Training Module #4:

Serving the Self-Represented Litigant

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Introduction

This print module was produced by the Michigan Judicial Institute (MJI) specifically for Michigan Court Support Personnel.

The intent of this print module is to provide staff with information on the following topics:

- **Demystifying the court process for all court customers,**
- **Providing helpful service to all customers, including the self-represented, without giving legal advice,**
- **Identifying resources that could assist persons entering the court process.**

The information is presented in a quick-read format and is intended to serve as a tool for learning, reflection, and dialogue.

If you are interested in additional training related to this topic, please refer to:

- ***"I'm Sorry, I Can't Give Legal Advice!"*** **MJI training program on CD, and**
- ***"Case File Management Standards"*** **developed by the Michigan State Court Administrative Office**

For inquiries on this or other available Michigan Judicial Institute training resources, contact MJI at (517) 373–7171.

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What Is A "Pro Se" Litigant?

***PRO SE* LITIGANT:** A person who represents him/herself in a legal matter; acting on his/her own behalf; in person. Black's Law Dictionary, 7th Edition, 1999

***PRO PER* LITIGANT:** (*In Propia Persona*) In one's own proper person.
Black's Law Dictionary, 7th Edition, 1999

For this print module, we will be referring to "*pro per*" or "*pro se*" as "self-represented" litigants.

The Federal Judicial Center, in a study of case data from 10 federal district courts during 1991–1994, reports that 21% of all filings were by self-represented persons.
Court Of Appeals Facilitate Handling of Pro Se Cases, The Third Branch, July 1995

A report from California based on 1991–1995 court data found that one party appeared pro se in 67% of all domestic relations cases and in 40% of all child custody cases.
Shortage In The Court, The Daily Journal, Jan 20, 1995

A study conducted by the National Center for State Courts that analyzed case data from 16 large urban trial courts in 1991–1992 found that neither party was represented by counsel in 18% of all domestic relations cases.
Goerdt, *Divorce Courts: Case Management,* National Center for State Courts, 1992

A recent Iowa newspaper account stated that "lawsuits filed by people acting as their own attorney are increasing. Domestic abuse pro se cases soared from 188 cases in 1990 to 5,340 in 1997."
Santiago, *Trend: Iowa Litigants Heading to Court Solo,* The Des Moines Register, August 18, 1997.

Why Is Self-Representation on the Rise?

The increasing number of self-represented litigants is due to a number of factors:
(Using the fill-in-the-blank answers below, complete the sentences on the right.)

do-it-yourself	1. The _____ of litigation.
anti-lawyer	2. The emphasis in the 1960's on the _____.
public's right to fair value	3. The growing scrutiny over the value received from _____.
Goldfarb v Virginia (1975)	4. The 1967 publication of Norman Cadey's book _____.
legal fees	5. _____, the court decision which eliminated the legal profession's exemption from antitrust laws.
"How to Avoid Probate"	6. _____ sentiment expressed for centuries, even before Shakespeare's time.
cost	7. The growth of _____ businesses and self-help books, computerized forms, and products available via the Internet.

ANSWERS: 1. cost 2. public's right to fair value 3. legal fees 4. "how to Avoid … " 5. *Goldfarb v Virginia* (1975) 6. anti-lawyer 7. do-it-yourself.

Who Are Self-Represented Litigants?

A revealing study of self-representation is the 1990 survey of almost 1900 domestic relations cases in the Superior Court of Maricopa County, Arizona, conducted for the American Bar Association.

American Bar Association, Standing Committee on Delivery of Legal Services, 541 North Fairbanks Court, Chicago, IL 60611-541

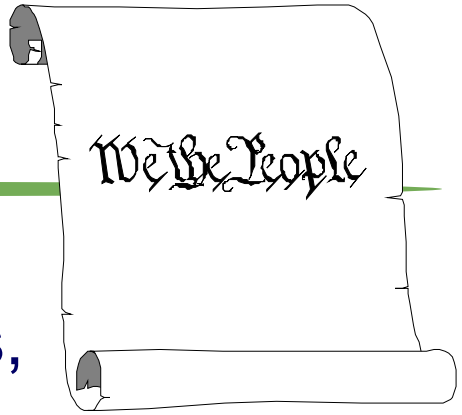
Who Are More Likely to Be Self-Represented?

(Circle one choice in each line.)

Higher income	OR	Lower income
Younger person	OR	Older person?
Less educated	OR	Reasonably educated?
People with children	OR	People without children?
People with property	OR	People with no property?
People with longer marriages	OR	People newly married?

ANSWERS: 1. lower income 2. younger 3. most common = 1–3 years of college 4. No children 5. No property 6. newer marriages.
SOURCE: *ABA Consortium on Legal Services and the Public*, 1994.

Constitutional Principles and 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."

Reflect in *Hudson v Palmer*, 486 U.S. 517, 523,104 S. Ct. 3194 ,198 (1984)

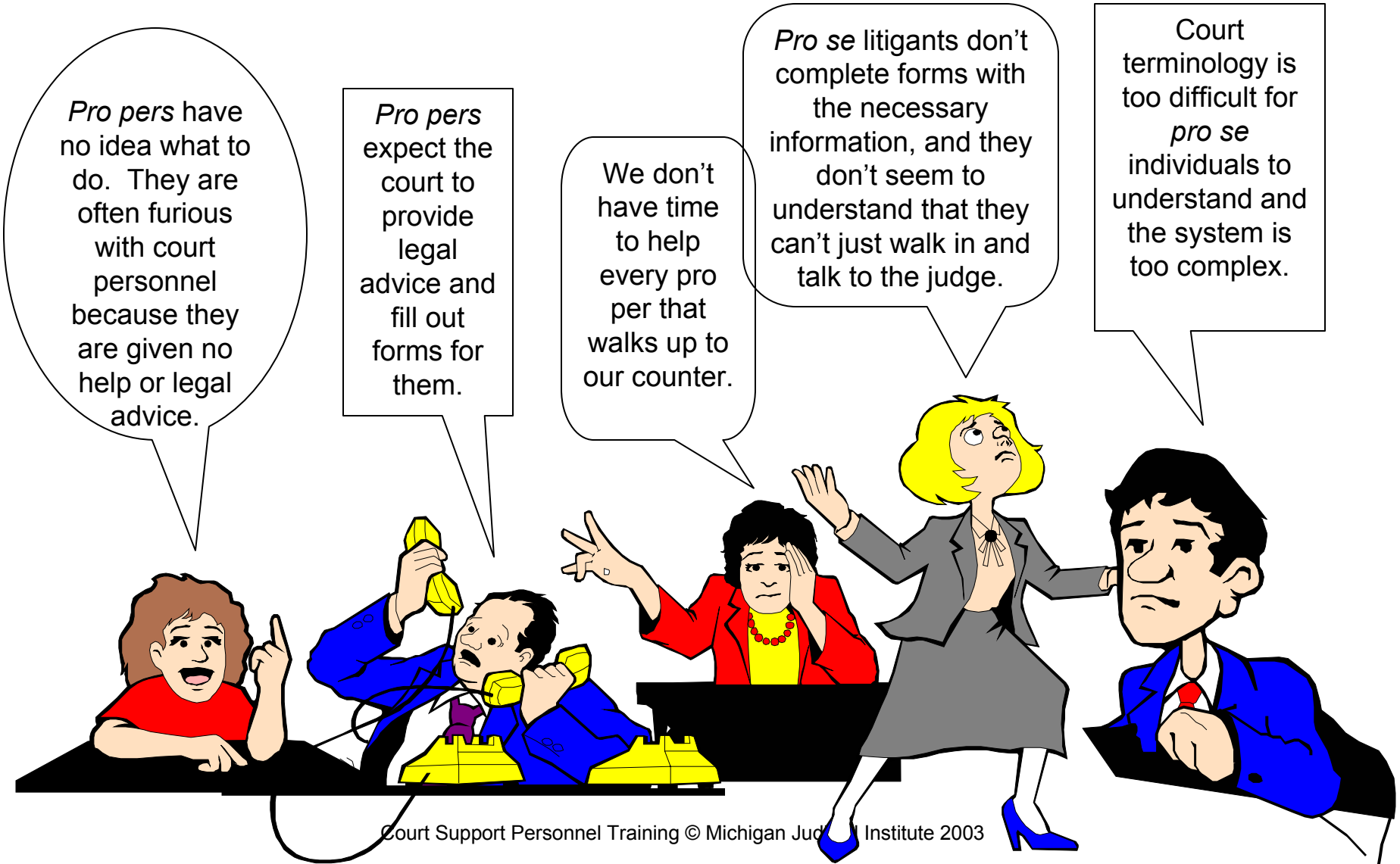
Exceptions to the Rule

There are exceptions to the rule of self-representation as follows:

- An officer or employee of a corporation, partnership or other organization who is not a member of the State Bar may not file papers or appear in court for the entity.
  MCR 4.301(B)(2) and MCL 600.8407(3)

- A trustee, guardian, conservator, “next friend”, agent, or one serving under a “power of attorney” may not file papers or appear as counsel in court unless the person is a licensed lawyer in this state.
  Cobb v Judge Superior Court of Grand Rapids, 43 Mich 289; 5 N.W. 309 (1880)

Identify the Issues of Serving Self-Represented Litigants...



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And Address Those Issues…

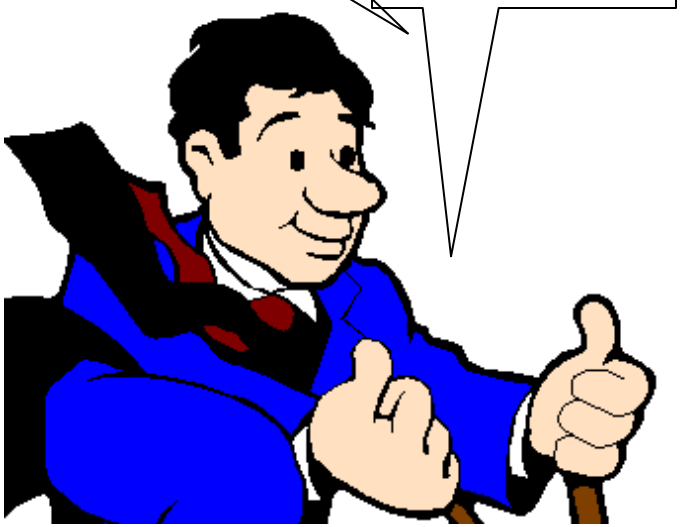
***Pro-pers* have no idea what to do.**
Provide brochures or packets for common situations with simple step-by-step procedural information and proper forms.

Filling out forms:
Provide "How To" pamphlets that walk through each component of the form and tell how to fill it out.

We don't have time !
Create readily available resources that you as a court staff person can provide to your customers. This will save you time answering questions that can be answered in the resource.

Court terminology is too difficult .
Provide a booklet of "Legal Terms" for your customers. Such a tool will also be helpful in training new court staff as well.

They can't just walk in and talk to the judge.
They may not talk to the judge, but is there a community resource that might be able to help them? Create a flyer of service agencies along with telephone numbers.



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…with Professional Excellence

Read and answer the questions below.		
1. Do you see yourself as an “ambassador of the court? You are, indeed, the first contact for most court customers.	Yes	No
2. As an “ambassador,” does your interaction with customers model the belief that all court customers, represented or not, are provided access to equal justice in the courts?	Yes	No
3. Do you sometimes go out of your way to assist a customer when it may not be the most convenient?	Yes	No
4. If you were on the other side of the counter, as the customer, would you rate your service as “above average”?	Yes	No
5. Do you feel that you have adequate resources readily available to provide excellent service to your customers?	Yes	No
If you answered “NO” to any of the questions above, it is time to reflect on how you can improve the level of service provided to your customers.		

"With so many citizens
electing to represent themselves,
there is a critical need
for a system-wide, coordinated effort
to develop and implement
strategies which assist
the self-represented litigants
and still addresses
the needs of the courts."

Sara Ann Determan,
Chair of the Committee on
Delivery of Legal Services,
American Bar Association

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Requests for Assistance

Read the requests below. If the request constitutes legal advice, circle the question number.

1. Has a complaint (or petition, motion, response, answer, certificate of service, objection, etc.) been filed yet?
2. I just got this summons and complaint. It says I have to file an answer or I will be subject to default. I can't afford an attorney and I don't trust them anyway. What is an "answer"? What does one look like? What does it have to say? What does "default" mean?
3. When is my answer due?
4. What does 'interrogatory' mean?
5. When will the court decide my case?
6. Do I have to do anything else?
7. Here is the situation...How can I get the Court to resolve this thing?
8. I need to file a motion for extension of time to file my papers. Does the court have a rule about that? What will the judge think if I'm late?
9. What are my rights?

See next slide for answers.

Answers

Numbers 2, 3, 5, 6, 7, and 9 should be circled.

How might you provide quality customer service and assist the person without giving legal advice?

2.

4.

5.

6.

7.

9.

If you are unsure, check with your supervisor. You may also want to refer to MJI's training program on legal advice which should be available in your court.

Question Source: *"Clerk's Office Staff Cannot Give Legal Advice - What Does That Mean?",* John M. Greacen, Wayne Co. Probate , 1992.
Answer Source: Answers based on MJI "Legal Advice" Booklet.

How Can I Help Self-Represented Litigants?

Reduce the complexity . . .

Making your court facilities "user-friendly" will help the court-customer relationship. Using the checklist below, put a checkmark beside those items that are included at your court facility.

- Customer parking available and close by.
- Signs clearly indicating the location of court offices.
- Court hours clearly posted outside the building.
- Facilities designed to accommodate special needs customers who may have disabilities.

. . . to facilitate access.

SOURCE: *"Divorce Litigants Without Lawyers"* by Robert B. Yegge, The Judges Journal, Spring 1994

How Can I Help Self-Represented Litigants?

Document the process . . .

Once the customer reaches the appropriate court location: (check all that apply)

- Information is provided in “plain English” and explains procedures, schedules, and actions of the court.
- Court forms are provided along with understandable “how to” manuals or instructions on completing the forms.
- A schedule of court hearings is posted for customers to see. The schedule is realistic, and time allotments are adequate to avoid delays.
- A list of court service fees is displayed for public view.
- Service counters operate during hours convenient to the public and hours are posted.

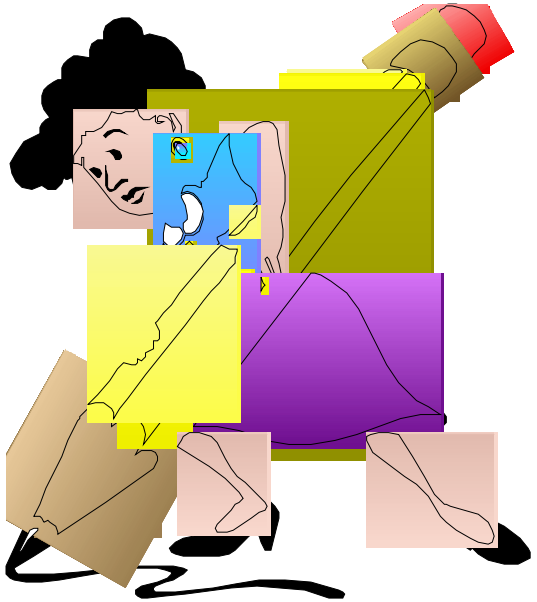
. . . to streamline service.

SOURCE: *“Divorce Litigants Without Lawyers”* by Robert B. Yegge, The Judges Journal, Spring 1994

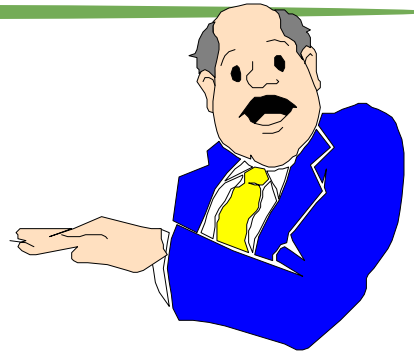
How Can I Help Self-Represented Litigants?

Resources Your Court May Want to Develop

- List of local attorneys
- List of mediation services
- List of social services, public health, mental health and other community services.
- List of legal services programs
- Legal information (books, brochures, etc.)
- Legal information videos
- Computerized assistance
- Internet addresses of court sites with information pages
- Local workshops offered to court customers
- Information on protecting children
- Necessary forms and instructions on completing them



How Can I Help Self-Represented Litigants?



Find the opportunity . . .

- Attend on-going opportunities for continuing education
- Locate and read your court's policies related to customer service and self-represented litigants.
- Assist in developing referral resources that can be provided to self-represented customers.
- Find an opportunity to offer suggestions for improvement. Does your court have a "Suggestion Box"? Is there a "Court Improvement Committee" in place? Would your supervisor welcome new ideas?

. . . to learn and grow.

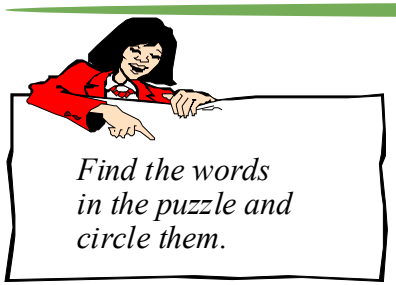
Each of the items listed on the last three pages contributes to the customers' access to justice. Getting off to a good start with your customers will enhance the court environment and informed customers will make your job easier as well.

Strategy Worksheet

Issues for Serving Self-Represented Litigants	Strategy for Handling	Implementation Plan (How, When, Who?)

List the issues that confront staff in your court related to Pro Se / Pro Per litigants in the first column. Identify a strategy for dealing with the issue in the second column. In the third column, identify how the strategy will be put into place.

Self-Represented Word Search



ASSISTANCE
COMMUNITY
COMPLEXITY
CONFIDENCE
CONSTITUTION
CONTACT
COURT
EXCELLENCE
LITIGANT
MICHIGAN
OPPORTUNITY
PROFESSIONAL
RESOURCES
RULES
TERMINOLOGY
SERVICE
STRATEGY
TRUST

L O P R O M O T E C O N F I D E N C E A N D T R U S T W Q Q
A A P I Z L D S D R Y A D Z J D T F O F Y P Q I U A V L L O
Q Q N P R G N H T B C R Q M B H L G H L X U M T L W H I C D
P S M O O C O M P L E X I T Y S J M F L J D S Y E X T Y R S
E S Z I I R Y S G E U D I Z T O I Q X R M U T U M I T B I U
O B L H O S T R F N Q D S Q U T E R M I N O L O G Y T T V M
E C I V D A S U E X C E L L E N C E D M F S J A L T C P X H
G Z E E O E S E N S W U F V Z N Y A K K C Q N V T P M H O R
W J O E L A F Q F I P I A K A H U F L O G T E P C B S K T F
A H A U X Z N Z G O T N R Q Q N S F K C R L O B M F Y F O X
P I R F Z A O J Q M R Y U L S O T H E F N A B K M S V E L H
S R Q V C Y S V L U P P Z E E Y R Z X L S K G K C W Y Y U S
Y O J Y J C E S S J Z A L Y Y G W Z T O Z B V C O E A Q H I
E N U N N V C B I O G F I G T B A D N B V D O D N I P R N P
L E A F Q S R E T S R L E K C B I L I O O N K R F W X S N C
Y W M S E X U J E E T T P L O M H X O B S T S G I H P T O P
C Q L I U Y O J P D A A R W H N L F P T R M H K D X P N A H
T R U S T J S R B R H U N E E M Y V I C J L D W E J T B R I
C O U R T Y E M T D Y F L C F H W T Y O Y G A Z N A X U K D
W R P E A S R S R J S Z I E E G U X I A M D D O C H R W L P
I N V Q E U H G Q F C T J T V T C G P A L M Q T E G P D J X
L T L N B C N B R E V X F O I Z S D C N W R I O F R Q R Z K
V O T S E R V I C E L V C O M M U N I T Y F K C D F W I W Z
X E L F H N J H I O X B N G F R L C A P Z A Y Z H Q X Y J X
D C N H E K X P D H C O V P I U P B U Z L N Q B P I B C P Q
K Q Z N F S K W A I P Y S N K W F N K C F V V G V Z G R K J
Z B R H I A H G F M X T C V X T E L V C C D R A C A O A R F
H N F U H O B T C C T T A Z L T B X S I Q P T A E L B Y N J
R E P G U S L D Z O R A Q V K X H J V U L R P P X Y G N Q K
C N L B G Z N M Z X P B I B W F V M T I U J I G H Y K V E U

Resources For The Self-Represented

Unauthorized Practice of Law: Fact and Information
Brochure from the State Bar of Michigan (517) 372–9033, Ext 3026

How to Obtain a Personal Protection Order
Brochure from the Michigan State Court Administrative Office (517) 373–5596

McGee, *Survivor's Handbook For Battered Women*
Michigan Domestic Violence Prevention & Treatment Board (517) 241–7103

Mediation: Where the winning solution is up to you!
Brochure from the Community Dispute Resolution Center (800) 873–7658

Small Claims Packet from 41–B District Court.
Clinton Township Division (800) 286–8010

Handbook of Legal Terms
Michigan Judicial Institute (517) 373–7171

Michigan Supreme Court Web Site—Frequently Asked Questions
www.supremecourt.state.mi.us/QandA.htm