REPORT from the

OJD/OSB TASK FORCE on FAMILY LAW FORMS and SERVICES

Oregon State Bar

February 2011

OJD/OSB Task Force on Family Law Forms and Services

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EXECUTIVE SUMMARY

Oregonians now represent themselves in Family Court in 67%-86% of the cases filed. Given the huge demand for legal help in family law matters that nonprofit law firms and the private bar cannot meet, access to justice efforts the last 10 years have concentrated on the statewide availability of model family law forms and procedural assistance from courthouse facilitators. Now, budget cutbacks have led to reductions in existing court services and stalled planning efforts focused on self-representation. The next critical step is nevertheless clear: a transition from hard-copy, fill-in the-blank forms to a user-friendly, online document assembly service that guides litigants though branching questions to produce forms that can be printed out or filed electronically (a la TurboTax©). Redirecting litigants who can easily access, navigate, and file family law court forms online should produce operational savings and preserve diminishing court and community resources for the most needy family law litigants. The only question for justice planners is whether the Courts or Bar, each substantially invested in access to justice, will take the lead on this initiative.

A Task Force appointed jointly by the Oregon Supreme Court Chief Justice Paul DeMuniz and Oregon State Bar President Kathleen Evans recommends that the Oregon Judicial Department (OJD) take the lead. However, if OJD's eCourt sponsors cannot commit to beginning development of the forms by the end of 2011, the Oregon State Bar (OSB) should instead promptly assume the leadership role but collaborate with OJD on technology and practice requirements. Determining whether and what to charge litigants for use of the electronic interactive format is a key question and involves careful consideration of both what constitutes a sustainable business model with staff support and the situation of low-income litigants qualifying for court fee waivers and deferrals. Prefatory work can and should begin immediately on prioritizing which family forms should be available in the interactive format. The State Court Administrator's Family Law Advisory Committee should undertake this effort with the OSB Family Law Section and jointly work other stakeholders to produce recommendations regarding courthouse facilitation delivery models that maximize both court efficiencies and family law access. Expanding the delivery of *pro bono* and unbundled legal services is a component of this access effort and the area of child support calculation assistance may merit particular focus. Finally, the OSB Family Law Section should convene an OSB/OJD workgroup to examine statutes, rules, and forms that unduly complicate legal matters for self-represented family law litigants.

OJD/OSB TASK FORCE ON FAMILY LAW FORMS AND SERVICES

RECOMMENDATIONS

February 2011

1. OJD should take the lead in developing and maintaining model family law forms for use in Oregon trial courts. If funding or other issues prevent OJD from committing to this role by August 2011 and commencing action on the development of interactive electronic formats by January 2012, OSB should promptly assume the leadership role but collaborate with OJD on technology and practice requirements.

2. OJD should ensure by rule or other administrative action that the model family law forms are accepted in all Oregon trial courts.

3. OJD (or OSB if it assumes the lead role), should provide adequate legal staffing and clerical support for coordinating the development, maintenance, and revision of the model forms.

4. Model family law forms should be provided in an interactive electronic format that integrates with the developing eCourt platform. Forms determined not suitable for interactive formats should be offered in fillable Portable Document Format (PDF). Forms and supportive material should follow standard plain language principles and achieve as closely as possible an eighth grade readability level.

5. Due to access-to-justice implications, the determination of whether to charge the public for use of the electronic interactive format, separate from filing fees, should involve careful consideration of the situation of low-income litigants. If OJD develops the forms and determines that nominal fees are necessary to develop and maintain the on-line document assembly service, consideration should include a tiered model that accommodates individuals with fee waivers and deferrals. Fees for these individuals should be based only on a cost-recovery goal for the forms and document assembly services provided by OJD and its vendor.

6. The Statewide Family Law Advisory Committee (SFLAC) should recommend prioritization of forms for development on interactive formatting, considering case volume, litigant needs, and other relevant criteria. The SFLAC should involve the private bar, eCourt and other OJD staff, and other stakeholders such as non-profit legal services providers and public and law librarians in the process.

7. The following issues should be considered in development of interactive forms:

- integration with e-filing functionality
- Interface using a standard web browser
- ability to extract data for vital records and other statistical needs
- adaptability to both self-represented users and attorneys
- inclusion of a preliminary or internal diagnostic to determine appropriateness of particular form for the individual user
- automatic data validation
- support for electronic prompts for instructions
- ability of users to save work for later completion
- clarity for users regarding data security and data retention
- maximized capacity of local administrator (OJD or OSB) to make minor revisions
- capacity to provide interactive service in l languages other than English

8. The website hosting the interactive forms should

- use a secure portal
- state clearly what entity is providing and hosting the service
- provide access to explanatory material and instructions throughout the interactive interview process and specific to particular points therein
- include links to other resources for legal information and assistance

9. OJD should make every effort to maintain court facilitation programs at the maximum level of service possible, recognizing that facilitator roles are likely to change after implementation of interactive forms. OJD should evaluate imposition of a user-fee for facilitation appointments only if necessary and effective to support continuation of the programs and their training needs. The SFLAC should make recommendations to the State Court Administrator regarding facilitation delivery models maximizing both court efficiencies and family law access for courts facing additional cutbacks in this access.

10. OSB, non-profit legal services providers, and the Division the Division of Child Support of the Oregon Dept. of Justice should continue efforts to expand information about, and delivery of, unbundled legal services and *pro bono* assistance. Child support calculation assistance is one area of potential focus.

11. The Family Law Section of the OSB should convene an OSB/OJD workgroup to identify and make recommendations eliminating or revising statutory and regulatory forms and procedures that unduly complicate legal matters for self-represented family law litigants.

I. Origin and Charge of the Task Force

During the decade between 1997 and 2007, Oregon courts developed a two-fold approach in response to the high number of family law cases involving litigants without lawyers.[1] Facilitation programs providing procedural assistance were implemented at courthouses and many model family law forms were prepared for public use, available both at the courthouses and on-line. In 2007, the State Family Law Advisory Committee completed a report suggesting specific areas for additional planning.[2] Seven proposals were made with the dual goals of improving both access to justice for self-represented parties and effective court management of cases involving self-representation. Central among the SFLAC recommendations was the development of user-friendly, electronically-interactive forms. Planning for Oregon eCourt was proceeding at the State Court Administrator's Office on a track parallel to the SFLAC's self-representation planning and also envisioned the eventual development of interactive forms in several areas of the law.

Since 2007, however, significant budget reductions precipitated by the poor economy have stalled energy and funding for both interactive forms and broader self-representation planning. Moreover, some local courts have eliminated or reduced their facilitation programs to preserve resources. Simultaneously, the court's partners in the access to justice community have continued to struggle with the high unmet demand for family law legal services. The poor economy has placed additional stress on this challenge. In addition, given the enormous public need for family law help, concern has arisen that market-minded entrepreneurs may soon preempt access-oriented,

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[1] Although data collected from the Oregon Judicial Information Network (OJIN) both under-reports and over-reports the rate of self-representation due to a variety of reasons, the most recent information available indicates that at least 67% and as high as 86% of family law matters involve at least one self-represented party. Oregon data indicates that both sides are self-represented in approximately 49% of family law filings. *Analysis of Domestic Relations Cases Having At Least One Pro Se Party, Office of the State Court Administrator,* Analysts Giordano and Yetter (February 1, 2005); Update by Analyst Giordano in January 2008. Task Force members found that surrounding states report similar rates of self-representation.

[2] "*Self-Representation in Oregon's Family Law Cases: Next Steps*," September 2007, available at http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/FINALReportonSelfRepresentation9-6-07.pdf. The SFLAC is a statutorily created entity appointed by the Chief Justice of the Oregon Supreme Court and advises the State Court Administrator. ORS 3.436.

quality-focused legal planners by selling web-based interactive Oregon family law court forms for profit.

It was against this backdrop that the Self-Representation Subcommittee of the SFLAC recommended a joint Bench-Bar collaboration. In December 2009, Chief Justice Paul DeMuniz of the Oregon Supreme Court and Oregon State Bar President Kathleen A. Evans each appointed six persons to a Task Force on Family Law Forms and Services. The charge of the Task Force was to:

- Review recommendations from the 1999 report of the Oregon Family Law Legal Services Commission[3]
- Assess the status of current Oregon initiatives regarding family law court forms and services for self-represented litigants
- Examine evolving technology and analyze potential resources and collaborations and
- Develop recommendations for the Oregon Judicial Department and the Oregon State Bar, identifying priorities and strategies for maintaining and improving forms and services.

II. The Task Force's Composition and Work

Appointments were made to the Task Force in March 2010 from the various constituencies most commonly encountering self-represented family law litigants. In addition to judges, attorneys, courthouse facilitators, and court administrators, representatives were identified from law libraries, access to justice groups, and the Oregon Child Support Program (CSP). The CSP provides support enforcement services to over 250,000 mostly low- and middle-income Oregon families on its paternity and child support caseload. Chief Justice DeMuniz appointed:

- Nancy Cozine, Deputy Trial Court Administrator in Multnomah County;
- Sue Gerhardt, Family Court Coordinator in the Washington County Circuit Court;
- Nancy Lamvik, Trial Court Administrator in Newport County;

[3] This group was created by the 1997 Oregon Legislature to evaluate and report on how courthouse facilitation and unbundled legal services might enhance the delivery of family law legal services to low- and middle-income Oregonians.

- Elizabeth Vaughn, Family Court Facilitator in the Clackamas County Circuit Court; and
- Hon. Charles Zennaché, Circuit Court Judge in Lane County.

OSB Bar President Kathleen Evans appointed:

- Jean Fogarty, Director, Oregon Child Support Program, Oregon Department of Justice;
- Karen Lord, member of the OSB Board of Governors Access to Justice Committee;
- Mitzi Naucler, President-Elect, OSB President; Member, Access to Justice Committee;
- Martha Renick, Marion County Law Librarian; and
- Anthony Wilson, Portland attorney and OSB Family Law Executive Board representative.

The Honorable Maureen McKnight, Multnomah County Circuit Court Judge and Chair of the SFLAC Subcommittee on Self-Representation, and Michael Fearl, a Portland attorney who is a member of that subcommittee, were named as Co-Chairs. Kay Pulju, Communications Director for the Oregon State Bar, provided staffing. The OSB also provided meeting facilities at its Tigard office.

The chairs also invited other interested persons to participate in discussions: representatives of Legal Aid (Pro Bono Coordinator Maya Crawford), the Oregon Law Center (State Support Unit Attorney Robin Selig), and the Gateway Center for Domestic Violence Services (Martha Strawn Morris, who is administering a federal grant to develop interactive forms for Family Abuse Prevention Act cases). Rebecca Orf and David Factor from the State Court Administrator's Office also participated regularly in the Task Force's work. Additional interested persons from the courts, bar groups, and legal service providers received copies of the minutes and an opportunity to comment on this report.

The Task Force met monthly in half-day sessions from April 2010 through November 2010. The group began by reviewing both the 1999 report of the Family Law Legal Services Commission and the 2007 SFLAC report. The group then discussed the status of current initiatives focused on self-representation: the OSB's Modest Means, Pro Se Coaching, and Pro Bono Programs; Legal Aid's and the Oregon Law Center's *pro bono* projects and web-based materials; and the on-line interactive child support calculator introduced by the Child Support Program in January 2010.

Several meetings then focused exclusively on the issue of interactive forms. Two providers (TurboCourt and A2J) were invited to a meeting to demonstrate product capabilities and respond to questions from Task Force members. Members then compared and prioritized the features viewed in light of the perceived needs of Oregon litigants and identified the preparation work needed for interactive forms. Attention then turned to the court's facilitation programs and other responses from the legal community to the unmet family law need.

III. Underlying Themes

Underlying the recommendations in this report are three themes that have also informed the SFLAC's work on self-representation:

- While the ultimate goal in access to justice efforts is representation by attorneys, self-representation is a permanent aspect of the family court. As such, the legal system's response to litigants without lawyers must be **actively planned.**
- The most effective approaches to self-representation will be **developed and tested in collaborations** between the courts, the bar, and other community partners. This second point has assumed even more significance given the current budget realities of the Oregon courts.
- The access goals of the justice system merge with efficiency goals when user-friendly products and interfaces are provided for those who can navigate them. By re-directing the thousands of individuals who can easily access, navigate, and even file on-line products such as interactive forms, **diminishing court time and services and other limited legal resources can be preserved for the most needy legal consumers** who require in-person, staff-intensive assistance.

IV. Recommendations and Commentary

RECOMMENDATION No. 1

OJD should take the lead in developing and maintaining model family law forms for use in Oregon trial courts. If funding or other issues prevent OJD from committing to this role by August 2011 and commencing action on the development of interactive electronic formats by January 2012, OSB should promptly assume the leadership role but collaborate with OJD on technology and practice requirements.

COMMENTARY

The courts are the natural first choice to provide model family law forms and lead the transition to electronic formats. Given the significant numbers of Oregonians who represent themselves in family law matters,[4] the court's interest in the content and use of model forms is unmatched. The forms create the framework for court involvement and response, court staff daily deal with litigants about document errors or missing forms, and the forms serve as the template for most court rulings involving self-represented family law parties. Also, consistency in statewide acceptance of the forms would also be maximized with OJD development.[5] OJD has a well-established history of convening multi-perspective statewide advisory groups on family law forms and, if staffing were available, can readily collaborate with OSB and other legal services providers on the initiative. In addition, both the *Oregon Judicial Department Strategic Plan 2009-2013* and the vision for Oregon eCourt anticipate exactly this user-friendly, web-based access to a virtual courthouse interactive model forms offer, with or without electronic filing. Knowledge of OJD's technological requirements is critical to implement this vision and regular contact with OJD's Enterprise Technical Services Division (ETSD) staff would be optimized with OJD as the forms developer. Finally, implementation of interactive family law forms is precisely the type of

[4] *See* footnote 1.

[5] *See* Recommendation No. 2.

government milestone that produces the press reports and public acclaim that can leverage additional public and legislative support for eCourt. Like on-line payment of traffic tickets, interactive family law forms combine a very broadly-used customer service with obvious efficiency. Task Force members are aware of no jurisdiction in which an entity *other* than the courts has taken the lead on form development.

On the other hand, provision of the forms is not a statutorily required court function but a responsibility the courts appropriately assumed to respond effectively to the surge of litigants without lawyers.[6] Budget cuts have now drastically affected all court staffing, including centralized support at the State Court Administrator's office for maintenance and updates to the model forms. OJD's sponsorship of the transition to electronic formats is destined for the same unsustainable status[7] unless adequate funding is dedicated to maintenance, revision, and training as well as to initial development of the forms. OSB shares the access-to-justice focus that model interactive forms represent and in a climate of diminishing public funds, OSB is well-suited to leverage that fairness incentive with a business-based model that would fund the initiative on user fees rather than vulnerable public funds. OSB is also experienced in convening multi-perspective collaborative groups and can establish a close working relationship with OJD's ETSD and eCourt staff. If the OSB Board of Governors is able to continue its long-standing support of access efforts against competing priorities, maintaining the forms and spearheading the transition to interactive formatting could be effectively hosted by OSB. Based on the widespread support of legal practitioners for court facilitation programs, Task Force members believe that family law lawyers will view this project similarly as supplementary to and not competitive with their own services.

Moving forward quickly on this project is important for several reasons: (1) the longer the delay, the more likely it becomes that private entrepreneurs focused on profit rather than access,

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[6] OJD implemented Recommendation No. 3 of the 1999 Oregon Family Law Legal Services Commission report that "OJD coordinate the development, updating, and dissemination of sample family law forms for pro se parties."

[7] *See* commentary to Recommendation No. 3.

efficiency, and legal correctness[8] will develop a product and establish a market share against which OJD or OSB would need to compete; (2) Oregon's model family law forms will very soon be out-of-date again. In additional to the routine changes stemming from the upcoming legislative session, substantial changes to family law are anticipated from the quadrennial review of child support calculation rules in 2011. No plan currently exists to update and revise the existing forms and revival of discussion about removing this resource from the court's website is likely. Task Force members believe that given OJD's recent selection of a single-source provider for eCourt and its re-calibration timeframe, a six month period ending in August 2011 should be adequate for assessing whether and how quickly interactive family law forms fit in the short-term vision of eCourt planning. If OJD cannot commit to this step and take initial action within the 6-12 month deadline suggested by Task Force members, OSB should act promptly to spearhead the effort, in collaboration with OJD and other legal service providers.

RECOMMENDATION No. 2

OJD should ensure by rule or other administrative action that the model family law forms are accepted in all Oregon trial courts.

COMMENTARY

Some Oregon trial courts still require use of a locally produced form in particular situations, tweaked from the applicable model family law form posted on the OJD website. Self-represented litigants who download and complete forms from the OJD website sometimes find those model forms rejected by individual courts insisting on use of the local form. This circumstance also complicates the delivery of legal help by practitioners in one county of the state to litigants with

[8] Commercial preparers of family law forms remain in business despite the court's current provision of printable, fill-in-the-blanks versions. Some of these businesses use the court-provided forms and charge litigants for assistance in filling them out. At least one firm uses its own forms, some of which are inadequate from a legal standpoint and result in the litigant having to re-file with court-provided forms, both steps necessitating extra work for the court.

matters sited in another county. The lack of mandatory acceptance – particularly given the loss of the Family Counsel position at the State Court Administrator's Office -- also means that local court staff are revising form content piecemeal, sometimes without legally-trained oversight or coordination except through sharing on the OSCA Family Law Facilitator email listserv (for which legally-trained staff support is not consistently available). Policy decisions from eCourt governance understandably preserve the ability of practitioners to use their individual family law pleading templates and the Task Force is not recommending that Oregon convert to a "mandatory" family law form approach such as California and Washington use. And local courts should continue to have the discretion to develop forms for procedures unique to their county or district. Members believe, however, that *requiring* local courts to accept centrally developed and vetted model forms is an important part of ensuring statewide access to justice. The Chief Justice can ensure this acceptance by Uniform Trial Court Rule or other administrative action he selects. Institutionalizing the opportunity for the family law bar, court staff, and judges to review and comment on forms prior to publication is a critical component for favorable reception of the "universal acceptance" mandate.

RECOMMENDATION No. 3

OJD (or OSB if it assumes the lead role) should provide adequate legal staffing and clerical support for coordinating the development, maintenance, and revision of the model forms.

COMMENTARY

Ensuring adequate staff to maintain and revise the forms and as well as to train staff on their content is critical to OJD sponsorship of model forms and the transition to interactive formatting. No centralized support currently exists at OSCA for work on the existing "hard copy" model family law forms. Except for one small contract, volunteers are attempting to address improvements piecemeal, and local courts are re-inventing the wheel with individually developed (and sometimes

legally improper) updates. The members of the SFLAC have attempted to help but as an unstaffed body, SFLAC assistance is both limited in scope and dependent on member availability. Nor is there current OJD staffing to coordinate a multi-perspective group of bar and court representatives for forms review, as has been the practice in the past. Moreover, substantive changes in family law occur not just biennially with Oregon legislative action or annually with the publication of the Uniform Trial Court Rules but unpredictably due to issuance of federal regulations affecting both administrative and judicial actions regarding child support. An on-going dedicated position (or portion thereof) filled by an attorney with family law expertise is needed at OSCA to coordinate this work:

- to convene an advisory body,
- to draft and user-test revisions to the forms,
- to publish proposed forms for comment
- to serve as a clearinghouse for comments and needed updates,
- to liaise with the court vendor on development issues, and
- to train court facilitators and other court staff dealing with the public regarding the forms.

It is unclear whether and how eCourt planning envisions the on-going support needed for this staffing component. Should OSB assume primary leadership on the interactive family law forms effort, the model will be to impose electronically-paid user fees (separate from court filing fees) that underwrite the cost of this on-going work. Under this approach, the court training and coordination components would need to be a planned collaboration.

RECOMMENDATION No. 4

Model family law forms should be provided in an interactive electronic format that integrates with the developing eCourt platform. Forms determined not suitable for interactive formats should be offered in fillable Portable Document Format (PDF). Forms and supportive material should follow standard plain language principles and achieve as closely as possible an eighth grade readability level.

COMMENTARY

This proposal is the crux of the Task Force's recommendations. Whether it is OJD or OSB who assumes the prime sponsorship role, Oregon needs to transition from hard-copy, fill-in-the-blanks versions available on the web and at courthouses to a more user-friendly format that is also capable of electronic filing. Broad consensus exists nationwide that after standardization, user-friendly document-assembly software is the next critical step in forms delivery.

> The core concept of document assembly is the idea of software that walks users through branching questions to complete forms which are then printed out or filed electronically. Among the advantages are the ability to provide support as people complete the forms, that users need enter repetitive information only once, and that the focus can be on the information needed to complete the form. The process of filling out the forms also educates the litigant on what is relevant to their claim. *"Best Practices in Court-Based Self-Help Programs for the Self-Represented: Concepts, Attributes, and Issues for Exploration,"* National Center for State Courts (2006), pp. 15-18. Available online at *http://www.nscsonline.org/WC/Publications/KIS_ProSe Best Practices SRLN.pdf.*

Not all Oregon model family law forms can or should be available in an interactive format. Some are short enough that the development time and expense outweigh the benefit. The opportunities for interactive forms are numerous, however, and already recognized as a key component of Oregon eCourt planning. At this report's writing, OJD has selected its single-source provider (Tyler Technologies) during which process Tyler's subcontractor, TurboCourt/Intersys, demonstrated its capacity for interactive document assembly programs. With the identity of OJD's vendor and the capacity of its product now known, the only questions are how soon the fiscal environment at OJD will allow it to implement this component in the overall eCourt plan and whether significant delay prompts the OSB to take the lead.

Currently twenty-two (22) packets with a total of approximately 235 forms are available for downloading from the OJD website in PDF (Portable Document Format) for statewide use. Many of these forms are 1 or 2 pages long and not particularly complex. They do not require the development of branching logic to assist the filer in filling them out, but could benefit from auto-population of the caption and other fields from related forms prepared electronically. Forms determined not to be suitable for the interactive dialogue due to brevity or simplicity should be provided in a fillable PDF format. This will allow users to fill out forms electronically by completing form fields *or* to print the form and fill it in manually.

Other forms are longer and cover multiple issues. The petition for dissolution of marriage with children, for example, is 10 pages long and the judgment for this action is 14 pages. The entire packet of forms for this case-type consists of 16 different forms, each of which requires identical captions and address information. Determining which packets, and which forms in particular packets, are appropriate for the interactive format and which are better suited for a fillable PDF format (not currently offered on-line) is a task that can be undertaken now. This review could also highlight major readability concerns.

The final theme presented in this recommendation involves the readability of Oregon's family law forms. Using standard readability algorithms, the current model forms test at grade 16 (college level), but the guidelines for court documents based on national and state standards call for levels of 5th to 8th grade, depending on public use.[9] It is widely acknowledged that legal documents and forms cannot always meet this threshold but concerted efforts are needed to address plain language principles in both the interactive queries and printed versions of the forms.

[9] *See "Clear Writing Guidelines for Correspondence, Memoranda, Policies, Reports, and Public Documents,"* Office of the State Court Administrator, Oregon Judicial Department, (February 20, 2008).

RECOMMENDATION No. 5

Due to access-to-justice implications, the determination of whether to charge the public for use of the electronic interactive format, separate from filing fees, should involve careful consideration of the situation of low-income litigants. If OJD develops the forms and determines that nominal fees are necessary to develop and maintain an on-line document assembly service, consideration should include a tiered model that accommodates individuals with fee waivers and deferrals. Fees for these individuals should be based only on a cost-recovery goal for the forms and document assembly services provided by OJD and its vendor.

COMMENTARY

This issue was a difficult one for Task Force members. Many felt strongly that no user fee should be charged for use of interactive technology, especially if OJD is the developer. These members argued that filing fees – whether for manual filing or electronic filing – should be determined by separate court schedule but no additional cost should be imposed for use of the interactive document assembly process. Requiring litigants to pay for a technology-based approach the court wants to *encourage* (if not actually mandate for the self-represented) is both counter-intuitive and counter-productive under this view. Like other entities changing their business operations, OJD should create inducements rather than disincentives for use. Administrative savings from reduced staff/facilitation time in assisting litigants with hard copy forms are likely very substantial. Even though some of those recouped staff resources could concentrate on the more intensive one-on-one, personal assistance needed by those lacking computer literacy or having language issues that complicate access, the savings and efficiencies gained from interactive forms appear reasonably likely to be significant enough to help defray the upfront development and maintenance costs.

Conversely, several themes underscore the need to consider charging fees for use of interactive forms, an approach other Task Force members favor. Foremost is the statewide budget crisis and the cuts OJD will almost certainly be making in operations. User fees may be the only viable way for the courts to launch this initiative, particularly when the uncertainty about eCourt

funding as a whole is weighed against the urgency of proceeding with the interactive forms component now rather than later. If the only way to begin OJD deployment of the document assembly program in 2011 is to charge user fees, such fees may be appropriate but consideration of the needs of low-income litigants[10] is needed in this analysis. Task Force members discussed two approaches:

- A three-tier option -- no fee would be charged individuals with waivers, a modest fee charged those with deferrals, and a standard fee for those who qualify for neither.
- A two-tier approach: a nominal fee for low-income individuals with waivers or deferrals and a higher, standard fee for those without those orders.

The latter approach has the advantage of simplicity of administration although it ignores a differentiation in incomes the fee waiver rules establishes. The bottom line is that if user fees are necessary for OJD to move forward, it is clear that to preserve public access to the virtual courthouse, the choice of fee model needs to be informed by the expected rates of deferrals and waivers of family law litigants, as well as by costs to develop and maintain the forms. In addition, the sequencing procedure developed for e-filing would need to include the step of administrative decision or judicial approval of the waiver/deferral request.

The second, and related, point is that even if funding exists for initial development of interactive forms, associated maintenance, revision, and staffing costs require on-going funding whose stability at OJD is unclear. A modest user fee designed to fund a part-time position and revision costs (if not separately negotiated with the vendor) may be necessary. Staffing for the forms developer position could be maintained from the savings produced from reduced staff facilitation time or revenue realized from appropriate document assembly fees.

[10] The best deferral/waiver data to which the Task Force had access was reported by the SFLAC in June 2009. Available OJIN data indicated a waiver/deferral/neither split of 30%/10%/60% for general family law filings but facilitators reported anecdotally a 45%/30%/25for their clientele. Not surprisingly, facilitation customers overall are lower-income than family law litigants in general.

The third and final theme is that OSB as alternative developer would almost certainly pursue a user-fee model. At minimum, the OSB model would produce revenue sufficient to sustain the forms project, including any necessary technical maintenance and staff support. Unlike OJD, OSB does not stand to gain any efficiencies or cost-savings that would offset the cost of form development. The bar would certainly consider accommodations for low-income clients, but does not have ready access to fee waiver and deferral information so a different standard or adjustment would need to be developed.

If OJD takes the lead role, significant sentiment existed that any user fee charged low-income litigants, if imposed, be focused only on a break-even basis and not be premised on a revenue-generating model. However, Task Force members recognized that cost estimates need to include the maintenance, revision, training, and staffing functions as well as reasonably expected business increases. The forms will have only short-lived utility if an infrastructure is not built to maintain it.

RECOMMENDATION No. 6

The Statewide Family Law Advisory Committee (SFLAC) should recommend prioritization of forms for development on interactive formatting, considering case volume, litigant needs, and other relevant criteria. The SFLAC should involve the private bar, eCourt and other OJD staff, and other stakeholders such as non-profit legal services providers and public and law librarians in the process.

COMMENTARY

The most commonly used family law form packets in Oregon are well-known (dissolution, unmarried parents, modification of custody/support, fee waiver/deferral, for example). Prioritization of which forms should be prepared for interactive formatting, and in what order, is a preparatory step OJD and OSB should and can take even while the single source provider contracts are prepared. The SFLAC should assume that responsibility after the work of the Task Force is completed.

Intensive staffing of the effort is not needed but coordination with the newly hired OJD Forms Developer and other eCourt workgroups will be critical. The prioritization recommendations should be a collaborative effort involving that Forms Developer, court facilitators, other court staff, the Family Law Section of OSB, and other non-profit legal services providers such as Legal Aid and public and law librarians.

RECOMMENDATION No. 7

The following issues should be considered in development of forms produced with virtual interview technology:

- integration with e-filing functionality
- interface using a standard web browser
- adaptability to both self-represented users and attorneys
- inclusion of a preliminary or internal diagnostic to determine appropriateness of particular form for the individual user
- automatic data validation
- support from electronic prompts for instructions
- ability of user to save work for later completion
- clarity for users regarding data security and data retention
- ability to extract data for vital records and other statistical needs
- maximized capacity of local administrator (OJD / OSB) to make minor revisions
- capacity to provide service in languages other than English (print form in English but dialogue in other language)

COMMENTARY

A user-friendly document assembly program should be the new gateway between self-represented litigants and the court. It is the vehicle by which these individuals will provide more complete and focused information to decision-makers, produce legally sufficient pleadings, and also improve their understanding of the issues in the case and the court process. The software for the document production should operate independently of any e-filing program, so that parties can print out their forms and file them manually (when no efiling option exists or for other reasons), but must also be fully compatible with the e-filing functionality developed by OJD. Interface with a standard

web browser is critical, as is a preliminary or internal diagnostic to ensure that the interactive “path” chosen is the one appropriate for the user. Automatic internal data validation is also needed to highlight and prevent clerical or other mistakes in names, dates, addresses, and computations. The software must provide prompts which the user can access to obtain explanations about particular terms or points implicated by the presenting questions. Clear explanations regarding the process to save entered answers and subsequently return to document assembly (without repeating the query process) are also a necessity. Given privacy and safety concerns, prominently posted information regarding the retention and security of data is imperative. Task Force members anticipate the benefit of data extraction for producing the trends and statistics for policy planning that family courts in Oregon have long lacked. The ability to export court documents for delivery to outside partners (Child Support Program, Vital Statistics, Sheriff offices for service) would likely be a function of the case management system rather than document assembly, but the logic for a party’s service options should be planned as part of some forms’ production. A significant component of maintaining the interactive forms is the ability of the developing entity (OJD or OSB) to make minor revisions required by law or rule changes. The capacity *by the developer* (OJD or OSB) to revise instructional prompts (the least complex revision) as well as the form (mid-level complexity) and the logic tree itself (greatest complexity) should be thoughtfully negotiated with an eye toward the unpredictable frequency with which family law procedures can change due to the timing of legislative action and state and federal regulation. Finally, the capacity to produce forms in English based on interactive dialogues in other languages, even if not implemented immediately, should be a priority requirement.

RECOMMENDATION No. 8

The website hosting the interactive forms should:

- use a secure portal
- state clearly what entity is providing and hosting the service
- provide access to explanatory material and instructions throughout the interactive interview process and specific to particular points on the screen

COMMENTARY

Whichever entity develops the forms will need to determine how to refer users to the host site without appearing to impair neutrality (for OJD) or to endorse a particular product (for both OJD and OSB). Some courts "umbrella" the forms production site by using a name reflecting the sponsoring court (for example, "California Superior Court EZ Legal File"). Others contain the court name on the page but also provide disclaimers that indicate that the interactive form process is available *through* the court but is not a component of it: See, for example, Minnesota's approach:

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The bottom line is that users are entitled to know the relationship of the developer to the forms producer to make an informed choice about proceeding.

As previously mentioned, the virtual technology program must include prompts that the user can access to obtain explanations about particular terms or points implicated by the presenting questions. Links to external resources should be provided as well, where appropriate. This is an arena in which collaboration with other Oregon legal services providers would be most beneficial. OJD, OSB, Legal Aid Services of Oregon (LASO), and the Oregon Law Center are the primary developers of public legal education material in this state. The Child Support Program serves as a well-traveled path for many parents and is their first encounter with he family law justice system. Appropriate links to and from the CSP website are also a priority. Planning about the resource material that can be linked to the interactive forms would optimize the access efforts of each. Dedicated funding may be available for such a collaboration.[11]

[11] The national Legal Services Corporation provides Technology Initiative Grants (TIG) to Legal Services grantees in a number of specific technology-related areas focused on increased client access. At least one of the streams under this grant program prioritizes statewide collaborations with partners that substantially improve the legal services provided to the low-income community. LSC notes that according to a September 2009 survey by the Pew Internet & American Life Project, individuals in 62% of households with incomes of less than $30,000 have access to and use the Internet, at least occasionally, either from home or from public access points.

RECOMMENDATION No. 9

OJD should make every effort to maintain court facilitation programs at the maximum level of service possible, recognizing that facilitator roles are likely to change after implementation of interactive forms. OJD should evaluate imposition of a user-fee for facilitation appointments only if necessary and effective to support continuation of the programs and their training needs. The SFLAC should make recommendations to the State Court Administrator regarding facilitation delivery models maximizing both court efficiencies and family law access for courts facing additional cutbacks in this access.

COMMENTARY

For the last decade, family law facilitation programs – along with model forms -- have been the backbone of OJD's commitment to provide "fair, accessible, and timely justice" for family law litigants. Court staff providing procedural assistance and forms review have assisted thousands of Oregonians, many referred by lawyers, law enforcement, and social service agencies. Most of those assisted cannot afford to hire attorneys[12] , are unemployed or underemployed, have limited income from social security or disability payments, or are receiving some form of state assistance. In addition, those seeking facilitation assistance are sometimes at imminent risk of losing their children to state care without the intervention of protective family law orders. Facilitation customers come from every socio-economic class because facilitation – like all services of the judicial branch – is available to all Oregonians regardless of income. In recognition that a minority of facilitation clients could afford some fee for facilitation and against a backdrop of funding cutbacks that have seen some courts already end or substantially reduce their facilitation programs, the SFLAC reluctantly recommended in 2009 that OJD consider imposing a user-fee for facilitation appointments. Task Force members endorse that suggestion only if such fees directly support the continuation of the programs and their training needs, meaningfully accommodate low-income litigants with fee deferrals and waivers, and are insulated from legislative re-allocation. Those conditions appear unlikely in the aggregate.

[12] *See* footnote 10.

Left then with high demand and reduced resources, re-organization and even prioritization of facilitation services may be necessary. The SFLAC, in consultation with local trial court administration staff (including facilitators) and the family law bar, should develop recommendations for the State Court Administrator to offer local courts regarding facilitation delivery models maximizing both court efficiencies and family law access. Maximizing public access to computers and printers will probably be a critical component in this discussion. The recommendations will need to encompass the changing roles of facilitators likely after implementation of interactive forms. Requests for facilitation help may decrease in number due to user-friendly, web-based materials but increase in complexity as those without computer access or with literacy or other barriers remain ill-served by electronic forms.

RECOMMENDATION No. 10

OSB, non-profit legal services providers, and the Division of Child Support of the Oregon Department of Justice should continue efforts to expand information about, and delivery of, unbundled legal services and *pro bono* assistance. Child support calculation assistance is one area of potential focus.

COMMENTARY

The OSB, Legal Aid Services of Oregon (LASO), Oregon Law Center (OLC), and government agencies offer a range of programs to assist self-represented litigants in family law matters. The OSB, LASO, and OLC focus their efforts on attorney involvement. In addition to education efforts, the OSB offers a Modest Means Program that matches lower-income Oregonians with private attorneys willing to charge reduced fees.[13] The OSB's Lawyer Referral Service, which

[13] The Modest Means Program was started in 1994 with the goal of matching lower-income Oregonians with attorneys willing to work for reduced fees. By 1995, the Modest Means Program had added two Family Law pro se subpanels – Pro Se Coaching and Document Review. It now includes the following pro se subpanels:

provides any potential client an attorney consultation for no more than $35, offers referral categories for Document Review and Pro Se Coaching within its family law panel. The OSB's programs have grown rapidly in recent years: in the 2005-06 program year, 88 clients were referred under the pro se panels; for the 2009-10 program year the number of clients rose to 408, a 364% increase in that four year span. Attorney panelist registration has also steadily increased, with 250 attorneys registered for the 2010-11 program year.

LASO and other legal aid programs offer *pro se* assistance in family law matters through group classes and clinic models. Some clinics are run in partnership with courthouse facilitation programs, including a Multnomah County program that offers low-income clients appointments with attorney volunteers on Tuesday and Thursday afternoons. These *pro bono* attorneys provide legal advice and help people fill out family law court forms.

The DOJ's Oregon Child Support Program provides an array of services related to paternity and the establishment and enforcement of child support orders. DOJ offers general information about child support-related matters on its website and provides a guided-interview for support calculation assistance that produces child support worksheets required as petition and judgment exhibits. This interactive calculator is available to all users, regardless of income. Individuals without computer access or who have literacy, language, or educational barriers often require assistance in understanding and performing the calculation process. Unbundled and *pro bono* assistance could be particularly suited to this arena, given the statewide uniformity of the calculation rules and the possibility of telephonic or emailed communication rather than in-person consultation. The Child Support Program also makes numerous referrals to unbundled and pro bono service providers to address parenting time issues and custody matters that impact child support orders but cannot be addressed by Program personnel.

In addition to continuing their current programs and services, these organizations should increase efforts to educate and assist self-represented litigants. The OSB and non-profit legal

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Pro Se Coaching, Document Review, Process Questions, Domestic Violence, Grandparent Issues, Spousal Support, Child Support Rebuttal and Contested Custody.

services providers should actively encourage lawyers to provide *pro bono* and low-fee legal services, including unbundled legal services. While the OSB and Professional Liability Fund (PLF) have both published articles and produced CLE programs supportive of unbundling, the topic has received little attention the past few years. The OSB and PLF should renew education and recruitment efforts, encouraging members to provide services to self-represented litigants through existing LASO, OLC, and OSB programs.

In support of private attorney involvement, OJD should encourage Oregon judges to support *pro bono* programs as appropriate under the judicial canons. Finalization of proposed amendments to the Oregon Code of Judicial Conduct could greatly enhance this effort if proposed commentary is adopted supporting judicial recruitment, recognition, and other support to pro bono programs.

RECOMMENDATION No. 11

The Family Law Section of the OSB should convene an OSB/OJD workgroup to identify and make recommendations eliminating or revising statutory and regulatory forms and procedures that unduly complicate legal matters for self-represented family law litigants.

COMMENTARY

Negotiating the complex rules and procedures that govern any litigation is daunting for self-represented litigants in family law cases. Most are unfamiliar with the legal system. For many, their divorce or custody case is the only direct contact they will have with the courts. These parties face a vast array of forms and procedures that must be correctly navigated before their case can be completed. Some of these forms or procedures may be outdated, overly complicated, or unnecessary. By eliminating unnecessary forms and procedures, and simplifying those that are overly complicated, facilitation programs and other access to justice resources would be able to increase their effectiveness by reducing the sheer volume of information litigants must

accommodate in order to see their case through to completion. In addition, with fewer forms or procedures to process, courthouse staff time would be freed up for other tasks. Task Force members identified several areas for possible study, including whether the statutory 90-day waiting period required in dissolution cases should be modified or eliminated,[14] and whether the procedure for submitting a dissolution judgment on a prima facie affidavit could be streamlined. Altering either of these procedures would legislative, rule, and/or or practice changes. The Family Law Section of the OSB should convene a work group drawn from the Bar, OJD, and nonprofit legal service providers to identify law improvements that can be achieved by eliminating unnecessary forms and procedures and streamlining others where possible, and to recommend changes to both rules and statutes in order to facilitate the improvements.

[14] Proposed legislation is expected in the 2011 session on one approach to changing the waiting period.