EXAMINING THE WHO, WHY, AND HOW OF SELF-REPRESENTED LITIGANTS IN FAMILY COURT

John Greacen
THE IAALS QUALITATIVE EMPIRICAL RESEARCH STUDY

Full results here: iaals.du.edu/caseswithoutcounsel
SELF-REPRESENTED LITIGATION NETWORK

Full information here: www.slrn.org
A BRIEF FRAMING OF THE ISSUE

(It matters!)
We make assumptions about litigants and what their needs are without truly, truly knowing what they are. And I think we all try to be very sympathetic to them, but we can’t know their experience.

- Cases Without Counsel Court Participant
It feels really good to know that at least my voice will be heard...I’ve felt very powerless.

- Cases Without Counsel Litigant Participant
THE NATIONAL SELF-REPRESENTED LITIGANTS PROJECT: FINAL REPORT (2013)

Full information here: https://representingyourselfcanada.com
DESIGN

1. Family court litigants
2. Without an attorney at some point in the case
3. Both “open” and “closed” cases
WHERE

Multnomah County, OR (Portland)

Larimer County, CO (Fort Collins)

Davidson County, TN (Nashville)

Franklin County, MA (Rural Western Mass.)
WHAT AND HOW

In-depth, one-on-one interviews with:

- 128 self-represented litigants
- 49 court professionals

Litigant recruitment:

- Mailed outreach based on filing data
- Postcards in each courthouse
- Gift card incentive for participation
CASE STATUS

- Complete: 70.9%
- Ongoing: 29.1%

REPRESENTATION STATUS

- No representation: 74.8%
- Represented for parts of the case: 25.2%
WHO SELF-REPRESENTS IN FAMILY CASES?

(Or rather, who doesn’t?)
**Gender**

- Men: 37.5%
- Women: 62.5%

**Race**

- Caucasian: 72.8%
- Black or African American: 14.4%
- Other: 8.8%
- Multiracial: 4.0%
### Education

- High School Diploma or GED: 5.6%
- Some Higher Education: 41.9%
- Undergraduate Degree: 28.2%
- Graduate Degree: 11.3%

### Income

- Under $20K: 43.4%
- $20K to $40K: 27.0%
- $40K to $60K: 15.6%
- $60K to $80K: 6.6%
- $80K or more: 7.4%
WHY SELF-REPRESENTATION?

(A fool for a client?)
TOP MOTIVATIONS FOR SELF-REPRESENTATION

1. Financial Considerations
2. Assessment of Ability to Self-Represent
3. Preference for Self-Representation
THE VOICE OF THE LITIGANT

It’s not really a decision, it’s a financial barrier – you can’t give what you don’t have.

- Cases Without Counsel Litigant Participant on the unaffordability of legal representation
I did some research on my own and I thought I understood what the issues were and how to proceed. And so then, I did consult with an attorney to say, ‘Am I on the right track here?’ And they said, ‘Yes.’ So that made me feel I had the confidence to do it.

- Cases Without Counsel Litigant Participant on the ability to self-represent
THE VOICE OF THE LITIGANT

It felt really important to me, so I don’t know that I would have felt comfortable just handing it over and expecting someone to know exactly what I wanted and every nuance of it.

- Cases Without Counsel Litigant Participant on the desire to self-represent
WHY SELF-REPRESENT? - OTHER STUDIES

• Matter relatively simple
• CANNOT afford an attorney
• Don’t want to pay for an attorney
• An attorney will take longer
• An attorney will increase conflict with the other party
HOW DO SELF-REPRESENTED LITIGANTS VIEW AND NAVIGATE THE PROCESS?

(Getting from Point A to Point B)
CHALLENGES OF SELF-REPRESENTATION

1. Knowing and executing the steps/stages of litigation
2. Understanding the substantive issues and how to present them
3. Separating the emotional and legal aspects of a case
It felt very much like wandering through a room with no lights on, and you’d bump into something, you’d ask somebody about it, and they’d shine a little flashlight and say, ‘Go that way.’

Nobody ever turned the lights on in the whole room to give us an idea of exactly what it should look like…

- Cases Without Counsel Litigant Participant
  on the litigation process
I had to know what wording to use, why [it was] relevant to the case, and then present the evidence. So, that was very difficult, very frustrating...

- Cases Without Counsel Litigant Participant on substantive challenges
The stuff I had to go over was so traumatic and emotional that as soon as I would sit down to start assembling my case, I would just be so upset that I just couldn’t even focus.

- Cases Without Counsel Litigant Participant on the effect of emotions on self-representation
LITIGANT STRATEGIES

1. Research written information and materials
2. Access in-person court resources
3. Connect with a lawyer or paralegal
I went online and I looked up [the state’s] laws for child support and I downloaded the handbook. And I read it cover to cover.

- Cases Without Counsel Litigant Participant on conducting research
You know, it’s the one-on-one. Sitting with someone and describing for them what needs to happen and helping them do it. [This] is what we need more of.

- Cases Without Counsel Court Participant on the value of litigant help centers
"It was really, really, really comforting to me – I don’t think I could have done it myself without having access to that guidance."

- Cases Without Counsel Litigant Participant on periodically consulting with an attorney
WHAT ARE THE IMPACTS OF SELF-REPRESENTATION?

(Fair is where you go to buy a balloon)
1. Feeling disadvantaged
2. Being disadvantaged
3. Stress and anxiety
I felt like I wasn’t heard, but I didn’t feel like I was even given a fair chance. It’s like the judge and attorney probably knew each other and I was like an outsider.

- Cases Without Counsel Litigant Participant on feeling disadvantaged
THE VOICE OF THE LITIGANT

“...I think that people who are represented generally have better outcomes.”

- Cases Without Counsel Judge Participant on the substantive effects of self-representation
How am I going to survive? What am I going to do? How am I going to get through this? Where am I going to go? You’re already thinking all of those things…and then you’re put into this extremely terrifying situation with the courthouse and no help.

- Cases Without Counsel Litigant Participant on feeling overwhelmed with self-representation
DESIRE FOR ASSISTANCE

Many would have liked...

- Help with:
  - Forms/paperwork
  - Navigating processes/procedures
  - Guidance on substantive issues
  - Trial preparation
  - Evidence presentation
  - Courtroom advocacy

- Legal assistance for the entire case
Recognition of:

- Increased need for human resources
  - More staff time to assist litigants
  - More judicial officer time during hearings
- The need for more programs and resources for self-represented litigants
In courts with sophisticated SLR assistance, judges and litigants understood each other at a rate of 8.7 on a 10 point scale.

100% of judges participating in the study responded “no” to the statement “Hearings involving SRLs take more time to complete than hearings involving lawyers.”
SRL SATISFACTION

• SRLs consistently report higher perception of fairness and satisfaction with the court process than represented litigants.
SRL SUCCESS

• Michigan legal Aid 2015 study of use of document assembly forms: no statistical difference in outcomes compared to represented parties.

• SRLN 2016 study of remote services delivery persons obtaining forms remotely in Utah and three counties in Northern California: 80-90% decision on the merits and similar % obtain relief requested.


• John M. Greacen, Self-represented Litigants, the Courts, and the Legal Profession: Myths and Realities, 52 Family Court Review 662 (July 2014)
HOW CAN WE MOVE FORWARD?

(And whose responsibility is it?)
### STUDY PARTICIPANT RECOMMENDATIONS

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Self-Represented Litigants</th>
<th>Court Professionals</th>
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<tbody>
<tr>
<td>Increased availability and accessibility of legal services</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Increased information, guidance, and self-help resources</td>
<td>X</td>
<td>X</td>
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<td>Simplification of forms and process</td>
<td>X</td>
<td>X</td>
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<td>More court staff to assist litigants</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Better education/information at the outset on available legal services and self-help resources</td>
<td>X</td>
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<tr>
<td>Increased involvement from the legal community</td>
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IDEAS FOR COURT COMMUNITIES

Self-help resources:

- Facilitate litigant awareness of the process and available resources at the outset
- Explore virtual and innovative means of delivering and expanding resources
- Assign a liaison or navigator to guide litigants through the process
IDEAS FOR COURT COMMUNITIES

Changes to family court:

- Simplify components of the process
- Establish triage or DCM systems
- Incorporate trauma-informed processes
- More guidance and education for court staff and judges
IDEAS FOR THE BROADER COMMUNITY

Changes to delivery of legal services:

- Provide unbundled legal services
- Establish creative billing structures
- Increase legal aid and pro bono services
- Explore non-attorney legal service models
- Address negative perceptions of attorney involvement and communicate value added
IDEAS FOR THE BROADER COMMUNITY

Changes to family support services:

- Increase services for families in transition
- Facilitate greater access to those services
THANK YOU!

(And have a great weekend)