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Overstepping Ethical Boundaries? Limitations on State Efforts To Provide Access to Justice in Family Courts

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OVERSTEPPING ETHICAL BOUNDARIES? LIMITATIONS ON STATE EFFORTS TO PROVIDE ACCESS TO JUSTICE IN FAMILY COURTS

Jessica Dixon Weaver*

Family law courts in America are overwhelmed with self-represented parties who try their best to navigate an unfamiliar territory laden with procedural and evidentiary rules. Efforts to level the playing field in these courts have resulted in state entities and judges taking on roles that previously belonged to attorneys. State supreme court judges and state agencies draft and promulgate family law forms, such as divorce pleadings and paternity acknowledgments, to provide poor citizens access to justice. While these efforts have resulted in positive outcomes for some families, reliance on the state's imprimatur has caused significant harm to others. Upon closer examination, the state has not adhered to the same ethical standards that ordinarily apply to judges and attorneys with regard to the development and dissemination of these forms. This Article is the first to explore whether state courts and agencies have overstepped ethical boundaries and subverted public interest to satisfy private interests of the state as regulator. It argues that these state forms are poor substitutes for attorneys and that the complexities of family law continue to warrant legal counsel in our current adversarial court practice.

TABLE OF CONTENTS

INTRODUCTION.....	2706
I. FAMILY COURT OVERLOAD.....	2708
A. <i>The Proliferation of Family Court Cases and the Rise of Pro Se Litigants</i>	2708
B. <i>The Complexities of Family Law</i>	2712

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II. STATE LEGAL FORMS AS ACCESS TO JUSTICE	2715
A. <i>A Summary of State Supreme Court–Approved Divorce Pro Se Forms</i>	2716
B. <i>A Summary of the Voluntary AOP Process in the United States</i>	2719
C. <i>The Pros and Cons of State-Sponsored Self-Help Legal Forms</i>	2721
III. ETHICAL BOUNDARIES OVERSTEPPED	2725
A. <i>Reliance on the State’s Imprimatur</i>	2725
B. <i>Limitations of the Judicial Canon</i>	2726
1. <i>A Judge’s Role</i>	2727
2. <i>Extrajudicial Activities and Conflicts of Interests</i>	2731
3. <i>Practice of Law</i>	2732
C. <i>Limitations on the State’s Attorney</i>	2734
1. <i>Who Is a State Agent?</i>	2734
2. <i>Communication and Incomplete Disclosure</i>	2736
3. <i>“Advising” Versus “Informing”—Unauthorized Practice of Law</i>	2737
IV. ETHICAL BOUNDARIES RESET.....	2742
A. <i>Why Lawyers Are Still Necessary in Family Law Practice</i>	2743
B. <i>True Access to Justice Versus State Interests</i>	2743
C. <i>Lawyer-Inclusive Solutions for Access to Justice</i>	2745
1. <i>Family Law Forms</i>	2746
2. <i>Acknowledgements of Paternity</i>	2746
CONCLUSION	2747
APPENDIX A. LIST OF STATES AND PRO SE FAMILY LAW FORMS	2749

INTRODUCTION

Family law courts in America are overwhelmed with self-represented parties who try their best to navigate an unfamiliar territory laden with procedural and evidentiary rules. Efforts to level the playing field in these courts have resulted in state entities and judges taking on roles that previously belonged to attorneys. State supreme court judges and state agencies draft and promulgate family law forms, such as divorce pleadings and paternity acknowledgments, to provide poor citizens with access to justice. While these efforts have resulted in positive outcomes for some families, the reliance on the state’s imprimatur has caused significant harm to others. Upon closer examination, the state has not adhered to the same ethical standards that would ordinarily apply to judges and attorneys with regard to the development and dissemination of these forms.

This Article is the first to explore whether state courts and agencies have overstepped ethical boundaries in their efforts to provide access to justice in the family court system. Challenges to lawyers’ monopoly of the legal system and the U.S. Supreme Court’s continuous rejection of a right to

counsel in civil cases have led to the creation of many avenues for pro se legal assistance. The public has relied on state-sponsored forms as a secure, acceptable way to engage in the court process. Exploration of the ethical limitations on a proactive judiciary and state-provided nonlawyer assistance has been overlooked in scholarly literature about access to justice. This Article explores the applicable judicial and ethical rules and whether state courts and agencies should have boundaries for the delivery of legal forms for the public at large. Ultimately, this Article argues that these state forms are poor substitutes for attorneys and that the complexities of family law render legal counsel necessary in our current adversarial court practice.

Many questions arise from the state's involvement in providing legal forms ordinarily drafted by attorneys. Is there an inherent conflict of interest where the state's highest judicial body, structured to determine the law, also drafts the legal forms used to petition the state judicial body? Are judges who review and approve divorce forms for pro se petitioners stepping out of their roles as judges and inappropriately wearing an advocate's hat, thereby violating their ethical obligations to state citizens? Should there be a state-generated form to establish paternity without a full explanation of the meaning of parental rights and the duties and obligations that ensue? Can the state effectively authorize a nonlawyer agent to execute a paternity acknowledgment without lawyer supervision?

This Article proceeds in four Parts. Part I of this Article addresses the issue of outsourcing the practice of family law to state judges and agencies. It provides background data regarding the proliferation of family court cases and the increased number of pro se litigants in the United States, the majority of whom appear in family courts.

Part II includes an overview of the use of legal forms in family law, specifically voluntary Acknowledgments of Paternity (AOP) forms and divorce pro se forms that state supreme courts have approved. This Part further highlights the advantages and disadvantages of outsourcing family law to the state and nonlawyer state agents.

Part III of the Article examines ethical questions regarding the highest state judiciary's active participation in providing legal assistance for pro se litigants in family law cases. Specifically, this Part explores the judge's role, extrajudicial activities, and appointments to government positions to determine if serving as drafters or approvers of court pleadings poses a conflict of interests for state supreme court judges. Part III also explores the specific ethical issues for state agencies that provide oversight for the voluntary acknowledgment of paternity process in hospitals and birthing centers. This Part considers whether hospital staff members are in fact state agents under the American Bar Association's (ABA) Model Code of Professional Conduct, and if limitations placed on their communication with unwed parents are ethically appropriate and properly supervised.

Part IV addresses the need for family law attorneys because of the various complexities in the field. This Part analyzes whether the states' interests in efficiency and reducing expenditures should subvert the interests of citizens to make fully informed choices regarding their

fundamental and statutory rights as married persons and parents. This Part also describes why lawyers are a more ethical and equitable choice for the public and how lawyer-inclusive solutions for access to justice can work to serve the growing number of pro se family law litigants. The Article concludes with considerations for reinventing how lawyers serve the public, to address job shrinkage in the field of law and encroachments on the monopoly of law practice.

I. FAMILY COURT OVERLOAD

In order to give context to states' efforts to provide access to the court system for everyday citizens, it is important to consider the rise in litigation among families and the impediments to legal representation. This Part sets forth the reasons people represent themselves in court, the lack of sufficient funding for legal aid to the poor, the lack of judicial support for court-appointed counsel in family law cases, and the response of state and national bar associations to the needs of pro se litigants. This Part also reviews the complexities of family law, specifically noting the intersection of legal and other professional fields with family law, the growth in diverse family composition, and the impact of federal laws and globalization on the practice of family law. Part I concludes with observations regarding the nature of family law cases and how a lawyer's knowledge and experience can be vital to successful resolution of a client's case.

A. *The Proliferation of Family Court Cases and the Rise of Pro Se Litigants*

Since the 1970s, American court systems have experienced a significant increase in the number of persons who appear in court pro se.¹ Family court has the highest number of litigants without legal representation.² In family court, parties appear pro se in a variety of cases, including divorce,

1. See DEBORAH L. RHODE, ACCESS TO JUSTICE 82 (2004); Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 1987 (1999); Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 LEWIS & CLARK L. REV. 439, 441–42 (2009); Richard W. Painter, *Pro Se Litigation in Times of Financial Hardship—A Legal Crisis and Its Solutions*, 45 FAM. L.Q. 45, 45–46 (2011).

2. See Deborah J. Chase, *Pro Se Justice and Unified Family Courts*, 37 FAM. L.Q. 403, 404–05 (2003); Randall R. Shephard, *The Self-Represented Litigant: Implications for the Bench and Bar*, 48 FAM. CT. REV. 607, 611 (2010) (noting that some reports estimate that 80 to 90 percent of family law cases involve at least one self-represented litigant); Richard Zorza, *An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue*, 43 FAM. L.Q. 519, 520 (2009) (noting that in California, 80 percent of petitioners are self-represented by the time the case is closed). Since the 1980s, the rate of cases in which one party was without counsel more than doubled in a number of states, including Arizona and California. Chase, *supra*, at 404–05. By the 1990s, the rates of cases in which at least one party was unrepresented were as high as 77 percent in Washington, 80 percent in Massachusetts, 89 percent in Oregon, and 90 percent in Baltimore, Maryland. *Id.*

paternity, child support, legal separation, and nullity cases.³ Research shows that this rise in self-representation stems from a myriad of factors, including an inability or unwillingness to pay for a lawyer, an attitude toward self-help and control over problem solving, and a negative attitude toward lawyers' ability and desire to make the court process simpler and less painful.⁴

Resources available for pro se litigants in individual states varied until the late 1990s, when more state bar associations and judiciary groups gathered to address how to deal with the dramatic growth of pro se litigants.⁵ While the federal government provides funds to support legal aid to the poor, the money available for these services has been significantly reduced over the past two decades.⁶ The Legal Services Corporation (LSC) is the largest single source of civil service funding in the United States for the poor.⁷ The \$355 million in funds from LSC and \$528 million in funds from other nonprofit organizations are still insufficient to meet the needs of those who cannot afford legal counsel.⁸ In addition to the high number of income-eligible poor applicants who are denied legal aid, middle-income people also have unmet legal needs and cannot afford an attorney for complex benefits, employment, family, and property issues.⁹

Additionally, the Supreme Court has not recognized the need for or required the provision of counsel in civil court cases involving family law issues. In *Lassiter v. Department of Social Services*,¹⁰ the Supreme Court

3. See CHARLES P. KINDREGAN, JR. & PATRICIA A. KINDREGAN, *PRO SE LITIGANTS: THE CHALLENGE OF THE FUTURE* 11 (1999).

4. See OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, *SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES* 7–8 (2005); Landsman, *supra* note 1, at 443–47.

5. See, e.g., BOS. BAR ASS'N TASK FORCE ON UNREPRESENTED LITIGANTS, *REPORT ON PRO SE LITIGATION* 1 (1998), available at <http://www.bostonbar.org/prs/reports/unrepresented0898.pdf>; KINDREGAN & KINDREGAN, *supra* note 3, pt. I, at 1; N.H. SUPREME COURT TASK FORCE ON SELF-REPRESENTATION, *CHALLENGE TO JUSTICE: A REPORT ON SELF-REPRESENTED LITIGANTS IN NEW HAMPSHIRE COURTS* 1–3 (2004), available at www.courts.state.nh.us/supreme/docs/prosereport.pdf; OFFICE OF THE STATE COURTS ADM'R FLA. SUPREME COURT, *A NATIONAL CONFERENCE ON PRO SE LITIGATION FLORIDA TEAM REPORT* 1–4 (2000), available at www.flcourts.org/core/fileparse.php/260/urlt/arizonareport.pdf; SUPREME COURT OF OHIO, *REPORT AND RECOMMENDATIONS OF THE SUPREME COURT TASK FORCE ON PRO SE & INDIGENT LITIGANTS* 1 (2006), available at www.supremecourt.ohio.gov/Publications/prose/report_april06.pdf; Painter, *supra* note 1, at 45–46.

6. Drew A. Swank, *In Defense of Rules and Roles: The Need To Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537, 1543 (2005) (noting that the federal government has reduced funding to support legal services to the poor by one-third).

7. Quintin Johnstone, *Law and Policy Issues Concerning the Provision of Adequate Legal Services for the Poor*, 20 CORNELL J.L. & PUB. POL'Y 571, 579 (2011).

8. *Id.*; see also LEGAL SERVS. CORP., *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 3 (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf (noting that less than one-fifth of low-income people's legal needs are being met).

9. See Emily A. Spieler, *The Paradox of Access to Civil Justice: The "Glut" of New Lawyers and the Persistence of Unmet Need*, 44 U. TOL. L. REV. 365, 370–71 (2013).

10. 452 U.S. 18 (1981).

held that the Constitution did not entitle a parent facing termination of parental rights to the appointment of counsel.¹¹ The most recent case before the high court, *Turner v. Rogers*,¹² affirmed the Supreme Court's reluctance to expand the right to court-appointed counsel in a civil proceeding, specifically in a father's child support hearing where there was risk of incarceration.¹³ The Court did find, however, that the lower court needed to help pro se litigants navigate the process themselves.¹⁴

The response to the rise of pro se litigants within family court is extensive and varied. For many reasons, state organizations, including supreme courts, state attorneys general, and other state child support agencies, have come together to determine how to provide indigent persons equal access to family law courts.¹⁵ Changes in technology have increased the number of avenues through which the public can access information, become educated on legal topics, manage their own cases, and obtain help from courts.¹⁶ The range of low-cost or free assistance for pro se litigants runs the gamut—from court forms with instructions to pro bono attorney support for pro se programs.¹⁷ The ABA offers a user-friendly section on its website that highlights what each state offers for pro se litigants and provides links to state guidelines and forms.¹⁸ State bar associations, judges' organizations, and court administrators' organizations have held conferences and formed committees and commissions to consider the alternatives available for self-represented persons.¹⁹ Self-help kiosks, pro

11. *Id.* at 33.

12. 131 S. Ct. 2507 (2011).

13. *Id.* at 2520. There were three basic reasons for not recognizing a civil right to counsel: (1) the complexity of the case as well as the need for a lawyer varies in different cases; (2) lawyers often delay civil proceedings and are excessively formalistic; and (3) less intrusive alternatives to court appointed counsel, such as pro se legal assistance, are available. Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PA. L. REV. 967, 982 (2012).

14. *Turner*, 131 S. Ct. at 2512. The majority noted that in child support proceedings, courts may provide this assistance by (1) giving notice that ability to pay is a key issue; (2) asking defendants to fill out financial disclosure forms; (3) allowing defendants to respond to questions about their finances; and (4) making express findings regarding defendants' ability to pay. *Id.* at 2519.

15. See Jona Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance*, 40 FAM. CT. REV. 36, 36–37 (2002); Bonnie Hough, *Self-Represented Litigants in Family Law: The Response of California's Courts*, 1 CALIF. L. REV. CIRCUIT 15, 17 (2010); Zorza, *supra* note 2, at 520; see also Margaret B. Flaherty, Note, *How Courts Help You Help Yourself: The Internet and the Pro Se Divorce Litigant*, 40 FAM. CT. REV. 91, 93 (2002).

16. AYN H. CRAWLEY, MD. LEGAL ASSISTANCE NETWORK, HELPING PRO SE LITIGANTS TO HELP THEMSELVES 4 (n.d.) (on file with *Fordham Law Review*).

17. *Id.*

18. See *Pro Se Resources by State*, A.B.A., http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/pro_se_resources_by_state.html (last updated Mar. 7, 2014).

19. See, e.g., COMM. ON RES. FOR SELF-REPRESENTED PARTIES, STRATEGIC PLANNING INITIATIVE REPORT TO THE JUDICIAL COUNCIL (2006) available at http://utah.ptfs.com/awweb/guest.jsp?smd=1&cl=all_lib&lb_document_id=14650; OFFICE OF THE STATES COURT ADM'R FLA. SUPREME COURT, *supra* note 5, at 1–4; 2009 *Self-*

bono clinics, training of court clerks and administrators, and training of judges have been common solutions to what is now considered a standard part of the family civil court process.

The ABA has also opined as to how judges can assist self-represented persons in court. It revised the ABA Model Code of Judicial Conduct to give judges the authority to provide “reasonable accommodations” to pro se litigants.²⁰ This rule allows state supreme courts and judicial ethics committees to provide judicial recommendations regarding court protocol for handling communications with pro se litigants and for fairly and efficiently processing the court docket. In addition, the ABA has issued several reports, including *Justice in Jeopardy*, which identified the need for the legal profession to reconsider the role of judges and the guidelines provided to them with regard to impartially conducting court hearings and trials when one party is unrepresented and the other has legal counsel.²¹

It is legitimate to question why lawyers are necessary for certain mundane, transactional tasks that could be completed by a well-trained layperson or even an informed citizen. In some instances, courts rightfully encourage citizens to represent themselves, because the self-representation allows for a more efficient administration of justice. Particular legal disputes, such as simple contracts, landlord-tenant issues, or even uncontested divorces, could be settled without the use of attorneys. However, while many uncontested divorces initially appear simple, they are often more complicated at second glance. Family law legal disputes are frequently far more complicated than everyday transactional disputes between strangers because family law issues involve emotional bonds between adults and children. The simplest divorce is usually one where a couple has been married for a short period of time, owns no real property, has no children, and both parties agree to the split. But even splitting up holiday decorations and deciding who gets the dog can become complicated.²²

Represented Litigants Conference, CAL. JUD. BRANCH, <http://www.courts.ca.gov/partners/141.htm> (last visited Apr. 26, 2014).

20. See MODEL CODE OF JUDICIAL CONDUCT R. 2.2 cmt. 4 (2010).

21. See AM. BAR ASS'N, JUSTICE IN JEOPARDY: REPORT OF THE AMERICAN BAR ASSOCIATION COMMISSION ON THE 21ST CENTURY JUDICIARY 40–41 (2003).

22. Anecdotally, my solo law practice included “simple, uncontested” divorces. I represented a young couple with no children and no real property, married for less than ten years, and they fought hard over Christmas decorations and other small items purchased for their apartment. Another couple fought over a pet dog that was a gift from the wife to the husband. See Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. AM. ACAD. MATRIMONIAL L., 1, 10 (2006) (citing *In re Marriage of Stewart*, 356 N.W.2d 611 (Iowa Ct. App. 1984) (awarding to the husband during divorce proceedings a dog that the husband gifted to the wife)); John DeWitt Gregory, *Pet Custody: Distorting Language and the Law*, 44 FAM. L.Q. 35 (2010) (same). The wife was the primary caretaker of the dog, and she wanted to keep the pet after the divorce.

B. The Complexities of Family Law

Often attorneys and laypersons underestimate the complexities of family law. Generally, family law is thought of as “touchy, feely” law centered on relationships, primarily the dissolution of marriages. In reality, family law is more varied and encompasses a host of legal issues, including paternity establishment, child visitation and support, child abuse and neglect, criminal law, probate law, bankruptcy, employment, and tax law.²³ Family law is transubstantive,²⁴ and the family law practitioner must be well versed in diverse areas of law in order to provide competent and comprehensive representation to clients.²⁵

Family law is also made more complex because of the diverse composition of families today. Whereas in the past just one nuclear unit consisting of a husband, wife, and children was typical, now several different types of families exist, ranging from blended, nonmarital, multigenerational, and same-sex families to immigrant families with both noncitizen and citizen members.²⁶ Adoption and assisted reproduction technology also complicate the practice of family law because of the new ways that families can be created and the competing rights of biology and function among parents.²⁷

The function of the federal government and states within the private domain of families has changed over time and added another layer of complexity to the practice of family law.²⁸ Federal legislation, such as the Violence Against Women Act of 1994²⁹ (VAWA), the Child Abuse Prevention and Treatment Act³⁰ (CAPTA), and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,³¹ has had a significant impact on parents and children.³² These laws have resulted in steady

23. Barbara Glesner Fines, *Fifty Years of Family Law Practice—The Evolving Role of the Family Law Attorney*, 24 J. AM. ACAD. MATRIMONIAL L. 391, 395–403 (2012).

24. Jessica Dixon Weaver, *Grandma in the White House: Legal Support for Intergenerational Caregiving*, 43 SETON HALL L. REV. 1, 5 (2013) (“[T]he laws that apply to family structure and conduct extend beyond state family codes.”).

25. See Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 UMKC L. REV. 965, 968 (2007); Mary E. O’Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 524, 525 (2006).

26. See Glesner Fines, *supra* note 23, at 392–95.

27. See *id.* at 394–95.

28. See Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 782–83 (1997).

29. Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 16, 18, and 42 U.S.C.).

30. Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified as amended in scattered sections of 42 U.S.C.).

31. Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 7, 8, 21, 25, and 42 U.S.C.).

32. See ROB GEEN & KAREN C. TUMLIN, STATE EFFORTS TO REMAKE CHILD WELFARE: RESPONSES TO NEW CHALLENGES AND INCREASED SCRUTINY 20–22 (1999), available at www.urban.org/uploadedPDF/ACF3E.pdf; Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes To Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER & L. 101, 148–49 (2004); Samuel V.

increases in state-initiated lawsuits in both criminal and family law courts. This growth in the regulation of domestic violence, child abuse and neglect, and child support has prompted the development of specialty courts to handle the volume of cases involving these three issues.³³ In many specialty courts, forms assist pro se litigants, enabling the state and court to move the case more quickly through a government process designed to offer legal and physical protection and financial support for women and children.

In addition to developing knowledge and expertise in a variety of overlapping legal fields, the family law practitioner must also have a basic understanding of social work, psychology, psychiatry, and child development.³⁴ As indicated above, the recognition of abuse and neglect within families involves a nonlegal dimension, which requires attorneys to rely on assistance from experts in other disciplines.³⁵ Most child custody cases involve home studies that social workers perform, psychological evaluations of parents and children, and parenting plans, which lawyers and mental health professionals may develop collaboratively.³⁶ Many of the problems facing family law attorneys are relationship oriented, which ultimately means that attorneys must also be counselors, handling their clients' emotions and interpersonal problems in order to effectively manage cases.³⁷ A growing practice area is collaborative family law, a diplomatic method designed to capitalize on the expertise of mental health professionals and mediators to work towards resolution of family matters without judicial intervention.³⁸

Globalization has also affected the domestic practice of family law because an increasing number of family law practitioners find familiarity with international family law necessary to serve their clients.³⁹ The

Schoonmaker, IV, *Consequences and Validity of Family Law Provisions in the "Welfare Reform Act,"* 14 J. AM. ACAD. MATRIMONIAL L. 1, 3–4 (1997).

33. See LAWRENCE BAUM, *SPECIALIZING THE COURTS* 22 (2011).

34. Joan B. Kelly & Mary Kay Kisthardt, *Helping Parents Tell Their Children About Separation and Divorce: Social Science Frameworks and the Lawyer's Counseling Responsibility*, 22 J. AM. ACAD. MATRIMONIAL L. 315, 328 (2009); Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1296–97 (1993).

35. See O'Connell & DiFonzo, *supra* note 25, at 537–38.

36. See Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 100 (1997); see also Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, CLINICAL L. REV., Fall 2000, at 227, 228–29.

37. See Glesner Fines & Madsen, *supra* note 25, at 968 (noting that the problems that clients bring to family law attorneys are about people and relationships, and "[a]s a consequence, a client's emotions and attitudes are central to problem solving and planning"); Kelly & Kisthardt, *supra* note 34, at 327 ("[L]awyers must understand and be ready to explain to their clients various ways to address their family-related problems.").

38. See Sherrie R. Abney, *The Evolution of Civil Collaborative Law*, 15 TEX. WESLEYAN L. REV. 495, 497 (2009); Elizabeth F. Beyer, Comment, *A Pragmatic Look at Mediation and Collaborative Law As Alternatives to Family Law Litigation*, 40 ST. MARY'S L.J. 303, 316–20 (2008).

39. See Barbara Stark, *When Globalization Hits Home: International Family Law Comes of Age*, 39 VAND. J. TRANSNAT'L L. 1551, 1553–55 (2006).

intersection of immigration and family law is a growing practice area because of the high number of immigrants and their children who become entangled in custody, deportation, and kidnapping cases.⁴⁰ Expanding employment markets abroad and a history of wars over the last century have also increased the number of couples from different continents and children shared between world citizens.⁴¹

In family law, legal problems within the family often persist beyond the legal resolution of a case. Most family relationships continue long after the case is over. Accordingly, during the course of a representation, family law attorneys not only must consider these lifetime relationships but also must anticipate future legal issues.⁴² For example, when a married or cohabitating couple with children split, child support and visitation may ensue for almost two decades, over which period there will often be changes between the parties' status and financial situation that bring them back to court.

The use of forms in today's more complex family law practice can further complicate matters before the court. While research has shown that self-help kits and nonlawyers can be as valuable and less expensive than family lawyers,⁴³ the utility of these documents and individuals is limited.⁴⁴ In particular, the forms and nonlawyers are unable to detect ethical issues that might arise because of conflicts of interest and cannot analyze a particular set of facts to provide specific legal advice. Lawyers who have the experience and knowledge gained from years of practice offer invaluable insight for accomplishing a client's objective.

For example, a family lawyer would likely advise an unmarried man considering voluntarily establishing paternity through a state form to obtain genetic testing first before legally obligating himself to a child that may not be biologically his. Unlike a prospective father emotionally overwhelmed by witnessing the birth of a new baby, an attorney is able to present an objective, rational analysis of the far-reaching consequences of a hasty decision.

An attorney is also able to explain fully the rights and responsibilities that come with executing an AOP and becoming a child's legal father. Even if a man read through most state family code sections that explain the

40. See Nicole Lawrence Ezer, *The Intersection of Immigration Law and Family Law*, 40 FAM. L.Q. 339 (2006); see also David B. Thronson, *Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts*, 11 TEX. HISP. J.L. & POL'Y 45, 53, 71–72 (2005).

41. See Table XVI(A), *Classes of Nonimmigrants Issued Visas (Including Crewlist Visas and Border Crossing Cards) Fiscal Years 2009–2013*, TRAVEL.STATE.GOV, <http://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2013AnnualReport/FY13AnnualReport-TableXVIA.pdf> (last visited Apr. 26, 2014); see also Stark, *supra* note 39, at 1554–55.

42. See Clare Huntington, *Repairing Family Law*, 57 DUKE L.J. 1245, 1281–82 (2008).

43. See Ralph C. Cavanagh & Deborah L. Rhode, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 YALE L.J. 104, 109–10 (1976).

44. Helen B. Kim, *Legal Education for the Pro Se Litigant: A Step Towards a Meaningful Right To Be Heard*, 96 YALE L.J. 1641, 1643 (1987).

duties and obligations of parenthood, he would not find a statement that says “failure to pay child support may result in incarceration, loss of your business license, and lowering of your credit rating.” Detailed knowledge of how state child support laws impact parental duties is a topic with which family law attorneys are intimately familiar because it is such a common family law issue. Educating clients and equipping them with information helps families work together more effectively and can often help avoid disastrous outcomes.⁴⁵

II. STATE LEGAL FORMS AS ACCESS TO JUSTICE

Legal forms in family law cases like divorce and child custody have become quite routine with the extraordinary high number of pro se litigants in family courts. These forms are available for purchase in stores like Office Depot and Wal-Mart or on websites like famous attorney Robert Shapiro’s LegalZoom,⁴⁶ U.S. Legal Forms,⁴⁷ and All Law.⁴⁸ Although the forms are plentiful, pro se litigants often encounter problems when filling out numerous forms and are overwhelmed because of poor instructions for drafting and filing the forms.⁴⁹ Many of the privately generated forms are incorrect.⁵⁰ With respect to family law, states solved these problems, in part, by creating simple, standardized divorce forms.⁵¹

The primary reason for state-created family law forms is to provide simple, easy-to-use instructions and forms that are accurate, conform to

45. See *In re Paternity of an Unknown Minor*, 951 N.E.2d 1220, 1221 (Ill. App. Ct. 2011) (confronting an alleged biological father who brought an action to determine paternity after the presumptive father’s execution of voluntary acknowledgment of paternity); *In re M.M.*, 928 N.E.2d 1281, 1281–82 (Ill. App. Ct. 2010) (holding that a child was not estopped from challenging the presumed father’s paternity despite voluntary acknowledgment); *Wilson v. Cramer*, 317 S.W.3d 206, 207–08 (Mo. Ct. App. 2010) (addressing a situation where one man signed an AOP and paid child support for six years, only to find out that he was not the father of the child); see also Ruth Padawer, *Losing Fatherhood*, N.Y. TIMES, Nov. 22, 2009, § 6 (Magazine), at 38 (detailing stories and legal battles of men who were duped into believing that they were the father of children who were biologically related to a man with whom their wives had cheated). But in one case, a court allowed genetic testing after the statutory time limitation had passed where a putative father had previously executed a voluntary AOP. *State v. Kimbrel*, 231 P.3d 576 (Kan. Ct. App. 2010). The court found that the negative test rebutted the presumption of paternity and further held that the child’s best interests were served by ending the father-child relationship and denying a petition for child support. *Id.*

46. LEGALZOOM, <http://www.legalzoom.com> (last visited Apr. 26, 2014).

47. USLEGAL, <http://www.uslegalforms.com> (last visited Apr. 26, 2014).

48. ALLLAW.COM, <http://www.alllaw.com> (last visited Apr. 26, 2014).

49. Amy C. Henderson, *Meaningful Access to the Courts?: Assessing Self-Represented Litigants’ Ability To Obtain a Fair, Inexpensive Divorce in Missouri’s Court System*, 72 UMKC L. REV. 571, 575–76 (2003).

50. See Denise S. Owens, *The Reality of Pro Se Representation*, 82 MISS. L.J. SUPRA 147, 154 (2013).

51. Jona Goldschmidt, *Strategies for Dealing with Self-Represented Litigants*, 30 N.C. CENT. L. REV. 130, 130 (2008); Henderson, *supra* note 49, at 582; Robert B. Yegge, *Divorce Litigants Without Lawyers: This Crisis for Bench and Bar Needs Answers Now*, JUDGES’ J., Spring 1994, at 8, 10.

current state law, and accepted by family court judges.⁵² Other forms available for free in law libraries are too complex because they are intended for licensed practicing attorneys. State-generated forms are also helpful in states where pro bono or private attorneys can provide bundled services or limited legal assistance to indigent litigants.

The law on whether drafting legal forms is part of the practice of law is inconsistent across the United States. Each state has its own prescription for which actions constitute the unauthorized practice of law.⁵³ For the most part, states have been lenient toward for-profit corporations and states creating standardized forms.

Texas passed a statute in 2005 proclaiming that

“practice of law” does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney.⁵⁴

This law was the result of a State Bar of Texas challenge to Nolo Press, a leading legal manual publisher, for the unauthorized practice of law.⁵⁵ Some states have followed the ruling in this case,⁵⁶ while others have determined that the drafting of pleadings is a skill only for an attorney authorized to practice law.⁵⁷

A. *A Summary of State Supreme Court–Approved Divorce Pro Se Forms*

The majority of U.S. states provide divorce forms online: only eight states do not offer divorce, child custody, or other family law forms for their constituents.⁵⁸ Twenty-three states have standardized forms available for pro se litigants to use but are not clearly approved by the state’s

52. See Amendments to the Florida Family Law Rules of Procedure & Family Law Forms, 810 So. 2d 1, 1–2 (Fla. 2000).

53. See TASK FORCE ON THE MODEL DEFINITION OF THE PRACTICE OF LAW, REPORT app. A (2003), available at http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.authcheckdam.pdf.

54. TEX. GOV’T CODE ANN. § 81.101(c) (West 2005) (emphasis added).

55. Landsman, *supra* note 1, at 445.

56. See WASH. CT. GEN. R. 24; see also ARIZ. SUP. CT. R. 31(a).

57. See MO. REV. STAT. § 484.010 (West Supp. 2014); State *ex rel.* Comm’n on Unauthorized Practice of Law v. Yah, 796 N.W.2d 189, 191 (Neb. 2011); Hous. Auth. v. Key, 572 S.E.2d 284, 285 (S.C. 2002).

58. Arkansas, Colorado, Georgia, Illinois, Kentucky, Louisiana, Mississippi, and Virginia do not have any state standardized family law forms available for pro se use. See *infra* Appendix A.

supreme court.⁵⁹ Approximately seventeen states have supreme court–approved pro se divorce forms.⁶⁰

These states have developed the forms in a variety of ways. For example, in Michigan, the Supreme Court has approved the use of standardized divorce forms developed by the State Court Administrative Office (SCAO).⁶¹ In addition, county courts with specific divorce forms must allow use of the SCAO-approved divorce forms.⁶²

Many other state courts have used separate committees that were created to craft instructions and forms.⁶³ These committees have played an important role in the drafting, reviewing, and publicizing of pro se forms in various states. However, the degree of their involvement varies from state to state, and some states do not provide any information about how these forms were created or publicized.

Missouri provides an example of how a committee was used to vet the standardized divorce form. The pro se forms were initially created in a subcommittee of the Missouri Supreme Court Committee on Access to Family Courts.⁶⁴ Members of this committee include judges from around the state.⁶⁵ Once the subcommittee drafted and approved the form, it was then sent to the Committee on Access to Family Courts (CAFC).⁶⁶ The CAFC reviewed the form and suggested changes.⁶⁷ Once the CAFC

59. Alabama, Alaska, Arizona, California, Delaware, Hawaii, Idaho, Indiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin do have family law forms available for pro se litigants, but they are not approved by the states' highest court. *See infra* Appendix A.

60. California, Florida, Iowa, Kansas, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, West Virginia, and Wyoming are the states that have state supreme court–approved family law forms. *See infra* Appendix A.

61. *See* Press Release, Mich. Poverty Law Program, Solutions on Self-Help Task Force Announces Upcoming Public Launch of Michigan Legal Help Website; SCAO-Approved Divorce Forms To Be Included (n.d.), available at <http://courts.mi.gov/Administration/SCAO/Resources/Mailings/SelfHelp.pdf>.

62. *Id.*

63. *See* MD. JUDICIARY, CLEARING A PATH TO JUSTICE: A REPORT OF THE MARYLAND JUDICIARY WORK GROUP ON SELF-REPRESENTATION IN THE MARYLAND COURTS 2, 6 (2007) available at <http://apps.americanbar.org/legalservices/delivery/downloads/mdselfrepresentation0807.pdf>; TENN. SUPREME COURT ACCESS TO JUSTICE COMM'N, MEETING THE CHALLENGES OF SELF-REPRESENTED LITIGANTS: A BENCH BOOK FOR GENERAL SESSIONS JUDGES OF THE STATE OF TENNESSEE (2013), available at http://www.tbpr.org/NewsAndPublications/Bench_book_for_General_Sessions_Judges_regarding_Pro_Se_Litigants_May2013.pdf; WIS. PRO SE WORKING GRP., MEETING THE CHALLENGE OF SELF-REPRESENTED LITIGANTS IN WISCONSIN 6, 27–30 (2000), available at <https://www.wicourts.gov/publications/reports/docs/prosereport.pdf>; Suzanne Valdez, *Addressing the Pro Se Litigant Challenge in Kansas State Courts*, J. KAN. B. ASS'N, Apr. 2009, at 25, 28–29.

64. *Missouri Family Court Forms for Self-Represented Litigants*, FAM. CT. FORMS FOR SELF-REPRESENTED LITIGANTS, <http://www.selfrepresent.com/mo/Forms/cafc> (last visited Apr. 26, 2014).

65. *Id.*

66. *Id.*

67. *Id.*

approved the form, the Missouri Supreme Court Judicial Records Committee and the Missouri Supreme Court Family Court Committee further reviewed the form.⁶⁸ Next, the form returned to the CAFC, where it considered input from the other committees and amended the form accordingly.⁶⁹ The form was then submitted to the Missouri Supreme Court for review, approval, and subsequent amendments.⁷⁰ Once the Missouri Supreme Court approved the form, pro se litigants were required to use it.⁷¹

Some courts have supplemented standardized pro se family court forms with other avenues of assistance for self-represented parties. For example, in Utah, the staff at the Administrative Office of the Courts developed and managed a web-based program that provides forms to pro se parties.⁷² Following a 2005 study, the Utah Supreme Court interpreted the law in a way that now permits nonlawyers to provide pro bono “clerical assistance” to self-represented litigants when completing a standardized form provided by the court.⁷³ In 2007, the Utah state courts created self-help centers that provide legal information to litigants.⁷⁴

Family courts in Washington State have taken steps to meet the U.S. Supreme Court’s mandate in *Turner v. Rogers* by translating over 200 family law court forms into plain language.⁷⁵ The Pro Se Plan, developed by a wide array of participants, is quite comprehensive in scope; it provides an online self-help center and self-help centers in court houses, public libraries, community centers, domestic violence shelters, and other public gathering places.⁷⁶ In addition to forms and instructions, resources for assistance in completing the forms, including a local legal aid provider, an online chat-based assistant, or a toll-free number for assistance with a knowledgeable staff person (ideally an attorney), are also available.⁷⁷ Online translation services are a key component of the system.⁷⁸

Washington State has taken further innovative steps to assist pro se litigants, including the adoption of a limited scope representation rule and a “Limited Practice Rule for Limited License Legal Technicians.”⁷⁹ The first of its kind in the United States, the latter rule allows nonlawyers with certain training to provide technical help on simple legal matters, including selecting and completing court forms and identifying additional documents

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. Linda F. Smith & Barry Stratford, *DIY in Family Law: A Case Study of a Brief Advice Clinic for Pro Se Litigants*, 14 J.L. & FAM. STUD. 167, 171 (2012).

73. *Id.*

74. *Id.*

75. Charles R. Dyer et al., *Improving Access to Justice: Plain Language Family Law Court Forms in Washington State*, 11 SEATTLE J. FOR SOC. JUST. 1065, 1065–66 (2013).

76. *Id.* at 1078–79.

77. *Id.* at 1080.

78. *Id.*

79. *Id.* at 1089; see WASH. ADMISSION TO PRACTICE R. 28.

that may be needed in a court proceeding.⁸⁰ As states grapple with the continuous flow of self-represented parties in courts, many will be closely watching how these new laws work in Washington to determine if they should follow suit.

B. A Summary of the Voluntary AOP Process in the United States

Another commonly used state-generated form in family court is the AOP. This is a free document, usually executed after the birth of a nonmarital child to legally establish paternity for a man who either believes he is the biological father of a child or intends to serve as the legal father of a child. Voluntary AOPs are available in all fifty states, and are a distinct mandate of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996⁸¹ (PRWORA), which President William J. Clinton signed into law.

A major portion of this welfare reform act was targeted towards efforts to assign financial responsibility for children born out of wedlock to fathers, rather than to states and the federal government.⁸² In addition to implementing stricter guidelines for enforcement of child support payment, the law also required all states to approve stronger measures to establish paternity for nonmarital fathers.⁸³ The main features of the requirements placed on states include: (1) mandatory procedures for hospitals and birthing centers regarding the voluntary establishment of paternity after the birth of a child; (2) conditional placement of putative birth fathers' names on birth certificates only after signing a voluntary paternity acknowledgment or court adjudication of paternity; and (3) reciprocal provisions whereby the signing of a voluntary paternity acknowledgment is the equivalent of a legal finding of paternity by a court of law, and judicial ratification is not allowed to approve an unchallenged acknowledgment of paternity.⁸⁴

Prior to the federal AOP requirement, the legal procedure to establish paternity required filing a petition, genetic testing confirming the biological relationship between the father and child, and entry of a court order by a judge.⁸⁵ Alternatively, some states allow a putative father to execute an affidavit to establish paternity without the necessity of genetic testing.⁸⁶ But the putative father would still need to file a petition whereby the court could consider the affidavit to establish paternity, either in an ongoing

80. Dyer et al., *supra* note 75, at 1089–90.

81. 42 U.S.C. § 666 (2006).

82. See Laura Wheaton & Elaine Sorensen, *Reducing Welfare Costs and Dependency: How Much Bang for the Child Support Buck?*, 4 GEO. PUB. POL'Y REV. 23, 23 (1998); see also Roger J.R. Levesque, *Looking to Unwed Dads To Fill the Public Purse: A Disturbing Wave in Welfare Reform*, 32 U. LOUISVILLE J. FAM. L. 1, 2–4 (1993).

83. 42 U.S.C. § 666(a)(5).

84. *Id.* § 666.

85. See Child Support Enforcement Amendments of 1984, Pub. L. 98-378, 98 Stat. 1305 (codified as amended at 42 U.S.C. §§ 666–667); Family Support Act of 1988, Pub. L. 110-485, 102 Stat. 234 (codified as amended in scattered sections of 42 U.S.C.).

86. See CHILD WELFARE INFO. GATEWAY, THE RIGHTS OF UNMARRIED FATHERS 4 (2010), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/putative.pdf.

family law case or a case initiated to establish paternity and request child support. In either case, an attorney was usually necessary to litigate paternity cases, and for low-income and indigent citizens, the attorneys that the state child support agency or attorney general's office employed served as the legal representatives to accomplish this goal. These methods of establishing paternity are still available to putative fathers, but they require court appearances and take much longer than the AOP process.

Since the passage of PRWORA, states have received federal funding to secure the legal commitment of unwed fathers to their children.⁸⁷ The benefit for states is that the AOPs allow a shorter, cheaper way to obtain child support for children born outside of the private order of marriage. An additional incentive for the state and the unwed mother was PRWORA's new requirement under the Temporary Assistance for Needy Families (TANF) program that applicants for welfare must seek child support prior to being approved for state assistance.⁸⁸ Hospitals receive federal funds to administer the AOP process, and states, in turn, provide financial compensation to hospitals and birthing centers for each voluntary paternity acknowledgment executed.⁸⁹

The federal law was designed to capitalize on the social science research that determined that most unwed fathers are active in their children's lives for the first year after birth.⁹⁰ A "putative father must be given notice, orally, or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights . . . and responsibilities that arise from, signing the [paternity] acknowledgment."⁹¹ The law provides that mothers and fathers be given the "opportunity to speak with staff . . . who are trained to clarify information and answer questions about paternity establishment."⁹² In Texas, the attorney general's office grants certification or authorization to a hospital staff member or birthing center employee annually, requiring that they complete one three-hour training.⁹³ These staff members distribute the AOPs in the hospital, and they must speak with each mother and father about the opportunity to voluntarily acknowledge paternity.⁹⁴ Staff members are tasked with informing the putative father and birth mother about the legal rights and responsibilities of a parent pursuant to the state family law code, which are

87. See 42 U.S.C. § 603(a)(2).

88. See *id.* § 666(a)(5)(C)(iii)(l).

89. *Id.* § 666.

90. See Robert I. Lerman, *Capabilities and Contributions of Unwed Fathers*, FUTURE CHILD., Fall 2010, at 63, 74; see also Sara McLanahan & Audrey N. Beck, *Parental Relationships in Fragile Families*, 20 FUTURE CHILD., Fall 2010, at 17, 20–21.

91. 42 U.S.C. § 666(a)(5)(C)(i).

92. 45 C.F.R. § 303.5(g)(2)(i)(D) (2013).

93. See Letter from Ted White, Assistant Attorney Gen., Attorney Gen. of Tex., to author (Aug. 5, 2013) (on file with *Fordham Law Review*); see also *Child Support Community Services and Volunteer Program*, ATT'Y GEN. TEX., <http://www.oag.state.tx.us/child/outreach.shtml> (last visited Apr. 26, 2014).

94. 1 TEX. ADMIN. CODE § 55.407 (2013).

not listed in their entirety on any of the state-generated forms presented to the father.⁹⁵

This approach has become the state's best method for pursuing fathers for child support. But whether the practice of executing AOPs by hospital and birthing center staff members is legally ethical is questionable. A host of questions arise from this procedure, and though some of these questions are beyond the scope of this Article,⁹⁶ this Article will evaluate the critical question of whether states have been allowed to exercise a much more relaxed ethical standard in pursuing the "voluntary" paternity of nonmarital men in America.

C. *The Pros and Cons of State-Sponsored Self-Help Legal Forms*

Almost every U.S. state court or state bar organization has developed ways to provide legal assistance to individuals who cannot afford to hire attorneys. Rises in the number of divorces, children born out of wedlock, incidents of domestic violence, and nonmarital family disputes provide a steady flow of self-represented people in family courts. Outsourcing the practice of family law has become commonplace, and state courts have many incentives to offer assistance to unrepresented litigants.⁹⁷ Currently, the use of standardized family law forms has received mixed reviews, as some attorneys, judges, and other critics assert that these forms have done more harm than good.⁹⁸ Others believe these forms are working effectively and are a good solution to the problem of increasing pro se litigants.⁹⁹

Providing large numbers of pro se parties with some form of free legal assistance is a cost-benefit for state court judges and court administrators. State courts began creating forms because limited court resources are used inefficiently when judges must spend significant time dealing with laypersons who are unfamiliar with civil court procedures, rules of evidence, and professional and judicial rules of conduct.¹⁰⁰ Because of the proliferation of forms available to the public, state court judges had to deal with a variety of makeshift pleadings, many of which did not have proper

95. See JUNE GIBBS BROWN, PATERNITY ESTABLISHMENT: NOTIFICATION OF RIGHTS AND RESPONSIBILITIES FOR VOLUNTARY PATERNITY ACKNOWLEDGMENT 1–2 (1999), available at oig.hhs.gov/oei/reports/oei-06-98-00051.pdf; see also Jeffrey A. Parness & Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 U. BALT. L. REV. 53, 62–63 (2010).

96. *Father Chasers: State Ethical Violations in Paternity Establishment* is a separate work in progress by the author which provides a much more detailed analysis of the ethical violations presented by the PRWORA's mandatory paternity establishment process.

97. See Zorza, *supra* note 2, at 520.

98. For a list of pros and cons of standardized forms, see William A. Scott, Comment, *Filling in the Blanks: How Computerized Forms Are Affecting the Legal Profession*, 13 ALB. L.J. SCI. & TECH. 835, 838–57 (2003). See also Swank, *supra* note 6, at 1538–39.

99. See Dyer et al., *supra* note 75, at 1082–95; see also Benjamin P. Cooper, *Access to Justice Without Lawyers*, 47 AKRON L. REV. 205, 209 (2014) (advocating for usage of pro se forms to address problem with access to justice for low-income litigants).

100. See Nina Ingwer VanWormer, Note, *Help at Your Fingertips: A Twenty-First Century Response to the Pro Se Phenomenon*, 60 VAND. L. REV. 983, 998–99 (2007).

instructions.¹⁰¹ Judges have the unique position of being able to assess how to administer justice fairly, given the time allocated to them to handle the volume of cases on their dockets. One of the strongest arguments for court-approved forms is that the quality and uniformity of the documents will ensure more effective use of court time and administrative personnel time.

Other positive attributes of the state-sponsored forms are their ability to empower the public to handle their own legal affairs. In the area of family law, pro se litigants change their marital status without significant expense and sometimes more quickly than if they had a lawyer. This ability may help individuals exit a legal relationship, allowing them to remarry or even escape harm. A simpler procedure gives the person more control over his or her status, rather than practically requiring the individual to engage an attorney who may add unnecessary strain to an already difficult situation.

On the other hand, court clerks often report that many pro se litigants have trouble using the standardized divorce forms.¹⁰² Oftentimes, these pro se parties come into the clerk's office to ask for help and are unfortunately turned away¹⁰³ because the clerks must be exceedingly careful not to give pro se litigants legal advice.¹⁰⁴ Many judges and the county's chief clerk train clerks not to offer unauthorized advice about the law.¹⁰⁵

Many attorneys criticize the success rate of family law forms. First, solo and small-firm attorneys typically dislike standardized forms because they believe that forms reduce their business.¹⁰⁶ Second, other attorneys criticize the use of do-it-yourself divorce forms because they can potentially harm litigants if incorrectly filled out.¹⁰⁷ Third, attorneys fear that the legally represented party takes advantage of many pro se divorce litigants.¹⁰⁸ For example, one man in Missouri had a substantial pension that he could split with his wife, but instead he offered her only \$2,000 a month.¹⁰⁹ In a different instance, a man in Texas had approximately \$100,000 in retirement, while his wife had no assets.¹¹⁰ Under the initial State of Texas divorce forms, the wife would not be aware that her husband

101. See Owens, *supra* note 50, at 157.

102. Terry Conaway, *Who's Using Missouri's Pro Se Divorce Forms?*, SHLEP: SELF-HELP L. EXPRESS (July 22, 2009, 7:04 PM), <http://blogs.law.harvard.edu/shlep/2009/07/22/whos-using-missouris-pro-se-divorce-forms/>.

103. *Id.*

104. *Cases and Materials on Pro Se Litigation and Related Issues*, PRO SE L. CTR., <http://www.pro-selaw.org/cases.asp> (last visited Apr. 26, 2014).

105. John M. Greacen, "No Legal Advice from Court Personnel" *What Does That Mean?*, JUDGES' J., Winter 1995, at 10, 10.

106. Conaway, *supra* note 102.

107. *Id.* (noting that judges in Dallas County, Texas, rejected nine out of ten forms because they were incorrectly filled out).

108. *Id.* Judges also "observe that some attorneys take advantage of the fact their opponent is self-represented." JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGE AND COURT MANAGERS 53 (1998).

109. *Id.*

110. Angela Morris, *Chief Justice: Delay Action on Bill Limiting Pro Se Divorce Forms*, TEX. LAW. (Apr. 15, 2013), <http://www.texasatj.org/files/file/041513TXLawyerChiefJusticeDelayActiononBillLimitingProSe.pdf>.

had those assets unless he voluntarily disclosed that information.¹¹¹ Therefore, many family law attorneys advocate that standardized divorce forms potentially leave vulnerable pro se litigants unprotected.¹¹²

Judges and other community leaders have also voiced concerns about these forms. A Texas judge expressed concern that if litigants fill out forms incorrectly, standardized divorce forms may negatively impact judicial efficiency.¹¹³ The executive director of the Texas Access to Justice Commission predicted that the confusing nature of the forms may cause litigants to file multiple forms, which will slow down court dockets.¹¹⁴ Whether judges should offer greater assistance to pro se litigants in court proceedings is another ongoing dilemma.¹¹⁵

Finally, many critics fear that these forms are overwhelming to pro se litigants because the forms lack adequate instructions.¹¹⁶ Frequently pro se assistance programs hinder litigants, create confusion, and generate frustration about the complexity of the law and the legal process itself.¹¹⁷ Some attorneys have voiced their concerns that these forms are unmanageable and do not provide legal advice or individualized assessment.¹¹⁸ As a result, many pro se litigants express concerns about the use of standardized forms because the forms often lack proper instruction, thereby preventing the pro se litigant from fully exercising his or her rights.¹¹⁹

The AOP forms are unquestionably the federal government's most successful means to establish legal paternity for unwed parents in the United States. Since the initiation of the process, more than three times as many fathers have been verified than before the PRWORA was passed.¹²⁰ Over 1.8 million fathers established paternity through executed AOPs in 2009 alone.¹²¹ Legal standing as a father is not, however, the same as a child support order. As stated earlier, once the AOP is filed with the state, the onus is on the parents to file the appropriate paperwork on their own or through the attorney general's office to set in motion a court order for child

111. *Id.* After an amicus curiae brief was submitted by the Texas Family Law Council, the Texas Supreme Court modified the divorce forms to disallow a party from using them who have retirement, pension, profit-sharing, stock option plans and individual retirement accounts in his or her name alone. See Brief of the State Bar of Texas Family Law Council As Amicus Curiae, *In re* Order Approving Uniform Forms—Divorce Set One, No. 12-9192 (Tex. Jan. 28, 2013).

112. See Conaway, *supra* note 102; see also Morris, *supra* note 110.

113. Morris, *supra* note 110.

114. *Id.*

115. Swank, *supra* note 6, at 1586.

116. Henderson, *supra* note 49, at 576.

117. Swank, *supra* note 6, at 1557.

118. Leslie Feitz, Comment, *Pro Se Litigants in Domestic Relations Cases*, 21 J. AM. ACAD. MATRIMONIAL L. 193, 206 (2008); *The Law and Self-Representation: Handling Legal Matters "Pro Se,"* STANDARD LEGAL, <http://www.standardlegal.com/law-library/pro-se-legal-self-representation.html> (last visited Apr. 26, 2014).

119. Yegge, *supra* note 51, at 9.

120. Leslie Joan Harris, *Questioning Child Support Enforcement Policy for Poor Families*, 45 FAM. L.Q. 157, 162 (2011).

121. *Id.*

support to be paid to the custodial parent.¹²² The passage of the PRWORA has increased child support collection, but because most states do not keep statistics regarding the correlation between AOP executions and child support orders, determining how much the AOP process has attributed to this increase is difficult.¹²³

One of the drawbacks of using the AOP to establish paternity is the speed with which men are locked into being legally bound to children who may not in fact be biologically related to them. By eliminating the lawyer's monopoly on the establishment of paternity, the federal government and the states have opened up a legal and emotional conundrum for a considerable number of parents and children in America. Although research indicates that the in-hospital AOP program has effectively increased paternity establishment rates by nearly 40 percent,¹²⁴ approximately one-third of fathers who complete genetic testing are found not to be the biological father.¹²⁵ As paternity fraud and disestablishment of paternity cases abound in state courts, this Article asserts that reliance on the current AOP process, without additional ethical safeguards, causes significant harm to children and families as a whole.

Both sets of forms, the divorce forms and the AOP, primarily benefit the same group of people—low-income or impoverished state citizens. Statistics show that four-fifths of the civil legal needs of the poor are unmet.¹²⁶ Statistics also show that the number of women giving birth to children out of wedlock has decreased to 32 percent among whites, 72 percent among Hispanics, and 62 percent among African Americans.¹²⁷ Overall, the numbers are rising for families where women are the head of household.¹²⁸ This group is also more likely to be less educated and employed in low-wage, unskilled jobs than those that can afford legal

122. See, e.g., TEX. FAM. CODE § 154.001 (2013); *Frequently Asked Questions*, ATT'Y GEN. TEX., <https://www.texasattorneygeneral.gov/cs/parents/faq.shtml#signs> (last updated Jan. 5, 2012) (follow "What happens if the father signs the Acknowledgment of Paternity?" hyperlink) ("In order for a parent to obtain child support and visitation rights that are enforceable, a parent must go to either a child support office or a private attorney."); see also Melinda L. Eitzen & Matthew T. Slimp, *Five Easy Steps to Paternity*, 63 TEX. B.J. 988, 989 (2000).

123. See Laura Oren, *The Paradox of Unmarried Fathers and the Constitution: Biology 'Plus' Defines Relationships; Biology Alone Safeguards the Public Fisc*, 11 WM. & MARY J. WOMEN & L. 47, 99–100 (2004).

124. CHILD & FAMILY RESEARCH P'SHIP, IN-HOSPITAL ACKNOWLEDGEMENT OF PATERNITY LITERATURE REVIEW 4 (2012), available at http://childandfamilyresearch.org/content/uploads/2013/04/CFRP_AOP_Literature-Review_October2012_web.pdf.

125. Padawer, *supra* note 45, at 40.

126. LEGAL SERVS. CORP., *supra* note 8, at 17.

127. JOYCE A. MARTIN ET AL., BIRTHS: FINAL DATA FOR 2012, at 9 (2013), available at http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62_09.pdf.

128. WENDY WANG ET AL., BREADWINNER MOMS 1 (2013), available at <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/> (noting that in 40 percent of U.S. households women are the sole or primary provider, up from approximately 28 percent twenty years ago).

representation and those that marry before the birth of a child.¹²⁹ These fragile families often have complex family dynamics,¹³⁰ and the status of the other parent, who in most cases is the father, could mean the difference between federal assistance and an unrelenting cycle of poverty.

III. ETHICAL BOUNDARIES OVERSTEPPED

After considering the nature of the state-promulgated forms in family law, this Part examines whether state supreme court judges and states' attorneys have crossed ethical boundaries with regard to development and dissemination of these forms. An overarching principle of the U.S. legal system is the existence of an independent, impartial, and competent judiciary.¹³¹ This Part examines three relevant issues within the canons of the ABA Model Code of Judicial Conduct: (1) the judges' role, (2) extrajudicial activities and conflicts of interests, and (3) appointments to governmental positions. Next, the analysis turns to limitations on the actions of the state's attorney. This Part reviews Model Rule 5.3, exploring the attorney's responsibilities regarding nonlawyer assistance and whether the hospital and birthing center staff is a state agent to whom the attorney owes a duty of supervision. Finally, this Part discusses concerns regarding the unauthorized practice of law, and whether hospital and birthing center staff who "inform" putative fathers about their legal rights and responsibilities are also "advising" them in a legal sense.

A. *Reliance on the State's Imprimatur*

The state is a unique actor. It has specific public policy and financial interests that ultimately are designed to protect and serve the nation and its citizens—at least in theory. Those lawyers and judges who work for the state and represent the imprimatur of the state should not be immune from upholding the same ethical standards in place for other legal professionals. This Article asks a new question: can a state allow ethical blind spots to exist when an action or process benefits a sizeable portion of the public? Analyzing this question leads to more questions. What is the threshold for determining whether the integrity of a state actor has been compromised? Are implied presumptions in place that work to the advantage of the state but to the disadvantage of collective individual state citizens? The examination of the role of state supreme court judges and states' attorneys in specific family law contexts calls into question whether it is ethically

129. Ariel Kalil & Rebecca M. Ryan, *Mother's Economic Conditions and Sources of Support in Fragile Families*, FUTURE CHILD., Fall 2010, at 39, 40–41.

130. Jessica Dixon Weaver, *The First Father: Perspectives on the President's Fatherhood Initiative*, 50 FAM. CT. REV. 297, 303–04 (2012) (noting that unmarried fathers' inability to pay child support does not mean they are absentee fathers); see also Laurie S. Kohn, *Engaging Men As Fathers: The Courts, the Law, and Father-Absence in Low-Income Families*, 35 CARDOZO L. REV. 551, 519–30 (2013) (describing relational, structural, role, and social norm barriers to paternal engagement).

131. See MODEL CODE OF JUDICIAL CONDUCT pmb. para. 1 (2010).

sound to permit a state actor to control both the procedure upon which an individual relies and the means through which he seeks legal resolution.

Of primary importance in the consideration of how the public relies upon the fairness of state institutions is the fact that the American court system conducts 98 percent of the country's legal business.¹³² The ABA's concern about the administration of justice stems in part from the public perception that justice is available only to the wealthy, the powerful, or those with partisan influence.¹³³ State courts are aware of the public viewpoint, and because of the increase in pro se litigants, courts have strayed away from traditional neutrality towards active involvement in helping litigants help themselves.¹³⁴

Free offers of assistance, whether from state court judges or state hospital staff members, are problematic if they under- or overdeliver. For example, a divorce form for a simple divorce will get a pro se litigant in the door of the court room, but it will not help him during a hearing or determine what pleading should be filed if the simple divorce turns complex. From the standpoint of overreaching, the execution of an AOP form creates an administrative Hobson's choice for nonmarital parents when it is specifically tied to a man being identified on the birth certificate as the father and a child being able to use the father's surname. When citizens rely on the help from the state to their detriment, faith in the notion of "equal justice" and service to the public diminishes.

B. Limitations of the Judicial Canon

At least seventeen state supreme courts have promulgated court-approved divorce forms for citizens to use in family courts. The ways in which state supreme courts draft, review, and approve family court forms vary—some use special committees formed for the purpose of providing access to justice, some start with initial advisory drafts from state bar family law sections, and others draft the forms themselves, seeking comments from different interested sections of the state bar associations. The approval process is almost always inclusionary, allowing for drafts to be reviewed, suggestions and critiques to be submitted, and changes to be made during a set period of time. The real question—whether judges should be involved in the drafting, review, or approval of standardized family legal forms—requires delving deeper to examine the role of the judiciary in the litigation process. The ethical issues that arise for state supreme court justices encompass three areas governed by the ABA Model Code of Judicial Conduct: the judges' role, extrajudicial activities and conflicts of interests, and the practice of law.

132. AM. BAR ASS'N, *supra* note 21, at viii.

133. *Id.*

134. *Id.* at 40–41.

1. A Judge's Role

One of the primary duties of a judge is outlined in Canon 2 of the Model Code of Judicial Conduct. Canon 2 states that a judge shall perform the duties of judicial office impartially, competently, and diligently.¹³⁵ However, most judges in civil courts stated that their “primary challenge” is maintaining impartiality in the mixed cases, where one party is self-represented and the opponent has legal representation.¹³⁶ Judges recognize that a pro se litigant in a hearing may cause procedural difficulties, time-consuming delays, and pose ethically compromising dilemmas for the judge that will be perceived as unfair for either the pro se litigant or the legally represented party.¹³⁷

One way to reduce the procedural difficulties is to have a standardized pleading for common family law causes of action like divorce, child custody, and child support. If done correctly, the standardized form allows the judge to easily identify the legal issues of the case and move the case forward toward resolution. In many cases, a family court judge spends additional time repeatedly rejecting the petition of the pro se litigant, because it lacks a statutory requirement that is unknown to the unrepresented party.¹³⁸

Since many courts and at least one legal ethics opinion have held that the mere provision of forms is not the practice of law,¹³⁹ judges rightfully believe their exercise of judicial authority, by weighing in on the details of family law forms or being the ultimate endorser of the forms, is harmless. Virginia's Standing Committee on Legal Ethics provided that the distinguishing factor for ethical misconduct by legal services attorneys who provided pro se litigants with blank forms was whether the attorneys helped to complete the forms.¹⁴⁰ Similarly, the test for whether a judge who sanctions or approves family court forms violates her ethical duties should be that as long as the judge provides no assistance to the pro se litigant to complete the forms, the judges would be on solid ground. The question then becomes how much impartiality the judge shows toward the pro se litigant who has incorrectly filled out the forms.

Judges' roles have changed in family courts in many significant ways, and the ABA has noted that the role of judges as problem solvers in

135. MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2010).

136. GOLDSCHMIDT ET AL., *supra* note 108, at 52.

137. See Russell Engler, *The Toughest Nut: Handling Cases Pitting Unrepresented Litigants Against Represented Ones*, JUV. & FAM. CT. J., Winter 2011, at 10, 10, 16; Beverly W. Snukals & Glen H. Sturtevant, Jr., *Pro Se Litigation: Best Practices from a Judge's Perspective*, 42 U. RICH. L. REV. 93, 95–98 (2007).

138. See Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 384 (2005); VanWormer, *supra* note 100, at 993.

139. State Bar v. Cramer, 249 N.W.2d 1, 8–9 (Mich. 1976), *abrogated by* Dressel v. Ameribank, 664 N.W.2d 151 (Mich. 2003); N.Y. Cnty. Lawyers' Ass'n v. Ducey, 234 N.E.2d 459, 459 (N.Y. 1967); Or. State Bar v. Gilchrist, 538 P.2d 913, 919 (Or. 1975) (en banc); Va. State Bar Legal Ethics Comm., Op. 1761 (2002), *available at* <http://www.vsb.org/docs/LEO/1761.pdf>.

140. Va. State Bar Legal Ethics Comm., Op. 1761.

specialty courts poses a threat to their independence and impartiality on the bench.¹⁴¹ An analogy can be made regarding a judge's intensive monitoring and community engagement in a drug, mental health, or domestic violence court and her active participation on a pro se or family law judicial advisory committee charged with drafting forms. Both activities are collaborative in nature, whereby judicial input or opinion is considered alongside other professionals. The fact that judges step outside of the traditional role as arbiter and step into a role that could be perceived as being partisan is problematic.¹⁴² The judge is unable to be a detached fact referee, but has been pulled into the work of providing social services in the problem-solving courts and legal aid with pro se litigants. While both activities are likely to improve judicial approval among the public, it may come at the cost of appearing more politicized.¹⁴³

As stated earlier, the ABA expanded the way in which judges could freely interact with pro se litigants through its revision of Canon 2 of the Model Code of Judicial Conduct. Canon 2.2, which governs impartiality and fairness, states that "a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."¹⁴⁴ Comment 4 specifically addresses issues related to pro se litigants, stating that "[i]t is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard."¹⁴⁵ This comment recognizes that judges often are placed in the compromising situation of dealing with unrepresented parties who are unfamiliar with the legal system and the litigation process, and it allows them to make reasonable accommodations to level the playing field such that they receive a fair hearing.¹⁴⁶ This "leveling of the playing field" can be quite subjective, but the explanation of the comment points out that "judges should resist unreasonable demands for assistance that might give an unrepresented party an unfair advantage."¹⁴⁷

Imagine a scenario where a lower court trial judge who participated on the state supreme court committee that drafted the court-approved divorce forms encounters a case where the form has been incorrectly filled out or the pro se litigant has failed to establish that the court has jurisdiction over the matter. Does the judge, who is intimately familiar with the form and its instructions, point out the mistakes to the person or guide him back to the twenty-five pages of instructions? What happens when hearings hit a standstill because the pro se litigant does not know or understand what to do next?

141. AM. BAR ASS'N, *supra* note 21, at 50.

142. *Id.* at 49–50 (noting that with respect to problem-solving courts there is concern, with courts and judges "reaching out" and social workers and other professionals "reaching in," that represents a challenge to the core principles of judicial independence and impartiality).

143. *Id.*

144. MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2010).

145. *Id.* Canon 2 cmt 4.

146. *Id.*

147. *Id.*

Beyond the Model Code of Judicial Conduct, there is contradictory guidance for judges regarding how to handle pro se litigants. State courts have precedents holding that papers submitted by pro se litigants will face a different standard of judicial review than those submitted by lawyers.¹⁴⁸ Judges are supposed to construe the papers very liberally in favor of the unrepresented litigant.¹⁴⁹ On the other hand, self-represented litigants are supposed to be held to the same standards as attorneys.¹⁵⁰

If litigants in family court are allowed to file only state supreme court–approved forms, three potential conflicts could arise for judges. First, state court judges would become familiar with the forms and possibly the instructions, which might prompt the judge to overreach in his or her reasonable accommodation to the pro se party. For example, the judge could indicate to the party the page number or section dealing with jurisdiction or which box most people fill in when they are residents of a particular county. Knowledge of the form would assist the judge in quickly identifying the missing information that might ordinarily bar a party from obtaining a divorce. It is questionable whether the judge steps into the role of lawyer by instructing the pro se party regarding how to fill out the form.¹⁵¹

An advisory opinion from Indiana sheds some light on a judge’s duty with regard to providing assistance to the unrepresented party, stating that the “‘judge’s ethical obligation to treat all litigants fairly obligates the judge to ensure that a pro se litigant in a non-adversarial setting is not denied the relief sought only on the basis of a minor or easily established deficiency in the litigant’s presentation or pleadings.’”¹⁵² A jurisdictional matter would likely be considered a minor deficiency in the pleadings if all parties resided in the same state and jurisdiction was not contested. So, in nonadversarial matters, judges should accommodate the litigant, but the judge is not obligated to try the case for a person who is not prepared or unable to complete the task.¹⁵³

Trial judges are afforded greater latitude in assisting pro se litigants when their actions ensure justice.¹⁵⁴ But while this latitude would allow judges to assist pro se litigants in court with an oversight made when filling out a divorce form, judges must avoid involvement in tasks that “cast doubt on

148. Rebecca A. Albrecht et al., *Judicial Techniques for Cases Involving Self-Represented Litigants*, JUDGES’ J., Winter 2003, at 16, 20.

149. Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, 27 J. NAT’L ASS’N ADMIN. L. JUDICIARY 97, 122–24 (2007).

150. See Albrecht et al., *supra* note 148, at 16.

151. See Gray, *supra* note 149, at 101–02 (noting a judge’s different treatment of a pro se litigant with the same testimonial substantive defect as a party with legal counsel who was able to correct the defect quickly and resolve the case, unlike the pro se litigant).

152. Albrecht et al., *supra* note 148, at 19 (quoting Ind. Comm’n on Judicial Qualifications, Advisory Op. 1-97 (1997), available at www.in.gov/judiciary/jud-qual/files/jud-qual-adops-1-97.pdf).

153. *Id.*

154. Joseph M. McLaughlin, *An Extension of the Right of Access: The Pro Se Litigant’s Right to Notification of the Requirements of the Summary Judgment Rule*, 55 FORDHAM L. REV. 1109, 1125 (1987).

their capacity to impartially decide issues that may come before them.”¹⁵⁵ Furthermore, judges also should not engage in activities that create a public or private advantage for certain individuals.¹⁵⁶ By engaging in the drafting or approval of pleadings, judges may be committing judicial misconduct.

Fluctuating state law and various local rules present the second potential conflict that could arise with state supreme court–approved forms. Many states revise the family code quite often,¹⁵⁷ which would mean that the state’s supreme court would have to constantly revise the forms to ensure compliance with current law. Whether most state supreme courts are comprised of former practitioners drawing on experience in diverse practice areas is questionable. Specifically, whether each court has a former family law practitioner or judge who could properly advise the court as to the drafting of family law forms is uncertain. The majority of state supreme court judges come from the private civil litigation sector and have worked at law firms ranging from small to large or within the federal or state government.¹⁵⁸ Most high court judges do not have the trial court experience and training in family law to ascertain whether suggested legal challenges to the form or critiques are valid.

In addition, some judges may have local rules that require litigants to take certain steps prior to divorce, such as pre-divorce counseling for the parents and any children of the marriage. If the approved state supreme court form does not accommodate the requirements set forth by the local rule (such as stipulations regarding these prerequisites), the form could cause more delay and frustration for the lower court judge who is ultimately the person that has to interface most often with pro se litigants. This may be an easy fix if the state promulgated forms that clearly set forth that pro se litigants should always check with the local civil or family court to find out if any local rules apply to their case.

Imagine another scenario where a state supreme court grants certiorari on an appellate case where one of the underlying issues is the pro se litigant’s substantive pleading, or rather lack of pleading, because she used a court-approved divorce form. Herein lies the third problem with the form. Is the supreme court going to give more deference to itself since it is the legal body that approved the form in the first place? If the pleading is attacked as deficient, the high court judges are not neutral towards the substance of the document if they drafted or approved the form. It might be difficult for judges to be critical of themselves and their peers. Moreover, would the judges find themselves in the position of being disqualified under Canon

155. Wash. Ethics Advisory Comm., Op. 02-05 (2002), available at http://www.courts.wa.gov/programs_orgs/pos_ethics/?fa=pos_ethics.dispopin&mode=0205; see also MODEL CODE OF JUDICIAL CONDUCT Canon 4 (2010).

156. See MODEL CODE OF JUDICIAL CONDUCT Canon 4.

157. See, e.g., Jessica Dixon Weaver, *The Texas Mis-Step: Why the Largest Child Removal in U.S. Modern History Failed*, 16 WM. & MARY J. WOMEN & L. 449, 528 (2010). See generally SANFORD N. KATZ, FAMILY LAW IN AMERICA 2–9 (2003).

158. See Gregory L. Acquaviva & John D. Castiglione, *Judicial Diversity on State Supreme Courts*, 39 SETON HALL L. REV. 1203, 1234–38 (2009).

2.11? Judicial Canon 2.11 governs disqualification and provides in subsection (A)(6) that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.¹⁵⁹ It is reasonable to think that a judge would not be impartial to a client that used the court-approved form to plead their case.

2. Extrajudicial Activities and Conflicts of Interests

Canon 2 of the Model Code of Judicial Conduct states, "A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office."¹⁶⁰ Participation on state supreme court committees charged with drafting and updating family litigation forms may push the envelope on conflict with respect to the judge's duty to remain impartial pursuant to Canon 2. The primary issue regarding this type of activity is whether a state supreme court could remain neutral in reviewing a case in which an appellee used the court-approved forms and an appellant claims a substantive pleading error based on an omission or mistake on the forms.

An examination of Rule 3.1, "Extrajudicial Activities in General," of the Model Code of Judicial Conduct sheds light on what is expected from a judge when he engages in extrajudicial activities. It states:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.¹⁶¹

Comment 1 sets forth the type of extracurricular activities that judges are qualified to engage in—those that concern the law, the legal system, and the administration of justice.¹⁶²

Serving on a committee or work group that drafts pleadings for pro se litigants would definitely fall under all of the above three areas. The

159. MODEL CODE OF JUDICIAL CONDUCT Canon 2.11.

160. *Id.* Canon 3.

161. *Id.* R. 3.1.

162. *Id.* R. 3.1 cmt. 1.

regulation of extrajudicial activity is primarily concerned with the separation of the executive, legislative, and judicial powers.¹⁶³ When a judge is participating in activities that support improvements in the legal system and the administration of justice, a presumption exists in favor of extrajudicial activities.¹⁶⁴ Drafting or approving form pleadings falls under the powers of the judiciary as long as the separation of powers is maintained. A judge would still need to consider whether this type of assistance to the public interferes with her ability to be impartial. Judges must avoid involvement in tasks that may prevent their impartiality in cases that come before them.¹⁶⁵

The Model Code of Judicial Conduct dictates through Rule 2.1 that the duties of the judicial office should be given precedence over extrajudicial activities.¹⁶⁶ Comment 1 of this Rule highlights the relationship between Canon 2 and Canon 3 in that if judges must disqualify themselves from cases in which they have a conflict of interest, they must conduct their extrajudicial activities in ways that minimize their need to do so.¹⁶⁷ The potential conflict that judges have includes wearing the hat of advocate and crossing over into the practice of law. As stated earlier, there is also the possibility that a state supreme court might be in the position of considering an appeal of a party who cites a substantive error in the form pleading promulgated by the court.

3. Practice of Law

Rule 3.10 of the Model Code of Judicial Conduct governs the practice of law for judges.¹⁶⁸ The rule is a simple mandate: “A judge shall not practice law.”¹⁶⁹ The rule also states, “A judge may act pro se and may . . . give legal advice to and draft or review documents for a member of the judge’s family, but is prohibited from serving as the family member’s lawyer in any forum.”¹⁷⁰ The single comment to Rule 3.10 reinforces that a judge may act pro se in all legal matters, including litigation and appearances before governmental bodies.¹⁷¹

When considering whether an ethical line has been crossed by a judge who actively drafts or approves family law forms for pro se litigants, the question is whether the judge is wearing two conflicting hats—one as advocate and the other as arbiter. Earlier ethical opinions analyzed whether the judicial canons prohibit judicial involvement in the drafting and

163. N.Y. Attorney Gen., Formal Op. 2002-F2, at 4 (2002), available at www.ag.ny.gov/sites/default/files/opinion/2002-F2%20pw.pdf.

164. Jonathan Lippman, *The Judge and Extrajudicial Conduct: Challenges, Lessons Learned, and a Proposed Framework for Assessing the Propriety of Pursuing Activities Beyond the Bench*, 33 CARDOZO L. REV. 1341, 1386 (2012).

165. *See id.* at 1385.

166. MODEL CODE OF JUDICIAL CONDUCT R. 2.1.

167. *See id.* R. 2.1 cmt. 1.

168. *Id.* R. 3.10.

169. *Id.*

170. *Id.*

171. *See id.* R. 3.10 cmt. 1.

approval of forms for litigants.¹⁷² In Nevada, a municipal court judge who provided samples of a standard form motion to be used in the Reno Municipal Court was “encouraged to use court time to develop any form which might improve access to justice in the state[,] as long as the forms are distributed by the clerk of the court and the judge does not assist litigants in any way to complete the forms by giving legal advice.”¹⁷³ The Nevada Standing Committee on Judicial Ethics and Election Practices stated that it did not believe that distribution of the forms to litigants would affect the impartiality of the court in any way.¹⁷⁴

The Florida Judicial Ethics Advisory Committee was divided on the question of whether a judge’s office could distribute forms for final judgment and orders for temporary support in pro se dissolution cases.¹⁷⁵ The Committee did agree that the judge could prepare his own orders and judgments on a case-by-case basis.¹⁷⁶ A subsequent inquiry of the Committee regarding judicial distribution of a brochure to assist pro se litigants in uncontested marriage dissolution cases reveals the central ethical issue in these cases.¹⁷⁷ The Committee’s focus was on whether the judge was practicing law by providing a checklist and two pages describing the forms and procedures necessary to obtain final judgment.¹⁷⁸ Again there was a split among the Committee; five members agreed that judges could help pro se litigants by providing forms, and five other members believed that the judge’s brochure was the practice of law and prohibited by the judicial code.¹⁷⁹ Notably, the latter members of the committee recognized the possibility of the judge crossing an impermissible line, because the brochure might be “legal or quasi-legal work that is potentially the subject of litigation.”¹⁸⁰

The split decision of the Florida Committee highlights the consideration of pro se litigants in court and whether a judge can act like a lawyer for the administration of justice. In the opinion, the committee members who voted in favor of the judge distributing the brochure noted the increased number of pro se parties in family court and also stated that the judge needed to provide information assistance to the pro se litigants so that the judge could be more efficient in court.¹⁸¹ Interestingly, the committee members who did not believe it was appropriate for the judge to distribute

172. See, e.g., Fla. Judicial Ethics Advisory Comm., Op. 91-30 (1991), available at <http://www.jud6.org/legalcommunity/legalpractice/opinions/jecopinions/ninet1/91-30.html>; Nev. Standing Comm. on Judicial Ethics & Election Practices, Op. JE99-006 (1999), available at <http://judicial.state.nv.us/je990063new.htm>.

173. Nev. Standing Comm. on Judicial Ethics, Op. JE99-006.

174. *Id.*

175. Fla. Judicial Ethics Advisory Comm., Op. 91-30.

176. *Id.*

177. See Fla. Judicial Ethics Advisory Comm., Op. 93-8, (1993), available at <http://www.jud6.org/legalcommunity/legalpractice/opinions/jecopinions/ninet3/93-08.html>.

178. *See id.*

179. *Id.*

180. *Id.*

181. *See id.*

the brochure suggested that the Family Law Section of the Florida State Bar should draft and distribute the brochure, rather than the judge.¹⁸²

C. *Limitations on the State's Attorney*

The question of whether an attorney-client relationship exists between a parent seeking child support through the state's attorney's office and the state's attorney has ostensibly been settled.¹⁸³ Most states have statutes that address the scope of representation of Child Support Enforcement (CSE or IV-D) attorneys, specifically excluding the custodial parent as a client.¹⁸⁴ In most cases, advisory opinions in many states have determined that the child support attorney represents the state as its client.¹⁸⁵ Since the interests of the state are often aligned with the interests of parents, consideration must be given to the ultimate goal of the state in executing AOPs—increasing the collection of child support and reducing the number of families financially supported by the government.

1. Who Is a State Agent?

The Model Rules of Professional Conduct provide that nonlawyers who act on behalf of an attorney, such as a legal secretary or paralegal, are considered agents of that attorney.¹⁸⁶ Model Rule 5.3 governs the responsibilities of a lawyer regarding nonlawyer assistance.¹⁸⁷ A nonlawyer assistant is defined as a person who is “employed or retained by or associated with a lawyer.”¹⁸⁸ Is the birthing hospital or birthing center staff member a state agent? The language of the PRWORA may answer this question. As stated earlier, the PRWORA requires the state to provide a simple civil process for voluntary paternity acknowledgment.¹⁸⁹ The language further provides that “[s]uch procedures *must* include a hospital-based program for the voluntary acknowledgment of paternity focusing on

182. *See id.*

183. Barbara Glesner Fines, *From Representing “Clients” to Serving “Recipients”*: *Transforming the Role of the IV-D Child Support Enforcement Attorney*, 67 FORDHAM L. REV. 2155, 2155–56 (1999).

184. *Id.*

185. ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1528 (1989); Neb. Lawyer's Advisory Comm., Op. 92-1 (1992), available at <http://court.cdc.nol.org/sites/court.cdc.nol.org/files/ethics/lawyers/92-1.pdf>; Supreme Court of Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 90-10 (1990), available at 1990 WL 640505; Or. State Bar Bd. of Governors, Op. 527 (1989) (on file with *Fordham Law Review*) (Conflict of Interest—District Attorney Enforcement of Support Orders and Restraining Orders); Bd. of Prof'l Responsibility of the Supreme Court of Tenn., Formal Op. 90-F-123 (1990), available at <http://www.tbpr.org/Attorneys/EthicsOpinions/Pdfs/90-F-123.pdf>; Va. State Bar Legal Ethics Comm., Op. 964 (1988), available at <http://www.vsb.org/docs/LEO/964.pdf> (“Attorney General—Communication with an Unrepresented Party: Representation of Custodial Parent in Lawsuits Against the Division of Child Support Enforcement”).

186. MODEL RULES OF PROF'L CONDUCT R. 5.3 cmt. 2 (2013).

187. *Id.* R. 5.3.

188. *Id.*

189. 42 U.S.C. § 666(a)(5)(C)(i) (2006).

the period immediately before or after the birth of a child.”¹⁹⁰ Unless state agencies were to place their own employees in hospitals or birthing centers, training hospital staff members to run a program regarding voluntary paternity acknowledgment is a much less expensive route.

Since the state agency provides training for the staff member, it does have some association with the hospital or birthing center staff. Does the level or degree of association rise to the level of employment? No—the staff member could not be considered an employee of a state agency, contract or otherwise. However, the state agency provides testing and certification of these staff members, which indicates control over their status to assist nonmarital parents with AOPs. Furthermore, hospitals are incentivized to complete as many AOP forms as possible, because the state pays a certain amount of money for each AOP form filed with the state.

Another indicator that the hospital staff member is a state agent is the explicit role that this person plays with respect to the execution of the AOP by the parents. The hospital staff employees are the only persons besides employees who actually work for the state who can supply the AOP form to the mother and father.¹⁹¹ The fact that the state restricts distribution of the AOP forms to either state employees or hospital and birthing staff illustrates that only those who are under the authority of the state can perform this civil process. As stated earlier, each hospital staff person has to be certified by a state entity, usually on an annual basis.¹⁹²

The restricted access of the AOP form is also an important sign that underscores the substantial risk of injury to the prospective father if the form is not read or explained properly prior to filing. The hospital staff member verbally informs the mother and putative father of the rights and responsibilities afforded to legal parents by the state and explains the legal options available to fathers in order to establish paternity, including the option to seek genetic testing and consultation with an attorney. Part of the hospital staff’s explanation includes the consequences of signing an AOP. Almost all states include a statement that makes clear that once the document is filed with the state, it is considered a legal document.¹⁹³

This preventative measure (restricted access) is also taken to avoid any misrepresentation if someone who was not the actual birth father of the child were to file the form. Hospital staff members must verify the identity of the parents, and in some states, AOPs must be notarized. This is important to prevent fraud and usurpation of parental rights. While current laws vary from state to state, the PRWORA provides that a putative father who files an AOP with the state has only sixty days to rescind the document.¹⁹⁴ Subsequently, any other method to disestablish paternity or

190. *Id.* § 666(a)(5)(C)(ii) (emphasis added).

191. *See id.* § 666(a)(5)(C)(iii)(I), 666(a)(5)(C)(iii)(II)(bb); JUNE GIBBS BROWN, PATERNITY ESTABLISHMENT: USE OF VOLUNTARY PATERNITY ACKNOWLEDGMENTS 1, 4–5 (2000), available at oig.hhs.gov/oei/reports/oei-06-98-00053.pdf.

192. *See, e.g.*, Letter from Ted White, *supra* note 93 (detailing this requirement in Texas).

193. *See Parness & Townsend, supra* note 95, at 79.

194. 42 U.S.C. § 666(a)(5)(D)(ii)(I).

terminate parental rights would require initiation of a lawsuit within certain time limitations by the putative father.¹⁹⁵

Since these hospital and birthing center personnel are agents of the state, proper training is necessary to “give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment.”¹⁹⁶ While all states require annual training for hospital and birthing center staff members in order to become certified entities for the administration of the paternity acknowledgment, whether this training is sufficient to meet the requirements of Model Rule 5.3(a) is questionable.

Another issue that arises under Model Rule 5.3(b) is whether there is proper supervision of the hundreds of thousands of hospital and birthing center staff members who are responsible for speaking to every nonmarital father and mother who give birth at their facility. Model Rule 5.3(b) states that “a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.”¹⁹⁷ In some states, there is no personnel from the state that monitors the conduct of the hospital staff as they execute the form.¹⁹⁸ This lack of individual accountability does impact the hospital staff’s efforts to explain the AOP process to the mother.¹⁹⁹

States that do not offer periodic on-site evaluation of the methods used by the staff members to give unmarried parents information about the paternity acknowledgements are in violation of ethical rules. Some child support agencies pay hospitals for completed AOPs, which raises several questions with regard to whether these payments incentivize staff members to try to obtain AOPs from parents in a more aggressive manner.²⁰⁰ Other states, such as Texas, which offer on-site assessment of the hospital and birthing center three times per year,²⁰¹ may or may not be making “reasonable efforts” to supervise the work of these state agents.

2. Communication and Incomplete Disclosure

The guidelines that the PRWORA sets forth for the simple civil process for voluntarily acknowledging paternity require that,

before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally . . . and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to

195. *Id.* § 666(a)(5)(D)(iii).

196. MODEL RULES OF PROF’L CONDUCT R. 5.3 cmt. 2 (2013).

197. *Id.* R. 5.3(b).

198. *See* GIBBS BROWN, *supra* note 191, at 18, 20.

199. *See id.*

200. *See id.* at 18, 21.

201. *See* Letter from Ted White, *supra* note 93.

minority status) and responsibilities that arise from, signing the acknowledgment.²⁰²

While people routinely sign documents that have legal consequences without legal consultation, such as rental leases and car loans, the acknowledgment of paternity has significant psychological and legal consequences. While apartments and cars are inanimate objects, a child is a living being, helpless at birth and in need of constant care and nurturing. The right to parent is considered a fundamental right, and it is afforded many constitutional protections.²⁰³ It is a fairly simple document—in fact in most states it oversimplifies the actual rights and responsibilities afforded by parenthood. The only state that provides a full disclosure of the rights and responsibilities of a parent and the legal consequences of signing the AOP is Iowa.²⁰⁴ The AOP forms in most states do not divulge a great deal of information regarding the consequences of failing to pay child support.

Because the AOP forms do not fully disclose the various legal penalties that fathers can incur if they fail to pay child support, fathers executing these forms in the hospital are not fully informed without first consulting with an attorney.²⁰⁵ Federal law should require inclusion of relevant state statutes in the materials given to the father, such as those that allow garnishment of wages, revocation of driver's and professional licenses, and jail sentences for failure to pay child support. The father also should be given the opportunity to speak to an attorney before signing the AOP. The effort to keep the AOP process simple is a disservice to the parents. The lack of information could cause some men to sign the AOP when, ordinarily, they would proceed more cautiously, and rescinding or disestablishing paternity is not as simple as signing the AOP form.

3. “Advising” Versus “Informing”—Unauthorized Practice of Law

Since Model Rule 5.3 permits lawyers to delegate certain administrative tasks to nonlawyer assistants, often lawyers also delegate tasks that are legal in nature. Lawyers “must be careful not to cross the line into assisting others in engaging in the unauthorized practice of law.”²⁰⁶ What constitutes the unauthorized practice of law varies significantly from state to state, and many courts define legal practice on a case-by-case basis.²⁰⁷ “Representing clients in court, preparing legal documents, and advising individuals regarding legal matters are tasks that most states generally agree constitute

202. 42 U.S.C. § 666(a)(5)(C)(i) (2006).

203. *See, e.g.*, *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *Lehr v. Robertson*, 463 U.S. 248, 262 (1983); *Caban v. Mohammed*, 441 U.S. 380, 392–93 (1979); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

204. *See Parness & Townsend, supra* note 95, at 81.

205. *See* Anne Greenwood, Comment, *Predatory Paternity Establishment: A Critical Analysis of the Acknowledgment of Paternity Process in Texas*, 35 ST. MARY’S L.J. 421, 440–42 (2004).

206. BARBARA GLESNER FINES, *ETHICAL ISSUES IN FAMILY REPRESENTATION* 69 (2010).

207. *Id.*

the practice of law.”²⁰⁸ Even though a paralegal may communicate “clearly defined legal information and even advice from the attorney,” the paralegal is restricted from giving legal advice of their own.²⁰⁹ A problem ensues if the party asks for more advice from the paralegal because his or her perception is that the advice is coming directly from the paralegal.²¹⁰ An attorney must take on the dual responsibility of educating the client and training and supervising the paralegal in order to avoid violating the ethical rules.²¹¹

Model Rule 5.5 governs the unauthorized practice of law for lawyers, but neither the actual rule nor the comments address nonlawyers who cross the line into the practice of law.²¹² Section 4 of the *Restatement (Third) of the Law Governing Lawyers* provides guidance regarding the unauthorized practice of law by a nonlawyer.²¹³ It states: “A person not admitted to practice as a lawyer . . . may not engage in the unauthorized practice of law, and a lawyer may not assist a person to do so.”²¹⁴ Obviously, a nonlawyer may engage in some limited forms of law practice, such as self-representation in either a civil or criminal matter.²¹⁵ The primary question to answer regarding AOPs is whether advising or assisting a person in filling out the form constitutes unauthorized practice of law.

Comment c to section 4 of the *Restatement (Third) of the Law Governing Lawyers* addresses this question. The traditional position of the bar has been that nonlawyer provision of services denies the person the benefit of several legal measures, including the attorney-client privilege, the duty of confidentiality of information, protection against conflicts of interests, and the protection of lawyers being required to supervise nonlawyer personnel.²¹⁶

An Iowa ethics opinion supports the traditional position of the bar.²¹⁷ This opinion states that a nonlawyer cannot assist and advise individuals in preparing pleadings affecting their legal rights and obligations.²¹⁸ This type of assistance constitutes the unauthorized practice of law.²¹⁹ Hospital staff are “very often placed in the position of having to answer detailed questions and to explain related child support and legal issues to parents.”²²⁰ Without

208. *Id.* at 70.

209. *Id.*

210. *Id.*

211. *Id.*

212. MODEL RULES OF PROF'L CONDUCT R. 5.5 (2013).

213. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 (2000).

214. *Id.*

215. *Id.* § 4 cmt. d.

216. *Id.* § 4 cmt. c.

217. Iowa Supreme Court Bd. of Prof'l Ethics & Conduct, Op. 96-19 (1996), available at <http://www.iabar.net/ethics.nsf/e61beed77a215f6686256497004ce492/ea450c215a186ded86256498005a261f?OpenDocument>.

218. *Id.*

219. *Id.*

220. JUNE GIBBS BROWN, IN-HOSPITAL VOLUNTARY PATERNITY ACKNOWLEDGMENT PROGRAM: EFFECTIVE PRACTICES IN HOSPITAL STAFF TRAINING 5 (1997), available at oig.hhs.gov/oei/reports/oei-06-95-00162.pdf.

proper training on how to avoid giving legal advice, as well as consistent supervision, some staff members likely overstep the boundary and offer legal advice and opinions that would qualify as unauthorized practice of law.

Notably, most unmarried men do not come to hospitals or birthing centers seeking legal assistance to establish paternity for a child. Unlike consumers who search for and purchase divorce forms, putative fathers are not engaging in self-initiated self-representation. Establishing legal paternity is typically presented to them, perhaps even thrust upon some, during a time when the life-changing experience of having a child interrupts their daily routine. Some consideration should be made for the timing and often unexpected nature of the AOP process. Advanced education of the public, particularly nonmarital couples, might assist these men in being more prepared for this serious legal decision.

Another consideration that was mentioned earlier is the determination of whether the type of information that the staff member provides rises to the level of unauthorized practice of law. Since the execution of the form has distinct, grave legal consequences, executing AOPs arguably falls under the practice of law. Yet, this arguable categorization alone would not instantly place informing or advising a person about the AOP form under this category; car leases, mortgages, and loans have similar serious consequences for consumers. The documents in these transactions, however, do have “fine print.” In other words, they are much more voluminous, and typically legal rights, duties, and consequences are stated explicitly, albeit in very small letters.

The type of information provided specifically includes statements regarding the state laws about the legal rights and obligations of parents, and the legal consequences of signing the form. Describing the legal consequences of being a parent is not a simple task, nor are the answers derived from a single place in a state’s family code. To the contrary, parental rights, obligations and the consequences therefrom are found in multiple places in state family, juvenile, penal, probate, education, and health and safety codes, not to mention the various federal laws that provide legal protections for parents in the workplace, children in school, and obligations in filing income taxes. In order for a person to be fully informed, he would need a booklet rather than a two-page form with only one side explaining a mere outline of rights, obligations, and consequences of signing the AOP.

One indicator that hospital staff members are “advising” in addition to merely “informing” is that a survey of these persons revealed that almost a third of them believed that the parent had been “convinced” or urged to sign the form. Reading most forms out loud would be arguably objective—unless the information on the form itself is skewed to produce a certain result. Starting from the premise that the state’s interest is to sign up as many fathers as possible, it is reasonable to think that the information would be written in such a way to make signing the form appealing and at least omit certain issues that raise a question in a potential father’s mind.

One may naturally assume that these hospital staff members engage in further discussion beyond the information on the back of the form, and these conversations likely tread the line regarding the wisdom and efficacy of signing the form at that time. This type of advice may or may not be legal, but it certainly does have legal consequences.

Whether the hospital staff members have in their possession or share on their own the statistics regarding genetic testing of men in the state is uncertain. In Texas, for example, from 2006 to 2011, the number of men who were excluded as the father of a child after state-requested genetic testing consistently ranged from 23 to 25 percent of the men tested.²²¹ A quarter of the population is statistically significant, and if this information was shared with potential fathers, it would provide them with additional information regarding the consequences of signing the form.

Comment g to section 4 of the *Restatement (Third) of the Law Governing Lawyers* provides that nonlawyer employees of law firms can permissibly conduct activities that would ordinarily constitute unauthorized practice of law if the activities were conducted by the person alone without appropriate lawyer supervision.²²² The other issue that arises that is not likely implicated with respect to the AOP form is whether the nonlawyer is permitted to have an interest in the law firm, split fees, or exercise management powers with respect to the law practice aspect. While hospitals do receive fees per AOP, the nonlawyer does not share in these fees. At most, the hospital staff member may receive a more favorable work review, which may result in a higher pay raise, if he or she is able to report a good percentage of AOPs each year.

Employees may be engaging in the unauthorized practice of law by assisting parents in the execution of the AOP form. The Ohio Board of Commissioners on Grievances and Discipline (Board of Commissioners) was asked whether nonlegal Child Support Enforcement Agency (CSEA) employees may perform certain tasks without engaging in the unauthorized practice of law.²²³ The fact scenario presented was that nonlawyers who were trained as enforcement personnel performed all client intake and initial interviews, as well as “fill[ed] out pre-printed forms for contempt actions, petitions for support, paternity complaints and wage withholding orders.”²²⁴ These enforcement caseworkers were “cautioned against giving legal advice and [were required to] refer any legal questions to the legal department.”²²⁵ Once the paperwork (including initial pleadings) was filled out, the case file, along with interview notes, employment verification, and financial

221. See Letter from Sherry D. Mansell, Pub. Info. Coordinator, Tex. Dep't of State Health Servs., to Donna Wolff, Head of Research Servs., S. Methodist Univ. Dedman Sch. of Law (Jun. 28, 2013) (on file with *Fordham Law Review*).

222. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 cmt. g (2000).

223. Supreme Court of Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 90-10 (1990), available at 1990 WL 640505, at *5.

224. *Id.*

225. *Id.*

documentation, were forwarded to the legal department for review.²²⁶ “A staff attorney then review[ed] the case file, and when properly prepared, it [was] approved and signed for filing with the proper tribunal.”²²⁷

The Board of Commissioners set forth that this activity would not constitute the unauthorized practice of law.²²⁸ The board noted that a prior ethical opinion held that intake workers at the legal aid society may do the initial screening for their organizations. The board also noted the State of Alabama had held that a nonlawyer social worker who interviewed noncustodial parents, arranged agreements, and prepared forms and case summaries was not engaging in the unauthorized practice of law.²²⁹

The Board of Commissioners also highlighted three actions necessary for the state to warrant that the nonlawyer enforcement personnel’s work did not constitute the unauthorized practice of law.²³⁰ First, the work must be approved by an attorney.²³¹ Second, the CSEA staff attorneys must be available for questions from the enforcement personnel or the general public.²³² Third, the enforcement caseworkers “must be frequently reminded of the restriction on giving any type of legal advice.”²³³ These are critical issues to consider regarding the civil process established by states for execution of the AOP. In no other area of law is there one form that acts as an application *and* an order to establish what is considered a fundamental right for a person. The AOP form should be treated similarly to the forms filled out by child support enforcement personnel in that the legal significance of the document is at least the same, if not greater than, the other pleadings filed by the CSEA attorney in child support or family court.

The problem that the state encounters regarding voluntary AOPs is that, in most cases, the state is not monitoring hospital participation,²³⁴ much less taking the necessary actions to properly supervise the hospital staff members. No hospital staff attorney reviews the AOPs before they are sent to the Bureau of Vital Statistics. In some states, like Texas, there are “three site visits per year to monitor hospital performance in administering AOPs.”²³⁵ During the site visit, outreach coordinators, who are not necessarily attorneys, observe hospital staff explaining the AOP process to new, unwed parents.²³⁶ The outreach coordinators also review a sample of nonmarital birth records to determine if parents completed the required

226. *Id.*

227. *Id.*

228. *Id.* at *6.

229. *Id.* (citing Ala. St. Bar, Op. 87-142 (1987)).

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. See JUNE GIBBS BROWN, IN-HOSPITAL VOLUNTARY PATERNITY ACKNOWLEDGMENT PROGRAM: STATE AGENCY AND BIRTHING HOSPITAL IMPLEMENTATION 18 (1997), available at <http://oig.hhs.gov/oei/reports/oei-06-95-00160.pdf>.

235. Letter from Ted White, *supra* note 93.

236. *Id.*

parent survey and were given the opportunity to complete an AOP form, as well as review completed AOPs for accuracy.²³⁷ In most states, however, there is just the annual training/certification process with very little contact between the hospital staff and the legal counsel that may have trained them. Moreover, whether the hospital staff receive any training from a licensed lawyer is unclear.

As stated earlier, federal law does require that mothers and fathers be given the “opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment.”²³⁸ The law does not state, however, whether this staff person should be an attorney or trained hospital staff member on hand at the hospital. In the State of Iowa, an attorney is available on staff to address individual questions from putative fathers that arise at the hospital.²³⁹ The State of Washington provides a hotline number for parents to contact a lawyer referral service to see if they might qualify for reduced cost legal assistance.²⁴⁰ Washington State also provides a toll-free hotline for parents to call and ask questions about the form and its repercussions.²⁴¹ Idaho is the only other state that has a similar hotline available to parents.²⁴²

As for the consistent reminders about the restriction on giving out any legal advice, federal law does not make clear what type of training is required.²⁴³ This one-time training would not constitute a consistent reminder. If there were proper supervision of the hospital staff members, attorneys would be able to consistently remind them about this restriction, as well as ensure that the staff did not violate the restriction. There should be a standard for training as well as attorney supervision to ensure that the state is in compliance with the ethical rules.

IV. ETHICAL BOUNDARIES RESET

After considering the judicial canons and model rules that apply to state promulgated forms, states must make some adjustments to stay within the parameters of the ethical guidelines for judges and lawyers. This Part briefly considers the importance of lawyers within the family law practice and analyzes whether states’ interests subvert true access to justice for the poor. This Part also suggests some lawyer-inclusive solutions so that

237. *Id.*

238. 45 C.F.R. § 303.5(g)(2)(i)(D) (2013).

239. IOWA DEP’T OF HUMAN SERVS., PATERNITY BY AFFIDAVIT 10 (2003), available at http://www.dhs.state.ia.us/policyanalysis/policymanualpages/Manual_Documents/Master/10-c.pdf.

240. *Division of Child Support: Information for Parents*, WASH. ST. DEPARTMENT SOC. & HEALTH SERVICES, <http://www.dshs.wa.gov/dcs/services/parents.asp> (last visited Apr. 26, 2014).

241. *Id.*

242. *Acknowledging Legal Fatherhood*, IDAHO DEPARTMENT HEALTH & WELFARE, <http://www.healthandwelfare.idaho.gov/Children/ChildSupport/Paternity/AcknowledgingLegalPaternity/tabid/364/Default.aspx> (last visited Apr. 26, 2014).

243. *See* 45 C.F.R. § 303.5.

judges and the state's attorneys will not cross ethical lines by providing family law forms to the public.

A. Why Lawyers Are Still Necessary in Family Law Practice

While some self-help solutions in family law will work better to provide all persons with equal access to justice, it is necessary for lawyers to maintain a major role in the practice of family law. Central to providing a meaningful opportunity to the public to obtain free or affordable legal representation is whether litigants in family court have a right to an attorney. Even though precedent cases involving state-initiated termination of parental rights proceedings do not require court-appointed legal representation for parents, many state statutes do oblige judges in these types of cases to appoint counsel for indigent parents.²⁴⁴ Recognizing inequities in the family court system can be handled through collective solutions that engage state and local government, the judiciary, state bar associations, and legislators.

Properly prepared AOPs should be recognized as an entered court order once filed with the appropriate state agency, and as such, they should require attorney oversight. If legal oversight of the AOP process is not economically feasible for child support or attorney general's offices, then greater precautions should be instated before allowing parents or hospital staff members to file these documents. The state must ensure that parents who sign AOPs have a solid understanding of their legal rights and options, as well as the ramifications of signing an AOP. Although trained hospital staff members can relay this information, it would be best transmitted through an attorney so that the parents would have the opportunity to ask questions and obtain answers regarding any legal issues related to the AOP and paternity establishment.

B. True Access to Justice Versus State Interests

There are three basic schools of thought regarding the provision of access to justice for the poor in America. Some ethics scholars insist that there are not enough lawyers to represent indigent clients and, therefore, argue that expanding the role of the judge to that of active umpire is a necessary and acceptable compromise.²⁴⁵ Other ethics scholars argue that providing forms and increasing nonlawyer assistance is the answer.²⁴⁶ A third viewpoint is that the only way to have a fair dispute in an adversarial court

244. See ARK. CODE ANN. § 9-27-316 (Supp. 2013); KAN. STAT. ANN. § 38-2205 (West 2013); LA. CHILD. CODE ANN. art. 573-575 (Supp. 2014); N.J. STAT. ANN. § 30:4C-15.4 (West 2008); TEX. FAM. CODE ANN. § 107.013 (West 2008).

245. See Russell Engler, *Ethics in Transition: Unrepresented Litigants and the Changing Judicial Role*, 22 NOTRE DAME J.L. ETHICS & PUB. POL'Y 367, 396 (2008); Russell G. Pearce, *Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help*, 73 FORDHAM L. REV. 969, 977 (2005).

246. See RHODE, *supra* note 1, at 84; Painter, *supra* note 1, at 45, 51-53.

of law with formal civil and evidentiary procedures is to provide indigent parties with some form of legal counsel.²⁴⁷

The problem with the proposal to improve the courtroom experience for pro se litigants with an active judge is that it assumes that all judges can impartially stand in two roles at the same time. As former lawyers, judges are acutely aware of what evidence and procedures are necessary to prevail in a case. It would be fair to assume that some judges will go too far as active umpires in court, while others will not go far enough. In most instances, appellate courts have reversed trial judges who were quick to reject the petitions of unrepresented litigants.²⁴⁸ Even if a judge did not conduct court in a partial manner toward one litigant, the appearance of partiality would still impact the public's ability to rely on the judiciary as fair.²⁴⁹

The second approach to dealing with the pro se phenomenon in court might be sufficient for simple, no-contest divorces where there are no children and no property. But more complex family cases require legal counsel in order for a litigant to be fully informed and able to secure important rulings and orders.²⁵⁰ The bottom line with this approach is that the forms and nonlawyer assistance may help initiate the lawsuit in family court, but continued assistance is needed in order for the case to be resolved. There are discovery deadlines, motion hearings, and substantive claims and defenses to be made that require legal knowledge and skill.²⁵¹ While supplying forms may be a temporary fix, it does not solve the entirety of the pro se problem.

The third option of providing more lawyers for the pro se litigants is perhaps the most difficult to achieve. Most scholars concede that even if legal aid had more money, there would still not be enough attorneys to meet the needs of the poor.²⁵² It seems that a fundamental shift is needed in the way lawyers conceive of serving the public. Litigating pro bono cases is not a priority for most legal practitioners. If attorneys had to complete a higher number of pro bono cases in order to maintain their licenses, it

247. See Brief of Retired Alaska Judges As Amicus Curiae in Support of Appellee Jonsson, Office of Public Advocacy v. Alaska Court Sys., No. S-12999 (Alaska Nov. 19, 2008), 2008 WL 5585566 [hereinafter Brief of Retired Alaska Judges].

248. See Albrecht et al., *supra* note 148, at 43.

249. See *id.* at 44–45 (citing *Oko v. Rogers*, 466 N.E. 2d 658 (Ill. App. Ct. 1984) (confronting a situation where the judge actively participated in a jury trial with a pro se litigant, and the appeal was brought by a legally represented party alleging denial of a fair trial because of the judge's assistance to the defendant in presenting his case)).

250. See Brief of Retired Alaska Judges, *supra* note 247, at *8–9 (noting the importance of legal counsel in the domestic violence context and in child custody disputes); Bruce D. Sales et al., *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 ST. LOUIS U. L.J. 553, 567–68 (1993).

251. See Brief of Retired Alaska Judges, *supra* note 247, at *10–11; see also *Family Law Cares: Mobilizing Texas Attorneys To Help Texas Families in Need*, FAM. L. CARES, <https://www.familylawcares.com/about/> (last visited Apr. 26, 2014).

252. See DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 119–20 (2000); see also Deborah J. Cantrell, *Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 FORDHAM L. REV. 1573, 1573–74 (2002).

would prompt lawyers to dedicate more of their time for indigent clients. Choosing to take on a family law case is another issue that the State Bar of Texas Family Law Section is tackling. Family Law Cares, a nonprofit organization that trains lawyers to represent citizens in family law cases, aims to recruit lawyers in Texas to handle cases where the party would normally proceed as a pro se litigant.²⁵³

It is important to strive to create an equitable justice system where a party's economic situation does not determine the outcome of the case. While state judges have an interest in conducting their courts in an effective manner, they should also have an interest in parity and ensuring that certain citizens do not suffer legal harms solely because they lack an attorney. Even if case precedents do not support court-appointed attorneys in civil settings, attorneys could seek legislative action that would allow judges, in their own discretion, to appoint attorneys in certain situations.

For unmarried fathers seeking to establish paternity, it is vital that they fully understand the rights and responsibilities that the AOP commands. The state's interest in securing financial support for nonmarital women should not override a potential father's right to be informed. Moreover, the state should have a greater interest in the well-being of its children, who deserve the opportunity to have a legal bond with a father who is assured of his role and willing to take on his obligations. The failure of the state to improve the AOP process impacts children more than parents, and their welfare should be the priority.

C. Lawyer-Inclusive Solutions for Access to Justice

Many excellent articles have been written about solving the dichotomy of the huge number of unrepresented parties in courts and the surplus of attorneys in the market.²⁵⁴ This dilemma grows with each graduating class of lawyers, because there are more unemployed or underemployed lawyers in the United States than ever before.²⁵⁵ Eventually the economic model upon which lawyering has been cast needs to be updated to fit modern times and adjust to the reality of today's market.

253. See *Family Law Cares: Mobilizing Texas Attorneys To Help Texas Families in Need*, *supra* note 251.

254. Patricia Kay Oliver, *Justice for All*, 40 PEPP. L. REV. 509 (2013) (arguing for an urgent care model of law offices, similar to urgent care health centers, available in various parts of the community providing free legal assistance); Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531 (2013) (noting the creation of the 2010 Access to Justice Initiative in the U.S. Department of Justice as a means for change in social justice in legal education).

255. See Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1; Adam Cohen, *Just How Bad Off Are Law School Graduates?*, TIME (Mar. 11, 2013), <http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates/>.

1. Family Law Forms

Generally, judges should not be in the business of drafting pleadings for the public's use. While judges may have the most to gain from a uniform set of divorce and child custody forms, state bar associations and family law sections have shown enough interest in dedicating time to put together a set of forms that would be acceptable to courts. Although many arguments against state-sponsored forms have centered on the reality that they may reduce business for private attorneys, a counterargument exists in that better-prepared pro se litigants will reduce the cost of legal fees for represented parties. Attorneys will spend less time in court, file fewer pleadings, and, in all likelihood, resolve the case quicker.

Very few states have established guidelines for how trial judges should deal with self-represented parties.²⁵⁶ Rather than promulgate forms, state supreme courts are in the perfect position to develop or approve such bench guides as a tool for lower court judges. In fact, the Tennessee Supreme Court²⁵⁷ and other groups of judges in Massachusetts²⁵⁸ and Minnesota have done just that.²⁵⁹ In California, the American Judicature Society has authored an extensive judicial bench guide.²⁶⁰ If family courts remain traditionally adversarial or evolve to more problem-solving courts, it is crucial for the public to maintain its belief in the justice system.

2. Acknowledgements of Paternity

Several scholars have noted the myriad of changes that could be implemented to improve paternity establishment through the AOP process.²⁶¹ Notwithstanding any substantive changes to the law, an opportunity exists for lawyers to provide a more equitable environment for both nonmarital fathers and mothers to evaluate the execution of this document. Similar to doctors and hospital ethics teams, there could be on-call lawyers for prospective fathers to consult with before signing the AOP. An on-call lawyer would be made available during the forty-eight-hour period after the baby is born. This person could be available in person, via Skype, or telephone. Iowa is an example of a state that has a legal staff person available in the hospital to answer legal questions about paternity affidavits.²⁶² Judicial bench guides that promote consistent and just treatment of all litigants will help towards this goal and are the best use of the wisdom of state supreme court judges.

256. Albrecht et al., *supra* note 148.

257. See TENN. SUPREME COURT ACCESS TO JUSTICE COMM'N, *supra* note 63.

258. See Engler, *supra* note 245, at 377.

259. See *id.* at 372.

260. See *id.* at 378.

261. See Nancy E. Dowd, *Parentage at Birth: Birthfathers and Social Fatherhood*, 14 WM. & MARY BILL RTS. J. 909, 934–35 (2006); Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 374–85 (2005); Parness & Townsend, *supra* note 95, at 93–98.

262. See IOWA DEP'T OF HUMAN SERVS., *supra* note 239, at 10.

An attorney could be hired to fulfill a similar role as a patient advocate or public defender, either by the hospital or the state. This attorney, or cadre of attorneys, would be on call at the hospital on certain days and hours so that if a putative father wished to speak to an attorney while at the hospital, one would be made available. The on-call attorney could answer questions, have information about where the putative father could obtain DNA testing, and, most importantly, explain to the father the legal rights and responsibilities he accepts upon signing an AOP. The on-call attorney could also explain the various ways that the state allows for establishment of fatherhood and the importance of gaining parental status within a certain time period after the child's birth.

Two separate attorneys would need to be on call so that both parents could talk separately to them and seek legal advice. Certain situations, as mentioned earlier, arise where mothers may not want a putative father to sign an AOP. Instances where domestic abuse or child abuse is occurring or has occurred in the past would cause most mothers to be reticent in giving that same man legal status in a newborn's life. If maintaining some control over custody and visitation is easily accomplished by withholding her signature from the AOP, an on-call attorney could share with the mother alternative or additional legal information necessary to keep her and her child safe.

CONCLUSION

As the area of family law has grown, the federal government and state actors have changed to meet their own needs and the needs of the public. Considering the ethical implications of state efforts to provide access to justice is important. In some instances, state supreme courts' approval of pro se family law forms results in great benefits. In other instances, where the greatest benefit inures to the state itself and the public at large bears a significant burden, issues of procedural inequity and oversight must be addressed. It is problematic that the particular segment of the public that both of these state actions affect the most is the same: poor people of color. A separate judicial committee should review issues of judicial independence and impartiality to determine if it would be more ethical for state bar associations and other related lawyer organizations to draft and approve forms for indigent citizens.

Though the state's interests in courtroom efficiency and reducing expenditures are important, they should not override certain interests of citizens, particularly those concerning fundamental and statutory rights as married persons and parents. The state can organize a team of lawyers—including retired judges—and citizens to help improve access to the court system, including drafting forms and recruiting lawyers to provide limited bundled representation, while sitting judges can establish bench guides for the judiciary to use when dealing with pro se litigants. While the Model Code of Judicial Conduct does technically allow for state supreme court judges to assist with or draft family law forms, there are enough concerns about the judges' ability to remain impartial that they should avoid this

activity. State supreme court judges are best suited for drafting bench guides for state court judges to use when dealing with self-represented litigants. If family law courts evolve to become less traditional and more oriented towards problem solving, judges may then alter their role and take a more collaborative approach to parties to a suit.

The AOP process is achieving the federal goal of creating a simple way for nonmarried citizens to establish paternity. But the lack of clear guidelines and standards for training hospital and birthing center staff who are state agents is ethically problematic. Even more concerning, the state's or child support offices' attorney provides very little, if any, supervision of these state agents. Because of the automatic legal parental status that these state forms afford a putative father, states should engage in serious ethical inquiries regarding whether staff members are taking part in the unauthorized practice of law. State's attorneys should not be absolved of their ethical duties because the AOP process is federally mandated and secures financial savings for the state. The AOP process should be adjusted to meet the ethical requirements of the Model Code of Professional Responsibility, and by doing so, the government will balance state's interests with parents' interests.

In the midst of persistent job shrinkage in the legal industry and outsourcing legal services to a host of entities and nonlawyers, legal leaders and scholars stand at a crossroads. We can either demonopolize the practice of law or perhaps reinvent it to serve the society. Though something as radical as universal legal coverage would never happen, lawyers should reassess our roles in providing access to justice for all people. This would inevitably require some sacrifice on the part of lawyers—volunteering to do more pro bono cases and readjusting hourly rates (or lawyer billing practices altogether), salary expectations, and training for future lawyers. Efforts to provide access to justice should provide true access to the citizens who need it the most, and the interests of the public should be foremost when considering reforms and changes to the legal system.

APPENDIX A. LIST OF STATES AND PRO SE FAMILY LAW FORMS

State	Online Form Availability	Type	Location
Alabama	Yes	Divorce, custody, and child support	<i>Do It Yourself Instructions and Forms</i> , ALABAMALEGALHELP.ORG, http://www.alabamalegalhelp.org/resource/do-it-yourself-instructions-and-forms (last visited Apr. 26, 2014). ²⁶³
Alaska	Yes	Divorce and custody	<i>Form, Instructions and Publications: By Topic & Number</i> , ALASKA CT. SYS., http://courts.alaska.gov/forms.htm (last visited Apr. 26, 2014) (search “Domestic Relations (DR-1 - DR-806)”).
Arizona	Yes	Child support	<i>Self-Service Forms</i> , ARIZ. JUD. BRANCH, http://www.azcourts.gov/selfservicecenter/selfserviceforms.aspx#Family%20Law (last visited Apr. 26, 2014).
Arkansas	No ²⁶⁴		<i>Court Forms</i> , ARK. JUDICIARY, https://courts.arkansas.gov/forms-and-publications (last visited Apr. 26, 2014).
California	Yes	Divorce	<i>Forms</i> , CAL. COURTS JUD. BRANCH CAL., http://courts.ca.gov/1230.htm (last visited Apr. 26, 2014). FL-107-INFO, Legal Steps for a Divorce or Legal Separation (July 1, 2013), <i>available at</i> http://www.courts.ca.gov/documents/fl107info.pdf (last visited Apr. 26, 2013).

263. The forms listed on this website are official state government forms.

264. This website does have several links, but there is no section for self-represented divorce litigants. Flaherty, *supra* note 15, at 99.

Colorado	No	<p>Divorce information sheet</p> <p>Custody information sheet</p> <p>Child support information sheet</p>	<p><i>All Domestic Forms Forms</i>, JUD. BRANCH ST. COLO., http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=108 (last visited Apr. 26, 2014).</p> <p><i>Child Custody Forms</i>, JUD. BRANCH ST. COLO., http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=15 (last visited Apr. 26, 2014).</p> <p><i>Divorce, Family Matters, Civil Unions Subcategories</i>, JUD. BRANCH ST. COLO., http://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Divorce (last visited Apr. 26, 2014).</p>
Connecticut	Yes	<p>Divorce “do it yourself how-to”</p> <p>Divorce form</p> <p>Custody</p>	<p>JUDICIAL BRANCH, STATE OF CONN., <i>DO IT YOURSELF DIVORCE GUIDE (2012)</i>, available at http://www.jud.ct.gov/publications/fm179.pdf.</p> <p><i>Family Forms: Filing for a Divorce with Children</i>, ST. CONN. JUD. BRANCH, http://www.jud.ct.gov/forms/grouped/family/divorce_children.htm (last visited Apr. 26, 2014).</p> <p><i>Family Forms: Filing for Custody or Visitation (or Both)</i>, ST. CONN. JUD. BRANCH, http://www.jud.ct.gov/forms/grouped/family/custody.htm (last visited Apr. 26, 2014).</p>
Delaware	Yes	Divorce	<p><i>Divorce Forms</i>, DEL. ST. COURTS, http://courts.delaware.gov/help/Divorce/forms.stm (last visited Apr. 26, 2014).</p>

Florida	Yes	Divorce, custody, and child support	<p><i>Family Law & Self Help Information</i>, FLA. COURTS, http://www.flcourts.org/gen_public/family/self_help/index.shtml (last visited Apr. 26, 2014).</p> <p><i>Family Law Rules and Opinions</i>, FLA. COURTS, http://www.flcourts.org/gen_public/family/forms_rules/index.shtml#dissolution (last visited Apr. 26, 2014).</p> <p><i>Family Law Forms</i>, FLA. COURTS, http://www.flcourts.org/resources-and-services/family-courts/family-law-self-help-information/family-law-forms.shtml (last visited Apr. 26, 2014).</p>
Georgia	No	County divorce form	<p>OFFICE OF SUPERIOR COURT JUDGES, INSTRUCTION SHEET FOR PRO SE DIVORCE PAPERS (2009), <i>available at</i> http://www.telfairclerkofcourt.com/pdf/PRO%20SE%20DIVORCE%20PETITION.pdf.</p> <p><i>Domestic Relations</i>, JUD. BRANCH GA., http://www.georgiacourts.org/aoc/selfhelp/dom_relations.html (last visited Apr. 26, 2014).</p>
Hawaii	Yes	Divorce	<p><i>Divorce Forms</i>, HAW. ST. JUDICIARY, http://www.courts.state.hi.us/self-help/divorce/forms/divorce_forms.html (last visited Apr. 26, 2014).</p>
Idaho	Yes	Divorce and custody	<p><i>Forms: Family Related</i>, ST. IDAHO JUD. BRANCH CT. ASSISTANCE OFF., http://www.courtselfhelp.idaho.gov/family-related# (last visited Apr. 26, 2014).</p>

Illinois	No ²⁶⁵		
Indiana	Yes	Divorce and child support	<i>Court Forms</i> , COURTS.IN.GOV, http://www.in.gov/judiciary/selfservice/2333.htm (last visited Apr. 26, 2014).
Iowa	Yes	General Divorce forms and guides	<i>Divorce/Family Law Forms</i> , IOWA JUD. BRANCH, http://www.iowacourts.gov/For_the_Public/Representing_Yourself_in_Court/DivorceFamily_Law/Forms/index.asp (last visited Apr. 26, 2014). IOWA SUPREME COURT & OFFICE OF STATE COURT ADMIN., APPROVED IOWA COURTS FORMS & INSTRUCTIONS FOR A PETITIONER IN A DIVORCE THAT DOES NOT INVOLVE MINOR CHILDREN (2007), <i>available at</i> http://www.iowacourtsonline.org/wfdata/files/petitionerspacket.pdf . IOWA JUD. BRANCH, GUIDE TO REPRESENTING YOURSELF IN AN IOWA DIVORCE CASE WITH CHILDREN (2013), <i>available at</i> www.iowacourts.gov/wfdata/files/FamilyLaw/Divorcewkids/GuideDivorcewithchildren.pdf .

265. The Illinois State Court System website does not have forms for pro se divorce litigants. *Id.* at 102. The Self Help Legal Center at Southern Illinois University School of Law does contain a link to pro se forms on its website. These forms were developed by the Self Help Legal Center, and these packets cannot be used in Cook County. However, these forms do include forms for pro se litigants. *See Self-Help*, S. ILL. U. SCH. L., <http://www.law.siu.edu/selfhelp/> (last visited Apr. 26, 2014).

Iowa		Child support guide	IOWA JUD. BRANCH, GUIDE TO REPRESENTING YOURSELF IN A CHILD SUPPORT MODIFICATION CASE IN IOWA (2014), <i>available at</i> www.iowacourts.gov/wfdata/files/FamilyLaw/Child%20support%20mod/Guide%20with%20EDMS%20Child%20Support%20Modification%2003%2006%2014.pdf .
Kansas	Yes	General Divorce	<i>Free Legal Forms</i> , KAN. LEGAL SERVICES, http://www.kansaslegalservices.org/FreeLegalForms (last visited Apr. 26, 2014). STATE OF KAN. 6TH JUDICIAL DISTRICT, PRO SE (SELF-REPRESENTATION) DIVORCE PACKET (2009), <i>available at</i> http://www.kscourts.org/dstcts/6prosedivorcepacketforms.pdf .
Kentucky	No		
Louisiana	No ²⁶⁶		
Maine	Yes	Divorce, custody, and child support	<i>Court Forms</i> , ST. ME. JUD. BRANCH, http://www.courts.state.me.us/fees_forms/forms/index.shtml#fm (last visited Apr. 26, 2014).
Maryland	Yes	Divorce, custody, and child support	<i>Family Law Forms Index</i> , MD. COURTS, http://mdcourts.gov/family/formindex.html#domesticrelations (last visited Apr. 26, 2014).
Massachusetts	Yes	Divorce	<i>Massachusetts Legal Forms</i> , MASS. TRIAL CT. L. LIBR., http://www.lawlib.state.ma.us/subject/forms/#divorce (last visited Apr. 26, 2014).

266. Neither the Louisiana Judiciary website nor the district court website provide pro se divorce forms. *See* Flaherty, *supra* note 15, at 101.

Massachusetts		Custody	<i>Massachusetts Legal Forms</i> , MASS. TRIAL CT. L. LIBR., http://www.lawlib.state.ma.us/subject/forms/#custody (last visited Apr. 26, 2014).
		Child support	<i>Massachusetts Legal Forms</i> , MASS. TRIAL CT. L. LIBR., http://www.lawlib.state.ma.us/subject/forms/#support (last visited Apr. 26, 2014).
Michigan	Yes	Divorce	<i>Automated Online Divorce Forms</i> , MICH. LEGAL HELP, http://www.michiganlegalhelp.org/self-help-tools/family/automated-online-divorce-forms (last visited Apr. 26, 2014).
Minnesota	Yes	Divorce, custody, and child support	<i>Divorce, Child Support, Custody & Family Law</i> , MINN. JUD. BRANCH, http://www.mncourts.gov/selfhelp/?page=310 (last visited Apr. 26, 2014).
		Custody	<i>Forms—Child Custody & Parenting Time</i> , MINN. JUD. BRANCH, http://www.mncourts.gov/selfhelp/?page=1627 (last visited Apr. 26, 2014).
		Child support	<i>Forms—Child Support</i> , MINN. JUD. BRANCH, http://www.mncourts.gov/selfhelp/?page=1175 (last visited Apr. 26, 2014).
		Divorce	<i>Divorce Forms</i> , MINN. JUD. BRANCH, http://www.mncourts.gov/selfhelp/?page=1668 (last visited Apr. 26, 2014).
Mississippi	No ²⁶⁷		

267. The Mississippi Supreme Court website does not contain a section for pro se litigants. *See id.* at 104.

Missouri	Yes	Divorce	<p><i>Dissolution of Marriage (Divorce)—Petitioner's Forms Package</i>, REPRESENTING YOURSELF MO. COURTS, http://www.selfrepresent.mo.gov/page.jsp?id=3832 (last visited Apr. 26, 2014).</p>
		Child custody	<p><i>Motion To Modify Child Custody (and Support) Forms</i>, REPRESENTING YOURSELF MO. COURTS, http://www.selfrepresent.mo.gov/page.jsp?id=38347 (last visited Apr. 26, 2014).</p>
		Child support	<p><i>Motion To Modify Child Support Forms</i>, REPRESENTING YOURSELF MO. COURTS, http://www.selfrepresent.mo.gov/page.jsp?id=38397 (last visited Apr. 26, 2014).</p> <p><i>Child Support Forms</i>, JUD. BRANCH ST. GOV'T, http://www.courts.mo.gov/page.jsp?id=638 (last visited Apr. 26, 2014).</p>
Montana	Yes	Divorce	<p><i>Ending Your Marriage</i>, MONT. JUD. BRANCH, http://courts.mt.gov/library/topic/end_marriage.mcpx (last visited Apr. 26, 2014).</p>
		Child support	<p><i>Child Support</i>, MONT. JUD. BRANCH, http://courts.mt.gov/library/topic/child_support.mcpx (last visited Apr. 26, 2014).</p>
		Custody	<p><i>Child Custody—Parenting Plans—Visitation</i>, MONT. JUD. BRANCH, http://courts.mt.gov/library/topic/childecustody.mcpx (last visited Apr. 26, 2014).</p>

Nebraska	Yes	Divorce	<i>Nebraska Online Legal Self-Help Center</i> , ST. NEB. JUD. BRANCH, http://court.nol.org/self-help/families.html (last visited Apr. 26, 2014).
Nevada	Yes	Divorce	<i>Standardized Divorce Forms—Complaint for Divorce</i> , NEV. JUDICIARY, http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/SelfHelpProSe/Standardized-Divorce-Forms---Complaint-for-Divorce/ (last visited Apr. 26, 2014).
New Hampshire	Yes	Divorce	<i>Circuit Court Family Division—How To File a Divorce Petition</i> , N.H. JUD. BRANCH, http://www.courts.state.nh.us/fdpp/divorce_petition.htm (last visited Apr. 26, 2014).
New Jersey	Yes	Divorce, custody, and child support	<i>Represent Yourself in Court (Pro Se): Self-Help Resource Center</i> , N.J. COURTS, http://www.judiciary.state.nj.us/prose/index.htm (last visited Apr. 26, 2014).
New Mexico	Yes	Divorce	<i>Divorce and Paternity Forms</i> , SUPREME CT. L. LIBR., http://www.supremecourtlibrary.org/div.htm (last visited Apr. 26, 2014).
New York	Yes	Custody Child support	<i>FORMS—Family Court Forms: Custody & Visitation Forms</i> , N.Y. ST. UNIFIED CT. SYS., http://www.nycourts.gov/forms/familycourt/custodyvisitation.shtml (last visited Apr. 26, 2014). <i>FORMS—Family Court Forms: Child Support Forms</i> , N.Y. ST. UNIFIED CT. SYS., http://www.nycourts.gov/forms/familycourt/childsupport.shtml (last visited Apr. 26, 2014).

North Carolina	Yes	Divorce County divorce forms	LEGAL AID OF N.C., INC., <i>PRO SE</i> DIVORCE INSTRUCTION PACKET (n.d.), available at http://ww2.legalaidnc.org/Downloads/SampleOutput/DivorcePacket-Instructions.pdf . <i>Pro Se Absolute Divorce Packet</i> , N.C. CT. SYS., http://www.nccourts.org/county/durham/courts/family/prosedivorce.asp (last visited Apr. 26, 2014).
North Dakota	Yes	Divorce Child support	<i>Self Represented Divorce Forms</i> , N.D. SUPREME CT., http://www.ndcourts.gov/court/forms/divorce/forms.htm (last visited Apr. 26, 2014). <i>Child Support Forms for Self Represented Parties</i> , N.D. SUPREME CT., http://www.ndcourts.gov/court/forms/childsup/forms.htm (last visited Apr. 26, 2014).
Ohio	Yes	Divorce, custody, and child support	<i>Uniform Ohio Domestic Relations Forms</i> , SUPREME CT. OHIO & OHIO JUD. SYS., http://www.sc.ohio.gov/JCS/CF/DRForms/default.asp (last visited Apr. 26, 2014).
Oklahoma	Yes	Child support	Order/Notice To Withhold Income for Child Support, available at http://www.oscn.net/forms/child_support/adobe/Order_Notice_To_Withhold_Income_for_Child_Support.pdf . <i>Forms</i> , OKLA. ST. CT. NETWORK, http://www.oscn.net/static/forms/start.asp (last visited Apr. 26, 2014).

Oregon	Yes	Divorce	<i>Dissolution of Marriage (Divorce)</i> , OR. COURTS OR. JUD. DEPARTMENT, http://courts.oregon.gov/OJD/O_SCA/cpsd/courtimprovement/familylaw/pages/flpacket1.aspx (last visited Apr. 26, 2014).
		Custody	<i>Enforcement of Custody and Parenting Time Orders</i> , OR. COURTS OR. JUD. DEPARTMENT, http://courts.oregon.gov/OJD/O_SCA/cpsd/courtimprovement/familylaw/pages/flpacket5.aspx (last visited Apr. 26, 2014).
		Child support	<i>Governing Child Support Judgments</i> , OR. COURTS OR. JUD. DEPARTMENT, http://courts.oregon.gov/OJD/O_SCA/cpsd/courtimprovement/familylaw/pages/flpacket-14.aspx (last visited Apr. 26, 2014).
Pennsylvania	Yes	Divorce, custody, and child support	<i>Dependency Forms</i> , UNIFIED JUD. SYS. PENN., http://www.pacourts.us/forms/dependency-forms (last visited Apr. 26, 2014).
Rhode Island	Yes	Child support	<i>Forms</i> , R.I. JUDICIARY, http://www.courts.ri.gov/publicresources/forms/default.aspx (last visited Apr. 26, 2014).
South Carolina	Yes	Divorce, custody, and child support	<i>All Court Forms</i> , S.C. JUD. DEPARTMENT, http://www.sccourts.org/forms/searchType.cfm (last visited Apr. 26, 2014).
South Dakota	Yes	Divorce	<i>Divorce for the Self-Represented Litigant</i> , S.D. UNIFIED JUD. SYS., http://ujs.sd.gov/Forms/divorce.aspx (Apr. 26, 2014).

Tennessee	Yes	Divorce	<i>Court-Approved Divorce Forms</i> , TENN. ST. COURTS, http://www.tncourts.gov/help-center/court-approved-divorce-forms (last visited Apr. 26, 2014).
Texas	Yes	Divorce	Order Approving Uniform Forms—Divorce Set One, No. 12-9192 (Tex. Nov. 13, 2012), <i>available at</i> http://www.supreme.courts.state.tx.us/miscdocket/12/12919200.pdf .
Utah	Yes	Divorce	<i>Divorce</i> , UTAH COURTS, https://www.utcourts.gov/howto/divorce (last visited Apr. 26, 2014). Form 14, Certificate of Divorce, Dissolution of Marriage, or Annulment (Dec. 2003), <i>available at</i> https://www.utcourts.gov/howto/divorce/docs/Divorce_Certificate.pdf .
		Custody	<i>Child Custody and Parent Time</i> , UTAH COURTS, https://www.utcourts.gov/howto/divorce/custody.html#forms (last visited Apr. 26, 2014).
		Child support	<i>Child Support</i> , UTAH COURTS, https://www.utcourts.gov/howto/divorce/support.html (last visited Apr. 26, 2014).
Vermont	Yes	Divorce and child support	<i>Vermont Judiciary Forms</i> , ST. VT. JUDICIARY, http://www.vermontjudiciary.org/masterpages/court-forms-family-packet.aspx (last visited Apr. 26, 2014).
Virginia	No ²⁶⁸		

268. Virginia's Judicial System website does not contain information for either pro se litigants or for family court, nor does the website provide pro se divorce forms on its link for downloadable forms. *Id.* at 110.

Washington	Yes	Divorce, custody, and child support	<p><i>Washington State Court Forms</i>, WASH. COURTS, http://www.courts.wa.gov/forms/ (last visited Apr. 26, 2014).</p> <p><i>List of All Forms</i>, WASH. COURTS, http://www.courts.wa.gov/forms/?fa=forms.static&staticID=14 (last visited Apr. 26, 2014).</p>
West Virginia	Yes	Divorce Custody and child support	<p><i>Divorce Packet Forms</i>, W. VA. JUDICIARY, http://www.courts.wv.gov/lower-courts/divorce-forms/index-divorce-forms.html (last visited Apr. 26, 2014).</p> <p><i>Family Court Forms</i>, W. VA. JUDICIARY, http://www.courts.wv.gov/lower-courts/family-forms/index-family-forms.html (last visited Apr. 26, 2014).</p>
Wisconsin	Yes	Divorce, custody, and child support Family law form filing assistance	<p><i>Circuit Court Forms</i>, WIS. CT. SYS., http://www.wicourts.gov/forms/1/circuit/ccform.jsp?FormName=&FormNumber=&beg_date=&end_date=&StatuteCite=&Category=12&SubCat=All (last visited Apr. 26, 2014).</p> <p><i>Family Law Forms Assistant</i>, WIS. CT. SYS., https://myforms.wicourts.gov/wizards/family/getting_started/county (last visited Apr. 26, 2014).</p>
Wyoming	Yes	Divorce, custody, and child support	<p><i>Family Law Pro Se Forms</i>, WYO. JUD. BRANCH, http://www.courts.state.wy.us/DandCS.aspx (last visited Apr. 26, 2014).</p>