

Building A Litigant Portal Business and Technical Requirements

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Building a Litigant Portal

Business and Technical Requirements

Background

Many groups have devoted significant time and effort toward providing assistance of various kinds to litigants without representation. Numerous studies find a sizable unmet civil legal need.¹ Organization-specific websites and portals publish a vast amount of information intended to help potential litigants overcome the barriers of cost and complexity. Yet, the need continues to outweigh the solutions by a significant margin.

The Legal Services Corporation (LSC) published a path breaking report in 2013 outlining five strategies that could help jurisdictions narrow the gap.² These five strategies include the creation of statewide legal portals, the provision of document assembly capabilities, access by mobile devices, use of business process analysis, and the application of expert systems and intelligent checklists. The report called for solutions that integrate these five strategies. The intent of this project is to do that and more.

At about the same time the State Justice Institute funded a project to identify case triage strategies for case types with high incidences of self-represented litigants (SRLs).³ That project recommended an approach to case triage that supports several kinds of decisions that must be made in cases with SRLs.

Goals

Because there are so many resources already available to potential litigants, this project will focus on goals that will point us to a different and complementary target than existing information. We will also concentrate on a small number of goals, so that we have clear objectives that are not too diffuse. Ultimately, the portal should

¹ “Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans,” Legal Services Corporation, September 2009; “Access Across America: First Report of the Civil Justice Infrastructure Mapping Project,” Rebecca Sandefur and Aaron Smyth, American Bar Foundation, October 2011; “Accessing Justice in the Contemporary USA: Findings From the Community Needs and Services Study,” Rebecca Sandefur, American Bar Foundation, August 2014.

² “Report of the Summit on the Use of Technology to Expand Access to Justice,” Legal Services Corporation, December 2013.

³ “Triage Protocols for Litigant Portals: A Coordinated Strategy Between Courts and Service Providers,” Tom Clarke, Richard Zorza, and Katherine Alteneider, State Justice Institute, December 2013.

support the overall goal expressed by both the Legal Services Corporation and the Consortium of Chief Justices to provide appropriate assistance to 100% of civil litigants.⁴

1. *Increased assistance for legal problems*
2. *Improved integration of self-help resources*
3. *Improved focus on potential litigants*
4. *Increased use of non-traditional resources*

Performance Measures

We need concrete, objective, and practical performance measures for each goal to tell us if we have reached our objectives or not. The ability to specify such performance measures also helps us to identify goals that are specific and achievable.

1. Percentage of potential litigants who receive meaningful assistance (goal #1)
2. Percentage of providers who participate in the portal (goal #2)
3. Reduction in litigant time and cost (goal #3)
4. Change in user satisfaction (goal #3)
5. Percentage of potential litigants who use online dispute resolution (goal #4)

There is an element of ambiguity in several of these measures, so some agreement within the justice and provider communities on standard definitions and approaches will aid assessment both within and across portal projects. For example, what constitutes “meaningful” assistance could vary widely. Similarly, the percentage of providers who participate is directly dependent on the definition of which providers constitute the potential universe of assisters.

The fifth proposed measure is a proxy for a wider universe of alternative dispute resolution methods outside the traditional court process. Many forms of mediation, arbitration, and other approaches could support Goal 4. This measure may also be uniquely controversial, since opinions vary about the benefits of encouraging the use of certain dispute resolution techniques or using them in certain ways or in certain contexts.

⁴ See the LSC report, “Summit on the Use of Technology to Expand Access to Justice, December 2013. Also see CCJ resolution 5, “Reaffirming the Commitment to Meaningful Access to Justice for All,” July 2015.

Scope

Several researchers note the complex and decentralized patchwork of services for self-represented litigants in America. That situation often results in no one place where all litigants with legal needs can go. For example, court self-help sites logically focus on people with court cases. Legal aid sites are required to help only those who meet their guidelines for low or moderate income.

Similarly, most self-help sites concentrate almost entirely on civil case types with high frequencies of self-represented litigants. We know that citizens most often come into contact with the legal system in the context of traffic cases, where they are usually unrepresented. Research also tells us that misdemeanor offenders quite often do not avail themselves of due process rights and fairly often proceed without adequate representation.⁵

So, the scope for a litigant portal should be:

- All people with legal problems
 - Non-court and court solutions
 - Represented and unrepresented litigants
 - Online and in-person resources
- Case Types:
 - Civil
 - Family (divorce, custody, paternity, guardianships)
 - Housing (evictions, foreclosures)
 - Probate (adoptions, guardianships, wills)
 - Consumer (debt collection)
 - Traffic (citations and misdemeanors)
 - Non-traffic Misdemeanors
 - Criminal Expungements
 - Administrative (unemployment insurance, social security benefits, workers compensation, health insurance coverage, and other disputed benefits)

⁵ “The Process is the Punishment: Handling Cases in a Lower Criminal Court,” Malcolm Feeley, Russell Sage 1992. The original book, published in 1979, provoked several studies that continue today and confirm his original hypotheses, including: “Managerial Justice and Mass Misdemeanors,” Issa Kohler-Hausmann, Stanford Law Review 66, February 2014; “Court Reform on Trial: Why Simple Solutions Fail,” Malcolm Feeley, Quid Pro, 2013.

Business Capabilities

A business capability accomplishes something of business value to somebody. A business capability describes what is accomplished--not how. We will identify high level capabilities in this section, leaving more detailed descriptions to the business process section of the report below.

- Help potential litigants identify typical legal problems that they might have.
- Help potential litigants identify related legal problems.
- Help potential litigants determine what outcomes they want.
- Help potential litigants decide how best to resolve their legal problems.
- Help litigants decide if they need full legal representation.
- Help potential litigants decide what kind of legal assistance they need.
- Help potential litigants find the kind of legal assistance they want.
- Help litigants navigate the legal process.
- Help litigants make key decisions about their legal cases.
- Help litigants execute desired legal actions.

This list of capabilities provides business value to potential litigants (people with legal problems of some kind), since they are the target audience for the portal. There are also a number of very desirable features that such a portal should have to deliver these capabilities. Those features will be identified in the sections on business processes, design approaches, and technical requirements.

In order to provide the capabilities that potential litigants need, the portal must also provide some second order capabilities and benefits for providers:

- Automatically route eligible clients to appropriate providers.
- Automatically support provider intake processes.
- Automatically report provider information to potential litigants through the portal as appropriate.
- Automatically update provider systems with result data.

Business Processes

The goal of a litigant portal is to help potential litigants through the entire process of resolving their legal problems. One can imagine someone working their way through a sequence of decisions in a linear fashion. Along the way that person makes a series of decisions at each step of the process. As the capabilities listed above suggest, those key decisions would be:

1. Do I have a legal problem?
2. What legal problem do I have?

3. What is the best way to resolve that legal problem?
4. What kind of alternative dispute resolution options are available?
5. What kind of representation do I need for my court case?
6. What kind of assistance do I need for my court case?
7. What actions should I take with my court case?

Of course, the reality may diverge very far from this simple idealized process. If you find yourself suddenly a defendant in a court case, you may jump immediately to questions about representation, assistance, and case actions. If you decide you do not have a legal problem or some other forum is a better way to resolve that problem, you may never go to court. Your decision about case actions may cause you to revise your “earlier” decision about appropriate representation and assistance.

Given these complications, it is more useful to view the portal as an entry point that acts as a hub for a set of functions that provide value to potential litigants. With that structure a person can work through a linear process, enter at any point in the process, or circle back to parts of the process that were exercised earlier. This approach provides maximum flexibility and value to users. The portal operates less like a standard business process with a fixed pathway and more like a collection of functions that can be used as desired.

The entry point is then a description of those functions and a way to easily get to each of them. The functions may be thought of as separate “modules” in an application. The division of the functions into modules is somewhat arbitrary. Individual modules should contain collections of functions that usually go together in the sense that a typical user will want to do all of those things to accomplish something of value to them. Some modules may be closely related and usually but not always used together.

One possible set of modules is briefly described below. These modules are designed to be used in any sequence desired by the litigant. There will be structured interactions between the modules that constrain the possible navigational options.

If technical standards are established for the interfaces between these modules, then it becomes possible for a market in such modules to develop. Providers would then compete on the functionality and user interfaces of their modules. It also enables providers to easily integrate with a portal. In essence, the portal then becomes an ever changing virtual portal consisting of whatever modules are interacting at that time to provide services.

- Registration/Login Module (optional)

Litigants may use the portal anonymously by not registering or logging in. If users wish to save their inputs or outputs and return at a later time, they must register in

a way that enables identification of them in some unique way (although not necessarily in a way that permits actual identification of the person).

Comments and Issues: Partner organizations will probably want to use their login methods, so the most efficient approach would be a consistent single sign on model for all of the partner organizations. Achieving this goal could be difficult. It is a classic governance problem.

- Description/Navigation Module

This module describes the capabilities of the portal and provides basic navigation to the desired module or between modules. Users may still enter other modules directly if they know how to get there. They may also navigate directly from one module to another module as desired.

Comments and Issues: Navigation must work simply and seamlessly regardless of where the user enters the portal and in which order they want to use the various modules.

- Problem Identification Module

This module prompts the user to describe their problem in a way that will enable the portal to determine if it is a legal problem. Of course, that determination is not entirely an objective one, so it is more a matter of suggesting available legal strategies when appropriate. The module will prompt for information that enables the portal to determine if it is a legal problem within the scope of the portal, and maps the legal problem to a court case type. Again, there may be several possible case types or causes of action for a particular legal problem, so the module should suggest all alternatives and explain the tradeoffs. If there is not a legal problem, or not one that the portal can respond to, the litigant may still gain value by exercising the solutions module.

Comments and Issues: Once correctly mapped to the appropriate court case type, there may be rights in certain cases to full representation by a lawyer. The portal should recognize these instances. Of course, a litigant may still choose to forego a lawyer or may decide to acquire their services through an eligible provider, so they still should not bypass the Assistance module.

Some case types like domestic violence may require emergency responses, so the portal should recommend appropriate actions in those cases. Similarly, some case types should be confidential, possibly requiring different data handling and the exclusion of some information to some partners. Perhaps most innovative and also most challenging, the portal should make the appropriate handoff for cases that are out of scope (not legal problems) if possible.

- Solutions Module

If the problem identified is not a legal problem, the portal may suggest several generic non-legal solutions with an appropriate handoff. If the problem is a genuine legal problem, it should suggest several alternative solutions, some of which involve the formal legal system and some of which do not. In both cases the module should provide appropriate tradeoff information to aid the litigant in making a choice.

Comments and Issues: Some non-traditional options may be appropriate in some cases. For example, in some states one option might be a tribal court. Legal problems that appear to track the traditional court process may be open to various types of diversion at various points in the process. The portal should make those options clear, even where the litigant does not have full control over the decision. Policies around data transparency and access must be made clear to all users of the modules in the portal, especially for this module (and the Capacity Assessment module below).

- Assistance Module

The assistance module will determine whether the litigant *likely* requires formal representation by a lawyer or not. If so, the portal will provide a set of possible sources of representation with seamless hand off to the selected resource. If a lawyer is not desired by the litigant, the module will determine the most cost effective form of assistance required and hand off the litigant to that assistance seamlessly.

Comments and Issues: All forms of appropriate assistance, if available, should be described. Some may be less mainstream than others. Common forms include legal aid, court help centers, public libraries, law school clinics, bar-sponsored pro bono clinics and services, and public defenders. More controversial and innovative forms may include unbundling of legal services, the creation of non-lawyer legal services roles, and online dispute resolution websites. The portal must also be intelligent enough to recognize which forms of assistance are constrained to only certain case types or problems.

- Tradeoff Preferences Module

This module assesses the litigant's preferred tradeoffs between cost, time, convenience, and due process. The tradeoff information will be used by other modules to recommend solutions and types of assistance. The links between tradeoff preferences and portal recommendations will be reported transparently.

Comments and Issues: Describing choices among options with different amounts of due process to litigants in simple and understandable ways when more than one case processing path exists may be challenging. Traditionally, both courts and the

bar have been relatively resistant to accommodating litigant preferences, particularly when it entails informational transparency about things like case cost and time to disposition.

- Probabilistic Outcomes Module

For court cases, this module provides descriptions of the most likely or common alternatives and actions in a particular type of case. It will also report probabilistic or statistical information on the likely outcomes of each alternative, based on court data.

Comments and Issues: Some evidence suggests that most common case types, especially those with many self-represented litigants, often follow only two or three simple case paths, with a very small percentage involving significant case complexity.⁶ Therefore, courts may be able to provide simple descriptive statistics on what usually happens when each possible path is chosen. Note that the portal does not make any recommendations about which path to take, so there is no issue around the practice of law or giving legal advice. It merely describes what typically happens (win or lose, amounts awarded, etc.).

- Capacity Assessment Module (optional)

This module will assess the capacity of the litigant to both use the portal and to utilize various forms of assistance other than formal representation. This module is optional because not all jurisdictions may choose to include this capability, some litigants may not want to be assessed, and the ability to validly and appropriately assess such capacity is still not well understood.

Comments and Issues: Considerations such as case complexity or levels of hostility should be handled by the Assistance module. Indices of case complexity may be case type specific. Here we are primarily interested in the ability of the litigant to competently understand information and make certain decisions required by the portal. Attempts to do this to date have not been encouraging. It has either proven to be too difficult or too paternalistic to do successfully.

Information Inputs and Outputs

In general, there should be a two-way connection between the portal and the systems of its partners. Both data and referrals or handoffs may occur in either

⁶ See again, “Triage Protocols for Litigant Portals: A Coordinated Strategy Between Courts and Service Providers,” Tom Clarke, Richard Zorza, and Katherine Alteneider, State Justice Institute, December 2013.

direction. Detailed process modeling and data modeling is required to clarify what data can be passed to whom under what situations or conditions.

Any time data is passed between two systems about an individual, there is a chance that those systems cannot agree on whether or not it is the same person. Similarly, the systems may differ on key policy issues like access to personal information and data retention periods. Thus, both technical and policy issues must be coordinated and solved before systems can exchange the necessary information for the portal to work properly.

The portal may collect and send or require two different kinds of information: individual and aggregate. The latter is easier to deal with from a policy perspective. Both may be needed to assess how well the portal is fulfilling its business goals.

User Inputs and Outputs

- Inputs to diagnose the legal problem.
- Inputs to assess tradeoff preferences.
- Inputs to identify assistance recommendations.
- Inputs to identify case action preferences.
- Output summaries of user inputs, outputs, and decisions to users.

Portal and Provider Inputs and Outputs

- Inputs to assess the “capacity” of users.
- Inputs to provide feedback to operators about effectiveness of the portal.
- Inputs from external partners and providers as required to support portal capabilities and operations.
- Inputs from external partners and providers as required to support handoffs to the portal.
- Outputs to external partners and providers as required to support desired handoffs from the portal to those organizations.

Governance

Richard Zorza repeatedly notes in his articles and blogs on the decentralized and chaotic nature of the legal assistance “system.” What characterizes it in most cases is a lack of organization and integrated governance. That makes the creation of an appropriate governance structure for a litigant portal a difficult new challenge. If no existing organization represents the combined resources of all significant legal assistance providers, then states will need to start a new one.

There are strong similarities between what is needed here and traditional state integrated criminal justice (CJIS) organizations. They also exist because the justice systems need to work together on common projects and prioritize funding across the various agencies. This is often accomplished by creating a new statutory body.

The track record for such bodies is mixed. Some operate effectively and others do not. It is a difficult governance problem at the best of times. The recommendations below are a starting point that will probably change and improve as litigant portals mature.

- The governance structure should consist of a policy body and a lead agency.
- The governance body makes all policy decisions.
- The lead agency creates and maintains the portal and administers funding for it.
- The lead agency will vary by jurisdiction.
- Working sub-groups may be required to properly implement some aspects of the portal.
- Technical experts and for profit organizations should not be represented on the governance body, but may and sometimes should participate in the working sub-groups.
- The governance body should include representatives of all major stakeholders, but not be too large (10 to 15 members).
- Governance body members may in some cases represent “communities of interest” with similar kinds of expertise and capabilities.

Membership on the governance body is a critical but difficult decision. A majority of the members should be provider organizations, rather than judges or lawyers, so that the body reflects the viewpoint of litigants. It may also vary by jurisdiction, but the following suggested list is a good starting point:

- Courts (clerks separately represented in some states)
- Legal aid organizations
- State bar association
- Libraries
- “Discovery” organizations (aid litigants to know about and find portal)
- Social and human services organizations
- Self-help centers
- Non-court ADR providers
- Law schools
- Administrative law agencies
- Public representative (may be difficult to find an appropriate member)
- Other key referring agencies or roles not already represented, such as a legal technologist from the non-profit sector.

For the portal to operate appropriately, every state governance body will need to facilitate a “single sign on” capability by agreeing on a limited set of common identifying information for litigants. This information should then be captured, tracked and shared as litigants are referred to and from the portal.

Business Policies

Governance is all about making key policy decisions. Such bodies will need to make decisions about a long list of policy issues. Below is a recommended list of issues and, in some cases, guidance on how those decisions should be made. The policy areas are not prioritized.⁷

- Marketing

At a minimum there should be a “no wrong door” policy. Litigants may discover the portal through many different channels and get referred appropriately. Users should not be forced to access the portal only by going there directly, or through the website of the lead agency. If a portal is fundamentally modular and virtual in nature, then litigants may not perceive any difference between an experience that starts with the portal and one that starts with one of the supporting providers.

Some of the policies that should be set include:

- What kinds of marketing will be allowed (i.e. advertising)?
- What branding will be used (name, logo, domain name)?
- What outreach strategy will be used?
- Who controls marketing operationally?

- Data Transparency

The overriding philosophy of the portal should be data transparency from the litigant’s viewpoint. That applies comprehensively to their own data, but also includes aggregate data of interest to them. Such data may include typical case action decisions, outcomes, and types of assistance requested.

- Data Access

The most important step is to make data policies clear up front and simple to understand. The portal home page and module home pages should contain links to the policies. The policies themselves should be summarized in a few simple and easy to understand bullets, with links to the complete legalese.

Litigants should always have access to their own data and data about the performance of the portal. Non-litigants who sign in should also have access to their own data. Litigants and non-litigants who do not sign in should have access

⁷ See the ABA’s Best Practices for Legal Information Websites for additional ideas at http://www.americanbar.org/groups/law_practice/committees/elawyering-best-practices.html

only to aggregate data about the portal. The governance body should consider the possibility of seeking a legislative exemption to the public records law.

- Data Retention

The portal contains three kinds of data: identifying/demographic data, process/transactional data, and decisional data. The portal may be used anonymously, so sometimes there will be no identifying/demographic data retained. Users may opt to provide identifying data to accomplish certain transactions. Such data will be deleted once the case is completed (to the extent that court systems report case closures back to the portal). Process data should be deleted after each assessment cycle for the portal is completed. Decisional data may be deleted after case completion or retained indefinitely at the request of the user or based on the purpose and design of the portal.

- Privacy

As with data policies, all privacy policies should be provided up front in simple plain language. All user information should remain private until the litigant takes an action that would make such information public. The portal should warn the user that the action will have that effect. Similarly, the portal should inform users of what information will be required to make certain types of referrals when they are requested. The same is true for information required to make other process decisions within the portal. Finally, agreements with participating providers should make clear what data can be shared and what constitutes unauthorized use of portal data.

- Non-functional Requirements

These types of portal requirements include availability, reliability, response time, and other related decisions concerning the performance of the portal. The governance body can indicate at a high level what kinds of performance are required to effectively meet the business goals of the portal. A technical subgroup is best qualified to identify the costs and benefits for different levels of performance.

- Security

The portal should implement standard security controls for similar websites. At a minimum those controls include appropriate encryption of data during transmission and while stored. The portal may require checks of “humanness” on the front end if desired. For some actions, such as actions involving return to the site by a user, providers may want to verify identification. If so, the portal should clearly state how the identifying data will be used and the importance of its accuracy to provide the desired results to the litigant.

Security controls should be summarized in simple language and accessible via a home page link. To some categories of users, security and data protection concerns are extremely important, so they will want to know that their information is safe and exactly who will use it, and in what ways. For similar reasons, it may make sense to perform regular security audits and publish that fact as one of the security controls.

- Versioning

Changes to an application are typically made in three different ways. Bug fixes will be done in near real-time if the application is not operating correctly. Minor updates should be done on the same schedule as the assessment cycle. Feedback from the assessment may motivate design changes. Major changes are usually made less frequently—often only every several years. Such changes by definition may break the interfaces with supporting providers and require both significant work and careful planning to implement.

- Quality Control

The assessment cycle, discussed below, addresses the collection and analysis of the performance measures identified above. Other quality control measures are discussed here. Users should have readily accessible user feedback mechanisms to report on their experience with the portal and the effectiveness of the referrals.

These results can be used to refine the operation of the portal. When assessing its operation, appropriate performance baselines are important. The effectiveness of the portal is relative to what would happen to litigants in its absence—not what a perfect solution would be.

- Funding

There must be enough funding to create and operate the portal in a sustainable way, including necessary improvements to the production versions of the portal. That requires a stable source of funding. That requirement may make the court budget a good place to host the necessary funds. At a minimum, the hosting organization should be a state government entity. Funding excludes portal pilots, which should be separately funded.

One good approach is to perform a prospective cost/benefit analysis to determine what the target expected return on investment (ROI) will be. That exercise helps participating agencies understand in what way the portal delivers value. Subsequent analyses should confirm whether or not the portal actually does deliver the expected value in the expected ways. Participating providers

will want to perform similar exercises from their own perspective for their role in the portal to confirm that they get value from that relationship (or at least provide value to litigants).

Core funding for the portal might be supplemented in a number of ways. Only policy and creativity limit the possibilities. For example, they may include advertising, donations, fees for referrals to for-profit entities, provider subscription fees, and bar contributions.

- On-boarding

On-boarding refers to the process by which a new provider becomes a participant in the portal. The portal governance entity should establish the criteria for participating providers. At a minimum, the portal should start with the core existing providers, who should be required to comply with all portal policies. All participating providers must be capable of updating their supporting interfaces and systems in compliance with the portal versioning cycle.

Cost barriers may be useful to filter provider requests. The direct provider may in some instances be an existing or newly established “accumulator” organization that effectively and efficiently connects many smaller providers of some type with the portal. In any case, the operators of the portal should not get into the business of trying to decide which providers are “worthy.”

The assistance module in the portal should provide caveats about the capabilities and policies of participating providers to aid decisions by litigants. If the provider policies differ significantly from those of the portal, such differences should also be made clear at that point. It is expected that litigants will often be presented with multiple options, so the provision of information useful for making a decision between providers is both appropriate and necessary in the interests of transparency.

- Ethics

The primary concern is to avoid real or perceived conflicts of interest. There are two perspectives on this issue. The prevailing attitude among government participants is that for-profit entities should not be members of the governing body. The hosting organization should clearly have no conflicts. In contrast, most of the non-profit and for-profit participants prefer a set of members that primarily represent the interests of litigants. Toward that end, they would prefer as members service providers who serve the litigants more directly. These different strategies for governance were not resolved in this project.

The portal assistance module should describe any provider scope constraints, so that litigants can make appropriate and informed decisions. The ABA Model Rule 6.5 may offer appropriate policy guidance on requirements for attorney conflict checks in the context of programs run by courts or non-profit entities that entail only brief legal services.

- **Assessment Cycle**

The recommended assessment cycle is every half year. There is nothing sacred about that particular period. It is often enough to incorporate changes in supporting aggregate information and seldom enough to minimize the cost of on-going support and necessary modifications to partner systems. There should still be real-time flags to signal incorrect behavior by the portal.

Each assessment should use aggregate data for the identified performance measures. Trends are particularly important. It may be a good idea to produce similar but less ambitious management reports during the first few months of portal operation and after each major version change to ensure correct operation and positive impacts in relation to the stated goals.

- **Supporting Services**

The portal may require some supporting services that are provided elsewhere. One particularly important service is real-time interactive user support. One absolutely essential type is chat. Comprehensive user support, with live chat, implies around the clock human staffing by somebody. This is not a trivial resource requirement. A significant amount of training is also necessary to ensure effective support. The strategy for providing these kinds of services will be a key governance decision.

- **External Resources**

The portal should not duplicate what already exists elsewhere. It should seamlessly integrate those resources and capabilities from the litigant's point of view. Thus, significant external resources are assumed and required for proper portal operation. Those resources include full information websites, standard forms (including forms for requested judgments and orders), document assembly, electronic filing, and automated reminders and prompts.

Making these resources available requires a number of event-driven transactions in provider systems and appropriate workflows that cross multiple organizations. Once such workflows exist and corresponding litigant expectations are created by the portal, all participating entities will need to comply with the required response times for those transactions. The governance

body should both identify the required workflows and establish the supporting policies for performance.

It will be tempting to ask for everything possible at the beginning, but most jurisdictions will only be capable of supporting a limited scope for the portal at first. It is better to perform essential functions well and incrementally expand the scope of the portal in the future as aspirations can be supported.

- Accessibility

The starting point for accessibility is ADA compliance. Language access is another issue that should motivate versions of the portal modules in multiple languages. Beyond that, the portal interface should avoid insider jargon and strive for an average language level of the fifth grade. One key strategy for ensuring a good user experience is scenario-based testing by real users.

Portal Design Guidelines

- Facilitate litigant decisions using process-based dialogues (rather than resource links or handoffs to other websites).
- Seamlessly integrate the supporting resources that potential litigants need in a bi-directional way (to and from backend providers).
- Be transparent to users about its decision support processes.
- Support non-sequential use of the portal capabilities.
- Support iterative use of the portal capabilities.
- Support both anonymous and confidential use of the portal. Anonymous use is one-time and requires no identification of any kind. Confidential use requires some identification and/or contact information, so that the user can save results and return to the portal later at the same point if desired.

User Experience Best Practices

Several principles should drive good user experiences. These principles include:

1. Maximize simplicity, ease of use, and intuitiveness.
2. Maximize legitimacy using logos, visual cues, and a serious tone.
3. Maximize ability to search as desired.
4. Maximize the ability to complete actions that deliver value in a given time.

The portal modules should strive to conform to a number of other best practices:

1. **Maximize simplicity, ease of use, and intuitiveness.**

- Minimize the number of screens and clicks required to perform a task.
 - Provide an easy graphical way to track progress toward the completion of a task.
 - Provide a glossary in plain language to both explain and standardize terms.
 - Use a conversational style.
 - Embed contextual help systematically.
 - Make the style personal and warm, but not silly or whimsical.
 - Provide real-time chat support if possible.
 - Include flags, links and popups to additional information and explanations where relevant.
 - Hide information that is not absolutely necessary to complete a task.
2. **Maximize legitimacy using logos, visual cues, and a serious tone.**
 - Be transparent to users about its decision support processes.
 - Create a standard brand and logo.
 - Make it clear who owns and operates the portal.
 - In general, be as transparent as possible about what the portal does, how it does it, and what will be done with the provided information.
 3. **Maximize ability to search as desired.**
 - Seamlessly integrate the supporting resources that potential litigants need in a bi-directional way (to and from backend providers).
 - Support non-sequential use of the portal capabilities.
 4. **Maximize the ability to complete actions that deliver value in a given time.**
 - Facilitate litigant decisions using process-based dialogues (rather than resource links or handoffs to other websites).
 - Support iterative use of the portal capabilities.
 - Support both anonymous and confidential use of the portal. Anonymous use is one-time and requires no identification of any kind. Confidential use requires some identification and/or contact information, so that the user can save results and return to the portal later at the same point if desired.

Flexible Architectural Design Requirements

- Standardize the interfaces for required information sharing between providers.
- Design in an ability to experiment with the design of the portal and modify that design as needed.
- Support non-linear navigation of the portal.
- Support technical definitions of the modules and interface standards that enable a market to develop in the provision of the modules and any allowable extensible widgets.

- Fully support bi-directional communication between the portal and provider systems (no wrong door).
- Fully support mobile access to the portal.
- Use parameters, tables, and other easily configurable approaches for aspects of the portal likely to change often or differ between jurisdictions.
- Include among the technical standards a way to describe the services of a provider.

Maturity Levels

The establishment of a litigant portal that complies with all of the recommendations and best practices will be a huge step for many jurisdictions. It may make sense to build out the portal in several steps that essentially represent increasing levels of institutional maturity. The levels in the following maturity model are intended only to suggest one possible approach.

- Level 0

This level is the status quo with a few beginning steps. Potential portal partners are identified and a governance structure is established. A funding model is also identified and implemented. Public/private partnerships are established.

- Level 1

Technical standards are established for data and messages between the portal and providers. Decision trees are identified for the most frequent paths used in certain case types (decision paths most often followed by users). These decision and referral processes leverage the knowledge and capabilities of existing providers to the maximum extent. Portal operators focus strongly on “low hanging fruit” as they build out the capabilities. By supporting the actions most often desired by users, the portal delivers perceptible value for both users and providers early and often.

Although only suggestive, a sample group of case types amenable to this kind of approach for pilots might include domestic violence, divorce, modifications of child support and parenting plans, landlord/tenant matters, debt collection, small claims and traffic. Limited information to date suggests that the most frequent one or two paths within each of this case types will account for 80% to 95% of all cases.

- Level 2

Portal operators build out the portal to the target end state, including all case types and associated paths about which users seek information. The portal

maintains a mature process for adding or deleting providers and capabilities. It regularly uses performance reviews to improve outcomes for users.

Implementation Guidelines

- Use an implementation strategy built around easy wins.
- Allow both open source and proprietary solutions for the modules and portal.
- Identify five to ten core case type “paths” for use of the portal and build those out (since there will be literally hundreds of thousands of paths through the portal decision tree).
- Use a consistent brand, but do not try to initially create a national website.
- Implement portals at the state level.
- Leverage existing providers to facilitate discovery of the portal.
- Establish clear and consistent processes for on-boarding new providers.
- Do not attempt to “vet” new providers as long as they comply with mandatory portal policies and standards.
- Establish subscription fees for use of the portal by for profit providers, but do not use, or permit providers to use, transaction fees.
- Be sure that the portal scope integrates existing assistance providers from the very beginning, especially those created by the court and legal assistance communities.
- Support the ability of providers to contribute intellectual property to the portal without giving up control of that information using appropriate open source licenses or portals such as the Creative Commons.

Next Steps

The following steps were identified as the key actions required to move the litigant portal concept forward. Although the number of steps are few, they are big steps that require a significant amount of work.

1. Identify a small number of core case type paths for the portal that account for a significant proportion of the total paths that users seek.
2. Establish technical standards for the interfaces and messages between the portal modules and the provider systems (possibly within OASIS LegalXML⁸).
3. Establish a public/private technical consortium to work on technical standards, leverage the capabilities of existing portal pilots, and carry out a prototype development and implementation project. A key issue for such a consortium will be deciding if the portal should refer to a provider at the

⁸ See www.oasis.org for information on that standards body in general, the LegalXML member section and Electronic Court Filing technical committee.

earliest possible opportunity or try to provide as many services as possible to litigants within the core portal.