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February 6, 2012

The Supreme Court of Texas
Attn: Mr. Blake Hawthorne
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

RECEIVED
IN SUPREME COURT
OF TEXAS
FEB 06 2012
BLAKE HAWTHORNE
By _____

RE: Supplemental Report to the Court on the Activities of the Self-Represented Litigants
Committee of the Texas Access to Justice Commission

Dear Justices of the Supreme Court of Texas,

On behalf of the Texas Access to Justice Commission, I am providing a Supplemental Report to the Court on the Activities of the Self-Represented Litigants Committee of the Texas Access to Justice Commission to provide greater detail on the purpose and work of this Committee and its subcommittees.

Please feel free to contact me for addition information at (512) 427-1862 or tmcallister@texasbar.com.

Very truly yours,

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A Supplemental Report to the Supreme Court of Texas on the Texas Access to Justice Commission's Self-Represented Litigants Committee and Subcommittees

Background Information

In April 2010, a statewide Forum on Self-Represented Litigants was held to discuss the issue of the burgeoning population of self-represented litigants who cannot afford representation and who are unable to obtain representation through a legal service provider. A broad spectrum of stakeholders were invited to attend, including the private bar¹, the judiciary, clerks, law librarians, and legal service providers. National leaders were invited to discuss various best practices² and solutions that are widely accepted throughout the country. The Forum concluded with a consensus to pursue development of these best practices, including standardized forms.

Two entities were created in the wake of the Forum. The Texas Access to Justice Commission created its Self-Represented Litigants Committee in May 2010 to research and develop strategies to improve self-representation for the poor. The Supreme Court of Texas created the Uniform Forms Task Force in March 2011 to develop standardized forms.

The Self-Represented Litigants Committee

The Self-Represented Litigants Committee ("SRL Committee") is charged with addressing the challenges presented by the increasing number of self-represented litigants who cannot afford an attorney. The SRL Committee is comprised of a wide range of those who interface with, or are impacted by, pro se litigants, including two private bar attorneys, three judges, one county clerk, one local bar association director, three legal aid representatives, one pro bono organization representative, one Office of Court Administration attorney, and one law librarian. The SRL Committee had its initial meeting in October 2010 to discuss follow up from the Forum and get a baseline idea of what self-represented litigant initiatives currently existed in the state. At its February 2011 meeting, the SRL Committee spent a great deal of time identifying priorities on how to best proceed in improving self-representation for the poor. The SRL Committee discussed the various best practices that have been implemented nationally to address the issue and decided to form five working subcommittees based on these best practices.

At the time, these subcommittees were an education subcommittee, a self-help center subcommittee, an assisted pro se subcommittee, a rules and guidelines subcommittee, and a communication and information dissemination subcommittee. In July, the assisted pro se subcommittee determined that the scope of its work was too broad to effectively accomplish in one subcommittee, and split into a sixth subcommittee focused on limited scope representation.

¹ State Bar Sections encompassing substantive legal areas that interface with poverty law were invited to attend the forum, including the following sections: ADR, Bankruptcy, Consumer and Commercial Law, Family Law, Hispanic Issues, Immigration, Individual Rights and Responsibilities, Justice of the Peace, Labor and Employment, Litigation, Appellate, Asian-Pacific Islander and Administrative and Public Law. State Bar Committees were also invited, including the Unauthorized Practice of Law Committee.

² *Best Practices in Court-Based Programs for the Self-Represented*, the Self-Represented Litigation Network, 2008, funded by a grant from the State Justice Institute.

We believe that these six subcommittees plus the Court's Uniform Forms Task Force make up the nonexistent "Seven Point Plan" referenced in emails from the Family Law Section leadership and materials produced by the Texas Family Law Foundation. This report will provide detailed information on the work of each subcommittee to date, and hopefully, dispel the myth that the Commission has a calculated plan to re-engineer the practice of law or force attorneys to adopt business models that they would otherwise not choose to adopt.

It is important to remember that the SRL Committee and its subcommittees are a resource for courts, communities, lawyers, and the poor on access to justice matters. It lacks the ability to force any entity or person to adopt any of the following best practices. When a court or community or lawyer asks for help addressing problems related to self-represented litigants, the appropriate subcommittee responds to that request with suggestions. It is up to each community to determine what is best for their particular situation.

Education Subcommittee

The Education Subcommittee seeks to inform and educate judges, clerks, court personnel and the private bar on self-represented litigant issues. The goals are to increase judicial economy and efficiency by more effectively handling self-represented litigants and to involve the private bar in assisting the self-represented litigant population through pro bono or limited assistance.

The Education Subcommittee decided to offer presentations as a means of providing this information. So far, it has developed three presentations and has been invited to give these presentations as detailed below:

1. Judiciary: The general judicial presentation gives an overview of the problems facing pro se litigants and proposes solutions that fit within the confines of their judicial ethical canons. This training will be given by judges to judges and will be tailored to the needs of the particular audience at any given conference (e.g. judges hearing child protection cases versus general jurisdiction judges). A modified version was given at the Shared Solutions Summit held by the Texas Judicial Council and the Office of Court Administration in January 2011.

Self-represented litigant training has been given at the CPS Associate Judge Conference and is given annually at the College of New Judges. Upcoming self-represented litigant training will be given in September at the Annual Judicial Conference sponsored by the Center for the Judiciary, and possibly in April at the College for Judicial Studies, although this is not yet confirmed.

2. Clerk and Court Personnel: The clerk and court personnel presentation focuses on the difference between legal advice and legal information. While clerk and court personnel are clear that they cannot give advice, they are often not clear what the actual difference between advice and information is. To ensure that they do not err on the side of giving advice, it is important that they understand this critical difference. It is also important that they understand what they can do to facilitate judicial efficiency when dealing with an unrepresented person. The training teaches them how to discern the difference, and how to provide information while remaining neutral and impartial, maintaining confidential information, and avoiding *ex parte* communications.

In 2011, the Education Subcommittee was invited to give this presentation at three regional court clerk conferences in Galveston, Waco, and Amarillo. In all instances, the feedback was overwhelmingly positive, and many district and county clerks have asked the speakers to return to educate their entire staff.

In January 2012, the presentation was given at the County and District Clerk School at Texas A&M University. The Subcommittee is scheduled to speak in Abilene and Hondo, and has many other requests to make the presentation in 2012. The Subcommittee is currently determining how to prioritize filling these requests in light of limited staff resources.

3. **Private Bar.** There are three different presentations given to the private bar. The initial presentation is typically an overview of access to justice issues, which contains brief information on self-represented litigants and limited scope representation. The second presentation focuses primarily on self-represented litigant issues, with a brief amount of limited scope information. The third presentation focuses primarily on limited scope representation information.
 - a. **Access to Justice Presentation** – This presentation existed prior to the development of the SRL Committee and has been given to many local bar associations. It discusses the overwhelming need for civil legal services to the poor, legal aid funding issues, the current systems in place to deliver legal services – including legal aid and pro bono providers – touches on self-represented litigant issues, and encourages pro bono.
 - b. **Self-Represented Litigant Presentation** – This presentation is an abbreviated version of the Access to Justice presentation in terms of civil legal needs of the poor and funding issues, and provides more detailed information on self-represented litigant issues and solutions. It acknowledges that it is best to have an attorney and encourages the bar to help by increasing local and national funding and by increasing pro bono. It then discusses alternative best practices when low-income people do not have access to a lawyer and the concept of a continuum of legal services from full representation to no representation. Topics covered include limited scope representation (addressed in full under the Limited Scope Representation Subcommittee section of this Report), assisted pro se with legal advice, assisted pro se without legal advice, staffed self help centers, and standardized forms. The self-represented litigant presentation, in conjunction with a series of self-represented litigant workshops, was given at the annual Local Bar Leaders Conference held by the State Bar in July 2011.
 - c. **Limited Scope Representation Presentations** – Two different limited scope representation presentations are planned. One is directed to attorneys and the other is directed to the judiciary.

The purpose of the attorney presentation is to make attorneys aware, if not already so, that limited scope representation is allowed under the Texas Disciplinary Rules of Professional Conduct 1.02(b) and to address common questions and concerns that lawyers have when contemplating representing someone on a limited scope basis. It addresses malpractice insurance and provides tips to avoid common pitfalls, such as using a written agreement specifying exactly what the attorney will do and what the client will do. It also

addresses when it is not appropriate to use limited scope representation. Further, it opens a dialogue on attorney concerns that a judge will try to expand the scope of representation beyond what the attorney had contemplated. The financial benefits of adding limited scope representation to an attorney's practice are also covered, in that low-income people who could not afford their services on a full scope basis, or come up with a retainer fee, may be able to afford their hourly rate for a discrete task. The first presentation was given in January 2012 to the Solo and Small Firm Section of the Austin Bar Association.

The judicial presentation has not yet been developed as a stand-alone training. Once developed, the presentation will approach limited scope representation from a judicial economy and efficiency standpoint because the more contact a litigant has with an attorney, the better prepared that person is. It will also address common concerns around attorney entry and withdrawal on cases and best practices in handling these situations.

Assisted Pro Se Subcommittee

The Assisted Pro Se Subcommittee is working towards expanding the availability of legal services for low-income pro se litigants. Assisted pro se programs are an important component of legal service delivery because they provide pro se litigants with some level of attorney assistance, although less than full representation. It is an efficient way to help many people while maximizing limited attorney resources.

Assisted pro se programs essentially offer pro bono legal services on a limited scope basis to low-income individuals who are unable to get an attorney through legal aid. Assisted pro se projects run the gamut from simple advice clinics to document preparation (such as drafting a demand letter for landlord repairs or preparing court pleadings) to settlement or hearing preparation. The underlying consistency in all assisted pro se projects is that the litigant ultimately represents him or herself in the legal matter.

Many pro bono programs in Texas already use this model as an efficient means of helping several low-income people with similar uncontested legal problems at one time, while preserving valuable attorney resources for more complex or contested legal issues. The most common example is an assisted pro se clinic for those with uncontested divorces. Pro bono and legal aid programs are often able to help ten or more low-income litigants at one time using only one or two attorneys to walk them through the process of completing forms, filing their case, obtaining service, and proving up their final divorce decree.

To date, the Assisted Pro Se Subcommittee has compiled a comprehensive list of assisted pro se programs in Texas. It has also finished its review and modification of the portions of an existing best practices guide that relate to assisted pro se programs and practices. The Subcommittee will now turn to offering technical assistance to programs who wish to learn more about assisted pro se projects or request help with starting a project.

Limited Scope Representation

Limited scope representation, also known as unbundled services, is the provision of discrete legal services to a client rather than handling all aspects of the client's case. A common

example is document review or preparation, where the attorney reviews or prepares pleadings and the litigant handles all other aspects of the case.

Limited scope representation increases access to justice for low-income people by allowing those who cannot afford full representation to get the help they need from a lawyer in a more affordable way. Limited scope representation is allowed in Texas under the Texas Disciplinary Rules of Professional Conduct 1.02(b), which states, "A lawyer may limit the scope, objectives, and general methods of representation if the client consents after consultation."

While the poor may not be able to afford a retainer fee, they might be able to afford the hourly rate that an attorney sets for specific discrete tasks. As such, limited scope representation has the potential to create a new market of clients from those who would otherwise not have hired an attorney. It can be a useful tool for attorneys who are trying to build a practice, or who prefer to focus on a particular aspect of their overall practice, such as drafting pleadings. However, the Subcommittee's experience has been that there is much confusion about limited scope representation among attorneys, suggesting that further education is needed.

Limited scope representation also promotes judicial efficiency and economy by increasing the number of pro se people who have access to an attorney. The result is a better prepared and more informed litigant, which reduces the time needed to move these cases through the judicial system.

It is important to remember, however, that limited scope representation is not appropriate in all situations, especially those that are very complex or highly contested.

Therefore, the purpose of the Limited Scope Representation Subcommittee is two-fold:

1. To educate and increase awareness among the judiciary, the bar, and those who cannot afford to hire an attorney about limited scope representation, including addressing common questions and concerns, and when it is inappropriate to use limited scope representation; and
2. To develop limited scope representation as a model of increasing access to justice for the poor by connecting attorneys who handle, or want to start handling, matters on a limited scope basis with low-income Texans.

The following work has been done by this Subcommittee towards these goals:

1. Research: Research on the experience of other states with limited scope representation has been conducted. The Limited Scope Representation Subcommittee is keeping up to date on current trends and developments, and updates its research accordingly.
2. Educational and Outreach Efforts
 - a. **Information Sheets** – The Limited Scope Representation Subcommittee developed information sheets geared to lawyers and judges explaining what limited scope representation is, why it is beneficial, and covering common questions and concerns. This resource was included with other self-represented litigant materials at the Texas Association for Court

Administration conference in October 2011 and will continue to be distributed when possible. A second handout will be developed for people seeking to hire an attorney on a limited scope basis.

- b. **Presentations** – In July 2011, the self represented litigant presentation at the annual State Bar Local Bar Leaders Conference included a breakout session for a discussion on limited scope representation. Participants voiced interest in participating in a training conducted by Sue Talia, a nationally-known limited scope representation expert. Participants currently providing limited scope representation described their experiences in a positive light, and common concerns and questions were voiced and discussed.

In early January 2012, the Education Subcommittee developed a stand-alone presentation on limited scope representation for local bar association audiences. It is described above under the work of the Education Subcommittee.

Future education and outreach plans include identifying key people in the local bar and judiciary to partner with in each community. The Limited Scope Representation Subcommittee seeks their advice and knowledge to facilitate local conversations with the local bar and judiciary and make live presentations on a local level. Other outreach strategies may include:

- Presenting at annual conferences and partnering with the State Bar to develop a CLE on how to best develop a limited scope practice;
- Helping local bars develop a resource for low-income people listing attorneys who handle matters on a limited scope basis;
- Helping local lawyer referral service providers create a limited scope representation referral panel; and
- Developing limited scope representation toolkits with sample retainer agreements, withdrawal pleadings and the like.

3. Limited Scope Representation Rules

- a. **Texas Disciplinary Rules of Professional Conduct 1.02(b)** – The Commission’s Rules Subcommittee reviewed and assessed the possible need for a rule change regarding limited scope representation. The Rules Subcommittee looked at the current limited scope representation rule, Texas Disciplinary Rules of Professional Conduct 1.02(b), as well as the ABA model rule and various rules in other states. Because the current rule allows for the practice of limited scope representation, the Rules Subcommittee did not recommend a rule change at this time. If, in the future, an explanatory comment or rule change appears necessary, the Limited Scope Representation Subcommittee will ask the Rules Subcommittee to revisit the situation, determine if any action is needed, and draft a proposal if needed.
- b. **Local Limited Scope Representation Rules Efforts (not Efforts of the Limited Scope Representation Subcommittee)** – The Limited Scope Representation Subcommittee was asked by members of the Travis County bar and judiciary to review a limited scope rule they wished to propose on a local level. The Subcommittee reviewed the rule and gave its input. On October 19, 2011, the local rule was presented to the Travis County District

and County Court Judges for consideration. The judges supported the local rule and recommended it proceed to the Texas Supreme Court for approval.

The Commission and its SRL Committee were also asked to pass a resolution in support of local efforts to increase limited scope representation. The Commission and the SRL Committee voted to pass the resolution. The resolution was then presented to Travis County District and County Judges.

Self-Help Center and Services Subcommittee

The Self-Help Center Subcommittee provides technical assistance to courts and communities that are interested in developing or expanding self-help projects and have requested help in doing so. Self-help centers are a best practice because they increase judicial economy and efficiency by more effectively managing the ever-increasing numbers of pro se litigants moving through the courthouse. Self-help centers are typically established in courthouses or law libraries, and range from something as simple as an unmanned computer station where someone can access information or forms, to a full-service self-help center staffed by volunteer or staff attorneys.

Self-help centers reflect the needs and the resources of the particular community or court in which they are established. The local community, rather than the Self-Help Center Subcommittee, makes all the decisions regarding each aspect of their self-help center, including who the self-help center will serve and how it will be funded. For example, self-help centers can be established to serve only low-income pro se litigants or to serve all litigants regardless of income.

The Self-Help Center Subcommittee has developed a list of self-help centers available in Texas to serve as a contact list for those who wish to establish a similar center. The Subcommittee updates the list as needed. The Subcommittee will provide technical assistance to counties who request it. This assistance will be tailored to the needs and requests of particular jurisdictions.

Uniform Rules and Guidelines Subcommittee

The Rules Subcommittee researches and reviews possible rules, legislation, and policies that impact low-income self-represented litigants. The role of the Subcommittee is to:

1. Research and monitor the rule, legislative, and policy efforts of other states that impact self-represented litigants;
2. Research and review rule, legislative and policy issues as they arise within the other SRL Subcommittees; and
3. Make recommendations regarding the need for, or efficacy of, a proposed rule, legislative, or policy change.

To date, the Rules Subcommittee has not found the need for any rule, legislative, or policy changes in Texas.

The Rules Subcommittee has addressed the following issues:

1. Rule Regarding Uniform Forms: The Rules Subcommittee researched whether a rule was needed for any standardized forms that the Supreme Court might approve. The Subcommittee reviewed relevant Texas rules and procedures as well as what was done in the various states that currently have uniform forms. The Subcommittee learned that some states do not promulgate rules for their forms, while others have rules ranging from requiring court acceptance of forms to requiring self-represented litigants, and sometimes attorneys, to use the forms. The Subcommittee determined that a rule regarding forms was not necessary at this time. It will periodically review the need for such a rule in the future.
2. Provision Regarding Self-Represented Litigants in the Code of Judicial Conduct: The Rules Subcommittee researched whether revisions were needed to the current provision regarding self-represented litigants in the Code of Judicial Conduct. They looked at the American Bar Association model judicial rule, adopted by 12 states, as well as similar rules in other states. The Rules Subcommittee determined that the current Code of Judicial Conduct provision did not need revision. The Subcommittee felt that the issue of self-represented litigants is already on the minds of the judiciary and that education on what is and is not allowed under the Code of Judicial Conduct would be more helpful and timely. The Subcommittee plans to conduct further research on the effectiveness of judicial training alone in improving judicial efficiency regarding self-represented litigant issues.
3. Limited Scope Representation: As mentioned above, the Rules Subcommittee and the Limited Scope Subcommittee decided that no revision was needed to our current limited scope representation rule, Texas Disciplinary Rules of Professional Conduct 1.02(b).

The Rules Subcommittee is currently addressing the following issue:

1. Rule on Determining Indigence: The Rules Subcommittee is reviewing whether to propose changes to Rule 145 of the Texas Rules of Civil Procedure regarding determining indigence in civil courts. Currently, a person who qualifies for an affidavit of inability to pay costs in one court may not be deemed to qualify in another court.

Communications and Clearinghouse Subcommittee

The Communications and Clearinghouse Subcommittee is formulating a plan on how to communicate effectively with the judiciary, private bar, and general public about self-represented litigant issues. This subcommittee will also create a clearinghouse of available information and resources regarding self-represented litigants. Currently, the Subcommittee is collecting communications reports from the other Subcommittees to create a comprehensive communications plan.