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## Access to Justice in Idaho

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# Access to Justice in Idaho

Frances H. Thompson

## **Abstract**

This Article addresses the efforts made by the Idaho Court Assistance Office Project to increase access to the Idaho court system. The Article discusses the Project's goals of addressing concerns over plain English forms and brochures, pro bono legal and paralegal services, and equipment and technology needs. It describes the four primary models used by the Project in assisting pro-se litigants.

# ACCESS TO JUSTICE IN IDAHO

*Frances H. Thompson\**

Idaho's Court Assistance Office Project started operations in July 1999. The project is overseen by a standing committee of the supreme court known as the Committee to Increase Access to the Courts. When it chose program goals, the committee consulted the *Survey of Pro Se Litigation and Staff Assistance* by the American Judicature Society /Justice Management Institute,<sup>1</sup> as well as a report on pro se litigants in Idaho family law cases.<sup>2</sup> In the hope of making the Idaho court system more accessible, the Project has been charged with addressing the recommendations of the report concerning plain English forms and brochures, pro bono legal and paralegal assistance, and equipment and technology needs.

Rather than create new forms and informational brochures, the Project collected and reviewed existing state law related materials. Brochures were purchased in bulk from various agencies and disseminated in all forty-four of Idaho's counties. Permission to use specific forms was obtained from the authors. Forms authored by the Idaho Volunteer Lawyer's Program, however, were made available through cooperative workshops.<sup>3</sup>

The Project tried four different staffing models to determine the most effective method of assisting pro se litigants.<sup>4</sup> In two small

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1. JONA GOLDSCHMIDT ET AL., AM. JUDICATURE SOC'Y/JUSTICE MGMT. INST., *MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS* (1998). The project was created through consultations with the Idaho State Bar, the Idaho State Law Library, the Idaho Department of Health and Welfare, the Idaho Volunteer Lawyers Program, Idaho Legal Aid Services, the Domestic Violence Council, state judges, trial court administrators, and private attorneys.

2. LAZARUS STRATEGIC SERV., *REPORT ON SURVEY OF IDAHO COURT USERS* (1999).

3. Volunteer attorneys earn CLE credit learning how to conduct an educational workshop. The Project schedules the workshop and supplies all the materials. Applicants who exceed the Idaho Volunteer Lawyer's Program income criteria, less than 125% of the federal poverty line, can participate for a fee (\$50.00 if the income is between 125%-200% of the federal poverty line and \$100.00 if the income is over 200%), which is offered to the presenting attorney. Attorneys who participate in the workshops have, to date, rejected all offered fees, donating their services in support of the Idaho Volunteer Lawyer's Project and the Court Assistance Office Project.

4. CLERK OF THE DIST. COURT MANUAL AND TRAINING COMM., *CLERK OF THE DIST. COURT MANUAL* (2001), available at [www2.state.id.us/judicial/clerkman.pdf](http://www2.state.id.us/judicial/clerkman.pdf).

counties with supportive local judges, part-time court clerks were given court assistance office functions along with their regular duties. In a medium sized county, a half-time attorney was hired as an independent contractor to provide services and coordinate law student volunteers. In a large county, a full-time paralegal with court clerking experience was employed. In a ten-county judicial district, two independent contractors, one an attorney and the other a court interpreter, were hired part-time. All assistance was provided in a location outside the court clerk's office.

To provide better pro se legal services, both the Idaho Volunteer Lawyers Program and Idaho Legal Aid Services increased the number and frequency of their default divorce workshops. The Project has linked with both agencies to manage initial case intake and screen referrals. The goal is one-stop shopping, so patrons will not spend unnecessary time contacting agencies that are unable to provide services. Each Court Assistance Office has a list of the case qualifications for each Legal Aid Services office, as well as the Volunteer Lawyer's Program.<sup>5</sup> Each office also has referral lists with the contact information, practice areas, and hourly rates of interested private attorneys. In addition to providing referrals for legal services, the Project provides references to local social service agencies that may benefit patrons. Finally, the Idaho State Bar has started a Modest Means Program that links the working poor<sup>6</sup> with a reduced fee<sup>7</sup> attorney for a \$15.00 application fee. If no match can be found, the fee is refunded. In addition to providing referrals for legal services, the Project provides references to local social service agencies that may benefit patrons.

Court assistance officers are authorized to help patrons with the information needed to complete the forms and assist them with formatting issues. A Project website was developed to offer forms, instructions, and referral information,<sup>8</sup> and each Court Assistance

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5. The Volunteer Lawyers Program will assist with civil cases regarding hardship bankruptcy, debt collection, child custody, support and visitation modifications, divorce and custody modifications, divorce, guardianship, limited immigration situations, certain non-profit situations, and wills. Each Legal Aid Service office serves qualifying low income Idaho residents in areas such as domestic violence, elder law, fair housing, health, landlord/tenant, protection orders, and public housing. The Idaho Legal Aid Services website is [www.idaholegalaid.org](http://www.idaholegalaid.org).

6. Defined as 125%-200% of the federal poverty guidelines. Annual Update of the HHS Poverty Guidelines, 66 Fed. Reg. 10,695 (Feb. 16, 2001).

7. Lawyers who accept referrals from the Modest Means Program agree to charge no more than \$55.00 per hour or a predetermined reduced flat fee.

8. The Idaho Court Assistance Office Project website is <http://www2.state.id.us/cao>.

Office was outfitted with a computer for patron and staff use. Officers do not prepare forms for patrons, but they may provide typing services for impaired individuals.<sup>9</sup>

Evaluation has been a key component of the Project since its inception. The Justice Management Institute conducted the first six-month pilot project evaluation.<sup>10</sup> The three largest Project offices also had local oversight committees that were kept abreast of problems and successes at each location. At the end of the pilot project, none of the offices were earmarked for closure. The medium sized office expanded considerably due to increased caseload. The district-wide office was reduced to a staff of one attorney who provides all services. An ongoing evaluation component was adopted, and a new instrument was created to survey those referred to each office.

The original goal of the Project was to link every pro se litigant to an attorney. The Project evolved, however, when it became obvious that the demand for attorneys exceeded the supply.<sup>11</sup> This lack of resources is partially due to the fact that most Idaho attorneys live in more heavily populated cities and towns, leaving rural residents far from legal help. Another reason for the scarcity is that many attorneys do not practice the kinds of law that are useful to the self-represented. This scarcity is particularly noticeable in landlord/tenant matters and family law cases such as divorce, custody, visitation, and support disputes, where eighty percent of respondents are self-represented.<sup>12</sup> As the Justice Management Institute's evaluation of the pilot project noted, "[T]here simply are not enough attorneys to meet the need of litigants who need assistance" in these areas.<sup>13</sup>

Conflict of interest rules also pose a problem when linking attorneys with pro se litigants. In keeping with the applicable Rules of

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9. *Id.*

10. GINGER M. KYLE ET. AL., JUSTICE MGMT. INST., HELPING SELF-REPRESENTED LITIGANTS IN IDAHO: AN EVALUATION REPORT ON THE IDAHO COURT ASSISTANCE OFFICE PROJECT (2000).

11. The seventh district model required substantial revision due to an initial limitation on services provided. At inception, the seventh district court assistance offices were only allowed to provide referrals to attorneys, to pro bono or reduced fee attorneys, and to Legal Aid Services or the Volunteer Lawyer's Program. The limited attorney resources were soon overwhelmed by the caseload, and the officers expanded service to provide approved forms to patrons through self-supporting workshops. *Id.*

12. LAZARUS STRATEGIC SERVS., *supra* note 2, at 3.

13. KYLE ET AL., *supra* note 10, at 6.

Professional Conduct,<sup>14</sup> an attorney can only serve one party in an adversarial court proceeding. In small communities, which may have only one lawyer, the first party to seek an attorney's advice can effectively prevent the other party from retaining local counsel. It is also not uncommon for both parties to meet the income qualifications for Legal Aid and Volunteer Lawyer's Program assistance, but for only one party to obtain representation due to differences in processing time. The processing time for Volunteer Lawyer's Program applications is longer than that of Legal Aid applications. Because the Volunteer Lawyer's Program and Legal Aid cannot represent opposite sides of the same case,<sup>15</sup> sometimes a party seeking representation by a pro bono Volunteer Lawyers Program attorney will lose the opportunity to be represented because the other party obtained Legal Aid representation first.

Another reason pro se litigants are often not linked with an attorney is that thirty-one percent of pro se litigants choose to go it alone after consulting counsel.<sup>16</sup> Although some pro se litigants choose self-representation out of economic necessity,<sup>17</sup> many are advised by private attorneys that their case is simple enough for them to handle themselves. Others are told that there is no contested issue in their case and hence no need for representation.

One Project goal is to reduce the number and duration of contested court appearances by the self-represented and the number of continuances in cases involving self-represented litigants. The Project has forms that allow parties to enter into stipulation agreements in family law cases and divorce proceedings.<sup>18</sup> The forms also allow joint applications for court orders, which are accepted in many counties on a judge-by-judge basis.<sup>19</sup> The pre-Project Lazarus survey found that fifty-three percent "of those using an attorney were involved in a case that went to court," while seventy-six percent "of those representing themselves went to court."<sup>20</sup> The Project has successfully moved these numbers closer to parity and reduced the number of court appearances in cases involving attor-

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14. IDAHO RULES OF PROF'L CONDUCT R.1.7(a) (2001) (prohibiting the representation of a client if such representation "will be directly adverse to another client").

15. A policy decision that may need to be reevaluated.

16. LAZARUS STRATEGIC SERV., *supra* note 2, at 2.

17. Seventy percent of those served by the Court Assistance Office Project earn less than 125% of federal poverty guidelines income.

18. Such forms are available at <http://www2state.id.us/judicial/clerkman.pdf>.

19. *Id.*

20. LAZARUS STRATEGIC SERVS., *supra* note 2, at 3.

neys, particularly in regions accepting the joint application procedure.

Judges and court staff report that pro se litigants using some Project service are generally better prepared, in terms of paperwork and understanding their role, than litigants in the pre-Project past and those who do not use any Project services.<sup>21</sup> As a result, some judges in counties with a Court Assistance Office have begun to require that all self-represented litigants have their forms checked by the Office before submitting them to a judge. The Court Assistance Office review helps ensure that the filed document has been properly prepared and is logically consistent. Moreover, if the self-represented litigant requests relief that requires a high burden of proof, the Court Assistance Office will offer resources to help educate the litigant about the heightened burdens. The pro se litigant, for example, who wants sole legal and physical custody of a child, as well as a regular schedule of child contact with the other parent, will be told not only that these requests are logically inconsistent, but that Idaho has a presumption in favor of joint legal and physical custody.<sup>22</sup> The court may order any combination of legal and physical custody that it feels is justified,<sup>23</sup> but the party seeking relief must explain why the presumption should not control.<sup>24</sup> When the pro se litigant reads the provided paperwork and realizes that a parent without legal and physical custody is restricted in both access to the children and in providing consent to medical care, education, and so forth, s/he often will change her allegations and request relief consistent with the statutory presumption, with specific practical terms outlining both the limits of the other parent's consent authority and access. Such changes often make the other parent willing to agree to the proposed order. Some might argue that the self-represented party has given up a right to pursue an available remedy. A more apt conclusion is that s/he has exercised an informed choice in altering the requests and allegations.

The Project also provides legal assistance on-line. With the cooperation of the Idaho State Law Library and the Idaho Public Library System, on-line legal services are available. The Idaho

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21. KYLE ET AL., *supra* note 10, at 2-3.

22. IDAHO CODE § 32-717B(4) (Michie 2000) (providing that "absent a preponderance of the evidence to the contrary, there shall be a presumption that joint custody is in the best interest of the child").

23. IDAHO CODE § 32-7171A (Michie 2000) (providing that the court may determine the terms of custody "as may seem necessary and proper in the best interest of the child" based on many factors).

24. IDAHO CODE § 32-717B(4) (Michie 2000).

State Law Library has hired a trained research librarian who summarizes those legal resources most useful for the self-represented, develops research guides for non-attorneys, and answers telephone inquiries. The Idaho Public Library System provides internet access at every Idaho library, and the librarians of both the legal and public library systems have been notified of the Project's website. Although some Idahoans live and work far from law libraries and attorneys, most have access to a public library. The Idaho Public Library System, in conjunction with the Idaho State Law Library, is engaged in an effort to inventory Idaho's law related library holdings, weed out useless publications, and determine what gaps need filling.

The committee that oversees the Project is also linked with the Idaho Law Foundation and the Idaho Volunteer Lawyer's Program, which staff a toll-free legal resource line available by referral from the Court Assistance Offices. A patron in need of legal advice can call and leave a first name, telephone number, and legal question, and a staff attorney will return the call with advice on the issue. The staff attorney will not, however, conduct exhaustive research on behalf of a patron. Although the service was established to provide advice, the staff attorney found that many callers merely seek information. To make the service more efficient, the attorney developed a series of answers to frequently asked questions (FAQs) that are available at each CAO.

One positive outgrowth of the Project is the Standard Family Law Forms Subcommittee charged by the supreme court with evaluating the feasibility of a uniform set of family law forms and making recommendations for the court's review.<sup>25</sup> The subcommittee first met in 2000 and determined that it was feasible to create a set of uniform family law forms for the self-represented. The subcommittee has met regularly since then to develop a simple set of forms and instructions to meet the needs of about ninety percent of pro se litigants. While the subcommittee realizes that not all cases fit a single mold, it is striving to create a set of forms for the most common set of facts. As with the Project forms currently in use, the subcommittee plans to recommend that standard family law forms be implemented for a six-month review period and finalized thereafter if appropriate. As the forms are adopted, they will be forwarded to the Project offices and the Project's website so that their trial period can begin.

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25. Order creating Standard Family Law Forms Subcommittee (2000).



In 2001, the Idaho legislature enacted section 32-1402(5), I.C., establishing court assistance officers as part of the family services system in Idaho courts.<sup>26</sup> The legislature also appropriated matching funds to support the Court Assistance Offices in each of Idaho's seven judicial districts. Every judicial district in the state now has at least one Court Assistance Office. Additionally, in some parts of the state, court clerks have been provided with the existing standard forms and are making those forms available at their offices. Over time, the Committee to Increase Access to the Courts expects the court assistance officers in each district to extend services to all of the state's outlying counties, either by directly providing services or by training court staff to provide services.

The Justice Management Institute's evaluation recommended that the committee develop plans to train Project staff and others involved in assisting pro se litigants.<sup>27</sup> To address this need, the committee created the position of deputy director of the Court Assistance Office Project. Regular meetings of the Project staff have also been scheduled to exchange information about policies and practices<sup>28</sup> and to identify the most effective practices.<sup>29</sup> A *Training Curriculum and Reference Guidebook on Public Service for Court Assistance Officers* was completed in July 2000,<sup>30</sup> with funds from a State Justice Institute grant. The *Guidebook*, together with materials from the National Conference on Unbundled Legal Services, held in Baltimore in 2000, provided the basis for a Project presentation to help court clerks distinguish between legal information and legal advice and outline the services available at Court Assistance Offices. The *Guidebook* is continually updated as the Project develops and new materials are created. A list of what court clerks can and cannot do has been developed and circulated for state-wide use as a posted sign and hand-out to litigants. This listing is modeled after those developed by other court systems, but

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26. This addition came about in large part through the recommendations of *State-wide Court Assessment: Children and Families in the Idaho Courts*, a report submitted to the Idaho Supreme Court in 2000 by Hildegard Ayer and Jeffrey Kuhn. A brief overview of the report's recommendations can be found in *IDAHO COURTS SUMMIT ON CHILDREN AND FAMILIES: PROGRAM SUMMARIES (2000)*, available at <http://www2.state.id.us/judicial/summarie.pdf>.

27. KYLE ET AL., *supra* note 10, at 6.

28. *Id.*

29. *Id.*

30. COURT ASSISTANCE OFFICE PROJECT, IDAHO SUPREME COURT, TRAINING CURRICULUM AND REFERENCE GUIDEBOOK ON PUBLIC SERVICE FOR COURT ASSISTANCE OFFICERS (2000).

has been adapted for Idaho courts. It will be inserted in the next revised *Clerk of District Court Manual*.

Technology initiatives continue to develop. The Project's website is constantly revised to make it more user friendly, update information, and keep the forms current. Many Project services are now available on-line and others are in development.<sup>31</sup> A web-based program for preparing domestic violence civil protection order forms is scheduled for development. The goal is to provide an on-line application where potential litigants answer a series of questions from which the program generates applicable forms. Discussions are also ongoing about creating a consolidated set of standard forms, so potential litigants will not have to enter redundant information.

Project creators had hoped that the Court Assistance Office's Pilot Project would identify which models of service were most effective. The Justice Management Institute's evaluation, however, provided no simple answer to the staffing question. The Institute found that although the available data does not permit meaningful comparison,<sup>32</sup> the staffing models at each court assistance office were appropriate for the level of client volume and the specific needs at that office.<sup>33</sup> The staff positions that have not changed are the two part-time court clerk positions and the full-time paralegal, although the paralegal is now providing district-wide services by training court clerks. The medium county attorney expanded from one-half to three-quarter time to handle increasing case volume and is also providing district wide service through telephone and electronic contacts. For this judicial district to continue to offer the level of service it currently does, the Court Assistance Office must continue to expand, or a second must be opened. A second Court Assistance Office is in the works, but is not yet open. The original district-wide program was reduced to a staff of one, an attorney who "rides circuit" in response to needs throughout the ten county district.

The Justice Management Institute report specifically recommended hiring an attorney or paralegal whose sole responsibility is the Court Assistance Office,<sup>34</sup> rather than assigning office duties as an add-on to an existing job. This recommendation has been followed in the legislative expansion of the project to each judicial

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31. Court Assistance Office statistics, at [www2.state.id.us/wt/caostats.htm](http://www2.state.id.us/wt/caostats.htm).

32. KYLE ET AL., *supra* note 10, at 6.

33. *Id.*

34. KYLE ET AL., *supra* note 10 at 38.

district. We have also learned that not just any attorney or paralegal will be acceptable. The individual chosen for the job must be familiar with the culture of the courthouse in which s/he will work and the surrounding area; community contacts and stature are as important to program success as professional credentials.

As previously mentioned, a new dispersion model has been developed. Standard forms and printed instructions are available at each courthouse in the district and a professional "lead" officer has trained the court clerks to provide information about completing the forms. Questions that cannot be answered at the court clerk's office are referred to the lead officer. This model grew out of a scheduled vacation for the officer. Court clerks volunteered to be trained to provide Court Assistance Office Project services rather than have the program shut down while the officer was unavailable. It will be interesting to see if this new model is effective.<sup>35</sup>

Evaluation remains a key element of the project. The Idaho legislature recognized the importance of the evaluation component by requiring a full report of project operations to be submitted to the governor and legislature at the outset of each legislative session. Intake forms are provided to each patron at each physical office visit and accompany all mailings. These forms not only gather demographic information, but also identify the type of case and the services provided by the Court Assistance Office. Intake information is furnished to the Project director on a monthly basis so trends can be identified and addressed. Court assistance offices also furnish a customer satisfaction survey to each patron and completed surveys are tabulated centrally. In addition, the committee also uses information from the court's file management program to gather case statistics.

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35. Although this is a new model for the Court Assistance Office Project, it is not new to the state. In counties where judges have been supportive, form packets have been developed which are distributed at the court clerk's office. The Standard Family Law Forms Subcommittee has been reviewing these packets as part of its work on uniform forms.

