



TIPS FOR WORKING WITH PRO BONO CLIENTS

Angie Dorsch, Executive Director

Liz Hutchinson, Staff Attorney / Pro Bono Coordinator

www.equaljustice.wy.gov

Equal Justice Wyoming

- First state-sponsored civil legal aid program in Wyoming
- Independent program of the Wyoming Supreme Court
- Funding, training, resources, and support for legal aid programs in Wyoming
 - Wyoming Coalition Against Domestic Violence and Sexual Assault
 - Legal Aid of Wyoming, Inc.
 - Wyoming Children's Law Center
 - Teton County Access to Justice Center
 - Medical-Legal Partnership at Health Works/Laramie County Community Partnership
- Provide support and resources for self-represented litigants in Wyoming
 - Legal Information and Forms
 - Online Classrooms and Automated Forms
 - Self-Help Centers & Kiosks
- Manage and support a statewide pro bono program of volunteer attorneys
- Active participants in court and bar initiatives.
 - Access to Justice Commission

Changing Legal Landscape

- Increasing number of self-represented litigants in the courts
- This trend is not going to change in the near future
- Court staff and judges spend a large portion of their time handling cases in which at least one party is self-represented
- This change presents challenges to courts, attorneys, and litigants

Effects of Increased Pro Se Litigants

- Inefficiency in the court system caused by ill-prepared self-represented litigants
- Increased amount of time court personnel must spend with SRLs
- Attorneys with excess capacity
- Loss of public confidence in the justice system

No Lawyer. No Choice.

- National court-based research shows most self-represented litigants cannot afford an attorney
- Only a small number of self-represented litigants could afford an attorney (many times by making a significant sacrifice if they do so)
- Wyoming does not have statistics tracking this trend, but other states have studied the issue and found that typically more than 90% of self-represented litigants are low-income or in poverty
- This represents economic and social trends unlikely to change anytime soon

Level of Poverty in Wyoming

- 11% of Wyoming's population lives below 100% of the federal poverty level – about 61,000 Wyoming residents.
- 25% of Wyoming's population lives below 200% of the federal poverty level – about 143,000 Wyoming residents.

Level of Access to an Attorney

In Wyoming there is approximately:

- One *attorney* in the state for every 300 Wyoming residents
- Only one *legal aid attorney* for every 8,900 Wyoming residents who are financially eligible for free legal assistance (those at or below 200% of the federal poverty level)

The Justice Gap

- The current level of funding for civil legal aid meets only a fraction of the need. A recent study released in 2017 found that 86% of the legal needs reported by low-income Americans were not met with adequate legal help
- Seven in ten low-income households experienced a legal problem in the past year and 70% of those who had a legal problem reported that the legal problem affected them “very much” or “severely”

Delivery of Services to the Low-Income

- Civil Legal Aid Programs
 - Only able to fully serve a fraction of the need
- Pro Bono Attorneys
 - Integral part of delivering services to low-income individuals
- Pro Se Litigants
 - Access to information, trusted legal resources, and limited scope representation is essential

Barriers to Access for Pro Se Litigants

- Self-Represented litigants have difficulty:
 - Preparing complete pleadings or bringing motions
 - Understanding and meeting procedural requirements
 - Determining what facts and laws are relevant to their case
 - Clearly articulating their case to the court
- Why?
 - Legal language barrier
 - Complexity of legal processes and procedures
 - Problems understanding the role of the court
 - Legal requirements are not always intuitive
 - Procedural rules vary between types of court and types of cases
 - Lack of understanding of judgments or orders, which leads to noncompliance

Public Perception

- Public perception of the court system
 - Everyone has the right to an attorney, right?
 - Civil cases are like the cases on Judge Judy, aren't they?
 - I'll be able to go to court and take care of this quickly, won't I?
 - Why I can't I just call the judge and explain why I need a court order?
- Disconnect in what litigants expect the process to be and the reality of how the process actually works.

Substantive vs. Procedural Justice

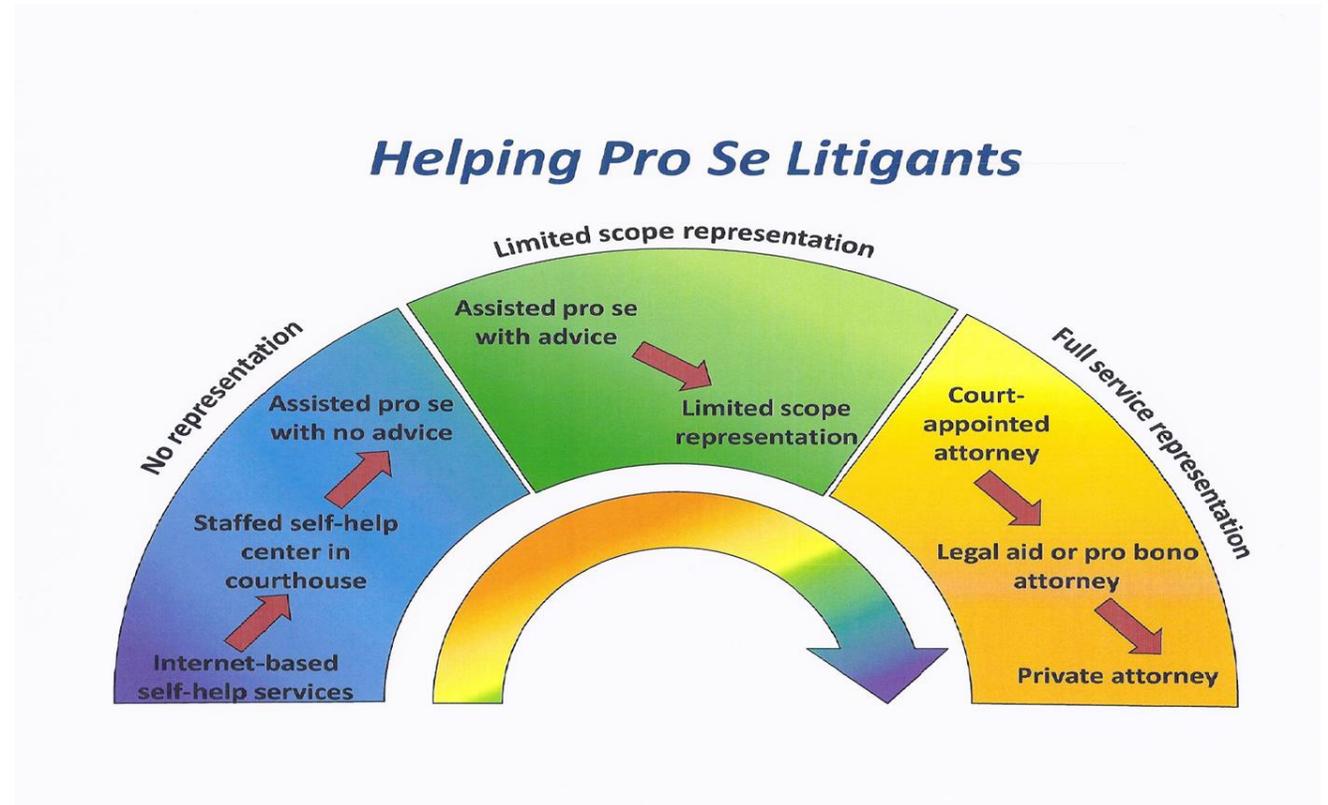
- Study conducted by the National Center for State Courts, Trust and Confidence in the California Courts 2005
 - The public focuses heavily on procedural justice – did they perceive the *process* was fair
 - When litigants perceive the decision-making process is fair, they are more likely satisfied with the outcome
 - Attorneys focus heavily on substantive justice – was the *outcome* fair
 - Both are equally important for access to justice

What do litigants need to feel the process is fair?

- Opportunity to be heard
- Neutrality
- Trustworthiness
- Respect
- Demeanor of the proceedings

Bridging the Gap – Why Is It Important?

- Public trust and confidence in our courts
- Sense of fairness
- Perceived degree of access to court services



Wyoming Rules of Professional Conduct

Preamble: a Lawyer's Responsibilities

- “. . . a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the profession. . . A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice . . .” WRPC Preamble, cmt 6.

W.R.P.C. 6.1 Pro bono public service

“Every lawyer has a **professional responsibility** to provide legal services to those unable to pay. A lawyer should aspire to tender at least fifty (50) hours of pro bono legal services per year.”

- The substantial amount by providing legal services **without fee or expectation of fee** to persons of limited means, or organizations servicing persons of limited means
- Provide additional services to other civic or charitable organizations, or by providing legal services at a substantially reduced rate to persons of limited means
- Participate in improving the law, legal system and/or legal profession
- Alternative is to donate at least \$500.00 per year

Limited Scope Representation (LSR)

- W.R.C.P. 1.2 allows limited scope representation
- Representation may be limited (unbundled) if reasonable under the circumstances and client gives informed consent
 - No longer a requirement that the informed consent be in writing, but still best practice
- Client utilizing an attorney for limited representation is considered to unrepresented unless written notice stating that the lawyer is to communicate only with the limited representation attorney
- LSR is an important tool for pro bono because the services can often be unbundled

Common Limited-Scope Representation

- Provide advice and counsel on a particular issue or issues
- Assist in drafting or reviewing pleadings or other documents
- Make a limited court appearance

W.R.P.C. 6.5 Non-profit limited legal services programs

- Legal Advice Clinic setting (limited scope) requirements of attorney conflict check obligation are relaxed
- Rules 1.7 and 1.9(a) apply only if lawyer knows a conflict of interest exists
 - Does not require a full blown conflict search “back at the firm”
- Lawyer must obtain informed consent for limited scope representation
 - Best practice is to have the informed consent in writing

*If after meeting with the client you decide to take the case for further services, you must do a conflict check before moving forward

Walk-in Legal Advice Clinics

- Form of limited-scope representation
- Help clients assess their case and talk about next steps
- Help clients complete pro se packets, most commonly
- Where do Walk-in Legal Advice Clinics take place?
 - Monthly in Cheyenne at First United Methodist Church off 18th & Central
 - Launched monthly clinic in Laramie at the Downtown Clinic in September 2017
 - Pro Bono Week – statewide clinics sponsored by local bar associations
 - We support and encourage local bar associations to host clinics in their area

Wyoming Free Legal Answers

- Barriers to accessing legal help making an online model attractive and necessary:
 - Limited options for in-person free legal advice for low-income individuals in rural areas
 - Many low-income individuals have limited access to transportation or child care, but do have access to the internet
 - Can be difficult for low-wage workers to take off work without adverse consequences to their employment
- How does it work:
 - Clients submit questions anytime from anywhere with an internet connection
 - Volunteer attorneys then provide legal advice anytime, anywhere they have an internet connection
 - Volunteer attorneys choose the questions they want to answer
 - Volunteer attorneys decide how much time to donate

Volunteer Reference Attorney Program

- What does a Volunteer Reference Attorney do?
 - Provide legal information and procedural assistance to self-represented litigants.
 - Help users navigate the Equal Justice Wyoming and courts' resources and forms.
 - Provide referrals to other legal resources and legal aid providers.
 - Provide assistance and information, but not legal advice.
- Program currently exists in:
 - Cheyenne
 - Casper
 - Sheridan
 - Rawlins
 - Laramie
 - Green River
- When? First and third Thursday (some counties only first Thursday) of each month from 2:00 – 4:00 pm

Tips for Working with Pro Bono Clients

- Working with pro bono clients is rewarding, but can be challenging
- Your client may have never spoken to a lawyer before
- The client may be nervous or uncomfortable and many times is dealing with an already stressful situation

Tips for Working with Pro Bono Clients

- Meet with the client face-to-face if possible for your initial meeting
 - Chance to build rapport with the client
 - Can make the client more vested in their case and feel that someone cares about their legal issues
 - Can uncover details the client did not disclose in an initial interview with a legal service provider or application for legal help

Client Management

Communicate Expectations

- Set Ground Rules
 - Be clear in your first meeting what you expect
 - Easier for clients to meet expectations when expectations are clear – communicate the ground rules up front
 - Address the importance of punctuality – client may not understand the importance of scheduled commitments
 - Stress the importance of keeping you informed and the consequences if the client does not keep appointments or stay in touch – consider getting alternate contacts
- Provide a Road Map
 - Give clients an idea of what is ahead and what to expect

Client Management

Communicate Expectations

- Try to be flexible in making appointments with pro bono clients
 - Clients may not be able to take time off work without adverse consequences
 - Ability to arrange for childcare may be limited
- Explain the importance of keeping appointments with you and the consequences failing to keep an appointment – if you would withdraw after the client misses more than one appointment, tell the client upfront that will be the consequence

Tips for working with Pro Bono Clients

- Your client may not understand attorney-client privilege
 - May not be aware of your responsibilities to keep communications confidential
 - May need to tell client not to discuss your advice or some aspects of the case with others
 - Clients may want to have friends or family attend consultations with you
 - advise clients on the potential consequences and waiver of privilege

Tips for Working with Pro Bono Clients

- Verify that the client understands the scope of the representation
 - Best practice to have a written agreement to assure the expectations are clearly set out – this is especially important if you are providing limited scope representation
- Explain the legal process and what to expect
- Explain the elements of the client's case – “I'm helping you seek an order of protection. An order of protection will be issued if...”

Tips for Working with Pro Bono Clients

- Explain which party will have the burden of proof
- Explain the kinds of evidence that may be presented – testimony from the parties, witnesses, and documents or exhibits
- Explain the limits on what evidence can be presented
- Take the time to ask the client if they understand the process and procedure after you discuss it with them

Tips for Working with Pro Bono Clients

- Your client may not understand the results of a court proceeding
- If a ruling is made at a hearing, explain what the order means and any obligations or deadlines they have
- When your client understands the orders, they are more likely to comply

Effectively Communicating with Clients

- Lawyers are under time pressures and the stress of busy schedules
- You must determine how best to efficiently work on your client's case while effectively communicating with the client – ask the client how they prefer to be contacted and how it is best to reach them

Effectively Communicating with Clients

- Some pro bono clients may have trouble keeping their phones from being cut off or may have unstable housing – consider getting alternate contact information in case you lose contact with the client
- Practical Tip: Put in your written agreement your expectations of the client to keep you informed of any changes to contact information or to matters affecting their case

Communicating with Clients

- Content, Formality, and Overall Language Level
 - Important to use understandable terms and definitions
 - Attorneys must have a legal vocabulary, but it doesn't always need to be used

Communicating with Clients

- Formal vs. Informal Speech
 - Maintaining formality, but using informal speech can make it easier to communicate with clients and increase their comprehension – for example
 - Use shorter sentences
 - Use first and second person rather than third
 - Active voice – “You need to...” rather than “It is necessary that...”

Communicating with Clients

- Language level
 - Adapt language so it is accessible without being condescending
 - Use plain language
- Written materials
 - Remember, most people are nervous when they are dealing with lawyers and the legal system – they may forget complex information
 - Best to provide in writing complex or lengthy information
 - Keep it plain language

Communicating with Clients

- Recognize and address literacy barriers
 - Slow down
 - Give as much information orally as possible
 - Repeat important information
 - Supplement oral information with written information that the client can take with them to have someone read to them later if necessary
 - Read important documents aloud
 - Using plain language is important

Help the Client Understand

- Repetition
 - Legal information is usually new for pro bono clients, so repeating important information is helpful
- Paraphrasing
 - If you question whether a client understands something, ask them to paraphrase – this also helps them retain the information
- Ask Questions to Clarify Comprehension
 - Occasionally ask if the client has questions – may be nervous or afraid to ask without prompting - may not want to interrupt

Nonverbal Communication

- Even when you are not speaking, you are still communicating
- Nonverbal communication is important to perception
- Be aware of nonverbal messages being sent
- Remember the importance clients place on having their voice heard
 - Active listening and awareness of nonverbal communication build's rapport with client

Equal Justice Wyoming Resources and Support for Volunteer Attorneys

- Malpractice coverage under Equal Justice Wyoming for pro bono work
- Web-based Pro Bono Portal: forms, outlines, CLE archives www.probono.wy.gov
- Placement with mentor attorneys
- Assistance in out-of-pocket cost reimbursement from Wyoming State Bar
- Receive CLE credit for pro bono work performed

Help Support Other Volunteer Attorneys

- Equal Justice Wyoming maintains database of mentors by practice area, offer your expertise
- Provide forms, outlines, practice resources for volunteer attorneys
- Present one of Equal Justice Wyoming's monthly CLE webinars
- Consider bringing formal pro bono program to your firm

Sign Up Today

Volunteer Lawyer Program form helps you customize your contribution

- Pick your practice area, geographic reach, and level of involvement
- Taking a pro bono case through Equal Justice Wyoming ensures the clients are screened for need, the case is vetted, and empowers the volunteer attorney
- Volunteer Lawyer Program helps streamline the process
- A substantial need for pro bono attorneys exists in Wyoming

THANK YOU!

Angie Dorsch

adorsch@courts.state.wy.us

Liz Hutchinson

lhutchinson@courts.state.wy.us

(307) 777-8383