

In Propria Persona Aid

Mission Statement

In Propria Persona Aid is a legal aid foundation that helps those people who cannot afford an attorney and have found themselves in administrative, criminal, or civil litigation. It is unfortunate; yet nevertheless a fact, that most American citizens cannot afford a lawyer to help them with their legal necessities; denying them equal access and equal protections of the law.

One of the most significant changes in the court system in recent years is the growing number of self-represented litigants. The caseload of most California judges now consists primarily of cases in which at least one party is self-represented. This change offers both opportunities and challenges for judicial officers, highlighting the crucial role that they play in making sure that the self-represented obtain access to justice.

Many judges report that they like handling cases with self-represented litigants because these litigants do not generally engage in legal gamesmanship. These judges find it easier to get quickly to the crux of a matter and to craft creative problem-solving orders for litigants. However, self-represented litigants often have difficulty preparing complete pleadings, meeting procedural requirements, and clearly articulating their cases to the judicial officer.

These difficulties produce both obvious and subtle challenges. Many innovative solutions exist to help litigants draft adequate pleadings and prepare for hearings. Yet, these solutions cannot completely substitute for the three years of law school and the experience that lawyers bring to the courtroom. Until recently, there has been little guidance for judges on how to meet the challenges of ensuring access to justice for all litigants while running an efficient calendar.¹

Self-Represented Litigants: Who Are They and What Do They Face When They Come to Court?

Many judges have expectations about who self-represented litigants are, why they do not have lawyers, what they want from the court, and how they will behave. These expectations play a powerful role in how the courts treat people who represent themselves. While many of these expectations come from experience, some may result from particularly dramatic or intense cases and may not reflect the complex reality of the millions who represent themselves in court each year. The follow explanations provide judges context on the reason's litigants self-represent as well as the difficulties self-represented litigants face in court.

- “I can’t afford a lawyer”.
- “Lawyers will make it worse”; or
- “My case is simple enough to handle on my own.”

These reasons for not having a lawyer reflect economic and social trends and are not likely to change anytime soon. Nearly 70 percent of the 450,000 people each year who use self-help programs in California earn less than \$2,000 per month and nearly 85 percent make less than \$3,000 per month.

The majority are working and raising families. Given the high price of hiring a lawyer, even individuals with large incomes are likely to find that the cost of counsel represents a substantial burden that can have long-term impacts on family financial stability.

For example, four in 10 adults, if faced with an unexpected expense of \$400, would either not be able to cover it or would cover it by selling something or borrowing money. Over one-fourth of adults skipped necessary medical care in 2017 because they were unable to afford the cost.

Through 2024, the largest number of job openings will be primarily in low-wage occupations, such as personal care and home health aides, nursing assistants, retail salespersons, and food preparation and service workers. In fact, 5 of the top 10 occupations expected to add the most jobs during this period pay a median hourly wage of less than \$12, equivalent to an annual salary of \$24,960 for full-time, year-round work.

This will likely result in more, rather than fewer, self-represented litigants. Legal services programs are unable to meet the need for representation. The State Bar of California reports that the ratio of potential low-income clients to legal aid attorneys in California is more than 7,500 to 1.¹

Legal needs studies indicate that 86 percent of civil legal problems reported by people with low income received inadequate or no legal help. Dr. Rebecca Sandefur has conducted extensive research into how and if individuals address legal challenges. In a study for the American Bar Foundation; she found that only 11 percent of civil legal issues she identified ever came to the attention of a court or lawyer.

Interestingly, she determined that most civil legal problems are attributed to “bad luck” and the individual never seeks legal assistance. There are a small number of self-

¹ [supfinalreport.pdf](#), a manual prepared by John. M. Greacen, Greacen Associates, LLC, for the Administrative Office of the Courts.

² Board of Governors of the Federal Reserve System, Report on the Economic Well-being of U.S. Households in 2017 (May 2018) <https://www.federalreserve.gov/publications/files/2017-report-economic-well-beingus-households-201805.pdf>

³ Bureau of Labor Statistics, Occupational Outlook Handbook (Dec. 2015), www.bls.gov/ooh/most-new-jobs.htm.

represented litigants who could afford an attorney (possibly by making some significant sacrifice) but still choose not to hire one. They are part of a larger do-it-yourself social movement to forgo various professional services, including real estate brokers, investment advisors, doctors, and lawyers.

However, finances often play a major part in this decision. Many attorneys report that they would not be able to afford themselves if they had a serious legal problem – even judges report that they could not afford many of the attorneys who appear before them. Judges must be aware that the “choice” not to have a lawyer is generally not a choice that litigants wish to make, but that litigants are simply trying to take care of problems in their lives in the best way that they can. Most likely, an attorney is simply not available to them as they fall into the “gap” between legal aid financial eligibility and not making enough to afford a private attorney.

“I am handling a case where the parties really need an attorney to help them out. They keep coming to court, and I keep telling them that they need a lawyer. I finally realized that the only way they will be able to get a lawyer is if I come up with the \$5,000 retainer.”

Family law judge

Not Enough Attorneys

Because self-represented litigants do not have attorneys to interpret the “foreign” language of the courtroom, to explain the process and to screen for and remedy problems that may occur, judges are faced with special challenges. Historically, limited resources have been allocated to family, small claims, misdemeanor, traffic, and eviction cases, resulting in high-volume dockets.

These dockets in turn create heavy workloads for judges allowing little time for litigants to present their cases. When judges feel that they have insufficient time to listen and get the facts they need to decide, their jobs become more stressful. This stress, in turn, leads to job dissatisfaction and potentially less than optimum case outcomes.

The experience of self-represented litigants in our courthouses and courtrooms is often similar. People representing themselves often find it extremely difficult to understand the words used in the courtroom, particularly when the judge and staff use Latin or French terms that lawyers and others such as experts rely on as legal shorthand.

This is even more complicated for those who do not speak English as their first language and who come from different cultures. An obvious example is “pro per,” an abbreviation for the Latin phrase “in propria persona,” meaning appearing on one’s own behalf, which is often used in California trial courts. In fact, it has been said that “many pro pers do not even know that that is what they are.”

The Complexity of the Clerk's Office

Litigants often find themselves in court clerks' offices that are confusing and crowded with lawyers and litigants wanting information and assistance with filling out forms, as well as performing the traditional filing tasks. Self-represented litigants often pose challenges for court clerks. When filing their case, required forms are often missing or incomplete. They often do not know that filing fees are required or that there is a process to seek a fee waiver if the litigant cannot afford the filing fees. The litigants often need more help than the clerks can give them due to the time pressures that clerks face to keep the lines moving to serve other litigants and attorneys within a reasonable period. Also, in the past, clerks were explicitly trained to never answer any questions from the public. Such assistance was perceived as violating

The court's neutrality or as the unauthorized practice of law.

Litigants therefore frequently find their paperwork being refused as "inappropriate" or "incomplete", but are given no help to correct it, no explanation of the problem or how to fix it, and no referral to someone who could help. Often litigants must return to the clerk's office multiple times before their forms are finally completed correctly and accepted for filing. These multiple visits to the clerk's office are not only frustrating for the litigants, but they also create added burdens for already overworked court staff. To address this frustration, today court staff is educated on what assistance court staff can and cannot provide to the public.²

Problems with Service

As every judge and attorney knows, to obtain a court order not only must the litigant file a request of the court, but the litigant—not the court—is also responsible for seeing that the papers are properly served on the opposing party. When litigants appear for their hearing without having successfully accomplished effective service or without a completed proof of service, the case may be postponed, or worse, dismissed.

This causes distress and hardship to litigants, delays their ability to enforce important rights, and wastes valuable time for both the litigants and the court. The often-complex set of service requirements has been a major obstacle to self-represented litigants and a major source of delay for the courts for several reasons:

1. Litigants may not understand that they cannot serve the papers themselves on the opposing party.
2. Litigants may not be able to physically locate the other party that they are required to serve.

² See Judicial Council of Cal., *May I Help You? Legal Advice vs. Legal Information: A Resource Guide for Court Clerks* (2003), www.courts.ca.gov/documents/mayihelpyou.pdf.

3. Litigants may not know that person that effected service must fully fill out the proof of service form and that the written proof must be presented to the court before most orders can be made.

4. Litigants, or the individual that performed the service, may have filled out the required proof of service form incorrectly.

5. Litigants are often unaware of the alternative service methods available, what those complex alternatives require, or how to make use of them. (How many judges or lawyers have tried to summarize the laws governing service in a few simple sentences?)

Legal Requirements That Are Unfamiliar and Confusing

Most legal cases involve technical and sometimes superficially counterintuitive requirements that are confusing—even to lawyers with limited experience in a subject matter. Notice and service requirements are a good example. In family law, if a party wants ex parte temporary orders such as restraining orders, the motion is filed first, the judge signs the temporary orders, and the orders are then served on the other party. However, if non-emergency orders are sought, the other party can be served before or after the request for order is filed if the party gets adequate notice of the hearing date.

Self-represented litigants are often not aware of the service distinction between requests for emergency and non-emergency orders. There are many examples of court procedures that confuse self-represented litigants. As a result, litigants often fail to complete and file the proper documents or follow proper procedures. Failure to fully complete or file documents or follow procedure results in additional delays and frustration for both the litigants and the court.

In a San Diego study on why self-represented litigants hadn't finished their divorce cases after five months, 60 percent of such litigants either did not realize that there was anything more that they had to do or just did not know what to do. Nearly 20 percent were waiting to hear from the court before taking any further action.³ These statistics highlight the importance of case management to assist the litigant in finalizing their case.

Procedural Rules That Vary Between Types of Cases and By Location

California procedural rules in family cases require the parties to request a hearing for the case to move forward. The court does not routinely schedule such hearings on its own initiative. Many self-represented litigants are completely unaware of this requirement, which is inconsistent with other types of cases, such as those in traffic court where the court or law enforcement schedules the hearing date. This can be particularly confusing if litigants have had experience in other types of cases, such as

³ Greacen Associates, LLC, Developing Effective Practices in Family Law Case Flow Management (Administrative Office of the Courts, Center for Families, Children & the Courts, Oct 2005), p. 25.

traffic, small claims, juvenile dependency, or domestic violence, in which the court takes a more active role in setting hearings and managing the cases.

Additionally, each separate county's procedures may be slightly different. Thus, a litigant's experience or information from one county may, or may not be accurate in a different county. Many attorneys have been caught by these differences as in this as well. Each county has procedural rules that were developed over time. Further, each county may have unwritten cultural norms that are followed by the bench and bar but are not easily discernable from the written rules.

Finally, the expectations and procedures for the litigants may vary from courtroom to courtroom within each county. Each of these differences cause uncertainty in litigants as they prepare their presentations for court.

Overcrowded Dockets

All too often, cases with self-represented litigants are handled on highly crowded dockets. Time constraints and evidentiary issues can prevent litigants from communicating sufficiently, clearly, and comprehensively with the judge. Litigants often do not understand what information the judge needs to decide on a given issue and therefore often take court time asking judges and courtroom staff to explain legal terms and procedures.

Frustration for both litigant and judge occurs when a self-represented party insists, often in good faith, on giving lengthy explanations about matters that the litigant does not realize are irrelevant as a matter of law to the issue at hand. Courts Often Do Not Prepare an Order After a Hearing Each time there is a hearing in a case where the judge makes an order, the order needs to be memorialized in writing. It is usually the attorney's responsibility to prepare the written order after hearing.

Self-represented litigants often do not know that this is required, let alone how to prepare such orders in a manner acceptable to the court 1-9 and to law enforcement. As a result, they leave without written orders and the court's order is left to unreliable memory rendering it effectively unenforceable.

If a court order is unenforceable, not only is the legitimacy of and confidence in the legal system severely damaged, even more controversy can arise between the litigants because they are uncertain what the orders are. Without a written order, it is extremely difficult for litigants to be fully aware of their rights and responsibilities arising from the court's decision.

Additionally, lack of a written order leaves the court file with only an abbreviated minute order for the judge to refer to when reviewing the file for future hearings. Because self-represented litigants do not realize that they are generally required to prepare a proposed order or judgment for the court's review and signature, a written order may never exist.

Alternatively, the judgment paperwork will be inaccurate or incomplete and returned to the submitting litigant repeatedly before final judgment is eventually, if ever, entered. Often, the lack of an order does not come to the court's attention until there is a crisis and the order must be enforced. Alternatively, the court may be forced to modify a prior order without the benefit of agreement as to what the prior order was.

Cases Can Be Dismissed Because Litigants Did Not Know They Had to Take Additional Steps to Finalize the Case

When self-represented litigants fail to take the necessary steps to complete their cases, the law deems them abandoned and the court must dismiss such cases on the grounds of "lack of prosecution." As many as one-third of all family law files from the 1980s prepared for archiving in one California trial court lack a final judgment, which can obviously have serious consequences for the litigants and their children.

Lack of Understanding of Orders and Judgments and How to Enforce Them

Litigants often do not understand the terms of the court's orders and judgments. Without an attorney, they have no one to help them interpret those terms or their implications. Moreover, litigants often lack an understanding of the legal mechanisms for enforcing the terms of a court's judgment.

Many expect the court to enforce its orders on its own. If the other party does not comply voluntarily, they are at a loss as to how to proceed. Frequently the sole method of enforcement is through a contempt action.

Even the most seasoned attorney may have difficulty proving a contempt action. Absent a clear, written order, a self-represented litigant has a virtually impossible task in enforcing the order that they sought and undoubtedly rely on.

Language Barriers California is home to millions of residents who speak English "less than very well."

While most non-English speakers in California speak Spanish, there are at least 200 distinct languages spoken in the state. Most courts are now able to offer an interpreter in civil cases; however, that assistance is often limited to the courtroom, and most signage, instructions, and self-help guidance is still in English.

Limited English proficiency can pose barriers to communication in the courtroom and to a full understanding of legal rights and procedures. Litigants with limited English proficiency often struggle to navigate and understand the court system and cannot fully participate in hearings and trials.

Family members and friends who may be enlisted to assist might or might not have adequate language skills, especially when it comes to legal terminology, or may have conflicts of interest that make the translation unreliable. Litigants who do not know what they or the other parties were ordered to do, or why they were ordered to do it, are

likely to fail to comply with the order. They could then be violating a court order without intending to do so, with serious consequences.

Disabilities

Approximately 10 percent of the state population reports having a disability that negatively impacts court participation. In addition to disabilities making physical access to the courtroom a challenge, some litigants also have auditory or visual impairments, developmental disabilities, communication disabilities or processing issues. All of these may cause challenges for self-represented litigants who may not seek ADA or other accommodations. The judicial officer must be mindful of these various disabilities in handling the calendar.

Conclusion

Generally, self-represented litigants do not desire to be without lawyers. They want to comply with court rules and procedures, but they face a wide and complicated variety of barriers to access. This information should be the guiding approach of the court's, judges, and court staff to make sure that the legal system is accessible to everyone.

The citizens of a state should not bare legal discrimination because of an unequal monetary ability to afford an attorney. They should not forgo the disqualification of their efforts to defend or exercise their rights to equal justice and equal protection under the law because of their income. We at In Propria Persona Aid believe that the wealthy do not own the law and the poor should have equal legal support in their efforts to have their problems heard and equally judged in a court of law.

Thousands of paralegals are out of work; not hired because boutique law firms cannot afford them or unable to pay them a decent wage. Legal assistants should not be forced not to use their skills by the current unjust laws. It is not fair for them to forgo their degrees and careers that they have studied for, paid money for, and are still paying student loans on because they have not been hired by an attorney when they could be helping the underprivileged.

ⁱ JUDICIAL COUNCIL OF CALIFORNIA CHIEF JUSTICE TANI G. CANTIL-SAKAUYE Chair, Judicial Council MARTIN HOSHINO Administrative Director MILLICENT TIDWELL Chief Deputy Director, 2019