

# ROLES BEYOND LAWYERS

## Summary and Recommendations

of an Evaluation of the  
New York City Court  
Navigators Program and its  
Three Pilot Projects

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*Prepared by Rebecca L. Sandefur, American Bar Foundation,  
and Thomas M. Clarke, National Center for State Courts,  
with support from the  
Public Welfare Foundation*

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# Research Summary and Recommendations

## Introduction

There is now a major movement in the United States to expand the use of appropriately trained and supervised individuals without full formal legal training to provide help to people who would otherwise be without legal assistance of any kind. The general approach has been endorsed by The Commission on the Future of Legal Services of the American Bar Association,<sup>1</sup> and by the *Guidance* issued by the National Center for State Courts in support of the Justice for All Strategic Planning Initiative developed in response to a recent resolution of the Conferences of Chief Justices and State Court Administrators.<sup>2</sup>

The need for such innovations is clear. At the time this evaluation was conducted, approximately 90 percent of tenants facing eviction in New York City did not have a lawyer, while the vast majority of landlords did.<sup>3</sup> Research from the National Center for State Courts shows that in 70 percent of non-domestic civil cases in urban counties, one party is unrepresented while the other has lawyer representation.<sup>4</sup>

***The first comprehensive evaluation of programs providing assistance through staff or volunteers without full formal legal training provides important evidence that these initiatives can influence the experiences of unrepresented litigants in positive ways and can also shape the outcomes of court cases, including legal and real-life outcomes.***

The umbrella program, New York City Court Navigators, makes use of trained and supervised individuals with no prior formal legal training to provide one-on-one assistance to unrepresented litigants in the City's Housing and Civil Courts. Navigators provide information, assist litigants in accessing and completing court-required simplified forms, attend settlement negotiations and accompany unrepresented litigants into the courtroom. If judges address direct factual questions to a Navigator, the Navigator is authorized to respond.

In February 2014, three distinct Navigator pilot projects began operation in New York City Courts as part of the larger Navigator program. Two of these pilot projects involve volunteer Navigators. A third pilot project involves experienced caseworkers on the staff of a non-profit organization; these caseworkers had previously performed more limited roles.

The evaluation of the New York City Court Navigators program was conducted by researchers from the American Bar Foundation and the National Center for State Courts, under a research project supported by the Public Welfare Foundation. The research assessed the *appropriateness, efficacy, and sustainability* of each of the three Navigator pilot projects. The program design and evaluation frameworks, published

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<sup>1</sup>ABA Commission on the Future of Legal Services, Report on the Future of Legal Services in the United States (2016), [http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport\\_FNL\\_WEB.pdf](http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf).

<sup>2</sup>National Center for State Courts, <http://www.ncsc.org/jfap>.

<sup>3</sup> SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS. SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT, Office of the Deputy Chief Administrative Judge for Justice Initiatives. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005. At time of the release of this report (October 2016), increased funding for lawyer representation in eviction cases has reduced the percentage of unrepresented tenants to around 83 percent.

<sup>4</sup>National Center for State Courts Civil Litigation Project, *The Landscape of Civil Litigation in State Courts* (2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

elsewhere<sup>5</sup>, were newly developed for the evaluation as models for general use in access to justice evaluation research.

The positive results of the three Navigator pilot projects were produced in a context that is both adverse and supportive. The New York City Courts are among the most chaotic and overloaded in the United States. That the pilot projects showed evidence of positive contributions in such environments suggests that such programs could be effective in a wide range of jurisdictions. At the same time, the New York City Courts are leaders in developing innovations to provide fairness for unrepresented litigants. The fact that the courtrooms in which Navigators worked were those in which other significant efforts had already been made to improve the experiences of unrepresented parties may have been an important support to the pilot projects, making some results easier to achieve here than might be the case elsewhere. Alternatively, Navigators working in courts that have not made efforts to improve the experiences of unrepresented litigants could be found to have comparatively larger influence on litigant experience and case outcomes.

### Key Findings: Evidence of Program Impact

The three Navigator pilot projects differ in important respects, but all involve the same core capacities: providing to unrepresented litigants the services of information, moral support, and accompaniment to negotiations with the other side’s attorneys and into courtrooms. Navigators are authorized to respond to questions from court attorneys and judges and to prompt litigants to provide additional information. Complete descriptions of each pilot project are available in the full Report.<sup>6</sup> The evaluation uncovered evidence that assistance from appropriately trained and supervised individuals without formal legal training is associated with changes in a range of outcomes, including both legal and real-life outcomes.

*Principal findings of the evaluation include:*

- The ***Access to Justice Navigators Pilot Project*** is built around trained volunteer Navigators “for-the-day.” These Navigators assist unrepresented litigants in understanding and moving through nonpayment or debt collection proceedings. Access to Justice Navigators currently operate in a variety of housing courts and in consumer debt cases in civil court in New York City. ***Surveys of litigants revealed that litigants who received the help of any kind of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story.***
- The ***Housing Court Answers Navigators Pilot Project*** involves trained volunteer Navigators “for-the-day,” operating in the Brooklyn Housing Court. These Navigators provide individualized assistance with tenants’ preparation of a legal document, the “answer” to the landlord’s petition for nonpayment of rent, in which the tenant responds to the petition by asserting defenses. Litigants assisted by Housing Court Answers Navigators ***asserted more than twice as many defenses as litigants who received no assistance.*** A review of case files reveals that ***tenants assisted by a Housing Court Answers Navigator were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court. For instance, judges ordered landlords to make needed repairs about 50 percent more often in Navigator-assisted cases.***

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<sup>5</sup> INCREASING ACCESS TO JUSTICE THROUGH EXPANDED ‘ROLES BEYOND LAWYERS’: PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS, Rebecca L. Sandefur and Thomas M. Clarke, American Bar Foundation and National Center for State Courts, Chicago, IL and Williamsburg, VA, 2015. Available at [americanbarfoundation.org/research/A2J](http://americanbarfoundation.org/research/A2J).

<sup>6</sup> The full report may be found here: [americanbarfoundation.org/research/A2J/RolesBeyondLawyers](http://americanbarfoundation.org/research/A2J/RolesBeyondLawyers).

- The ***University Settlement Navigators Pilot Project*** employs trained caseworkers who are employees of a nonprofit organization. These Navigators, operating in the Brooklyn Housing Court, are Navigators “for-the-duration,” working the case from initial appearance through resolution and beyond. This pilot project’s aim is to prevent evictions by providing both the in-court services that all Navigators are able to provide as well as an ongoing relationship with litigants in which the Navigator both accompanies the unrepresented litigant to all of the court activities related to her case and assists the tenant outside of court in connecting with benefits and services for which she may be eligible. ***In cases assisted by these University Settlement Navigators, zero percent of tenants experienced eviction from their homes by a marshal. By contrast, in recent years, one formal eviction occurs for about every 9 nonpayment cases filed citywide.***

The programs were found to be appropriate uses of trained personnel without full formal legal training and to have potential for sustainability. Navigator programs, through their impact on both legal and life outcomes, thus can result in *financial savings to society as well as a reduction in the hardships experienced by unrepresented litigants in civil cases.*<sup>7</sup>

## Description of the Program, Evaluation, and Pilot Projects

On February 11, 2014, then New York State Chief Judge Jonathan Lippman announced in his State of the Judiciary speech what he described as:

*[A] series of court-sponsored incubator projects to expand the role of non-lawyers in assisting unrepresented litigants. This idea of finding ways for non-lawyers to help pro se litigants is one that has only just begun to emerge in the United States. But it has taken hold elsewhere in the common-law world, including the United Kingdom, to great positive effect. With the new projects that we announce today, it is my hope that we can graphically illustrate the tremendous difference non-lawyers can make in closing the justice gap.*

The three pilot projects commenced operation in 2014 under the general guidance of a special task force, the Committee on Non-Lawyers and the Justice Gap,<sup>8</sup> appointed by the Chief Judge. The pilot projects operated within the New York Civil Court, under the Supervision of Deputy Chief Administrative Judge Fern Fisher and with close participation of community groups and regular input from legal aid agencies and bar associations.

All of the pilot projects shared a general approach, as described by Chief Judge Lippman in the 2014 State of the Judiciary speech:

*...This kind of one-on-one assistance will include providing informational resources to litigants and helping them access and complete court do-it-yourself forms and assemble documents, as well as assisting in settlement negotiations outside the courtroom.*

*Most significantly, for the first time, the trained non-lawyers, called Navigators, will be permitted to accompany unrepresented litigants into the courtroom in specific locations in Brooklyn Housing Court and Bronx Civil Court. They will not be permitted to address the court on their own, but if the judge directs factual questions to them, they will be able to respond. They will also provide moral support and information to litigants, help them keep paperwork in order, assist*

<sup>7</sup> For estimates of the costs and benefits of providing lawyer assistance in eviction cases, see Stout Risius Ross, Inc., *The Financial Costs and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, (2016).

<sup>8</sup> See the press release at [http://www.nycourts.gov/press/pdfs/pr13\\_07.pdf](http://www.nycourts.gov/press/pdfs/pr13_07.pdf).

*them in accessing interpreters and other services, and, before they even enter the courtroom, explain what to expect and what the roles are of each person in the courtroom.*

*Clear guidelines govern what a non-lawyer can and cannot do to ensure that they do not cross the line into the practice of law. They will receive training and develop expertise in defined subject areas. When these non-lawyers confront situations where the help of a lawyer is crucial, they will have access to legal service providers for help and referrals.*

An Order issued by the Chief Administrative Judge of the Courts codified these protections and authorizations.<sup>9</sup> The courthouses in which the Navigators projects were piloted are chaotic, loud, confusing and overwhelming, perhaps even to new lawyers as well as to the approximately 90 percent of tenants who, at the time of this research, were there without legal representation.<sup>10</sup>

In 2014, the Public Welfare Foundation made a grant to the National Center for State Courts and the American Bar Foundation to fund the development of frameworks for the design and evaluation of such programs and the use of that evaluation framework to assess two distinct initiatives, i) the New York Court Navigators program, reported on here, and, ii) the Washington State Limited License Legal Technicians program, which authorizes trained, licensed and regulated legal technicians to provide a range of services in a provider-client relationship without attorney supervision.<sup>11</sup>

The evaluation of the New York Court Navigators program included review of court files, surveys of litigants and Navigators, and interviews with stakeholders such as lawyers, judges, court staff, staff in nonprofit organizations that work in these areas, and current and potential funders as well as Navigators themselves. The majority of the data were collected in the Brooklyn Housing Court, as this was the only site of two of the three pilot projects. Following the evaluation framework, the data collected were reviewed for evidence of 1) *appropriateness*: whether the services as designed could potentially produce the kinds of outcomes desired; 2) *efficacy*: whether the services showed evidence of producing those outcomes; and 3) *sustainability*: whether it was reasonable to anticipate that the project could be maintained, expanded and replicated in other jurisdictions.

## Recommendations for Enhancements of the New York Navigators Program

The New York City Court Navigators Program shows evidence of achieving the goals of the program as a whole and of its individual pilot projects. One broadly shared benefit from the launch and evaluation of pilot innovations is the opportunity to learn about both what works and what could work better. Some improvements to the existing projects can be achieved at minimal cost. Expanding the projects' size to have greater impact on legal and life outcomes would be more expensive, but also likely accompanied by substantial savings to society as well as reductions in hardship.

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<sup>9</sup> See Administrative Order of the Chief Administrative Judge of the Courts 42-14, February 11, 2014. Available at <https://www.nycourts.gov/courts/nyc/SSI/pdfs/AO-42-14.pdf>.

<sup>10</sup> SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS. SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT, Office of the Deputy Chief Administrative Judge for Justice Initiatives. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005. At time of the release of this report (October 2016), increased funding for lawyer representation in eviction cases has reduced the percentage of unrepresented tenants to around 83 percent.

<sup>11</sup> "Limited License Legal Technician Program," <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>. The Roles Beyond Lawyers Evaluation report on the Limited License Legal Technicians is scheduled to appear later this year.

Lower-cost changes to achieve improvements include:

- Providing dedicated, on-going supervision for Access to Justice Navigators in all the courthouses where they work. Volunteer Navigators should be supervised by trained and experienced staff who are on-site and available for questions, consultation, and support during all the hours Navigators are providing services. This supervision should include additional “on-the-job” training for Navigators about working with unrepresented litigants and court staff within the bounds of the Navigator role.
- Educating both the judges and the court attorneys who assist the judges about Navigators’ role and capacities, so that both groups are able to use Navigators as a resource in acquiring information they need to make decisions and in using courtroom time as efficiently as possible.
- Educating court staff about Navigators’ role, and working with court staff to develop means to better integrate Navigators into the case flow, so that Navigators’ work is a consistently helpful supplement to the work of clerks and other courthouse workers.
- Increasing availability of the DIY (“do-it-yourself”) computer kiosks for the preparation of answers and other legal documents.
- Developing a triage referral system that integrates the various services currently available in the courthouse, so that those cases that would benefit most from the enhanced services provided by some types of Navigators are more likely to receive them.
- Providing more information about all types of Navigators to the public, with the goal of increasing the use of all types of Navigators.

Cost projections for expansion of the projects appear in the full Report.

## General Conclusions About “Roles Beyond Lawyers” Programs

This is the first comprehensive evaluation of a “Roles Beyond Lawyers” program, in which appropriately trained and supervised individuals without full formal legal training provide help to litigants who would otherwise be without assistance. As in all empirical social science, questions remain to be answered by future research. Nonetheless, actionable conclusions about the range of Roles Beyond Lawyers initiatives can be drawn from this evaluation.

1. People without formal legal training can provide meaningful assistance and services to litigants who are not represented by a lawyer.
2. These services can impact several kinds of outcomes, ranging from litigants’ understanding of court processes and empowerment to present their side of the case, to providing more relevant information to the decision-maker, to formal legal outcomes and the real-life outcomes experienced by assisted litigants and their families.
3. The tasks Navigators are actually able to perform, and thus their impact, are influenced by the philosophy and attitude of the court in which the services are provided, including the attitudes of case processing staff and judges.
4. Contributions of Navigators’ work to legal outcomes and real-life outcomes such as eviction prevention are likely similarly influenced by court environment and by the range of services and

benefit programs available in the jurisdiction. The availability of such services and benefits to which Navigators can connect litigants is a major mechanism of Navigator impact. Some jurisdictions, such as New York City, have significantly more such resources than most.

5. The impact of Roles Beyond Lawyers programs on legal outcomes can be greatly assisted by the availability and use of plain language, standardized legal forms, such as the Answer form, and of software programs (what in New York are called “DIY” programs) that help litigants prepare legal documents such as answers. Such programs have been developed for many jurisdictions, facilitating the replication of Roles Beyond Lawyers programs.

## General Recommendations

### 1. Sustaining the Current Program

The Navigators projects produce goods valued by a range of stakeholders. Sustaining funding for the program is recommended, with sufficient increases to follow the Navigator supervision recommendations in the Report.

### 2. Replication in New York City and State

Replication is recommended, but with careful attention to changes of the kind described above to enhance efficacy and total cost effectiveness.

### 3. Replication Beyond New York State

The Navigators program shows potential to contribute to the national goal of providing meaningful access to justice for all, as urged for adoption by the states by the Conference of Chief Justices.<sup>12</sup> The findings of the Report suggest that these approaches can be an important tool in helping achieve this goal, and that they should be integrated with other initiatives developed to meet the goal.

### 4. The Overall Evaluation Framework

The framework is recommended for evaluations of all types of “Roles Beyond Lawyers” programs. It is offered as useful for evaluations of other access to justice innovations. Potential downsides of a standardized approach are likely to be outweighed by the benefits of being able to compare different innovations on their appropriateness, efficacy and sustainability.

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<sup>12</sup> Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All. Conference of Chief Justices and Conference of State Court Administrators (2015). [http://www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all\\_final.ashx](http://www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all_final.ashx)