

The Critical Role of the State Judiciary in Increasing Access for Self-Represented Litigants: *Self-Help Access 360*

The explosion of online applications for a variety of business transactions means that more and more, Americans are living their lives online. We are able to shop, manage our household finances and conduct many official transactions online. With internet technology accessible through a variety of portable devices, we are not only able to conduct business from home; we are also able to do so while in the car, at our child's band concert and while getting coffee at the local Starbucks. The paperless transaction is more common every day and there are electronic solutions to virtually every possible paper transaction—from storing information on the cloud to scanning coupons on a shopper's phone to electronic airline tickets.

By contrast, the legal world remains paper-bound in many respects. The United States Supreme Court's 2014 year-end report on the activities of the federal courts included commentary from Chief Justice John Roberts on the Court's philosophy of technology. Roberts makes plain the business case for the federal judiciary's use of technology, starting with a clear statement on the intended beneficiary of technological innovations:

Article III of the Constitution specifies the distinctive role of the federal courts, which sets the judiciary apart from other private and public institutions. Article III invests the federal courts with a strictly limited power, and responsibility, to decide prescribed categories of “cases” and “controversies.” Under our constitutional scheme, the courts are neutral arbiters of concrete disputes that rely on parties with genuine grievances to initiate the process and frame the issues for decision. The courts' passive and circumscribed role directly affects how courts deploy information technology. ***The courts understandably focus on those innovations that, first and foremost, advance their primary goal of fairly and efficiently adjudicating cases through the application of law.***¹

This narrowly-focused vision is intentional, and the report argues that “the federal courts, including the Supreme Court, must often introduce new technologies at a more measured pace than other institutions...”² Roberts cites the government procurement process, concern for security and confidentiality, and the implementation challenges of decentralized federal courts as reasons for the “more measured pace” of technological advancement, but also explains that the “judiciary has a special duty to ensure, as a fundamental matter of equal access to justice, that its case filing process is readily accessible to the entire population” and he notes that “procedural fairness begins in the clerk's office.”³

¹ “2014 Year-End Report on the Federal Judiciary,” December 31, 2014, <http://www.supremecourt.gov/publicinfo/year-end/2014year-endreport.pdf>, at 4 (emphasis added).

² *Id.* at 8.

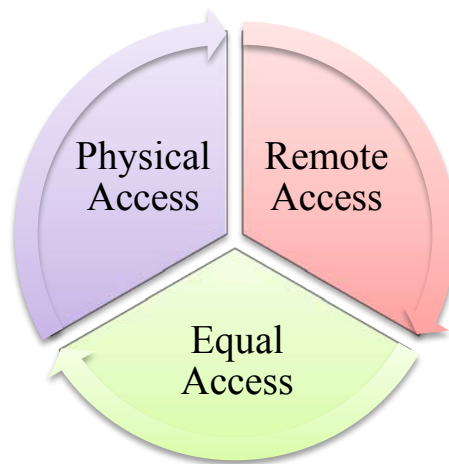
³ *Id.* at 9.

The primary technological manifestation of this narrowly prescribed role for the federal courts is their case management and electronic case filing system or CM/ECF, which the report states has “revolutionized case docketing and administration.”⁴ The Chief Justice indicates that the federal courts’ CM/ECF system “is vitally important to the cause of justice because it can make the courts more accessible, and more affordable, to a diverse body of litigants...”⁵

The Supreme Court’s report highlights the inherent tension between technology and tradition, and is careful to frame technology not as an end unto itself, but as a tool for increasing access and facilitating the work of the courts. It is a tool that must be employed wisely, even if that means being behind the curve in terms of technological advancements in the courts. Roberts has plainly stated the role and objectives of the federal courts and how they must employ a deliberative process to harness technology to meet those goals, instead of chasing “beneficial innovations that are nonetheless bound for obsolescence from the moment they launch.”⁶

Access to Justice in California

In addition to work being done in the federal courts, there is increasing interest in leveraging technology to achieve access goals in state courts nationwide. California’s Chief Justice, Tani Cantil-Sakauye, has proposed a concept called *Access 3D* in which she highlights three key aspects of access to justice: 1) physical access; 2) remote access; and 3) equal access. Through this proposal, the Chief Justice established a framework for prioritizing future investments and reinvestments in our courts and evaluating and pursuing those initiatives that will provide the greatest benefits to California courts and court-users.



The first of these three dimensions of access is *physical access*, the importance of having courthouses that are open for business, where litigants can get their legal business done.

⁴ *Id.* at 5.

⁵ *Id.* at 5.

⁶ *Id.* at 3.

Improving access to a physical courthouse requires funding to modernize brick and mortar facilities, as well as investments in personnel and in-person processes.

The second dimension is that of *remote access*, or the goal of getting litigants out of a physical line at the courthouse and allowing them to transact their business online. Remote access includes services such as interactive document assembly, electronic communications with the court and remote appearances. Ultimately, the promotion of remote access is meant to both facilitate access in general and to free up resources for those cases that require a personal appearance or the need to “stand in line” in a physical location.

The third aspect of the Chief Justice’s proposal is that of *equal access*, or the ability of a variety of populations who experience a barrier of some kind, including the disabled, those with limited English proficiency and those who cannot afford an attorney, to have access to the justice system in equal measure with those who do not experience these barriers. Equal access is a foundational element of improving both physical and remote access to the courts.

In each of these three interlocking elements of access, technology has an important role to play. Technology solutions are applied to building projects, the modernization of facilities, and the modernization of court processes in order to allocate our human resources more efficiently. Remote access is generally achieved through internet functionality and can include a range of applications and programs, from access to case information to setting up a remote appearance via videoconference. Finally, technology is critical to equal access and levels the playing field by providing solutions to disability barriers, translation and interpretation for those with limited English proficiency and information for those who are representing themselves.

Self-Help Resources and Initiatives in California

Using both technological interventions and human resources, California has already made great strides in connecting self-represented litigants with the information they need to engage with the courts and assert and protect their interests. The Judicial Council’s statewide Self-Help website contains a wealth of information on legal processes, including divorce, small claims cases and eviction and other housing disputes. Many family law forms and information sheets are available in Spanish and domestic violence forms are available in Spanish and in Chinese, Korean and Vietnamese. Each of the county superior courts has a Family Law Facilitator who provides support and information on child support and other family law matters. Most of the superior courts also have a self-help center that provides assistance in a wide range of civil matters.

Self-help centers have served as incubators of innovation in outreach and service to self-represented litigants—they have developed workshops to help lead litigants through the necessary paperwork to file for divorce, to request a domestic violence restraining orders and to petition the court for a guardianship or conservatorship. Self-help centers have also forged community connections with local law libraries and developed programs that use volunteer

attorneys and law students to provide low-cost services to a broader spectrum of court users. In collaboration with the Judicial Council, several self-help centers and local courts have developed interactive document assembly programs that help their own employees get forms filled out properly in workshops or individual consultations for a variety of processes and can be made available to the general public for remote, individual use. Other self-help centers have developed step-by-step form instructions, which can be written instructions to accompany the form, or in some cases audio files that provide oral instructions for each section of a form. These types of solutions seem to be among the most desired based on a recent California Courts Website Survey, which found that the top three answers to the question “I would like to see this kind of feature on this website:” were:

1. Step-by-Step for Forms
2. Mobile Optimized
3. Video Tutorials⁷

The Judicial Council currently provides links to many of these local court resources on its Equal Access webpages, but is looking at a re-design of the self-help website that would leverage these solutions for the greater public in order to meet the needs expressed through the website survey.

In addition to working on the development of these interactive tools for form completion, the branch is also looking at the possibility of mobile-optimized content, particularly for the static information currently available on the Self-Help Center website. The state-of-the-art in this realm appears to be “responsive optimization” which adjusts the display of content for the whole range of mobile devices that could be used to access it—everything from the smallest SmartPhone screen, to a portable tablet with a screen size closer to that of a small laptop computer.

There is growing statewide collaboration on document assembly programs in the local courts, with the current program of choice being HotDocs, a document assembly solution hosted by Law Help Interactive, and provided to the branch and by extension to the courts, at a very low cost. A 2012 article on technology and access issues authored by several members of the access community nationwide, noted the importance of collaboration among courts and self-help entities under an “ecosystem” model, in which standardized modules are developed to help litigants complete discrete tasks (i.e., filing for a divorce, petitioning for a limited conservatorship). The ecosystem approach means that “Not only can application modules based on open technical standards be easily integrated, they can also be reused readily in different jurisdictions at low cost...thus, the ability to significantly leverage ever-scarcer resources to rapidly scale useful solutions...”⁸ Because the work of the branch on document assembly is based on this ecosystem concept, the standards developed should be easily adapted to a variety of

⁷ California Courts Website Survey Results 2014, at 16.

⁸ Cabral, et al., “Using Technology to Enhance Access to Justice,” *Harvard Journal of Law & Technology*, Volume 26, Number 1 Fall 2012, at 284.

solutions for self-represented litigants, depending on the solutions and programs sought by the individual courts.

A Vision for Technology in the California Judiciary

Heeding the call to take a measured approach to the use of technology in our court system, California also has moved slowly and deliberately with regard to employing new technology to improve access to justice. The importance of electronic case management to the functioning of the courts cannot be understated. However, the superior courts and the Legislature have made clear that electronic case management systems and the implementation of electronic filing are important goals, which must be pursued at the individual court level or in self-selected consortia. This is an area in which the state must provide overarching guidance, but defer to the operations of individual courts. By contrast, the issue of access—physical, remote and for all Californians, particularly those who are self-represented—is primed for additional investments and particularly those that leverage technological solutions.

In August 2014, the Judicial Council’s Technology Planning Task Force issued a vision for the use of technology by the branch, based on a 2012 Technology Summit and ongoing strategic planning around technology in the courts.

Technology Vision: *“Through collaboration, initiative, and innovation on a statewide and local level, the judicial branch adopts and uses technology to improve access to justice and provide a broader range and higher quality of services to the courts, litigants, lawyers, justice partners, and the public.”*⁹

Building on this vision and existing principles for the use of technology, the Task Force proposed a set of Technology Principles that are designed to guide the work of the branch in seeking out, funding and implementing technology initiatives.

Technology Principles:

1. Ensure Access and Fairness. Use technologies that allow all court users to have impartial and effective access to justice.
2. Include Self-Represented Litigants. Provide services to those representing themselves, as well as those represented by attorneys.
3. Preserve Traditional Access. Promote innovative approaches for public access to the courts while accommodating persons needing access through conventional means.
4. Design for Ease of Use. Build services that are user-friendly, and use technology that is widely available.
5. Provide Education and Support. Develop and provide training and support for all technology solutions, particularly those intended for use by the public.

⁹ Technology Governance, Strategy, and Funding Proposal Executive Summary, Technology Planning Task Force, August 21, 2014 at 3.

6. Secure Private Information. Design services to comply with privacy laws and to assure users that personal information is properly protected.
7. Provide Reliable Information. Ensure the accuracy and timeliness of information provided to judges, parties, and others.
8. Protect from Technology Failure. Define contingencies and remedies to guarantee that users do not forfeit legal rights when technologies fail and users are unable to operate systems successfully.
9. Improve Court Operations. Advance court operational practices to make full use of technology and, in turn, provide better service to court users.
10. Plan Ahead. Create technology solutions that are forward thinking and that enable courts to favorably adapt to changing expectations of the public and court users.
11. Improve Branchwide Compatibility through Technology Standards. Provide branchwide technology standards or guidelines related to access to information or submission of documents that support the branch's goal of greater compatibility for the public and state justice partners.
12. Consider Branchwide Collaboration and Economies of Scale. Identify opportunities to collaborate on technologies to reduce costs, leverage expertise and training, and improve consistency.
13. Foster Local Decision-Making. Develop, fund, and implement technologies to improve local business processes that may provide a model for wider implementation.
14. Encourage Local Innovation. When developing branchwide technologies, allow for adaptation to address local needs, foster innovation, and provide, where appropriate, a model for wider implementation.¹⁰

E-filing in the Superior Courts

California has made great strides toward universal electronic filing of superior court cases with the passage of bills allowing for e-filing in particular contexts, and the resulting updates and modernization of the California Rules of Court, which also contain protocols for electronic signatures and electronic notice. Some courts are moving quickly to offer e-filing capabilities through consortia formed with the purpose of implementing new case management systems.

A fully functioning e-filing system (as opposed to “e-delivery,” which allows for documents to be delivered to a court email address or other electronic drop box, but does not integrate those documents into the court’s case management system) requires both an electronic filing service provider (EFSP) to receive the filing, and a electronic filing manager (EFM), to serve as a “translator” of the information received on the forms from the EFSPs and deliver that information into an individual court’s case management system.

In California, local courts that are pursuing e-filing are working with their case management system vendors to determine a certification process for e-filing service providers (EFSPs) and an

¹⁰ *Id.* at 3-4.

appropriate number of EFSPs for certification. They will also be contracting with a vendor for the development of an EFM to communicate with their case management systems, in order to deliver the benefits of truly paperless filing.

Early experiences with e-filing, both in California and in other states, suggest that many private vendor EFSPs are not focused on serving the market segment of self-represented litigants, many of whom are indigent and qualify for fee waivers. The access community believes that the exclusion of self-represented litigants from electronic filing “has the potential to enlarge the access to justice gap in the long run.”¹¹ Electronic filing is an area in which a slight tip of the balance means that the technology tool is no longer used to achieve greater access; rather, it becomes a barrier. The California judicial branch has the opportunity to “place a finger on the scale” in favor of low-income and self-represented litigants by developing the capacity to serve as the EFSP and EFM for all self-represented litigants in the state.

In other states, the judicial branch serves as either a sole EFSP or sole EFM for all forms of electronic filing (or manages contracts with outside vendors for these services) on behalf of all courts throughout the state. In California, the Judicial Council can ensure that electronic filing is available to all court users by serving as a one-stop EFSP and EFM for self-represented litigants. This function is the culmination of the work currently being undertaken to apply user-centered design concepts to the information currently available on the statewide self-help website and is the final link in providing full and equal access to the courts for self-represented litigants.

Court Technology Advisory Committee Project

With the branch’s vision and guiding principles as the basis for making new investments in technology, the Judicial Council, under the auspices of the Court Technology Advisory Committee, has engaged in a process of research and evaluation of the services currently being offered statewide to increase access to justice and how the branch and courts can leverage technology to expand and improve upon these services, provide them at a lower cost and more efficiently, and reach more Californians who need help with a legal problem.

This research and reflection involved assessing our existing resources (current self-help web content, court technological capabilities and in-house technological expertise, among others) as well as reviewing feedback from the courts and the public on their expectations for technology in the legal realm. In addition, we studied a variety of technology deployments in other states and heard from vendors and programs nation- and worldwide on current offerings and capabilities for courts, legal aid agencies and self-help centers.

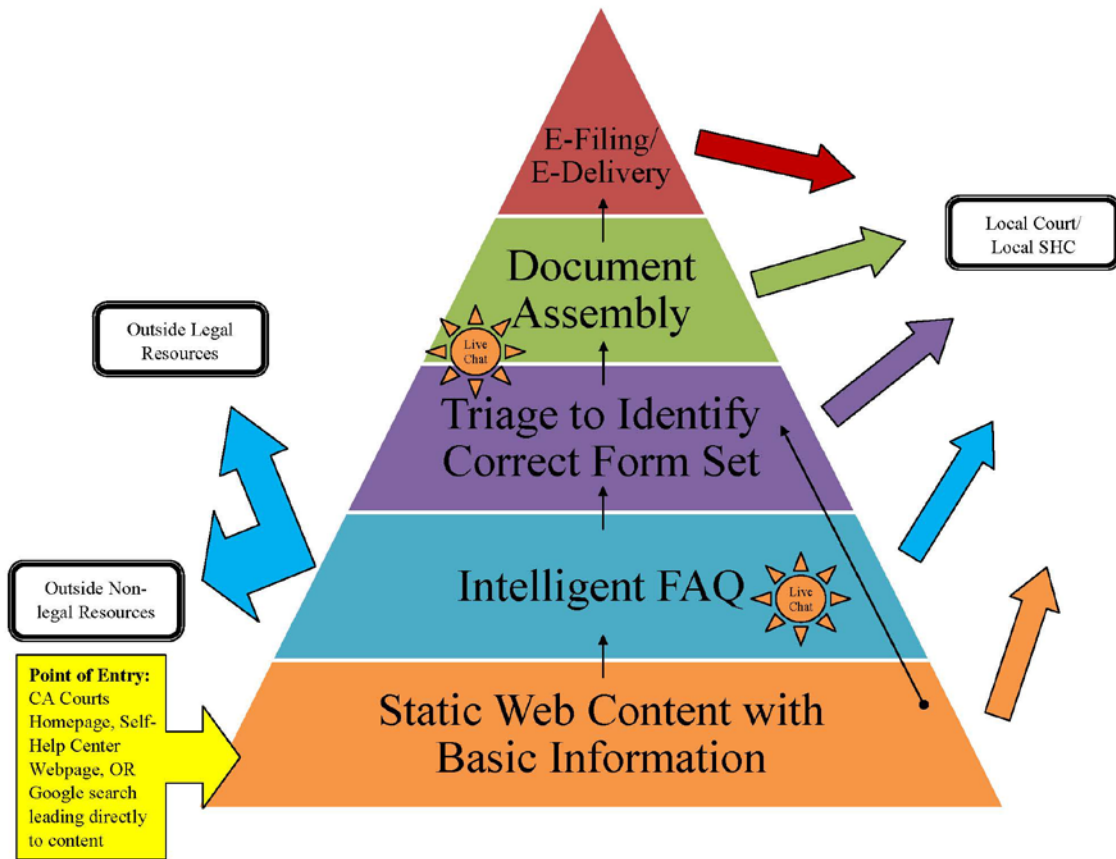
¹¹ Cabral, et al., “Using Technology to Enhance Access to Justice,” *Harvard Journal of Law & Technology*, Volume 26, Number 1 Fall 2012, at 253.

Our charge was to identify a project or series of projects that combine access goals with technological innovations and a strategy for implementation for the judicial branch to act upon during the 2015-16 fiscal year.

This proposal sets forth a vision for the functioning of the statewide self-help website that comports with the branch’s Technology Vision and Principles, the Chief Justice’s *Access 3D* initiative and the need for a one-stop resource for self-represented litigants. Because the state courts website receives millions of visits and pageviews each year and is a known resource for self-represented litigants, we recommend expanding our use of technology to leverage and build upon this resource as a low-cost measure that has the potential for far-reaching positive effects.


Self-Help Access 360°

The current Judicial Council Self-Help Website offers information on a wide range of legal processes and is a valuable resource for those representing themselves in court or needing to access the courts because of a legal problem. The *Self-Help Access 360°* project builds upon this existing content and creates a multi-tiered approach to providing information and support to anyone seeking help on the website.



The first level of support provided (in orange) is immediately available at the various points of entry to the website, including via Google search, and provides links directly to the pertinent content. It will be important to ensure the timeliness of legal information currently on the website and some measure of reorganization to ensure that search terms lead to the most appropriate content. Currently, much of the content available on the website includes a recommendation to seek the advice of an attorney depending on specific variables. ***We propose continuing this approach of identifying “red flags” for the need to consult an attorney or seek out other resources and working on ways to reconfigure existing content to make it easier to locate and understand.***



 At various levels of the SRL support pyramid, there are “exit points” at which a user might receive a recommendation that their needs may be better met through an outside resource, including legal, non-legal and local court resources. One example of this situation is if an SRL from Los Angeles County were to seek information on the statewide self-help website regarding how to handle a traffic citation in Los Angeles. Because Los Angeles already offers audio help in English and Spanish on its local website, someone seeking help on the statewide website should be immediately pointed back to their county website. ***It will be critical to collaborate with local courts to ensure that these exit points are appropriately placed, particularly when local courts have services or functions that the state cannot deliver or cannot deliver with the same specificity as the current local court solution.***

The second level of support (in blue) is available when a person has not found the answers to their questions or necessary instructions in the static web content. An “intelligent FAQ” is a technological innovation that allows a company or agency to build a body of answers and information over time, based on specific questions asked by the public. The program uses internal logic to point users to existing content based on key words in their questions. If the user continues to require information or has not found what he or she is looking for, the program prompts a moderator or moderators, who are subject matter experts, to receive questions, sort and send them out as needed, or answer them directly and use the question and answer to continue to build the information available on the website for future users. The information can also be presented and managed in Spanish, which would allow us to use our existing content in Spanish and build upon these FAQs as well. The Orange County Superior Court provides this type of program on their website for a limited number of subject areas. ***We propose learning from Orange’s experience, determining a single subject area with which to begin, and seeking out a program that can be managed through the statewide California Courts website to begin offering this functionality.***





While the objective of the services offered at each level is to answer as many questions and provide the maximum amount of information possible, sometimes there is no substitute for a personal conversation and Live Chat technology can be used to provide that personal service remotely for those website users who need additional help. It may be possible to collaborate with the legal aid community and other partners to provide Live Chat with volunteer attorneys or law students, or to build upon the existing “Ask a Law Librarian” function. ***Due to cost considerations, we propose rolling out these features in stages, with the exploration of Live Chat being the final step, in order to ensure maximum use of static content and the buildable FAQ prior to determining what should be invested in the Live Chat capability.***

The third level of support (in purple) assumes that website users have determined that they need a form or set of forms in order to conduct some business with the court. The website would provide some very basic “triage” questions in order to guide the user to the correct form set for completion. ***We propose starting with a single subject area and developing a set of high-level questions to guide a website user to the proper forms.***



The fourth level of support (in green) involves providing document assembly programs online for the general public. Currently, there are only a handful of these programs available in a limited number of case types directly from the courts. There are a number of private services available and others in development through a large consortium of courts who are using the same case management system. ***We propose continuing to develop document assembly modules on a statewide level and collaborating with other efforts to ensure consistency of content and quality in those programs available to self-represented litigants.***



The apex of the pyramid, and final level of support provided to self-represented litigants (in red), is the ability to either electronically deliver or electronically file documents with the local courts from the state self-help website. In examining the various e-filing models being implemented in California and across the country, it is clear that an important service that the branch can provide self-represented litigants is a single location on the web for filing forms. ***We recommend offering an e-filing portal (EFSP) on the self-help website with initial capability to effectuate e-delivery and eventually developing a statewide EFM for self-represented litigants that will allow for integration into the case management systems of each of the 58 superior courts for direct e-filing.***

How Does Self-Help Access 360° Fulfill the Technology Vision and Principles of the Branch?

This initiative will require internal collaboration and the best and highest use of our existing resources and capabilities as a branch. It will require working with the local courts in order to ensure consistency of the information provided to the public and that we are meeting the needs of the local courts while increasing access for the general population of court users. The project will consider the need for security and confidentiality in the use of technology and will work towards branchwide consistency and compatibility. The project will respect the need to preserve and continue to enhance traditional avenues of access as well as respecting the autonomy of local courts, while encouraging collaboration in order to achieve economies of scale in the deployment of technological solutions. Finally, the development of a single e-filing service portal, together with a single, statewide e-filing manager that is designed to work with all case management systems in the state, fulfills a need for access to e-filing and e-delivery of the state's self-represented litigants. This will be a service to both the courts and those court users who are indigent or who otherwise would be challenged in accessing the courts without an attorney.

How Does Self-Help Access 360° Fulfill the Vision of Access 3D?

The *Self-Help Access 360°* initiative addresses all three of the elements described in *Access 3D*. First and foremost, there is a focus on equal access and creating avenues to information and assistance on the website. The program would build upon existing remote access capabilities within the branch and expand and improve the user interface. The improvements made to website functionality should result in higher-quality filings, fewer questions to staff and less need to stand in line to conduct court business. Finally, the consolidation of the e-filing service provider and e-filing manager into a single statewide function provides an important service to both the courts and the citizens of California who need to access them.

Summary of Recommendations and Next Steps

The *Self-Help Access 360°* support pyramid builds on an existing resource—our California Courts Self-Help Center website and its content—and adds technological innovations such as interactive FAQ, document assembly and electronic filing capabilities in a way that serves both our superior court customer base and the need of the public for greater and improved access to the courts. While the work on the website and with document assembly programs is ongoing, CTAC may want to consider establishing an SRL Portal Workstream, which would work in collaboration with the existing E-filing Workstream and have a more narrow focus on ensuring e-delivery and e-filing capabilities for self-represented litigants statewide. The goal of the SRL Portal Workstream would be the following:

- Develop requirements for establishing a statewide SRL portal that is e-delivery/e-filing-ready based upon collaborative work with the E-Filing Workstream. In addition to e-delivery/e-filing capability, other key functionality of the portal will include document assembly, interactive FAQ and a triage function with questions that will help guide self-

represented litigants through the process. The portal will prioritize directing litigants to their courts for services that exist locally.