help center is a direct resource for court staff, who can immediately refer SRL's to the self-help center for more comprehensive assistance. Self-help center staff can work within the court to identify and address other barriers for SRL's. Self-help centers can provide services in a number of other ways in addition to individual advice: workshops, community outreach, providing educational materials, working with legal services providers and local bar associations to more efficiently address the legal needs of the community.

There have been a number of studies that have evaluated the effectiveness of programs to assist SRL's which show high levels of satisfaction among all factions (litigants, court staff, judges).⁶ These studies demonstrate a clear time-savings for the courts, in terms of substantial reductions in the number of inquiries to court staff as well as the amount of time required to hear SLR matters in court (both in terms of frequency and length of hearings).⁷ There are also studies that appear to support the logical conclusion that, given the various areas of time savings, self-help centers and related services for SRL's create economic savings for the courts (as well as for the litigants, for example in reducing days/hours away from work). For example, in a study published in 2009 regarding programs in one California district, findings suggest that courts there that provide services through workshops, through individual support and information services, or through assistance to resolve cases at the first court appearance, produce significant

⁶ See "The Benefits and Costs of Programs to Assist Self-Represented Litigants", May 3, 2009 draft report by Greacen Associates, LLC, at page 2, footnote 1.

⁷ Id. at pp.2-3. In one California general jurisdiction court in Alameda, a court study reported informally by the presiding judge showed that in cases where the SHC prepared orders after hearing for SLR's, these litigants were 50% less likely to return to court for more orders on the same issues in the future.

monetary savings; depending on what services are provided to SRL's the costs of the SHC services range from \$.23-\$.55 for every \$1.00 of court expense saved in terms of fewer and shorter court hearings, and less front-office clerk and judicial secretary time.⁸ Other studies have computed and demonstrated the savings in terms of costs per case.⁹

IV. Examples of Self-Help Center Programs:

A. State supported programs: Most self-help centers have state support, either in whole or in part. In California, expanding self-help centers has become one of the top priorities for funding in the judicial branch. In 2006-2007 a total of \$8.7 million from the courts' budget was allocated for the courts to start or expand self-help centers. California operates at least one self-help center in each of its 58 counties, and multiple centers in the more populated counties. All of the California centers use numerous web-based resources and collaborate with legal services and pro bono organizations. Some California self-help centers operate on-site clinics involving various recurring legal issues facing SRL's (e.g., restraining orders, family law matters, landlord/tenant, guardianship). In a number of California courts, a self-help center staff person is available in given courtrooms to provide explanations, instruction, and information to SLR's on an as-needed basis. In 2007 the California judiciary identified a need for \$44 million to adequately staff self-help centers with both attorney and non-attorney staff. A number of other states, including Connecticut, Maryland, Montana, New York and Washington, have state-wide court based SHC programs funded in whole or in part by the state. Connecticut has self-

⁸ Id.

⁹ Id. at page 3, footnotes 5 and 6, and pp. 5-10. Because the cost per case savings are peculiar to the cost structures in each state/jurisdiction, there is little point in using these numbers to estimate the cost savings (either in the aggregate or per case) in Massachusetts

help centers in its superior court courthouses staffed by court employees specially trained to provide assistance and referrals. Connecticut's centers are open not only to SLR's but also to lawyers and the community at large. Services include public use computers, printers, fax and copying machines, internet access, work space, a notary public, access to court calendar and docketing information in civil cases, and forms and court publications. New Jersey has a full-time staff person in every courthouse whose primary responsibility is to assist SRL's. Some of these programs, in addition to court-funded staff, use volunteers from the Americorps program, which is open to state governments as long as a compelling community need is being served. The California program, for one, uses Americorps volunteers in its courts (which it calls "JusticeCorps"); there is a financial component to such a program, but the costs would be far less than for full-time paid staff. Illinois also has a JusticeCorps program modeled on California's program; some New York courts use volunteers from New York's JusticeCorps program to assist SRL's.

B. Collaborative Programs: In New York the court system provides unbundled legal services programs which are effectively lawyer for a day programs or educational programs put on by either volunteer lawyers or legal services attorneys. In Maryland, for example, volunteer attorneys provided through the bar association are available to consult with SRL's who need legal advice beyond the competence of the non-lawyer self-help center court employed staff, who make the referrals. In addition, a number of courts contract with local legal services providers to deliver services in the courthouse. Because they are court-sponsored programs, there is no means testing permitted. This is the model followed in Los Angeles County, for example, where the county contracts with the primary legal services provider to staff self-help

centers in some of the more remote courthouses in the county; these legal services attorneys, operating under contract with the state, provide information to all consumers (SLR's, attorneys, and wider community members) but they cannot provide legal advice or advocacy.

C. Bar-supported programs: Some states look to bar associations and foundations to create and run self-help programs, though the reality is that such programs fall short of what true self-help centers consist. Illinois, for example, has implemented a network of "legal advice desks" in various Chicago courthouses (including federal and bankruptcy courts) created through the efforts of the Chicago Bar Foundation and the Chicago and Illinois bar associations. Staffed by private attorneys as well as additional staff, these centers provide SRL's with access to attorneys who can advise them on process and procedure and direct them to resources. In addition, the Illinois Coalition for Equal Justice has worked collaboratively with legal services organizations, court staff, community organizations and the courts to establish more limited self-help centers throughout the state staffed by non-lawyers who provide assistance using web-based tools (particularly Illinois Legal Aid Online) and who provide referrals to legal services/pro bono organization. In Washington D.C. courthouse centers are staffed by volunteer attorneys. In Nebraska the bar funds and staffs the state's three self-help centers.

V. Funding Issues:

As indicated above, there are different ways in which self-help centers can be funded. The most direct and logical funding source would, of course, be the judicial budget insofar as self-help centers are seen as directly benefitting the court system, both in terms of their access to justice advantages and in terms of the improvements to court effectiveness and efficiency that

inevitably flow from such centers. Funding could be sought through a separate legislative appropriation, though such an approach seems potentially controversial (competing as it will with limited legal services dollars) and politically complicated. Other potential sources of funding (each with their own issues and none with the staying power or logic of using the court budget) are bar foundation and other charitable organization grants, IOLTA funds, or new sources such as filing fee add-on's. In a few Florida counties, self-help services are offered on a fee for service basis at a charge of \$1 per minute.

Next Steps: The pressing question for the AJC is where to go from here. Reports from various quarters suggest that there is a high level of interest in self-help centers within the courts. The AJC now should adopt a resolution supporting the establishment of self-help centers in Massachusetts, with the following key attributes: permanent trained and informed multi-lingual staff (some of whom must be lawyers); adequate computers and internet access; adequate materials and forms; multiple locations state-wide tied to the courts; comprehensive integration into the court system. With such a resolution in hand, we can engage with the strategic planning process underway with the court administration. Obviously any serious planning would involve considering sites, staffing requirements, budgets, potential integration with existing legal services/hotline programs, involvement of the bar, and many other issues. Some of these issues are of course interdependent: staffing needs, for example, depend on the likely users of the services (which itself may be a function of whether the location is urban or rural) and the availability of volunteer services. If the AJC focus should be on encouraging the court system to undertake the establishment of self-help centers, then the AJC needs to decide what it can offer the courts by way of assistance, encouragement, and ideas.