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The Civil *Pro Se* Litigant v. The Legal System

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I. INTRODUCTION

The last decade has seen an increase in civil *pro se* litigants seeking to prosecute or defend their rights. While some have decided to proceed in the courts without counsel as a matter of choice, most have been forced to do so. The poor have found legal assistance unavailable for many of their problems,[1] and many in the middle income community have found the private bar priced beyond their resources.

The absence of legal aid services is most severe in rural areas. Government cut-backs in funding of free legal assistance programs, plant closings, the decline in farm economy, and a high rate of unemployment have resulted in an ever increasing need to resort to the legal system without counsel for resolving conflicts or to forego their resolution. In southern Illinois, thirteen counties are serviced by two legal aid offices with a total of only eight attorneys.[2] It is not surprising that the poor and lower middle income communities have a low expectation of finding legal services and tend to view *pro se* advocacy as an alternative for access to the legal system.

The urban areas, while having a greater availability of legal aid for indigents, cannot meet their civil legal needs or that of the lower middle income population.[3] The cost of legal services for those with marginal income has created an increasing *pro se* presence in the courts. The problem has been most severe in areas such as family law, housing court, and consumer disputes.

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1. *Illinois Legal Needs Study*, THE SPANGENBERG GROUP (1989). The low income households surveyed throughout Illinois reported experiencing an average of 1.69 distinct non-criminal legal problems per household in the last year for which they had no legal help. *Id.*

2. Land of Lincoln Legal Assistance Foundation, Murphysboro and Mt. Vernon Offices.

3. *Illinois Legal Needs Study*, THE SPANGENBERG GROUP (1989). "Our primary impression was that the potential client population for all civil legal services providers in Chicago is totally overwhelming . . . . The 'working poor' or 'marginally indigent' have legal needs that are at least equal to those of people who met official poverty standards." *Id.*

The recent Illinois Judicial Conference for Associate Judges[4] took special note of this problem. For the first time, the agenda of the seminar program included "Indigent and Pro Se Litigation" as one of its topics. A panel of judges and law professor reporters under the leadership of the Honorable Anne O'Laughlin Scott discussed the situation faced by courts in effectively coping with a very difficult situation.

II. THE DILEMMA

Under Illinois law, any person has a right to represent himself or herself in a civil action.[5] This basic right has created an ordeal in the courts arising from the statement, "I wish to represent myself." From this point on, the adversary system, upon which civil procedure rules are based, is out of synchronization. The judge is faced with the task of balancing fundamental fairness and order in the proceedings. The *pro se* litigant must struggle with how to present his or her case. The opposing attorney must protect and advocate his or her client's interest, while meeting the legal obligation to bring the truth to the court's attention. Further, the party represented by counsel, having a right to demand vigorous representation, must cope with escalating legal costs because of numerous delays.

The essential, yet often conflicting, demands of fairness and order create a nearly impossible situation. While many in the legal system have cried out in anguish over the dilemma, little has been done to remedy the problem. The prestigious National Judicial College, which serves as the principal continuing education facility for judges across the country, has little in its resource bank on the problem.[6] The Illinois court system has left each judge to struggle with the issue case-by-case. For every appellate decision that has held *pro se* litigants to a strict standard, there is one that required or allowed the rules of procedure to be altered considerably for the unrepresented litigant. Trial judges have had to follow their own procedures based upon widely varying discretion.

The following sections will highlight the various legal issues in-

4. Illinois Judicial Conference Associate Judges Seminar, March 9-11, 1988.

5. ILL. REV. STAT. ch. 13, para. 11 (1987). The statute provides in pertinent part: "Plaintiffs shall have the liberty of prosecuting, and defendants of defending in their proper persons . . . ." *Id.*

6. Currently, the National Judicial College in Reno, Nevada, has only limited materials on *pro se* litigants in trial disruption situations.

volving *pro se* litigants. While certainly not presenting a uniform standard, the case law has given some guidance to the trial judge.

III. THE LAW

A. Pro Se *Strict Standard*

Illinois courts have long held that persons who choose to represent themselves must comply with the procedures of the court and are not to expect favored treatment by a court.[7] Illinois appellate courts have encouraged a strict standard, instructing the trial court to provide no more leniency toward *pro se* plaintiffs regarding procedural standards than generally is allowed attorneys.[8] This has been held to apply equally to trial and appellate proceedings.[9] If we were to follow this long established principle strictly, there would be little difficulty in disposing of the *pro se* litigant.

In reality, however, this principle is often in direct conflict with the court's obligation to ensure a fair trial. It is virtually impossible to expect a *pro se* litigant to understand proper objections to tendered evidence. Many lawyers continue to struggle with the rules, such as those concerning hearsay, opinion testimony, privileged communications, and parol evidence. Therefore, courts have gone to extreme measures to ensure equity.

B. Pro Se *Liberal Standard*

Trial courts, although never abandoning the strict standard, may find a way to allow for significant deviations from the standard in the interest of equity. Trial courts will vacate a judgment based on justice and fundamental fairness,[10] and the appellate courts have

7. *See, e.g.*, Biggs v. Spader, 411 Ill. 42, 103 N.E.2d 104 (1951), *cert. denied*, 343 U.S. 956 (1952) (appellant had a right to appear *pro se*, but when he did, he was required to comply with the established rules of procedure).

8. *See, e.g.*, Harvey v. Harris Trust & Sav. Bank, 73 Ill. App. 3d 280, 391 N.E.2d 461 (1st Dist. 1979), *cert. denied*, 445 U.S. 929 (1980) (court refused the plaintiff's request to apply more lenient procedural standard because she was a *pro se* litigant); Kay v. Kay, 46 Ill. App. 2d 446, 197 N.E.2d 121 (1st Dist. 1964) (husband who decided to represent himself in a divorce action had no reason to complain of court's refusal to allow him to procure counsel after divorce was granted to his wife).

9. Boeger v. Boeger, 147 Ill. App. 3d 629, 498 N.E.2d 814 (2d Dist. 1986) (appellate court held that *pro se* appellant's brief failed to state sufficiently specific objections to the trial court's order); Harvey v. Carponelli, 117 Ill. App. 3d 448, 453 N.E.2d 820 (1st Dist. 1983) (*pro se* litigant's brief was flagrantly deficient in many respects and violative of rules for appellate briefs, and *pro se* litigant properly found in contempt by trial judge for conduct at trial).

10. *See, e.g.*, Rodriguez v. Owaynat, 137 Ill. App. 3d 1017, 485 N.E.2d 438 (1st Dist. 1985). In *Rodriguez*, the defendant appeared *pro se* in a forcible entry and detainer action, and the trial court found in favor of the plaintiff. *Id.* at 1018, 485 N.E.2d at 440.

found jurisdiction notwithstanding the impropriety of *pro se* briefs.[11] The concept of justice and fundamental fairness overcoming a failure to comply with legal procedure is not restricted to *pro se* cases, but can be found throughout the law.[12]

Recognizing that no one standard will be appropriate in every case and that no precedent will ensure fairness, case law has supported broad discretion in the trial judge. Appellate courts, however, have failed to provide a clear message to the trial judge regarding the proper exercise of this discretion.

C. *Court Assistance to the* Pro Se *Litigant*

In attempting to be fair and to further the discovery of truth, a court may find itself explaining rules and procedures and asking questions of the witnesses. In this regard, the court has broad discretion as to its role in providing a fair trial to both sides.[13]

In *Oko v. Rogers*,[14] the trial judge, faced with a *pro se* defendant surgeon in a medical malpractice action, on several occasions took over the questioning of witnesses on behalf of the defendant to fa-

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The defendant subsequently retained counsel and filed a timely motion to vacate, which was denied. The appellate court reversed and remanded the case, finding that relevant evidence was not presented at trial and that fundamental fairness and justice required granting timely motion to vacate. *Id.* at 1022, 485 N.E.2d at 442.

11. *See, e.g.*, *In re* J.M., 170 Ill. App. 3d 552, 524 N.E.2d 1241 (2d Dist. 1988). In *In re J.M.*, a *pro se* father appealed a finding of authoritative intervention concerning neglect of his minor child. The appellate court held that although his brief was inadequate, it would consider the arguments to the extent they were properly presented. *Id.* at 556, 524 N.E.2d at 1244. The case was remanded twice.

There is a natural tendency, however, to be less sympathetic and flexible with *pro se* litigants who are not indigent and who decide to proceed without the benefit of an attorney either because of a mistrust of attorneys or for economic reasons. Despite the ability to obtain counsel, the law requires the same standard for all *pro se* litigants. Nevertheless, a court may allow the assessment of attorney's fees, if provided by statute, against the non-indigent *pro se* party where appropriate. Booth v. Booth, 122 Ill. App. 2d 1, 258 N.E.2d 834 (1st Dist. 1970) (*pro se* litigant, although successful on issue before trial court, was required to pay the attorney's fees of the other party pursuant to statute).

12. *See, e.g.*, Czyzewski v. Gleeson, 49 Ill. App. 3d 655, 659, 364 N.E.2d 557, 560 (1st Dist. 1977); Hunt v. General Improvements, Inc., 48 Ill. App. 3d 421, 362 N.E.2d 1143 (4th Dist. 1977) (petitions to vacate judgment should contain sufficient allegations, but justice and fairness may require that relief be granted even though there is a lack of due diligence).

13. When an attorney decides to represent himself, the conflict in roles and emotional involvement usually amount to a disaster. Many attorneys fail to heed the old admonition: "An attorney who represents himself has a fool for a client." The attorney who is a party is to be treated as a litigant, and a *pro se* litigant is not entitled to attorney's fees even if he is an attorney. Hamer v. Lentz, 171 Ill. App. 3d 888, 525 N.E.2d 1045 (1st Dist. 1988).

14. 125 Ill. App. 3d 720, 466 N.E.2d 658 (3d Dist. 1984).

cilitate a coherent defense.[15] The trial court explained tactical alternatives available to the defendant, conducted his direct examination, and advised him of the proper way to ask questions of witnesses. Testimony that would have been stricken had an attorney been representing him was allowed over objection.[16] On appeal, the court upheld the trial judge's actions and, recognizing the patience, skill, and understanding required, stated:

> As any judge or lawyer knows, the conduct of a jury trial with a pro se litigant who is unschooled in the intricacies of evidence and trial practice is a difficult and arduous task. The heavy responsibility of ensuring a fair trial in such a situation rests directly on the trial judge. The buck stops there.[17]

The dissenting opinion in this case appears to be more in line with the well-settled standard in Illinois as to the rights and obligations of the *pro se* litigant. It made clear the trial court's failure to hold the defendant to the rules of procedure and evidence. The assisting of the defendant and special rulings in his favor were unacceptable. As the dissenting judge stated:

> To condone such actions of the trial court here is to invite pro se representation in difficult trials which would make a mockery of the judicial process, even though to fully inform a jury is a commendable purpose. Defendant was entitled to a fair opportunity to present his evidence, but nothing more.[18]

Nevertheless, cases such as this continue to confuse trial courts as to their conduct and the standard by which a decision will be reviewed.

D. Demeanor and Admonitions

If any area has been consistent, it is the acknowledgment by the appellate courts of the trial judge's demeanor in being considerate and patient with a *pro se* party in light of the party's lack of familiarity with trial practices,[19] and in apprising *pro se* litigants of the right to be represented by counsel.[20] The trial judge must always be careful to give proper admonitions.

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15. *Id.* at 723, 466 N.E.2d at 660.
16. *Id.* at 726, 466 N.E.2d at 662 (Barry, J., dissenting).
17. *Id.* at 723, 466 N.E.2d at 661.
18. *Id.* at 726, 466 N.E.2d at 662 (Barry, J., dissenting).
19. *See In re* Marriage of Winters, 160 Ill. App. 3d 277, 512 N.E.2d 1371 (2d Dist. 1987) (*pro se* litigant claimed he was denied fair trial; the appellate court noted that the trial court was considerate to him, while requiring him to follow same rules as litigants represented by an attorney).
20. *See In re* Marriage of Pahlke, 120 Ill. App. 3d 1009, 458 N.E.2d 1141 (1st Dist. 1983) (trial court informed *pro se* party of her right to be represented by counsel; appel-

In *Serpico v. Urso*,[21] the *pro se* defendant alleged that while he waited for his case to be called before the trial court (from 9:00 a.m. until 2:00 p.m.), he consumed at least five ounces of whiskey and, as a result, he was unable to understand the proceedings.[22] At trial, the defendant admitted paternity, and the court found him to be the father and ordered him to pay child support.[23]

On appeal, the defendant claimed that he was not informed of his rights prior to his plea. Nevertheless, the record showed that the defendant answered affirmatively to the questions of whether he knew that he had a right to both a trial on the issue of paternity and to a blood test.[24] The appellate court found that the defendant was never advised of his right to plead not guilty, of the necessity to be proven guilty by a preponderance of the evidence, or of the fact that if the blood test excluded him as the father, he must be found not guilty.[25] Consequently, the appellate court vacated the trial court's order.[26]

E. Pro Se *Pleadings*

Due to a lack of formal legal training or, even worse, illiteracy, many *pro se* litigants fail to state causes of action or to respond appropriately to allegations. The decision to allow an amendment of a pleading is a matter within the sound discretion of the trial court and, absent a manifest abuse of that discretion, the decision will not be disturbed on appeal.[27]

Despite this broad discretion, the law is clear that trial judges are to be liberal with pleading requirements of unrepresented parties. The Code of Civil Procedure only requires plain and concise statements that reasonably inform the opposite party.[28] These provisions are designed to promote the resolution of controversies based on substantial justice between the parties, rather than on technicalities of pleading.[29] Illinois case law on pleadings also has

late court held that once she waived counsel and represented herself, she was responsible for her own defense and could not expect favored treatment from the court).

21. 127 Ill. App. 3d 667, 469 N.E.2d 355 (1st Dist. 1984).

22. *Id.* at 668, 469 N.E.2d at 356.

23. *Id.*

24. *Id.*

25. *Id.* at 672-73, 469 N.E.2d at 359.

26. *Id.* at 673-74, 469 N.E.2d at 360.

27. Whildin v. Kovacs, 82 Ill. App. 3d 1015, 403 N.E.2d 694 (1st Dist. 1980) (trial court's denial of litigant's request to file a second amended counterclaim upheld on appeal).

28. ILL. REV. STAT. ch. 110, paras. 2-603(a), 2-612(b) (1987).

29. Schultz v. Continental Casualty Co., 79 Ill. App. 3d 1035, 398 N.E.2d 936 (1st

served to assist courts in overcoming the *pro se* litigant's inability to articulate his or her cause of action precisely.[30]

There is, however, a limit to the liberal construction afforded *pro se* pleadings. In *People v. Krueger*,[31] it was argued that a letter to the court by the defendant should serve as an answer. The letter did not respond to the complaint, and it referred to the judge as "Old Hell-is-From (Ellison)" and to the clerk of the court as the "jerk of the court."[32] The *pro se* party also included his own court rule "No. 3," stating: "Prosecutor must sign complaint with the appropriate color of 'no point' crayon (yellow) and only after his 'Mommy' gives him permission."[33] The court stated that "while documents filed by pro se litigants are to be liberally construed, even a liberal construction would not add meaning to the documents filed below."[34]

F. Continuances

The backlog of cases faced by many courts results in part from the failure to dispatch justice promptly. The threat of a continuance, which wreaks havoc with the trial court's case management, is a greater problem when a *pro se* litigant is involved. After being encouraged by the bench to seek counsel, the party usually is given extra time in which to find an attorney. In situations where this attempt fails or when the party wishes to proceed *pro se*, time usually is required to correct pleadings, bring in demonstrative evidence, and prepare for the presentation of the case. The need to be fair to the *pro se* party by granting additional time must be balanced against the rights of the adversary to proceed expeditiously and with a minimum of attorney's fees. With a reasonable warning, the court may impose a limit on continuances and require that the rules be followed in seeking postponement.

The Code of Civil Procedure provides a court with broad discretion in granting extensions of time and continuances.[35] This dis-

Dist. 1979) (second amended complaint stated a cause of action, and plaintiff entitled to complete copy of insurance policy for inspection).

30. *See* Horwath v. Parker, 72 Ill. App. 3d 128, 390 N.E.2d 72 (1st Dist. 1979) (leave to amend should be granted unless it is apparent that no cause of action can be stated); Dangeles v. Marcus, 57 Ill. App. 3d 662, 373 N.E.2d 645 (1st Dist. 1978) (dismissal appropriate only if no set of facts could be proven under pleadings that would entitle party to relief).

31. 146 Ill. App. 3d 530, 495 N.E.2d 993 (3d Dist. 1986).

32. *Id.* at 534, 495 N.E.2d at 996.

33. *Id.*

34. *Id.*

35. ILL. REV. STAT. ch. 110, para. 2-1007 (1987).

cretion is narrowed somewhat by Illinois Supreme Court Rule 231[36] and local circuit court rules relating to the continuance of a trial. The rules of the Circuit Court of Cook County allow an attorney only one continuance based upon an engagement in another trial or hearing.[37] A court's consistency and adherence to the rules will assist both sides in the adjudication of the case.

In *In re Marriage of Shalashnow*,[38] the petitioner sought an order allowing her to remove her children from Illinois to Ohio.[39] The respondent opposed the move and presented a motion for a directed finding at the close of the petitioner's case. The petitioner requested a continuance to produce further evidence, which the trial court granted in the interest of judicial economy.[40] At a later date, the hearing resumed and the petitioner, having presented further evidence, was allowed to remove the children from the state.[41]

The appellate court held that the trial court should not have granted the petitioner's motion for a continuance because Supreme Court Rule 231 requires that a party making a motion for a continuance based on the absence of material evidence support the motion with an affidavit, which was not provided in the present case.[42] The appellate court ruled, however, that it was not reversible error in that a prima facie case for removal had been made prior to the continuance, and it would not be in the children's best interest to have further proceedings because the removal had already occurred.[43]

G. *Competency of* Pro Se *Litigant*

The legal question of a *pro se* litigant's competency occasionally will arise. The presumption of competency exists in the *pro se* situation as it does in any civil matter. When confronted with a *pro se* litigant who appears to be clearly incompetent, the court may, as a procedural matter, appoint a guardian *ad litem* to act as a representative for the party. The court has no duty to assume the role of a petitioner for the appointment of a conservator.[44] Anything be-

36. ILL. S. CT. R. 231, ILL. REV. STAT. ch. 110A, para. 231 (1987).
37. CIRCUIT COURT OF COOK COUNTY Rule 5.2(a).
38. 159 Ill. App. 3d 760, 512 N.E.2d 1076 (2d Dist. 1987).
39. *Id.* at 761, 512 N.E.2d at 1077.
40. *Id.* at 762, 512 N.E.2d at 1077.
41. *Id.*
42. *Id.* at 764, 512 N.E.2d at 1079.
43. *Id.* at 765, 512 N.E.2d at 1079.
44. *See* Frieders v. Dayton, 61 Ill. App. 3d 873, 378 N.E.2d 1191 (2d Dist. 1978) (trial court refused counsel's request to declare an elderly defendant incompetent and to

yond the appointment of a guardian *ad litem* is best left for the statutory adjudication of incompetence. If a person has not been declared legally incompetent, it remains within the trial court's discretion whether the person's mental condition is such that his or her testimony would be completely untrustworthy, thus rendering the individual incompetent to testify.[45]

IV. DEVELOPMENTS

It would be naive to suggest that there is a simple solution to the *pro se* dilemma. Nevertheless, while the problem will continue to challenge the legal system, there have been measures taken to improve the situation which are worthy of recognition and further development.

A. Small Claims Courts

The purpose of small claims courts and their rules is to provide an expeditious, simplified, and inexpensive procedure for the resolution of disputes involving small amounts. The rules have been modified to accommodate the nature of the action and the *pro se* litigant. In cases in which the claim does not exceed $1,000, the court may, on its own motion or that of any party, adjudicate the dispute at an informal hearing. The court is allowed to call witnesses and to participate in all direct and cross-examination.[46]

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appoint a conservator, but it did appoint a guardian *ad litem*; the appellate court upheld the decision, stating that absent adjudication of incompetence, there is no bar to a suit).

45. Piano v. Davison, 157 Ill. App. 3d 649, 510 N.E.2d 1066 (1st Dist. 1987). In *Piano*, the court stated that:

> A distinct difference separates a probate court's adjudication declaring a person legally incompetent, from a trial court's decision that a person's mental condition is such that his testimony would be completely untrustworthy thus rendering him incompetent to testify . . . . It is not reversible error to fail to appoint a guardian *ad litem* for an adult litigant who has not been formally declared an incompetent.

Id. at 667-68, 510 N.E.2d at 1079 (citations omitted).

46. ILL. S. CT. R. 286(b), ILL. REV. STAT. ch. 110A, para. 286(b) (1987). The rule states in relevant part:

> In any small claims case where the amount claimed by any party does not exceed $1,000, the court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing. At the informal hearing all relevant evidence shall be admissible . . . . The court may call any person present at the hearing to testify and may conduct or participate in direct and cross-examination of any witness or party. At the conclusion of the hearing the court shall render judgment and explain the reason thereof to all parties.

Id. *See also* Obernauf v. Haberstich, 145 Ill. App. 3d 768, 496 N.E.2d 272 (2d Dist. 1986) (trial judge may examine the plaintiff and allow the defendant to amend pleadings to include the affirmative defense raised by the court's questioning).

Although previously limiting discovery in small claims cases (under $2,500), the rules now also limit motions.[47] These are cases which, due to economics, produce great numbers of *pro se* litigants. The bar and bench should make active use of the new rules to help accomplish the purpose for which they were intended. In *Bouhl v. Gross*,[48] the court stated that the small claims rules "were designed to allow *pro se* litigants an opportunity to obtain the resolution of disputes in a quick, simple, and informal manner unbridled by the technicalities and legal formalities which normally apply in a court proceeding."[49] The court supported the trial court's broad discretion in regard to the ordering of pleadings. The court stated that "[t]he small claims procedure will not be simplified, inexpensive, or expedited if the rigid pleading requirements of the Code are always held to apply if the small claims rules are silent."[50]

B. Pro Se *Court*

Even though the small claims courts have adopted rules and procedures to handle small cases effectively, an arena was needed where the *pro se* litigant would be welcomed. In 1972, Cook County established a special *pro se* branch of the small claims court. The *pro se* branch is intended for use by non-lawyers as it recognizes that the amounts involved would make affordable legal counsel impractical. The popularity of the "People's Court" and recent amendments to the rules affecting small claims matters reflect the trend toward smaller amounts in controversy being resolved without attorneys and with simplified procedures. The *pro se* branch of the various circuit courts should be encouraged. A greater use of mediation is the next likely development in the effective disposition of minor disputes.

C. Civil Court Appointment of Counsel

For some time, trial judges have sought the aid of the attorneys who frequent their courtroom in assisting with indigent *pro se* litigants. The attorneys usually called upon have been from the legal assistance programs that already are overburdened with work. The Code of Civil Procedure allows the court to assign counsel who "shall perform their duties . . . without any fees, charge or

47. ILL. S. CT. R 287(b), ILL. REV. STAT. ch. 110A, para. 287(b) (1987).
48. 133 Ill. App. 3d 6, 478 N.E.2d 620 (4th Dist. 1985).
49. *Id.* at 11, 478 N.E.2d at 624.
50. *Id.*

reward" to persons declared indigent.[51] More frequent and random attorney assignments can, in part, meet the obligation of the private bar to provide *pro bono* services.

The court also has the authority to appoint counsel as an aide to a *pro se* party to protect the judicial process from deterioration, and to assist the *pro se* party who is attempting to defend himself or herself.[52] When appointing a licensed senior law student pursuant to Supreme Court Rule 711,[53] the party must be informed and give consent.[54]

A cooperative effort by courts and local bar associations to provide legal assistance at the inception of a *pro se* case can produce dramatic results in the quality of adjudication and in keeping to a minimum the delays in litigating a matter. The Cook County Circuit Court and the Chicago Bar Association Young Lawyers Section have a program whereby young attorneys volunteer time in the Clerk's office to assist *pro se* litigants in both drafting pleadings and understanding the procedure in small claims matters. This has been successful not only in the court's administration of these matters, but also in overcoming the negative public perception that attorneys only pursue matters that have a monetary reward.

D. Circuit and Division Rules

It would be easier for everyone involved if the judges in the various districts or divisions discussed uniform guidelines for handling the *pro se* case. Consistency among courts regarding the number of continuances given for the purpose of seeking counsel, and in remaining firm on proceeding after the opportunity to seek counsel is given (and that after trial there will be no second chance with counsel[55]), would improve the system by lending predictability to the procedure. Cases would be resolved more expeditiously while

51. ILL. REV. STAT. ch. 110, para. 5-105 (1987).

52. *In re* Tuntland, 71 Ill. App. 3d 523, 390 N.E.2d 11 (1st Dist. 1979) (appointment of a public defender to guide *pro se* party upheld).

53. ILL. S. CT. R. 711, ILL. REV. STAT. ch. 110A, para. 711 (1987).

54. People v. Moore, 63 Ill. App. 3d 899, 380 N.E.2d 917 (1st Dist. 1978) (respondent in a commitment hearing and appearing *pro se* was appointed a rule 711 senior law student as an advisor; because the respondent was not informed of the law student's status, the lower court's commitment order was reversed).

55. *See, e.g.*, Meeker v. Gray, 142 Ill. App. 3d 717, 492 N.E.2d 508 (5th Dist. 1986) (party represented to court that he desired to represent himself; the argument on appeal that he was entitled to a new trial because he had no attorney and was forced to proceed *pro se* was found to be insufficient); *In re* Marriage of Pahlke, 120 Ill. App. 3d 1009, 458 N.E.2d 1141 (1st Dist. 1983); Kay v. Kay, 46 Ill. App. 2d 446, 197 N.E.2d 121 (1st Dist. 1964).

still permitting each judge discretion concerning the particular case before the bench.

E. Pro Se *Materials*

Some of the circuit courts in Illinois and several bar associations have prepared written materials to assist the *pro se* litigant. These range from warning sheets which cite to strict legal standards and seek to frighten the person into finding an attorney,[56] to booklets attempting to inform the person about time requirements, basic procedure, and the pitfalls of litigation. These two approaches are not totally incompatible, and an encouragement to seek counsel with informative material is probably the best alternative. Courts that have a high volume of *pro se* litigants, such as small claims, domestic relations, and paternity, should include admonitions in their written materials relating to the basic legal rights to which the person is entitled and to the burden that he or she faces. In paternity cases, this would include the right to plead not guilty, the necessity to prove guilt by a preponderance of the evidence (in layman terms), the right to a trial, and the right to take blood tests that could exclude the alleged father as the guilty party.[57]

Another useful document used by many courts is a handout listing all of the legal aid offices available in the area. Greater effort, however, is needed by the court administration in preparing and updating the lists, as some contain inaccurate information, including disconnected phone numbers. Such a situation only leads to frustration and fails to accomplish the intended purpose of reducing the number of unrepresented litigants before the bench. Further, it supports the prevalent negative impression of the legal system held by those having difficulty finding access to the courts.

Court forms that are available to attorneys can also be prepared to assist the *pro se* litigant. Where a simple contract dispute is at issue, a pre-printed *pro se* complaint[58] can provide a place for all necessary information to overcome frequent pleading deficiencies.

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56. *Notice to People Acting as Their Own Attorney*, Cook County. The notice was handed out to *pro se* litigants by the Clerk's office. Although the origin is unknown, it clearly was intended to persuade the recipient to obtain an attorney by referring to the attorney standards, the statutory prohibition of court personnel giving legal advice, and the Clerk of the Circuit Court not being required to provide preprinted pleading forms.

57. Serpico v. Urso, 127 Ill. App. 3d 667, 469 N.E.2d 355 (1st Dist. 1984). *See supra* notes 21-26 and accompanying text.

58. Clerk of the Circuit Court of Cook County, Form CCMI-PSC, Pro Se Complaint.

V. CONCLUSION

A legal system created for attorneys to adjudicate disputes will always have problems in coping with a *pro se* litigant. The legal community has failed to effectively reduce the obstacles encountered. The inconsistent case law and widely varying discretion vested in trial judges have ensured confusion concerning the boundaries within which the *pro se* litigant must present his or her case, what opposing counsel can anticipate in the way of procedure, and the trial judge's role. Instead of accepting the situation as a recurring nightmare, we must make a greater effort with the present rules and seek creative alternatives to make the legal system work more effectively. Once we have accomplished this at the trial level, we can focus on coping with the *pro se* litigant who wins, asking, "How do I collect?" and the one who loses, asking, "How do I appeal?"