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Non-Prisoner Pro Se Litigation in the United States District Court for the Eastern District of Kentucky: Analyzing 2004 and 2007 Cases from Filing to Termination

Timothy D. Thompson¹

INTRODUCTION

“**D**ESPITE the interest in pro se litigation, there is very little information about what kinds of cases unrepresented litigants are involved in and what happens to those cases,” stated a Federal Judicial Center study published in 1996.² Thirteen years later, the “pro se problem”³ still poses substantial challenges to the judicial system,⁴ yet the available information on pro se litigants is still described as “fragmentary,” with only “bits and pieces” of data.⁵ Information is particularly sparse for federal district courts. An article published in the summer of 2009 that included a review of studies of pro se litigation data from federal district courts only discovered two longitudinal studies.⁶ In spite of the lack of quantifiable data, commentators have freely offered theories and analysis regarding pro se litigation.⁷

Part I of this Note summarizes the history of pro se litigation and explains why this topic has grown in significance over the last few decades. Societal changes in the 1950s caused a paradigm shift, and use of the court system became more of a necessity for more people. As use of the courts became more widespread, litigants began appearing in court without counsel more

1 JD expected May 2011, University of Kentucky College of Law; MA, Ball State University; BS, Huntington University. Special thanks to the Honorable Jennifer B. Coffman, Honorable David A. Hogg, Sharon Vrolijk, and Professor Scott R. Bauries. This is for Jean.

2 David Rauma & Charles P. Sutelan, *Analysis of Pro Se Case Filings in Ten U.S. District Courts Yields New Information*, FJC DIRECTIONS, June 1996, at 5, 5.

3 Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2069 (1999).

4 John T. Broderick Jr. & Ronald M. George, Op-Ed., *A Nation of Do-It-Yourself Lawyers*, N.Y. TIMES, Jan. 2, 2010, at A21.

5 Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 LEWIS & CLARK L. REV. 439, 440 (2009).

6 *Id.* at 441-42.

7 Jonathan D. Rosenbloom, *Exploring Methods to Improve Management and Fairness in Pro Se Cases: A Study of the Pro Se Docket in the Southern District of New York*, 30 FORDHAM URB. L.J. 305, 310 (2002).

regularly. This created myriad challenges for the American justice system, yet the quandary remains under-researched.

Part II of this Note aspires to help rectify the dearth of research on pro se litigation by presenting the results of a longitudinal study of all the non-prisoner pro se parties who appeared in the United States District Court for the Eastern District of Kentucky in 2004 and 2007. This study sought to answer three broad questions: (1) What are the characteristics of a non-prisoner pro se litigant?; (2) How does the litigation involving a pro se party proceed and reach resolution?; and (3) What judicial resources are expended on pro se litigation?⁸ Part II answers those questions by comparing original data to previously conducted research.

Part III compares the results from this study to suggestions other authors have offered for fixing the pro se problem. This comparison reveals two significant findings. First, pro se plaintiffs rarely survive a motion to dismiss. Second, parties who are represented during some part of their action achieve more favorable results. In response to these findings, this Note suggests two practices that should be adopted. First, courts should institute a sua sponte review of any complaint filed by a pro se plaintiff. Second, the practice of partial representation should be continued and expanded.

I. THE CONTEXT OF PRO SE LITIGATION

A. *History and Justification for Allowing Self-Representation*

“One of the basic principles, one of the glories, of the American system of justice is that the courthouse door is open to everyone—the humblest citizen, the indigent, the convicted felon, the illegal alien.”⁹ A person’s right to litigate without representation is rooted in British common law¹⁰ as well as various Constitutional provisions, e.g., the First, Fifth, and Fourteenth Amendments,¹¹ the Sixth Amendment,¹² and “the Privileges

8 Spencer G. Park, Note, *Providing Equal Access to Equal Justice: A Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco*, 48 HASTINGS L.J. 821, 828 (1997). The study undertaken here is modeled off of Park’s study, where similar information was sought.

9 Lois Bloom & Helen Hershkoff, *Federal Courts, Magistrate Judges, and the Pro Se Plaintiff*, 16 NOTRE DAME J.L. ETHICS & PUB. POL’Y 475, 485 (2002) (quoting NAACP v. Meese, 615 F. Supp. 200, 205-06 (D.D.C. 1985)) (internal quotation marks omitted).

10 Tiffany Buxton, Note, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT’L L. 103, 107 (2002).

11 Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537, 1547 (2005) [hereinafter Swank, *Rules and Roles*] (citation omitted).

12 Landsman, *supra* note 5, at 454 (noting that the Supreme Court case that cited the Sixth Amendment was a criminal case, but it has been utilized to support this right in civil

and Immunities Clause . . . or due process.”¹³ Regardless of the specific constitutional foundation, the United States government acted quickly to solidify the right to appear pro se by codifying it in the Judiciary Act of 1789.¹⁴ Congress wrote that parties were entitled to “plead and manage their own causes personally or by the assistance of . . . counsel.”¹⁵ The Judiciary Act, as recodified in 1948, offered renewed statutory support for this foundational right.¹⁶ More recently, both the American Bar Association (ABA)¹⁷ and the United States Department of Justice have affirmed this perspective.¹⁸

The original justification for allowing self-representation was a combination of thoughts about “natural law,’ an early anti-lawyer sentiment, and the egalitarian ‘all men are created equal’ concept.”¹⁹ The belief espoused was that anyone who appeared before a court would be treated equally, regardless of wealth, and that a fair decision would be rendered.²⁰ Operating in the background may have been a fear that restricting access to courts could hinder the maturation of law and the legal system²¹ and push people towards self-help solutions.²²

B. The Growing Docket and the Necessity for Court Intervention

Literal access to the court system, then, has been available since 1789. Although access was available, many parties in “low or moderate-income ranges . . . faced very few problems that required legal intervention.”²³ Accordingly, “there was very little government assistance for representation in civil litigation.”²⁴ Beginning in 1958, however, the court system began to experience a marked increase in case filings.²⁵ A 1990 report regarding

litigation).

13 Bloom & Hershkoff, *supra* note 9, at 484-85 & nn.50, 52. *But see* Drew A. Swank, Note and Comment, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 375 (2005) [hereinafter Swank, *Pro Se Phenomenon*].

14 Landsman, *supra* note 5, at 454.

15 *Id.* (alteration in original) (quoting *Faretta v. California*, 422 U.S. 806, 831 (1975)).

16 *Id.*

17 *Id.* at 455 (citing MODEL CODE OF JUDICIAL CONDUCT R. 2.6(A) (2007)).

18 Rosenbloom, *supra* note 7, at 378 n.222.

19 Swank, *Rules and Roles*, *supra* note 11, at 1546 (citation omitted).

20 Buxton, *supra* note 10, at 109.

21 Swank, *Rules and Roles*, *supra* note 11, at 1546 (citation omitted).

22 *Id.* (quoting Eric J.R. Nichols, *Preserving Pro Se Representation in an Age of Rule 11 Sanctions*, 67 TEX. L. REV. 351, 380 (1988)).

23 Buxton, *supra* note 10, at 111.

24 *Id.* at 106 (citing Richard L. Marcus, *Malaise of the Litigation Superpower, in CIVIL JUSTICE IN CRISIS: COMPARATIVE PERSPECTIVES OF CIVIL PROCEDURE* 93 (Adrian A.S. Zuckerman ed., 1999)).

25 Bloom & Hershkoff, *supra* note 9, at 479.

the docket load of federal courts between 1958 and 1988 noted: “following decades of extremely slow caseload growth, the number of cases (both civil and criminal) filed in the federal district courts (i.e., trial courts), trebled, while the number filed in the courts of appeals increased more than tenfold.”²⁶ Clearly, the court system was getting used more frequently; an increasing number of people found court proceedings “more of a necessity and less of a luxury.”²⁷

Many structural changes in society have been attributed to creating this need. Some have pointed to an “increasingly mobile society, where even familial relations are more transitory.”²⁸ Another commentator wrote that litigation is increasing because “[p]eople find themselves in . . . situation[s] in which they are affected by others, but have no leverage to control those others and hold them accountable.”²⁹ Yet, another theory is that increased use is a product of people needing “courts for the ordinary things of life (adoption, divorce, child custody, minor civil damages, minor disputes, etc.).”³⁰

C. Access to Justice Means Access to Representation

Throughout the 1960s, as courts’ dockets lengthened and the pool of people needing judicial intervention increased, the issue of “[a]ccess to justice . . . rose to the forefront of legal scholarship.”³¹ Access to justice has many components but “often presents itself as synonymous with a concern regarding access to representation.”³² Margaret Barry wrote that without representation, “reasonable access to the justice system” is “foreclose[d].”³³ Other commentators noted: “Even in the simple case—ordinary, routine, run of the mine, garden variety (pick your metaphor) . . . —the inability to secure legal advice may prevent a meritorious claim from ever being presented to a judge.”³⁴ Consequently, results from two different ABA

26 *Id.* (citation omitted) (internal quotation marks omitted).

27 Buxton, *supra* note 10, at 111.

28 *Id.*

29 Marc S. Galanter, *The Day After the Litigation Explosion*, 46 MD. L. REV. 3, 14 (1986).

30 Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants?*, 82 JUDICATURE 13, 19 (1998) (internal quotation marks omitted).

31 Buxton, *supra* note 10, at 104 (citation omitted).

32 *Id.*

33 See Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1884 (1999).

34 Bloom & Hershkoff, *supra* note 9, at 482-83 (internal quotation marks omitted) (citing Judith Resnik, *Trial as Error, Jurisdiction as Injury: Transforming the Meaning of Article III*, 113 HARV. L. REV. 924, 969 (2000)).

reports from the 1990s that illustrate significant challenges in obtaining counsel for low- and moderate-income individuals are troubling.³⁵

“The [ABA]’s Comprehensive Legal Needs Study reports that fewer than three in ten of the legal problems of low-income households” and “four in ten” of the legal problems of moderate-income households enter the court system.³⁶ The same report added that almost eighty percent of low-income households who had “legal problems” had not involved a lawyer in the situation.³⁷ Unfortunately, the report did not publish that statistic for moderate-income households.³⁸ Barry, nevertheless, labeled moderate-income households as “particularly disadvantaged” because of an “inability to afford private counsel or to qualify for publicly-funded legal services, which are tied to the federal poverty guidelines.”³⁹ A different ABA report—*NonLawyer Activity in Law-Related Situations*—stated that “when low-income people have legal needs, [thirty-eight percent] of the time they take no action.”⁴⁰ Similarly situated people earning a moderate income “take no action [twenty-six percent] of the time and take action without going to a lawyer [forty-five percent] of the time.”⁴¹

Although the aforementioned statistics were based on data gathered in the 1990s, recent events indicate this problem persists. For example, in October 2009, California announced its aspiration to offer parties in some civil cases the right to counsel.⁴² California is the first state to publicly identify such a goal.⁴³ California’s actions, when viewed alongside the ABA’s statistics, paint a bleak picture regarding the availability of legal counsel for low- and moderate-income households.

The pro se problem is particularly relevant in civil cases because the state handles criminal prosecutions and criminal defendants, especially defendants charged with felonies, have a right to state-appointed counsel.⁴⁴ Historically, those who needed counsel for a civil matter but could not

35 See COMM’N ON NONLAWYER PRACTICE, AM. BAR ASS’N, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS 35 (1995), available at http://www.abanet.org/cpr/clientpro/Non_Lawyer_Activity.pdf; Barry, *supra* note 33, at 1883-84 (citing ROY W. REESE & CAROLYN A. ELDRED, AM. BAR ASS’N, LEGAL NEEDS AMONG LOW-INCOME AND MODERATE-INCOME HOUSEHOLDS: SUMMARY OF FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY 22 (1994)).

36 Barry, *supra* note 33, at 1883 (citing REESE & ELDRED, *supra* note 35).

37 *Id.* at 1884.

38 *Id.*

39 *Id.* (citation omitted) (internal quotation marks omitted).

40 COMM’N ON NONLAWYER PRACTICE, *supra* note 35, at 35.

41 *Id.*

42 Broderick & George, *supra* note 4.

43 *Id.*

44 *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). The Court cited *Johnson v. Zerbst*, 304 U.S. 458 (1938), as holding that the right to counsel was guaranteed to criminal defendants in federal courts. *Gideon*, 372 U.S. at 340 & n.3. The Court subsequently held that the Constitution also grants criminal defendants in state court the right to counsel. *Id.* at 344-45.

afford it looked to three sources for assistance: (1) “the courts in the form of court-appointed counsel,” (2) “the government or private sector in the form of legal services programs,” or (3) the bar.⁴⁵ Demand for assistance has traditionally exceeded supply, but the problem has worsened over the past few decades.⁴⁶

1. *The Courts*.—Procedures for enabling access to the court system for poor litigants were imported from England.⁴⁷ Initially, states subsidized access by waiving the payment of “court fees or costs and provid[ing] the court with the option of assigning counsel.”⁴⁸ In 1948, Congress implemented a similar provision via 28 U.S.C. § 1915 that applied to “any court of the United States.”⁴⁹ This statute permits an individual⁵⁰ to request to proceed in an action without responsibility for “fees or security.”⁵¹ Courts are given discretion to allow a litigant’s request upon submission of “an affidavit that includes a statement of all assets,” an inability to pay the requisite fees, and “the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.”⁵² If leave is granted, the individual can ask the court to appoint counsel.⁵³ Generally, however, counsel will only be appointed in “exceptional circumstances.”⁵⁴ In actuality, the courts appear to provide assistance to only the neediest of parties.

2. *The Government and Legal Aid Programs*.—Government provision of legal counsel to civil litigants was rare before the 1960s.⁵⁵ In the 1960s, Congress initiated an assistance program designed to aid low-income individuals

45 Swank, *Pro Se Phenomenon*, *supra* note 13, at 380 (citation omitted).

46 *Id.*

47 Buxton, *supra* note 10, at 108 (citing SIDNEY L. MOORE, JR., INST. FOR RESEARCH ON POVERTY, RELIEF OF INDIGENTS FROM FINANCIAL BARRIERS TO EQUAL JUSTICE IN AMERICAN CIVIL COURTS 3 (1971)).

48 *Id.*

49 28 U.S.C. § 1915(a)(1) (2006).

50 See *Floyd v. United States Postal Serv.*, 105 F.3d 274, 275 (6th Cir. 1997) (explaining that the use of “prisoner” instead of “person” in this section of the statute was a typographical error).

51 § 1915(a)(1). The items or activities that are covered when the court authorizes a party to proceed in forma pauperis are unclear and generally defined by individual courts. See Robert F. Koets, Annotation, *What Constitutes “Fees” or “Costs” Within Meaning of Federal Statutory Provision (28 U.S.C.A. § 1915 and Similar Predecessor Statutes) Permitting Party to Proceed In Forma Pauperis Without Prepayment of Fees and Costs or Security Therefor*, 142 A.L.R. FED. 627 (2010), for an extensive examination.

52 § 1915(a)(1).

53 See *id.* § 1915(e)(1).

54 Julie M. Bradlow, Comment, *Procedural Due Process Rights of Pro Se Civil Litigants*, 55 U. CHI. L. REV. 659, 662 (1988) (citation omitted). *But see* *Tabron v. Grace*, 6 F.3d 147, 150 (3d Cir. 1993).

55 Swank, *Pro Se Phenomenon*, *supra* note 13, at 380.

in receiving representation during civil litigation.⁵⁶ The program resulted in an increase from 600 to 2500 in the number of lawyers employed by legal aid societies serving the poor.⁵⁷ That growth has since abated and, as reported in 2005, “[o]ver the last two decades, federal funding for legal services programs has been cut by one-third while greater restrictions have been placed on the type of cases and the type of clients that government-funded programs can help.”⁵⁸ More generally, cutbacks in government funding have made “assistance from legal services programs . . . a scarce resource.”⁵⁹

3. *The Bar.*—Two forces within the legal profession, working separately but simultaneously, have been identified as hindering broader access to representation. First, the legal job market has reallocated jobs from servicing individuals to supporting corporate clients.⁶⁰ Market forces have likely had some influence over this transformation: “where little or no profit motive exists—where the potential client is a plaintiff in an unprofitable case, a defendant, or where only injunctive or declaratory relief is sought—the market is highly unlikely to provide the necessary representation.”⁶¹ Nevertheless, the modification has been significant. One study found that between 1967 and 1992 “lawyer time devoted to individuals” dropped fifteen percent.⁶² During that same period, attention to businesses grew twelve percent.⁶³

Second, pro bono services have waned. For example, during the 1990s, the “nation’s 100 most financially successful firms” decreased their pro bono hours by thirty-three percent.⁶⁴ Fewer than twenty percent of the firms described above achieved the ABA’s recommended fifty hours of pro bono service per attorney per year.⁶⁵ More broadly, “[i]n most states, fewer than a fifth of lawyers offer such services.”⁶⁶ And, when offered, the contributions average “under half an hour a week.”⁶⁷ One commentator sees the lack of pro bono assistance as problematic but blames the system

⁵⁶ See Barry, *supra* note 33, at 1879 n.2.

⁵⁷ *Id.* (citations omitted).

⁵⁸ Swank, *Pro Se Phenomenon*, *supra* note 13, at 381.

⁵⁹ See Buxton, *supra* note 10, at 112 (citing Helen B. Kim, *Legal Education for the Pro Se Litigant: A Step Towards a Meaningful Right to Be Heard*, 96 YALE L.J. 1641, 1648 (1987)).

⁶⁰ Landsman, *supra* note 5, at 443 (citation omitted).

⁶¹ Swank, *Pro Se Phenomenon*, *supra* note 13, at 380.

⁶² See Landsman, *supra* note 5, at 443 (citations omitted).

⁶³ See *id.* (citations omitted).

⁶⁴ Deborah L. Rhode, *Equal Justice Under Law: Connecting Principle to Practice*, 12 WASH. U. J.L. & POL’Y 47, 60 (2003).

⁶⁵ *Id.* (citing Aric Press, *Eight Minutes*, AM. LAW., July 2000, at 13, 13).

⁶⁶ *Id.* at 59–60 (citation omitted).

⁶⁷ *Id.* at 60.

for “fail[ing] to harness the willingness of some attorneys to accept pro bono cases.”⁶⁸ The decreased emphasis on pro bono services coupled with the movement away from representation of individual clients has rendered this traditional source of legal assistance a rarity.

D. Pro Se Litigants

On January 2, 2010, a *New York Times* Op-Ed reported that in an “informal study conducted by the Self-Represented Litigation Network, about half the judges who responded reported a greater number of pro se litigants as a result of the economic crisis.”⁶⁹ In an article published in the summer of 2009, Stephan Landsman wrote, “America’s courts appear to be facing an inexorably rising tide of pro se litigation.”⁷⁰ Landsman supported his contention by citing data from the Administrative Office of the United States Courts that revealed that forty-three percent of all appeals filed in the courts of appeals in 2006 and 2007 were pro se.⁷¹ Non-prisoner filings constituted forty-six percent of the pro se appeals.⁷² A 2005 *Wall Street Journal* article reported research showing that “[t]here were nearly [twenty percent] more nonprisoner private pro se appeals filed in the federal courts in 2004 than in 1993.”⁷³ Meanwhile, in 1993, the *Wall Street Journal* published an article commenting that “pro se litigant ‘numbers are exploding.’”⁷⁴ Moreover, in 2000, the Conference of State Court Administrators issued a report describing a “surge in self-represented litigation [that] shows no sign of abating.”⁷⁵ These statements and statistics accumulate to support the proposition that the burgeoning population of pro se litigants has been a persistent issue for almost twenty years and is not disappearing.

Many authors point to the hurdles that low- and moderate-income households confront in securing representation as the cause of this trend. Landsman wrote that “the unavailability of legal services at an affordable price” is labeled a cause in “[v]irtually every study and report about the pro se issue.”⁷⁶ Lois Bloom and Helen Hershkoff cited other sources that

68 Rosenbloom, *supra* note 7, at 362.

69 Broderick & George, *supra* note 4.

70 Landsman, *supra* note 5, at 440.

71 *Id.* at 443.

72 *See id.*

73 Kara Scannell, *Legal Eagle: In Phoenix Court, Sales Rep Battles Aventis on Her Own*, WALL ST. J., Aug. 9, 2005, at A1.

74 Goldschmidt, *supra* note 30, at 15 (quoting Junda Woo, *The Lawyerless: More People Represent Themselves in Court, But Is Justice Served?*, WALL ST. J., Aug. 17, 1993, at A1).

75 CONFERENCE OF STATE COURT ADM’RS, POSITION PAPER ON SELF-REPRESENTED LITIGATION 1 (2000), available at <http://cosca.ncsc.dni.us/WhitePapers/selfreplitigation.pdf>; see, e.g., Swank, *Pro Se Phenomenon*, *supra* note 13, at 376-77.

76 Landsman, *supra* note 5, at 443 (citing JONA GOLDSCHMIDT ET AL., AM. JUDICATURE SOC’Y, MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES

“emphasiz[ed] expense as a barrier to [representation] . . . not only for poor and low-income, but also for middle-class households.”⁷⁷ To summarize:

Popular opinion holds that the reason for the increase in pro se appearances is the high cost of attorneys and litigation. Furthermore, the common belief is that all [p]ro se civil litigants want counsel to represent them . . . , and that no person would choose to be pro se. The inability of a large portion of American society to afford attorney assistance has been deemed one of the glaring failures of our system, straining the principle of equal justice under the law. The perceived result is that pro se litigants are reluctant participants in the legal system.⁷⁸

Alternatively, Drew Swank wrote that the increased number of pro se litigants was a result of a variety of personal preferences and beliefs.⁷⁹ He labeled the financial explanation “misguided”⁸⁰ and identified the real causes as “increased literacy rates,” “an anti-lawyer sentiment,” “mistrust of the legal system,” “a belief that the court will do what is right,” “a belief that litigation has been simplified to the point that attorneys are not needed,” and “a trial strategy designed to gain either sympathy or a procedural advantage.”⁸¹ Landsman, in an approach that acknowledged both theories as contributing factors, added two reasons to those listed above. He hypothesized that the “Home Depot” method may also play a part: a professional is not necessary when information that can explain the process to an amateur is easily accessible.⁸² Legal television programs like *The People’s Court* and *Judge Judy* were also identified.⁸³ Landsman stated that the message such programs convey is that the “judge, with the assistance of the litigants, can sort out any legal problem.”⁸⁴

E. The Effect of Pro Se Litigants on the Court System

Whether because of affordability concerns or a shift in societal perspective, “pro se representation is now extensive before many tribunals.”⁸⁵ “Regardless of the exact percentages, pro se litigation rates have been growing at an exponential rate and many commentators believe

AND COURT MANAGERS 10 (1998)).

77 Bloom & Hershkoff, *supra* note 9, at 482 (citation omitted).

78 Swank, *Pro Se Phenomenon*, *supra* note 13, at 378 (alterations in original) (citations omitted) (internal quotation marks omitted).

79 *Id.* at 378-79 (citations omitted).

80 *Id.* at 378.

81 *Id.* at 378-79 (citations omitted).

82 Landsman, *supra* note 5, at 445.

83 *Id.* at 446.

84 *Id.*

85 COMM’N ON NONLAWYER PRACTICE, *supra* note 35, at 33.

they are much higher now than ever before in United States history.”⁸⁶ With this growth comes newfound problems; pro se cases increase the complexity of the duties assigned to judges, magistrates, and other court administrators and personnel⁸⁷ and can challenge the impartiality of both judges⁸⁸ and clerks.⁸⁹ Pro se litigants, meanwhile, increase administrative costs, skip court proceedings or attend proceedings unprepared, and upset court routines.⁹⁰ This development has proven to be a “fundamental challenge to many basic assumptions of our adversary system”;⁹¹ a system that built the roles of judges and clerks on the premise that each party is represented.⁹²

Another basic assumption of the American justice system is that “justice is preserved through court procedures.”⁹³ But is justice preserved when “the law’s procedural requirements . . . ‘place in jeopardy the one due process right that pro se litigants clearly have: the right to a meaningful opportunity to be heard’”?⁹⁴ The Supreme Court recognized this issue and, in *Haines v. Kerner*,⁹⁵ instructed courts to hold pro se pleadings “to less stringent standards than formal pleadings drafted by lawyers.”⁹⁶ Notwithstanding that holding, a pro se litigant is responsible for following a court’s procedural rules with the same vigor as a litigant with counsel.⁹⁷ Noncompliance, even with an ordinary procedural issue, can result in losing one’s case.⁹⁸ In addition, comprehending the substantive law surrounding one’s claim or defense, putting forth cogent factual arguments, and even understanding how an action proceeds are difficult for pro se parties.⁹⁹ The whole process often leaves pro se litigants “confused and overwhelmed, if not frustrated and bitter.”¹⁰⁰ In general, “pro se litigants are almost unanimously ill-equipped to encounter the complexities of the judicial system.”¹⁰¹

86 Swank, *Pro Se Phenomenon*, *supra* note 13, at 376.

87 Bloom & Hershkoff, *supra* note 9, at 480 (internal quotation marks omitted).

88 Landsman, *supra* note 5, at 452.

89 Engler, *supra* note 3, at 1997.

90 Landsman, *supra* note 5, at 449.

91 Engler, *supra* note 3, at 2069.

92 *Id.*

93 Swank, *Rules and Roles*, *supra* note 11, at 1560.

94 *Id.* (quoting Bradlow, *supra* note 54, at 670).

95 *Haines v. Kerner*, 404 U.S. 519 (1972).

96 *Id.* at 520.

97 Bradlow, *supra* note 54, at 664.

98 *Id.*

99 Rosenbloom, *supra* note 7, at 305-06 (internal citation omitted).

100 *Id.* at 305.

101 *Id.* at 306.

The complications accompanying the onslaught of pro se litigants not only need closer examination for the benefit of the parties involved, but also to preempt the development of “skepticism about judicial legitimacy.”¹⁰² Landsman purports that “legitimacy judgments” are often based on “the apparent fairness of observed proceedings.”¹⁰³ “To the non-professional eye, the handling of the self-represented (which seldom results in reaching the merits, let alone winning) is not particularly likely to seem fair and may render the courts vulnerable to attack.”¹⁰⁴

More disconcerting than leaving the court system open to political attack is that some disappointed pro se litigants have physically assaulted courtroom personnel.¹⁰⁵ The frustration and anger that pro se litigants experience in a “substantial number of cases,”¹⁰⁶ as well as the litigants’ short-term relationship with the court,¹⁰⁷ heighten “[l]itigant volatility.”¹⁰⁸ “The Ninth Circuit’s Task Force on Self-Represented Litigants acknowledged [this] safety problem when it suggested that expenditures for the training of court personnel to handle pro se litigants might be placed within the category of improving court security.”¹⁰⁹

“[A]n inaccessible, overburdened justice system serves none of us well.”¹¹⁰ Furthermore, “it is essential to remember that pro se litigants are people who believe they have been wronged, and are entitled to access to the courts and due process under the law.”¹¹¹

II. LONGITUDINAL RESEARCH OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

“Data is desperately needed to appraise the nature of the [pro se] challenge.”¹¹² Even more problematic is that available data is rarely longitudinal or comprehensive.¹¹³ Commentators have theorized and offered anecdotal information regarding pro se litigation and its effects,¹¹⁴ but the pro se challenge is still plagued by a significant lack of information.¹¹⁵

¹⁰² Landsman, *supra* note 5, at 453.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *See id.* at 451-52.

¹⁰⁶ *Id.* at 451.

¹⁰⁷ *See id.* at 451-52.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 452 (citation omitted) (internal quotation marks omitted).

¹¹⁰ Broderick & George, *supra* note 4.

¹¹¹ Rosenbloom, *supra* note 7, at 312.

¹¹² Landsman, *supra* note 5, at 460.

¹¹³ *Id.* at 441.

¹¹⁴ Rosenbloom, *supra* note 7, at 310.

¹¹⁵ Landsman, *supra* note 5, at 460.

In the context of praising programs enacted to assist pro se litigants, one commentator wrote, “[p]robably the only thing growing as fast as the number of self-represented litigants in our state and federal courts are the efforts to assist and accommodate them.”¹¹⁶

This Note is written in response to the lack of data. The data set collected in this research consists of all the cases in which a non-prisoner litigant appeared pro se—initially or during the course of the action—in the United States District Court for the Eastern District of Kentucky in 2004 and 2007. The data selected for collection was based on a similar study conducted in 1993 by Spencer Park.¹¹⁷ That study was chosen as a guidepost based on an acknowledgement in a 2009 article that labeled Park’s study as “[p]erhaps the best snapshot of district court pro se litigation.”¹¹⁸

The remainder of this Part will present the information that was collected and compare it to other data that has been published. First, the data collection procedures, including the categories of data, will be outlined. Second, selected data from 2004, 2007, and combined will be presented and analyzed. Park’s study sought answers to three overarching questions; those questions similarly framed this inquiry: (1) What are the characteristics of non-prisoner pro se litigants?; (2) How does pro se litigation proceed and reach resolution?; and (3) What judicial resources are expended on pro se litigation?¹¹⁹ Finally, the information from this study will be compared to other available data, including Park’s study,¹²⁰ research conducted by Jonathan Rosenbloom,¹²¹ as well as data gathered by the Administrative Office of the United States Courts and the Federal Judicial Center.

A. Procedure

The Public Access to Court Electronic Records (PACER)¹²² system was accessed to display all of the civil cases filed in the Eastern District of Kentucky in 2004 and 2007. The cases were displayed using the “Civil Cases Report” function, and applicable cases were uncovered through the use of filtering options.¹²³ The same filters were applied each time a report was run, and once a report was produced, each case in that report was

¹¹⁶ Swank, *Rules and Roles*, *supra* note 11, at 1538.

¹¹⁷ *See generally* Park, *supra* note 8.

¹¹⁸ Landsman, *supra* note 5, at 442; *see also* Rosenbloom, *supra* note 7, at 310.

¹¹⁹ Park, *supra* note 8, at 828.

¹²⁰ *See generally* Park, *supra* note 8.

¹²¹ *See generally* Rosenbloom, *supra* note 7.

¹²² PACER, <http://www.pacer.uscourts.gov/> (last visited Mar. 7, 2011).

¹²³ *Id.* (Select “Find a Case”; then select “Court Links”; then select “Kentucky Eastern-ECF”; enter log-in information; then select “Reports”; then select “Civil Cases.”).

examined. If a party lacked counsel, terminated his counsel, or his counsel withdrew, then thirteen pieces of information were recorded.¹²⁴

B. Results

Sixty-one parties filed pro se complaints in 2004 and fifty-three filed complaints in 2007. In the context of all the cases the query described above produced, 3.3% of filings were pro se in 2004 and 4% were pro se in 2007.¹²⁵

Those percentages roughly align with statistics promulgated by the Administrative Office of the United States Courts in its annual report, *Judicial Business of the United States Courts*. The report tracked the total number of civil filings in the Eastern District of Kentucky by non-prisoner pro se and non-pro se parties. The 2005 through 2009 reports displayed that non-prisoner pro se parties comprised, respectively, 4.4%,¹²⁶ 6.2%,¹²⁷ 6.4%,¹²⁸ 4.3%,¹²⁹ and 5.1%,¹³⁰ of the total non-prisoner civil petitions.¹³¹ The five year average totaled 5.3%.¹³² Interestingly, that average was less than half the average—11.1%—of all the districts that comprise the Sixth Circuit during that same period of time.¹³³

124 An explanation of the data collection procedure is available *infra* Appendix.

125 Fifteen parties began with counsel but either terminated the relationship or had counsel withdraw in 2004. This amounted to 16% of the parties from 2004. In 2007, nine parties terminated counsel or had counsel withdraw, amounting to 12%.

126 See ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS 89 (2006), available at <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2005/tables/sz4.pdf>.

127 See JAMES C. DUFF, ADMIN. OFFICE OF THE U.S. COURTS, 2006 JUDICIAL BUSINESS OF THE UNITED STATES COURTS 98 (2007), available at <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2006/front/completejudicialbusiness.pdf>.

128 See JAMES C. DUFF, ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2007 ANNUAL REPORT OF THE DIRECTOR 80 (2008), available at <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2007/front/JudicialBusinesspdfversion.pdf>.

129 See JAMES C. DUFF, ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2008 ANNUAL REPORT OF THE DIRECTOR 79 (2009), available at <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2008/front/JudicialBusinesspdfversion.pdf>.

130 See JAMES C. DUFF, ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2009 ANNUAL REPORT OF THE DIRECTOR 79 (2010), available at <http://www.uscourts.gov/Statistics/JudicialBusiness/JudicialBusiness.aspx?doc=/uscourts/Statistics/JudicialBusiness/2009/JudicialBusinesspdfversion.pdf>.

131 Three details should be considered when examining these numbers. First, the report calculates one year from October 1 through September 30. Second, it seems unlikely that parties who became pro se in the middle of an action were included in this figure. Third, it seems unlikely, based on the title of the table, that this number includes parties who defended pro se.

132 The author conducted this calculation.

133 The figures used in calculating this number were obtained from the reports cited

As another means of comparison, the Federal Judicial Center produced a report studying pro se filings in ten district courts between October 1, 1990, and September 30, 1994.¹³⁴ This report revealed that 6-11% of the civil case filings in most reported districts were by non-prisoner pro se litigants.¹³⁵ Three districts were outliers: the Eastern District of Michigan totaled only 5.5%, the Northern District of Texas measured 19.5%, and the Northern District of California registered 14.6%.¹³⁶

The comparison is offered so that one can contextualize the following findings. Simply, in comparison to most other districts, courts in the Eastern District of Kentucky see fewer non-prisoner pro se filings. It did not appear that the Federal Judicial Center's data included parties who appeared pro se as defendants or who filed suit with counsel but subsequently proceeded pro se.¹³⁷ Those parties were tracked in this study and when added to the number of pro se plaintiffs, 5.1% of parties were pro se in 2004 and 5.9% were pro se in 2007.

C. What Are the Characteristics of a Non-Prisoner Pro Se Litigant?

1. *Party's Position in Suit.*—The 2004 and 2007 data produced remarkably similar results. In 2004, 64% of pro se parties were plaintiffs. In 2007, 68% were similarly situated. In three cases, the pro se party fell in the “other” category. Two of those cases were bankruptcy appeals in 2004.¹³⁸ The third case, decided in 2007, involved a party who moved to intervene but was denied. The balance of parties were defendants.

supra notes 126-30. The author conducted this calculation.

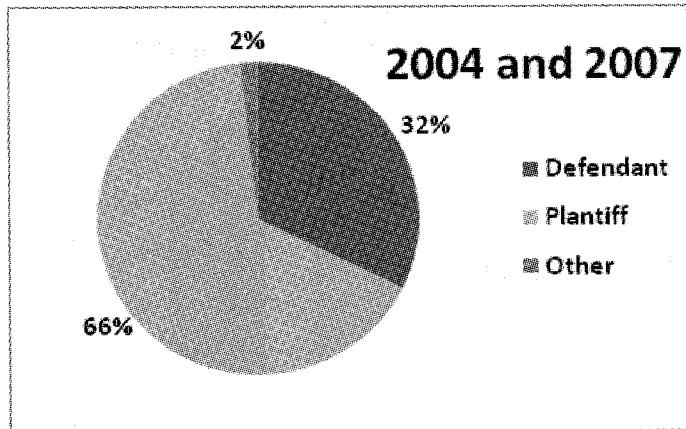
¹³⁴ Rauma & Sutelan, *supra* note 2, at 6. The ten districts were selected because they had the largest number of civil claims filed between 1989 and 1994. The following ten districts were studied: the Eastern District of Louisiana, the Southern District of Florida, the Southern District of New York, the District of New Jersey, the Eastern District of Pennsylvania, the Northern District of Texas, the Eastern District of Michigan, the Northern District of Ohio, the Northern District of California, and the Central District of California. *Id.* at 5.

¹³⁵ *Id.* at 6.

¹³⁶ *Id.*

¹³⁷ *See id.* at 5 (explaining that the cases that were counted in the study were “pro se cases filed” in the above noted federal district courts).

¹³⁸ These parties were counted in the “other” category to align with Park's study.



Park's research showed a different blend of parties. He found that approximately 52% of parties were plaintiffs, 14% were defendants, and almost 34% fell into the "other" category.¹³⁹ Most of the parties in the "other" category were identified as bankruptcy appeals and disbarment proceedings.¹⁴⁰ Because of the skewing effect by the "other" category, calculations were made excluding that category.¹⁴¹ Then, pro se parties proceeded as plaintiffs 79% of the time and as defendants 21%.¹⁴²

2. *Government as a Party*.—The combined results from 2004 and 2007 revealed that a government entity was involved in 58% of pro se cases in some capacity: 53% in 2004 and 62% in 2007.¹⁴³ The government's participation rate as a plaintiff remained relatively constant. Proportionally the government became more active as a defendant in 2007, yet the government defended thirty-three actions in both years.

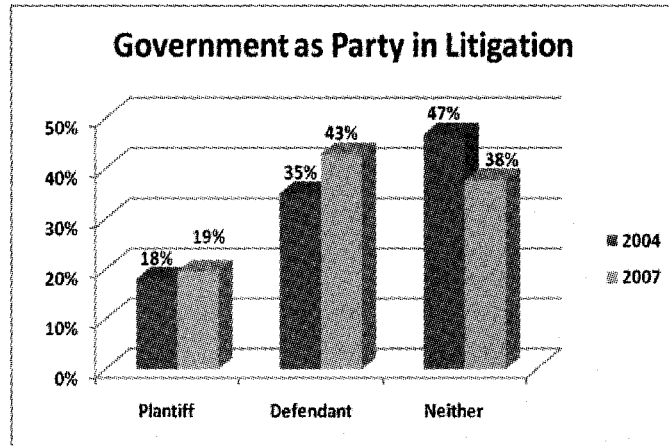
¹³⁹ Park, *supra* note 8, at 829.

¹⁴⁰ *Id.*

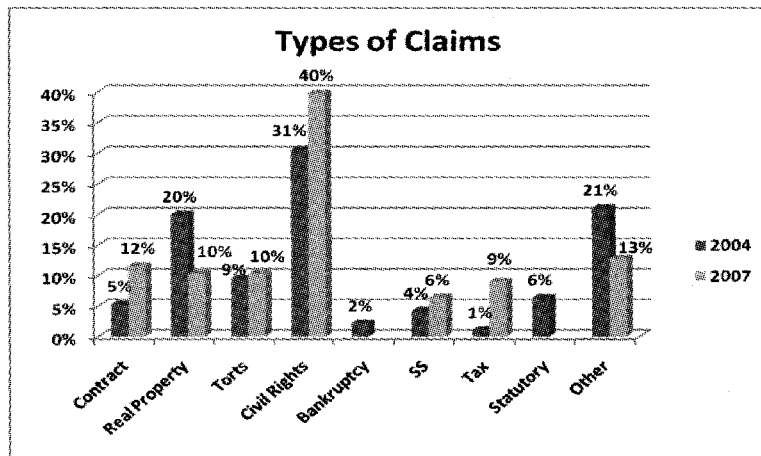
¹⁴¹ *Id.* at 829 & n.21.

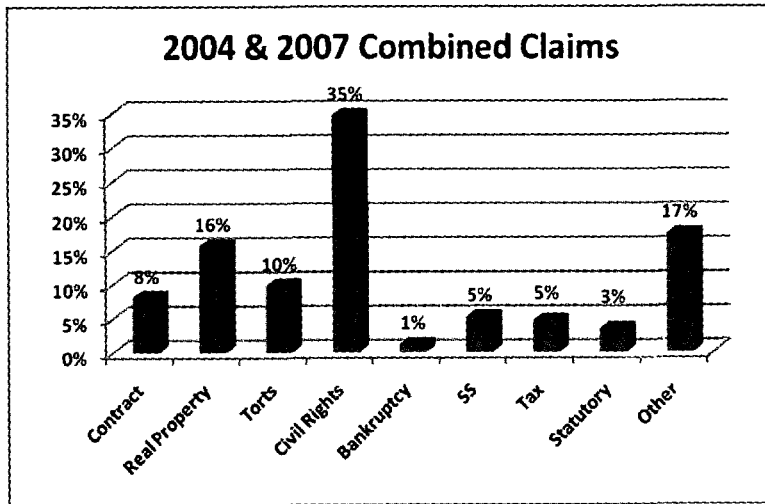
¹⁴² *Id.* at 829 n.21.

¹⁴³ In 2004, there was one action in which the government was a movant in a garnishment action. That case was not included in the calculations for this graph. Thus, the graph for 2004 was based on ninety-four actions instead of ninety-five.



3. *Claim.*—In 2004 and 2007, civil rights claims were the most prevalent type of claim. Respectively, civil rights claims constituted 31% and 40% of all claims. In 2004, only two other types of claims exceeded 10%: claims falling under the catch-all category of “other” totaled 21% and real property claims (primarily foreclosures) amounted to 20%. In 2007, four types of claims topped 10% including “other” with 13%, contract with 12%, and real property and torts, each accounting for 10%. The totals for 2004 and 2007 reveal that civil rights claims made up 35% of the claims, followed by “other” with 17% and real property with 16%.





Park found that civil rights cases constituted 46% of pro se filings.¹⁴⁴ The next two most common claims were torts, comprising almost 14%, and contract claims, totaling just over 10%.¹⁴⁵ A study conducted by the Federal Judicial Center (FJC) also collected data on the types of suits in cases involving non-prisoner pro se litigants.¹⁴⁶ Comparing the two data sets is challenging because the categories of claims are not perfectly aligned, and the breadth of the FJC study is greater—ten federal district courts were examined between 1991 and 1994.¹⁴⁷ In spite of the differences, civil rights claims were most prevalent (42%), and contract claims followed (14%).¹⁴⁸ Statutory claims were the third most litigated claim in the FJC study with 11%, and personal injury made up 7% of the claims.¹⁴⁹

All three studies show that pro se parties become entangled in civil rights litigation more frequently than any other type. Furthermore, this type of claim has been preminent in different studies spanning more than fifteen years.

¹⁴⁴ Park, *supra* note 8, at 833. Comparing this data to Park's findings is somewhat problematic because of an anomaly in his study. The category of "other" predominated over the remaining types of claims because of a large number of disbarment proceedings. *Id.* at 832. There were no disbarment proceedings amongst the pro se cases analyzed for this Note. Therefore, the types of claims in this study were compared to Park's totals after the "other" category was removed.

¹⁴⁵ *Id.* at 833.

¹⁴⁶ Rauma & Sutelan, *supra* note 2, at 9 fig.6.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

4. *In Forma Pauperis (IFP)*.¹⁵⁰—Thirty percent of pro se parties applied for IFP, but only 12% actually obtained that status. Stated differently, 40% of those who applied for IFP status obtained it. That total, however, was derived from dissimilar success rates in 2004 and 2007. Parties who applied for IFP in 2004 had their request granted only 18% of the time. In 2007, 57% of requests were granted. Accompanying the increased success was an increase in applications. Pro se litigants filed for IFP 13% more frequently in 2007 than they did in 2004.¹⁵¹ No express policy or organizational adjustment accounted for this shift. Park found that 30% of parties applied for IFP.¹⁵² Of that 30%, Park reported that 60% of the litigants were successful.¹⁵³

As alluded to in Part I,¹⁵⁴ a court can appoint counsel under 28 U.S.C. § 1915.¹⁵⁵ Although a court generally appoints counsel upon request of the litigant, a court has the freedom to appoint counsel sua sponte.¹⁵⁶ In this study, 4% of litigants, or seven total parties, requested counsel. Counsel was not appointed for any litigant. Park's study indicated that 8% of litigants filed a request for counsel.¹⁵⁷ Counsel was not appointed for any litigant. Park's results did not reveal whether the litigants' requests were granted.¹⁵⁸

D. How Does the Litigation in Which a Party Is Pro Se Proceed and Reach Resolution?

1. *Magistrate Involved in Proceedings*.—In 2004, 16% of pro se litigations were referred to a magistrate judge to resolve at least one aspect of the case. The landscape was dramatically different in 2007. Then, 49% of pro se litigations were referred to a magistrate judge. The increased rate of referral was described as a result of employee turnover in the positions of

¹⁵⁰ Three options were available in this category. If a party applied for and received IFP status, a "yes" was recorded. If a party did not apply for IFP, a "no" was recorded. If a party applied for IFP status and was either denied or the outcome was unclear or not recorded, then "applied" was recorded.

¹⁵¹ Pro se litigants applied for IFP in 23% of cases in 2004 and 36% of cases in 2007.

¹⁵² Park, *supra* note 8, at 830.

¹⁵³ *See id.* at 831.

¹⁵⁴ *See supra* Part I.C.1.

¹⁵⁵ 28 U.S.C. § 1915(e)(1) (2006).

¹⁵⁶ *Tabron v. Grace*, 6 F.3d 147, 156 (3d Cir. 1993) (citing *Castillo v. Cook Cnty. Mail Room Dep't*, 990 F.2d 304 (7th Cir. 1993)).

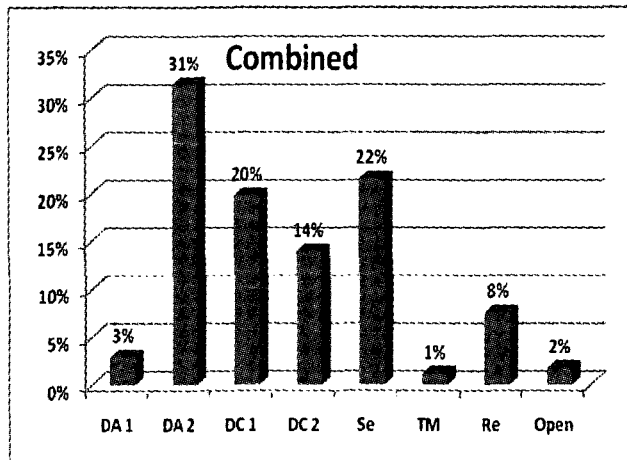
¹⁵⁷ Park, *supra* note 8, at 833.

¹⁵⁸ *Id.* at 834.

judge and magistrate; no additional positions were created.¹⁵⁹ Park found that 12% of cases were referred.¹⁶⁰

2. *Outcome.*—More than 50% of the pro se cases in both 2004 and 2007 were dismissed prior to or by a motion to dismiss: 54% and 55% respectively.¹⁶¹ Twenty percent of all cases were dismissed upon filing of a motion to dismiss. The procedural device more regularly used to dispose of cases was sua sponte dismissal by the court, generally for failure to prosecute. Thirty-one percent of cases were dismissed through this method, while 3% of cases were dismissed upon request of the pro se party.

Twelve percent of cases were dismissed by summary judgment in 2004; 17% were dismissed likewise in 2007. Twenty-two percent of cases were resolved by settlement. A caveat must be offered regarding the number of settlements. In 2004, 25% of cases were settled, but over 40% of those were foreclosure cases.¹⁶² Settlement was less common in 2007, with only 18% of cases ending in that manner. Foreclosure cases made up a smaller percentage of the settled cases, but still constituted 31%. Only two cases, both occurring in 2004, reached trial. Only three cases, all in 2007, were left unresolved when this research was terminated. Finally, 8% of the total number of cases were remanded.

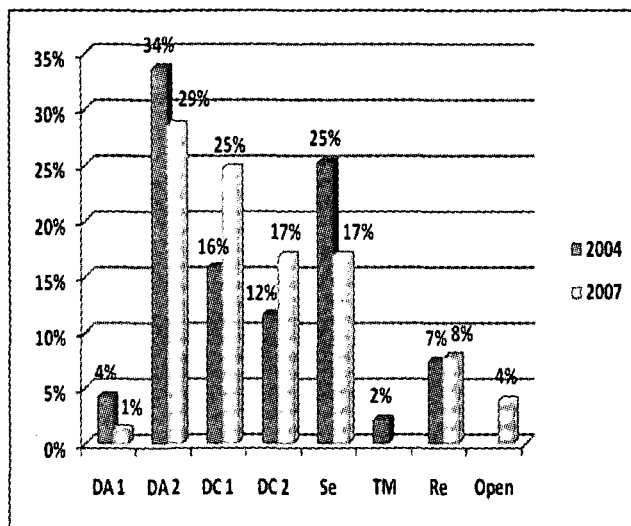


¹⁵⁹ Interview with Sharon Vrolijk, Operations Manager for the U.S. Dist. Court for the E. Dist. of Ky., in Lexington, Ky. (Jan. 29, 2010). Vrolijk offered insight into the dramatic increase in referrals. She said several new individuals became judges and magistrates, and these new parties established different systems in which the magistrates were used more regularly.

¹⁶⁰ Park, *supra* note 8, at 834.

¹⁶¹ The 2007 figure was calculated including 4% of cases that were still open. If the open cases were not considered, 57% of cases would be dismissed prior to or by a motion to dismiss.

¹⁶² Twenty-four cases were settled. Ten of those cases were foreclosures. Thus, 10.5% of case terminations in 2004 were foreclosure settlements.



DA1	Dismissal upon request by the pro se litigant
DA2	Dismissal by the court due to failure to prosecute or abandonment by the pro se litigant
DC1	Dismissal by the court under a motion to dismiss
DC2	Dismissal by the court under a motion for summary judgment
Se	Settlement
TM	Trial on the merits
Re	Remand to lower tribunal or other transfer to another venue

Park reported similar figures regarding both disposition before summary judgment and settlement. He stated that 56% of cases were incapable of withstanding a preliminary motion to dismiss,¹⁶³ and settlement was achieved in slightly over 15% of cases.¹⁶⁴ The findings varied significantly, however, in regard to the number of cases that were dismissed by the court for either failure to prosecute or abandonment. Park's findings showed that only 7% of cases were dismissed on those grounds.¹⁶⁵

¹⁶³ Park, *supra* note 8, at 835.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 836.

3. *Judgment.*—In the cases dismissed by motion to dismiss or prior to such motion, the pro se party could have been the prevailing party. Therefore, dispositions should not necessarily be equated with pro se litigants failing in their cause. In the cases included in this study, however, those two concepts were aligned.

Of the fifty-one cases dismissed before summary judgment in 2004, one was dismissed in favor of the pro se party. Forty-two cases were dismissed before summary judgment in 2007, and only one dismissal favored the pro se party. No summary judgment decisions in either year were rendered for the pro se party. Although trials were exceedingly rare, pro se parties split the two trial decisions. The pro se party who prevailed at trial, however, was a licensed attorney.

Park's findings were presented in a manner by which comparison is difficult. He reported that 76.2% of pro se parties were unsuccessful in their cause.¹⁶⁶ Over 20% of the cases settled or were remanded, and 3.5% ended in favor of the pro se party.¹⁶⁷

4. *Appeal.*—Eighteen percent of actions were appealed in 2004, and 17% were appealed in 2007. Three actions from 2007 were still open in district court at the conclusion of this project. Park found that 11.5% of cases were appealed.¹⁶⁸

¹⁶⁶ *Id.* at 834.

¹⁶⁷ *Id.* at 834.

¹⁶⁸ *Id.* at 836.

*E. What Judicial Resources Are Expended on Pro Se Litigation?*¹⁶⁹

	Number of Docket Entries		Number of Days Pending		Time-Docket	
	2004	2007	2004	2007	2004	2007
Average	28.98	19.99	443.64	325.04	182.98	94.28
Minimum	3	2	4	1	.2	.02
Maximum	397	106	1,930	942	7,662.1	647.7
Standard Deviation	47.57	17.87	441.67	265.54	387.21	137.59
Median	16	16	312	281	55.56	34.06

Actions in 2004 took over 100 more days, on average, to resolve than did actions in 2007. Actions in 2004 also took almost nine more docket entries. The average number of docket entries in Park's study—19.76—was similar to that found here in 2007.¹⁷⁰ Park found that the average number of days during which an action was pending was 183.46,¹⁷¹ that is significantly fewer than the average from 2004 or 2007.¹⁷²

Median time is the statistical measure used to demonstrate the time elapsed from filing to disposition of cases in the *Judicial Business of the United States Courts*.¹⁷³ This is a useful figure for reducing the influence of outliers.¹⁷⁴ The *Judicial Business of the United States Courts* reported that for civil cases, the median time an action was pending in 2007 was 8.6 months

169 The "time-docket" concept was derived from Park, *supra* note 8, at 827. "This figure multiplies the 'time' measurement by the 'docket' measurement to provide an index of the burden upon the court's resources." *Id.* (citation omitted). That total is then divided by 100 to make the numbers more manageable. "The two figures are used in combination because the two indicators measure burdens in different ways. While the 'days' parameter captures the burden of time, the 'docket' figure reflects . . ." the level of involvement of a court in an action. *Id.* These are not necessarily tightly correlated because an action could be on a court's docket for many days but require little from the court. *Id.*

170 *Id.*

171 *Id.*

172 The online docket report for the Eastern District of Kentucky continues to add docket entries as a case is appealed. These docket entries and days were counted when totals and averages were figured. It is unclear if Park calculated similarly.

173 *See, e.g.,* DUFF, *supra* note 128, at 19.

174 Rauma & Sutelan, *supra* note 2, at 10.

(approximately 258 days).¹⁷⁵ In 2008 that time span shrunk to 8.1 months (243 days), while in 2009 it lengthened to 8.9 months (267 days).¹⁷⁶ In this study, the median time in both 2004 and 2007 exceeded those figures. The median time in 2004 equated to approximately 10.4 months (312 days), while the median time in 2007 dropped to 9.4 months (281 days). This comparison is not perfect because the *Judicial Business of the United States Courts* includes represented and pro se parties for all civil cases.¹⁷⁷ Nonetheless, it demonstrates that pro se cases are on a court's docket for a longer period of time, at least in this instance.

The Federal Judicial Center's report, however, expressed somewhat different results. That report categorized the median time, from filing to disposition, into four categories, two of which are relevant to this research—non-prisoner, pro se and non-prisoner, represented.¹⁷⁸ The median time a case was pending for non-prisoner pro se parties exceeded non-prisoner represented parties in only two of the ten district courts that were studied.¹⁷⁹ Aggregately, the median time pending for non-prisoner pro se cases was 161 days (5.4 months)¹⁸⁰ and 173 days (5.8 months) for cases involving parties with representation.¹⁸¹

The type of claim also had an effect on the judicial resources that were expended. The average and median figures of this study are displayed in the following graphs. Both measures are shown due to the smaller sample size and thus the increased potential for extreme values to skew the results.¹⁸²

¹⁷⁵ DUFF, *supra* note 128, at 19.

¹⁷⁶ *Id.*

¹⁷⁷ *See id.* at 9-10.

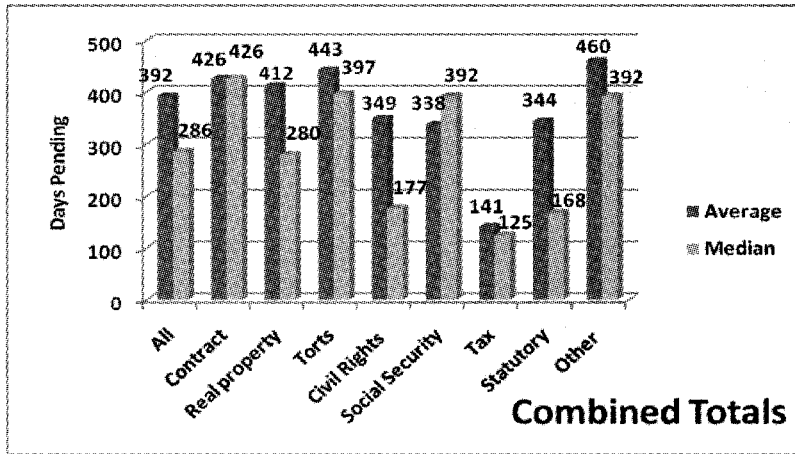
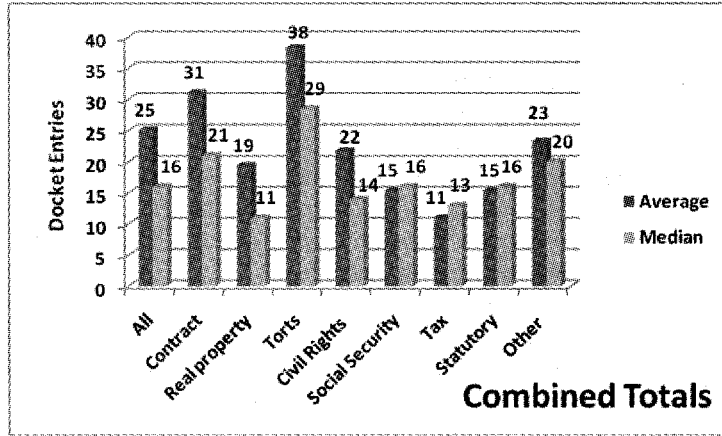
¹⁷⁸ Rauma & Sutelan, *supra* note 2, at 10 fig.7.

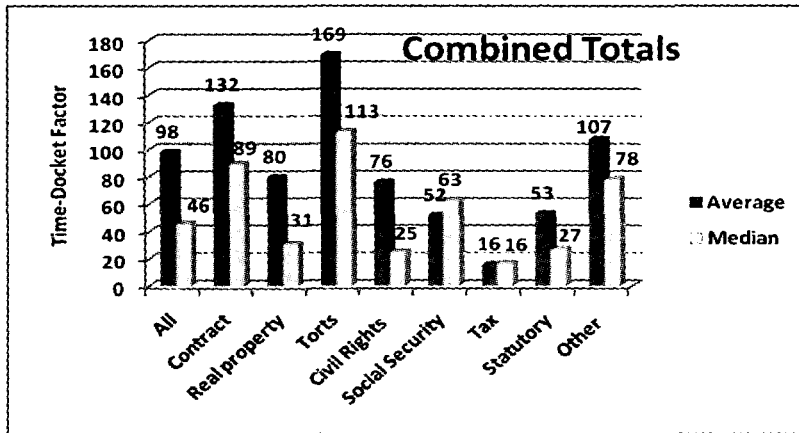
¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 10. The median time was not specifically listed for non-prisoner represented parties.

¹⁸¹ *Id.* The median time was only listed as a combined total of both prisoner and non-prisoner represented parties.

¹⁸² Only two bankruptcy actions were included in this study. They were not included in the graph in order to allow for easier viewing. One action had fifteen docket entries and lasted 351 days. The other action had five docket entries and lasted sixteen days.





In this study, tort claims proved to be the most burdensome for courts as shown by almost all the measures offered above. Contract claims placed the second greatest burden on the courts. In terms of frequency, tort and contract claims were the fourth and fifth most prevalent types of cases in which pro se litigants were involved. Civil rights claims—the most common type of action involving pro se parties—measured as the fifth most time-consuming claim using the average time-docket factor.

Park's results were dissimilar. He found that bankruptcy claims had the largest average time-docket factor (157), followed by labor claims (138), civil rights claims (116), and torts claims (68).¹⁸³ Contract claims had the seventh highest time-docket average (45) out of the nine types of claims about which Park reported information.¹⁸⁴ More generally, the average time-docket for all of Park's claims was about thirty-three percent less than the average from this study: sixty-four as opposed to ninety-eight.¹⁸⁵ This figure is intriguing in light of the different sample sizes from these two studies. Park's study included a larger number of parties, but the individual parties, on average, demanded fewer resources from the court. This study had fewer parties but those parties needed markedly more from the court system. Thus, the number of pro se parties is not necessarily indicative of the challenge courts face from pro se litigants.¹⁸⁶

¹⁸³ Park, *supra* note 8, at 839. This Note rounds figures for the ease of the reader.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Park found that in a one year filing period, 683 parties initiated their action pro se, or became pro se in the middle of the action. *Id.* at 824. His data is based on the results from 33% of those cases: a total of 227. *Id.* This study was based on 173 actions.

III. RECOMMENDATIONS

A. *Pro Se* Plaintiffs

Plaintiffs constituted the majority of the pro se parties in this study.¹⁸⁷ When the party's position in the dispute is linked to the type of claim that was involved, some obvious and logical results emerge: in both 2004 and 2007 the pro se party was the plaintiff 100% of the time in social security cases, the defendant 100% of the time in tax cases, and the plaintiff in 97% of civil rights cases.

Contract claims and tort claims are the two types of claims that stand out as instances in which a pro se party's position in a suit is less determined by the type of claim. Seemingly, there is nothing inherent in those types of claims that would predispose pro se parties to participating as a plaintiff or defendant. Yet, in this study, 71% of pro se parties involved in contract actions were plaintiffs and 81% were plaintiffs in tort actions. Examined independently, however, the 2004 and 2007 results display that the percent of pro se plaintiffs in contract actions dropped 13%. The rate of plaintiff involvement in tort actions, meanwhile, dropped 43%.¹⁸⁸ Extrapolating too much information from those two categories is dangerous due to the small sample size, but this information could serve as evidence demonstrating that pro se parties are involved in actions in more varied ways than in years past. Regrettably, even if that is true, the data does not reveal whether pro se parties defended more due to financial hardships, social or psychological factors,¹⁸⁹ or some unidentified reason.¹⁹⁰

Cross-tabulating pro se plaintiffs with the outcome of the action in which they were involved also produces a noteworthy figure. Seventy percent of claims from 2004 brought by pro se plaintiffs ended by the plaintiff withdrawing his claim or by the court's dismissal—either sua sponte or upon a motion to dismiss. Only 54% of suits in 2004 in which either the plaintiff *or* the defendant was pro se ended by withdrawal or dismissal. Though less dramatic, in 2007, 62% of suits brought by pro se plaintiffs ended by motions to dismiss or before such motions, while 55% of cases were similarly terminated when pro se plaintiffs and defendants were considered. These figures evidence the lack of success that pro se plaintiffs have in simply sustaining an action. Moreover, the decrease in the

¹⁸⁷ *See supra* Part II.C.1.

¹⁸⁸ Contract claims dropped from 80% to 67% and tort claims dropped from 100% to 57%. Five contract claims were brought in 2004 and nine in 2007. Nine tort claims were brought in 2004 and seven in 2007. These low numbers could lead to skewed percentages and would benefit from being repeated in courts with more claimants in each of these categories.

¹⁸⁹ *See supra* Part I.D.

¹⁹⁰ *See supra* Part I.D.

percentages when pro se defendants were added indicates similar failure when pro se parties defend against claims.

Plaintiffs' low rate of success in rebutting a motion to dismiss is significant as responses to the pro se challenge are considered. Although claims by plaintiffs are less taxing on courts—the average and median time-docket factors were lower when only plaintiff's claims were considered—focusing more energy on review of a plaintiff's complaint could be beneficial. Rosenbloom suggested a sua sponte review of each complaint by the court's pro se office.¹⁹¹ If the complaint is deemed credible enough to avoid dismissal, Rosenbloom proposed that a conference should be held with the plaintiff and “a pro se staff attorney.”¹⁹² This conference should have three objectives: to discuss the litigant's desires and expectations, to inform the litigant about the availability of alternative dispute resolution procedures, and to examine if such procedures might be appropriate.¹⁹³ Courts benefit through this process by spending fewer resources on non-meritorious claims. Pro se parties with meritorious claims benefit by receiving attention and information they would otherwise lack. This attention may in turn help plaintiffs achieve more favorable resolution of their claims.

B. Partially Represented Litigants

Twenty-four parties in this study were represented for part of their litigation. Seventeen were plaintiffs; seven were defendants. Partially represented parties were involved in only five types of claims: 25% in contract claims, 4% in real property claims, 25% in tort claims, 21% in civil rights claims, and 25% in the category of “other.”

Three significant differences emerge between partially represented parties and those who litigated alone throughout the process: the government was a party to fewer actions, pro se parties achieved more favorable outcomes, and the time-docket factor was much larger. First, the government was a party in only four of the actions and was a defendant each time.¹⁹⁴ Second, partially represented parties had 33% of their actions dismissed by a motion to dismiss or prior to such motion.¹⁹⁵ In

¹⁹¹ Rosenbloom, *supra* note 7, at 368-71. “In *Denton v. Hernandez*, the United States Supreme Court held claims that are ‘delusional’ or ‘wholly incredible’ may be dismissed as factually baseless.” *Id.* at 346 (quoting *Denton v. Hernandez*, 504 U.S. 25, 33 (1992)).

¹⁹² *Id.* at 371.

¹⁹³ *Id.* at 371-72.

¹⁹⁴ This number reveals that the government was a party in only 17% of the cases. When all cases are considered, the government was a party in 58% of the actions. *See supra* Part II.C.2.

¹⁹⁵ The actual percent of parties who saw their cases dismissed at this stage was 37.5%. One party, however, was removed from these calculations because he was a defendant in the action. Because he was a defendant, he actually achieved his objective by getting the case dismissed and, therefore, was not counted.

comparison, 54% of all pro se parties suffered that result.¹⁹⁶ Settlement was also achieved in 33% of the cases, and plaintiffs were the pro se parties in 75% of the settlements.¹⁹⁷ Third, partially represented parties' average and median time-docket factors were more than two and three times longer, respectively, than those of the total population.¹⁹⁸

It is clear that when a party has representation for part of an action he is able to stay on a court's docket longer. This staying power likely increases his odds of obtaining a more desirable outcome. It is possible that the assistance of counsel at the beginning of an action allows a litigant to avoid procedural pitfalls that trip up many unrepresented litigants. Once those challenges have been overcome, the merits of one's action are before the court, and a pro se party may be less disadvantaged. These results unfortunately do not allow for that line of reasoning to be conclusively defended. It is also plausible that, for the parties who were plaintiffs, counsel agreed to the representation because the action appeared meritorious. In that case, these claims may have naturally persisted longer than others regardless of the presence of counsel.¹⁹⁹

These results offer at least tepid support for the proposition that limited scope representation (or unbundled legal services) may be beneficial to pro se litigants. "Limited scope representation is an agreement in which a client hires an attorney to assist with specific elements of a legal matter or to perform discrete tasks, either for a fee or pro bono."²⁰⁰ These discrete tasks might vary from drafting documents to representing a party in court.²⁰¹ Fee arrangements are similarly flexible. This system works to

196 See *supra* Part II.D.2.

197 Cf. Part II.D.2 (displaying settlement results from the entire study revealing that 22% of cases ended in settlement).

198 Average: 222 for partially represented and 98 for all parties; Median: 172 for partially represented and 46 for all parties.

199 Similar criticism has been levied at research that shows that represented parties achieve more favorable outcomes than unrepresented parties. Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 *FORDHAM URB. L.J.* 37, 85-86 (2010); Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 *LOY. L.A. L. REV.* 869, 892-93 (2009).

200 Alicia M. Farley, Current Development, *An Important Piece of the Bundle: How Limited Appearances Can Provide an Ethically Sound Way to Increase Access to Justice for Pro Se Litigants*, 20 *GEO. J. LEGAL ETHICS* 563, 567 (2007). The full bundle has been described as "(1) gathering facts, (2) advising the client, (3) discovering facts of the opposing party, (4) researching the law, (5) drafting correspondence and documents, (6) negotiating, and (7) representing the client in court." Steven A. Nigh, Current Development, *Legal Hotlines: Ethical Concerns and Proposals for Regulation*, 22 *GEO. J. LEGAL ETHICS* 1053, 1055-56 (2009) (citations omitted) (internal quotation marks omitted).

201 Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoners' Access to the Courts*, 23 *GEO. J. LEGAL ETHICS* 271, 276 (2010); Rochelle Klempner, *Unbundled Legal Services in New York State Litigated Matters: A Proposal to Test the Efficacy Through Law School Clinics*, 30 *N.Y.U. REV. L. & SOC. CHANGE* 653, 654 (2006).

give clients substantial control over the representation—both in terms of costs and the services that are being purchased.²⁰² At its most basic level, limited scope representation has been advanced as a way for pro se parties to enhance their cases without spending the money required for full-scale representation.²⁰³

Some have argued that limited scope representation is already engrained in the practice of law: clients regularly ask attorneys for legal advice on discrete matters.²⁰⁴ For instance, counsel might be sought to review a contract or offer an opinion on an action that is being contemplated.²⁰⁵ Generally, although the matter might be discrete, the advice is solicited in the context of an established attorney-client relationship.²⁰⁶ Limited scope representation is distinguished from this practice in two ways. First, in non-litigation matters, an attorney-client relationship is limited to a short-term encounter in which neither party expects further interactions.²⁰⁷ Second, limited scope representation transfers the concept of issue-oriented assistance into the previously untapped field of litigation.²⁰⁸

One of the problems critics of limited scope representation have identified is establishing appropriate limits.²⁰⁹ This is especially troublesome when the client desires the representation to include appearing before a court.²¹⁰ Other identified problems include “ghostwriting” (attorneys drafting documents for clients who proceed pro se and refrain from attributing authorship²¹¹), “the inability of courts to monitor attorneys, and a lawyer’s inability to provide competent and diligent representation.”²¹² A final problem is that attorneys must base their work on a client’s findings.²¹³

Nevertheless, many benefits are associated with limited scope representation, not least of which is that clients and attorneys who utilized this option expressed “high satisfaction.”²¹⁴ An additional benefit that

202 Jeanne Charn, *Legal Services for All: Is the Profession Ready?*, 42 *LOU. L.A. L. REV.* 1021, 1036 (2009).

203 Broderick & George, *supra* note 4.

204 Klempner, *supra* note 200, at 654.

205 *Id.*

206 *Id.*

207 *See id.*

208 *Id.*

209 *See id.* at 663.

210 *Id.*

211 *Id.* at 658.

212 Nigh, *supra* note 199, at 1060. For an in-depth discussion on this topic, including possible responses to this issue, see *STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS’N, AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE PRO SE LITIGANTS 10-12* (2009), available at http://www.abanet.org/legalservices/delivery/downloads/prose_white_paper.pdf.

213 Klempner, *supra* note 200, at 663.

214 Charn, *supra* note 201, at 1036.

accrues to litigants is the feeling of being empowered.²¹⁵ This feeling can manifest in two ways. First, a litigant may feel empowered because much of the responsibility of overseeing the litigation has been shifted.²¹⁶ The pro se party can undertake the case with the knowledge that professional advice can be readily obtained if necessary. Second, some litigants enter the judicial system feeling vulnerable.²¹⁷ Such litigants might be defendants, or perhaps reluctant plaintiffs. The support of representation in overcoming a troublesome substantive question or a challenging procedural problem, or acting as an in-court advocate can help provide a “vulnerable, one-shot litigant with the benefits of repeat-player status.”²¹⁸

The reported advantages of this system extend further and reach the court and opposing counsel. Those who support limited scope representation cite one benefit as improving the efficiency of the courts.²¹⁹ This result is mostly achieved through court proceedings that resolve more quickly.²²⁰ “attorneys are aware of local rules and procedures, rules of evidence, and the scope of legally relevant issues. . . . [This permits] a clear presentation of the case.”²²¹ Those qualities benefit opposing counsel as well and explain, at least in part, the reason momentum has shifted in favor of allowing limited scope representation.²²² To date, forty-one states have adopted a rule that allows for a lawyer to represent a client for particular portions of litigation.²²³ The ABA expressed its support for this practice through its amendment of Model Rule 1.2 of the *Model Rules of Professional Conduct*.²²⁴ The amended rule explicitly states that an attorney is permitted to “limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”²²⁵

In summary, “[t]he system is structured to require legal counsel for meaningful access.”²²⁶ The Supreme Court recognized this more than seventy years ago when it wrote: “an individual’s ‘right to be heard [in

215 Deborah J. Cantrell, *Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 *FORDHAM L. REV.* 1573, 1581 (2002); see Engler, *supra* note 198, at 78-81 (discussing the importance of having knowledgeable resources at one’s disposal during legal proceedings).

216 Klempner, *supra* note 200, at 672; see Nigh, *supra* note 202, at 1058.

217 Engler, *supra* note 198, at 79.

218 *Id.*

219 Farley, *supra* note 199, at 571; Engler, *supra* note 198, at 69, 72-73.

220 See Farley, *supra* note 199, at 571 n.65, 572.

221 Klempner, *supra* note 200, at 664 (internal quotation marks omitted).

222 Charn, *supra* note 201, at 1036.

223 Broderick & George, *supra* note 4.

224 STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., *supra* note 211, at 8 (discussing amendments to the Model Rules from 2000 that permitted limited representation).

225 MODEL RULES OF PROF’L CONDUCT R. 1.2(c) (2009).

226 Andrew Scherer, *Securing a Civil Right to Counsel: The Importance of Collaborating*, 30 *N.Y.U. REV. L. & SOC. CHANGE* 675, 675 (2006).

legal proceedings] would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”²²⁷ This research supports that sentiment.²²⁸ Thus, improving access to counsel is an important step in making access to justice more widely available. But short of systemic change, “only a massive infusion of resources, complemented by an army of pro bono attorneys can solve the access to justice problem in the United States.”²²⁹ Yet, resources are limited, and improving pro se access to counsel is unlikely to rise above other issues—the federal deficit, stabilizing the economy, and national security, among others—competing for public monies.²³⁰ Limited scope representation is a solution to this problem. It requires little, if any, public money. Most importantly, it can help low- and moderate-income parties who are unable to afford full representation obtain the benefits offered by counsel.²³¹

IV. CONCLUSION

This data was collected to answer three questions: (1) What are the characteristics of a non-prisoner pro se litigant?; (2) How does the litigation in which a party is pro se proceed and reach resolution?; and (3) What judicial resources are expended on pro se litigation?

Pro se parties were involved in more than 5% of the civil actions in the Eastern District of Kentucky. These parties were overwhelmingly plaintiffs who most frequently brought civil rights actions. However, pro se litigants became involved in a number of other claims. The government—federal, state, or local—was involved in more than 50% of pro se litigations, more frequently as a defendant. In forma pauperis was not routinely sought, but the number of times when it was granted rose significantly from 2004 to 2007. Litigations involving pro se parties involved magistrate judges regularly in 2007, but rarely in 2004. More than half of the litigants were unable to shepherd their claim past a motion to dismiss, and trials were held in only 1% of cases. Slightly less than 20% of cases were appealed. Finally, the burden on the court varied by the claim involved. Tort claims and contract claims were the most demanding, based on time-docket, while tax claims resulted in the lowest time-docket factor.

²²⁷ Rhode, *supra* note 198, at 877 (alteration in original) (quoting Powell v. Alabama, 285 U.S. 45, 68-69 (1932)).

²²⁸ Other research also supports this finding. Rhode, *supra* note 198, at 893. *But see* Engler, *supra* note 198, at 85-92 (criticizing some of the research Rhode cited).

²²⁹ Charn, *supra* note 201, at 1021.

²³⁰ Swank, *Rules and Roles*, *supra* note 11, at 1583.

²³¹ Farley, *supra* note 199, at 566-67.

APPENDIX

A. The Sample

The Public Access to Court Electronic Records (PACER)²³² system was accessed to display all of the civil cases filed in the Eastern District of Kentucky in 2004 and 2007. The cases were displayed using the “Civil Cases Report” function.²³³ The Civil Cases Report page has several filters that were applied to narrow results: “Office,”²³⁴ “Case Type,”²³⁵ “Nature of Suit,”²³⁶ “Cause,”²³⁷ “Jurisdiction,”²³⁸ “Case Flags,”²³⁹ and boxes by both “Open Cases” and “Closed Cases” were checked. Nothing was entered in the “Terminal Digit(s)” field. Finally, the “Filed” filter was set to span one month, and a report was produced. Each time a report was run the same filters were applied.

The report that was produced had four columns that displayed “Case Number/Title,” “Case Dates,” “Days Pending,” and “Notes.” Each case was hyperlinked under the Case Number/Title column, and its docket sheet was accessed by selecting the case number; on the next webpage, “Run Report” was selected. The docket sheet revealed each party in the action, his/her address, if an attorney had registered an appearance on behalf of a party, and all the docket entries pertaining to that case. The various docket entries could be selected and, for most cases, the applicable documents examined.²⁴⁰ For this study, once a report was produced, each case in that report was opened. If a party lacked counsel, terminated his counsel, or his counsel withdrew, then thirteen pieces of information were recorded.

232 PACER, <http://www.pacer.uscourts.gov/> (last visited Oct. 29, 2010).

233 *Id.* at <http://www.pacer.uscourts.gov/> (last visited Mar. 7, 2011) (Select “Find a Case”; then select “Court Links”; then select “Kentucky Eastern-ECF”; enter log-in information; then select “Reports”; then select “Civil Cases.”).

234 *Id.* (Under “Office,” all options—Ashland, Covington, Frankfort, Lexington, London, and Pikeville—were selected.).

235 *Id.* (Under “Case Type,” all options—Civil, Foreign, Judgment, and Miscellaneous—were selected.).

236 *Id.* (Under “Nature of Suit,” all options except for six were selected. Those six, numbered 510, 530, 535, 540, 550, 555, were excluded because they only apply to filings by a prisoner.).

237 *Id.* (Under “Cause,” all options were selected. All options were selected notwithstanding that some are primarily applicable to prisoner filings. These were included to ensure a non-prisoner case was not excluded.).

238 *Id.* (Under “Jurisdiction,” all options were selected.).

239 *Id.* (Under “Case Flags,” no options were selected.).

240 This is generally the case. Social Security cases, as well as a few other types, could not be selected unless one visited a computer terminal inside a district courthouse.

B. Data Categories

1. *Case Number*.—Case numbers were recorded for tracking purposes. This allowed each case to be tied to its original judicial division.

2. *Party's Position in Suit*.—Whether the party was a plaintiff, defendant, or “other” was recorded. Only three instances arose where the “other” label was used.²⁴¹

3. *Government as a Party*.—A record was made if the government—local, state, or federal—was a party. A party was determined to be a public official only if an appropriate title was offered on the docket sheet.

4. *Claim*.—Eleven different categories were utilized to sort the claims implicated in each suit. The categories were based on Park's study for comparison purposes.²⁴² Determinations about the appropriate categorization of a case were made using several indicators. First, when the “cause” on the docket sheet clearly corresponded with a category in the study, then that category was utilized. If the “cause” was unclear, then the complaint was examined and labeled.²⁴³ If a case included multiple claims, the case was assigned to the claim that predominated. If that was unclear, the case was grouped by the first claim in the complaint. Categories consisted of the following:

- (1) contract, (2) real property [including foreclosure], (3) torts (including personal injury, personal property, and fraud), (4) civil rights (including employment discrimination, housing, and other civil rights claims), (5) labor, (6) bankruptcy, (7) property rights (including intellectual property), (8) social security, (9) tax, (10) statutory (constitutional, environmental, banking, Freedom of Information Act, and securities acts claims), and (11) other (. . . unspecified statutory claims).²⁴⁴

5. *In Forma Pauperis (IFP)*.²⁴⁵—Three options were available in this category. If a party applied for and received IFP status, a “yes” was recorded. If a party did not apply for IFP, a “no” was recorded. If a party applied for IFP status and was either denied or the outcome was unclear or not recorded, then “applied” was recorded.²⁴⁶

²⁴¹ See *supra* Part II.C.1.

²⁴² Park, *supra* note 8, at 825.

²⁴³ If the complaint was not available through the PACER system (generally because a case was removed from state court), the answer was examined and the case was categorized accordingly.

²⁴⁴ Park, *supra* note 8, at 825.

²⁴⁵ See *supra* Part I.C.1.

²⁴⁶ This categorization was selected to mirror Park and allow for useful comparison. Park, *supra* note 8, at 825-26.

6. *Counsel Requested.*—This category examined whether the docket report included a request by the party (plaintiff or defendant) for the appointment of counsel.²⁴⁷

7. *Counsel Appointed.*—This category examined if the docket report included an entry in which counsel was actually appointed to represent a party that had previously acted pro se.²⁴⁸

8. *Magistrate Involved in Proceedings.*—If any part of the litigation was referred to a magistrate judge and noted in the docket report, then a “yes” was recorded.

9. *Outcome.*—The manner in which each action was terminated was grouped into one of seven different classifications:

(1) dismissal upon request by the pro se litigant (“da1”); (2) dismissal by the court due to failure to prosecute or abandonment by the pro se litigant (“da2”); (3) dismissal by the court under a motion to dismiss (“dc1”); (4) dismissal by the court under a motion for summary judgment (“dc2”); (5) settlement (“se”); (6) trial on the merits (“tm”); and (7) remand to lower tribunal or other transfer to another venue (“re”).²⁴⁹

Each case was grouped according to the manner in which the docket report labeled the termination. When the docket report was unclear, the applicable order or pleading was read to ascertain the proper classification.

10. *Judgment.*—“For,” “against,” “not applicable,” and “open” were the labels used for this classification. “For” and “against” referenced the outcome in relation to the party’s position in the case. The “not applicable” classification was used if the case was either remanded or settled. “Open” indicated the case was still pending.

11. *Appeal.*—If the case was appealed, a “yes” was recorded. If no appeal was noted in the docket report, a “no” was recorded.

12. *Number of Docket Entries.*—This number was based on the number of entries made on the docket sheet.²⁵⁰

²⁴⁷ See *id.* at 826 n.14 (citations omitted) (offering information on when counsel might be appointed).

²⁴⁸ Park measured this category differently. See Park, *supra* note 8, at 826. Park did not distinguish between cases in which an attorney was appointed by court order and cases in which an attorney was “appointed as a result of the pro se litigant’s own efforts.” *Id.*

²⁴⁹ Park, *supra* note 8, at 826-27 (citations omitted).

²⁵⁰ Instances arose where the court clerk would indicate a mistake had been made on a previous docket entry, and the new entry was correcting that mistake. These entries generally

13. *Number of Days*.—The number entered was the span of days from the date the complaint was filed or the case was removed to the district court until the date of the final docket entry.²⁵¹

were not numbered, but they did appear on the docket sheet. The figure used here corresponds only to numbered entries. Also, if there was an appeal, the docket sheet included some entries pertaining to the appeal. The appeal entries were included in this study.

²⁵¹ The date span includes all days listed on the docket report. This includes docket entries that pertained to an appeal.

