Narrowing the Gap Between Rights and Resources: Finding a Role for Law Students in Court-Annexed Resource Centers

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NARROWING THE GAP BETWEEN RIGHTS AND RESOURCES: FINDING A ROLE FOR LAW STUDENTS IN COURT-ANNEXED RESOURCE CENTERS

FAITH MULLEN

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I. INTRODUCTION

The Small Claims Resource Center in Washington, DC was conceived as a partnership among the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, the District of Columbia Bar Pro Bono Program, the Neighborhood Legal Services Program, and two law school general practice clinics. When the District of Columbia Bar Pro Bono Program approached the Catholic University

1. Faith Mullen is an Assistant Clinical Professor at the Catholic University of America Columbus School of Law. She would like to thank CUA law librarian Emily Black for her patience and expertise. A CUA summer research grant supported this work.

2. Such resource centers are growing in popularity. In 2011, over 70% of states had at least one court-annexed resource center. REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA, FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT, A.B.A. (Oct. 7, 2011), at 11. Innovative means of connecting with clients and delivering services are becoming more widespread, including co-located services, hotlines, and various form of court-based limited legal assistance. See also AM. JUDICATURE SOC'Y, A NATIONAL CONFERENCE ON PRO SE LITIGATION: A REPORT AND UPDATE, Appendix B (April 2001) (reporting the results of a national survey of state court administrators describing 152 pro se assistance programs).
clinic about staffing the Small Claims Resource Center for 16 weeks during the school year, I had reservations. As an old-school legal services attorney, I had doubts that law students would be able to provide meaningful assistance in this brief services context. I was concerned that without knowing all the facts or much of the law they would speculate and give bad advice. I worried that even if law school students could be trained sufficiently, Resource Center customers would omit key pieces of information, not because they were trying to hide anything but because they did not attach significance to particular details.

To some degree, these concerns continue today and inform both how students are trained and how services are delivered. But the provision of solid technical assistance has been, in some ways, the easy part. Law students are quick to grasp the requirements for service of process or the

3. I shared many of the concerns articulated by Paris R. Baldacci, the Director of the Housing Rights Clinic at the Cardozo School of Law, "I have seen some pretty dreadful programs. [The] essential problem is students, with the best of intentions, giving legal advice based on limited understanding of law and little understanding of the cultural, socio-economic situations of the litigant, as well as not knowing much about how courts really function." Posting of Paris R. Baldacci, baldacci@yu.edu, to lawclinic@lists.washlaw.edu (Sept. 28, 2011) (copy on file with author).

4. "It is important to remember that in times of stress, people often neglect to mention facts that may be crucial to the legal issue. If the [person trying to help] is mistaken in his or her understanding of the facts or legal issues involved (possibly because the user has not communicated his or her question clearly), the...interventions could negatively affect the ultimate outcome of the [individual's] legal problem." SOUTHERN CALIFORNIA ASSN OF LAW LIBRARIES, LOCATING THE LAW: A HANDBOOK FOR NON-LAW LIBRARIANS, WITH AN EMPHASIS ON CALIFORNIA LAW 47 (June Kim ed., 5th ed. 2011), available at http://www.aallnet.org/chapter/scall/locating/complete_5th_edition.pdf.

5. Lauren Sudeall Lucas identified these technical elements as the advocate's "knowledge of relevant law and procedure; her ability to maneuver through what can be a complicated legal system; her familiarity with relevant actors and institutions; and her role in translating the client's needs into legal claims and translating legal process into terms that the client can understand." Lauren Sudeall Lucas, Deconstructing The Right To Counsel, AM. CONSTITUTION SOC'Y FOR LAW AND POLICY ISSUE BRIEF 6 (July 2014) (referencing James A. Bamberger, Confirming the Constitutional Right of Meaningful Access to the Courts in Non-Criminal Cases in Washington State, 4 SEATTLE J. FOR SOC. JUST. 383, 389-90 (2005)).

6. "To a lawyer, the concept that due process includes adequate notice is second nature, as is the way in which that process is put into practice. To a non-lawyer, the concept that due process includes notice may be familiar, but the practice if often foreign and mysterious and is not made clear merely because the summons and the complaint are one form instead of two." Deborah J. Cantrell, Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel, 70 FORDHAM L. REV. 1573, 1579 (2002).
mechanics of collecting on a judgment by garnishing wages. In contrast, issues around how much and what kind of help to offer and how to provide good customer service (particularly to individuals with mental health issues) continue to challenge us. Despite these challenges, it has become clear over time that law students can play an important role in narrowing the gap between court access and the resources to make that access meaningful.

Law students play a substantial role in meeting the unmet need for legal assistance by staffing court-annexed resource centers. In the District of Columbia, law students routinely provide assistance at the Family Court Self-Help Center and the Child-Support Resource Center. Although not affiliated with a resource center, students enrolled in the DC Law Students in Court program provide legal advice and representation from their office in the Superior Court of the District of Columbia. Law students staff court programs in East Baton Rouge, New Orleans, Baltimore, Grand Rapids, and Missoula. As Jeanne Charn and Richard Zorza observed, “Skilled attorneys will always be needed to represent clients on legally complex problems, but many straightforward matters can be addressed by law students or recent graduates.”

This article relates the experience of law students from The Catholic University of America providing assistance in the Small Claims
Resource Center during the past eight years.\textsuperscript{12} During this time, the District of Columbia Bar Pro Bono Program has played a pivotal role in the development and the ongoing success of court-annexed resource centers in the District of Columbia. They have recruited law firms and legal services providers (including law school clinics) to staff the resource centers, sought changes in the rules of professional responsibility, and developed intake forms and model pleadings.\textsuperscript{13} Their steady oversight, provided by knowledgeable and resourceful staff, sustains the project. However, even with a solid infrastructure in place, volunteers will confront challenges in court-annexed resource centers. This article offers some guidance on those issues. It starts with a description of how the Small Claims Court operates and how customers access the Small Claims Resource Center. It describes some typical cases and the training that students receive to handle them. The article then explores some of the rules of professional responsibility that govern court-annexed resource centers and concludes with a discussion of three of the most challenging issues that volunteers face: the scope of help that can be provided, customer service, and dealing with questionable claims. These issues should be considered carefully when starting a court-annexed resource center.

II. HOW THE SMALL CLAIMS AND CONCILIATION BRANCH WORKS

Resource centers operate in the context of the rules and practices of the court to which they are annexed, and to succeed they must be tailored to that particular court.\textsuperscript{14} In the District of Columbia, the Small Claims

\textsuperscript{12} Memorandum of Understanding between the District of Columbia Bar Association and The Catholic University of America, Columbus School of Law (copy on file with the author).

\textsuperscript{13} The DC Bar Pro Bono Program has developed form pleadings for self-represented parties. As Charn & Zorza observed, "We will not solve the access problem by focusing exclusively on getting help to consumers while ignoring the ways in which legal rules, procedures, courts and agencies make resolving legal problems unnecessarily complex, time-consuming and opaque. Simplifying, explaining, and de-mystifying legal processes may turn out to be one of the most cost- and outcome-effective strategies for increasing access to justice." CHARN & ZORZA, supra note 11, at 17.

\textsuperscript{14} There are eight court-annexed resource centers in the District of Columbia, and none of them operate on precisely the same model (probate, tax foreclosure, child support, family, L&T, consumer, small claims, and Office of Administrative Hearings). They do have some elements in common—brief services, no promise of representation, and support from both the courts and the District of Columbia Bar Pro Bono Program. Two resource centers at the family court and the Office of Administrative Hearings arestaffed by paid attorneys who work closely with volunteers. Staff from the D.C. Bar Pro Bono Program are available on-site to support volunteers whenever the Probate, Tax Sale, L&T, Consumer and Small Claims resource centers are open.
and Conciliation Branch hears cases up to $5,000 and can provide monetary but not injunctive relief.\textsuperscript{15} Parties initiate a case in Small Claims much as they would in any other civil branch. They file a complaint,\textsuperscript{16} pay a fee, and serve the defendant with a copy of the complaint. But there are important differences—the complaint is drafted on a court-printed form that provides only six lines to state the complaint and the relief sought;\textsuperscript{17} the fees range from five to forty-five dollars based on the amount of the complaint;\textsuperscript{18} and service of process is typically accomplished by certified mail sent by the Small Claims Court clerk.\textsuperscript{19}

In the District of Columbia, more than 6,000 cases were filed in the Small Claims and Conciliation Branch in 2013,\textsuperscript{20} but only those where there was some evidence of service on the defendant were put on the calendar. At the opening of each day’s session the judge sitting in Small Claims Court, usually a magistrate judge,\textsuperscript{21} provides parties an overview of the process, alerts them to possible delay in the adjudication of their cases due to the high volume of cases, and informs them about mandatory mediation.\textsuperscript{22} The judge also encourages parties to seek help at the Small Claims Resource Center.\textsuperscript{23} When the judge concludes these remarks, the clerk calls the cases. The clerk may dismiss cases where the defendant is present and the plaintiff is absent. When the plaintiff is present but the defendant is absent, the judge will pass the case and ask the plaintiff to wait. When the case is called a second time and the

\textsuperscript{15} D.C. CODE §11-1321 (2012).  
\textsuperscript{16} D.C. CODE §16-3902(a) (2012).  
\textsuperscript{17} Small Claims Form 11. General Statement. Superior Court of the District of Columbia, Civil Division, Small Claims and Conciliation Branch.  
\textsuperscript{19} D.C. R SM CL Rule 4 (Current with amendments received through July 15, 2014).  
\textsuperscript{20} In 2013, 6,148 cases were filed in Small Claims Court, down from the 7,930 cases filed in 2012. DISTRICT OF COLUMBIA COURTS STATISTICAL SUMMARY 2013 at 5, available at http://www.dccourts.gov/intemet/documents/Calendar-Year-2013-Statistical-Summary-FINAL.pdf.  
\textsuperscript{21} D.C. CODE § 11-1732 (2012).  
\textsuperscript{22} D.C. CODE § 16-3906(a) (2012).  
defendant is still not present, a default judgment may be entered, and the judge will then schedule the case for *ex parte* proof of damages on a later date. If neither party is present, the clerk will dismiss the case without prejudice. When both parties are present, the clerk calls them up to the front of the courtroom where the judge hears preliminary matters and motions, addresses any deficiencies in service of process, and sends parties to mediation.

In some cases, when the defendant does not appear, the Judge tells the plaintiff that there has been "questionable service" on the defendant. This occurs when the certified letter containing the summons and complaint was delivered, but when the post office returned the green certificate of delivery to the court, the signature was not clearly that of the defendant or of someone authorized to receive process on the defendant’s behalf. The plaintiff is given the opportunity to present evidence that the defendant was served. Sometimes plaintiffs are able to do this by producing a document (like a promissory note) signed by the defendant, and the judge may compare the two signatures. If the judge concludes that the person who signed for the summons and complaint was neither the defendant nor anyone authorized to receive court papers on behalf of the defendant, the judge will decline to hear the case, and the plaintiff must take additional steps to ensure service of process. Problems with service of process are one of the two most common issues that prompt individuals to seek help from the Resource Center (the other is collection on a judgment).

III. HOW THE RESOURCE CENTER WORKS (THE CUSTOMER EXPERIENCE)

Individuals who seek help at the Resource Center are referred to as "customers" rather than "clients" to underscore the fact that no attorney-client relationship exists. When customers reach the Resource Center, they see a sign that indicates that it is being staffed by law student volunteers. The Resource Center is open on Wednesday and Thursday

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25. This practice of scheduling the case on another day for proof of damages means that in cases where the defendants do not appear, the plaintiffs must return to court a second time, and that defendants will be able to set aside the default for liberally construed "good cause." Garces v. Bradley, 299 A2d 142, 144 (D.C. 1973) (articulates the rule that "the law abhors a default, and the corollary of the rule that dispositions on the merits are favored").
27. Students from The Catholic University of America General Practice Clinic staff the Small Claims Resource Center on Thursday mornings for approximately eight weeks of each semester. Attorneys from the Neighborhood Legal Services Program staff the program during rest of the year. This partnership insures staffing at the resource center
mornings between 9:15 and noon. The volunteer who staffs the front table, usually the supervising attorney or a paralegal, will ask whether the customer has a small claims or landlord-tenant question, because the two resource centers operate in the same court building at the same time and it is easy for customers to wait in the wrong place. If the customer indicates that her question is both a landlord-tenant question and a small claims question, the volunteer will ask whether she currently lives in the property. If so, the matter is likely a landlord-tenant or housing condition case and she is referred to the Landlord Tenant Resource Center. Cases involving security deposits are always handled as Small Claims.

The volunteer also will ask whether the customer is due in court that morning or expected in mediation. At this point, the volunteer also ascertains whether the customer needs the assistance of an interpreter, and requests one if needed. These preliminary screening questions are important because they ensure that the customers do not waste their time waiting for help that cannot be provided and that processes requiring extra time (like finding an interpreter) can be initiated.

The volunteer staffing the desk will write the customer's name on the sign-in sheet, and ask the customer to read a one-page document entitled "Important Notice to Customers." This one-page document describes the scope of help that can be obtained at the Resource Center, reminds customers that attorneys at the Resource Center cannot provide representation in court, and states that, "There is no lawyer-client relationship between the customer and the Resource Center lawyer." The customer will then be asked to provide his name, address, telephone every week throughout the year and offers legal service lawyers a break from the resource center for about one third of the year. The George Washington University Law School staffed the Resource Center during the first semester of operation and then withdrew from the project.

28. On Wednesdays the Consumer Resource Center, staffed by volunteers from Williams and Connolly, Perkins Coie, or Wiley Rein, operates out of the same space and provides help with consumer cases of any size, in addition to help with small claims.

29. D.C. R. LAND AND TEN. R. 3. In the District of Columbia, the landlord is always the plaintiff in actions brought in the Landlord-Tenant branch of the court.

30. The DC Language Access Act requires the court to provide "provide oral language services to a person with limited or no-English proficiency." D.C. CODE § 2-1932(a) (2012).

31. Customers should not write on the sign-in sheet, for legibility and privacy reasons.

32. Important Notice to Customer, DC Bar Pro Bono Program (copy on file with the author) [hereinafter Important Notice].

33. Id.
number, and annual income on a basic intake form and to take a nearby seat in the corridor outside the Resource Center. The space allocated to the Resource Center is small, and in order to provide customers some privacy it is important that other customers be seated out of earshot. Customers are generally seen in the order in which they sign in. Exceptions are made for customers who have a case on that day's court calendar and are expected in the courtroom or in mediation, and for customers who need an interpreter. Because of demands on the interpreters' time, customers are seen whenever an interpreter becomes available, even if that means being helped ahead of someone who has been waiting longer.

Once the customer has read the notice and completed the intake form, the customer will be asked to step into the Small Claims Resource Center and accompany the law student to one of two workstations that are enclosed by standard office partitions. The first thing the law students are trained to ask is whether the customer has read and understands the "Important Notice to Customers." This is done to confirm that the customer understands that no attorney-client relationship exists. The law student will obtain details about the customer's problem and an understanding of what the customer hopes to accomplish.

Once the law student has a sufficient understanding of the customer's problem, the student and the supervising attorney will step out into the hallway, away from other people, and the law student will present the case. Law students are encouraged to identify possible solutions. The supervising attorney will ask questions to clarify the nature of the problem and may send the student back to collect additional information. At times, particularly when several hearings have occurred

34. If the volunteer staffing the desk has any reason to believe the customer may have difficulty reading the notice or completing the form, the volunteer will let the customer know that a law student can help with the initial paperwork.

35. Customers are alerted that "nothing the a customer says to the Resource Center lawyer is protected by lawyer-client confidentiality, though it is the policy of the Resource Center not to share a customer's information without the customer's permission." Important Notice, supra note 32. Seating customers outside the Resource Center while they wait affords other customers a measure of privacy.


37. This step of having students present the case to a supervising attorney is a part of the quality assurance that Charn & Zorza identified as essential to providing quality and protecting clients. "Sectors of the bar may resist encroachments on their monopoly, claiming not guild but quality and client protection concerns. The response is that a well-designed, client-centered and quality-assured system will address these concerns whether the service provider is a lawyer or a lay advisor." CHARN & ZORZA, supra note 11, at 17.

38. One customer objected to the delay inherent in speaking with a law student and then having the law student provide information based on conversation with the supervising attorney. The customer felt it would have saved time to speak directly to an
or when customers are unable to articulate what kind of help they need, the student and the supervising attorney will review the docket and sometimes the documents that have been filed in the case. In the District of Columbia, this can be done by calling up the case on Court Cases Online, the court’s electronic case management system.

The supervising attorney and the student work together to determine what needs to be done to accomplish the customer’s goal. If, for example, the judge has ruled that the plaintiff did not properly serve the defendant, several issues surface. Customers may need to decide whether to pay an additional fee to serve the defendant by certified mail or to have the court appoint someone as a “special process server”39 for a $5.00 fee.40 They may need help identifying a registered agent for service of process on a corporate defendant, or they may need to file a motion asking the court to extend the time for service of process.41

Once the next step is identified, the student explains the procedure and in some cases helps the customer follow through. For example, students routinely contact the Department of Consumer and Regulatory Affairs to identify the registered agent for service of process on corporations. At the conclusion of the interview, the student will write down a brief summary of next steps, often in the form of a list. While the customer completes a customer satisfaction survey,42 the student makes a copy of the list of next steps. Often, the customer’s immediate next step is to return to the clerk’s office for filing. If there is reason to believe that the customer will need additional help, the student will accompany the customer to the clerk’s office.

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42. There is some question about the value of these surveys. The great majority of the ones completed in the Resource Center are positive. One “limitation of a client satisfaction survey is that it is likely skewed by a halo effect, the client counterpart to the attorney ‘feel good’ effect. The client is relieved to have had some assistance, often the first compassionate response to the client’s problem (the angel with the halo), and the client’s response to the survey reveals more about the good feelings and relief she has experienced than it does about the actual impact the assistance had on the outcome of the client’s legal problem.” Cantrell, supra note 6, at 1583.
Although service of process questions, like the one described above, are among the most common, a variety of other questions require a range of types of assistance. What follows is a description of a typical day in the Small Claims Resource Center from the perspective of the law students who staff it.

Law students arrive at the Resource Center at 8:45 a.m., half an hour before it opens. They use this time to assemble forms (the notice to customers, the intake sheet, and the customer satisfaction survey), log into the computer, practice using the court’s on-line case management system (Court Cases Online), and review the procedures for assisting customers. Students are reminded that even when they think they know the answer, they are required to confer with the supervising attorney before giving the customer any information. Typically, two or three people are in line when the Resource Center opens. Each student sees between three and six customers in the morning. The majority of customers have civil procedure questions, and within this category, the most common questions concern service of process and how to enforce judgments. Another common question is how best to present a claim or evidence to the court.

Here is a summary of some typical cases and how they were handled. These examples are drawn from summaries that students prepared after their first of two days staffing the Small Claims Resource Center:

- A customer wanted to enforce a judgment. The law student asked the customer whether he knew of any assets the defendant had. Because the customer knew where the defendant worked, the law student explained the attachment process to the customer and helped him prepare a writ of attachment for wages.

- A customer had obtained a default judgment when the other driver involved in a collision failed to appear in court. A law student helped the customer prepare a subpoena for an oral examination, which if served personally, would compel the

43. Collecting judgments can be difficult for self-represented parties, so “programs are beginning to explore the creation of initiatives focused on support for compliance with, and enforcement of, already issued orders. This will increase overall compliance with court orders and satisfaction with the court and its processes.” SELF-REPRESENTED LITIGATION NETWORK, supra note 7.
defendant to appear in court and produce evidence of income and assets.

- A customer was trying to serve someone who had moved to Arizona. Upon learning that the defendant was a licensed professional and was being sued for work performed in that capacity, the student suggested that the customer file a complaint with the local licensing board, a suggestion the customer rejected.44

- A customer had a complaint against a moving company for damaging his property and had documents and photographs to support his claim. He needed help organizing them to present to the court. After a brief discussion with the supervising attorney, the law student helped the customer put his evidence in a logical sequence and gave him basic information about what information the court would need to understand that a photograph was authentic.45

- A customer had collided with a taxicab, and after unsuccessfully dealing with the insurance company, she wished to bring a suit against the cab company, but was uncertain whom to name as a defendant. The student obtained the name and address of the taxicab company’s registered agent for service of process.

- A customer wished to file a complaint against the seller of property he had recently purchased in Maryland, for failure to perform repairs the seller had contractually agreed to complete. The customer insisted that the District of Columbia was the correct venue because he lived there and it was “more convenient” for him. The student explained that the Maryland

44. The student was philosophical about having her suggestion rejected, and noted, “This interaction reminded me that as an attorney your role is to advise and inform the client and ultimately to accept the client’s decision. Here, the customer had very particular opinions and strategies and it was our job to try to impart the information that we could provide but also to allow him his independence” (student comment on file with the author).

45. In Small Claims the court is not bound by the rules of evidence: “The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the provisions or rules of practice, procedure, pleading or evidence, except such provisions relating to privileged communications.” D.C. SM. CT. R. 12. Nonetheless, the court will look for indicia that evidence is what it purports to be.
court would have jurisdiction. She then determined which county court that would have jurisdiction and gave the customer information about how to get there.  

- With the assistance of a court interpreter, a law student interviewed a customer who spoke Spanish. The customer wanted to sue his employer for unpaid wages. After conferring with the supervising attorney, the student drafted the complaint and also completed a referral to the Employment Justice Center asking them to help the customer decide whether to file the case in Small Claims Court or to seek the assistance of the DC Wage and Hour Board. On paper, both remedies seem reasonable. The Wage and Hour Board can investigate and compel payment through criminal sanctions, but there could be delays associated with using their help. The plaintiff might receive a judgment more quickly in Small Claims but then have more difficulty collecting it.

- A customer had deposited a settlement check from the defendant that had cleared the bank, but the bank subsequently discovered the defendant had insufficient funds. The bank’s discovery came after the plaintiff had faxed a judgment satisfaction letter to the Small Claims branch. The student assisted the customer in filing a Rule 60(b) motion to reopen the case and award judgment on the basis of the defendant’s violation of the settlement agreement.

- A customer was suing for “wrongful discharge, character assassination, and undo [sic] harassment.” He spoke loudly and at length about injustice and deception in the District of

46. At the end of the day the student concluded, “I felt like I had a better understanding of several aspects of bringing a claim in a court. I learned the general steps to serving notice on another party and actually walked through the steps with the customer. I was able to put my [knowledge of civil procedure] into practice when warning a customer that his case would be more appropriately filed in Maryland because the property and defendant are both located in that state rather than in the District” (student comment on file with the author).

47. See THE EMPLOYMENT JUSTICE CENTER, http://www.dcejc.org/ (last visited Feb. 1, 2015). (The Employment Justice Center provides legal information and advice to workers who earn less than 300% of the federal poverty level.)

Columbia and said that his only goal was to speak in Congress. The law student explained that the Small Claims Court did not have jurisdiction over his complaint because it involved the federal government.

As is apparent from these brief descriptions, some of these problems involve familiarity with court rules or practice, some involve actual drafting, some involve referrals to other legal services providers, and some are beyond the scope of help that can be provided in the Small Claims Resource Center.

V. TRAINING RESOURCE CENTER STUDENT VOLUNTEERS

Law students who staff the Small Claims Resource Center receive training as part of their coursework in the General Practice Clinic. By the time they step into the Resource Center, many of the students have started work with their own clients and have completed at least one client interview. In addition, they will have completed nine hours of training on client interviewing—six on basic interviewing techniques and three on multicultural competence in client interviews.49

Although this makes them better listeners, increases their cultural competence, and gives them some confidence about working with people with legal problems, interviewing in a court-annexed resource center differs from interviewing a client at a legal clinic in several important ways. First, students working with clinic clients are encouraged to take as much time as necessary to gain a full understanding of the client's legal problem. Second, students are trained to welcome digression as a necessary part of building rapport with the client and surfacing details that may have serious consequences for the case. And third, in the clinic context students have multiple opportunities to confer with clients and to develop the facts of the case. In contrast, in a court-annexed resource center time is limited, which means that students have to identify key

49. Training on cultural competency is an essential part of training volunteers. These include working with customers who are unable read the Notice to Customers or to complete the basic interview form without help. Students also appreciate that different cultures have different approaches to dispute resolution and different levels of trust in court process. Further they understand that although the legal problem is the most pressing and interesting issue in front of the law student, it may be fairly far down on the list of concerns for the customer, or the customer may express ambivalence about doing anything at all. See Rebecca L. Sandefur, The Importance of Doing Nothing: Everyday Problems and Responses of Inaction, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112 (Pascoe Pleasence, Alexy Buck, Nigel Balmer, eds., Stationery Office Books, 2007).
facts quickly and find the right balance between eliciting enough details to help the customer take the next logical step and understanding the entire story.50

To meet the demands of the Small Claims Resource Center, students who staff the resource center take an additional three-hour class on access to justice, the second half of which focuses on how the Resource Center operates and provides an opportunity to practice simulated Small Claims interviews.51 The class is designed to prepare the students to staff the Resource Center and to encourage them to think more generally about how they can improve access to justice through pro bono work.52

Before the class, students are asked to read selected rules of professional responsibility53 and materials on access to justice.54 During the class, the conversation focuses on the obligations and opportunities lawyers have to make justice accessible. Students discuss allocation of legal resources and how the rules of professional responsibility advance or inhibit access to justice. During the second half of the class, students who will staff the Resource Center learn about the rules and procedures that govern the two issues they are most likely to encounter: service of process and collection of a judgment. Students then observe a simulated Small Claims customer interview where a customer, played by a student, needs help filing out the complaint form in a routine consumer case.

50. This is not always easy. One student wrote, "What I found to be the most difficult aspect about the [Small Claims Resource] Center was the long-winded stories. Every customer wanted to tell me every particularized part of the story as if I was the decision maker. I understand that we need enough facts to find the issues, but the stories can become fairly convoluted when the customer gives too much unnecessary information. Especially when so many other customers are patiently waiting" (student comment on file with the author).

51. Clinic students are divided into two groups: those who staff the Small Claims Resource Center, and those who staff the Child Support Resource Center at DC Superior Court. Students received training geared to the resource center they will staff.

52. "This failure to make pro bono programs a more integral part of the law school curriculum shortchanges both the profession and the public. Such programs can offer students, no less than lawyers, invaluable skills training and a window on what passes for justice in low-income communities. If the bar wants lawyers to see public service as a professional responsibility, then law schools cannot afford to treat that issue as someone else's responsibility." Deborah L. Rhode, Whatever Happened to Access to Justice? 42 Loy. L.A. L. Rev. 869, 890 (2009).

53. D.C. RULES OF PROF'L CONDUCT R. 1.2 (Current with amendments received through June 15, 2014); D.C. RULES OF PROF'L CONDUCT R. 1.6 (Current with amendments received through June 15, 2014); D.C. RULES OF PROF'L CONDUCT R. 6.5 (Current with amendments received through June 15, 2014).

Students then play the role of customer or resource center volunteer in one of three simulations.

The first simulation involves a customer who first learned of a lawsuit when his bank account was attached. When the students check the affidavit of service, they discover that it was not served on the customer or anyone in the customer's household. They help the customer prepare a motion to set aside the default. At the conclusion of this simulation, students are asked to raise their hands if they remembered to follow the protocols, including asking whether the customer had read the "Important Notice to Customers," conferring with the supervising attorney before providing any information, and preparing a list of next steps for the customer. This serves as a good reminder because few students remember to follow all the protocols at this point.

The second simulation involves a customer who paid several thousand dollars to have a chair reupholstered and is dissatisfied with the work. The customer's complaint about the piping on the arm of the chair is designed to strike students as fussy and possibly frivolous. In addition, the customer indicates that he has an annual household income in excess of $150,000. The problem is designed to underscore the fact that the job in the Resource Center is to assist customers, not to adjudicate the merits of their cases. The hypothetical also serves as a reminder that the Resource Center provides assistance to individuals with any income level, as long as they are not represented by counsel.55

The third simulation centers on a home improvement contractor who is trying to collect an outstanding balance on a home improvement contract. The contractor has already collected $9,000 on a $13,000 contract but the remaining $4,000 is outstanding. He has a letter from the homeowner saying how pleased she is with his work. The case seems routine, and when conferring with the supervising attorney, most law students will propose filling out the complaint form as the next reasonable step. But the contractor was unlicensed, and the District of Columbia has strict consumer protection laws that make it unlawful for an unlicensed home improvement contractor to accept any payment for work until the entire project is complete.56 By accepting a partial payment, the contractor violated the law. Further, the law requires contractors to return money they received in advance to the consumer,

55. Students are reminded that most people who use court-annexed resource centers have modest incomes, and that "[f]or the courts to enjoy the public trust and confidence of the people, they must make their services practically, as well as theoretically, available to the public." John M. Greacen, Legal Information vs. Legal Advice, Developments During the Last Five Years, 84 JUDICATURE 198, 204 (2001).
without any payment for the work already performed. By making a claim for $4,000, the contractor may be liable for a $9,000 counterclaim. This hypothetical is useful because it invites a discussion about counterclaims. It also reminds students of what could happen if they guess about the law or neglect to confer with the supervising attorney.

VI. THE RULES OF PROFESSIONAL RESPONSIBILITY

The right kind of training, which focuses on cultural competence as well as court rules and how the resource center operates, will give volunteers a solid foundation from which to assist customers. Training ensures that volunteers comply with one of the fundamental requirements of the rules of professional responsibility—competence. ABA Model Rule 1.1 provides that, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Although the model rule on court-annexed limited legal service programs provides no "expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter," the volunteers who provide information are still required to provide competent advice. In the words of a District of Columbia Legal Ethics Opinion, "lawyers must provide competent representation to their clients, and the unbundling of legal services in no way obviates lawyers' duties of competence. In other words, the scope of the services may be limited but their quality may not."

The other duties that generally attach to lawyer-client relationships, including confidentiality, apply in court-annexed resource centers. Customers need enough privacy so that their conversations with resource center staff cannot be overheard. The first important step in protecting confidentiality, therefore, centers on the physical layout of the Resource Center, including placing chairs for waiting customers outside the Resource Center. In addition, volunteers are reminded not to talk about

60. Id.
61. It was one of the law students who first raised this issue: "My main concern was maintaining confidentiality. Because the spaces are so small and so close together, this may prove to be extra difficult. One particular customer of mine kept eavesdropping on the other law student's customer. I realize the Resource Center itself is a small space but
a customer’s case with anyone other than Resource Center staff without the customer’s consent, and must secure a customer’s permission to disclose information about a case before making a referral to a legal or social services provider. They indicate they have the customer’s permission by checking a box on the back of the intake form.62

In court-annexed resource centers, it is important to take care that the customer does not mistakenly believe than an attorney-client relationship has formed. Traditionally, it is thought “the amount of interaction between an attorney and a prospective client necessary to form an attorney-client relationship . . . is uncertain and fact-specific,”63 and that the formation of an attorney-client relationship occurs when the client thinks it does.64 Written materials inform the customer that the Small Claims Resource Center “does not provide a lawyer to represent customers in court,” that no lawyer-client relationship is formed, and that Resource Center volunteers may assist both parties in a dispute.65 Volunteers are asked to check a box on the back of the form to confirm that the customer received and understood this information.66

The District of Columbia adopted a rule that is similar to the ABA Model Rule 6.5, which relaxes the usual conflict rules to permit lawyers working in court- or nonprofit-sponsored programs to provide brief services without conducting the conflict checks required by Rules 1.7 (disqualification due to a conflict of interest with a current client) or 1.9(a) (disqualification due to a conflict of interest with a former client), unless the lawyer knows that representation involves a conflict with a client represented by either the Resource Center lawyer or another lawyer with whom the Resource Center lawyer is affiliated.67 The rule was developed in response to concerns that the conflict of interest rules may discourage lawyers, particularly lawyers from large firms with a large client base, from providing brief legal services.68

maybe there is a way to [set up the office] to avoid this problem” (student comment on file with the author).

62. Small Claims Resource Center Intake form (on file with the author).

63. Brian Wassom, Removing an Ethical Barrier to Serving the Poor, MICH. BAR J. (Oct. 2002), at 54.

64. See Dalrymple v. Nat’l Bank & Trust Co. of Traverse City, 615 F. Supp. 979, 982 (W.D. Mich. 1985) (“[T]he focus is on the putative client’s subjective belief that he is consulting a lawyer in his professional capacity, and on his intent to seek professional legal advice”).

65. Important Notice, supra note 32.

66. Small Claims Resource Center Intake form (on file with the author).


68. “A strict application of the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs in which client are provided limited legal advice.”
relaxation of the normally applicable conflict-of-interest rules, limited legal aid programs are forced to use only attorneys with a small, easily identifiable client base or otherwise adopt a cumbersome, multiple-interview screening process that unnecessarily inconveniences the indigent patron, who may not be able to return for numerous visits."

Although the majority of states have adopted Model Rule 6.5 or a similar rule, they vary substantially on the obligation of attorneys to disclose their help in preparing written documents or coaching a client. Some courts "have expressed concern that providing anonymous assistance to a self-represented litigant defrauds the court by implying that the litigant has had no attorney assistance. The concern is that this might lead to special treatment for the litigant or allow the attorney to evade the court's authority." The countervailing view is that "it is generally possible to determine from the appearance of a pleading whether an attorney was involved in drafting it," and "the benefits of having documents prepared by an attorney are substantial."

The scope of services that may be provided in a court-annexed resource center may be limited by a state's rule on ghostwriting pleadings. Delaware, for example, requires disclosure if a legal service organization "prepares pleadings or other documents, or provides advice or assistance on an ongoing basis." In Colorado, "pleadings filed by a pro se party that were prepared with the drafting assistance of a lawyer must include the lawyer's name and contact information, and the assisting attorney must so advise the pro se party." Rule 12.040 of the Florida Family Law Rules of Procedure requires a pro se party who has

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69. Wassom, supra note 63.


73. Id.


75. COLO. R. CIV. P. 11(b).
received a lawyer's help to certify that fact in the pleadings. In these jurisdictions it would be important to determine whether helping a customer who returns to the resource center on several occasions, or completing the small claims complaint form, triggers the disclosure requirement. A legal ethic opinion in the District of Columbia concludes that ghostwriting is permissible and that nothing in the D.C. Rules of Professional Conduct “requires attorneys who assist pro se litigants in preparing court papers to place their names on these documents or otherwise disclose their involvement.” Even some states that permit behind-the-scenes assistance to self-represented parties impose requirements of both quality and disclosure. In West Virginia “a lawyer must follow procedure to ensure that the client is fully aware of and consents to the specific limitations and possible ramifications.”

VII. ISSUES THAT CONFRONT VOLUNTEERS IN COURT-ANNEXED RESOURCE CENTERS

Even with enthusiastic backing of judges and court personnel, logistical support from the bar association, well-trained volunteers, and rules of professional responsibility that foster the provision of services, several issues directly affect the utility of court-annexed resource centers that should be resolved at the programmatic level. These issues include discerning the scope of assistance that should be provided, customer service (especially working with difficult customers), and the role volunteers should take in screening cases. It is easy to gloss over these issues and to assume that they will resolve themselves in practice, but because they can affect the quality of service, it is wise to address them explicitly.

A. The Scope of Assistance

Customers in court-annexed resource centers seek a range of assistance: help understanding basic legal practices (such as the need to serve a copy of a complaint on a defendant), completing forms, framing their stories as cognizable legal claims, organizing documents, and collecting judgments. Against this backdrop of considerable need, court-annexed resource centers must decide what, if any, limitation they will

77. D.C. Bar Comm. on Prof'l Conduct, supra note 59.
place on the kinds of assistance they will provide. In the absence of a clear understanding of those limitations, shared by everyone who staffs a court-annexed resource center, services may be uneven, and some people who could be helped will be turned away.

This issue is often framed as a distinction between providing “legal information” and providing “legal advice,” but as Russell Engler observed, “[t]he ease with which courts announce the rule prohibiting advice-giving belies the difficulties in understanding and applying the rule.” This dilemma can be illustrated with a typical lawsuit in Small Claims, one centered on the return of a security deposit. In the District of Columbia a landlord who does not return a security deposit within 45 days after the tenant moves out, and who fails to provide the tenant a letter detailing the reasons for retaining the security deposit, is presumed to owe the tenant the full amount of the security deposit plus interest. The hypothetical customer who wishes to file suit against a landlord 30 days after moving out may inadvertently provide the landlord with the opportunity to correct the failure to send the appropriate notice, and in the process transform what was a prima facie case in favor of the tenant into a matter of disputed fact.

When meeting with this hypothetical customer, the volunteer could respond in several ways to questions about the timing of the case. The volunteer could hand the customer the complaint form and the court’s sample for completing the form. But in some ways, handing someone a form is in effect giving them legal advice, as, at a minimum, it implies that it is the correct form and that the individual should complete it. In the alternative, the volunteer could help the customer complete the form.


80. Occasionally people who should be turned away because they do not have a Small Claims problem seek help at the Resource Center. One woman wanted the law student to write a letter to the electric company disputing charges on her bill. While the case may end up in Small Claims Court, the woman would be the defendant, and no case had been filed. In England or Wales a person with this kind of problem could receive assistance at the Citizen’s Advice Bureaux. See http://www.citizensadvice.org.uk/index/aboutus.htm (last visited on Nov. 8, 2014). The Citizens Advice Bureaux offers free legal assistance, dispensed from over 3,000 locations including courts, prisons, and community centers.


82. D.C. MUN. REGS. tit. 17 § 600 (2012).

including details about the nature of the claim, the amount of the claim, and when the tenancy ended (to show the claim is within the three-year statute of limitation), but say nothing about the 45-day rule. Or the volunteer could tell the customer, “The law in the District of Columbia requires landlords to either notify a former tenant in writing why a security deposit is retained or return the security deposits within 45 days after the tenant moved. Failure to do so will result in the return of the security deposit to the tenant.” If volunteer tells the customer about the law, the customer may well ask, “Do you think I should wait to file the case?” One volunteer could reply, “I can’t give you legal advice.” Another volunteer could say, “If you wait another 15 days before your file your case, your landlord will not have the opportunity to tell you why he is keeping your deposit, and if he fails to give you reasons within that timeframe, he can be ordered to return it to you.”

During the first few of years of staffing the Small Claims Resource Center, students were trained to avoid the application of law to facts and to take care to present the information they provided as legal information. Law students proved to be adept at this because they are frequently tested in hypotheticals. However, this effort to avoid applying the law to specific facts puzzled and frustrated many customers because it seemed as though the law student was deliberately refusing to answer a simple question. An unintended consequence was that customers who were less literate or less sophisticated, but often most in need of help, could not understand why the volunteer was answering questions in a seemingly oblique or inconclusive way. And, quite apart from how convoluted conversations with customers became, it did not make sense to tell law students that they could not answer a direct question because that was the provision of legal advice, but that it was fine to draft a complaint or a motion to set aside a default. Becoming tangled up in the distinction between providing legal information and legal advice unnecessarily constrained volunteers and kept them from being as helpful as they should be.

This line between legal information and legal advice often serves as a surrogate for more complex and sometimes unarticulated concerns about how to apportion resources. Some of the reasons for refusing to

84. Our experience differs from that of Jona Goldschmidt, who suggests, “Of the various definitions used by state courts to define the practice of law, the most workable one is that which prohibits giving advice based on the application of the specific facts of a litigant’s case to rules of substantive law. That should be the only ‘bright line’ to guide court staff.” Jona Goldschmidt, The Pro Se Litigant’s Struggle for Access to Justice, Meeting the Challenge of Bench and Bar Resistance, 40 FAM. CT. REV. 36, 47 (2002).
provide legal advice are more acceptable than others, but in the end they all mean the customer does not get guidance on what to do next.

One way to think about the question of how to apportion resources is to consider why the prohibition on giving legal advice exists. Some courts take the position that courthouse clerks are not allowed to provide legal advice, in order to avoid engaging in the unauthorized practice of law. It is easy to automatically apply that prohibition to volunteers who staff court annexed resource centers. But attorneys who are licensed in the jurisdiction where a resource center is located, and law students who are permitted to practice under limited student practice rules and who are supervised by an attorney will not run afoul of this prohibition. A better standard is the one proposed by John Greacen: “Court staff [and resource center volunteers] must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent . . . never favor one party over another.”

A second consideration is time. Busy resource centers with small staffs will not have time to assist every customer to the degree that every customer needs. Even question as straightforward as, “What is the filing fee for a claim more than $2,500?” may raise questions that implicate legal advice, such as whether filing fees can be recovered, whether a party is eligible to proceed without prepayment of costs, or whether it makes sense to compromise a claim before filing it in order to save on court costs.

How a program defines and how volunteers understand any limitations on the scope of services are important because they will not only affect the nature of the information that can be provided but also have implications for how much and what kind of training volunteers need in order to comply with the rules of professional responsibility on competency. At a minimum, if a court or program determines that volunteers should not provide legal advice, it is important that the

85. John M. Greacen argues that this is misguided: “In my view, laws or court rules prohibiting the unauthorized practice of law do not apply to court staff performing tasks at the direction of the court. Preoccupation with the topic of unauthorized practice of law focuses attention on the wrong issues and provides either too much or too little guidance to the courts on what information their staff should and should not provide.” Greacen, supra note 55, at 203.
86. Engler, supra note 83, at 1994-95.
87. Id. at 2037.
88. “[T]he phrase ‘legal advice’ [has] no inherent meaning to the courts or to court staff who were required to interpret it. The use of a vague term has negative consequences for the courts and the public. . . .” Greacen, supra note 55, at 198.
program devote the time necessary to developing a clear understanding of what legal advice looks like in a given setting and the boundaries the resource-center staff will observe. Numerous articles have explored this issue.\textsuperscript{90}

One final consideration is that some legal service providers that are natural partners in the provision of services at court-annexed resource centers are precluded by the terms of their funding from providing services to nonresidents or to anyone whose income exceeds a certain multiple of the federal poverty level.\textsuperscript{91} By and large, court-annexed resource centers are open to anyone regardless of income or residency.\textsuperscript{92} When setting up court-annexed resource centers it is important for courts to understand any external limitations on whom their partner organizations can serve.\textsuperscript{93} Resource centers can address this issue by having someone who is not part of the partner organization supplement that organization’s services for resource center customers who would not otherwise qualify for help.

\textbf{B. Customer Service as an Access to Justice Issue}

Providing good customer service has turned out to be one of the most challenging aspects of assisting people in a court-annexed resource center.\textsuperscript{94} It is also one of the most important. With training, law students


\textsuperscript{91} For example, programs funded by the Legal Services Corporation can provide legal services only to individuals whose incomes do not exceed 125% of the federal poverty level. See Legal Services Corporation, \textit{Income Level for Individuals Eligible for Assistance}, 45 C.F.R. 1611, Appendix A (Feb. 14, 2014) https://www.federalregister.gov/articles/2014/02/14/2014-03273/income-level-for-individuals-eligible-for-assistance#h-10 (last visited Apr. 26, 2015).

\textsuperscript{92} Moderate and low-income people have long been recognized as having similar legal needs. See AM. BAR ASSOC., LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS—MAJOR FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY (1994).

\textsuperscript{93} Legal Services Corporation, supra note 91.

\textsuperscript{94} In describing challenge of responding to self-represented parties, one scholar said court staff needs “a thorough understanding of the legal issues, but also the ability to describe the issues in an easily accessible manner. This is not an easy task, especially when the litigant is enraged, frustrated, and has a limited education and/or English language ability.” Jonathan D. Rosenbloom, \textit{Exploring Methods to Improve Management
excel in providing good customer service. They are genuinely interested in the legal problems the customers have, they are eager to help, and they seem to relish the novelty of even the most ordinary legal issues.\textsuperscript{95} Furthermore, they are abundantly patient and are grateful for the repeat questions that afford them the opportunity to display expertise.\textsuperscript{96} They derive satisfaction from helping people complete a simple form or explaining basic legal concepts because for many students it is the first time they have used their legal knowledge to help someone.

Everyone agrees that resource center staff, particularly those who are the first point of contact for customers, need to maintain a professional and friendly demeanor. Small things can make a resource center more welcoming: volunteers need to stop talking on a cellphone or to one another and greet people when they come in. They need to stop texting, make eye contact, and affirmatively help customers sign in. Good customer service also means keeping the space clear of clutter and personal items. From time to time, this means tossing out used coffee cups, straightening chairs, and wiping down sticky surfaces. These are not activities that highly trained volunteer attorneys anticipate having to perform, but court-annexed resource centers that are staffed by volunteers may not have anyone else available to do these things.

In the Small Claims Resource Center, we do our best to keep people from waiting for services that we cannot provide. When we cannot provide the service, we try to make a referral. Even the act of making a referral, however, requires a certain level of familiarity with the civil legal assistance programs in the community.\textsuperscript{97} And the reality is that


\textsuperscript{95} Jona Goldschmidt noted that self-represented parties sometimes “receive a hostile reception from overworked court staff who feel put-upon by having to educate them about the system.” Goldschmidt, supra note 84, at 37.

\textsuperscript{96} Their curiosity about all the customers’ questions contrasts with the tedium courthouse clerks face in answering the same questions over and over. The Arizona guidelines for court personnel encourages staff to be patient because while, “Court personnel may have been asked for the same information many times before, but remember that this is the first time for this particular court customer.” THE ARIZ. SUP. CT., TASK FORCE ON LEGAL ADVICE, GUIDE TO COURT CUSTOMER ASSISTANCE, LEGAL ADVICE – LEGAL INFORMATION GUIDELINES FOR ARIZONA COURT PERSONNEL 8 (n.d.), available at http://supreme.state.az.us/courtserv/Legal A-I/ManualGloss.pdf.

\textsuperscript{97} “Self-help centers should maintain a current and complete referral list and develop referral protocols with all appropriate community-based organizations and lawyer referral services to ensure efficient and effective referral of matters where counsel is necessary. Many cases are not appropriate for self-representation, either because of the individual needs of the litigant or the complexity of the legal issues involved.” ADMIN. OFFICE OF THE COURTS, GUIDELINE FOR THE OPERATION OF SELF-HELP CENTERS IN
many kinds of civil legal problems have no appropriate referral. Even when we can identify an appropriate referral, there is no guarantee that the individual will qualify for free legal assistance. Without devoting the time to sit down with someone and understand their legal problem, it is at times difficult to make a helpful referral.

It is important that customers feel that the waiting process is administered fairly. People will tolerate fairly lengthy waits if they understand in advance that it will be some time before they are seen. They also appreciate being given updates about how the line is moving and when they can expect to be helped, especially when other customers will be seen first because they are needed in either the courtroom or in mediation, or they need an interpreter.

Over time, volunteers at the Resource Center have become adept at solving certain customer service problems:

- It helps to have written statements about what kinds of problems a resource center can and cannot address. The District of Columbia Bar Pro Bono program recently amended the “Important Notice to Customers” to include a description of cases that are not small claims, including cases filed in other courts, cases more than $5,000, and criminal cases. Although it


98. Free legal services program have “many more eligible people wishing to use them than can be served with existing resources.” SANDEFUR & SMYTH, supra note 2, at 2.

99. Id. As Sandefur & Smyth note “legal assistance in not an entitlement to eligible populations, but rather provided in the volume permitted by available resources.”

100. “Interpreter programs are critical to access to justice. When there are no such programs all limited or non-English speaking litigants are harmed, but it makes the biggest difference to those who do not have a lawyer.” John M. Greacen, Resources to Assist Self-Represented Litigants: A Fifty-State Review of the “State of the Art,” MICH. STATE BAR FOUND., at 95 (June 2011), available at http://www.msbf.org/selfhelp/resources.htm (last visited Nov. 9, 2014).

101. One man had problems collecting damages from a towing company. He was frustrated with the lengthy court process, and as the student began to explain the next steps for collection, he expressed his deep displeasure. The law student described him as irate and was not confident that he that he would be able to calm the customer down. The student explained that the process can seem long and complex. He copied documents for the customer that outlined the steps in enforcing a judgment. At the end of the interview, the customer apologized for “getting caught up” and thanked the student for remaining calm. He said he wished the student would be there for his follow-up visit because he was so good at working with people. These kinds of experiences are rewarding for students; they reinforce newly developed skills and give students confidence that they are able to use their legal knowledge to solve problems.
may be obvious to lawyers what "small claims" means, it is not obvious to every customer.

- Some customers who express skepticism about rules that lawyers take for granted (such as the statute of limitations or the necessity of serving a defendant with court papers before adjudicating a claim in court) are reassured when they are shown a copy of the court rules.

- Customers who do not want to wait because they only have a "quick question" are now told that they are welcome to ask a quick question but if the question has a long answer, they will have to wait in line.

- Customers whose problems cannot be addressed by the Small Claims Resource Center sometimes appreciate the explanation that law, like medicine, is specialized and that they need the help of a specialist.

- The occasional customer who wants to go over the details of a long story a second or third time will be told, kindly, that the law student must wrap up the conversation after another five minutes because others are waiting.

- Customers who are obviously intoxicated are encouraged to come back another day when they are "less tired."

The more nettlesome problem is working with difficult customers. Some interviews will go badly and volunteers need to be prepared. This is not to suggest that resource center problems are more severe or even different from what court personnel face every day, but few volunteer

102. The issue of difficult customers is one that law librarians routinely face. In that setting, "problem patrons" include "those who are disruptive, difficult, mildly irate, violent, or mentally deranged, as well as those who monopolize librarians' time, are suspected of being under the influence of drugs or alcohol, are emotionally disturbed, and are sex offenders." Shelley Ferrell, Who Says There's a Problem? A New Way to Approach the Issue of "Problem Patrons," 50 REFERENCE & USER SERVS. Q. 141, 142 (2010) (quoting Bernice Redfern, The Difficult Library Patron: A Selective Survey of the Current Literature, 36 REFERENCE LIBR. 75-76 (2002)).

103. "State courts are inundated by parties appearing ill-prepared, without counsel, or lacking any notion of what to do or say. The result is delay, strain on clerk's offices, harried judges, confused, dissatisfied claimants and disruption of the orderly administration of justice." CHARN & ZORZA, supra note 11, at 50.
lawyers and even fewer law students are trained to address them. It is unsettling when an angry customer impugns either the intentions or intelligence of law student volunteers, and the drama of a deeply upset customer disrupts the work of the Resource Center. This issue is something that designers of court-annexed resource centers should anticipate and provide training on.

To better assist customers and to help students respond to these situations, the General Practice Clinic has asked a psychologist to conduct training on working with difficult customers. The psychologist offered a number of practical suggestions about how to de-escalate conflict and how to calm down after a difficult encounter. Admonitions to take things professionally, not personally, are well-intentioned, but it is considerably more helpful to suggest that it is not productive to tell someone to “calm down” or that “telling the person that they are rude or upsetting you is not going to make them stop behaving badly and may actually make them angrier and ruder, which will upset you more.”

C. Questionable Claims

An issue that is closely aligned with providing good customer service and with whether a court-annexed resource center should provide legal advice is what role, if any, court-annexed resource centers should have in screening cases. Inevitably some customers will wish to pursue cases that resource center staff considers unlikely to succeed. Law

104. "Court personnel, accustomed to experience counsel, are rarely trained to address the anger, fear, frustration, and communication barriers that are common hurdles when working with pro se litigants." Rosenbloom, supra note 94, at 307.

105. "I felt as though I had done something wrong when he walked out. More importantly I thought his display threatened my credibility with future customers. As I continued with the customers this did not seem to be the case. I think one man expressed extra gratitude as though to reaffirm my self-confidence” (student comment on file with the author).


107. Jennifer A. Crumlish, Ph.D. CCLS, Tips on How to Take Care of Yourself During and After a Difficult Encounter, presented at “How to Be Helpful” (April 23, 2012), (copy on file with the author).

108. Ordinarily, it is the lawyer’s obligation to “make merits-based assessment of possible claims before proceeding with them. . . . [And to] simply refuse to pursue unsupportable claims when their clients are potential plaintiffs and advise their clients who are defendants when they have no viable defenses to the claims brought against them.” Greacen, supra note 100, at 8.

109. “[W]hat qualifies as a frivolous claim generally depends on the eye of the beholder. Although some cases . . . meet almost anyone’s definition, the line between vindictiveness and vindication is often difficult to draw.” Deborah L. Rhode, Frivolous Litigation and Civil Justice Reform, 54 Duke L.J. 447, 454 (2004).
student volunteers are trained to be sensitive to access-to-justice issues. They are instructed that their role is to provide information and do what is in their power to help customers accomplish their legal goals. Put another way, their role is that of a gateway and not a gatekeeper. Unless it is absolutely clear that a case has already been adjudicated (and the time for taking an appeal has passed), that the statute of limitations has run, or courts in the District of Columbia do not have jurisdiction over a matter because it occurred solely in another state, the law students rarely try to discourage a customer from pursuing a claim. Outside these limited circumstances, students err on the side of determining a way to make the customer’s claim work.¹⁰ There are certainly times when a lawyer would not bring a lawsuit,¹¹ but the role of the resource center is not to bring cases, to adjudicate them, or to discourage customers from bringing them.

VIII. CONCLUSION

For court-annexed resource centers to succeed, several elements need to be in place. First is a commitment from the court that a resource center has value and will assist rather than impede its operation. When the judge sitting in Small Claims Court mentions the resource center during opening remarks or suggests an individual seek help there, it gives the resource center visibility and legitimacy. Second, it is helpful to have a stable professional presence, like the District of Columbia Bar Pro Bono Program or courthouse staff, available to provide continuity and to address systemic problems. Clerks in the Small Claims Branch have been generous with their expertise and patient in guiding students through some of the more arcane procedures.¹² Third, a jurisdiction’s rules of professional responsibility should support, or at least not prohibit, provision of the types of services typically offered in court-annexed

¹⁰. “There is small group of people who persist in litigation, over real or imagined grievances, regardless of costs and consequences. . . . The litigation usually result from a legal slight or injustice, which assumes a special meaning for the individual and unlocks the litigious behavior.” M. W. D. Rowlands, Psychiatric and Legal Aspects of Persistent Litigation, BRIT. J. PSYCHIATRY 317 (1988).
¹¹. Greacen, supra note 100.
¹². For example, in the District of Columbia, if one wishes to sue a corporation but the corporation has failed to designate a registered agent for service of process, it is possible to pay a $50 fee and serve the Superintendent of Corporations. It is also possible to have the $50 fee waived if the plaintiff is proceeding without prepayment of costs. Clerks have helped law students navigate this process. See D.C. CODE § 29-104.12(d) (2012); D.C. MUN. REGS. tit. 17, § 600 (2010).
resource centers. ¹¹³ Rules on conflicts of interest and ghostwriting pleadings directly affect how court-annexed resource centers operate. Fourth, volunteers—whether law students or licensed professionals—need training. This training should cover procedures of the particular court, common legal issues that arise in that setting, and working with people who are different from themselves—whether those differences center on literacy, language, age, culture, sophistication, or mental health. In addition to this practical framework, a court-annexed resource center needs policy and clarity around the scope of services that can be provided, customer service (especially working with difficult customers), and the extent to which the resource center will screen out questionable claims. Bench and bar need to build referrals for people who cannot be served at a resource center. ¹¹⁴

These projects are of value to law schools because they present an opportunity for law schools to do more than indulge in “rhetoric about the importance of public service at symbolically important events like graduation.”¹¹⁵ These projects train law students for the future because they make pro bono work seem possible—with only a few hours, it is possible to make a difference. They also help students refine their skills. As one student wrote, “The experience gained in the Small Claims Resource Center was invaluable. The unique legal problems presented along with the various customer personalities required me to use every tool in my legal skill set.”¹¹⁶

With sufficient training and supervision, law students can provide excellent service in court-annexed resource centers. They understand that non-lawyers approach legal problems not from the perspective of rules of law, but rather in narrative.¹¹⁷ They expect customers will present their cases in the light most favorable to themselves and may omit key facts. They know that how non-lawyers think about law is often informed by what they see on television.¹¹⁸ They understand that part of the lawyer's

¹¹³. There is a need to “work out the differences between high-minded principles and ethical considerations on the one hand, and on the other the gut-level reality of courts swamped with litigants who are on their own.” Carter, supra note 81.

¹¹⁴. ADMIN. OFFICE OF THE COURTS, supra note 97.


¹¹⁶. Student comment on file with the author.

¹¹⁷. See JOHN M. CONLEY & WILLIAM M. O’BARR, RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE (1990). (The authors researched the difference between how lawyers and non-lawyers approach legal problems by studying the language of litigants more than 400 cases.)

job is to educate clients about the law, acting as a guide through what can at times be a bewildering landscape. Law students know these things and are good at them because they can recall a time in the not-too-distant past when they held those beliefs themselves.

Student participation in court-annexed resource centers offers a relatively low-cost way for courts to improve access to justice. But court-annexed resource centers are not a substitute for representation. Too many things are unknown and unknowable in the context of such brief services. The fundamental help that people need from attorneys—help predicting outcomes and making decisions—is often beyond the scope of help a resource center can provide. And as helpful as court-annexed resource centers can be, courts must recognize the limitations on the help that they can provide and not assume that if the party sought assistance then all need for legal help has been met.

administrative law judges. “The pro se party may have a yen to ‘play lawyer,’ but is handicapped by misunderstanding fostered by the distortions of the popular media, about what lawyers do, and how they do it.” Manual for Administrative Law Judges, 23 J. NAALJ 75-76 (2004)).

119. Even with the considerable efforts afoot to make civil court more accessible to self-represented parties, the “systems in which these parties operate have been designed by and for lawyers, and too little effort has focused on making them accessible to the average claimant.” Deborah L. Rhode, Access to Justice: Again, Still, 73 FORDHAM L. REV. 1013, 1015-16 (2004).

120. See STEVEN PINKER, THE SENSE OF STYLE: THE THINKING PERSON’S GUIDE TO WRITING IN THE 21ST CENTURY (2014). Pinker, a linguist and psychologist, explores what he calls “the curse of knowledge,” the inability to imagine that another person does not know what we know interferes with our ability to communicate.

121. “It bears emphasis, however, that such ‘free’ assistance is not free to everyone. Volunteers need training, supervision, backup support, and sometimes office space and staff.” Deborah L. Rhode & Dmitry Bam, A Roadmap to Justice, STANFORD CTR. ON THE LEGAL PROF. & THE SOKOLOVE CHARITABLE FUND, at 25 (2010).

122. “A court self-help center cannot take the place of attorneys who are able and willing to provide pro bono, low-cost, or unbundled legal counsel and representation to the public.” ADMIN. OFFICE OF THE COURTS, supra note 97, at 8.

123. “Even where programs permit the giving of legal advice, the limited and rushed nature of the encounter between the lawyer and litigant similarly precludes a presumption that the litigant has received the benefit of full and complete legal advice.” Engler, supra note 83, at 2002.

124. CHARN & ZORZA, supra note 11, at 29 (“In some instances today consumers are directed to self-help not because it is a good choice but because nothing else is available”).

125. “Where the help is from lawyers, the unrepresented litigant may or may not have understood the advice or have been capable of acting on it. Regardless of the source and nature of the help, the advice would not reflect subsequent encounters with clerks, other court personnel, opposing parties, or opposing counsel, which may have confused the unrepresented litigants’ understanding of their cases and undercut the effectiveness of the assistance.” Engler, supra note 83, at 2006-07.