

Summer 2023

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Recommended Citation

Rotimi, Amanda (2023) "Dream Big and Lay the Groundwork: How Rhode Island Can Improve Access to Civil Justice for Self- Represented Litigants," *Roger Williams University Law Review*. Vol. 28: Iss. 3, Article 14.

Available at: https://docs.rwu.edu/rwu_LR/vol28/iss3/14

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Dream Big and Lay the Groundwork: How Rhode Island Can Improve Access to Civil Justice for Self- Represented Litigants

Amanda Rotimi*

INTRODUCTION

Rhode Island is a small state with a big problem. In 2019, the Rhode Island Judiciary had 36,885 cases in which at least one party was a self-represented litigant (SRL).¹ The District Court, which hears small claims, housing, employment, and other civil cases, handled the brunt of these cases involving SRLs—33,815.² The Family Court, which hears domestic relation cases such as custody, child support, and divorces, handled the next largest batch of these cases—2,300.³ Even in 2020, as the COVID-19 pandemic disrupted

* Candidate for Juris Doctor, Roger Williams University of Law, 2024. I would like to thank my editors, Sam DaRocha and Julyssa Tavares, and my mentor, Candace Quinn for their unwavering support and guidance throughout this writing process. I would also like to thank Nicole Dyszlewski and Eliza Vorenberg for giving me the resources and input to understand the meaning and importance of access to civil justice.

1. R.I. JUDICIARY, NEW STATE ACCESS TO JUSTICE OFFICE TO COORDINATE 3 ESSENTIAL COURT SERVICES (2021), <https://www.courts.ri.gov/PublicResources/media/PDF/Access%20to%20Justice%20111521%20web.pdf>. The National Center for State Courts (NCSC) has noted that from 2017–2019 there has been a steady increase of SRLs in cases filed in Rhode Island courts. DANIELLE E. HIRSCH, NAT'L CTR. FOR STATE CTS., RHODE ISLAND JUDICIARY AND SELF-REPRESENTED LITIGANTS: A STUDY 11 (2021), <https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/954> [hereinafter NCSC STUDY].

2. R.I. JUDICIARY, *supra* note 1.

3. *Id.*

court operations, SRLs maintained a pervasive presence and were involved in 20,806 cases filed within the Judiciary.⁴

This increase in SRLs presents a pressing issue for courts and litigants. The American justice system was designed to be adversarial, with an expectation that an attorney would represent each party.⁵ Across the nation, state courts operate under rules and judicial procedures created and understood by attorneys—not laypersons.⁶ While indigent criminal defendants enjoy a constitutional right to counsel, most indigent civil litigants do not have such an absolute right.⁷ This results in represented civil litigants having attorneys that serve as an atlas for their journey through the judicial system, while SRLs are left to untangle the web of complex court procedures, indecipherable legal forms, and confusing self-help resources.⁸

The hurdles SRLs face when left to navigate a court system built for attorneys present barriers to justice and decrease judicial efficiency.⁹ To tackle those issues, the Rhode Island Judiciary must coordinate an effort to implement and maintain solutions to make its courts accessible to SRLs. This Comment analyzes how the Rhode Island Judiciary can improve access to civil justice for SRLs. Part I of this Comment will highlight the Rhode Island Judiciary's current efforts to improve access to justice and the outstanding struggles SRLs still face. Part II of this Comment will highlight how insufficient access to justice affects the rights of SRLs' and the Rhode Island Judiciary's duty to uphold those rights. Part III will discuss how the Rhode Island Judiciary can improve its access to justice resources and adopt new resources to assure efficiency and justice for SRLs. This Part will also highlight the need to create an Access to Justice Commission (ATJ Commission) that bands

4. NCSC STUDY, *supra* note 1, at 11.

5. Collen F. Shanahan & Anna E. Carpenter, *Simplified Courts Can't Solve Inequality*, 148 DAEDALUS 128, 129 (2019).

6. See NCSC STUDY, *supra* note 1, at 12–13.

7. Tonya L. Brito, *The Right to Civil Counsel*, 148 DAEDALUS 56, 56–57 (2019).

8. NCSC STUDY, *supra* note 1, at 12–14.

9. SRLs opposing parties with an attorney often lose their case even when the merits are in their favor. Fern A. Fisher, *Why Judges Support Civil Legal Aid*, 148 DAEDALUS 171, 171 (2019). Judges involved in cases with at least one self-represented litigant (SRL) carry a large burden of arranging the facts and law. See *id.*

together the legal aid community and its stakeholders and oversees conformity in access to justice resources throughout the Rhode Island Judiciary and the State. Part IV addresses counterarguments about the redundancy of launching an ATJ Commission alongside the current Access to Justice Office (ATJ Office) and how producing more resources for SRLs can create increased competition for attorney services.

I. CURRENT ACCESS TO JUSTICE EFFORTS AND OUTSTANDING SRL STRUGGLES

The number of SRLs inundating the Judiciary sparked the Rhode Island Administrative Office of State Courts' (AOSC) interest in reanalyzing how they could improve court electronic filing (e-filing) services for SRLs.¹⁰ The National Center for State Courts (NCSC) was awarded a contract to supply the AOSC with recommendations for e-filing improvement.¹¹ However, the COVID-19 pandemic shifted the NCSC's tasks to a broader initiative.¹² Instead of focusing on e-filing only, the NCSC embarked on an inquisitory process to pinpoint how to improve SRLs' experiences with the Rhode Island courts in general.¹³

To understand how to improve SRLs' experiences, the NCSC spent several months conducting stakeholder interviews, focus groups, and virtual court observations to understand the Judiciary's current practices.¹⁴ These efforts allowed NCSC to highlight the Judiciary's modest attempts toward making their courts accessible and discover areas where the Rhode Island Judiciary's current practices create difficulties for SRLs.¹⁵ The NCSC identified seven key areas where the Rhode Island Judiciary could explore changes to the SRL experience.¹⁶

Upon assessing these areas, the NCSC made eight recommendations to improve the Judiciary's resources and services, including: (1) using a multimedia approach to increase self-help resources;

10. *SEE* NCSC STUDY, *supra* note 1, at 5.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 5–6.

15. *Id.* at 7, 8, 12.

16. *Id.* at 12–14.

(2) increasing and improving collaboration with other service providers; (3) creating a prescription pad or information packet for SRLs; (4) creating an ATJ Commission; (5) auditing and user testing current self-help resources (6) training judges, clerks, and other court staff on SRLs, (7) providing templates for final judgment orders, and (8) implementing large-scale efforts to improve the experiences of SRLs.¹⁷ These first seven recommended solutions will be explained in parallel with their corresponding issue area in the sections below. The last recommendation will be extrapolated in its own section.

A. *Self-help Information*

During stakeholder interviews, the NCSC discovered that SRLs yearned for court materials such as “forms, explainer guides, checklists” that were simple to find and use either remotely or in the courthouse.¹⁸ The Rhode Island Judiciary has self-help resources on its website, such as downloadable court forms from each of its six courts and a dedicated self-help page.¹⁹ However, the website is not user-friendly due to its format and organization.²⁰ Specifically, the court forms are listed in small scrollable boxes, which are difficult to navigate on mobile devices and make forms challenging to identify.²¹ Further, the forms are neither written in plain language²² nor accompanied by any instructions or legal resources to assist SRLs with understanding and filling out the forms.²³

Moreover, the website’s self-help page supplies resources for SRLs but is not well-organized and hosts insufficient information. The NCSC points to the page’s “How Do I?” box, which has fifteen answer choices to questions that are not organized or aimed to address the everyday needs of SRLs.²⁴ Specifically, there are no

17. *Id.* at 16–20.

18. *Id.* at 12.

19. *See Forms*, R.I. JUDICIARY, <https://www.courts.ri.gov/PublicResources/forms/Pages/default.aspx> (last visited Nov. 21, 2022).

20. NCSC STUDY, *supra* note 1, at 12.

21. Further, these forms are listed in alphabetical order, which is unhelpful for SRLs who do not know the name of their needed form. *Id.*

22. The NCSC defines “plain language” as written material readable “at a lower than fifth grade reading level. *Id.* at 18.

23. *Id.*

24. *Id.* at 12. Notably, most answers were utterly unrelated to the pressing needs of SRLs, governing inquiries about non-litigation-related court

answers related to the different areas of civil law where SRLs often struggle—such as family and housing law.²⁵

The “How Do I?” section is not the only aspect of the self-help page guilty of centering non-essential information and resources. The scope of how the Judiciary employees can or cannot help SRLs is helpful, but the information is centered in the middle and takes up half of the self-help page.²⁶ Other important sections, such as “frequently asked questions” and “legal assistance,” are listed in boxes that take up less than a third of a page.²⁷ The NCSC suggests that the webpage would benefit from centering the most needed resources, like court forms and links to other legal aid resources, rather than placing them on the sidelines.²⁸

The NCSC recommended that the Rhode Island Judiciary use a multimedia approach to increase the number of self-help resources.²⁹ The Judiciary can carry out this approach by creating flowcharts, instructions packets, short videos, or checklists that explain different court processes. These multimedia resources can be platformed on a website or app.³⁰ Importantly, these resources do not have to be created from scratch, as the Judiciary can reference existing templates.³¹ Additionally, the Judiciary can create links to existing self-help resources that are platformed on legal aid or government websites.³² The NCSC reemphasizes that these resources must be organized to the forefront of the most needed information and written in plain language.³³

The NCSC also stressed that the Judiciary needs to ensure that self-help resources are available in person.³⁴ Making self-help resources available exclusively online would be a disservice to court

conduct such as touring, filming, or taking pictures at the court, bidding on Judiciary projects, and applying to the Judiciary for employment. *See Self-help Center*, R.I. JUDICIARY, <https://www.courts.ri.gov/Self%20Help%20Center/Pages/default.aspx> (last visited Nov. 22, 2022).

25. *See Self-help Center*, *supra* note 24.

26. *See id.*

27. *See id.*

28. NCSC STUDY, *supra* note 1, at 12.

29. *Id.* at 16.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 10.

users with limited or no internet access.³⁵ Notably, about one-fourth of Hispanics and blacks access the internet only on their smartphones.³⁶ These groups and lower-income smartphone users are twice as likely as whites to have their internet service cut off due to its expense.³⁷ The NCSC also notes that the Judiciary's online self-help resources, such as court forms and e-filing, are difficult to access and use for smartphone users because these resources are not optimized for these devices.³⁸

Further, those who lack internet access, tech savviness, literacy, and English proficiency may also need access or the ability to navigate these online resources.³⁹ Thus, the NCSC recommended that the Judiciary implement in-person resources such as an internet-connected kiosk where court users could submit their filing and access electronic guides and other resources.⁴⁰ The NCSC suggested that these kiosks be accompanied by printed resources and staffed to provide support and guidance for court users with questions or concerns.⁴¹

B. *Judges and Court Staff's Approach to SRLs*

The NCSC also learned that judges' and court staff's approaches to helping SRLs vary widely.⁴² Many court personnel were eager to help SRLs, while others who interact with SRLs more frequently were unsure how far they could help before encroaching into legal advice territory.⁴³ Additionally, some court users reported having negative interactions with court staff who proved unhelpful or withheld legal information from them.⁴⁴ Since most of the Judiciary's court users are SRLs, the NCSC suggests that meeting their needs should be a priority concern for court personnel.⁴⁵

35. *Id.*

36. *Id.*

37. *Id.*

38. *See id.* at 10.

39. *Id.*

40. *Id.* at 9.

41. *Id.*

42. *Id.* at 12.

43. *Id.*

44. *Id.*

45. *Id.* at 19.

The NCSC recommended that court staff receive regular training to inform them of best practices and resources they can provide for SRLs.⁴⁶ Potential training subjects can involve interacting with SRLs who are traumatized, impoverished, have limited English proficiency, or need limited scope representation.⁴⁷ The NCSC also emphasizes training court staff to spot the difference between what constitutes legal information and advice.⁴⁸

C. Assistance With Locating Limited Resources

The NCSC discovered the need for more awareness surrounding the full scope of the legal aid resources available to SRLs.⁴⁹ In a focus group with representatives from the public and private legal sectors, some members identified legal aid or the Rhode Island Bar Association's lawyer referral list as resources.⁵⁰ However, not all participants knew of the resources available.⁵¹ Further, some had outdated or insufficient information about specific resources, such as the hours and services of certain legal aid organizations.⁵² The NCSC points out that this varying level of knowledge about legal aid means that SRLs may not be referred to the proper resources.⁵³

Another issue the NCSC highlighted was that compared to other states, Rhode Island has fewer resources available for SRLs.⁵⁴ They noted that having limited resources should be a further incentive for these legal entities to be apprised of what resources are available and how they can help SRLs.⁵⁵ Notably, while it can be difficult for court staff to keep themselves apprised of all available resources, improving the organization of links to online resources would greatly benefit SRLs.⁵⁶

46. *Id.*

47. *Id.*

48. *Id.* Other jurisdictions, such as Illinois, Kansas, and Colorado, have toolkits or rules aid court staff with recognizing when legal information encroaches into legal advice. *Id.*

49. *See id.* at 13.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

The NCSC suggested that the Judiciary improve its collaborations with service providers to ensure that information about external legal aid resources is updated.⁵⁷ This collaboration would entail having a point of contact from law schools, legal aid organizations, libraries, and other agencies.⁵⁸ This relationship would enable the Judiciary to keep the entities apprised of its rules and procedures, and these entities can keep the Judiciary apprised about its hours and scope of operations.⁵⁹ All involved would benefit from being able to provide SRLs with accurate information. The NCSC notes that the Judiciary can use these relationships to organize various legal aid initiatives to help SRLs, such as a legal aid clinic, lawyer for a day, or criminal expungement day.⁶⁰

D. Accessibility for Those With Low Literacy and English Proficiency

The NCSC also discovered that SRLs need help understanding court forms and instructions.⁶¹ They note that these forms and instructions are filled with “complex legal concepts and jargon,” which can be difficult for SRLs who do not comprehensively understand written or spoken English.⁶² The NCSC suggests that not only should these forms be written in plain language, but they should also be available in multiple languages.⁶³ Further, they urge that online court forms be compatible with web content accessibility guidelines (WCAG) to provide access for individuals with low literacy levels or limited English proficiencies.⁶⁴ Additionally, the NCSC suggests that courts use “I Speak” cards to help court staff identify interpreter needs.⁶⁵

57. *Id.* at 17.

58. *Id.*

59. *Id.*

60. *Id.*

61. *See id.* at 13.

62. *See id.*

63. *Id.* Currently, the Rhode Island Judiciary has court forms available in English, Portuguese, and Spanish. *See Forms, supra* note 19.

64. NCSC STUDY, *supra* note 1, at 13.

65. *Id.* *See generally* LANGUAGE IDENTIFICATION GUIDE, OFF. CRIM. JUST. SERVS. (2015), <https://publicsafety.ohio.gov/static/CJS0007.pdf> (providing example of an “I Speak” card).

E. *Court Rules and Procedures*

The NCSC also discovered that court rules and procedures were confusing hurdles for SRLs.⁶⁶ Notably, focus groups highlighted that the divorce procedure tripped up SRLs because they missed the last step to obtaining a divorce—submitting an order for the court to finalize the divorce terms.⁶⁷ This is particularly problematic because it leaves many SRLs unknowingly married, undiscovered until they try to remarry.⁶⁸ To tackle this issue, the NCSC recommended that the Judiciary provide a template for final judgment orders accompanied with instructions on how to fill it out and file it.⁶⁹

The NCSC also suggested using a referral or “prescription” pad to aid SRLs in navigating court procedures.⁷⁰ These pads would guide SRLs in understanding which court forms they need for a particular case and where to get them.⁷¹ Further, these pads could also assist SRLs with navigating where to go within the courthouse and the type of case or issue they face.⁷² The NCSC notes that these prescription pads should be accessible online, optimized to be readable on mobile devices, and available in multiple languages.⁷³ The pads should also be organized so that it is clear when a particular form should be used.⁷⁴

F. *Rhode Island Has No Access to Justice Commission*

The NCSC found that Rhode Island had a glaring absence of an Access to Justice Commission (ATJ Commission).⁷⁵ At least forty-one states, districts, or territories in the United States have

66. NCSC STUDY, *supra* note 1, at 14.

67. *Id.*

68. *Id.*

69. *Id.* at 19.

70. *Id.* at 17.

71. *Id.*

72. *Id.*

73. *Id.* at 18.

74. “For example, for those seeking a divorce with children they would get a process map, instructions, sample parenting plans, information about parenting class providers and filing the certificate of completion, a link to the child support calculator, and all the required forms.” *Id.*

75. *Id.* at 13.

an ATJ Commission—and Rhode Island is not one of them.⁷⁶ In 2013, the American Bar Association (ABA) adopted a resolution urging *all* states and territories to establish an ATJ Commission or a similar body.⁷⁷ The ABA defines an ATJ Commission as “a high-level commission or similar formal entity composed of leaders representing, at minimum, the state . . . courts, the organized bar, and legal aid providers.”⁷⁸ An ATJ Commission’s core purpose is “to expand access to civil justice at all levels for low-income and disadvantaged people in the state by assessing their civil justice needs, developing strategies to meet them, and evaluating progress.”⁷⁹

Recognizing its absence, one NCSC-recommended solution for improving SRLs’ access to justice was for Rhode Island to create an ATJ Commission.⁸⁰ The NCSC suggested that the ATJ Commission form regular collaboration and communication between internal and external stakeholders who can advocate and advance the goals of improving access to justice in the State.⁸¹ These stakeholders would include “the private bar, legal aid, social service providers whose clients use the courts, the judiciary, and the administrative office of the courts.”⁸² The NCSC emphasized that such a commission would enable these stakeholders to create recommendations to improve and increase services that remove barriers to justice and “collaborate on expanded pro bono services and help for SRLs.”⁸³

76. *See id.* at 15.

77. AM. BAR ASS’N, ABA HOUSE OF DELEGATES RESOLUTION IN SUPPORT OF ATJ COMMISSIONS (2013), https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/atj-commissions/ (report available under “support” heading on the “Access to Justice Commissions” page).

78. The ABA notes that ATJ Commission’s may also involve member representation from “law schools, legal aid funders, the executive branch, and federal and tribal courts.” AM. BAR ASS’N, AMERICAN BAR ASSOCIATION CENTER FOR ACCESS TO JUSTICE INITIATIVES: DEFINITION OF AN ACCESS TO JUSTICE COMMISSION (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_definition_commission.pdf [<https://perma.cc/8D5W-YJZH>].

79. *Id.*

80. NCSC STUDY, *supra* note 1, at 18.

81. *Id.*

82. *Id.*

83. *Id.* at 15.

G. *Large-Scale Efforts for SRLs*

Finally, the NCSC suggested that the Rhode Island Judiciary adopt larger-scale solutions to improve access to justice for SRLs that are both inexpensive and not time-consuming.⁸⁴ These solutions include qualifying pro bono work as continuing legal education (CLE) for attorneys or having the court collaborate with the legal community to expand, coordinate, and host regularly held pro bono or pro se clinics.⁸⁵ Additionally, the Judiciary could adopt a non-lawyer navigator program staffed with individuals who can give legal information to court users⁸⁶ or streamline e-filing for SRLs by allowing them to apply for a fee waiver without going to court.⁸⁷

Clear from the NCSC findings, the Rhode Island Judiciary has not been entirely apathetic to the needs of SRLs.⁸⁸ The Judiciary's current resources and practices—particularly its website—shows its efforts to give SRLs adequate aid.⁸⁹ However, there is certainly room for the Judiciary to improve its services and ensure that SRLs with differing language, economic, and disability backgrounds can have equal access to civil justice. Without such improvement, the Rhode Island Judiciary will uphold SRL's barriers to justice and continue to face judicial inefficiency as SRLs remain prominent in its courts.

II. HOW ACCESS TO JUSTICE AFFECTS SRLS RIGHTS AND THE JUDICIARY'S DUTIES TO IMPROVE IT

Written above the main entrance of the United States Supreme Court building are the words “equal justice under the law.”⁹⁰ Justice Lewis Powell remarked about this mantra, “[e]qual justice under law is not merely a caption on the façade of the Supreme Court

84. *Id.* at 20.

85. The NCSC notes that collaboration with law schools, the Bar, and legal aid organizations is necessary to execute these clinics. *Id.* at 20.

86. Other jurisdictions have adopted non-lawyer navigator programs involving retirees, college students, and volunteers who can provide legal information to court users. *Id.*

87. *Id.*

88. *See id.* at 9.

89. *See id.* at 12.

90. *About the Court*, SUP. COURT. OF THE U.S., <https://www.supremecourt.gov/about/about.aspx> (last visited Nov. 25, 2022).

building . . . [i]t is one of the ends for which our entire legal system exists . . . fundamentally, justice should be the same, in substance and availability, without regard to economic status.”⁹¹ Nevertheless, the Supreme Court has not recognized how justice can be inaccessible for indigent civil litigants without an absolute right to assistance of counsel. Instead, in *Lassiter v. Department of Social Services*, the Supreme Court ruled that there is a rebuttable presumption against civil litigants’ due process right to counsel unless “he [or she] may be deprived of his [or her] physical liberty.”⁹² Outside the risk of losing physical liberty, there are limited circumstances where courts recognize the right to appoint an attorney in civil cases.⁹³

In civil cases, a person’s physical liberty is usually not at stake. However, civil litigants often experience legal issues where critical human needs are at stake, such as “shelter, food, safety, health, or child custody.”⁹⁴ The stakes can be higher than those a criminal defendant, who is entitled to counsel, may face.⁹⁵ Generally, civil litigants who cannot afford a lawyer to protect these needs can either seek a legal aid attorney to help them or represent themselves in court.⁹⁶ The bigger problem is that those who seek civil legal

91. Robert Grey Jr., *There is No Justice as Long as Millions Lack Meaningful Access to It*, ABA J. (Aug. 30, 2018, 6:05 AM CDT), https://www.abajournal.com/news/article/there_is_no_justice_as_long_as_millions_lack_meaningful_access_to_it/.

92. *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N.C.*, 452 U.S. 18, 26–27 (1981). Outside of situations where the indigent litigant may lose their rights, the Court employs a three-part due process test that balances “the private interests at stake, the government’s interest, and the risk that the procedures used will lead to erroneous decisions.” *See id.* at 27. *But see* *Turner v. Rogers*, 131 S. Ct. 2507, 2512 (2011) (holding that an indigent civil litigant was not entitled to counsel even though the case resulted in the loss of his physical liberty—one year in prison).

93. *See* Deborah L. Rhode, *Access to Justice*, 69 *FORDHAM L. REV.* 1785, 1798 (2001).

94. Tonya L. Brito, *The Right to Civil Counsel*, 148 *DAEDALUS* 56, 57 (2019).

95. *See* Rhode, *supra* note 93, at 1799 n.77.

96. In Rhode Island, there are some subject areas of civil law where an indigent civil litigant has a categorical, qualified, or discretionary right to counsel. *See Status Map: Rhode Island*, NAT’L. COAL. FOR CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/major_developments?jurisdiction=Rhode%20Island (last visited Jan. 8, 2023).

assistance are often turned away due to inadequate resources.⁹⁷ In 2022, the Legal Services Corporation (LSC) reported that of the approximately 1.9 million civil legal issues that low-income Americans sought from LSC-funded legal aid organizations, 1.1-1.3 million have little to no legal assistance.⁹⁸

The inability to afford an attorney and to secure help from a legal aid attorney leave individuals across the nation no choice but to represent themselves in court.⁹⁹ SRLs opposed by parties with an attorney are often doomed to lose their case—even if the merits are in their favor.¹⁰⁰ This adverse outcome can be tied to the complexity of courts since, without counsel, SRLs are at the mercy of “navigating the mazes of bureaucratic government and filling out its forms, and . . . contesting adverse government actions.”¹⁰¹ These hurdles underscore the importance of states increasing and improving services that better the court process for SRLs, as the NCSC has recommended for Rhode Island.

As noted, the Rhode Island Judiciary has been active when addressing access to justice and the intertwined struggles of SRLs. However, the NCSC’s recommendations highlight how resources improving access to justice for SRLs can still be inaccessible for specific groups.¹⁰² Not only could SRLs lose essential human needs without cultivating self-help resources to accommodate them, but inadequate resources can also infringe on their legal rights.

The Rhode Island Judiciary has firsthand experience with how insufficient access to justice can affect the rights of SRLs. In 2004,

97. *The Unmet Need for Legal Aid*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/what-legal-aid/unmet-need-legal-aid> (last visited Nov. 28, 2022).

98. The LSC also reported that 92% of all low-income Americans encountered civil legal problems did not receive legal help. *Id.*

99. If a civil case merits a possible monetary award, some civil litigants can secure an attorney on a contingency fee basis. However, indigent civil litigants cannot secure legal representation in cases without such awards. See Julie M. Bradlow, *Procedural Due Process Rights of Pro Se Civil Litigants*, 55 U. CHI. L. REV. 659, 670 (1988).

100. Fisher, *supra* note 9, at 171.

101. Robert W. Gordon, *Lawyers, the Legal Profession & Access to Justice in the United States: A Brief History*, 148 DAEDALUS 177, 178 (2019).

102. Deborah Rhode addressed this issue, noting that many services created in the systematic access to justice reform of courts remain unusable for those who need the resources the most—“uneducated litigants with limited competence and English language skills.” See Rhode, *supra* note 93, at 1805.

the American Civil Liberties Union of Rhode Island filed an administrative complaint against the Rhode Island Judiciary, claiming it violated provisions under Title VI of the Civil Rights Act of 1964¹⁰³ because it “failed to provide interpreters and other language assistance services to limited English proficient (LEP) individuals.”¹⁰⁴ Subsequently, the United States Department of Justice (DOJ) opened an investigation to review the Judiciary’s practices and policies on language assistance services for LEP court users.¹⁰⁵ Fortunately, the Judiciary voluntarily issued an Executive Order mandating that LEP individuals be provided with qualified interpreters and other approved language services.¹⁰⁶ Ultimately, the Judiciary successfully brought its language services up to Title VI compliance, enabling the DOJ to close its investigation in 2016.¹⁰⁷ At the investigation’s close, the DOJ’s Principal Deputy Assistant Attorney General Vanita Gupta made a poignant statement, noting that “[a]ccess to justice requires that all people, including those with limited English proficiency, can fully access and fairly participate in our courts.”¹⁰⁸

The DOJ’s investigation underscored how practices impeding individuals’ access to justice are not mere moral quips—these

103. Title VI of the Civil Rights Act of 1964 prohibits “discrimination based on race, color, national origin, sex, and religion in DOJ-funded programs and activities.” U.S. DEPT OF JUSTICE & R.I. JUDICIARY, DOJ No. 171-66-2, VOLUNTARY RESOLUTION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE RHODE ISLAND JUDICIARY 1 (2014), https://www.lep.gov/sites/lep/files/resources/MOA_RI_040914_signed.pdf [hereinafter RESOLUTION AGREEMENT].

104. *Id.*

105. *Id.*

106. These language services were to be provided at no charge in all of the Judiciary’s court proceedings and services. *Justice Department Closes Case after Rhode Island Judiciary Reforms Provide Equal Access for Individuals with Limited English Proficiency*, DEPT. OF JUST. (Apr. 21, 2016), <https://www.justice.gov/opa/pr/justice-department-closes-case-after-rhode-island-judiciary-reforms-provide-equal-access>. The Executive Order (EO) provided that the Judiciary adopt a language access plan (LAP) that “shall include provisions which require the AOSC [Administrative Office of State Courts] to make good faith efforts to expand the Courts’ capacity to generate audio recordings of interpreted proceedings, and when proceedings are recorded, to make the audio recordings of interpreted proceedings available to interested persons.” R.I. JUD. ADMIN. OFF. OF STATE CTS., LANGUAGE ACCESS PLAN 2 (April 1, 2014), https://www.lep.gov/sites/lep/files/resources/RI_Language_Access_Plan.pdf.

107. *Justice Department Closes Case*, *supra* note 106.

108. *Id.*

practices can negatively affect individuals' legal rights. The investigation also highlighted the Judiciary's legal *duty* as a federally funded court system to ensure that its procedures do not discriminate based on race, color, and national origin.¹⁰⁹ The Judiciary's legal duty stretches beyond the provisions of the Civil Rights Act of 1964 as it must additionally adhere to the Americans with Disabilities Act (ADA) prohibition of discrimination against those based on disability.¹¹⁰ Thus, the Judiciary has a legal duty to ensure that as it systemically changes its self-help resources, these tools are accessible to LEP and disabled court users.¹¹¹

The Judiciary's duties to ensure equal access to justice go beyond those required by statute. Equal access to justice for all is enshrined in Rhode Island's State Constitution:

Every person within this state ought to find a particular remedy by having recourse to the laws for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.¹¹²

This state constitutional provision grants Rhode Islanders the right to pursue justice for themselves without regard to what they can afford.¹¹³ Rhode Island judges and court officers must swear an oath to support the State's Constitution upon ascending into their respective positions.¹¹⁴ Thus, intrinsic to judges' and attorneys'

109. RESOLUTION AGREEMENT, *supra* note 103, at 1.

110. The Rhode Island Judiciary has a legal duty, under Title II of the Americans with Disabilities Act (ADA) to ensure its in-person and online services, programs, and activities do not form discrimination against people with disabilities. See 28 C.F.R. §§ 35.149, 35.164. This involves ensuring that in-person and online court resources are accessible for individuals with physical disabilities like "impaired hearing, blindness, and mobility difficulty." R.I. JUDICIARY, *supra* note 1.

111. See RESOLUTION AGREEMENT, *supra* note 103.

112. R.I. CONST. art. I, § 5.

113. See *id.*

114. "The members of the general assembly, the judges of all the courts, and all other officers, both civil and military, shall be bound by oath or affirmation to support this Constitution, and the Constitution of the United States." R.I. CONST. art. III, § 4.

duties under this oath is the obligation to help citizens achieve equal access to the courts.

Moreover, the Rhode Island Rules of Professional Responsibility places an ethical duty on attorneys in the State to aid in the administration of equal access to justice for all, noting “[A]ll lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel.”¹¹⁵

In sum, the duty of the Rhode Island Judiciary to ensure that they promote equal access to justice for all is highlighted in statute, the State Constitution, and the Rules of Professional Responsibility. This is not to suggest that the responsibility of improving access to justice in Rhode Island falls squarely on the Rhode Island Judiciary. However, these principles enumerate the Judiciary’s obligation to ensure that its courts are equally accessible for all, regardless of their race, language abilities, disabilities, or economic background. Because of these obligations, the Judiciary needs to spearhead or support all NCSC-suggested solutions to pursue a more equitable experience for SRLs.

III. SOLUTIONS TO IMPROVING ACCESS TO JUSTICE

Of the NCSC’s eight recommendations, creating an ATJ Commission is the most potent tool the Judiciary could adopt to improve access to justice in Rhode Island. As noted, an ATJ Commission’s core purpose “is to expand access to civil justice at all levels for low-income and disadvantaged people in the state by assessing their civil justice needs, developing strategies to meet them, and evaluating progress.”¹¹⁶ Thus, an ATJ Commission would bring together leadership from relevant internal and external stakeholders who could fulfill that core purpose through administering the NCSC’s seven other recommended access to justice solutions.¹¹⁷

A. *The Rhode Island Judiciary’s Access to Justice Office*

On November 15, 2021, the Rhode Island Judiciary announced the creation of an ATJ *Office*, appointing Tamera Rocha as

115. R.I. RULES OF PROFESSIONAL CONDUCT, PREAMBLE.

116. AM. BAR ASS’N, *supra* note 78.

117. *See id.*

director.¹¹⁸ The ATJ Office's primary duties are to "oversee the Judiciary's compliance with the Americans with Disabilities Act; the Office of Court Interpreters, and services for self-represented litigants."¹¹⁹ Since its inception, the ATJ Office has started implementing the NCSC's recommendations to improve the experience for self-represented litigants (SRLs) navigating the Rhode Island Judiciary.¹²⁰ Specifically, the ATJ Office has collaborated with the Rhode Island Judiciary to identify the barriers faced and common cases handled by self-represented litigants.¹²¹ Together, the entities have worked on reviewing, revising, and recreating self-help resources by incorporating plain language and graphics to explain court processes and information.¹²²

For example, the ATJ Office and the Rhode Island Judiciary's Family Court are creating "multimedia [information] for [SRLs] navigating the divorce process."¹²³ This multimedia approach involves creating: (1) videos on service of process, (2) graphical charts explaining the divorce process, and (3) prescription pads explaining what is needed to start the divorce process.¹²⁴ These solutions address the struggles SRLs were encountering with the divorce procedure and NCSC's recommendation to adopt prescription pads.¹²⁵ Additionally, the ATJ Office has collaborated with the Judiciary's Superior Court to create self-help guides for SRLs that focus on navigating the court process and understanding administrative orders and protocols.¹²⁶ Further, the ATJ Office plans to ensure that all the downloadable court documents available in "frequently encountered languages" are up to date.¹²⁷ The ATJ Office is currently updating the Rhode Island Judiciary's

118. R.I. JUDICIARY, *supra* note 1.

119. *Id.*

120. E-mail from Tamera Rocha, Dir., Access to Just. Off., to Amanda Rotimi, author (Oct. 27, 8:56 AM EST) (on file with author).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. NCSC STUDY, *supra* note 1, at 17, 19.

126. Email from Tamera Rocha, Dir., Access to Just. Off., *supra* note 120.

127. *Id.*

website to be more user-friendly and have resources tailored explicitly for SRLs.¹²⁸

In addition to its self-help resource overhaul, the ATJ Office has collaborated with internal and external stakeholders to improve the Judiciary's services.¹²⁹ Rocha notes that the ATJ Office collaborates with the Rhode Island Bar Association, Rhode Island Legal Services, and other community organizations such as United Way and the Center for Health and Justice Transformation—although the scope and nature of these collaborations remain unclear.¹³⁰ The ATJ Office also collaborates with the Rhode Island Supreme Court's Committee on Racial and Ethnic Fairness in the Courts.¹³¹ This collaboration allows the ATJ Office to identify and confront any racism and discrimination that court users may face and educate the Judiciary staff on access to justice issues.¹³²

Further, the Office collaborates with the Community College of Rhode Island's Divisions of Workforce Partnership to increase the number of credentialed local court interpreters in the State.¹³³ Rocha emphasizes that the ATJ Office is continuing to look for more groups to collaborate and connect with to increase awareness about access to justice issues.¹³⁴

The ATJ Office's efforts show a clear plan to adopt most of the solutions to SRLs obstacles that the NCSC recommended in their report.¹³⁵ However, creating the ATJ Office appears to circumvent NCSC's recommendation to form an ATJ *Commission*.¹³⁶ As mentioned, the NCSC recommended that the Rhode Island

128. Rocha has stated that the Office plans to have the new Rhode Island Judiciary website online by summer 2023. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Rocha notes that this collaboration helps solve issue of the shortage of locally credentialed court interpreters and the low passage rates for individuals sitting for the court interpreter certification examination. *Id.*

134. *Id.*

135. In part, the NCSC SRL report recommended that the Rhode Island Judiciary: use a multimedia approach to increase available self-help resources, create a prescription pad for SRLs, and engage judiciary staff with more training on SRLs. See NCSC STUDY, *supra* note 1, at 16–20.

136. *Id.* at 18.

Judiciary “designate a committee or group of internal and external stakeholders who are empowered to advocate for [access to justice] and who can take a leadership role in advancing this goal.”¹³⁷ While the ATJ Office has collaborated with *external* stakeholders, it is comprised of only *internal* stakeholders.¹³⁸ Specifically, the ATJ Office includes Director Rocha and Vanessa Dean, the Office of Court Interpreters coordinator—both Rhode Island Judiciary staff members.¹³⁹

While there is no singular model for a successful ATJ Commission, the ABA recommends that such a commission is structured to include “meaningful representation of . . . core legal community stakeholders.”¹⁴⁰ Notably, the ABA emphasizes that creating an ATJ Commission “address[es] a state’s often-fragmented system for providing access to civil justice as a whole.”¹⁴¹ The NCSC’s SRL report alluded to Rhode Island’s fragmented system, noting that the State has a “siloeed ecosystem of actors in the justice system.”¹⁴²

Unfortunately, the creation of the ATJ Office perpetuates Rhode Island’s siloeed civil justice ecosystem because it operates within the Rhode Island Court and comprises *only* Court staff members.¹⁴³ Such intertwining with the Court hinders the ATJ Office’s ability to act on interests beyond those of the Judiciary.¹⁴⁴ Further, this siloeed structure bares the risk of external

137. *Id.*

138. *Id.* at 12.

139. Vanessa Dean works in the Access to Justice Office under the supervision of Director Rocha. R.I. JUDICIARY, *supra* note 1.

140. AM. BAR ASS’N, DESIGNING AND LAUNCHING A NEW ATJ COMMISSION 2 (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_launching_atj_commission.pdf.

141. *Access to Justice Commissions*, AM. BAR ASS’N, https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/atj-commissions/ (last visited Nov. 3, 2022).

142. The NCSC notes that Rhode Island’s “siloeed ecosystem” is a barrier to maintaining an updated and detailed list of referral partners like law schools, public libraries, and legal aid organizations. NCSC STUDY, *supra* note 1, at 17.

143. *See* R.I. JUDICIARY, *supra* note 1.

144. *See* AM. BAR. ASS’N, HALLMARKS OF EFFECTIVE ACCESS TO JUSTICE COMMISSION 2 (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_hallmarks.pdf (explaining “partners [outside of the judiciary] bring in valuable new ideas, perspectives, and access to potential contacts and resources”).

organizations feeling disengaged or inadequately represented in the Office's process to solve access to justice issues.¹⁴⁵ The NCSC has emphasized that Rhode Island needs an ATJ Commission to form a unified approach to access to justice issues.¹⁴⁶ Suppose the Rhode Island Judiciary wants to adopt such an approach. In that case, it must also create a Commission that involves cross-organizational leadership and synchronizes the interest of the State's access to justice actors. Luckily, the Rhode Island Judiciary does not have to look far. The Judiciary can use its past efforts as the foundation for a new ATJ Commission.

B. *Framework for Rhode Island's ATJ Commission*

1. *The Rhode Island Judiciary's Ill-fated ATJ Commission*

In 2013, the ABA granted the Judiciary \$18,000 to invest in the planning and training necessary to create an ATJ Commission.¹⁴⁷ This grant enabled the Judiciary to hire consultant Ronald Lanoue¹⁴⁸ and gather with a group of core stakeholders¹⁴⁹ to take a comprehensive approach toward formulating the mission, goals, and composition of an ATJ Commission.¹⁵⁰ From there, the stakeholders held four planning meetings in which Lanoue apprised them of the needs of civil litigants and how an ATJ Commission could address those needs.¹⁵¹ Further, Lanoue

145. *See id.* at 5.

146. *See* NCSC STUDY, *supra* note 1, at 13–14.

147. Julie McMahon, *Justice for All: With Help from Grant, Rhode Island Judiciary Looks to Cultivate Local Talent*, R.I. LAWS. WKLY. (Apr. 11, 2013) (on file with author).

148. Ronald Lanoue previously served as a staff member for the Arkansas Access to Justice Commission. Letter from J. Joseph Baxter, State Ct. Adm'r, R.I. Judiciary, to Terry Brooks, Dir., Am. Bar Ass'n Div. of Legal Servs. (Jul. 31, 2014).

149. These stakeholders, internal to the Rhode Island Judiciary, included: Chief Justice Paul Suttell; Justice Alice Gibney; Chief Judge Georgy Healy; Associate Judge Stephen Isherwood; Magistrate David J. Cruise; and J. Joseph Baxter. External stakeholders included: Eliza Vorenberg; Linn Friedman; Robert Barge; David Bazar; Richard Scarpelino; and Lisa Smith. Meeting Notes, R.I. Access to Just. Comm'n (Dec. 12, 2013) (on file with author).

150. *See* Letter from J. Joseph Baxter, *supra* note 148.

151. *See id.*

presented the best practices and the models of A2J Commissions in other jurisdictions.¹⁵²

The group also looked to the ABA's *Designing and Launching a New Access to Justice* report to be a guiding reference for the Commission's future efforts.¹⁵³ This information enabled the stakeholders to formulate the ATJ Commission's goals and mission statement, identify potential members, and recommend the Commission's size and represented stakeholders.¹⁵⁴ The work product from these meetings guided the Rhode Island Judiciary draft administrative order (AO) that outlined the framework of Rhode Island's ATJ Commission.¹⁵⁵

The Rhode Island Judiciary should adopt its past framework for an ATJ Commission because it aligns with the NCSC's recommendations for setting up an ATJ Commission. Specifically, the goals of the proposed ATJ Commission reflect the NCSC's proposal for the Judiciary to collaborate with various organizations that aim to improve access to justice and address the needs of SRLs.¹⁵⁶ In relevant part, the Commission's proposed goals were to:

1. Cooperate with the Rhode Island Supreme Court Administrative Office of State Courts and the respective state courts to create access to justice initiatives within the court system;
2. Coordinate efforts among a vast network of organizations and individuals interested in improving access to justice;
3. Provide a neutral forum for civil legal services and government agencies to discuss important issues affecting access to justice, including a broad cross-

152. Lanoue referenced the ABA's *Hallmarks of Effective Access to Justice Commission* report, *supra* note 144, to create benchmarks for Rhode Island's Commission. *Id.*

153. *Id.*

154. *See id.*

155. *See* Administrative Order, R.I. Sup. Ct., Establishment of the Access to Justice Commission (June 2014) (on file with author) [hereinafter Draft ATJ Order].

156. *See* NCSC STUDY, *supra* note 1, at 18.

section of law firms, funders, clients, bar leaders, and other interested parties; and

4. Inform the Supreme Court annually about the status of access to justice in the State, including new initiatives and reform recommendations.¹⁵⁷

Further, the proposed ATJ Commission composition reflects these collaborative goals and aligns with the NCSC's suggestion to form a committee that includes internal and external stakeholders in leadership roles.¹⁵⁸ Specifically, Lanoue proposed stakeholder membership from a cross-section of entities working within the Judiciary, civil legal aid, Roger Williams University, the private bar, and social services—paralleling the NCSC recommendation.¹⁵⁹ The draft AO called for the ATJ Commission to include nineteen stakeholders, including judges from courts across the state, representatives from legal institutions across the state, state politicians, and attorneys.¹⁶⁰

157. Draft ATJ Order, *supra* note 155.

158. See NCSC STUDY, *supra* note 1, at 18.

159. *Id.* at 15. The NCSC suggested that the Committee bring together “court staff, judges, the bar, civil legal aid providers, Roger Williams University, and other stakeholders.” *Id.*

160. Draft ATJ Order, *supra* note 155, at 3.

1. Seven of those members would be the highest seated justice, judge, or magistrate—or their designee—from the six courts within the Rhode Island Judiciary and the Chief Justice of the United States District Court for the District of Rhode Island or their designee. *Id.*
2. Six members would comprise: the Executive Director of Rhode Island Legal Services, the President of the Rhode Island Bar Association, the Dean of Roger Williams University School of Law; the Governor of the State of Rhode Island; the Speaker of the Rhode Island House of Representatives, and; the President Pro Tempore of the Rhode Island Senate—or each member’s respective designee. *Id.*
3. The other five members would be Court-appointed and include one member that is a corporate general or in-house counsel, one member from the Rhode Island Bar Foundation; one member from the business community; one member from a non-governmental organization that serves the needs of low-income Rhode Island residents; and two members that attorneys actively engaged in law practice. *Id.*

The draft AO also outlined the frequency and manner of the Commission's meetings, which align with the NCSC's recommendation for the group to collaborate and communicate *regularly*.¹⁶¹ The ATJ Commission would have met at least quarterly in settings open to the public.¹⁶² To take official action on any subject, meetings would require a majority vote from a quorum of ten Commission members in person, on the telephone, or through other electronic participation.¹⁶³

The ATJ Commission would have also wielded power to create or dissolve standing committees and designate its composition, which could include non-members.¹⁶⁴ These standing committees would have been required to submit "any and all policies, public positions, and proposed projects to the Commission for approval."¹⁶⁵ While not specified in the NCSC's recommendation, the ABA considers standing committees a hallmark of a successful ATJ Commission because they can create and execute initiatives between a Commission's handful of yearly meetings.¹⁶⁶ Specifically, these standing committees have the potential to respond to "emerging issues and new developments" and bring in additional non-member stakeholders that can contribute a significant level of expertise.¹⁶⁷

Clear from its past efforts, the Rhode Island Judiciary can create a Commission without reinventing the wheel. Through its planning process, the Judiciary has already conducted the research needed to lay the foundation for an ATJ Commission suitable for Rhode Island.¹⁶⁸ Unlike the Judiciary's ATJ Office, this Commission model follows NCSC's recommendation to create a leadership platform with internal and external stakeholders who can meet regularly to advocate for improving access to justice in

4. The Court would appoint one Commission member as chairperson and another as co- or vice chairperson. *Id.*

161. NCSC STUDY, *supra* note 1, at 18.

162. Draft ATJ Order, *supra* note 155, at 3.

163. *Id.*

164. *Id.*

165. *Id.*

166. AM. BAR. ASS'N, *supra* note 144, at 4.

167. *Id.*

168. See Letter from J. Joseph Baxter, *supra* note 148.

Rhode Island.¹⁶⁹ Thus, the Judiciary should finally adopt its past efforts to help launch an ATJ Commission and facilitate a collaborative commitment to remove barriers to justice.

2. *Rhode Island's ATJ in Practice*

When talking about the potential of a Commission, the Rhode Island Judiciary's state court administrator J. Joseph Baxter Jr., remarked:

To use [Rhode Island Legal Services] as an example, we recognize that these folks are the frontline every day those who come into their office who might be low-income and wouldn't otherwise be able to afford legal services, [w]ho better to tell us, "Here are the needs and wants, here are the roadblocks and hurdles"?¹⁷⁰

It would be difficult to quantify the potential achievements of Rhode Island's ATJ Commission because ATJ Commissions across the nation have been able to adopt hundreds of different initiatives that have expanded access to justice in their respective states.¹⁷¹ Nonetheless, a Rhode Island ATJ Commission can potentially administer most of the NCSC's solutions for improving access to justice for SRLs. These solutions need not be redundant to what the Judiciary's current ATJ Office is already working to achieve.¹⁷² Instead, there are various ways that Rhode Island's ATJ Commission can leverage its composition and structure to help develop and facilitate access to justice solutions across the state.

One NCSC solution that the ATJ Commission could implement is increased collaboration with and referrals to other service organizations.¹⁷³ Embedded in its composition, an ATJ Commission can foster collaboration with other service providers, such as law schools, public libraries, and legal aid organizations, because these service providers would have representatives serving

169. See NCSC STUDY, *supra* note 1, at 18.

170. Julie McMahon, *supra* note 147.

171. See AM. BAR ASS'N, ACCESS TO JUSTICE COMMISSION INITIATIVES (2018), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_sclaid_atj_checklist.pdf (providing examples of state ATJ commission initiatives).

172. How a Rhode Island ATJ Commission can support the Access to Justice Office will be discussed in Part IV.

173. NCSC STUDY, *supra* note 1, at 17.

as a member of the Commission.¹⁷⁴ These members can be the point persons that the NCSC suggested the Judiciary designate to maintain regular communication with these organizations. Further, the recurrent collaboration between these service providers will give them a platform to remain apprised of each other's services, so these providers are well versed on which provider has the proper resources for an SRL. This is especially important for mitigating court staff's struggle to track external legal aid resources.¹⁷⁵

The ATJ Commission will also enable the body to leverage its relationships to create various legal aid initiatives that can expand pro bono services. Massachusetts's ATJ Commission is an excellent example of how a Rhode Island ATJ Commission could leverage its diverse leadership to spearhead programs and projects that work to improve access to justice. For example, the Massachusetts Commission used its leadership relationship with the Volunteer Lawyer's Project to create Massachusetts's Civil Appellate Pro Bono Program, a bi-weekly clinic providing low-income SRLs free, same-day help for appeals from volunteer attorneys.¹⁷⁶ Rhode Island's ATJ Commission would boast a representative of the Rhode Island Bar, which has its own volunteer lawyer program (VLP).¹⁷⁷ The Commission could leverage the Rhode Island Bar's VLP to support a program like Massachusetts's Civil Appellate Pro Bono Program, where volunteer lawyers aid low-income litigants with civil legal issues, such as navigating divorce procedures¹⁷⁸—an area of procedure that commonly trips up Rhode Island SRLs. This would be one method through which the Judiciary can coordinate and expand pro bono services across the State—per NCSC's suggestion.¹⁷⁹

An ATJ Commission can also focus comprehensively on the sub-issues that impede access to justice, which Rhode Island's ATJ Office may not have the staffing capabilities to do. For example, Massachusetts's ATJ Commission boasts various standing

174. *Id.*

175. *See id.*

176. *Civil Appeals Clinic*, MASS.GOV, <https://www.mass.gov/service-details/civil-appeals-clinic> (last visited Mar. 28, 2023).

177. *See Volunteer Lawyer Program Sign-Up Intro*, R.I. BAR ASS'N, <https://ribar.com/page.aspx?id=127> (last visited March 31, 2023).

178. *See* NCSC STUDY, *supra* note 1, at 14.

179. *See* NCSC STUDY, *supra* note 1, at 15, 20.

committees on access to justice issues.¹⁸⁰ These standing committees have enabled Massachusetts's ATJ Commission to run dedicated task forces for issues that impede access to justice issues arising from racial inequity, consumer debt, housing, and family law.¹⁸¹ Notably, these standing committees are pinnacle examples of how the Rhode Island ATJ Commission can tailor its standing committees—which the draft AO gave it the power to achieve.¹⁸²

Rhode Island's ATJ Commission would benefit from implementing some standing committees to tackle the State's pressing access to justice issues. As noted, family law issues such as divorce are a common area of law in which SRLs frequently make procedural mistakes.¹⁸³ Thus, implementing a committee that focuses on family law will allow the Commission to narrow its focus on simplifying those complex procedures. Since the draft AO does not limit the Commission's standing committee to its current members,¹⁸⁴ it can draw in non-members with expertise on relevant issues such as family or housing law to ensure their creating solutions are based on advice from those with intimate knowledge of these issues.

Rhode Island ATJ Commission could also support training judges, clerks, and other court staff on SRLs. As noted, one of the issues the NCSC discovered was that SRLs' hampered interactions with the court personnel stemmed from difficulty discerning the difference between providing legal information and advice.¹⁸⁵ An ATJ Commission can help cultivate the resources and guidelines to apprise court staff about these crucial differences. For example, Texas's ATJ Commission collaborated with the Texas Office of Court Administration and other legal aid organizations to produce guidelines and an instruction manual that educated court personnel on the differences between legal information and legal

180. As of January 2023, The Massachusetts Access to Justice Commission has six standing committees: (1) Executive Committee; (2) Consumer Debt Committee; (3) Family Law Committee; (4) Housing Committee; (5) Racial Equity and Justice Committee; and (6) Revenue Enhancement Committee. *Committees of the Massachusetts Access to Justice Commission 2022-2023*, MASS. A2J, https://massa2j.org/?page_id=589 (last visited January 1, 2023).

181. *Id.*

182. Draft ATJ Order, *supra* note 155, at 4.

183. NCSC STUDY, *supra* note 1, at 14.

184. Draft ATJ Order, *supra* note 155, at 4.

185. NCSC STUDY, *supra* note 1, at 19.

advice.¹⁸⁶ Rhode Island can reference Texas's achievement and collaborate with the AOSC and legal aid organizations such as Rhode Island Legal Services to create these guidelines and encourage court personnel assistance of SRLs.

IV. HURDLES TO ACCESS TO JUSTICE SOLUTIONS

A. *Access to Justice Office vs. ATJ Commission*

An effort to advocate for the Rhode Island Judiciary to create an ATJ Commission be hard-pressed, especially during the infancy of its newly created ATJ Office. The ATJ Office is already working toward developing and implementing the NCSC-recommended solutions to improve SRLs' experience within the courts.¹⁸⁷ Thus, it is arguable that the ATJ Office's efforts would preempt those of an ATJ Commission or, at the very least, be redundant alongside it. These concerns would not be unfounded, given that most states typically have only one dedicated Access to Justice body.¹⁸⁸ However, Rhode Island's ATJ Commission and ATJ Office can co-exist, and the Judiciary does not have to look further than its neighboring state—Massachusetts—to understand how.

The Massachusetts Judiciary has an Access to Justice Initiative, which has initiatives that mirror that of Rhode Island's ATJ Office.¹⁸⁹ As the Massachusetts ATJ Commission points out, an entity like an ATJ Initiative is important because it shows that the Judiciary recognizes access to justice issues across its courts and plans to coordinate actions amongst those courts to solve these

186. *See For Legal Community*, TEX. ACCESS TO JUST. COMM'N, <https://www.texasatj.org/legal-community> (last visited Mar. 31, 2023).

187. *See* Email from Tamera Rocha, Dir., Access to Just. Off., *supra* note 120.

188. *See* AM. BAR. ASS'N, STATE ACCESS TO JUSTICE COMMISSIONS: CREATION, COMPOSITION, AND FURTHER DETAILS (Apr. 2018), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_sclaid_atj_commissions_structure.pdf (listing ATJ bodies of each state).

189. These shared initiatives include implementing services for SRLs, those with limited English ability, and individuals with mental or physical disabilities. *Massachusetts Access to Justice: Goals*, MASS.GOV., <https://www.mass.gov/info-details/access-to-justice#goals-> (last visited Mar. 31 2023).

issues.¹⁹⁰ In contrast, an ATJ Commission achieves what a siloed Judiciary access to justice body office does on a grander scale, looking at how access to justice can be improved and coordinated across the *state*.¹⁹¹

Massachusetts's ATJ Commission works alongside the Judiciary's Access to Justice Initiative.¹⁹² The work these entities collaborate on is similar to the NCSC-recommended solutions that Rhode Island's ATJ Office plans to adopt—particularly creating more online court forms available in multiple languages.¹⁹³ Thus, as Massachusetts ATJ Commission supports the Access to Justice Initiative's goals and projects, Rhode Island's ATJ Commission can provide support for the initiatives of the ATJ Office as they work to implement the NCSC's solutions.

B. *Concern of Increased Legal Resources Creating Competition with Lawyers*

A more general argument about expanding resources to improve SRLs' access to the courts is how these resources can create competition with lawyer services.¹⁹⁴ The NCSC speculates that pushback surrounding the expansion of self-help resources stems from a perceived threat to private attorneys' business.¹⁹⁵ The NCSC's speculation is not unfounded.

Former Rhode Island Bar Association President Michael R. McElroy expressed concerns about how attorneys risk pricing themselves out of the legal market as legal resources become more accessible to people at little to no costs.¹⁹⁶ McElroy makes the case

190. MASS. ACCESS TO JUST. COMM'N, *FOURTH ANNUAL REPORT OF THE MASSACHUSETTS ACCESS TO JUSTICE COMMISSION 12–13* (2009), <https://massa2j.org/wp-content/uploads/2020/01/2009-ATJ-Commission-Report.pdf>.

191. See NCSC STUDY, *supra* note 1, at 17.

192. Specifically, the Commission supported “the development of information centers in trial courts across the state, creating more forms available to self-representing litigants online and in multiple languages, and spreading the approval of limited access representation throughout the trial courts.” MASS. ACCESS TO JUST. COMM'N, *REPORT ON ACTIVITIES IN 2011*, at 6 (2011).

193. NCSC STUDY, *supra* note 1, at 18.

194. For example, while the ATJ Office is working on creating a divorce guide for SRLs, this initiative comes after strong opposition from the private bars surrounding earlier attempts to create these guides. *Id.* at 17.

195. *Id.* at 17–18.

196. Of note, McElroy acknowledges that those from low socio-economic backgrounds cannot afford an attorney, and thus relying on these online legal

that individuals should seek advice from an attorney because disastrous consequences may result from using legal forms.¹⁹⁷ He stresses that the wave of easily accessible low to no-cost legal forms and information does not necessarily place SRLs in a position to handle their legal affairs adequately.¹⁹⁸ Instead, he argues that a trained attorney must apply this legal information to the case's facts.¹⁹⁹ The essence of his arguments lies in the fear that these resources would undermine the value of lawyers and ultimately make the profession's services irrelevant.²⁰⁰

McElroy and those with similar concerns, however, must recognize *who* is seeking these resources and why. The people using these low-to-no-cost legal resources are those who lack the means to hire a private attorney in the first instance.²⁰¹ Thus, these legal resources do not compete with attorney services because their primary users are not within those attorneys' potential client pool.²⁰² The NCSC notes that these self-help resources "should be rightfully viewed as a necessary element of the court's assistance offerings and a key resource for an extremely common court user."²⁰³

CONCLUSION

As SRLs remain prominent participants in the judicial systems, the Rhode Island Judiciary must make affirmative efforts to improve court resources so that justice can be more accessible for these litigants and judicial efficiency can be improved. The Judiciary has statutory, constitutional, and ethical duties to help break down the barriers impeding SRLs from securing justice in its courts. The Judiciary's creation of the ATJ Office is a step in the

resources is a desirable way to save that expense. Michael R. McElroy, *Dangers of the Pro Se Explosion*, 61 R.I. BAR J. Jan./Feb. 2013, at 3, 3

197. McElroy remarks how two daughters had unintentionally disinherited themselves after finding a will form online for their father and serving as witnesses when he filled out and signed the will. *Id.* Under Rhode Island law, witnesses to a will cannot inherit from that will. R.I. GEN. LAWS § 33-6-1 (2023).

198. McElroy, *supra* note 196, at 3.

199. *Id.*

200. *See id.*

201. NCSC STUDY, *supra* note 1, at 17.

202. *Id.*

203. *Id.* at 18

right direction, but a systemic and coordinated effort is needed to expand access to justice in Rhode Island. Thus, the Rhode Island Judiciary needs to establish an ATJ Commission to bring together leaders from both internal and external stakeholders to create agreeable solutions for furthering the mission of equal access to the courts—regardless of income, disability, or language comprehension.

An ATJ Commission would birth solutions that reflect the experiences and knowledge of leaders with varying perspectives on the issues SRLs face based on their interactions—which is challenging to carry out with an independent effort. Furthermore, a Commission has the power and capacity to plan and implement services that improve court experiences for SRLs, such as expanding pro bono services, training Judiciary staff on assisting SRLs, creating subcommittees dedicated to other access to justice issues and solutions, and supporting the ATJ Office's services and solutions. With effective models in other jurisdictions and a blueprint from the Judiciary's past efforts, there are already existing roadmaps to follow in pursuit of creating an ATJ Commission in Rhode Island.