

GUIDING SELF-REPRESENTED LITIGANTS THROUGH THE COURTS

Angie Dorsch, JD
Executive Director
Equal Justice Wyoming

Equal Justice Wyoming

- First state-sponsored civil legal aid program in Wyoming
- Division of the Wyoming Supreme Court
- Provide funding, training, resources, and support for legal aid programs in WY
- Manage and support a statewide pro bono program of volunteer attorneys
- Provide support and resources for self-represented litigants in Wyoming

Equal Justice Wyoming Grantees

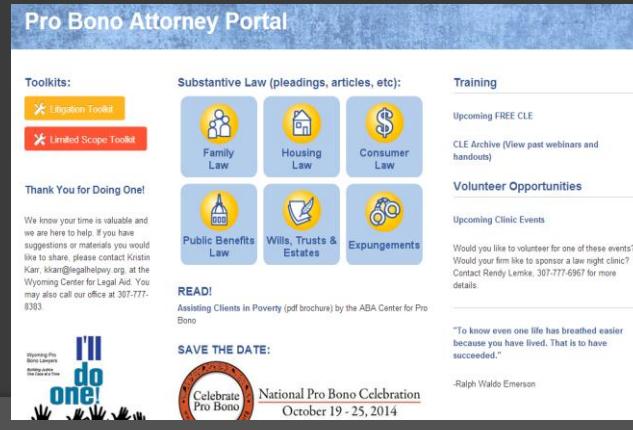
- Wyoming Coalition Against Domestic Violence and Sexual Assault
- Legal Aid of Wyoming, Inc.
- Wyoming Children's Law Center
- Teton County Access to Justice Center

Resources and Support for Wyoming Pro Bono Attorneys

- Malpractice insurance for pro bono attorneys
- Online Pro Bono Portal with substantive and procedural legal resources
- Mentor attorneys for volunteer lawyers
- Assistance with cost and fee reimbursement in pro bono cases
- CLE credit for pro bono work

Pro Bono Portal

- Forms, Pleadings, Reference Materials, Archived CLEs



Bridging the Justice Gap



Self-Represented Litigants

○ Who?

- Until recently we paid very little attention to SRLs
- We referred to SRLs in Latin.
- We are starting to recognize the need and the gaps in services.
- We need to recognize who SRLs are, why we have SRLs, and how to guide them through our justice system.

Why is it Important?

- Public trust and confidence in our Courts
- Sense of fairness
- Perceived degree of access to Court services

Justice for All

- The theme of equal justice for all is woven into the fabric of our society
- Pledge of Allegiance
- Constitution
- On the façade of the US Supreme Court

Public Perception

- Perception of the court system
 - Everyone has the right to an attorney, right?
 - Civil cases are like the cases on Judge Judy, aren't they?
 - I'll be able to go to court and take care of this quickly, won't I?

Disconnect in what the litigant expects the process to be and the reality of how the process works.

Changing Legal Landscape

- Ever increasing number of self-represented litigants in the courts
- This trend is not going to change in the near future
- Judges spend a large portion of their time handling cases in which at least one party is self-represented
- This change presents challenges to courts

Effects of Increased SRLs

- Inefficiency in the court system caused by ill-prepared self-represented litigants
- Increased amount of time which court personnel must spend with SRLs
- Attorneys with excess capacity
- Loss of public confidence in the justice system

No Lawyer?

- When all parties are represented, there is a better understanding of the process of presenting facts that pertain to the law that applies
- When there is no lawyer, how do self-represented litigants gain an understanding of the court process?

The Dilemma Courts Face

- How should courts respond to self-represented litigants?
- Judges face the dilemma of remaining impartial while trying to gather the relevant facts needed to make a fair determination in a case
- Judges know that without prompting, some facts may not be presented by a self-represented litigant

The Dilemma Courts Face

- All court personnel are affected
- Self-represented litigants see the clerks, judicial staff, and judges as court experts
- Assumption that these experts are available to assist them
- Disconnect with the reality that court personnel cannot provide legal advice or assistance and must remain neutral

Outline

- Characteristics and needs of self-represented litigants
- Barriers facing self-represented litigants
- Guidance on handling cases with self-represented litigants
- Communication tools
- Addressing mental health issues

Why do litigants represent themselves?

- Most frequent answers
 - “I can’t afford a lawyer.”
 - “My case is simple enough to handle on my own.”

These reflect economic and social trends unlikely to change anytime soon.

Who are self-represented litigants?

- Wyoming does not have statistics tracking this trend, but other states who have studied the issue find that typically more than 90% of self-represented litigants are low-income or in poverty.
- Growing number of individuals in poverty around the country.

Wyoming's Level of Poverty

- 11.5% of Wyoming's population lives below 100% of the Federal Poverty Level
 - 67,000 individuals
- 30% of Wyoming's population lives below 200% of the Federal Poverty Level
 - 175,000 individuals

Level of Access to an Attorney

In Wyoming:

- There is one **attorney** in practice for every 250 Wyoming residents
- There is only one **legal aid attorney** for every 7,500 *poor* Wyoming residents

Delivery of Services to the Poor

- Legal Aid Programs
 - Only able to serve a fraction of the need
- Pro Bono Attorneys
 - Integral part of delivering services to the poor
- Pro Se Litigants
 - Access to information and trusted legal resources is essential

Usually no choice

- National court-based research shows that a small number of self-represented litigants could afford an attorney (many times by making a significant sacrifice to do so), but still choose not to have an attorney.
- It is important to be aware that the choice not to have a lawyer is usually not a choice the litigant wants to make, but they're doing the best they can.

Who are SRLs in Your Court?

- What are the common characteristics of SRLs in your court?
 - Case type
 - Income level
 - Sophistication level with the court process

Challenges Faced by Pro Se Litigants

Self-Represented litigants have difficulty:

- Preparing complete pleadings or bringing motions
- Understanding and meeting procedural requirements
- Determining what facts and laws are relevant to their case
- Clearly articulating their case to the judge

Barriers Faced by Self-Represented Litigants

- Legal Language Barrier
- Complexity of the Process
- Problems Understanding the Roles of the Court
- Legal Requirements are Not Always Intuitive
- Procedural Rules Vary Between Types of Court and Types of Cases

Barriers Faced by Self-Represented Litigants

- Cases Can be Dismissed when Litigant Fails to Perform Steps Which They May Have No Knowledge
- Lack of Understanding Judgments or Orders
 - Lack of understanding leads to noncompliance with orders

What are the common issues?

- What are the most common questions SRLs have in your court?
- What are the most common barriers they face?

Substantive vs. Procedural Justice

- Study conducted by the National Center for State Courts, Trust and Confidence in the California Court 2005
 - The public focuses heavily on procedural justice – did they perceive the *process* was fair
 - When litigants perceive the decision-making process is fair, they are more likely satisfied with the outcome
 - Attorneys focus heavily on substantive justice – was the *outcome* fair
 - Both are equally important to access to justice

Achieving Procedural Justice

- Lawyers and Judges are ingrained with procedural due process from our training
- Public has a different sense of what procedural fairness or justice looks like

Traditional Role of Judges

- Role of American judges traditionally is a passive role
- American law does not generally recognize a duty of judicial assistance
- Most trial judges have to grapple with the reality that they have to assist SRLs to some extent to get through the process

What do litigants need to feel the process is fair?

- Opportunity to be heard
- Neutrality
- Trustworthiness
- Respect
- Demeanor of the Proceedings

Ethical Rules Support Access and Neutrality

- Promoting access while maintaining neutrality is possible
- ABA model canons for judicial conduct recognize that judges should ensure fairness in the proceedings and that litigants have an opportunity to be heard
- Wyoming has adopted this ABA model rule

Dealing with SRLs in the Courtroom

- Verify that the SRL understands they have the right to be represented by an attorney and verify they are choosing to proceed pro se.
- Explain the process. “I will hear both sides in this matter. First, I will hear...”
- Explain the elements. “The petitioner is seeking an order of protection. An order of protection will be issued if...”

Dealing with SRLs in the Courtroom

- Explain which party has the burden of proof.
- Explain the kinds of evidence that may be presented. “Evidence may be in the form of testimony from the parties, witnesses, or documents and exhibits.”
- Explain the limits on what evidence can be presented.
- Ask the parties if they understand the process and the procedure.

Dealing with SRLs in the Courtroom

- Questioning by the judge should be to obtain general information to avoid the appearance of advocacy.
- For example, “Tell me why you believe you need an order of protection.” “If you have specific incidents or events you’d like to tell me about, start with the most recent and tell me when and where it happened and what happened.

Dealing with SRLs in the Courtroom

- If a ruling is made at the hearing, explain what the order means.
- When parties understand orders, they are more likely to comply.

Unauthorized Practice of Law

- Understanding the difference between legal information and legal advice
- Helping self-represented litigants without crossing the line
- Could you give the same information to both sides?
- Cannot give an opinion about what a party should do, but can explain procedures, rules, and options.

Communicating with SRLs

- Judges and court personnel are under time pressure and the stress of busy calendars
- Judges have to determine how best to perform fact-finding and decision-making functions under these pressures while effectively communicating with the parties

Communicating with SRSs

- Content, Formality, and Overall Language Level
 - Important to use understandable terms and definitions
 - Judges must have a legal vocabulary, but it doesn't always need to be used with SRLs
 - Example: legal elements – instead say “the factors that need to be proved in this case”

Communicating with SRLs

- Formal vs. Informal Speech
 - Maintaining formality of proceedings, but using informal speech can make it easier to communicate with SRLs, for example
 - Use shorter sentences
 - Use first and second person rather than third
 - Active voice – “You need to...” rather than “It is necessary that...”
 - Use informal connectors to connect sentences – “After that...” “Now...”

Communicating with SRLs

- Language level

- Adapt language so it is accessible without being condescending
- Plain language

- Written materials

- Remember, people are nervous in court, they may forget complex information
- Best to provide in writing complex or lengthy information
- Keep it plain language – WriteClearly.org tools

Communicating with SRLs

- Recognize & Address Literacy Barriers

- Slow down
- Give as much information orally as possible
- Speak clearly and repeat important information
- Supplement oral information with written that the person can take with them to have someone read to them later if necessary
- Read documents aloud in the courtroom
- Using plain language is important

Communicating with SRLs

- What techniques have you adopted in your courts to communicate with SRLs?

Increase SRL's Comprehension

- Set Ground Rules
 - Easier for people to follow rules when they know what is expected
 - Communicate these rules up front
- Provide a Road Map
 - Give participants an idea of what is ahead and what to expect
 - Example – “This is the time and place for traffic court. Before we begin I will briefly explain the procedure I will follow in hearing these cases.”

Increase SRL's Comprehension

- Use Repetition

- Court information is usually new for SRLs, so repeating important information is helpful

- Use Paraphrasing

- If you question whether a SRL understands something, ask them to paraphrase – this also helps them retain the information

- Ask Questions to Clarify Comprehension

- Occasionally ask if participants have questions

Increase SRL's Comprehension

- What techniques do you already use in your courtrooms that you find helpful?

Nonverbal Communication

- Even when you are not speaking, you are still communicating
- Understand the context of nonverbal communication
- Nonverbal communication is important to perception
- Be aware of the nonverbal message being sent

Paths of Nonverbal Communication

- Voice
- Eye contact
- Facial expressions and gestures
- Posture
- Time
- Silence

Communication Tools

- Awareness of communicative power of tone and inflection
- Looking at a person while they speak
- Orientation of the body toward the speaker
- If verbal and nonverbal behavior is inconsistent, listener tends to believe the nonverbal cues

Effective Listening Techniques

- Active Listening is important to confirm that the speaker is being heard
- Remember the importance SRLs place on having their voice heard

Active Listening

- Focus on the speaker
- Draw out the message as necessary
- Communicate understanding of the message
- Encourage confirmation or clarification of the meaning

Potential Barriers to Communications

- Physiological & Environmental Factors
 - Thinking ahead of speaker
 - Preoccupation or boredom
 - Physical distractions
 - Stress
 - Time pressures

Addressing Mental Health Issues in the Courtroom

- Mental illness of litigants can be a significant issue faced by court personnel in dealing with SRLs

Burdens of Mental Illness

- Adjusting to communicate with litigant
- Can cause frustration for both the court personnel and the SRL
- Not always possible for the court to intervene in a positive or helpful way
- Recognize uneasiness caused by mental illness
- Determine if a different approach is necessary in dealing with the SRL
 - Is the litigant willfully noncompliant or obstinate or is it a symptom of a mental illness
 - Does the person need additional coaching to comply with court orders

Dealing with Chronic Mental Illness

- Relieve the litigants anxiety
- Pay respectful attention to the litigant
- May try to connect litigant to resources or services if available
- Stick to the facts and be honest – “your story sounds unusual” – this can be done without dismissing the person’s sense of reality
- Set limits calmly and firmly if the person is agitated or upset

Dealing with Chronic Mental Illness

- Have you dealt with mentally ill SRLs in your court?
- What techniques have you found useful?

Resources for SRLs

- www.legalhelp.wy.gov
- State Bar Lawyer Referral Service
- Limited Scope Representation

Your Ideas and Suggestions

- Do you think any of these suggestions or techniques would be useful for you in your court?
- What other suggestions or tips do you have?