

Access to Justice: *Pro Se Litigation in Indiana*

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The increase in cases with self represented litigants has resulted in the need for programs that provide them with access to justice and enable the courts to accommodate these individuals. A common misconception of organizations that assist the self represented is that they encourage litigants to pursue cases by means of the pro se process. We understand that legal services “have become more of a necessity and less of a luxury when compared to the past”.ⁱ For many litigants affording appropriate representation is economically impossible. It is for this reason that courts provide assistance to pro se individuals so that they will have access to the same kind of justice as the represented. In order to prevent justice from becoming a commodity, courts have made strides towards helping pro se litigants become better prepared to enter the courtroom. Many people question pro se litigation and feel that the burdens associated with it make it a pending disaster. In order to find out how these burdens have affected the judicial system I conducted a survey of judges across the State of Indiana. Of the 300 surveys sent the response rate was 76%. Questions centered around one key issue. Is it an appropriate function of the courts to provide assistance to pro se litigants? In addition, the survey defined specific problem areas and possible solutions to these issues.

A major concern of critics of pro se litigation is that “even with the assistance currently given, pro se litigants still may not have meaningful access to the courts”.ⁱⁱ By providing access, many times a court provides a litigant with the appropriate forms containing rudimentary directions. With no legal education these individuals are expected to complete sometimes complicated paper work. "Pro se litigants are almost unanimously ill equipped to encounter the complexities of the judicial system."ⁱⁱⁱ

Slightly over 88% of the judges surveyed believed that the extent to which litigants committed procedural errors was a problem for pro se litigation. Before the individual has even entered the courtroom their case may have already been lost because of a mistake in the paperwork. As a result of the litigants lack of understanding, the court staff is often placed in the position of having to provide legal information without crossing the boundary of legal advice. This gray area between information and advice is also a problem according to the majority of judges. There is an undeniable problem with the ability of litigants to perform the necessary requirements to handle a case in court. The main challenge to judges and to justice itself occurs once the pro se litigant enters the courtroom.

Although a majority of judges responded that remaining impartial in pro se cases was not a problem, one third of respondents felt that it was a problem. This is mainly an issue when one side of the case is represented and the other is not. The fundamental problem is that pro se litigants do not understand or are not aware of rules of civil procedure or evidence. Many respondents admitted to a bend, but do not break mentality towards the rules governing how much assistance one can provide from the bench. Even more admitted to unconsciously becoming an advocate for the pro se litigant. Some believe that pro se litigation is asking courts and their staffs to leave their traditional roles and become “negotiators, facilitators, teachers, and representatives”.^{iv}

A major disservice for pro se litigants is having high expectations for the courts when first filing a case. They must understand that the arena that they are entering is one which requires individuals to pass ethics and bar exams. We require individuals to

obtain certain professional degrees. They have to understand that there are rules that govern procedure and there are limits placed on the roles of certain individuals. It is unfair to the judicial system for a pro se litigant to feel that they received substandard justice when they commit so many errors. The majority of judges in the survey believed the justice they administer is quite standard. The more accurate statement would be that they received substandard representation.

Is it an appropriate function for courts to provide assistance to pro se litigants in order to achieve access to justice? This is the fundamental question that this survey hoped to answer. 54.4% of judges surveyed believed that this is an appropriate function of the courts. Many referred to pro se litigation as a necessary evil. They believed it to be necessary, but there seems to be an uncertainty of whether the benefits outweigh the problems that it creates. I am confident that if we can find a way to reduce the strain that it places on the courts, pro se litigation would be more highly regarded. The survey yielded many recommendations for improvements. The system needs limits placed on the type of case that can be done pro se. “Do surgeons operate on themselves? Do dentists pull their own teeth? Why do we think that pro se litigation is some wonderful idea?”^v People do not perform major operations such as open heart surgery on themselves. However, they do perform minor procedures such as removing splinters. The same principle should be applied to pro se litigation. There are many case types that are way over the heads of these individuals and attempting to tackle one is a mistake. There are also case types such as dissolutions involving children that should not be handled by pro se litigants. These cases have far reaching implications that affect

individuals other than themselves. The cases that pro se litigants are allowed to handle should be limited to simple small claims matters or any uncontested issues. In these cases efforts should be made to settle the matters outside of the courtroom before they have to appear in front of a judge. The use of mediation in small claims reduces the stress placed on the court.

Education is another important issue that can aid in improving pro se litigation. The courtroom is no place for a crash course in civil procedure or the rules of evidence. Pressure must be placed on secondary education systems to educate students on how the legal system operates. We cannot expect a high school to provide students with a complete legal education, but the curriculum should include a basic teaching of how the legal system works. High school government classes could be utilized to teach how cases are adjudicated. This coupled with videos that are available through public libraries and community legal aide services can be of enormous value in educating the public. Integration of community self-help services and programs are important to successful pro se litigation. The small services that various offices provide can be even more powerful when they build upon one another.

Invariably, court staff and clerks are going to be asked questions by pro se litigants. Staff training must be used more effectively. The court staff should be educated on how to field questions to a higher degree than what they are at the present time. Currently, a popular response to many pro se related questions is to refer the litigant to the state website or pamphlets full of instructions. The internet is valuable for dealing with some issues, but it cannot answer every question. The availability of forms

on the internet has had positive effects according to the judges. The only negative responses were concerned with litigants not filling the forms out correctly. A convenient place to find help is in the court offices. Unfortunately, this is asking court staff to take on additional tasks and roles in an already hectic atmosphere.

It is interesting to look at the components that go into successful pro se litigation. The public places the entire burden of administering justice on the shoulders of the judge. In reality justice is achieved when each actor in the system performs his or her role to the best of their ability. The court staff, clerks, both sides of a case, and the judge all contribute to a decision that is fair and just. Pro se litigation is a wrench that is occasionally tossed into the gears of justice. Pro se litigants do not have an appropriate understanding of how justice works. If they do not provide the court with the necessary facts to make an informed judgment, then the final decision will suffer. They need to realize that the burden is also on them. This necessary evil does not have to be a pending disaster. Efforts must be increased to have a more educated litigant. The more educated the litigant the easier it is for the court staff and judge to perform their roles. If we can get everyone on the same page justice will not have to be compromised. Pro se litigation does not have to mean substandard representation.

ⁱ See Tiffany Buxton, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 Case W. Res. J. Int'l L. 103, 138-47

ⁱⁱ See Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 Am. U.L. Rev. 1557, 1537-1594

ⁱⁱⁱ See Jonathan D. Rosenbloom, *Exploring Methods to Improve Management and Fairness in Pro Se Cases: A Study of the Pro Se Docket in the Southern District of New York*, 30 Fordham Urb. L.J. 305, 312-14

^{iv/v} See Judges' Comments. Attached.