

NAVIGATING JUSTICE: SELF-HELP RESOURCES, ACCESS TO JUSTICE, AND WHOSE JOB IS IT ANYWAY?

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The courthouse plays a unique role in our system of democracy because it is the forum where the citizens of our nation can present their grievances against individuals, corporate entities and the government. The courthouse also serves as the physical interface for the execution of laws where a party against whom an action is brought—either civil or criminal—typically cannot opt out of the action without potentially serious financial or personal consequences or loss of liberty.¹ If one cannot afford an

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¹ Individuals who are charged with crimes—though they don’t have the ability to “opt out” of such cases—are entitled under the Sixth Amendment of the U.S. Constitution to have counsel appointed to represent them. *See generally* Gideon v. Wainwright, 372 U.S. 335, 344 (1963) (holding that the Sixth Amendment’s right to the assistance of counsel is a fundamental right in criminal cases and applies to the states as well as the federal government). In addition, there are limited instances in civil matters, where counsel may be appointed for a person facing deprivation of a substantial liberty interest, as in the case of an individual who is the subject of civil commitment proceedings. *See e.g.*, In re Gault, 387 U.S. 1, 41 (1967) (holding that the Fourteenth Amendment requires states to provide counsel in civil juvenile proceedings, which could lead to incarceration); Vitek v. Jones, 445 U.S. 480, 496-97 (1980) (“A prisoners thought to be suffering from a mental disease or defect requiring involuntary

attorney and one cannot opt out of the system, then self-representation is the only option left.

Forced self-representation in a legal matter with serious consequences creates an immediate question of equity. The answer is often harsh, and we must live with the fact that life is not fair. But, when a person has no option to seek redress from a court when, for example, her abusive husband takes her children and her belongings, leaving her on the street, or when a person working two jobs cannot afford an attorney to defend a collection matter involving an uninsured hospitalization, should we, as lawyers, really be satisfied with this “life is not fair” answer? This simple question has ramifications not just for the legal community, but for citizens subject to the laws of the land, which in a democracy includes everyone. The first seventeen words of our Constitution—“We the People of the United States, in order to form a more perfect Union, establish Justice . . .”—did not come with the caveat “for those who can afford it.”² Indeed, the denial of meaningful access to justice to a significant segment of our society—those who cannot afford attorneys³—is a failure of our profession and of our system of democracy.

When these questions are raised within the community that holds the keys to providing meaningful access to justice, the answer that “life is not fair” should not be accepted. We must then ask: *Should those that cannot afford representation be helped? If so, how can they be helped, and who is responsible for providing that help?*

treatment has an even greater need for legal assistance . . . [and] it is appropriate that counsel be provided to indigent prisoners whom the State seeks to treat as mentally ill.”). This article therefore focuses on civil matters where the litigant is *not* entitled to appointment of counsel.

² See Jess Dickinson, Presiding J., Miss. S. Ct., Opening Keynote Address to the Arkansas Access to Justice Commission Conference (May 29, 2012), in ARK. J. SOC. CHANGE & PUB. SERV. (June 15, 2012), <http://ualr.edu/socialchange/2012/06/15/supreme-court-of-mississippi-justice-jess-dickinsons-opening-keynote-address-to-the-arkansas-access-to-justice-commission-2/>.

³ Nearly a million people who qualify for free legal aid and who self-identify as having a legal problem are turned away from federally-funded legal-aid programs each year. *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans*, LEGAL SERVS. CORP. 1, 9 (Sept. 2009), http://lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

As licensed attorneys we have heightened ethical obligations, both in our roles as attorneys and as public citizens, to increase access to justice and popular participation in the legal process.⁴ As such, we should support tools that assist those who cannot afford attorneys to navigate our system of justice. Technology is one such tool. This Article focuses on technological self-help resources and reviews the availability, validity, usage, and sustainability of these resources. However, the basic questions asked above are fundamental to a discussion that seeks to determine the range, type, and future of self-help legal resources.

Technology has not only changed the practice of law, but it has broadened access to justice for those that cannot afford attorney representation.⁵ The United States has a long history of self-representation, and one of the core tenets of American jurisprudence is that you can represent yourself in court.⁶ In most U.S. states and territories, it is now possible for an unrepresented litigant to go online and acquire all the necessary pleadings needed to initiate and litigate many different types of lawsuits.⁷ The majority of these resources and innovations have been made available by three primary groups: free legal-aid organizations; the private sector; and court administrative offices.⁸

Technology projects often begin with determining the nomenclature, variable names, and language that should be used to develop a successful program. Since this article focuses on technical self-help resources, we should begin with defining the very terms that are used to label those that do not have attorney representation. When reviewing documentation concerning

⁴ MODEL RULES OF PROF'L CONDUCT pmb. (2012) ("A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.").

⁵ DEBORAH L. RHODE, ACCESS TO JUSTICE 81 (2004) ("Technological innovations have also expanded the services that individuals can obtain quickly and cheaply through the Internet or computer software.").

⁶ See An Act to Establish the Judicial Courts of the United States, ch. 20, § 35, 1 Stat. 73, 92 (1789). Section 35 of the Judiciary Act of 1789 states that "the parties may plead and manage their own causes personally." *Id.*

⁷ See *infra* Part II.

⁸ See *infra* note 39 and accompanying text.

unrepresented litigants, readers often see the terms *pro se*, *self-represented litigant* (SRL), and *self-help user* used almost interchangeably.⁹ Most often these terms may be substituted without confusion; however, it is helpful to distinguish these terms to some degree. National studies and journal articles have shifted to using the term *self-represented litigant* (SRL) as opposed to the traditional Latin, *pro se*, meaning “[f]or oneself” or “on one’s own behalf.”¹⁰ I disagree with the trend to call those without counsel SRLs because it is a euphemism, a fiction—they are not represented; they are alone. I will therefore refer to those who represent themselves as unrepresented litigants, or URLs.

Nonetheless, there is a need to retain the term “pro se,” at least within the community of those working to assist URLs, due to the accuracy of the term. When someone without legal education or the financial capability to retain an attorney begins thinking about accessing our legal system, then the meaning “for oneself” resonates more profoundly than the acronym of SRL. Further, self-represented litigant presumes that all those in need of access to the courts actually become litigants. There are far too many that get lost long before they get to the court’s front door.¹¹ These are the ones who are still most certainly “for oneself.” The term SRL also fails to account for those who seek self-help resources for purely informational reasons or discover litigation is currently unnecessary.

This Article is divided into three sections. Section I provides an overview of the increasing amount of self-represented litigation and the reasons behind the growth in self representation. Section II provides an overview of the need and use of self-help resources that have been developed to address the challenges created by the increase of self-represented litigation. Section III looks forward to

⁹ See e.g., Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 *Geo. J. Legal Ethics* 423, 448 (2004) (“It is far from easy to reconcile the relatively small number of cases dealing with judicial responses to the self-represented The cases can best be read to suggest that judges have broad discretion concerning how to deal with the needs and circumstances of *pro se* litigants, provided they act within broad boundaries.”).

¹⁰ BLACK’S LAW DICTIONARY 1341 (9th ed. 2009).

¹¹ RHODE, *supra* note 5, at 13-14 (“[M]illions of Americans are locked out of law entirely. Millions more attempt to represent themselves in a system stacked against them.”).

the viability, sustainability, and purpose of self-help resources.¹² The focus of this Article will be on civil litigation, as there are broader protections in the criminal context that will not be addressed here.

I. THE INCREASING AMOUNT OF SELF-HELP LITIGATION

Courts across the nation are challenged with supervising large volumes of self-represented litigants.¹³ As federal funding, Interest on Lawyer Trust Accounts (IOLTA), grants, and state financial support continues to decrease for many free legal services and pro bono organizations, there will likely continue to be an increase in the volume of self-represented litigation.¹⁴ The increasing number of unprepared self-represented litigants is causing a strain on court resources, resulting in congestion and delays within the court system.¹⁵ These delays and frustrations negatively affect both the unrepresented and represented litigants, resulting in less access to justice.¹⁶

A complete national data set for the quantity of URLs is not currently available; however, the National Center for State Courts provides a compilation of reports on the amount of URLs from lower state courts, appellate state courts, and federal courts.¹⁷ The

¹² Although this Article seeks to provide a national perspective, it will occasionally speak to the work done in Arkansas to broaden access to justice with self-help resources. The author has also worked with several other state and national projects. Therefore, the lessons learned through the Arkansas Justice Technology Project (AJTP) should help the reader replicate the successes and avoid the challenges faced in Arkansas.

¹³ *Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts*, A.B.A. COALITION FOR JUSTICE 1, 14-15 (July 12, 2010), http://www.abajournal.com/files/Coalition_for_Justice_Report_on_Survey.pdf.

¹⁴ See Press Release, Legal Servs. Corp., Funding Cuts Expected to Result in Nearly 750 Fewer Staff Positions at LSC-funded Programs (Aug. 15, 2012), available at <http://www.lsc.gov/media/press-releases/funding-cuts-expected-result-nearly-750-fewer-staff-positions-lsc-funded>. The results of a survey conducted by the Legal Services Corporation (LSC) indicated “local legal aid programs expect to reduce staffing by nearly 750 employees in 2012, including 350 attorneys, because of funding cuts. This represents a reduction of eight percent of full-time-equivalent (FTE) positions from the end of 2011.” *Id.* LSC was established by Congress in 1974. *Id.* LSC provides “funding to 134 independent nonprofit legal-aid programs in every state, the District of Columbia, and U.S. territories.” *Id.*

¹⁵ *Report on the Survey of Judges*, *supra* note 13, at 3-4.

¹⁶ *Id.* at 4-5.

¹⁷ *Documenting the Justice Gap in America*, *supra* note 3, at 23.

“data from some court systems shows extremely high numbers, often clustered in those courts in which low-income people are particularly likely to appear, such as family and housing courts.”¹⁸

More recently, the American Bar Association Coalition for Justice reported the results of their national study of judges in an effort to determine the effect of the recent economic recession.¹⁹ The survey, which asked judges detailed questions concerning URLs, began by asking if the judges had “seen a change in the number of filings in their courts?”²⁰ The majority of judges, 53%, indicated that the number of cases increased.²¹ 20% of the judges stated that the case numbers stayed the same in 2009, and 18% responded that there were decreases in the case numbers.²²

The judges responding that there was an increase of cases in 2009 were asked the additional question of “what types of cases have seen the most growth?”²³ The responses indicated that:

The most common increase was in the area of foreclosures (61%). Second, was an increase in domestic relations cases (49%). There has long been an acknowledged link between the economy and divorce rates, as economic issues tend to put the greatest amount of pressure on a marriage. The third most common area of increase was consumer issues (49%), and the fourth was housing matters other than foreclosures (26%).²⁴

The next question focused specifically on changes regarding client representation in civil matters during 2009.²⁵ Again, the majority of judges, 60%, stated, “[F]ewer parties were being represented.”²⁶ 62% of all the judges stated that the outcomes for URLs were worse when asked “how the lack of representation impacts the parties?”²⁷ The survey included many additional and more detailed questions concerning particular issues with self-

¹⁸ *Id.* at 25.

¹⁹ *Report on the Survey of Judges, supra* note 13, at 2.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 3.

²⁶ *Id.* The remaining 37% said that they had not seen any change in the level of representation. Only 3% said that representation had increased. *Id.*

²⁷ *Id.*

represented litigation and resulted in the general view “that litigants are generally doing a poor job of representing themselves and are burdening the courts.”²⁸

Several state and local studies have been completed in an effort to understand the extent of URLs and some show an even higher level of URLs in the court system. In Arkansas, a judicial survey of circuit court judges regarding URLs was completed in 2008.²⁹ The 2008 responses indicated that 69% of their cases included at least one self-represented litigant.³⁰ A vast majority of the judges, 94%, responded that they have seen an increase in the number of people trying to file pro se in the past three years.³¹ When asked where the judges and court staff refer URLs, the two primary sources were legal aid programs (87.8%) and the Arkansas Legal Services Partnership self-help website (33.3%).³²

A 2011 Arkansas study indicated a 25% increase, since 2008, for cases involving at least one self-represented party, and the researcher found that a stunning 90% to 95% of cases reviewed had at least one URL.³³ The study, *Exploring the Problem of Self-*

²⁸ See Richard W. Painter, *Pro Se Litigation in Times of Financial Hardship—A Legal Crisis and Its Solutions*, 45 FAM. L.Q. 45, 45 (2011).

²⁹ *Survey of Arkansas Circuit Court Judges Regarding Self-Represented [Pro Se] Litigants*, ARK. ACCESS TO JUSTICE COMM’N 1, 1 (Nov. 7, 2008), <http://www.arkansasjustice.org/sites/default/files/CompositeCircuitJudgeSurvey2008.pdf>. The Arkansas Access to Justice Commission implemented the *Survey of Arkansas Circuit Court Judges regarding Self-Help Represented [Pro Se] Litigants* in an effort to better understand how the Commission and legal-aid organizations could better assist Arkansas courts in handling the challenges of pro se litigation. *Id.* The Arkansas Access to Justice Commission was created in 2003 by per curiam of the Arkansas Supreme Court and charged with providing equal access to justice in civil cases for all Arkansans. *About the Commission*, ARK. ACCESS TO JUSTICE COMM’N, <http://www.arkansasjustice.org/commission> (last visited Jan. 29, 2013).

³⁰ *Survey of Arkansas Circuit Court Judges Regarding Self-Represented [Pro Se] Litigants*, *supra* note 29, at 1. The 69% of respondents reporting at least one SRL is a conservative estimation. 30% of the judges surveyed noted that 5% or less of their cases contain at least one self-represented litigant. *Id.*

³¹ *Id.* at 2.

³² See *Id.* at 2-3 (assuming that Legal Services Website refers to Arkansas Legal Services Partnership); see also ARK. LEGAL SERVS. P’SHP, www.arlegalservices.org (last visited Jan. 29, 2013).

³³ See *supra* note 30 and accompanying text; Chanley S. Painter, *Capstone Report: Exploring the Problem of Self-Represented Litigants in Arkansas Civil Courts*, UNIV. OF ARK. CLINTON SCH. OF PUBLIC SERV. 1, 16, 19 (2011), <http://www.arlegalservices.org/node/1078> (averaging the 90% to 95% of respondents who noted at least one SRL was represented in the cases before the courts.).

Represented Litigants in Arkansas Civil Courts, included two components: (1) a review of circuit court case files in three counties to determine the number of civil cases in which at least one party was self-represented,³⁴ and (2) a statewide survey of circuit judges regarding their perceptions of the prevalence of self-representation and outcomes for URLs.³⁵

The survey portion of the study confirmed the trend of increasing URLs from the 2008 survey with 84% of responding judges reporting they have seen an increase in the number of URLs over the last three years.³⁶ The studies and data concerning URL numbers clearly indicate that Arkansas Circuit Courts face challenges managing large volumes of self-represented litigants. Reports from other states demonstrate that Arkansas is not alone in facing a steady rise in self-represented litigation.³⁷

II. THE NEED AND USAGE OF SELF-HELP RESOURCES

The challenges faced by URLs and the burden placed on the court system have become clear in the past decade. Responses to this challenge have often come in the form of providing self-help resources for the pro se, self-helper, and URL population.³⁸ As stated in the introduction, the majority of these resources and

³⁴ *Id.* at 4-10 (This component of the study was limited in scope—cases from three counties, for limited time frames in 2010 and 2011, were reviewed. In addition, the review didn't include all case types; civil cases involving matters likely to involve self-represented litigants, such as domestic relations and consumer law were studied. Because of the limited nature of this component of the study, the results may not be representative).

³⁵ *Id.* at 10, 17 (This component of the study consisted of a survey distributed via email to all circuit judges statewide. The response rate exceeded 50%, meaning the results are representative of circuit judges across the state).

³⁶ *Id.* at 19.

³⁷ See e.g., The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, N.Y. STATE UNIFIED CT. SYSTEM 1, 16 (2011), http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf. The report details that in New York, during 2010, “[m]ore than 2.3 million litigants still try to navigate the complex civil justice system without a lawyer.” The amount of unrepresented litigants in New York is 4/5 of the entire population of Arkansas of 2.9 million. See *State & County Quick Facts: Arkansas*, U.S. CENSUS BUREAU (Dec. 6, 2012), <http://quickfacts.census.gov/qfd/states/05000.html>.

³⁸ RHODE, *supra* note 5, at 14 (“Kits, manuals, interactive computer programs, on-line information, form processing services, and courthouse facilitators have emerged to assist those priced out of the market for lawyers.”).

innovations have been made available by three primary groups: free legal-aid organizations; the private sector; and court administration offices.³⁹

Each region and state has developed different self-help resources in response to the increase of self-represented litigants.⁴⁰ For some states the private sector is still the only resource to draw upon.⁴¹ Although the private sector⁴² is often disparaged and discouraged from providing self-help resources,⁴³ sometimes rightfully so, there have been benefits to the self-help user from the private sector.⁴⁴

³⁹ See Office of Inspector Gen., *Increasing Legal Services Delivery Capacity Through Information Technology*, LEGAL SERVS. CORP., <https://www.oig.lsc.gov/tech/excsum.htm> (last visited Jan. 29, 2013).

⁴⁰ See John M. Greacen, *Framing the Issues for the Summit on the Future of Self-Represented Litigation*, in *The Future of Self-Represented Litigation: Report from the March 2005 Summit*, NAT'L CTR. FOR STATE COURTS & STATE JUSTICE INST. 25, <http://lawworks1.com/publicfiles/PDFs/FutureOfProSe.pdf> ("The Alaska Family Law Self Help Center has developed resources to assist litigants in contested family law matters and has mastered the delivery of services through the telephone and Internet. Law students in Madison, Wisconsin are helping litigants in contested cases to prepare for court proceedings . . . Counties in Maryland and Maricopa County are providing proactive case management for family court cases involving self-represented litigants. . . The Minnesota judicial branch has provided guidelines for judges in handling cases of self-represented litigants in the courtroom.").

⁴¹ See Richard Zorza, *The Future of Self-Represented Litigation: Report from the March 2005 Summit*, in *The Future of Self-Represented Litigation: Report from the March 2005 Summit*, *supra* note 40 at 3.

⁴² The private sector, for purposes of this article, does not mean the private bar, but rather the companies that provide, publish, and disseminate self-help resources (e.g. Nolo, Rucker Lawyer, LegalZoom). Although many of these companies hire attorneys from the private bar, the entities are not usually law firms.

⁴³ See Catherine J. Lanctot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOFSTRA L. REV. 811, 849 (2002) ("Services like *Desktop Lawyer* and *LegalZoom* . . . that generat[e] legal documents for lay people, whether done over the Internet or in an office, constitute the unauthorized practice of law if the provider of the form furnishes any kind of 'advice.' Further, the courts have consistently taken the position that selecting which form to use, giving advice about which information ought to be included in a form, or soliciting information from a lay person and then making determinations about how to use the information in the form is the equivalent of practicing law.").

⁴⁴ Chief Justice Chase T. Rogers, Conn. S. Ct., Keynote Address at the Connecticut Bar Association (June 11, 2012), *available at* [http://ccj.nesc.dni.us/pdfs/CBA%20Annual%20Meeting%20Dinner%202012%20\(2\).pdf](http://ccj.nesc.dni.us/pdfs/CBA%20Annual%20Meeting%20Dinner%202012%20(2).pdf). Chief Justice Rogers stated:

[W]e live in a society that encourages a do-it-yourself mentality. More than a decade ago, urban anthropologist Dr. Jennifer James predicted that this do-

The term used for those without counsel will now switch from “unrepresented” to the “self-help user,” because many of these people never actually make it to the litigation stage; from the outset, some are only seeking information and never intend to file any documents with the court.⁴⁵ With this term I hope to capture two important ideas: (1) self-help resources can help educate the pro se person about legal concerns and rights resulting in either preemptive legal action or referring the pro se person to another non-judicial remedy and away from the court when court action is not needed; and (2) self-help resources have had tremendous success in the past decade when developed and implemented properly; however, these resources fail to help all those in need, leaving the self-help user as one who is truly pro se, “for oneself.”⁴⁶

The private sector has reacted far more quickly than the private bar in providing low cost self-help legal forms, and the generated revenue indicates that many of these companies are successful, at least insofar as their corporate goals.⁴⁷

it-yourself trend—which started when people began pumping their own gas in the 1970s—would eventually impact all professions including the law. I don’t think that anyone in this room could deny that is where we are today.

Finally, we know that an entire industry has already been built around providing advice on complicated matters. The ease of accessing such information, coupled with aggressive marketing, has created the false impression that advice from a website is as reliable as going to a lawyer with years of experience and education.

Id.

⁴⁵ *LHI State Statistics: Arkansas*, ARK. LEGAL SERVS. (2011), <https://www.arlegalservices.org/system/files/2011%20-%20LHI%20Pro%20Se%20Arkansas%20Only.pdf>. This report provides statistical and analytical reporting on all Arkansas Justice Technology projects developed, maintained, and sustained by the Arkansas Legal Services Partnership. There were 1,408 online self-help interviews and 1,303 generated documents of legal resources that do not involve a court filing, such as power of attorney, living will, security deposit demand letter, and debt dispute letter documents. *Id.* For all ASLP Justice Technology Reports see *Arkansas Legal Services Partnership: ASLP Justice Technology Reports, Articles & Research*, <http://www.arlegalservices.org/alsp> (last visited Jan. 30, 2013).

⁴⁶ See *supra* note 10 and accompanying text.

⁴⁷ LegalZoom, Inc. was founded in 1999 and had 551 employees as of January 29, 2013. *Internet Software and Services: Company Overview of LegalZoom.com, Inc.*, BLOOMBERG BUSINESSWEEK, <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=11677383> (last visited Jan. 8, 2013). LegalZoom “provides legal document preparation and related subscription services for small businesses and consumers in the United States. The company offers a portfolio of interactive legal documents through its online legal

Notwithstanding this new market's threat to the private bar, and the resulting revenue shift, there are some benefits and issues with the private sector supply of self-help resources.⁴⁸

Self-help resources come in a variety of ways and formats. These resources range from informational fact sheets to interactive automated documents that result in user-specific legal documents that are ready to file.⁴⁹ The private sector's primary involvement in online self-help resources is the provision of user (or customer) specific documents.⁵⁰

In many states, the second most active group developing critical self-help resources has been free legal-aid organizations.⁵¹ The Legal Services Corporation (LSC) was established in 1974 by the United States Congress as an independent 501(c)(3) nonprofit corporation and is the "largest funder of civil legal aid for low-

platform." *Id.* Estimated valuation of the company is as high as \$483 million, and LegalZoom intended an IPO of 8 million shares priced between \$10 and \$12 in the summer of 2012. Debra Cassens Weiss, *Business of Law: LegalZoom Valued at 40 Times Last Year's Earnings for IPO*, A.B.A. JOURNAL (July 25, 2012, 9:38 AM), http://www.abajournal.com/news/article/legalzoom_valued_at_40_times_last_years_earnings_for_ipo. Reuters, however, reported on August 3, 2012 that the "[o]nline legal services company LegalZoom.com Inc has delayed its initial public offering due to market conditions." Olivia Oran, *UPDATE 1-LegalZoom IPO Delayed—Source*, REUTERS (Aug. 2, 2012, 2:10 AM), <http://in.reuters.com/article/2012/08/02/legalzoom-idINL2E8J2EZF20120802>. As of the date of this submission, the intended New York Stock Exchange ticker "LGZ" was listed as an invalid security. *Id.* (noting the intended ticker for LegalZoom on the New York Stock Exchange is "LGZ"); *LegalZoom.com, Inc.*, N.Y.S.E. EURONEXT, <http://www.nyse.com/about/listed/lgz.html> (last visited Jan. 29, 2013).

⁴⁸ See *infra* Part III.

⁴⁹ See *infra* notes 64-66 and accompanying text.

⁵⁰ Other technical innovations from the private sector include eLawyering or virtual law offices, but as services as these include some limited client-attorney relationship they will not be considered self-help resources for purposes of this article. See *Law Practice Management Section: eLawyering Task Force*, A.B.A. (Nov. 21, 2011), <http://apps.americanbar.org/dch/committee.cfm?com=EP024500> (last visited Jan. 29, 2013) (describing eLawyering as "doing legal work—not just marketing—over the Web. Pioneering practitioners have found dramatic new ways to communicate and collaborate with clients and other lawyers, produce documents, settle disputes, interact with courts, and manage legal knowledge. ELawyering encompasses all the ways in which lawyers can do their work using the Web and associated technologies. Think of lawyering as a 'verb'—interview, investigate, counsel, draft, advocate, analyze, negotiate, manage, . . . and there are corresponding Internet-based tools and technologies.").

⁵¹ See *supra* note 39 and accompanying text.

income Americans in the nation.”⁵² In 2000, Congress approved funding for the LSC’s Technology Initiative Grants (TIG) program.⁵³ Since then TIG has “supported projects to develop, test and replicate technologies that improve client access to high-quality legal information and pro se assistance.”⁵⁴ The LSC-TIG program has awarded over 500 grants totaling approximately \$40 million.⁵⁵ TIG funding to legal aid organizations has helped to support the development and implementation of free self-help resources throughout the United States. Also, many of these projects have resulted in nationally shared technical resources between legal aid organizations that, in turn, support the development of pro se resources locally.⁵⁶

The history of self-help assistance in Arkansas is a story, first and foremost, about legal aid. There are two free legal aid organizations in Arkansas that provide civil legal assistance for low-income Arkansans throughout the state: the Center for Arkansas Legal Services and Legal Aid of Arkansas.⁵⁷ These two organizations created and continue to maintain the Arkansas Legal Services Partnership (ALSP) to serve as a statewide support, training, and coordination unit for free legal services within the state.⁵⁸ ALSP was also charged with the development

⁵² *Fact Sheet on the Legal Services Corporation*, LEGAL SERVS. CORP., <http://www.lsc.gov/about/what-is-lsc> (last visited Jan. 29, 2013).

⁵³ *About the Technology Initiative Grants (TIG) Program*, LEGAL SERVS. CORP., <http://www.lsc.gov/media/fact-sheets/about-technology-initiative-grants-tig-program> (last visited Jan. 29, 2013).

⁵⁴ *Types of Grants*, LEGAL SERVS. CORP., <http://www.lsc.gov/about/types-grants> (last visited Jan. 29, 2013).

⁵⁵ *Technology Initiative Grants: Background*, LEGAL SERVS. CORP., <http://tig.lsc.gov/about-us/background> (last visited Jan. 8, 2013).

⁵⁶ See e.g., *LawHelp Interactive*, LEGAL SERVS. CORP., <http://lri.lsc.gov/program-administration/technology/self-help-projects/lawhelp-interactive-0> (last visited Jan. 29, 2013); *About A2J Author®: A Brief History*, A2J® AUTHOR CMTY. WEBSITE, <http://www.a2jauthor.org/drupal/?q=node/123> (last visited Jan. 29, 2013); *User Guide*, STATESIDE LEGAL™, <http://statesidelegal.org/userguide> (last visited Jan. 29, 2013); *About ShareLaw*, SHARELAW™, <http://www.sharelaw.org/about> (last visited Jan. 29, 2013).

⁵⁷ *About Free Legal Aid in Arkansas*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/about> (last visited Jan. 29, 2013).

⁵⁸ Ctr. For Ark. Legal Servs. & Legal Aid of Ark, *The Voices of Justice: 2009 Annual Report*, ARK. LEGAL SERVS. P'SHIP 1, 7-8 (2009), <http://www.arlegalservices.org/system/files/ALSP%202009%20Annual%20Report.pdf>.

and staffing of an Access to Justice Commission and has developed all of the justice-technology projects in Arkansas.⁵⁹

Legal aid began the Arkansas Justice Technology Project (AJTP) in 2004 with the mission statement: to use “*technology to improve access to justice for all*” Arkansans in need of civil-legal resources.⁶⁰ The AJTP could not have achieved its level of success without the LSC-TIG funding.⁶¹ The hundreds of resources developed by the AJTP, since its inception in 2004, play a critical part in providing more meaningful access to justice for those without attorney representation.

The AJTP goes beyond focusing on self-help resources and includes tools for legal aid staff members and pro bono attorneys.⁶² A strategic goal of the AJTP is to actually reduce the amount of self-represented litigants by creating resources, such as automated document forms, that help legal aid and pro bono advocates more easily, accurately, and efficiently create legal documents for their clients.⁶³

The amount of self-help resources in Arkansas and usage of these resources have continually increased since the beginning of the project.⁶⁴ There are two primary types of self-help resources: self-help resources that are “informational,” containing only fact sheets or website content;⁶⁵ and free legal documents, such as a stop-contact letter to a debt collector⁶⁶ or uncontested divorce

⁵⁹ See *Justice Partnerships, Projects & Initiatives*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/projects> (last visited Jan. 29, 2013).

⁶⁰ *Technology and Justice*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/justicetechnology> (last visited Jan. 29, 2013).

⁶¹ Arkansas has received 12 grants through the LSC TIG program. See e.g., *Funding for Legal Services in Arkansas*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/funding> (last visited Jan. 29, 2013) (noting that LSC's TIG allowed for the development of the Arkansas Legal Services Partnership's website).

⁶² *Technology and Justice*, *supra* note 60.

⁶³ These advocate resources and other Arkansas Justice Technology Projects assist legal-aid attorneys with their high-volume case load and encourage more pro-bono activity and case acceptance.

⁶⁴ *Technology and Justice*, *supra* note 60.

⁶⁵ See e.g., *Divorce (Overview)*, ARK. LEGAL SERVS. P'SHIP (Nov. 2011), <https://www.arlegalservices.org/files/FSDivorce-Overview.pdf>.

⁶⁶ *Collection Agency Stop Contact Letter*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/node/33> (last visited Jan. 29, 2013).

pleadings.⁶⁷ Although these are the two primary types of self-help resources, there are several different formats and levels of interactivity of the resources.⁶⁸

One of the most successful self-help resources in Arkansas, and nationally, is self-help automated documents. LawHelp Interactive (LHI) is a program that provides free hosting services, training, support, and the needed technical infrastructure for automated documents.⁶⁹ The interactive online interviews and automated document templates are created by legal aid programs, access to justice projects, and court programs.⁷⁰ This service has been critical in the development of self-help resources in Arkansas and throughout the nation. LHI provides a repository for these documents that allows for easy replication cross-jurisdictionally insofar as the technology is concerned.⁷¹

The self-help automated documents (templates) are usually created by “legal experts, then uploaded to the national LawHelp Interactive server and made available to advocates and the public” by posting links to the self-help resources on legal aid websites.⁷² LHI is also used in “court-based self-help centers, some of which

⁶⁷ *Self-Help Forms—Divorce Packet*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/divorcepacket> (last visited Jan. 29, 2013).

⁶⁸ The Arkansas Legal Services Partnership website contains 175 fact sheets, which includes twenty-one written in Spanish. *Quick Facts—Fact Sheets at a Glance*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/quickfacts> (last visited Jan. 29, 2013). In addition, the website includes a variety of automated document packets for pro-se use. *Free Self-Help Forms*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/interactiveforms> (last visited Jan. 29, 2013). The website also offers substantive and procedural video clips in both English and Spanish. *LegalTube—A Free Video Library*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/legaltube> (last visited Jan. 29, 2013).

⁶⁹ *See About LawHelp Interactive*, LAHELP INTERACTIVE, <https://lawhelpinteractive.org/about> (last visited Jan. 29, 2013). Funding and support for LawHelp Interactive (LHI) service has been provided by the Legal Services Corporation (LSC), State Justice Institute (SJI), and Capsoft. *Id.* LHI services are free to LSC funded legal aid programs. *See Free Tools*, LSC TECH. INITIATIVE GRANTS, <http://tig.lsc.gov/resources/free-tools> (last visited Feb. 7, 2013). The purchase of a license is required for court projects or other entities. *Id.*

⁷⁰ *See id.*

⁷¹ *See id.* (listing twenty-seven states, the Virgin Islands and Ontario as participating members).

⁷² *LawHelp Interactive*, *supra* note 56.

collaborate with legal aid and pro bono programs to supplement the online forms with advice and counsel.”⁷³

There are two layers to this type of automated resource. The user begins with an online interview where information is provided by the user.⁷⁴ That information is then sent and assembled into a downloadable personalized document. Nationally, there were 591,783 online interviews and 318,846 assembled documents in 2011 through LHI.⁷⁵ The Arkansas based self-help resources hosted on LHI had 22,261 interviews and 13,261 assembled documents in 2011.⁷⁶

Another critical component of the free self-help resource community within legal aid is the A2J Author®, which is a software tool that enables “non-technical authors from the courts, clerk’s offices, legal services programs, and website editors” to easily build and publish user “friendly web-based interfaces for document assembly.”⁷⁷ These interfaces are called “A2J Guided Interviews®,” and “remove many of the barriers faced by self-represented litigants, allowing them easily to complete court documents that are ready to be filed with the court system.”⁷⁸

The A2J Author® software “was developed under grants from the State Justice Institute . . . , Chicago Kent College of Law, Center for Computer-Assisted Legal Instruction (CALI), Center for Access to the Courts through Technology, and Legal Services Corporation.”⁷⁹ This software has become a critical tool within the legal-aid community for developing self-help user resources. In 2011, there were a total of 812 active user interviews on the LawHelp Interactive server.⁸⁰ From 2005 through 2011, there were 1.7 million interviews by self-help users or advocate users.⁸¹

⁷³ *Id.*

⁷⁴ *About LawHelp Interactive, supra* note 69.

⁷⁵ *Justice Technology Projects Report: Statistical Analysis Yearly Report 2011*, ARK. LEGAL SERVS. P'SHIP 1, 10 (Feb. 23, 2012), <http://www.arlegalservices.org/system/files/ALSPJusticeTechnologyReport2011.pdf>.

⁷⁶ *Id.*

⁷⁷ *About A2J Author®, supra* note 56.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Pro Bono Net, *LHI State Statistics*, ARK. LEGAL SERVS. P'SHIP 1, 1 (Jan. 15, 2013), <http://www.arlegalservices.org/system/files/2011%20-%20LHI%20%20State%20Statistics.pdf>.

⁸¹ *Id.*

Out of those 1.7 million interviews, there were 942,266 legal documents generated.⁸²

Automated documents are not the only self-help resources that have been developed and maintained by the legal aid community. Tens of thousands of pieces of content can be found on legal-aid websites that provide self-help legal information.⁸³ These free self-help resources range from static forms, information fact sheets, streaming video and audio.⁸⁴ In Arkansas, the primary delivery vehicle for self-help resources is the statewide legal aid website.⁸⁵ The courts have increasingly referred pro se litigants to these websites in order to find the help that they need.⁸⁶

LiveHelp is another type of interactive resource, which provides real time chat that assists website visitors locate and use the self-help resources.⁸⁷ There are currently “13 states that have LiveHelp chat capabilities” providing this service.⁸⁸ Arkansas also provides LiveHelp assistance to visitors of the statewide legal aid website with 1,127 chats in 2011 and a total of 2,924 chats since

⁸² *Id.*

⁸³ *See* <http://www.lawhelp.org/NationalAboutUs.cfm/> (last visited Jan. 29, 2013) (providing a full directory of legal aid websites).

⁸⁴ *See e.g., supra* note 68 and accompanying text.

⁸⁵ *See* ARK. LEGAL SERVS. P'SHIP, <http://www.arlegalservices.org/> (last visited Jan. 29, 2013). The Arkansas Legal Services Partnership website first exceeded 2 million annual page views in 2009. *See Justice Technology Projects Report: Statistical Analysis Yearly Report 2009*, ARK. LEGAL SERVS. P'SHIP 4, 6, <http://www.arlegalservices.org/system/files/ALSPJusticeTechnologyReport2009.pdf>.

⁸⁶ *See* Painter, *supra* note 33, at 26-27. The 2011 capstone project surveyed judges in 2011 showing that “a majority . . . of judges refer SRLs to legal services programs and legal services website[s].” *Id.* at 26. The report did not have corresponding data from a survey conducted in 2008. *Id.* While it may be unclear whether judges are personally referring SRLs to websites, the report clearly indicates that the percent of persons using websites for legal assistance has increased. *Id.* at 26-27. According to the report, in 2011, 73% of the judges responded that SRLs were using forms and directions developed by the Commission or Arkansas Legal Services Partnership compared to only 60% in 2008. *Id.* “The change indicates an increase in the amount of SRLs using the self-help resources.” *Id.* at 27.

⁸⁷ William Jones, *Disaster Response and Legal Technology*, GPSOLO, Jan.-Feb. 2012, at 52, 55 *available at* http://www.americanbar.org/publications/gp_solo/2012/january_february/disaster_response_legal_technology.html (“LiveHelp is a service tied into a website. If the website visitors desire assistance, they click the LiveHelp button, which initiates an online chat session with an operator. The operator can provide legal information and navigate visitors to the appropriate section of the website that addresses their need.”).

⁸⁸ *Id.*

the project was launched.⁸⁹ The LiveHelp assistants, called “navigators,” do not provide legal advice. They only help the user locate and use the resource.⁹⁰ A comparison could be made to a virtual court clerk showing the court patron where the printed-forms sources are located.

Self-help resources like the ones reviewed above have become a critical service-delivery method for self-help resources in Arkansas and nationally. The legal aid community and its partners have created a large catalogue of innovative self-help tools on an ever-decreasing budget and with a very limited staffing capacity.⁹¹ Nonetheless those working within the legal aid community have developed a national framework for developing and delivering self-help resources to those in need.

III. SHOULD WE HELP THOSE WITHOUT ATTORNEY RESPRESENTATION? IF SO, WHOSE JOB IS IT?

Although some courts are addressing the challenge of the unrepresented many are still only providing very limited resources, if any, and are dependent upon free legal aid to innovate, develop, and sustain the majority of free self-help resources. Considering the ongoing efforts that legal aid provides in developing self-help resources⁹² and the decreasing legal aid funding,⁹³ the question arises whether the current model is sufficient and sustainable. Many states do not currently have a court-based strategy in place for addressing the growing number of unrepresented litigants in our courts.

The U.S. Supreme Court’s 2011 decision, *Turner v. Rogers*,⁹⁴ underscores the need for state courts to have tools at their disposal to ensure that unrepresented parties receive a fair opportunity to be heard, especially when fundamental rights are at stake. The Due Process Clause of the Fourteenth Amendment requires the states to guarantee certain levels of fairness in civil proceedings. Justice Breyer, writing for the majority, effectively

⁸⁹ *Justice Technology Projects Report*, *supra* note 75, at 9.

⁹⁰ Jones, *supra* note 87, at 55.

⁹¹ See also *supra* note 14 and accompanying text.

⁹² See *supra* Part II.

⁹³ See *supra* note 14, 91 and accompanying text.

⁹⁴ 131 S. Ct. 2507 (2011).

argued that if a state does not provide counsel for an indigent client in certain civil litigation situations, then sufficient procedural safeguards must be in place to remedy the unfairness of lack of representation.⁹⁵

Although the *Turner* opinion elicited mixed responses from the access-to-justice community due to its failure to provide a Civil *Gideon*,⁹⁶ it did provide an unprecedented demand for judicial intervention when a URL is before the court in certain situations where liberty is at stake.⁹⁷ In fact, *Turner* actually provides procedural safeguards for judges to follow when a URL is at risk of losing liberty in a civil matter.⁹⁸ When counsel is absent, a judge's failure to provide these safeguards, sua sponte, constitutes a violation of the unrepresented party's due process rights if the action could result in a deprivation of liberty via incarceration.⁹⁹

The decision was limited in scope and does not apply to all civil matters involving unrepresented parties, however, "[l]urking behind this changed judicial environment is the Court's effective endorsement of judicial engagement as helping ensure, and indeed sometimes requiring to ensure, fairness and accuracy, and to meet the requirements of due process."¹⁰⁰ Specifically, the Supreme Court identified four procedural safeguards that must be included:

- (1) notice to the defendant that his ability to pay is a critical issue in the contempt proceeding;
- (2) the use of a form (or the equivalent) to elicit relevant financial information;
- (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status . . . ; and
- (4) an express finding by the court that the defendant has the ability to pay.¹⁰¹

⁹⁵ *Id.* at 2512. ("[T]he State must . . . have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question.").

⁹⁶ *Id.* at 2520 (holding that the Fourteenth Amendment does not create a constitutional guarantee to counsel in civil cases).

⁹⁷ *See id.* at 2519.

⁹⁸ *See infra* note 101 and accompanying text.

⁹⁹ *Turner*, 131 S. Ct. at 2520.

¹⁰⁰ Richard Zorza, *A New Day for Judges and the Self-Represented: The Implications of Turner v. Rogers*, 50 THE JUDGES' J. 16, 16 (2011), available at <http://www.zorza.net/JJ-Turner.pdf>.

¹⁰¹ *Turner*, 131 S. Ct. at 2519 (internal quotations omitted).

Without these safeguards, a civil contempt hearing violates the Due Process Clause of the Fourteenth Amendment, which only the right to counsel can remedy.¹⁰²

The U.S. Supreme Court has clearly stated that the safeguards listed above, and perhaps counsel, must be provided to unrepresented litigants when their liberty is at stake even in a civil proceeding.¹⁰³ Further, that judicial intervention with certain pro se matters is not only needed, but mandated. This opinion should echo beyond the courtroom and into the administrative efforts of the court. The legal-aid and access-to-justice communities have debated the effect of *Turner* and what the response will be from the courts insofar as self-help assistance generally.¹⁰⁴ One conclusion is clear:

[T]here is an urgent need to think of better ways to decide who needs what services in order to get access to justice, and not just in the civil contempt area. Here is a new idea . . . Its [sic] not just legal aid that now has to be involved in making smart and cost effective decisions about who should receive a free lawyer and who should receive other forms of assistance that can help to make our courts more accessible.¹⁰⁵

CONCLUSION

Turner settles the question of regarding *whose* responsibility it is to ensure that unrepresented civil litigants receive either representation or sufficient procedural safeguards in certain situations. The extension of the parameters to which *Turner* should apply will likely be argued in the future, but it is settled law that the Due Process Clause of the Fourteenth Amendment requires certain levels of fairness in civil proceedings.¹⁰⁶ In the absence of counsel, the court is best situated to ensure that unrepresented civil litigants have meaningful access to justice.

¹⁰² *Id.* at 2520.

¹⁰³ *Id.*

¹⁰⁴ See e.g., Zorza, *supra* note 100, at 17-22 (offering specific suggestions to judges on how to effectively comply with the *Turner* decision and provide assistance to SRLs).

¹⁰⁵ Richard Zorza, *After Turner: A Proposed "Attorney Diagnosis" Approach to Triage for Access to Justice*, RICHARD ZORZA'S ACCESS TO JUSTICE BLOG (Sept. 6, 2011), <http://accesstojustice.net/2011/09/06/after-turner-a-proposed-attorney-diagnosis-approach-to-triage-for-access-to-justice/>.

¹⁰⁶ See *supra* note 94-99 and accompanying text.

Nonetheless, the legal-aid community still has an obligation to fulfill their mission and expand equal access to justice.¹⁰⁷

Legal aid and their partners have created extensive and innovative self-help resources that have become critical support systems for unrepresented litigants and for the courts that must manage them. There is also a large private sector market for self-help resources that should be called upon to discuss collaboration, and perhaps ethical responsibility, in partnering with non-profit and court self-help projects.

Upon review of the primary groups working to ensure access to justice for the unrepresented, the answers to the questions asked in the beginning of this Article become clearer. The question, “*Should those that cannot afford representation be helped?*” is “yes,” at least in some situations according to *Turner*. However, for all of us that are honored to be a licensed attorney then the answer is “yes *and* always according to our code of ethics.”¹⁰⁸ To the questions, “If so, how can they be helped and who is responsible for providing that help?” the answer to the “how” question is that a framework has already been created by legal aid, but it needs new and innovative ways to help and a true court collaboration for sustainability.

The answer to the final question, “*who is responsible for providing that help?*” is often the type of question that is hardest to answer. The answer, however, again is found within the ethical duties governing attorneys. These ethical obligations stem not only from our code of ethics, but from the very oath I made as new attorney that now hangs upon the wall in my legal aid office:

“I will not reject, from any consideration personal to myself, the cause of the impoverished, the defenseless, or the oppressed. I will endeavor always to advance the cause of justice...”¹⁰⁹

Arkansas Attorney’s Oath

¹⁰⁷ See *supra* note 4 and accompanying text.

¹⁰⁸ See *supra* note 4 and accompanying text.

¹⁰⁹ *Pro Bono Portal*, ARK. LEGAL SERVS. P’SHIP, <http://www.arlegalservices.org/probono> (last visited Jan. 29, 2013).

