



## Ethics and Pro Se Litigants

Minnesota Family Support and Recovery Council  
September 21, 2010

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### Why should courts, lawyers and child support staff care about pro se litigation?

- Unprepared pro se litigants are a drain on court and agency resources.
- They become “frequent filers” because their paperwork is incomplete or incorrect.
- In general they slow down the process for the cases in which they are involved, including those in which the other party is represented by an attorney.

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### MN Rules of Professional Conduct

- **PREAMBLE: A LAWYER'S RESPONSIBILITIES**
- [1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a **public citizen having special responsibility for the quality of justice.**
- [2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As evaluator, a lawyer examines a client's legal affairs and reports about them to the client or to others.

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## MN Rules of Professional Conduct

- **PREAMBLE: A LAWYER'S RESPONSIBILITIES**

[6] As a public citizen, 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 legal profession. [emphasis added]

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## **518A.47 PROVISION OF LEGAL SERVICES BY THE PUBLIC AUTHORITY.**

### **Subdivision 1. General.**

(a) The provision of services under the child support enforcement program that includes services by an attorney or an attorney's representative employed by, under contract to, or representing the public authority **does not create an attorney-client relationship with any party other than the public authority.** [emphasis added]

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## **518A.47 PROVISION OF LEGAL SERVICES BY THE PUBLIC AUTHORITY.**

(Subd.1 – continued)

Attorneys employed by or under contract with the public authority **have an affirmative duty to inform applicants and recipients of services under the child support enforcement program that no attorney-client relationship exists between the attorney and the applicant or recipient.** This section applies to all legal services provided by the child support enforcement program. [emphasis added]

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## Legal Advice <sup>vs</sup> Legal Information



- What's the difference and why should I care?
- **Legal Advice**
  - Applying the law to someone's facts, and telling them what they **SHOULD** do to further his or her own best interests.
- **Legal Information**
  - Facts describing what the law says and what the legal process involves

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## What is Legal Advice?

A *written or oral statement* that...

- **Interprets or analyzes** some aspect of the law, court rules, or court procedures, or
- **Recommends a specific course of action** a court user should take.
- **Applies laws, rules, etc.** to a court user's specific fact situation.

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## Legal Advice "Red Flags"



- 🚩 Having in-depth knowledge on an area of law
- 🚩 Telling a court user "what you should do" rather than "how to do it"
- 🚩 Court user asks questions about whether they should proceed in a certain way rather than another way

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## Legal Information



It **IS** appropriate for you to:

- Explain (tell the facts about) court rules, procedures, and regular court practices
- Give court forms, instructions, handouts, brochures
- Answer questions about how to complete forms (not suggesting legal arguments or theories)
- Explain terms and documents used in court cases or the purpose of a hearing

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## Rules of Thumb



- Ask yourself, "Would I give the same response if the other party were present?"
- Ask the person, "What do you want to do?"
- Avoid the trap of saying "You should do XYZ."
- It's OK to say "The process for doing XYZ is steps 1, 2, 3."

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## Ethical Issues Raised



- Unauthorized Practice of Law? (Maybe, if not a licensed attorney- See Minn. Stat. § 481.02 )
- Conflict of Interest? Actual? Perceived?
- Minn. Stat. § 518a.47 Provision Of Legal Services By The Public Authority
- Neutrality and Impartiality – you assist both parties while representing neither

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### Customer Service without Advice

- Start by telling court users how you CAN help within some limits.
- Give options, referrals and resources (if you know them).
- Consult with your co-workers, supervisor or manager.
- Refer court users to the person with greatest knowledge in your department.

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### Customer Service without Advice

- Refer the court user to a specific website or other publicly available resource
- Refer the court user to local Self-Help Centers or Self-Help website ([www.mncourts.gov/selfhelp](http://www.mncourts.gov/selfhelp))
- Refer to lawyer referral programs, legal aid and the local bar association (\*not to specific attorneys)
- Refer to the local law library - usually located at the Courthouse

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### Legal Information or Legal Advice?

- Informing an obligor that s/he needs to file a motion to get their child support reduced
- Informing an obligor that the court will not impute income to the other parent because s/he is staying home to care for a young child
- Telling an obligor that s/he should file for ex-parte relief to get custody of his children and stop child support
- Suggesting to a customer that they enter into a parenting time agreement even though the child lives in another state.

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## Conclusion

- You CAN give quality customer service and avoid the “advice shield”
- You CAN help people by explaining facts about laws, rules, procedures, and forms
- You CAN give referrals and resources



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## Referral to Statewide Self-Help Center

- Court Rule 110 – expands duties of self-help staff
- Staff Attorneys (we can educate, but not advise)
- SHC Website (over 30 legal topics covered!)
- Assist with Court Forms
- Forms Tutorials & Court Videos
- Links to lots of resources!
- Help via call-center & email

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## MN Judicial Branch Self Help Center Resources at [www.mncourts.gov/selfhelp](http://www.mncourts.gov/selfhelp)



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Legal Advice Clinics and Self Help in the Courts

- Self-Help computers and one-way phones are now available in all Minnesota courthouses (except Hubbard County) where you can print court forms, get court information, and visit links to other legal resources.
- Walk-in services are available in many of the District Courts and Law Libraries.

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Legal Advice Clinics and Self Help in the Courts

- **1st District Court**
- **Dakota County Family Court Self Help Center**  
Free family law advice consults with volunteer attorneys available by **appointment only**. Please visit their website for more details.
- **Scott County Law Library Legal Advice Clinic & Workshop**  
Free family law advice consults with volunteer attorneys available by **appointment only** on the **second Monday of each month from 4p - 6p**. Call (952)496-8713 to schedule an appointment. Please visit the Scott County Law Library website for more details on the clinic and other legal workshops.

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# Legal Advice Clinics and Self Help in the Courts

## 2<sup>nd</sup> District Court

- **Ramsey County Family Court Self Help Center**  
A free family law advice clinic is available Mondays and Thursdays from 12:00p - 3:00p, by appointment only, for residents of Ramsey County or people who have a case in Ramsey County Family Court. Call (651)266-2816 to schedule an appointment.
- **Ramsey County Housing and Conciliation Court Self Help Center** (brochure)
- Free legal advice consults with volunteer attorneys are available on a first-come, first-served basis on Tuesdays from 1p - 4p. Sign-up starts at 12:30p. Located in the Ramsey County Law Library on the 18th floor of the Ramsey County Courthouse.

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# MN Court of Appeals



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# MN Court of Appeals



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## Other Referrals For Customers



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## www.lawhelpmn.org



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## www.lawhelpmn.org

- Find answers to legal questions, legal aid offices and more.
- Helpful feature: “If you need help finding information, [click here to chat with a live person.](#)”
- Helpful feature: See the link for “audio fact sheets in Somali” on the right side of the page

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## Litigating Against Pro Se Litigants

Understanding How the Courts May Treat Pro Se Litigants, In Order to Litigate Effectively and Ethically Against Them.

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## PRO SE ADVERSE LITIGANTS

- Likelihood of having a pro se party as an adverse party:

“Although exact numbers are not maintained, approximately 70 percent of Hennepin County family law cases are filed by a pro se litigant.” “Leveling the Playing Field for Pro Se Litigants,” Andrea Nordick, Hennepin Lawyer, Dec. 28, 2009.

Expedited Process for Child Support is designed for pro se parties to represent themselves more easily. Minn. Gen. R. Pract. 351.02.

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## Is There a Right to Represent Oneself in Court?

- Yes, according to the U.S. Supreme Court:  
“Right to self-representation - to make one’s own defense personally - is thus necessarily implied by the structure of the [Sixth] Amendment.” Faretta v. California, 422 U.S. 806, 819 (1975).
- Minnesota courts agree:  
“A trial court cannot deny a defendant the freedom to choose to represent himself so long as he is competent to make the choice; this is so even if he obviously lacks the skill and knowledge necessary to present a good defense, and even if it seems that the choice would foreclose the likelihood of success.” State v. Seifert, 423 N.W.2d 368, 373 (Minn. 1988).

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## At Least Three Ways For Courts to Treat Pro Se Litigants

- Majority of state courts: hold pro se litigants to same standard as attorneys.
- Minority of state courts: make reasonable accommodations for pro se litigants that do not prejudice the opposing party.
- Smallest minority of state courts: treat pro se prisoners differently than other pro se parties.
- [www.zorza.net/JudicialTech.JJW103.pdf](http://www.zorza.net/JudicialTech.JJW103.pdf)

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## MN Rules of Professional Conduct

- **We can say “Hold pro se litigants to the same standard as attorneys” but in reality, this doesn’t play out ....**
- **RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS**
- A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law....

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## How Do Minnesota State Courts Treat Pro Se Litigants?

- “Whenever these rules require that an act be done by a lawyer, the same duty is required of a party appearing *pro se*.” Minn. Gen. R. Pract. 1.04
- BUT, . . .
- “A judge may modify the application of these rules in any case to prevent manifest injustice.” Minn. Gen. R. Pract. 1.02

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### How Do Minnesota State Courts Treat Pro Se Litigants? (con't)

- “[A] trial court has a duty to ensure fairness to a pro se litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party.” Kasson State Bank v. Haugen, 430 N.W.2d 392, 395 (Minn. App., 1987).
- “Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” Fitzgerald v. Fitzgerald, 629 N.W.2d 115, 119 (Minn. App., 2001).

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### How Do Minnesota State Courts Treat Pro Se Litigants? (con't)

- Report of the Minnesota Conference of Chief Judges Committee on the Treatment of Litigants and Pro Se Litigation (1996).
- Committee Issued “Proposed Protocol to be Used by Judicial Officers During Hearings Involving Pro Se Litigants.”  
[www.ajs.org/prose/pdfs/Proposed\\_Protocol.pdf](http://www.ajs.org/prose/pdfs/Proposed_Protocol.pdf)  
or [www.zorza.net/JudicialTech.JJWio3.pdf](http://www.zorza.net/JudicialTech.JJWio3.pdf)

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### How Do Minnesota State Courts Treat Pro Se Litigants? (con't)

- Key Steps of “Proposed Protocol:” Judges should
  - Verify pro se status and inform of right to be represented by attorney or to self-represent.
  - Explain the process of the hearing.
  - Explain the elements of the legal matter at hand.
  - Explain who has burden of proof .
  - Explain types of presentable evidence.
  - Explain what evidence is admissible.
  - Ensure pro se litigants understand process and procedure.

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## How Do Minnesota State Courts Treat Pro Se Litigants? (con't)

- Key Steps of “Proposed Protocol” (con’t):
  - Judges should permit non-attorney advocates to sit at counsel table and “provide support but will not be permitted to argue on behalf of a party or to question witnesses.”
  - Judge’s questions should seek for general information in order “to avoid appearance of advocacy.”
  - When possible, decide matter and issue order immediately at end of hearing in order to serve both parties while they are at courthouse.

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## What To Do?

- Verify litigant’s pro se status.
- Treat pro se litigant as you should treat an opposing attorney (i.e., with respect, professional courtesy).
- Expect court to accommodate pro se litigant.
- Voice concerns to the court if accommodations prejudice your client.
- Help to keep proceedings focused on relevant matters and issues.
- Keep clear boundaries with pro se litigants.

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### **RULE 4.3: DEALING WITH UNREPRESENTED PERSON**

- In dealing on behalf of a client with a person who is not represented by counsel:
  - (a) a lawyer shall not state or imply that the lawyer is disinterested;
  - (b) a lawyer shall clearly disclose that the client’s interests are adverse to the interests of the unrepresented person, if the lawyer knows or reasonably should know that the interests are adverse;
  - (c) when a lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding; and
  - (d) a lawyer shall not give legal advice to the unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of the unrepresented person are or have a reasonable possibility of being in conflict with the interests of the client.

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## Keep Clear Boundaries With Pro Se Litigants

- “I want to begin by reminding you that I am not your attorney and am unable to give you legal advice.”
- Do not give legal advice, but give legal information (e.g., basic rules of procedure), without prejudicing your client.
- Give one location: (local self help center/law library), two websites: (lawhelpmn.org and mncourts.gov) and three telephone numbers: (Statewide Self Help Center, local legal aid office, local law library).

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## Contact Information

Regina A. Wagner  
Self-Help Center Staff Attorney  
Family Justice Center  
Fourth Judicial District Court  
110 South Fourth Street  
Minneapolis, MN 55401  
612-596-7966  
[regina.wagner@courts.state.mn.us](mailto:regina.wagner@courts.state.mn.us)

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