

THERE ARE MORE PROGRAMS THAN EVER TO HELP UNDERREPRESENTED FLORIDIANS; WILL IT MAKE A DIFFERENCE?

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Online and in-person efforts are up, coordination seen as key



A person who can't afford to hire a lawyer but needs help with a civil legal problem can walk into the Lee County Courthouse and be directed to Clerk of Court Linda Doggett's Self Help Center.

There, the person can find a variety of forms, and an online program that walks them through, question by question, filling out the necessary paperwork. Lawyers are available at designated hours through a program run by the Lee County Legal Aid Society, providing a short consultation to answer questions and clarify procedures.

If a volunteer attorney working through the program is intrigued by an issue or thinks it important, he or she can accept the client in a pro bono representation.

The process involves many factors — a clerk of court's self-help center (which all clerks have now in some form), technology, a legal aid office, and pro bono programs.

It demonstrates a trend in recent years of more programs and projects designed for low- and middle-income Floridians who can't afford lawyers for their unmet civil legal needs (one study has showed only 14 percent of those needs are being met).

Efforts include clerks' self-help centers, programs by local circuit court administrative offices, legal aid offices running clinics and education programs to help people fill out legal forms, expanded pro bono programs, a revised Bar

Lawyer Referral Service, and more online resources including the Office of the State Courts Florida Courts Help App and online TurboTax style Q&A programs that lead parties step by step in filling out Supreme Court approved forms.

The variety of programs also raises the questions — is Florida, through all these diverse efforts, poised to take a huge chunk out of the unmet civil legal needs problem instead of nibbling around the edges? And can they meet them well?



“It’s not just that the courthouse is open for business, access is also understanding what is going on,” said 11th Circuit Court Judge Scott Bernstein, who works with a local court administration program for pro se family law parties. “These help programs do an outstanding job of explaining the process to self-represented litigants without giving legal advice [in] ... all kinds of processes

where the legal system is complicated, and people don’t understand what is going on.”

“We can make a much bigger difference, that’s the challenge,” said Donny MacKenzie, executive director of The Florida Bar Foundation. “We’ve got all of these products and they are parallel to each other and we need to intersect.”

What’s required, he said, is a triage system “to provide legal information when that’s helpful. The second purpose is to provide forms if you’re capable of doing it yourself. The third thing is to provide help for you to fill out that form, if you need it, and the fourth is to provide a referral to lawyers when needed.”

“Access to justice doesn’t always require a lawyer, or even a court, because our job is to provide legal information and legal assistance,” MacKenzie added. “If we solve their problems, does it really matter if they don’t need a lawyer or a court?”

Here’s a look at what many people involved in the system are saying. They don’t always agree on the best approach but generally do concur that more resources have become available and there’s a good chance of significantly improved services for those who are now left out or underserved.

Clerks of court are on the frontline of helping pro se parties, and Lee County's Doggett and Palm Beach County Clerk of Court Sharon Bock have run self-help centers for years.

"We call ourselves the emergency room of the courthouse," Bock said, because that's where many people will wind up when they need help.

And despite years of efforts making forms and other directions available online, people will come seek out clerks because they don't trust the forms, the online information, or themselves to fill out the form or follow the procedures, she said.

"Anything that we do to help the infrequent user of the courthouse is fantastic," Bock said. "And the Bar and the courts putting their effort into creating these forms is really a move in the right direction and is such a really good move for our state."

Bock said her clerk staff is trained so any person seeking help who needs legal advice, as opposed to information about filing forms or court procedures, is sent to a referral service or legal aid. (In one case, she said a self-represented litigant sought her office's help on a complex trademark case; that person was told to see a lawyer.)

"Statistically, the most sought-after forms are family law forms; landlord-tenant is second, and small claims third," Bock said.

Doggett's staff is also trained to distinguish the difference between legal information and legal advice, but she said she likes the arrangement with the Lee County Legal Aid Society that has attorneys regularly available at her self-help center (see **"One clerk self-help center, many ways of getting assistance"** for details).

"The biggest thing that people need when representing themselves is advice from an attorney," she said. "From my experience, you watch these self-represented cases get brought into the system and especially if there's an attorney on the other side, the self-represented litigant doesn't have a chance, particularly if they don't file the right form...."

“It’s hard to narrow down from all the information and match it up with our situation and ferret out the right things to do at the right times. So, I really feel like legal advice is a huge part of what is needed in addition to better forms.”

The lawyers and staff help the pro se parties in conjunction with TurboCourt, an online product from a California company that asks user questions and automatically fills out forms that are ready to file. The court system’s e-filing portal also has a similar Q&A process, but for the moment only has forms for filing and answering eviction actions. Forms for small claims, domestic violence, and family law cases are in the works.



While many programs focus on helping people help themselves, Bar President John Stewart believes the new solutions will include a broader role for lawyers. He pointed to the revamped Bar Lawyer Referral Service, which is easier to access online and generated \$2 million in fees for its lawyer participants in its first year. He also said, as programs reach out to middle-income Floridians, there will be opportunities for lawyers, assisted by technology, to help what he calls the “fat middle” of the market between those who need legal aid and those who can afford \$300-an-hour attorneys.

“I don’t think lawyers understood how to connect to it and I don’t think they’ve understood how they deliver that service and make money doing it. That’s all technology related,” Stewart said. “The arc [of legal practice] has been for almost every lawyer to become more specialized because law has become more complicated and issues became more complicated and the fat middle is left behind.

“Not every lawyer needs that. I think as we bend back to the middle a little more and become more generalists, there’s a huge market for that.... If you become good at five or 10 things and you help the general population, you’re never going to run out of work.”

Judge Bernstein sees technology and a variety of programs as helping improve services for more people. The 11th Circuit Court Administrator's Office runs a program which helps, for a small fee which can be waived, pro se litigants in family law cases — and Bernstein noted 80 percent of family law cases in Miami-Dade have at least one self-represented party. That program is continuing during the COVID-19 shutdown using telephones and Zoom.

Before the pandemic put the plans on hold, Bernstein was also working with the Florida International University College of Law on establishing a clinic where law students supervised by the clinic director will help pro se parties.

"There are a lot of people who go to legal aid, but legal aid can't take everyone," he said. "If legal aid represents a mother in a custody battle, who is representing the father because the father needs help, too. We need constantly to find new partnerships."

Technology and advice about the process is also key, the judge said.

"One of the main components of procedural justice is people understanding what's going on. For people to be able to get access to accurate information online is going to help a lot of people understand the complexities of the legal system," Bernstein said. "If the right petition is filed, you're not facing someone's motion to dismiss for the wrong cause of action. When cases get dismissed for technicalities, it tends to frustrate people."

He also believes that pro se parties should sign up to do filing through the Florida courts statewide e-filing portal, calling it the "single most important piece of connecting self-representing litigants to the court system.... Once they're on the portal, we have really easy communications with them, and it makes all the difference in the world."

Leslie Powell-Boudreaux, executive director of Legal Services of North Florida, said having a variety of programs available is helpful to clients, but coordination can be a problem.

“People may touch the legal system multiple times before they actually do something about it. Someone may come into a legal aid office or a clerk’s office three or five times before they decide to do anything. That might be what access looks like to them,” she said. “I don’t know if there’s a one size fits all, and that’s a good thing....”

“I think the recommendations from the Justice for All project [a study conducted for the Supreme Court’s Commission on Access to Civil Justice] are interesting in that they seem to recognize there are some strengths and there are some weaknesses in that we’re not all working together in the right way.”

Education will play a major role, Powell-Boudreaux said, and legal aid offices have conducted forums (now suspended) to educate people about the legal system, procedures, and how to fill out forms. And people to help guide them through the system, like the navigators who helped applicants select policies when Obamacare began, will be valuable.

But Powell-Boudreaux said there will always be jobs for lawyers in meeting the needs.

“There are still people who need to be heard who need guidance and handholding, and there are people who have complex legal needs that these systems can’t address and perhaps never will,” she said. “From the lawyer’s perspective, there’s no replacing a lawyer one-on-one in some cases.”

Former Bar President Greg Coleman, vice chair of the Commission on Access to Civil Justice, said the problem is too large for just lawyers to handle and it will require a coordinated effort from a variety of programs and interested parties.

“From my perspective lawyers can’t solve this problem. It’s like asking grocery stores to solve world hunger. It’s too big of a problem,” he said. “We need a systemic approach that to date has not occurred, that’s going to require buy in from all of the stakeholders, the citizens, the clerks, the business community, legal aid, the Bar. We’ve got all these plans circulating around on their own and really there’s no cohesiveness.”

Referring to the Justice for All study done for the access commission, Coleman said the streamlined procedures intended to help the self-represented navigate small claims courts are needed in other venues frequented by pro se parties.

“The system as designed is a system for lawyers and that’s the fundamental disconnect between self-represented litigants and the court system,” he said. “The report clearly articulates the fact people are scared, they are emotionally spent, and they wander into this world that’s designed for lawyers. We really need to look at systemic changes.”

There is also growing awareness that the traditional goal of helping the “poorest of the poor” isn’t enough in a world where most of the middle class can’t afford lawyers, Coleman said, which is why a broader approach is needed, including the access commission’s inclusion of the business community.

The extent of that cooperation may well determine whether the new and existing efforts succeed in significantly improving court access for underrepresented Floridians. As Powell-Boudreaux put it, “I love the idea that we can do that more collaboratively, with OSCA, with the clerks and others who are on the ground and who can serve the people who need it. This is certainly a door that’s opening that will lend to that type of collaboration happening more frequently.”