

Meeting the Challenge of Pro Se Litigation in Wisconsin

John Voelker

I. Introduction

A. Background

Self-represented litigants, while not a new phenomenon, are creating new challenges for the court system as their numbers increase. Courts, bar associations, and national organizations are looking for ways to respond to the influx of pro se litigants and the challenges these cases present for the legal system. These efforts culminated in November 1999 with a national conference on pro se litigation sponsored by the American Judicature Society, State Justice Institute, Open Society Institute, and the ABA Standing Committee on Delivery of Legal Services. 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 actions plans to address them; and
- prepare actions plans and recommendations on how to meet the challenges of self-represented litigants at the local, state, and national levels.

To take advantage of the momentum created at the national level, Chief Justice Shirley S. Abrahamson of the Wisconsin Supreme Court appointed a working group to develop a Wisconsin action plan.

In this era that emphasizes customer service, courts around the country are trying to meet the challenges posed by a relatively new customer—the self-represented litigant. The difficulty is that court systems are not designed to serve these customers. As a result, individuals seeking “service” from the court system and those involved in providing service are frustrated. Confusing language, rules, and procedures frustrate litigants. Unprepared self-represented litigants frustrate attorneys by delaying proceeding, which may increase expenses. Judges must remain neutral and cannot assist the self-represented litigant.

Examining this issue from the perspective of the Wisconsin court system, I shall try to identify mechanisms that can help the courts meet the challenge presented by the self-represented litigant.

B. Wisconsin Experience

Like most states, we do not know the extent of cases involving self-represented litigants. Anecdotal information and the available quantitative data show significant increase in self-represented litigants. Two primary sources of information available in Wisconsin are a survey of the clerks of circuit court and a management report completed by the tenth circuit court administrative district (Northwest Wisconsin, including Eau Claire).

1. Statewide Survey

The survey of the clerks was completed by 45 of the 72 clerks of circuit court. We found that:

- Forty-four reported an increase in litigation 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 some type of pro se assistance program was operating.

2. Tenth District Study

The tenth circuit court administrative district developed a report to measure the frequency of self-represented litigants in family cases using data collected by the circuit court automation program. Table 1 shows the number of self-represented litigants in the tenth district from 1996 through 1999.

Table 1
Self-represented Litigants in Family Cases
Tenth Circuit Court Administrative District

Year	Total Self-represented Litigants	Percentage of Total Cases Involving a Self-represented Litigant
1996	2,604	43 %

1997	2,568	44%
1998	3,066	48%
1999	3,745	53%

Statistics from nine of the district's 13 counties showed that there were more self-represented litigants in family cases than litigants represented by counsel. The range of self-represented litigants in family law cases was 69 percent to 30 percent.

C. Challenges of Self-represented Litigants

Court systems, including Wisconsin's, are not designed to serve self-represented litigants. As a result, clerks of circuit court, attorneys, and judges find themselves challenged in knowing how to effectively deal with them. The litigant on the other hand is frustrated by the lack of assistance provided by "the system".

Challenges begin when self-represented litigants make their first contact with the court system. The self-represented litigant is seeking some form of assistance from the court clerk about how to start the proceeding. The court clerk must balance the training they have received on providing customer service, workload demands, and legal and ethical constraints concerning the unauthorized practice of law. As a result, the court clerk is faced with a customer that may require an explanation of a number of items, but the clerk is not sure what information is appropriate to provide. The uncertainty of this situation likely results in limited information being provided to self-represented litigants.

Attorneys face challenges when opposing self-represented litigants in a case. Opposing a self-represented litigant involves difficulties that are not present in cases where both parties have representation. Self-represented litigants often have little knowledge of rules of evidence, rules of procedures, or how to be properly prepared for court. This situation can result in frequent rescheduling of a case, appropriate parties not being notified, and difficulties during discovery. These occurrences can have significant impact on the time and expense required to complete a case.

Judges expect to play the traditional role of arbiter. Judges expect that both parties will understand and use established rules for disposing the case. Self-represented litigants often cannot meet these expectations. Judges are placed in the position of explaining the law and procedures to the self-represented litigant without becoming an advocate. Judges are concerned that there may be an appearance of impropriety if they intervene too much or if they intervene too little. The level of intervention is especially challenging when one litigant is represented and the other is not.

II. Systematic Approach to Self-represented Litigants

A. Responses Throughout the Country

As self-represented litigants have become more numerous, jurisdictions around the country are starting to address the issue with new programs or services. These programs range from informal ad hoc responses to system-wide programs. According to a survey by the American Judicature Society (AJS), twenty states have implemented statewide initiatives. In addition, the AJS survey received information on 152 local programs in 45 states. The services provided fall into five general areas:

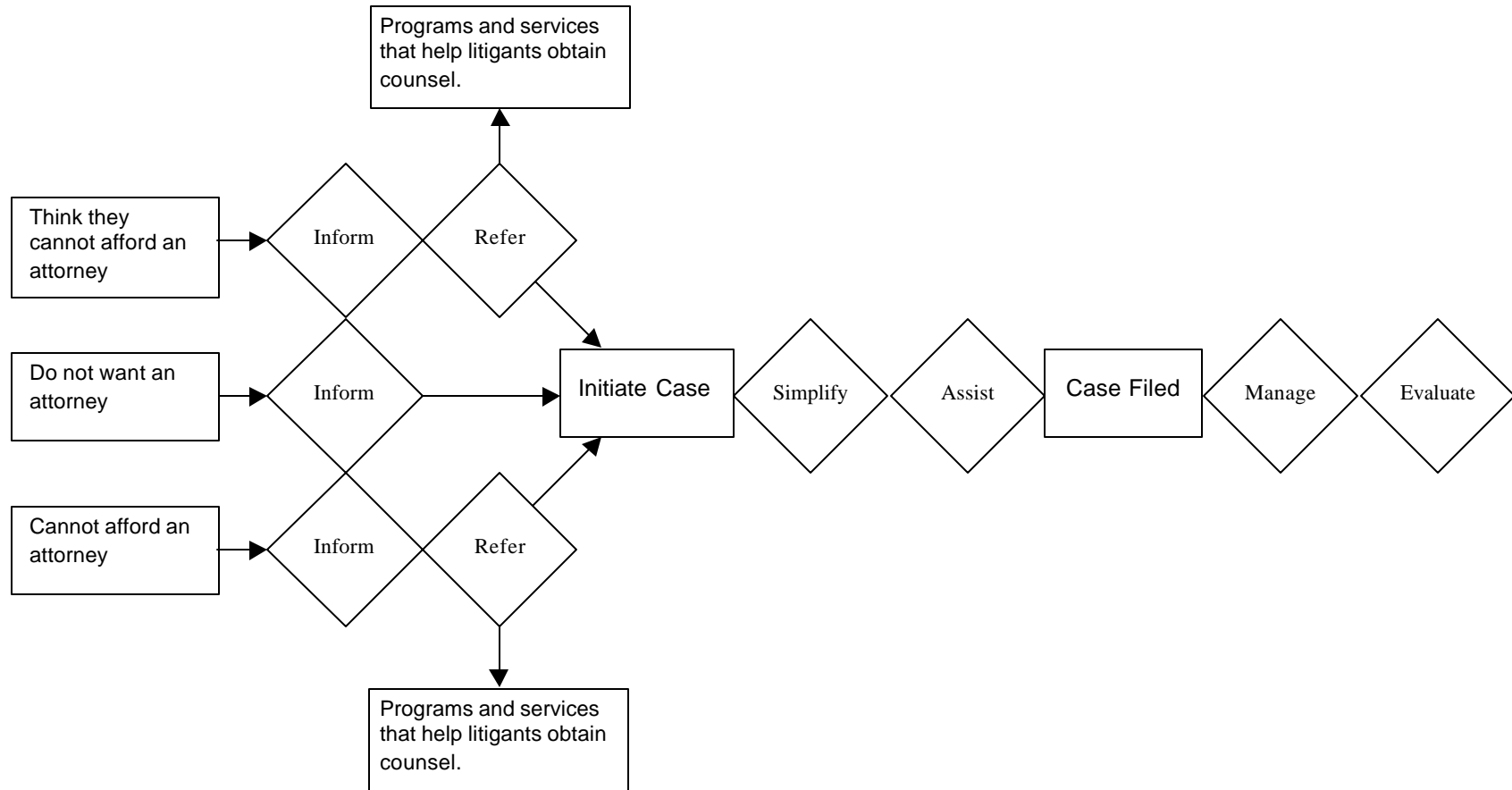
- self-help centers,
- family law facilitators,
- pro bono and lawyer referral programs,
- pro se clinics, and
- technology-based assistance.

B. Wisconsin's Approach to Self-represent Litigants

Wisconsin's approach includes six opportunities within the typical litigation process for implementation of programs or services to assist the self-represented litigant. These six opportunities are called response areas. These response areas allow jurisdictions, both state and local, to consider a range of options to deal with self-represented litigants. A jurisdiction may tailor programs to specific needs and available resources.

Figure 1 illustrates the systematic approach to the issue of self-represented litigants. The six response areas are designated in the diamond-shaped boxes.

Self-represented Litigation Process
Inform Refer Simplify Assist Manage Evaluate
(IRSAME)



1. Inform

a. Objective

The objective of the inform response area is to ensure that the self-represented litigant understands the risks and responsibilities of choosing not to have an attorney. This response area should assist in managing the expectations of the self-represented litigant. 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. The pro se litigant may have the following expectations: 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; 3) the court will assist them through the entire process just as other governmental services do.

b. Examples of Potential Responses

- Brochure outlining the risks and responsibilities of proceeding without representation.
- An "orientation" session conducted by volunteers or by video.
- Specialized training for Clerks of Circuit Court on this topic.

2. Refer

a. Objective

The objective of the refer response area is to ensure individuals who are interested in retaining representation have information about their options and access to legal services. Self-represented litigants may be classified into three categories: 1) individuals who think they cannot afford an attorney; 2) individuals who 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 impact the daily lives of litigants and children, efforts should be made to assist litigants in obtaining representation. This response area needs to identify programs and services that increase the likelihood that litigants in the first two groups obtain legal services.

b. Examples of Potential Responses

- Standardized attorney roster available at courthouse.
- Partnerships with pro bono or legal service organizations.

3. Simplify/Standardize

a. Objective

The objective of this response area is to simplify and standardize materials, forms, and instructions that are commonly used by self-represented litigants and others. The inability to complete required forms can frustrate both the litigants and the court. No matter how well the system informs or refers litigants, some individuals will decide to proceed without an attorney; therefore steps must be taken to make forms user friendly.

Currently, a variety of pro se forms are used around the state, but these forms are only effective in the counties that developed them. Standardization would eliminate the variety of forms circulating, increase compliance with law changes, reduce the burden on local organizations to make changes, and provide the foundation for the establishment of assistant programs on a regional or statewide basis.

b. Examples of Potential Responses

- Review family forms for readability.
- Create standardized forms.
- Create simple, concise instructions for completing forms.

4. Assist

a. Objective

The objective of the assist response area is to facilitate accurate and complete filings by providing assistance to self-represented litigants. This assistance may take different forms, but its goal would be to provide a resource for the self-represented litigant to understand the case from initiation to completion.

b. Examples of Potential Responses

- Establish legal resource centers at courthouses or other public facilities.
- Develop guidelines and provide training to Clerks of Circuit Court on what constitutes legal advice.
- Use volunteer attorneys to assist litigants in completing court forms.

5. Manage

a. Objective

The objective of the manage response area is to ensure that the courts use effective case management techniques to process cases involving self-represented litigants. Currently, the litigation process is usually handled the same even if a pro se litigant is involved in the case.

b. Examples of Potential Responses

- Incorporate additional hearings, scheduling conferences, or procedures in matters involving self-represented litigants.
- Develop a pro se case track for cases involving two litigants representing themselves.
- Provide judicial training on effective case management techniques.

6. Evaluate

a. Objective

The objective of the evaluation response 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.

b. Examples of Potential Responses

- Develop management reports identifying the number of self-represented litigants.

- Measure the effectiveness of new programs for litigants that represent themselves.

III. Conclusion

When the Pro Se working group's report is submitted to Chief Justice Abrahamson it will include recommendations for statewide programs or services that should be pursued to help address the issue of self-represented litigants. It will also include ideas for local jurisdictions and other organizations to consider because the court cannot respond to the self-represented litigant challenge alone. With her leadership and through emerging partnerships the "problem" of self-represented litigants may be an opportunity for the legal system to become more efficient and pro-active with respect to all parties, whether or not they are represented by counsel.