



Legal Advice or  
Information?

Unrepresented Litigants

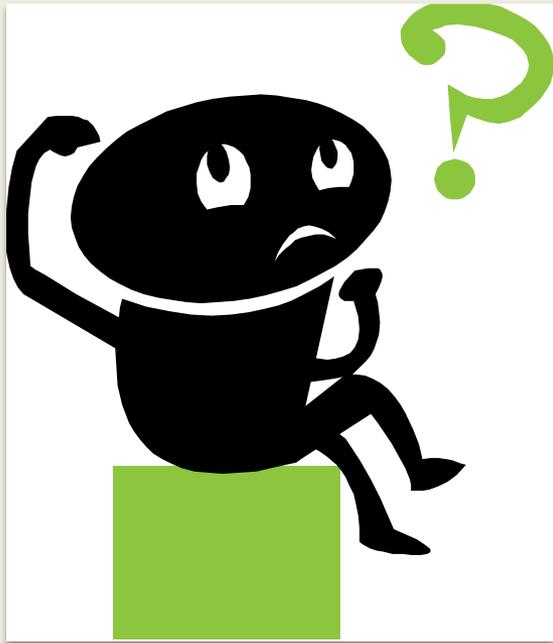
## GOALS for TODAY'S SESSION

- ✓ **Understand** the role of the courts in handling disputes
- ✓ **Review** our duties as court employees
- ✓ **Distinguish** between legal information and legal advice
- ✓ **Learn** how to provide options and legal information to Unrepresented Litigants (“URLs”) without providing legal advice



# VISION FOR TRIAL COURTS IN INDIANA

That the general public and those who use the court system will refer to it as **accessible**, fair, consistent, responsive, free of discrimination, and well-managed.



Pro Se??



Self- Represented?



Unrepresented  
Litigant?

# UNREPRESENTED LITIGANT!!

- Dickson observed,.... “‘Self-represented’ is an oxymoron. They’re going it alone. They’re unrepresented....”

*Indiana Lawyer*, October 23, 2013

# WHY ARE WE TALKING ABOUT THIS?

Court employees – like you & I:

- are vital links between the courts and the public
- provide information to the public about cases, judges, court procedures and other legal concerns

AND.....

Requests for information from the public,  
especially from URLs  
run smack into.....



the long-standing mentality in the courts to  
say little so as to avoid “giving legal advice.”



## DUTIES OF ALL COURT STAFF

- Be fair and neutral
- Provide “Access to the Courts”
- Provide quality customer service
- Provide accurate information
- Follow legal requirements and court policies



## DUTIES OF ALL COURT STAFF

- Be fair and neutral



Fairness – impartiality – is similar to neutrality, but focuses on ***equal treatment of court users.***

Court knowledge must be shared fairly and equally.

# Nice Customers



# Angry Customers



# What does being “neutral” mean?

Neutral =  
not aligned with, supporting, or  
favoring one side or another in a  
dispute

(from thefreedictionary.com)





# Three Branches of Government

In alphabetical order:

- Administrative/Executive
- Judicial
- Legislative

How is the branch that we work for different from the others?



# Three Branches of Government

**Legislative:** makes laws; **advocates** on behalf of constituents

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**Executive:** enforces laws; creates regulations; **advocates** on behalf of clients

(e.g., Police, Attorney General, County Attorney, City Attorney, Public Defender, Probation Officers, etc.)

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**Judicial:** interprets laws & administers justice; provides a forum for resolution of legal disputes;  
**NEUTRAL branch**

*Does NOT advocate for one side over another*



Court staff must remain **neutral**  
and may not:

- show an interest in the outcome of any case  
OR
  - recommend one course of action over another

We are “facilitators” of the legal process.

## DUTIES OF ALL COURT STAFF

- Be fair and neutral
- Provide access to the Courts

# Access to Justice





## ACCESS TO JUSTICE

- Court employees are the “gatekeepers” to the justice system
- We have specialized knowledge that the public both wants and needs
- Access to justice is denied if public doesn’t know how to use the court system and we do not offer assistance.

# Access to Justice Denied



## DUTIES OF ALL COURT STAFF

- Be fair and neutral
- Provide access to the Courts
- Provide quality customer service

# Quality Customer Service

Duty to provide quality customer service to **ALL** court users, including the challenging ones.



Each of our interactions with court users shapes how the public views their court experience and their image of the court.

So, quality customer service **directly** affects “Public Trust & Confidence.”





## EFFECTIVE CUSTOMER SERVICE

- May reduce visits to the courthouse
- Helps reduce stress on the court system, and
- Requires court staff to understand what information they can and cannot provide.

## DUTIES OF ALL COURT STAFF

- Be fair and neutral
- Provide access to the Courts
- Provide quality customer service
- Provide accurate information





Unfortunately, there may not be any clear warning signs to tell someone if they are on the wrong path.



# ACCURATE INFORMATION

We have a duty to provide not just any information, but **accurate** information.

Unrepresented litigants ask a lot of case specific questions. They ask different questions than attorneys do.

If you don't know the answer,

**NEVER guess!**

Even small mistakes can have a major impact on a litigant's case.

## DUTIES OF ALL COURT STAFF

- Be fair and neutral
- Provide access to the Courts
- Provide quality customer service
- Provide accurate information
- Follow legal requirements and court policies

## LIMITATIONS ON THE SERVICE COURT EMPLOYEES CAN PROVIDE

- Rules of Criminal/Civil Procedure and others
- State and Federal Statutes
- Prohibited from giving legal advice (but CAN and SHOULD give “legal information”)

# Legal Information v. Legal Advice

## Legal Information:

Facts describing what the law says and what the legal process involves.

## Legal Advice:

- Applying the law to someone's facts, and/or telling her what she should do to further her best interests.
- Interpreting or analyzing an aspect of a statute, rule or principle.

\*\*\*\*\*

Giving legal advice is a crime if you are not a licensed attorney  
(Indiana Code § 33-43-2-1 )



# LEGAL INFORMATION

- Facts describing what the law says and what the legal process involves.
- Detailing the forms available from the Court's website.
- Outlining the statutes and rules that govern different areas of the law. (e.g. Family law in IN is, for the most part, contained in Title 31 of the Indiana Code)
- Defining legal terms used in documents (e.g. "de novo review")

# LEGAL INFORMATION

## Calculating Service and Filing Deadlines

- You can help court users calculate routine filing deadlines associated with most court hearings.
- Court rules state when weekends and holidays are included and when they are excluded in counting the number of days. Court staff should help court users correctly apply these rules.
- Remember, if you are not sure what the filing deadline is on a particular matter, it is always appropriate to say, “I don’t know.” Then ask the most knowledgeable person in your area to help you assist the customer.



# LEGAL INFORMATION

It IS appropriate for court staff to:

- Explain court rules and procedures
- Give court forms, instructions, handouts, brochures
- Answer questions about **how** to complete forms (but, not suggesting legal arguments or theories)
- Explain terms and documents used in court cases or the purpose of a hearing

# REFRAMING

Listen closely to what the customer is asking.  
Identify the part(s) of the question you can answer.  
Reframe the question.

## Customer:

(shows you a Summons & Complaint)

Someone brought this to my house. It looks like a legal paper but there isn't a case number on it. Has this been filed or is this a scam?



## You:

I can check to see if this has been filed. If you are being sued, I suggest that you get legal advice. ( Listen to see if they are looking for free legal advice, or just a referral). Suggest the a provider from your resource list if seeking legal aid.

## PROVIDING QUALITY CUSTOMER SERVICE WITHOUT GIVING ADVICE

TIP: You usually can't go wrong by asking, "Tell me what you are trying to do and I'll tell you if there are forms and procedures the court has in place to ask for that."

Not sure what you want to do? Consult with an attorney/refer to law library.

No court forms to help you do this? Consult with an attorney/refer to law library.

## PROVIDING QUALITY CUSTOMER SERVICE WITHOUT GIVING ADVICE

Refer customer to a court website/page or other publicly available resource

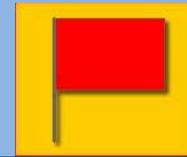
Refer to Self-Service Legal Center website (<http://www.in.gov/judiciary/selfservice>) or to your county's local self-help center.

Refer to lawyer referral programs, legal aid and the local bar association (\*but, not to specific attorneys)

(<http://www.in.gov/judiciary/probono/2333.htm>)

Refer to the local law library

## LEGAL ADVICE RED FLAGS



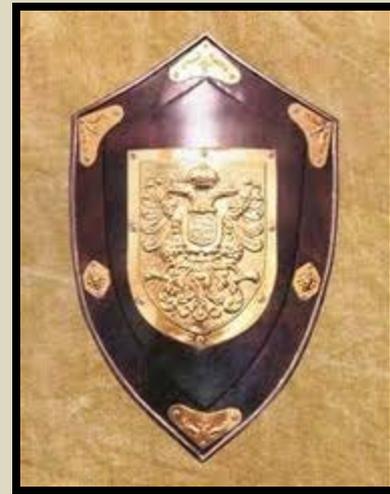
Having in-depth knowledge in an area of law (more than just familiar with basic requirements and court procedures) *NOTE: experienced staff may be more tempted to advise*

Telling a court user what they should do rather than how to do it.

Court user asks questions about whether they *should* choose a specific legal option over another.

Saying something to one party that you would not feel comfortable saying if the opposing party was also there.

DO NOT USE THE  
LEGAL ADVICE SHIELD!



- “I cannot give legal advice” should never be used as an excuse to avoid giving quality customer service.

This phrase alone is not enough: too vague, not helpful, too limiting.

- Follow it with “but I can give you information about court rules and procedures and tell you where you can get legal advice” .....whenever possible.

## Experience Will Build Confidence



- Review any standard forms & instructions, brochures, handouts, etc.
- Review departmental policies and procedures
- Review IN State Court Administration Court websites,  
*\*visit websites regularly to stay current*
- Review your division-specific resources on



# You Can & Should

- Make referrals to the Court’s Self-Service Legal Center
- Direct them to legal aid clinics, pro bono and modest means clinics
- Direct them to services that the local bar may offer, or local county programs.

\*\*\*\*\*

**One of the most important things court staff can do is help a litigant understand when they have a complicated situation and could benefit from even a brief consultation from an attorney.**

Courts & Clerks' Offices

Decisions & Case Records

Agencies & Programs

Education & Outreach

Multimedia & Publications

Forms & Court Rules

Self-Service Legal Center

INDIANA JUDICIAL BRANCH SELF-SERVICE LEGAL CENTER

- Courts Home
- Self-Service Legal Center**
- About
- En Español
- Representing Yourself in Court
- Getting Legal Help
- Court Forms
- Help with Mortgage Foreclosures
- Alternative Dispute Resolution
- Family Legal Resources
- Resources for Legal Research
- Contact Information

Please note that staff cannot offer legal advice.

Indiana Supreme Court  
Division of State Court Administration  
30 S. Meridian St., Suite 500  
Indianapolis, IN 46204

# Going to Small Claims Court without a Lawyer

Video guides with captioning in both Spanish and English

Watch Video »

## Features

Search for case information

Search protection orders

Calculate child support

Apply for a marriage license

Prepare for court checklist

Visit the law library

## Top FAQs I want to...

What kinds of cases can be searched online?

Do I qualify for pro bono?

Is there a way that I can check on the status of my child support case?

How do I establish, change, or modify custody?

Can I get a credit on my child support when I have been giving the custodial parent money directly?

More FAQs »

## Have a Legal Question?



IndianaLegalAnswers.org is a system that allows eligible clients to post legal questions to a private, confidential messaging system. The questions are answered by private attorneys at no cost to the client.

[More about IndianaLegalAnswers.org »](#)

## Self-Service Legal Center



**Representing Yourself in Court**  
What you need to know



**Mediation (Alternative Dispute Resolution)**  
Alternatives to court.



**Getting a Protection Order**  
Resources for requesting an order and getting shelter.



**Getting Legal Help**  
Find a lawyer to take your case at little to no cost if you qualify.



**Court Forms**  
Electronic and printable form packets with instructions.



**Legal Research**  
Links to laws, rules, procedures and other online resources.

Courts & Clerks' Offices

Decisions & Case Records

Agencies & Programs

Education & Outreach

Multimedia & Publications

Forms & Court Rules

Self-Service Legal Center

INDIANA JUDICIAL BRANCH INDIANA PRO BONO COMMISSION

Courts Home

Getting Legal Help

What is Pro Bono?

Find a Legal Aid Provider

Represent Yourself in Court

Request Help with an Appeal

Contact Information

Indiana Pro Bono Commission 615 N Alabama St, Suite 122 Indianapolis, IN 46204

Pho: 317.269.2415

Fax: 317.536.2271

Email: probono@inbf.org

Don't Send Us Confidential Information!

We can't give you legal advice by telephone, email or on the internet! We are not your lawyer. We can only point you to lawyers or programs that may be able to help you.

Find a Legal Aid Provider

For low-cost or no-cost help with your civil case

Get Started



getting legal help

What is Pro Bono?

Pro bono means for the common good. It is a long-standing tradition that lawyers help the defenseless, weak, and oppressed regardless of an ability to pay. Indiana attorneys take an oath to protect all citizens and to... More about Pro Bono >>



FEATURE

Family Matters: Choosing to Represent Yourself in Court

When you represent yourself in any legal matter without assistance from an attorney, it's important to understand your rights and your responsibilities. This video explains the process and helps you understand how to prepare for court... Watch the video >>

Features

Self-Service Legal Center

Indiana Justice Center

Supreme Court Law Library

Top FAQs I want to...

Do I qualify for pro bono?

How do I find pro bono help?

What do I do if I have a criminal matter?

Can a law school help me with my legal needs?

What is pro bono?

More FAQs >

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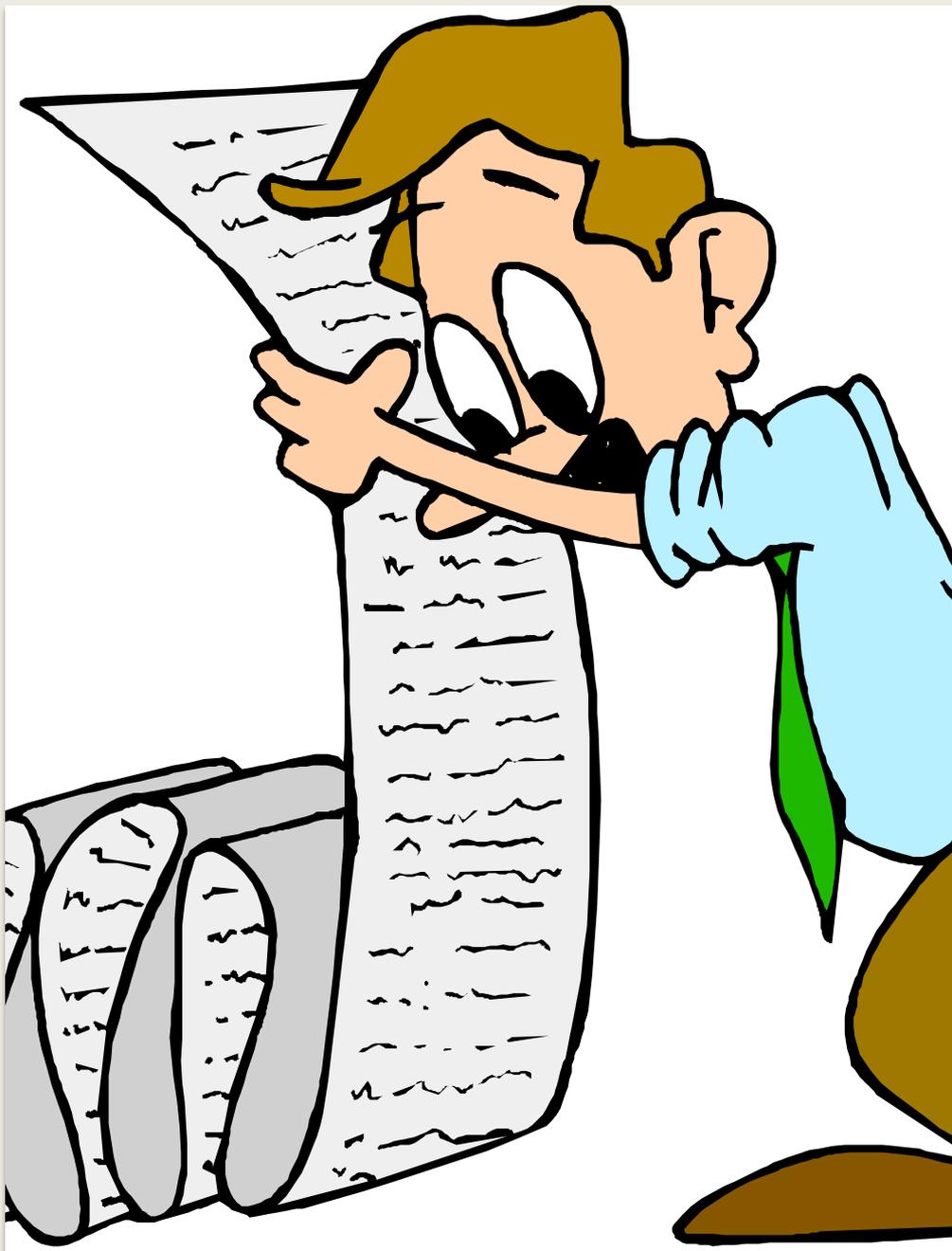
The Indiana Constitution divides state government into three branches: the Legislative, the Executive and the

Business Hours & Holidays

Appellate Courts and offices are open Monday - Friday, 8:30am to 4:30pm. To find out when your local court is open

Services

Help FAQs En Español Press Releases



## RESOURCE LIST

- List contains information on legal providers, and pro bono providers throughout the state.
- This list will be placed on the state court administration website
- We also have it as a handout today

LIMITED ENGLISH  
PROFICIENT (“LEP”)  
INDIVIDUALS

감사합니다 Natick

Danke Ευχαριστίες Dalu

Thank You

Köszönöm

Tack

Grazie Спасибо Dank

Gracias

고맙습니다

谢谢

Merci

Seeé

ありがとう



# BEST PRACTICES

- Language Line
- Certified interpreters
- Family and friends should NOT be used
- We are here to help find interpreters for you from ASL to Punjabi.
- Court grants available
- Court grant reporting



Thank You!!!

Questions?

Contact: Angela Joseph –  
[angela.joseph@courts.in.gov](mailto:angela.joseph@courts.in.gov) or 317-234-3935

Be sure to familiarize yourself with your state  
and local county website so that you can help  
direct others.

[www.courts.in.gov](http://www.courts.in.gov)

# NOTES FOR 2014 COURT STAFF TRAINING JULY, 2014

Ruth D. Reichard, Family Violence Resource Attorney  
Indiana Supreme Court, Division of State Court  
Administration

# What is domestic violence?

“A **pattern** of abusive behavior in any relationship that is used by one partner to gain or maintain **power and control** over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological **actions or threats of actions** that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.”

--U.S. Department of Justice, Office on Violence Against Women

# Domestic violence can happen to anyone

- Regardless of race, age, sexual orientation, religion, or gender.
- Domestic violence affects people of all socioeconomic backgrounds and education levels.
- It happens in both opposite-sex and same-sex relationships.
- It happens whether people are married, living together, or dating.

--U.S. Department of Justice, Office on Violence Against Women

# Domestic & family violence often involves cruelty to animals

- Experts estimate that 48% to 71% of battered women have pets who also have been abused or killed.
- Pet abuse is a significant predictor of who will become a batterer.
- About half the states' protection order laws now also allow for protection of companion animals.

Source: Animal Welfare Institute, "Animals & Family Violence,"  
<https://awionline.org/content/animals-family-violence>

# Intimate partner violence is widespread & lethal

- Nationwide, an average of 3 women a day are killed by a current or former intimate partner.

(Bureau of Justice Statistics, Intimate Partner Violence in the U.S. 1993-2004, 2006)

- 1 in 4 women, and 1 in 9 men in the U.S. are victims of domestic violence at some point in their lives.

(CDC Behavioral Risk Factor Surveillance System Survey 2005)

- Each year, intimate partner violence results in approximately 1,200 deaths and 2 million injuries to women, and nearly 600,000 injuries to men.

(CDC Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence—United States 2005)

# Most domestic violence is not fatal . .

## Latest statistics on nonfatal DV, 2003-2012:

- Domestic violence accounted for 21% of all violent crime.
- Intimate partner violence (15%) accounted for a greater percentage of all violent victimizations than violence committed by immediate family members (4%) or other relatives (2%).
- Most DV was committed by current or former boyfriends or girlfriends.
- Most DV was committed against females (76%) compared to males (24%).
- Most DV happened at or near the victim's home (77%).
- **Only about half (56%)** of incidents by intimate partners and immediate family members were reported to police.
- Intimate partner violence resulted in injuries more often than violence perpetrated by other, non-intimate family members.
- A weapon was involved in 19% of incidents with intimate partners.

Truman and Morgan, *Nonfatal Domestic Violence, 2003-2012*, Bureau of Justice Statistics, April 2014 (NCJ 244697)

# The National Domestic Violence Hotline

- Established in 1996 as part of VAWA
- Available 24/7/365
- 1-800-799-SAFE (7233)
- Can help people in 170 different languages and also via TTY for hearing impaired
- It's free and confidential
- They also do online chatting & text messaging at "loveisrespect"
- How many calls, texts, & chats did it get in 2013?

(<http://www.thehotline.org/year-end-review-2013>)

# 331,078

*The Hotline logged 331, 078 calls, texts, and chats in 2013:*

- **264,415** calls received (that's a call every 2 minutes)
- **55,610** online chats received
- **11,053** texts received

# They had to turn some people away

- 77,484 contacts went unanswered due to a lack of resources.

# A snapshot of **just one day**: September 17, 2013

- State and local hotlines around the country answered over 20,000 calls on that one day.
- The national hotline answered 550 calls that day.
- An average of 14 hotline calls a minute that day.
- Over 36,000 victims stayed in domestic violence shelters or transitional housing that day.
- Over 30,000 adults and children received non-shelter services (counseling, legal help, children's support groups, etc.).

# A snapshot of just one day: September 17, 2013

- On that same day, over 9,600 victims and their children were turned away from services because of a lack of resources.
- 60% of those unmet requests were for housing—emergency shelter and transitional housing.
- There is not enough funding for programs, services, or staff.

(NNEDV, '13 Domestic Violence Counts National Summary)

# What was happening in Indiana on that same day?

- 1,107 victims stayed in shelters or transitional housing.
- 601 adults and children received non-shelter services.
- 581 hotline calls answered.
- 1,817 educated in prevention and education trainings.
- 128 victims were turned away because of a lack of resources (102 requests for housing went unmet).

# How busy are courts in Indiana with family violence cases?

- In **2012**: people seeking protection from family violence, stalking, and sexual violence filed a total **36,313** protection order cases in Indiana courts statewide.
- We have **385 separate courts** issuing these types of orders.
- In **2013**: courts issued **44,194** protection orders
  - 57,102 no-contact orders (not necessarily domestic)
  - 367 workplace violence restraining orders

# Most protection order litigants are *pro se*

*What resources are available to help you help them?*

- Trial Court Administration Manual, Chapter 14:  
<http://www.in.gov/judiciary/admin/2492.htm>
- Protection Order Deskbook:  
<http://www.in.gov/judiciary/center/files/center-bb-po-deskbook.pdf>

# Most protection order litigants are *pro se*

*According to federal law, state courts are not allowed to charge a fee for the filing, issuance, registration, or service of a protection order or a petition for a protection order.*

*Also no fees for subpoenas for witnesses*

*42 CFR §3796gg-5 & 42 CFR §3796hh(c)(4)*

# Address Confidentiality Program (ACP)

- A program run by the Attorney General's office.
- Ind. Code 5-26.5-1 et seq.
- Problem: you need to first get the order (PO, NCO, WVRO) before you can use the ACP as your address for certificates of service, etc.
- It's a Catch-22.
- Solution: partner with your local DV program to use its address for the petitioner's appearance form until the protected person can be enrolled in the ACP.