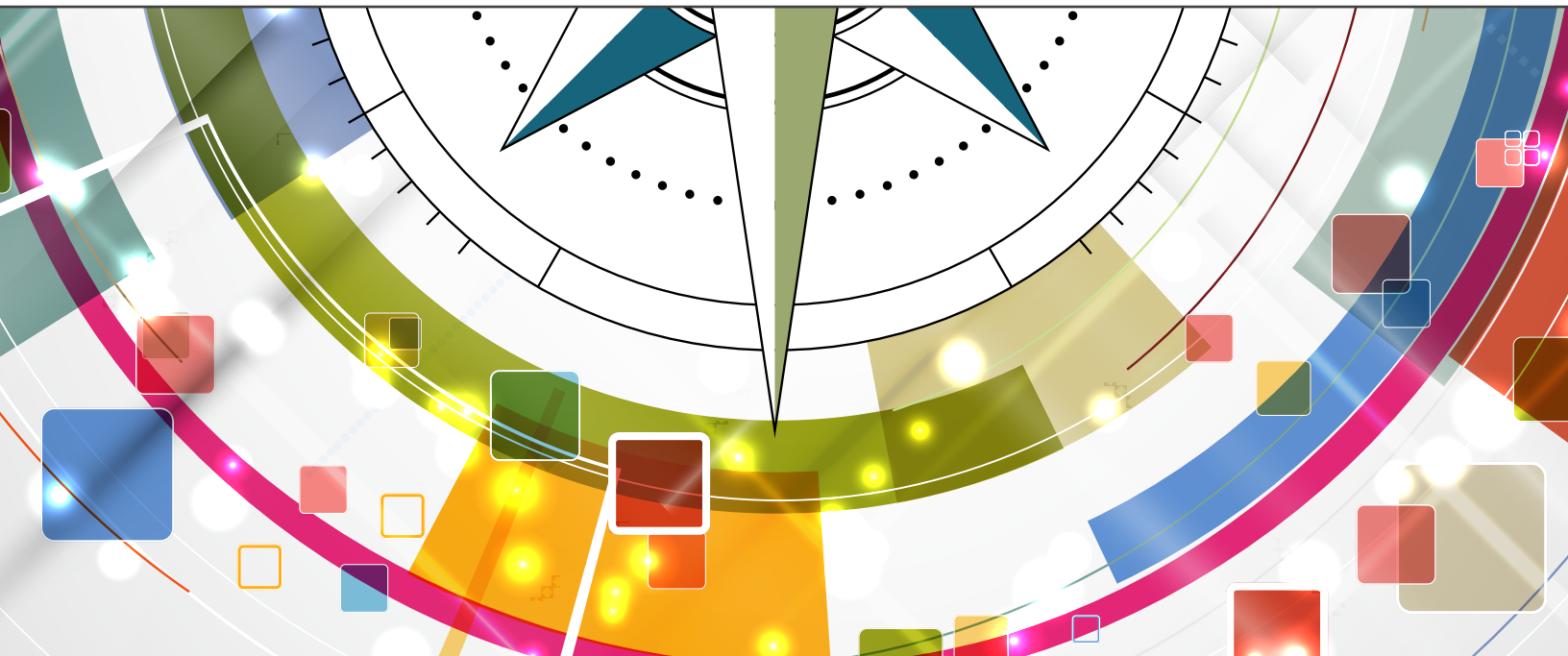




A COURT COMPASS FOR LITIGANTS



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July 2016

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INSTITUTE *for the* ADVANCEMENT
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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a “think tank” that goes one step further—we are practical and solution-oriented. Our mission is to forge innovative solutions to problems in our system in collaboration with the best minds in the country. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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Honoring Families is an initiative of IAALS dedicated to developing and promulgating evidence-informed processes and options for families involved in divorce, separation, or parental responsibility cases that enable better outcomes for children and that provide greater accessibility, efficiency, and fairness for all parties, including those without counsel.

ACKNOWLEDGEMENT

IAALS gratefully acknowledges the assistance of Alan Carlson, Court Executive Officer of the Superior Court of Orange County; Glenn Rawdon, Program Counsel for Technology with the Legal Services Corporation; and Thomas M. Clarke, Ph.D., Vice President of Research & Technology at the National Center for State Courts, in the drafting of this Report.

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I. INTRODUCTION

IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, is dedicated to facilitating continuous improvement and advancing excellence in the American legal system. Our mission is to forge innovative and practical solutions to problems in our system in collaboration with the best minds in the country.

One Initiative within IAALS is the *Honoring Families Initiative* (“HFI”), which is dedicated to promoting new ways to handle family cases that ensure better outcomes for children, less-adversarial approaches for spouses/parents, and greater accessibility, efficiency, and fairness for everyone involved in the family court process, including those who navigate the system without a lawyer.

Under the rubric of HFI, and consistent with IAALS’ mission of convening stakeholders and developing solutions, IAALS convened a group of people from around the country in June of 2016 to discuss the development of an online tool designed to help people with potential legal problems in the family court arena and to help self-represented litigants with these kinds of cases in court. *A Court Compass for Litigants: Building an App for That* attendees included technologists, private vendors, court administrators, practitioners, academics, legal services representatives, and an economist. IAALS’ interest in this project was spurred by recent research it undertook regarding self-represented litigants in family courts, which demonstrated their confusion, disempowerment, and feeling of miscarriage of justice through the process. Clearly, we start with the presumption that people need access to better information about their legal rights and options, better systems of referral to attorneys and other providers, and better tools to help them once they end up in court.

This Paper is the outgrowth of that convening and details next steps in a plan designed to coalesce energy and funding toward achievement of an online tool sooner rather than later.

II. BACKGROUND

In the past, when attorneys, judges, or court professionals spoke of access to justice, what they meant was an effort to secure an attorney for every individual who needed to go to court. Hence, the focus was on enhancing pro bono service delivery by attorneys, attempting to obtain additional funding for legal services entities, and such things as Civil Gideon.

That has changed. First, there is now a belated recognition that justice is not court-centric. Many legal problems never reach the court. A 2013 study on civil justice experiences of the American public sheds light on an important (and, perhaps, overlooked) aspect of the justice

gap: “When facing civil justice situations, people often do not consider law at all. They frequently do not think of these situations as legal, nor do they think of courts or of attorneys as always appropriate providers of remedy.”¹

People need help initially in working through the threshold question: “Do I have a legal problem?”² As a profession, we now recognize that helping people with that dilemma is an essential component of access to justice.

The second evolution in our thinking circles around the recognition that it is impossible to supply every litigant with an attorney. One of the more substantial developments that 21st Century civil and family courts are experiencing is a growth in rates of self-representation. The precise statistics vary across jurisdictions, but, broadly speaking, millions of litigants are proceeding through state courts without an attorney. The recently published National Center for State Courts (“NCSC”) Landscape of Civil Litigation in State Courts study notes that, “[o]ne of the most striking findings in the dataset was the relatively large proportion of cases (76%) in which at least one party was self-represented.”³ The NCSC study was confined to civil cases only, and, in family court cases, it is not uncommon for between 60 and 80 percent to involve at least one self-represented party at some point in the litigation.⁴ Thus, in many cases—civil and family—both parties are self-represented. The NCSC study concludes: “The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”⁵

It is too late to turn back the clock. And, maybe it would be inappropriate to try. Similar to the evolution of medical services, where individuals often first seek out information on the internet about a particular symptom, people should be able to obtain information about legal “symptoms,” be more empowered in deciding when they need lawyers, courts, or an alternative method for resolving disputes, and be wiser and better informed in the use of whichever route they select.

One tool to achieve these goals is technology. Technology—to the extent it can facilitate access to robust and usable content—is a necessary, if not wholly sufficient, component of the solution to the “justice gap.” As California Chief Justice Tani Cantil-Sakauye recognizes in

¹ REBECCA L. SANDEFUR, AM. BAR FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 16 (2014).

² See, e.g., THOMAS M. CLARKE, NAT’L CTR. FOR STATE CTS., BUILDING A LITIGANT PORTAL: BUSINESS AND TECHNICAL REQUIREMENTS 4-5 (2015).

³ PAULA HANNAFORD-AGOR ET AL., NAT’L CTR. FOR STATE CTS., THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS iv (2015), available at <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

⁴ JUD. COUNCIL OF CAL., TASK FORCE ON SELF-REPRESENTED LITIGANTS, IMPLEMENTATION TASK FORCE: FINAL REPORT 2-3 (October 2014); Carolyn D. Schwarz, Note, *Pro Se Divorce Litigants Frustrating the Traditional Role of the Trial Court Judge and Court Personnel*, 42 FAM. CT. REV. 655, 657 (2004).

⁵ HANNAFORD-AGOR ET AL., *supra* note 3, at vi.

Access 3D, citizens must have physical, remote, and equal access to justice.⁶ Remote access means mobile-optimized, easily understood internet tools.

Thus, the vision that is emerging is one of a litigant portal that helps individuals diagnose the existence of a legal problem and provides rich and relevant referrals, online dispute resolution where appropriate, and also seamless entry into the court process when chosen—accompanied by user friendly tools that will assist and support them through the court process.

The concept of a litigant portal was introduced and discussed during a Legal Services Corporation (“LSC”) Summit on the Use of Technology to Expand Access to Justice. During that 2013 Summit, LSC, NCSC, and other national and state partners envisioned “a single, statewide mobile web access portal” that would facilitate access to “an integrated system of resources, rules, and recommendations through which users can be matched with available services.”⁷ Through these portals and related technologies, stakeholders are seeking to ensure that effective assistance is provided “to 100% of persons otherwise unable to afford an attorney for dealing with essential civil legal needs.”⁸

In addition to helping self-represented litigants access legal information and locate referrals to affordable legal services, litigant portals hold promise to serve a broader swath of individuals—those who are not yet involved in any litigation.

In recent months, LSC and NCSC have made substantial progress toward the litigant portal capability. NCSC is currently developing the business capabilities and technical standards that are needed if justice system and service provider communities are going to mount a coordinated approach to implementing the portals nationwide.⁹ LSC has recently partnered with Microsoft and Pro Bono Net to develop the portals, with Microsoft committing at least \$1M in funding, technical support, and project management services.¹⁰ As Microsoft Vice President and Deputy General Counsel Dave Heiner explains, “[t]echnology can help empower the powerless—people who may feel lost without a lawyer in the legal system.”¹¹ Additionally, a variety of courts around the nation are developing tools designed to help the litigants navigate those particular systems.

⁶ Press Release, Ca. Jud. Branch, Chief Justice Introduces “Access 3D” (Aug. 17, 2013).

⁷ LEGAL SERV. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 4 (December 2013).

⁸ *Id.* at 12.

⁹ See CLARKE, *supra* note 2, at 4-5.

¹⁰ *The Legal Services Corporation Launches Pilot Program to Increase Access to Justice*, LSC (April 19, 2016), <http://www.lsc.gov/media-center/press-releases/2016/legal-services-corporation-launches-pilot-program-increase-access-0>.

¹¹ *Id.*

However, there is insufficient coordination and collaboration. Accordingly, the efforts are limited in application and ultimate scalability. People are building tools that do not “talk” to one another, tools that are limited to a particular jurisdiction, and tools that meet one need but without considering a host of other potential needs.

What is needed is a strategic approach that is:

1. Manageable in the first instance;
2. Grounded in standards that assure compatibility;
3. Scalable across states and courts;
4. Robustly measured; and
5. Ultimately financially sustainable.

III. GENERAL CONCEPT DESCRIPTION: THE LITIGANT PORTAL

The broad concept is to create a destination on the Internet to which an individual can go when looking for a solution to a problem. The problem may or may not have one or more legal issues imbedded in it. Initially, the destination would work to help someone diagnose their situation and any underlying legal issues. The destination would then offer information and options targeted to address the legal problems identified. The information and options would not be limited to legal solutions. Services and options available through the ecosystem would address personal, emotional, relationship, and societal issues that are often associated with legal issues. Issue resolution services would be unbundled.

Because not everyone has the same problems, or thinks about them in the same way, the destination should be an ecosystem with numerous entry points, multiple paths, and a range of services and options. The ecosystem should be more of a web than a sequential process. A user may move back and forth and repeat paths. The entrances, paths, and options must address the range of users’ skills, knowledge, and approaches to, and comfort with, technology. Additionally, the ecosystem should have multilingual capability, in order to be accessible to Limited English Proficiency users. Finally, the ecosystem should also have an ability to assess the capacity of users and learn how to better help current and future users based on past usage.¹²

¹² While capacity assessment capabilities can be costly and difficult to undertake, there are cost-effective ways that this function could be built into the initial stages of the FLP. For example, the portal might employ an initial data tracking and analysis strategy, leveraging a statistically valid random sample of cases that utilize the system, including a manageable number of qualitative user interviews. A more fully integrated capacity assessment could be built into the FLP at a later stage.

The ecosystem must also have a seamless connection to the courts, and once in the court process, the litigant must still have access to a similar breadth of referrals, as well as instructions, forms, and scheduling assistance, document assembly, and navigation services.

IV. SPECIFIC CONCEPT: THE FAMILY LAW PORTAL

We cannot await the creation of the broad vision that will serve all needs. It would take too long. An ecosystem that could triage, diagnose, and provide options for responses to every possible human problem would take years to develop. Furthermore, we do not know enough about how such a system should work and could work. In such situations, current agile project management encourages incremental development, beginning with a subset of the ultimate solution to demonstrate the validity of the concept in a manageable way.

To this end, it is proposed that the proof of concept model should address problems associated with the breakup of a family. For the reasons described below, it is also proposed that the pilot include at least two courts located in the same state and one additional state with a statewide case management system.

IAALS therefore proposes the development and implementation of a Family Law Portal (“FLP”), that would help people diagnose family law issues, facilitate online dispute settlement or narrow issues, refer them to sources that could help them as necessary, and provide a seamless connection to the courts with robust assistance and support through the court process. The court process itself may end up changing as the FLP develops, such that additional options and processes become available to litigants. The whole idea is to determine what people need and to shape the systems and provider access accordingly.

Why?

Why, then, a focus on family cases as a prototype for development of the broader litigant portal with court interface? Because there is an exigent need. Whether the cost of legal services,¹³ cost of litigation,¹⁴ or other factors¹⁵ are driving the phenomenon, the truth is that

¹³ Commentators cite numerous factors as influencing the increase in self-representation but most frequently reference the cost of legal services. A recent *Honoring Families Initiative* qualitative research study—Cases Without Counsel: Experiences of Self-Representation in U.S. Family Court (“CWC”)—found that “[f]inancial issues—especially those related to affordability—were the most commonly referenced factor” driving participants’ decision to self-represent. NATALIE ANNE KNOWLTON, LOGAN CORNETT, CORINA GERETY & JANET DROBINSKE, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT (2016), available at http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf [hereinafter CASES WITHOUT COUNSEL RESEARCH].

more and more parties in family cases are flying solo. Although more complicated than other potential legal problems, family cases involve a greater range of options for online assistance and support, providing a more general proof of concept.

Furthermore, court systems and processes in the family area are complex and designed for use by represented parties, creating difficulties for litigants and courts alike. IAALS' recent *Cases Without Counsel: Experiences of Self-Representation in U.S. Family Court* ("CWC") study reaffirms what other researchers have found: self-represented litigants often struggle with various aspects of the process.¹⁶ Specifically, the study identifies a number of process and procedural aspects that self-represented litigants found particularly challenging:

- Understanding how to navigate the process;
- Knowing what to expect at various stages of the process;
- Completing forms, filings, and other paperwork;
- Preparing for trial; and
- Presenting evidence and participating in trial.

Courts, court staff, and judges are also impacted when self-represented litigants struggle with the process.¹⁷ Commenting on the frequency with which some self-represented litigants' paperwork is returned, CWC court staff participants "paint[ed] a picture of inefficiencies in rounds of filing, review, rejection, and return."¹⁸ Judge participants described encountering challenges applying the Rules of Evidence to cases involving self-represented litigants, particularly in cases where the opposing side is represented.¹⁹ In some instances, difficulties presenting evidence can impact outcomes.²⁰

¹⁴ In its recent analysis of civil cases, the NCSC suggests that "[e]ven if defendants might have the financial resources to hire a lawyer to defend them in court, most would not because the cost of the lawyer exceeds the potential judgment." HANNAFORD-AGOR ET AL. *supra* note 3, at v-vii.

¹⁵ While high costs of legal services may be a predominate factor influencing self-representation, the *Cases Without Counsel* study suggests that the decision to proceed without an attorney is often multifaceted. Approximately 60 percent of self-represented litigant participants indicated that their assessment of and/or their confidence in their ability to represent themselves influenced their decision. Additionally, just under one-fourth of participants expressed a preference for handling the matter themselves. Of this group, some wished to maintain an amicable relationship with the other party; others wished to retain total control over their case. *CASES WITHOUT COUNSEL RESEARCH*, *supra* note 13, at 16-18.

¹⁶ See also LINDA KLEIN, ABA COALITION FOR JUSTICE, *REPORT ON THE SURVEY OF JUDGES ON THE IMPACT OF THE ECONOMIC DOWNTURN ON REPRESENTATION IN THE COURTS (PRELIMINARY)* (July 12, 2010) (reporting that surveyed judges identified witness examination, evidence presentation, ineffective arguments, and other tasks as problematic for self-represented litigants).

¹⁷ See also JOHN M. GREACEN, *SERVICES FOR SELF-REPRESENTED LITIGANTS IN ARKANSAS: A REPORT TO THE ARKANSAS ACCESS TO JUSTICE COMMISSION* (July 26, 2013); NICOLE ZOE GARCIA, *EXAMINING DISSOLUTIONS AMONGST SELF-REPRESENTED LITIGANTS IN THE SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY* (May 2014).

¹⁸ *CASES WITHOUT COUNSEL RESEARCH*, *supra* note 13, at 33.

¹⁹ *Id.* at 36-37.

²⁰ According to the *Cases Without Counsel* research report: "There appears to be some consistency to the perception that self-represented litigants are at a disadvantage, related to challenges in understanding, gathering, presenting, and

Cases Without Counsel findings further suggest that technology-based solutions such as the litigant portal would indeed be of substantial benefit to self-represented litigants. Online sources of information were the most utilized source of information for litigant participants, and many indicated these resources were helpful.²¹ Furthermore, both self-represented litigants and court participants spoke of the broad desirability of a navigator-type function that would actively guide individuals through the process.²²

A significant portion of the public will encounter a family law issue in their lifetime, more than any other type of legal problem. Family law also has a significant portion of self-represented litigants—a higher percentage than in other case types, with the exception of traffic, evictions, or small claims where lawyers are generally not permitted. Thus, there is a larger pool of people in these case types who may be looking for assistance on the Internet.

Family law problems generally involve a wide range of legal issues: dissolution of marriage or partnership, child custody and visitation, division of property (personal as well as real), investments, retirement investments, probate, etc. Family law problems also involve a significant level of deep-seated emotions, not only for the parties, but also for family, friends, children, communities, and society.

Family law problems also have the following components:

- A broad range of support and referral services can be implicated, including such things as mediation, counseling, parenting classes, domestic violence shelters, etc.;
- The issues are often amenable to alternative dispute resolution; and
- When court action is necessary, it is imperative that the issues be fully and fairly addressed in an efficient way and in a way that the litigants understand.

An effective ecosystem will need to have paths for this range of services, coordinated with legal solutions, and provide seamless access to the courts. Again, if it can be built for family break-ups, it can be adapted for many other problems across a host of substantive areas.

admitting the factual support for their position. Across jurisdictions, a broad majority of court interviewees, both judges and court staff, who commented on the issue articulated that self-represented litigants are not knowledgeable about the proper process for getting evidence before the court, which can and does impact final case outcomes.” *Id.* at 44.

²¹ *Id.* at 26-27.

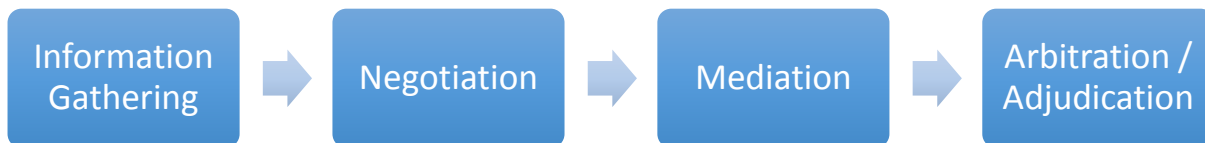
²² NATALIE ANNE KNOWLTON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., CASES WITHOUT COUNSEL: OUR RECOMMENDATIONS AFTER LISTENING TO THE LITIGANTS 12 (2016) (“The concept that participants described can be distinguished conceptually from that of a self-help center or other one-on-one self-help resource in that a navigator would proactively work with self-represented litigants throughout the course of a case, as opposed to reactively assist litigants at discrete portions of a case in response to a specific request.”).

What?

To help plan for the FLP, at the *A Court Compass for Litigants* convening, attendees were shown two tools designed to help people resolve their family law issues: [Rechtwijzer 2.0](#) used in the Netherlands and [MyLawBC](#) used in British Columbia. The latter replicates the functionality of the former and adds an additional Guided Pathways feature.

The features common to both include an online dispute resolution (“ODR”) system that helps families that are getting divorced with a minimum of judicial intervention. This process is based upon a concept developed for resolving consumer disputes on eBay—a system that resolves over 60 million disputes a year. The parties start the process online by following guided interviews that help them identify the issues and learn ways to resolve them. If the parties reach an impasse on an issue, they can request the assistance of a professional mediator.²³ Again, this is all within the online system. Should they not be able to reach agreement through mediation,²⁴ they can request a decision on the issue from a non-judicial hearing examiner. At the end of the process, the parties have a settlement agreement that will be filed with the court and signed by a judge.

Online Dispute Resolution & Referral Process



Rechtwijzer²⁵ in particular is responsive to one issue that often arises in dispute resolution systems: the sometimes uneven bargaining positions of the parties. Before a settlement agreement is ratified by the court, it is reviewed for fairness by an independent reviewer familiar with what is ordinary and customary in these agreements.

The new functionality added to MyLawBC is the ability to help users find the information they are seeking through a series of questions called Guided Pathways. How users answer these questions determines which information the site will present. Instead of returning

²³ Some users would prefer online chat-facilitated negotiations, as opposed to in-person meetings with a mediator.

²⁴ A high proportion of cases settle in the investigation/settlement phases.

²⁵ This function was necessitated by the fact that in the Netherlands, parties may not submit court filings without the assistance of an attorney. Hence, the reviewing attorney both assures sufficiency and fairness of the filings and facilitates the court interface.

50 search results for family law, they may be shown only five, but all five will be directly targeted to the user's issue. In addition, they will be given a step-by-step action plan to guide them to the resolution of their problem.

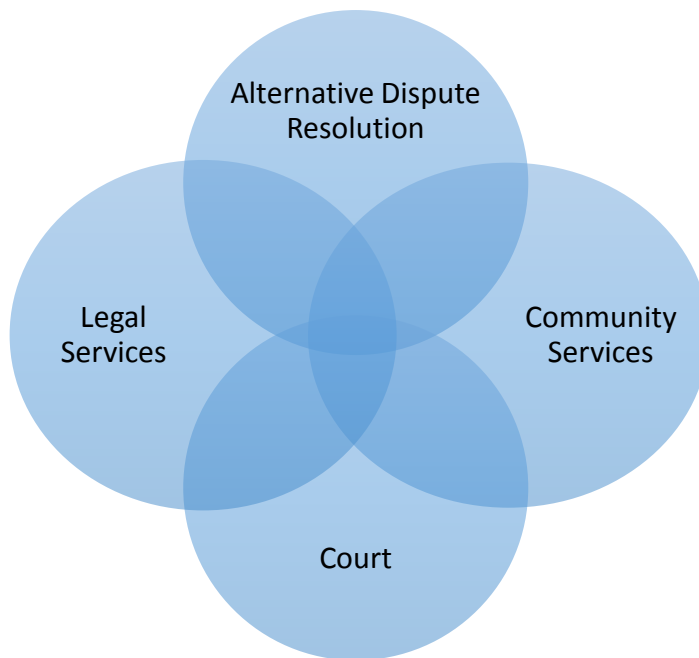
Rather than reinventing the wheel, IAALS proposes to replicate the features of Rechtwijzer and MyLawBC on a platform that can be scaled throughout the United States. In addition to the features described, it will incorporate the work that is being done by the Stanford Design School to facilitate natural language search inquiries, so that users do not need to cite legalese. The Stanford project plans to work with Google to identify the terms “real people” use when looking for answers to their legal problems. This natural language approach will be used throughout the process.

And, the FLP will recognize that persons going through a divorce or custody dispute need more than legal help. They may well need to locate services such as family counselors, rent assistance, and domestic violence shelters. Navigating all of the different websites and intake requirements for these can be time consuming and frustrating. When fully implemented, the FLP will be able to direct users not only to legal assistance but to the others services they need as well.

If navigating the myriad of providers is challenging for the public, keeping referral information accurate for providers is similarly no simple matter. That is why the FLP will use a methodology that allows providers themselves to keep their information and requirements up to date. One possible way of doing this is by using a developing standard called [OpenReferral](#). The mission statement of the project says it very succinctly: “The vision of Open Referral is a world where everyone has access to—and the ability to effectively use—information about the resources that are available in their community.”²⁶ The IAALS FLP project enthusiastically supports this goal and plans to implement a system to support it.

Very closely related to the standards being developed by OpenReferral are those the NCSC is developing in conjunction with the LegalXML project of the Organization for the Advancement of Structured Information Standards (“OASIS”). These will allow the FLP, state access portals, and providers to seamlessly exchange information—a benefit for users and providers. For users, it means they will not have to enter information time and time again. Users can enter information once, and it will go to all of the providers they choose, such as a legal aid provider, a domestic violence shelter, or a juvenile counseling service.

²⁶ OPEN REFERRAL, <https://openreferral.org/> (last visited July 5, 2016).



The interface on the Venn diagram between the various stakeholders is where the FLP lives. But, for the providers—particularly the courts—seamless information exchange means that those various providers will not have to manually enter information into their case management systems, but rather will be able to import it from the portal. Providers can spend precious resources helping clients rather than typing. This function is absolutely critical to court acceptance of the portal approach—and probably to acceptance by various other stakeholders as well.

For both users and providers, it will mean fewer bounces around the system. When the FLP makes a referral to a provider, it will get real-time information on the efficacy of that referral. To start off with, the heuristics used by the system to make referrals will be based on assumptions by the designers. By using the OASIS standards, these assumptions will be tested and refined in real time by the system. This means the online system can improve and users will get fewer wrong referrals and providers will get fewer persons they have to turn down.

V. PILOT PROJECT APPROACH

The proposal is to pilot the concept in at least two courts in the same state, and perhaps a third demonstration project in a second state that has a statewide case management system. While all states have laws for dissolution of marriage or partnerships, each state has slightly

different laws and rules of procedure. Having two or more pilot courts in one state reduces complexities resulting from differences in law and allows focusing of options, paths, and services to those acceptable within a state's laws.

In working with trial courts, there is an old adage that “when you have seen one court, you have seen one court.” Just because an idea works in one court does not mean it will work in other courts. Every court has different business practices and procedures designed around the court's volume of work, the skills of judges and staff, the level of automation, and the local legal culture associated with the court. While it is not necessarily true that every court is unique, the perception exists.

To dispel this perception, it is proposed that the pilot be conducted in at least two courts. In addition to demonstrating that an idea works in more than one court, there is a need to demonstrate scalability of the concept across the spectrum of urban-suburban-rural courts and across large-medium-small courts. Including one other state with a statewide case management system tests the concept in yet a different setting. Cumulatively, the project will amass data that will set the stage for scalability.

The ultimate question for a pilot project is: How do we know it works? It is equally important to know what works and why. The pilot will be accompanied by a cost-benefit analysis from multiple perspectives, including that of: 1) the user; 2) the judiciary; 3) the service providers; and 4) the community and society. Once the pilot is established and operational, it will also be important to learn how people use the ecosystem in order to improve its performance regarding ease of use, “cleanliness” of entry and movement, wayfinding, speed to acceptable solution/option, and ability to minimally wander around the ecosystem while successfully moving forward to resolve the underlying problems.

What does this look like when you put it all together? The IAALS FLP will be a place where persons with family law issues can frame their questions in plain English and receive information that is pertinent to their issue along with a plan for resolving it.²⁷ That plan will include the tools they need to solve the issue(s) themselves or, if more appropriate, will include referrals to service providers to assist them, both with legal issues and non-legal issues that families often face in times of transition.

The system will also interface with robust functions in the courts, which may include electronic filing, Chatbots, cloud-based document storage (e.g., Dropbox), education, navigation tools, scheduling, and push notifications concerning next steps and court requirements.

²⁷ The system can also include a post-judgment component that will allow individuals to modify orders in their existing cases, through use of the same guided dispute resolution process—with ultimate access to the courts as necessary either to resolve open issues or to file negotiated agreements.

VI. REQUIREMENTS & CHALLENGES

For the concepts in this Paper to be most valuable to the public seeking access to justice, several problems must be overcome or minimized. First, it is likely that many different organizations will build part of the software required to fully implement the concepts. Some may build everything required, but others may only build pieces or subsets. Potentially, there are 50 states and perhaps many more jurisdictions that want similar capabilities, so an array of government, non-profit, and for-profit organizations may build part or all of the capabilities envisioned or may want to provide services through the FLP. If so, then something must be done to ensure that they interoperate without significant difficulty or expense. Otherwise, the only possible strategy is for each jurisdiction to build the entire solution as a unique solution. That would be very expensive and would run counter to IAALS' vision.

A common strategy in such a situation is to divide the needed capabilities into "chunks" of software that make some kind of business sense. That is, each chunk or module accomplishes something of easily recognized business value. These modules can then be grouped together into applications in a variety of ways and by a variety of builders and consumers. A secondary advantage of this approach is that it encourages competition and innovation, since anyone can build one of the modules. To make this approach work, someone must identify technical standards for the "interfaces" that each module uses to connect with and talk to any of the other modules.

OASIS is a recognized international standards organization that hosts many important technical standards of a similar nature. Specifically, OASIS has operated for years a LegalXML member section that has worked on several different kinds of justice and court technical standards, perhaps most successfully the electronic court filing ("ECF") standards. The ECF standards consist of the same kind of interface standards as the concepts in this Paper require. An interested group of government, non-profit, and for-profit organizations are now preparing a charter for a new technical committee as the standard OASIS process requires. The current plan is for that technical committee to leverage several existing justice data models: the justice domain of the National Information Exchange Model ("NIEM"), hosted by the federal government, and the Open Referral Initiative ("ORI"), hosted by a non-profit coalition. The NIEM data model will provide much of the basic data standards for things like case types. The ORI data model provides data standards for referrals and service provider descriptions.

The number of modules required to implement these concepts in every jurisdiction depends partly on the extent to which those jurisdictions differ in ways that affect how the modules must operate. We know that states differ by statutes and court rules. Sometimes, there are also local court rules. States, counties, and cities also differ in the provider resources available. Any set of modules supporting the concepts in this paper must be capable of cost

effectively supporting both the things that are common across jurisdictions and the things that are unique within jurisdictions if they are ever to be more than unique solutions in only one place. That is a design problem for implementers to carefully consider. We believe it is solvable, but it is beyond the scope of this Paper to suggest what those solutions might look like.

VII. FUNDING & SUSTAINABILITY

Sustainability of the proposed solutions is a completely different but equally critical issue. How will jurisdictions fund these capabilities and maintain them in a time of perpetually scarce resources for such projects? Jurisdictions may be able to obtain one-time funding as grants from government agencies or foundations to accomplish the initial implementation. Ongoing funding requires either a stable funding stream from a government funder or some market-based funding strategy. One could even envision a mix of those two strategies if a jurisdiction is especially creative and nimble.

One market-based strategy might be to charge for-profit organizations some kind of time-based subscription for receiving referrals from the relevant modules, e.g., referrals from the portal to a private mediator service. Some for-profit organizations might even build complete solutions and either offer them directly to the public or resell the capabilities to government and non-profit organizations with appropriate local customization. Of course, government and non-profit entities could also charge user fees, possibly with appropriate adjustments and waivers for low-income users.

Keeping these solutions updated in a timely way is not a trivial issue. In particular, the availability of specific provider services in terms of time, type, and quantity may vary often, even on a daily basis. So, solutions must support user-friendly administrative interfaces for easily supporting these kinds of changes. There is some potential for automating part of this updating process, but partly manual administrative processes may be unavoidable at least in the short-run. That need has already proven to be problematic, since providers are often very busy doing their normal business and not focusing on the needs of this kind of solution.

Other potential issues include the extent to which the organized Bar becomes invested in this solution. A variety of signs indicate that the market has already moved away from a model of full-service legal representation by lawyers. Commercial providers are capitalizing on the market for DIY legal documents. Many attorneys are offering unbundled legal services. States are experimenting with non-attorney legal technicians who can provide services in certain areas. All of these innovations suggest that the Bar understands the need for tools that allow people to take more control of their own legal problems and determine where and how they wish to seek help.

However, it would be naive to assume that all lawyers view these developments as advantageous or inevitable. Some lawyers may be concerned that people will make bad decisions based on the information provided, and compromise their legal rights. Hopefully, those lawyers can be encouraged to become involved, contribute to the creation of the FLP, and be identified as referral sources. The social good of empowerment and information sharing is the goal that must ultimately prevail and is the message that supporters of an FLP must embrace.

None of these issues seem insoluble, but to date none of them has been demonstrably solved either. We do have enough implementation experience to begin working on practical solutions to such problems. Progress with the concepts in this Paper may depend partly on the willingness of the relevant community of organizations to mitigate these issues and learn from each other.

VIII. NEXT STEPS

IAALS proposes the following steps, on an expedited time line:

1. Form a project leadership team
2. Convene the team soon to develop a concrete action plan, which will include the answers to such questions as:
 - What is the platform on which the tool will be built, or the combination of various platforms and modules?
 - What are the standards for such platforms and modules?
 - What are the costs associated with initial creation of the tool?
 - Which states and courts will be included in the pilot and what are their particular needs? This analysis must center around finding courts that are eager to participate: to engage in the building, learning, evaluating and changing that the project will require.
 - Should other organizations be involved in the action planning and early project development?
 - Will students be involved in the design and/or implementation?
 - What is the evaluation design and how will it be integrated and monitored?
 - What will be the funding necessary to implement the project, and sustain it through appropriate evaluation?

Courts are known, in the words of Tom Clarke, to implement “yesterday’s technology tomorrow.” The challenge before us is to implement tomorrow’s technology today.