

Engaging Courts to Improve Outcomes for Self-Represented Litigants and Clients

TIP SHEET • November 2020

Introduction

The COVID-19 health crisis has increased the demand for legal help. In an environment with constricting capacity due to funding shortfalls, the urgency to support basic needs of older adults, like health, safety, and economic security, has never been greater.

Systemic advocacy efforts can produce lasting positive change and increase access to justice. Legal assistance providers can engage in an innovative, multi-prong strategy to improve outcomes for older adults and increase system and program capacity. This tip sheet offers three categories of systemic advocacy to consider: engaging with courts; engaging the media; and legal strategies.

Strategy One: Engaging with Courts

Points of Entry

The courts are generally made up of three rings: administrative, judges, and the clerk. Self-help is at the intersection of the three rings. A deeper understanding of each ring will improve the efficacy of efforts to engage with the courts. Some of the points of entry to engage include:

- **Committees:** Committees are key players in the development of court rules, such as Rules Committees. In addition to Rules Committees, there are often standing committees on particular subject matters or access to justice issues. Ad hoc committees are created in response to an emergent issue, such as a natural disaster or public health emergency. Legal assistance providers who get involved with these committees can have a place at the table and build relationships with the key players in the courts.
- **Departments:** Departments are less formal and sometimes easier to access than committees. Departments can include self-help centers, case-type departments, case management departments, problem-solving courts, mediation departments, and Americans with Disabilities Act representative departments. You don't need to ask for permission to contact a department to ask a question, build relationships, and to learn how they work. Self-help centers are usually the easiest department for legal assistance providers to engage with.
- **People:** When thinking about the people within the courts, consider their individual jobs and the hierarchy. The people within the courts include court administrators, clerks of courts, and key department leaders.

Finding pathways inside the courts and building relationships with individuals is key to successful engagement.

Propose Solutions

After relationship building, the next part of this strategy is to propose solutions and identify unintended consequences. The courts often operate in a silo and many of their decisions on case management and other issues are driven by the goal to optimize operations. Sometimes, this can result in unintended consequences for litigants. Legal assistance providers can play an important role by proposing solutions to problems and bringing issues to light.

Strategy Two: Engaging with Media

Court personnel generally cannot speak to the media, and are often limited to issuing an administrative order, which can be difficult for the public and advocates to understand. Legal assistance providers can work with the media to help the community understand how the courts and justice system function.

Build Relationships

Legal assistance providers can develop relationships “on background” as a way to educate the media about the courts. Attorneys can avoid being quoted by specifying that a conversation is “on background” when speaking to a member of the media. This can provide a safe opportunity to develop a relationship with the media and help them build expertise on how the justice system works and who the players are in the community.

Advocacy Strategy

Advocacy strategy with the media can be helpful in situations when there is a particular issue going on in the community and engagement with the courts has not worked to address the issue. Media may produce faster results than some legal strategies.

Encourage Investigative Journalism

Once a relationship is built and background is provided, legal assistance providers can encourage investigative journalism to help address situations where more resources, time, and expertise are needed.

Strategy Three: Legal Strategies

Case-Specific

There are several legal strategies that can be used to address case-specific issues. These are typically “second bite” options that do not involve class actions. These can include:

- Motion for Reconsideration
- Motion to Set Aside Defaults
- Interlocutory Appeals
- Appeal of a Final Judgment

Each of these strategies have different timelines and different outcomes they can achieve.

Spotting Complex Issues

Legal assistance providers often see the issues affecting their clients and community. Spotting complex issues, having networks in place, and finding the right actor to take on a matter are important actions that legal assistance attorneys can take.

Case Study: Unintended Consequences of Court Case Management

Pre-COVID, court sets a settlement conference between lenders and owners in foreclosure actions. If owners do not appear at the conference, the case moves to the judge for final action, including default. When conferences moved online, legal assistance providers started receiving calls from owners who missed their conference. There is no court process for homeowners to request a new conference and no outreach by the court or second conference date offered.

Potential Strategies

- **Engaging the court:** Reach out to a contact at the court, such as someone at the court self-help center. Self-help center staff often will help troubleshoot issues around self-represented litigants and can be an efficient access point. Also, think about where this case management decision came from (perhaps administrator's office) and try to engage there. It might be helpful to propose a solution and even create a memo to help the court see potential options.
- **Engaging the media:** If the court does not engage, consider working with the media. This may work faster than legal processes. This particular scenario may be a story of interest, since homeowners have lost an option that they previously had to save their homes.
- **Legal strategies:** Even if the court does engage, there are people who may have already been harmed by this situation. The court could issue an administrative order to get homeowners back to the settlement conference stage. The court could also provide data on the cases that were in the specific window of time to get them connected to legal help and possibly appeal.

Conclusion

These strategies for systemic advocacy involve taking the time to develop relationships, build trust, and work collaboratively. Engaging in this work can benefit older adults, including self-represented litigants, and improve services and outcomes for everyone.

Additional Resources

- [Self-Represented Litigation Network Publications](#)
- [Voices for Civil Justice](#)
- [National Center for State Courts](#)
- [NCLER Strategies for Continuing Court Based Advocacy During the COVID-19 Pandemic](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

This Tip Sheet was supported by contract with the National Center on Law and Elder Rights, contract number HHSP233201650076A, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.