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A LEGAL TEAM OF ONE: PRO SE DIVORCE IN COOK COUNTY

by MARGARET DAVIS

For many people, the first stop in the divorce process is an attorney's office. A divorce attorney is trained to advise the client on how to proceed as well as drafting the appropriate documents and pleadings, negotiating on behalf of the client, and representing the client in front of a judge. However, some individuals decide not to hire an attorney, and instead represent themselves throughout the divorce process. These individuals are referred to as pro se litigants. In Latin, the term pro se means "for himself."¹

Pro se litigants exist in many different areas of law, but their presence in divorce cases is increasingly an issue in the family law field.² Overall, the number of pro se litigants is on the rise in the United States.³ Today, pro se representa-

tion is so common that the majority of divorce cases in the United States include at least one pro se party.⁴ In fact, some jurisdictions have as many as 90 percent of cases involving at least one pro se party.⁵

WHO ARE PRO SE LITIGANTS?

People decide to get divorced without an attorney for a variety of reasons.⁶ Some major factors that influence this decision include income level of the litigants, the length of the marriage, amount of assets, and existence of minor children.⁷ Pro se litigants are primarily low income, and the high cost of an attorney is historically the number one reason individuals decide to represent themselves.⁸

However, cost is not the only reason. Some affluent couples also choose to separate without an attorney simply because they believe that the process will more efficient if they do it on their own.⁹ These beliefs are not totally off the mark, since studies show that when even one lawyer is present, divorces take longer to resolve.¹⁰ That study acknowledged, however, that the decision to hire an attorney and length of time until resolution is impacted by the level of complication of a case, e.g. greater assets, children, a longer marriage, etc.¹¹

Those that decide to hire attorneys also do so for a variety of reasons. The general assumption is that hiring an attorney might make a person more likely to “win” their case.¹² A few studies have attempted to determine if this assumption is correct, and if pro se litigants actually do fare worse than those with attorneys in divorce cases.¹³ In one study, people with lawyers were found to be 72% more likely to succeed in their divorce cases.¹⁴ However, the challenge to determining who “won” a divorce case can make the results of these studies a bit difficult to contextualize, since not all litigants will define victory in the same way.

COOK COUNTY

In Chicago, many divorce proceedings are handled at the Richard J. Daley Center, one of the courthouses for the Circuit Court of Cook County. In 1997, 2% of the divorce complaints filed at the Daley Center were filed by pro se litigants.¹⁵ By 2003, that number had jumped to 20%.¹⁶ Generally, the consensus in the legal community is that individuals getting divorced are better served with an attorney, but that is simply not realistic.¹⁷

As such, there are a variety of programs in Cook County designed to accommodate the influx of pro se litigants. Each of these organizations has its own parameters for the type of cases it will take. For example, some organization will only help pro se litigants with uncontested divorces, and recommend that individuals with a contested divorce get an attorney.¹⁸ Others set an income cap and are only available to assist those who live below it.¹⁹

Coordinated Advice & Referral Program for Legal Services (“CARPLS”) is a Chicago organization that provides legal assistance to low income individuals through a telephone hotline, and also through in-person counseling at various courthouses.²⁰ At the Daley Center, CAPRLS runs a help desk for family law issues.²¹ Although CAPRLS also assists with other family law matters, the majority of the individuals who visit the family law desk are pro se litigants seeking help with their divorce cases.²²

CARPLS will only work on certain types of divorce cases, recognizing that some divorce cases are simply beyond the capabilities of a pro se litigant.²³ Such cases may include: pension division, a marriage with a history of domestic violence, parents unable to reach an agreement regarding custody of minor children, or other serious and significant marital conflicts.²⁴ In these situations, it is best for the litigants to seek an attorney, whether through a legal aid organization or through their own means.²⁵

The Legal Assistance Foundation of Metropolitan Chicago (“LAF”) also helps pro se divorce litigants.²⁶ LAF differs from some of the other organizations in that it has attorneys that will actually take on cases, instead of simply issuing assistance and advice to pro se individuals.²⁷ However, in cases where litigants want to continue pro se, LAF does offer minor assistance such as offering advice and instructions for drafting documents.²⁸

Chicago is Illinois Legal Aid Online (“ILAO”), another organization assisting pro se litigants, posts interactive legal forms and documents online for public use.²⁹ ILAO also acts as a “nervous system” for legal resources by directing people to the organizations and lawyers that can help them.³⁰ However, in order to use most of ILAO’s resources, an individual must be computer literate and have access to a computer, which makes it unattainable for some of the individuals seeking advice.³¹

Although Chicago has a variety of organizations and clinics to assist pro se divorce litigants, the demand is often greater than the supply.³² The data shows a steady increase in the number of pro se litigants, so in order to meet their demands Cook County needs to continue to provide relevant and adequate services, while also finding ways to improve the resources available.³³

NOTES

1 LEGAL INFORMATION INSTITUTE, *Pro Se*, Cornell University Law School (Aug. 19, 2010), http://www.law.cornell.edu/wex/pro_se.

2 Jodi Wilgoren, *Divorce Court is Now in Lawyer-Free Session*, New York Times (Feb. 9, 2002) <http://www.nytimes.com/2002/02/09/us/divorce-court-is-now-in-lawyer-free-session.html?src=pm>

3 *Id.*

4 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, 168 (2012).

5 Wilgoren, *supra* note 2.

6 Judith G. McMullen & Debra Oswald, *Why Do We Need A Lawyer?: An Empirical Study of Divorce Cases*, 12 J. L. & Fam. Stud. 57 (2010).

7 *Id.*

8 Interview with Susan Pulido-Craven, Supervising Attorney at CARPLS, in Chi., Ill. (March. 18, 2013).

9 McMullen & Oswald, *supra* note 6.

10 *Id.*

11 *Id.*

12 Smith & Stratford, *supra* note 4.

13 *Id.*

14 *Id.*

15 Crystal Yednak, *In Divorce Cases, More of the Poor Go It Alone*, Chicago Tribune (Apr. 22, 2004). http://articles.chicagotribune.com/2004-04-22/news/0404220264_1_legal-aid-divorce-low-income-clients.

16 *Id.*

17 *Id.*

18 Pulido-Craven *supra* note 8.

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 Legal Assistance Foundation of Metropolitan Chicago, *Family Law/Domestic Violence Services*, (2013). <http://www.lafchicago.org/content/view/63/93/>

27 Illinois Legal Aid Online, *About Us* (2013). <http://www.lafchicago.org/content/view/62/128/>.

28 *Id.*

29 Illinois Legal Aid Online, *Our Mission and Goals*, (2013). <http://www.illinoislegalaidonline.org/index.php?mission>.

30 *Id.*

31 Pulido-Craven, *supra* note 8.

32 *Id.*

33 *Id.*