

**Examining Dissolutions Amongst Self-Represented Litigants
in the Superior Court of Arizona in Maricopa County**



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Table of Contents

Acknowledgments	iii
Table of Contents	v
List of Figures.....	ix
List of Tables.....	x
Abstract.....	xi
Introduction	1
Background	2
Literature Review	3
What Is the Issue?	3
The Self-Represented Litigant Phenomenon.....	4
What Has Been Done So Far?	6
Family Law Facilitator Programs	6
Superior Court in Maricopa County	7
Self-Service Center	10
The Judicial Role in the Adversarial System.....	14
Non-Lawyer Forms of Assistance for Self-Represented Litigants.....	15
Assisting the Self-Represented Litigant.....	16
The Indiana Case Study – A Strategic Response.....	18
Methodology.....	20
Determining the Sample Pool.....	20

Data Collection	21
Judicial Officer Interviews	23
Comparison of Self-Service Center Forms Versus ezCourtForms	24
Findings.....	24
Finding 1: The Majority of Cases Require Only One Trial Setting	24
Finding 2: There is A Positive Correlation Between the Number of Trial Settings and the Major Case Indicators.....	25
Finding 3: Referrals to Alternative Dispute Resolution Were Rarely Made.....	25
Finding 4: Type of Filing Method Used By the Petitioner Drives the Case.....	26
Finding 5: Parties Who Participate In ERCs Are More Likely to Require Only One Trial Setting	26
Finding 6: Judicial Officers Try To Resolve Most Cases at the First Trial Setting.....	27
Finding 7: The Nature of Family Court Requires Judicial Intervention in Cases Involving Self-Represented Parties	28
Finding 8: Judicial Officers Find Forms Prepared by ezCourtForms or AZCLDPs Preferable to Forms Obtained from the Self-Service Center	29
Finding 9: ezCourtForms Are Superior to the Current Paper Dissolution Packets....	29
Conclusions and Recommendations.....	31
Conclusion 1: A Lack of Information and Specific Instructions Is the Biggest Cause of Unpreparedness.....	31
Recommendation 1.1: Create an easy to read trial preparation checklist	32
Recommendation 1.2: Create a court staff position similar to the family law facilitators that exist in other state court systems.....	32

Recommendation 1.3: Renew Self-Service Center staff training with a focus on appropriate procedural information.	33
Recommendation 1.4: Create posters like those used by the Indiana State Courts.	34
Conclusion 2: Parties Who Participate In ERCs Are More Informed and Better Prepared Than Those Who Do Not.	34
Recommendation 2.1: Close the ERC loophole	34
Recommendation 2.2: Create a YouTube video about ERCs	35
Conclusion 3: The Self-Service Center Packet for Dissolution Is No Longer Effective For SRLs.	35
Recommendation 3.1: Begin phasing out the use of SSC forms and move exclusively to ezCourtForms.....	36
Recommendation 3.2: Promote the ezCourtForms YouTube video	36
Conclusion 4: The Paradigm Concerning Judicial Intervention Should Be Changed	37
Recommendation 4.1: Assemble a task force of judicial officers to develop “best practices” when dealing with SRLs.	37
Recommendation 4.2: Develop standardized Trial Instruction Minute Entries.	37
Summary	38
References	40
Appendices	43
Appendix 1: Distribution of Filing Methods by Party and Trial Setting	44
Appendix 2: Results of ERC per Trial Setting	46
Appendix 3: Cross Comparison of ERC Results per Trial Setting	47
Appendix 4: Reasons for Trial Continuance per Trial Setting	48

Appendix 5: Screen Captures of the ezCourtForms Process for Filing for Dissolution
..... 49

Appendix 6: Sample Pages from the Self-Service Center Packet for Dissolution..... 55

List of Figures

Figure 1: What Courts Can and Cannot Do - Indiana State Courts.....	18
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List of Tables

Table 1: Major Case Indicator Averages Per Amount of Trial Settings.....	25
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Examining Dissolutions Amongst Self-Represented Litigants in the Superior Court of Arizona in Maricopa County

Nicole Zoe García

Abstract

As an increasing number of self-represented litigants (SRLs) access the court system, courts across the country are left struggling to meet the needs of this population while balancing the duties of fairness and impartiality with access to justice. This struggle has become most apparent in Family Courts, where an overwhelming majority of cases have at least one self-represented party. Over the years, courts have employed various methods to deal with this challenge. Initially, courts met the demands of this unique population by enabling them to simply get to the filing stage of a case. The challenge now is how to get SRLs past this stage and through to the successful completion of a trial.

This paper examines the methods that the Superior Court of Arizona in Maricopa County has so far employed to face this hurdle, and focuses on what can be done in the future to more adequately overcome it. A literature review was conducted, focusing on the current SRL phenomenon and causes of it, as well as an examination of current opinions regarding judicial intervention and the appropriate role of judicial officers in the adversarial system. In addition, an analysis of some of the methods other courts have used to face this challenge was performed.

The main cause for concern this project aimed to address was that an extremely high number of SRLs arrive to court on the day of trial unprepared. Judicial officers estimated that fewer than 10% of litigants arrive prepared. This lack of preparedness was resulting in cases that had to be dismissed or continued to another day, which

further created a ripple of adverse effects throughout the system. The goal became to identify commonalities in individual cases that had successfully proceeded to trial, in order to develop markers of a “successful” case. These markers would then be used (along with the relevant research) to develop techniques that Superior Court could utilize to prevent these issues at the onset of a case.

In addition to the literature review, the data collection techniques performed in this project included a data analysis of a sampling of similar Family Court dissolution cases, interviews of Family Court judges regarding their observations of dissolution cases involving SRLs and their thoughts on judicial intervention, and finally, a comparison of two of the most commonly used filing methods at Superior Court.

From the collected data, it was concluded that Superior Court should undertake various methods of providing information to SRLs in Family Court. Such methods, including checklists and informational signs, would serve to reduce the amount of unpreparedness among SRLs by providing information that they may be failing to get or receive throughout the course of their case. The Court should also seek to increase access to justice for SRLs by creating a Family Law Facilitator-type position that will help litigants navigate the system. Reducing the lack of information amongst SRLs will be the biggest tool that the Court can employ in meeting this challenge.

In addition, the court should also take steps to ensure that all SRL parties are participating in Early Resolution Conferences (ERCs), as these conferences were found to increase the likelihood that the parties would be more informed and better prepared for trial. This can be done by closing a loophole that currently exists in the case

management system, which allows some cases to fall out of the pipeline, and also by creating an informational video to educate SRLs about ERCs.

The data also showed that traditional paper filing packets are no longer effective for SRLs in Family Court. Because of this, the Court should immediately begin phasing out their use and move exclusively towards the ezCourtForms system, which helps SRLs prepare filings through a virtual interview process.

Finally, it has become apparent that the nature of Family Court and its plethora of SRLs requires different standards for judges serving on this bench. The demands of these cases require judges to be more involved than they might be in a different type of case. Due to this, education of the bench should be emphasized. It is recommended that a task force of Family Court Judges be charged with developing best practices for dealing with SRLs. Their suggestions can be used to develop a training program for judges who are new to the Family Court Bench and may not have dealt with SRLs in such a capacity before. This should serve as the final piece of the puzzle for Superior Court in combatting the strains of dealing with SRLs that are being felt throughout the system and also benefitting court customers by providing meaningful access to justice.

Introduction

Across the United States, Family Courts are faced with a challenge: the number of persons accessing the courts as self-represented litigants (SRLs)¹ has skyrocketed as fewer and fewer litigants can afford an attorney and an increasing number simply choose not to use one. In Arizona's Superior Court in Maricopa County, approximately 79% of all dissolutions (the legal term for the ending of a marriage by divorce) were filed by SRLs in Fiscal Year 2013 (FY13) (Judicial Branch of Arizona in Maricopa County, 2013). Some SRLs are capable of filing and presenting their cases adequately, but the majority are not. Judicial officers in Maricopa County estimate that less than 10% of SRLs come to court ready to proceed² with trial on the initial setting.³ In the remaining cases the parties are unprepared, resulting in a dismissal of the petition (to be re-filed) or causing the trial to be vacated and reset. Not only does this strain the limited resources of the court, it also places a burden on judicial officers, court staff, and the litigants themselves.

The goal of this project is to answer the question, "What makes a case involving SRLs likely to successfully proceed to trial?" To do so, I study Family Court cases in which a decree has already been issued and attempt to identify markers that indicate whether or not a case will successfully reach resolution or will need intervention to do so. The results will be used to make recommendations of methods the Court can employ to increase the trial compliance rate.

¹ Self-represented litigants are formally known in the legal community as *pro se* or *pro per* litigants

² "Ready to proceed" means that the parties came with all the affidavits, documents, and witnesses required to present their case or defend their issues, and properly entered their exhibits with the clerk ahead of time.

³ The term 'initial setting' refers to the very first time a hearing or event is scheduled in a case. Initial setting is typically used in reference to a trial date, but can generally be used for a hearing of any type.

Background

The Superior Court of Arizona is composed of general jurisdiction trial courts with locations in each of the state's 15 counties. The Superior Court in Maricopa County is the largest trial court in the state, with 95 judges and 59 commissioners (collectively known as judicial officers), and 1,160 employees. Aside from being Arizona's largest trial court, Maricopa County Superior Court is also the fourth largest trial court in the United States.

Family Court in Maricopa County has jurisdiction over dissolution, child custody, child support, parenting time, paternity, and other domestic relations matters. There are 27 judges and 11 commissioner assigned to the Family Court bench. The judicial officers assigned to Family Court adhere to the Rules of Family Law Procedure and Title 25 of the Arizona Revised Statutes. The judicial officers schedule hearings and trials as required to adjudicate all pending matters. In FY13 there were 33,882 case filings and of these, 18,162 (53.6%) were dissolution filings. Approximately 6.5% of the cases were contested and required a trial to conclude the matter; in FY13, the Family Court bench conducted more than 2,100 trials. Each judicial officer carries an average of 814 pre- and post-decree cases (Superior Court of Arizona in Maricopa County, 2013).

Extrapolating from the numbers above, we can estimate that approximately 1,180 divorce trials were conducted. Using the judicial officer estimate of about 10%, this means that in only 118 of those divorce trials did the parties come to court ready to proceed. Conversely, in 1,062 of those trials, the parties were not ready to proceed

when they came to court and the case was reset to another day, or the petition in the case was dismissed.

Literature Review

What Is the Issue?

SRLs have always been a factor in the courts, but never to the extent that we are now seeing. Many commentators believe that the number of SRLs is higher than at any other time in United States history (Swank, 2005). This “great tide of SRLs” (as it has been dubbed) is washing over Family Courts all over the country, making these judges, in many respects, the “first outside the limited-jurisdiction courts to face the challenge of *pro se* litigation” (Goldschmidt, 2002). It is a commonly held belief that judges must hold SRLs to the same standards as litigants represented by counsel. However, this causes difficulty for the courts as SRLs typically do not know court procedure or the finer points of legal argument. Judge Raymond R. Noriko, Chairman of the Connecticut Judicial Branch’s Access to Justice Commission noted,

“...The boom in self-representation applies pressures on the court system. It slows down dockets. It forces judges to sometimes hear cases where one side has an experienced trial attorney and the other a self-represented party. It becomes difficult to deal with those cases fairly. Those stressors get multiplied through the whole system. You can see the effect without having to sit in a courtroom” (Morganteen, 2012).

It appears that the situation is only getting worse as the number of Americans at or below 125% of the federal poverty level was expected to reach an all-time high of 66 million in 2013 (Collins, 2012). This means fewer people who may need the services of an attorney will be able to afford one.

A 2010 survey of nearly 1,200 trial judges from around the country, conducted by the American Bar Association, resulted in some grim conclusions:

- The judges say SRLs are doing a poor job as well as burdening courts already hurt by cutbacks;
- More than half the judges saw case filings increase in 2009 and 60% of them say fewer people are represented by counsel;
- 62% of the judges surveyed feel that self-representation is resulting in worse outcomes for litigants;
- 78% of judges say the increase in self-representation is hurting the courts, especially by slowing down the docket (Carter, 2010)

The results of this survey demonstrate that not only are strains on the system literally being felt, but also that there is a larger issue that we must be concerned about – the struggle for access to justice by SRLs.

The Self-Represented Litigant Phenomenon

As has been noted already, there has been a marked rise in self represented litigation in recent years. In his article *The Pro Se Phenomenon*, Drew A. Swank (2005) notes that compounding this rise in SRLs is the fact that family law cases have become increasingly complex over the years, to the point that legal services can no longer be considered a luxury but rather a necessity. He stresses, however, that before courts begin making changes to accommodate SRLs, we must understand the reasons for self-represented litigation; if we do not, we may end up wasting time and resources by making changes for the wrong reasons or making changes that are ineffective.

According to various surveys, there are a number of reasons why a person may pursue their case as a SRL (Swank, 2005). Not being able to afford an attorney is a common reason, but other reasons include increased literacy rates among the population, anti-lawyer sentiment, increased belief in one's own abilities, feeling that

one's case involves only a single, clear cut issue, a belief that the court will do what is right regardless of the party's SRL status, and even as a trial strategy.

Another important aspect of this issue is the fact that the demand for free legal help far exceeds the supply. The amount of pro bono work done by private attorneys is very small, and as we have seen in recent years, the economic downturn has decimated government budgets that might otherwise fund free legal aid programs. This results in individuals who, finding legal assistance unavailable, then either choose to not bring their problems to the court or choose to forge ahead, expecting the judge to assist them in presenting their case. However, Swank (2005) is careful to note that just because *some* individuals choose to proceed as SRLs does not indicate that costs are a prohibiting factor for *all* SRLs. He also notes that no matter how much funding is available for legal aid, or how many pro bono hours attorneys donate, there are always going to be individuals who simply choose to go it on their own.

Swank (2005) believes that the solution, then, is not to eliminate the ability for litigants to represent themselves, but rather to identify and address any systematic issues that affect how pro se litigants interact with the court. Furthermore, he believes that any suggestions for judges and clerks to more actively assist SRLs (which will be discussed shortly) are not the best solution, as those suggestions are premised entirely on the belief that SRLs are proceeding on their own involuntarily. We should not rely only on this notion that SRLs make that decision based on economic necessity, as that argument is weakened when individuals simply choose to "opt out" from the rules and procedures that apply to every other court participant.

What Has Been Done So Far?

Even with budget difficulties, courts must find ways to confront this new challenge by expanding public access to court services, and indeed many have begun to do so. Some courts have begun to offer forms online, and programs that will walk litigants through the steps to fill them out (Collins, 2012). Some have created SRL clinics and Lawyer-of-the-Day programs (Engler, 2012). Some have increased the type and amount of information that is available online. Several states are considering mandating attorneys to donate a certain amount of pro bono hours, and others still are considering allowing limited scope-representation (Morganteen, 2012).

Family Law Facilitator Programs

Another way that some courts are meeting the needs of SRLs in Family Court are Family Law (or Family Court) Facilitator programs.⁴ Family Law Facilitator programs are programs that provide assistance to litigants who choose to or who cannot afford an attorney to represent them in matters dealing with certain family law and domestic relations matters such as dissolutions, child or spousal support, and custody issues. These services are usually offered at little to no cost to the individual.

The Family Law Facilitator is usually a non-attorney who gives information to SRLs about the law and may provide instructions on the forms and procedures that may be needed in their case. They do not give legal advice or represent individuals in court but may provide referrals to other appropriate legal resources or lawyer referral services. Other services that such programs may provide include:

⁴ These programs currently exist in the state courts of California, Washington, Minnesota, Colorado, Oregon and Nevada. The information in this section was compiled from the websites of each state's AOC.

- Information on what mandatory forms are available and how to acquire them
- Review of completed forms for procedural correctness
- Explanations of local court rules and procedures

There is not much formal research on Family Law Facilitator programs, but anecdotal evidence and a report by the Washington State Center for Court Research on the programs in that state indicates that facilitator programs are heavily used in the states where they exist. These programs enjoy high rates of customer satisfaction, with the Washington report noting that 83% of program users say they have more trust and confidence in the courts and over 80% of customers indicate they are satisfied with services even after their court experience. Program users also consistently report higher rates of satisfaction over non-users with court proceedings and outcomes, and have more trust and confidence in the courts. Most importantly (for our purposes), the report states that family cases involving a litigant who has used the program are more likely to be resolved in a timely manner than cases involving an unassisted self-represented litigant (George & Wang, 2008).

Superior Court in Maricopa County

At Superior Court in Maricopa County, several resources are available to SRLs. Regarding forms, SRLs can visit the Superior Court website and print out forms for most Family Court actions and fill them out by hand. These forms are also available online as PDF fillable forms so that a person can type their information directly onto the form and then print it out. In addition to being available online, individuals may visit the Superior Court Self-Service Center and purchase the appropriate forms.

SRLs can also take advantage of the ezCourtForms program. The ezCourtForms program consists of a series of interactive interviews that assists SRLs in completing the forms necessary to create court documents. The program asks a question and when the person types in their response, the program places their answer in the appropriate place on the filing. This program can be used for court forms for a number of pre and post-decree matters, as well as other related matters such as scheduling a Decree on Demand hearing, requesting a fee waiver or deferral, and even proof of service.

Another service that is available to SRLs in Maricopa County is the Family Lawyers Assistance Project (FLAP). FLAP is a collaboration between the Maricopa County Bar Association and Community Legal Services.⁵ Persons representing themselves in family law cases receive legal assistance and brief services. Half-hour consultations are scheduled with volunteer attorneys at the Superior Court facilities in Phoenix and Mesa. This service is provided for free or for \$40, depending on the individual's financial situation.

Arizona is also one of only two states (the other is California) that certifies and monitors the people and companies who prepare legal documents for SRLs. These document preparers are now known as Arizona Certified Legal Document Preparers (AZCLDPs). As defined by the Arizona Code of Judicial Administration § 7-208 (A), a legal document preparer is

An individual or business entity certified to prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public who is engaging in self-representation in any legal

⁵ Community Legal Services (CLS) is a not-for-profit law firm that provides free legal aid in civil (non-criminal) matters to low-income persons.

matter. An individual or business entity whose assistance consists merely of secretarial or receptionist services is not a legal document preparer.

AZCLDPs differ from paralegals in that paralegals must perform their work under the supervision of a licensed attorney whereas AZCLDPs do not require such supervision. While AZCLDPs are authorized to help SRLs complete court forms, they cannot give legal advice, recommend case strategies or legal remedies, engage in settlement negotiations, or represent people in court (Arizona Code of Judicial Administration, 2013).

AZCLDPs prepare dissolution (and other) filings by interviewing the filing party. The AZCLDP will ask a question of the filing party, and the information he or she receives from them becomes the body of the filing. In addition to preparing legal documents, some AZCLDPs also offer additional services, such as physically filing the documents with the Clerk of Court for the party, and even serve process. Some include these services in the fee they charge for the document preparation and others offer these services for additional fees. Even with these additional fees, the costs are still significantly lower than the services of an attorney would be.

All of the above are resources that many SRLs involved in Family Court cases in Maricopa County take advantage of every day. But perhaps the biggest (and most well known) resource available to SRLs in Maricopa County is the Superior Court Self-Service Center.

Self-Service Center

In 1994, the American Bar Association (ABA) issued a report on SRLs.⁶ This study did much to change the existing perception of SRLs by dispelling the myths that all SRLs lived in poverty, were uneducated, involved in the criminal justice system, or otherwise had no choice but to represent themselves in court. Moreover, by dispelling these myths, this report had the effect of humanizing SRLs for the legal community.

During this period, there were various challenges that SRLs faced in the court system. Today, it is commonplace for court forms to be fairly easily available to litigants. At the time, however, the “court forms” available to SRLs in Maricopa County were basically blank templates in legal books that would be more suitable for use by attorneys. These books were located in the law library and SRLs would be referred to them by the law librarians upon request. There was also a Domestic Relations Paralegal who would meet with SRLs and, after listening to their issues, give them an appropriate set of forms that he had developed. This “DR” paralegal was the only assistance available to SRLs in Family Court, and the demand for his service was greater than his availability.

Partly in response to the ABA report and partly in recognition of the challenges that SRLs in Maricopa County were facing, Court Administration realized that something needed to be done and so assembled a design team comprised of various stakeholders. The goal of this team was to create a solution that could reach a lot of people and provide services in an ethical manner. The solution was the Maricopa County Self-Service Center (SSC), opened in 1995, and the first program of its kind in

⁶ American Bar Association, Report on the Legal Needs of the Low-Income Public: Findings of the Comprehensive Legal Needs Study (1994) / American Bar Association, Report on the Legal Needs of the Moderate-Income Public: Findings of the Comprehensive Legal Needs Study (1994)

the nation (Superior Court of Arizona Maricopa County, 1997). The SSC is not just a place in the courthouse; it is a program that offers services. Today, the SSC offers court forms (which have been specifically designed for SRLs), instructions and information to those who are representing themselves. The majority of SSC users are involved in Family Court proceedings, but the SSC also offers services to those involved in civil, probate, juvenile, and even justice court matters. There are over 1,600 documents in English and Spanish available at the SSC, and in FY13, over 180,000 citizens were served. There are also public computer terminals in the SSC that are available for people to access the previously mentioned ezCourtForms program (Superior Court of Arizona in Maricopa County, 2013). Since the first SSC opened in 1995, Superior Court has gone on to establish one at each of its outlying regional complexes. The program also stands today as one of the most replicated court programs in the United States.

Judicial Officer Intervention

Judicial officer intervention in cases involving SRLs is a subject that stirs debate. Authors such as Jona Goldschmidt and the Honorable Rebecca Albrecht have posited in recent articles that not only do SRLs have a right to receive reasonable judicial assistance, but judicial officers *should* provide such assistance. Some judicial officers, however, disagree with this statement as they believe that if they provide any sort of intervention to the parties, they lose their impartiality and are no longer a neutral arbiter. Take, for instance, the practice of settlement conferences.⁷ In a criminal court setting, a judge is able to conduct a settlement conference and maintain impartiality as he or she

⁷ In Superior Court in Maricopa County, Family Court cases have various options for settlement conferences. Settlement conferences specifically conducted by a judicial officer are known as Resolution Management Conferences, or RMCs.

is not usually the finder of fact if a case goes to trial – the jury is.⁸ In a Family Court setting, however, there are no jury trials. Judges who conduct settlement conferences become privy to information they may not otherwise learn in the normal course of a case. Such issues may give judicial officers pause when deciding whether to intervene in a case.

In their article, *Judicial Techniques for Cases Involving Self-Represented Litigants*, former Superior Court in Maricopa County Judge Rebecca Albrecht and colleagues attempt to examine this issue and offer suggestions for judges struggling with accommodating self-represented litigants without compromising their role as a neutral arbiter. Albrecht et al. acknowledge that while some litigants are “able to prepare court documents and present their positions effectively in court,” most are not. Furthermore, this lack of knowledge imposes a burden on the courts, judges, and court staff (Albrecht, Greacen, Hough, & Zorza, 2003).

It is also of note that judicial officers may feel that their options for assisting SRLs are limited by the Canons of Judicial Ethics. But Albrecht et al. point out that while SRLs are not explicitly mentioned in the Canons except by implication in § 3A(7), which states that judicial officers must “accord every person... the right to be heard according to the law,” the actual code “says nothing about requiring self-represented litigants to abide by the same rules and standards that apply to lawyers.” Furthermore, the authors found no instance of case law in which a judge was disciplined “for relieving a self-represented litigant of the strict requirements of procedural or evidentiary rules” (Albrecht, Greacen, Hough, & Zorza, 2003).

⁸ Except in cases where the defendant chooses to be tried by a bench trial.

Finally, in an extensive case law study on the issue, the authors found plenty of support for judges who may wish to intervene in a case, but do acknowledge that this support is inconsistent at best. In general, it seems that SRLs are entitled to a certain leniency as well as treatment equal to that of a represented party. SRLs are not, however, entitled to special exemptions,⁹ as the administration of justice requires “reasonable adherence to procedural rules and requirements of the court.” Furthermore, Albrecht et al. (2003) also note that courts all over the United States generally hold that, “A self-represented person must abide by the same rules of procedure and rules of evidence as lawyers. It is the responsibility of self-represented parties to determine what needs to be done and to take the necessary action.”¹⁰

Ultimately, Albrecht et al. developed a set of techniques from their case law analysis. They believe that judicial officers faced with SRLs may reduce the appearance of any conflict of impartiality by:

- Preparing for the matter by mastering any substantive law applicable to the case;
- Providing the litigants with guidelines regarding courtroom protocol, basic rules for evidence presentation, and a list of elements that must be proved in order to obtain relief;
- Creating an informal atmosphere for the acceptance of evidence and testimony;
- Asking questions of SRLs and their witnesses;
- Providing written notice of further hearings, referrals or other obligations to all parties;
- Swearing both parties at the beginning of the proceeding;
- Maintaining strict control over the proceeding; and
- Remaining alert to imbalances of power in the courtroom

(Albrecht, Greacen, Hough, & Zorza, 2003).

⁹ “The statement that self-represented litigants will be held to the standard of an attorney seems... to be merely a shorthand phrase for stating that the court will not let the unrepresented litigant use his or her status as a reason to avoid application of a particular procedural rule” (Albrecht, Greacen, Hough, & Zorza, 2003).

¹⁰ Taken directly from a new set of forms for use in uncontested divorce and paternity cases in New Mexico, promulgated by the New Mexico Supreme Court.

The Judicial Role in the Adversarial System

While Albrecht et al. (2003) stopped short of asserting that judicial officers are obligated to provide assistance or intervention to SRLs, Jona Goldschmidt (2002) stated just that, as well as stating that SRLs have a right to receive such assistance. In developing his set of recommendations for assisting SRLs, Goldschmidt found a sort of resistance from some judicial officers to such an idea. While the judicial officers in his study acknowledged that all litigants (including SRLs) are entitled to access to justice, most did not know how to reconcile their constitutional duty to provide such access with their ethical duty to remain impartial (Goldschmidt, 2002). These judges would end up leaning towards their ethical duty to remain impartial, which in cases with one represented and one unrepresented party ended up being a sort of bias in favor of the represented party. The struggle is ultimately one of balance: in a society where we expect equal protection under the law and the right of access to justice, how do the courts fulfill the obligation to give meaning to those rights while balancing the requirement of judicial impartiality? (Goldschmidt, 2002)

Goldschmidt ultimately believes that Family Courts need reform and would do well to adopt some aspects of the inquisitorial judicial system, but does not feel that radical changes to the system or judicial role are necessary to achieve reform. Like Albrecht et al., he offers a list of techniques that he feels would increase SRLs access to justice:

- The Court should train court staff to provide basic legal information to the public regarding the elements of common causes of action, defenses, statutes of limitations, and such procedural requirements as those for service of process and execution of judgment
- Pretrial conferences should be conducted by court staff or judicial personnel to prepare the litigants for trial

- Judges should be authorized to provide reasonable assistance to *pro se* litigants and facilitate the introduction of their evidence
- Judges should be permitted to ask questions, call witnesses, and conduct limited independent investigations
- The rules of procedures and evidence should be relaxed in cases involving *pro se* litigants

(Goldschmidt, 2002)

While we can see that there is some overlap between Goldschmidt's recommendations and those of Albrecht et al., we can also clearly see that Goldschmidt's belief that judges are obligated to provide extra assistance to SRLs causes his recommendations to cross over the line of "leaning over the bench".

Non-Lawyer Forms of Assistance for Self-Represented Litigants

While considering ways to assist the SRL, one additional issue we must consider is the type of access that any solutions we may propose will be; are we simply going through the motions of providing mere access, or are we actually providing meaningful access to justice? In his article, *Opportunities and Challenges: Non-Lawyer Forms of Assistance in Providing Access to Justice for Middle-Income Earners*, Russell Engler points out the need for caution in responding to the overflow of SRLs, as the wrong response can send us down a path of delivering second-class justice to self-represented litigants. This is especially important when one considers that the cases most likely to involve SRLs are those that involve such every day needs as housing, employment and child support (Engler, 2012).

Engler (2012) asserts that any program enacted to assist SRLs obtain access to justice should be a three-pronged approach that will ensure that such access is meaningful and does not affect one segment of the population differently than another:

1. The roles of judges, court-connected mediators, clerks, and other court personnel should be re-examined to ensure that the players are part of the solution, rather than the problem.¹¹
2. Courts should utilize the full menu of assistance programs including non-legal forms of assistance, but paired with evaluation to identify which programs actually impact case outcomes.
3. The use of counsel remains an essential component, but as part of a larger strategy.

I would also add to Prong 2 that by using a wide variety of programs, we can increase access to justice for middle-income earners who are traditionally excluded from such programs because they make too much money to qualify for legal aid for the poor, however do not make enough money to be able to pay the average legal rate.

Ultimately, Engler (2012) believes it is imperative to ask the right questions, as the questions we ask will determine the problems we are trying to solve. Even more important is the problem that “on a daily basis, vulnerable litigants – and those who never reach the formal legal system – forfeit important rights and jeopardize basic human needs not because the law and facts are against them, but because they lack legal representation. Our solutions must be driven by the determination to make a reality of the image of the balanced scales of justice... Anything less suggests that by access to justice, we mean mere access, rather than meaningful access.”

Assisting the Self-Represented Litigant

Another important facet of this issue is the difference between legal advice and legal information. As courts have struggled to deal with the great tide of SRLs, many have indirectly raised barriers to self-representation by enacting rigid “no legal advice” policies. However, as noted by Paula Hannaford-Agor in her article *Helping the Pro Se*

¹¹ This solution is similar to notes by Paula Hannaford-Agor (2003) and Drew Swank (2002) of the need to identify systemic issues – Court staff can create or be systemic issues, too!

Litigant: A Changing Landscape, despite these barriers, the number of SRLs continued to rise, and by not offering any forms of assistance to them, not only were logistical problems worsened, but public trust and confidence in the courts took a beating, as the courts were seen as prohibiting access to justice (Hannaford-Agor, 2003).

Hannaford-Agor (2003) indicates that an important way for courts to address the logistical problems that are inherent when dealing with SRLs is for courts to change the paradigm of common mistakes being seen as operator error; rather, we should think of common mistakes as systemic errors. This is a common practice in re-engineering models, where symptoms are identified to determine the underlying problem. The solution, then, is to identify these systemic errors and correct them.

Solutions that arise from this method may include shifting responsibility of case management from the litigant to the court, creating a self-perpetuating case management system, 'advertising' settlement resources available to SRLs, and mandatory informational pre-trial conferences. Solutions such as these can go a long way towards easing the complexity of the judicial system for SRLs and thus ensure we provide not just simple access to justice, but meaningful access to justice.

The Indiana Case Study – A Strategic Response

In the mid-1990s, the Indiana State Courts realized that the traditional model of family law no longer worked – it was time to make a change. The Indiana Supreme Court created teams to develop an action plan, which led to the creation of a Pro Se Advisory Committee, which occurred in April 2001. From there, the committee obtained a \$50,000 grant from the State Justice Institute with a matching contribution from the Division of State Court Administration. With these funds, the committee set out to develop a self-represented litigant program. Stakeholders in the development of this project included attorneys, judges, clerks, legal service professionals, and law librarians. The task force created a website for the program and developed online forms and instructions (in English and Spanish) based on SRL forms used by Indiana Legal Services, Inc. The website also contained links to a child support calculator and other legal resources. In addition, the task force created a poster identifying what the courts can and cannot do for SRLs. An updated version of this poster (see Figure 1) is still in use and can be seen in courts all across Indiana. Another important thing that the committee did was to prioritize education of the bench. Trainings were conducted for the Family Court judges in Indiana on how to handle cases with SRLs. A “Pro Se

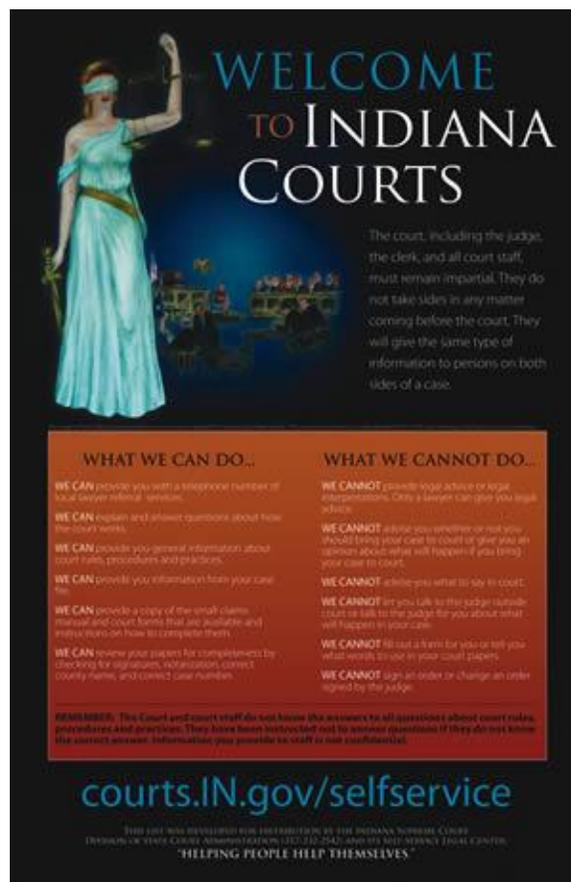


Figure 1: What Courts Can and Cannot Do - Indiana State Courts

Benchbook” was also created to assist the judges with issues that commonly arise in SRL cases.

While efforts in this area died down after about five years due to leadership changes and term expirations of committee members, the Indiana Supreme Court remained committed to the cause of SRLs and recently renewed efforts by passing a new court rule in 2007 that created the Indiana Supreme Court Planning Committee on Self-Represented Litigants. This committee is tasked with the “continuous study of the practices, procedures, and systems for serving self-represented litigants.” The committee came up with a number of endeavors with the intent being not to encourage self-representation, but to promote informed decision-making. Some of the most recent projects include:

- *Family Matters Video*: 30 short educational videos about various topics that SRLs will need to understand when proceeding as a SRL. These videos are shown in courts all across the state, with at least twelve counties customizing the videos with county-specific information.
- *Self-Service Legal Center Upgrade/Document Assembly*: A massive overhaul of the website and forms used by the self-service center in order to make them more user-friendly and ensure accurate completion.
- *Court Staff Training*: A training program designed to help court staff give court clients “informed referrals” using a list of resources and a decision tree that helps court staff distinguish the needs of the SRL.

Methodology

To develop a picture of the 'life' of a Family Court dissolution case, and thereby identify factors that would cause a case to be more likely to proceed successfully to trial on the first attempt, it is necessary to examine the case files of the sample pool of cases. In addition, interviews with judicial officers are needed to determine their perceptions versus the reality of trial rate success, as well as identify any interventions they themselves provide that might also affect trial success. Finally, discrepancies among the type of filing methods available to SRLs must also be noted to determine if the filing method affects the direction that a case will take. Thus, the methods used were as follows:

- 1) Data collection by means of case file analysis in Superior Court's case management system (iCIS, or, integrated Court Information System)
- 2) Judicial officer interviews
- 3) Comparison of Self-Service Center forms versus ezCourtForms

Determining the Sample Pool

Before any data collection can take place, it was necessary to define the sample pool of the cases analyzed. To create a uniform sample, the cases in the pool needed to have the following characteristics:

- Dissolution case; nothing post-decree such as child support or custody modification
- The case should be a case with children (a case number prefixed by FC)¹²

¹² These cases were selected for this study due to the fact that by nature of children being involved, there are more likely to be contested issues such as child custody or child support that would require intervention. Cases involving only two adults by definition do not have these issues.

- A decree of dissolution needed to have been issued prior to June 30, 2013
- Both parties shall be *SRLs*
- The decree shall be issued through trial

Data Collection

The first task performed was an in-depth analysis of case files. A random listing of case numbers was requested from the court's Research and Planning department, using the first three guidelines set above.¹³ It was requested that the department provide enough cases such that after culling a sample size of at least 100 would remain.

Ultimately a list of 247 cases was received from the department in the form of an Excel workbook. The cases were first sorted by final case hearing. From this sorting 112 cases were immediately removed for the following reasons:

- 40 cases were resolved by Decree on Demand (Default)
- 46 cases were resolved by way of an Early Resolution Conference (ERC)¹⁴
- 26 cases were resolved by the issuance of a consent decree

This left 135 cases to comprise the sample pool. In order to get a complete picture of the life of each of these cases, the following aspects of each case were identified:

- The trial judge
- The initial filing date

¹³ The first three guidelines are items that can be set as parameters in the department's report generating function. The remaining guidelines must be determined through analysis of the case file.

¹⁴ An ERC is a settlement conference conducted by an Attorney Case Manager, who assists the parties to memorialize any agreements and schedule further events to finalize the case. Every ERC that is concluded is concluded in one of 3 ways: 1) The parties reach full agreement on the issues, a Consent Decree is prepared and signed by the parties, and the parties are referred immediately to the Decree on Demand program to finalize their case so that they leave the Court on the day of the ERC with a copy of a final Consent Decree; 2) The parties reach partial agreement that is memorialized in a Partial Agreement form signed by the parties to resolve those agreed issues, and a trial date is set with the assigned Judge with a Notice of Trial Date form delivered to both parties at the time of the ERC with further written instructions for trial preparation; or 3) The parties reach no agreements and they leave with a written Notice of a Trial Date scheduling their trial and trial preparation instructions (Maricopa County Superior Court Family Court Department, 2006).

- The decree issuance date
- Case age (based on filing and decree dates)
- The number of hearings and events in the case
- How many times the case was set for trial
- If the trial was continued, the reason(s) for the continuance
- Whether or not the services of Alternative Dispute Resolution (ADR) were used
- Whether or not an Early Resolution Conference (ERC) was held, and if one was held, what the outcome was
- The docket count (not including filings or minute entries from the court)
- Whether or not a party had used forms from the Self-Service Center and if so, which party used those forms
- Whether or not a party had used the services of a certified document preparer, and if so, which party used those services
- Whether or not a party had used the court's ezCourtForms service, and if so, which party had used those services
- Anything else of note about the case

As each case was researched, an additional 22 cases were removed from the pool due to the parties not actually being SRLs. Rather, in these cases the attorneys had filed motions to withdraw upon issuance of the decree and iCIS automatically switched the parties to SRL status. With the removal of these 22 cases, the final sample pool numbered 113 cases.

The cases were analyzed for any correlation between amount of trial settings and method of case filing preparation at the party level (SSC forms versus ezCourtForms versus utilizing an AZCLDP). A comparison was also performed on the average and median case ages, docket counts and numbers of hearings and events per amount of trial setting, as well as the high and low case ages, docket counts and numbers of hearings and events per amount of trial setting. The reasons for continuance (either lack of preparation or administrative reasons) in the cases were also examined. Finally, an examination on the results of Early Resolution Conferences (if one was conducted) per amount of trial settings was performed.

Judicial Officer Interviews

In order to supplement the information obtained through the case profile analysis and develop a more complete picture than numbers alone can provide, judicial officers were also interviewed as part of the data collection process. Judicial officers were selected upon recommendation from the Family Court Administrator, selecting from among the judges who had cases appearing in the sample pool.

During each interview, the judicial officers were given a brief background of the project and the data collection efforts taken so far. They were informed that the impetus for the project was the common perception among judicial officers that the trial compliance rate among SRLs was very low (as low as 10%) and that many trials were continued due to the unpreparedness of the parties. It was also noted that during the data collection process, the sample pool results showed that approximately 68% of the dissolutions were successfully obtained on the first trial setting. Given that background, the judicial officers were then asked the following questions:

- Are you providing interventions to the litigants in order to successfully resolve their case?
- If yes, what are you doing to intervene? (specific actions)
- If no, why not?
- At what point, if any, do you decide to reset/continue the trial?
- Is there anything that gives you pause or prevents you from intervening?

In addition to these questions, information regarding their length of time as a judge, the length of time they have served on the Family Court bench and any prior Family Court experience was also collected.

Comparison of Self-Service Center Forms Versus ezCourtForms

Another important area of examination was the identification of any potential differences between the forms available to SRLs in the Self-Service Center and the forms that are generated by the ezCourtForms program. The forms were first examined for any differences in the presentation of the questions that make up the filing. They were also examined for any differences between the initial instructions (i.e. how to complete the forms) and the follow up instructions (i.e. what to do with the forms once they were complete).

Findings

Finding 1: The Majority of Cases Require Only One Trial Setting

The first finding in the case analysis was that in 79 cases (approximately 69.9%) the parties were successful in obtaining a decree of dissolution at the first trial setting. This finding was a bit surprising as it was contrary to the earlier report by judicial officers that a high number of cases needed to be continued due to the unpreparedness of the parties. Of the remaining 34 cases, 29 were set for trial twice, four were set for trial three times, and one was set for trial four times. From these 34 cases, combined, there were 40 continuances¹⁵ before a decree was issued. Two-thirds (65%) of all these continuances were due to the parties not being prepared to proceed with trial for varied reasons. The remaining 35% were continued for administrative reasons, such as notices of change of judge, or administrative judicial reassignments.

¹⁵ The total amount of trial settings from these 34 cases equaled 74 separate hearings.

Finding 2: There is A Positive Correlation Between the Number of Trial Settings and the Major Case Indicators

As would be expected, the average case age, docket count and number of hearings and events increased as the number of trial settings increased. Again, this is to be expected as pushing back the trial date lengthens the time between the initial filing date and the decree issuance. It also gives more opportunity for more filings to be submitted and additional hearings to be held in the interim.

Table 1: Major Case Indicator Averages per Amount of Trial Settings

# of Times Set for Trial	Average Case Age	Average Docket Count	Average # of Hearings & Events
1	241	20	10
2	265	20	12
3	323	46	28

Finding 3: Referrals to Alternative Dispute Resolution Were Rarely Made

Of the 113 cases in the sample, only 10 were referred to Alternative Dispute Resolution for a settlement conference. This is less than 9% of the total cases. This is a bit surprising, given that Family Court is the largest user of ADR services, with over 1,500 referrals and 1,350 settlement conferences held in FY13. During interviews with the judicial officers, it was discovered that they feel that there are other services available that are preferable to ADR, especially the ERC. In cases where there are disputes regarding children, Parenting Conferences¹⁶ are preferred due to their high rates of resolution and the information that is given to the parties that helps them

¹⁶ The judicial officers did also note that the cost of Parenting Conferences can be prohibitive for parties with limited resources, as the cost is \$300 per party. However, this service is a tremendous resource for both the parties and the judicial officer. Sixteen cases in our sample (about 14%) participated in a Parenting Conference.

prepare for trial. Parenting Conferences also produce a summary report that is given to the assigned judicial officer, which can help them make a decision. The judges felt that ADR is more appropriate for cases where there is a lawyer involved and there are no disputes involving children, which is a small percentage of the cases they see. Another significant issue in the limited assignment of parties to ADR for settlement conferences was the time factor; due to the limited availability of settlement conferences, there is often a wait of up to four months or longer. One judge reported that often litigants in his court would rather just try the case than wait until a settlement conference is available.

Finding 4: Type of Filing Method Used By the Petitioner Drives the Case

There appears to be a correlation between the type of method used in preparing the case filing documents and the amount of trial settings in a case. The highest average number of times a case is scheduled is when the Petitioner uses the SSC forms and the Respondent uses either the SSC or AZCLDP forms (1.5 times set for trial). When the Petitioner uses some other type of form (AZCLDP or ezCourtForms), the average number of times set for trial drops to 1.2 to 1.3. While not statistically significant, these differences are suggestive that the SSC Petitioner forms may not provide litigants enough information to get started efficiently. This was also anecdotally noted by the interviewed judicial officers, who noted that parties using either ezCourtForms or the services of an AZCLDP seemed to be better prepared at trial.

Finding 5: Parties Who Participate In ERCs Are More Likely to Require Only One Trial Setting

There also appears to be a correlation between the number of trial settings in a case and whether or not the parties participated in an Early Resolution Conference. At

the sample level, approximately 53.1% of the total sample of cases participated in ERCs. Of those cases, 76.7% successfully obtained a decree of dissolution on the first trial setting. Examination on the case setting level reveals that of the cases set for trial one time, 58.2% participated in an ERC. Of the cases set for trial two times, only 34.5% participated in an ERC. This seems to indicate that participation in an ERC increases the likelihood that a case will only require one trial setting. This also seems to indicate that parties who participate in ERCs receive some type of benefit or experience that allows them to resolve their cases successfully.

This was further confirmed when speaking to the judges, as each of them found ERCs to be very beneficial to the parties. Even when parties do not come to a full agreement, the process of participation eliminates or narrows many of the issues between the parties. The ERC also identifies outstanding issues for the judge and gives the litigants trial preparation instructions, which educate the litigants on what they will need to take to the trial in order to present their case. In sum it can be stated that parties who participate in an ERC are more informed and better prepared for trial and therefore are more likely to only require one trial setting.

Finding 6: Judicial Officers Try To Resolve Most Cases at the First Trial Setting

In speaking with the judges who participated in interviews for this project, it became very apparent that each of them will do what they can to resolve the trial on the first attempt, even when the parties are not prepared. There was a general sense that court can be an imposition on people's lives, so the goal of a judicial officer should be to try to resolve what can be resolved on the first setting, rather than "prolong the inevitable." Each of the judicial officers had their own technique for helping parties

come to a resolution; one tries to narrow the focus as much as possible for each issue and finds that this helps most to come to a resolution without having to return to court. Another tries to hold a pretrial conference with the parties where he will identify the outstanding issues and give the parties pretrial preparedness instructions and explain the rules and procedures. All of the judges agreed that they will do what they can, within reason, to resolve the issues at the first trial setting and will only continue the trial if it is apparent that the parties are nowhere near coming to an agreement or not prepared even slightly.

Finding 7: The Nature of Family Court Requires Judicial Intervention in Cases Involving Self-Represented Parties

The judicial officers felt that the reality of serving on the Family Court Bench is that all SRLs are unprepared. Each of the judges noted that they always try to schedule a hearing at some point in the case to help them assess the issues and understand the positions of the parties. They try to give the parties instructions on what is needed, and what the judge will need to know and see at trial. Giving legal advice is avoided by being very specific in giving these instructions. One judge noted that we cannot expect SRLs to follow the rules with the same precision as represented parties. Another judge stated that sometimes intervention is necessary to help him do his job; he needs information to do his job and to give a fair result and sometimes he needs to intervene in order to get that information.

Each of the judges stated that people who seek no help, or refuse to help themselves, are the hardest cases to resolve and require the most intervention, whether

that be the judge asking questions and walking the individual through the case, or by the referral to additional services.

Finding 8: Judicial Officers Find Forms Prepared by ezCourtForms or AZCLDPs Preferable to Forms Obtained from the Self-Service Center

As mentioned in Finding 4, the judges noted that parties using either ezCourtForms or the services of an AZCLDP seemed to be better prepared at trial, with one judge noting that AZCLDPs seemed to be the most helpful. One of the judges noted that while the SSC gives out forms and basic instructions, they offer no guidance. This may lead some SRLs to pick (and fill out) the wrong filing packets, with one specific example given being SRLs who submit forms for Emergency Order for Child Custody Without Notice, when what they actually need is a Temporary Order for Child Custody. Forms filled out by an AZCLDP or via ezCourtForms are also neatly typed with the information in the appropriate areas, while forms from the SSC may be illegible with incomplete information. The judges noted that SRLs need someone to explain to them what specific forms they need and how to fill them out, which is not something they get when using the SSC.

Finding 9: ezCourtForms Are Superior to the Current Paper Dissolution Packets

The dissolution forms available on ezCourtForms are far more streamlined, condensed and informative than the dissolution packets available at the SSC. The petitioner packet for “Divorce – With Minor Children” is comprised of an overwhelming 43 pages, including seven pages of instructions, two pages of filing procedures, and 27 pages of actual forms. The remaining pages are checklists and packet section cover pages. By contrast, the “packet” for a divorce with minor children available through

ezCourtForms is created from an approximately 27-screen (depending on case complexity) online interview. The resulting packet is nine pages long, only one of which is instructions with the remainder actual filled out forms.

Because ezCourtForms are filled out through an interview process, the cumbersome instructions on how to fill out the forms that are a part of the SSC packet are not necessary. The only instructions that print out in the ezCourtForms program are the instructions on what to do with the completed packet and how to file the packet with the Clerk of Court. This information is presented in a clear and concise step-by-step format, and together with information on filing locations, court fees, and process of service, comprises one page. This is in comparison to the dense seven-page set of instructions on how to fill out the SSC forms. Then there is an additional two-page set of instructions on how to file the forms, where to file them, court fees, and process of service.

Not only are the instructions presented differently between the two methods, but the questions are as well. If a litigant is going through the dissolution packet as it is obtained from the SSC or printed off online, the first form they would come to (14 pages into the packet) is the Sensitive Data Coversheet. This is a dense form requiring the personal information of each party and all the children involved. By contrast, the first screen in the ezCourtForms program for a dissolution is a yes or no question. The questions in the remainder of the interview are also presented in an easy to understand, plain-English format.

In the SSC packet, there are numerous other forms that are presented before you even come to the actual petition for dissolution. In the ezCourtForms program,

there is no need to fill out the same information repeatedly, since information that is required in multiple places is asked for once, and then placed where needed by the program.

Conclusions and Recommendations

The primary goal of this project was to identify any potential markers that would indicate the likelihood of a case successfully proceeding to trial (i.e. the parties are more likely to be prepared for trial). Based on the above findings, the markers can be summarized as follows:

Marker 1: A case is more likely to successfully proceed to trial if the petitioner prepares his or her filing packet using ezCourtForms or the services of an AZCLDP.

Marker 2: A case is more likely to successfully proceed to trial if the parties have participated in an ERC, regardless of the outcome.

Marker 3: A case is more likely to successfully proceed to trial if the parties have received specific information or instructions at some point in their case.

By combining our findings with the above markers, the following conclusions can be made.

Conclusion 1: A Lack of Information and Specific Instructions Is the Biggest Cause of Unpreparedness

What many of these findings have in common is that they point to the fact that somehow, somewhere along the way, the parties are failing to get or receive specific information that would ultimately make the trial process easier on the parties and the judges. The situation in the courts is that an overwhelming majority of Family Court litigants are SRLs. Are we doing ourselves any favors by providing them with forms and sending them on their way? Or are we just adding to the difficulties later on in the process – which we will ultimately need to deal with?

Society is changing, and so are expectations about what the court is supposed to do, what services we are supposed to perform, what our role in society is. Because of this, we need to consider that we may be perceived as putting up roadblocks to SRLs obtaining the justice they need. We should consider reexamining what is deemed legal advice versus what is legal information.

It is very important to note that this is not a conclusion that the court should provide legal advice to SRLs. Rather, providing procedural information and appropriate referrals may solve some of the issues that ultimately cause SRLs to be unprepared. To address this issue, the following changes are recommended.

Recommendation 1.1: Create an easy to read trial preparation checklist

A literal checklist should be created and provided to SRLs to help them prepare for trial. The checklist should be concise, so as not to overwhelm with information that may then not get read. This checklist should contain the items that the judge will need to make a decision and issue a decree, such as tax statements, financial affidavits, etc. Of course not every trial will require the same items, depending on the issues being contested, but the most commonly required items can be identified by the judges and included on this list. Hard copies of this list should be provided to SRLs, and the list should also be made available online on the Family Court page of the Maricopa County Superior Court website, and at the Self-Service Center.

Recommendation 1.2: Create a court staff position similar to the family law facilitators that exist in other state court systems.

A proposal should be submitted to the funding authority for permission to create a court staff position similar to a family law facilitator. In earlier times, such positions

were seen as “ethically murky,” due to strict interpretations of what constitutes legal advice. However, now may be the perfect time to revisit the issue due to the overwhelming amount of SRLs in the system. As we can see from the Washington report, not only do these positions serve to provide information to SRLs, but they also increase public trust and confidence in the courts, as well as customer satisfaction. The services that these types of positions provide also increase *meaningful* access to justice for SRLs. Due to the high rates of use reported by other states, it is not hard to imagine that a similar program would be just as popular amongst SRLs in Maricopa County.

Recommendation 1.3: Renew Self-Service Center staff training with a focus on appropriate procedural information.

This recommendation follows the undertaking of the Indiana State Courts, with their staff training program. The court staff that work in the Superior Court Self-Service Center should receive training and be empowered to provide specific procedural information and make appropriate referrals to outside resources and service providers. As with the Indiana program, a decision tree should be created to help staff “distinguish between resources to help litigants find legal information [on their own] and resources to assist them in locating legal advice or representation.” This recommendation may especially be of use for the segment of SRLs who decides not to use an attorney for no reason other than they wish not to use one. By providing information about resources or where to find legal information, this recommendation may give that population a place to start and help them do so efficiently. If appropriate, it should be considered extending this training to judicial staff, as they routinely deal with SRLs as well.

Recommendation 1.4: Create posters like those used by the Indiana State Courts.

The Indiana State Courts should be contacted regarding their posters about what courts can and cannot do (Figure 1). These posters should be obtained and adapted for Maricopa County and then placed in the various locations of the Self-Service Center and all the Family Court information desks. The posters help inform SRLs and may also increase understanding of the role of the court; thereby decreasing frustration when a SRL cannot get what would amount to legal advice. SRLs may also be better able to navigate the court system on their own. This is another method of providing *meaningful* access to justice.

Conclusion 2: Parties Who Participate In ERCs Are More Informed and Better Prepared Than Those Who Do Not.

With the anecdotal evidence from the judges along with the statistical data from the case analysis, it is safe to say that regardless of the outcome of the ERC, participation is a huge benefit to both the parties and the court. Yet there remain a number of cases where the parties do not participate in an ERC – in our sample, 35 cases (approximately 31%) did not take part in one. These next recommendations focus on increasing the rate of participation in ERCs, thereby increasing the benefits to the court and parties.

Recommendation 2.1: Close the ERC loophole

At Superior Court in Maricopa County, all contested Family Court dissolution cases are automatically scheduled for an ERC when a response is filed in the case. However sometimes a judge must take early action in the case, for instance, when temporary orders are requested, which is actually quite common. If this happens, then

the case is taken out of the ERC pipeline and the parties do not participate in one unless specifically ordered to. Superior Court should close this loophole and continue to automatically schedule an ERC for all contested cases, especially those that involve two SRL parties, regardless if there is early judicial action, unless ordered otherwise.

Recommendation 2.2: Create a YouTube video about ERCs

The media department at Superior Court in Maricopa County has created a number of educational videos for the public about various resources the court offers, and also how-to videos about such things as obtaining a protective order. A similar video should be created for ERCs. The video would serve to educate the public about the purpose and benefits of ERCs, what to expect during an ERC, and what the outcomes could be. This video could be hosted on the Family Court page of the Superior Court website, and it would also be beneficial to play the video in areas where there are large numbers of SRLs, such as the Self-Service Center and the Family Court waiting rooms and lobbies located at the various Superior Court facilities.

Conclusion 3: The Self-Service Center Packet for Dissolution Is No Longer Effective For SRLs.

From our comparison of the SSC and ezCourtForms versions of the dissolution filing, as well as the statistical findings regarding trial rate success and anecdotal evidence from the judges, it is apparent that the SSC packet is no longer as effective as it may once have been. In the sample of cases examined for this project, there were only 28 petitioners (about 25%) who used ezCourtForms to prepare their dissolution packet. It is important for all vested parties that we increase use of the ezCourtForms program. To address this issue, the following recommendations are made.

Recommendation 3.1: Begin phasing out the use of SSC forms and move exclusively to ezCourtForms.

As the world continues to become paperless, courts should continue to make strides in this realm as well. This is especially true in areas where electronic versions of forms are superior to paper versions in ease of use and understandability. With this in mind, Superior Court should begin to phase out the use of the SSC forms for dissolution, both the hard copy packets and the downloadable packets, and begin moving exclusively towards use of the ezCourtForms version of the packet. The elimination of paper packets can eventually be extended to other types of filings as well.

Recommendation 3.2: Promote the ezCourtForms YouTube video

One of the videos that the media department has created is a video about ezCourtForms. This video was placed online in April 2013. It is a great way for people to find out about the resource available to them in ezCourtForms; however, it has only been viewed slightly more than 300 times.¹⁷ To increase views of the video, and thereby increase awareness of ezCourtForms, the video should be placed prominently on the Superior Court homepage. Nowadays, many people either use search engines or go directly to websites to find information. To take advantage of that, this video should be prominently displayed on the court's webpage. Furthermore, key search terms should be linked to the video to increase search engine optimization (i.e. "where do I find divorce forms")

¹⁷ As of January 10, 2014

Conclusion 4: The Paradigm Concerning Judicial Intervention Should Be Changed

It is apparent that a shift in thinking is required regarding what should be expected of judges in Family Court. The very nature of working in Family Court requires that judges be more involved in their cases, and in fact, many judges do so as a matter of course to be able to resolve cases efficiently and fairly. The demands of working with SRLs are such that judicial action in a case should no longer be seen negatively as judicial intervention or “leaning over the bench”, but rather as effective case management. To that end, the following recommendations are made.

Recommendation 4.1: Assemble a task force of judicial officers to develop “best practices” when dealing with SRLs.

As with the Indiana case study, education of the Family Court bench should be emphasized. The reality is that all judges serving in Family Court will encounter cases involving SRLs. With that in mind, a task force of Family Court judges should be created to develop best practices and case management techniques for dealing with SRLs. The task force should also focus on creating collaborative resources for the bench, such as a bench book of common issues in SRL cases, and shared computer drives where helpful forms can be accessed. The information that comes from the committee may also be considered for later development into a training program for judges who are new to the Family Court bench.

Recommendation 4.2: Develop standardized Trial Instruction Minute Entries.

During interviews with the judges, one judge mentioned trial instruction minute entries as a specific area that should be examined for improvement. The issue is that these minute entries are created to instruct litigants of the requirements for trial.

However, there is no standard format and they are varied from judge to judge. Some of these minute entries are very detailed and thus very long and dense; others are shorter, but may not provide enough information for parties to prepare adequately. An easy to read, standard minute entry, combined with a trial preparation checklist as recommended in item 1.1, would have a dramatic impact by ensuring that all SRLs receive the same type and amount of information in anticipation of trial. This standardized minute entry could be developed by the above-recommended task force and tested on a pilot basis with a limited amount of judges before being rolled out to the entire bench.

Summary

As the amount of SRLs has dramatically increased over the years, courts have struggled to keep up with the needs and demands of this population. There are other issues that we have also had to consider, such as access to justice, and what that means in a world where more people are accessing the courts without legal assistance. Superior Court in Maricopa County was an early pioneer in assisting SRLs with the development of the Self-Service Center, which helped litigants get started in their cases. The current obstacle is how to get those litigants successfully through their cases to trial.

In an effort to identify ways to overcome that obstacle, this project has examined a number of cases in order to develop “markers of success” in cases involving SRLs. The overall goal was to be able to develop a set of recommendations from these markers, in the hopes of increasing the number of cases that would successfully be able to proceed to trial. And while the focus of examination was limited to a very specific

type of case, there is no doubt that several of these recommendations can be of use for any Family Court case involving SRLs.

By implementing the recommendations made above, not only do we expect to ease some of the burden placed on court staff and the court system by having a more informed SRL population, but we also expect that we will increase access to justice, thereby gaining an increase in public trust and satisfaction in the courts.

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Appendices

Appendix 1: Distribution of Filing Methods by Party and Trial Setting

Table 1A: Cases Set for Trial 1 Time

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	22	11	8		41
	AZCLDP	4	6	5		15
	ezCourtForms	7	6	7		20
	Other/Unk		1	2	0	3
	Total	33	24	22	0	79

Table 1B: Cases Set for Trial 1 Time

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	27.85%	13.92%	10.13%		51.90%
	AZCLDP	5.06%	7.59%	6.33%		18.99%
	ezCourtForms	8.86%	7.59%	8.86%		25.32%
	Other/Unk		1.27%	2.53%		3.80%
	Total	41.77%	30.38%	27.85%	0.00%	100.00%

Table 2A: Cases Set for Trial 2 Times

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	17	3	2		22
	AZCLDP	2	2	1		5
	ezCourtForms			2		2
	Other/Unk					0
	Total	19	5	5	0	29

Table 2B: Cases Set for Trial 2 Times

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	58.62%	10.34%	6.90%		75.86%
	AZCLDP	6.90%	6.90%	3.45%		17.24%
	ezCourtForms		0.00%	6.90%		6.90%
	Other/Unk					0.00%
	Total	65.52%	17.24%	17.24%	0.00%	100.00%

Table 3A: Cases Set for Trial 3 Times

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	1				1
	AZCLDP					0
	ezCourtForms	1	1	1		3
	Other/Unk					0
	Total	2	1	1	0	4

Table 3B: Cases Set for Trial 3 Times

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	25.00%				25.00%
	AZCLDP					0.00%
	ezCourtForms	25.00%	25.00%	25.00%		75.00%
	Other/Unk					0.00%
	Total	50.00%	25.00%	25.00%	0.00%	100.00%

Table 4A: Cases Set for Trial 4 Times

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	1				1
	AZCLDP					0
	ezCourtForms					0
	Other/Unk					0
	Total	1	0	0	0	1

Table 4B: Cases Set for Trial 4 Times

		Petitioner				Total
		SSC	AZCLDP	ezCourtForms	Other/Unk	
Respondent	SSC	100%				100%
	AZCLDP					0
	ezCourtForms					0
	Other/Unk					0
	Total	100%	0	0	0	100%

Appendix 2: Results of ERC per Trial Setting

Table 5: Cases Set for Trial 1 Time

		ERC	Total
1 Trial Setting	None or Vacated	33	41.8%
	Full Agreement	1	1.3%
	Partial Agreement	40	50.6%
	No Agreement	5	6.3%
	Total	79	100.0%

Table 6: Cases Set for Trial 2 Times

		ERC	Total
2 Trial Settings	None or Vacated	19	65.5%
	Full Agreement	0	0.0%
	Partial Agreement	9	31.0%
	No Agreement	1	3.4%
	Total	29	100.0%

Table 7: Cases Set for Trial 3 Time

		ERC	Total
3 Trial Settings	None or Vacated	1	25.0%
	Full Agreement	0	0.0%
	Partial Agreement	3	75.0%
	No Agreement	0	0.0%
	Total	4	100.0%

Table 8: Cases Set for Trial 4 Times

		ERC	Total
4 Trial Settings	None or Vacated	0	0.0%
	Full Agreement	0	0.0%
	Partial Agreement	1	100.0%
	No Agreement	0	0.0%
	Total	1	100.0%

Appendix 3: Cross Comparison of ERC Results per Trial Setting

Table 9A: ERC vs. Trial Settings

		1 Setting	2 Settings	3 Settings	4 Settings	Total
ERC Result	None or Vacated	33	19	1	0	53
	Full Agreement	1	0	0	0	1
	Partial Agreement	40	9	3	1	53
	No Agreement	5	1	0	0	6
	Total	79	29	4	1	113

Table 9B: ERC vs. Trial Settings

		1 Setting	2 Settings	3 Settings	4 Settings	Total
ERC Result	None or Vacated	29.2%	16.8%	0.9%	0.0%	46.9%
	Full Agreement	0.9%	0.0%	0.0%	0.0%	0.9%
	Partial Agreement	35.4%	8.0%	2.7%	0.9%	46.9%
	No Agreement	4.4%	0.9%	0.0%	0.0%	5.3%
	Total	69.9%	25.7%	3.5%	0.9%	100.0%

Appendix 4: Reasons for Trial Continuance per Trial Setting

Table 10a: Cases Set for Trial 2 Times

Reason for Continuance	1st Setting	Total
Parties Not Prepared	17	17
Administrative	12	12
Total	29	29

Table 10b: Cases Set for Trial 2 Times

Reason for Continuance	1st Setting	Total
Parties Not Prepared	42.50%	42.50%
Administrative	30.00%	30.00%
Total	72.50%	72.50%

Table 11a: Cases Set for Trial 3 Times

Reason for Continuance	1st Setting	2nd Setting	Total
Parties Not Prepared	4	3	7
Administrative	0	1	1
Total	4	4	8

Table 11b: Cases Set for Trial 3 Times

Reason for Continuance	1st Setting	2nd Setting	Total
Parties Not Prepared	10.00%	7.50%	17.50%
Administrative	0.00%	2.50%	2.50%
Total	10.00%	10.00%	20.00%

Table 12a: Cases Set for Trial 4 Times

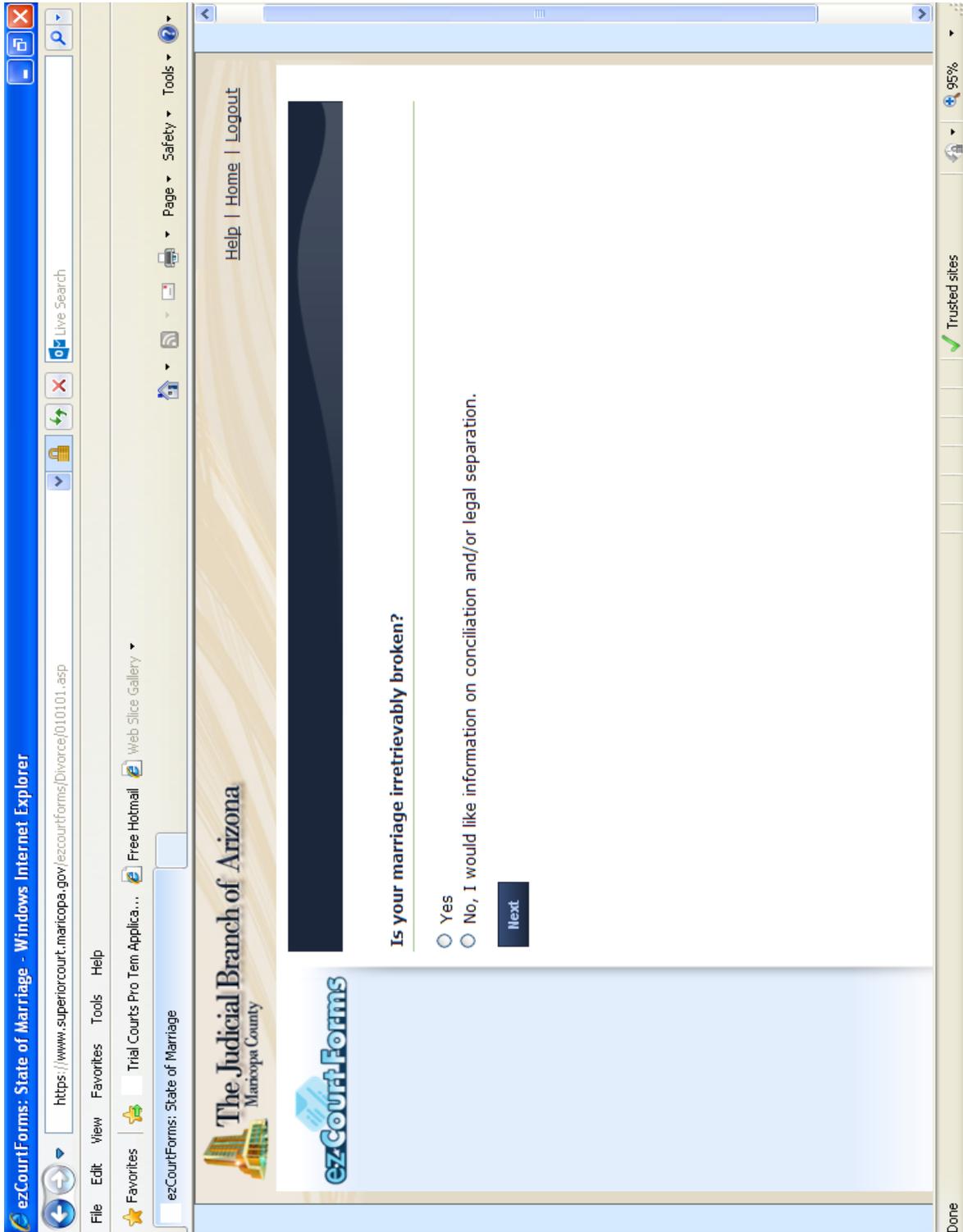
Reason for Continuance	1st Setting	2nd Setting	3rd Setting	Total
Parties Not Prepared	1	1	0	2
Administrative	0	0	1	1
Total	1	1	1	3

Table 12b: Cases Set for Trial 4 Times

Reason for Continuance	1st Setting	2nd Setting	3rd Setting	Total
Parties Not Prepared	2.50%	2.50%	0.00%	5.00%
Administrative	0.00%	0.00%	2.50%	2.50%
Total	2.50%	2.50%	2.50%	7.50%

Appendix 5: Screen Captures of the ezCourtForms Process for Filing for Dissolution

5.1: Page 1 of the Interview Process



5.2: Petitioner Personal Information Page (Page 6 of the Interview)

ezCourtForms: Petitioner - Windows Internet Explorer
https://www.superiorcourt.maricopa.gov/ezcourtforms/divorce/010205.asp
Live Search
Home Page Safety Tools
ezCourtForms: Petitioner
Web Slice Gallery

The Judicial Branch of Arizona
Maricopa County
ezCourtForms

Help | Home | Logout

Enter your personal information:

Name: First Middle Last Sr, Jr, III

Address: Street Protect Address Apt./ Unit

City State AZ Zip

Country United States Other

Contact Information

Home Phone

Work Phone

Mobile Phone

Email

Other Information

Gender Male Female

Birthdate (m/d/yyyy)

SSN

Occupation

Your Lawyer's Information

If you have a lawyer, please provide the following information:

Lawyer's Name:

Bar Number:

Next.

5.3: Questions Regarding Debts (Page 17 of the Interview)

The screenshot shows a web browser window with the following details:

- Browser Title:** ezCourtForms: Division of Debt - Windows Internet Explorer
- Address Bar:** https://www.superiorcourt.maricopa.gov/ezcourtforms/divorce/010701.asp
- Page Content:**
 - Header: ezCourtForms: Division of Debt
 - Logo: The Judicial Branch of Arizona Maricopa County
 - Navigation: Help | Home | Logout
 - Section Header: **How do you request the court order your debts be paid?**
 - Form Content:
 - The court should equitably divide the community debts and obligations of the parties.
 - Order that each party shall pay and hold the other party harmless from all debts, liens and encumbrances outstanding against or incurred to purchase the property awarded to him or her respectively.
 - Order that each party pay all debts incurred by him or her respectively since date of separation: (m/d/yyyy)
 - Order that each party be required to assume and pay one-half of all the outstanding community debts of the parties.
 - Order that the following community debts and obligations be paid as follows.
 - Button: **Next**

- Browser Status Bar:** Done

5.4: Preview of Filing

The screenshot shows a web browser window with the address bar displaying <https://www.superiorcourt.maricopa.gov/lezcourtforms/divorce/Review01.asp>. The browser's title bar reads "Review - Windows Internet Explorer". The page content includes a navigation menu with "Help", "Home", and "Logout" links. A large black banner at the top of the page reads "Interview Summary". Below this, a message states: "You have provided all the information necessary to print your paperwork." A paragraph follows: "Your responses are summarized below. Please review your responses and make any necessary changes. When you have finished reviewing your answers, click the **Preview Documents** button to preview/print your paperwork."

The page features several form sections:

- Petitioner** [edit](#)
Name: JANE DOE
Address: 123 Anywhere Street
Phoenix, AZ 85037
Home: (602) 234-5678
Work: blank
Mobile: blank
Email: blank
Gender: Female
Birthdate: 1/1/1983
Social: 123-45-6781
Occupation: Student
Lawyer: blank
- Respondent** [edit](#)
Name: JOHN DOE
Address: 123 Anywhere Street
- Prior Child Legal Decision-Making Proceeding(s):** [add](#)
No prior child legal decision-making proceeding(s) listed.
- Additional Proceeding(s):** [add](#)
No additional proceeding(s) listed.
- Person(s) Claiming Legal Decision-Making Rights:** [add](#)
No person(s) claiming legal decision-making rights listed.
- Spousal Maintenance**
Agreements: [edit](#) **No agreements.**
Arrangements: [edit](#) **No spousal maintenance should be awarded to either my spouse or myself.**

The browser's status bar at the bottom shows "Done" and "Trusted sites".

5.5: Resultant Filing and Service Instructions

DO NOT FILE THIS PAGE WITH THE CLERK

PROCEDURES: WHAT TO DO AFTER THE DOCUMENTS ARE PRINTED HOW MANY COPIES TO MAKE; WHERE TO TAKE THEM; HOW TO FILE

STEP 1: Make 2 copies of the following documents:

- Summons
- Preliminary Injunctions
- Petition for Dissolution of Marriage (Divorce)
- Notices Required by Statute (Health Insurance & Creditors Notice)

STEP 2: SEPARATE your documents into three (3) sets (Originals + 2 Sets of Copies):

SET 1 – ORIGINALS FOR CLERK OF COURT:

- *Sensitive Data Sheet*
- *Summons*
- *Preliminary Injunction*
- *Petition for Dissolution of Marriage*
- *Notices Required by Statute*

SET 2 – COPIES FOR SPOUSE:

- *Summons*
- *Preliminary Injunction*
- *Petition for Dissolution of Marriage*
- *Notices Required by Statute*

SET 3 – COPIES FOR YOU:

- *Summons*
- *Preliminary Injunction*
- *Petition for Dissolution of Marriage*
- *Notices Required by Statute*

STEP 3: TO FILE YOUR PAPERS, GO TO THE CLERK OF THE COURT FILING COUNTER at any of the following Superior Court locations, between 8:00AM and 5:00PM, Monday-Friday:
Central Court Building, 201 West Jefferson, 1st Floor, Phoenix, AZ 85003
Southeast Court Complex, 222 East Javelina Drive, 1st Floor, Mesa, AZ 85210
Northwest Court Complex, 14264 W. Tierra Buena Ln., Surprise, AZ 85374
Northeast Court Complex, 18380 N. 40th St., Suite120, Phoenix, AZ 85032

FEES: There will be a filing fee for this petition. Go online to <http://clerkofcourt.maricopa.gov/fees.asp> or the Self-Service Center for a list of current fees. You may request a fee deferral (a delayed payment plan) for the filing fees – and the service fees if you intend to use the Sheriff's Office for service.
 The Self-Service Center and the Filing Counter have the free deferral application forms.

PAPERS: Hand all three (3) sets of your court papers to the Clerk along with cash, check or a Money Order for the filing fee. **MAKE SURE YOU GET BACK FROM THE CLERK:**
 Your set of copies and your spouse's set of copies.

STEP 4: **SERVE THE PAPERS ON THE OTHER PARTY.** Different methods are required depending on whether the other party is willing to sign an Acceptance of Service, is not in Arizona, location unknown, etc. The Self Service Center's Service packets explain how to serve in various situations. File proof of service with the Court as soon as the Respondent is served.

Appendix 6: Sample Pages from the Self-Service Center Packet for Dissolution

6.1: Instructions Page 1 of 6

SELF-SERVICE CENTER

INSTRUCTIONS: HOW TO FILL OUT "PETITION FOR DISSOLUTION OF MARRIAGE (DIVORCE) -- WITHOUT MINOR CHILDREN" PAPERS

DOMESTIC VIOLENCE:
Domestic violence can be part of any marriage. Domestic violence includes **physical violence**, such as hitting, slapping, pushing or kicking, **OR threats** of physical violence, directed against you and/or your child(ren). Domestic violence also includes **verbal abuse** used to control you and/or your child(ren).

Court documents request your address and phone number. If you are a victim of domestic violence, and you do not want your address to be known in order to protect yourself or your children from further violence, you must file a "**Petition for an Order of Protection**" and ask that your address not be disclosed on court papers. With that Order, you do **not** need to put your address and phone number on your divorce papers, just write "protected" in the space where the court asks you for this information. You must tell the Clerk of the Court your address and phone number as soon as possible.

FAMILY COURT / SENSITIVE DATA COVER SHEET
(All Forms: TYPE OR PRINT IN BLACK INK)

- Write in the information requested about the petitioner, and the respondent.
- **DO NOT INCLUDE MAILING ADDRESS ON THIS FORM IF REQUESTING ADDRESS PROTECTION.**
- **Case Type:** Mark only one box that matches the legal procedure for which you are filing the documents in this packet: **Dissolution (Divorce).**
- **Interpreter:** Check "yes" or "no" to indicate whether an interpreter is needed. If "yes", write in what language(s).
- **No additional copies needed. Do NOT serve this document on the other party.**

SUMMONS AND PRELIMINARY INJUNCTION:
Fill in the following information: Your name; street address (if not protected); city, state and zip code; telephone number; ATLAS number; Attorney Bar Number if you are represented by an attorney; then check the box to say whether you are representing yourself or not. Then print the name of Petitioner (your name); name of Respondent (your spouse's name). You will have an ATLAS number **ONLY** if you receive, or have received, AFDC or other public benefits for the children who are common to you and your spouse. **DO NOT** fill out the rest of the form, except on Page 2 of the "**Preliminary Injunction**" where you must provide a description of the other party. The Clerk of Court will complete it later.

"PETITION FOR DISSOLUTION OF MARRIAGE (DIVORCE) WITHOUT MINOR CHILDREN"

A. Use this form **ONLY** if you are getting a divorce and there are no children under the age of 18, common to you and your spouse, whether by birth or adoption, **AND** you do **not** have a "covenant" marriage. Make sure your form is titled "**PETITION FOR DISSOLUTION OF MARRIAGE (DIVORCE) WITHOUT CHILDREN.**"

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Page 1 of 6

DRDA10I-041110

6.2: Personal Information Page

Person Filing: _____
Address (if not protected): _____
City, State, Zip Code: _____
Telephone: _____
Email Address: _____
ATLAS Number: _____
Lawyer's Bar Number: _____



Representing Self, without a Lawyer or Attorney for Petitioner OR Respondent

**SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY**

Case Number: _____

Name of Petitioner

**PETITION FOR DISSOLUTION OF
MARRIAGE (DIVORCE)
WITHOUT MINOR CHILDREN**

AND

Name of Respondent

STATEMENTS TO THE COURT, UNDER OATH OR AFFIRMATION

1. INFORMATION ABOUT ME, THE PETITIONER

Name: _____
Address: _____
Date of Birth: _____
Job Title: _____
Starting with today, number of months/years in a row you, the Petitioner, have lived in Arizona. _____

2. INFORMATION ABOUT MY SPOUSE, THE RESPONDENT

Name: _____
Address: _____
Date of Birth: _____
Job Title: _____
Starting with today, number of months/years in a row the Respondent has lived in Arizona. _____

3. INFORMATION ABOUT MY MARRIAGE

Date of Marriage: _____
City and state or country where we were married: _____

The following statements **MUST BE TRUE** for you to use this document and to qualify for divorce in Arizona **AND you must check the boxes** to indicate that the statements are true or your case may not proceed.

- We do not have a covenant marriage (if not sure, refer to the INSTRUCTIONS for information).
- Our marriage is broken beyond repair ("irretrievably broken") and there is no hope of reconciliation.
- We have tried to resolve our problems through Conciliation Services or going to Conciliation Services would not work.

4. 90 DAY REQUIREMENT

I OR my spouse have lived, or have been stationed while a member of the Armed Forces, in Arizona for at least 90 days before I filed this action. (WARNING: If this statement is not true, you cannot file for a divorce until it becomes true.)

6.3: Questions Regarding Property and Debts

Case No. _____

Make: _____ Year: _____
 Model: _____
 VIN: _____
 Lien Holder: _____

Petitioner	Respondent	Value
<input type="checkbox"/>	<input type="checkbox"/>	\$ _____

5.b. SEPARATE PROPERTY. (Check all boxes that apply.)

- I **do not** have any property, or separate property, that I brought into the marriage.
- My spouse, the Respondent, **does not** have any property, or separate property, that he/she brought into the marriage.
- I **do** have property, or separate property, that I brought into the marriage. I want this property awarded to me as described below.
- My spouse, the Respondent, **does have** property, or separate property, that he/she brought into the marriage. I want this property awarded to my spouse as described below.

Separate Property: (List the property and the value of the property, and check the box to tell the court who should get the property.)

Description of Separate Property	Petitioner	Respondent	Value
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____

6.a. COMMUNITY DEBTS: (check one box)

- My spouse and I **did not** incur any community debts during the marriage, **OR**
- My spouse and I **did** incur community debts during the marriage and we should divide the responsibility for these debts as follows:

DESCRIPTION OF DEBT	Petitioner	Respondent	Amount Owed
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____

6.b. SEPARATE DEBTS. (Check all boxes that apply.)

- My spouse and I **do not** have any debt, or separate debt, that were incurred prior to the marriage.
- I **do** have debt, or separate debt that I incurred prior to the marriage, that should be paid by me as described below.
- My spouse **does** have debt, or separate debt that he/she incurred prior to the marriage, that should be paid by my spouse as described below.

DESCRIPTION OF DEBT	Petitioner	Respondent	Amount Owed
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
_____	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____