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# Empowering Religious Leaders as JFA Stakeholders

1. What is the full name of your organization? If incorporated, please provide the name under which your organization is incorporated?

Your answer

2. Is your organization a church, synagogue, mosque, temple, or other place of worship? If "other," please specify.

- Church
- Synagogue
- Mosque
- Temple
- Other:

3. If your organization is not a church, synagogue, mosque, or temple, or other place of worship, is it affiliated with a particular religion or religious denomination?

Your answer



4. Is your organization multi-denominational? If so, please list,

Your answer

5. Does your organization have a religious affiliation? if so, name the religious affiliation.

Your answer

6. Does your organization mostly serve a particular ethnic group? If yes, please specify the ethnicity.

Your answer

7. Does your organization operate via a hierarchical system? If so, explain.

Your answer

8. Does your organization mostly serve individuals in a particular income level (i.e., high, middle, or low socio economic level)? If yes, please specify which one.

Your answer

9. Does your organization operate less than year-round? If yes, please specify how many months during the year it is operational.

Your answer

10. What is the average age of your attending parishioners?

Your answer

11. Do members or affiliates of your organization experience civil legal issues?

Yes

No

12. If members or affiliates of your organization do experience civil legal issues, how frequently do they experience these issues?

Almost Never

Sometimes

Often

Very Often

Constantly

13. Do the civil legal issues faced by members or affiliates of your organization negatively affect your community?

Your answer

14. When members or affiliates of your organization experience legal issues, do they consult leader(s) of your organization for assistance?

Your answer

15. When members or affiliates of your organization experience civil legal issues, do they consult other members of your organization for assistance?

Your answer

16. When members or affiliates of your organization experience legal issues, can the organization consistently direct them to helpful resources that are free or inexpensive?

Your answer

17. Does your organization offer free or inexpensive legal services for members or affiliates?

Yes

No

18. Does your organization need help to learn more about free or inexpensive legal resources available in your community?

Yes

No

19. Do lawyers in your community volunteer their time to help answer questions or provide free or inexpensive legal services for members or affiliates of your organization?

Yes

No

I do not know

20. Do you have a current system in place to direct your members who are in need of legal assistance? If so, please explain.

Your answer

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# Court-Based Self-Help Programs Toolkit

Developed by the Supreme Court of Georgia Access, Fairness, Public Trust & Confidence Committee

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\*Annotated law journal article forthcoming in the *Harvard Journal of Law and Gender*, examining a bill pending in the New York legislature regarding civil access to justice in housing courts.



## EXISTING PROGRAMS IN GEORGIA

### *Metropolitan Area*

- (1) Fulton County Family Law Information Center (FLIC)
  - a. Provides legal forms, free 30-minute legal consultations, and a free monthly workshop to clients (consulting attorneys are affiliated with Atlanta Legal Aid Society, though I imagine attorneys from other legal services organizations may also volunteer their time).
    - i. The consultations and workshop are not limited to Fulton County residents
  - b. Allows for one private 30-minute consultation with an Atlanta Legal Aid Society attorney, at no charge.
  - c. In 2015 and 2016, FLIC averaged 1,293 free 30-minute consultations per year.
- (2) Fulton County: Probate Information Center (PIC)
  - a. Partnership between the Probate Court, the Estate Planning and Probate Section of the Atlanta Bar Association, and the Atlanta Volunteer Lawyers Foundation.
  - b. PIC provides free 30-minute consultations with an attorney for self-represented litigants with probate issues.
  - c. Consulting attorneys work on a pro bono basis and are active members of the Estate Planning and Probate Section of the Atlanta Bar Association and must have a minimum of three years of work experience.
  - d. Martin Ellin, Executive Director of the Atlanta Volunteer Lawyers Foundation: “PIC has a reputation for being a highly effective and trustworthy resource for helping self-represented litigants resolve delicate probate issues.”
- (3) Gwinnett County: Self-Help Pamphlet Series
  - a. Chief Magistrate Judge Kristina Hammer Blum spearheaded creation of a color-coded pamphlet series outlining the Magistrate Court’s main court processes.
    - i. Pamphlet series covers family violence, garnishments, abandoned motor vehicles, civil disputes, warrant applications, and landlord/tenant issues.
    - ii. The pamphlets are written in English, Spanish, Vietnamese, and Korean.
  - b. Installation of two self-help kiosks at the Gwinnett Magistrate Court which allow litigants to electronically generate the requisite forms for their court case; integrated electronic filing is anticipated in the future.
- (4) Cobb County: Family Law Workshop
  - a. Assists self-represented litigants in Cobb County with divorce, contempt, paternity and legitimation, child support, and modification issues.
  - b. Held once a month and led by attorneys from the Cobb County Bar Association’s Family Law and Younger Lawyers Sections.
  - c. In 2016, 390 individuals attended the workshop.
  - d. Self-represented litigants can also pay \$150 for a three-hour consultation with an attorney, and print or purchase forms from the Cobb County Law Library.

- i. Cobb County partially redirects the revenue earned from forms to sponsor individuals with a \$150 scholarship to offset the cost of the three-hour attorney consultation.

*Rural Areas: Appalachian and Eastern Judicial Circuits*

(1) The Appalachian Judicial Circuit

- a. Located in northern Georgia and serves Fannin, Gilmer, and Pickens counties.
- b. The circuit's Family Law Information Center was inaugurated in 2008.
  - i. Serves low-income residents seeking assistance with family law issues such as divorce, child custody, child support, legitimation, and contempt, among others.
  - ii. Staffing: When I visited in summer 2017, the Center was principally staffed by a single Staff Attorney who also served as the Center Coordinator. At that time the individual was Ms. Glenna Stone, a former federal prosecutor in Atlanta. Ms. Stone was friendly, knowledgeable, and highly capable.
    - 1. The Center Director is supported by a highly involved group of judges and court staff, including (1) Judge Keith Galligan, Appalachian Judicial Circuit Juvenile Judge; (2) Chief Judge Brenda Weaver, Appalachian Judicial Circuit Superior Court; (3) Judge John Worcester, Appalachian Judicial Circuit Superior Court; (4) Ms. Cami Fowler, staff clerk to Judge Weaver.
    - 2. Effective January 2018, Ms. Glenna Stone is no longer affiliated with the Center and the Center is without a Coordinator (though I anticipate by spring 2018 the Center will be staffed).
- c. 2008 – 2014:
  - i. 10,143 individuals in the circuit utilized the FLIC office, benefitting from some combination of help with forms and consultations with the Center Coordinator.
    - 1. The statistics cited directly above are available [here](#).
- d. August 2010:
  - i. Richard Zorza, founder of the Self Represented Litigation Network, evaluated FLIC and concluded that it effectively meets its goal of increasing access to courts for self-represented litigants.
- e. 2014:
  - i. The Center received the William B. Spann, Jr. award from the State Bar of Georgia Access to Justice Committee and the Bar's Pro Bono Project.
- f. Over 80% of litigants who consult FLIC earn \$300 or less per week, with only 1% of litigants earning over \$700 per week.
  - i. Assistance is based on financial need (poverty guidelines). The most recent published information concerning financial need is from June 2009.
- g. FLIC services are promoted through various channels, including business cards, a detailed website ([www.appflic.org](http://www.appflic.org)), brochures, print media, DFCS offices, community centers, word of mouth, and referrals from local practicing attorneys.
- h. Two days each month:
  - i. Each county in the circuit hosts two pro se court days per month, for a total of six monthly pro se court days in the circuit;

- ii. Pro se court allows the presiding judge to take a more engaged approach during proceedings;
- iii. The judge will explain court procedure, conduct fact-finding, review relevant paperwork, and allow each party to consult FLIC staff as the need arises during the case.

Note on judicial engagement: Critical to FLIC’s success is engagement from the local judiciary. The judges recognize that family law issues can be complicated and stressful. The issues may take an emotional toll on the parties involved, especially if a party is unemployed or underemployed, suffering from substance abuse issues, responsible for young children or ailing parents, or anxious because they fear an unfavorable outcome in court. The judges believe unrepresented litigants may be more willing to fully engage in the judicial process and less inclined to view court as a strictly adversarial setting if judges empathize and acknowledge the taxing effect that litigation can have on unrepresented parties.

(2) The Eastern Judicial Circuit

- a. Located in southeastern Georgia, exclusively serves Chatham County.
- b. Primary resource for self-represented litigants in the circuit is the Mediation Center of Savannah, a nonprofit organization that contracts with Chatham County Superior Court and receives funding from the county.
- c. The Mediation Center manages the Family Law Resource Center (“FLRC”)
  - i. The most frequent issues that FLRC assists with include divorce, modification, adult name change, legitimation, contempt, and child support.
  - ii. FLRC is open three days per week, from 9:00 a.m. to 5:00 p.m., during which time self-represented litigants can schedule an appointment with a non-attorney staff member to help answer procedural questions, including questions about forms.
  - iii. An appointment at FLRC costs \$40, although fees may be waived due to mitigating financial circumstances.
- d. Mediation:
  - i. The Chatham County Office of Alternative Dispute Resolution refers litigants to the Mediation Center of Savannah, which provides free mediation services to litigants with cases in magistrate, state, and probate court, and provides discounted mediation services to litigants with cases in superior court
  - ii. 2012 – 2015:
    - 1. 1,899 cases were resolved through mediation, generating savings of \$3.3 million from avoiding trial.
  - iii. 2016:
    - 1. 430 cases were mediated in Chatham County Superior Court.
    - 2. Approximately 100 mediated cases were pro se cases, with 61% of cases reaching agreements.
    - 3. The Mediation Center received 1,406 and 1,388 referrals from superior, magistrate, juvenile, state, and probate judges in 2016 and 2015, respectively.

## PROGRAMS IN STATES OUTSIDE OF GEORGIA: NEW YORK AND ALASKA

### (1) New York State: Best Practices

#### *Location*

- Ideally, Help Centers should be located in the courthouse, because self-represented litigants typically first realize that they have questions when they are in court
- Help Centers should be:
  - (1) easily visible and reachable
  - (2) located on the first floor of the building, near the building entrance
  - (3) adjacent to, near, or part of the Clerk’s office where papers are filed
  - (4) close to the court’s childcare center (if there is one)
  - (5) easily accessible to those with disabilities
  - Alternatively, Help Centers may be located in a Bar Association office or a law library

#### *Practical Considerations*

- Uniformity makes everything easier for court personnel, unrepresented litigants, and attorneys
- To achieve uniformity, a statewide Help Center administration—or central office—can help reduce redundancies between centers; promote uniformity in training; promote regular communication between centers; and otherwise support and connect centers

#### *Stakeholder Partnerships*

- Help Centers typically work best where partnerships exist with community stakeholders
- Potential stakeholders include local and state Bar Associations, legal aid organizations, law schools, nonprofit organizations, government agencies, advocacy and community organizations, and private foundations
- Neutrality should be considered before a partnership is realized

#### *Logistics: Operating Hours*

- Ideally, a Help Center will operate during the same days and hours as the court, and additionally will operate both in the evening and in the early morning once per week
- Staffing difficulties may be met by hiring school interns or accepting volunteers
- Branding is an important consideration too. Names like “Office of the Self-Represented” or “Pro Se Office” may not be clear to self-represented litigants and could perpetuate confusion

#### *Legal Information versus Legal Advice*

- Legal information is factual information about court procedures and rules, definitions of legal words, and information about legal help
- Legal advice is information—sometimes nonfactual—about how the law applies to the case and suggests how to best proceed
- Help Centers should freely provide legal information to self-represented litigants at no cost, but are prohibited from providing legal advice

- The Help Center’s neutrality is a priority – this warrants more discussion. Neutrality is not equivalent to not giving legal advice. For example, during the attorney consultations at Fulton FLIC legal advice is given. FLIC is neutral in that either party may receive advice as long as the attorney providing the advice does not have a conflict.

#### *Rural Areas*

- For rural areas, a Mobile Legal Help Center or a Virtual Help Center may be effective
- Mobile Centers:
  - A Mobile Legal Help Center provides most of the services available in a traditional Help Center, simply aboard a vehicle
  - A mobile center accommodates litigants who are homebound, disabled or otherwise unhealthy, or who are unable to travel to a courthouse
- Virtual Centers:
  - A Virtual Help Center provides services strictly over the internet and telephone
  - A virtual center may offer multi-lingual access to Help Center publications and instructions, and is inexpensive relative to mobile centers
  - Alaska has a particularly good Virtual Help Center.

#### *Suggested Best Practices*

- Help Centers should provide free internet access for basic legal research, including access to city records, government agencies and websites, and all court websites and resources
- Translate buttons should be added to internet pages, and a reasonable amount of printing should be free
- Computer terminals should also be provided where the court system has document assembly programs that produce court forms
- Remote tools can be utilized to promote remote services – tools like desktop sharing, FaceTime or Skype, email or telephone assistance, or web chatting can effectively connect self-represented litigants in rural areas to legal information
- At a minimum, each Help Center should offer (1) free one-on-one consultations or workshops with attorneys, (2) attorney referrals, and (3) free written materials, including forms
  - Ideally, written materials should help shorten consultation times, assuming they are direct and concise
  - Further, written materials should be available in foreign languages that are prevalent in the jurisdiction
  - Interpreting services should always be available without charge to self-represented litigants visiting Help Centers and ideally an interpreter in the language most requested should be on Help Center staff
    - Where staffing an interpreter is impossible, however, robust translation services should be provided by the Help Center.

### *Triage*

- The triage role consists of quickly and correctly determining what a litigant is trying to do, e.g., whether the litigant should be in the Help Center in the first place, if they need mere information as opposed to a private attorney consultation, if they need a form, or if they need a referral
- Bilingual triage staff members are particularly effective in ensuring the Help Center runs smoothly

### *Statewide Staffing and Support*

- In New York, pro se administration is handled through a statewide office with centralized, top-down authority, with some latitude given to regional offices.
- The Statewide Pro Se Coordination Office oversees, supports, and connects individual Help Centers
- The Coordination Office is also tasked with overseeing technology that links all Help Centers in the state together, which includes a statewide shared site and intake statistical program
- The Office can facilitate remote services programs and is responsible for posting information and resources on the courts' website(s) and on social media
- The Help Center Central Administration Managing Attorney should be licensed to practice in the jurisdiction and be in good standing with the State Bar
- The Managing Attorney should have expertise in the areas of law that Help Centers assist with and must be an excellent communicator, who is personable and who has a profound understanding of the challenges faced by unrepresented litigants in court
- Basic duties include conducting Help Center promotion, reporting Help Center statistics, facilitating expansion of Help Centers, overseeing Help Center unification, developing uniform intake procedure, and training Help Center Supervisors

### *Promotion*

- Every Help Center should have a clear and visible presence
- Multi-lingual promotional materials should be placed strategically around the courthouse, and clerks may hand out materials to litigants when they come in to answer a summons
- Public events—like information fairs and Law Day celebrations—and local organizations—like law schools and government agencies—can effectively promote Help Centers through community outreach
- Twitter, Facebook, and YouTube are great resources for publicizing Help Centers, particularly when noteworthy events occur

(2) Alaska – The Alaska Family Law Self Help Center (FLSHC)

- *Fully Mobile Help Center:*
  - Primary resource for Alaska residents seeking information and educational materials regarding issues of family law
  - Due to the vast geographic area that Alaska occupies, the self-help center exclusively assists self-represented litigants via a toll-free helpline that is staffed 42 hours per week
    - Calls are fielded one at a time; therefore, FLSHC staff do not face interruptions from multiple litigants competing to ask for information
  - The helpline is staffed by four non-attorney facilitators, who can answer procedural questions from litigants in English, Spanish, and Tagalog, and use interpreters for other non-English languages such as Russian, Korean, Samoan, Hmong, and Yup'ik
  - Staff facilitators are incredibly careful about not advising customers, but instead provide an abundance of education and information about their options regarding procedures and forms to accomplish their goals
  - Non-attorney facilitators are supervised by an attorney to ensure they are not giving out legal advice, and are trained by attorneys at the outset of their tenure
  
- *Civil Rule 16.2:*
  - Alaska Supreme Court adopted Civil Rule 16.2 in 2015, which provides for informal trials in domestic relations disputes
  - If both parties consent to an informal trial, the formal rules of evidence are suspended, parties are not allowed to cross-examine each other, and in most cases the only witnesses will be the parties
    - The judge asks all the questions of the witnesses and solicits topics or questions from the parties about which to inquire
    - Parties can introduce all evidence they think is important and the judge determines the appropriate weight to afford the evidence
    - No objections are permitted
    - Informal trials allow judges to relax or suspend certain rules in the interest of achieving a swifter resolution

### **SRLN Report on Remote Service Delivery**

- In 2016, the Self-Represented Litigation Network released a resource guide entitled *Serving Self Represented Litigants Remotely*
- Eight state-level and county-level programs contributed to the guide
- The resource guide concluded that remote services delivery is effective and efficient, cost-effective, potentially better than in-person services, and a powerful catalyst for developing provider networks to better serve the public
- For rural jurisdictions, remote service delivery is a valuable method by which to assist self-represented litigants
- Link: <https://www.srln.org/node/997/report-resource-guide-serving-self-represented-litigants-remotely-srln-2016>



## **(I) THE JUSTICE GAP IN 2017**

In June 2017, the Legal Services Corporation (LSC) released a report entitled *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. In cooperation with the non-partisan and objective research organization at the University of Chicago (NORC), LSC made the following findings in its report:

- (1) In 2017, legal aid organizations funded by LSC will receive requests to assist with 1.7 million legal issues from low-income Americans, over half of which will be left partially or entirely unresolved;
- (2) This past year, 86% of the civil legal issues reported by low-income Americans were inadequately resolved or entirely unresolved;
- (3) Senior citizens, individuals with disabilities, veterans, and residents of rural communities prominently account for the 60 million Americans who live at or below 125% of the Federal Poverty Level; and
- (4) Low-income Americans seek professional help for only 20% of the civil legal problems they face, often because they are unaware of available resources and whether their problem is “legal” in nature. Ms. Linda Klein, current American Bar Association President and senior managing shareholder with the Baker Donelson firm in Atlanta, says the divide between the civil legal needs of low-income Americans and the available resources to meet those needs is now a chasm, and that the disparity presents obvious issues for the American justice system.

Despite the struggle that individual states face in adequately addressing the unmet civil legal needs of low-income individuals, Georgia’s Appalachian and Eastern Judicial Circuits have demonstrated a concerted effort to help low-income residents in their communities access help in family law cases. They have enjoyed considerable success. Other states, such as Alaska, have made strides to assist pro se individuals with the use of a statewide self-help center and informal trial proceedings. Finally, in Georgia, alternative dispute resolution offices are also using creative ways to assist courts in resolving a wide variety of disputes.

## **(II) PROGRESS MADE BY THE APPALACHIAN AND EASTERN JUDICIAL CIRCUITS IN GEORGIA**

### *The Appalachian Judicial Circuit*

The Appalachian Judicial Circuit is located in northern Georgia and serves Fannin, Gilmer, and Pickens counties. The circuit’s Family Law Information Center (“FLIC”) was inaugurated in 2008 as a resource for low-income residents seeking assistance with family law issues such as divorce, child custody, legitimation, and contempt, among others.

### *Awards and Recognitions*

Between 2008 and 2014, FLIC assisted 10,143 individuals in the circuit, and in 2014 Chief Superior Court Judge Brenda Weaver of the Appalachian Judicial Circuit received the William B. Spann, Jr. award from the State Bar of Georgia Access to Justice Committee and the Bar's Pro Bono Project. The award recognizes a pro bono program in Georgia that satisfies previously unmet needs affecting underserved segments of the population.

In August 2010, Richard Zorza, founder of the Self Represented Litigation Network and a writer and thought leader on access to justice issues (<https://accesstojustice.net/>) evaluated FLIC. Mr. Zorza's evaluation concluded that FLIC effectively meets its goal of increasing access to courts for self-represented litigants. Mr. Zorza noted that "time is being saved, and quality [is] being improved in a variety of ways," and that FLIC staff are skilled in providing litigants with the information and assistance they need without violating the neutrality of the court by serving as advocates.

### *Services Provided*

Ms. Glenna Stone serves as the Staff Attorney and Coordinator of FLIC. Ms. Stone assists self-represented litigants with the completion of forms and provides litigants with basic information regarding the legal process. Litigants may arrange for an in-person appointment with Ms. Stone to discuss the premise of their case, but only from a procedural standpoint, and to ensure their paperwork is accurate prior to filing. Over 80% of litigants who consult FLIC earn \$300 or less per week, with only 1% of litigants earning over \$700 per week, so free access to an attorney who is knowledgeable about family law issues and who can speak in simple terms is vital to helping litigants resolve their cases. Litigants who consult FLIC may not be entirely literate and often do not know about available remedies at law. FLIC services are promoted through various channels, including business cards, a detailed website ([www.appflc.org/](http://www.appflc.org/)), brochures, print media, DFCS offices, community centers, word of mouth, and referrals from local practicing attorneys.

Two days each month, each county in the Appalachian Judicial Circuit hosts pro se court, for a total of six monthly pro se court days in the circuit. Usually, both parties in pro se court are self-represented. Pro se court allows the presiding judge to take a more engaged approach during proceedings. The judge will often explain court procedure, conduct fact-finding, review relevant paperwork, and allow each party to consult FLIC staff as the need arises during the case. When pro se court is not in session, Ms. Stone frequently holds office hours for self-represented litigants.

### *The Importance of Judicial Engagement*

Critical to FLIC's success is engagement from the local judiciary. Chief Judge Brenda Weaver and her law clerk Cami Fowler, Judge John Worcester, also of the Appalachian Judicial Circuit Superior Court, and Judge Keith Galligan of the Appalachian Judicial Circuit Juvenile Court unanimously agree that judges, clerks, and court staff should work with pro se litigants to help them navigate the judicial system. The judges recognize that family law issues can be complicated and stressful. They may take an emotional toll on the parties involved, especially if a party is unemployed or underemployed, suffering from substance abuse issues, responsible for young children or ailing parents, or anxious because they fear an unfavorable outcome in court. The judges believe self-represented litigants may be more willing to fully engage in the judicial process and less inclined to view court as a strictly adversarial setting if judges empathize and acknowledge the taxing effect that litigation can have on parties.

### *The Eastern Judicial Circuit*

The Eastern Judicial Circuit is located in southeastern Georgia and exclusively serves Chatham County. The primary resource for self-represented litigants in the circuit is the Mediation Center of Savannah, a nonprofit organization established in 1986 that contracts with Chatham County Superior Court and receives funding from the county. The Mediation Center manages the Family Law Resource Center (“FLRC”). Similar to FLIC in the Appalachian Judicial Circuit, FLRC exists to guide and educate self-represented litigants who need assistance with family law issues. The most frequent issues that FLRC assists with include divorce, modification, adult name change, legitimation, contempt, and child support. FLRC is open three days per week, from 9:00 a.m. to 5:00 p.m., during which self-represented litigants can schedule an appointment with a staff member. During an appointment, a non-attorney staff member will ensure that litigants’ court approved forms are complete and accurate. The litigant will then sign the documents in the presence of a notary public, and will receive detailed instructions regarding what to do next. FLRC can also provide litigants with attorney referrals and hosts educational videos on divorce proceedings. An appointment at FLRC costs \$40, although fees may be waived due to mitigating financial circumstances.

Jill Checks, the Executive Director of FLRC and the Mediation Center, says FLRC effectively educates litigants about the practical steps involved in pursuing a legal remedy in court. Ms. Checks says that many litigants are unaware of how to assert a claim, and are frequently referred to FLRC by court staff who are unable to field the large volume of questions they receive from litigants.

### *Mediation*

Alternative dispute resolution (ADR), specifically mediation, is frequently used to assist self-represented litigants resolve disputes. The Chatham County Office of Alternative Dispute Resolution refers litigants to the Mediation Center of Savannah, which provides free mediation services to litigants with cases in magistrate, state, and probate court, and provides discounted mediation services to litigants with cases in superior court.

Between 2012 and 2015, 1,899 cases were resolved through mediation, generating savings of \$3.3 million from avoiding trial. In 2016, 430 cases were mediated in Chatham County Superior Court. Approximately 100 mediated cases were pro se cases, with 61% of cases reaching agreements. The Mediation Center received 1,406 and 1,388 referrals from superior, magistrate, juvenile, state, and probate judges in 2016 and 2015, respectively.

## **(III) ALASKA’S REMOTE SERVICE DELIVERY AND INFORMAL TRIAL PROCEDURE**

### *The Alaska Model: A Fully Mobile Help Center*

The Alaska Family Law Self Help Center (“FLSHC”) is the primary resource for Alaska residents seeking information and educational materials regarding issues of family law. Due to the vast geographic area that Alaska occupies and the limitations imposed by difficult terrain and weather, the self-help center exclusively assists self-represented litigants via a toll-free helpline that is staffed 42 hours per week. Stacey Marz, Director of Self-Help Services at the Alaska State Court System, says that FLSHC is able to effectively answer questions from across the state using telephonic services. Calls are fielded one at a time; therefore, FLSHC staff do not face interruptions from multiple litigants competing to ask for information. Ms. Marz believes that helping people over the phone is generally less taxing for staff than assisting individuals in person and often provides a faster

service relative to centers that provide similar services in person. The helpline is staffed by four non-attorney facilitators, who can answer procedural questions from litigants in English, Spanish, and Tagalog, and use interpreters for other non-English languages such as Russian, Korean, Samoan, Hmong, and Yup'ik. With proper training and attorney oversight, Stacey Marz considers non-attorneys to be excellent candidates for staffing help centers. The most important attributes are the abilities to provide excellent customer service and understand the distinction between providing legal information – which is permitted – and legal advice, which is prohibited. The staff facilitators are incredibly careful about not advising customers, but instead provide an abundance of education and information about their options regarding procedures and forms to accomplish their goals.

#### *Civil Rule 16.2*

In 2015, the Alaska Supreme Court adopted Civil Rule 16.2, which provides for informal trials in domestic relations disputes. According to the rule, an informal trial is an alternative trial procedure. If both parties consent to an informal trial, the formal rules of evidence are suspended, parties are not allowed to cross-examine each other, and in most cases the only witnesses will be the parties. The judge asks all the questions of the witnesses and solicits topics or questions from the parties about which to inquire. Parties can introduce all evidence they think is important and the judge determines the appropriate weight to afford the evidence. Finally, no objections are permitted. Provided that self-represented litigants – especially those who do not speak English fluently – are unfamiliar with rules of civil procedure and evidence, informal trials allow judges to relax or suspend certain rules in the interest of achieving a swifter resolution. In 2018, the Alaska Supreme Court will evaluate the informal trial process.

#### *SRLN Report on Remote Service Delivery*

In 2016, the Self-Represented Litigation Network released a resource guide entitled *Serving Self Represented Litigants Remotely*. Eight state-level and county-level programs contributed to the guide, including Alaska. The resource guide concluded that remote services delivery is effective and efficient, cost-effective, potentially better than in-person services, and a powerful catalyst for developing provider networks to better serve the public. According to the guide, remote service delivery – namely, providing substantive procedural information – is a valuable method by which to assist self-represented litigants and should be an integral tool to judicial districts nationwide, particularly those located in rural settings.

In April 2017, Alaska (along with Hawaii) was announced as a new pilot site for increased development of its legal services in partnership with Microsoft and Pro Net.

See: <http://www.lsc.gov/media-center/press-releases/2017/legal-services-corporation-announces-pilot-states-innovative>

## **(IV) THE ROLE THAT ADR AND JUDGES CAN PLAY IN CLOSING THE JUSTICE GAP**

Tracy Johnson, current Executive Director of the Georgia Office of Dispute Resolution and previous director of the ADR program in Georgia's Sixth Judicial Administrative District, which serves several rural counties, says that ADR is a powerful tool for increasing meaningful access to justice for litigants. Ms. Johnson says that while 20 years ago attorneys were highly skeptical of mediation as a method of legal recourse, many attorneys now earn fees from mediating cases between pro se litigants and have realized that earning fees and closing the justice gap can be complementary endeavors. Relative to litigation, ADR is informal, which can potentially promote more efficient outcomes. Mediation gives litigants the opportunity to actually be heard, Ms. Johnson

says. And even if litigants do not come to an immediate solution during mediation, many litigants feel as though their experience in mediation was more satisfying relative to pursuing a remedy in court.

Judge Jerry Wood, formerly the Chief Magistrate Judge in Floyd County, Georgia, and currently the Program Director of the Fulton County Alternative Dispute Resolution Office, said the main challenge when working with self-represented litigants during his tenure as judge was to educate the parties on court procedure without providing legal advice, so that litigants felt comfortable making informed decisions about their case. The Fulton County ADR office has used mediation to assist self-represented litigants in a wider variety of cases than family law matters. Nevertheless, mediation as a means of closing the justice gap is not without its challenges. Judge Wood raises a common question regarding access to justice in the context of mediation by way of a hypothetical: suppose a dispute arises between a landlord and a tenant. The landlord has allegedly violated a statute. A different statute provides for treble damages, in this case to the tenant. The parties achieve a settlement using mediation, but the tenant is never aware of the treble damages statute. Does the mediator bear responsibility for informing the tenant of the treble damages statute? It's a question appropriate for deeper discussion—is justice really delivered when a party foregoes a claim simply because they were unaware they had a right to assert it? Alternatively, isn't it the role of the attorney as an advocate to counsel clients with respect to the claims and defenses available to them in law? There is hardly an easy answer, but Judge Wood thinks that whatever the scenario, where self-represented litigants have ready access to clear, free information about courts, the justice gap begins to narrow.

## Court-based Self-Help Programs

April 2017 in the Georgia Courts Journal

“One of the biggest challenges in the court system is the increasing number of self-represented litigants.

As the number of self-represented litigants in civil cases continues to grow, courts are responding by improving access to justice and making courts more user-friendly.”

Georgia courts heard approximately 800,000 cases involving self-represented litigants in 2016.[2] In his 2017 State of the Judiciary Address, Georgia Supreme Court Chief Justice P. Harris Hines stated that one of his priorities as Chief Justice is to improve the way courts assist self-represented litigants. Justice Hines recognized two common issues concerning self-represented litigants. First, self-represented litigants often lack basic legal knowledge and as a result are more likely to lose in court. Second, self-represented litigants slow courts down. More litigants are representing themselves in court, and as a result Georgia courts are working to improve access to justice and make courts more user-friendly. Four examples of this effort include the Fulton County Family Law Information Center, Fulton County Probate Information Center, Gwinnett County Self-Help Pamphlet Series, and Cobb County Family Law Workshop.

### **Fulton County: Family Law Information Center**

The Fulton County Family Law Information Center (FLIC) was founded in the late 1990s under the leadership of then Fulton County Superior Court Chief Judge Thelma Wyatt Cummings Moore. Today, FLIC provides legal forms, free 30-minute legal consultations, and a free monthly workshop to clients from around the state of Georgia. Georgia superior court judges who believe that a self-represented litigant might benefit from further legal advice can encourage the litigant to inquire with FLIC regarding his or her eligibility for a free 30-minute consultation. In 2015 and 2016, FLIC averaged 1,293 free 30-minute consultations per year, although the total number of individuals who benefitted from all FLIC services is much higher. Through a joint partnership between FLIC and Atlanta Legal Aid Society, FLIC consultations provide self-represented litigants with access to an attorney for 30 minutes to discuss domestic issues such as divorce, legitimation, child support, and visitation. One FLIC client (pictured in video), an entrepreneur recognized by Atlanta Business Chronicle’s 40 under 40 who recently fell on hard times, emphasized how comforting it was simply to speak to an experienced attorney in person. Kesia Green, another FLIC client, scheduled an appointment seeking advice for how to file for divorce. Green admitted that before attending the consultation she had “no idea what to do,” but that consulting with an attorney was very helpful and provided her with a clearer sense of direction.

### **Fulton County: Probate Information Center**

The Fulton County Probate Information Center (PIC) is a partnership between the Probate Court, the Estate Planning and Probate Section of the Atlanta Bar Association, and the Atlanta Volunteer Lawyers Foundation. Like FLIC, PIC provides free 30-minute consultations for self-represented

litigants with probate issues. In 2016, 140 individuals scheduled consultations. Consulting attorneys work on a pro bono basis and are active members of the Estate Planning and Probate Section of the Atlanta Bar Association who must have a minimum of three years of work experience. Martin Ellin, Executive Director of the Atlanta Volunteer Lawyers Foundation, said the PIC has a reputation for being a highly effective and trustworthy resource for helping self-represented litigants resolve delicate probate issues. As of January 2017, PIC consultations were booked through August 2017.

Fulton County Superior Court Judge Jane Barwick considers self-help programs to be “invaluable” to the courts. When asked why the judiciary should continue to fight for court-based self-help programs, Barwick simply said, “it’s the right thing to do, and it benefits society.”

### **Gwinnett County: Self-Help Pamphlet Series**

In Gwinnett County, Chief Magistrate Judge Kristina Hammer Blum spearheaded the creation of a color-coded pamphlet series outlining the Magistrate Court’s main court processes. They include family violence, garnishments, abandoned motor vehicles, civil disputes, warrant applications, and landlord tenant issues. The pamphlets are written in plain English, and are largely devoid of technical legal terms. In addition to their availability in English, the pamphlets are printed in Spanish, Vietnamese, and Korean—a reflection of Gwinnett’s status as one of the most diverse counties in the southeastern United States. At their simplest, the pamphlets are intended to help litigants decide whether a particular court process is right for them. “Ultimately,” Blum said, “we want anyone who walks in [our court] to feel like they have the access to justice they deserve.”

Additionally, Judge Blum wants to encourage litigants to reconsider how they create and file pleadings. The first step in that direction has been the installation of two self-help kiosks at the Gwinnett Magistrate Court—a resource in which Judge Blum sees significant potential. Once operational, the kiosks will allow litigants to electronically generate the requisite forms for their court case. Although Gwinnett County cannot process electronic filing yet, Judge Blum is optimistic that litigants will eventually be able to file future pleadings using the kiosks. The kiosks, which offer clear and direct instructions for generating forms, are complemented by thirteen videos on the Gwinnett County Courts website, which include topics like “Should I Be Represented By a Lawyer,” “Filing a Claim in Magistrate Court,” and “Family Violence.”

### **Cobb County: Family Law Workshop**

The Family Law Workshop assists self-represented litigants in Cobb County with divorce, contempt, paternity and legitimation, and modification issues. The workshop, held once a month, is led by attorneys from the Cobb County Bar Association’s Family Law and Younger Lawyers Sections. In 2016, 390 individuals attended the workshop. At the end of each workshop attendees are invited to complete a satisfaction survey. Notably, 80% of respondents said they found the workshop to be helpful, and approximately 75% of respondents said they would recommend the workshop to a friend. In addition to the workshop, self-represented litigants can pay \$150 for a three-hour consultation with an attorney, and print or purchase forms from the Cobb County Law Library. Cobb County partially redirects the revenue earned from forms to sponsor individuals with a \$150 scholarship to offset the cost of the three-hour attorney consultation. In 2016, 24 scholarships were awarded in total.

Cobb County Law Library Director Amanda Marshall said Cobb County judges unequivocally support the workshop, and other self-help programs more broadly. Cobb County Superior Court

Judge Mary Staley Clark explains her firm support of self-help programs in simple terms: “Access to justice is a key component of a court system, and the more information a pro se litigant has, the better outcome for everyone: that person, their family, and the court system.”

### Housing Defense as the New Gideon (2017).

*Harvard Journal of Law and Gender, Vol. 41, Forthcoming*

Note from the author: “Draft currently undergoing revisions. please contact author and obtain new version prior to citing or quoting.”

*Summary:* Article by a professor who examines Intro 214-A, a bill pending in New York City which would codify the right to housing defense counsel. The article tracks the development of the right to housing defense counsel, the rationale underlying the bill, and substantive outcomes which will likely be achieved should the bill pass.

*Author:* Kathryn A. Sabbeth

## INTRODUCTION

- NYC is currently on the verge of enacting legislation that would mandate appointment of counsel to all income eligible defendants in eviction, foreclosure, and ejection proceedings
  - The pending bill is called “Intro 214-A”
  - The New York Times Editorial Board, the NYC Bar Association, the Presidents of the Boroughs of Manhattan, Brooklyn, and the Bronx, the former Chief Judge of New York’s highest court, Jonathan Lippman, the NYC Comptroller, and numerous faith leaders, community organizations, and medical and legal services providers have all voiced support for the legislation

## I. HOUSING DEFENSE AS THE NEW GIDEON

### A. HOUSING AS ESSENTIAL TO SOCIETY

- Housing is a vital human need, necessary for individuals to reach their full potential in life – security in the home has been identified as essential to dignity and personhood
- Access to housing shapes educational and employment opportunities
- The harms of housing displacement are exacerbated when housing loss results in homelessness
  - The consequences include psychological trauma, physical injuries, infection, illness, and death
  - Homeless persons also face challenges in building and maintaining social and professional networks
  - Homelessness creates significant psychological damage, particularly for children
  - Eviction and homelessness contribute to a criminalization loop, as evicted



tenants may be prosecuted for trespassing if they remain on the premises, and homeless people who sit or sleep on streets may face criminal charges for loitering

- A major obstacle to new housing after a losing one's case in court is the civil judgment issued against the defendant, which carries three important consequences:
  - (1) After an eviction, the judgment of possession against the tenant marks her as an undesirable applicant for future housing rentals; public and private exclusions from national "blacklists" restrict the supply of housing available to persons who have lost their homes
  - (2) Civil judgments damage defendants' credit
    - Damaged credit further restricts the supply of housing
    - Landlords use credit scores to evaluate applicants for rental housing
    - Mortgage lenders depend on credit scores to evaluate applicants for loans
  - (3) Damaged credit scores can harm the ability to generate the income necessary to pay the rent in the future
    - Damaged credit impacts both immediate employment opportunities and educational opportunities that could improve employment prospects
      - Employers increasingly use credit scores to screen out current and prospective employees
      - Education, one of the best avenues for boosting credentials and earnings, typically requires loans, which themselves require credit
    - Eviction judgments create additional, indirect obstacles to obtaining and maintaining new housing

## **B. DEVELOPMENT OF THE RIGHT TO HOUSING DEFENSE COUNSEL**

- The rationale for protecting liberty and other vital interests through appointment of counsel is procedural and substantive [constitutes a matter of fairness and to produce results that accurately comport with the applicable law]
- In the development of the right to appointment of criminal defense counsel, courts have emphasized procedural goals even when substantive outcomes provided the true motivation
  - The Justices who decided *Gideon* and the cases leading up to it were motivated by a desire for substantive justice: they sought to protect African American men from abusive states operating under Jim Crow
    - Yet they pursued this substantive aim indirectly and relied on the language and logic of procedure
- Although Mr. Gideon was white, *Gideon* was in many ways a race case
- The *Gideon* decision reflected the Court's "concern over a criminal justice system where white judges and prosecutors processed poor, unrepresented blacks and Hispanics," a system known for "the selective prosecution of crime" and "treating black suspects and defendants much worse than white ones."
- In the past decade the push for a right to counsel in civil cases has regained steam
  - State and local jurisdictions have begun new access-to-justice initiatives to

- expand the availability of representation
  - 2003: the National Coalition for a Civil Right to Counsel was born, strengthening coordination and advocacy efforts
  - 2006: the American Bar Association adopted a resolution advocating the appointment of counsel in civil matters where “basic human needs” are at stake
    - The ABA Resolution identified five such needs, in the following order: shelter; sustenance; safety; access to healthcare; and child custody and parental rights
    - No jurisdiction guarantees counsel for all basic needs, though many have made progress on parental rights and have begun to expand to other areas
    - Recently housing has been receiving increased attention
- A number of localities have developed experimental pilot projects to provide counsel in targeted areas for limited periods, and to evaluate the results
- California
  - 2009: Legislation passed establishing the most ambitious pilot program yet, funding appointment of counsel in ten different projects across the state
  - Six of the ten projects focused on housing, while the remaining four were divided between custody, domestic violence, and probate guardianship services
  - 2016: Because of the proven success in the above programs California committed to funding the program on a recurring basis
- District of Columbia
  - 2015: Funded a pilot project to provide attorneys for tenants facing eviction from subsidized housing, and the following year introduced the “Expanding Access to Justice Act Of 2016” to expand the program
- Massachusetts
  - 2009: Established the Housing Assistance and Representation Pilot Project, a group of two pilot studies, which measured the effect of providing representation to tenants facing eviction
  - January 2017: Building on the results of the above studies, Martin J. “Marty” Walsh, the Mayor of Boston, worked with Massachusetts legislators to file a bill to guarantee such tenants a right to counsel
- Pennsylvania [Philadelphia]
  - March 2017: The Philadelphia City Council held a hearing regarding the possibility of appointing counsel to tenants
- New York
  - New York City might soon become the first government in the United States to guarantee a right to counsel for people at risk of losing their homes
  - Pending bill Intro 214-A would provide counsel to all defendants in eviction, foreclosure, or ejection proceedings whose incomes fall at or below 200% of the federal poverty line

- A civil justice coordinator would establish and implement a program for the appointment of counsel in the covered cases
  - Methodology:
  - Coordinator would identify organizations eligible to provide legal services under the program; assign individual cases upon requests from eligible persons seeking counsel, judges handling covered proceedings, and designated organizations; provide compensation to these organizations
  - NYC’s proposal to guarantee housing defense counsel is bold and unprecedented.

## 2. RATIONALE FOR HOUSING DEFENSE COUNSEL

- In one of the earliest Supreme Court cases considering the right to appointed counsel [*Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)], the Court explained that “[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”
  - Pro se parties lack the knowledge of law and strategy necessary to present a case or negotiate its resolution
  - Commentators in favor of appointment of housing defense counsel have borrowed a partial analogy from the criminal defense context and emphasized the absurdity of a judicial system in which people with little understanding of the process are dragged into court, where they confront lawyers arguing against them, and then, in relatively quick fashion, lose any right to their homes
- Multiple studies have shown a routine, systemic mismatch of pro se parties against lawyers
  - 90% of landlords in eviction proceedings are represented
  - 90% of tenants in eviction proceedings are unrepresented
  - The absence of counsel for one party and presence of counsel for the other raises basic concerns about due process, fairness, equality, accuracy of outcomes, and legitimacy
- Landlords have been represented disproportionately for many years, allowing them to influence the culture of the Housing Courts to favor their clients’ positions
  - Landlords and their lawyers enjoy numerous advantages as “repeat players” in the Housing Court system
  - Advantages for repeat players include specialized expertise, bargaining credibility, informal relationships with institutional representatives, the ability to play for rules, instead of individual results, and savings from economies of scale [according to Marc Galanter’s research]
- Judges regularly misapply rules of procedure and standards of proof, allowing landlords to evade their evidentiary burdens and even “trying the landlord’s case”
  - When tenants try to offer testimony, judges often silence and interrupt them
  - The majority of tenants in Housing Court are poor women of color while the majority of landlords and their lawyers are middle or upper-class white men, and the majority of judges are white and middle or upper-class
  - Evidence suggests that judges, like all of us, suffer from implicit bias, which can

- predispose even well-meaning people against women and people of color
- Judges are also more likely to be property owners or landlords than to be tenants, increasing the potential for bias

## II. THE NEW GIDEON IMPROVES UPON THE OLD

- NYC legislature’s approach to the right to housing defense counsel reflects lessons learned from decades of criminal defense practice
- The emphasis of the “new *Gideon*” builds on the old criminal defense model in three notable ways
  - (1) Supporters of a right to housing defense counsel move beyond the language of procedural fairness, and explicitly emphasize the goal of positive substantive outcomes
  - (2) While incarceration is a problem that disproportionately affects black men, and *Gideon* served to protect black men in the criminal justice system, eviction is a phenomenon that disproportionately impacts black women
    - The new right to housing defense counsel seeks to protect them in the civil justice system
  - (3) While the criminal defense model emphasizes the need to counteract the power of the state, the appointment of housing defense counsel acknowledges and contends with the power of private actors

### A. SUBSTANTIVE OUTCOMES

- The NYC legislation seeks to prevent displacement from homes, decrease homelessness, and preserve affordable housing
- Discussion around Intro 214-A is very different from how the right to criminal defense counsel has been conceptualized
- The right to criminal defense counsel developed from due process doctrine. It is therefore tethered to the jurisprudence and traditions of constitutional rights
- The right to housing counsel, in contrast, has been presented as legislation
  - It benefits from a clean slate, limited only by the creativity and capital of local representatives
  - In contrast to the viewpoint neutrality expected of courts and embodied in process rights, legislation can support a program for social welfare based on a conception of the public good
- The evidence on the effectiveness of alternatives to full legal representation – like for example “unbundled” services, self-help centers, and hotlines that offer limited advice or assistance with discrete tasks – is scant

- Existing data suggest that limited legal assistance might make the processes feel fairer to litigants but still produce no difference in substantive outcomes
- Some evidence has even indicated that limited services can be detrimental to the outcome if the person wielding the legal tools lacks the strategic knowledge to employ them properly
- Even commentators who favor non-lawyer alternatives in other contexts generally acknowledge that housing litigation is an area where full representation is needed

## 2. BEYOND LEGAL OUTCOMES: SECONDARY EFFECTS

- Intro 214-A takes aim not only at case outcomes, but also at non-legal, secondary effects of such proceedings
- City Council Member Mark Levine summarized the bill’s legislative intent in Sep. 2016:
  - “It cost around 2,500 dollars to provide a tenant a lawyer, but if that same tenant were to have no lawyer and would be evicted, and as happens in so many cases when families are evicted were to wind up homeless, it would cost the City tens of thousands of dollars in shelter costs, in extra services in schools, in extra emergency room visits, and increased applications for unemployment benefits, and increased mental health services and more. And since over half of evictions [are] in rent regulated units, and we know those units often go market rate after they’re vacated, when we invest in lawyers to prevent evictions, we save thousands of affordable apartments, which otherwise the City would have to spend millions of dollars to replace”

## B. EQUALITY FOR GIDEON’S SISTER

- The NYC legislature aims to create substantive change in an area of particular importance to African American women
- Housing court defendants and evicted persons are disproportionately women of color
- Harvard sociologist Matthew Desmond in his new book *Evicted*:
  - Milwaukee, Wisconsin:
    - Women of color are overrepresented among evicted tenants
    - Eviction is extremely widespread for black and latina women and plays a major role in creating and maintaining poverty for them and their families
    - In poor black and latino communities “eviction is to women what incarceration is to men.”
  - Desmond’s quantitative sample:
    - The average annual number of women evicted from black neighborhoods was more than double that of men from the same neighborhoods and almost

triple that of women from white neighborhoods

- The eviction rate was 5.55 percent of women and 2.94 percent of men in black neighborhoods, 2.51 percent of women and 1.16 percent of men in latino neighborhoods, and 2.05 percent of women and 1.14 percent of men in white neighborhoods

## **1. EXPLAINING THE GENDER DISPARITY**

- Caring for the home and its occupants remains disproportionately women's work
- Women are more likely than men to live with their children
- Women with children are even more likely than women without to face eviction
- Children as a contributing factor to eviction:
  - Children can make noise or damage property, which a landlord may claim to be a nuisance
  - Children also attract negative attention through no fault of their own
  - Police engage disproportionately with black and latino children, and the neighborhood disruptions caused by police activity can lead to their mothers' eviction
  - Substandard housing conditions pose particular dangers for children, increasing liability for landlords and conflict for tenants
  - Women are more likely than men to report substandard conditions to relevant agencies and such reports often result in retaliatory eviction
- Greater Monthly Expenses
  - Women are more likely than men to serve as the primary caretaker for their children, and so women's monthly expenses tend to be higher
  - Single women generally maintain primary responsibility for food, clothing, medical care, school supplies, and other needs of their children which compete with rent for a share of the budget
- Budget Shortfalls Hit Harder
  - Women enjoy fewer opportunities than men to compensate for budget fluctuations and shortfalls
  - When emergencies occur, poor tenants sometimes work overtime, rely on social contacts, or make additional money in underground economies, but these options are more readily available to men than women
  - With respect to overtime work, child care responsibilities often leave women without

extra time to perform it, and paying a third party for child care would likely cost more than mothers could earn with the additional hours

- Among poor people like those in Desmond's study, employed women are also more likely than employed men to occupy part-time positions that do not include overtime opportunities
- Sexual Harassment
  - Although it has received less attention than sexual harassment in the workplace, sexual harassment in rental housing is remarkably common, further compounding the gender disparity in eviction.
  - Landlords' sexual harassment of their tenants includes conduct ranging from abusive or threatening remarks to rape
  - Property owners and managers use keys to gain unauthorized access to apartments and corner tenants in hallways and laundry rooms
- Gendered Tenant Eligibility
  - As a technical matter, women are more likely than men to qualify as tenants when they apply for housing
  - They are more likely to work in the formal economy or to receive public assistance
  - Because women can more often document their income sources and otherwise demonstrate eligibility, landlords are more likely to approve them for leases
  - Because of their formal eligibility for housing, women become overrepresented as named tenants on leases and, should there be an eviction later on, overrepresented as defendants in eviction proceedings

### **C. RULE OF LAW: BALANCING POWER OF PRIVATE ACTORS**

- Appointment of counsel serves to counteract power imbalances that might otherwise interfere with the fair application of the rule of law
- The criminal trial serves to provide a check on state power, but without representation for the defendant, he or she is in no position to benefit from the trial process
- As the Court explained in *Gideon*, "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him"
  - Tenants "haled into court" are generally in no position to make use of their legal defenses without a lawyer to articulate them

### **III. THE LIMITS OF HOUSING DEFENSE COUNSEL**

- The bill pending in NYC would appoint lawyers for named defendants at risk of losing their

homes through judicial proceedings

- It does not cover administrative proceedings, such as those governing termination of housing subsidies
- It does not address the legal needs of persons whose problems with their homes are not yet, or never become, expressed in court pleadings
- This is significant because “informal evictions,” involving no court action, make up at least half of forced tenant moves
  - Example: When landlords take steps toward filing an eviction proceeding, such as serving a tenant with a Notice to Quit, tenants often abandon the property before the landlord files a complaint with the court
- Such informal evictions are more difficult to track, but offering tenants advice, counsel, and transactional assistance could potentially make a difference

## **1. PROCEEDINGS INCLUDED AND PROBLEMS ADDRESSED [BY INTRO 214-A]**

- The proposed legislation would provide counsel to defendants in eviction, ejection, and foreclosure proceedings – all of which involve potential imminent displacement of occupants
- Eviction:
  - Also called summary proceedings because of their shortened timeline compared to most civil litigation, concern a landlord’s right to recover possession of real property from a tenant
- Ejection:
  - An action to recover possession of real property from a party outside of the statutory landlord-tenant relationship; it is the appropriate course of action for property disputes between, for example, family members
- Foreclosure:
  - Involves disputes regarding ownership of homes purchased with credit, specifically allegations that a debtor failed to pay a mortgage and therefore forfeited rights to a property
- The volume of eviction proceedings vastly outweighs that of the other two categories combined
- Eviction matters are handled by a special subdivision of the New York City Court System, the Housing Court
  - The most common eviction matter is the non-payment action in which the landlord alleges the tenant has not paid rent due, and the landlord seeks possession of the property and monetary damages for unpaid rent



- The second type of eviction proceeding is a “holdover”
  - In a holdover, the landlord alleges the tenant is “holding over” and occupying the property after the tenant’s right to occupy it has terminated. In these cases, the landlord seeks to recover possession of the unit regardless of whether any money is owed
- Foreclosures and ejectments are generally initiated in New York Supreme Court, the lowest division of the New York State Court System

## **B. PROCEDURAL POSITION**

- The defensive position brings inherent limits
- (1) The defensive posture is necessarily reactive, rather than proactive, which can put the defendant at a disadvantage
  - The defendant does not choose whether to use litigation or a different method to solve the underlying social problem
  - The plaintiff selects the time for commencement of the litigation and generally controls the speed of the litigation
  - The timing or speed may be difficult for the defendant
- (2) Because the plaintiff selects the forum when filing the lawsuit, defense attorneys do not enjoy the benefit of choosing the court
  - Forum selection can decide the rules of evidence and procedure that will cover the proceeding
  - Such rules can support or undermine due process, and be outcome-determinative
- (3) Defensive litigation tends to address issues individually, not collectively
  - A tenant-defendant challenges the landlord on a case-by-case basis, whereas tenants as plaintiffs can bring their claims together
  - The collective approach may be more effective for the plaintiffs and the justice system overall

### **UPDATE:**

Intro 214-B was passed into law in August 2017. The passed law mandates universal access to legal representation for low-income tenants ([media](#)).

# Litigant Income

## Breakdown of Weekly Income based on Litigants Served

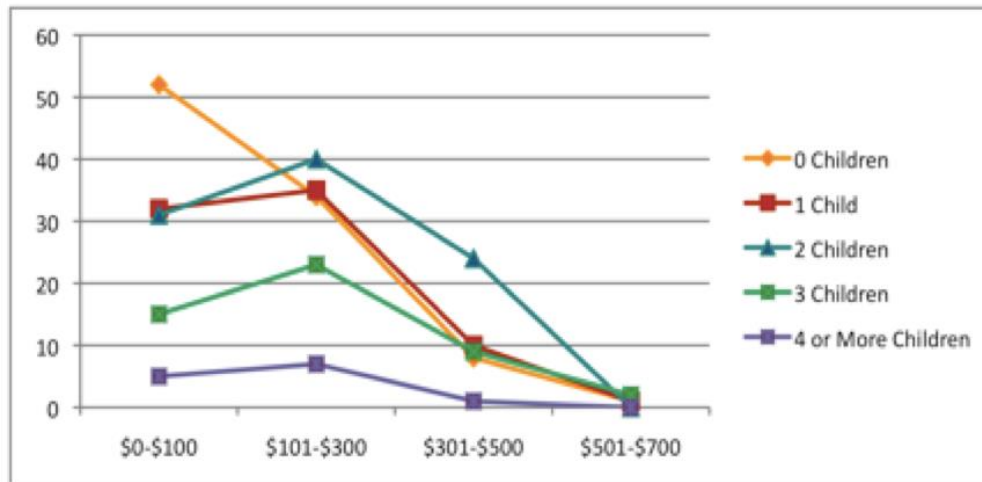
\$0-\$100	41%
\$101-\$300	42%
\$301-\$500	16%
\$501-\$700	1%

## 2008 Poverty Guidelines for Indigence

Family Unit Size	150% Weekly
1	\$300
2	\$404
3	\$508
4	\$612
5	\$715

## Litigant Income Level compared to Number of Children

Data below reflects the income level of litigants, per week, and the number of children they support with the weekly income.



# Issues and Topics

- Divorce (with and without minor children)
- Contempt
- Child Support Modifications
- Visitation Modifications
- Custody Modifications
- Legitimation
- Grandparent Adoptions
- Name Change (adults and minor children)
- Amending birth certificates
- TPO (when the North Georgia Crisis Network cannot assist)

# Statistics

## Topic Breakdown

Average of 193.2 contacts per month since January 2009

January 2009 – 175

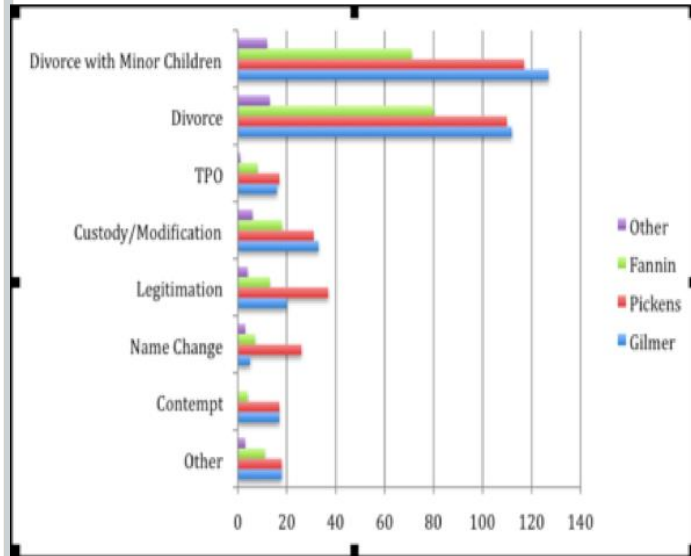
February 2009 – 213

March 2009 – 201

April 2009 – 200

May 2009 – 177

*This chart is a compilation of statistics from January 2009 through May 2009*



**Gilmer** - Total of 348 Individuals

**Pickens** - Total of 363 Individuals

**Fannin** - Total of 212 Individuals

**Other** - Total of 44 Individuals

## Superior Court Cases 2016 Year in Review

Metric	2016
# Cases Mediated	430
% Cases Mediated with Agreements	53%
# Pro Se Cases Mediated	101
% Pro Se Cases with Agreements	61%
# DV Cases Mediated	64
% DV Mediations with Agreements	50%
# Hours Mediated	1,575
Avg. # hours per Mediation	3.29
# Cases Mediated at Courthouse	24



## Referrals to The Mediation Center 2016 vs Prior Year, by Court and Judge

Court/Judge	Number of Referrals		% Change
	2015	2016	
<b>Superior</b>			
Judge Abbot	145	24	-83%
Judge Bass	119	146	23%
Judge Freeseaman	17	23	35%
Judge Karpf	143	204	43%
Judge Morse	136	181	33%
Judge Walmsley	8	109	1263%
<b>Total Superior</b>	<b>568</b>	<b>687</b>	<b>21%</b>
<b>Magistrate</b>			
Judge Barker	385	373	-3%
Judge Fowler	86	71	-17%
Judge Moss	10	10	0%
<b>Total Magistrate</b>	<b>481</b>	<b>454</b>	<b>-6%</b>
<b>Juvenile</b>			
Judge Cole	7	5	-29%
Judge Colbert	2	1	-50%
<b>Total Juvenile</b>	<b>9</b>	<b>6</b>	<b>-33%</b>
<b>State</b>			
Judge Coolidge	67	43	-36%
Judge Fowler	86	71	-17%
Judge Sapp	155	125	-19%
<b>Total State Court</b>	<b>308</b>	<b>239</b>	<b>-22%</b>
<b>Probate</b>			
Judge Lewis	22	20	-9%
<b>Total Probate</b>	<b>22</b>	<b>20</b>	<b>-9%</b>
<b>Total Referrals</b>	<b>1388</b>	<b>1406</b>	<b>1%</b>



## Dispositions by The Mediation Center 2016 vs PY - Dispositions by Court

2015 Dispositions						
Type of Disposition	Case referred by					Total by Disposition Type
	Superior Court	State Court	Probate Court	Magistrate Court	Juvenile Court	
Mediation Resulting in Agreement	247	87	3	170	23	530
Mediation with No Agreement	171	65	7	120	2	365
Resolved during Scheduling	84	66	3	42	2	197
Unable to Schedule	88	60	5	68	6	227
<b>Total Cases Closed</b>	<b>590</b>	<b>278</b>	<b>18</b>	<b>400</b>	<b>33</b>	<b>1319</b>
<b>% of Mediated Cases Resulting in Agreement</b>	<b>59%</b>	<b>57%</b>	<b>30%</b>	<b>59%</b>	<b>92%</b>	<b>59%</b>
<b>% of Referred Cases Closed as Settled or Resolved</b>	<b>56%</b>	<b>55%</b>	<b>33%</b>	<b>53%</b>	<b>76%</b>	<b>55%</b>
<b>% of Cases Closed Unable to Schedule</b>	<b>15%</b>	<b>22%</b>	<b>28%</b>	<b>17%</b>	<b>18%</b>	<b>17%</b>

2016 Dispositions						
Type of Disposition	Case referred by					Total by Disposition Type
	Superior Court	State Court	Probate Court	Magistrate Court	Juvenile Court	
Mediation Resulting in Agreement	230	67	7	135	10	449
Mediation with No Agreement	200	37	8	121	2	368
Resolved during Scheduling	95	38	2	54	0	189
Not Scheduled due to unable, private mediator, etc.	91	42	2	84	3	222
<b>Total Cases Closed</b>	<b>616</b>	<b>184</b>	<b>19</b>	<b>394</b>	<b>15</b>	<b>1228</b>
<b>% of Mediated Cases Resulting in Agreement</b>	<b>53%</b>	<b>64%</b>	<b>47%</b>	<b>53%</b>	<b>83%</b>	<b>55%</b>
<b>% of Referred Cases Closed as Settled or Resolved</b>	<b>53%</b>	<b>57%</b>	<b>47%</b>	<b>48%</b>	<b>67%</b>	<b>52%</b>
<b>% of Cases Closed Unable to Schedule</b>	<b>15%</b>	<b>23%</b>	<b>11%</b>	<b>21%</b>	<b>20%</b>	<b>18%</b>

\* Not Scheduled=Cases Exempted from ADR, Cases Withdrawn, Unable to Schedule and No Shows



## Hearing Accommodations Survey

1. Name:

2. Which circuit or county do you work in?

3. What type of accommodations are the courts in your county/circuit currently using to assist hearing impaired litigants?

4. What is the process for requesting the accommodations?

5. What is the estimated cost for providing these accommodations?