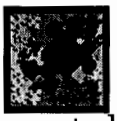


Preparing Self-Represented Litigants for Court

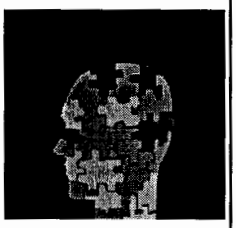
Commissioner Dale Wells
Riverside Superior Court
Dale.Wells@riverside.courts.ca.gov

Is the courtroom hostile or hospitable to pro pers?

- To a large degree, it depends on how well prepared they are
- Your role is to help prepare them for their encounter with the court

They may be missing critical pieces of information

- Do they understand the law?
- Do they understand procedure?
- Do they have realistic expectations?
- Do they know how to prepare & present their cases?



Know Your Customers

- 80%+/- of litigants are self-represented
- They are employed at <$1,000 - $1,500 per month
- 15% primarily speak languages other than English

"Legalese" is a foreign language to them. We talk, but all they hear is ...

- They may or may not be educated
- Like having a doctor tell you in current, accurate medical terminology what's ailing you
- What can you do for them?

Explain Terminology in Plain English

- Pro Per
  - Self-represented
- Subject matter jurisdiction
  - Can the court make this kind of order?
- Personal jurisdiction
  - Can the court order this person to do anything?
- Date of marriage & date of separation
  - The day you said "I do" & the day you decided "Not any more, I don't"

Explain Terminology in Plain English

- Community property & separate property
  - "Our stuff" & "My stuff"
- Legal custody
  - Who is going to make the decisions about health, education, welfare & morals of the children?
- Physical custody
  - Who are the kids going to primarily live with?
- Visitation
  - Timeshare between the parents

Explain the Law in Plain English

- Sources of misinformation:
  - Court staff:
    - "The clerk told me to write 'ex parte' if I wanted to get in court earlier"
  - Law enforcement:
    - "They said I had voided my restraining order by inviting him over"
    - "They said he had just as much right to keep our child as I do" (no VDOP, parentage presumption, or adjudication)
- Family, friends, neighbors – they mean well, but they'll get you in trouble!

Explain Procedure in Plain English

- Service
  - Someone has to give him/her these papers. It can be any adult in the world – except you
  - Role play (Petitioner, Respondent & Friend)
    - Who serves?
    - What if he won't accept service?
  - POS must list every document & be filed

Explain Procedure in Plain English

- Burden of Proof
  - You have to convince the judge to do something
- Preponderance of evidence
  - Tipping balance scales
- Issues before the court
  - Shopping list – but you can't add other items to the cart

Use Plain English Checklists & Workshops

- Use workshops for the most common procedures
  - Petitions (Dissolution & UPA)
  - OSCs
- Provide checklists for other common procedures
  - Petition, disclosures & judgment
  - Obtaining temporary orders

Make sure they know to provide current relevant information

Rule 5.128 (a) A current Income and Expense Declaration ... or a current Financial Statement ... and a current Property Declaration ... must be served and filed by any party appearing at any hearing at which the court is to determine an issue as to which such declarations would be relevant. Current is defined as being completed within the past three months providing no facts have changed. Those forms must be sufficiently completed to allow determination of the issue. (See also Rule 5.118, Marriage of Tydlaska)

What About the Rules of Evidence?

- A British jurist, commenting on the complexity of our Evidence Code:
- "We only have two rules:
  - "Is it probative?
  - "Do they really want to get it off their chest?"
- That summarizes what self-represented parties think about evidence in Family Law!

Expectations of Self-Represented Litigants

- *Pro per expectations are frequently based on ignorance of the law and of the judge's role. Here are assumptions they might make:*
- The judge will explain the procedure in simple language.
- The judge will help me prepare and complete legal forms.

Expectations of Self-Represented Litigants

- If I ask questions of a witness, the judge will help me out if I'm doing it incorrectly.
- If a lawyer tries to dominate or control me, the judge will step in to protect my interests.
- After the proceedings begin, if I decide I need a lawyer, the judge will continue the case until I can get one.

Expectations of Self-Represented Litigants

- Because the judge knows that I'm not a lawyer, he/she should be tolerant if I make legal errors.
- Because I don't know the rules of evidence, I should be able to present anything in my favor and the judge can filter out whatever may be inadmissible.

Expectations of Self-Represented Litigants

- One way or another, the judge will make sure that he/she gets all relevant information before making a decision.
- If there are documents or witnesses that I've overlooked that would help me make my case, the judge will tell me what I need.