

FAQ #20

Can you clarify the question asked or standards used in X indicator?

A. Self-represented Litigants – Does the state, through a statewide statute, rule, regulation, appropriation, or other written guidance (including statewide training and human resources policies):

Q #	Question/Indicator	Additional Explanation/Clarification
1 10 pts	DEDICATE A COURT EMPLOYEE TO HELP PEOPLE WITHOUT LAWYERS. Dedicate a court employee or court office to design and advance initiatives to enhance access to courts for self-represented litigants?	Unlike in Justice Index 2014, Access to Justice Commissions were not sufficient sources for a “Yes” finding to this question. A separate indicator focused on Access to Justice Commissions was added at Q. #30.
2 10 pts	AUTHORIZE JUDGES TO TAKE SPECIFIED STEPS. Authorize or encourage judges to take specified steps (for example, by providing information to the litigant about evidentiary requirements) to ensure that self-represented litigants are fairly heard?	Unlike in Justice Index 2014, to receive credit for this indicator, a source must have been provided that lists “specified steps.” Several states have adopted the following language from the Model Code of Judicial Conduct, Rule 2.2, Cmt. 4: “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.” This language alone would not be sufficient for a “Yes” finding.
6 10 pts	AUTHORIZE UNBUNDLING. Authorize lawyers to perform discrete tasks for parties without first obtaining judicial permission and without incurring an obligation to continue representation that requires judicial permission to withdraw?	To satisfy this indicator the unbundled legal services must be authorized for at least some litigation matters and must not require prior judicial permission for providing or withdrawing from such services, regardless of whether such judicial permission is considered a mere formality.
8 5 pts	FUND A SELF-HELP CENTER. Fund a court-based “self-help center” in the past 12 months to help self-represented litigants?	We defined “self-help center” as a physical space and thus excluded websites or helplines. Funding must have been provided on a statewide basis (e.g., from the state judiciary budget rather than by a county or a Bar association). NCAJ is actively reassessing its indicators to better capture certain issues and nuances regarding self-help center funding.

Q #	Question/Indicator	Additional Explanation/Clarification
<p>9 5 pts</p>	<p>COUNT SELF-REPRESENTED CASES. Count in the past 12 months the number of disposed cases in which one or more parties was self-represented, as recommended by the National Center for State Courts?</p>	<p>The National Center for State Courts (“NCSC” prescribes a certain method for counting and collecting data on cases involving self-represented litigants (www.courtstatistics.org/Other-Pages/SRL_Main.aspx). After consultation with NCSC officials, NCAJ decided to apply a broad standard to this indicator, crediting states as long as they could show that they have had a statewide program in place in the past year that systematically collected quantitative data on cases involving self-represented litigants in a given venue.</p>
<p>10 5 pts</p>	<p>Require court written materials intended for the public to be a) in plain English, or b) at a designated reading level?</p>	<p>The “written materials” referred to in this indicator consist of mainly administrative documents such as forms and instructions; it does not refer to case-specific documents written by a presiding judge.</p>
<p>11 10 pts</p>	<p>Authorize or encourage judges to use plain English when communicating orally with self-represented litigants?</p>	<p>A source for this indicator was sufficient if it invoked oral communication and used a term similar to “plain English.” Unlike in Justice Index 2014, we did not credit sources that adopted language from Model Code of Judicial Conduct, Rule 2.6 broadly citing the judicial responsibility of insuring “the right to be heard.”</p>
<p>12 1 pt</p>	<p>DESIGNATE RESPONSIBILITY FOR PLAIN ENGLISH IN COURTROOM. Designate a court employee responsible for encouraging judges to use plain English when communicating with self-represented litigants?</p>	<p>In the questionnaire sent to the state court contacts, this question read as follows: “Designate a specific court employee with the responsibility for ensuring that judges use plain English when communicating with self-represented litigants?” We modified the language upon realizing that the original language had the unintended interpretation of implying that the designated administrative court employee would have authority over a judge’s courtroom proceedings. Though we clarified the intended meaning of this indicator with the state contacts, we decreased the weight of this indicator to one point in light of the potential ambiguity.</p>
<p>13 5 pts</p>	<p>PUBLISH A PLAIN ENGLISH STYLE GUIDE. Publish a style guide that provides guidance on how to draft forms and instructions in plain English?</p>	<p>This is one of several indicators for which some state contacts cited non-public, internal documents. We credited these sources only when a copy was sent for our review, in which case the citation will say “(on file with NCAJ).” In limited circumstances we credited the source where the contact provided a full quote from the internal document with complete context as well as contact information for a source person knowledgeable about the document.</p>

Q #	Question/Indicator	Additional Explanation/Clarification
<p>16 1 pt</p>	<p>MAKE ELECTRONIC FILING ACCESSIBLE. Require that electronic filing systems be accessible to self-represented litigants?</p>	<p>In the original questionnaire, this indicator was broken into four parts and asked if the state provided “that electronic filing systems be accessible to self-represented litigants in . . . courthouses, self-help centers, libraries, [and] legal aid offices.” These indicators proved to raise various ambiguities that impeded the application of a practicable and consistent standard. We contacted the state contacts early in our quality assurance process with the following message:</p> <p>“Due to ambiguities that we have discovered regarding Q. 16 and the 4 sub-questions, we are adopting a stricter standard than described in the Annotated Instructions. A state will get credit for this question only if it has a statewide policy requiring that self-represented litigants have access to e-filing. An example of such a policy would be, ‘Self-represented litigants shall be provided a means to file documents electronically.’ With this standard in mind, please indicate whether you think the state should receive a ‘Yes’ response for this question.”</p> <p>In light of the potential ambiguity caused by this indicator, we decreased the weight to one point. We intend to further assess the various facets of e-filing and the best practices for people without lawyers in future versions of the Justice Index.</p> <p>We will count this as 1 question and omit the sub-questions. We discussed expanding and revising for next year.</p>
<p>17 1 pt</p>	<p>WAIVE CIVIL FILING FEES. Permit courts to grant a waiver of civil filing fees for people who meet a designated financial eligibility standard (aka “in forma pauperis” standard)?</p>	<p>In the original questionnaire, this indicator asked whether states “[p]ermit court clerks’ offices and/or court staff to grant a waiver of civil filing fees for people who meet a designated financial eligibility standard[.]” After re-assessing whether permitting court employees to make such waiver decisions was a best practice, we changed the language to a broad indicator intended to essentially collect the sources of authority and examples of forms that all states have regarding waivers of civil filing fees.</p>

Q #	Question/Indicator	Additional Explanation/Clarification
24a-g 1 pt. each	LIST ON WEB PAGE FORMS FOR [X CASE TYPE]. List on a single page of the state judiciary website all court forms necessary to fulfill the minimum filing obligations for [X CASE]	This indicator requires that the court website list all the court-created forms that a litigant must file in order to initiate the action, avoid default, or assert defenses depending on the circumstances described in the indicator for the seven different case types. In most cases, and ideally, this list will be of downloadable forms; however, we granted credit if the website just identifies all of the forms necessary for a complete filing. In future version of the Justice Index we will re-assess this standard to consider whether to place a greater emphasis on downloadable court forms.
25a-g 1pt. each	LIST ON WEB PAGE MATERIALS FOR [X CASE TYPE]. List on a single page on the state judiciary website all supporting materials necessary for a court to consider the merits of a petition by a [A PARTY IN X CASE TYPE]	This indicator requires a higher level of detail than the previous indicator regarding court forms. Depending on the type of case, supporting materials might include, for example, tax returns, affidavits, property records, insurance forms, financial disclosures, etc. If a person cannot discover what supporting materials are required by looking at the website, a state will not receive credit for this indicator.
26a-f 1 pt. each	REQUIRE COURTS TO ACCEPT COMMON FORM, [X CASE TYPE]. Require that all courts in the state accept common statewide court form(s) from [A PARTY IN X CASE TYPE].	For this question and others referring to “all courts,” we generally awarded credit if the practice or policy applied to at least the trial-level court of broadest jurisdiction.
24g-27g 1 pt each	<i>These indicators all concern forms regarding a defendant's response to a mortgage foreclosure action.</i>	We recognize that a non-judicial foreclosure state is much less likely than a judicial foreclosure state to receive a “Yes” finding for these indicators. Where states indicated that they are non-judicial foreclosure states, we made a finding of “No*” and included the relevant information in the sources section. Some state contacts have asked why we include these indicators when it would not make sense for a non-judicial foreclosure state to have such forms. NCAJ’s position is that access to a judicial remedy is important for people facing the potential loss of their homes in non-judicial foreclosure states, and therefore online resources on court websites are important resources that can explain to self-represented persons the steps they can take in a court to stop a non-judicial foreclosure.

Q #	Question/Indicator	Additional Explanation/Clarification
<p>27a-g 1 pt each</p>	<p>MAINTAIN DOCUMENT ASSEMBLY PROGRAM, [X CASE TYPE]. Maintain a computer-based document assembly self-help program to assist litigants in actions seeking [X REMEDY]</p>	<p>States were awarded credit only if such programs were applicable statewide. If the program listed only certain counties for which the program could be used, credit was not awarded.</p> <p>Unlike most other indicators, we did not require strictly that “the state” or “the court system” maintain such programs. Rather, it is typically a third-party vendor working in conjunction with the courts that maintains the program. See, for example, https://lawhelpinteractive.org.</p>
<p>28 10 pts</p>	<p>MAINTAIN ACCESS TO JUSTICE COMMISSION. Maintain an ABA-recognized Access to Justice (ATJ) Commission or other ATJ entity?</p>	<p>“Yes” findings were made for jurisdictions listed on the ABA website as having an ATJ Commission or an “Other ATJ Entity.” See http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj-commissions/commission-directory.html</p>
<p>32 10 pts</p>	<p>RECOGNIZE A RIGHT TO COUNSEL IN HOUSING CASES. Require the appointment of counsel at public expense for indigent parties in any type of housing proceeding (e.g., eviction, foreclosure, discrimination, etc.)?</p>	<p>Data taken from the National Coalition for a Civil Right to Counsel (“NCCRC”) Status Map, civilrighttocounsel.org/map. A “Yes” finding was made for states designated in the Status Map as having a Categorical Right to Counsel or where the legal authority cited in the Status Map otherwise satisfied the criteria for the Justice Index indicator.</p> <p>The NCCRC Status Map does not include Puerto Rico. For Puerto Rico, NCAJ conducted original research in consultation with Puerto Rico court officials and the NCCRC staff.</p> <p>Please note the following disclaimer from the NCCRC website, civilrighttocounsel.org: “No information in the map should be taken as legal advice. Moreover, information in the map is to be taken as-is, with no guarantees of its accuracy. . . . The information in this map is current as of late 2013, and while we add new information as we learn of it, we cannot ensure the information is always to-date.”</p> <p>Finally, information from the NCCRC’s Status Map was taken for the Justice Index on April 5, 2016, and the Justice Index is not intending to update the findings, even if they findings are updated on the Status Map, until such time as the Justice Index is comprehensively updated, which is currently anticipated to occur in 2018.</p>

Q #	Question/Indicator	Additional Explanation/Clarification
33 10 pts	RECOGNIZE A RIGHT TO COUNSEL IN ABUSE/NEGLECT CASES. Require the appointment of counsel at public expense to indigent accused parents in abuse/neglect/dependency proceedings?	See above.

B. Language Access – Does the state, through a statewide statute, rule, regulation, appropriation, or other written guidance (including statewide training and human resources policies):

Q #	Question/Indicator	Additional Explanation/Clarification
7 5 pts	REQUIRE INTERPRETERS AT CLERKS' COUNTERS. Require that clerks' counters in areas in which a significant number of people speak languages other than English have present during all hours of operation either certified interpreters (where available) or bilingual staff fluent in commonly spoken languages?	We made a "Yes" finding where the jurisdiction showed that it contracts with a vendor for telephone interpretation where that service is readily available at clerks' counters during all hours of operation.
8 10 pts	INCLUDE CLERK-COUNTER INTERPRETERS IN LANGUAGE ACCESS PLAN. Maintain a Language Access Plan to ensure that in areas in which a significant number of people speak languages other than English, clerk counter staff have resources available to assist with communication with LEP litigants?	Because virtually all Language Access Plans will include information on resources at clerks' counters, this indicator essentially tracks which states have sufficient Language Access Plans as follows. To define and determine sufficiency of a Language Access Plan, we used the federal example described at LEP.gov as a model. See http://www.lep.gov/resources/courts/022814_Planning_Tool/February_2014_Language_Access_Planning_and_Technical_Assistance_Tool_for_Courts_508_Version.pdf .
12 1 pt	TRANSLATE ON WEBSITE WHEN INTERPRETERS ARE PROVIDED. Explain on the state judiciary website the cases for which the state will provide certified interpreters, in the languages other than English that are commonly spoken by litigants?	This indicator and similarly worded indicators refer to whether the website text is in languages other than English. Due to potential ambiguity in the wording of these questions, we followed up with the state contacts to clarify the intent of the indicator and did our own check of the state judiciary website to ensure accuracy.

Q #	Question/Indicator	Additional Explanation/Clarification
14A (1-12) 1 pt each	REQUIRE APPOINTED INTERPRETERS BE CERTIFIED, [X CASE TYPE]. Require certified interpreters (where available) for LEP parties in [X CASE TYPE]?	These indicators refer only to interpreters provided by the court system. The qualification of “(where available)” functions as a requirement that jurisdictions make a good-faith attempt to retain a certified a interpreter before they are permitted to retain an uncertified interpreter.
14B (1-12) 1 pt each	REQUIRE INTERPRETERS BE FREE-OF-CHARGE, [X CASE TYPE]. Prohibit requiring payment (including fees, costs, or other expenses) for court-provided interpreters in [X CASE TYPE]?	A “Yes” finding was made if this policy was stated affirmatively – <i>e.g.</i> , “All appointed interpreters are paid for out of public funds” – or negatively – <i>e.g.</i> , “Courts are prohibited from requiring any payment for court-provided interpreters.” A “No” finding was made if there was no written documentation stating that all interpreters in the given case type, or in general, were free of charge, or if exceptions were put on such a policy, such as a judge’s discretion to demand reimbursement in certain circumstances.
15 5 pts	TRANSLATE ON WEBSITE AVAILABILITY OF COURT FORMS. Describe on the state judiciary website, in languages (other than English) commonly spoken by litigants, the availability of self-help forms?	This indicator and the one below it are very similar. In some circumstances, states received a “No” finding for this indicator, but a “Yes” finding for the below indicator. Typically, this meant that the state judiciary website posted the downloadable translated court form, but there was no indication of this in languages other than English. For example, a PDF titled “Vacate Default Judgment in a Consumer Debt Case {Spanish Version}” would likely receive a “No” finding this indicator, but a “Yes” finding for Q.16 below.
16 5 pts	POST TRANSLATED COURT FORMS ON WEBSITE. Make electronic forms available on the state judiciary website in languages (other than English) commonly spoken by self-represented litigants?	See above.

C. Disability Access – Does the state, through a statewide statute, rule, regulation, appropriation, or other written guidance (including statewide training and human resources policies):

Q #	Question/Indicator	Additional Explanation/Clarification
2 5 pts.	REQUIRE APPOINTED SIGN LANGUAGE INTERPRETERS BE CERTIFIED. Require courts to use only certified sign language interpreters?	We note that the Justice Index standard for a “Yes” finding here is above the minimum federal requirement. The DAA requires “qualified interpreters” and the DOJ, citing congressional language, stated, “On review of this issue, the Department has decided against imposing a certification requirement under the ADA. It is sufficient under the ADA that the interpreter be qualified.” The DOJ added that states can impose stricter standards.
4 5 pts.	EXPLAIN ON WEBSITE HOW TO REQUEST ACCOMMODATION. Explain on the state judiciary website how to request an accommodation because of a disability?	Indicators 4 and 6 require explanations or instructions about how to perform the acts of requesting accommodations and filings complaints, respectively. The ideal source for these indicators to justify a “Yes” finding would be statewide forms with instructions as to what information must be provided and what to do with the form. As support for Indicators 4 and 6, we received some webpages listing only the ADA liaison for each county. These sources were typically not sufficient for Indicators 4 and 6. Nevertheless, they were likely sufficient for a “Yes” finding for Indicators 5 and 7, which ask “who” to contact, rather than “how” one makes prepares and submits the request of complaint.
5 1 pt	NAME ON WEBSITE THE CONTACT FOR ACCOMMODATIONS. Provide on the state judiciary website the name and mailing or email address of a person to contact to request an accommodation?	See above
6 5 pts.	EXPLAIN ON WEBSITE HOW TO FILE DISABILITY ACCESS COMPLAINT. Explain on the state judiciary website how to file a complaint about difficulty due to a disability in accessing: a) court facilities, or b) court services?	See above
7 1pts.	NAME ON WEBSITE THE CONTACT FOR DISABILITY ACCESS COMPLAINTS. Provide on the state judiciary website the name and	See above

Q #	Question/Indicator	Additional Explanation/Clarification
	mailing or email address of a person to contact to file a complaint?	
8 5 pts	REQUIRE ACCESS FOR SERVICE ANIMALS. Require courts to allow service animals?	We did not grant credit to responses that cited only the federal statute or provision of the ADA without an accompanying state law or written guidance. For a “Yes” finding, it was sufficient that the state law refer to public accommodations or facilities and not courthouses specifically.
11 5 pts	PROVIDE FOR APPOINTMENT OF COUNSEL AS ACCOMMODATION. Identify the provision of counsel at public expense to litigants with disabilities as a form of reasonable accommodation?	By using the term “reasonable accommodation,” this indicator necessarily implicated the ADA. We recognize that there is mixed legal authority as to whether appointment of counsel would ever actually fall within the ADA, or whether it is excluded as a “service of a personal nature.” We have concluded at this juncture that this is an open legal issue with no definitive federal guidance, and that the indicator refers to what should be considered the best practice.
12 10 pts	RECOGNIZE A RIGHT TO COUNSEL IN INVOLUNTARY COMMITMENT CASES. Provide counsel at public expense in all cases where an indigent person is subject to a petition for involuntary commitment?	<p>Data taken from the National Coalition for a Civil Right to Counsel (“NCCRC”) Status Map, civilrighttocounsel.org/map. A “Yes” finding was made for states designated in the Status Map as having a Categorical Right to Counsel or where the legal authority cited in the Status Map otherwise satisfied the criteria for the Justice Index indicator.</p> <p>The NCCRC Status Map does not include Puerto Rico. For Puerto Rico, NCAJ conducted original research in consultation with Puerto Rico court officials and the NCCRC staff.</p> <p>Please note the following disclaimer from NCCRC’s web site, civilrighttocounsel.org: “No information in the map should be taken as legal advice. Moreover, information in the map is to be taken as-is, with no guarantees of its accuracy. . . . The information in this map is current as of late 2013, and while we add new information as we learn of it, we cannot ensure the information is always to-date.”</p> <p>Finally, information from the NCCRC’s Status Map was taken for the Justice Index on April 5, 2016, and the Justice Index is not intending to update the findings, even if the findings are updated on the Status Map, until such time as the Justice Index is comprehensively updated, which is currently anticipated to occur in 2018.</p>

Q #	Question/Indicator	Additional Explanation/Clarification
<p>13 10 pts</p>	<p>RECOGNIZE A RIGHT TO COUNSEL IN GUARDIANSHIP CASES. Provide counsel at public expense to an indigent proposed ward for all proceedings involving guardianship due to a mental impairment or psychiatric disability?</p>	<p>See above.</p> <p>Note that “guardianship” here refers to cases of alleged mental incapacitation; it does not refer to, <i>e.g.</i>, guardians ad litem for minors.</p>