

Step-By-Step Guidance: Empowering Pro Se Litigants Through Technology

by Angela Dunne and Angela Lennon

“One who is his own lawyer has a fool for a client.” Most lawyers have likely heard this clever quip from United States Supreme Court Justice Blackmun who penned this in *Faretta v. California*.¹

Our legal system is designed fundamentally to support a person’s right to representation in court. The justice system is designed, in large part, for the traditional full representation model. Virtually all aspects of the system, from the rules to the physical layout of the courthouses themselves, have been oriented to cases in which knowledgeable attorneys represent the parties. Being a lawyer requires a vast amount of knowledge regarding proper legal rules and court procedures. Rules of evidence, rules of civil procedure, and local rules of courts are generally foreign and unnatural concepts to a pro se litigant.

However, many litigants are unable to afford the legal fees that accompany navigating our judicial system. Complexities of law and lack of easy, understandable access make self-representation particularly difficult.

The Pro-Se Litigant Problem

In recent years, both federal and state courts have seen a sharp increase in the number of pro se litigants. According to National Center on State Courts, 71% of domestic relations (family law) cases have at least one unrepresented party. In 18% of cases, both parties are pro se litigants.

In some states, as many as 80 to 90% of litigants are unrepresented in civil issues like custody and family law cases, even though their opponent has a lawyer.² The number of pro se litigants has risen substantially in the last decade. This is due in part to the economic downturn of 2008.³ With close to 40 million Americans having filed for unemployment this year, those numbers are certain to rise.

Furthermore, as income inequality has increased over the last several decades, public support for legal services has decreased over 40%.⁴

Internet access may be a contributing factor to increasing the number of people who attempt to litigate legal issues on

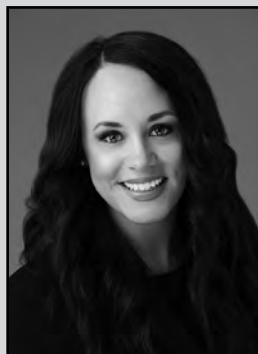


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their own. How-to guides, basic legal forms, and access to some case law and statutes can readily be found.

In his 2011 State of the Judiciary Address, Nebraska's Chief Justice Heavican asserted that "one of the major challenges that our courts and judges face is the rapid increase of self-represented litigants." Eighty-five percent of the judges surveyed in Nebraska agreed. Seventy-three percent of the judges believed the increase in self-represented litigants in Nebraska has been dramatic. Greater increases were reported in urban counties. Eighty percent of judges in urban counties believed the increase has been dramatic within the last five years. Further, 60.2% of judges believed that family law had the most self-represented litigants. Among those who chose family law as having the most pro se litigant cases, they cited divorce for half of those cases. When the statistics are broken down by court level, 98.9% of the district court judges and clerks indicated that the most self-represented litigants appeared in family law cases.

When asked to provide the top three reasons why they believe people represent themselves, the judges said: 1) lack of financial resources; 2) the belief that relying on a lawyer will increase the time and cost of resolving the dispute; and 3) the belief that the problem can be handled without an attorney.

According to USA Today, the average cost of a divorce with children in Nebraska is \$15,600.⁵ The average cost of a divorce without children is \$10,400.⁶

What Have We Done So Far?

In response to the self-represented litigant surge, courts, state bar associations, and other institutions have developed programs designed to help self-represented litigants navigate the legal system. Many state courts sponsor programs and clinics that assist pro se litigants with their cases. Moreover, several state bars have adopted "unbundling" rules that allow lawyers and law firms to carry out discrete legal tasks, rather than provide full representation, for their clients.⁷ Limited scope representation permits a lawyer to help a client with specific portions of the litigation process, rather than obligating the attorney to handle all matters arising throughout the duration of the client's case.⁸

In recent years, the internet has played an increasingly significant role in providing pro se litigants with guidance and access to legal authorities. Many jurisdictions, private organizations, and even individuals now make such resources available to anyone able to access the Internet.⁹ Perhaps most significantly, the internet can be a highly impersonal medium. Unlike pro se clinics or unbundled legal services, internet resources do not provide pro se litigants with the opportunity to interact physically or consult with specialized personnel.¹⁰

Numerous problems may arise when deciding to use online forms and services. More often than not, these services do not

take into account specific state laws. Only an attorney authorized to practice law in a specific state can effectively advise a party regarding the various jurisdictional issues that may affect their case. This is particularly true in family law cases. Many states have varying requirements when it comes to witnesses, discovery, case experts, and specific language that must be included in legal forms, such as a parenting plan. Failure to comply with state requirements may lead to a case being dismissed by the court and increase future litigation expenses.

What Role Can Technology Play in Bridging the Gap to Access to Justice?

Family law practitioners can maximize technology to make limited scope representation efficient. Limited scope representation by experienced family law lawyers can provide the balance of personal, substantive, and procedural advice that is needed by pro se clients to successfully navigate the divorce process.

With the COVID-19 pandemic enveloping our country over these last several months, family law attorneys have been forced to use technology in new ways. Teleconference hearings, online notary services, and virtual initial consultations are now the new normal. Family law practitioners can further maximize technology to support the challenges pro se litigants face in our judicial system.

We have learned that clients may be more comfortable in accessing legal services through technology. We have learned the legal system may be more equipped to assist lawyers and clients in using technology to access legal services. Lastly, we have learned that we legal teams may be more equipped to provide limited scope legal services that maximize technology.

As the number of self-represented litigants in civil cases continues to grow, courts are responding by improving access to justice and making courts more user-friendly. Innovations include:

- simplifying court forms;
- providing one-on-one assistance;
- developing guides, handbooks, and instructions on how to proceed;
- offering court-sponsored legal advice;
- developing court-based self-help centers;
- collaborating with libraries and legal services; and
- using Internet technologies to increase access.

The goal is to empower people to solve their own problems and improve the public's trust and confidence in the court. This also benefits the courts through improved case-flow and increased quality of information presented to judges.

Although there are self-help solutions for pro se litigants to access the legal system, the piece-by-piece nature of such services may not fit every circumstance. Thus, pro se litigants


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continue to overwhelm the court system which can result in judicial inefficiencies.¹¹

Creating platforms that allow a self-represented person to find simplified court forms, get one-on-one assistance, and instructions on how to proceed would solve the piecemeal products pro se litigants are faced with today.

In a handful of jurisdictions these services have been developed and are responding to narrowing the gap and improving access to justice for pro se litigants. These platforms go above and beyond by also offering limited legal advice and using internet technologies to provide a user-friendly experience. These include: It's Over Easy—a California based firm and service (www.itsovereasy.com), Hello Divorce—also a California based firm and service (www.hellodivorce.com), and Untie Online—a Nebraska based firm and service (www.untieonline.com).

The benefit to these services is that pro se litigants can obtain personalized legal form, step-by-step guidance, and attorney support as needed at a fraction of the cost of the full representation model. These models best support those spouses in divorce cases that both want the divorce, can reach agreements on the division of their assets and debts, do not own real property or significant assets, and can reach agreement on co-parenting and support issues.

Family law lawyers should embrace technology to efficiently provide limited scope legal services. We have the technology to bridge the access to justice gap and still provide personal, substantive, and procedural representation. 

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Endnotes

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- 8 *Id.* at 23.
- 9 *Id.* at 4-5.
- 10 *Id.* at 28.
- 11 *Id.* at 29.

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