

**IN THIS ISSUE:**

**Recent Developments  
In Self-Represented  
Litigation**

Courts confront a revolution in the way people access, consume, and communicate information. Today, they are more likely to consult the Internet for legal help and expect information and forms to be available on court Web sites. In addition, more people “do it themselves”—frequent do-it-yourself home repair stores, make their own travel reservations—so it shouldn’t be surprising that the number of self-represented litigants is rising, especially in cases that don’t seem complicated to the litigant or where the cost of a lawyer outweighs the amount at stake.

While the focus in recent decades has been on efficiently moving cases through the courts, trends in self-represented litigation indicate that effective methods may need to include strategies that accommodate the self-represented. Processes and models are needed to help them understand how the courts work and manage progress through the system.

Because successful and accessible courts of the future face this challenge, *Civil Action* examines recent work in self-represented litigation of interest to our court and community readers.

# Civil Action

**A publication of the National Center for State Courts  
highlighting aspects of its Civil Justice Reform Initiative**



## Access to Justice:

### Meeting the Needs of Self-Represented Litigants

Paula Hannaford-Agor  
NCSC Principal Court Research Consultant

The National Center for State Courts and the Chicago-Kent College of Law Institute of Design conducted a project examining court processes and recommending modifications to eliminate or reduce procedural barriers to access for self-represented litigants. Funding was provided by the State Justice Institute, the Open Society Institute, the Center for Access to the Courts Through Technology, and the Pritzker/Galven Match of the Illinois Institute of Technology.

The study’s first phase provided essential background information about the barriers to access that the self-represented face. The barriers are of three discrete types.

#### **3 Types of Barriers for Self-Represented Litigants**

1. Scarcity of affordable legal services

Many self-represented litigants proceed without a lawyer because they simply lack sufficient income to

afford one. In surveys conducted at four of the project sites, the proportion of self-represented litigants who reported that they could not afford a lawyer ranged between 40% in the Delaware Family Court to 73% in Colorado’s 20th Judicial District Court. Moreover, many cases filed by self-represented litigants involve only small amounts of money, making it difficult to find lawyers willing to take the case on a contingency basis.

2. Inherent complexity of the court system and poor quality of information about the courts

Courts have established a multitude of procedures intended both to preserve the rights of litigants and to manage the courts’ caseload efficiently. However, they have accumulated in ways that are internally inconsistent or that obscure their underlying purpose, and many procedures carry on long after the conditions that led to their establishment have disappeared.

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Indeed, the court system is so complex that the court itself sometimes provides inaccurate or inconsistent information.

Exacerbating the situation is the fact that procedures can vary tremendously from jurisdiction to jurisdiction, from court to court, and even from judge to judge. Thus, information that a self-represented litigant obtains about one court cannot necessarily be relied upon when dealing with another court.

The justice system suffers from widespread distrust and low levels of public confidence. Self-represented litigants who are disenchanted and cynical about the justice system are less likely to avail themselves of information, advice, and help they consider suspect, and are more likely to try to make their own way through the legal system. The courts seem even more intimidating for litigants from diverse cultural backgrounds who lack fluency in English.

### 3. Restrictions on litigants' ability to access the justice system effectively

Certainly a major barrier is the litigants' lack of knowledge about the court system. Neither public education nor the media provide citizens with an accurate understanding of how the courts work.

Many self-represented litigants begin the process with highly unrealistic expectations about what will happen during their case, especially the amount of time and resources that may be necessary. Litigants with heavy employment or family commitments often find it difficult to dedicate enough time to prepare their case or find out what will be required of them, especially if getting to the courthouse to acquire information is difficult due to distance or lack of transportation.

### **A System to Reduce Barriers: A2J**

Based on these insights, researchers and students developed a conceptual design for 53 individual ideas or "system elements" in a single, integrated system, called the "Access to Justice System" or the "A2J System."

The National Center for State Courts and the Chicago-Kent College of Law are identifying a handful of courts willing to implement components of the A2J System.

### **CCJ/COSCA Initiatives on Self-Represented Litigation**

The Conference of State Justices and the Conference of State Court Administrators discussed self-represented litigation at their 2002 Annual Meeting in Rockport, Maine.

- CCJ and COSCA members listened to presentations by Chief Justice Margaret H. Marshall (Massachusetts Supreme Judicial Court), joint CCJ/COSCA Task Force on *Pro Se* Litigation; William Hornsby, American Bar Association; and Randi Youells, Legal Services Corporation. A panel discussion with national experts on developing and implementing self-help initiatives followed.
- In a final report, the CCJ/COSCA Task Force outlined existing knowledge on the topic, identified promising initiatives, and made recommendations to support and encourage efforts to improve access for self-represented litigants. The report is located at [www.ncsconline.org/WC/Publications/Res\\_ProSe\\_FinalReportProSeTaskForcePub.pdf](http://www.ncsconline.org/WC/Publications/Res_ProSe_FinalReportProSeTaskForcePub.pdf).
- CCJ and COSCA approved a resolution affirming the obligation of state courts to ensure that all litigants have meaningful access to the courts regardless of their representation and urged members to take a leadership role in their jurisdictions to encourage the expansion of *pro se* assistance programs. The resolution is available at [ccj.ncsc.dni.us/resol31AsstPgmsSlfLitigants.html](http://ccj.ncsc.dni.us/resol31AsstPgmsSlfLitigants.html).

### **Internet Clearinghouse for Information on Self-Help Programs**

The Self-Help Practitioners Resource Center addresses the pressing need identified by courts, legal services organizations, private bar associations, and community agencies to provide better access to justice for self-represented litigants. The Resource Center provides news and information about upcoming events and an online library of resources. Project collaborators include the American Judicature Society, the Legal Services Corporation, the NCSC, Pro Bono.Net, the State Justice Institute, and Zorza Associates. The Web site is located at [www.probono.net/areas/library.cfm?Area\\_ID=13&geographic\\_area=NY](http://www.probono.net/areas/library.cfm?Area_ID=13&geographic_area=NY).

**Paula L. Hannaford-Agor**, a staff attorney and Principal Court Research Consultant with the Research Division, joined NCSC in May 1993. Her areas of expertise include access to justice for *pro se* litigants; jury system management and trial procedure; management of complex litigation; legal and judicial ethics and discipline; state-federal jurisdiction; and probate and guardianship procedures.

In the area of access to justice for *pro se* litigants, Ms. Hannaford-Agor is the director of several NCSC projects and initiatives, including:

A research project to examine court procedures using systems-planning methodologies to identify and remove systemic barriers for self-represented litigants.

A series of Internet workshops for judges, court staff, Legal Aid/Legal Services and private bar lawyers, and community representatives to showcase successful models of collaborative *pro se* assistance programs.

The development of reliable measurement criteria for a variety of aspects of *pro se* litigation, such as impact on court resources, outcomes, and litigant satisfaction.

Staff support for a Joint Task Force on *Pro Se* Litigation of the Conference of Chief Justices and the Conference of State Court Administrators.

## A Profile of Self-Represented Litigants

The Access to Justice study relied on data and surveys from courtrooms, filing counters, or self-help centers in five jurisdictions across the country. It found that self-represented litigants were primarily 25 to 44 years old, had a high school degree or some college, and, with one exception, were female. Their racial and ethnic mix reflected the demography of the jurisdiction.

The primary reasons given for self-representation were expense and simple nature of the case. Large percentages (23% to 41%) reported that they had received help from a lawyer or clinic. Significant percentages reported that they had obtained information from court staff (15% to 36%).

Other observations were:

- in one small-claims court, 43% of cases resulted in a plaintiff judgment (1/3 from defaults), 22% were settled, 22% were dismissed, and 9% were defendant judgments
- in one domestic relations court, it appeared that motions were dismissed twice as often in cases with two self-represented litigants than they were in cases with two lawyers
- in some but not all of the jurisdictions, it appeared that self-represented litigants were at a consistent disadvantage if the other side was represented

## New Publication

### The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers

What can courts do to ease the trials of self-represented litigants and court staff? How can court staff avoid crossing the line that divides administrative from “legal” advice? Dr. Richard Zorza takes up these and other topics in *The Self-Help Friendly Court*, a new publication of the National Center for State Courts.

“This work is a first effort to shape a comprehensive and integrated response to that challenge,” writes Dr. Zorza. “Its suggestions offer a comprehensive vision, a vision of how a courthouse, courtroom, court team, and court processes could be planned together from the ground up to provide simple, open, and affordable justice to all.”

Six sections take up the challenges courts must face in helping litigants without lawyers.

- “Visions, Barriers, and Approaches” discusses the overall concept of the self-help court.
- “Redesigning the Physical and Technological Environment” takes up how to design the actual courthouse and use technology to aid self-represented litigants.
- “Rethinking the Process Step-by-Step” guides courts on how to help litigants from the moment they enter the courthouse through the

enforcement of the final judgment.

- “Meeting the Needs of Uncontested and ‘Mixed’ Cases” describes simple procedures for handling truly uncontested cases and techniques for judges to use when one side has an attorney and one does not.
- “Building a Broad Self-Help Court Team” discusses how to select and train judges and support personnel to operate a self-help court and how to work with community and advocacy organizations.
- “Perspectives for the Long View” takes up the relationship between substantive law itself and any attempts to assist self-represented litigants.
- An “Afterword” proposes the creation of a “Court Research Laboratory,” which would be housed in a working court, for testing the value of proposed innovations in serving litigants.

“The trick,” writes Zorza, “. . . is to build every component of the court, and the underlying processes and law, so that the whole process is helpful and open to all litigants. Then . . . the help seems neither unfair nor arbitrary; rather, it is just the way things should and do work.”

*The Self-Help Friendly Court*, was written by Richard Zorza and published by NCSC with funding from the State Justice Institute and the Open Society Institute. A limited number of copies are available and may be ordered by contacting the Research Division of NCSC at (800) 616-6109 or by e-mail at [zorza@ncsc.dni.us](mailto:zorza@ncsc.dni.us).

## Update on Judicial Selection Reform

Lessons learned from the Symposium on Judicial Campaign Conduct and the First Amendment have been organized by the Symposium steering committee in “The Way Forward” and can be read in the 2002 *Indiana Law Review* (Vol. 35, No. 3) and on the Web at [www.in.gov/judicial](http://www.in.gov/judicial).

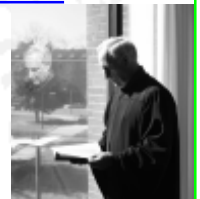
The four guiding principles and eight recommendations provide a roadmap to constitutionally permissible opportunities to improve judicial election campaigns. The principles include:

- Judicial elections are different from other elections because of the differences between the role of judges and the role of elected officials.
- There is a compelling need to ensure that judicial campaigns remain different.
- That some judicial campaign speech can and should be regulated does not mean that all can or should be regulated.
- Efforts to ensure that judicial campaigns remain different depend

ultimately on the success of steps to ensure candidate professionalism and to strengthen the norms and culture that enable judicial elections to fulfill their proper role in the balance of electoral accountability and judicial independence.

The steering committee viewed the principles and recommendations as consistent with Symposium participant views, although some dissent was acknowledged.

NCSC has established two independent national ad hoc advisory committees to offer states and localities information and advice during the 2002 judicial elections. The Judicial Conduct Committee helps to create and operate judicial campaign conduct committees that monitor campaigns. The Judicial Election Law Committee analyzes the implications of the recent U.S. Supreme Court’s *White* decisions and other developments. For more information visit [www.ncsonline.org/Projects\\_Initiatives/CJRI/index.htm](http://www.ncsonline.org/Projects_Initiatives/CJRI/index.htm).



## Self-Represented Litigants and Court and Legal Services Responses to Their Needs, What We Know

From a Report Prepared by John M. Greacen for the Center for Families, Children & the Courts,  
California Administrative Office of the Courts

While there is general agreement that we are experiencing an explosion in the number of unrepresented persons appearing in the courts of this country, Greacen's study recommends research and evaluation to support the development of future self-help programs. He has analyzed what we do know about the self-represented at this time in order to assist other researchers to reach conclusions about the success of self-help programs.

Research and evaluation suggests that:

- Many self-represented litigants appear in domestic relations and domestic violence matters but it is unclear whether their number has increased as a percentage of the total. Unrepresented litigation in landlord/tenant matters, though, does appear to be a more serious matter for limited jurisdiction courts.
- Unrepresented cases may or may not take longer to move

through the system, but they are less likely to require a hearing or trial.

- Although a large number of people use self-help centers and court staff appreciate the programs, they only serve a fraction of potential users.
- Self-represented litigants who use centers appreciate the service and their understanding of the system is improved, thereby allowing more realistic expectations.
- The courts face obstacles in obtaining data and it is difficult to follow up with the self-represented.

John Greacen spoke on the topic of serving self-represented litigants at the 17th Annual National Association for Court Management conference where he offered the California state self-help Web site and the I-CAN! Interactive Community Assistance Networks as "best practice" examples.



### **The Civil Justice Reform Initiative**

The National Center for State Courts launched its Civil Justice Reform Initiative to set the agenda for civil justice reform in the new millennium. In this ambitious, multiyear effort, NCSC has undertaken a series of projects to examine best practices in civil case management, including review of discovery, case settlement, and trial practices. The CJRI Projects include studies of how complex litigation procedure—including mass tort and class actions—can be improved and how technology can be used to reengineer and simplify civil court processes. Other projects seek to promote confidence in the state judiciary through judicial election system reform and expansion of judicial performance evaluation processes. NCSC will also continue its already substantial jury reform activities and use of Internet technologies to address contemporary issues of science and the law. Please visit [www.ncsconline.org](http://www.ncsconline.org), and click on Projects and Initiatives or Research for more information.



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