

The Michigan Legal Help Project and the Role Libraries Played in Approving Access to Justice

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Abstract:

Access to legal information is a critical component of access to justice. Without it, it can be extraordinarily difficult for a non-lawyer to address a legal issue or even represent oneself in a court proceeding. At the beginning of the second decade of the 21st century, free, reliable, and authoritative legal information was not consistently and uniformly available to the nine million residents of the state of Michigan. Then Michigan Supreme Court Chief Justice Marilyn Kelly, in partnership with the Michigan State Bar Foundation, formed the Solutions on Self-Help (SOS) Task Force to address this situation in order to improve access to justice for the state's citizens. This initiative led to the development of the Michigan Legal Help website and the establishment of legal self-help centers throughout the state. From the SOS Task Force's very inception, it recognized the critical role public libraries would have to play in this endeavor in order to truly change the access to justice environment. Law librarians were recruited to be members of the Task Force and were charged with collaborating with the state's public libraries to train them on how to better assist patrons with legal questions and how to use the Michigan Legal Help website. Through the support of the Michigan State Bar Foundation, training programs for public libraries were developed and conducted throughout the state in two phases. These programs brought Michigan law libraries and public libraries together in ways they had never been before. This paper will discuss the evolution of this collaboration, what lessons were learned for both types of libraries, and will offer recommendations on how law libraries across the United States can collaborate with their public library colleagues to improve access to justice in their own communities.

Keywords: Legal Information, Access to Justice, Michigan Legal Help, Public Libraries, Law Libraries

“How would you feel if we had a system in this country where, if you went to the emergency room with severe abdominal pain, without insurance, you were told to use the illustrated textbooks on the bookshelves to diagnose your problem and the sterilized instruments in the trays to perform your own surgery? All of us would think the system is immoral. Somehow, when mothers or fathers are told to fight for custody of their child or for their health care, their job, their apartment or their home without a lawyer, too many think its perfectly alright for them to perform their own surgery in our courthouses with burdens, rules, and a process they do not understand.”¹

These remarks were made by then New Hampshire Chief Justice John T. Broderick, Jr., and they aptly sum up the situation that so many civil litigants find themselves in when representing themselves in court in the United States. While the Sixth Amendment of the U.S. Constitution guarantees for “the assistance of counsel,”² this applies only to criminal cases. A person having a civil court case must either hire an attorney or represent themselves. This situation presents huge challenges for those citizens who do not have the economic means to pay for the services of an attorney. While legal aid organizations do exist, the resources of these groups are simply not enough to meet the demand for their services. It is estimated that for every one person served by a legal aid program, at least one person is turned away due to a lack of resources. Nationwide, nearly one million cases annually go unserved due to a lack of funds.³ When a person has to represent themselves in court, they have to learn the various laws, rules, and procedures that could or will have an impact on their cases. The court system often does not provide these resources to the individual and it becomes necessary for them to seek these out on their own.

In the United States, the majority of legal matters are addressed at the state and local levels of government. There are no uniform nationwide standards or guidelines for how much assistance a court system must provide to someone who is representing themselves in a court case. The individual states and/or court jurisdictions determine for themselves what resources and assistance they will provide to a self-represented litigant (SRL).

Prior to 2012, there were very few options that a SRL in Michigan had in seeking legal assistance. The global recession also impacted Michigan extremely hard. One in three of its residents became low income.⁴ As such, more and more individuals were representing themselves in court. Mirroring the national situation, roughly half of all individuals seeking legal assistance in Michigan were turned away.⁵ The judicial establishment knew that something had to be done to alleviate this situation to preserve access to justice.

In 2010, then Michigan Supreme Court Chief Justice Marilyn Kelly created the Solutions on Self-Help (SOS) Task Force comprised of judges, courts, lawyers, legal aid programs, bar associations, self-help centers, social service agencies and libraries. The Task Force was charged with developing methods to promote greater centralization, coordination, and quality of support for the SRL community in Michigan.⁶ As Justice Kelly stated, “Many people who cannot afford to hire an attorney try to represent themselves. But, many self-represented litigants find it very difficult to navigate the legal system and understand legal forms. I created this task force to fill the justice gap I see in our state. Many judges and court staff have tried to develop resources for those who represent themselves, but not all of those resources are truly helpful or up-to-date.”⁷

Among the first projects of the SOS Task Force were the development of the *Michigan Legal Help* website and the establishment of legal self-help centers. Many courts and organizations in Michigan tried to develop some self-help resources over the years, but quality, consistency, and currency varied widely. The Michigan State Bar Foundation conducted a study and found “some 158 different websites of self-help resources, but many materials are incomplete, out of date or of poor quality, and the websites are not well-maintained or user-friendly. Nearly all were PDF-drill down rather than interactive and they often had broken links.”⁸ The Task Force wanted to develop one single current and authoritative website to provide assistance to SRLs, similar to what was being done in other parts of the country with sites such as *Illinois Legal Aid Online* and *Texas Law Help*.

The *Michigan Legal Help* website debuted in August 2012 and featured self-help content in the areas that see the most self-representation in the Michigan courts: family law, consumer law, criminal expungements, protection orders, and landlord/tenant matters. Additional legal topics have since been added over the years. The site contained toolkits for each area of the law it addressed. These toolkits contained articles and common questions on that particular topic as well as online court forms that could be completed through a user-friendly interview process. SRLs could also find step-by-step instructions on how to file their court forms as well as learn what additional procedural steps they would need to follow to complete their case. All of the procedural information was specifically tailored to the particular court the SRL would need to use for their case. Short videos were also featured for more generalized court procedures, such as how to serve legal papers and what to do if a SRL was facing a civil lawsuit. *Ayuda Legal de Michigan*, a Spanish-language version of the website debuted in 2014 to serve Michigan’s growing Hispanic community.

Because there are not enough legal aid attorneys and programs to meet the demand, the website works to provide Michigan residents with many of the tools they would need to represent themselves in court on a simple legal matter. *Michigan Legal Help* is not a substitute for an attorney and the website makes that clear throughout its content. Likewise, court form interviews are structured to screen out individuals with complex situations who really do require the assistance of an attorney. As such, the website also contains referrals to legal assistance organizations, lawyer referral services and community service agencies all pertinent to the SRL’s geographic location. The result is similar to a triage effect with simple cases being given basic assistance and the more serious ones getting referred to the legal aid organizations. It is a win-win situation for the both the SRL and the state’s civil legal aid programs.

The SOS Task Force knew it simply was not enough to publish a website and then hope for the best. The Task Force knew that many SRL individuals would require assistance beyond what was available on the computer. With that in mind, the Task Force established *Michigan Legal Help Self-Help Centers* throughout the state. These centers would be staffed with individuals who could act as “navigators” for the *Michigan Legal Help* website and could provide detailed assistance with using the website and locating the necessary information needed by the SRL. The centers would also serve as a place where the SRL could get free computer access and more detailed information about the local courts and legal aid resources available to them. As of this writing, there are 15 *Michigan Legal Help Self-Help Centers* throughout the state. One-third of these centers are located in libraries.

The United States has a strong tradition of having public libraries accessible to residents in their local communities. According to the American Library Association, there are an estimated 9,082 public libraries in the United States.⁹ Many states, including Michigan, have the provision of public libraries for their citizens in their constitutions.¹⁰ People visit their public libraries to obtain information about all kinds of subjects, including the law.

Public libraries offer SRLs a level of accessibility that can be difficult to find elsewhere in a community. The libraries are free to use and they are located within a reasonable distance to every member in a community. Moreover, they are generally open for more days and longer hours than the courts. In addition to having information the SRL needs, the public library is often the only place where they can find free computer access. Last, but not least, libraries are staffed with professionals whose role is to assist individuals in locating information. Librarians are viewed as helpful and approachable people and are trained to interact with people of all socio-economic and educational levels.

While locating legal information is not a problem, librarians often receive requests that are in reality requests for legal advice. These are not questions that can be addressed by librarians because they are not licensed attorneys and cannot therefore engage in the practice of law. Legal questions from the public can cause libraries a bit of anxiety as they need to remain within their roles as libraries and yet still provide some level of quality customer service to the SRL. Members of the legal aid and access to justice communities have taken note of the increased usage of libraries by SRLs and have been working with libraries to help them better understand how they can better serve their SRL patrons. Richard Zora, from the Self-Represented Litigation Network, has written extensively on this topic and has been involved with several training programs for libraries. He indicates that “Libraries, just like self-help center staff and clerks, can provide information and help the patrons find the information, but they cannot develop an attorney-client relationship with the patron, cannot create any expectation of confidentiality, and cannot provide advice. They must remain neutral. They can point out court forms, and their functions, but they cannot tell litigants how to choose what legal strategy to follow.”¹¹

The leaders of the SOS Task Force understood that libraries were one of the places that SRLs were turning to for assistance. They knew that if the Task Force was going to be able to accomplish its goals, libraries were going to have to be part of the statewide collaboration. Linda Rexer, Co-Chair of the SOS Task Force and Executive Director of the Michigan State Bar Foundation, stated that “SOS involved librarians from the beginning and going forward, for three important reasons: (a) libraries are places where people go for information; thousands of persons seeking to represent themselves go to public and law libraries each year in our State for help; (b) librarians are skilled and very committed to helping persons in need find help to solve their problems; (c) librarians have similar needs to non-lawyer court staff or non-lawyer self-center staff for training in how to provide information that does not cross the line into providing legal advice (which only lawyers can provide).”¹² Librarians were asked to join the Task Force and they worked on programs to help train other Michigan librarians on how to serve SRL patrons and on how to act as navigators for the *Michigan Legal Help* website.

With the assistance of the Michigan State Bar Foundation, the SOS Task Force launched two training programs for librarians. The first program was held in 2010 and was conducted by SOS Task Force members Kimberly Koscielniak from the State Law Library of Michigan and Laura Mancini from the Adams-Pratt Oakland County Law Library. Training sessions were held at libraries in four different locations throughout the state: Allegan, Houghton Lake, Marquette, and Southfield. The content of the training curriculum centered upon five key areas:

- Introduction to Michigan and Federal primary law
- Legal information vs. legal advice
- Referrals to local legal aid providers
- Inexpensive self-help items for library collections
- Introduction to the SOS Task Force

Approximately 100 Michigan librarians attended these sessions. From the conversations that took place with the attendees, three main themes emerged: Michigan's public libraries were seeing ever increasing numbers of people asking for assistance with legal matters, great confusion existed among librarians as to what was legal advice, what was not, and whether libraries could even address legal questions, and lastly, some regions of the state had a large number of legal aid organizations whereas others barely had any.

It came as no surprise to the Task Force trainers that libraries were seeing increasing numbers of SRLs in their facilities. What was surprising was the wide variety of interpretations librarians had regarding the provision of not providing legal advice to patrons. Michigan has an unauthorized practice of the law statute¹³ and most librarians were familiar with this fact. Many believed that the statute meant that no legal questions could be addressed whether they were for information or advice. This understanding went so far as to become official policy at several libraries. Other librarians thought just the opposite and believed that they needed to answer any legal question otherwise they would be accused of providing poor customer service and could even be disciplined by their management.¹⁴ Probably the greatest amount of time in each training session was spent helping libraries dissect and better understand the information vs. advice question.

For each training session, packets were put together for distribution listing lawyer referral services, legal aid organizations, community dispute resolution centers, law school clinics, and community based organizations for the area of the state where the training session was held. Upon the compilation of these packets, it became immediately apparent that Michigan has a great geographic disparity in the availability of legal assistance organizations. Residents in southeast Michigan, which is home to half of the state's population, have access to dozens of legal aid and community service organizations from which they can seek help. Those living in Michigan's Upper Peninsula region and other rural areas of the state have only a handful of organizations available to them. Likewise, Michigan's law schools are all concentrated in the southern portion of the state which puts law school clinics out of geographic reach for many SRLs.

To coincide with the debut of the *Michigan Legal Help* website and the opening of the first of the *Self-Help Centers*, the SOS Task Force and the Michigan State Bar Foundation commissioned a second training program for libraries. These programs would give an overview of the content and instruction in the navigation of the *Michigan Legal Help* website.

In addition to the *Michigan Legal Help* website content, an expanded section on the difference between legal information and legal advice was included in the training curriculum. The Michigan Judicial Institute, the education office of the Michigan Supreme Court, State Court Administrative Office, publishes an *Employee Guide to Legal Advice*, which is distributed to court employees.¹⁵ This guide was taken and applied to the library environment, and was distributed to program attendees.

The training sessions also featured a segment on how to have an effective and positive customer interaction with a SRL patron. These transactions have often been found to be challenging for librarians as they can be lengthy, the patron may be upset about their legal problem and may not be able to describe what information they need, and they may want legal advice. Tips were provided to attendees on how they can explain the limits of the library's ability to addressing their legal question without making the patron feel like they were not being given proper service. Emphasis was also placed on the importance of referrals to legal assistance and lawyer referral organizations. The attendees were divided into teams for role-playing exercises with one person playing the librarian and the other the patron asking a legal question. Critiques were given to the teams from audience members as to how the librarian could improve their interaction with the SRL patron.

The 2012 sessions were much larger in scope than the 2010 training program. Sessions were held in ten different locations throughout Michigan: Bloomfield Township, Clinton Township, Grand Blanc, Kalamazoo, Lansing, Livonia, Saginaw, Sault Ste. Marie, Traverse City, and Wyoming. It is estimated that some 200 librarians in total attended them. Due to demand, additional sessions were added in Lansing and Saginaw and a new session in Detroit was scheduled. By the time the training programs were completed, nearly every region and population center in the state had featured a session.

As they had in the 2010, Laura Mancini and Kimberly Koscielniak coordinated the 2012 training program. Due the expanded nature of the program, additional librarians were recruited to assist with the project. Three public law librarians and two academic law librarians with substantial experience working with questions from SRLs were added as trainers. As the group took the program throughout the state, the trainers noted this was often the very first time a public librarian had the opportunity to converse at length with a law librarian about providing service to a SRL patron. The library community in Michigan is very fragmented and librarians who work in different types of libraries do not often get the opportunity to network and interact with another. Contacts were made and relationships were established between trainers and attendees. The law librarians strongly encouraged the public librarians not to hesitate to use them as a resource when addressing questions from SRL patrons. This type of collaboration is being encouraged all across the United States as evidenced in comments made by The *Access to Justice Committee* of the American Association of Law Libraries: "Partnerships with public librarians foster opportunities for training, gatekeeping and referrals, collection building and access during non-courthouse hours."¹⁶

From the various training sessions and conversations that took place, the following lessons were learned:

- Law Librarians and Public Librarians need to continue to build relationships with one another.

- There is still great confusion as to what is legal information and what is legal advice and how libraries can address questions from SRLs.
- Many public libraries perceive legal collections to be too expensive to develop.

The need to build relationships with one another did not come as a surprise to either group of librarians. With only the state law library and two county law libraries remaining in Michigan, there are only a handful of public law librarians in the state. Likewise, the state's academic law librarians are geographically concentrated in the one area. There simply are not many opportunities for law and public librarians to interact with one another. Furthermore, many of the public librarians did not know what other law libraries might serve as appropriate referrals for their SRL patrons. Establishing relationships with one another helped to take away some of these barriers and encouraged further communication and collaboration. A Texas county law librarian who established partnerships with the local public libraries in his community had a similar experience and offered these thoughts on the importance of relationships: "Giving them a local face to remember increases the chance that they will recall your law library at the reference desk. It also makes the process less daunting if you have encouraged them to do so face to face."¹⁷

The most constant concern voiced by public librarians in both the 2010 and 2012 training sessions was the difference between legal information and legal advice. While the trainers knew this would be a topic of discussion and included it in the curriculum each time, they were surprised at the level of anxiety expressed by public librarians on this issue. Some simply dreaded having these types of questions asked by a patron and felt completely inadequate to respond. This issue is not given much attention in graduate library programs other than providing the general directive of not giving advice. Professional literature and job training programs also offer scant attention to this topic. Law Librarians can do much to allay the concerns of their public library colleagues on this issue. In their *Law Libraries and Access to Justice Report*, the American Association of Law Libraries urges their members to talk to public librarians regarding their concerns: "Law librarians are valuable resources for teaching public librarians about the unauthorized practice of law. They are very familiar with the types of issues self-represented litigants bring to the library, and they are experienced in techniques for drawing the line. While law librarians may have a greater zone of comfort when it comes to providing legal information, they also have a good perspective on ways to provide encouragement and guidance for public librarians trying to tread these waters."¹⁸

The area of collection development proved to offer lessons to each group of librarians. The 2010 training sessions featured a section on inexpensive legal resources for a public library collection. It offered attendees a list of free government websites on various Michigan legal topics and a list of print titles that each cost under \$50.00 US dollars. Titles came mainly from legal self-help publishers Nolo Press and Sphinx Publications. There was some discussion among the trainers whether or not to even include this information as it was assumed that most librarians would be familiar with these resources. Instead, the opposite was found to be true. At each of the four sessions, the data from the evaluations showed that many of these sources were new to the public librarians. From comments made at the sessions, it appeared that many public librarians operated under the assumption that legal materials were simply too expensive for their libraries to purchase and were pleasantly surprised to find that there were items they could offer their patrons that were inexpensive or even free. While the issue of legal advice and addressing information requests are important

topics to address in any law-public library collaboration, collection development should not be ignored. Maintaining a small legal self-help collection (onsite or online) can greatly benefit any library's patrons. Law Librarians can and should serve as resources public libraries can tap into when setting up these collections. Some law libraries even maintain small self-help collections at public libraries. The LA Law Library has been doing this with several branches of the Los Angeles County Library for many years and the partnership has worked well for all involved. Here again, relationships and collaborations between law and public libraries can serve as avenues to improve service to SRL patrons.

Since its inception in 2012, the *Michigan Legal Help* website has changed the way libraries have been able to serve patrons with legal questions. A librarian recently described a legal question she had from a SRL patron: "A man was having trouble finding a form for custody of his child. I directed him to the *Michigan Legal Help* website, showed him the Custody section under the Family tab, as well as the section on how to find a lawyer and legal aid. He was very grateful."¹⁹ Prior to the development of the website, there would have been no place to direct the patron to for a form, as there are no official Michigan court forms for establishing custody. The patron would have had to compose their form using templates from legal books that likely would only been available at a law library. Likewise, the information on lawyers and legal aid might not have been compiled by the local library. The SRL patron might have had to research this information on their own. Now the librarian was able to refer the patron to one authoritative location where they were able to all the information they requested.

The assistance provided by the *Michigan Legal Help* website has also made transactions easier for the court system. A Michigan judge contacted the local library where he knew SRLs were coming for assistance. He indicated that people were showing up to court with the wrong forms and were receiving bad information (although not necessarily from the Library). If the Library could direct people to the *Michigan Legal Help* website, this would help to alleviate this situation. The Library began to do so and has found the process to work well for all involved. As one of the librarians detailed: "We love the website. It completely takes us off of the hot seat. The patron is getting the right information and the court is getting the right information. It is a huge blessing for staff. It is the best way to serve patrons with legal questions with the least amount of stress for all involved."²⁰

It is not just the website that is working well for libraries. The numbers of libraries that are serving as *Michigan Legal-Self Help Centers* has increased from an initial two to now five and more libraries are in discussions to become future centers. Like the website, the *Self-Help Centers* provide another place where SRLs can turn to for assistance. These self-help center libraries recognize how their service help improves the access to justice for the citizens they serve. According to one library *Self-Help Center*: "It is a good way to serve the population of our county which is rural and a high percentage are living in poverty, and the library offers a place that is more inviting and less intimidating than a room in a Courthouse. This is a way to offer a vital service to those that may not see a way through a legal issue."²¹

The collaboration between the legal and library communities on the *Michigan Legal Help* projects has resulted in an improved access to justice environment and has created more accessible legal information resources for the SRL. Continued collaboration between these groups can only serve to improve the access to justice situation in Michigan. Likewise, this project has also led to greater collaboration between Michigan's law and public librarians which has also resulted in better provisions of services to SRL patrons. Much has been

accomplished, yet more can and should be done. In 2016, it should not be necessary for Michigan citizens “to perform their own surgery in our courthouses with burdens, rules, and a process they do not understand.”²²

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