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## The Federal Rules of Pro Se Procedure

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## ARTICLES

### THE FEDERAL RULES OF PRO SE PROCEDURE

*Andrew Hammond\**

*In recent years, more than a quarter of all federal civil cases were filed by people without legal representation. Yet, the Federal Rules of Civil Procedure refer to pro se litigants only once, and the U.S. Supreme Court has not considered in over a decade the question of what process is due to unrepresented civil litigants. Many judicial opinions in these cases go unpublished, and many are never appealed. Instead, the task of developing rules for pro se parties has taken place inside our federal district courts, whose piecemeal and largely unnoticed local rulemaking governs thousands of such litigants each year.*

*This Article illuminates this neglected corner of the federal courts. It collects and analyzes every pro se-specific rule and practice—nearly 500 in total—in the ninety-four federal district courts. This Article first categorizes these rules and then digs deeper into the most resource-intensive practice—the appointment of counsel—in the roughly forty district courts that maintain a pro bono program. In doing so, this Article unearths the procedures unrepresented litigants must follow when they walk into federal court.*

*In addition to its descriptive contribution, this Article pushes the bench, bar, and academy to revisit these federal rules of pro se procedure. It considers how to improve the process of making such local rules to better consider the needs of pro se litigants. This Article points the way forward for civil justice reform in the federal courts.*

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## INTRODUCTION

In a typical year, roughly one in four civil cases filed in federal district courts were filed pro se<sup>1</sup>—in other words, by unrepresented litigants.<sup>2</sup> That national average masks variation across the ninety-four district courts. Some district courts had much higher percentages of pro se filings with some ranging between 25 and 30 percent.<sup>3</sup> In each of the federal system’s trial courts, self-represented litigants comprise a sizable chunk of the civil docket.<sup>4</sup> Moreover, this group of litigants is itself heterogeneous. For instance, many pro se litigants are prisoners.<sup>5</sup> While some pro se parties litigate in good faith, others are frequent (and sometimes frivolous) filers.<sup>6</sup>

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1. In the twelve-month period ending in September 2019, 25,846 of the 242,859 nonprisoner civil cases filed in district courts were filed pro se. See ADMIN. OFF. OF THE U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2019 (2019) [hereinafter TABLE C-13], [https://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_c13\\_0930.2019.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2019.pdf) [<https://perma.cc/NP9C-DB8S>] (author’s calculation). That percentage holds steady across the previous three years. See ADMIN. OFF. OF THE U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2018 (2018), [https://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_c13\\_0930.2018.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2018.pdf) [<https://perma.cc/9DFL-H46P>]; ADMIN. OFF. OF THE U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2017 (2017), [https://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_c13\\_0930.2017.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2017.pdf) [<https://perma.cc/F5UH-A7VW>]; ADMIN. OFF. OF THE U.S. CTS., TABLE C-13: CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2016 (2016), [https://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_c13\\_0930.2016.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2016.pdf) [<https://perma.cc/CSB6-GNSQ>]. The most recent year’s data is skewed by two multidistrict litigation cases in the Northern District of Florida. See ADMIN. OFF. OF THE U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2020 (2020), [https://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_c13\\_0930.2020.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2020.pdf) [<https://perma.cc/LY6V-UMBY>] (counting 197,118 pro se cases in the Northern District of Florida alone and therefore making up 74 percent of all pro se filings in the federal system).

2. Throughout the paper, I use the terms “unrepresented,” “self-represented,” and “pro se” interchangeably. See JEFRI WOOD, FED. JUD. CTR., PRO SE CASE MANAGEMENT FOR NONPRISONER CIVIL LITIGATION vii n.3 (2016), [https://www.fjc.gov/sites/default/files/2017/Pro\\_Se\\_Case\\_Management\\_for\\_Nonprisoner\\_Civil\\_Litigation.pdf](https://www.fjc.gov/sites/default/files/2017/Pro_Se_Case_Management_for_Nonprisoner_Civil_Litigation.pdf) [<https://perma.cc/4PCT-XRZE>] (noting that “[a]lthough ‘self-represented litigant’ is often used in state courts and academic literature, the vast majority of federal cases and materials still use ‘pro se litigant’ or simply ‘pro se’”).

3. See TABLE C-13, *supra* note 1. Based on the 2019 data, those districts include the District of Alaska (26 percent), the Middle District of Alabama (26 percent), the Northern District of Georgia (22 percent), the Southern District of Indiana (31 percent), the Northern District of New York (20 percent), and the Eastern District of Virginia (23 percent). See *id.* (author’s calculation).

4. See *id.*

5. According to the 2019 data, prisoners filed close to two-thirds of all pro se cases filed in federal district courts. See *id.*

6. See, e.g., Michael Mueller, *Abusive Pro Se Plaintiffs in the Federal Courts: Proposals for Judicial Control*, 18 U. MICH. J.L. REFORM 93, 100–03 (1984) (reviewing the prevalence of bad faith pro se litigation).

Some enter federal court unrepresented, but following a successful *in forma pauperis* motion, may later be represented by counsel.<sup>7</sup>

This Article seeks to understand how federal district courts use distinct procedures for unrepresented parties. To pursue this inquiry, it collects and classifies the local rules and practices that treat *pro se* litigants differently from represented litigants. It analyzes all of the court-level procedures that apply to unrepresented litigants. This Article follows an approach similar to my earlier article on how federal courts grant fee waivers for poor litigants through the *in forma pauperis* process.<sup>8</sup> To understand federal practice of the *in forma pauperis* standard, that article constructed a dataset of all the information the district courts required of low-income litigants in order to proceed *in forma pauperis* and thus merit a fee waiver.<sup>9</sup> However, for this project, that approach has limitations. The local rules might not capture the full range of district court practice. Therefore, this Article supplements the hand coding of local rules with additional investigation into the resources district courts provide to self-represented litigants.

This Article reveals both the scope and the substance of the federal rules of *pro se* procedure. Of the ninety-four district courts, all but three have at least one *pro se*-specific procedural rule.<sup>10</sup> Many district courts have several.<sup>11</sup> The universe of the federal rules of *pro se* procedure totals close to 500.<sup>12</sup> This Article characterizes each of these rules using a classic, two-by-two categorization to provide a workable framework for conceptualizing *pro se* rules. While some rules resist this categorization, most rules are classified as either a tax (imposing some cost on *pro se* litigants that represented litigants do not bear) or a subsidy (imposing some kind of benefit).<sup>13</sup> And each tax or subsidy is further identified as either mandatory—therefore applying to all *pro se* litigants—or discretionary, empowering judges to choose when to apply the rule to a particular *pro se* litigant.<sup>14</sup> For instance, the fairly common rule that a court must provide additional information to a *pro se* litigant facing summary judgment is classified as a mandatory subsidy.<sup>15</sup>

This Article also provides detailed information about arguably the most salient discretionary subsidy: the appointment of counsel. There is no right

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7. See Andrew Hammond, *Pleading Poverty in Federal Court*, 128 YALE L.J. 1478, 1492–95 (2019) (describing the *in forma pauperis* practice).

8. See *id.*

9. *Id.* at 1496–505; see also Adam R. Pah et al., *How to Build a More Open Justice System*, 369 SCIENCE 134, 135 (2020) (citing Hammond, *supra* note 7, and finding “[a]t the 95% confidence level, nearly 40% of judges . . . approve [in forma pauperis] fee waivers at a rate that statistically significantly differs from the average rate for all other judges in their same district”).

10. See *infra* Appendix A.

11. See *infra* Appendix A.

12. See *infra* Appendix A.

13. See *infra* Appendix A.

14. See *infra* Appendix A.

15. See *infra* Appendix A.

to appointed counsel in American civil litigation,<sup>16</sup> and a majority of district courts have no formal program to connect pro se litigants to lawyers.<sup>17</sup> However, forty-seven federal district courts run some kind of pro bono panel program, where the court itself matches pro se litigants with lawyers.<sup>18</sup> But the similarities end there. Some courts permit lawyers to decline for any reason, others only for good cause.<sup>19</sup> To capture that cacophony, this Article documents how each court permits or prohibits certain types of cases, composes its panel, selects attorneys, and compensates those attorneys, if at all.

Since the federal judiciary is not required to appoint counsel for civil litigants who cannot afford to hire an attorney,<sup>20</sup> there will always be some portion of litigants who go without. Where does that leave the federal judiciary? It cannot bar its doors from litigants simply because they lack lawyers. And some judges may be reluctant to dragoon lawyers through waves of appointments. Instead, courts devise procedures to manage these unrepresented litigants. This Article names, claims, and, in some ways, shames that procedural system.

For any procedural system, we need to ask where we find the rules. For the federal courts, the conventional answer is a combination of the Federal Rules of Civil Procedure (“Federal Rules”) and appellate decisions.<sup>21</sup> However, a focus on pro se litigants suggests that limiting one’s study to those two sources misses much of what is happening in the federal courts.<sup>22</sup> In short, one cannot find the federal rules of pro se procedure in the Federal Rules of Civil Procedure. Rather, many of the relevant rules for pro se litigants are found in a district court’s local rules.<sup>23</sup> These local rules, permissible under the Federal Rules, are the undergrowth of federal rules

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16. See, e.g., *Lassiter v. Dep’t of Soc. Serv.*, 452 U.S. 18, 25 (1981) (noting that there is a right to counsel only in criminal cases where freedom is at stake).

17. See *infra* Part II.C.3.

18. See *infra* Appendix B.

19. See *infra* Part II.C.3.

20. See *Lassiter*, 452 U.S. at 25–27.

21. See Judith Resnik, *Revising Our “Common Intellectual Heritage”: Federal and State Courts in Our Federal System*, 91 NOTRE DAME L. REV. 1831, 1833 (2016) (“Fixing attention on the U.S. Supreme Court has become easy by its production of a predictable and tidy corpus, down to fewer than ninety opinions annually and concluding major pronouncements each year by July 1.”).

22. Pro se and in forma pauperis litigants are each singled out in the Federal Rules once. See FED. R. CIV. P. 5.2(b)(6) (exempting pro se filings brought under 28 U.S.C. §§ 2241, 2254, or 2255 from Rule 5’s redaction requirement); *id.* r. 4(c)(3) (requiring courts to order a United States marshal or another officer of the court to serve process on behalf of in forma pauperis litigants). The Federal Rules do mention “unrepresented” parties in Rules 4, 11, 16, and 26, but only to include them in rules applying equally to represented parties. *Id.* rs. 4, 11, 16, 26.

23. See FED. BAR ASS’N, REPRESENTING YOURSELF IN FEDERAL DISTRICT COURT: A HANDBOOK FOR PRO SE LITIGANTS 13 (2019), <https://www.fedbar.org/wp-content/uploads/2019/12/Pro-Se-Handbook-APPROVED-v2019-2.pdf> [https://perma.cc/8HQL-XDH4] (telling self-represented litigants to refer to the local rules on eleven different questions).

governing civil procedure.<sup>24</sup> Although publicly available on each district court's website, this source of procedural law has largely evaded systematic study.<sup>25</sup> Compared to the difficulty of assembling disparate procedural rules, it is no wonder that proceduralists have traditionally chosen the relative ease of tracking the occasional civil procedure decision from the U.S. Supreme Court or the more frequent, but not quite relentless, developments from the circuit courts.<sup>26</sup>

As a result, on one level, this Article raises the question of whether the federal courts possess a subsystem of civil procedure for litigants who cannot secure representation. It is an attempt to instigate proceduralists to study other sources of procedural rules in the federal system in other contexts.<sup>27</sup> This is not to say that Supreme Court doctrine and local rules are functional equivalents in the federal courts, but even if the Federal Rules and Supreme Court decisions can displace and change local rules and practice, the specificity of the latter may carry more consequences than the authority of the former. The aspiration for this Article is that by focusing on underresourced litigants, we will have a better understanding of the procedural rules and practices that shape the federal courts today.

At the risk of overgeneralization, recently the bench, bar, and academy have been more concerned with complex civil litigation than the needs of individual litigants, including those who proceed pro se.<sup>28</sup> To the extent that proceduralists have focused on low-income litigants in federal courts, it has been to attend to the distributional consequences of restrictions on aggregate litigation, such as class actions<sup>29</sup> and multi-district litigation,<sup>30</sup> or substantive

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24. See FED. R. CIV. P. 83(a)(1). *But see generally* Lauren Robel, *Fractured Procedure: The Civil Justice Reform Act of 1990*, 46 STAN. L. REV. 1447 (1994) (considering the validity of local procedural rules in light of the federal rules' goal of national procedural uniformity).

25. Katherine Macfarlane has repeatedly highlighted the role of local rules and individual court practices, especially in the context of prison litigation. See *generally* Katherine A. Macfarlane, *Shadow Judges: Staff Attorney Adjudication of Prisoner Claims*, 95 OR. L. REV. 97 (2016) [hereinafter Macfarlane, *Shadow Judges*]; Katherine A. Macfarlane, *A New Approach to Local Rules*, 11 STAN. J. C.R. & C.L. 121 (2015) [hereinafter Macfarlane, *A New Approach to Local Rules*].

26. See Anne E. Ralph, *Narrative-Erasing Procedure*, 18 NEV. L.J. 573, 595 (2018) (discussing "a well-noted bias in legal scholarship in favor of federal appellate decisions, especially decisions of the Supreme Court, as a subject of study"); see also Sanford Levinson, *The Rhetoric of the Judicial Opinion*, in LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 187, 193 (Peter Brooks & Paul Gewirtz eds., 1996) ("[M]ost ordinary citizens receive their law from [lower federal and state] courts rather than from the absent, often-mysterious entity far off in Washington, D.C."). This could be changing. See James E. Pfander, *The Past and Future of Procedure Scholarship*, 169 U. PA. L. REV. 2551, 2572–74 (2021) (arguing that procedural scholarship is now best characterized as doctrinally informed empiricism). While this status quo makes procedure harder to detect, litigants may prefer relying on a single court's local rules than parsing appellate decisions.

27. See, e.g., Robin J. Effron, *The Shadow Rules of Joinder*, 100 GEO. L.J. 759, 764 (2012) (making this point about the interpretation of the Federal Rules).

28. See Hammond, *supra* note 7, at 1526–29 (elaborating on this point).

29. See, e.g., David Marcus, *The Public Interest Class Action*, 104 GEO. L.J. 777, 779–83 (2016); Henry Rose, *Class Actions and the Poor*, 6 PIERCE L. REV. 55, 61–62 (2007).

30. See, e.g., Elizabeth Chamblee Burch & Margaret S. Williams, *Repeat Players in Multidistrict Litigation: The Social Network*, 102 CORNELL L. REV. 1445 (2017); Alexandra

law's regressive reach in civil procedure, like arbitration<sup>31</sup> or qualified immunity.<sup>32</sup> But many of those questions turn on how federal courts should allocate, handle, and even compete for the big cases.<sup>33</sup> Meanwhile, thousands of federal cases are filed, not by large corporations, federal or state governments, or well-resourced lawyers, but by the people themselves. This Article seeks to shed light on that shadow system of civil procedure.

Part I of this Article foregrounds the rules and practices that apply to pro se litigants by placing those rules in the context of the last fifty years of federal practice. To do so, Part I recounts the institutional history of the federal courts over the last half century as these courts, enabled by new and rediscovered grants of federal jurisdiction, encountered more and more poor litigants.

Part II pursues the project's descriptive purpose. It captures the range of rules and practices that apply only to federal pro se litigants. This survey documents the ways in which district courts have responded to pro se litigants by promulgating local rules on filing requirements, pleadings, pro se-specific pretrial rules, mediation and settlement conferences, and pro se-specific trial rules.<sup>34</sup> This Article does not argue that pro se-specific rules are categorically appropriate or inappropriate. Rather, by examining the advantages and drawbacks to the litigants and the courts, Part II evaluates these rules as mandatory or voluntary taxes and subsidies. Part II pays special attention to recent efforts by individual district courts that have created pro se help desks and systematized appointment of counsel through pro bono panels.<sup>35</sup>

A broader ambition of the paper is to consider how the federal judiciary should revise these rules of pro se procedure. To do that, Part III builds on the descriptive findings to identify distinct, yet reinforcing, roles for the district courts, the Judicial Conference of the United States, and Congress. Part III leverages the fact that district courts are required to allow notice and comment before they write, revise, or scrap local rules to explain how district court rulemaking could better account for pro se litigants. For instance, when a district court engages in local rulemaking, the court could incorporate information and participation from local lawyers and litigants who have experience with these pro se rules. Part III also considers the role of the

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D. Lahav, *Multidistrict Litigation and Common Law Procedure*, 24 LEWIS & CLARK L. REV. 531 (2020).

31. See, e.g., Cynthia Estlund, *The Black Hole of Mandatory Arbitration*, 96 N.C. L. REV. 679, 682 (2018); Jean R. Sternlight, *Creeping Mandatory Arbitration: Is It Just?*, 57 STAN. L. REV. 1631, 1638 (2005).

32. See, e.g., Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 36–39 (2017); Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797, 1831 (2018); Fred O. Smith, Jr., *Formalism, Ferguson, and the Future of Qualified Immunity*, 93 NOTRE DAME L. REV. 2093, 2103 (2018).

33. See Pamela K. Bookman, *The Adjudication Business*, 45 YALE J. INT'L L. 227, 236–37 (2020) (discussing the role of New York courts, and especially the Southern District of New York, in international commercial litigation).

34. See *infra* Part II.

35. See *infra* Part II.



Judicial Conference and nationally sponsored pilots like the recently implemented Mandatory Initial Discovery Pilot Project.<sup>36</sup> Part III envisions a more robust role for the Judicial Conference in fostering innovation and best practices in the district courts. Finally, Part III explains how Congress could strengthen the federal courts' responses to pro se litigants, not by interfering with procedural rulemaking, but by making significant investments to spur and strengthen the federal district courts' efforts to increase access to counsel. To do so, both the Judicial Conference and Congress should encourage the growth and standardization of mandatory pro bono panels.

Stepping back, this Article works under the assumption that, even though there are far more litigants, including unrepresented litigants, in state courts, unrepresented litigants in federal court also deserve our attention.<sup>37</sup> After all, dating back to the First Congress, pro se litigants have had a statutory right to file lawsuits in federal court.<sup>38</sup> Since our national system of civil adjudication permits self-representation as of right, there will always be a host of second-order questions as to how the courts should respond to these litigants. As a result, this Article eschews the first-order question of whether or why courts should permit uncounseled parties to enter, for the more pragmatic inquiry of how courts should respond to pro se litigants once they have entered the federal courthouse.

In that way, this Article is part of an ongoing project to encourage a scholarly perspective on civil procedure that starts from the bottom up.<sup>39</sup> It pays more attention to the rules and practices that judges, lawyers, and people experience every day in our courts than to the canonical appellate cases that often dominate our scholarly ken. Understanding procedure from the bottom up has its own methodological challenges. First, the law itself is often obscured, dispersed, and unpublished.<sup>40</sup> Second, interviewing individuals in

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36. See *infra* Part III.

37. See generally Anna E. Carpenter et al., *Studying the "New" Civil Judges*, 2018 WIS. L. REV. 249, 268; Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 746 (2015).

38. See 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."); see also *Schilling v. Walworth Cnty. Park & Plan. Comm'n*, 805 F.2d 272, 276 (7th Cir. 1986) (noting that failure to obtain counsel may not be held against the pro se litigant); *O'Reilly v. N.Y. Times Co.*, 692 F.2d 863, 867 (2d Cir. 1982) (stating that the right to appear pro se is a valuable right not to be dishonored by courts).

39. See Hammond, *supra* note 7, at 1526–29 (laying out an agenda for bottom-up procedural scholarship).

40. See Elizabeth Y. McCuskey, *Submerged Precedent*, 16 NEV. L.J. 515, 517 (2016) (identifying that the "study of submerged precedent . . . identifies a deeper layer of 'unpublication' in district courts—one that not only limits public use of court opinions, but largely prevents public knowledge of those opinions' existence"); see also Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 LEWIS & CLARK L. REV. 439, 441 (2009) (describing data on federal pro se litigation as "patchy and only occasionally longitudinal"); Merritt E. McAlister, *Missing Decisions*, 169 U. PA. L. REV. 1101, 1101 (2021) (documenting that "at least twenty-five percent or more of the [federal circuit] courts' self-reported merits terminations" are not published by the leading commercial legal databases).

the midst of litigation raises accuracy and ethical issues.<sup>41</sup> Experimental methods may be particularly useful, as they allow researchers to test hypotheses without interfering with ongoing litigation, but American courts lack a robust culture of experimentation.<sup>42</sup> Administrative data from the courts themselves is particularly illuminating, but it is not always accessible and if then, not comprehensive.<sup>43</sup> Moreover, researchers are tempted to let the available data drive the research agenda, not the other way around. As with any field, different research methods complement and buttress one another. This Article operates from the perspective that, in addition to the methods just mentioned, there is value in gathering and analyzing the “rules on the books” of each district court as a window, albeit a murky one, into the behavior of federal district court judges—the legal actors who have arguably the most power in the federal courts. This Article considers the local rules and practices to be some of the revealed preferences of the federal judiciary.<sup>44</sup> As a result, the hope is that, by collecting and critiquing these practices, this Article can shed more light on how our national court system of civil justice responds to—and, indeed, values—the needs and demands of poor people.

#### I. JUDICIAL RESPONSES TO POOR PEOPLE IN FEDERAL COURT

Federal courts hear all kinds of cases. Despite being courts of limited subject matter jurisdiction,<sup>45</sup> federal district courts handle everything from slip-and-falls,<sup>46</sup> to the opioid multi-district litigation,<sup>47</sup> to whether the President’s lawyer must comply with a congressional subpoena.<sup>48</sup> And every year, federal district courts hear thousands of cases brought by people who

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41. *But see* Anna E. Carpenter, *Active Judging and Access to Justice*, 93 NOTRE DAME L. REV. 647, 683–84 (2017) (discussing the benefits of qualitative interviews of judges).

42. *See, e.g.*, Victor D. Quintanilla et al., *The Signaling Effect of Pro Se Status*, 42 LAW & SOC. INQUIRY 1091, 1116 (2017) (conducting a social psychological experiment of the public, law students, and employment discrimination lawyers and concluding that “*pro se* claimants are perceived as less competent than counseled claimants and that these stereotypes explain why the law-trained award uncounseled claimants lower settlement awards”); *see also* D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2198 (2012) (noting that there is “astonishingly little credible, quantitative information about the effect of representation . . . [and] such information can only be obtained via randomized trials”).

43. *See* Pah et al., *supra* note 9, at 135.

44. *See* Catherine T. Struve, *The Federal Rules of Inmate Appeals*, 50 ARIZ. ST. L.J. 247, 308 (2018) (describing how district courts “tend to be the initial locus of experimentation”); *see also* Macfarlane, *A New Approach to Local Rules*, *supra* note 25, at 123 (arguing that local rules “are not the subject of rigorous scrutiny” despite “their increased importance, scope, and potential for substantive impact”).

45. *See, e.g.*, Home Depot U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1746 (2019).

46. *See, e.g.*, Lionel v. Target Corp., 44 F. Supp. 3d 315 (E.D.N.Y. 2014).

47. *See, e.g.*, *In re Nat’l Prescription Opiate Litig.*, 477 F. Supp. 3d 613 (N.D. Ohio 2020) (involving multidistrict litigation filed in the wake of the opioid epidemic).

48. *See* Comm. on the Judiciary, U.S. House of Representatives v. McGahn, 415 F. Supp. 3d 148, 214 (D.D.C. 2019), *vacated and remanded*, 951 F.3d 510 (D.C. Cir. 2020), *reh’g en banc aff’d in part, remanded in part*, 968 F.3d 755 (D.C. Cir. 2020).

do not have the benefit of an attorney's representation.<sup>49</sup> These people bring a variety of claims, but many challenge police misconduct, allege employment discrimination, or claim they were wrongfully denied disability benefits.<sup>50</sup>

The federal courts perform a special function in our democracy. Any person can enter and demand redress based on the violation of federal law.<sup>51</sup> That person's claim need not meet some economic threshold.<sup>52</sup> And while it is rarely to that person's benefit to do so, they can file their federal complaint without a lawyer.<sup>53</sup> Since Reconstruction, federal courts have had general federal question jurisdiction, empowering them to hear all claims under federal law.<sup>54</sup>

Despite the wide variety of cases, the federal courts purport to adhere to trans-substantivity in civil procedure. In other words, in our national court system, the same procedural rules apply to all cases. The commitment is expressed in the Federal Rules of Civil Procedure,<sup>55</sup> doctrine,<sup>56</sup> and scholarship.<sup>57</sup> This article of procedural faith represents more than mere

49. See *supra* notes 1–4 and accompanying text.

50. Claims brought under Section 1983, Title VII of the Civil Rights Act, and the Social Security Act represent three of the most common types of federal question claims brought by pro se litigants. See generally *infra* Part I.A.

51. See *supra* note 38 and accompanying text.

52. Compare 28 U.S.C. § 1331 (no amount-in-controversy requirement for federal question cases), with *id.* § 1332 (requiring that diversity cases “exceed[] the sum or value of \$75,000”).

53. See 28 U.S.C. § 1654.

54. See Act of Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470, 470. Before 1875, there were specific grants of federal question jurisdiction for, inter alia, patents and copyrights. See Amelia Smith Rinehart, *The Federal Question in Patent-License Cases*, 90 IND. L.J. 659, 664 n.25 (2015) (discussing those jurisdictional statutes). But aside from the Midnight Judges Act of 1801, which was repealed the following year, there was no general federal question jurisdiction until the 1875 statute. See Judiciary Act of 1801, ch. 4, § 2, 2 Stat. 89, 89 (repealed 1802). See generally Erwin Chemerinsky & Larry Kramer, *Defining the Role of the Federal Courts*, 1990 BYU L. REV. 67, 80–81; Barry Friedman, *Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts*, 104 COLUM. L. REV. 1211, 1226 (2004); Lumen N. Mulligan, *A Unified Theory of 28 U.S.C. § 1331 Jurisdiction*, 61 VAND. L. REV. 1667, 1669–71 (2008).

55. See FED. R. CIV. P. 1 (“These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”).

56. See David Marcus, *Trans-Substantivity and the Processes of American Law*, 2013 BYU L. REV. 1191, 1192–93 (discussing *Ricci v. DeStefano*, 557 U.S. 557 (2009), as such an example).

57. Other proceduralists have ably contested and contextualized this commitment. See, e.g., Robert G. Bone, “To Encourage Settlement”: Rule 68, Offers of Judgment, and the History of the Federal Rules of Civil Procedure, 102 NW. U. L. REV. 1561, 1619 (2008) (“The idea that the Federal Rules of Civil Procedure should apply uniformly to all substantive law claims . . . still has a strong hold on rulemaking today.”); David Marcus, *The Past, Present, and Future of Trans-Substantivity in Federal Civil Procedure*, 59 DEPAUL L. REV. 371, 376 (2010). But see Stephen B. Burbank, *Of Rules and Discretion: The Supreme Court, Federal Rules and Common Law*, 63 NOTRE DAME L. REV. 693, 715–16 (1988) (suggesting that procedural trans-substantivity is difficult, if not impossible, to achieve).

uniformity,<sup>58</sup> but a sense that the federal courts' procedural rules demonstrate egalitarian aspirations.<sup>59</sup>

This Article harnesses two challenges to civil procedure's purported commitment to the same rules across cases. Neither of these arguments are new, but both benefit from this Article's new evidence. First, if individual district courts are able to create rules specific to their court, do we have a procedural system that is, in fact, uniform across our federal judicial system? Others have drawn our field's attention to this feature of the federal rules,<sup>60</sup> especially in the wake of the Civil Justice Reform Act of 1990.<sup>61</sup> Second, while the Federal Rules rarely differentiate between litigants who have the benefit of counsel and those who do not, many litigants in the federal courts file their lawsuits pro se.<sup>62</sup> Does the presence of thousands of these litigants in the federal courts belie the judiciary's professed commitment to trans-substantivity?<sup>63</sup>

This Article's contribution to our understanding of civil procedure in the federal courts is that these two phenomena conspire to create federal rules of pro se procedure.<sup>64</sup> This Article does so by lifting up the often forgotten local rules of our federal trial courts. To make this argument, we first need some historical and doctrinal context.

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58. Cf. Gil Seinfeld, *The Federal Courts as a Franchise: Rethinking the Justifications for Federal Question Jurisdiction*, 97 CALIF. L. REV. 95, 123 (2009).

59. See William B. Rubenstein, *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865, 1898–906 (2002) (discussing equality's implications for procedural design).

60. See, e.g., Erwin Chemerinsky & Barry Friedman, *The Fragmentation of Federal Rules*, 46 MERCER L. REV. 757, 760–63 (1995); Stephen N. Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns*, 137 U. PA. L. REV. 1999, 2025 (1989); Carl Tobias, *Local Federal Civil Procedure for the Twenty-First Century*, 77 NOTRE DAME L. REV. 533, 537–44 (2002); see also Marcus, *supra* note 56, at 1219 n.115 (suggesting that “the devolution of authority to ninety-four federal districts to craft local rules” is an “ostensible signal of disappearing trans-substantivity” but that there is a lack of “evidence of extensive substance-specificity in local rules”).

61. Pub. L. No. 101-650, 104 Stat. 5089 (codified as amended in scattered sections of the U.S.C.). Compare Robel, *supra* note 24, at 1473–82, with Linda S. Mullenix, *The Counter-Reformation in Procedural Justice*, 77 MINN. L. REV. 375, 379 (1992). Some may retort that Rule 83, the rule permitting district courts to create and enforce local rules, places limits on an individual court's power of procedural rulemaking. See FED. R. CIV. P. 83(a)(1) (requiring that “[a] local rule must be consistent with—but not duplicate—federal statutes and rules adopted under [the Rules Enabling Act]”).

62. See *supra* notes 1–4 and accompanying text.

63. See Thomas O. Main, *The Procedural Foundation of Substantive Law*, 87 WASH. U. L. REV. 801, 802 (2010) (“Procedure is an instrument of power that can, in a very practical sense, generate or undermine substantive rights.”); see also Patrick Higginbotham, *Foreword*, 49 ALA. L. REV. 1, 2 (1997) (arguing that participation by judges, lawyers, and academics in rulemaking is “kindled by the reality that changes in rules of procedure today immediately engage social policy in ways that tax the dichotomy of substance and procedure”).

64. See, e.g., Samuel Estreicher, *Beyond Cadillacs and Rickshaws: Towards a Culture of Citizen Service*, 1 N.Y.U. J.L. & BUS. 323, 334 (2005) (discussing pro se claimants); Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1804–06 (2001) (same).

*A. Initial Responses to Pro Se Litigants*

The federal courts have encountered unrepresented litigants since the First Congress. The Judiciary Act of 1789<sup>65</sup> provided people seeking redress in federal court a statutory right to pursue their case pro se,<sup>66</sup> which remains to this day.<sup>67</sup> But the types of cases that could be brought in federal court for the first two centuries of the republic looked very different from the types of cases of the last fifty years.<sup>68</sup>

One way to chart the history of pro se litigants in federal court over the last fifty years is to analyze when and how judges discuss unrepresented litigants in publications written by and for judges. Two journals fit that bill: *Judicature* and *The Judges' Journal*. Neither focus exclusively on the federal courts, but both involve judges writing about developments in legal practice and judicial administration to an intended audience of other judges.<sup>69</sup> Another publication that complements this investigation is the American Bar Association's flagship monthly publication, the *ABA Journal*. Culling discussions of pro se litigants from each of these journals over the last fifty years suggests that judges have become increasingly focused on the challenges associated with unrepresented litigants in an adversarial system.

In the 1960s, there was little discussion of pro se civil litigants in the pages of these three judge-facing publications, but by the early 1970s, judges started to discuss the increase in the number of self-represented litigants in federal and state courts.<sup>70</sup> At this time, some puzzled over how these access-to-justice innovations would change the American bar.<sup>71</sup> In the first 1977 issue, along with articles by then Professor Ruth Bader Ginsburg on the Equal Rights Amendment<sup>72</sup> and Arthur Schlesinger on the war power,<sup>73</sup> the

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65. Ch. 20, 1 Stat. 73.

66. *Id.* § 35, at 92.

67. 28 U.S.C. § 1654 (“In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”).

68. See generally Mark D. Gough & Emily S. Taylor Poppe, *(Un)Changing Rates of Pro Se Litigation in Federal Court*, 45 LAW & SOC. INQUIRY 567, 585 (2020).

69. See, e.g., *About Us: Overview*, JUDICATURE, <https://judicature.duke.edu/about-us/overview/> [<https://perma.cc/XTJ5-Y4B8>] (last visited Apr. 2, 2022) (stating that the journal's “mission [in part] is to create a forum for judges, practitioners, and academics to share ideas, best practices, perspectives, and opinions”).

70. See Dar Cogswell, *Pro Se Representation in Civil Actions—a Judicial Tightrope*, 10 JUDGES' J. 42, 43 (1971) (describing how “[a] hard and fast rule for pro se trials is impossible to formulate” and that “[t]he trial judge will continue to walk the tightrope between judicial passiveness and advocacy of a party's cause”); see also Gerard A. Gilbride, *Pro Bono Council Panel in Civil Matters—An Experiment*, 12 JUDGES' J. 57, 60 (1973) (describing the creation of a pro bono panel of attorneys in New York City).

71. See John Woytash, *Too Many Lawyers?*, 63 A.B.A. J. 12, 12 (1977); see also Eugene Gressman, *Supreme Court Practices: Circa 1980*, 66 A.B.A. J. 1385, 1388 (1980) (discussing how the Supreme Court's rules failed to provide answers for how a self-represented litigant could secure the necessary affidavit by a member of the Court's bar).

72. See generally Ruth Bader Ginsburg, *Let's Have E.R.A. as a Signal*, 63 A.B.A. J. 70 (1977).

73. See generally Arthur Schlesinger, Jr., *Who Makes War—and How*, 63 A.B.A. J. 78 (1977).

*ABA Journal* suggested that “[t]here is a growing consensus among the public and lawyers that unmet legal needs exist” and noted that “expanded pro bono public work may provide employment for many more lawyers, even if other reforms such as ‘delawyer[ing],’ pro se courts, and no-fault insurance take away other traditional bread-and-butter tasks.”<sup>74</sup>

In the 1980s, judges and court staff continued to write about pro se litigants, but with a newfound emphasis on frivolous litigation.<sup>75</sup> In 1982, the Circuit Executive for the Seventh Circuit at the time discussed how judges should “[r]estrict the filings of frivolous pro se litigants” and how bar associations should “[e]ncourage more volunteer lawyers to take appointments in the federal courts” because “[j]udges now spend a substantial amount of time reviewing pro se pleadings” and “judges’ time and the adversary process would be better served if an attorney reviewed the pleadings” first.<sup>76</sup> Similarly, federal judges gave various lectures pondering whether there should be a right to appointed counsel in certain types of civil cases in federal court.<sup>77</sup> In 1985, Judge Frederick B. Lacey of the U.S. District Court for the District of New Jersey wrote at the end of his term as chairman of the National Conference of Federal Trial Judges that since 1970, “[t]he federal judiciary has become highly profiled as a ‘hallowed place’ where all people—but particularly the poor, unprotected and unsophisticated—know they will be heard.”<sup>78</sup> “[A]s positive as they may be,” Judge Lacey wrote that this “tidal wave of lawsuits,” as evidenced by the “tremendous increase in the number of *pro se* filings,” “threaten[ed] to engulf [judges] by adding to their already awesome responsibilities.”<sup>79</sup>

In the 1990s, these rumblings from the bench reached a crescendo in the Judicial Conference’s Long Range Plan for the Federal Courts. In it, the Judicial Conference declared that “a large proportion of recent caseload increases is due to pro se filings.”<sup>80</sup> The Judicial Conference claimed that “[p]ro se litigation places great stress on the resources of the federal courts”<sup>81</sup> and that “the district courts must face numerous practical difficulties in dealing with unrepresented litigants.”<sup>82</sup> It is no accident that Congress passed and President Clinton signed the Prison Litigation Reform Act of

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74. Woytash, *supra* note 71, at 12.

75. See Marc Galanter, *The Day After the Litigation Explosion*, 46 MD. L. REV. 3, 3–10 (1986) (discussing this discourse).

76. Collins T. Fitzpatrick, *Depleting the Currency of the Federal Judiciary*, 68 A.B.A. J. 1236, 1240 (1982).

77. See, e.g., Luther M. Swygert, *Should Indigent Civil Litigants in the Federal Courts Have a Right to Appointed Counsel?*, 39 WASH. & LEE L. REV. 1267, 1270–82 (1982); Jack B. Weinstein, *The Poor’s Right to Equal Access to the Courts*, 13 CONN. L. REV. 651, 651–60 (1981).

78. Frederick B. Lacey, *Holding the Center Together*, 24 JUDGES’ J. 29, 29 (1985).

79. *Id.*

80. JUD. CONF. OF THE U.S., LONG RANGE PLAN FOR THE FEDERAL COURTS 63 (1995).

81. *Id.*

82. *Id.*

1995<sup>83</sup> ostensibly to reduce and restrict prisoner litigation, especially lawsuits brought by prisoners themselves, in the federal courts.<sup>84</sup>

The judicial discourse regarding pro se litigants in the first quarter of the early twenty-first century is shaping up to echo the last quarter of the twentieth. In 2010, the Judicial Conference adopted its Strategic Plan for the Federal Judiciary.<sup>85</sup> In that document and its updated version in 2015, the Judicial Conference continued to identify pro se litigation as one of its most pressing concerns.<sup>86</sup> Both documents are very much in keeping with the 1995 Long Range Plan. Reading through the archives of these publications gives a distinct impression of intensifying concern among judges and court staff about pro se litigation. A review of the case law of this fifty-year period echoes the judges' public pronouncements.

### B. Doctrinal Responses to Pro Se Litigants

As more people began litigating without lawyers in federal court, they forced judges to determine to what extent the Federal Rules of Civil Procedure could accommodate unrepresented litigants. Unsurprisingly, a survey of case law suggests that the Supreme Court and the lower federal courts did begin to consider to what extent procedural rules should bend to the particular circumstances of pro se litigants.

The Supreme Court has instructed the federal courts to apply the standard that a pleading filed pro se is “to be liberally construed.”<sup>87</sup> But the Court has not addressed the needs of unrepresented litigants in a decade. In 2011, the Supreme Court held in *Turner v. Rogers*<sup>88</sup> that Michael Turner was not entitled to counsel as a matter of constitutional due process in family court proceedings that resulted in his incarceration multiple times for failure to pay child support to Rebecca Rogers for their child.<sup>89</sup> Since then, the Supreme Court has only cited *Turner* twice—both times in the criminal context and with little discussion.<sup>90</sup> However, the circuit and district courts have

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83. Pub. L. No. 104-134, §§ 801–810, 110 Stat. 1321, 1321-66 to -77 (1996) (codified as amended in scattered sections of 11, 18, 28, and 42 U.S.C.).

84. See Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1627–32 (2003) (canvassing the Prison Litigation Reform Act (PLRA)).

85. See JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 14 (2010) (enumerating as a goal to “[d]evelop best practices for handling claims of pro se litigants in civil and bankruptcy cases”).

86. See *id.* at 12–14; JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 13–14 (2015).

87. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); see also *Sause v. Bauer*, 138 S. Ct. 2561, 2563 (2018) (per curiam) (holding that “[i]n considering the defendants’ motion to dismiss, the District Court was required to interpret the *pro se* complaint liberally”); *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972) (per curiam). *But see* *McNeil v. United States*, 508 U.S. 106, 113 (1993) (claiming that the Court has “never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel”).

88. 564 U.S. 431 (2011).

89. See *id.* at 436, 448.

90. See *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1540 (2018); *Johnson v. United States*, 135 S. Ct. 2551, 2573 (2015) (Thomas, J., concurring).

continued to wrestle with how to adapt procedural doctrines to the reality of unrepresented litigants.

For instance, at the pleadings stage, district courts have developed a practice of admonishing pro se litigants about the potential consequences of failing to respond to a motion to dismiss, likely in response to cases where the defendants' motions were dispositive.<sup>91</sup> Similarly at summary judgment, some courts require additional notice if the nonmovant is pro se. These courts have required district courts and governmental defendants to inform pro se plaintiffs of the contours of Federal Rule of Civil Procedure 56 and of the specific consequences for failure to submit an opposing affidavit.<sup>92</sup> But the circuits are divided on this score.<sup>93</sup> Then Judge Antonin Scalia wrote for the D.C. Circuit that “[w]hile such a pro se litigant must of course be given fair and equal treatment, he cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance.”<sup>94</sup> And federal courts routinely intone that district courts “do not need to provide detailed guidance to pro se litigants”<sup>95</sup> because liberal treatment “does not constitute a license for a plaintiff filing pro se to ignore the Federal Rules of Civil Procedure.”<sup>96</sup>

This part has contextualized what comes next—namely, the proliferation of rules governing unrepresented litigants in federal courts. That context includes both the functions and culture of federal trial courts. But we need to keep in mind one more aspect of the Federal Rules before we dive into the morass of local rules.

Federal Rule of Civil Procedure 83 allows a district court, after a notice-and-comment period, to adopt and amend local rules so long as they are not in conflict with or duplicative of any rules adopted through the Rules Enabling Act,<sup>97</sup> including the Federal Rules of Civil Procedure, as well as Acts of Congress.<sup>98</sup> Thus, federal district courts create local rules because they can. But that functional account only partially explains why the federal

91. See, e.g., *Schroeder v. Polk*, 842 F. Supp. 355, 356 (N.D. Ind. 1993); *Russell v. D.C. Dep’t of Corr.*, Civ. A. No. 94-1456, 1994 WL 512402, at \*1 (D.D.C. Sept. 6, 1994).

92. See, e.g., *Renchenski v. Williams*, 622 F.3d 315, 340 (3d Cir. 2010) (agreeing with the majority of circuits that “adequate notice in the pro se prisoner context includes providing a prisoner-plaintiff with a paper copy of the conversion Order, as well as a copy of Rule 56 and a short summary explaining its import that highlights the utility of a Rule 56(f) affidavit”).

93. See also *Jessica Case, Pro Se Litigants at the Summary Judgment Stage: Is Ignorance of the Law an Excuse?*, 90 KY. L.J. 701, 704 n.24 (2002) (collecting cases).

94. *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1983).

95. *Moore v. Agency for Int’l Dev.*, 994 F.2d 874, 876 (D.C. Cir. 1993).

96. *Id.* (quoting *Jarrell v. Tisch*, 656 F. Supp. 237, 239 (D.D.C. 1987)); see also *Green v. McKaskle*, 788 F.2d 1116, 1119–20 (5th Cir. 1986) (stating that frivolous pro se litigation wastes judicial resources and impairs the chance of success of meritorious claims).

97. 28 U.S.C. §§ 2071–2077.

98. FED. R. CIV. P. 83(a)(1). The notice-and-comment requirement was added in 1985. *Id.* advisory committee’s note to the 1985 amendment. The advisory committee note states: “The new language subjects local rulemaking to scrutiny similar to that accompanying the Federal Rules, administrative rulemaking, and legislation. It attempts to assure that the expert advice of practitioners and scholars is made available to the district court before local rules are promulgated.” *Id.*; see also Macfarlane, *A New Approach to Local Rules*, *supra* note 25, at 131–40 (discussing this problem).



district courts have used this power to fashion local rules to specifically address pro se litigants. This institutional explanation, building on the discussion above, suggests that many federal judges think pro se litigants represent a population that needs additional resources, but also one that judges need to manage. These procedures, however, may not surface in judicial opinions. As a result, to trace how federal district courts have responded to the needs of pro se litigants, we need an accounting of these local rules and practices. The next part examines a particularly important but often overlooked aspect of that judicial response to pro se litigants: individual courts altering their procedural rules and practices for cases involving unrepresented litigants.

## II. PRO SE RULES AND PRACTICES IN THE U.S. DISTRICT COURTS

This part analyzes the universe of pro se-specific local rules and practices in operation in all of the federal district courts. To do so, this part provides a framework to evaluate these rules and then proceeds to apply that framework to all of the local rules that single out unrepresented litigants. This part then ends with a discussion of how these rules proliferate and persist in light of the institutional dynamics of the federal courts.

All but a few district courts explicitly recognize pro se parties in their local rules.<sup>99</sup> Terminology varies, but the rules typically define pro se parties by what they are not: they are not represented,<sup>100</sup> and they are not corporations.<sup>101</sup> A common rule mandates that pro se parties follow local and federal rules. For example, districts like the Southern District of Alabama and the Central District of California state that pro se parties are bound by local and federal rules, unless otherwise determined.<sup>102</sup> This phrasing is quite common across districts.<sup>103</sup> Other district courts extend these rules implicitly, with phrasing that applies to all parties.<sup>104</sup>

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99. According to their local rules, the District of Maryland and the Northern and Southern Districts of Mississippi have no civil rules specifically related to pro se litigants.

100. See, e.g., E.D. CAL. L.R. 183(a) (referring to persons appearing “*in propria persona*” as “[a]ny individual who is representing himself or herself without an attorney”).

101. See, e.g., D. MASS. L.R. 83.5.5(c) (“A corporation, partnership, limited liability company, trust, estate, or other entity that is not an individual may not appear *pro se*.”).

102. See S.D. ALA. GENLR 83.5(a); C.D. CAL. L.R. 83-2.2.3.

103. See *infra* Appendix A.

104. Compare E.D. OKLA. LCVR 1.2(a) (noting that the rules of procedure govern “any proceeding in this Court”), and D.D.C. LCVR 7(m) (“The duty to confer [on all nondispositive motions] also applies to non-incarcerated parties appearing *pro se*.”), with LOC. CIV. R. 7.02 (D.S.C.) (“Counsel is under no duty to consult with a *pro se* litigant.”). Other general requirements state that a pro se party must promptly notify the clerk of a change in address or telephone number. See, e.g., S.D. ALA. GENLR 83.5(b). Districts impose a variety of timelines for updating contact information. For instance, the Eastern District of California gives pro se parties sixty-three days from the date mail is returned undelivered to update their current address. See E.D. CAL. L.R. 183(b); see also C.D. CAL. L.R. 41-6 (setting a fourteen day deadline); D.D.C. LCVR 11.1 (noting that “[f]ailure to provide the address information within 30 days upon filing may result in the dismissal of the case against the defendant”); E.D. TENN. L.R. 83.13 (“Notification of a change of address must be accomplished by filing a Notice with the Clerk and service of the Notice upon all other parties within 14 days of the change of address.”).

Ten districts offer an exclusive section of rules for pro se litigants.<sup>105</sup> Most of these districts provide a brief section that sets forth the standard rules described above.<sup>106</sup> For instance, the Middle District of North Carolina’s pro se rule section includes rules governing appearances, address changes, and exceptions to electronic filing.<sup>107</sup> Moreover, some districts impose rules specific to pro se litigants who are incarcerated.<sup>108</sup>

#### A. Categorizing Pro Se–Specific Rules

How should we think about these pro se–specific rules? The hope is that this Article spurs and enriches further debate among judges, lawyers, and scholars on whether applying different procedural rules to unrepresented litigants is beneficial or harmful, necessary or not. Perhaps simply by documenting the proliferation of these rules in the federal trial courts, others, including those with more power and more perspective, will weigh in. But in an effort to jumpstart the normative discussion, here is a fairly straightforward way to classify them.

First, let us consider whether by singling out unrepresented litigants, federal courts are taxing those litigants (and that method of litigation) or subsidizing it. In other words, we can determine whether the procedural rule imposes some kind of cost or benefit. A classic example of a procedural rule that is, in fact, a subsidy, is the filing fee waiver for litigants proceeding in forma pauperis.<sup>109</sup> The cost of filing a lawsuit in federal court is currently \$402.<sup>110</sup> If a court grants an in forma pauperis application, the litigant, whether represented or not, does not have to pay that fee.<sup>111</sup>

Another way to evaluate these rules is to determine whether these rules are mandatory or discretionary. Must a federal district court judge impose a rule on all pro se litigants who appear in her courtroom? Or, may she choose whether and when to impose such a rule? In other words, some of these rules

105. See *infra* Appendix A.

106. See *infra* Appendix A.

107. M.D.N.C. LR11.1 (setting forth various rules under the title “Persons Appearing *Pro Se* in Civil and Criminal Cases”).

108. A number of districts impose habeas corpus rules specific to pro se prisoners, and several districts discuss pro se prisoners’ civil rights cases. See *infra* Appendix A. For example, the Eastern District of Pennsylvania exempts pro se prisoner civil rights actions from the mandate of a scheduling order. See E.D. PA. R. 16.2; see also W.D. VA. CIV. R. 16 (excluding pro se prisoner actions). Some districts also require the filing party to serve an incarcerated pro se party with a paper copy of the case, statutory, or regulatory authority cited by the filing party, regardless of availability on legal databases. See, e.g., E.D. CAL. L.R. 133(i)(3)(ii).

109. See, e.g., D. ALASKA L.CIV.R. 3.1(c)(1).

110. This includes the \$350 filing fee, as well as a \$52 administrative fee. See 28 U.S.C. § 1914 (detailing the \$350 filing fee); *District Court Miscellaneous Fee Schedule*, U.S. CTS., <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule> [<https://perma.cc/UHC5-GNCT>] (last visited Apr. 2, 2022) (detailing the \$52 administrative fee).

111. While avoiding the \$400 fee is certainly significant to low-income litigants, the other benefits that come from in forma pauperis status may be even more so, as I explain elsewhere. See Hammond, *supra* note 7, at 1492–95.

in the trial courts apply to all pro se litigants, and for others, judges have the power to determine to whom these rules apply.<sup>112</sup> To make this more concrete, here are explanations and examples of each of these categories.

1. *Mandatory tax.* A mandatory tax is a rule that imposes some cost on all pro se litigants in the district court. For instance, the District of Vermont requires that pro se parties provide the court with a witness statement within a set time frame before a hearing or trial.<sup>113</sup>

2. *Discretionary tax.* A rule that would qualify as a discretionary tax will be one that permits but does not require a federal judge to impose some cost on pro se litigants appearing before her. One instance of a discretionary tax is the Eastern District of Texas's rule that allows judges to order that a pro se litigant give security in the event of vexatious litigation.<sup>114</sup>

3. *Mandatory subsidy.* A rule that automatically awards a benefit to all pro se litigants will qualify as a mandatory subsidy. Many districts require that the court furnish a pro se party with additional information that explains how that litigant can respond to a summary judgment motion.<sup>115</sup> As a result, self-represented litigants get the benefit of additional information at a particularly important stage of federal civil litigation.

4. *Discretionary subsidy.* In addition to the in forma pauperis process discussed above, appointment of counsel to pro se litigants is another classic example of a discretionary subsidy. As will be discussed, all district courts that follow a local rule to permit appointment of counsel to some pro se litigants do so on a case-by-case basis.<sup>116</sup> One can combine these two distinctions and the aforementioned examples into the following chart.

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112. There is a related question in federal jurisprudence about how courts should interpret the Federal Rules when the rules use mandatory language. Compare *Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 400 (2d Cir. 2019) (accord great weight to the mandatory language in Rule 68(a)), with *Kale v. Combined Ins. Co. of Am.*, 861 F.2d 746, 758 (1st Cir. 1988) (“[W]hile we acknowledge the mandatory language of Rule 11, we cannot escape the fact that at its core imposition of sanctions is ‘a judgment call.’” (footnote omitted) (quoting *FDIC v. Tefken Constr. & Installation Co.*, 847 F.2d 440, 443 (7th Cir. 1988))). See also *Effron*, *supra* note 27, at 764 (making this point about the interpretation of the Federal Rules).

113. See, e.g., D. VT. L.R.45.

114. See E.D. TEX. LOC. R. CV-65.1(b).

115. See *infra* notes 159–62 and accompanying text; Appendix A.

116. See *infra* Part II.C.3.

	<b>Mandatory</b>	<b>Discretionary</b>
<b>Tax</b>	Pro se litigant must file a witness list at least thirty days before a trial or hearing (D. Vt.) <sup>117</sup>	A judge can order a pro se litigant to provide security (E.D. Tex.) <sup>118</sup>
<b>Subsidy</b>	The court will provide a pro se party facing a summary judgment motion with a notice explaining the motion (e.g., D. Kan.) <sup>119</sup>	Appointment of counsel (e.g., N.D. Ill.) <sup>120</sup>

To be sure, not all the rules will be susceptible to this kind of categorization. There are tough calls. For instance, the Northern District of Georgia exempts pro se litigants and their opposing counsel from meeting in person, after the close of discovery, to discuss settling the case.<sup>121</sup> While this rule is clearly mandatory (no pro se litigant will be required to confer with the opposing party after discovery), it is far from clear whether this would qualify as a tax or a subsidy. Some litigants, including those who are representing themselves, may see a settlement discussion, especially before summary judgment, as a waste of time. But others, perhaps especially those without counsel, may welcome the court requiring the opposing party to meet to discuss settlement. Thus, for some litigants, such a rule will be considered a cost and to others a benefit.

Take another example. Some district courts funnel self-represented litigants to a particular judge in the district court. At least four district courts assign all pro se cases to magistrate judges.<sup>122</sup> Like the previous example, this rule would be considered mandatory, not discretionary, but is it a subsidy or tax? Such a rule might be beneficial to pro se litigants. But even if we knew something about the particular judge or the difference between magistrate judges and district judges in a particular district, it would be hard to say whether this diversion of unrepresented litigants to a certain judge taxes or subsidizes those litigants.

This categorization also does not capture *who* subsidizes the litigant. Some subsidies come at the expense of the court, others from the opposing

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117. D. VT. L.R.45.

118. E.D. TEX. LOC. R. CV-65.1(b).

119. D. KAN. R. 56.1(f).

120. N.D. ILL. LR83.36.

121. See LR16.3, NDGA.

122. See N.D. FLA. LOC. R. 72.2(E); LOC. CIV. R. 73.02(B)(2)(e) (D.S.C.); N.D.W. VA. LR CIV P 72.01(d)(6); S.D.W. VA. LR CIV P 72.1(d)(6); see also Christian J. Grostic, *An Indigent Plaintiff in the Federal Courts*, FED. LAW., Jan./Feb. 2014, at 70, 70 (recounting how a case brought by an in forma pauperis litigant was transferred to a particular judge per local rule).

party. For instance, the Eastern District of California gives pro se parties in Social Security and black lung cases “direct access to documents on file with the Clerk.”<sup>123</sup> Presumably, this local rule subsidizes a pro se litigant’s access to the administrative record at the court’s expense. Whereas the District of Colorado also provides a subsidy in the form of access to any unpublished case, it does so at the expense of the opposing party.<sup>124</sup> That district requires that a party that cites any unpublished case must furnish a copy of that case to the unrepresented party.<sup>125</sup> Part III returns to the question of who should finance these subsidies. For now, it is worth flagging that, as a matter of procedural design, one can finance the subsidy through the court itself or by taxing an adversary.

Any attempt to classify this universe of disparate rules will be imperfect.<sup>126</sup> However, by focusing on these two distinctions (mandatory/discretionary and tax/subsidy), the following section serves, at a minimum, as a guide through the thicket of pro se rules in federal district courts.

### B. Pro Se Rules Across the District Courts

Looking at the pro se rules in the federal district courts, some are easily categorized as either a tax or a subsidy, whereas others resist this categorization. This section follows the litigation process, beginning with filing requirements, then pretrial rules (including pleadings, discovery, and summary judgment), and finally trial rules.

#### 1. Filing Requirements

The most common rules related to pro se litigants are ones that exempt them from various filing requirements. Several districts recognize that pro se parties do not typically have access to the federal court’s electronic filing system (ECF).<sup>127</sup> These districts impose a variety of rules premised on this lack of access. Many districts explicitly require pro se parties to file paper documents with the Clerk of the Court.<sup>128</sup> For the same reason, additional rules require the opposing party to provide hard copies of electronically filed documents to the pro se litigant.<sup>129</sup> Typically, the pro se party files a paper

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123. E.D. CAL. L.R. 206(c).

124. *See* D.C.COLO.LCIVR 7.1(e).

125. *See id.*

126. *See, e.g.,* Andrew Manuel Crespo, *The Hidden Law of Plea Bargaining*, 118 COLUM. L. REV. 1303, 1342 (2018) (describing disparate grand jury procedures).

127. *See infra* Appendix A. For more information about the Case Management/Electronic Case Files (CM/ECF) system, see *Electronic Filing (CM/ECF)*, U.S. CTS., <https://www.uscourts.gov/court-records/electronic-filing-cmecf> [https://perma.cc/JQ6R-YR35] (last visited Apr. 2, 2022).

128. *See, e.g.,* E.D. CAL. L.R. 133(b)(2).

129. *See, e.g.,* E.D. MICH. ELEC. FILING POL’YS AND PROCS. R 9(e).

document, and the clerk's office makes an electronic copy,<sup>130</sup> with the electronic file serving as the official court record.<sup>131</sup>

Additionally, several districts permit pro se parties to seek access to e-filing, subject to certain additional requirements.<sup>132</sup> In the Central District of California, for example, “[l]eave to file electronically must be sought by motion, which must demonstrate that the pro se litigant has access to the equipment and software necessary to prepare documents, for filing in PDF format and to connect to the Court’s CM/ECF System.”<sup>133</sup> Similarly, the federal court in the District of Columbia requires the pro se party to “certify[] that he or she either has successfully completed the entire Clerk’s Office on-line tutorial or has been permitted to file electronically in other federal courts.”<sup>134</sup>

While the discretionary approach to e-filing might suggest that districts afford more flexibility to pro se parties, case law complicates that conclusion. Some courts are unwilling to grant the pro se party’s motion for e-filing access. In one case, the Eastern District of North Carolina denied a pro se plaintiff’s request to access electronic filing because he had already demonstrated an ability to file conventionally and did not adequately explain how electronic access would accommodate his mental impairment.<sup>135</sup> In another case, the Middle District of North Carolina requested that the pro se party demonstrate his ability and willingness to attend training for the electronic filing system.<sup>136</sup> The Northern District of Ohio explicitly stated its preferred policy of “disallow[ing] *pro se* litigants access to electronic filing unless extenuating circumstances exist to justify waiving these procedures.”<sup>137</sup>

The e-filing rules imply that districts hold concerns regarding a pro se litigant’s lack of access to a computer, the internet, or both. Yet, the requirements of paper filing are not necessarily less burdensome and therefore may not always be considered a subsidy.<sup>138</sup> For example, most districts require pro se parties to file documents on court-supplied forms.<sup>139</sup> In the Western District of Kentucky, a pro se party’s failure to refile the petition on the appropriate form within thirty days may be grounds for

130. See, e.g., E.D. CAL. L.R. 133(a).

131. See C.D. ILL. CIV. LR 5.4(B)(1); see also Struve, *supra* note 44, at 314 (suggesting that “prisoner e-filing programs might alleviate some of the difficulties associated with incoming prisoner mail”).

132. See *infra* Appendix A.

133. C.D. CAL. L.R. 5-4.1.1.

134. D.D.C. LCvR 5.4(b)(2) (noting that a “pro se party may obtain a CM/ECF user name and password . . . with leave of Court”).

135. See Fuller v. Holt, No. 7:18-CV-59-FL, 2019 WL 1560433, at \*1 (E.D.N.C. Apr. 10, 2019).

136. See Bardes v. Mass. Mut. Life Ins. Co., No. 1:11CV340, 2011 WL 1790816, at \*9 (M.D.N.C. May 10, 2011).

137. Johnson v. Working Am., Inc., No. 1:12CV1505, 2012 WL 5948639, at \*5 (N.D. Ohio Nov. 1, 2012).

138. See Struve, *supra* note 44, at 305–08 (discussing e-filing challenges in the context of prison litigation).

139. See *infra* Appendix A.

dismissal.<sup>140</sup> Furthermore, pro se parties must submit every complaint, petition, motion, or other court form in a particular format.<sup>141</sup> A 2011 survey of sixty-one chief judges and some clerks in the district courts revealed that one of the most common problems in pro se cases was illegible pleadings.<sup>142</sup> Even if the pro se party has access to a computer, printing adds costs, especially if a district imposes a rule requiring multiple copies of court documents. The Western District of Michigan states that “in all proceedings brought *in propria persona* or *in forma pauperis*, the petition or complaint shall not be accepted for filing unless it is accompanied by a copy or copies in number sufficient for service on the respondent(s) or the defendant(s).”<sup>143</sup>

## 2. Pretrial Motions

Outside filing, most rules governing pro se parties concern pretrial matters. These include pleading requirements, dispositive and non-dispositive motions, discovery procedures, and pretrial conferences. The following subsections summarize the various kinds of rules.

*a. Initiating the Lawsuit.* Seventeen districts subsidize all pro se litigants by exempting their lawsuits from the civil cover sheet requirement.<sup>144</sup> Additionally, many districts require a pro se party to sign the pleadings and to disclose relevant contact information.<sup>145</sup> In some districts, failure to timely notify the court of a change in address or other contact information may result in dismissal.<sup>146</sup> Some districts allow parties appearing pro se to show good cause for failure to comply with serving a party within the period prescribed by Federal Rule of Civil Procedure 4(m).<sup>147</sup>

*b. Pleadings.* A number of district courts afford liberal construction to an unrepresented litigant’s pleadings. This mandatory subsidy of pro se litigation is perhaps the most well known to proceduralists and federal litigators. These rules derive from the fifty-year-old Supreme Court decision, *Haines v. Kerner*.<sup>148</sup> In that case, the Court recognized a relaxed pleading standard for a pro se plaintiff, stating that such pleadings are held “to less

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140. See W.D. KY. LR 5.3(b).

141. See generally *id.* at 5.3(a)–(d) (detailing paper submission requirements for pro se litigants).

142. See DONNA STIENSTRA ET AL., FED. JUD. CTR., ASSISTANCE TO PRO SE LITIGANTS IN U.S. DISTRICT COURTS: A REPORT ON SURVEYS OF CLERKS OF COURT AND CHIEF JUDGES 21 (2011), <https://www.fjc.gov/sites/default/files/2012/ProSeUSDC.pdf> [<https://perma.cc/MDB2-B3J8>] (noting that 70 percent of respondents reported that pleadings or submissions were unnecessary, illegible, or could not be understood).

143. W.D. MICH. LCIVR 5.6(b).

144. See *infra* Appendix A. Some districts explicitly require pro se parties to use a civil cover sheet. See, e.g., S.D. OHIO CIV. R. 3.1(a) (noting that pro se litigants may initiate a civil action in paper form with a completed civil cover sheet). Others do so implicitly: the Eastern District of Wisconsin requires all civil actions to contain a civil cover sheet when filed. See E.D. WIS. CIV. L.R. 3.

145. For example, the Eastern and Western Districts of Arkansas require the party to state “his/her address, zip code, and telephone number.” E.D. ARK & W.D. ARK. LOC. R. 5.5(c)(2).

146. See, e.g., M.D. TENN. LR41.01(b).

147. See, e.g., D. MASS. L.R. 4.1(b).

148. 404 U.S. 519 (1972) (per curiam).

stringent standards than formal pleadings drafted by lawyers.”<sup>149</sup> Yet, the Court failed to offer much guidance on how to apply that relaxed standard and therefore empowered district court judges to use their discretion. This relaxed standard sometimes appears in the local rules. The District of Nebraska gives the individual judge discretion to consider a pro se litigant’s amended pleading as supplemental to—rather than superseding—the original pleading, unless stated otherwise.<sup>150</sup> In one instance, the court treated an amended complaint as supplemental, relying on the original complaint’s prayer for relief.<sup>151</sup> Recall that the District of New Hampshire tasks magistrate judges with conducting a preliminary review of pro se pleadings.<sup>152</sup> That would suggest it is best considered as a tax on pro se litigation, but the local rules instruct the magistrate judges to construe a pro se litigant’s complaint liberally.<sup>153</sup> In that sense, the jurisdictional hurdle might be a tax, but the liberal construction of the claims and the prayer for relief might be a subsidy.

*c. Discovery.* Given the central role discovery plays in federal litigation, it is not surprising that a dozen or so districts provide pro se rules related to discovery materials.<sup>154</sup> These rules typically take the form of either a mandatory or discretionary subsidy, usually requiring or permitting parties to file discovery materials with the court when the case involves a pro se party.<sup>155</sup> The Northern District of Alabama’s is one example of this rule, having implemented a permissive standard.<sup>156</sup> The Northern District of Indiana phrases this rule as mandatory, stating that “[a]ll discovery material in cases involving a pro se party must be filed.”<sup>157</sup> The District of Delaware separates its rule regarding discovery proceedings in two parts: “Service With Filing” for cases involving pro se parties and “Service Without Filing” for cases involving parties represented by counsel.<sup>158</sup>

*d. Summary Judgment and Other Motions.* A dozen or so districts have a pro se rule for summary judgment.<sup>159</sup> Some districts have a mandatory subsidy that requires a party moving for summary judgment against an unrepresented party to attach a separate document providing additional

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149. *Id.* at 520.

150. *See* NECivR 15.1(b).

151. *See* McKinley v. Rech, No. 8:09CV371, 2010 WL 583997, at \*1 n.1 (D. Neb. Feb. 10, 2010).

152. *See* D.N.H. LR 4.3(d)(3).

153. *See* Chambers v. Eppolito, No. 11-cv-355-PB, 2011 WL 4436285, at \*1 (D.N.H. Aug. 24, 2011) (holding that “[i]n conducting a preliminary review, the magistrate judge construes pro se pleadings liberally, to avoid inappropriately stringent rules and unnecessary dismissals”); *see also* Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997) (“[I]f [the pro se litigants] present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled.”).

154. *See infra* Appendix A.

155. *See infra* Appendix A.

156. *See* N.D. ALA. LR 5.3 (carving out an exception to the rule prohibiting a party from filing discovery materials with the court in a civil case).

157. N.D. IND. L.R. 26-2(a)(2)(A).

158. D. DEL. LR 5.4(a), (b).

159. *See infra* Appendix A.



information about the motion. For example, both the District of Kansas and the District of Connecticut require that a represented party file and serve an unrepresented party with such notes, along with copies of the full text of Federal Rule of Civil Procedure 56 and the local summary judgment rule.<sup>160</sup> Ten other districts impose similar rules.<sup>161</sup> The Northern District of New York requires that the moving party advise pro se parties about the consequences of their failure to respond to a motion for summary judgment.<sup>162</sup>

Like summary judgment, some districts require parties to provide notice to an unrepresented party for other dispositive motions. For example, the District of Connecticut requires represented parties to file a separate notice document with its motion to dismiss.<sup>163</sup> The Eastern and Southern Districts of New York, which impose a similar rule, state that such a rule “plays a valuable role in alerting *pro se* litigants to the potentially serious consequences of a motion to dismiss.”<sup>164</sup> Contrast such a rule with the District of Delaware’s, which exempts civil pro se parties from a requirement that a statement be filed with all nondispositive motions.<sup>165</sup>

*e. Duty to Confer and the Pretrial Conference.* Many districts do not mention pro se parties in the context of the duty to confer, implying that unrepresented litigants must follow the same rules as represented litigants. However, several districts exempt all pro se litigants from the duty to confer.<sup>166</sup> Others exempt only pro se parties in custody.<sup>167</sup> For instance, the Northern District of New York states that “[a]ctions which involve an incarcerated, pro se party are not subject to the requirement that a court conference be held prior to filing a non-dispositive motion.”<sup>168</sup> Those types of rules suggest that nonincarcerated pro se parties must still confer. Moreover, several districts exempt pro se litigants from pretrial conferences.<sup>169</sup> Conversely, some districts like the Southern District of Alabama state that the court may require pro se parties to appear for a final

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160. See D. KAN. R. 56.1(f); D. CONN. L. CIV. R. 56(b).

161. See D. HAW. LR99.56.2 (for prisoner plaintiffs only); N.D. ILL. LR56.2; N.D. IND. L.R. 56-1(f); S.D. IND. L.R. 56-1(k); D. MONT. L.R. 56.2 (for prisoner plaintiffs only); E.D.N.Y. LOC. CIV. R. 56.2; N.D.N.Y. L.R. 56.2; W.D.N.Y. L.R.CIV.P. 56(b); S.D.N.Y. LOC. CIV. R. 56.2; D. VT. L.R.56.

162. See N.D.N.Y. L.R. 56.2.

163. See D. CONN. L. CIV. R. 12(a).

164. E.D.N.Y. & S.D.N.Y. LOC. CIV. R. 12.1, Committee Note. The Eastern District of Virginia requires the represented party to include a warning at the end of a dispositive or partially dispositive motion. See E.D. VA. LOC. CIV. R. 7(K).

165. See D. DEL. LR 7.1.1.

166. See, e.g., E.D. OKLA. LCVR 7.1(f). But see D. OR. LR 7-1(a), Practice Tips 1 (suggesting that “counsel should document a good faith effort to consult with the unrepresented party”).

167. See, e.g., N.D. FLA. LOC. R. 7.1(B).

168. N.D.N.Y. L.R. 7.1(a)(2).

169. See *infra* Appendix A.

pretrial conference.<sup>170</sup> The Northern and Southern Districts of Iowa explicitly require the represented party to initiate the pretrial conference.<sup>171</sup>

*f. Alternative Dispute Resolution.* Thirteen districts exempt pro se parties from dispute resolution programs.<sup>172</sup> For example, the Western District of Wisconsin exempts pro se plaintiffs from its alternative dispute resolution program.<sup>173</sup> The district court for the District of Columbia's local rules suggest that pro se parties are generally ineligible for mediation.<sup>174</sup> Other districts permit pro se parties to file a motion for leave not to engage in mediation, but otherwise do not automatically exempt those parties. In the Southern District of West Virginia, for example, a judicial officer may grant a motion for exception to mediation on a showing of good cause, regardless of whether the party is represented.<sup>175</sup> The Eastern District of Pennsylvania exempts pro se prisoners involved in civil rights actions from the requirement to consider dispute resolution.<sup>176</sup>

### 3. Trial Rules

Across the federal system, districts provide fewer local rules and explicit exceptions for pro se parties at trial than they do at the pretrial stage. This may be because unrepresented parties, like other federal litigants, rarely make it to trial.<sup>177</sup> Many districts require self-represented parties to follow nearly all the same trial rules and procedures as experienced trial attorneys.<sup>178</sup> Still, some districts set forth specific rules governing pro se parties during the trial.

A common local rule related to trial in the district courts states that pro se parties may not delegate their representation to any other person. Although such rules typically state that unrepresented parties may seek outside assistance in other matters, such as in preparing court documents, these rules require that such parties personally participate in all aspects of the litigation, including the trial itself.<sup>179</sup> This rule is typically incorporated in the rule instructing pro se parties that they must follow all local and federal rules.<sup>180</sup>

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170. See S.D. ALA. CIVLR 16(b) (noting that such a conference may be needed to consider the subjects specified in Federal Rule of Civil Procedure 16 or other matters as determined by the judge).

171. See N.D. IOWA & S.D. IOWA LR 16A(b) (“[I]f the plaintiff is proceeding pro se, the lawyer for the defendant must initiate the conference.”).

172. See *infra* Appendix A.

173. See W.D. WIS. R. 3.D.1; see also D. WYO. U.S.D.C.L.R. 16.3(e)(1).

174. See D.D.C. LCvR 84.4(c) (noting that a pro se party represented by counsel for the purpose of mediation could be eligible).

175. See S.D.W. VA. LR CIV P 16.6(b).

176. See E.D. PA. R. 53.3(1).

177. See Gough & Poppe, *supra* note 68, at 580–82.

178. If districts do not have pro se–specific trial rules, litigants will have to follow the trial rules laid out in the Federal Rules of Civil Procedure.

179. See, e.g., DIST. IDAHO LOC. CIV. R. 83.7; E.D. VA. LOC. CIV. R. 83.1(M)(2) (requiring pro se litigants to certify in writing and under penalty of perjury that the documents filed with the court have not been prepared by (or with the aid of) an attorney).

180. See, e.g., D. HAW. LR81.1(a); S.D. CAL. CIVLR 83.11(a).

Several districts set forth a rule relating to bringing forth witnesses as a pro se litigant. In the District of New Hampshire, pro se litigants proceeding in forma pauperis must file a motion for witnesses, documents, or evidence by subpoena at least twenty-one days before trial.<sup>181</sup> Similarly, in the District of Vermont, a pro se or in forma pauperis party must file a witness list and statement at least thirty days before a trial.<sup>182</sup> A third district, the Eastern District of Missouri, explicitly gives the court discretion to impose that twenty-one-day deadline for certain unrepresented litigants.<sup>183</sup> Many disciplinary sanctions that apply to attorneys at trial (or pretrial) proceedings also apply to parties acting pro se.<sup>184</sup>

### C. Subsidizing Pro Se Litigants with Legal Advice and Representation

As demonstrated above, the ninety-four district courts that make up the backbone of the federal judiciary have all kinds of rules that pertain to pro se litigants. However, focusing solely on the local rules in each district court may miss other institutional responses to self-represented litigants. This section digs deeper into the ways in which federal district courts subsidize pro se litigants in a specific respect: by providing them access to legal advice and representation. Some district courts have created guidebooks for pro se litigants, pro se help desks and clinics, and pro bono attorney panels. This section sorts through this heap of rules and practices.<sup>185</sup>

#### 1. Pro Se Guidebooks and Handbooks

Several district courts offer guides or handbooks for self-represented litigants on their court websites. Some, like the District of Vermont's, simply summarize local rules specific to pro se litigants.<sup>186</sup> Others, like the District of North Dakota's, include sample forms.<sup>187</sup> Many districts have "Pro Se Packets" that explain how to file a civil complaint and include the necessary forms.<sup>188</sup> For instance, the District of New Mexico's pro se guide provides

181. See D.N.H. LR 45.2(a).

182. See D. VT. L.R.45(a).

183. See E.D. MO. L.R. 2.06(C)(1) (applying, at the court's discretion, the twenty-one day deadline to self-represented litigants not proceeding in forma pauperis).

184. For example, the Eastern District of Washington allows the court to impose sanctions against pro se litigants who fail to appear or prepare for a hearing, trial, or conference. See E.D. WASH. LCIVR 83.3(k)(1)(B).

185. The information discussed below is current as of March 23, 2022.

186. See U.S. DIST. CT.: DIST. OF VT., REPRESENTING YOURSELF AS A PRO SE LITIGANT GUIDE (2015), <https://www.vtd.uscourts.gov/sites/vtd/files/Pro%20Se%20Litigant%20Guide%20w-Glossary%2020151201.pdf> [<https://perma.cc/P6ZJ-J8WN>].

187. See U.S. DIST. CT.: DIST. OF N.D., INFORMATION SHEET FOR PRO SE LITIGANTS, [https://www.ndd.uscourts.gov/lci/pro\\_se.pdf](https://www.ndd.uscourts.gov/lci/pro_se.pdf) [<https://perma.cc/AN2G-LDSS>].

188. See, e.g., U.S. DIST. CT.: E. DIST. OF CAL., PRO SE PACKAGE: A SIMPLE GUIDE TO FILING A CIVIL ACTION (2016), <http://www.caed.uscourts.gov/caednew/assets/File/Combined%20Pro%20Se%20Packet.pdf> [<https://perma.cc/5WHK-PXC9>]; U.S. DIST. CT.: S. DIST. OF CAL., TO ANY PERSON WISHING TO FILE A COMPLAINT IN THEIR OWN BEHALF, <https://www.casd.uscourts.gov/assets/pdf/forms/Pro%20Se%20Complaint%20Packet.pdf> [<https://perma.cc/69TR-SERB>].

not only sample forms, but also information about the law library and legal representation.<sup>189</sup> Several district courts offer a handbook originally created by the Federal Bar Association (FBA),<sup>190</sup> while others offer that resource as well as their own local version.<sup>191</sup> These local guides vary greatly in their level of detail. For instance, the Eastern District of Wisconsin offers a guidebook that answers pro se litigants' most common questions,<sup>192</sup> while the Western District of Wisconsin's guide contains over 200 pages of detailed explanations regarding each stage of the litigation, including a glossary of legal terms.<sup>193</sup> A few districts have separate handbooks for prisoner and nonprisoner pro se parties.<sup>194</sup>

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189. See U.S. DIST. CT.: DIST. OF N.M., GUIDE FOR PRO SE LITIGANTS (2019), <https://www.nmd.uscourts.gov/sites/nmd/files/ProSePackage.pdf> [<https://perma.cc/CD3C-7ALK>].

190. The District of Delaware and Middle District of Louisiana are two examples. See *Representing Yourself in Federal District Court*, U.S. DIST. CT.: DIST. OF DEL., <https://www.ded.uscourts.gov/representing-yourself-federal-district-court> [<https://perma.cc/VS85-CJDJ>] (last visited Apr. 2, 2022); U.S. DIST. CT.: MIDDLE DIST. OF LA., <https://www.lamd.uscourts.gov/> [<https://perma.cc/3LLT-52XH>] (under dropdown header titled "Filing Without an Attorney" click on "Pro Se Litigants Handbook (FBA Publication)") (last visited Apr. 2, 2022).

191. See, e.g., FED. BAR ASS'N, REPRESENTING YOURSELF IN FEDERAL DISTRICT COURT: A HANDBOOK FOR PRO SE LITIGANTS (INCLUDING NEVADA DISTRICT REVISIONS) (2020), <https://www.nvd.uscourts.gov/wp-content/uploads/2020/02/1-9-2020-NV-Pro-Se-Handbook.pdf> [<https://perma.cc/X9TL-Q545>] (District of Nevada); U.S. DIST. CT.: DIST. OF NEV., FILING A COMPLAINT ON YOUR OWN BEHALF, <https://www.nvd.uscourts.gov/wp-content/uploads/2017/08/Representing-Yourself-Guide.pdf> [<https://perma.cc/3GUG-323Z>]; U.S. DIST. CT. FOR THE MIDDLE DIST. OF N.C., PRO SE GUIDE AND FORMS (2016), [https://www.ncmd.uscourts.gov/sites/ncmd/files/pro\\_se.pdf](https://www.ncmd.uscourts.gov/sites/ncmd/files/pro_se.pdf) [<https://perma.cc/R72V-5PTE>]; *Representing Yourself in Federal District Court*, U.S. DIST. CT.: MIDDLE DIST. OF N.C., <https://www.ncmd.uscourts.gov/representing-yourself-federal-district-court> [<https://perma.cc/9HES-2X47>] (last visited Apr. 2, 2022) (providing the Federal Bar Association's handbook).

192. See U.S. DIST. CT. FOR THE E. DIST. OF WIS., ANSWERS TO PRO SE LITIGANTS' COMMON QUESTIONS (2018), <https://www.wied.uscourts.gov/sites/wied/files/documents/Answers%20to%20Pro%20Se%20Litigants%27%20Common%20Questions%20%2803.02.18%29.pdf> [<https://perma.cc/AJN7-Q3KR>].

193. See U.S. DIST. CT. FOR THE W. DIST. OF WIS., GUIDE FOR LITIGANTS WITHOUT A LAWYER, [https://www.wiwd.uscourts.gov/sites/default/files/Guide\\_ProSe\\_Litigants.pdf](https://www.wiwd.uscourts.gov/sites/default/files/Guide_ProSe_Litigants.pdf) [<https://perma.cc/4KAU-XJCU>].

194. See, e.g., U.S. DIST. CT. FOR THE DIST. OF D.C., PRO SE NON-PRISONER HANDBOOK (2020), [https://www.dcd.uscourts.gov/sites/dcd/files/ProseNON-PRISONERManual\\_2020.pdf](https://www.dcd.uscourts.gov/sites/dcd/files/ProseNON-PRISONERManual_2020.pdf) [<https://perma.cc/7T25-883Y>]; U.S. DIST. CT. FOR THE DIST. OF D.C., PRO SE PRISONER HANDBOOK (2021), [https://www.dcd.uscourts.gov/sites/dcd/files/ProSePRISONERManual\\_2021.pdf](https://www.dcd.uscourts.gov/sites/dcd/files/ProSePRISONERManual_2021.pdf) [<https://perma.cc/MR7W-B6C7>]; U.S. DIST. CT.: W. DIST. OF KY., PRO SE HANDBOOK FOR NON-PRISONERS: A SIMPLE GUIDE TO FILING AN ACTION WITHOUT THE ASSISTANCE OF COUNSEL (2013), [https://www.kywd.uscourts.gov/sites/kywd/files/court\\_docs/Pro\\_Se\\_Non-Prisoner\\_Handbook\\_0.pdf](https://www.kywd.uscourts.gov/sites/kywd/files/court_docs/Pro_Se_Non-Prisoner_Handbook_0.pdf) [<https://perma.cc/ZFG8-8HQX>]; U.S. DIST. CT.: W. DIST. OF KY., PRO SE PRISONER HANDBOOK: A SIMPLE GUIDE TO FILING AN ACTION WHILE INCARCERATED (2013), [https://www.kywd.uscourts.gov/sites/kywd/files/court\\_docs/Pro\\_Se\\_Prisoner\\_Handbook\\_0.pdf](https://www.kywd.uscourts.gov/sites/kywd/files/court_docs/Pro_Se_Prisoner_Handbook_0.pdf) [<https://perma.cc/3MAT-S9P9>].

## 2. Pro Se Help Desks and Related Assistance Programs

Nineteen district courts run a pro se help desk or similar assistance program.<sup>195</sup> These programs vary but are typically operated by court staff or volunteer attorneys who assist pro se litigants in understanding federal procedure and substantive law. Most programs explicitly state that help desk attorneys are prohibited from conducting research or writing court documents, investigating the particular facts of a case, or otherwise representing the litigant. Rather, these programs are the functional equivalent to the “advice and referral” model common to legal aid organizations.<sup>196</sup>

For example, the Northern District of Illinois offers an assistance program to civil pro se litigants.<sup>197</sup> Under the program, volunteer attorneys can provide information about federal court procedure and substantive law, explain the status of a case, help litigants prepare court documents, refer pro se parties to legal services, and maintain confidentiality.<sup>198</sup> Conversely, the program prohibits volunteer attorneys from appearing on the litigant’s behalf in court, researching or writing court documents for the litigant, investigating the facts of the party’s case, communicating with the litigant’s opponent or opponent’s attorney, filing, serving, or mailing anything on the pro se party’s behalf, assisting a currently incarcerated party, or assisting with a criminal case.<sup>199</sup> Similarly, the Western District of New York offers a Pro Se Assistance Program on a weekly basis for noncriminal matters.<sup>200</sup> There, too, the advice is limited to providing general information about procedures and law, though they can assist in preparing court documents.<sup>201</sup> The Eastern District of Michigan partners with a local law school and also has a Pro Se Case Administrator from the Clerk’s Office assist unrepresented litigants.<sup>202</sup>

These programs vary widely in their availability. Although most programs are year-round, other districts offer more limited assistance. In the Eastern District of California, for example, pro se litigants may attend a Pro Se Help

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195. A list of the district courts, along with links to information on each court’s website, is on file with the author and available on request.

196. See LEGAL SERVS. CORP., 2019 ANNUAL REPORT (2019), <https://lsc-live.box.com/s/boo2b9zitjdmhmh964t25ne2540flg0r> [<https://perma.cc/S2W5-QFLS>].

197. See *Information for People Without Lawyers (Pro Se)*, U.S. DIST. CT.: N. DIST. OF ILL., <https://www.ilnd.uscourts.gov/Pages.aspx?/2+UWDbtVzCDq3Lu8BusuQ==> [<https://perma.cc/DR4Z-JTXA>] (last visited Apr. 2, 2022).

198. See U.S. DIST. CT.: N. DIST. OF ILL., U.S. DISTRICT COURT HIBBLER MEMORIAL PRO SE ASSISTANCE PROGRAM, [https://www.ilnd.uscourts.gov/formview.aspx?pdf=\\_assets/\\_documents/\\_forms/\\_prose/DistrictCourtProSeAssistanceProgram.pdf](https://www.ilnd.uscourts.gov/formview.aspx?pdf=_assets/_documents/_forms/_prose/DistrictCourtProSeAssistanceProgram.pdf) [<https://perma.cc/72YY-GM25>].

199. See *id.*

200. See U.S. DIST. CT.: W. DIST. OF N.Y., PRO SE ASSISTANCE PROGRAM, [https://www.nywd.uscourts.gov/sites/nywd/files/PRO%20SE%20ASSISTANCE%20Program%20Flyer\\_update-4.17.pdf](https://www.nywd.uscourts.gov/sites/nywd/files/PRO%20SE%20ASSISTANCE%20Program%20Flyer_update-4.17.pdf) [<https://perma.cc/U783-BRTG>].

201. See *id.*

202. See *Representing Yourself: Court Related Assistance*, U.S. DIST. CT.: E. DIST. OF MICH., <http://www.mied.uscourts.gov/index.cfm?pageFunction=proSe#courthelp> [<https://perma.cc/P3QF-A8UA>] (last visited Apr. 2, 2022).

Day, offered three days throughout the year.<sup>203</sup> Some districts only offer assistance programs in certain divisions or courthouses.<sup>204</sup>

Several district courts offer information and referral to an outside organization like legal aid or a law school clinic. While some districts provide program information and appointment details directly through the court's website, other districts provide links to legal aid and assistance programs that are not part of or run by the court. These include legal aid organizations and law school clinics. In the Southern District of New York, for example, the court website directs pro se litigants to seek assistance from a local legal aid provider.<sup>205</sup>

At least two district courts offer pro se litigants the assistance of attorneys solely to help negotiate a settlement with the opposing party.<sup>206</sup> The Western District of North Carolina's program is not available for prison litigation, habeas cases, Social Security cases, bankruptcy appeals, and any case (except

203. See *Pro Se Help Days 2020*, U.S. DIST. CT.: E. DIST. OF CAL., <http://www.caed.uscourts.gov/caednew/index.cfm/news/pro-se-help-days-2020/> [<https://perma.cc/VC7B-62A3>] (last visited Apr. 2, 2022). This page has been subsequently removed from the court's website, possibly in light of the court's COVID-19 pandemic procedures. However, it is still referenced elsewhere. See *Pro Bono Legal Services*, SACRAMENTO CNTY. BAR ASS'N, <https://sacbar.org/probono> [<https://perma.cc/U9YR-FHSQ>] (last visited Apr. 2, 2022) (discussing the Pro Se Help Day program).

204. For instance, the District of Arizona's program is limited to Tucson and Phoenix. See *Federal Court Advice Only Clinic—Phoenix*, U.S. DIST. CT.: DIST. OF ARIZ., <https://www.azd.uscourts.gov/federal-court-advice-only-clinic-phoenix> [<https://perma.cc/2J9K-AFJG>] (last visited Apr. 2, 2022); *Federal Court Advice Only Clinic—Tucson*, U.S. DIST. CT.: DIST. OF ARIZ., <https://www.azd.uscourts.gov/federal-court-advice-only-clinic-tucson> [<https://perma.cc/KPS8-7L78>] (last visited Apr. 2, 2022); see also *Federal Pro Se Clinics*, PEOPLE WITHOUT LAWS., <http://prose.caed.uscourts.gov/federal-pro-se-clinics> [<https://perma.cc/3YAL-DHCR>] (last visited Apr. 2, 2022) (describing the pro se clinic program in three districts of the Central District of California); *The Federal Pro Se Program at the San Jose Courthouse*, U.S. DIST. CT.: N. DIST. OF CAL., <https://www.cand.uscourts.gov/pro-se-litigants/the-federal-pro-se-program-at-the-san-jose-courthouse/> [<https://perma.cc/8CYN-MUWA>] (last visited Apr. 2, 2022); *The JDC Legal Help Center at the San Francisco & Oakland Courthouses*, U.S. DIST. CT.: N. DIST. OF CAL., <https://www.cand.uscourts.gov/about/court-programs/legal-help-desks/> [<https://perma.cc/F8TW-CCNU>] (last visited Apr. 2, 2022).

205. See *Legal Assistance Clinic*, U.S. DIST. CT.: S. DIST. OF N.Y., <https://nysd.uscourts.gov/attorney/legal-assistance> [<https://perma.cc/HY6M-JCE6>] (last visited Apr. 2, 2022). Similarly, the Eastern District of New York provides a link to the Federal Pro Se Legal Assistance Project run by the City Bar Justice Center. See *Other Resources for Self-Represented Parties*, U.S. DIST. CT.: E. DIST. OF N.Y., <https://www.nyed.uscourts.gov/other-resources-self-represented-parties> [<https://perma.cc/EU4S-MQ3C>] (last visited Apr. 2, 2022); see also *The Federal Pro Se Legal Assistance Project*, CITY BAR JUST. CTR., <https://www.citybarjusticecenter.org/projects/federal-pro-se-legal-assistance-project/> [<https://perma.cc/9LYQ-SPRR>] (last visited Apr. 2, 2022). Hofstra University also provides a Pro Se Legal Assistance program located within the Long Island Courthouse. See *Pro Se Legal Assistance Program: About*, HOFSTRA UNIV. MAURICE A. DEANE SCH. OF L., <https://proseprogram.law.hofstra.edu/about/> [<https://perma.cc/Y8KC-DGM4>] (last visited Apr. 2, 2022).

206. See W.D.N.C. LCvR 16.4; see also *Northern District Pro Bono Programs: Settlement Assistance Program (SAP)*, U.S. DIST. CT.: N. DIST. OF ILL., <https://www.ilnd.uscourts.gov/Pages.aspx?BQuMZcPiD1N2onwVG/J4/Q==> [<https://perma.cc/9MB3-3MBA>] (last visited Apr. 2, 2022).

employment discrimination) in which the United States is a party.<sup>207</sup> For this particular program, an attorney only assists the pro se litigant with the settlement conference.<sup>208</sup> Within fourteen days of the appointment, the attorney, working with opposing counsel, helps the pro se litigant designate a mediator, and within sixty days, the parties attend a mediated settlement conference.<sup>209</sup> The mediator then files a report, and the appointed attorney's limited representation is over.<sup>210</sup> The Northern District of Illinois's program operates along similar lines, although training is required for any volunteer attorney who is not already a member of the district court's trial bar.<sup>211</sup>

### 3. Appointment of Counsel

Arguably the most significant subsidy a district court can offer a pro se litigant is the appointment of counsel. The federal in forma pauperis statute allows a federal district court to appoint an attorney to any litigant who is unable to afford one.<sup>212</sup> There are roughly forty district courts that have created panels of lawyers, typically members of the district's bar who will accept court appointments to represent litigants for free.<sup>213</sup> For instance, the federal district court for the District of Columbia has, through its local rules, created a Civil Pro Bono Panel.<sup>214</sup> The District of Colorado publishes on its website a list of cases (with links to the relevant pro se complaint) available

207. *See Pro Se Settlement Assistance Program*, U.S. DIST. CT.: W. DIST. OF N.C., <https://www.ncwd.uscourts.gov/pro-se-settlement-assistance-program> [https://perma.cc/2PRN-UNUZ] (last visited Apr. 2, 2022).

208. *See id.* According to the model appointment order, counsel “has no obligation to conduct discovery, to prepare or respond to any motions, participate in the trial or take any other action on behalf of the Pro Se Litigant in this lawsuit.” Order for Referral to Pro Se Settlement Assistance Program (W.D.N.C.), [https://www.ncwd.uscourts.gov/sites/default/files/general/PSAP\\_OrdReferPSAP.pdf](https://www.ncwd.uscourts.gov/sites/default/files/general/PSAP_OrdReferPSAP.pdf) [https://perma.cc/8Y5L-UABG].

209. *See* Order for Referral to Pro Se Settlement Assistance Program, *supra* note 208, ¶¶ 4–5.

210. *See id.* ¶¶ 5–6.

211. *See Northern District Pro Bono Programs: Settlement Assistance Program (SAP)*, *supra* note 206.

212. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel.”).

213. *See infra* Appendix B. This count includes courts that do not label their programs as “pro bono panels,” but are functionally identical, just with a different label. *But see* U.S. DIST. CT., DIST. OF COLO., STANDING COMM. ON PRO SE LITIG., 2018–19 ANNUAL REPORT: CIVIL PRO BONO PANEL 7 (2019), [http://www.cod.uscourts.gov/Portals/0/Documents/AttInfo/2018\\_2019\\_Pro\\_Bono\\_Panel\\_Annual\\_Report.pdf](http://www.cod.uscourts.gov/Portals/0/Documents/AttInfo/2018_2019_Pro_Bono_Panel_Annual_Report.pdf) [https://perma.cc/3ZZ7-TNV3] (asserting that “20 federal district courts have a court-maintained pro bono panel or attorney list available to pro se litigants”). *See also* Amended Plan for the Representation of *Pro Se* Litigants in Civil Rights Actions, General Order No. 16-20, at 3–4 (W.D. Wash. Dec. 8, 2020) [hereinafter General Order No. 16-20], <https://www.wawd.uscourts.gov/sites/wawd/files/GO16-20AmendedProBonoPlan.pdf> [https://perma.cc/XP84-WTT9] (describing a screening committee); U.S. DIST. CT.: DIST. OF R.I., PLAN FOR *PRO BONO* REPRESENTATION IN CIVIL CASES (2014), <https://www.rid.uscourts.gov/sites/rid/files/documents/cvprobono/Pro%20Bono%20Plan%20Final.pdf> [https://perma.cc/JJ4Z-X9SK] (limiting the number of appointments per year).

214. *See* D.D.C. LCvR 83.11 (describing the Civil Pro Bono Panel to represent pro se parties).

to all attorneys.<sup>215</sup> Notably, no district court has anything approaching a mandatory subsidy (i.e., automatic appointment of counsel for pro se litigants). Rather, all of these pro bono panels allow courts to deny appointment of counsel to pro se litigants,<sup>216</sup> and some courts limit the types of cases to which the pro bono panel applies.<sup>217</sup> Many district courts that operate pro bono panels allow appointed attorneys to apply for compensation through a court-operated fund.<sup>218</sup>

What does a typical pro bono panel look like? The Northern District of Illinois's program is one example. All members of the district court's trial bar become part of the pro bono pool, not unlike residents comprising a jury pool.<sup>219</sup> Every year, the Clerk of the Court randomly selects trial bar members from the pool to create a pro bono panel.<sup>220</sup> Members of that panel are then assigned to represent pro se litigants for free.<sup>221</sup> Once a trial bar member has completed the pro bono assignment, the member will not be selected for the pro bono panel again until all other trial bar members complete pro bono assignments.<sup>222</sup> That said, members of the trial bar may volunteer to join the pro bono panel to receive an assignment at any time.<sup>223</sup> Some members of the trial bar, such as those who are employed full-time by the United States or by a legal aid organization, are exempt from the pro bono pool,<sup>224</sup> and others may move for relief from an order of assignment on

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215. See *Civil Pro Bono Panel—Details, and Available Cases*, U.S. DIST. CT.: DIST. OF COLO., <http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,andAvailableCases.aspx> [<https://perma.cc/E3MQ-95PQ>] (last visited Apr. 2, 2022); see also DIST. OF COLO. STANDING COMM. ON PRO SE LITIG., *supra* note 213, at 2 (recounting that “[t]he Civil Pro Bono Panel began in 2013 as a pilot project and was formalized as a local rule in 2014 as a key feature to the Court’s commitment to provide judicial services to all the people of Colorado”).

216. See, e.g., N.D. OHIO LR 83.10 (reminding that “[a]ssignment of counsel is not a right of a pro se litigant but may be utilized in those limited cases where the judicial officer believes such an assignment is warranted”).

217. See, e.g., D. MONT. L.R. 83.6(b)(1) (“In social security disability cases, counsel will not be appointed unless the party acknowledges counsel is entitled to obtain compensation from any award of benefits.”).

218. See, e.g., *id.* r. 83.6(e)(2) (permitting reimbursement for “reasonable expenses”); N.D. OHIO LR 83.10 (providing that “[t]he Court will reimburse assigned counsel, pursuant to the Pro Bono Civil Case Protocol, for certain expenses incurred in providing representation up to \$1,500”); W.D. TENN. LR 83.7 (allowing for reimbursement from the “Pro Bono Expense Fund”); see also Order Amending Administrative Order 93-1 to Authorize Expanded Use of the Court Improvement Fund to Finance Operation of a Plan for the Appointment of Counsel for Pro Se Indigent Parties in Civil Cases of the United States District Court for the Western District of Tennessee, Administrative Order No. 98-17 (W.D. Tenn. May 28, 1998), <https://www.tnwd.uscourts.gov/pdf/adminorders/98-17.pdf> [<https://perma.cc/M43Z-4SK7>].

219. See N.D. ILL. LR83.35(b)(i); cf. D. CONN. L. CIV. R. 83.10(a)(1)–(2) (explaining that the Clerk of the Court will, with a few exceptions, place “[a]ny member of the Bar who has appeared as counsel of record in at least one civil action in this Court since January 1, 2015” in the “Assignment Wheel” for “pro bono representation to indigent persons in civil cases”).

220. See N.D. ILL. LR83.35(b)(ii).

221. See *id.*

222. See *id.* r. 83.35(b)(iv).

223. See *id.* r. 83.35(e); cf. D. CONN. L. CIV. R. 83.10(b) (describing “the Assignment Wheel”).

224. See N.D. ILL. LR83.35(d).



limited grounds.<sup>225</sup> Relieved attorneys return to the pro bono panel or certify to the court within one year that the attorney has provided pro bono assistance in the district court through one of the court's other pro se assistance programs.<sup>226</sup> If an attorney fails to do the latter without good cause, the court will remove the attorney from the trial bar.<sup>227</sup>

But while some district courts require that attorneys accept the court's appointment absent an exemption for good cause, other districts rely on volunteers and allow for attorneys to refuse the court's appointment for any reason.<sup>228</sup> The recent history of such a system in the Southern District of Indiana is instructive. The Southern District of Indiana has one of the highest—if not the highest—percentages of pro se litigants in the federal courts.<sup>229</sup> Over the last decade, the Seventh Circuit has repeatedly criticized the Southern District of Indiana for not doing more to secure counsel for poor litigants.<sup>230</sup> The Seventh Circuit has stated that “courts should strive to implement programs to help locate pro bono assistance for indigent litigants.”<sup>231</sup> And the Court of Appeals went out of its way to explain that the “mandatory nature” of other districts' pro bono panels are superior to strictly voluntary programs like the Southern District of Indiana's.<sup>232</sup> The federal court in Indiana got the message, and through a new local rule, created an obligatory pro bono panel.<sup>233</sup>

#### D. *A Preliminary Critique of the Local Rules and Practices*

As Part II has shown, the federal district courts have created an array of local procedures in response to pro se litigants. A tour of these rules and practices suggests a level of judicial activity that flies under the radar of procedural scholarship. We need more research into how judges, lawyers, and laypeople rely, resist, and reshape these rules, but this part represents a first cut of the federal rules of pro se procedure.

This part has attempted to capture all the court-wide rules that pro se litigants must follow in the federal courts.<sup>234</sup> The rules arise throughout the

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225. *See id.* r. 83.38(a) (enumerating five grounds upon which counsel can move for relief from order of assignment for good cause).

226. *See id.* r. 83.38(c).

227. *See id.*

228. *See, e.g.*, N.D. OHIO LR app. J (“The Court encourages members of the Federal Bar to represent parties in civil actions who cannot afford legal counsel.”).

229. *See* S.D. IND. L.R. 87, Local Rules Advisory Committee Comments (“The Southern District of Indiana has an especially high volume of pro se and prisoner litigants. Over half of the district's civil case load is initiated pro se, and over half of the pro se cases are brought by prisoners. This requires the court to frequently recruit counsel to represent pro se litigants pursuant to 28 U.S.C. § 1915(e)(1).”).

230. *See, e.g.*, *Henderson v. Ghosh*, 755 F.3d 559, 567–68 (7th Cir. 2014).

231. *Perez v. Fenoglio*, 792 F.3d 768, 785 (7th Cir. 2015).

232. *Dewitt v. Corizon, Inc.*, 760 F.3d 654, 659 (7th Cir. 2014).

233. *See* S.D. IND. L.R. 87(a)(2); *see also id.* L.R. 87 cmt. (“Local Rules Advisory Committee Comments Re: 2016 New Rule 87”).

234. Of course, an individual judge's standing orders (i.e., the judge's courtroom-specific practices) should be investigated as well, but to include those practices in this Article would overwhelm and clutter the ninety-four district data already presented.

litigation life cycle—from filing requirements to additional information regarding dispositive motions to settlement conferences to trial.<sup>235</sup> Several courts have forged partnerships with legal aid organizations and law school clinics,<sup>236</sup> and some have gone so far as to effectively build a pro bono bar.<sup>237</sup> Before discussing in the next part how these rules could change, here are a few substantive suggestions.

Some individual rules are ripe for revision. Why should a pro se litigant need a judge’s permission to enter the court’s law library?<sup>238</sup> Why should a person representing herself in a lawsuit be prohibited from filing that lawsuit electronically?<sup>239</sup> And why should a court allow a member of that court’s bar to turn down a pro bono appointment for any reason at all?<sup>240</sup> A more systematic approach may be to scrutinize the mandatory nature of some of these local rules of pro se procedure. On the other hand, discretionary rules that leave individual judges with no guidance as to when to apply these pro se-specific rules also deserves further scrutiny.

This part examined what, in fact, are the federal rules of pro se procedure. The next and final part proceeds to think through how they should change. This Article stops short of recommending model pro se rules for federal courts. Instead, it charts the constellation of institutions that could revise these procedural rules.

### III. REVISING THE FEDERAL RULES OF PRO SE PROCEDURE

Now that we have a better understanding of the pro se-specific rules and practices in federal district courts, we can posit how those rules should change. This part explores how federal district courts could change their local rulemaking processes to better accommodate the needs of pro se litigants and which types of local rules might be worth revising. This part identifies the particular roles the district courts, the Judicial Conference, and Congress could play in improving these federal rules of pro se procedure.

#### A. The District Courts

Reasonable minds may differ as to the respective competence and legitimacy of these three institutions when it comes to revising the federal rules of pro se procedure,<sup>241</sup> but arguably the first stop should be the district

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235. See *supra* Part II.B.

236. See *supra* Part II.C.2.

237. See *supra* Part II.C.3.

238. See, e.g., D.HAW. LR77.3 (“Pro se parties may use the court library only if they obtain an order signed by any judge of this court.”).

239. See, e.g., E.D. MICH. LR, Appendix ECF R7(d) (“A *pro se* party does not have permission to file civil initiating papers electronically in ECF.”).

240. See *generally supra* notes 228–33 and accompanying text (discussing how the Southern District of Indiana abandoned a voluntary panel system).

241. See, e.g., Robert G. Bone, *The Process of Making Process: Court Rulemaking, Democratic Legitimacy, and Procedural Efficacy*, 87 GEO. L.J. 887, 890 (1999) (articulating “a theory of procedural rulemaking that explains what the court and the legislature each have to contribute to the process”).

courts.<sup>242</sup> At a minimum, the proliferation of local rules regarding pro se litigants suggests that district courts are open to revising procedures for these types of cases. The question is whether there is a way to structure the process of revising these rules that accounts for the interests and needs of unrepresented parties. The next section tries to answer that question.

### 1. The Process of Revising Pro Se Rules in District Courts

As described in Part I, Federal Rule of Civil Procedure 83 empowers federal district courts to adopt and amend local rules.<sup>243</sup> Rule 83 requires that a district court give “public notice and an opportunity for comment” before it adopts or amends a local rule.<sup>244</sup> Notably, in the notes written to accompany this revision, the Civil Rules Committee explained that the inclusion of a notice and comment period was added “to enhance the local rulemaking process” and noted that, “[a]lthough some district courts apparently consult the local bar before promulgating rules, many do not, which has led to criticism of a process that has district judges consulting only with each other.”<sup>245</sup> The Civil Rules Committee went on to suggest that “[t]he new language subjects local rulemaking to scrutiny similar to that accompanying the Federal Rules, administrative rulemaking, and legislation” and “attempts to assure that the expert advice of practitioners and scholars is made available to the district court before local rules are promulgated.”<sup>246</sup>

Considering that, in some district courts, pro se litigants make up a sizable chunk of the civil docket, district courts should consider their interests whenever revising the district’s local rules. However, unlike repeat players who routinely litigate in federal court, pro se litigants are often “one-shotters.”<sup>247</sup> Consulting litigators and academics, expert though they may be, seems unlikely to regularly provide a perspective on how the district courts’ rules impact unrepresented litigants whose first lawsuit in federal court may be their last. The combination of these two realities—the notice-and-comment requirement and the proportion of the pro se litigants in the civil docket—prompts the following question: how do district courts engage in local procedural rulemaking in a way that addresses the needs of pro se litigants?

Over the last few years, proceduralists have drawn attention to the unrepresentative composition and slanted output of the Judicial

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242. See Struve, *supra* note 44, at 308 (suggesting that district courts are “the initial locus of experimentation”).

243. See *supra* note 98 and accompanying text.

244. FED. R. CIV. P. 83(a)(1).

245. *Id.* advisory committee’s note to 1985 amendment.

246. *Id.*

247. Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95, 97 (1974) (creating a typology of “one-shooter” litigants and repeat players). The exception might be incarcerated individuals who effectively become “jailhouse lawyers,” some of whom can navigate the PLRA and other barriers to inmate litigation. See Schlanger, *supra* note 84, at 1585; see also Struve, *supra* note 44, at 296–300 (reviewing the PLRA’s limits on inmate appeals).

Conference.<sup>248</sup> Thanks to the work of these scholars, we know that judicial rulemaking bodies are not representative of the federal judiciary, the American bar, or the country as a whole.<sup>249</sup> We also have evidence that these bodies have made revisions to the rules that favor business interests.<sup>250</sup> Similarly, administrative law offers a related set of concerns regarding participation in agency rulemaking.<sup>251</sup> While public participation can improve rulemaking, social scientists have documented how business interests dominate deliberations in the American administrative state.<sup>252</sup>

However, proceduralists have paid less attention to the possibilities of procedural rulemaking at the level of individual courts. Procedural rulemaking at that level could be more representative. Organized groups and interests may have less motivation to influence a single district court than the entire federal system. Moreover, ninety-four individual courts may be more costly to influence than a single rulemaking body like the Judicial Conference or a single advisory committee like the Civil Rules Committee.

One can imagine multiple ways to promote the particular interests of pro se litigants in the local rulemaking process. The district court could solicit feedback from legal aid providers in the district. The district court could also ask unrepresented parties who litigated in the district court recently, but whose cases are closed, for feedback about their experiences. Staff in the

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248. See STEPHEN B. BURBANK & SEAN FARHANG, RIGHTS AND RETRENCHMENT: THE COUNTERREVOLUTION AGAINST FEDERAL LITIGATION *passim* (2017); Pfander, *supra* note 26, at 2571–72 (pointing out that while “[o]ther senior scholars have made the arresting, if largely intuitive or casually empirical, claim that the Supreme Court has been captured by the Chamber of the Commerce; Burbank and Farhang provide compelling proof”).

249. See Brooke D. Coleman, #SoWhiteMale: *Federal Civil Rulemaking*, 113 NW. U. L. REV. 407, 415 (2018) (documenting that “[o]f the 136 individuals who have served on the Committee, 116 are white men, fifteen are white women, four are black men, and one is a Latino/Hispanic man”).

250. See Brooke D. Coleman, *One Percent Procedure*, 91 WASH. L. REV. 1005, 1017 (2016) (noting that the plaintiffs’ lawyers on the Civil Rules Committee largely specialize in complex litigation); Elizabeth Thornburg, *Cognitive Bias, the “Band of Experts,” and the Anti-Litigation Narrative*, 65 DEPAUL L. REV. 755, 767 (2016) (describing the committee members as “operat[ing] in the rarified world of complex litigation”).

251. See Ernest Gellhorn, *Public Participation in Administrative Proceedings*, 81 YALE L.J. 359, 381 (1972); Mark Seidenfeld, *A Civic Republican Justification for the Bureaucratic State*, 105 HARV. L. REV. 1511, 1514 (1992). And the design choices for participation in rulemaking are far greater if one takes a comparative approach. See generally Susan Rose-Ackerman & Lena Riemer, *Strengthening Democracy Through Public Participation in Policymaking: The EU, Germany, and the United States*, YALE J. REG. NOTICE & COMMENT (May 6, 2019), <https://www.yalejreg.com/nc/strengthening-democracy-through-public-participation-in-policymaking-the-eu-germany-and-the-united-states-by-susan-rose-ackerman-lena-riemer/> [<https://perma.cc/76ZR-7N3H>].

252. See Jason Webb Yackee & Susan Webb Yackee, *A Bias Towards Business?: Assessing Interest Group Influence on the U.S. Bureaucracy*, 68 J. POLITICS 128, 128 (2006) (concluding that “business commenters, but not nonbusiness commenters, hold important influence over the content of final rules”); see also RACHEL AUGUSTINE POTTER, BENDING THE RULES: PROCEDURAL POLITICKING IN THE BUREAUCRACY 185–201 (2019); Daniel E. Walters, *Capturing the Regulatory Agenda: An Empirical Study of Agency Responsiveness to Rulemaking Petitions*, 43 HARV. ENV’T L. REV. 175, 184–85 (2019); Susan Webb Yackee, *Participant Voice in the Bureaucratic Policymaking Process*, 25 J. PUB. ADMIN. RSCH. & THEORY 427, 444–46 (2015).

clerk's office could also reach out to self-represented litigants more systematically through surveys and other means. The district court would still need to determine how best to present and discuss whatever information it gathers from that outreach. The district could also invite a legal aid attorney to serve on its local rules committee. While there is an inherent limitation to asking a lawyer to represent the interests of litigants who lack counsel, legal aid attorneys at least have experience interacting with and representing people who cannot otherwise afford an attorney. Similarly, if the individual court has a staff member who is dedicated to working with unrepresented litigants, such as a pro se clerk, that person could participate in the local rulemaking process. The challenge with asking a pro se clerk to deliberate with the judges on the local rules committee is that such an arrangement would ask court staff members to deliberate and potentially disagree with their bosses. Whether by soliciting more information from pro se litigants themselves or inviting a legal aid attorney or a court staffer to participate in the deliberations, local rule committees can do more to reflect the reality that pro se litigants, though unorganized, are major stakeholders in the work of federal district courts.

## 2. Making Better Use of the Local Bar

In addition to incorporating the interests of pro se litigants in the local rulemaking process, district courts could enlist their local bars so that more unrepresented litigants who would benefit from representation can receive it. As documented earlier, several district courts maintain pro bono panels.<sup>253</sup> District courts compile their panels in different ways, taking volunteers or simply listing all attorneys who have filed an appearance and whose office is located in the district.<sup>254</sup> As discussed in Part II, recent experiences of individual district courts suggest that mandatory panels, in which attorneys can only decline appointment for good cause, are more effective than voluntary panels, in which attorneys can refuse the court's request for any reason at all.<sup>255</sup>

Some courts finance such programs with a fee levied on every member of the bar.<sup>256</sup> Federal courts tax nonlawyers with jury service. Why not tax the local bar with pro bono service? Courts could even give lawyers the option: make yourself available to serve as appointed counsel or support other lawyers who will.

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253. *See supra* Part II.C.3.

254. *See infra* Appendix B.

255. *See supra* notes 229–33 and accompanying text.

256. *See, e.g.*, Establishment of a Clinic to Assist Pro Se Litigants in the Alfred A. Arraj Courthouse, General Order 2019-4 (D. Colo. July 11, 2019), [http://www.cod.uscourts.gov/Portals/0/Documents/Orders/GO\\_2019-4\\_Pro\\_Se\\_Clinic.pdf](http://www.cod.uscourts.gov/Portals/0/Documents/Orders/GO_2019-4_Pro_Se_Clinic.pdf) [<https://perma.cc/QB74-CY4K>] (explaining that the “Pro Se Clinic was initially funded by the Court’s attorney admissions fees, and thereafter, by a \$50 biennial assessment collected from attorneys”).

### B. The Judicial Conference

The structure of the federal judiciary permits nationwide rulemaking through revisions to the Federal Rules of Civil Procedure as well as guidance and training for federal judges. While the Supreme Court has the power to “prescribe ‘general rules’ of practice and procedure” for the lower federal courts, it is the Judicial Conference, not the Court, that is the forum for national judicial rulemaking.<sup>257</sup>

The Judicial Conference of the United States consists of the Chief Justice, the chief judges of the circuits, a district court judge from each geographic circuit, and the Chief Judge of the U.S. Court of International Trade.<sup>258</sup> The Judicial Conference, in turn, oversees the appointed Committee on Rules of Practice and Procedure and five advisory rules committees. One of those five, the Advisory Committee on Civil Rules (“Civil Rules Committee”), proposes changes to the Federal Rules of Civil Procedure.<sup>259</sup>

Pursuing revisions to pro se procedure via the Judicial Conference has some advantages. First, the Judicial Conference can learn from several districts’ experiences at once. Indeed, Rule 83 requires that district courts send these rules to the Administrative Office of the U.S. Courts (AO), which is overseen by the Judicial Conference.<sup>260</sup> The Civil Rules Committee could ask the AO to analyze information from all the federal district courts regarding pro se litigants, including case outcomes, changes to the civil docket over time, and judges’ experiences with pro se litigants.<sup>261</sup> While an individual district court could conduct research, the Judicial Conference has more capacity to do so due to its staff in the Federal Judicial Center and the AO.<sup>262</sup> The AO could also conduct more targeted outreach to district courts that are particularly active when it comes to pro se litigants. For instance, the AO could invite all district courts that run a pro bono panel to share their experiences and discuss best practices.

Second, the Judicial Conference has the possibility to experiment with procedural changes across district courts. In recent years, the Judicial Conference has pursued one pilot project in the federal district courts: the

257. Stephen B. Burbank & Sean Farhang, *Class Actions and the Counterrevolution Against Federal Litigation*, 165 U. PA. L. REV. 1495, 1499 (2017) (quoting Act of June 19, 1934, Pub. L. No. 73-415, 48 Stat. 1064 (codified as amended at 28 U.S.C. §§ 2072–74)).

258. See 28 U.S.C. § 331.

259. The Advisory Committee must provide notice and public comment, including oral hearings. See 28 U.S.C. § 2073(c)(1).

260. See FED. R. CIV. P. 83(a)(1); 28 U.S.C. § 604 (laying out responsibilities of the administrative officer of the U.S. Courts and its relationship to the Judicial Conference). Incidentally, the Judicial Conference opposed the Civil Justice Reform Act. See Charles Gardner Geyh, *Paradise Lost, Paradigm Found: Redefining the Judiciary’s Imperiled Role in Congress*, 71 N.Y.U. L. REV. 1165, 1207–11 (1996); Mullenix, *supra* note 61, at 411–18.

261. The AO did such a survey of judges in 2011, but I can find no other similar publications in the last decade. See generally STIENSTRA ET AL., *supra* note 142.

262. See generally *About the FJC*, FED. JUD. CTR., <https://www.fjc.gov/about> [<https://perma.cc/FS37-NU86>] (last visited Apr. 2, 2022).

Mandatory Initial Discovery Pilot Project.<sup>263</sup> The Judicial Conference could run similar pilot projects focused on pro se litigants. For instance, some federal courts could experiment with a fully staffed help desk or a mandatory pro bono panel.<sup>264</sup>

Third, the Judicial Conference can make nationwide changes that may ameliorate the uneven efforts of the individual courts.<sup>265</sup> As Part II showed, there is a range of judicial activity regarding pro se litigants. A few district courts have no pro se-specific local rules.<sup>266</sup> Some have several.<sup>267</sup> Some offer no additional services to unrepresented litigants; others have full-time court staff dedicated to assisting pro se litigants.<sup>268</sup> Some even require all members of the local bar to participate in a pro bono panel.<sup>269</sup> The Judicial Conference is particularly well-suited to establish a baseline for these activities, above which district courts may exceed, but below which no district may fall.

Finally, the Judicial Conference has policy levers short of rulemaking that could address pro se litigation in the federal district courts. In addition to research, whether through administrative data or pilot projects, the Judicial Conference can offer additional training and guidance to federal district court judges.<sup>270</sup> That training and guidance can derive from best practices in other district courts in the federal system or state courts.

### C. Congress

Finally, there is a role for Congress, should its members wish to improve access to justice in the federal courts. Congress should focus more on investing in the justice infrastructure of the federal courts, rather than try its hand at revising procedures in the same. Of course, Congress has broad authority to structure the federal courts.<sup>271</sup> The history of Congress's activity

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263. See *Mandatory Initial Discovery Pilot Project Model Standing Order*, FED. JUD. CTR. (Nov. 15, 2021), <https://www.fjc.gov/content/320224/midpp-standing-order> [<https://perma.cc/7955-CSXS>].

264. Cf. Edward H. Cooper, *Simplified Rules of Federal Procedure*, 100 MICH. L. REV. 1794, 1803 (2002) (noting that the Civil Rules Committee's draft of simplified rules ignored the "proposal of the Federal Magistrate Judges' Association that a special set of rules should be adopted for pro se actions").

265. See 28 U.S.C. § 2073.

266. See *infra* Appendix A.

267. See *infra* Appendix A.

268. See *infra* Appendix B.

269. See *infra* Appendix B.

270. See OFF. OF THE FED. REG., THE UNITED STATES GOVERNMENT MANUAL 79–82 (1998).

271. See U.S. CONST. art. III, § 1 ("The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."); see also *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) ("Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution."); *Sheldon v. Sill*, 49 U.S. 441, 446–47 (1850) (stating that the Supreme Court is the only constitutionally mandated federal court). See generally Henry M. Hart, Jr., *The Power of Congress to Limit Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362, 1402 (1953).

in this regard evinces a particular focus on the creation of districts and judgeships as well as efforts to expand, strip, and channel the jurisdiction of the federal courts.<sup>272</sup> But a focus on individuals who cannot afford counsel suggests that Congress could do more. After all, forty years ago, Congress eliminated the amount-in-controversy requirement for federal question cases.<sup>273</sup> When it comes to questions of federal law, there is no controversy whose economic value is so little so as to deny the federal courts' ability to hear the case.<sup>274</sup> Moreover, as discussed in Part I, an individual's right to file in federal court has been in place since the First Congress.<sup>275</sup>

Furthermore, the Legal Services Corporation serves as a \$465 million reminder that Congress annually appropriates federal funding to provide legal services to poor Americans.<sup>276</sup> To be sure, Congress's record is uneven on this score: funding levels have been haphazard and on a steady decline since the 1980s.<sup>277</sup> Worse, over the years, Congress has placed several restrictions on how these lawyers can practice law.<sup>278</sup>

Still, these facets of federal courts—no federal claim is too small, a statutory right to proceed pro se, and nationwide funding for legal services for poor Americans—suggest that Congress is a worthwhile forum to seek additional investment to improve access to justice in the federal courts. Indeed, Congress could counter the federal judiciary's procedural retrenchment with institutional investment.<sup>279</sup> Congress could offer

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272. See, e.g., Richard H. Fallon, Jr., *Jurisdiction-Stripping Reconsidered*, 96 VA. L. REV. 1043, 1063–87 (2010); see also RUSSELL R. WHEELER & CYNTHIA HARRISON, FED. JUD. CTR., *CREATING THE FEDERAL JUDICIAL SYSTEM* (3d ed. 2005) (depicting the shape and growth of federal district and circuit courts since 1789).

273. When Congress created general federal question jurisdiction in the lower federal courts in 1875, it included an amount-in-controversy requirement. See 13D CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 3561 (3d ed. 2021). Congress eliminated that threshold amount in 1980. See *id.* (discussing the history of the amount-in-controversy requirement for federal question jurisdiction); see also FED. JUD. CTR., *REPORT OF THE FEDERAL COURTS STUDY COMMITTEE* 40 (1990), <https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf> [<https://perma.cc/6A55-68P6>] (describing the federal courts' "primary role of litigating federal constitutional and statutory issues"). I realize that some pro se litigants file diversity actions and consequently could be shut out of federal court if their prayer for relief does not exceed \$75,000 per 28 U.S.C. § 1332.

274. Cf. Judith Resnik, *Trial as Error, Jurisdiction as Injury: Transforming the Meaning of Article III*, 113 HARV. L. REV. 924, 1007 (2000) (arguing to replace the impulse to "naturaliz[e] a set of problems as intrinsically and always 'federal'" with "an understanding of 'the federal' as (almost) whatever Congress deems to be in need of national attention, be it kidnapping, alcohol consumption, bank robbery, fraud, or nondiscrimination" (footnote omitted)).

275. See *supra* note 38 and accompanying text.

276. *Congressional Appropriations*, LEGAL SERV. CORP., <https://www.lsc.gov/about-lsc/financials#congressional-appropriations> [<https://perma.cc/N67C-8QYF>] (last visited Apr. 2, 2022).

277. I discuss Congress's role in funding legal services at length elsewhere. See Andrew Hammond, *Poverty Lawyering in the States*, in *HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY* 215, 222–25 (Ezra Rosser ed., 2019).

278. See *id.* at 222–23; see also David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209, 224 (2003).

279. Such a role of increased resources, but not rulemaking for Congress is in keeping with past procedural scholarship. See Bone, *supra* note 241, at 890 (arguing for congressional



additional funds to the federal judiciary so that every district court has at least one pro se clerk. Or Congress could allocate funding to finance appointment of counsel in each district.

Actions by the district courts, the Judicial Conference, and Congress could reinforce, rather than displace, one another. Individual courts can pursue district-level improvements while the Judicial Conference crafts pilot programs. Congress can allocate funding for additional court staff in a way that enhances the interests of pro se litigants in local rulemaking. But individual courts, the judiciary as a whole, and Congress should not merely muddle through. Each institution could do more to meet the needs of poor litigants in federal court.

#### CONCLUSION

This Article has worked to uncover the procedural rules unrepresented litigants encounter in federal court. It is a complete account in the sense that it captures all the rules pro se parties must obey in the federal district courts. But in another sense, it is far from exhaustive. We need more research to understand how judges apply some of these rules to individual litigants, especially those rules that give judges seemingly unlimited discretion. At the same time, the district courts, the Judicial Conference, and Congress all have roles to play in improving access to justice in our federal courts.

On one level, this Article is pitched to specific audiences: proceduralists in the academy, lawyers who practice in federal court, and most of all, the judges and staff who make up our federal judiciary. But on another, it is part of a broader effort to grapple with how courts operate in a society that is increasingly stratified and dishearteningly antidemocratic. Specifically, have the federal courts become fora only for those with an ability to pay? Procedure, even obscure rules in a single court, sets the terms for how people make claims on our system of justice and each other. The federal courts have a special role to play in enforcing our nation's laws. By being open to all, federal courts deter discrimination in the workplace, redress civil rights violations by state and local law enforcement, and oversee the lawful administration of disability benefits, among other vital cases. But the federal courts cannot fulfill the aspirations of a national forum for all Americans until these courts address the needs of those who walk through their courthouse doors without a lawyer.

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restraint and deference to judicial rulemaking); *see also* Geyh, *supra* note 260, at 1206–23 (discussing the statutory and rulemaking dynamics between Congress and the federal judiciary). On the other hand, after twenty years of procedural retrenchment in the Supreme Court and the Judicial Conference, this scholarship (and Congress) may need a new approach.

APPENDIX A: PRO SE–SPECIFIC LOCAL RULES IN THE U.S. DISTRICT  
COURTS

This appendix includes the local rules pertaining to pro se litigation in the United States district courts, characterizing each as either a mandatory or discretionary tax or subsidy.

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
M.D. Ala.	Local Rule 9.1(a)	Filing requirements for pro se inmate and habeas corpus filings ( <i>mandatory tax</i> )
	Local Rule 45.1 (a)–(b)	Exempting some pro se litigants from some subpoena requirements and adding others ( <i>mandatory tax/subsidy</i> )
N.D. Ala.	LR 5.3	Filing of discovery materials with the court ( <i>mandatory tax</i> )
	LR 9.1	Filing requirements for pro se inmate and habeas corpus filings ( <i>mandatory tax</i> )
	LR 16.1(a)	Scheduling order exception ( <i>mandatory subsidy</i> )
S.D. Ala.	General L.R. 5(a)(4)	Requirements for pro se pleadings and other papers ( <i>mandatory tax</i> )
	General L.R. 83.5(b)	Maintain current address and phone number with Clerk’s Office or risk sanction, including dismissal (for plaintiffs) or entry of judgment (for defendants) ( <i>mandatory tax</i> )
	Civil L.R. 12	Motions to dismiss or motions for judgment on the pleadings in pro se litigation ( <i>mandatory subsidy</i> )
	Civil L.R. 16(c)	Scheduling order exception ( <i>mandatory subsidy</i> )
D. Alaska	Local Civil Rule 83.1(c)(1)	Voluntary pro bono attorneys for pro se litigants who are proceeding in forma pauperis ( <i>discretionary subsidy</i> )
D. Ariz.	LRCiv 3.1(b)	Civil cover sheet exemption ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LRCiv 3.3	Details of in forma pauperis declaration ( <i>n/a</i> )
	LRCiv 3.4	Requirements for complaints by incarcerated persons ( <i>mandatory tax</i> )
	LRCiv 7.3(b)	Exception for pro se prisoners for requirements of motion for an extension of time ( <i>mandatory subsidy</i> )
	LRCiv 16.2(b)(2)(B)(ii)	Pro se prisoner case management ( <i>mandatory tax</i> )
	LRCiv 83.3(d)	Filing requirements for name and address changes of pro se prisoner ( <i>mandatory tax</i> )
E.D. Ark. & W.D. Ark.	Local Rule 5.5(c)(2)	Notice requirements for name and address changes for pro se parties ( <i>mandatory tax</i> )
	Local Rule 5.5(e)	Exempting pro se parties from amended pleadings requirements ( <i>mandatory subsidy</i> )
	Local Rule 16.2(3)	Scheduling order exception for pro se prisoners ( <i>mandatory subsidy</i> )
C.D. Cal.	L.R. 1-3	Applicability of rules to pro se parties ( <i>n/a</i> )
	L.R. 5-2	Filing in forma pauperis ( <i>n/a</i> )
	L.R. 5-3.2.2, 5-4.1.1, 5-4.8	E-filing rules ( <i>mandatory subsidy</i> )
	L.R. 11-1, 11-3.8	Document signatures and title page requirements ( <i>n/a</i> )
	L.R. 16-8	Final pretrial conference ( <i>n/a</i> )
	L.R. 16-12	Scheduling order exception ( <i>mandatory subsidy</i> )
	L.R. 41-6	Requirement that pro se plaintiff keep court apprised of current address ( <i>mandatory tax</i> )
	L.R. 83-2.2.1	Prohibition on delegating representation ( <i>n/a</i> )
	L.R. 83-2.2.2	Organizations not permitted to proceed pro se ( <i>n/a</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	L.R. 83-2.2.3, 83-2.2.4	Failing to comply with local rules risks sanction, including dismissal (for plaintiffs) or entry of judgment (for defendants) ( <i>mandatory tax</i> )
	L.R. 83-2.4	Notification requirement for change in contact information ( <i>mandatory tax</i> )
	L.R. 83-17.3(c)	Pro se petitioners only need to file the original of a petition ( <i>mandatory subsidy</i> )
E.D. Cal.	Rule 133(b)(2)	Pro se parties may not e-file unless they first receive permission from the assigned judge ( <i>discretionary subsidy</i> )
	Rule 133(i)(3)(ii)	Paper copies of any case, statutory, or regulatory authority must be served on incarcerated pro se parties ( <i>mandatory subsidy</i> )
	Rule 135(b), (e)	Requiring conventional service on pro se parties ( <i>mandatory subsidy</i> )
	Rule 138(d)	Pro se parties may only file paper documents ( <i>mandatory subsidy</i> )
	Rule 146	Pro se parties should file notice of appeals conventionally ( <i>mandatory subsidy</i> )
	Rule 182(f)	Maintain current address and phone number with clerk ( <i>mandatory tax</i> )
	Rule 183	General pro se rule restating rules for appearance, address changes, and e-filing ( <i>n/a</i> )
	Rule 206(c)	Pro se privacy and document access in Social Security actions ( <i>n/a</i> )
	Rule 271(a)(2)	Exemption from voluntary dispute resolution program ( <i>mandatory subsidy</i> )
N.D. Cal.	Civil L.R. 3-9(a)	General pro se rule ( <i>n/a</i> )
	Civil L.R. 3-10	Proceeding in forma pauperis ( <i>n/a</i> )
	Civil L.R. 3-11	Failure to notify of address change and sanction of dismissal ( <i>discretionary tax</i> )
	Civil L.R. 5-1(b)	Opposing party must serve all documents for pro se parties manually ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
S.D. Cal.	Civil Rule 3.2	Proceeding in forma pauperis ( <i>n/a</i> )
	Civil Rule 15.1(d)	Exempting incarcerated pro se parties from amended pleading rules ( <i>mandatory subsidy</i> )
	Civil Rule 83.11(b)	Failure to notify of address change and sanction of dismissal ( <i>discretionary tax</i> )
D. Colo.	D.C.COLO.LCivR 5.1(b)(3)	Pro se parties may not e-file unless they first receive permission ( <i>discretionary subsidy</i> )
	D.C.COLO.LCivR 7.1(b)(1)	No duty to confer for motions filed in a case involving a pro se prisoner ( <i>mandatory tax</i> )
	D.C.COLO.LCivR 7.1(e)	Unpublished authorities must be given to pro se parties ( <i>mandatory subsidy</i> )
	D.C.COLO.LCivR 8.1(a)	Proceeding in forma pauperis ( <i>n/a</i> )
	D.C.COLO.LAttyR 2(b)(1)	Limited representation of pro se party permitted ( <i>n/a</i> )
	D.C.COLO.LAttyR 5(a)(2)	Limited pro se assistance ( <i>mandatory subsidy</i> )
	D.C.COLO.LAttyR 15(e)	Pro se party eligibility for appointment of pro bono counsel ( <i>discretionary subsidy</i> )
D. Conn.	Rule 83.10(c)	Appointment of counsel from civil pro bono panel ( <i>discretionary subsidy</i> )
D. Del.	Rule 5.2(b)(2)	Certification for service on pro se party ( <i>mandatory subsidy</i> )
	Rule 5.4(a)	Discovery requests, and answers and responses to them, required to be filed with court ( <i>mandatory tax</i> )
	Rule 7.1.1	Exception from statement required to be filed with nondispositive motions ( <i>mandatory subsidy</i> )
	Rule 16.2(a)	Scheduling conference exception for incarcerated pro se parties ( <i>mandatory subsidy</i> )
D.D.C.	LCvR 5.1(c)(1)	Name and address requirements for filing of documents ( <i>mandatory tax</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LCvR 5.4	Procedures for e-filing ( <i>mandatory subsidy</i> )
	LCvR 7(m)	Duty to confer on nondispositive motions for nonincarcerated pro se parties ( <i>n/a</i> )
	LCvR 16.3	Duty to confer ( <i>n/a</i> )
	LCvR 83.11	Civil Pro Bono Panel ( <i>discretionary subsidy</i> )
	LCvR 84.4(c)	Generally ineligible for mediation ( <i>discretionary tax</i> )
M.D. Fla.	Rule 2.02(c)	Withdrawal of attorney ( <i>n/a</i> )
N.D. Fla.	Rule 4.1	Serving process on behalf of a party proceeding in forma pauperis ( <i>mandatory subsidy</i> )
	Rule 5.1(E)	Signature block requirement ( <i>mandatory tax</i> )
	Rule 5.2	Civil cover sheet exception ( <i>mandatory subsidy</i> )
	Rule 5.4(A)(3)	E-filing exception ( <i>mandatory subsidy</i> )
	Rule 7.1(B)	Attorney conference required unless in custody ( <i>mandatory tax</i> )
	Rule 11.1(F)	No attorney representation for pro se parties ( <i>n/a</i> )
	Rule 72.2(E)	Civil cases filed by nonprisoner pro se litigants ( <i>n/a</i> )
S.D. Fla.	Rule 5.1(b)	Exempt from filing in compliance with the CM/ECF administrative procedures ( <i>mandatory subsidy</i> )
	Rule 5.4(b)	Procedure for filing under seal in civil cases ( <i>n/a</i> )
	Rule 5.4(d)(4)	Conventional filing requirement ( <i>mandatory subsidy</i> )
	Rule 7.1(d)	Must file emergency matters conventionally ( <i>mandatory subsidy</i> )
	Rule 11.1(g)	Must maintain current contact information ( <i>mandatory tax</i> )
M.D. Ga.	Local Rule 5.0(A)	Not authorized to e-file without court permission ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Local Rule 5.4(B)(6)	Pro se filing in actions brought under §§ 2241, 2254, 2255 exempted from the redaction requirement ( <i>mandatory subsidy</i> )
	Local Rule 5.5	Hybrid representation ( <i>n/a</i> )
N.D. Ga.	LR 16.3	Post-discovery conference exception ( <i>mandatory subsidy</i> )
	LR 41.2(B)	Failure to update contact information ( <i>mandatory tax</i> )
	LR 79.1(B)(5)	E-filing of returned oversized and nondocumentary exhibits ( <i>n/a</i> )
	LR 83.1(D)(2)–(3)	Pro se appearance limitations and duty to supplement ( <i>n/a</i> )
S.D. Ga.	LR 11.3	Pro se filings ( <i>mandatory subsidy</i> )
	LR 16.7.1	Notice of alternative dispute resolution (ADR) and case management procedures exception ( <i>n/a</i> )
	LR 77.4	Notice of mailing any notice, orders, and judgments to pro se parties in civil cases ( <i>n/a</i> )
D. Guam	CVLR 12	Notice to pro se litigants for Rule 12 motions ( <i>mandatory subsidy</i> )
	CVLR 56(h)	Notice to pro se litigants for motions for summary judgment ( <i>mandatory subsidy</i> )
D. Haw.	LR1.3	Pro se parties bound by local rules ( <i>n/a</i> )
	LR16.1	Duty of diligence ( <i>n/a</i> )
	LR16.5(b)(2)	Required attendance at settlement conference ( <i>n/a</i> )
	LR77.3	Use of court library permitted by judicial order ( <i>discretionary tax</i> )
	LR81.1(a)	Required to abide by all local, federal, and other applicable rules and statutes ( <i>n/a</i> )
	LR81.1(c)	Pro se filing and service ( <i>mandatory subsidy</i> )
	LR83.1(e)	Notification of change in address or contact information ( <i>mandatory tax</i> )
	LR83.2	Any individual may appear pro se ( <i>n/a</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LR83.5(b)	Business entities cannot appear pro se ( <i>n/a</i> )
	LR99.12	Pro se prisoner cases can be dismissed for not taking all necessary steps to be ready for trial ( <i>discretionary tax</i> )
	LR99.16.1	Telecommunication for all pretrial pro se prisoner proceedings ( <i>mandatory subsidy</i> )
	LR99.16.2	Scheduling conference exception in pro se prisoner actions ( <i>mandatory tax</i> )
	LR99.56.2	Summary judgment motions in pro se prisoner cases ( <i>mandatory subsidy</i> )
D. Idaho	Local Rule Civ 9.1(b)	Requirements for pro se habeas petitions ( <i>mandatory tax</i> )
	Local Rule Civ 15.1	Form of motion to amend by pro se prisoner ( <i>mandatory tax</i> )
	Local Rule Civ 37.1	Duty to confer ( <i>mandatory tax</i> )
	Local Rule Civ 40.1	Assignment of cases ( <i>n/a</i> )
	Local Rule Civ 73.1	Assignment of civil cases to magistrate judges ( <i>n/a</i> )
	Local Rule Civ 77.4	Ex parte communications with judges ( <i>n/a</i> )
	Local Rule Civ 83.6(d)	Requirement to provide notice of change in address ( <i>mandatory tax</i> )
	Local Rule Civ 83.7	Prohibition against delegating representation when proceeding pro se ( <i>n/a</i> )
N.D. Ill.	LR5.8	Filing under seal ( <i>mandatory subsidy</i> )
	LR56.2	Notice to pro se litigant opposing motion for summary judgment ( <i>mandatory subsidy</i> )
	LR81.1	Requirements for § 1983 complaints ( <i>n/a</i> )
	LR83.36–83.39	Appointed counsel for pro se party procedures, duties, assignment relief, and discharge ( <i>discretionary subsidy</i> )
C.D. Ill.	Rule 5.1(C)	Pro se litigants that are not incarcerated can submit email filings if compliant with Rule 5.4 ( <i>discretionary tax</i> )



COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Rule 5.4(B)–(C)	Filing and service by pro se parties, including e-filing ( <i>mandatory subsidy</i> )
	Rule 5.7	E-filing ( <i>mandatory subsidy</i> )
	Rule 5.11(D)	Redaction rules for pro se parties ( <i>mandatory tax</i> )
	Rule 16.3(D)	Service of process in cases proceeding in forma pauperis ( <i>mandatory subsidy</i> )
	Rule 16.3(E)(2)	Prisoner or civil detainee answer and subsequent pleading ( <i>mandatory tax</i> )
	Rule 16.3(K)	Notice of change of address ( <i>mandatory tax</i> )
	Rule 45.1 Note on Use	Issuance of subpoenas for a pro se litigant ( <i>mandatory subsidy</i> )
	Rule 49.3(B)(2)	Conventional filing ( <i>mandatory subsidy</i> )
S.D. Ill.	Rule 16.2	Pretrial conference rules ( <i>n/a</i> )
	Rule 26.1(a)	Implementation of Rule 26 for disclosure and discovery ( <i>n/a</i> )
N.D. Ind.	N.D. Ind. L.R. 6-1(c)	Automatic extension does not apply to pro se parties ( <i>discretionary tax</i> )
	N.D. Ind. L.R. 8-1	Pro se parties must prepare the listed types of complaints on clerk-supplied forms ( <i>mandatory tax</i> )
	N.D. Ind. L.R. 10-1(b)	Responsive pleading rule does not apply to pro se cases ( <i>mandatory subsidy</i> )
	N.D. Ind. L.R. 16-1(b)	Courts may issue a scheduling order after consulting with attorneys ( <i>mandatory tax</i> )
	N.D. Ind. L.R. 26-2(a)(2)(A)	In cases involving pro se parties, all discovery materials must be filed ( <i>mandatory tax</i> )
	N.D. Ind. L.R. 37-1(b)	Excepting pro se cases from certification requirement for discovery disputes ( <i>mandatory subsidy</i> )
	N.D. Ind. L.R. 56-1(f)	Notice for summary judgment sought against unrepresented party ( <i>mandatory subsidy</i> )
	N.D. Ind. L.R. 83-5(a)(2)(A)	Permitting pro se representation ( <i>mandatory subsidy</i> )
	N.D. Ind. L.R. 83-7	Pro bono requirement for attorneys ( <i>discretionary subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
S.D. Ind.	Local Rule 5-2(b)(1)	Pro se litigant documents exempt from e-filing ( <i>mandatory subsidy</i> )
	Local Rule 6-1(b)	Automatic initial extension does not apply to pro se parties ( <i>discretionary tax</i> )
	Local Rule 8-1	Pro se parties must prepare the listed types of complaints on court-supplied forms ( <i>mandatory tax</i> )
	Local Rule 16-1(b)	Scheduling orders ( <i>discretionary tax</i> )
	Local Rule 37-1(c)	Discovery disputes involving pro se parties not subject to Local Rule 37-1 ( <i>mandatory subsidy</i> )
	Local Rule 56-1(k)	Notice required when summary judgment sought against unrepresented party ( <i>mandatory subsidy</i> )
	Local Rule 80-2	Redaction rules ( <i>n/a</i> )
	Local Rule 83-5(a)(2)(A)	Pro se representation permitted ( <i>n/a</i> )
	Local Rule 87	Pro bono panel for the representation of indigent litigants ( <i>discretionary subsidy</i> )
N.D. Iowa & S.D. Iowa	LR 3(c)	Copies of local rules and change in contact information ( <i>mandatory subsidy</i> )
	LR 5A(c)	Exemption from e-filing ( <i>mandatory subsidy</i> )
	LR 11	Notice of changes in contact information ( <i>mandatory tax</i> )
	LR 16A(b)	Final pretrial conference requirements ( <i>mandatory tax</i> )
	LR 37(a)	Exempted from discovery motion declaration ( <i>mandatory subsidy</i> )
D. Kan.	Rule CR44.1.XIII.(B)	Pro se status will not change how court considers requests ( <i>n/a</i> )
	Rule 5.1	Form of pleadings and papers, including duty to update contact information ( <i>mandatory tax</i> )
	Rule 5.4.2(d)	E-filing permitted ( <i>mandatory subsidy</i> )
	Rule 16.3(f)	Mediation with indigent parties ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Rule 56.1(f)	Notice requirement for summary judgment sought against unrepresented party ( <i>mandatory subsidy</i> )
	Rule 77.1(c)(2)–(d)	Fax and email filing ( <i>mandatory subsidy</i> )
	Rule 83.5.1(c)	Pro se appearances ( <i>n/a</i> )
	Rule 83.5.4(g)	Pro se parties bound by local and federal rules ( <i>n/a</i> )
E.D. Ky. & W.D. Ky.	LR 5.3	Pro se parties must prepare the listed types of complaints on court-supplied forms and provide notification of change in address ( <i>mandatory tax</i> )
E.D. La.	LR 10.1	Civil cover sheet exception ( <i>mandatory subsidy</i> )
	LR 41.3.1	Failure to provide notification of change in address may be grounds for dismissal ( <i>mandatory tax</i> )
M.D. La.	Local Civil Rule 10(a)(3)	Civil cover sheet exception ( <i>mandatory subsidy</i> )
	Local Civil Rule 11(a)(5)	Address change notification ( <i>mandatory tax</i> )
W.D. La.	LR10.1	Civil cover sheet exception ( <i>mandatory subsidy</i> )
	LR11.1	Address change notification ( <i>mandatory tax</i> )
D. Me.	Rule 83.13, Appendix IV, Administrative Procedures (o)	E-filing ( <i>mandatory subsidy</i> )
D. Mass.	Rule 5.2(b)(2)	Service on pro se party ( <i>discretionary tax</i> )
	Rule 5.4(e), (g)(2)(B)	E-filing not required ( <i>mandatory subsidy</i> )
	Rule 16.4(c)(4)(A)	Limited appointment of counsel as requested for ADR ( <i>discretionary subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Rule 67.4(d)	Payment of fees by pro se parties ( <i>n/a</i> )
	Rule 83.5.4(d)(3)	A law student may represent indigent parties in civil proceedings ( <i>discretionary subsidy</i> )
	Rule 83.5.5	General pro se rule ( <i>n/a</i> )
E.D. Mich.	LR 3.1(b)	Cover sheet exemption ( <i>mandatory subsidy</i> )
	LR 16.1(e)(1)	Exception to pretrial scheduling ( <i>mandatory tax</i> )
	Electronic Filing Policies and Procedures R6	Exempted from requirement referencing a court record ( <i>mandatory subsidy</i> )
	Electronic Filing Policies and Procedures R7(d)	Not permitted to file initiating papers electronically ( <i>mandatory subsidy</i> )
	Electronic Filing Policies and Procedures R9(e)	Service on a pro se party ( <i>mandatory subsidy</i> )
W.D. Mich.	Local Civil Rule 5.6(a)	Actions by prisoners proceeding pro se ( <i>mandatory subsidy</i> )
	Local Civil Rule 5.7(d)(ii)(A)	E-filing not permitted ( <i>mandatory subsidy</i> )
	Local Civil Rule 5.7(i)(iii)	Service on pro se parties ( <i>mandatory subsidy</i> )
	Local Civil Rule 8.2	Exemption for a responsive pleading by pro se party ( <i>mandatory subsidy</i> )
	Local Civil Rule 10.3	Contact information for filing ( <i>mandatory tax</i> )
	Local Civil Rule 10.9	Exemption from referencing the court record ( <i>mandatory subsidy</i> )
	Local Civil Rule 16.2(g)	Pro se parties responsible for fees ( <i>n/a</i> )
D. Minn.	LR 7.1(h)(2)	Memorandum of law format for unrepresented parties ( <i>mandatory tax</i> )
	LR 72.2(c)(2)(B)	Format of objections and responses ( <i>mandatory tax</i> )
E.D. Mo.	Rule 2.01(A)(1)	Format of filings ( <i>mandatory tax</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Rule 2.05(B)	Notification of change in financial status ( <i>n/a</i> )
	Rule 2.06(B)	Notification of change of address ( <i>mandatory tax</i> )
	Rule 2.10	Exempt from e-filing ( <i>mandatory subsidy</i> )
	Rule 6.02(D)(1)	Appointment of counsel process ( <i>discretionary subsidy</i> )
W.D. Mo.	Local Rule 5.1	E-filing ( <i>mandatory subsidy</i> )
D. Mont.	Civil Rule 1.4(c)(2)	E-filing not permitted ( <i>mandatory subsidy</i> )
	Civil Rule 3.1(a)(3)	Civil cover sheet exception ( <i>mandatory subsidy</i> )
	Civil Rule 5.3(a)	Address change notification ( <i>mandatory tax</i> )
	Civil Rule 7.3(b)	Form of motion for reconsideration for pro se parties ( <i>mandatory tax</i> )
	Civil Rule 56.2	Requirements for motion filed against a self-represented prisoner ( <i>mandatory subsidy</i> )
	Civil Rule 83.6(a)	Civil pro bono panel ( <i>discretionary subsidy</i> )
	Civil Rule 83.8	General pro se rule ( <i>n/a</i> )
D. Neb.	General Rule 1.3(g)	Pro se parties bound by all local and federal rules ( <i>n/a</i> )
	General Rule 1.3(h)	Pro se plaintiff may request appointment of attorney ( <i>discretionary subsidy</i> )
	Civil Rule 5.1(b)	Exempt from e-filing ( <i>mandatory subsidy</i> )
	Civil Rule 15.1(b)	Pro se litigants' amended pleadings may be considered supplemental ( <i>discretionary tax</i> )
	Civil Rule 16.1(c)	Pro se litigants exempt from Rule 26 disclosure and conference requirement ( <i>mandatory subsidy/tax</i> )
D. Nev.	LR IA 3-1	Notice of change of contact information ( <i>mandatory tax</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LR IA 10-2	Format for documents filed by pro se parties ( <i>mandatory tax</i> )
	LR IC 2-1(b)	Court's authorization for e-filing ( <i>mandatory subsidy</i> )
	LR 3-1	Civil cover sheet exception ( <i>mandatory subsidy</i> )
	LSR 2-1	Form of pro se civil rights complaints ( <i>n/a</i> )
	LSR 3-3(e)	Exhibit references for petitions for writ of habeas corpus ( <i>mandatory tax</i> )
	LSR 3-5	Service by pro se litigants in habeas corpus cases ( <i>mandatory tax</i> )
D.N.H.	LR 3.1	Civil cover sheet exemption ( <i>mandatory subsidy</i> )
	LR 4.3	Filings by pro se/in forma pauperis plaintiffs ( <i>n/a</i> )
	LR 16.2(a)(1)	Exemption from brief statement in final pretrial statement for pro se incarcerated parties ( <i>mandatory subsidy</i> )
	LR 45.2(a)	Must file motion for attendance of witness twenty-one days in advance ( <i>mandatory tax</i> )
	LR 83.6(b), (c), (e)	General pro se rule on appearances and withdrawals ( <i>n/a</i> )
	LR 83.7(a)	Limited attorney representation within court discretion permitted ( <i>discretionary subsidy</i> )
D.N.J.	Civ. Rule 5.2(4)	E-filing not permitted ( <i>discretionary tax</i> )
	Civ. Rule 16.1(f)(2)	Pro se plaintiffs exempted from case management conference ( <i>discretionary subsidy</i> )
	Civ. Rule 37.1(a)(2)	Pro se plaintiffs do not have to have a discovery dispute conference ( <i>discretionary subsidy</i> )
D.N.M.	Rule 3.1	Cover sheet exception ( <i>mandatory subsidy</i> )
	Rule 5.1(a)	E-filing exception ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Rule 7.1(a)	Pro se inmate movants need not determine whether motion is opposed ( <i>mandatory subsidy</i> )
	Rule 73.1(b)	How pro se applicants proceed before a magistrate judge without access to e-filing ( <i>mandatory tax</i> )
	Rule 83.6	Change of address notification ( <i>mandatory tax</i> )
E.D.N.Y. & S.D.N.Y.	Local Civil Rule 7.2	Opposing counsel must provide pro se litigant with copies of unpublished legal authorities ( <i>mandatory subsidy</i> )
	Local Civil Rule 12.1	Notice required to pro se litigant who opposes a Rule 12 motion referring to matters outside the pleadings ( <i>mandatory subsidy</i> )
	Local Civil Rule 33.2	Discovery in prisoner pro se actions ( <i>n/a</i> )
	Local Civil Rule 56.2	Notice to pro se litigant who opposes summary judgment ( <i>mandatory subsidy</i> )
N.D.N.Y.	Rule 5.1.4	Civil actions filed in forma pauperis ( <i>n/a</i> )
	Rule 7.1(a)(2)	Incarcerated pro se litigants filing nondispositive motions not subject to court conference requirement ( <i>mandatory subsidy</i> )
	Rule 7.1(b)(1)	Must give hard copy of authorities cited in memorandum to pro se litigant if they are unpublished ( <i>mandatory subsidy</i> )
	Rule 10.1(c)(2)	Identifying information required in filed documents ( <i>mandatory tax</i> )
	Rule 56.2	Notice required to pro se litigant of the consequences of failing to reply to summary judgment motion ( <i>mandatory subsidy</i> )
	Rule 83.2(b)	Application for pro bono appointment of attorney ( <i>discretionary subsidy</i> )
	Rule 83.2(b)(3)	Court may sua sponte appoint counsel to pro se litigants ( <i>discretionary subsidy</i> )
	Rule 83.6	Assisted mediation for pro se applicants ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
W.D.N.Y.	Rule 1.3	Pro se parties must comply with local rules ( <i>n/a</i> )
	Rule 5.2	Pro se actions ( <i>n/a</i> )
	Rule 5.2(e)	Randomly assigned to district court unless previously filed with the court ( <i>n/a</i> )
	Rule 7(a)(8)	Opposing counsel must provide pro se litigants with printed copies of unreported decisions ( <i>mandatory subsidy</i> )
	Rule 15(b)	Pro se litigants exempt from using specific word functions to amend complaint ( <i>mandatory subsidy</i> )
	Rule 26(f)	Requires incarcerated pro se litigants to file discovery materials pursuant to Rule 5(f) rather than 5(d)(1) ( <i>mandatory subsidy</i> )
	Rule 54(g)	Clerk must send pro se litigant Guidelines for Bills of Costs when such bills are filed ( <i>mandatory subsidy</i> )
	Rule 56(b)	Notice to pro se litigants regarding Rule 56 summary judgment motion ( <i>mandatory subsidy</i> )
	Rule 73(b)(2)	Consent to a magistrate in cases involving a pro se party ( <i>n/a</i> )
E.D.N.C.	Rule 5.1(b)	E-filing ( <i>mandatory subsidy</i> )
	Rule 5.2(b)(1)	Notice of self-representation from nonincarcerated pro se litigants ( <i>mandatory tax</i> )
	Rule 11.2(b)	All pro se litigants (except prisoners) must file a disclosure statement ( <i>mandatory tax</i> )
	Rule 79.2(d)	Sealing procedures for manual filers ( <i>n/a</i> )
	Rule 83.3	Notice of change of address required ( <i>mandatory subsidy</i> )
M.D.N.C.	LR 5.3(a)(1)(d)	E-filing exemption ( <i>mandatory subsidy</i> )
	LR 5.4(b)(3)	Exemption from meet-and-confer requirements ( <i>mandatory tax</i> )



COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LR 7.1(d)	Civil rights actions by pro se prisoners ( <i>mandatory tax</i> )
	LR 11.1	Pro se general rule ( <i>n/a</i> )
	LR 16.1(a)(6)	No initial pretrial order for pro se ( <i>mandatory subsidy</i> )
	LR 16.4(b)	Pro se cases excepted from automatic selection for mediation during discovery ( <i>mandatory tax</i> )
	LR 83.9b(a)	Pro se cases not included in automatic selection for mediation for settlement ( <i>mandatory tax</i> )
W.D.N.C.	LCvR 7.1(b)	Exempted from requirement of consultation where the nonmoving party is unrepresented ( <i>mandatory tax</i> )
	LCvR 16.4	Pro se settlement assistance program ( <i>discretionary subsidy</i> )
	LCvR 47.1(a)(1)	Pro se litigants may apply to court for similar pretrial access to juror information ( <i>discretionary subsidy</i> )
	LCvR 83.3(b)(1)	Pro se litigant must contact court to secure permission to bring electronic device to court ( <i>discretionary subsidy</i> )
D.N.D.	Civil Rule 5.1(B)(4)	Filings by pro se litigants must have original signature ( <i>mandatory tax</i> )
	Civil Rule 16.1(9)	Scheduling conference exception for pro se incarcerated parties ( <i>mandatory tax</i> )
	Civil Rule 45.1	Clerk may not issue blank subpoenas to pro se parties unless directed by court ( <i>discretionary tax</i> )
D.N. Mar. I.	LR 5.3	Filing by email as a pro se litigant ( <i>mandatory subsidy</i> )
	LR 83.4(a)	Pro se appearances generally ( <i>n/a</i> )
	Appendix A, 2	Pro se parties may not e-file, but can register as email filers ( <i>n/a</i> )
N.D. Ohio	Rule 1.2(b)	Specifies that reference to “attorney” in the rules does not mean that a pro se party is not included ( <i>n/a</i> )
	Rule 3.15	In forma pauperis cases ( <i>n/a</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Rule 5.1(c)	May receive “read only” e-filing; at judicial officer’s discretion may be permitted to e-file ( <i>discretionary subsidy</i> )
	Rule 10.1(a)	Pro se exempt from document formatting requirements ( <i>mandatory subsidy</i> )
	Rule 16.1(b)(2)	Case management conference exemption ( <i>mandatory tax</i> )
	Rule 72.2(b)(2)	Referral to magistrate judge when pro se petitions for habeas corpus ( <i>n/a</i> )
	Rule 83.10	Appointment of pro bono counsel ( <i>voluntary subsidy</i> )
S.D. Ohio	3.1(a)	Pro se paper filings must be accompanied by civil cover sheet ( <i>n/a</i> )
	5.1(c)	E-filing not required for pro se litigants ( <i>mandatory subsidy</i> )
	5.4(a)	Pro se parties must file deposition transcripts on paper ( <i>mandatory tax</i> )
	5.2.1(a)–(b)	Filing under seal when pro se party lacks access to e-filing ( <i>n/a</i> )
	16.2	Scheduling order exception for pro se litigants in custody ( <i>mandatory subsidy</i> )
E.D. Okla.	LCvR 3.3	In forma pauperis motions ( <i>n/a</i> )
	LCvR 5.6(a)–(b)	Notice of change in address; mandatory certificate for proof of service ( <i>mandatory tax</i> )
	LCvR 7.1(f)	Duty to confer exception ( <i>mandatory subsidy</i> )
	LCvR 16.1(b)	Required attendance at pretrial conference ( <i>mandatory tax</i> )
	LCvR 17.1	Parties who are not natural persons may not appear pro se ( <i>n/a</i> )
	LCvR 73.1(c)	Separate consent forms may be submitted for magistrate judge appointment if one of the parties is a pro se prisoner ( <i>discretionary tax</i> )
N.D. Okla.	LCvR3-2	In forma pauperis motions ( <i>n/a</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LCvR16-1(b)(2)	Required attendance at pretrial conference ( <i>n/a</i> )
	LCvR17-1	Parties who are not natural persons may not appear pro se ( <i>n/a</i> )
	LCvR73-1(c)	Separate consent forms may be submitted for magistrate judge appointment if one of the parties is a pro se prisoner ( <i>discretionary tax</i> )
W.D. Okla.	LCvR3.1	Civil cover sheet requirement ( <i>mandatory tax</i> )
	LCvR3.3	In forma pauperis applications ( <i>n/a</i> )
	LCvR5.4	Change of address notification ( <i>mandatory tax</i> )
	LCvR16.1(a)(4)	Required attendance at pretrial conference ( <i>mandatory tax</i> )
	LCvR17.1	Parties that are not natural persons may not appear pro se ( <i>n/a</i> )
	LCvR73.1(c)	Separate consent forms may be submitted for magistrate judge appointment if one of the parties is a pro se prisoner ( <i>discretionary tax</i> )
D. Or.	LR 4-1	Summons issued electronically, except in cases where the filing party is pro se ( <i>mandatory tax</i> )
	LR 5-1(a), 5-2	E-filing ( <i>mandatory subsidy</i> )
	LR 5-4(a)	Motion to file a document under seal must be filed on paper ( <i>mandatory tax</i> )
	LR 7-1 Practice Tips 2	Where one or more parties are proceeding pro se, counsel should note a good faith effort to consult with the unrepresented party ( <i>discretionary subsidy</i> )
E.D. Pa.	Rule 5.1(b)	Notice of change in address ( <i>mandatory subsidy</i> )
	Rule 5.1.2(16)(B)(2)	Excluded from e-filing ( <i>mandatory subsidy</i> )
	Rule 16.2(9)	Pro se prisoner civil rights actions exempt from scheduling order ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Rule 40.1, Note 3	Pro se applicants exempt from assignment of related cases and other e-filing statements ( <i>mandatory subsidy</i> )
	Rule 53.3(1)	Pro se civil rights actions exempt from ADR consideration ( <i>mandatory tax</i> )
M.D. Pa.	LR 5.1(i)	Pro se litigants have exceptions regarding form of documents ( <i>mandatory subsidy</i> )
	LR 5.4(a)	Duty to confer exception ( <i>discretionary tax</i> )
	LR 5.6	E-filing exception ( <i>mandatory subsidy</i> )
	LR 7.1	No concurrence for motions needs to be sought in pro se prisoner cases ( <i>mandatory tax</i> )
	LR 16.1	Pro se parties are exempted from requirement of holding court conferences ( <i>n/a</i> )
	LR 83.18	Appearance of parties not represented by counsel ( <i>n/a</i> )
	LR 83.34.1	Application for appointment of volunteer attorney ( <i>discretionary subsidy</i> )
W.D. Pa.	LCvR 5.5	E-filing exception ( <i>mandatory subsidy</i> )
	LCvR 10	General rule for pro se civil rights actions filed by incarcerated individuals ( <i>mandatory tax</i> )
	LCvR 16.1(A)(4)	Unrepresented parties are subject to the same obligations as attorneys regarding pretrial procedures ( <i>n/a</i> )
	LCvR 40(D)(3)	Assignment of related actions ( <i>n/a</i> )
D.P.R.	Rule 3(c)(4)	Indigent pro se plaintiff or petitioner may seek in forma pauperis status ( <i>n/a</i> )
	Rule 11	Signing pleadings ( <i>n/a</i> )
	Rule 83A(h)	General pro se rule ( <i>n/a</i> )
	Rule 83L	Pro bono program ( <i>discretionary subsidy</i> )
D.R.I.	LR Cv 5(a)(5)	Signing pleadings ( <i>n/a</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LR Gen 107.1(c)(1)	“Standby” counsel for pro se litigants ( <i>discretionary subsidy</i> )
	LR Gen 201(b)(4)	Exception to requirement for membership in the local bar ( <i>n/a</i> )
	LR Gen 205	General pro se rule ( <i>n/a</i> )
	LR Gen 302(b)	Court authorization required for e-filing ( <i>mandatory subsidy</i> )
	LR Gen 303(c)(2)	Conventional filing by pro se litigants ( <i>mandatory subsidy</i> )
D.S.C.	5.05	E-filing not permitted unless authorized ( <i>mandatory subsidy</i> )
	7.02	Counsel does not have to consult with a pro se litigant before filing a motion ( <i>mandatory tax</i> )
	16.00(B)	Pro se parties not exempt from Rule 26 ( <i>n/a</i> )
	26.03(D)	Report required without Rule 26 conference ( <i>mandatory tax</i> )
	73.02(B)(2)(e)	All pretrial proceedings involving litigation by pro se parties automatically assigned to magistrate judge ( <i>n/a</i> )
	73.02(C)(6)	Case assignments for pro se litigants with prior cases ( <i>n/a</i> )
	83.I.04	Exempt from attorney representation requirement ( <i>n/a</i> )
D.S.D.	LR 5.1(A)(2)	Electronic service ( <i>mandatory subsidy</i> )
	LR 5.1(B)(2)(b)	Traditional filing by pro se parties ( <i>n/a</i> )
E.D. Tenn.	LR3.1	Civil cover sheet exemption ( <i>mandatory subsidy</i> )
	LR9.3(b)	Pro se petitions for writs of habeas corpus must be filed on court-supplied forms ( <i>mandatory tax</i> )
	LR16.1(a)(3)	Pro se prisoners bringing § 1983 actions exempt from pretrial conferences ( <i>mandatory tax</i> )
	LR16.3(b)	Pro se prisoners exempt from consideration of ADR ( <i>mandatory tax</i> )
	LR16.5(l)(2)	The Clerk will make copies of arbitration order available to all counsel

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
		of record and any parties proceeding pro se ( <i>mandatory subsidy</i> )
	LR83.4(c)	Pro se procedure after appearance by counsel ( <i>n/a</i> )
	LR83.9(i)	Excused from e-filing ( <i>mandatory subsidy</i> )
	LR83.13	General pro se rule ( <i>n/a</i> )
M.D. Tenn.	LR4.01(c)	Summonses for pro se cases ( <i>mandatory subsidy</i> )
	LR16.01(c)(1)	Case management conference exception ( <i>mandatory tax</i> )
	LR26.01	Exempt from providing copy of discovery requests ( <i>mandatory subsidy</i> )
	LR41.01(b)	Dismissal for failure to keep court apprised of current address ( <i>discretionary tax</i> )
	LR45.01(a)	Issuance of subpoenas to pro se parties ( <i>mandatory tax</i> )
	LR56.01(b)	In motion for summary judgment, pro se parties are excused from providing a copy of the statement to opposing counsel in editable electronic format ( <i>mandatory subsidy</i> )
	LR65.01(c)	Motion for a temporary restraining order (TRO) by pro se party ( <i>mandatory subsidy</i> )
W.D. Tenn.	LR 3.1	Civil cover sheet exemption ( <i>mandatory subsidy</i> )
	LR 4.1	Issuance of summonses in pro se cases ( <i>mandatory subsidy</i> )
	LR 4.1(d)(2)	Provision for waiver of service in Federal Rule of Civil Procedure 4(d) shall not apply in cases filed by pro se plaintiffs proceeding in forma pauperis ( <i>mandatory tax</i> )
	LR 5.2	Nonelectronic filing ( <i>mandatory subsidy</i> )
	LR 7.1	Format for paper filings ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LR 16.2(b)(2)	Pro se prisoner case management track ( <i>n/a</i> )
	LR 83.7	Civil pro bono panel ( <i>discretionary subsidy</i> )
	Appendix A r. 3.3	An attorney who is a member of the court's bar who represents themselves as pro se is not exempt from e-filing unless they have been excused ( <i>discretionary subsidy</i> )
	Appendix D.1 r. 5.3(d)–(e)	In forma pauperis status and pro se litigants access to mediation ( <i>discretionary subsidy</i> )
	Appendix D.1 r. 5.8(b)	A party who is proceeding pro se may be accompanied by one nonattorney to rely on for support ( <i>discretionary tax</i> )
	Appendix D.2	Mediation plan for pro se civil cases with parties granted in forma pauperis status ( <i>mandatory subsidy</i> )
E.D. Tex.	Local Rule CV-5(a)(1)(B), CV-5(a)(2)(B), CV-5(e)	Mandatory e-filing exemption and service of documents ( <i>mandatory subsidy</i> )
	Local Rule CV-7(i)	Meet-and-confer and the certificate of conference requirements are not applicable to pro se cases ( <i>mandatory tax</i> )
	Local Rule CV-11(d)	Notification of change of address ( <i>mandatory tax</i> )
	Local Rule CV-11(f)	Sanctions for vexatious pro se litigants ( <i>discretionary tax</i> )
	Local Rule CV-65.1(b)	Security for costs and sanctions ( <i>mandatory tax</i> )
N.D. Tex.	LR 5.1(e)–(f)	E-filing requirement exemption ( <i>mandatory subsidy</i> )
	LR 16.1(f)	Exempt from pretrial scheduling and management ( <i>mandatory subsidy</i> )
	LR 83.14	Pro se parties must follow local and federal rules ( <i>n/a</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
S.D. Tex.	LR83.4	Notification of address change ( <i>mandatory tax</i> )
W.D. Tex.	Rule CR-49(b)	Format of documents ( <i>mandatory tax</i> )
D. Utah	DUCivR 5-4	Format for habeas corpus petitions and civil rights complaints ( <i>mandatory tax</i> )
	DUCivR 16-1(a)(1)(A)(ii)	Pretrial scheduling exemption ( <i>mandatory subsidy</i> )
	DUCivR 16-1(a)(1)(B)	Incarcerated pro se plaintiffs exempt from Federal Rule of Civil Procedure 26(f) ( <i>mandatory subsidy</i> )
	DUCivR 83-1.3(c)	Individuals, not corporations, may proceed pro se ( <i>n/a</i> )
	DUCivR 83-1.3(e)	Notification of address change ( <i>mandatory tax</i> )
	DUCivR 83-1.4	Withdrawal or removal of attorney ( <i>n/a</i> )
D. Vt.	Rule 7(a)(7)	Attempt to reach agreement requirement does not apply to incarcerated pro se litigants ( <i>mandatory subsidy</i> )
	Rule 11	General pro se rule ( <i>n/a</i> )
	Rule 45	Subpoena of witnesses in in forma pauperis cases or pro se cases ( <i>mandatory tax</i> )
	Rule 56(e)	Notice to pro se litigants opposing summary judgment ( <i>mandatory subsidy</i> )
	Rule 83.2(b)(4)(F)	Pro se parties must submit application and obtain permission from the presiding judge to bring electronic devices into the courtroom ( <i>mandatory tax</i> )
D.V.I.	Rule 3.1(c)	Civil cover sheet exemption ( <i>mandatory subsidy</i> )
	Rule 5.4(b)	E-filing allowed with court's permission ( <i>discretionary subsidy</i> )
E.D. Va.	Local Civil Rule 4(C)	Civil cover sheet exemption ( <i>mandatory subsidy</i> )
	Local Civil Rule 7(B)	Contact information required ( <i>mandatory tax</i> )



COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	Local Civil Rule 7(K)	Motions against pro se parties ( <i>mandatory subsidy</i> )
	Local Civil Rule 45(A)	Pro se parties may apply for subpoenas on their own behalf ( <i>mandatory tax</i> )
	Local Civil Rule 45(C)	Proof of service of subpoenas ( <i>mandatory tax</i> )
	Local Civil Rule 83.1(M)(2)	All pro se litigants shall certify in writing that anything filed with the court had not been prepared by (or with the aid of) an attorney ( <i>mandatory tax</i> )
	Local Civil Rule 83.4(A)	All pro se petitions for writs of habeas corpus must be filed on a set of standardized forms ( <i>mandatory tax</i> )
W.D. Va.	Rule 1(b)	Pro se parties are bound by the same rules as attorneys ( <i>n/a</i> )
	Rule 11(a)	Contact information ( <i>mandatory tax</i> )
	Rule 16	Scheduling order exception ( <i>mandatory subsidy</i> )
E.D. Wash.	LCivR 3(b)(1)	E-filing ( <i>mandatory subsidy</i> )
	LCivR 7(c)(2)(A), (d)(2)(A)	Response and reply memorandum ( <i>mandatory subsidy</i> )
	LCivR 41(b)(2)	Contact information ( <i>mandatory tax</i> )
	LCivR 83.2(d)(2)	Appearances by attorney ( <i>n/a</i> )
	LCivR 83.3(k)(1)(B)	Sanctions for failure to appear or prepare ( <i>discretionary tax</i> )
	LCivR 83.6	Corporations cannot appear pro se ( <i>n/a</i> )
W.D. Wash.	LCR 5(d)	May e-file ( <i>mandatory subsidy</i> )
	LCR 5(g)(9)	Filing under seal ( <i>n/a</i> )
	LCR 7(d)(4)	Can impose sanctions under Federal Rule of Civil Procedure 11 if willful refusal to confer on motions in limine ( <i>n/a</i> )
	LCR 41(b)(2)	Contact information ( <i>mandatory tax</i> )
	LCR 65(b)	Temporary restraining orders ( <i>mandatory tax</i> )
	LCR 83.2	Appointment of counsel for pro se parties ( <i>discretionary subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
	LCR 104(e)	Pro se petitioner need only file the original and there is no filing fee ( <i>mandatory subsidy</i> )
N.D.W. Va.	LR Civ P 5.01(d)	Must serve pro se parties with paper copies ( <i>mandatory subsidy</i> )
	LR Civ P 72.01(d)(6)	Actions filed by pro se litigants are referred to magistrate judges ( <i>n/a</i> )
	LR Gen P 83.03	General pro se rule ( <i>n/a</i> )
	LR Gen P 84.04	Pro se litigants are expected to comply with Federal Rule of Civil Procedure Rule 11 ( <i>n/a</i> )
S.D.W. Va.	LR Civ P 9.2	Information required for filing complaints ( <i>mandatory tax</i> )
	LR Civ P 16.6(b)	May file a motion for leave not to engage in mediation ( <i>discretionary subsidy</i> )
	LR Civ P 72.1(d)(6)	Actions filed by pro se parties are referred to magistrate judges ( <i>n/a</i> )
	LR Civ P 83.3	Corporations cannot appear pro se ( <i>n/a</i> )
	LR Civ P 83.5	Notification of address and phone number change required ( <i>mandatory tax</i> )
E.D. Wis.	General L. R. 5(a)(2)	Exempt from e-filing requirements ( <i>mandatory subsidy</i> )
	General L. R. 5(a)(3)	Original copies must be filed ( <i>n/a</i> )
	General L. R. 5(a)(4)	Contact information must be included ( <i>mandatory tax</i> )
	General L. R. 83(e)	Only natural persons may appear pro se ( <i>n/a</i> )
	Civil L. R. 12	Motions to dismiss or motions for judgment on the pleadings in pro se litigation ( <i>mandatory subsidy</i> )
	Civil L. R. 16(d)(2)	Pro se prisoner litigant exempt from ADR requirement ( <i>mandatory subsidy</i> )
	Civil L. R. 56(a)	Summary judgment and pro se litigant ( <i>mandatory subsidy</i> )
W.D. Wis.	Rule 3.D.1	Pro se plaintiffs exempt from ADR requirement ( <i>mandatory subsidy</i> )

COURT	LOCAL RULES	BRIEF DESCRIPTION AND CLASSIFICATION
D. Wyo.	Rule 3.1	Civil cover sheet exemption ( <i>mandatory subsidy</i> )
	Rule 7.1(b)(1)(A)	Duty to confer ( <i>mandatory tax</i> )
	Rule 10.1(a)	Exempt from standard filing format ( <i>mandatory subsidy</i> )
	Rule 16.3(e)(1)	ADR exemption ( <i>mandatory tax</i> )

## APPENDIX B: CIVIL PRO BONO PROGRAMS IN THE U.S. DISTRICT COURTS

This appendix summarizes the current pro bono programs administered in the U.S. district courts. Citations for the information contained within each row follow the relevant district court.

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
N.D. Ala. <sup>280</sup>	Volunteer attorneys	Clerk of court randomly selects counsel from the Panel  Attorney has two weeks to notify the clerk that attorney is unwilling or unable to accept and must state the reason	All civil cases except bankruptcy	May apply for reimbursement of reasonable expenses
D. Alaska <sup>281</sup>	Volunteer attorneys	Pro Se Staff Attorney places a generic description of the case on the court's website and forwards the request to various bar associations and legal aid organizations; maintains a database of volunteer pro bono attorneys	Civil cases selected by the presiding judge	May seek reimbursement not exceeding \$1000 per case, except in exceptional circumstances

280. See U.S. DIST. CT.: N. DIST. OF ALA., PLAN FOR PRO BONO COUNSEL FOR QUALIFIED UNREPRESENTED PARTIES IN CIVIL CASES (2016), <https://www.alnd.uscourts.gov/sites/alnd/files/Pro%20Bono%20Plan%20signed%20by%20Chief%20Judge%20Bowdre%20%28a%20dopted%20by%20court%20Nov.%2018%2C%202016%29.pdf> [https://perma.cc/6YH8-B5Z5].

281. See The Adoption of Local Civil Rule 83.4 for the District of Alaska, Miscellaneous General Order No. 17-03 (D. Alaska July 6, 2017), <https://www.akd.uscourts.gov/sites/akd/files/general-ordes/MGO%2017-03.pdf> [https://perma.cc/5XA2-UMNG]; see also D. ALASKA L.CIV.R. 83.4.

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
C.D. Cal. <sup>282</sup>	Participating private law firms and volunteer attorneys	Expected to accept an appointment for a pro se litigant in a civil rights case at least once a year  No indication of whether attorney may reject nor for what reasons	Prisoner civil rights cases  Limited scope representation for nonprisoner, pro se, civil cases	May seek reimbursement no later than thirty days after judgment is entered for out-of-pocket expenses of up to \$10,000 per case
E.D. Cal. <sup>283</sup>	Members of the district's pro bono panel	Not expected to accept an appointment more than once every three years  No indication of whether attorney may reject and for what reasons	Prisoner civil rights cases	May recover out-of-pocket expenses on approved expenditures if sought within thirty days following the entry of final judgment
S.D. Cal. <sup>284</sup>	Voluntary process for law firms and attorneys; serve on the panel for a	Randomly assigned  Expected to accept appointment	Civil cases filed by indigent pro se parties	May be reimbursed for necessarily incurred out-of-pocket expenses

282. See *Pro Bono Civil Rights Panel*, U.S. DIST. CT.: CENT. DIST. OF CAL., <https://www.cacd.uscourts.gov/attorneys/pro-bono> [<https://perma.cc/LX3B-WUR9>] (last visited Apr. 2, 2022); *Pro Bono Limited-Scope Representation Pilot Program*, U.S. DIST. CT.: CENT. DIST. OF CAL., <https://www.cacd.uscourts.gov/attorneys/pro-bono/pro-bono-limited-scope-representation-pilot-program> [<https://perma.cc/3YUY-KLTE>] (last visited Apr. 2, 2022); *Procedures for Recovering Out-of-Pocket Expenses*, U.S. DIST. CT.: CENT. DIST. OF CAL., <https://www.cacd.uscourts.gov/attorneys/pro-bono/procedures-recovering-out-pocket-expenses> [<https://perma.cc/FJM4-CQ9Y>] (last visited Apr. 2, 2022).

283. See Adoption of Amended Plan Governing Reimbursement of Appointed Pro Bono Counsel, General Order No. 558 (E.D. Cal. Mar. 18, 2015), <https://www.caed.uscourts.gov/caednew/assets/File/GO558.pdf> [<https://perma.cc/7HSL-W436>]; *Pro Bono Panel*, U.S. DIST. CT.: E. DIST. OF CAL., <https://www.caed.uscourts.gov/caednew/index.cfm/attorney-info/pro-bono-panel/> [<https://perma.cc/7Q2A-3BNS>] (last visited Apr. 2, 2022).

284. See Adopting Pro Bono Plan, General Order No. 596 (S.D. Cal. Aug. 3, 2011), [https://www.casd.uscourts.gov/\\_assets/pdf/attorney/GO\\_596.pdf](https://www.casd.uscourts.gov/_assets/pdf/attorney/GO_596.pdf) [<https://perma.cc/Y9HJ-AL37>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
	period of at least two years	unless there is a conflict or other exceptional circumstances	Prisoner civil rights cases where summary judgment has been denied	
D. Colo. <sup>285</sup>	Members in good standing of the bar of the district court; also open to law school clinics and law firms	Randomly assigned; Clerk is directed to select an attorney with relevant expertise  Panel member must notify the Clerk whether they are available for appointment no later than five days after assignment  May be removed from Panel for excessive number of declinations of appointment	Civil rights, prisoners' rights, social security appeals, and other categories  Website lists cases available to all attorneys after at least four Pro Bono Panel attorneys have declined	Reimbursement limited to \$5000 for non-expert costs and an additional \$7500 for expert fees  Attorney may seek fees
D. Conn. <sup>286</sup>	Any attorney who practices in the district and has appeared in a	Court selects at random from volunteer wheel; if no attorney on the		May be reimbursed for expenses upon motion to the court submitted

285. See D.C.COLO.LATTYR 15; U.S. DIST. CT.: DIST. OF COLO., UNITED STATES DISTRICT COURT'S CIVIL PRO BONO PANEL PROGRAM (2014), [http://www.cod.uscourts.gov/Portals/0/Documents/AttInfo/Civil\\_Pro\\_Bono\\_Panel\\_Program.pdf](http://www.cod.uscourts.gov/Portals/0/Documents/AttInfo/Civil_Pro_Bono_Panel_Program.pdf) [<https://perma.cc/RD3L-X8AJ>]; *Civil Pro Bono Panel—Details, and Available Cases*, U.S. DIST. CT.: DIST. OF COLO., <http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,AndAvailableCases.aspx> [<https://perma.cc/8LWX-4KKN>] (last visited Apr. 2, 2022).

286. See D. CONN. L. CIV. R. 83.10(e); see also U.S. DIST. CT.: DIST. OF CONN., NOTICE REGARDING LOCAL RULE 83.10(K): INCURRING PRO BONO EXPENSES (2022), <https://ctd.uscourts.gov/sites/default/files/Pro-Bono-Notice-Re-Expenses-Final-1-11-2022.pdf> [<https://perma.cc/L95Q-THL4>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
	<p>civil case in the last five years (assignment wheel)</p> <p>Members of the bar who contact the clerk's office in writing may request to serve as a volunteer panel member (volunteer wheel)</p>	<p>volunteer wheel is available, court selects from assignment wheel</p>		<p>in advance of incurring the expenses</p> <p>Expenses greater than \$2000 require prior approval by the court's Budget Committee</p>
D. Del. <sup>287</sup>	<p>Firms, organizations, or attorneys who notify the Federal Civil Panel Coordinators they wish to join</p>	<p>Clerk's office selects firm, which must respond within fourteen days</p> <p>Representation may only be declined if there is a conflict of interest, the firm is currently representing a party in two or more panel cases, or representation may cause an undue hardship on the firm</p>	<p>Indigent litigants in civil cases</p>	<p>May seek reimbursement for up to \$10,000 per case for certain costs and expenses related to representation in a panel case</p> <p>Can obtain more than a \$10,000 reimbursement with majority of the court's approval</p>

287. See Amendments to the Federal Civil Panel that Provides Legal Assistance to Indigent Parties in Certain Civil Litigation, Standing Order (D. Del. June 27, 2016), <https://www.ded.uscourts.gov/sites/ded/files/news/Revised%20Federal%20Civil%20Panel%20Order%20dated%202016-27-16.pdf> [<https://perma.cc/TUB2-PX8T>]; Revised Standing Order for District Court Fund (D. Del. Aug. 30, 2016), <https://www.ded.uscourts.gov/sites/ded/files/news/RevisedStandingOrderforDistrictCourtFund9-1-16.pdf> [<https://perma.cc/7N7U-SPDE>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
D.D.C. <sup>288</sup>	Members of the bar who practice in D.C.; also open to law school clinics and firms	Clerk selects a member of the panel in consideration of the experience and preferences regarding specific types of cases  Selected members are encouraged, but not required, to accept appointment	Limited to parties that have been granted leave to proceed in forma pauperis or within the discretion of the judge	May enter into an agreement for recovery of expenses and fees with prior approval of the Court  Indigent Civil Litigation Fund (private nonprofit) may also reimburse panel members for expenses incurred
M.D. Fla. <sup>289</sup>	Members of the bar in good standing listed as willing to accept appointments through their federal bar organization	Judge asks the Clerk of court to select an attorney from the list  No indication of how attorney may reject the appointment and for what reasons	Civil cases	May seek reimbursement for reasonable litigation expenses and expenses exceeding \$30,000 will not be reimbursed absent exceptional circumstances
N.D. Fla. <sup>290</sup>	All members in good standing of the bar who apply to become a member of the Volunteer	Judge directs the Clerk to select an attorney through a strict rotation	Pro se, in forma pauperis civil actions	May receive reimbursement through the district's Bench and Bar Fund

288. See U.S. DIST. & BANKR. CT. FOR THE DIST. OF D.C., THE CIVIL PRO BONO PANEL, <https://www.dcd.uscourts.gov/sites/dcd/files/probonopamphlet.pdf> [<https://perma.cc/QJF3-8JKP>].

289. See U.S. DIST. CT.: MIDDLE DIST. OF FLA., PLAN FOR PRO BONO REPRESENTATION BY APPOINTMENT IN CIVIL CASES, <https://www.flmd.uscourts.gov/sites/flmd/files/documents/flmd-pro-bono-plan.pdf> [<https://perma.cc/RU6M-E45X>].

290. See U.S. DIST. CT.: N. DIST. OF FLA., PLAN FOR THE DESIGNATION OF ATTORNEYS TO REPRESENT PRO SE, IN FORMA PAUPERIS PARTIES IN CIVIL CASES (2014), [www.flnd.uscourts.gov/sites/default/files/forms/14%20NDFL%20Final%20Pro%20Bono%200Volunteer%20Plan%20October%201%2C%202014.pdf](http://www.flnd.uscourts.gov/sites/default/files/forms/14%20NDFL%20Final%20Pro%20Bono%200Volunteer%20Plan%20October%201%2C%202014.pdf) [<https://perma.cc/MJ2C-8P3Y>].



COURT	COMPOSITION	SELECTION	CASES	EXPENSES
	Lawyers' Project Panel	Panel member has thirty days to accept or decline; may decline for any reason and need not specify a reason, but will stay at top of list if fail to respond		
S.D. Fla. <sup>291</sup>	Registered members of the court's pro bono panel list	Judges may call upon interested attorneys registered in database, but attorneys may decline for any reason	Available cases listed on court website	May be reimbursed for amounts not exceeding \$7500 absent exceptional circumstances; no guarantee of reimbursement
D. Haw. <sup>292</sup>	Members in good standing to practice in the district and who have agreed to pro bono appointments	Upon a judge's order, the Pro Bono Coordinator selects an attorney, considering the experience and preference of these attorneys  Attorney has ten days to	Civil cases involving indigent pro se litigants	Authorizes funding for allowable litigation costs and expenses; may seek reimbursement of up to \$1500 at the conclusion of the appointment

291. See *Assistance with Litigation Expenses (Pro Bono)*, U.S. DIST. CT.: S. DIST. OF FLA., <https://www.flsd.uscourts.gov/assistance-litigation-expenses-pro-bono> [<https://perma.cc/E69Z-35Q4>] (last visited Apr. 2, 2022); *Available Cases*, U.S. DIST. CT.: S. DIST. OF FLA., [https://www.flsd.uscourts.gov/available\\_cases](https://www.flsd.uscourts.gov/available_cases) [<https://perma.cc/DG2X-Q47Y>] (last visited Apr. 2, 2022); *Register for the Court's Pro Bono Panel List*, U.S. DIST. CT.: S. DIST. OF FLA., <https://www.flsd.uscourts.gov/content/register-court%E2%80%99s-pro-bono-panel-list> [<https://perma.cc/3HGZ-35QX>] (last visited Apr. 2, 2022); *Volunteer Opportunities and Pro Bono Assistance*, U.S. DIST. CT.: S. DIST. OF FLA., <https://www.flsd.uscourts.gov/volunteer-opportunities-and-pro-bono-assistance> [<https://perma.cc/7X7E-3KDZ>] (last visited Apr. 2, 2022).

292. See Order Adopting Rules for Civil Pro Bono Panel for the United States District Court for the District of Hawaii (D. Haw. Aug. 15, 2016), [https://www.hid.uscourts.gov/files/order337/2016\\_08\\_15\\_civil\\_Order%20Adopting%20Rules%20FOR%20Pro%20Bono%20Panel.pdf](https://www.hid.uscourts.gov/files/order337/2016_08_15_civil_Order%20Adopting%20Rules%20FOR%20Pro%20Bono%20Panel.pdf) [<https://perma.cc/Y3GK-4V9K>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		respond to appointment and can only deny because of conflict of interest or other grounds consistent with the applicable Rules of Professional Conduct		
D. Idaho <sup>293</sup>	Any member of the bar that applies through the Federal Bar Association Pro Bono Liaison	FBA Pro Bono Liaison is in charge of communicating and extending invitations to accept representations	Litigants of limited means in all types of civil cases	Authorized funding for litigation costs through the program  May seek reimbursement of up to \$1500 per case for reasonable and necessary costs
N.D. Ill. <sup>294</sup>	All members of the Trial Bar	Clerk randomly selects names every year to create the panel; Trial Bar members can also volunteer for assignments anytime  May only defer pursuant to the local rule's exceptions	Civil actions	Limited funds may be available to reimburse costs

293. See Pro Bono Program, General Order No. 351 (D. Idaho Sept. 26, 2019), [https://www.id.uscourts.gov/Content\\_Fetcher/index.cfm/Pro\\_Bono\\_Program\\_3298.pdf?Content\\_ID=3298](https://www.id.uscourts.gov/Content_Fetcher/index.cfm/Pro_Bono_Program_3298.pdf?Content_ID=3298) [<https://perma.cc/9LR7-KBCH>].

294. See *Northern District Pro Bono Programs*, U.S. DIST. CT.: N. DIST. OF ILL., <https://www.ilnd.uscourts.gov/Pages.aspx?BQuMZcPiD1N2onwVG/J4/Q==> [<https://perma.cc/32WL-U9AQ>] (last visited Apr. 2, 2022).

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
C.D. Ill. <sup>295</sup>	Participating attorneys	Pro Bono Coordinator contacts participating lawyers not currently handling a case  Participating lawyer may only decline for five specified reasons	Certain civil cases involving indigent parties	Reimbursement is available for out-of-pocket expenses of up to \$1000
S.D. Ind. <sup>296</sup>	Volunteer attorneys in good standing of the bar (Voluntary Panel)  All members of the court's bar who have appeared in a threshold number of civil cases during the last year (Obligatory Panel) unless exempted	Recruited attorneys may only withdraw for specified reasons: conflict of interest; counsel is not competent; burden of other professional commitments in the practice of law; personal incompatibility; believes litigant is proceeding for the purpose of harassment; substantial prior assistance to the court as recruited counsel	Civil cases involving indigent litigants	May seek prepayment or reimbursement of expenses  Funds in excess of \$1000 must be approved by the assigned judge before the expense is incurred

295. See U.S. DIST. CT.: CENT. DIST. OF ILL., PLAN FOR THE RECRUITMENT OF COUNSEL FOR INDIGENT PARTIES IN CERTAIN CIVIL CASES (2019), <https://www.ilcd.uscourts.gov/sites/ilcd/files/Plan%20for%20Recruitment%20of%20Counsel%202017.pdf> [https://perma.cc/335V-PBXD].

296. See S.D. IND. L.R. 87.

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
W.D. Ky. <sup>297</sup>	Volunteer attorneys admitted to practice in the district who submit an application to be on the Pro Bono Counsel Panel	Court contacts a member of the panel to request volunteer  Attorney must communicate acceptance or denial within twenty-one days	Civil cases involving indigent litigants decided by the court based on particular circumstances	May seek reimbursement of up to \$1000 from the Bench and Bar Fund
E.D. La. <sup>298</sup>	Volunteer attorneys in good standing of the bar willing to serve on the Civil Pro Bono Counsel Panel	Pilot Program Coordinator selects lawyer on the panel pursuant to various prerequisites	Civil cases involving pro se litigants who have demonstrated a financial inability to pay	Reimbursement for costs up to \$2500
M.D. La. <sup>299</sup>	Volunteer attorneys admitted to practice in the district serving on the Civil Pro Bono Counsel Panel	Court sends request for representation to all panel members and panel member may volunteer	Civil cases involving pro se inmates who have demonstrated inability to pay for counsel	Reimbursement for costs up to \$2500
W.D. La. <sup>300</sup>	Volunteer attorneys in good standing of the bar with current and adequate adequate malpractice	Court sends request for representation to all Civil Pro Bono Counsel Panel members and panel	Civil cases of pro se prisoners who cannot retain private counsel	Reimbursement for costs up to \$2500

297. See U.S. DIST. CT.: W. DIST. OF KY., PRO BONO CIVIL CASE PROTOCOL, [https://www.kywd.uscourts.gov/sites/kywd/files/court\\_docs/Pro%20Bono%20Protocol.pdf](https://www.kywd.uscourts.gov/sites/kywd/files/court_docs/Pro%20Bono%20Protocol.pdf) [<https://perma.cc/6A6Z-MAQY>].

298. See Resolution of the En Banc Court (E.D. La. Apr. 22, 2014), <http://www.laed.uscourts.gov/sites/default/files/pdfs/ProBono-Civil-Panel-Res%20Permanent%20Ntc.pdf> [<https://perma.cc/VH8X-82LP>].

299. See Resolution of the En Banc Court (M.D. La. Mar. 9, 2015), <https://www.lamd.uscourts.gov/sites/default/files/pdf/ProBonoResolution.pdf> [<https://perma.cc/Q9Y7-8ZMU>].

300. See Resolution Forming a Civil Pro Bono Panel (W.D. La. Jan. 3, 2019), <https://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/Resolution%20Forming%20a%2>

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
	insurance coverage	member may volunteer  If none volunteer, magistrate judge may select a panel member; selected panel member may decline for reasonable cause, including a conflict of interest, a recent appointment in another case, or a prohibitive work schedule, among others		
D. Mass. <sup>301</sup>	Participating law firms	Pro Bono Coordinator selects a firm; firm may only decline appointment if conflict of interest, lack of sufficient experience, personal incompatibility, party is proceeding to harass, or the	Civil cases involving indigent parties	May seek reimbursement for expenses not exceeding \$10,000

0Civil%20Pro%20Bono%20Panel.pdf [https://perma.cc/3QNW-KETT]; *see also* Order (W.D. La. Dec. 15, 2021), [https://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/ResolutionFormingaCivilProBonoPanel\\_2022\\_2024.pdf](https://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/ResolutionFormingaCivilProBonoPanel_2022_2024.pdf) [https://perma.cc/B8V3-BKR5].

301. *See* PLAN FOR THE APPOINTMENT OF COUNSEL FOR INDIGENT PARTIES IN CERTAIN CIVIL CASES, U.S. DIST. CT.: DIST. OF MASS. (2009), <https://www.mad.uscourts.gov/attorneys/pdf/ProBonoPlan2009.pdf> [https://perma.cc/5LEG-MT9A]; U.S. DIST. CT.: DIST. OF MASS., GUIDELINES GOVERNING THE REIMBURSEMENT OF EXPENSES IN PRO BONO CASES (2015), <https://www.mad.uscourts.gov/attorneys/pdf/Guidelines%20Pro%20Bono%20Reimb.pdf> [https://perma.cc/MXL5-HCGJ].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		party's claims or defenses are not warranted		
W.D. Mich. <sup>302</sup>	Participating panel members	Magistrate judge appoints attorney suitable for the case	Civil action where litigant has been granted leave to proceed in forma pauperis	Reimbursement of appropriate costs from fund administered by the Grand Rapids Bar Association not exceeding \$5000 unless good cause is shown
E.D. Mo. <sup>303</sup>	Member in good standing of the bar	Court contacts panel members for appointment	Civil cases involving indigent and self-represented persons	Limited compensation for attorney fees and reasonable expenses
D. Mont. <sup>304</sup>	Member in good standing of the bar	Appointed on pro se party's motion or the court's own motion  Appointed attorney may only withdraw for the following reasons: conflict of interest; counsel and client	Civil cases except Social Security disability cases (unless party acknowledges counsel is entitled to obtain compensation from any award of benefits)	May seek reimbursement for reasonable expenses  Reimbursements over \$3000 must be approved by the Non-Appropriated Funds Advisory Committee

302. See U.S. DIST. CT. FOR THE W. DIST. OF MICH., AMENDED PRO BONO PLAN OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN IN COOPERATION WITH THE WESTERN MICHIGAN CHAPTER OF THE FEDERAL BAR ASSOCIATION: GUIDELINES (2006), <https://www.miwd.uscourts.gov/sites/miwd/files/Pro%20Bono%20Guidelines.pdf> [<https://perma.cc/PEN5-G8R5>].

303. See *Pro Bono Service Opportunities*, U.S. DIST. CT.: E. DIST. OF MO., <https://www.moed.uscourts.gov/pro-bono-service-opportunities> [<https://perma.cc/FW72-TVFZ>] (last visited Apr. 2, 2022).

304. See D. MONT. L.R. 83.6; see also *Civil Pro Bono Panel*, U.S. DIST. CT.: DIST. OF MONT., <https://www.mtd.uscourts.gov/civil-pro-bono-panel> [<https://perma.cc/E3PB-VBK6>] (last visited Apr. 2, 2022).

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		substantially disagree; serious personal incompatibility; compelling reason justifies withdrawal		
D. Nev. <sup>305</sup>	Volunteer lawyers	Legal Aid Center of Southern Nevada or Washoe Legal Services locate counsel willing to take representation	Civil cases selected by judges based on a number of factors	May seek reimbursement from the Court Fund for reasonable, eligible expenses
D.N.M. <sup>306</sup>	Volunteer attorneys	Clerk appoints attorneys on a rotational basis from the panel  Attorney may decline appointment for good cause shown	Civil cases	Payment of litigation cases of up to \$2500 available on a per case basis  Additional funds must be requested from the court
E.D.N.Y. <sup>307</sup>	Volunteer attorneys; those with prior civil trial experience preferred	Clerk selects attorney from the panel on a random basis  Attorney may decline appointment on	Civil cases who lack the resources to retain counsel by other means	Appointed attorney bears cost of litigation but may seek reimbursement of expenses of up to \$200 from

305. See Pro Bono Program, Amended General Order 2019-07 (D. Nev. Oct. 25, 2019), <https://www.nvd.uscourts.gov/wp-content/uploads/2019/12/2019-11-18-Amended-GO-2019-7-re-Pro-Bono.pdf> [<https://perma.cc/LVJ6-MMAF>]; see also *Pro Bono*, U.S. DIST. CT.: DIST. OF NEV., <https://www.nvd.uscourts.gov/self-help/pro-bono-self-help/> [<https://perma.cc/X8VG-BMUB>] (last visited Apr. 2, 2022).

306. See Civil Pro Bono Plan of the United States District Court for the District of New Mexico, Misc. Order No. 95-189 (D.N.M. Oct. 18, 1995), <https://www.nmd.uscourts.gov/sites/nmd/files/general-ordes/Civil%20Pro%20Bono%20Plan.pdf> [<https://perma.cc/LTT8-SDKZ>].

307. See U.S. DIST. CT.: E. DIST. OF N.Y., RULES GOVERNING PROCEDURES FOR APPOINTMENT OF ATTORNEYS IN PRO SE CIVIL ACTIONS, [https://img.nyed.uscourts.gov/files/local\\_rules/probonoplan.pdf](https://img.nyed.uscourts.gov/files/local_rules/probonoplan.pdf) [<https://perma.cc/BCZ3-YKJ3>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		specified grounds		district's Civil Litigation Fund
N.D.N.Y. 308	All attorneys admitted to practice in the district except attorneys employed by the government	Clerk appoints counsel  Counsel may only withdraw for the following reasons: conflict of interest; attorney does not feel confident to represent in the particular type of action; personal incompatibility; party is proceeding for the purpose of harassment	Cases involving pro se litigants	May seek reimbursement for expenses not exceeding \$2000  Expenses greater than \$500 require court's prior approval
W.D.N.Y. 309	Volunteer attorneys (volunteer panel)  All attorneys who have entered an appearance within the last two years of the appointment (assignment wheel)	Court randomly selects from the Volunteer Panel; if the Volunteer Panel is exhausted, court will randomly select from the Assignment Wheel  Appointed attorney may decline	Pro se litigants who are indigent	Reimbursement will be permitted to the extent possible in light of available resources

308. See N.D.N.Y. L.R. 83.2; see also *Pro Bono*, U.S. DIST. CT.: N. DIST. OF N.Y., <https://www.nynd.uscourts.gov/pro-bono> [<https://perma.cc/T3XY-MWX9>] (last visited Apr. 2, 2022).

309. See W.D.N.Y. L.R.Civ.P. 83.8; see also *Pro Bono Program*, U.S. DIST. CT.: W. DIST. OF N.Y., <https://www.nywd.uscourts.gov/pro-bono-program> [<https://perma.cc/2P XK-5474>] (last visited Apr. 2, 2022).



COURT	COMPOSITION	SELECTION	CASES	EXPENSES
	Experienced federal practitioners may be appointed as co-counsel to assist less experienced attorneys (senior pro bono panel)	appointment within fourteen days of the notice letter, but automatic relief may be granted, upon request, for a number of reasons including conflict of interest and exemption from the Assignment Wheel		
E.D.N.C. 310	Volunteer attorneys	Applying does not obligate an attorney to assignment	Pro se civil cases	
M.D.N.C. 311	Volunteer attorneys	Clerk selects eligible names at random from panel list  Attorney may decline appointment for any reason	Pro se civil cases	May seek reimbursement for certain expenses subject to the guidelines in Appendix A of the Bench and Bar Fund Plan
N.D. Ohio <sup>312</sup>	Volunteer attorneys	Judicial officers forward the docket to the Pro Bono Legal Services Program of the local bar, which	Civil actions involving parties who cannot afford legal counsel	May seek reimbursement for certain expenses of up to \$1500

310. See *Eastern District Pro Bono Panel*, U.S. DIST. CT.: E. DIST. OF N.C., <http://www.nced.uscourts.gov/attorney/probonopanel.aspx> [https://perma.cc/Z4SX-MFQJ] (last visited Apr. 2, 2022).

311. See *Pilot Program for Pro Bono Representation in Pro Se Civil Cases*, Standing Order Number 6 (M.D.N.C. Oct. 8, 2014), <https://www.ncmd.uscourts.gov/sites/ncmd/files/orders.pdf> [https://perma.cc/CV7X-36EV]; see also *Pro Bono Representation Program*, U.S. DIST. CT.: MIDDLE DIST. OF N.C., <https://www.ncmd.uscourts.gov/pro-bono-representation-program> [https://perma.cc/EEM4-WW6C] (last visited Apr. 2, 2022).

312. See *Adoption of Revised Pro Bono Civil Case Protocol Amended*, General Order No. 2007-02 (N.D. Ohio Oct. 23, 2018), <https://www.ohnd.uscourts.gov/sites/ohnd/files/ProBonoPlan.pdf> [https://perma.cc/R794-D4HP].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		recommends a lawyer to be assigned to the case		Expenses over \$1500 can be obtained through written explanation approved by the Chief Judge
D. Or. <sup>313</sup>	Volunteer attorneys and law firms that enroll in the Pro Bono Program	Attorneys may be appointed for a specific purpose or for the entire case  Attorney may seek removal within fourteen days of appointment order if conflict of interest exists or for a specific reason other than a conflict of interest	Civil cases involving pro se parties who demonstrate financial need	May seek reimbursement of out-of-pocket expenses up to \$10,000
E.D. Pa. <sup>314</sup>	Volunteer attorneys	Cases listed on extranet are available for selection by panel members; attorneys are free to decline	Three panels: (1) Prisoner Civil Rights Panel; (2) Employment Panel; (3) Social	May apply for reimbursement of costs up to \$2500 per case from the Public Interest Civil Litigation Fund under the

313. See U.S. DIST. CT.: DIST. OF OR., PRO BONO PROGRAM PROCEDURES (2020), [https://ord.uscourts.gov/index.php/component/rsfiles/download-file/files?path=civil\\_forms%252Fpro\\_bono%252Fpublic%2BProgram%2BProcedures.pdf](https://ord.uscourts.gov/index.php/component/rsfiles/download-file/files?path=civil_forms%252Fpro_bono%252Fpublic%2BProgram%2BProcedures.pdf) [<https://perma.cc/2VFF-CV8G>].

314. See U.S. DIST. CT. FOR THE E. DIST. OF PA., ATTORNEY PANEL FOR PRO SE PLAINTIFFS IN EMPLOYMENT CASES PROGRAM DESCRIPTION (2015), <https://www.paed.uscourts.gov/documents/probono2/empnlides.pdf> [<https://perma.cc/6YYL-RJB5>]; U.S. DIST. CT. FOR THE E. DIST. OF PA., ATTORNEY PANEL FOR PRO SE PLAINTIFFS IN SOCIAL SECURITY CASES PROGRAM DESCRIPTION (2018), <https://www.paed.uscourts.gov/documents/probono2/sspnldes.pdf> [<https://perma.cc/V2CR-S544>]; U.S. DIST. CT. FOR THE E. DIST. OF PA., PRISONER CIVIL RIGHTS PANEL PROGRAM DESCRIPTION (2012), <https://www.paed.uscourts.gov/documents/probono2/cvnlides.pdf> [<https://perma.cc/N9VX-3R8A>]; see also U.S. DIST. CT.: E. DIST. OF PA., VOLUNTEER ATTORNEY PANELS OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA (2019), [http://www.paed.uscourts.gov/documents/misc/Flyer\\_09.19.pdf](http://www.paed.uscourts.gov/documents/misc/Flyer_09.19.pdf) [<https://perma.cc/D6KG-4HCB>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		In Prisoner Civil Rights cases, representation may be declined only where counsel reasonably believes that the case would not withstand a motion to dismiss or where there is a conflict of interest	Security Panel	Prisoner Civil Rights Panel
M.D. Pa. <sup>315</sup>	Volunteer attorneys  New attorneys are allowed a two-year grace period	Pro bono chair of the local chapter of the Federal Bar Association selects attorney, who is free to decline	Cases involving pro se indigent litigants	May seek reimbursement for costs necessarily incurred not exceeding \$1500
D.P.R. <sup>316</sup>	Members of the trial bar who have volunteered for appointment or who have been selected at random to the panel, subject to certain exemptions	Clerk selects the first available panel member indicating their expertise or preference  May be relieved of an order of appointment only for good cause (such as a	Civil cases involving indigent persons	Party bears the cost to the extent reasonably feasible, but the appointed counsel may seek reimbursement of attorney's fees where permitted by statute

315. See *Pro Bono Attorney Program*, U.S. DIST. CT.: MIDDLE DIST. OF PA., <https://www.pamd.uscourts.gov/pro-bono-attorney-program-0> [https://perma.cc/6YTM-3TFX] (last visited Apr. 2, 2022).

316. See D.P.R. R. 83L; see also U.S. DIST. CT. FOR THE DIST. OF P.R., PRO BONO PROGRAM: INSTRUCTIONS TO PRO SE LITIGANTS, [https://www.prd.uscourts.gov/sites/default/files/documents/17/Pro\\_Bono\\_Instructions\\_eng.pdf](https://www.prd.uscourts.gov/sites/default/files/documents/17/Pro_Bono_Instructions_eng.pdf) [https://perma.cc/X2XZ-J5GT] (last visited Apr. 2, 2022).

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		conflict of interest)		
D.R.I. <sup>317</sup>	Volunteer attorneys in good standing of the bar who maintain professional liability insurance  Attorneys with less than five years of civil litigation will work under supervision of a mentoring attorney	Clerk selects from panel list  Attorney may accept or decline appointment; expected to decline only if there is a conflict, issues with workload, or ethical concerns	Civil cases involving pro se parties granted in forma pauperis status or entities of limited financial means	May seek reimbursement of expenses not exceeding \$1500, and not exceeding \$2500 in exceptional cases
D.S.C. <sup>318</sup>	Volunteer attorneys	Presiding judge consults selected volunteer attorney before making appointment	Cases involving pro se litigants where summary judgment has been denied	May seek reimbursement for necessary and reasonable expenses not exceeding \$3000
W.D. Tenn. <sup>319</sup>	Volunteer attorneys who are members in good standing of the bar	Clerk randomly selects panel member from list  Attorney may decline appointment, and must specify the reason	Civil cases involving pro se indigent parties	May seek reimbursement from the Pro Bono Expense Fund not exceeding \$3000 per case, with an additional \$2000 permitted if

317. See U.S. DIST. CT.: DIST. OF R.I., *supra* note 213.

318. See *Volunteer Pro Bono Opportunities*, U.S. DIST. CT.: DIST. OF S.C., <http://www.scd.uscourts.gov/Attorney/ProBono.asp> [<https://perma.cc/VYE9-DB5D>] (last visited Apr. 2, 2022).

319. See U.S. DIST. CT.: W. DIST. OF TENN., THE PLAN FOR APPOINTMENT OF COUNSEL FOR PRO SE INDIGENT PARTIES IN CIVIL CASES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE (2016), <https://www.tnwd.uscourts.gov/pdf/content/CivilProBonoPlan.pdf> [<https://perma.cc/C8AR-PK8L>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		Judge has discretion to select a nonpanel attorney		authorized by the presiding judge  Reimbursements up to \$5000 are allowed if authorized by the court sitting en banc
N.D. Tex. <sup>320</sup> (limited to the Dallas Division)	Volunteer attorneys (specifies that no federal litigation experience is necessary)	Magistrate judge selects panel attorney  May decline to accept the appointment for a variety of enumerated reasons	Civil cases involving indigent pro se litigants	May seek reimbursement for expenses not exceeding \$3500
W.D. Tex. <sup>321</sup> (limited to San Antonio Division)	All attorneys in private to practice admitted in the San Antonio Division are placed on one of three panels (A+, A, or B panels), which determines their appointment in civil cases	The court appoints an attorney from the A+ panel; if no attorney is available or appropriate, the court may appoint an attorney from the A panel, and similarly if no attorney is	Civil cases involving indigent parties	May seek reimbursement for attorney's fees up to \$5000 and expenses up to \$5000

320. See *Pro Bono Civil Panel Information*, U.S. DIST. CT.: N. DIST. OF TEX., <https://www.txnd.uscourts.gov/pro-bono-civil-panel-information> [https://perma.cc/CQ7N-LPQ8] (last visited Apr. 2, 2022); *Pro Bono FAQs*, U.S. DIST. CT.: N. DIST. OF TEX., <https://www.txnd.uscourts.gov/faq/pro-bono-faq> [https://perma.cc/JTZ3-NN84] (last visited Apr. 2, 2022); *Pro Bono Plan for Reimbursement*, U.S. DIST. CT.: N. DIST. OF TEX., <https://www.txnd.uscourts.gov/pro-bono-plan-reimbursement> [https://perma.cc/UB5E-VELT] (last visited Apr. 2, 2022).

321. See Appointment of Counsel to Represent Indigent Parties in Civil Cases, Standing Order Establishing A+, A, and B Panels for Civil Appointments in the San Antonio Division and Supplementing Amended Plan for Reimbursement of Counsel (W.D. Tex. Mar. 24, 2021), <https://www.txwd.uscourts.gov/wp-content/uploads/2021/03/CivilProBonoPanelOrder032421.pdf> [https://perma.cc/CBS5-8FC9].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		<p>available, from the B panel</p> <p>The court can also assign counsel regardless of panel placement in certain cases</p> <p>May withdraw for good cause or if appointed to another case currently or within a specified time frame</p>		
W.D. Va. <sup>322</sup>	Volunteer attorneys	<p>Pro Bono Coordinator appoints attorney not currently handling a case in a rotating order</p> <p>Appointment may only be declined because of conflict of interest; lack of experience; personal incompatibility; party is proceeding to harass; claims or defenses</p>	Civil cases involving indigent pro se parties	May seek reimbursement for expenses not exceeding \$2500 per case

322. See U.S. DIST. CT.: W. DIST. OF VA., PLAN FOR APPOINTMENT OF COUNSEL FOR INDIGENT PARTIES IN CIVIL CASES (2018), <http://www.vawd.uscourts.gov/media/31964396/plan-for-appointment-counsel-indigent-parties-civil-cases.pdf> [<https://perma.cc/7UNR-66ZB>].

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
		cannot be supported in good faith		
E.D. Wash. <sup>323</sup>	Volunteer attorneys	Bar association selects attorney from the panel  May decline if conflict of interest	Civil cases involving indigent pro se parties	May seek reimbursement for expenses not exceeding \$2500
W.D. Wash. <sup>324</sup>	Volunteer attorneys who are admitted to practice in the district	Clerk selects attorney from the panel  The attorney must confirm no conflict of interest	Civil rights cases involving pro se litigants	May seek reimbursement for up to \$4500 in pretrial expenses and an additional amount of up to \$4500 for trial expenses
E.D. Wis. <sup>325</sup>	Volunteer attorneys	No ongoing panel commitment; the court will email attorneys who recently appeared in the district	Civil cases involving a pro se litigant	May seek reimbursement up to \$5000

323. See Plan of the U.S. District Court for the Eastern District of Washington for the Representation of Indigent Pro Se Litigants in Civil Cases, General Order No. 16-114-1 (E.D. Wash. May 31, 2016), [https://www.waed.uscourts.gov/sites/default/files/general-ordes/16-114-1\\_0.pdf](https://www.waed.uscourts.gov/sites/default/files/general-ordes/16-114-1_0.pdf) [<https://perma.cc/UQR4-AT6P>].

324. See General Order No. 16-20, *supra* note 213.

325. See U.S. DIST. CT. FOR THE E. DIST. OF WIS., REGULATIONS GOVERNING THE PREPAYMENT AND REIMBURSEMENT OF EXPENSES IN PRO BONO CASES FROM THE DISTRICT COURT PRO BONO FUND, <https://www.wied.uscourts.gov/sites/wied/files/documents/Pro%20Bono%20Fund%20-%20Regulations-2-17.pdf> [<https://perma.cc/M3TZ-CDK5>]; *Pro Bono Program*, U.S. DIST. CT.: E. DIST. OF WIS., <https://www.wied.uscourts.gov/pro-bono-program> [<https://perma.cc/ZBX8-35R5>] (last visited Apr. 2, 2022); *Recruiting Pro Bono Attorneys*, U.S. DIST. CT.: E. DIST. OF WIS., <https://www.wied.uscourts.gov/recruiting-pro-bono-attorneys> [<https://perma.cc/4MFV-E5FT>] (last visited Apr. 2, 2022).

COURT	COMPOSITION	SELECTION	CASES	EXPENSES
W.D. Wis. <sup>326</sup>	Volunteer Attorneys	Maintained by the district's bar association	Civil cases involving indigent parties	May seek reimbursement up to \$4000 from bar association fund

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326. See W. DIST. OF WIS. BAR ASS'N PRO BONO FUND, INC., PROCEDURES FOR REIMBURSEMENT OF EXPENSES TO COURT-RECRUITED COUNSEL, [https://www.wiwd.uscourts.gov/sites/default/files/Reimbursement\\_Guide.pdf](https://www.wiwd.uscourts.gov/sites/default/files/Reimbursement_Guide.pdf) [<https://perma.cc/CD4T-NUVM>]; *Pro Bono Representation*, U.S. DIST. CT.: W. DIST. OF WIS., <https://www.wiwd.uscourts.gov/pro-bono-representation> [<https://perma.cc/C9BG-ZCGJ>] (last visited Apr. 2, 2022).