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## FROM MARKET FAILURE TO 100% ACCESS: TOWARD A CIVIL JUSTICE CONTINUUM

*John M. Greacen,<sup>\*</sup> Amy Dunn Johnson,<sup>\*\*</sup> and Vincent Morris<sup>\*\*\*</sup>*

“Institutions will try to preserve the problem to which they are the solution.”

—Clay Shirky<sup>1</sup>

### I. INTRODUCTION

That Americans of limited and modest means are largely unable to access legal advice and representation in civil matters involving basic human needs is a well-documented fact of the American legal system, and has been for decades.<sup>2</sup> The Legal Services Corporation estimates that the funding available for civil legal services in the United States is sufficient to serve

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1. RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013).

2. See generally DEBORAH L. RHODE, *ACCESS TO JUSTICE* (2004).

only 20% of the civil legal needs of poor people.<sup>3</sup> With the exception of personal injury matters, where the availability of contingency fee contracts in cases with significant potential liability makes attorneys accessible to persons of limited and modest means, most poor and middle class Americans simply cannot afford the cost of attorney's fees needed for representation in civil matters. A number of empirical "civil legal needs" studies arrive at the same overall conclusion—that lawyers provide assistance with less than 20% of civil legal problems experienced by our country's poor.<sup>4</sup> Indeed, the United States consistently ranks below most other higher-income countries when it comes to accessibility and affordability of civil legal services.<sup>5</sup> Our country's most treasured principles of "liberty and justice for all" stand in stark contrast to the present-day reality that justice in most matters is only available to the well-to-do.<sup>6</sup>

This state of affairs is referred to as the "Access to Justice Gap."<sup>7</sup> After a generation of efforts to increase the funding for legal services, to expand the types of cases in which indigent civil litigants are entitled to counsel at public expense, and to expand the amount of pro bono services donated by the private bar, it is unrealistic—given current resource limitations and de-

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3. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL NEEDS OF LOW-INCOME AMERICANS 13 (2009), *available at* [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf) [hereinafter DOCUMENTING THE JUSTICE GAP]. The Legal Services Corporation is a private nonprofit organization that administers federal grants to 134 legal aid providers around the United States. It is the single largest funder of civil legal aid for the poor in the country. *About LSC*, LEGAL SERVS. CORP., <http://www.lsc.gov/about-lsc/who-we-are> (last visited June 17, 2015).

4. See DOCUMENTING THE JUSTICE GAP, *supra* note 3, at 13–14. This is likely an underestimate if one takes into account the fact that many Americans do not perceive their problems to be legal in nature. See generally Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, AM. BAR FOUND. (2014), *available at* <http://ssrn.com/abstract=2478040>.

5. RULE OF LAW INDEX 2015, WORLD JUSTICE PROJECT 30 (2015), *available at* <http://data.worldjusticeproject.org/> (last visited June 8, 2015). In 2015, The United States ranked 1/100 of a point higher than the United Arab Emirates, which was the lowest-ranked first world nation in the world. *Id.* at 150, 152. The U.S. tied with eight other countries, including Pakistan, Tanzania, Turkey, and Uzbekistan, for the 66th place ranking among the 103 countries surveyed. *Id.*

6. See generally RHODE, *supra* note 2. Poor and middle class Americans are, for the most part, unable to obtain counsel to seek justice in the courts, or to defend themselves against legal actions brought against them—for instance, in eviction, debt collection, and foreclosure actions. Representation for the poorest Americans with the most serious of civil legal problems may, at least in some instances, qualify for free civil legal aid or pro bono representation. In fact, it may be that the poor have a greater likelihood of obtaining legal help than persons with moderate incomes who are unable to afford the standard retainers charged by civil and family lawyers. See JOHN GREACEN, SERVICES FOR SELF-REPRESENTED LITIGANTS IN ARKANSAS: A REPORT TO THE ARKANSAS ACCESS TO JUSTICE COMMISSION, ARK. ACCESS TO JUSTICE 3 (2013), <http://www.arkansasjustice.org/research>.

7. GREACEN, *supra* note 6, at 2.

mand for legal help—to expect that we can provide a lawyer for every poor person with an essential civil legal need, let alone every person of modest means with such a problem.<sup>8</sup> In reality, the Access to Justice Gap is more of an abyss when one considers that a striking number of Americans with civil legal problems do not even identify their problems as legal in nature.<sup>9</sup>

The consequences of this kind of large-scale disenfranchisement are very real—an estimated one of six Americans is a self-represented litigant in a newly filed case each year.<sup>10</sup> Self-represented litigants have more difficulty achieving resolution of their legal issues based on the merits; outcomes tend to favor litigants represented by counsel.<sup>11</sup> This imbalance breeds a general distrust of the ability of courts to yield fair results and erodes the rule of law.<sup>12</sup>

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8. *Id.*; Amy Dunn Johnson, *Unbundled Legal Services: A Revolution Whose Time Has Come*, ARK. LAWYER, Summer 2014, at 28.

9. See DOCUMENTING THE JUSTICE GAP, *supra* note 3, at 10 & app. C-1. Professor Rebecca Sandefur has done groundbreaking work by surveying legal needs by reframing legal problems as “situations you may have experienced.” Sandefur, *supra* note 4, at 5. That survey—which sampled random adults in a medium-sized city in the Midwestern United States, rather than just individuals of limited or modest means—found that 66% of survey respondents reported having experienced one or more legal-related problems within the past eighteen months. *Id.* at 7.

10. Katherine Alteneder, Coordinator, Self-Represented Litigation Network, Remarks at the SRLN Preconference to the ABA/NLADA Equal Justice Conference (May 6, 2015), available at [http://www.srln.org/trainings/item.6025-SRLN\\_PreConference\\_May\\_6\\_2015](http://www.srln.org/trainings/item.6025-SRLN_PreConference_May_6_2015). This estimate does not take into account hundreds of thousands of administrative agency decisions that involve self-represented litigants in such cases as those involving access to public education for children with disabilities and access to Medicaid benefits. Literature suggests that outcomes in those matters significantly favor litigants who are represented by legal counsel. See, e.g., Perry A. Zirkel, *Are the Outcomes of Hearing (and Review) Officer Decisions Different for Pro Se and Represented Parents?*, 34 J. NAT’L ASS’N ADMIN. L. JUDICIARY 263, 273 (2014).

11. See, e.g., CHANLEY PAINTER, EXPLORING THE PROBLEM OF SELF-REPRESENTED LITIGANTS IN ARKANSAS CIVIL COURTS, ARK. ACCESS TO JUSTICE 25 (2011), [www.arkansasjustice.org/research](http://www.arkansasjustice.org/research) (seventy-eight percent of circuit court judges report that self-representation negatively impacts the outcomes of those cases); see also Rebecca Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers’ Impact*, 80 AM. SOC. REV. 909 (2015) (impact of lawyer representation on case outcomes is “spectacular” compared to lay people’s attempts at self-representation). But see Jeanne Charn, *Celebrating the “Null” Finding: Evidence-Based Strategies for Improving Access to Legal Services*, 122 YALE L.J. 2206 (2013).

12. See generally Donald Campbell, *The Sky Is Falling (Again): Evaluating the Current Crisis in the Judiciary*, 47 NEW ENG. L. REV. 571, 597 (2013); Richard Zorza, *DOJ ATJ Initiative Director Lisa Foster Keynotes at Equal Justice Conference*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (May 8, 2015), <http://accesstojustice.net/2015/05/08/doj-atj-initiative-director-lisa-foster-keynote-at-equal-justice-conference/> (suggesting that civil unrest in disenfranchised communities such as Ferguson, Missouri, can be attributed in part to the inaccessibility of the legal system).

Against this backdrop is the reality of an impending fruit-basket-turnover of the legal industry as we know it. The legal profession has enjoyed a centuries-old monopoly on the tools and knowledge needed to navigate our court system.<sup>13</sup> The result has been that attorneys have, until only recently, been able to control the legal market with no meaningful external competition.<sup>14</sup> The advent of information technology and the internet has brought the legal profession to the precipice of what will be a major disruption to the practice of law as we know it; as one writer has bluntly put it, “law . . . is about to get Ubered. Hard.”<sup>15</sup>

Much of this shift can be attributed to the pervasiveness of a “do-it-yourself” culture that has followed in the wake of the widespread availability of information online. As the president of the country’s largest funder of civil legal aid has said, the DIY movement “is not going away, and anyone who thinks law is immune to it is delusional.”<sup>16</sup> Consumers now expect transparency in pricing, ready access to information, and the ability to navigate some aspects of their problems on their own. The legal profession must adapt to this market reality, or else face a fate similar to Kodak film and newspapers.<sup>17</sup>

The juxtaposition of the seemingly intractable Access to Justice Gap and the impending disruption of the legal market should not have to spell the

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13. Cathy Reisenwitz, *The Legal Industry Is About to Get Ubered Hard*, THE LAWYERIST (May 20, 2015), <https://lawyerist.com/82778/the-legal-industry-is-about-to-get-ubered-hard-sponsored/>.

14. *Id.* A recent U.S. Supreme Court decision involving a state dental board’s attempt to regulate teeth whitening services may hasten the erosion of the legal profession’s ability to regulate alternative legal services. See Mark Walsh, *State Bars Gnash Their Teeth: Dental Board Ruling May Drill into State Bar Associations’ Immunity*, A.B.A. J., May 2015, at 19. In *North Carolina State Board of Dental Examiners v. FTC*, the U.S. Supreme Court found that the North Carolina body of dental regulators could not claim state-action antitrust immunity because a controlling number of the decision-makers were active participants in the market that the body regulated. 135 S. Ct. 1101 (2015), [http://www.supremecourt.gov/opinions/14pdf/13-534\\_19m2.pdf](http://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf). The decision is widely believed to expose professional regulatory boards, including boards that regulate the practice of law, to antitrust liability. See, e.g., Walsh, *supra* note 14. But see Benjamin H. Barton, *The Lawyer’s Monopoly—What Stays and What Goes*, 82 FORDHAM L. REV. 3067, 3089 (2014) (“There is the possibility for some targeted deregulation to allow lawyers to compete more effectively with the explosion of nonlawyer services on the Internet. Right now, regulatory sluggishness is keeping many lawyers on the sideline while unregulated nonlawyers are rushing in.”).

15. Reisenwitz, *supra* note 13.

16. Interview by Monica Bay with James Sandman, President, Legal Services Corporation (Aug. 1, 2015), in LSC’s *James Sandman: We Need Technology & Paraprofessionals*, LEGAL SERVS. CORP., <http://www.lsc.gov/lsc%E2%80%99s-james-sandman-we-need-technology-paraprofessionals>.

17. See SUSSKIND, *supra* note 1, at 63; John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3041 (2014).

“end of lawyers.”<sup>18</sup> In an age where work-arounds are becoming the rule, rather than the exception, the legal profession and the court system have an unprecedented opportunity to transform the way that they interact with the public in a way that provides some meaningful access to all Americans with essential civil legal needs.

This article will first discuss the Access to Justice Gap in Arkansas and the insufficiency of the state’s current legal delivery system in addressing the legal needs of both the poor and of persons with the means to pay for legal advice. The article will then lay out a vision for 100% access and how Arkansas can achieve that vision. The authors propose that this can be accomplished by the coordinated development of a continuum of services ranging from free access to basic legal information to full-service representation by legal aid, pro bono, or appointed counsel. The private legal market is a major component of that continuum, as market-rate limited scope legal services hold meaningful promise for addressing unmet civil legal needs while giving lawyers the tools to successfully compete with the growing number of nonlawyer enterprises that currently offer more affordable options.

## II. THE ACCESS TO JUSTICE GAP IN ARKANSAS

Arkansas trails behind much of the country when it comes to accessibility and affordability of attorneys to assist in civil legal matters. Of the state’s nearly 3 million residents, approximately 746,039 qualify by income for legal aid.<sup>19</sup> Every year, the state’s two nonprofit civil legal aid providers—the Center for Arkansas Legal Services (CALS) and Legal Aid of Arkansas (LAA)—receive nearly 30,000 calls for help from persons who qualify by income to receive services. Half of those who call are turned away due to the limited capacity of these organizations.<sup>20</sup> It should therefore come as no surprise that Arkansas courts are seeing significant growth in the number of litigants who are handling their own civil legal problems without the assistance of a lawyer. In fact, a 2011 Arkansas study suggests that self-represented litigants initiate four out of every ten domestic relations cases;

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18. See generally RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2010).

19. *Poverty Status in the Past 12 Months: 2013 American Community Survey 1-Year Estimates*, U.S. CENSUS BUREAU, [http://factfinder.census.gov/bkmk/table/1.0/en/ACS/13\\_1YR/S1701/0400000US05](http://factfinder.census.gov/bkmk/table/1.0/en/ACS/13_1YR/S1701/0400000US05) (last visited May 18, 2015). This estimate is based on the number of Arkansans whose household income falls at or below 125% of the federal poverty level, which is generally the financial eligibility threshold for civil legal aid. Johnson, *supra* note 8, at 28.

20. See Home, ARK. ACCESS TO JUSTICE, <http://www.arkansasjustice.org/> (last visited June 17, 2015).

in nine out of ten of these cases, no attorney appears for the respondent.<sup>21</sup> Annual domestic relations case filings in Arkansas in recent years have consistently exceeded the 50,000 mark,<sup>22</sup> meaning that as many as 45,000 cases filed in the state each year likely have at least one unrepresented party.

The Arkansas court system has not yet adapted to this alarming trend. According to the National Center for Access to Justice's "Justice Index," Arkansas courts are currently tied with Kentucky for 49th place in the country when it comes to adoption of court-based best practices for ensuring that courts are accessible to self-represented litigants.<sup>23</sup> Notably, the metrics used to arrive at this ranking exclude resources and support systems from private sources, such as civil legal aid.<sup>24</sup>

Arkansas has a large catalogue of free self-help resources that are developed, funded, maintained, and managed by the Arkansas Legal Services Partnership ("ALSP") without the assistance of any court or legislative funding.<sup>25</sup> ALSP has developed and sustained several technology projects all

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21. PAINTER, *supra* note 11, at 11–16. This estimate does not include any administrative agency appeals, which likely involve significant numbers of self-represented litigants. *See, e.g.,* Spencer Willems, 2 *Claim Hotline System Unfair*, ARK. DEMOCRAT-GAZETTE 6B (July 31, 2015) (stating that only 38% of child maltreatment administrative appeals in fiscal year 2015 were represented by attorneys). Also not accounted for are cases within the jurisdiction of Arkansas district courts, which in 2014 alone saw more than a million cases filed. *See Calendar Year 2014 Statistical Supplement to Annual Report*, ARK. JUDICIARY, <https://courts.arkansas.gov/forms-and-publications/annual-reports/calendar-year-2014-statistical-supplement-annual-report> [hereinafter *2014 Statistical Supplement*] (follow "Limited Jurisdiction Courts" hyperlink; then follow "District & City Courts Statewide Summary (CHART)" hyperlink) (last visited June 17, 2015). At the present time, there is no reliable estimate of the number of self-represented litigants involved in district court cases; however, anecdotal information certainly suggests that the vast majority of these cases do, in fact, involve one or more self-represented litigants. Telephone Interview with Kay Palmer, Executive Director, Arkansas District Judges Council (June 8, 2015).

22. The Arkansas Administrative Office of the Courts annually compiles court case filing information, with reports dating back to 2003. These totals include domestic relations case filings. *See Annual Reports*, ARK. JUDICIARY, <https://courts.arkansas.gov/forms-and-publications/annual-reports>.

23. *See Self Representation*, NAT'L CTR. FOR ACCESS TO JUSTICE, <http://www.justiceindex.org/findings/self-represented-litigants/> (last visited June 17, 2015). The Justice Index uses a scale of zero (0) to one hundred (100) where zero reflects a poor performance or a lack of information regarding the indicator, while 100 reflects adoption of all of the practices researched with respect to this issue. *See Composite Index*, NAT'L CTR. FOR ACCESS TO JUSTICE, <http://www.justiceindex.org/findings/> (hover cursor over "About This Data Visualization") (last visited June 17, 2015). Arkansas and Kentucky both received a score of 20.3 out of 100 in making courts user-friendly to self-represented litigants. *See id.* at <http://www.justiceindex.org/findings/self-represented-litigants/>.

24. *See* Laura Abel & David Udell, *The Justice Index: Measuring Access to the Courts*, MGMT. INFO. EXCH. J. 48 (Fall 2012) ("A primary task in producing the Justice Index is to overcome the justice system's failure to systematically track data on its own performance.").

25. ALSP provides statewide support, training, and coordination for the two LSC-funded legal services organizations in Arkansas. Vincent Morris, *Navigating Justice: Self-*

with the goal of “using technology to improve access to justice for all” Arkansans in need of civil legal resources.<sup>26</sup> The primary vehicle for these technology projects is the legal aid website at [www.arlegalservices.org](http://www.arlegalservices.org).

ALSP began creating self-help resources in 2004, expanding its offerings in subsequent years after surveys—conducted jointly with the Arkansas Access to Justice Commission in 2005 and 2008—indicated a need within the judiciary for such resources.<sup>27</sup> ALSP remains the primary provider of free civil legal resources in Arkansas today.<sup>28</sup> There are two primary types of resources: (1) information about common legal issues; and (2) legal pleadings, forms, or other documents.<sup>29</sup> There are more than one thousand resources that are provided in a variety of media on the website. All resources designed for public use are written in plain language—readable at a fourth to eighth grade reading level—with several available in Spanish.

The use and volume of these resources have continually increased since the beginning of the project. Analytical usage data indicate a high demand for various types of legal resources and levels of legal assistance. The website has received more than 9.5 million page views since its launch ten years ago with an average of 2256 page views per day in 2014. There were 165,135 documents downloaded by visitors in 2014.<sup>30</sup>

The demand for access to legal resources, as well as the user demand for a choice in the level of legal assistance, may be best demonstrated by the popularity of the self-help automated documents provided on the website. The self-help automated documents are created using an interview-style interactive technology known as A2J Author® that guides the user through all the legal questions needed to complete a legal document.<sup>31</sup> Document

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*Help Resources, Access to Justice and Whose Job Is It Anyway?*, 82 MISS. L.J. 161, 172–73 (2013). A key component of this support is the development, distribution, and maintenance of justice technology. These resources are uniquely developed for three user types: self-help users, legal aid staff, and pro bono attorneys. The resources developed for self-help users have received the highest level of use.

26. See *Technology and Justice*, ARK. LEGAL SERVS. P'SHIP, <http://www.arlegal services.org/justicetechnology> (last visited June 19, 2015).

27. See, e.g., *2008 Statewide Circuit Judge Survey*, ARK. ACCESS TO JUSTICE, <http://www.arkansasjustice.org/research> (last visited June 15, 2015).

28. The overwhelming success of the ALSP website may ultimately lead to its own demise. The website continues to increase both in user volume and in the amount of content provided. However, the human resources to manage such a large catalogue of content have not increased.

29. Morris, *supra* note 25, at 173–74.

30. All document interview and assembly statistics cited in this article are maintained by ALSP and are on file with author Vincent Morris. Reports for 2009 through 2014 can be accessed on the ALSP website. See ARK. LEGAL SERVS. P'SHIP, *supra* note 26.

31. A2J Author® is an interactive platform created by the Chicago-Kent College of Law to make the court system more accessible to self-represented litigants by simplifying the process for creating legally sufficient pleadings to be filed with the court system. See *A2J*



automation technology utilizes branching and skip logic, meaning the user does not need to understand the complexities of the legal problem, but instead simply answers the questions asked by the virtual interview. If the legal form is not appropriate for the user's circumstance, the user is "exited" out. If the form is appropriate for the user's situation, the answers provided by the user are inserted into a pleading based on Arkansas law.

The ALSP website currently features 173 Arkansas-specific automated resources, including twenty-seven that are available to the public.<sup>32</sup> Since the first year of automated document production, Arkansas has been in the top ten of the highest number of interviews and assemblies in the nation.<sup>33</sup> There were 18,204 legal documents assembled in Arkansas in 2014.<sup>34</sup> As indicated in the table below, there have been more than 100,000 legal documents assembled in Arkansas since ALSP began the automation project, with an increase in usage every year.<sup>35</sup>

*Table 1: Arkansas Automated Document Interviews and Assemblies 2007-2014*

Arkansas Totals	2014	2013	2012	2011	2010	2009	2008	2007
Interviews	36,233	29,646	27,653	22,261	17,505	17,525	10,790	5,793
Assemblies	18,204	17,695	15,671	13,261	9,670	7,708	6,459	3,088
Percent of Interviews Resulting in Documents	50%	59%	57%	60%	55%	44%	60%	54%

When these document assemblies are compared to the volume of circuit court case filings in corresponding matters, it is obvious how critical this type of assistance has become in Arkansas. The number of documents generated compared to the number of domestic relations court filings indi-

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*Author*, IIT CHICAGO-KENT COLLEGE OF LAW, <http://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author> (last visited Aug. 11, 2015).

32. A majority of the automated resources are available only to legal aid advocates and pro bono volunteers on a password-protected section of the site.

33. An "interview" is the user's provision of answers in response to questions posed in the user interface; an "assembly" results when a user completes an interview and downloads the document, which is customized for the user based on responses provided in the interview. See Morris, *supra* note 25, at 175. Twenty-nine states and the District of Columbia make automated documents available to the self-help public. *Find Forms*, LAWHELP INTERACTIVE, <https://lawhelpinteractive.org/FindForms> (last visited Aug. 15, 2015).

34. See ARK. LEGAL SERVS. P'SHIP, *supra* note 26.

35. See *id.*

cates that a very high percentage of ALSP resources are likely filed within the court system. In 2014 alone, there were 52,447 domestic relations court filings in Arkansas.<sup>36</sup> A total of 15,400 domestic relations automated documents were generated through the ALSP website in 2014, resulting in the possibility that ALSP could have provided up to 29.4% of the domestic relations pleadings filed in Arkansas for 2014.<sup>37</sup> The most stunning comparison is between the number of assemblies for uncontested divorces with no children and no property, which totaled 12,255 in 2014. That same year, there were a total of 14,383 divorces without custody, support, or property filed in Arkansas.<sup>38</sup> Comparative data for 2014, 2013, and 2012 are provided in the three tables that follow:

*Table 2: 2014 Comparison of Case Filings and Document Assemblies*

	2014 Court Filings	2014 Document Assemblies	2014 Filings to Assemblies
<b>Domestic Relations Court Filings (All)</b>	52,447	15,400	29.4%
<b>Divorce (Without Property or Support)</b>	14,383	12,255	85.2%

*Table 3: 2013 Comparison of Case Filings and Document Assemblies*

	2013 Court Filings	2013 Document Assemblies	2013 Filings to Assemblies
<b>Domestic Relations Court Filings (All)</b>	51,924	15,298	25.0%
<b>Divorce (Without Property or Support)</b>	14,010	11,267	80.4%

36. 2014 Statistical Supplement, *supra* note 21.

37. See ARK. LEGAL SERVS. P'SHIP, *supra* note 26. There presently is no mechanism in place to track how many of the automated ALSP resources actually get filed. However, the sheer volume of assemblies compared to the corresponding court case filings indicates a strong likelihood that ALSP resources fill a substantial portion of the demand for self-help resources in domestic relations matters.

38. See *id.*; 2014 Statistical Supplement, *supra* note 21. The 2014 Statistical Supplement that is publicly available on the Arkansas Judiciary website shows case filings for broad categories of cases (e.g., domestic relations, civil, criminal, and probate) but does not list totals for individual case types. The authors requested and received data from the Arkansas Administrative Office of the Courts on individual subcategories, including divorces without property or support; results are on file with author Amy Dunn Johnson.

*Table 4: 2012 Comparison of Case Filings and Document Assemblies*

	2012 Court Filings	2012 Document Assemblies	2012 Filings to Assemblies
<b>Domestic Relations Court Filings (All)</b>	52,829	12,428	23.5%
<b>Divorce (Without Property or Support)</b>	15,523	10,881	70.1%

Despite Arkansas's high poverty population and high usage of free online resources, there are ample indications of a strong demand within the state for affordable alternatives to full-service representation among persons with the means to pay.<sup>39</sup> The high level of usage of the free resources available through arlegalservices.org indicates that there are tens of thousands of Arkansans each year who seek out self-help resources. Trial court judges routinely report seeing self-represented litigants who come to court—if not with ALSP-supplied documents, forms that have been purchased online.<sup>40</sup> In addition, authors Johnson and Morris have—as part of a pilot “CourtHelp” program to assist self-represented litigants in Pulaski County—undertaken a survey that attempts to determine whether the program's patrons would be willing to pay for legal advice to assist them in representing themselves, and a range of options for amounts they would be willing to pay. So far, more than half of the patrons who have responded have indicated that they would be willing to pay—some as little as \$100, others as much as \$1000.<sup>41</sup>

The Access to Justice Gap is not limited to the problem of high demand; there are significant deficits on the supply side of the equation. In Arkansas and other states, we are seeing a diminishing pool of attorneys in private practice—particularly in less populated areas—who are available to

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39. This is often referred to as the “latent” legal market—a market that in 2013 was estimated to be more than \$45 billion in the United States. Richard Granat, *The Latent Market for Legal Services*, SLIDESHARE (Dec. 2, 2013), <http://www.slideshare.net/rgranat/latent-market-for-legal-services>.

40. See PAINTER, *supra* note 11, at 26 (noting that 73% of judges surveyed indicated that self-represented litigants use the ALSP self-help resources). A number of for-profit, nonlawyer services market legal forms—often of dubious value—that can be purchased for a fee. See, e.g., MYDIVORCEPAPERS, <https://www.mydivorcepapers.com/> (last visited June 17, 2015).

41. A copy of the survey instrument is attached as Appendix A. Results are on file with author Amy Dunn Johnson.

handle even fee-generating cases.<sup>42</sup> In recent years, the decline in traditional job opportunities for law school graduates has led to a decrease in the number of law graduates who go on to careers that require a juris doctor. Many have attributed this decline to a perceived glut of lawyers in the market.<sup>43</sup> In Arkansas, this simply is not the case: of the state's 6855 active, licensed attorneys residing in Arkansas, a mere 2982 are likely in private practice.<sup>44</sup>

### III. A VISION FOR 100% ACCESS

In what at least one national authority on access to civil justice has called a "tipping point," the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) jointly adopted a resolution in August 2015 expressing explicit support for "the aspirational goal of providing 100 percent access to effective assistance for essential civil legal needs."<sup>45</sup> Notably, the joint resolution expressly identifies advances that have been made in expanding access to justice, suggesting overt support for their implementation:

[T]hese advances include, but are not limited to, expanded self-help services to litigants, new or modified court rules and processes that facilitate access, discrete task representation by counsel, increased pro bono assistance, effective use of technology, increased availability of legal aid services, enhanced language access services, and triage models to match specific needs to the appropriate level of services.<sup>46</sup>

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42. See Jayne Reardon, *Search: Lawyer Near Me*, ILL. SUPREME COURT COMM'N ON PROFESSIONALISM, <http://www.2civility.org/search-lawyer-near-me/> (last visited Aug. 5, 2015) (noting Arkansas is the state with the lowest ratio of lawyers in the country, with 20.1 lawyers per 10,000 residents); see also Lisa Pruitt et al., *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It*, 37 U. ARK. LITTLE ROCK L. REV. 573, 645–56 (2015).

43. See Doug Smith, *Over Lawyer-ed?*, ARK. TIMES, Nov. 18, 2010, <http://www.arktimes.com/arkansas/over-lawyer-ed/Content?oid=1393294&showFullText=true>.

44. See LISA R. PRUITT ET AL., ACCESS TO JUSTICE IN RURAL ARKANSAS, ARK. ACCESS TO JUSTICE (2015), [http://www.arkansasjustice.org/sites/default/files/file%20attachments/AATJ PolicyBrief2015-0420.pdf](http://www.arkansasjustice.org/sites/default/files/file%20attachments/AATJ%20PolicyBrief2015-0420.pdf). This estimate is based on the number of attorneys who have IOLTA accounts. *Id.*

45. *Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All*, CONFERENCE OF STATE COURT ADMINS. 1 (2015), <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07252015-Reaffirming-Commitment-Meaningful-Access-to-Justice-for-All.ashx>; Richard Zorza, *New CCJ/COSCA Resolution on 100% Access, and How to Get There, Is a Tipping Point*, RICHARD ZORZA'S ACCESS TO JUSTICE BLOG, <http://accesstojustice.net/2015/08/11/new-ccjcosca-resolution-on-100-access-and-how-to-get-there-is-a-tipping-point/> (last visited Aug. 11, 2015).

46. CONFERENCE OF STATE COURT ADMINS., *supra* note 45, at 1.

The resolution ultimately calls for a “continuum of meaningful and appropriate services,” with strong reliance on a robust, well-funded legal aid system.<sup>47</sup> Indeed, legal aid is, and has been for decades, the nation’s lead pioneer in providing a system of legal triage and a continuum-of-services delivery infrastructure based on available resources.

The 100% access vision was first articulated in a two-part national Summit on the Use of Technology to Enhance Access to Justice that the Legal Services Corporation convened in 2012 and 2013.<sup>48</sup> The planning committee for that event proposed a mission statement challenging the longstanding reality that only a small proportion of Americans with civil legal problems will get assistance in resolving those problems. That mission statement reads: “to explore the potential of technology to move the United States toward providing some form of effective assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential civil legal needs.”<sup>49</sup>

The report generated by the Technology Summit sets forth a series of strategies that have a genuine potential for reaching the 100% goal. Those strategies include (1) the creation of statewide “triage portals” that employ automated processes to direct persons needing legal assistance to the most appropriate resources for their needs; (2) the use of document assembly technology to support the creation of legal documents by service providers and self-represented litigants; (3) the use of mobile technologies; (4) application of business process analysis to make access-to-justice activities as efficient as possible; and (5) development of “expert systems” to assist lawyers and others who deliver legal services.<sup>50</sup> Implementation of these strategies would not only necessitate that the courts, the bar, and the legal services community embrace modern technologies, but it would also require them to engage in a degree of collaboration hitherto unimagined and to adopt an inter-related set of resource allocations never before envisioned.

The Arkansas Access to Justice Commission undertook a parallel project in 2013 to develop a statewide strategy for addressing the legal needs of a growing number of self-represented litigants.<sup>51</sup> The study, which was funded through a State Justice Institute Technical Assistance Grant, resulted

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47. *Id.* at 2.

48. *Report of the Summit on the Use of Technology to Expand Access to Justice*, LEGAL SERVS. CORP. 1 (Dec. 2013), <http://www.lsc.gov/media/in-the-spotlight/report-summit-use-technology-expand-access-justice>.

49. *Id.*

50. *Id.* at 2.

51. *See generally* GREACEN, *supra* note 6. In developing the strategy, the Commission’s executive director and consultant—two of the authors of this article—conducted site visits in five different counties in Arkansas, where they observed proceedings involving self-represented litigants and interviewed judges, court clerks and staff, trial court assistants and bailiffs, and local family law attorneys. *Id.* at 2.

in the development of a comprehensive set of recommendations that, like the Technology Summit Report, envisioned a spectrum of resources ranging from improving the availability of reliable legal information to the provision of full representation by legal aid or pro bono attorneys for persons of limited means who are unable to represent themselves in any capacity. Although not explicitly couched in terms of “100% access,” the plan did affirmatively state that its recommendations were intended to serve as a “plan for universal access to civil justice in Arkansas.”<sup>52</sup>

The major components of the 2013 Arkansas plan for access to civil justice for all Arkansans include the following: (1) adoption of policies clarifying the extent to which judges and clerks can provide legal information and assistance to self-represented litigants; (2) establishment of the Arkansas Supreme Court Library as a statewide self-help center for Arkansas that is accessible from locations around the state; (3) establishment of courthouse-based self-help services provided by court staff and volunteers; (4) expansion and upkeep of legal forms available online for the most common civil legal problems; (5) encouragement of lawyers to provide limited scope legal representation to otherwise self-represented litigants so that they have access to competent legal help that will facilitate resolution of their legal issues; (6) linking of self-represented litigants with limited scope attorneys who are willing to provide such assistance; and (7) focusing legal aid and pro bono resources on matters where persons of limited means are unable to pursue their own cases due to the complexity of the legal issues or personal circumstances that may limit their ability to advocate for themselves.<sup>53</sup> The ultimate conclusion of that study was this:

The only realistic hope for bridging the Access to Justice Gap is to make it possible for Americans to pursue their own civil matters in our courts by “representing themselves.” . . . For persons representing themselves to have a fair opportunity to obtain the legal relief to which the facts and law of their case entitle them requires a significant amount of assistance—in understanding the law and the steps in a legal proceeding, in preparing appropriate legal documents, and in assembling and presenting evidence supporting their positions.<sup>54</sup>

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52. *Id.* at ii.

53. *Id.*

54. *Id.* at i. The national justice community has begun to think of the provision of self-help services in terms of “justice tiers,” with the first tier being one-directional information, such as webpages, fact sheets, and forms; bi-directional information, which includes such services as basic form review, chat, email, and referrals to mediation and legal advice; and customized help, including triage, legal advice, and courtroom-based pro bono projects. Katherine Alteneder, *Introduction of SRLN National Self-Help Services Inventory, ATJ Tiers & Discussion*, SELF-REPRESENTED LITIG. NETWORK, <http://www.srln.org/node/49/conference-srln-2015-equal-justice-conference-pre-conference-austin-2015> (last visited Nov. 5, 2015).

The authors propose a 100% access vision for Arkansas that synthesizes the recommended strategies to come out of the CCJ/COSCA Resolution, the LSC Technology Summit, and the 2013 State Justice Institute-funded Arkansas plan. Conceiving of services in these terms allows for our system of justice to truly scale its limited resources in a way that makes some form of meaningful legal assistance available to everyone who needs it. Doing so necessarily calls for us to shift our thinking to *access* as the ultimate criterion.<sup>55</sup> In other words, every individual with a civil legal issue (whether a court case, administrative appeal, or extra-judicial dispute) has a fair opportunity to have that matter heard and resolved.

#### A. Statewide Triage Portal

The 100% vision has a core technological component referred to as a “statewide triaging portal” described in the Report of the LSC Technology Summit.<sup>56</sup> This online resource will serve as a “911” for persons who think they may have a civil legal issue. Persons desiring legal help will enter information about their situation, its urgency, and their personal capabilities. The information will be maintained in their own secure data repository to which they may authorize others to have access. The information will be analyzed by algorithms within “expert systems” that make referrals to the least expensive resource with a reasonable likelihood of leading to a fair outcome.

Referrals will be made to the following types of resources: information websites; forms; lawyers for full or limited scope representation; legal services organizations for full, limited, or pro bono representation; court-based self-help centers; libraries; to senior centers; or appropriate social services agencies for assistance in obtaining housing, public benefits, or the like. The entity to which a referral is made would be able to make a different referral based on a human’s assessment of the situation. All persons would be provided with information on other referral sources, such as full or limited scope representation to which they could turn as a matter of personal choice. The triage portal would generate information including court outcomes that would allow the portal governance to modify the referral algorithms in light of actual experience.

At the present time, the only statewide mechanism in Arkansas for any kind of legal “triage” is a coordinated intake system that the CALS and

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55. See Richard Zorza, *ABA Commission on the Future of Legal Services Comments—Now Due December 20—Some Challenging Thoughts*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG, <http://accesstojustice.net/2014/12/06/aba-commission-on-future-of-legal-services-comments-due-coming-wed-some-challenging-thoughts/> (last visited June 19, 2015) (emphasis added).

56. LEGAL SERVS. CORP., *supra* note 48, at 4–5.

LAA provide through a 1-800 telephone “Helpline” that geo-routes callers with civil legal issues based on the area code from which the call originates<sup>57</sup> and an online intake system on the ALSP website.<sup>58</sup> Callers and online intake users are screened for financial eligibility and their legal problem is assessed to determine whether the issue falls within the legal aid program’s case acceptance priorities, which generally give highest precedence to issues that pose an imminent threat to the health or safety of the client. Priorities also factor into the type of service a client receives, ranging from on-the-spot advice to full-service representation.<sup>59</sup> CALS and LAA are also the only funded and staffed mechanism in the state for referring cases to pro bono attorneys.<sup>60</sup> Successful implementation of a statewide triage portal in Arkansas will need to build on this existing infrastructure, with support and involvement of the private bar, courts, and social service agencies that can address legal needs that fall outside the scope of what CALS and LAA can address.

#### B. Websites, Information, and Automated Document Technology

Arkansas already has a robust statewide legal aid website developed and maintained by ALSP ([www.arlegalservices.org](http://www.arlegalservices.org)), which features the most comprehensive set of Arkansas-specific legal informational resources and automated documents available to the public.<sup>61</sup> However, ALSP’s funding comes solely from CALS and LAA, meaning fluctuations in federal funding that it receives leave the website and its resources highly vulnerable when funding cuts necessitate that CALS and LAA reallocate their scarce resources. One full-time legal aid staff member is currently responsible for the website and all of its content. Given the speed with which both technol-

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57. General information about contacting the Helpline can be found at <http://www.arlegalservices.org/helpline> (last visited Aug. 9, 2015). The Helpline receives more calls than it can possibly handle. *See supra* text accompanying note 20.

58. *Apply for Legal Aid*, ARK. LEGAL SERVS. P’SHIP, <http://www.arlegalservices.org/applyonline> (last visited Aug. 9, 2015). The state’s legal aid online intake system has been live for the Legal Aid of Arkansas service area since June 2014, and for the Center for Arkansas Legal Services service area since August 2015. In one year’s time, there were approximately 4500 online intakes for thirty-one of the state’s seventy-five counties.

59. *See* PAOLA CAVALLARI ET AL., *Justice Measured: An Assessment of Economic Impact of Civil Legal Aid in Arkansas*, ARK. ACCESS TO JUSTICE 7 (2014), <http://www.arkansasjustice.org/sites/default/files/file%20attachments/AR-Economic-Impact-Study-2014.pdf> (last visited Aug. 8, 2015).

60. *Id.* at 8.

61. *See* Morris, *supra* note 25, at 172–73. Given the high utilization of the site and its automated documents, the ALSP website would be a natural conduit for connecting self-help users who are “exited” out of automated document interviews to attorneys who provide limited scope representation.



ogy and the law change, it is essential to have the staff capacity necessary to maintain and expand Arkansas-specific information and resources.

The state court system, as the branch of government charged with dispensing justice, should assume primary responsibility for ensuring that its courts are navigable and accessible by ordinary citizens.<sup>62</sup> In virtually all other states in the country, the judicial branch is actively involved in efforts to make self-help resources more widely available to the public.<sup>63</sup> The self-help resources created and maintained by ALSP are demonstrably essential to the administration of justice in Arkansas, and, as such, should receive substantial support for their maintenance. In addition, available resources need to be expanded to include all forms needed for matters where Arkansans regularly represent themselves, with continued attention given to the need for such resources to be written in plain language and available in other languages.<sup>64</sup>

### C. Self-Help Centers and Accommodating Courts

Over the last twenty years, many U.S. courts have made resources available to the self-help public—in the form of court-staffed “self-help centers” and “accommodating” courtrooms in which judges guide litigants through the process of presenting their cases to elicit the information needed to resolve each case on its merits.<sup>65</sup> In these states, self-represented litigants have a reasonable expectation of obtaining justice in their cases.

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62. A 2011 U.S. Supreme Court decision suggests that judges have an affirmative duty to ensure that appropriate safeguards are in place to protect the due process rights of self-represented litigants. *See* *Turner v. Rogers*, 131 S. Ct. 2507, 2509–10 (2011); Russell Engler, *Turner v. Rogers and the Essential Role of the Judiciary in Delivering Access to Justice*, 7 HARV. L. & POL’Y REV. 31, 59 (2013) (“Only with the leadership both of court leaders and of individual judges will the courts’ procedures and resources be marshaled to reduce the unfairness facing many litigants in our adversarial system.”); Richard Zorza, *Turner v. Rogers: Improving Due Process for the Self-Represented*, NAT’L CTR. FOR STATE COURTS, [http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Courts-and-the-Community/~media/Microsites/Files/Future%20Trends%202012/PDFs/TurnerRogers\\_Zoraa.ashx](http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Courts-and-the-Community/~media/Microsites/Files/Future%20Trends%202012/PDFs/TurnerRogers_Zoraa.ashx) (last visited Aug. 11, 2015) (“The touchstone for whether procedures satisfy due process is whether they provide sufficient fairness and accuracy . . . thus potentially raising that key question in every self-represented litigant case.”).

63. This is an evident factor in Arkansas’s poor Justice Index ranking. *See supra* notes 23–24 and accompanying text.

64. GREACEN, *supra* note 6, at 16–18.

65. JOHN GREACEN, THE BENEFITS AND COSTS OF PROGRAMS TO ASSIST SELF-REPRESENTED LITIGANTS: RESULTS FROM LIMITED DATA GATHERING CONDUCTED BY SIX TRIAL COURTS IN CALIFORNIA’S SAN JOAQUIN VALLEY FINAL REPORT (2009). Rule 6.3 of the Arkansas Rules of Professional Conduct explicitly authorizes the provision of short-term legal services through court-based programs that are sponsored by nonprofit organizations or courts themselves. ARK. RULES OF PROF’L CONDUCT R. 6.3 (2015).

Efforts to establish self-help centers and to make courtrooms accommodating for self-represented litigants are best facilitated by having rules and policies in place that guide judges, court and clerk's office staff, librarians, and others on how to deal with self-represented litigants without crossing any ethical boundaries or engaging in the unauthorized practice of law. This can be accomplished: (1) by making clear in applicable rules of judicial conduct that judges may make reasonable accommodations to ensure that self-represented litigants have a fair opportunity to be heard; (2) by developing judicial benchbooks and training curricula on techniques for interacting with self-represented litigants; (3) by implementing procedures for proactive case management; and (4) by promulgating policies for non-attorney court staff regarding what kind of information and assistance they may permissibly provide.<sup>66</sup>

The Arkansas Access to Justice Commission—in an effort to implement the plan it adopted in 2013 for addressing the needs of self-represented litigants—has approved a set of recommended rule changes that would: (1) set guidelines for court staff and other non-attorneys with specialized knowledge of the court system for providing legal information to the public without engaging in the unauthorized practice of law; and (2) modify the code of judicial conduct to clearly authorize judges to make certain accommodations for self-represented litigants to ensure that matters are heard on their merits, without compromising ethical standards.<sup>67</sup> The Commission plans to petition the Arkansas Supreme Court to adopt these proposals, and it is, as of the date of this article, in the process of developing training materials and similar resources.<sup>68</sup>

The Arkansas Supreme Court should also consider repurposing its in-house library to serve as the hub of a network of court- and library-based self-help centers around the state. With the advent of online legal research, the Supreme Court Library goes largely unused by members of the Arkansas Supreme Court, Court of Appeals, and their staffs. However, library staff routinely handle inquiries from the public; in 2014 alone, library staff fielded more than 2030 inquiries, with nearly half of that traffic coming from the general public or self-represented litigants.<sup>69</sup>

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66. See GREACEN, *supra* note 6, at 12–15.

67. See Amy Johnson, *Commission Soliciting Comments on Proposed Rule Changes on Unbundling, Pro Se Assistance*, ARK. ACCESS TO JUSTICE (July 1, 2015, 1:28 PM), <http://www.arkansasjustice.org/srl-task-force-rules-comments> [hereinafter *Commission Soliciting Comments*].

68. *Id.*

69. The Arkansas Supreme Court Library tracks its reference desk statistics using a program called Gimlet. These statistics were provided by Ava Hicks, Director of the Arkansas Supreme Court Library, and are on file with author Amy Dunn Johnson.

As a rural state, Arkansas has numerous judicial districts that lack sufficient resources to staff court-based self-help centers. However, existing infrastructure could be utilized to develop a virtual self-help center model similar to a highly successful program in Minnesota.<sup>70</sup> Part of that infrastructure includes public access terminals that Arkansas court clerks are required to make available in courts that have implemented electronic filing.<sup>71</sup> Public access terminals could be made available to self-represented litigants not only to access e-filed documents, but also to access online self-help resources made available by ALSP and the courts. Staff at the Arkansas Supreme Court Library, who are already fielding numerous phone calls, emails, and web contacts, could—with sufficient staff resources—provide remote informational assistance to persons utilizing the public access terminals.

#### D. Limited Scope Representation and the Private Legal Market

Given the enormity of the Access to Justice Gap, implementation of the 100% vision necessitates the enlistment of a significant portion of the private bar in providing limited scope representation for persons representing themselves in court. Poor and modest income persons can afford several hours of a lawyer's time to provide them with legal counsel even though they cannot afford to hire an attorney to handle an entire matter on their behalf. In many instances, that time may be all that a litigant needs in order to successfully pursue a legal matter herself.

At the present time, tens of thousands of Arkansans are currently working around or bypassing lawyers altogether. By offering limited scope legal services, attorneys can gain the market share that they are losing to nonlawyer companies that sell forms, while providing services that are valued, desired, and result in cases resolved on the merits. The authors believe, judging from the usage statistics of ALSP resources and the estimated size of the latent legal market, that this delivery model is the most scalable solution to the access-to-justice crisis in our state and one that holds tremendous profitability potential for lawyers, including lawyers in rural areas of the state who are struggling to find sufficient paying work.<sup>72</sup>

Virtually every state has taken steps to amend or clarify the Rules of Professional Conduct to make clear that lawyers may ethically limit the scope of their representation of a client and that judges are bound by the

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70. See *Self Help Centers*, MINN. JUD. BRANCH, <http://www.mncourts.gov/selfhelp> (last visited Aug. 11, 2015).

71. See Ark. Admin. Order No. 21, § 10(A); see also *eFile*, ARK. JUDICIARY, <https://courts.arkansas.gov/administration/acap/efile> (last visited Aug. 11, 2015) (stating that only a handful of courts have implemented e-filing so far).

72. See *supra* notes 36–38 and accompanying text.

limitations agreed to by the lawyer and client.<sup>73</sup> However, it is the exceptional community in which the private bar has yet embraced this form of practice.

As of the writing of this article, Arkansas has adopted the most basic version of the Model Rule of Professional Conduct that permits a lawyer to limit the scope of representation of a client if the client gives informed consent and it is appropriate under the circumstances.<sup>74</sup> However, the Arkansas Access to Justice Commission plans to seek—in conjunction with a proposed amendment to the Arkansas Judicial Code of Conduct and guidelines for court staff and other non-attorneys—adoption of amendments to select rules of professional conduct and civil procedure to explicitly authorize attorneys to engage in limited scope representation.<sup>75</sup>

A series of virtual law office tools are already available to enable lawyers to communicate remotely with their clients, negotiate representation agreements, elicit relevant information about a case, review documents provided by a client, draft and review documents, communicate by videoconference as needed, and to provide legal counsel and make a record of the guidance provided.<sup>76</sup> All of these capabilities will reduce the cost of providing limited scope (or full scope) representation.<sup>77</sup> The American Bar Association has invested significant resources to encourage its members to embrace this form of law practice and is negotiating with Rocket Lawyer to offer the latter's online representation tools to a core group of lawyers in each state to provide a practical demonstration of the economic viability of limited scope representation.<sup>78</sup>

#### E. Language Access and Disability Assistance

Arkansas has comparatively good systems in place to address language access needs for limited-English proficiency (LEP) litigants and witnesses

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73. See *Unbundling*, SELF-REPRESENTED LITIG. NETWORK, <http://www.srln.org/taxonomy/term/174> (last visited Nov. 5, 2015).

74. MODEL RULES OF PROF'L CONDUCT R. 1.2 (2014); ARK. RULES OF PROF'L CONDUCT R. 1.2(c) (2015).

75. See *Commission Soliciting Comments*, *supra* note 67.

76. Chad E. Burton, *Launching a Virtual Law Firm*, GPSOLO (Jan.-Feb. 2014), [http://www.americanbar.org/publications/gp\\_solo/2014/january-february/launching\\_virtual\\_law\\_firm.html](http://www.americanbar.org/publications/gp_solo/2014/january-february/launching_virtual_law_firm.html); see also STEPHANIE L. KIMBRO, LIMITED SCOPE LEGAL SERVICES: UNBUNDLING AND THE SELF-HELP CLIENT (2012).

77. See Burton, *supra* note 76.

78. See ABA, *Rocket Lawyer Launch Test of Legal Services for Small Businesses in 3 States*, ABA (Oct. 1, 2015), [http://www.americanbar.org/news/abanews/aba-news-archives/2015/10/aba\\_rocket\\_lawyer1.html](http://www.americanbar.org/news/abanews/aba-news-archives/2015/10/aba_rocket_lawyer1.html).

for courtroom appearances.<sup>79</sup> However, there is no clear, publicly accessible set of resources that provides direction to persons with disabilities (other than hearing impairment) to request and receive accommodations. Assessment of these systems was outside the scope of a 2013 SJI-funded study conducted of Arkansas's study of services available to self-represented litigants.<sup>80</sup> However, language access and disability assistance—not just for courtroom appearances, but also for court and self-help services generally—should be part of any comprehensive effort to ensure 100% access for all Arkansans.

#### F. Legal Aid Attorneys, Pro Bono Attorneys, and Civil Right to Counsel

Even in states that are leading the way in providing access to civil justice, there are still cases in which no amount of court staff and judicial accommodation will prove sufficient. These cases are unusually complex matters (e.g., family matters involving multiple domestic or foreign jurisdictions) and even ordinary cases involving persons with limited levels of sophistication (low mental functioning, functional illiteracy, or lack of English language skills that cannot be fully addressed through courtroom interpreters or other accommodations). It is clear that a number of self-represented litigants who are capable of preparing the necessary documents and presenting their case in court would benefit from a strategic assessment of their situation by an experienced lawyer.<sup>81</sup>

For the 100% vision to be realized, the limited legal services and pro bono resources now available need to be directed to the persons and cases least likely to obtain a fair outcome without representation. This represents a

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79. See *Court Interpreters*, ARK. JUDICIARY, <https://courts.arkansas.gov/administration/interpreters> (last visited Aug. 23, 2015). Arkansas ranks 25th in the country in following best practices for LEP individuals, according to the most recent Justice Index rankings—a considerably higher ranking than the state has received when it comes to dealing with self-represented litigants. See *supra* note 23 and accompanying text; *Language Assistance*, NAT'L CTR. FOR ACCESS TO JUSTICE, <http://www.justiceindex.org/findings/language-assistance/> (last visited Aug. 12, 2015).

80. See *supra* notes 51–53 and accompanying text.

81. At least two states—Washington and New York—have taken an intermediate step and have authorized trained midlevel professionals to provide advice and assistance to clients in certain areas. See, e.g., Robert Ambrogì, *Authorized Practice: Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, A.B.A. J. (Jan. 2015), [http://www.abajournal.com/magazine/article/washington\\_state\\_moves\\_around\\_upl\\_using\\_legal\\_technicians\\_to\\_help\\_close\\_the\\_justice\\_gap](http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap). Washington's limited license legal technicians and New York's navigators offer such professional services as document review and preparation or individualized advice. *Id.* These states, along with a number of others that have considered authorizing nonlawyer practice, maintain that this is a delivery mechanism—not unlike nurse practitioners and physician assistants in the medical field—that can assist in some meaningful way in addressing unmet civil legal needs without “tak[ing] food off lawyers’ plates.” *Id.*

significant change in the criteria used by legal services organizations in their representation priorities. Efforts to establish a civil right to counsel can be pursued for cases where legal representation is needed to obtain the fair outcome, but which legal aid organizations are not able to handle in-house or assign to pro bono attorneys.<sup>82</sup>

#### IV. CONCLUSION

America's justice system is functionally inaccessible to most persons of limited and moderate means who face life-altering civil legal problems. The same can be said of Arkansas, where self-representation is often the rule, rather than the exception. Meanwhile, the number of Arkansas lawyers in private practice is dwindling, despite ample evidence of overwhelming, unmet legal needs. A growing DIY movement among the public has affected virtually every business sector—including the practice of law—yet the legal profession has failed to adapt. As a result, it is losing market share to nonlawyer online legal service companies by the day.

As daunting as these problems sound, they are solvable. The Arkansas legal system has an unprecedented opportunity to transform the way that it serves the public so that 100% of persons with essential civil legal needs have meaningful access to justice and a failing legal market can thrive. The vision for 100% access in Arkansas calls for the legal system to offer a continuum of services that include the following: (1) a statewide legal triage portal; (2) widely available legal information and self-help resources through websites and other tools that are endorsed and supported by the Arkansas judiciary; (3) the creation of a network of court-based self-help centers that are supported by policies, rules, and tools that courts and their staffs need to facilitate the disposition of cases involving self-represented litigants on their merits; (4) the widespread adoption of limited scope representation among lawyers; (5) language access and disability assistance services for individuals who utilize self-help services; and (6) full-service representation through civil legal aid providers, pro bono attorneys, and attorneys appointed in cases where there is a civil right to counsel.

The good news is that it is in the obvious best interests of all justice stakeholders—the courts, legal aid, and the private bar—to move in the directions required to achieve the 100% vision. For legal services, what is at stake is the realization of its ultimate objective of civil justice for all. For the

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82. For a history of the civil right-to-counsel movement and how it squares with the continuum-of-services approach, see John Pollock & Mary Deutsch Schneider, *Ten Years in and Picking up Steam: A Retrospective on the National Coalition for a Civil Right to Counsel*, 47 CLEARINGHOUSE REV. J. L. & POL'Y 35 (2013); see also Richard Zorza, *The Relationship of the Right to Counsel and the Self-Represented Litigant Movements*, 26 MGMT. INFO. EXCHANGE J., no. 2, Summer 2012, at 47.

private bar, what is at stake is “increasing the size of the pie” to ensure an adequate livelihood. These are the components that together comprise the 100% vision that can eliminate the Access to Justice Gap within the next five to ten years—if we have the collective will to embrace that vision.