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Hon. Beverly W. Snukals
Judge, Richmond Circuit Court, Richmond, Virginia.

Glen H. Sturtevant Jr.
O'Hagan Spencer, LLP

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ESSAYS

PRO SE LITIGATION: BEST PRACTICES FROM A JUDGE'S PERSPECTIVE

The Honorable Beverly W. Snukals *
Glen H. Sturtevant, Jr. **

I. INTRODUCTION

The days when every litigant was represented by an attorney are from a bygone era. The clogged dockets of general district courts are a testament to the prevalence of pro se litigation in Virginia. As self-representation has increased in recent times, court systems nationwide, including Virginia's, have lagged in meeting the increased challenges of pro se litigation. The purpose of this essay is to offer ways the legislature, judiciary, and the bar can adequately and efficiently deal with the rise in pro se litigation.

Unlike indigent criminal defendants, litigants in civil cases do not have a right to court-appointed legal representation. In the absence of such a right, the moral imperative demanding equal access to the justice system mandates that individuals be permitted to represent themselves in their legal affairs when they cannot afford, or choose not to hire, an attorney. To limit the right to self-represent would reserve access to the justice system only to those able to afford legal representation. The inefficiencies of pro

* Judge, Richmond Circuit Court, Richmond, Virginia. B.A., 1978, Hollins University; J.D., 1981, University of Richmond School of Law.

** Associate, O'Hagan Spencer, LLP, Richmond, Virginia. B.A., 2003, Catholic University of America; J.D., 2006, George Mason University School of Law.

se litigation in its current state, however, are also unacceptable and require positive change.

The types of cases typically involving pro se litigants include landlord-tenant, traffic, and family law cases, which usually involve support, custody, and visitation issues.¹ Pro se litigants are also commonly found in small claims courts.² In addition to the General Assembly's effort to ameliorate the difficulties pro se parties face by barring lawyers from small claims courts, it also repealed Virginia Code section 16.1-92, which allowed a party, who was typically represented, to remove a case from general district court to circuit court, where pro se litigants often have a more difficult time complying with the additional, more stringent procedures and deadlines.³ Despite the inability of a represented party to remove a case to circuit court and the implementation of small claims courts across the Commonwealth, additional measures must be put in place to better meet the challenges of pro se litigation.

Pro se litigants are a relatively powerless interest group. The group's lack of political influence results in little being done to remedy the difficulties posed by the rise in self-representation. Membership in the group is typically not by choice, but because the individual litigant lacks the money to hire an attorney. The lack of resources significantly limits the group's ability to garner similar attention from the General Assembly as well-funded groups do. But more importantly, pro se litigants lack group cohesion. Membership in the group ends with the final disposition of the litigant's case. Without the funds or logistical capability to pool resources and act as an organized group to lobby the legislature, pro se litigants fail to receive sufficient funding and services in comparison with their need.

In light of these concerns, former Supreme Court of Virginia Chief Justice Harry L. Carrico created the Virginia *Pro Se* Litigation Planning Committee in September 2001 to study the rise in self-representation and offer recommendations on how best to

1. NAT'L CONFERENCE ON PRO SE LITIG., AM. JUDICATURE SOC'Y, A REPORT AND UPDATE 24 (2001).

2. See Supreme Court of Virginia, Small Claims Court Procedures, http://www.courts.state.va.us/pamphlets/small_claims.html (last visited Oct. 24, 2007). Small claims court divisions became mandatory statewide in 1999. *Id.*

3. Act of Apr. 4, 2007, ch. 869, 2007 Va. Acts 2344 (repealing VA. CODE ANN. § 16.1-92 (Repl. Vol. 2003)).

handle cases involving pro se parties from “legal, ethical, and operational” standpoints.⁴ Since then, similar efforts have been attempted to improve the way the justice system deals with unrepresented litigants, but they have not been made a high priority.⁵

Part I of this essay discusses the many difficulties arising from pro se litigation under the current system in Virginia. Part II then examines the causes of the rise in self-representation. Finally, Part III proposes a number of practical solutions to the challenges of pro se litigation.

The status quo of dealing with pro se litigants is neither acceptable nor efficient. Implementing practical, common sense solutions will help courts run more smoothly and improve access to justice for pro se litigants.

II. THE CHALLENGES POSED BY THE CURRENT STATE OF PRO SE LITIGATION

The unintended consequences of the current state of pro se litigation in Virginia are often expensive and time-consuming for the court system, attorneys, and represented litigants, and can be disastrous for those who self-represent. Pro se litigants who have not consulted an attorney and are unaware of court and statutory deadlines are often barred from seeking legal redress because, for example, they neglect to file a bill of complaint within the applicable statute of limitation, suffer a default judgment for failing to file their answer within the applicable statutory deadline, or have their case dismissed on a demurrer for failing to adequately plead their cause of action.

If the pro se litigant is capable of making it to the pretrial stage to conduct discovery, the feat of answering interrogatories without an attorney, let alone drafting them, is enough to make the process prohibitively complex. If the pro se litigant is knowledgeable enough to proceed with his case to trial, laying a proper foundation for admission of evidence and navigating the hearsay exceptions are sure to make the already difficult job of self-

4. SUPREME COURT OF VIRGINIA *PRO SE* LITIG. PLANNING COMM., SELF-REPRESENTED LITIGANTS IN THE VIRGINIA COURT SYSTEM: ENHANCING ACCESS TO JUSTICE 7 (2002), available at http://www.courts.state.va.us/publications/pro_se_report.pdf.

5. See *infra* text accompanying notes 31–35.

representation nearly impossible. In addition to neglecting court and statutory deadlines, pro se litigants also have difficulty grasping the law and rules of court.⁶ Those who self-represent often fail to adequately prepare their case by forgetting to subpoena witnesses or provide the court with case law and statutory support for their legal positions, all of which have a number of significant consequences that affect more than just the individual pro se litigant.

The difficulties resulting from self-representation under the current system affect not just those who represent themselves, but also court staff, judges, lawyers, and the court system as a whole. The most apparent consequence of a pro se litigant's failure to file his lawsuit within the statute of limitations, research case law supporting his position, have a key piece of evidence admitted at trial, or subpoena an essential witness, is the increased odds the pro se litigant will lose the case, oftentimes regardless of its merits.⁷

Besides the negative consequences for the pro se litigant, the court system also suffers from increased burdens, which disrupt the efficiency of the courts and delay the administration of justice for both represented and pro se parties.⁸ Court staff, especially those working in the clerk's office, experience an increased workload as a result of the time they spend assisting pro se litigants who have little or no understanding of the judicial system, taking the clerks away from their other important duties.⁹ In addition to explaining how to file a lawsuit and determining which courtroom

6. Drew A. Swank, Comment, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 384 (2005) (quoting Tiffany Buxton, Note, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT'L L. 103, 114 (2002)).

7. Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 1991 (1999) (stating that because of their ignorance of the law, pro se litigants “will continue to forfeit important rights due, not to the merits of their cases, but to the absence of counsel”); 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, 1558 (2005) [hereinafter *In Defense of Rules and Roles*] (“[Pro se litigants] may be getting their day in court merely to lose their case because they are unaware of their rights or do not understand the theory behind proving their case.”); Brenda Star Adams, Note, *“Unbundled Legal Services”: A Solution to the Problems Caused by Pro Se Litigation in Massachusetts’s Civil Courts*, 40 NEW ENG. L. REV. 303, 309 (2005).

8. VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 18, 22.

9. See JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS 3 (1998); VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 19.

a pro se litigant should report to, clerks have the added difficulty of deciding how to approach questions such as “How should I complete this form?” or “What should I say to the judge?” without subjecting themselves to civil liability and criminal penalties for the unauthorized practice of law.¹⁰ These difficulties are compounded by the nuisances of funneling barely legible handwritten motions and pleadings and mislabeled court filings to the appropriate recipients.

The current state of pro se litigation also increases the workload of judges and lawyers. A judge who is willing to provide guidance to an inexperienced pro se litigant may walk the litigant through such matters as explaining the legal process, why a particular question is inappropriate because it elicits hearsay, or why a foundation has not been properly laid for admission of a piece of evidence.¹¹ However, even a judge who provides no guidance whatsoever will spend a significant amount of time observing a pro se litigant muddle through his case. Additionally, represented litigants suffer increased legal fees as their attorneys bill for the increased time the court spends dealing with inexperienced pro se litigants.¹² This increase in attorneys’ fees has the added effect, on a larger scale, of undermining the legal marketplace by driving up the cost of legal representation, thereby reducing the demand for attorneys as more and more potential litigants are unable to afford to hire a lawyer.¹³

In addition to the administrative inconveniences, increased workload, and reduced demand for attorneys, the challenges posed by pro se litigation also raise thorny ethical issues. As previously noted, staff in the clerk’s office run the risk of facing civil liability for providing incorrect and damaging information to a pro se litigant if the information is later determined to amount to

10. GOLDSCHMIDT ET AL., *supra* note 9, at 3; VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 19.

11. See VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 20.

12. Adams, *supra* note 7, at 308 (“[W]hen judges take extra time to explain proceedings to a pro se litigant, hourly fees for the opposing litigant rise, and this ultimately encourages more people to represent themselves. One major problem, therefore, is that pro se litigation breeds more pro se litigation.”).

13. *Id.* at 314 (“The pro se problem is, then, self-perpetuating: the increasing assistance from judges and self-service centers diminishes the demand for affordable attorneys by helping those that would otherwise employ those attorneys, yet most pro se litigants are forced to represent themselves precisely because affordable attorneys are unavailable.”).

legal advice and potential criminal prosecution for the unauthorized practice of law.¹⁴ Examples of unauthorized advice include interpreting statutes and court orders for litigants, advising them on proper phraseology for court filings, and the possible consequences of proceeding with a cause of action.¹⁵

Judges also have ethical duties they must comply with when presiding over cases involving pro se litigants. Canon 3 of the Canons of Judicial Conduct requires judges to perform the duties of their office impartially.¹⁶ Judges, however, must balance considerations of fairness to represented parties with due process requirements mandating that pro se litigants receive meaningful hearings.¹⁷ This balancing act requires judges to make difficult decisions, such as determining how much guidance to give a pro se litigant on substantive law or how to treat a meritorious case when the pro se litigant has failed to comply with court procedures, while remaining impartial to both the represented and pro se parties.¹⁸

The burdens caused by pro se litigation under the current system are imposed not only on pro se litigants, but on court staff, judges, attorneys, and represented litigants. Those challenges involve more than just time-consuming administrative inconveniences, increased workloads, and attorneys fees, but also difficult moral and ethical dilemmas in providing fair but meaningful access to justice. The next section discusses the many causes of the significant rise in pro se litigation in recent history.

14. Under Virginia Code section 54.1-3904, the unauthorized practice of law is a Class 1 misdemeanor. VA. CODE ANN. § 54.1-3204 (Repl. Vol. 2005 & Cum. Supp. 2007). The practice of law is defined as “furnish[ing] to another advice or service under circumstances which imply his possession and use of legal knowledge or skill,” such as “prepar[ing] for another legal instruments.” VA. SUP. CT. R. pt. 6, § 1 (Repl. Vol. 2007); see also VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 19.

15. VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 63.

16. VA. SUP. CT. R. pt. 6, § III, Canon 3 (Repl. Vol. 2007).

17. GOLDSCHMIDT ET AL., *supra* note 9, at 25; VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 20; NAT'L CONFERENCE ON PRO SE LITIG., *supra* note 1, at 4.

18. VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 20.

III. THE CAUSES OF PRO SE LITIGATION

The reasons are legion why pro se litigation has become so prevalent in recent times. Often they are financially related, but they have also resulted from other changes in American culture.

A great many of the individuals who represent themselves do so not because they have any particular desire to represent themselves, but because they believe their money, oftentimes justifiably, is better spent elsewhere. As such, rather than forgoing legal redress, they instead forego legal representation, hoping they can navigate the legal process by themselves and reach a successful outcome. The lack of free legal services resulting from cutbacks in state funding has also led to an increase in the number of individuals unable to obtain affordable legal representation.¹⁹ Oftentimes a potential litigant may be unable to afford the high cost of hiring an attorney, but at the same time make too much money to qualify for free representation through the local legal aid office.²⁰ Even when an individual does qualify for free legal services, there may not be enough legal aid attorneys or other attorneys willing to work on a pro bono basis to meet the demand.²¹

The desire to cut out the middleman in other areas of American culture has spilled over into the area of legal representation.²² With the increase in the popularity of do-it-yourself guides and self-help publications, those unable to afford an attorney, and

19. Swank, *supra* note 6, at 382 (“[A]ccording to a report of the American Bar Association, seventy to eighty percent or more of low-income persons are unable to obtain legal assistance when they need and want it.”)

20. The Virginia Legal Aid Society provides free legal services in the areas of housing, healthcare, economic self-sufficiency, education, public benefits, consumer purchases, and family relations. To be eligible, an individual’s income must be 125% of the federal poverty guideline or below. Virginia Legal Aid Society, What does Virginia Legal Aid Society do?, <http://www.vlas.org/AboutUs.cfm?pagename=AboutUs> (last visited Oct. 24, 2007); Suzanne J. Schmitz, *What’s the Harm?: Rethinking the Role of Domestic Violence Advocates and the Unauthorized Practice of Law*, 10 WM. & MARY J. WOMEN & L. 295, 298 (2004).

21. See VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 16 (“The Legal Services Corporation, the federal entity that provides funds to hundreds of local legal aid programs in the United States, estimates that only one in five individuals eligible for services actually receive assistance.”); Swank, *supra* note 6, at 381 (“[I]n the mid-1990s, approximately 9.1 million Americans’ legal needs went unmet. It has been estimated that it would take three to four billion dollars a year to merely meet the minimal civil legal needs of low-income Americans—ten-times the \$300 million now being spent.”); Adams, *supra* note 7, at 304, 315, 342 (“Even if the state government was willing to provide enough funding for legal services to make a significant difference, this would still not address the lack of attorneys willing to work for legal services.”).

22. VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 17.

those who choose not to, have begun to utilize these books more and more in order to represent themselves in their legal affairs.²³ Increased ownership of property and literacy rates have provided the means and incentive for growing numbers of individuals to navigate the legal system without an attorney.²⁴ In addition to the desire of individuals to take control of their legal affairs, the increase in the litigious nature of society and negative perception of lawyers have also contributed to the rise in pro se litigation in recent history.²⁵

With the causes and effects of pro se litigation under the current system in Virginia in mind, the next section offers solutions to the challenges posed by pro se litigation.

IV. SOLUTIONS TO CHALLENGES POSED BY PRO SE LITIGATION

The increase in the number of individuals who must, or who are willing, to represent themselves in their legal affairs shows no signs of slowing. The negative consequences discussed in Part I will continue unless measures are taken to introduce more efficiency and fairness into the way the justice system deals with pro se litigation. This section offers a number of ways to accomplish this goal, including the provision of “unbundled” legal services, Internet-based legal and court information systems, self-service centers, pro se clinics, and improved judicial education.

A. *Unbundled Legal Services*

“Unbundled” legal services is the concept of providing limited legal services where an attorney performs, and the client pays for, only those discrete tasks the client requests.²⁶ Examples of individual tasks an attorney might be hired for include: (1) providing legal advice, (2) conducting legal research, (3) gathering facts, (4) conducting discovery, (5) engaging in negotiations, (6) drafting and preparing pleadings, motions, and other court documents, (7) providing limited representation in court, (8) making “referrals to expert witnesses or other counsel,” and (9) providing “standby

23. *Id.*; *In Defense of Roles and Rules*, *supra* note 7, at 1574–75.

24. *In Defense of Roles and Rules*, *supra* note 7, at 1574.

25. *Id.*; NAT'L CONFERENCE ON PRO SE LITIG., *supra* note 1, at 4.

26. VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 35.

telephone assistance during negotiations or settlement conferences.”²⁷ By unbundling the tasks associated with full legal representation and offering them individually, pro se litigants unable to afford full representation have the opportunity to hire an attorney only for the “most difficult or complicated tasks,” allowing them to conserve their limited resources and more fully pursue their cause of action.²⁸

As currently written and understood, Rule 1.2 of the Rules of Professional Conduct is a roadblock to the widespread use of unbundling because of ethical concerns.²⁹ Comment 7 of Rule 1.2 states in part, “the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1 [requiring competent representation].”³⁰ Attorneys, therefore, are reluctant to provide limited legal services to a client who can only afford a few discrete tasks for fear that such limited representation will be found to violate the competency requirement when viewed in contrast to traditional, full-fledged legal representation. As such, the legal needs of those individuals often go unmet altogether.

In light of these important concerns, the Supreme Court of Virginia requested that the Virginia State Bar review the concept of unbundled legal representation and offer proposed amendments to the Rules of Professional Conduct in September 2002.³¹ The Virginia State Bar offered a number of amendments to the rule and comments section.³² The proposed amendments centered around adequate explanation to the client of all aspects surrounding the limitation of representation, utilization of a signed agreement specifying the legal services the attorney will supply, and adhering to the admonition that an attorney must still provide competent representation even though limited in scope.³³ The Supreme Court of Virginia, however, took no action on the

27. Adams, *supra* note 7, at 337; VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 35.

28. Adams, *supra* note 7, at 327.

29. See VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 36.

30. VA. SUP. CT. R. 1.2 cmt. 7 (Repl. Vol. 2007).

31. Virginia State Bar, Proposed Amendments to Rules 1.2 & 4.2 of the Rules of Professional Conduct and Rule 1.5 of Rules of Supreme Court of Virginia, <http://www.vsb.org/site/regulation/proposed-amendments-to-rules-12-42-of-the-rules-of-professional-conduct-and/> (last visited Oct. 24, 2007).

32. See *id.*

33. *Id.*

proposed changes.³⁴ Then in January 2007, the Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None submitted its final report to the Supreme Court of Virginia and also recommended that the Rules of Professional Conduct be amended to permit unbundled legal services.³⁵

Amending the Rules of Professional Conduct to explicitly allow the provision of unbundled legal services is an advisable course of action because it would allow individuals to more fully pursue their legal affairs according to their own needs.

B. *Self-Service Centers, Pro Se Clinics, and Internet-Based Information Systems*

Self-service centers are organized around the idea of providing one-stop access to the resources necessary for self-representation for free or on a nominal fee basis. These centers, located in or near courthouses, provide pro se litigants with explanatory materials, such as pamphlets, brochures, videos, and kits with forms and instructions that are standardized statewide.³⁶ To be most effective, the materials provided should be subject-matter and case specific.³⁷ They should explain court processes and procedures as well as courtroom codes of conduct.³⁸ Importantly, they should be written in plain English to update and remove archaic terminology.³⁹ Self-service centers should also provide computer terminals allowing pro se litigants to access the Internet and word processors. Volunteer attorneys can also be on site to provide unbundled legal services.⁴⁰ Funding could be allocated to hire paralegals to assist litigants filling out and filing forms.⁴¹ These centers could be operated in conjunction with a free legal-help hotline and self-

34. See VA. SUP. CT. R. 1.2 (Repl. Vol. 2007).

35. COMM'N ON VA. COURTS IN THE 21ST CENTURY: TO BENEFIT ALL, TO EXCLUDE NONE; FINAL REPORT 9 (2007), available at www.courts.state.va.us/futures_commission/reports/final_report.pdf; COMM'N ON VIRGINIA COURTS IN THE 21ST CENTURY: TO BENEFIT ALL, TO EXCLUDE NONE, APPENDIX 60, 94 (2007), available at www.courts.state.va.us/futures_commission/reports/appendix.pdf.

36. VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 44–46; Adams, *supra* note 7, at 323.

37. VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 44.

38. *Id.* at 46.

39. *Id.* at 40; Adams, *supra* note 7, at 324–25.

40. See Adams, *supra* note 7, at 325.

41. See *id.* at 323.

help center mobile unit that could travel to areas without public transportation or easy access to the self-help center.⁴²

Self-service centers are not inexpensive. The premier self-service center in the country, located in Maricopa County, Arizona, had start-up costs of more than \$800,000.⁴³ Whether a particular locality spends as much as the Maricopa self-help center or decides to allocate less funding to its self-service center is a decision each locality must make after considering the current costs of pro se litigation in terms of time, money, and resources.

For localities without funding for a self-service center, or in addition to such a resource, “informational session[s] taught by a lawyer, law student, or paralegal on a specific legal topic” would further serve to raise the quality and efficiency of pro se litigation.⁴⁴ Such clinics could offer court orientation sessions, instructional programs, and clinics on court procedures as well as “how to select, fill out, and file court forms.”⁴⁵

Finally, developing Internet-based information systems would offer the capability of making the resources mentioned above available to pro se litigants twenty-four hours a day, seven days a week.⁴⁶ These webpages should contain the same information and resources located at the self-service center in electronic form and online tutorials like those given at pro se clinics.

Offering free and easy to understand resources that are standardized on a statewide basis to those who choose to self-represent would have the positive effects of increasing the quality of pro se parties’ cases and relieving many of the burdens on staff, judges, attorneys, and the court system as a whole.

C. Amend Unauthorized Practice of Law Rules

To provide court staff with the peace of mind to fully answer questions and “fulfill their duties [] as public servants,” the

42. See *id.* at 323–24; Tina L. Rasnow, *Traveling Justice: Providing Court Based Pro Se Assistance to Limited Access Communities*, 29 *FORDHAM URB. L.J.* 1281, 1291 (2002).

43. Amy C. Henderson, Comment, *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, 580–81 (2003).

44. Adams, *supra* note 7, at 328.

45. *Id.*

46. VIRGINIA *PRO SE* LITIG. PLANNING COMM., *supra* note 4, at 48.

proper authorities should consider qualified immunity to protect court staff from criminal prosecution for the unauthorized practice of law.⁴⁷ Rather than the current policy, which severely restricts the amount of information, both permissible and impermissible, that court staff can provide to litigants, responsible parties should instead seek to clarify and train court staff on what information they may provide without inadvertently engaging in the unauthorized practice of law.⁴⁸ Clerk orientation and continuing education should include curriculum on adequately meeting the needs of pro se litigants.⁴⁹ Guidelines on permissible and impermissible forms of assistance should be developed and disseminated to clerks.⁵⁰ Posting those guidelines in a public area would help educate pro se litigants and help refine the questions clerks ultimately receive.⁵¹ This policy of providing qualified immunity and improving training would result in better quality information for all litigants.

D. *Judicial Education*

The educational curriculum for judges should include techniques on the best way to manage cases involving one or more pro se litigants.⁵² Scripts, responses to frequently asked questions, and successful practices and procedures for dealing with pro se litigants should be included in judicial benchbooks for easy reference.⁵³ Such scripts could include how, or whether, a judge should advise a self-represented litigant on amending his pleading after it is dismissed on a demurrer, how to serve a party with process, a general summary of the rules of evidence, how to enforce a judgment, and how to appeal a court order.⁵⁴ Just as judges currently have scripts for accepting a criminal defendant's guilty plea or waiver of a jury trial, statewide standardized scripts that are subject-matter specific would make the process of dealing with self-represented litigants more efficient for the justice system and more fair for the litigant.

47. *Id.* at 27-28.

48. *See id.* at 28-30.

49. GOLDSCHMIDT ET AL., *supra* note 9, at 41-42.

50. *Id.* at 43-44.

51. *See* VIRGINIA PRO SE LITIG. PLANNING COMM., *supra* note 4, at 29.

52. *Id.* at 30.

53. *Id.* at 31.

54. *Id.*

V. CONCLUSION

Pro se litigants often miss court dates, have difficulty understanding and applying the law, and are inadequately prepared. This results not only in difficulty for the pro se litigant, but also causes an overburdening of court staff, judges, lawyers, and the court system generally. Ironically, it also has the effect of increasing the number of individuals who cannot afford full-fledged legal representation, and who therefore must represent themselves. In addition to insufficient financial resources, the increase in the litigious nature of society and desire to cut out the middleman have led more individuals to take their legal affairs into their own hands—often times relying on do-it-yourself publications to navigate their way through the legal process. Because it is unlikely the current trend in self-representation will change, it is essential that measures which promote fairness and efficiency be put in place to ensure equal access to the justice system for both represented and self-represented parties.

This essay has briefly outlined some of those measures, such as amending the Rules of Professional Conduct to explicitly permit unbundled limited legal services or offering self-service centers, pro se clinics, Internet-based court information systems, better training for court staff on what information they may provide without subjecting themselves to liability for unauthorized practice of law, and improved judicial education on the best practices for dealing with pro se litigants. Implementing these practical measures will serve as a constructive starting point for a more efficient and equitable justice system for pro se litigants.
