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SELF-REPRESENTATION IS BECOMING THE NORM AND DRIVING REFORM

*Katherine Alteneder**

The impact of civil legal entanglement on individuals and communities in matters involving essential basic needs—such as housing, safety, food security, health, education, wages, and family matters—is profound, and, unlike criminal proceedings, there is no right to counsel. Thus, people are, for the most part, their own champions. The outcomes of these entanglements shape the culture, well-being, and capacity of our communities and ought to be of fundamental concern for those engaged in social justice, anti-poverty, and civil rights work.

An estimated over thirty million people per year appear without legal representation in America’s state and county courts,¹ while millions more appear pro se in unregulated municipal courts. In addition, “millions more are left on their own to navigate state and federal administrative proceedings, which disproportionately involve the most vulnerable among veterans, the

* Katherine Alteneder is the Executive Director of the Self-Represented Litigation Network (SRLN), an international network of justice system professionals and allies seeking to close the civil justice gap through reform so that every person gets the legal help they need, when and where they need it, in a format they can use. I wish to acknowledge and thank the SRLN founders—Richard Zorza, The Honorable Laurie Zelon, Bonnie Hough, John Greacen, and Glenn Rawdon—who have been remarkable and generous mentors. They established a collaborative and innovative culture to support the creative and visionary individuals working to make the justice system accessible and fair to people without lawyers. Their work has allowed so many of us to stand on one another’s shoulders, break down silos, and advance reforms. Thank you.

1. See *SRLN Brief: How Many SRLs?* (SRLN 2019), SELF-REPRESENTED LITIG. NETWORK (Feb. 6, 2019), <https://www.srln.org/node/548/srln-brief-how-many-srls-srln-2015> [<https://perma.cc/94SD-KWNW>]. Few jurisdictions formally report representation status; however, based on snapshot and sample studies, it is accepted that in the aggregate, depending on case type and location, 75 percent through 100 percent of civil cases involve at least one self-represented litigant. *Id.* “In cases such as uncontested divorces and domestic violence proceedings nearly 100% of the parties are self-represented.” See *Bringing the Access to Justice Pieces Together*, SELF-REPRESENTED LITIG. NETWORK 1 n.2, <https://www.srln.org/system/files/attachments/SRLN%20backgrounder%20final.9.18.pdf> [<https://perma.cc/3CPC-JRTT>] (last visited Apr. 1, 2019).

However, in housing and consumer debt, the landlord and creditor are usually represented while the tenant or debtor represents themselves. In contested family matters, approximately 70% of cases involve at least one self-represented litigant. In matters involving government interests, such as child support, administrative proceedings or traffic cases, the government is represented (most often by a lawyer, but sometimes not) and the individual parties are self-represented.

Id.

elderly, the disabled, children, the homeless and the hungry who are seeking to obtain or maintain benefits earned or established to support them.”²

Over the last decade, forward-thinking leaders within the courts, legal aid, and the private bar have produced scholarship and research to successfully assess and promote innovative services and policy reform so that people without lawyers can proceed and lawyers are better allocated to cases that truly require legal representation. These innovations include: self-help centers; standardized forms; comprehensive procedural information; transparent and simplified procedures; case management reform; triage systems to build pipelines for people to get a lawyer when they need one; plain language and multilingual resources and services; strategic and empowering uses of technology (for example, automated forms, diagnostic applications, e-filing, online dispute resolution (ODR) and online portals); integrated delivery systems among providers; utilization of non-lawyers and allied professionals including navigators both inside the courtroom and throughout the community; and judicial education to improve the adjudicatory process in courtrooms without lawyers.³

The rise of the self-represented litigant has required courts to learn how to ethically communicate directly with parties—without the intermediary of an attorney—which has laid bare just how arcane and unnecessary so much of our law and legal process is.

The services and strategies in play today have had a huge impact on changing the norms around the courts’ obligation to be transparent and improve their processes (benefiting the represented as well as the self-represented) but courts are ultimately limited by the law. The people’s law ought to be clear and simple and allow people to get on with their lives, but it is not.

The next wave of the access to justice movement ought to engage not only legal professionals, but also local communities in the re-design of statutes and regulations to eliminate unnecessary burdens and entanglements, to balance competing interests, and remain true to the fundamental principles of equal protection and due process. In other words, create law for the people.

2. *Id.* at 1.

3. *Id.*