Providing Equal Access to Justice in Civil Cases

There are more pro se litigants in the courtroom than ever before and there is little indication that this trend will decline. Pro se litigants seeking resolution in a court of law have placed a tremendous burden on the court staff, judges and the judicial system as a whole. Although national statistics are not available on the amount of pro se litigation, a sampling of pro se activity from Arkansas counties in 2005 was compiled along with testimony from five Town Hall meetings around the state which indicated a strong need to provide relief to the overburdened court system. Due to these findings, the Arkansas Access to Justice Commission has launched the Court Assistance Program aimed at educating and better preparing the pro se litigant for the court experience. In addition to preparing the pro se litigant for court, it is the goal of this brochure to share the latest information and insight from the national dialogue as to what the judicial response in Arkansas might be to the pro se challenge.

“Equal justice under law is not only a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

-Justice Lewis Powell, Jr.
U.S. Supreme Court

Arkansas Access to Justice Commission
303 West Capitol Ave., Suite 200
Little Rock, AR 72201
501.376.3423

Court assistance
self-help forms available at:

www.arkansasjustice.org
www.arlegalservices.org

Pro Se in the Courtroom
The View from the Bench
The Pro Se Challenge: View from the Bench

The Judge as Guardian and Gatekeeper of Justice
Studies done by the American Judicature Society have reported confusion about the actions judges should take when a self-litigant is in the courtroom. Over the past few years, many organizations like the American Judicature Society, Access to Justice Commissions, and free legal aid providers have worked to determine the ethical duties of a judge when faced with a pro se litigant. Additional guidance is emerging in case law, judicial ethics advisory opinions, and judicial discipline decisions on how to manage the challenge of pro se.

The following suggestions range from the bare minimum a judge should do when a case involves a pro se litigant(s) to highly accommodating options. This brochure is not a judicial guideline but rather it is offered as suggestions that hopefully will help initiate a conversation about determining solutions to the pro se challenge in Arkansas and at the same time enhancing access to justice for all.

Overview:
- Procedural rules should work to do substantial justice
- Cases should be decided on the merits
- A judge is not a mere moderator, referee, or spectator
- A judge should promote public confidence in the courts

Unreasonable Accommodations:
Beyond the practical burden placed on the court docket due to inexperienced pro se litigants, there is an ethical problem of overreaching from the bench that judges must be careful to avoid. As with most ethical questions the line can become blurry very quickly in the heat of the moment. However, there are some clear unreasonable accommodations to avoid.

- Judge may not become an advocate for one side
- Judge may not create claims or defenses
- Judge may not amend or redraft pleadings
- Judge may not assume facts
- Judge may not disregard substantive law or requirements of jurisdiction
- Judge may not sua sponte raise defense of statute of limitations on behalf of pro se defendants (this issue is split nationally)

For more information please visit the Arkansas Access to Justice Commission's website: www.ArkansasJustice.org

Reasonable Accommodations:
- Directing the litigant to self-help resources
- Asking questions for clarification
- Not dismissing the action based on technical rules
- Relaxation of the rules of evidence and calling attention to omissions in evidence proffered
- Allow reasonable continuances to hire lawyer or prepare case
- Explain basis for rulings (inform of defects in pleading)
- Use plain English whenever possible
- Liberally construe pleadings (overlooking poor syntax, sentence construction, irrelevant details or failure to cite correct legal theory)
- Looking beyond the label of a document and freely allow amendment
- Do not treat attorneys with familiarity or address pro se litigants less formally than counsel

Without raising reasonable questions concerning impartiality judges may exercise discretion to make equitable and procedural accommodations.