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meeting the challenge of self-represented litigants  
in Wisconsin

DECEMBER 2000

The Wisconsin Pro Se Working Group

· A Committee of the Office of the Chief Justice of the Wisconsin Supreme Court ·



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Report to Chief Justice Shirley S. Abrahamson  
Wisconsin Supreme Court

Submitted by The Wisconsin Pro Se Working Group  
December 2000

**John Voelker**  
Executive Assistant to the Chief Justice  
Wisconsin Supreme Court  
P.O. Box 1688  
Madison, WI 53701-1688  
Phone: (608) 261-8297  
Fax: (608) 261-8299

Report design by Karen Leone de Nie, program assistant, Wisconsin Supreme Court.

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# Introduction



**S**elf-represented, or pro se, litigants, while not a new phenomenon, are creating new challenges for the legal system as their numbers increase. Courts, bar associations, and national organizations are looking for ways to meet this challenge. Their efforts culminated in November 1999 with a national conference on pro se litigation sponsored by American Judicature Society, State Justice Institute, Open Society Institute, and the American Bar Association Standing Committee on Delivery of Legal Services. The conference recognized that representing oneself is a constitutional right. The goals of the conference were to:

- develop a clearer understanding of the proportion and nature of litigants who choose to represent themselves in court;
- obtain and share information about the nature and effectiveness of programs developed by various jurisdictions;
- identify problems and develop action plans to address them; and
- prepare action plans and recommendations on how to meet the challenges of self-represented litigants at the local, state, and national levels.

In response to the national conference, Wisconsin Supreme Court Chief Justice Shirley S. Abrahamson appointed a Pro Se Working Group that met for the first time on September 24, 1999. The following individuals served on the Working Group:

**Mr. Patrick Brummond**

Director of State Courts Office, Madison

**Atty. Tess Meuer**

Madison

**Clerk of Circuit Court**

**Carolyn Evenson**

Waukesha County Circuit Court, Waukesha

**Mr. Henk Newenhouse**

Richland County Resource Center, Richland Center

**Chief Judge Kathryn W. Foster**

Waukesha County Circuit Court, Waukesha

**Ms. Beth Bishop Perrigo**

District Court Administrators Office, Milwaukee

**Atty. John Hendrick**

Family Law Education, Inc., Madison

**Atty. Ernesto Romero**

Romero Law Office, LLC, Milwaukee

**Commissioner Mary Beth Keppel**

Dane County Circuit Court, Madison

**Atty. Beth Roney**

People's Legal Assistance Center, Baraboo

**Professor Katherine Kruse**

University of Wisconsin Law School, Madison

**Clerk of Circuit Court**

**Donna J. Seidel**

Marathon County Circuit Court, Wausau

**Judge Edward E. Leineweber**

Richland County Circuit Court, Richland Center

**Chief Judge Michael J. Skwierawski**

Milwaukee County Circuit Court, Milwaukee

**Ms. Liz Marquardt**

Task Force on Family Violence, Milwaukee

**Professor Louise Trubek**

University of Wisconsin Law School, Madison

Seven members of the group attended the November 1999 national pro se conference. Over the course of 10 meetings, members reviewed the information gathered at the conference, as well as state and national research. Their findings are outlined in this report, which the Pro Se Working Group submits to Chief Justice Abrahamson. *Meeting the Challenge of Self-Represented Litigants* identifies potential methods for addressing this issue and recommends actions for the state court system.



## Wisconsin Experience

Like most states, it is unclear how many Wisconsin cases involve a self-represented litigant. But anecdotal information and the available quantitative data show a significant increase in self-represented litigants since 1996. In some counties, as many as 70 percent of family cases now involve litigants who represent themselves in court.

The sources of information available in Wisconsin about pro se litigants are: 1) a statewide survey of clerks of circuit court; 2) a management report completed in the Tenth Judicial Administrative District (including Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Polk, Rusk, St. Croix, Sawyer, and Washburn counties); and 3) a management report completed in the First Judicial Administrative District (Milwaukee County).

### Statewide Survey of Clerks of Circuit Court

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The survey of the clerks was completed by 45 of the 72 Wisconsin clerks of circuit court. Results from the returned surveys show the following:

- Forty-four out of forty-five reported an overall increase in cases involving self-represented litigants over the past five years.
- Forty-four reported an increase in divorce cases involving self-represented litigants.
- Thirty-five reported an increase in domestic abuse cases involving self-represented litigants.
- Thirty-four reported an increase in child support and landlord/tenant cases involving self-represented litigants.
- Thirty-five would like to provide forms and instructions to self-represented litigants.
- Three reported that some type of pro se assistance program was in operation in their county.

## Tenth Judicial Administrative District Data

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District 10 produced a report that measured the prevalence of self-represented litigants in family cases using data gathered by the court case management system. The methodology conservatively measures the number of self-represented litigants.<sup>1</sup> District 10 includes 13 primarily one- or two-judge counties, with the exception of Eau Claire County, which has five judges. Table 1 shows the number of self-represented litigants in family cases within District 10 from 1996 through 1999.

Statistics from nine of the district's 13 counties in 1999 show that there were more self-represented litigants in family cases than litigants represented by counsel. The percentage of cases involving a self-represented litigant in these counties ranged from 30 to 69 percent.

**Table 1**  
**Self-represented Litigants in Family Cases**  
Tenth Judicial Administrative District

Year	Total Number of Self-represented Litigants	Percentage of Cases Involving a Self-represented Litigant
1996	2,604	43%
1997	2,568	44%
1998	3,066	48%
1999	3,745	53%

## First Judicial Administrative District Data

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Using the methodology developed by District 10, District 1, an urban jurisdiction, produced information concerning the prevalence of self-represented litigants between 1994 and 1999. Table 2 shows the number of self-represented litigants in the district since 1996.

While the district has not seen a dramatic increase in numbers since 1996, the district has consistently experienced 70 percent of litigants in family cases representing themselves.

**Table 2**  
**Self-represented Litigants in Family Cases**  
First Judicial Administrative District

Year	Total Number of Self-represented Litigants	Percentage of Cases Involving a Self-represented Litigant
1996	10,101	69%
1997	9,638	69%
1998	9,793	70%
1999	10,204	72%

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<sup>1</sup> The methodology used to produce the report is considered to be accurate, but not an exact measure.

## Challenges of Self-Represented Litigants

Challenges begin when self-represented litigants make their first contact with the court system. The difficulty arises out of the reality that the legal system is not designed to serve individuals without attorneys. Confusing language, or “legalese,” and complicated rules and procedures can alienate litigants representing themselves in court. The frustration experienced by a litigant is often shared by court staff, attorneys, and judges as the pro se case works its way through the system.

In this era of emphasis on customer service, courts are facing unique challenges in serving this increasingly more common court user—the self-represented litigant. The self-represented litigant often seeks assistance from **court staff** about how to start a legal proceeding. Court staff must balance the conflicting obligations to provide quality customer service, prioritize workload demands, and adhere to legal and ethical constraints concerning the unauthorized practice of law. As a result, court staff may become overwhelmed by pro se demands and often are not sure what information is appropriate to provide. This uncertainty frequently results in limited information being provided to self-represented litigants.

**Attorneys** also face challenges when opposing self-represented litigants. Self-represented litigants often have little knowledge of rules of evidence and procedures, or how to be properly prepared for court. This can result in frequent rescheduling of cases, failure to notify appropriate parties, and difficulties during discovery. These problems in turn can have a significant impact on the time and expense required to complete a case.

**Judges** expect to play the traditional role of arbiter in court, anticipating that both parties will understand and use established rules for disposing of cases. Self-represented litigants often cannot meet these expectations. Judges are then placed in the uneasy position of providing useful explanations of law and procedures without violating the judicial code. Judges are concerned about the appearance of impropriety if they intervene too much or too little. This balancing act is especially challenging when one litigant is represented and the other is not.

**Court commissioners** also expect to play the traditional role of arbiter. As a result, court commissioners experience many of the same challenges as judges. Throughout this report, the reader can assume that court commissioners experience challenges similar to those ascribed to judges. However, court commissioners must regularly deal with the added challenge of dealing with litigants earlier in the court process.



## Services for Self-Represented Litigants

**A**s self-represented litigants have become more numerous, jurisdictions around the country have begun to address the issue with new programs and services. These programs range from informal, ad hoc responses to systemwide programs. According to a survey by the American Judicature Society (AJS), 20 states have implemented statewide initiatives for self-represented litigants. In addition, the AJS survey received information on 152 local programs in 45 states. The services provided fall into five general areas:

- **Self-Help Centers.** These centers provide services such as distributing educational materials, brochures, and informational packets; helping users complete forms; providing access to computer terminals; and referring users to other services.
- **Family Law Facilitators.** Usually connected with the court system, family law facilitators provide assistance to litigants on a range of family court issues and expedite the processing of cases through family court.
- **Pro Bono and Lawyer Referral Programs.** Jurisdictions are collaborating with legal services programs, law school clinics, and bar associations to offer pro bono representation to litigants considering representing themselves in court. These programs range from simple referrals, to organized legal services programs, to well-structured bar and law school programs that operate offices at the local court or through clinics located outside the courthouse.
- **Pro Se Clinics.** Primarily relying on volunteer attorneys, clinics educate litigants so they can proceed with their case.

- **Technology-Based Assistance.** This type of service uses telephone hotlines, kiosks, or Web sites that provide information to litigants on how to proceed through the court system. Some technologies allow the litigants to fill out forms and initiate actions from one location.

Some Wisconsin jurisdictions have recognized the need to provide services to the self-represented litigant. These programs vary from the distribution of “pro se packets” to clinics that help individuals complete family law forms. While these programs are not widespread, interest in them continues to increase.

The following are examples of programs and services currently offered or planned in Wisconsin counties:

**Milwaukee County.** The Wisconsin Family Justice Clinic uses volunteer attorneys, paralegals, legal secretaries, law students, and advocates to provide one-on-one assistance to self-represented litigants. Litigants receive assistance with forms, procedures, and referrals to community resources. Spanish-speaking facilitators are also available. The volunteers do not provide legal advice. The Clinic is located in the Milwaukee County Courthouse and is open from 1:00 - 2:00 p.m., Monday through Friday.

**Richland County.** Non-attorney volunteers who assist self-represented litigants with simple uncontested divorces staff the Richland County Resource Center. The volunteers provide forms and instructions and basic information concerning court procedures. The Resource Center is located in the Richland County Courthouse and is open the first Wednesday of the month.

**Waukesha County.** In partnership with the nonprofit Wisconsin Correctional Services, Waukesha County has initiated a court self-help program. The program is in the early stages of development, but has recently received an outside grant to hire a coordinator for the project.

**Dane County.** The Dane County Bar Association has established a Family Law Assistance Center. The Center uses volunteer attorneys and non-attorneys to provide one-on-one assistance with forms, procedures, and referrals to community resources. The Center is located in the Dane County Courthouse and is open each Wednesday.

**Chippewa County.** The Chippewa County Free Legal Clinic is staffed by four volunteer attorneys and a coordinator. The coordinator provides self-represented litigants with the necessary forms and assigns them to an attorney based on the area

of law they want to discuss. Each user receives a 15-minute private consultation with the attorney. The Clinic is held the fourth Wednesday of the month at the Chippewa Falls Public Library from 6:30 to 8:00 p.m.

## Systematic Approach to Self-Represented Litigants

The Pro Se Working Group has reviewed information and research from other states and the programs currently operating in Wisconsin. Based on this evaluation, the Working Group developed a systematic approach for tailoring responses to the challenge of self-represented litigants. The development of a systematic approach allows for a wide range of recommendations, rather than focusing on one part of the problem. The benefits of this approach are:

- 1) it considers the entire court process when identifying responses,
- 2) it provides a framework for jurisdictions to determine appropriate responses for their unique situations, and
- 3) it can be used to determine both state and local responses.

## Action Areas

The model developed by the Working Group includes six opportunities within the typical litigation process for implementation of programs or services to address the issue of self-represented litigation. These six opportunities, or action areas, allow jurisdictions, both state and local, to consider a range of options for dealing with self-represented litigants. A jurisdiction may tailor programs based on specific needs or available resources.

Figure 1 illustrates the model developed by the Working Group. The six action areas are designated in the diamond-shaped boxes, and include:

- |               |   |
|---------------|---|
| <b>Inform</b> | Inform the self-represented litigant of the risks and responsibilities of proceeding without an attorney.   |
| <b>Refer</b>  | Ensure that individuals who are interested in obtaining assistance are referred to appropriate information, including legal and other community services. |

<b>Simplify</b>	Simplify materials self-represented litigants need to process their cases.
<b>Assist</b>	Facilitate accurate and complete filings and productive court proceedings by providing assistance to self-represented litigants.
<b>Manage</b>	Ensure that the courts use effective case management techniques in self-represented cases.
<b>Evaluate</b>	Evaluate strengths and weaknesses of processing cases involving self-represented litigants.

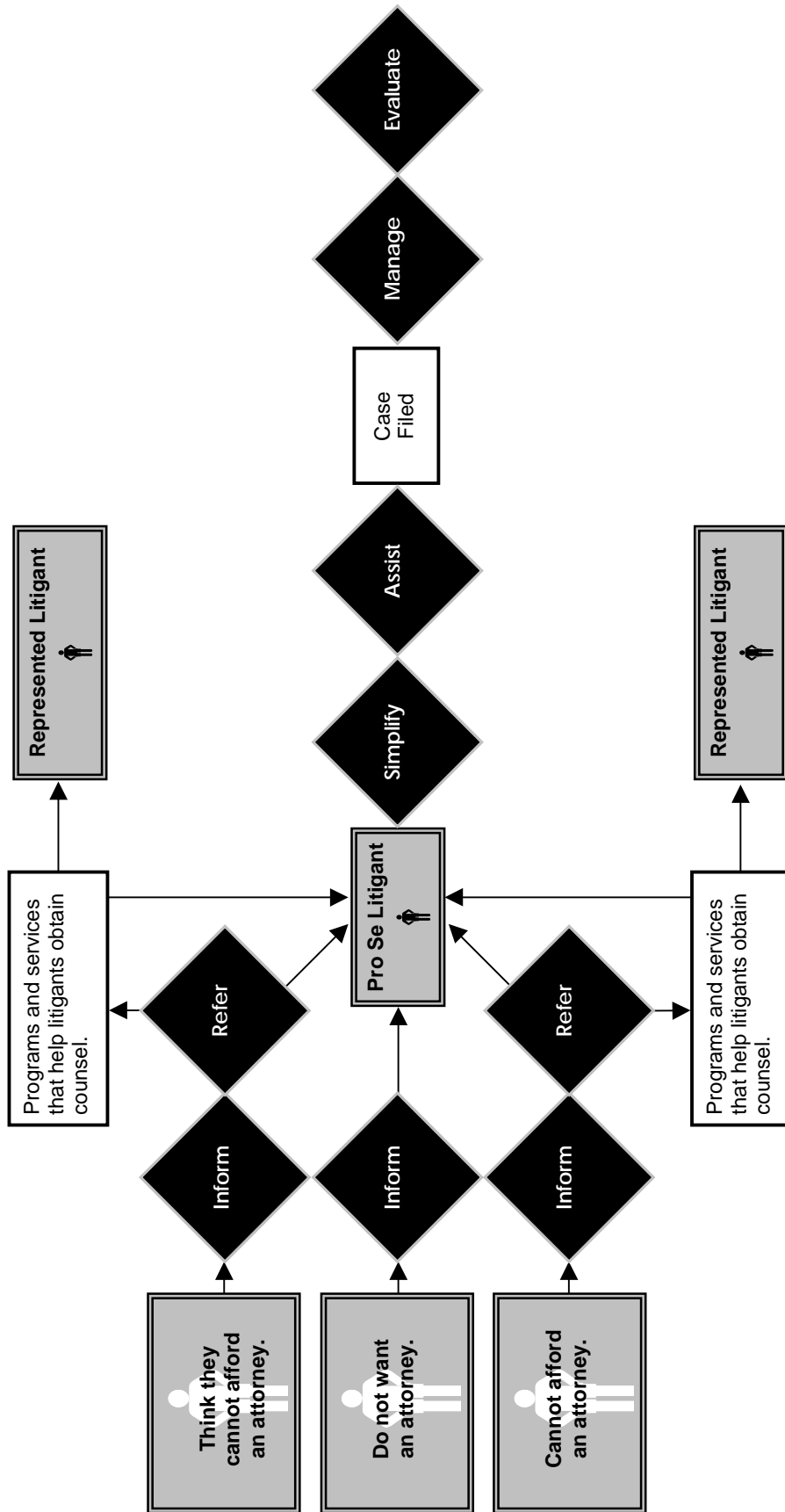
This report is based on this model, with each subsequent chapter describing a particular action area. The description contains four parts, including:

- 1) the objective of the action area,
- 2) issues associated with the action area,
- 3) potential actions that may be appropriate for state or local initiatives, and
- 4) recommendations to the chief justice for statewide implementation.

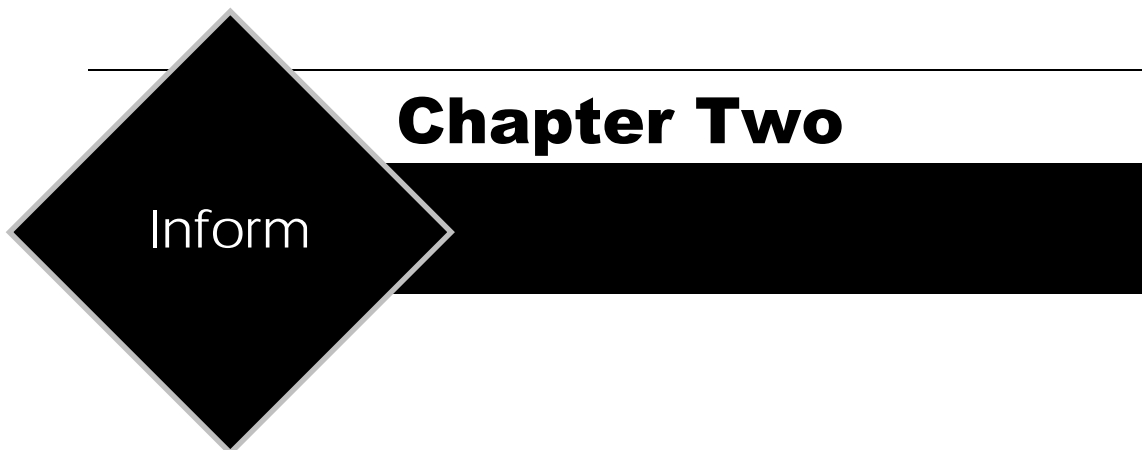
The list of potential actions is included to allow local jurisdictions to identify approaches that best suit their county or region. The Working Group recommendations are designed to help the chief justice and director of state courts identify a statewide plan for responding to this issue.



**Figure 1**  
**Self-Represented Litigation Process**  
 Inform-Refer-Simplify-Assist-Manage-Evaluate







The objective of the **INFORM ACTION AREA** is to ensure that self-represented litigants understand the risks and responsibilities of proceeding without an attorney. This action area should assist in managing the expectations of self-represented litigants. One problem area identified by a Massachusetts report entitled *Pro Se Litigants: The Challenge of the Future* is the self-represented litigant’s “unrealistic expectations of the court system.” Self-represented litigants may believe: 1) the court can solve all their problems, some of which are not legal problems; 2) the court will handle all notification and case scheduling; and 3) the court will assist them through the entire process just as other government entities do.<sup>2</sup>

Self-represented litigants often do not understand the court process or their responsibilities when proceeding without representation. As a result, court staff are frequently asked questions concerning the court process or the laws relating to the specific case. With limited resources or training on what information is appropriate to provide, court staff are often hesitant to answer questions from self-represented litigants. A primary concern of court staff is a clarification of the type of information they are permitted to convey so as not to engage in the unauthorized practice of law.

## Issues

### Understanding Court Procedures and Rules.

The court system is designed to provide a fair and impartial hearing of disputes. To accomplish this objective, the system has established certain rules and procedures. These

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<sup>2</sup> *Pro Se Litigants: The Challenge of the Future* (without the appendix) is available on the Massachusetts Bar Association Web site at [www.massbar.org/phpslash/public\\_html/article.php3?sid=20000322104159](http://www.massbar.org/phpslash/public_html/article.php3?sid=20000322104159), or by calling (617) 338-0678.

rules have been established over time and are based on the assumption that parties in a dispute will be represented by an attorney. Attorneys understand these rules and apply them to the cases they are involved in.

Most self-represented litigants, however, do not know these rules exist, let alone how to apply them. Initially, this lack of understanding results in litigants asking court staff various questions concerning the court process. Subsequently, it can result in a litigant not being prepared for hearings or experiencing difficulty presenting information to the court. In either instance, self-represented litigants can seriously damage his or her ability to be successful in court. More importantly, such a lack of understanding diminishes the court's ability to come to a fair disposition.

### **Unauthorized Practice of Law.**

The state legislature has enacted a statute addressing the unauthorized practice of law. Wisconsin Stat. § 757.30(2) states:

Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

The primary purpose of this law is to protect the public from inadequate or unethical legal representation. While the law is necessary, the practical application of the law is difficult for court staff, advocates, and the litigants themselves. The uncertainty about what is the unauthorized practice of law may unnecessarily limit the amount of information available to self-represented litigants.

Court staff are usually the first point of contact with the court system. When a self-represented litigant asks questions, it may be difficult for court staff to determine if answering the question constitutes legal advice. Because of concerns about violating the unauthorized practice of law statute, court staff often err on the side of caution when providing information. It is difficult for everyone when self-represented litigants need assistance and expect public servants to help with what they perceive as a simple question, only to find out that the court staff will not provide the information.

Victim advocates, especially in domestic violence cases, also struggle with the level of information that is appropriate to provide a self-represented litigant. Victim advocates are allowed by Wis. Stat. § 895.73(2)<sup>3</sup> to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, court proceeding, or disposition. However, based on a 1994 informal opinion by the state attorney general, advocates are allowed to provide legal information but are prohibited from giving legal advice.<sup>4</sup> That can be a difficult distinction to make, however.

## Potential Actions

- Develop a brochure outlining the risks and responsibilities of proceeding without representation.
- Conduct “orientation” sessions to court proceedings by volunteers or by video.
- Develop guidelines for court staff and advocates on the type of information that is appropriate to provide.
- Provide specialized training for court staff and victim advocates on the topic of what constitutes legal advice.
- Establish information centers within the courthouse to answer general questions.
- Hold regular information seminars for the public on specific aspects of the law.
- Increase awareness of legal hotline services available through the State Bar of Wisconsin.

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<sup>3</sup> **Wis. Stat. § 895.73(2) Right to be present.** A complainant has the right to select a service representative to attend, with the complainant, hearings, depositions and court proceedings, whether criminal or civil, and all interviews and meetings related to those hearings, depositions and court proceedings, if abusive conduct is alleged to have occurred against the complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under s. 767.24 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. A service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is represented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

<sup>4</sup> State Attorney General Informal Opinion, dated June 20, 1994.

# Working Group Recommendations

## **Publication and Distribution of Information on the Risks and Responsibilities of Proceeding without an Attorney.**

Self-represented litigants are often unfamiliar with the most basic court procedures. In addition, they may not be aware of the consequences of inadequately presenting their case. If an individual starts the litigation process with a misunderstanding of the procedures and consequences, it is more likely that the individual, and court staff and judges, will experience a higher level of frustration. It is preferable that individuals considering representing themselves make an informed decision. Since individuals consider representing themselves for different reasons, information provided at the beginning of the process may result in some people deciding that they should not proceed without the assistance of an attorney.

The Working Group recommends that a publication be developed by the court system that provides persons considering representing themselves in court with information about their responsibilities in proceeding without an attorney and the potential consequences of their actions. The information should be comprehensible to all and not overly lengthy. This information may also be presented in a video that could be shown to individuals considering representing themselves.

## **Guidelines on Providing Assistance to Self-Represented Litigants.**

While training will help clarify what type of information is appropriate to provide to self-represented litigants, court staff may still be concerned about “stepping over the line.” One way to alleviate this concern is to develop statewide guidelines that clearly define what information is, and is not, considered legal advice. By establishing statewide guidelines, court staff will feel more confident providing information. The guidelines will also institute a more uniform level of assistance to self-represented litigants around the state.

The Working Group recommends that a petition be submitted to the Wisconsin Supreme Court that establishes guidelines for providing assistance to self-represented litigants. Specifically, the rule should include:

- 1) what information should not be provided by court staff,
- 2) what information is authorized for dissemination, and
- 3) an order to distribute and post the authorized information at county courthouses.

This recommendation is modeled after other states, specifically, New Mexico and Iowa. Iowa has drafted guidelines concerning assistance to self-represented litigants. The New Mexico Supreme Court has adopted an order that lists what information can and cannot be provided and the reasons. This information is provided to court staff as a guide and is posted in the courthouse to advise the public.<sup>5</sup>

### **Legal Advice Training.**

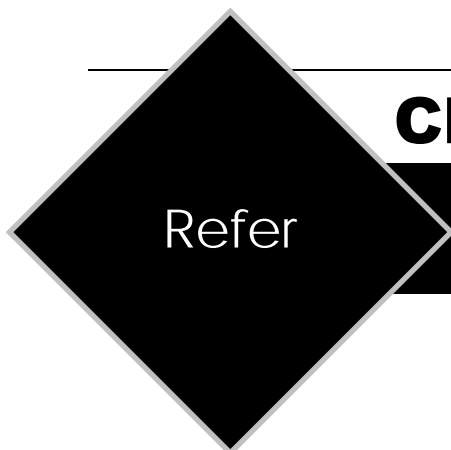
In general, court staff and lay advocates have not been trained to respond effectively to the requests for advice and information now sought by self-represented litigants on a daily basis. The language of the legal profession makes it difficult for self-represented litigants to pose the right questions and for individuals providing assistance to know whether an answer constitutes legal advice. The Working Group recommends that a curriculum and training program be developed for court staff. This educational program should be applicable not only to court staff and judges, but also to advocates who may interact with self-represented litigants.

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<sup>5</sup> See appendix for Iowa Court's *Guidelines for Clerks Who Assist Pro Se Litigants* (p. 45) and the New Mexico Supreme Court Order Regarding Self-Represented Litigants (p. 49).







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## Chapter Three

### Refer

**T**he objective of the **REFER ACTION AREA** is to ensure that individuals who are interested in obtaining assistance have information about their options, including the legal and other community services available to them. Persons considering representing themselves in court may be classified into three categories: 1) individuals who think they cannot afford an attorney; 2) individuals who truly cannot afford an attorney; and 3) those who do not want an attorney regardless of cost.

Since court cases can involve serious issues and critical decisions that affect the daily lives of litigants and their families, efforts should be made to assist litigants in obtaining representation if they want it. This action area identifies programs and services that could increase the likelihood that litigants in the first two groups obtain legal services. This includes ensuring that adequate legal services are available to individuals who would like to retain representation.

### Issues

#### **Legal Services Funding.**

The four Wisconsin Legal Services Corporation affiliates have experienced a decline in federal funding. For example, the federal budget for legal services has dropped 25 percent since 1995. The reduction in funding reduces the availability of legal services to low-income individuals in Wisconsin. As a result, individuals who would like representation are forced to proceed unrepresented. This issue is fully discussed in the

1996 report by the Commission on the Delivery of Legal Services established by the State Bar of Wisconsin.<sup>6</sup>

### **Unbundled Legal Services.**

The court system and parties benefit when legal representation is available to all litigants. However, many individuals are unable to afford the cost of full legal representation. One approach to this problem is to reduce the overall cost of legal assistance by “unbundling” legal services, also known as “discrete task representation.” Unbundling allows a lawyer to perform only a specific portion of the entire legal matter.

While unbundling legal services provides an opportunity for individuals to decrease the cost of representation, the concept of unbundling also presents questions of ethics and liability. These issues are described in the Commission on the Delivery of Legal Services report, which states:

A lawyer’s role is not limited to the performance of discrete tasks which can be allocated between the lawyer and client. Rather, lawyers serve in an advisory or counseling capacity, providing clients with an understanding of their legal rights and responsibilities and explaining the practical implications of those rights and responsibilities. *See generally*, Preamble to SCR Ch. 20, Rules of Professional Conduct for Attorneys. If a lawyer merely accepts the client’s identification of his or her legal needs without conducting an independent evaluation, there is a substantial risk that important considerations will be overlooked, thereby jeopardizing the client’s interests and exposing the lawyer to a malpractice claim. Moreover, while the Rules of Professional Conduct permit lawyers to ‘limit the objectives of the representation if the client consents after consultation,’ Supreme Court Rule (SCR) 20:1.2(c), lawyers retain the ethical obligation to provide competent representation. Given these ethical constraints, the boundaries of permissible ‘job sharing’ with clients is unclear.

If unbundling legal services is to be used in Wisconsin, corresponding rules will need to be promulgated by the Supreme Court with recommendations from the State Bar of Wisconsin.

### **Pro Bono Representation.**

Pro bono representation is another way to assist those interested in obtaining an attorney but are limited by income. While many lawyers provide pro bono representation, the demand outstrips the supply. As a result, the aggressive recruitment of pro bono attorneys

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<sup>6</sup> The report of the Commission on the Delivery of Legal Services is available on the State Bar of Wisconsin Web site at [www.wisbar.org/bar/cmleged.htm](http://www.wisbar.org/bar/cmleged.htm), or by calling (608) 257-3838.

is important to increasing the options available to individuals considering proceeding without an attorney.

## Potential Actions

- Develop a standardized attorney roster that would be available at courthouses.
- Establish partnerships with pro bono and legal service organizations.
- Develop a local referral phone center.
- Implement courtroom procedures to facilitate pro bono representation.
- Ensure information about pro bono attorneys and legal service organizations is available at the courthouse.
- Involve judges in recruiting pro bono attorneys.
- Create a pro bono plan in each county or judicial district.
- Pursue options to provide funding for legal services for low-income persons.

## Working Group Recommendations

### **Increase Pro Bono Representation.**

With the increasing need for low- or no-cost legal services and the decreasing resources to provide that service, there is an urgent need to develop sources of pro bono representation. While the State Bar of Wisconsin continues to recruit attorneys through its pro bono program, the Working Group recommends pursuing the following additional approaches:

- 1) Encourage the establishment of a pro bono component in the curriculum of University of Wisconsin and Marquette University law schools.
- 2) Review the idea of establishing a pro bono plan for each judicial administrative district. The plan would evaluate the needs of pro bono service and determine the adequacy of the available pro bono services.

- 3) Encourage judges to provide scheduling accommodations to facilitate volunteer service by pro bono attorneys. One example is to hear pro bono cases first on the daily calendar to minimize inconvenience to volunteer attorneys.
- 4) Explore the feasibility of offering reduced rates for continuing legal education programs to attorneys who provide pro bono representation.
- 5) Remove legal impediments for government lawyers to provide pro bono representation.

### **Pursue Financial Resources for Legal Services.**

Since many individuals who proceed without representation do so because of their limited incomes, legal service organizations could play a critical role in addressing the needs of self-represented litigants. The current funding levels of these organizations are not, however, adequate to meet the demand. Legal service organizations are forced to make difficult choices when using their resources, leaving many individuals without representation.

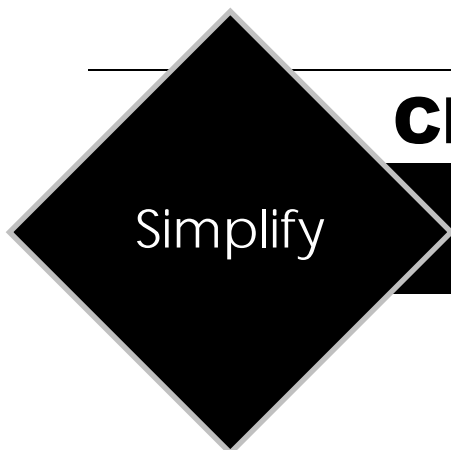
The Working Group recommends that options be pursued that would increase the resources available to legal service organizations, including funding increases at the national level and identifying innovative programs within the state that have found ways to stretch the limited funding to provide more services.

### **Clarify Supreme Court Rule Concerning Unbundled Legal Services.**

Unbundling of legal representation is one way to make representation available to more litigants. However, the Rules for Professional Conduct for Attorneys (SCR Chapter 20<sup>7</sup>) are not clear concerning this type of representation. The Working Group recommends that the Supreme Court Rules be changed to allow the unbundling of legal services.

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<sup>7</sup> Wisconsin SCRs are available on the Court System Web site: [www.courts.state.wi.us/supreme/sc\\_rules.asp](http://www.courts.state.wi.us/supreme/sc_rules.asp).



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## Chapter Four

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**T**he objective of the **SIMPLIFY ACTION AREA** is to make the materials, forms, and instructions commonly used by self-represented litigants easier to understand and to complete. A litigant's inability to complete required forms can frustrate both the litigant and the court. No matter how well the system informs or refers litigants, some individuals will decide to proceed without an attorney. Steps must be taken to make forms user-friendly.

Currently, a variety of pro se forms are available around the state, but these forms are ordinarily useful only within the counties in which they are developed. State-developed forms would reduce the variety of forms circulating, increase compliance of the forms with law changes, reduce the burden on local organizations to keep forms current, and provide the foundation for assistance programs on a regional or statewide basis.

### Issues

#### **Understandable Forms and Instructions.**

Self-represented litigants may have difficulty understanding and completing court forms because the language and format of many court forms can be overwhelming. As a result, the self-represented litigant asks for guidance from court staff, becomes frustrated when help is not available, and may ultimately file the wrong form with the court.

The simplification of court forms, especially in the family law area, could help the self-represented litigant navigate the court process. As noted in the final report of the Commission on the Delivery of Legal Services, "there is a critical need for uniform, reliable, user-friendly forms and instructional materials to assist pro se litigants."

Simplified forms can assist the self-represented litigant, but will not, however, fulfill their potential unless understandable instructions are also developed. These instructions should allow self-represented litigants to gain a better understanding of what information is required within each part of the form.

Non-English-speaking litigants also have a difficult time completing forms. While it may not be practical to develop forms in languages other than English, instructions in several languages would allow non-English-speaking litigants to understand and complete the forms.

### **Mechanism for Updating Forms and Instructions.**

The simplification of forms and instructions should be completed on a statewide basis to ensure that forms are consistent and current. This approach would require that a statewide organization or committee be responsible for developing these forms and instructions. However, equally important is a mechanism to update these forms for changes in the law. Currently, the Records Management Committee of the Director of State Courts Office is responsible for updating statewide forms as necessary. While this committee would be a logical choice for updating the simplified forms, the committee is probably not equipped to handle this extra work and the question of the mandatory use of the forms becomes an issue (Supreme Court Rule 70.153<sup>8</sup> in conjunction with Wis. Stat. § 758.18<sup>9</sup> provides for the mandatory use of all standard forms developed by the Records Management Committee.).

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<sup>8</sup> **SCR 70.153 Judicial conference, forms.**

- (1) The standard court forms that the judicial conference is required to adopt under section 758.18 of the statutes shall be developed by the records management committee, an advisory committee to the director of state courts office.
- (2) Under article VIII of the bylaws of the judicial conference, the judicial members of the records management committee act on behalf of the judicial conference in the adoption of standard court forms.
- (3) Each standard court form shall include a notice that the form may be supplemented with additional material.
- (4)(a) Upon adoption of a standard court form, the records management committee shall distribute or make a copy of the form available to the clerks of circuit court, the circuit court judges, the state bar of Wisconsin and other persons who are required to use the form.
  - (b) Within 90 days after the date of distribution of a standard court form under par. (a), an interested person may file with the records management committee a written objection to the mandatory use of the form, to the content of the form or to both the use and the content.
  - (c) The records management committee shall respond to the objector under par. (b) in writing within 90 days after receipt of the objection.
  - (d) Within 30 days after the date on which he or she receives the written response of the records management committee to an objection filed under par. (b), the person filing the objection may file with the clerk of the supreme court a petition for review of the decision of the records management committee. The supreme court may request a response from the records management committee and establish a schedule for submission of the matter to the supreme court for determination.

<sup>9</sup> **Wis. Stat. § 758.18 Judicial conference:** standard court forms. The judicial conference shall adopt standard court forms for use by parties and court officials in all civil and criminal actions and proceedings in the circuit court.

Since mandating certain forms for self-represented litigants is not the intent of developing simplified forms, assigning the updating function to the Records Management Committee may not be practical.

### **Access to and Distribution of Forms and Instructions.**

Once simplified forms are developed, mechanisms for access to and distribution of these forms and instructions need to be established. To ensure that litigants in all counties have access to these forms and instructions, electronic and paper copies must be available.

Electronically, the forms should be available on appropriate Web sites, such as county sites, the state court Web site, and the State Bar Web site. By making the forms available on a broad range of Web sites, more self-represented litigants will use them.

But since many self-represented litigants may not have access to the Internet, paper copies of the forms are also needed within each county. Logistically, these forms could be provided to counties on a computer disk to print as needed. This approach would also allow some modification of the forms that may be needed in each county.

## **Potential Actions**

- Create simplified/readable forms.
- Create simple, concise instructions for completing forms.
- Identify a responsible organization to create and update forms.
- Make standard forms and instructions available electronically.
- Develop local procedural instructions in each jurisdiction.

## **Working Group Recommendations**

### **Creation of Simplified Family Law Forms.**

A significant area of difficulty for self-represented litigants is understanding and completing forms. This is especially evident in the area of family law cases. While the Records Management Committee is responsible for developing standard forms, few standard forms have been developed in the area of family law. The Working Group recommends that simplified family law forms be developed for use in Wisconsin. The simplified forms should be made widely available in both electronic and paper formats.

### **Establish a Coordinator Position in the Director of State Courts Office.**

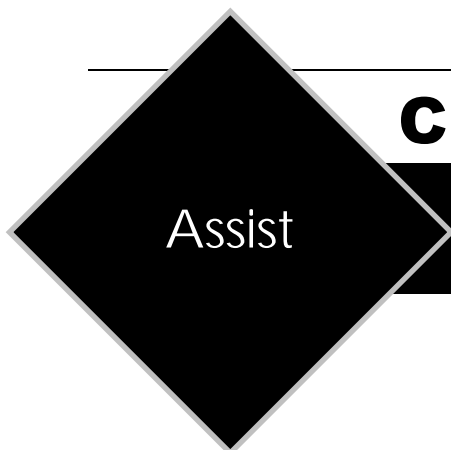
This report identifies a number of recommendations to address some of the current challenges of self-represented litigants. However, many of these responses would benefit from establishing a full-time position at the state level that would coordinate future actions. For example, if simplified court forms are developed, regular maintenance will be required. A coordinator could be responsible for updating forms as needed. In addition, a coordinator could provide technical assistance to counties interested in establishing self-help programs and also provide training to judges, court staff, and volunteers on handling self-represented litigants.

### **Provide Educational Material on the Internet.**

The Internet provides the opportunity to provide explanatory and educational materials to self-represented litigants. While forms have been mentioned for inclusion on the court system Web site, additional materials could also be provided. These materials might include directions to courthouses, descriptions of courts, or procedural information.

The Working Group recommends that the Wisconsin court system Web site include a section for self-represented litigants. This section could include various forms of information that can be easily updated as needed. In addition, links to legal services, local court sites, or local service providers could provide enough information for self-represented litigants to get the help they need.





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## Chapter Five

### Assist

**T**he objective of the **ASSIST ACTION AREA** is to facilitate accurate and complete filings and productive court proceedings by providing assistance to self-represented litigants. This assistance could take different forms, but its goal would be to provide a resource for the self-represented litigant to understand the case from initiation to disposition.<sup>10</sup>

Different approaches are being used across the country to provide assistance to the self-represented litigant. Maricopa County, Arizona, has established a center within the courthouse that provides a step-by-step approach on which forms are required for specific proceedings. The philosophy in Maricopa County is that the assistance program should be designed as a self-service center, not as a center that provides direct legal counseling.<sup>11</sup>

Ventura County, California, on the other hand, partners with a number of organizations to provide legal assistance at their assistance center. In addition, an attorney is on staff at the center. This philosophy is different from Maricopa County's, but effective in this jurisdiction.<sup>12</sup>

These counties provide examples of how jurisdictions may adopt different approaches based on their philosophy and the resources available. As a rule, in Wisconsin, the assistance programs that have been established provide one-on-one assistance, but legal advice is not provided. Assistance focuses on helping a self-represented litigant accurately complete appropriate forms.

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<sup>10</sup> The Florida State Courts developed *Family Law Forms, Commentary, and Instructions*. It includes "General Information for Self-Represented Litigants," which is available in the appendix (p. 51).

<sup>11</sup> For more information on the Maricopa County Self-Service Center visit the county court Web site at [www.superiorcourt.maricopa.gov/ssc/sschome.html](http://www.superiorcourt.maricopa.gov/ssc/sschome.html).

<sup>12</sup> For more information on the Ventura Courts Self-Help Legal Access Center visit the county court Web site at [www.ventura.org/courts/](http://www.ventura.org/courts/).

As more programs are established in local jurisdictions, a decision will have to be made about the level of assistance that will be provided. The level of assistance should be based on discussions among the local judiciary, court staff, and the local bar regarding what resources are available.

## Issues

### **Limitations of Assistance.**

Programs that have been established in Wisconsin use both lay persons and attorneys as volunteers. Both kinds of volunteers are limited in the type and level of information that they can provide to the self-represented litigant.

Lay volunteers are limited by the unauthorized practice of law statute. As a result, lay volunteers provide information on basic court processes, filing procedures, and the clarification of instructions to the court forms. This information is very helpful to self-represented litigants. In fact, in some jurisdictions this level of assistance may be sufficient depending on the philosophy adopted. However, jurisdictions that would like to offer more information may need to consider other alternatives.

Attorneys who volunteer their time in assistance programs are also limited. They are providing information on court processes, filing procedures, and completing forms. They do not provide legal advice. This limitation results from the concern that providing anything more than information on form completion may violate the Code of Professional Responsibility and increase an attorney's liability for malpractice.

In August 1997, the American Bar Association established the Commission on the Evaluation of the Rules of Professional Conduct, commonly known as "Ethics 2000." This commission is charged with: 1) conducting a comprehensive study and evaluation of the ethical and professionalism precepts of the legal profession; 2) examining and evaluating the ABA Model Rules of Professional Conduct and the rules governing professional conduct in state and federal jurisdictions; 3) conducting original research, surveys, and hearings; and 4) formulating recommendations for action.<sup>13</sup>

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<sup>13</sup> For more information on "Ethics 2000," visit the ABA's Web site at [www.abanet.org/cpr/ethics2k.html](http://www.abanet.org/cpr/ethics2k.html).

The Commission expects to complete its work later this year. One ABA Model Rule of Professional Conduct under consideration, proposed rule 6.5, would assist in clarifying the responsibilities of attorneys who participate in self-represented assistance programs.

The proposed rule states the following:

- (a) A lawyer who, under the auspices of a program sponsored by a non-profit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter is subject to the requirements of Rules 1.7<sup>14</sup> and 1.9(a)<sup>15</sup> only if the lawyer knows or reasonably should know that the representation of the client involves a conflict of interest.
- (b) Rule 1.1<sup>16</sup> is inapplicable to a representation governed by this rule.

The clarification of the rules of professional conduct would assist lawyers who are interested in participating in an assistance program.

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<sup>14</sup> **Rule 1.7: Conflict Of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing, and:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

<sup>15</sup> **Rule 1.9: Duties To Former Clients**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

<sup>16</sup> **Rule 1.1: Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

## Potential Actions

- Establish self-represented assistance centers at courthouses or other public facilities, using volunteer attorneys or non-attorneys to assist litigants in completing court forms.
- Develop a publication that includes a glossary of terms relating to both substantive and procedural issues.
- Adopt draft proposed rule 6.5 of the ABA Model Rules of Professional Conduct (Ethics 2000) in Wisconsin.
- Establish partnerships with other organizations, such as public libraries and legal services, in the development and distribution of interactive forms.

## Working Group Recommendations

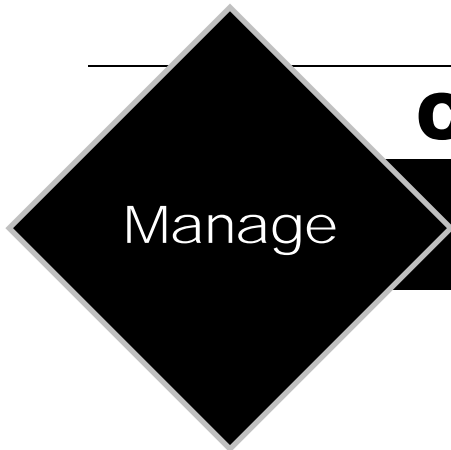
### **Adopt Draft Proposed Rule 6.5 of the ABA Model Rules of Professional Conduct (Ethics 2000) in Wisconsin.**

Attorneys who are interested in volunteering at self-represented assistance centers understandably have reservations about participating because of liability and ethical concerns. Proposed rule 6.5 could provide some comfort to attorneys considering volunteering. Adoption of the rule could increase the number of attorneys who volunteer at assistance centers.

The Working Group recommends that the Supreme Court adopt proposed rule 6.5 as part of the Wisconsin Code of Professional Conduct. This proposal has been developed over a three-year period by a commission made up of judges, law professors, government lawyers, corporate counsel, civil and criminal practitioners, and a non-lawyer.

### **Establish a Coordinator Position in the Director of State Courts Office.**

As stated in Chapter Four, the Working Group recommends that a coordinator be hired by the Director of State Courts Office. A coordinator could be especially helpful in providing technical assistance to counties interested in establishing a self-represented assistance center.



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## Chapter Six

The objective of the **MANAGE ACTION AREA** is to ensure that the courts use effective court management techniques to avoid delays in cases involving self-represented litigants. Judges are interested in moving cases to just and fair disposition as quickly as practical, but are faced with the fundamental dilemma of how to treat all parties fairly when one or more may be untrained in the law and court procedure. This can be a difficult situation and limited training is available judges in managing cases without lawyers.

### Issues

#### Judicial Ethics Concerns.

Judges are faced with difficult choices managing cases involving self-represented litigants. This difficult situation is best described in the American Judicature Society's publication entitled *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers*. The report states:

Judicial ethics principles have obvious relevancy to the thorny dilemma confronting the trial judge: balancing the duty of impartiality in appearance and in fact with the duty to provide a fair and meaningful hearing. The judge who provides any form of assistance to a self-represented litigant whose adversary is represented risks being accused of unfairness by the opposing attorney. Yet, by maintaining complete passivity when a self-represented litigant makes errors jeopardizing the claim or defense sought to be made, some would argue that the judge runs afoul of the meaningful hearing requirement of the due process clause and the rights of access to the court, self representation, and an open court.

This dilemma is experienced in courtrooms around the state every day. The following is an excerpt from a northern county judge's correspondence describing the difficult position he is in when trying to manage divorce cases involving self-represented litigants.

The parties both appear... They will usually have papers, from some law office or form supplier, but when asked if they know what they are supposed to do in court, they invariably say "no." I say "you're expecting me to walk you through this hearing, [aren't] you?" They say, "yes."

The post divorce. One brings the other one in for contempt or something. In court, I might try a little mediating, which actually tends to work. They reach an agreement. There is nobody to draft it. So I end up drafting for my signature a court order that memorializes the agreement.

This judge goes on to note that attorneys who have witnessed his handling of the situation believe that it should not be the court's responsibility to try the litigants' cases by eliciting the necessary testimony to establish the necessary facts. On the other hand, people come to the courtroom expecting to get divorced and the judge wants the case off the docket. The judge notes that if he does not "guide" them along, they could get upset and report him to the Judicial Commission. Judges feel like they are in a no-win situation.

## Potential Actions

- Establish local rules on standard court procedures for self-represented litigants.
- Identify techniques, such as additional hearings, scheduling conferences, or procedures that process cases involving self-represented litigants more efficiently.
- Provide judicial training on "best practices" for cases involving self-represented litigants.
- Consider a self-represented case track for cases involving at least one self-represented litigant, including methods to ensure litigant preparedness.
- Propose legislation to streamline simple, uncontested family actions.

## **Working Group Recommendations**

### **Judicial Training Seminars Should Include a Component on the Ethical and Case Management Issues Associated with Self-Represented Litigants.**

The Office of Judicial Education of the Director of State Courts Office regularly sponsors training on substantive areas of the law, such as family law, civil law, criminal law, etc. Since judges and court commissioners are continually faced with dilemmas concerning self-represented litigants, it would be helpful if judges and court commissioners could receive training in this area. However, rather than establish a specialty seminar concerning self-represented litigants, the Working Group recommends that a component on managing self-represented litigants be regularly incorporated into appropriate substantive law seminars. A component on self-represented litigants could review both ethical and case management issues.

### **Consider Modifying Rules of Evidence for Less Complicated Cases.**

Self-represented litigants have problems understanding procedural rules of the courts. The rules of evidence, in particular, cause problems for self-represented litigants. In fact, if litigants do not understand the various rules of procedure, the disposition of their case can be affected. In response, some judges around the country have relaxed the rules of evidence in their courtroom to ensure that the relevant information can be considered.

Rather than operate on a case-by-case basis, the Working Group recommends that the court system consider modifying the rules of evidence for less complicated cases. While the definition of less complicated can be difficult, it could include criteria such as the amount of the claim or level of assets involved in a divorce proceeding. However, the Working Group believes that no disputes involving minor children should be included within the criteria.

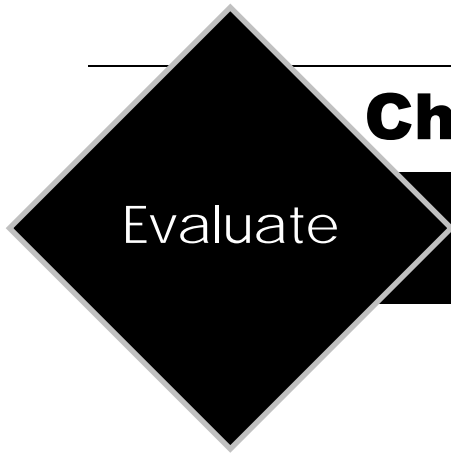
### **Pursue Legislation to Streamline Simple, Uncontested Family Actions.**

Draft legislation creating a joint simplified divorce action is currently under consideration by the Family Law Section of the State Bar of Wisconsin. The draft bill creates a joint simplified divorce action which is intended to enable parties to divorce who fulfill certain criteria to represent themselves in a divorce. Specifically, the draft allows married persons to jointly initiate a simplified divorce action if they agree that the marriage is

irretrievably broken, they have been married for five years or less, no children were born or adopted by them, neither one owns real property, the fair market value of their assets is less than \$20,000, and their combined annual gross income is less than \$40,000.

The simplified process requires only one hearing in front of a judge or court commissioner. While the Working Group is not specifically endorsing this particular draft, it endorses the concept of establishing a simplified procedure for individuals who meet criteria consistent to those proposed in the draft. The Working Group recommends that legislation be pursued that establishes a simplified divorce action for certain uncontested actions.





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## Chapter Seven

### Evaluate

**T**he objective of the **EVALUATE ACTION AREA** is to use management information to measure the strengths and weaknesses of how cases involving self-represented litigants are processed. Currently, management information is not available on a regular basis concerning the number of self-represented litigants or the effect of the challenges they pose.

### Potential Actions

- Develop management reports identifying the number of self-represented litigants involved in cases by type and month.
- Develop a methodology to determine the amount of judicial and staff time spent serving self-represented litigants.
- Study existing cases to determine what services self-represented litigants need.
- Develop a methodology to measure the effectiveness of new programs for self-represented litigants.
- Track the sources of referrals to assistance programs and the level of income of individuals using self-represented assistance programs.
- Develop performance measures for the processing of cases involving self-represented litigants.
- Create a Wisconsin Self-Represented Litigant Coordinating Council that would assist in policy development and act as a clearinghouse on statewide and local programs.

## Working Group Recommendations

### **Allow Court Administrators to Query the Circuit Court Automation Program (CCAP) to Generate Non-Standard Reports Concerning the Processing of Self-Represented Litigation.**

The information available on self-represented litigants in Wisconsin was compiled by the court administrator in the Tenth Judicial District. He developed a methodology that allowed him to query CCAP about the number of cases that did not involve attorneys. This represented the first time that any analysis was completed concerning self-represented litigants. Since the initial analysis, the First Judicial District has used the methodology to determine the magnitude of the issue. While this information has been extremely helpful, the current methodology is cumbersome and time consuming.

Good data and trend analysis are necessary to better serve self-represented litigants and to meet the challenges posed by such litigation. The Working Group recommends that CCAP provide district court administrators, clerks of court, judges, and others with both standard reports and ad hoc query capabilities. These reports and query capabilities would identify cases involving self-represented litigants, indicate the percentage of self-represented litigants in specific types of cases (including breakdown by case classification codes), and indicate the number of cases in which at least one litigant appears without an attorney.

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# Conclusion



**T**he court system is designed for use by individuals who have legal representation. Judges, attorneys, court staff, and even litigants understand the important role lawyers play in the administration of justice. Ideally, each litigant would have the benefit of an attorney during his or her case. However, a growing number of individuals cannot or will not retain an attorney for their legal matters. This is a choice provided to them by the constitution. As a result, a system designed for use by attorneys is being used by those unfamiliar with the “rules of the game.”

The Working Group has developed an approach that identifies opportunities within the current system to address the challenges posed by self-represented litigants. This approach should provide a framework for both state and local jurisdictions to improve the processing of cases involving self-represented litigants. While action in each action area will ensure a comprehensive approach to the issue, the approach is designed so state and local jurisdictions can tailor their actions based on specific needs or available resources.

The court system has a responsibility to provide meaningful access to the justice system. Meeting the challenge of self-represented litigants is one component of meeting that responsibility.



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# Appendix



1. Guidelines for Clerk Who Assist Pro Se Litigants (Iowa), 45
2. New Mexico Supreme Court Order Regarding Assistance to Self-Represented Litigants, 49
3. Family Law Forms, Commentary, and Instructions (Florida), 51





## Guidelines for Clerks Who Assist Pro Se Litigants (Iowa)<sup>17</sup>

**A. The primary goal of court and clerks' staff is to provide high quality service to court users.** Court staff strives to provide accurate information and assistance in a prompt and courteous manner. However, in many or most situations involving pro se litigants (or represented litigants who come to the clerk's office without their attorneys), the best customer service might be to advise the litigant to seek the assistance of an attorney.

**B. Absolute duty of impartiality.** Court staff must treat all litigants fairly and equally. Court staff must not provide assistance for the purpose of giving one party an advantage over another, nor give assistance to one party that they would not give to an opponent.

**C. Prohibition against giving legal advice.** Court staff shall not provide legal advice. (See *Guideline C.2* for examples of legal advice.)

1. If a court user asks for legal advice, court staff should advise the person to seek the assistance of an attorney.
2. Court staff should not apply the law to the facts of a given case, nor give directions regarding how a litigant *should* respond or behave in any aspect of the legal process. For example, court or clerk's staff **should not**:<sup>18</sup>
  - a. Recommend whether to file a petition or other pleading.
  - b. Recommend phrasing or specific content for pleadings.<sup>19</sup>
  - c. Fill in a form for the pro se litigant.

**(Exception:** If a litigant has a physical disability or is illiterate and therefore unable to fill in a form, and the litigant explains the

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<sup>17</sup> Excerpt from *Guidelines and Instructions for Clerks Who Assist Pro Se Litigants in Iowa's Courts*, approved by the Iowa Supreme Court July 2000. This excerpt refers to sections only available in the complete publication. The complete 36-page publication includes a section on suggested responses to questions from pro se litigants.

<sup>18</sup> COMMENT on C.2.: This list provides examples of prohibited types of assistance. It is not comprehensive. In general, clerks must avoid advising litigants that they *should* include specific content in what they write or say or that they *should* take a particular course of action.

<sup>19</sup> COMMENT on C.2.b.: Clerks may inform litigants that some *general content* may be required in a pleading (e.g., identification of the other parties involved in the accident; a description of the facts surrounding the accident). But clerks may not tell a litigant whom to identify or which particular facts might be relevant in the pleading.

disability to a clerk's staff member and requests appropriate assistance, then the staff member may fill in the form. However, the clerk's staff member must write down the *exact words* provided by the litigant, and another staff member must witness the action.)

- d. Recommend specific people against whom to file petitions or other pleadings.
  - e. Recommend specific types of claims or arguments to assert in pleadings or at trial.
  - f. Recommend what types or amount of damages to seek or the specific litigants from whom to seek damages.
  - g. Recommend specific questions to ask witnesses or other litigants.
  - h. Recommend specific techniques for presenting evidence in pleadings or at trial.<sup>20</sup>
  - i. Recommend which objections to raise to an opponent's pleadings or motions at trial or when and specifically how to raise them.
  - j. Recommend when or whether a litigant should request (or oppose) a continuance.
  - k. Recommend when or whether a litigant should settle a dispute.
  - l. Recommend whether a litigant should appeal a judge's decision.
  - m. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
  - n. Perform legal research.<sup>21</sup>
  - o. Predict the outcome of a particular case, strategy, or action.
3. If you are uncertain whether the advice or information constitutes "legal advice"—seek the assistance of a supervisor. If a supervisor is not available, inform the litigant that you are not able to provide the information and that the litigant should seek help from an attorney.

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<sup>20</sup> COMMENT on C.2.h.: Clerks should provide, or identify the place where someone can obtain, pamphlets or other documents that address this issue and that have been prepared for general distribution to the public (*e.g.*, *How to Use Small Claims Court*, prepared by the Iowa State Bar Association).

<sup>21</sup> COMMENT on C.2.n.: Clerks may refer litigants to sections of the Iowa court rules or Iowa Code for rules or statutes that govern matters of routine administration, practice, or procedure; and they may give definitions of common, well-defined legal terms used in those Code sections. However, clerks may not *interpret* the meaning of statutes or rules.



**D. Authorized information and assistance.** When a pro se court user seeks help—excluding legal advice—court or clerks’ staff should respond to questions to the best of her or his ability. Court and clerks’ staff are authorized to:

1. Provide public information contained in:
  - a. dockets or calendars,
  - b. case files,
  - c. indexes, and
  - d. other reports.
2. Recite common, routinely employed:<sup>22</sup>
  - a. court rules,
  - b. court procedures, and
  - c. administrative practices.
3. Show or tell the pro se litigant where to find pertinent statutes or rules of procedure.
4. Identify forms that might meet the needs of the pro se litigant, and provide forms that the supreme court has mandated for the guidance of pro se court users.<sup>23</sup>
5. Answer questions about how to complete forms (*e.g.*, where to write in particular types of information), but **not** questions about how the litigant *should* phrase his or her responses on the forms.
6. Define terms commonly used in court processes.
7. Provide phone numbers for lawyer referral services. (See appendix of this manual.)

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<sup>22</sup> COMMENT on D.2.: Reciting a common rule is permissible, but court staff should not attempt to apply the rule to the facts in the litigant’s case. Sometimes, after a clerk recites a rule (*e.g.*, “After a judge enters a judgment in your small claims case, you have 20 days to file an appeal.”), a pro se litigant will ask whether or how the rule would apply, or if the rule might be applied differently, given the facts in his or her case. This calls for an *interpretation* of the law or rule of procedure. *Court and clerk’s office staff must avoid offering interpretations of laws or rules.*

<sup>23</sup> COMMENT on D.4.: When a clerk is reasonably certain about which form is most appropriate for use by a given litigant, the clerk should identify the appropriate form. However, clerks should avoid telling litigants that they *should* or *must* use a particular form. The appropriate approach in most situations is to tell the litigant:

- a) a particular form probably will meet the individual’s needs; b) clerks *cannot guarantee* that this is the correct form; and c) the litigant should read the form very closely or consult an attorney to determine the appropriateness of the form for the litigant’s purposes.

**E. Prohibition against revealing the outcome of a case before the information is officially released to the litigants or public.** Court or clerks' staff shall not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the matter.

**F. *Ex parte* communications.**

1. If a litigant or attorney submits an *ex parte* **written** communication for a judge (*e.g.*, to grant a continuance; to stop or limit a garnishment), court staff **must** deliver it to a judge who should decide what action, if any, is appropriate.
2. If a party makes a **verbal** request that a judge take some type of **action** in a case, the clerk should tell the litigant to **put the request in writing** and:
  - a. address the request to the court;
  - b. include the case number (if any) on the document;
  - c. write the date on the document;
  - d. sign the written document;
  - e. print the person's name under the signature;
  - f. write the person's address and telephone number on the document;
  - g. deliver the written request to the clerk's office; and
  - h. serve a copy of the document on opposing litigant or litigant's attorney (in a manner consistent with Iowa Rule of Civil Procedure 106.)
3. If a party or attorney contacts a district court clerk by telephone with a verbal request for judicial **action** and there is **insufficient time to deliver a written request** to the clerk's office (*i.e.*, an **emergency situation**), the clerk **shall** communicate the request to a judge in accordance with rules established by the chief or presiding judge(s) for handling such communications. The clerk, however, should tell the caller that the clerk cannot guarantee that the judge will grant the request.



## INFORMATION AVAILABLE FROM THE CLERK'S OFFICE

### Court staff can provide:

- The status of a specific case, unless the case (or information in the case) is "sequestered" (not available for public inspection because of state law or a judge's decision)
- The court file on a specific case, unless the case is "sequestered," for you to review
- General information on court rules, procedures and practices
- Court-approved forms (Forms are not available for all legal proceedings.)
- Guidance on how to compute deadlines and due dates
- Court schedules and information on how to get matters scheduled

Court staff do not know the answers to all questions about court rules, procedures and practices. They have been instructed not to answer questions if they do not know the correct answer.

### Court staff can not:

- Give advice about whether you should file a case or whether you should take any particular action in a case
- Fill out a form for you or tell you what words to put in a form
- Advise you what to say in court
- Speculate about what decision the judge might make or what sentence the judge might impose

**Legal advice:** Court staff provide information, not legal advice. If you need legal advice, please contact a lawyer. If you do not have a lawyer, you may wish to call the Statewide Lawyer Referral Program of the New Mexico State Bar, at 1-800-357-0777, for the name of a lawyer practicing in the area of law in which you need advice.

**Remember --** The court, including the judge and all court staff, must remain impartial. They do not take sides in any matter coming before the court.

## Family Law Forms, Commentary, and Instructions (Florida)<sup>24</sup>

### General Information for Self-Represented Litigants

**You should read this General Information thoroughly before taking any other steps to file your case or represent yourself in court.** Most of this information is **not** repeated in the attached forms. This information should provide you with an overview of the court system, its participants, and its processes. It should be useful whether you want to represent yourself in a pending matter or have a better understanding of the way family court works. **This is not intended as a substitute for legal advice from an attorney. Each case has its own particular set of circumstances, and an attorney may advise you of what is best for you in your individual situation.**

These instructions are not the only place that you can get information about how a family case works. You may want to look at other books for more help. The Florida Statutes, Florida Family Law Rules of Procedure, Florida Rules of Civil Procedure, and other legal information or books may be found at the public library or in a law library at your county courthouse or a law school in your area. If you are filing a petition for **Name Change** and/or **Adoption**, these instructions may not apply.

If the word(s) is printed in **bold**, this means that the word is being emphasized. Throughout these instructions, you will also find words printed in **bold** and **underlined**. This means that the definitions of these words may be found in the glossary of common family law terms at the end of this general information section.

#### Commentary

**1995 Adoption.** To help the many people in family law court cases who do not have attorneys to represent them (pro se litigants), the Florida Supreme Court added these simplified forms and directions to the Florida Family Law Rules of Procedure. The directions refer to the Florida Family Law Rules of Procedure or the Florida Rules of Civil Procedure. Many of the forms were adapted from the forms accompanying the Florida Rules of Civil Procedure. Practitioners should refer to the committee notes for those forms for rule history.

The forms were adopted by the Court pursuant to *Family Law Rules of Procedure*, 667 So. 2d 202 (Fla. 1995); *In re Petition for Approval of Forms Pursuant to Rule 10-1.1(b) of the Rules*

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<sup>24</sup> Excerpt from *Family Law Forms, Commentary, and Instructions* of the Florida State Courts. The complete publication is available online at [www.flcourts.org/osca/divisions/family/bin/geninfo.pdf](http://www.flcourts.org/osca/divisions/family/bin/geninfo.pdf).

*Regulating the Florida Bar—Stepparent Adoption Forms*, 613 So. 2d 900 (Fla. 1992); *Rules Regulating the Florida Bar—Approval of Forms*, 581 So. 2d 902 (Fla. 1991).

Although the forms are part of these rules, they are not all inclusive and additional forms, as necessary, should be taken from the Florida Rules of Civil Procedure as provided in Florida Family Law Rules of Procedure. Also, the following notice has been included to strongly encourage individuals to seek the advice, when needed, of an attorney who is a member in good standing of the Florida Bar.

**1997 Amendment.** In 1997, the Florida Family Law Forms were completely revised to simplify and correct the forms. Additionally, the appendices were eliminated, the instructions contained in the appendices were incorporated into the forms, and the introduction following the Notice to Parties was created. Minor changes were also made to the Notice to Parties set forth below.

### **NOTICE TO PARTIES WHO ARE NOT REPRESENTED BY AN ATTORNEY WHO IS A MEMBER IN GOOD STANDING OF THE FLORIDA BAR**

**If you have questions or concerns about these forms, instructions, commentary, the use of the forms, or your legal rights, it is strongly recommended that you talk to an attorney. If you do not know an attorney, you should call the lawyer referral service listed in the yellow pages of the telephone book under “Attorney.” If you do not have the money to hire an attorney, you should call the legal aid office in your area.**

**Because the law does change, the forms and information about them may have become outdated. You should be aware that changes may have taken place in the law or court rules that would affect the accuracy of the forms or instructions.**

**In no event will the Florida Supreme Court, The Florida Bar, or anyone contributing to the production of these forms or instructions be liable for any direct, indirect, or consequential damages resulting from their use.**

### **FAMILY LAW PROCEDURES**

**Communication with the court...** Ex parte communication is communication with the judge with only one party present. Judges are not allowed to engage in ex parte communication except in very limited circumstances, so, absent specific authorization to the contrary, you should not try to speak with or write to the judge in your case unless the other party is present or has been properly notified. **If you have something you need to tell the judge, you must ask for a hearing and give notice to the other party or file a**

**written statement in the court file and send a copy of the written statement to the other party.**

**Filing a case...** A case begins with the filing of a **petition**. A petition is a written request to the court for some type of legal action. The person who originally asks for legal action is called the **petitioner** and remains the petitioner throughout the case.

A petition is given to the **clerk of the circuit court**, whose office is usually located in the county courthouse or a branch of the county courthouse. A case number is assigned and an official court file is opened. Delivering the petition to the clerk's office is called **filing** a case. A **filing fee** is usually required.

Once a case has been filed, a copy must be given to (served on) the respondent. The person against whom the original legal action is being requested is called the **respondent**, because he or she is expected to respond to the petition. The respondent remains the respondent throughout the case.

**Service...** When one party files a **petition**, **motion**, or other **pleading**, the other party must be "served" with a copy of the document. This means that the other party is given proper notice of the pending action(s) and any scheduled hearings. **Personal service** of the petition and summons on the respondent by a deputy sheriff or private process server is required in all **original petitions** and **supplemental petitions**, unless **constructive service** is permitted by law. Personal service may also be required in other actions by some judges. After initial service of the original or supplemental petition and summons by a deputy sheriff or private process server, service of most motions and other documents or papers filed in the case generally may be made by regular U.S. mail or hand delivery. However, service by **certified mail** is required at other times so you have proof that the other party actually received the papers. The instructions with each form will advise you of the type of **service** required for that form. **If the other party is represented by an attorney, you should serve the attorney and send a copy to the other party, except for original or supplemental petitions, which must be personally served on the respondent.**

Other than the initial original or supplemental petitions, anytime you file additional pleadings or motions in your case, you must provide a copy to the other party and include a **certificate of service**. Likewise, the other party must provide you with copies of everything that he or she files. Service of additional documents is usually completed by U.S. mail. For more information, see the instructions for **Certificate of Service (General)**, • • Florida Supreme Court Approved Family Law Form 12.914.

Forms for service of process are included in the Florida Family Law Forms, along with more detailed instructions and information regarding service. The instructions to those forms should be read carefully to ensure that you have the other party properly served. **If proper service is not obtained, the court cannot hear your case.**

**Note:** If you absolutely do not know where the other party to your case lives or if the other party resides in another state, you may be able to use **constructive service**. However, if constructive service is used, other than granting a divorce, the court may only grant limited relief. For more information on constructive service, see **Notice of Action for Dissolution of Marriage**, • • Florida Supreme Court Approved Family Law Form 12.913(a), and **Affidavit of Diligent Search and Inquiry**, • • Florida Family Law Rules of Procedure Form 12.913(b). Additionally, if the other party is in the military service of the United States, additional steps for service may be required. See, for example, **Memorandum for Certificate of Military Service**, • • Florida Supreme Court Approved Family Law Form 12.912(a). In sum, the law regarding constructive service and service on an individual in the military service is very complex and you may wish to consult an attorney regarding these issues.

**Default...** After being served with a petition or **counterpetition**, the other party has 20 days to file a response. If a response to a petition is not filed, the petitioner may file a **Motion for Default**, • • Florida Supreme Court Approved Family Law Form 12.922(a), with the clerk. This means that you may proceed with your case and set a **final hearing**, and a **judge** will make a decision, even if the other party will not cooperate. For more information, see rule 12.080(c), Florida Family Law Rules of Procedure.

**Answer and counterpetition...** After being served, the respondent has 20 days to file an answer admitting or denying each of the allegations contained in the petition. In addition to an answer, the respondent may also file a counterpetition. In a counterpetition, the respondent may request the same or some other relief or action not requested by the petitioner. If the respondent files a counterpetition, the petitioner should then file an **Answer to Counterpetition**, • • Florida Supreme Court Approved Family Law Form 12.903(d), and either admit or deny the allegations in the respondent's counterpetition.

**Mandatory disclosure...** Rule 12.285, Florida Family Law Rules of Procedure, requires each party in a **dissolution of marriage** to exchange certain information and documents, and file a **Family Law Financial Affidavit**, • • Florida Family Law Rules of Procedure Form 12.902(b) or (c). Failure to make this required disclosure within the time required by the Florida Family Law Rules of Procedure may allow the court to dismiss the case or



to refuse to consider the pleadings of the party failing to comply. This requirement also must be met in other family law cases, **except** adoptions, simplified dissolutions of marriage, enforcement proceedings, contempt proceedings, and proceedings for injunctions for domestic or repeat violence. The **Certificate of Compliance with Mandatory Disclosure**, • • Florida Family Law Rules of Procedure Form 12.932, lists the documents that must be given to the other party. For more information see rule 12.285, Florida Family Law Rules of Procedure, and the instructions to the **Certificate of Compliance with Mandatory Disclosure**, • • Florida Family Law Rules of Procedure Form 12.932.

**Setting a hearing or trial...** Generally, the court will have hearings on motions, final hearings on **uncontested** or **default** cases, and trials on contested cases. Before setting your case for **final hearing** or trial, certain requirements such as completing mandatory disclosure and filing certain papers and having them served on the other party must be met. These requirements vary depending on the type of case and the procedures in your particular jurisdiction. For further information, you should refer to the instructions for the type of form you are filing.

Next, you must obtain a hearing or trial date so that the court may consider your request. You should ask the clerk of court, or **family law intake staff** about the local procedure for setting a hearing or trial, which you should attend. These family law forms contain **orders** and **final judgments**, which the judge may use. You should ask the clerk of court or family law intake staff if you need to bring one of these forms with you to the hearing or trial. If so, you should type or print the heading, including the circuit, county, case number, division, and the parties' names, and leave the rest blank for the judge to complete at your hearing or trial.

[FORMS]

[GLOSSARY]