

**SURVEY OF ARKANSAS CIRCUIT COURT JUDGES
REGARDING SELF-REPRESENTED [PRO SE] LITIGANTS**

**Composite Responses – N= 33
7 November 2008**

Key

Information in this type style, size and boldness reflect the questions asked.
Information in this type style and size reflect responses to those questions.

About This Survey:

The Arkansas Access to Justice Commission is an Arkansas Supreme Court created entity charged with providing equal access to justice in civil cases for all Arkansans. One way to meet this charge is to address the issues surrounding self-represented [pro se] litigants. The Court Assistance Committee of the Commission is seeking to understand how we can better assist Arkansas courts in facing the challenge of pro se litigation. This survey is an effort to gain that understanding from your perspective. *Your answers are completely confidential.*

Thank you in advance for taking the time out of your busy schedule to complete and return this survey to the Commission. This survey is available on line if you would prefer to complete it there. If you have any questions about the survey, its future use, or suggestions for enhancing it; please see the contact information at the end of the survey. For more information about the Commission’s work visit www.ArkansasJustice.org

Estimated Completion Time: 5 minutes

1. Approximately, what percentage of cases in your court has at least one self-represented litigant?

5% or less 5-10% 10-20% 20-30% 40-50% Over 50%

Response Percentages:

30 % 42 % 9 % 18 %

One of the respondents at 20-30 % noted:

- o Cases not tried – 50%
- o Cases tried - 15%

Another respondent noted:

- o It depends on the county: my urban county sees 5-10%, whereas my rural counties see 20-25%.

2. In the past three [3] years have you seen an increase in the number of people trying to file pro se?

Yes No
Response Percentages:
94 % 6 %

3. In what types of cases do you regularly see self-represented litigants?
[Please check all that apply.]

Number of Responses

- 29 Divorce/ Separation/Annulment
- 29 Orders of Protection, Domestic Abuse
- 16 Child/Spousal Support
- 14 Child Custody/Visitation
- 24 Name Change
- 6 Collection/Auto repossession/Garnishment
- 9 Landlord/Tenant -unlawful detainer/writ of possession
- 6 Petitions to establish Paternity
- 5 Other Family
- 2 Contracts
- 7 Guardianship
- 3 Commitments [alcohol or mental commitments]
- 1 Homeownership/Real Property [quiet title/foreclosure/ejectment]
- 2 Adoption
- 2 Advance Directives/Wills [Probate/Affidavit of small estates]
- 3 Other Civil
 - o 2 Collections
 - o 1 Small Claims appeals

4. Do you refer unrepresented litigants to any of the following? *[Please check the appropriate ones.]*

Number of Responses

- 29 Legal Services Programs*

- 11 Legal Services Website
- 4 Bar association
- 4 Social Service agencies
- 4 Public or Law library
- 5 Old case files or similar case files
- 4 Other
 - Law School Clinic
 - No one.

Comments:

*Rarely accepted by legal aid according to one respondent.

5. What are your concerns about self-represented litigants in your court?

[Please tell us those concerns. Use back of this sheet if necessary]

Inability to Apply Rules

- They don't know the Rules of Civil Procedure or Rules of Evidence
- Everything! Pleadings, service, judgments, consequences of self-representation. Trial and Pre-trial is a nightmare. I jailed one pro se for 10 days [5 suspended on paying a \$500 fine] for violating examination guidelines at trial.
- Unfamiliarity with rules and procedures leads to poor results.
- The standard obvious ones.
- Complaints that fail to comply with the Rules/Statute: such as not state grounds for divorce.
- No knowledge of Rule of Evidence.
- Failure to follow procedure [process service] or law [admission of evidence] results in the opposing party prevailing when the result would have been the opposite if competent counsel represented the litigant.
- Breakdown in flow of case when pro se has no understanding of the law.
- They often have a good case but do not know how to proceed in trial, do not know when to object, and are often taken advantage of by the attorney on the other side.
- They have difficulty presenting evidence and knowing what is and is not relevant.
- Difficulty with notice requirements.
- Lack of knowledge as to consequences, court rules, document preparation. We need an attorney that can give pro se litigants advice in courtroom procedures on day of court.
- Inability to understand procedures and rules of evidence.
- Never prepared to cross examine witnesses.
- Lack of knowledge and understanding of law, procedure, etc.
- *Receiving Justice* and not a judgment for failing to respond to requests for admissions.
- Lack of knowledge, improper forms, not aware of website.
- Little or no knowledge of rules and procedures.

- They don't know what they're doing. They are easily frustrated and agitated. I generally encourage them to get legal counsel. To some degree from my standpoint as a judge, they are a nuisance.
- Following the Rules of Evidence.
- Filing proper and necessary pleading.
- They can't obtain legal service or draft acceptable decrees

Adverse Impact on their Case

- They cause themselves problems later on down the line with their decrees.
- Pro se litigants are often "represented" by friends and others, sometimes for a fee. Of course, the information they receive is usually wrong. Pro se litigants are usually at a disadvantage because of their lack of familiarity with court rules and procedures.
- Their clients.
- Potential violence of pro se without counsel.
- Safety.
- Staying focused on issue.
- In any contested matter that the pro se litigant will harm their case by doing or not doing things that would be avoided by a lawyer.

Use of Unapproved Forms

- I have seen several pro se litigants buy forms on-line for hundreds of dollars and find that the forms and information in the forms is wrong and does not comply with Arkansas law.
- Predatory online unauthorized practice of law.

Challenge to Judicial Ethics

- Judge assistance being perceived as non-neutral.
- Courts do not hold pro se litigants to the same degree as those who are represented by counsel.
- They do not know what they are doing and expect the judge to represent them.
- Maintaining neutrality – appearance thereof. Not helping pro se litigant inappropriately.
- The appearance that I am representing the pro se.
- Difficulty in pro se talking to other counsel to attempt to settle the matter. You want settlement to happen but know that it is difficult for the attorney.
- Problem with Bar Association if you go over backwards to help pro se.
- Fairness.
- Impartiality.
- They have no clue on how to proceed and expect clerks and court to assist.
- Pro se need help from someone to prosecute their case who is that someone – lawyer, court, clerk, who?

Appropriate and Inappropriate Pro Se

- I don't have concerns in uncontested divorces with no children and no undivided property. I would have great concern about cases involving children unless the

cases were uncontested and the forms specified visitation according to our Standard Visitation Order and child support was specified according to the child support chart and the statutory language involving wage withholding was included in the forms. I would not want to see any adoptions done pro se unless they were uncontested and it was made clear to the consenting parent the legal effect of an adoption. In regard to contested cases, I have difficulty in seeing how pro se litigants are going to represent themselves in matters which would require the introduction of evidence. However, I do think litigants should be able to represent themselves in denial of visitation cases since these would be fairly straightforward and I think it is very burdensome on a litigant to have to hire an attorney to secure the visitation that has been previously awarded to him or her and routinely denied.

6. Have pro se litigants in your court used the self help resources (forms and directions) developed by the Commission to assist courts in Arkansas? (*Resources located at www.arlegalservices.org*)

Percent of Responses

60 %

Yes

- The forms are great and helpful to the court and litigant. We give out [and hang a brochure outside the courtroom] the website for these forms.
- I think so.

37 %

No

3 %

Not Applicable

Comments:

- I have no idea – doesn't appear they've had any appreciable help.
- Do not know

7. If your court has used these resources have they been beneficial to your court and the pro se litigants? *Please Explain.*

To the Court –
Percent of Responses
48 %

To the litigants –
Percent of Responses
64 %

Yes

- Reduces likelihood of judicial assistance
- The forms are very helpful – we need to make that information more accessible and available.
- Proper forms and information beneficial to both court and litigants.

10 %

No

42 %

Not Applicable

Yes

- Better informed pro se litigants but
- Conversely leave litigant with a false sense of preparedness.
- Upon review.

4 %

No

32 %

Not Applicable

8. What would be the most helpful to your court in dealing with pro se litigants?

[Please check all that apply.]

Number of Responses

Priority

- | | | | |
|----|---|-------|----------------|
| 33 | <input type="checkbox"/> Approved forms that pro se litigants must use supporting] | 1 | [21 |
| 22 | <input type="checkbox"/> Brochures describing the procedures by case type | 2 tie | [4 supporting] |
| 8 | <input type="checkbox"/> An on-site pro se facilitator | | |
| 8 | <input type="checkbox"/> Regular pro se clinics for litigants | | |
| 1 | <input type="checkbox"/> Pre-trial conferences for litigants | | |
| 3 | <input type="checkbox"/> Training of court personnel on how to work with pro se | | |
| 16 | <input type="checkbox"/> Toll-free help line | | |
| 8 | <input type="checkbox"/> Videos which explain courtroom procedures and etiquette | | |
| 16 | <input type="checkbox"/> A court sanctioned website with links and general information supporting] | 2 tie | [4 |
| 2 | <input type="checkbox"/> Other | | |
| | o Dissolve the Commission and quit trying to allow these people to practice fill-in-the-blanks law. | | |
| | o They should hire an attorney. | | |

Comments:

Regarding pre-trial conferences for litigants and training of court personnel on how to work with pro se litigants – absent specific guidelines I would oppose both of these.

9. Of all the possible pro se litigant services listed above, which one do you think would be most helpful? *[Please place a checkmark by it on the list above]*

See Priority column at the right side of question 8.

Comments:

Really don't think we should make it easy to be pro se. After all, no other profession does.

10. Would you in your court be willing to give legal aid pro bono attorneys priority on your docket?

Percent of Responses

45 %

Yes

Within reason – perhaps a separate docket dedicated to pro bono.

52 %

No

All attorneys get specific times to present their cases on my docket.

3 %

Undecided

11. Please use the space below for any additional comments or ideas you would like to share with the Commission. *[Attach additional pages if needed]*

Specific Guidelines

- Communication between the court and a pro se litigant and/or assistance in the court room without ***specific*** guidelines certainly appears to present problems.
- I mostly see pro se litigants as plaintiffs in uncontested cases. Your divorce forms in the main have been beneficial. But mostly they still don't know what they are doing and most should still seek legal counsel.

Reflections on the Commission

- I think the Commission is doing fine.
- Access to the court is very important due to cost of litigation.

Local Forms and Pro Se Limits

- In Sebastian County we have our own uncontested divorce forms available in the clerk's office which are used frequently and seem to work well. I think child support cases can best be handled by the Office of Child Support Enforcement. I think appropriate forms could be devised for denial of visitation and I think pro se litigants could handle these even in contested cases. I am very leery of having pro

se litigants handle adoptions that do not have a written consent as even most attorneys don't handle these correctly. I see no way pro se litigants could handle guardianships involving incapacitated older people because of the very involved requirements of a medical evaluation and proper notice to the incapacitated person which cannot be waived.

Funding for Pro Se Class

- If I set up a “pro se class” taught by an attorney – one hour per month – is there any funding available to pay the attorney?

Attack on the Legal Profession

- No priority to pro se!! I feel irritated by question 10.
- Why are we lowering the profession of lawyer? We are trying to make it easy. This affects generations of legal rights. Why demean the practice of law. We spent 7 years to get legal degree and now y'all try to say “just use this form and read this brochure and you can be a lawyer? Better approach – “low cost legal help.”

12. Also please indicate if your court would be interested in any of the following information. *[Please check those items of interest.]*

Number of Responses

- 20 Brochure – Legal Information vs. Legal Advice
- 21 Brochure – Pro Se in the Courtroom
- 3 Website Training
- 3 Serving as a resource contact
- Other

Thank you for taking the time to respond to this questionnaire. Please return by email to rlanoue@arkansaslegalservices.org or fax to 501.376.3664 or mail to –

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