

Perceptions of Self-Represented Litigation in Virginia

2014 Survey of Virginia's Trial Judges

2015 Survey of Virginia's Trial Clerks

Findings and Recommendations

This report is the work of the Virginia Access to Justice Commission. The findings and recommendations have not been approved or endorsed by the Supreme Court of Virginia or the Office of the Executive Secretary of the Supreme Court of Virginia.

The Virginia Access to Justice Commission

On September 13, 2013, the Supreme Court of Virginia established the Virginia Access to Justice Commission. Its mission is to promote equal access to justice in Virginia, with particular emphasis on the civil legal needs of Virginia residents. The formation of the Virginia Access to Justice Commission is consistent with Vision 3 of the Strategic Plan for Virginia's Judicial System, which states that Virginia's courts will "maintain human dignity and provide effective access to justice for all persons."

The Commission is chaired by Supreme Court of Virginia Justice S. Bernard Goodwyn and John Whitfield, Executive Director and General Counsel of Blue Ridge Legal Services. The Commission operates through five standing committees—the Committee on Access for Self-Represented Litigants, the Pro Bono Committee, the Outreach and Education Committee, the Judicial Education Committee, and the Pro Bono Coordinating Consortium Committee. Commission membership is specified by Supreme Court order and currently includes judges; a trial court clerk; representatives from legal aid organizations and law school communities; lawyers in private and corporate practice; the State Law Librarian; and one member each from the Virginia State Bar Access to Legal Services Committee and the Virginia Bar Association Pro Bono Council. The current Commission roster is on the following page. The Commission is staffed through the Office of the Executive Secretary of the Supreme Court of Virginia.

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Executive Summary

The Access for Self-Represented Litigants Committee (“SRL Committee”) of the Virginia Access to Justice Commission (“Commission”) conducted a survey of Virginia’s trial court judges in 2014 and a survey of Virginia’s trial court clerks in 2015. Both surveys were intended to improve understanding of self-represented litigants (“SRLs”) and their interactions with judges and clerks, and provide guidance for the work of the SRL Committee and Commission.

Based on the responses to these surveys, the SRL Committee identified key findings and developed responsive recommendations regarding the primary legal areas in which SRLs interact with or have difficulty in the courts, the resources that are available to assist SRLs with their legal needs, court policies and practices with respect to handling litigation involving SRLs, and training and other resources for judges and clerks that could assist them in their interactions with SRLs.

The SRL Committee has benefitted from the surveys in two key ways. First, the survey findings have been instrumental in galvanizing the SRL Committee’s work in several areas over the last few years, resulting in accomplishment of the following important initiatives:

- Developed the Virginia Judicial System Court Self-Help web portal, <https://selfhelp.vacourts.gov/>, and placed a link to it on the Virginia Judiciary website.
- Surveyed access to justice promotional materials from other states and, in collaboration with the Commission’s Outreach and Education Committee and the Virginia Law Foundation, facilitated the development of educational materials (posters, cards, and bookmarks) and oversaw their distribution to clerks, judges, and SRLs.
- Initiated the Virginia Court Form Automation Project under the aegis of the University of Richmond School of Law in collaboration with Southwest Virginia Legal Aid Society and Virginia Poverty Law Center and with funding from a Legal Services Corporation (LSC) Technology Initiative Grant (TIG). Begun in November 2017, this project will develop new interactive online interviews for the statewide website, VALegalAid.org, to enable SRLs to complete court-approved forms. If approved by Office of the Executive Secretary, these will be linked to the self-help portal.
- Developed a Model Policy governing the admission and use of portable electronic devices in Virginia courthouses.
- In collaboration with the Commission’s Judicial Education Committee, provided training to judges and clerks at conferences during 2017 on issues surrounding SRLs’ court appearances.

Second, the findings have informed the SRL Committee’s current initiatives and the development of new initiatives – which will be submitted to the Supreme Court of Virginia for its consideration and will be undertaken only with its approval – as follows:

1. In consultation with OES's Legal Research Department, to propose revisions to certain court forms to make them easier to use and submit those proposed revisions to the Commission with a request for Commission acceptance and transmittal to the Chief Justice for referral to the Judicial Council and the Committee on District Courts;
2. To develop a strategy for the creation of interactive guided on-line interviews using A2J Author, HotDocs, or similar software tools that can complete court forms, starting with those forms which should be given highest priority as identified in Table 1 of the SRL Committee's November 2017 **Summary Report**, and addressing such details as estimated costs, proposed resources, online venues for placement of the interviews, and mechanisms to promote their use;
3. To produce videos for publication on the Virginia Judicial System Court Self-Help web portal depicting various activities in Circuit Court, including how to complete forms (especially forms for family law matters, and forms associated with unlawful detainers and warrants in debt), how to present evidence, how to question a witness, how to dress for and conduct oneself before the court, and how to learn about the rules governing a particular court;
4. To develop a strategy to support the creation of self-help centers or courthouse navigator services, staffed by pro bono attorneys or qualified non-attorneys, for the purpose of providing information to SRLs about the civil litigation process, court policies and procedures, and effective case development and presentation;
5. To create an online resource center for clerks of court to facilitate (i) sharing of in-house materials created by clerks to support their responses to SRLs and (ii) access to forms and other information useful to SRLs that are available from sites outside the judicial system;
6. To write guidelines for court staff explaining the differences between legal advice and legal information and provide training on the same at conferences for judges and clerks and in focused sessions held either at regional gatherings of clerks' offices or in individual clerks' offices;
7. In collaboration with the Commission's Judicial Education Committee, to develop technical resources to help judges adjudicate cases involving SRLs, including scripts and other protocols, and to distribute them in a variety of print and digital formats;
8. To assess the consistency and accessibility of court procedures regarding mediation and other mechanisms for alternative dispute resolution;
9. To encourage courts' development and expansion of small claims processes, consistent with Article 5 (§§ 16.1-122.1 et seq.) of Chapter 6 of Title 16.1, by surveying existing court practices and developing best practices; and
10. To consider the establishment of processes and procedures in juvenile and domestic relations district courts that would allow SRLs to resolve cases under relaxed rules of evidence and procedure analogous to those of small claims dockets in general district courts.

The SRL Committee also invited its colleagues on other committees to consider issues raised in the surveys, including suggesting that the Judicial Education Committee develop educational materials for Circuit Court judges on access to justice issues in various areas, and that the Pro Bono Committee support development of modest means panels where litigants can obtain representation at reduced rates.

Introduction

The Virginia Access to Justice Commission (“Commission”) was established by order of the Supreme Court in September 2013, and first convened in December 2013. Members of the Commission recognized its work would benefit from information about the extent and nature of access to justice needs in Virginia, specifically information about the nature of self-represented litigation in Virginia—its magnitude in terms of case filings, the types of cases and court business most likely to involve self-represented litigants (SRLs),¹ and the characteristics of SRL interactions with judges in the courtroom and with clerks at the service counter.²

The Commission’s SRL Committee accordingly undertook a survey of trial court clerks and judges in an initial attempt to gain insight into these issues. The first survey, conducted during 2014, asked Virginia trial judges to respond to questions about litigation in their courts in which one or more parties represented themselves. The second, conducted in 2015, asked Virginia trial clerks to respond to questions about their offices’ experiences with SRLs.

The 2014 survey of judges asked questions similar to those in surveys conducted in 2000 and 2007. The survey sought the perceptions and opinions of judges on the following issues:

1. The types of cases in which SRLs are most likely to appear and are most likely to need assistance or face challenges.
2. Whether the needs of self-represented defendants are notably different from those of self-represented plaintiffs or petitioners.
3. The demographic characteristics of SRLs and the reasons they proceed without legal counsel.
4. Whether the number of SRLs had changed during the judge’s tenure and the reason for any change.
5. Concerns raised or problems posed by SRLs with respect to courtroom procedure and professional ethics.
6. The types of assistance available to SRLs in the court or local community.
7. Any policies or procedural adaptations the judge or court use to effectively manage cases involving SRLs.

The survey also solicited input regarding the design of programs to assist SRLs and as to the appropriate role of the Supreme Court of Virginia or OES relative to SRLs and to judges hearing cases involving SRLs.

The survey of clerks was a first in Virginia. It sought to identify key issues for litigants and the courts, understand the significance of those issues, and determine how best to address them. Specifically, the survey sought the perceptions and opinions of clerks with respect to:

¹ The traditional legal terms used for individuals proceeding in litigation on their own behalf, *pro se* or *in propria persona* (*pro. pers.*), have been replaced by the plain English term “self-represented litigant” (“SRL”).

² The Office of the Executive Secretary (“OES”) to the Supreme Court of Virginia has modified Virginia’s case management system to add a field identifying the name of the attorney representing either party in a case.

1. The forms most commonly submitted by SRLs.
2. The forms with which SRLs have the most difficulty or need the most assistance.
3. Any changes to forms or improvements to court form instructions that would make them easier for SRLs to use.
4. The policies, procedures, and resources available through the court or within the jurisdiction to assist SRLs.
5. The challenges experienced by clerks' offices when attempting to provide permissible legal information to SRLs versus prohibited legal advice.
6. Any suggestions for how the Virginia Access to Justice Commission can help clerks' offices in working with SRLs or otherwise improve access to justice in Virginia.

OES staff conducted initial analyses of the responses to the two surveys under the guidance of the SRL Committee; these analyses are included separately in the appendices to this report. The Committee then used small work groups to study the analyzed survey results in depth in order to develop preliminary findings and draft recommendations responsive to those findings. In some cases, these findings from the results of the survey of judges are similar to those of the results of the survey of clerks. For example, both groups stressed the importance of plain English forms, written at a middle school grade reading level. The initial recommendations were developed by Committee work groups at different times but have subsequently been consolidated and edited to reduce repetition. The final recommendations are presented together in this report in a single list following the findings in each subject area without differentiating between the sources of information (i.e., judges' survey or clerks' survey) underlying the recommendations.

Although this consolidated report was not completed until 2019, the Commission's continued communications with judges, court clerks, lawyers, and other legal professionals indicate that these findings remain relevant today. The challenges involved in improving a self-represented litigant's access to justice persist, and the volume of self-represented litigation continues to be high. At the same time, the Commission's leadership in this area has helped open up lines of communication and has supported coordination of resources, while the SRL Committee and other committees of the Commission have been diligently considering, developing, and recommending approval of specific projects based upon the insights the surveys have provided. Projects that the Commission has considered and advanced to various degrees include:

- The integration of practice points into district court benchbooks to help judges adjudicate cases involving SRLs.
- An inventory of court forms conducted as a first step in developing online guided interviews to help SRLs complete some of the most common and problematic forms that they encounter in Virginia's trial courts.
- The establishment of a consolidated court self-help website, <https://selfhelp.vacourts.gov/>, to which court personnel can refer SRLs for resources and various forms of assistance to meet legal needs.

- The development of business cards and bookmarks advertising the court self-help website that judges and clerks may distribute to SRLs.
- The development, printing, and dissemination of posters for prominent placement in courthouses that clarify the differences between legal information that court staff may provide and legal advice that they may not.

In the course of studying the results of the surveys and considering and implementing responsive strategies to improve access to justice, the Commission also has gained insights that have prompted some related additional recommendations. These supplementary recommendations are included in Addendum B at page 19 of this Report.

Primary Findings and Recommendations

These findings and recommendations are the work of the Virginia Access to Justice Commission. They have not been approved or endorsed by the Supreme Court of Virginia or the Office of the Executive Secretary of the Supreme Court of Virginia.

The 2014 Survey of Virginia’s Trial Judges and the 2015 Survey of Virginia’s Trial Clerks, solicited the respondents’ perceptions of self-represented litigation in Virginia. The surveys directed different questions to judges and clerks regarding SRLs; however, similar questions were asked in the following areas:

- What are the most common cases (Judges’ Survey) or forms (Clerks’ Survey) that involve SRLs?
- In which cases or with which forms do SRLs have the greatest difficulty?
- Are there any programs operating outside the court in your jurisdiction that help SRLs?
- Does your court have specific policies for docketing (both surveys) and hearing (Judges’ Survey) SRL cases?

All members of the SRL Committee reviewed the results of the surveys and contributed to the preparation of this report. The Judges’ and Clerks’ Surveys both generated the findings and recommendations presented below and played a significant role in guiding the work of the SRL Committee and the Commission to date.

Primary Areas of SRL Interaction & Key Areas of Difficulty

The Judges’ Survey asked judges to describe the demographic characteristics of SRLs. Most judges reported that the majority of SRLs were fluent in English, but when an interpreter was needed, the most common language requested was Spanish. The reported need for foreign language interpretation varied by geographic jurisdiction. Most judges reported as an overall impression that SRLs are frequently low-income or among the working poor, and they often have a limited educational background. Judges overwhelmingly reported their impressions that

individuals choose to represent themselves because they cannot afford to hire an attorney and cannot obtain representation from legal aid. Additional reasons identified include the cost to hire an attorney exceeded the value of the case and that some individuals believed they were as capable as a lawyer to handle their case in court.

For each type of trial court, judges indicated the types of cases in which SRLs were most likely to appear. According to the *Circuit Court* judges, the top four categories of cases in which SRLs appeared were: civil appeals from Juvenile & Domestic Relations (“J&DR”) District Court (93 percent of responding judges identified this as a main area of appearance); chancery/divorce (91 percent); civil appeals from General District Court (87 percent); and “Other Family Cases” (67 percent). *General District Court* judges identified unlawful detainer (94 percent), warrants in debt (68 percent), protection orders (64 percent), and small claims (59 percent). *J&DR District Court* judges identified custody/visitation (97 percent), child support (80 percent), and protection orders—family violence/stalking (80 percent).

Judges also were asked to identify the types of cases in which SRLs experienced the greatest difficulty. *Circuit Court* judges overwhelmingly named chancery/divorce cases (83 percent), followed by civil appeals from J&DR District Court (67 percent), other family cases (59 percent), civil appeals from General District Court (59 percent), and equitable distribution (56 percent). *J&DR District Court* judges primarily identified custody/visitation (83 percent) and protection orders—family violence/stalking (80 percent). Only half as many *J&DR District Court* judges identified the next two case types: child support (43 percent) and abuse and neglect/foster care (41 percent). *General District Court* judges identified unlawful detainer (65 percent), warrants in debt (61 percent), contracts (55 percent), and torts (civil wrongs) (44 percent) as key areas of difficulty for SRLs.

Clerks in each court type were asked to name the top three court forms most commonly used by SRLs, as well as the three forms with which SRLs have the most difficulty or need the most assistance. The Virginia Judicial System provides dozens of court forms online as Adobe Portable Document Format (PDF) files for all types of trial courts. The vast majority of these forms are accompanied by written instructions, often presented as an annotated example of the form, explaining the purpose and scope of each form’s data elements. In most cases, these are “fillable PDF” files, created so that users can enter required form data using a computer. Once completed, forms can be printed, signed, and submitted. When a form includes instructions, these exist in a document separate from the form itself, though links to both documents appear in pairs on the Virginia Judicial System website.

For example, there are two garnishment forms in *Circuit* and *General District Court*: one for the judgment creditor to request garnishment (the Suggestion) and the second for the clerk to summons the debtor to respond (the Summons). The forms are numbered as follows:

- Suggestion for Summons in Garnishment
DC-450: 2-page form + 4-page instructions
CC-1485: 1-page form + 3-page instructions

- Garnishment Summons
DC-451: 2-page form + 6-page instructions
CC-1486: 2-page form + 5-page instructions

The links on the Supreme Court’s website include the forms and step-by-step instructions on how to complete the forms. The instructions are lengthy, as they reproduce the forms, number each of the blanks in the forms, and then supply succinct guidance – numbered so as to exactly correspond to the numbered blanks – on completion of each blank.

Circuit Court clerks reported the following to be the most commonly-used forms **and** the forms with which SRLs experienced the most difficulty:

- Applications for Change of Name (Adults: CC-1411; Minors: CC-1427),
- Petition for Restoration of Driving Privileges—Habitual Offender (CC-1465(B)),
- Petition for Restoration of Driving Privileges—Third Offense (CC-1470),
- Divorce-Related “Forms”—providing unspecified information naming court forms, and
- Expungement-Related Forms (CC-1473).

The forms SRLs use most frequently in General District Court include:

- Warrant in Debt (DC-412),
- Summons for Unlawful Detainer (DC-412), and
- Suggestion for Summons in Garnishment (DC-450) + Garnishment Summons (DC-451).

These were also the forms with which SRLs had the most difficulty, along with forms for protective orders.

The most common forms SRLs submit in J&DR District Courts include:

- Motion to Amend or Review Order (DC-630),
- Motion for Show Cause Summons or Capias (DC-635),
- Affidavit (Uniform Child Custody Jurisdiction and Enforcement Act) (DC-620), and
- Juvenile Petition (DC-511).

The first three are also the forms with which SRLs have the most difficulty, with DC-635 being identified as creating the most challenges, followed by DC-630.

As these lists show, the “use” and “difficulty” categories have meaningful overlap; that is, some of the most commonly-used forms are also those that are most difficult to complete and subject to error. All of these forms are available at the Virginia Judiciary website with accompanying instructions. The existence of written instructions may be insufficient guidance; clerks observed that the instructions and forms themselves would be more helpful if they used plain language rather than “legalese” and suggested that the use of examples and more detailed instructions would be helpful. There is widespread support among clerks for better instructional tools for SRLs who need to complete and file forms in their courts.

Recommendations

The following are recommendations solely of the Virginia Access to Justice Commission. They have not been approved or endorsed by the Supreme Court of Virginia or the Office of the Executive Secretary of the Supreme Court of Virginia. They cannot be implemented unless and until they have been approved by the Supreme Court of Virginia.

1. **Support prioritizing the development and provision to SRLs of educational materials explaining basic procedural and evidentiary issues that self-represented litigants may encounter** in the following areas: divorce, civil appeals from the District Courts, other family cases (Circuit Courts), unlawful detainers, warrants in debt, contracts, and torts (District Courts), and custody/visitation and protective orders/family violence (J&DR Courts).
2. **Support assessing the consistency and accessibility of court procedures regarding mediation, other alternative dispute resolution (“ADR”) approaches, and judicial settlement conferences.**
3. To make understanding of the court system easier for limited English proficient individuals, **support efforts to assess the extent of the needs within the court system for informational materials, signage, instructions and forms that are in languages other than English** and support funding necessary for their development and distribution.
4. **Support initiatives directed at ensuring that Court forms are written at a fifth-grade reading level and initiatives to develop videos** depicting various activities in court, including how to complete forms (especially family law materials and forms associated with unlawful detainers and warrants in debt), how to present evidence, how to question a witness, how to dress for court, and how to learn about the rules governing a particular court.
5. **Encourage the Advisory Committee on Forms to use plain language at a fifth-grade level** whenever possible in the creation of forms and related instructions, with the inclusion of examples of properly completed forms.
6. **Direct staff to review specific clerk suggestions for improvement of particular forms** (*see* “Addendum A: Clerk Suggestions for Form Improvements” beginning on page 14), including clearer instructions for the PDF fillable forms on the Virginia Judiciary Website. These specific suggestions should be shared with the Advisory Committee on Forms and relevant OES staff for consideration. (See, for example, suggestions for improving the Motion to Amend form in J&DR District Court on pages 18 and B-26.)
7. **Support development of interactive guided on-line interviews** using A2J Author and HotDocs software or similar software tools for several of the most commonly used forms in each of the types of trial courts, post them on the court’s website, and promote their use with the clerks and the public.

8. **Support development of a comprehensive set of tools for the most commonly used forms in Virginia’s courts** should interactive guided on-line interviews prove useful.

Resources to Help SRLs

Judges were asked a number of questions pertaining to policies, procedures, and services in place both in court and outside of court to help SRLs properly bring, frame, or defend a matter before the court. The amount of resources and services reported by judges varied by jurisdiction. With respect to court-provided services, most judges reported the availability of instructional materials, forms, and referral information in print format. Judges also reported the availability of in-person and telephonic information and referrals. Information that was reported to be available included forms and procedural instructions, referrals, and information regarding interpreters. For assistance outside of court, the majority of judges identified legal aid as a resource, followed by alternative dispute resolution and public and law libraries.

Approximately 20 percent of the clerks responded that they did not know what programs operated to assist SRLs in their jurisdiction. Most of the clerks who provide outside resources direct the SRL to legal aid (63 percent), a local library (23 percent), or dispute resolution (23 percent). Some mentioned social services or bar associations. In the “other” category, a few stated that they were not “aware” of any programs or “there were no programs.” In identifying legal aid offices, several mentioned that these offices are not near the courthouse or are located in other jurisdictions and are under-resourced.

A number of clerks pointed to the need for a more user-friendly website—a central website where SRLs “can search and go directly to those forms pertaining to their questions...”³ Many clerks recommended that courthouses establish centers where SRLs could access legal resources or, preferably, obtain assistance from trained individuals. Regarding how to provide assistance, the clerks’ suggestions ranged from using paid staff attorneys to recruiting more pro bono attorneys, increasing access to low-cost attorneys, and offering workshops sponsored and conducted by local bar associations. The ability to refer an SRL to someone who could assist them would be valuable; one clerk said it would be helpful to be able to refer SRLs “to a live person who could answer their questions...being able to speak to someone would be more meaningful.”

Recommendations

The following are recommendations solely of the Virginia Access to Justice Commission. They have not been approved or endorsed by the Supreme Court of Virginia or the Office of the Executive Secretary of the Supreme Court of Virginia. They cannot be implemented unless and until they have been approved by the Supreme Court of Virginia.

9. To make legal representation more accessible, **support legal aid programs, encourage pro bono services among the private bar, and support programs allowing litigants to obtain representation at reduced rates.**

³The clerks were surveyed before the development of the Virginia Judicial System Court Self-Help Website, <https://selfhelp.vacourts.gov/>, which was established partly in response to the clerks’ survey input.

10. **Support the development and implementation of self-help desks or kiosks or courthouse navigator services** staffed by pro bono or legal aid attorneys, or qualified non-attorneys who can provide information regarding the civil litigation process and court policies and procedures, along with basic information on how to present a case in court.
11. **Increase awareness** of forms available at websites such as Valegalaid.org and forms developed in-house by other clerk's offices.
12. **Develop an online resource center for clerks** of court to increase awareness of print and online legal resources for self-represented litigants.
13. **Ensure that training programs** for court system personnel, including judges, clerks of court, and court service unit staff, include a component covering the resources available for SRLs.
14. **Develop and maintain a centralized, user-friendly, one-stop website** where SRLs and others can obtain guidance and resources about conducting legal proceedings and other business in courts.
15. **Develop short videos** that show SRLs how to complete forms and how to dress, conduct themselves, and present evidence during court proceedings.
16. **Encourage development of educational programs and** workshops sponsored and conducted by the local bar for the public.
17. **Initiate a "Self-Help Center" pilot** program.

Policies for Docketing and Hearing Cases Involving SRLs

Most judges reported that their trial courts do not have special policies or procedures for docketing or hearing cases involving SRLs. In addition, although most judges do not use a script or standard protocol for cases involving SRLs, the majority indicated that they thought a script or protocol *would* be helpful, especially in the areas of presentation of evidence, pretrial proceedings, and motions.

A few courts have specific practices for docketing or hearing cases involving SRLs. General District Courts are more likely to have special procedures or dockets for SRLs. This may be related to their experience with small claims. At the same time, it appears that at least half of the clerks (there were 197 substantive responses) provide forms and some procedural instructions. Some clerks also supplied court rules, pamphlets, and other legal information. Clerks provided either paper copies or referrals to online resources.

Twelve clerks responded that they provide assistance in completing forms or petitions or scheduling hearings. Many more clerks indicated a discomfort with such assistance and fear of engaging in the unauthorized practice of law (UPL). Of those who assist SRLs, more General District Court clerks than Circuit Court clerks appear to provide assistance with forms, procedural instructions, and general legal information. Most Circuit Court clerks indicated that

their assistance included providing forms rather than procedural direction. The assistance provided most frequently by participating clerks (115 responses) was referrals to legal aid organizations or lawyer referral services provided by bar associations. Although there were other resources and aid mentioned, these responses were not quantitatively significant.

Approximately one third of the clerks responded that some of the information/resources they provide to SRLs are developed in-house. Half responded that none of their resources are internally developed. Several clerks offered to share the resources they had developed.

Recommendations

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18. **Support examining the possibility of modifying court rules and Virginia Code to provide that small claims courts are the default forum for self-represented litigants.**
19. **Support examining the possibility of establishing processes and procedures in J&DR District Court that would allow self-represented litigants to resolve cases under relaxed rules of evidence and procedure, i.e., “small claims docket” for J&DR district courts.**
20. **Support courts’ development of the small claims courts** permitted by Article 5 (§§ 16.1-122.1 et seq.) of Chapter 6 of Title 16.1.
21. **Support regular review and needed revisions to the practice points** developed by the Commission’s Judicial Education Committee, and support their incorporation into the circuit and district court benchbooks.
22. **Support development of scripts and other protocols for judges** to use in cases involving self-represented litigants and distribute these in a variety of print and digital formats.
23. **Provide training for clerks in what constitutes the unauthorized practice of law (UPL)** as defined by the Virginia State Bar.
24. **Provide SRL promotional tools** to all clerks’ offices, including A2J posters and information with the URL of the VA Judicial System Court Self-Help Website.
25. **Develop channels of communication** for clerks to share internally developed materials and best practices for providing forms and instructions. The materials could be tailored to fit the requirements of local jurisdictional rules and procedures.
26. **Survey and evaluate best practices** for providing separate dockets for SRLs.

27. **Develop best practices for a Small Claims Docket** for SRLs that could be adopted by courts in all jurisdictions where SRLs' cases would be heard separately from dockets involving lawyers.

Other Areas of Importance

In addition to the above three areas of importance showing commonalities among the respondents, the survey responses also revealed needs unique to clerks and judges. Judges may benefit from more information about SRL status and circumstances and about how to respond to SRL cases. The final section of the survey offered judges an opportunity to provide open responses regarding actions that judges, courts, or “the Supreme Court of Virginia / Office of the Executive Secretary” could take to assist SRLs or improve the handling of their cases. The remarks revealed two frames of thought that shape judges' perceptions. One, reflecting an emphasis on the need for impartiality required by the Canons of Judicial Conduct, held that the court (judges) should not take any part in assisting any litigant, self-represented or represented. The other focused on the broader mission of the judicial branch, as summarized on the home page of the Virginia Judiciary website: “Our aim is to assure that disputes are resolved justly, promptly, and economically....”

Recommendations

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28. **Support developing educational materials for judges on access to justice issues** in the following areas: judges' ability to encourage pro bono service and refer parties to legal aid organizations; the importance and availability of options for settlement and mediation of claims, including online dispute resolution and alternative dispute resolution; and the importance and availability of materials available to assist SRLs such as the on-line self-help portal, guided interviews, and videos.
29. **Support development of educational materials, including poverty simulations**, that would help judges better understand the justice gap, the difficulties SRLs face in understanding the legal process, and the inability of poor people to afford counsel.
30. **Publicize the availability of the judicial education curriculum available at the National Center for State Courts' Center on Access to Justice**, as well as the 32 videos in the “Courtroom Best Practices in Self-Represented Cases” series (see: <http://www.ncsc.org/microsites/access-to-justice/home/Curriculum.aspx>) .

For the clerks, a key challenge is trying to assist SRLs without violating the prohibition against the unauthorized practice of law. SRLs often do not understand the difference between legal information and legal advice and, based upon the survey responses, clerks also have difficulty defining, understanding, and communicating the difference between these two concepts. Although increasing understanding of what constitutes legal advice might not resolve

the needs of SRLs, efforts to educate court staff and the public about these two concepts could alter unrealistic expectations and reduce frustration.

Recommendations

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31. **Continue to create and distribute posters, flyers, and cards** to educate the public about the difference between legal information and legal advice.
32. **Continue to provide information in plain English, Spanish, and other languages**, as resources allow, about the difference between legal information and legal advice within the Virginia Judicial System Court Self-Help Website.
33. **Develop written guidelines** for court staff with respect to the differences between legal advice and legal information. As an example, see Maryland's guide for court staff, <http://www.mdcourts.gov/mdatjc/pdfs/manual.pdf>.
34. **Develop and conduct programs** illustrating the difference between legal information and legal advice at conferences for judges and clerks and focused sessions conducted at regional gatherings of clerks' offices and in individual clerk's offices.

Conclusion

It appears from both the survey results and the ongoing work of the Virginia Access to Justice Commission that self-represented litigation will continue into the foreseeable future. The survey results indicate that only a slight majority of judges believe the number of SRLs has remained the same, while 50 percent of Circuit judges, 32 percent of General District judges, and nearly 28 percent of J&DR District judges believe that the number of self-represented cases has increased. The perspective about the number of self-represented litigants varied based on the type of court and the individual judge's length of service: when taking into account judges' lengths of service on their courts, judges who believed the number of SRLs had increased had served, on average, five years longer than those who believed the number of these cases remained the same or did not know whether a change had occurred.

Those who had perceived an increase in the number of SRLs were asked to identify what they considered to be the reason for the increase. Most attributed the increase to the poor state of the economy generally or because a litigant's economic situation had worsened and he or she could not afford legal representation. Respondents also noted societal changes, such as increasing access to media and online content, resulting in a public citizenry more confident about proceeding as an SRL. In light of the expectations for continuing SRL activity in Virginia courts, the Committee recommends continuing research into this area, specifically that the Commission **"Encourage research into the question of the number of self-represented litigants who access the civil court system annually** in order to generate data that can help

determine the impact of legal representation on outcomes, and help inform the allocation of court resources.”

Addendum A: Clerk Suggestions for Form Improvement

The following suggestions were provided as responses to a survey issued by the Virginia Access to Justice Commission. They have not been approved or endorsed by the Supreme Court of Virginia or the Office of the Executive Secretary of the Supreme Court of Virginia. They cannot be implemented unless and until they have been approved by the Supreme Court of Virginia.

After first asking clerks which forms SRLs submitted most often and which caused the most difficulty for SRLs, the 2015 Survey of Virginia’s Trial Clerks invited respondents to “suggest any changes to court forms or improvements to court form instructions that would make them easier for self-represented litigants to use.”

The clerks recommended many changes to existing forms and creation of new forms. While the current forms posted at the Virginia Judiciary website are compliant with text of the Virginia Code, many clerks believe they are difficult for the public to read and complete, notwithstanding the detailed blank-specific instructions. Clerks also noted the absence of forms for some of the actions SRLs commonly file, such as divorce actions in circuit courts, and supported the development of forms for such actions.

The clerks’ recommendations were supplied in a survey that, as it was anonymous, offered no opportunity for follow-up. For that reason, even if a recommendation for a change to a form is not clear to OES staff – and hence cannot be considered for implementation – it is included in this report as an effort to give as full an accounting as possible of clerks’ concerns. A brief notation is made regarding the lack of clarity in the event that publication of this report creates an opportunity for follow-up.

The following summarizes some selections from clerks’ responses.

General Suggestions

Appoint a committee of clerks and deputy clerks to provide more input and suggestions for making forms more user-friendly for SRLs.

Provide clearer instructions on how to print public-use forms. Remove shading of form fields automatically when a form is printed.

Fields that must be completed should be made to stand out in some manner, such as bolding text.

Instructions should be worded at a middle-school reading level.

Explain or avoid, to the extent the statute allows, legal terms such as “Homestead Exemption.”

Develop interactive online forms similar to TurboTax that can walk litigants through the completion of forms, explain various decision points, automatically fill in repeated fields (e.g., dates), help calculate monetary sums, etc. Such

software would also help avoid situations in which mandatory fields are left blank and would complement the transition to electronic filing.

Online forms should be designed so that fields are legible when printed, copied, faxed, etc. Shading on field inhibits legibility and is not necessary once a field is completed.

SRLs have an easier time working with color-coded forms. They have an easier time remembering the color of a form than its name.

With respect to the unauthorized practice of law (UPL), help clerks to help SRLs rather than having the clerks tell SRLs that they must take forms to someone else who can help them. For example, allow clerks to paraphrase and write on forms what SRLs tell them.

With each relevant form, include a list of the items (evidence) that a party needs to bring to court to support their case.

Avoid complex boxes tied to Code sections; and add space for addresses under those for party names on the *front* of forms.

Make spaces on forms larger to allow for the inclusion of required information, such as names, addresses, and phone numbers when there are multiple plaintiffs or defendants. Create separate spaces or fields in which to enter amounts of fees, rent, and damages, perhaps by using space on the reverse of a form or on another sheet.

Plainly mark forms to indicate the information required.

Form-Specific Suggestions

DMV—Restricted License Applications and Petitions for License Restorations

These forms appear to be very difficult for SRLs to complete, and simpler language would be beneficial. The forms should set forth the process for filing for a full or partial license restoration, including informing applicants of the need to obtain a transcript/driving history from DMV in order to complete forms, and the relevant information from DMV's compliance summary that is needed for petitions for restoration of driving privileges. It would be helpful to add language to forms indicating that VASAP is required if underlying charges relate to driving under the influence.

Consider having the forms associated with restricted drivers' licenses processed by DMV rather than the clerks' offices. The clerk's office could supply a document containing the court orders, and either the receipt of payment or entry into a payment agreement. The litigant could take this document to DMV for processing.

Name Change Applications

Current form language confuses SRLs as to what name to put where with sections titled “In Re” and “Comes Now.” Instructions should clarify where to insert current names, where to insert the intended changes, and what previous name changes should be put on an application.

Divorces and Adoptions

There are currently no state-issued forms for divorces and other chancery issues (e.g., adoption by stepparent). It would be helpful to make available a packet of standard forms and instructions that sets out the process and specifics for filing a motion or other divorce paperwork.

Garnishments

Garnishment forms – CC-1485 (the Suggestion for Summons in Garnishment) and CC-1486 (the Garnishment Summons) in the Circuit Courts, and DC-450 and -451, respectively, in the District Courts – could be simplified, particularly to help defendants understand how to calculate interest and which box to check on the Suggestion form.

Expungements

Add space to petition forms to allow listing of charges. Provide written explanations to clarify the gray area of expungements with regard to charges that are dismissed but not eligible for expungement.

Interrogatories

Defendants usually miss sections, even when given a sample booklet provided by the court.

Motion to Amend or Review Order (DC-630)

Every motion to amend requires the completion of two additional forms that are then attached—the Affidavit—Default Judgment Service Members Civil Relief Act (DC-418) and the UCCJA Affidavit (DC-620). It would be helpful to have these three forms condensed in some way. For example, instead of completing separate DC-418s, include a simple yes/no question in the motion to amend regarding military service supported by some form of evidence in support of that answer.

Motion for Show Cause Summons or Capias (DC-635)

It would be helpful to revise the form to address basic questions related to former court decisions and the current pleading, including:

What is the court date of the earlier decision?

What is the judge’s decision?

What would you like for the judge to do now?

Why do you want these changes?

The most common suggestion offered is that separate civil and criminal versions of this form should be created. There are too many options on the form for SRLs to easily select the correct one, and knowing their case could be dismissed if the motion is not completed correctly increases SRLs' anxiety and need for clerical assistance. The form makes references to numerous sections of the Virginia Code that have no meaning to SRLs, increasing the likelihood they will mark the wrong code section as having been violated or submit show cause motions for matters that are not even contained in a court order. After simplifying and creating different versions of this form, providing clear, concise instructions and examples would also help.

Protective Order forms (especially DC-383)

Fields on the protective order form(s) do not match the fields in the case management system (CMS), financial management system (FMS), or the Virginia Criminal Information Network (VCIN). The incomplete matching of fields can lead to ambiguities that threaten litigant safety. Take away any ambiguous wording that would confuse ordinary citizens.⁴

Other Forms

Acceptance/Waiver of Service of Process and Waiver of Future Service of Process and Notice (CC-1406)

This form is extremely difficult for SRLs to complete. It would be helpful to add, after the style of the case “**BELOW TO BE FILLED OUT BY DEFENDANT**” and to include one or more spaces where the Defendant can put initials to acknowledge that he has read and understood all the areas in which he is waiving service of process and notice.

Petition for Proceeding in Civil Case without Payment of Fees or Costs (CC-1414)

An *in forma pauperis* form analogous to CC-1414 is needed for inmate litigants to comply with the Virginia Prisoner Litigation Reform Act.⁵

Motion to Amend or Review Order (DC-630)

Compared to DC-635, clerks believe DC-630 to be much easier for SRLs to complete. Suggestions for improvement include:

Clearer instructions so that SRLs know when they are considered petitioners and when respondents;

SRLs need more help in identifying what the current order says, what the SRL wants changed, and the reason justifying the requested amendment [SRLs tend to use this form for every issue or matter for which they are requesting review by a judge. A judge cannot respond to *ex parte* information, but SRLs frequently use the REASON section as a narrative to explain matters that bother them without stating a valid reason for amending an order.]; and

⁴ OES staff could not understand the suggestions contained in this paragraph.

⁵ It is not entirely clear why the form cannot be used with the PLRA. Staff assumes it is because there is no space to indicate that the prisoner has had two or fewer frivolous filings.

Additional space is needed on the form for identification of parties. There often are multiple respondents in custody and/or visitation matters, and individuals sometimes have different mailing and physical addresses.

Affidavit (UCCJEA) (DC-620)

The language on this form usefully could be simplified. Text could be made larger to improve legibility.

Motion to Rehear/ Motion for New Trial (DC-368)

Add space on the front of the form for parties' addresses.

As with other forms, there is no space on the front of the form for parties' addresses, only names. Although space for this service information is provided on the reverse of the form, individuals apparently do not turn the form over to complete that side, so motions sent to other jurisdictions are frequently returned. SRLs may be unwilling to read the forms and follow instructions; they would prefer the clerks supply them guidance. Revising the allocation of space on this and other forms would still be likely to reduce problems related to omitted contact information.

Acknowledgement of Suspension or Revocation of Driver's License (DC-210)

Most SRLs do not understand why they have to complete an Acknowledgement of Suspension when they are asking for an extension of time to pay. Logically, there might be justification for a separate form for use with payment plans.⁶

Subpoena duces tecum (DC-336)

As with DC-635, this form can be confusing because of the number of boxes [from which] SRLs must choose to mark. Wording is confusing as well because terms come directly from the Code.

Other

One clerk observed that electronic filing—presumably with some form of online forms-completion assistance—would be very helpful to SRLs.

Another clerk, without referencing a specific form but probably thinking of DC-635, suggested a form specifically for J&DR District Court civil matters which would address support and violations of other J&DR District Court orders. DC-635 currently addresses only civil support among a list of other issues that do not apply to J&DR civil matters.⁷

⁶ This suggestion is not entirely clear.

⁷ The meaning of this paragraph is not entirely clear.

Addendum B: Supplementary Findings & Recommendations

The following are recommendations solely of the Virginia Access to Justice Commission. They have not been approved or endorsed by the Supreme Court of Virginia or the Office of the Executive Secretary of the Supreme Court of Virginia. They cannot be implemented unless and until they have been approved by the Supreme Court of Virginia.

In the years between the administration of the two surveys and the completion of this report, the SRL Committee studied the survey results and the access-to-justice needs they revealed. That study has prompted some additional findings and recommendations, which are listed below.

New and improved forms, instructions, referrals, videos, and other resources are only beneficial to the extent that people are aware of, and can easily obtain them. Consequently:

- *Post SRL resources (e.g., how-to videos) and links to interactive guided online interviews on the Court Self-help Website.*
[Supplements Recommendations 1, 4, and 15]
- *Increase awareness of the Virginia Judicial System Court Self-Help Website by developing and disseminating posters and other promotional materials in clerks' offices, public libraries, social services offices, and other locations.*
[Supplements Recommendations 14 and 24]
- *Support the installation of self-help computer work terminals in every courthouse in the Commonwealth.*

To maximize the benefit of existing and future forms-completion programs, respect the investment of SRL time, and reduce the work required of intake personnel in courts and other government offices, the following steps are recommended:

- *Continue to explore the viability of enabling the forms generated by I-CAN! Virginia to be integrated into the court system's case management systems such that court clerks would not have to reenter information electronically supplied by the petitioner.*
[Supplements Recommendation 7]
- *Continue efforts to have Court Services units accept printouts from I-CAN! Virginia in their own intake processes and eventually have I-CAN! connect to their systems electronically to populate comparable fields.*
[Supplements Recommendation 7]
- *As interactive form-completion programs are developed, communicate with relevant state agencies to improve the acceptance and usefulness of generated documents and collaborate to build interfaces among systems.*
[Supplements Recommendation 7]

Unbundling can reduce SRLs' need for legal assistance while promoting better resolution of some legal issues. Therefore:

- *Support further examination of options for unbundling elements of family law and other civil matters so that issues that can be resolved by mediation may be handled separately from those requiring litigation and litigants will have the ability to retain counsel for discrete issues.*

[Supplements Recommendation 2]

There is no uniform policy in Virginia's courts regarding the carrying and use of portable electronic devices in courthouses. SRLs' and other court users' uncertain access to portable electronic devices to navigate court procedures and forms, to present evidence in litigation, and to communicate while in the courthouse is a significant access-to-justice issue. Confiscating portable electronic devices or refusing to allow their entry such that they must be placed in an unsecured status can have serious impacts on personal safety by foreclosing a person's ability to call for help or otherwise communicate with family or friends. Therefore:

- *Endorse a model policy governing the carrying and use of portable electronic devices in courthouses, and make that policy available to judges, clerks, and other relevant officials.*

With respect to training for clerks that can assist them and SRLs when they interact in carrying out courthouse business:

- *Prioritize family law issues in the development of educational options for court clerks explaining the distinction between legal information and advice.*

[Supplements Recommendation 23]

A special area of access to justice concern that was identified by a few clerks during the survey and subsequently voiced in the Commission's Judicial Education Committee and Pro Bono Coordinating Consortium related to civil cases filed by prisoners. Not counting complaints related to the conditions of their confinement, prisoners may have a considerable range of legal needs, particularly with respect to family issues. Although criminal defendants have a right to counsel, they have no similar right in civil matters, and face the same or even more serious barriers as other SRLs, because prisoners may have no access to even the limited legal resources that are available to other SRLs in courthouses and online.

Beyond the issue of what assistance appropriately might be provided to prisoner SRLs, clerks face their own particular concerns with respect to prisoner-*initiated* cases. The Virginia Prisoner Litigation Reform Act⁸ requires that prisoner actions be filed in the city or county containing the prison in which the prisoner was housed at the time his or her cause of action arose. As a consequence, the workload associated with prisoners' filings is concentrated in a few jurisdictions around the Commonwealth. There is concern among the clerks that the Act's conditions for filing *in forma pauperis* are not being enforced; specifically, the requirements that

⁸ Va. Code §§ 8.01-689 through -697, <https://law.lis.virginia.gov/vacodepopularnames/virginia-prisoner-litigation-reform-act/>.

the prisoner provide the required financial information *and* not have had three or more cases or appeals dismissed by any federal or state court for being frivolous, malicious, or for failure to state a claim. In addition to any possible form modification for prisoners filing *in forma pauperis* (as referenced above in the “Clerk Suggestions for Form Improvement”), the following recommendations are offered:

- *Explore methods for increasing the availability of printed and online legal resources to prisoners subject to appropriate security restrictions.*
- *Encourage greater attention to the provision of pro bono assistance to prisoners for certain legal needs.*
- *In jurisdictions where prisons are located, provide judges and clerks with training related to the requirements of the Virginia Prisoner Litigation Reform Act.*

Appendix A

Responses to the 2014 Judges' Survey: Analysis

Survey Sample

The 2014 Judges' Survey was administered from October 9 through November 7, 2014. During this survey period, 231 Virginia trial judges accessed the survey instrument, 230 of whom answered at least one question. Of the total sample of 230 Virginia judges participating in this survey, 225 answered the minimum number of mandatory questions that constitutes fully completing the survey.⁹ Of the total sample number, 94 were circuit court judges (40.87%), 66 were general district court judges (28.70%), and 70 were juvenile and domestic relations (J&DR) district court judges (30.43%).¹⁰ The sample represented 64.61% of the current Virginia trial bench—70.68% of the state's 133 circuit court judges, 58.93% of the general district judges, and 63.06% of the J&DR district judges. These data are displayed below in Figure 1. The number of judges who comprise this sample is sufficient to make it representative of all Virginia trial judges.

Figure 1: Description of Survey Sample of Judges

Court Type	Population	Sample	% of Population	% of Total Sample
Circuit	133	94	70.68	40.87
General District	112	66	58.93	28.70
J&DR District	111	70	63.06	30.43
TOTAL	356	230	64.61	100.00

Research Methodology

The research design centered on a self-reporting, descriptive survey instrument designed by OES staff in consultation with the Committee on Access for Self-Represented Litigants of the Virginia Access to Justice Commission. For the benefit of long-term comparisons, some questions were based upon ones asked in similar judicial surveys administered in 2000 and 2007. The instrument included 45 questions; however, some questions were specific to certain court types, and others were asked only when earlier questions were answered a specific way. Therefore, judges were asked a minimum of 33 and a maximum of 36 questions.

The response sets to the survey questions were varied and included dichotomous (yes-no) answers; multiple choice checklists (requesting single or multiple selections); and four-scale (Not concerned to Highly concerned) and five-scale (Always to Never) ratings. There were also optional open-ended questions that encouraged explanations of or elaborations on answers to

⁹ Some survey questions were specific to the types of court on which judges served while the inclusion of other questions was conditional upon how judges responded to earlier questions in the survey. Consequently, questions that some judges had to answer were never asked of others. The SurveyMonkey analytical software is somewhat misleading in that it reports that any question that a judge did not answer was "skipped" as if the judge intentionally chose not to respond. Rather, some questions had to be answered in order to advance through the survey; some questions were voluntary and could be skipped; and some questions did not apply and were automatically excluded by the survey software.

¹⁰ Virginia's circuit courts are general jurisdiction courts of record. The general district and juvenile and domestic relations district courts are limited jurisdiction courts not of record.

prior questions and allowed judges to share additional thoughts about self-represented litigant issues. The study participants' identities were not required. The only identifying information required on the survey instrument was type of trial court; years of service on that court; whether the judge's principal work location was urban, suburban, or rural; and whether the judge had presided on another court before selection to his or her current one.

During the period the survey was open in SurveyMonkey, a judge could exit and return to his/her survey instrument to complete or edit responses, as long as the judge accessed the survey from the same computer. Only one completed survey was permitted from any given computer. Based upon testing prior to the official administration of the survey, most judges needed about 20 minutes to complete the instrument.

The analytical tools built into SurveyMonkey were used to analyze the data. For the most part, examination of the responses was confined to basic frequency analysis. For a number of questions, however, this level of analysis was not particularly revealing with respect to the overall survey sample. Consequently, cross tabulation was employed to discern potentially significant correlations among the answers to different questions. The most significant correlations among judges' responses related to the type of court on which they served. Survey results are presented in order of the survey questions.

Survey Results

Location and Experience

Please indicate whether the court(s) on which you serve is (are) predominately urban, suburban, or rural. If you preside in multiple locations having different characteristics, please answer based upon the character of the jurisdiction in which you do most of your work.

In anticipation of possible correlations between the local characteristics of court jurisdictions and the number of, perceptions about, and assistance offered to self-represented litigants, each judge was asked to identify whether the court in which he/she presides or presides most often is urban, suburban, or rural. As is displayed in Figure 2, a plurality (39.13%) of the responding judges identified their jurisdictions as suburban, followed by urban (33.48%) and rural (27.39%). Among circuit judges, the three geographical categories were the most even, with urban judges slightly exceeding suburban ones. Among general district judges, suburban judges dominated, making up almost 44% of that bench. Suburban judges were also a plurality (42.86%) of the J&DR district bench.

Figure 2: Geographic Character of Judge’s Principal Jurisdiction

Court	Urban	Suburban	Rural	Total
Circuit	33	31	30	94
Gen. District	22	29	15	66
J&DR District	22	30	18	70
TOTAL	77	90	63	230
% of TOTAL	33.48	39.13	27.39	100.00

How many full years have you served on your current court (if fewer than 12 months, answer "0")?

The SRL Committee considered experience on the bench to be relevant to perspectives about the seriousness of various issues as well as awareness of any changes in the number of SRLs appearing in court. The survey therefore asked judges to indicate how long (in full years) they had served on their current court. Individuals who had served less than one year were asked to answer “0.” Among responding circuit judges, the minimum number of years served on their current courts was zero, and the maximum was 30. The mean number of years served as a circuit judge was 9.69 while the median and mode were 7.5 and six, respectively. The range of years served by responding general district judges was one to 23; similarly, the range for J&DR district judges was one to 24. The mean years served by respondents at the district level were 8.14 for general district judges and 9.71 for J&DR district judges. While the medians were comparable to the means for both the general and J&DR district court benches at eight and nine years, respectively, the modes were much shorter at two years for each. Among all responding judges, the mean number of years served on their *current* court was 9.25. Service data are presented below in Figure 3.

Figure 3: Years of Service on Current Court

Court	Min. (freq.)	Max. (freq.)	Mean	Median	Mode
Circuit	0 (1)	30 (2)	9.69	7.5	6
Gen. Dist.	1 (10)	23 (1)	8.14	8	2
J&DR Dist.	1 (6)	24 (1)	9.71	9	2
All Judges	0 (1)	30 (2)	9.25		

Did you preside in another court before your selection to your current court?

Because the SRL Committee believed service on another court would also provide experience and a useful basis for perspective on self-represented litigants, the survey included a question asking whether the respondent had presided in another court before being selected to his or her current one. Forty-seven judges (20.43%) indicated they had presided in another court (see Figure 4). Most (38) of those with prior service of this kind were, as expected, circuit judges, almost all of whom had served in the district courts. In all 40.43% of the circuit judges had presided on another court before selection to their current court. As for the few district

judges with prior experience, most indicated they had served as substitute judges—one for as many as 12 years and another in as many as 14 jurisdictions. One general district judge reported having presided in the general district court in an urban area for 13 years before transferring within the same district to a more suburban court.

Figure 4: Percentage of Responding Judges Who Previously Presided in Another Court

Court	Frequency	Percentage
Circuit	38	40.43
General District	5	7.58
J&DR District	4	5.71
All Judges	47	20.43

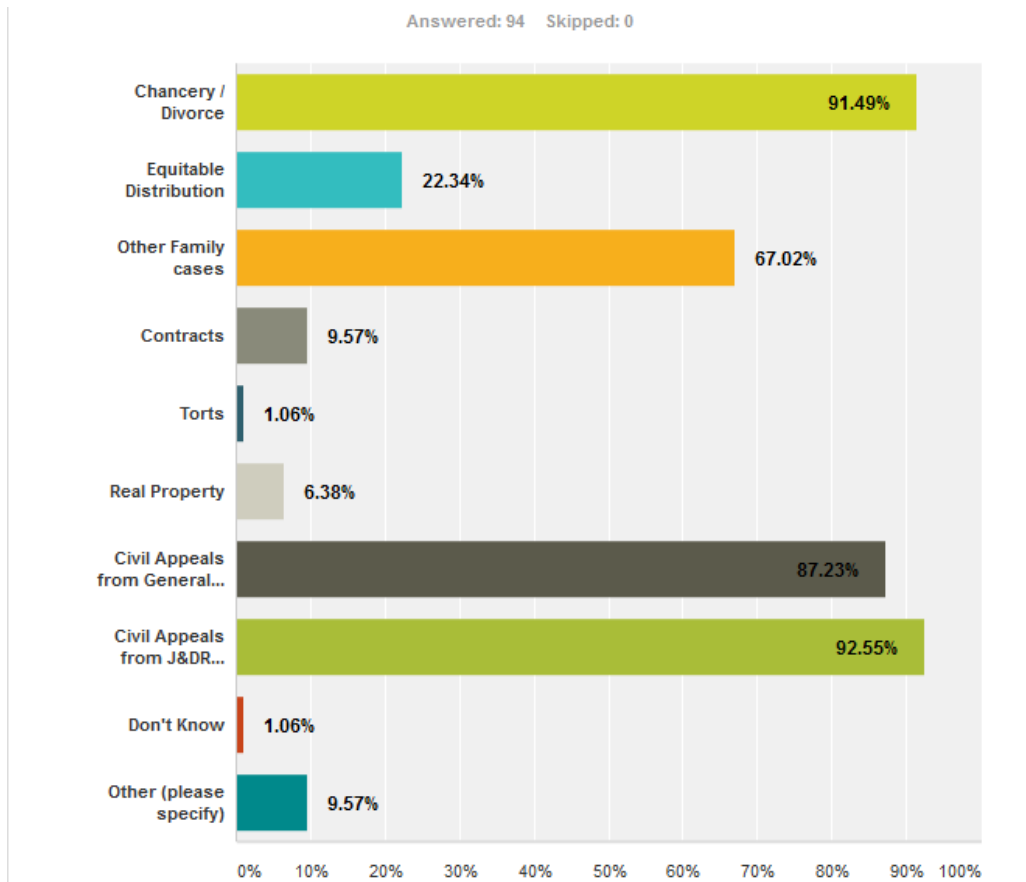
The key finding from these first questions is that there is a wide range of experience among judges with respect to the bench on which they currently serve. The majority of the responding judges have had sufficient experience in the courts to add legitimacy to their responses to other questions in the survey. Nevertheless, 67 of the responding judges (29.13%) had served for less than five years on their current court, and all but one of them had served less than four years. Along with the fact that many judges from the Baby Boomer generation will soon be retiring, these data may bolster the expansion of training and support programs for judges to handle SRL cases. This is particularly true for the General District bench on which almost a third of those responding had less than three years of experience.

Court-Specific Questions

Based upon your experience, in what...types of...civil cases are self-represented litigants most likely to appear in YOUR court?

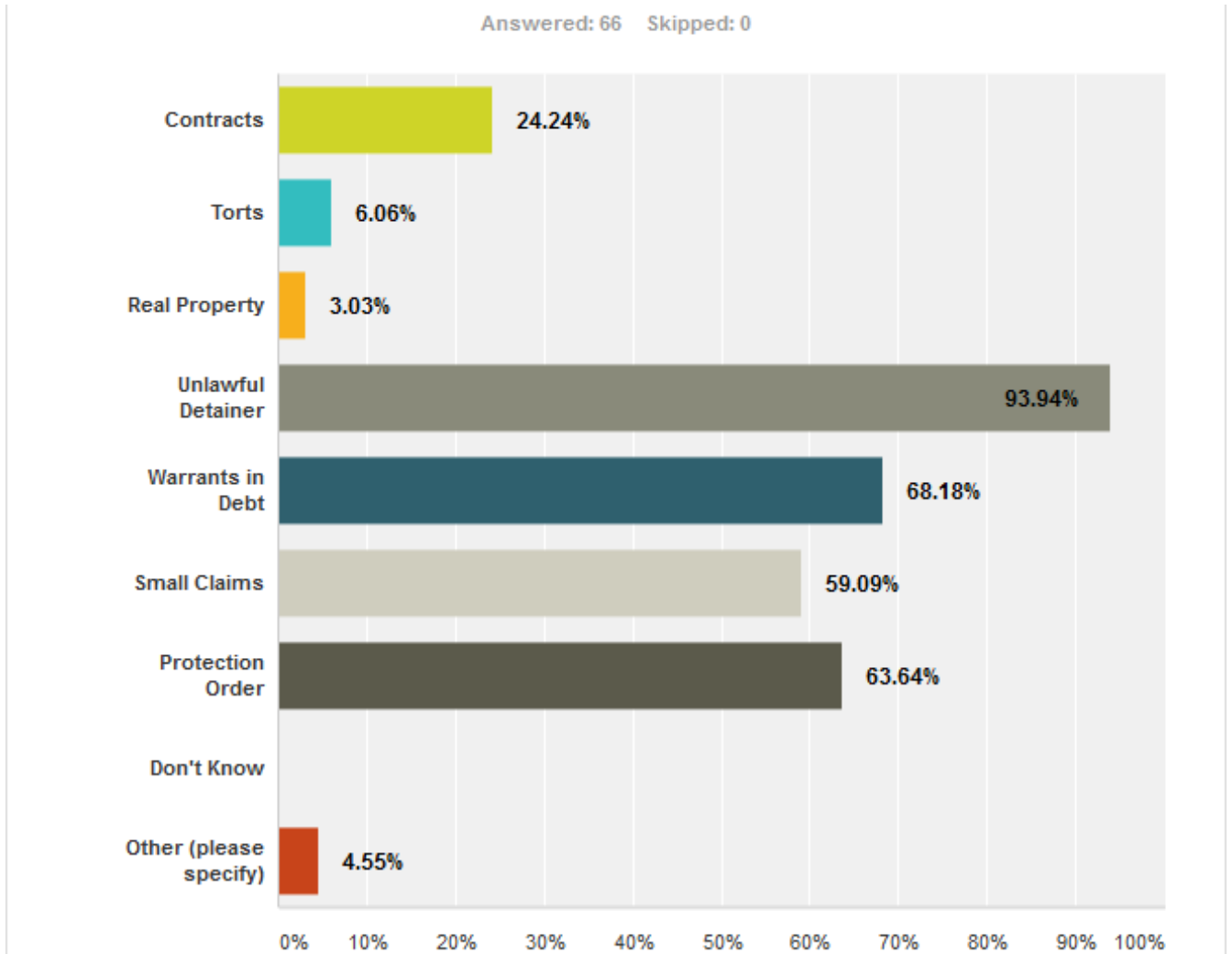
Judges were asked to identify the types of cases in their court in which SRLs were most likely to appear. Circuit judges were asked to identify the top four case types; district judges were asked to identify the top three. All 94 circuit judges answered this question, identifying Civil Appeals from J&DR District Court (92.55%), Chancery/Divorce (91.49%), Civil Appeals from General District Court (87.23%), and “Other Family Cases” (67.02%) as the most common types of cases for self-represented litigants. The case type that was next in frequency, Equitable Distribution, was identified by fewer than 23% of the judges. Circuit responses are displayed in Figure 5.

**Figure 5:
In what four types of Circuit civil cases are self-represented litigants most likely to appear
in YOUR court? (Circuit Responses)**



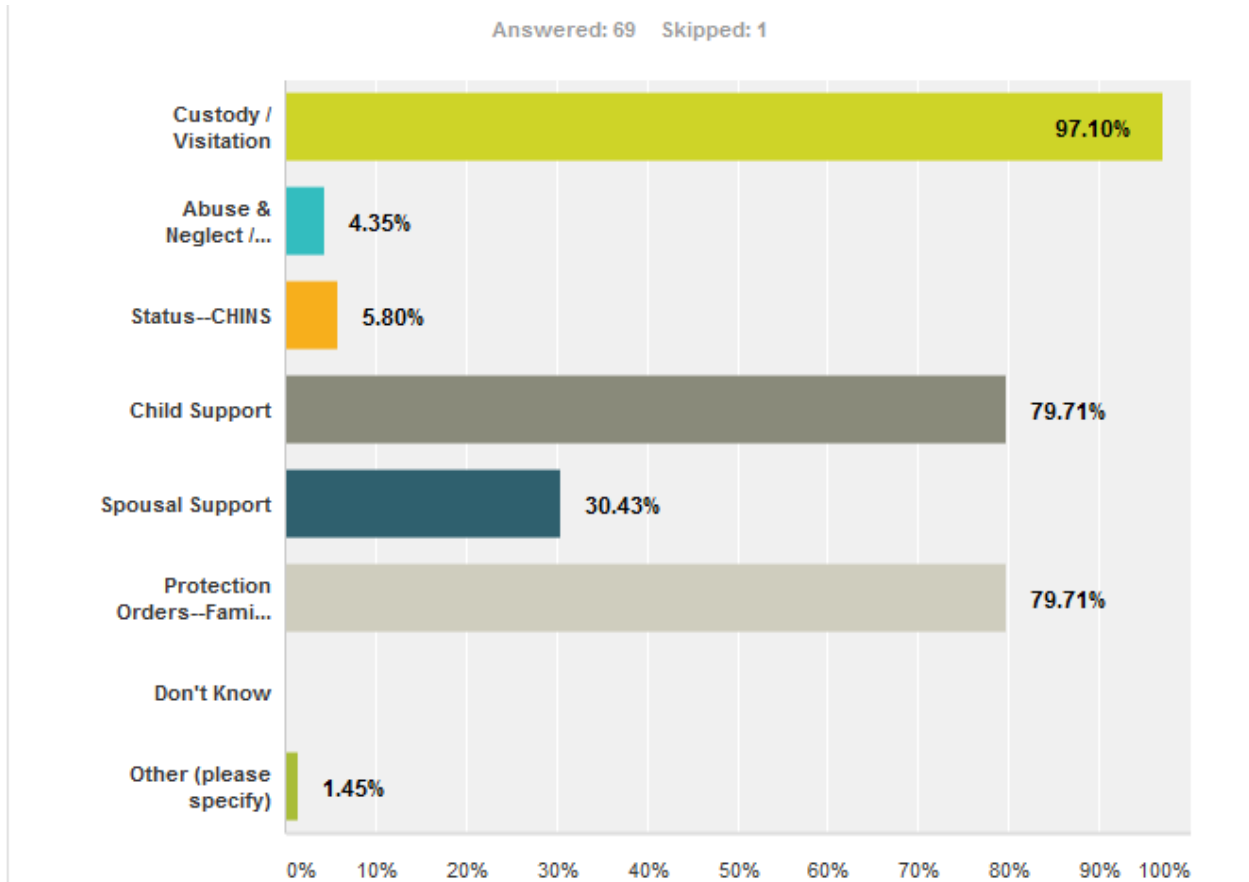
Among 66 responses by general district court judges, four case types clearly stood out as those in which SRLs are most likely to appear, even though each judge could select only three case types. The four case types were Unlawful Detainer (93.94%), Warrants in Debt (68.18%), Protection Orders (63.64%), and Small Claims (59.09%). Contracts (24.24%) was the only other civil case type that was identified by more than 10% of the judges. Data from General District responses are displayed in Figure 6.

Figure 6:
In what three types of General District civil cases are self-represented litigants most likely to appear in YOUR court?



Sixty-nine J&DR district judges provided responses. The three civil case types they most often identified were Custody/Visitation (97.10%), Child Support (79.71%), and Protection Orders—Family Violence/Stalking (79.71%). Spousal Support (30.43%) was a distant fourth. No other civil case type was identified by as many as 10% of the judges. Data from the J&DR district responses are displayed in Figure 7.

Figure 7:
In what three types of J&DR District civil cases are self-represented litigants most likely to appear in YOUR court?



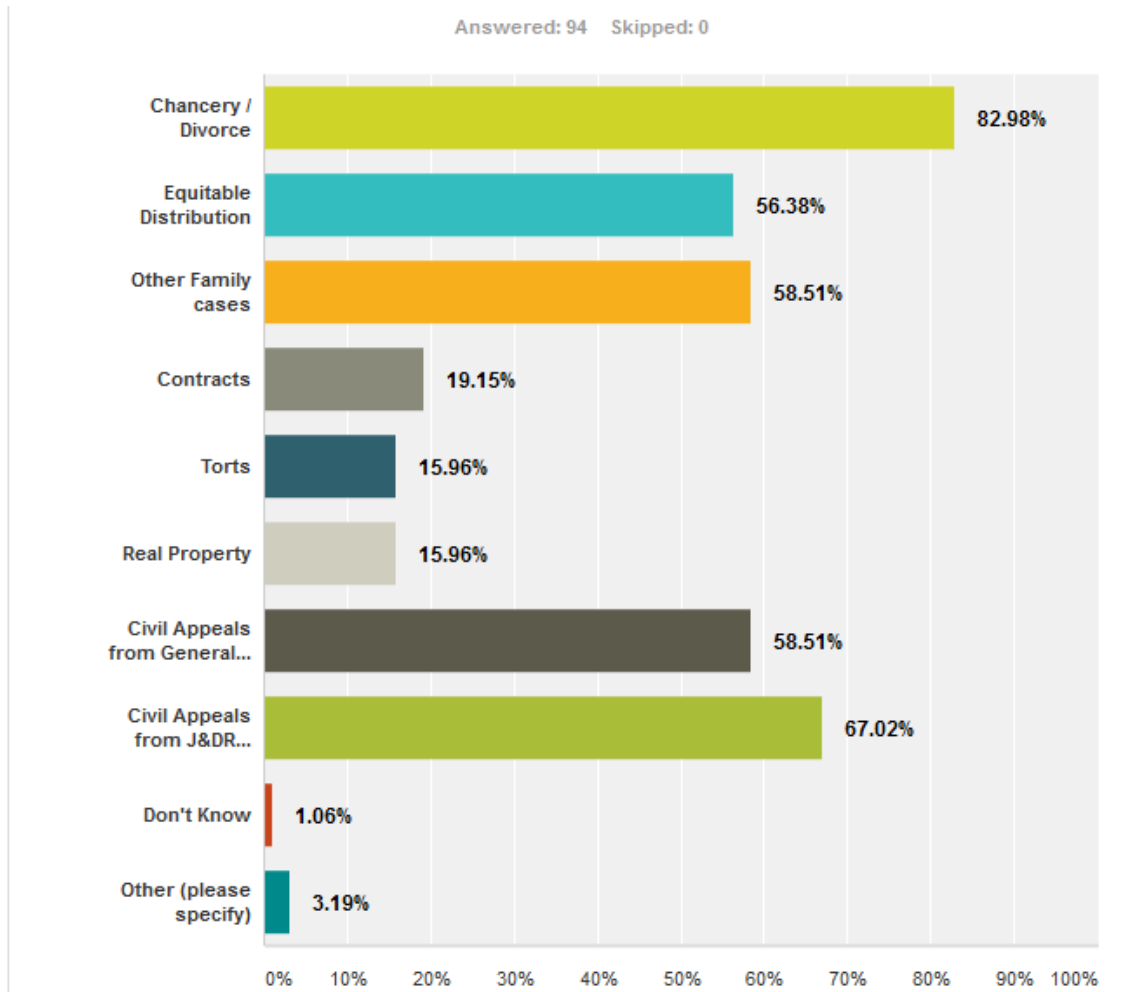
Based upon your experience, in what...types of...civil cases are self-represented litigants most likely to need assistance / have difficulties in YOUR court?

After having identified the case types in which SRLs were most likely to appear in their courts, judges were asked to identify the case types in which those litigants were most likely to need assistance or have difficulties. As with the previous question, circuit judges were asked to identify the top four case types in their court while district judges were asked to identify the top three.

The case type for which circuit judges believed SRLs were most likely to need assistance or have difficulties was Chancery/Divorce (82.98%). A cluster of four other case types were the next most common case types identified; in descending order, these were Civil Appeals from J&DR District Courts (67.02%), Other Family Cases (58.51%), Civil Appeals from General District Court (58.51%), and Equitable Distribution (56.38%). Among the remaining civil case

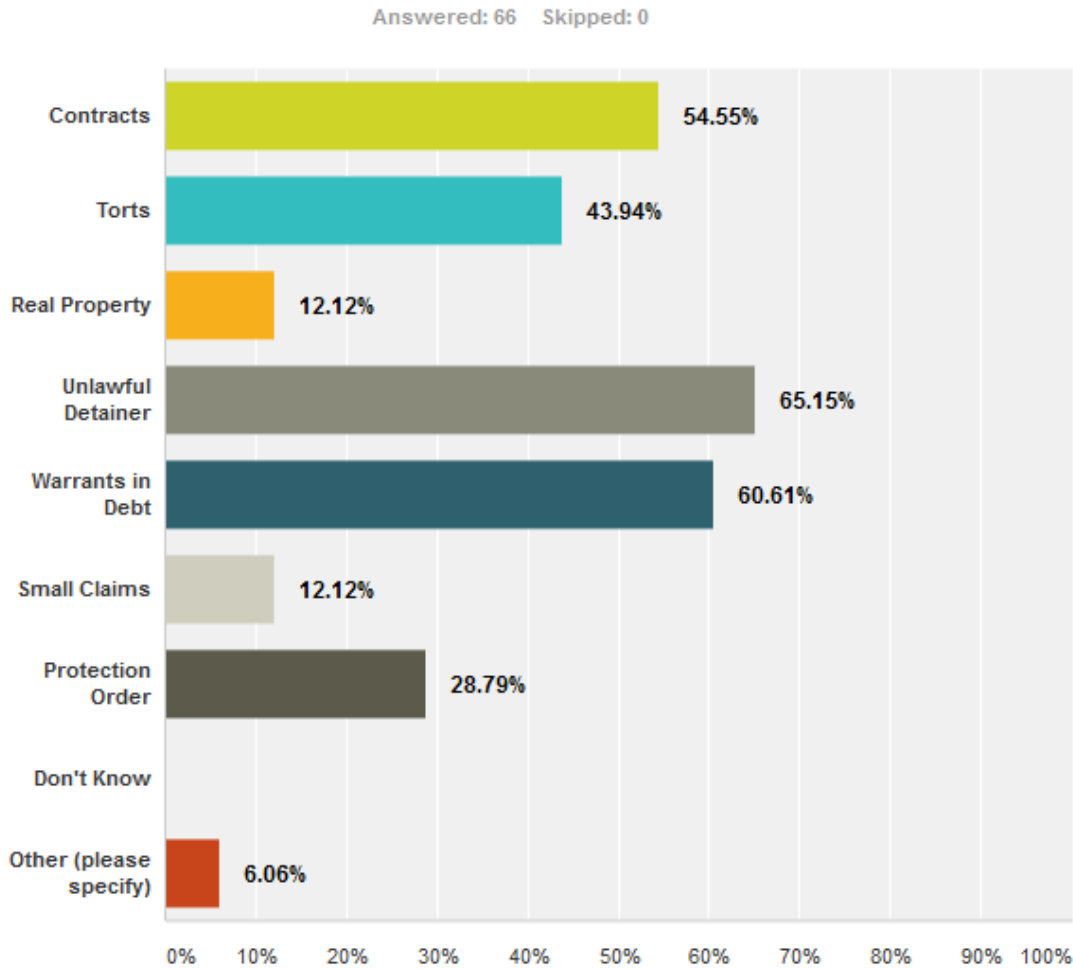
types, none was selected by as many as 20% of the circuit judges. Circuit data are displayed in Figure 8.

Figure 8:
In what four types of Circuit civil cases are self-represented litigants most likely to need assistance / have difficulties in YOUR court?



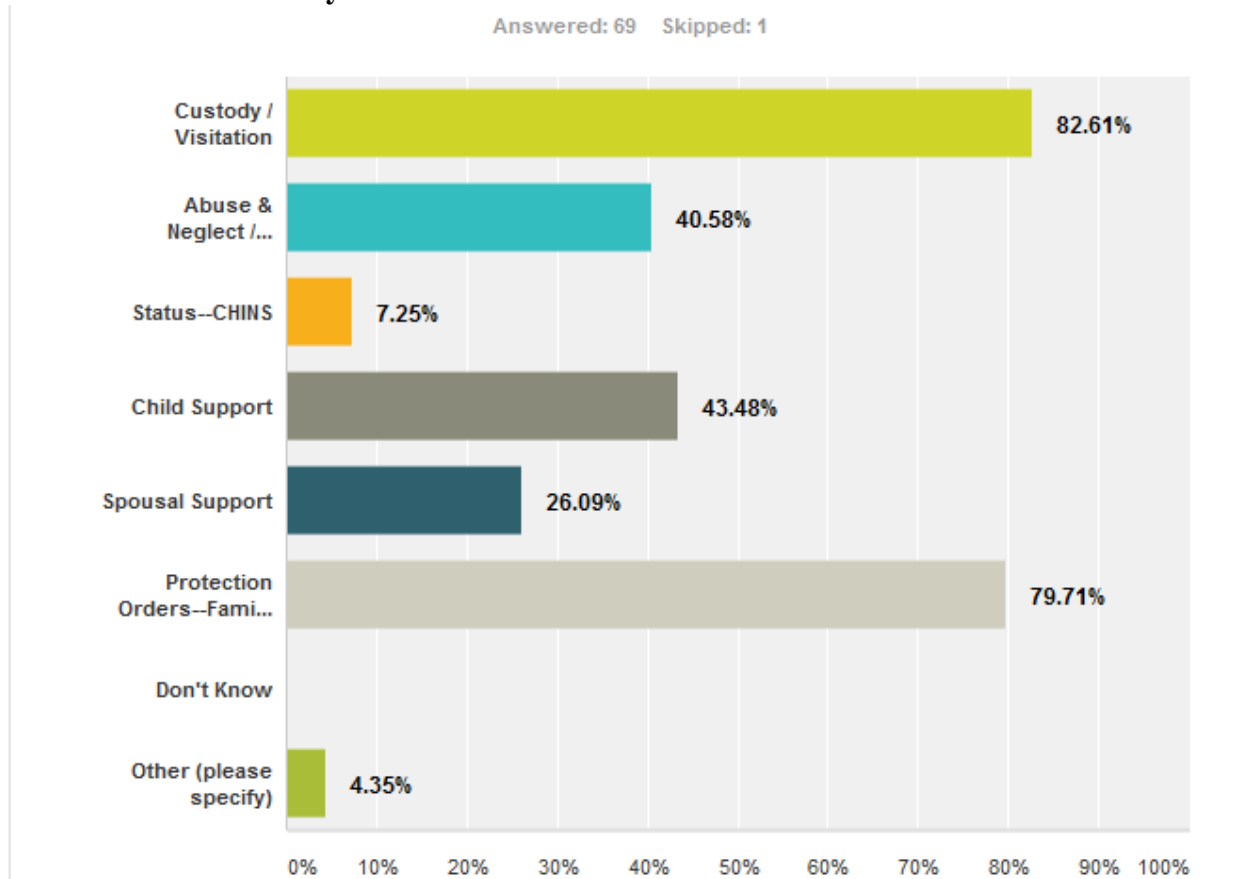
The responses from the general district judges identified a cluster of four case types in which SRLs were most likely to need assistance or have difficulties. These were, in descending order, Unlawful Detainer (65.15%), Warrants in Debt (60.61%), Contracts (54.55%), and Torts (43.94%). Protection Orders (28.79%) were a distant fifth. No other civil case type was identified by as many as 15% of the general district judges. Data from the general district responses is displayed in Figure 9.

Figure 9:
In what three types of General District civil cases are self-represented litigants most likely to need assistance / have difficulties in YOUR court?



Two case types dominated the responses by J&DR district judges, Custody/Visitation (82.61%) and Protection Orders—Family Violence/Stalking (79.71%). Only half as many judges identified the next two case types, Child Support (43.48%) and Abuse & Neglect/Foster Care (40.58%). Just over a quarter of the J&DR district judges (26.09%) identified Spousal Support as a case type in which SRLs were likely to need assistance or have problems, but less than 10% of the judges identified any other case type. Data from the J&DR district responses is displayed in Figure 10.

Figure 10:
In what three types of J&DR District civil cases are self-represented litigants most likely to need assistance / have difficulties in YOUR court?



With respect to the case types you identified in the question above, are the needs or difficulties of self-represented defendants notably different from those of self-represented plaintiffs / petitioners?

In addition to being asked about the case types in which SRLs were most likely to have difficulties or need assistance, judges were asked whether the needs or difficulties in the cases they had identified were notably different for self-represented defendants than for self-represented plaintiffs / petitioners. The majority of the judges in all three court types answered “No”—the needs/difficulties are not notably different (see Figure 11); however, both general district and J&DR district judges were more likely to say there are differences than were the circuit judges.

Figure 11: In the Case Types You Previously Identified, Are the Needs / Difficulties of SRL Defendants Notably Different from Those of SRL Plaintiffs / Petitioners?

Court	Answer	Frequency	Percentage
Circuit	Yes	13	13.83%
	No	75	79.79%
	Don't Know	6	6.38%
General District	Yes	16	24.24%
	No	47	71.21%
	Don't Know	3	4.55%
J&DR District	Yes	25	36.23%
	No	43	62.32%
	Don't Know	1	1.45%

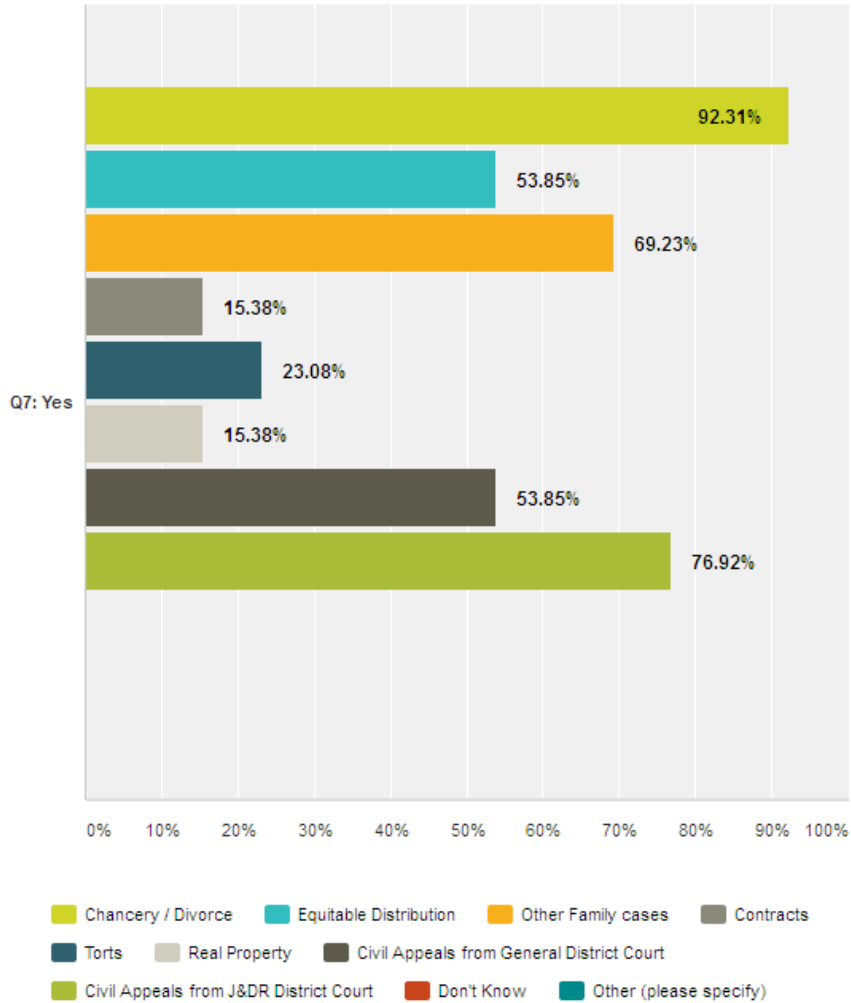
A cross-tabulation of the circuit judges who said that there are differences between the needs / difficulties of SRL defendants and plaintiff / petitioners revealed these judges were more likely than their peers to have identified Chancery Divorce (92.31%), Other Family Cases (69.23%), and Civil Appeals from J&DR District Courts (76.92%) as case types in which SRLs would need assistance or have difficulty (see Figure 12; compare Figure 8). These judges did not have uniform perceptions regarding what the differences are. Some of the circuit judges felt that SRL plaintiffs / petitioners have an advantage over SRL defendants because the former have more time to investigate or research legal issues prior to filing while the latter have to contend with the responsive pleading period, leave to amend, etc.

Another judge remarked that SRL petitioners may have some assistance from DCSE or other agencies. Some judges indicated that SRL plaintiffs / petitioners face greater difficulties to the extent that they bear the burden of presenting a claim in the first place and if they fail, the case may end without the defendant ever having appeared.

Figure 12:
Circuit judges who responded “Yes” to there being different needs / difficulties
between SRL plaintiffs / petitioners and SRL defendants

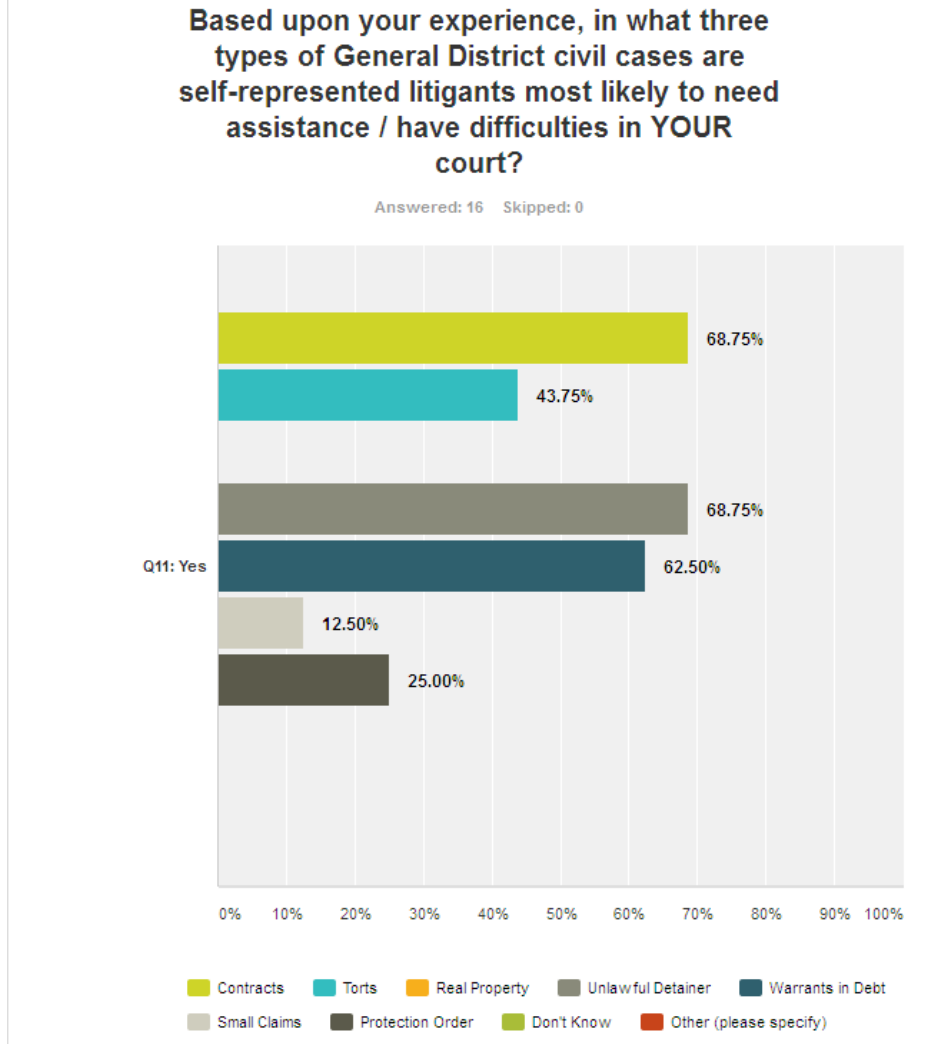
Based upon your experience, in what four types of Circuit civil cases are self-represented litigants most likely to need assistance / have difficulties in YOUR court?

Answered: 13 Skipped: 0



A similar cross-tabulation of the general district judges who believed there are differences between the needs for assistance or difficulties experienced by SRL plaintiffs / petitioners and SRL defendants revealed that these judges were much more likely than their peers to expect SRLs to need assistance in Contracts cases (68.75% v. 54.55%). They were slightly more likely to expect need for assistance or difficulties in cases of Unlawful Detainer (68.75% v. 65.15%), Warrants in Debt (62.50% v. 60.61%), and Small Claims (12.50% v. 12.12%) and less likely in all other case types (see Figure 13; compare Figure 9). These 16

Figure 13:
General district judges who responded “Yes” to there being different needs / difficulties between SRL plaintiffs / petitioners and SRL defendants

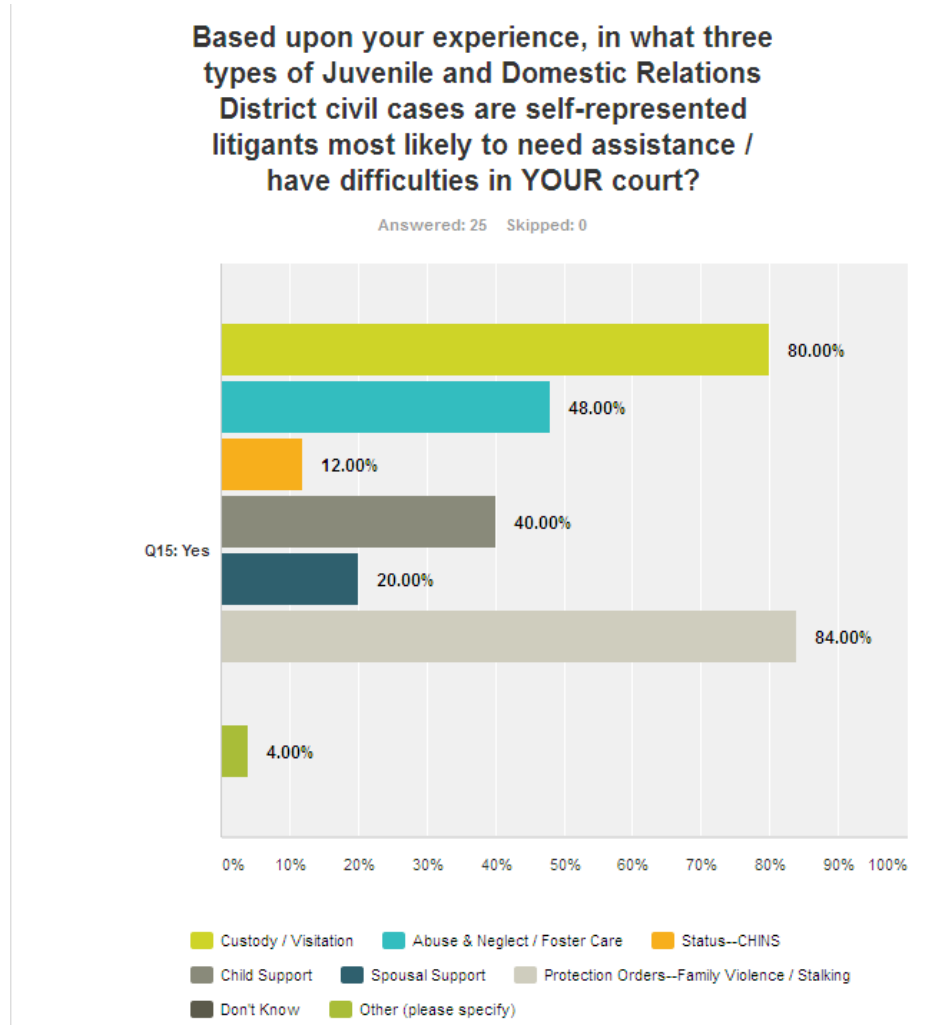


general district judges referenced the same types of needs/difficulties among SRL plaintiffs/petitioners and defendants as did the circuit judges; however, comments by these general district judges commonly reflected a belief that SRL defendants were more often at a greater disadvantage in their courts in light of the many non-attorney employee/representatives of apartment complexes (UDs), banks, and credit unions, as well as licensed real estate agents and property managers who are well-versed in the court and collection process.

As for the J&DR district judges, the 25 judges (36.23%) who believe that there *are* differences in the likelihood of SRLs needing assistance or having difficulties were like their peers in saying that need for assistance or difficulties were most likely in Custody / Visitation (80.00%) and Protection Order (84.00%) cases although these judges were marginally less likely (-2.61%) to identify the former case type than their peers did and more likely (+5.29%) to identify the latter. Similarly, they were slightly more likely to identify Abuse & Neglect / Foster

Care (+7.42%) and slightly less likely to identify Child Support (-3.48%) (see Figure 14; compare Figure 10).

Figure 14:
J&DR district judges who responded “Yes” to there being different needs / difficulties between SRL plaintiffs / petitioners and SRL defendants



J&DR district judges had perspectives similar to their circuit and general district peers: SR petitioners face a significant challenge in meeting their burdens of proof; however, SR defendants are typically not aware of available procedural or substantive defenses when the plaintiff files a matter and then makes a prima facie case. Important third-party / societal interests can be compromised when litigants are self-represented, including determinations as to the best interests of a child, or decisions to grant a protective order where the SRL has been unable to produce relevant evidence.

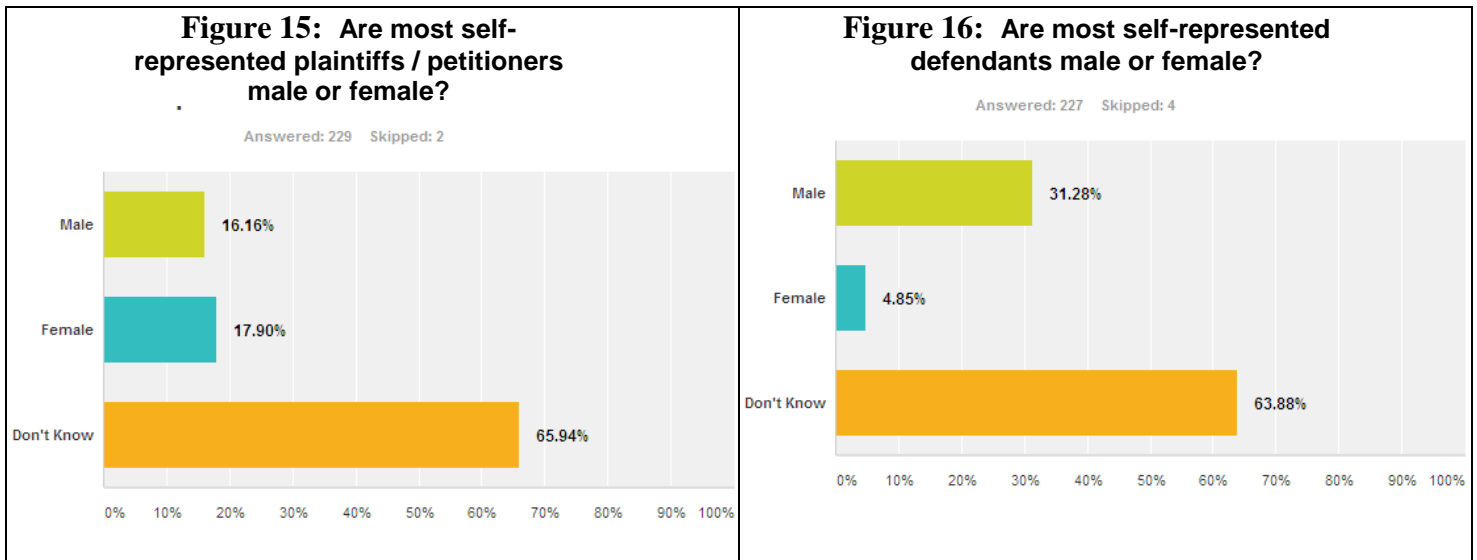
Perceptions Regarding Self-Represented Litigants

The next sections of the survey sought judges' perspectives about self-represented plaintiffs/petitioners and defendants, respectively, in the judges' current courts. The questions were largely demographic but also sought insights into the reasons individuals represented themselves. In analyzing the data in these two sections, it is most revealing to compare the data for plaintiffs to that for defendants rather than examining the data for each litigant group separately.

Are most self-represented plaintiffs / petitioners male or female?

Are most self-represented defendants male or female?

Most respondents indicated that they did not know the predominant sex of SRL plaintiffs/petitioners or SRL defendants (see Figures 15 and 16). This lack of knowledge was most pronounced among circuit and general district judges. For both plaintiffs/petitioners and defendants, on the other hand, a slight majority of the J&DR district judges (50.72% and 57.35%, respectively) did identify what they felt were the predominant sexes of their SRL litigants (see Figures 15 and 16). Whether this overall lack of knowledge is an indication there is no clearly predominant sex among litigating SRL parties in most jurisdictions or whether judges are not sensitive to this issue cannot be determined from this survey, but may suggest avenues for future research.



Among the judges who did identify a predominant sex of SRL plaintiffs/petitioners, slightly more (41) indicated that most in their courts were female rather than male (37) (see Figure 17). There are differences depending on the court type. In both circuit and general district courts, judges were more likely to have indicated most of their courts' self-represented plaintiffs/petitioners are male, with general district judges more than twice as likely to have answered "Male" than "Female." In contrast, J&DR district judges were almost three times

more likely to have identified the majority of their SRL plaintiff's/petitioners as female. Figure 17: Judges Indicating a Predominant Sex Among SRL Plaintiffs / Petitioners

Answer	Overall (n=229)		Circuit (n=94)		Gen. Dist. (n=66)		J&DR Dist. (n=69)	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Male	37	16.16	16	17.02	12	18.18	9	13.04
Female	41	17.90	10	10.64	5	7.58	26	37.68
Don't Know	151	65.94	68	72.34	49	74.24	34	49.28

The overwhelming majority of judges in all courts who identified a predominant sex said most SRL defendants are male (see Figure 18). Circuit judges were 2.5 times more likely to have answered “Male” than “Female.” General district judges were four times more likely to have answered “Male” than “Female.” None of the 39 responding J&DR judges indicated that women are the predominant sex among SRL defendants.

Figure 18: Judges Indicating a Predominant Sex Among SRL Defendants

Answer	Overall (n=227)		Circuit (n=94)		Gen. Dist. (n=65)		J&DR Dist. (n=68)	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Male	71	31.28	20	21.28	12	18.46	39	57.35
Female	11	4.85	8	8.51	3	4.62	0	0.00
Don't Know	145	63.88	66	70.21	50	76.92	29	42.65

What is the most common race / ethnicity of self-represented plaintiffs / petitioners? (Choose the best possible response.)

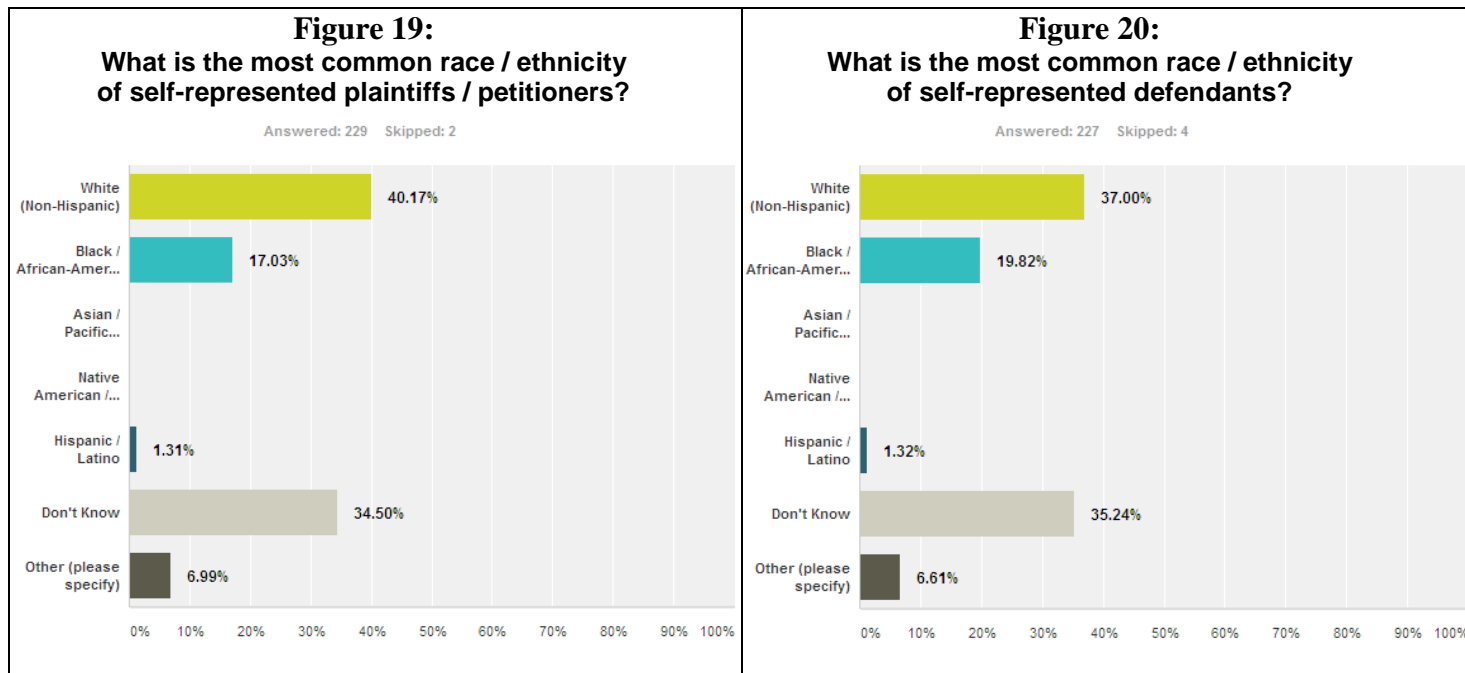
What is the most common race / ethnicity of self-represented defendants? (Choose the best possible response.)

The survey asked judges to identify the most common race of SRL plaintiffs / petitioners and SRL defendants appearing in their courts. Answer options included those commonly used in past Census surveys:

- White (Non-Hispanic)
- Black / African-American
- Asian / Pacific Islander
- Native American / Eskimo-Inuit / Aleut
- Hispanic / Latino
- Don't Know
- Other (please specify)

Judges were asked to provide the single, best possible response. With respect to both SRL plaintiffs / petitioners and defendants, just over a third of the judges reported they did not know the most common race / ethnicity of the SRL litigants (see Figures 19 and 20). Circuit judges

were the most likely to indicate they did not know; J&DR district judges were the least likely (see Figure 21).



For both categories of litigants, a plurality of the judges indicated most SRL litigants are White (Non-Hispanic). This response was strongest among judges for general district plaintiffs / petitioners (46.97%) and weakest among judges for circuit plaintiffs / petitioners and defendants (36.17% each). Overall, just over 17% of the judges believed most of their SRL plaintiffs / petitioners are black / African-American, and just under 20% believed the same of most of their SRL defendants.¹¹ Judges were least likely to perceive blacks to be the most common race among SRL general district plaintiffs / petitioners (7.58%) and most likely to perceive them as the majority among SRL J&DR district defendants (27.94%).

¹¹ According to statistics prepared by the Weldon Cooper Center, approximately 19.8% of Virginia’s 2014 population identified themselves as African-American alone, with highest concentrations in the southeastern part of the state. Among 133 Virginia localities (counties and cities), African-Americans constituted more than one third of the population in only 26 and more than half the population in only eight. “Population by Race, July 1, 2014: Virginia Localities,” a spreadsheet accessed from “POPULATION ESTIMATES FOR AGE & SEX, RACE & HISPANIC, AND TOWNS,” <http://demographics.coopercenter.org/population-estimates-age-sex-race-hispanic-towns/> (last accessed on December 28, 2017).

“The poverty rate among blacks was more than twice that of whites in Virginia in 2010: 20 percent among blacks compared to 9 percent among whites. Twenty-nine percent of black children lived in poverty in Virginia in 2010.” Michele P. Claibourn, “Blacks in Virginia: Demographic Trends in Historical Context,” p. 12 (Demographics and Workforce Group, Weldon Cooper Center, University of Virginia, 2012); http://demographics.coopercenter.org/files/2016/12/NC_Blacks-in-Virginia_4_30_12_r.pdf.

Figure 21: Percentage of Judges Indicating A Most Common Race Among SRL Litigants

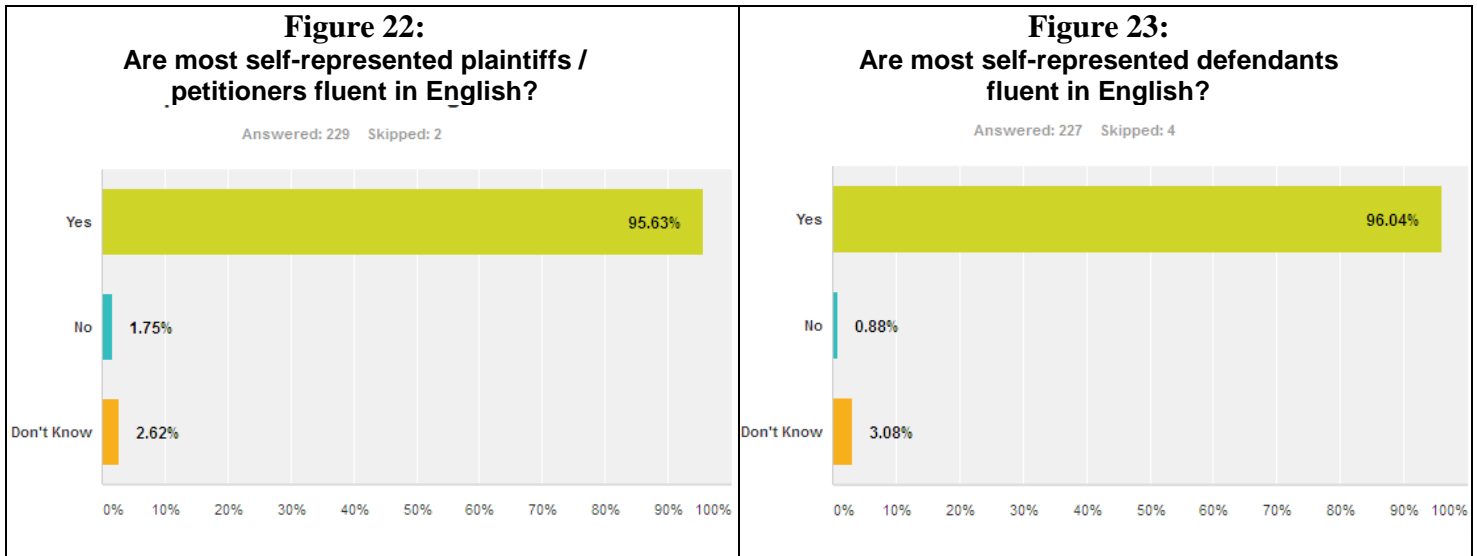
Answer	SRL Plaintiffs / Petitioners				SRL Defendants			
	Overall (n=229)	Circuit (n=94)	Gen. Dist. (n=66)	J&DR Dist. (n=69)	Overall (n=227)	Circuit (n=94)	Gen. Dist. (n=65)	J&DR Dist. (n=68)
White (Non-Hispanic)	40.17	36.17	46.97	39.13	37.00	36.17	38.46	36.76
Black / African- American	17.03	20.21	7.58	21.74	19.82	17.02	15.38	27.94
Asian / Pacific Islander	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Native American/ Inuit/Aleut	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Hispanic / Latino	1.31	0.00	1.52	2.90	1.32	0	3.08	1.47
Don't Know	34.50	37.23	33.33	31.88	35.24	38.30	35.38	30.88
Other (please specify)	6.99	6.39	10.61	4.35	6.61	8.51	7.69	2.94

As for other racial / ethnic groups, no judges indicated that individuals from Asian / Pacific Islander or Native American / Eskimo-Inuit / Aleut groups constituted a *majority* of their SRL plaintiffs / petitioners or SRL defendants. This does not mean, of course, that none of their courts' SRL litigants belong to such demographic groups. With respect to Hispanics / Latinos, only three judges—all in the district courts—identified that group as the most common race or ethnicity among their courts' SRL litigants. Among the specifics provided in conjunction with the few “Other” responses, judges did not identify any other racial / ethnic group; instead, judges indicated that the racial makeup of their SRL litigants was fairly evenly divided among whites and blacks or that there was no clear majority.

Are most self-represented plaintiffs / petitioners fluent in English?

Are most self-represented defendants fluent in English?

Almost all of the judges responding to the survey indicated that most of their courts' SRLs are fluent in English. Only four judges in the whole survey sample indicated most of their courts' SR plaintiffs / petitioners are not fluent in English, and only two judges (none in J&DR district courts) indicated that most of their SR defendants are not fluent in English (see Figures 22 and 23).



When self-represented plaintiffs / petitioners DO have limited English proficiency, what is (are) the most common language(s) for which an interpreter is needed?

When self-represented defendants DO have limited English proficiency, what is (are) the most common language(s) for which an interpreter is needed?

(Judges could choose more than one language.)

Judges were asked what language(s) were the most common for which SRLs needed interpreters. Responses were received from 229 judges with respect to SR plaintiffs / petitioners and 227 with respect to SR defendants. Judges could, and several did, identify more than one language as needing interpretation on behalf of SRLs in their court. An overwhelming majority of the judges (95.20% and 95.71%, respectively) identified Spanish interpretation as being needed for both SRL plaintiffs / petitioners and SRL defendants (see Figures 24 and 25). Among the other language choices the judges could specifically choose from in the survey, Vietnamese was a very distant second, with 7.42% of the judges identifying that language as needing interpretation for SR plaintiffs / petitioners and 7.93% for SR defendants. Each of the other language options that were included in the survey was identified by at least two judges as being one for which SRLs commonly needed interpretation. In descending order, roughly comparable for both plaintiffs / petitioners and defendants, these languages were Korean, Arabic, Mandarin Chinese, Haitian Creole, and Russian. Judges also had the option of identifying “Other” languages for which SRLs commonly need interpreters. Among the languages or language groups for which at least one judge said that SRLs commonly need interpretation are Tagalog, Farsi, Kurdish, Amharic, Ethiopian, Swahili dialects, and Burmese dialects.

Figure 24:
When self-represented plaintiffs / petitioners DO have limited English proficiency, what is (are) the most common language(s) for which an interpreter is needed?
 (You may choose more than one language.)

Answered: 229 Skipped: 2

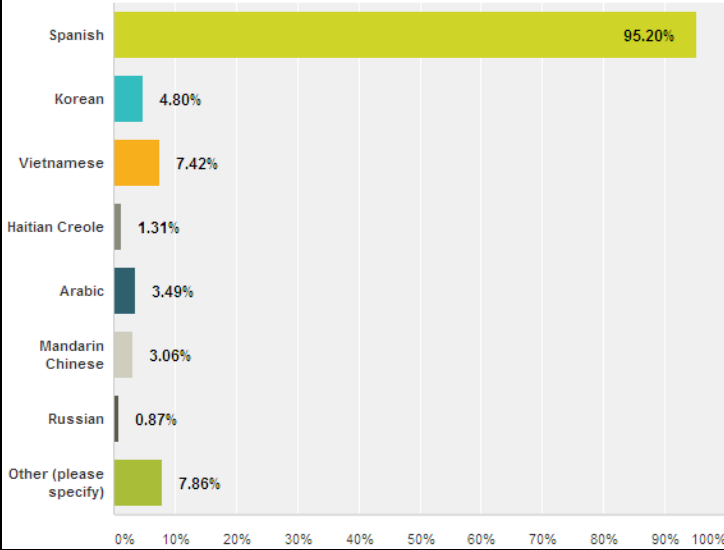
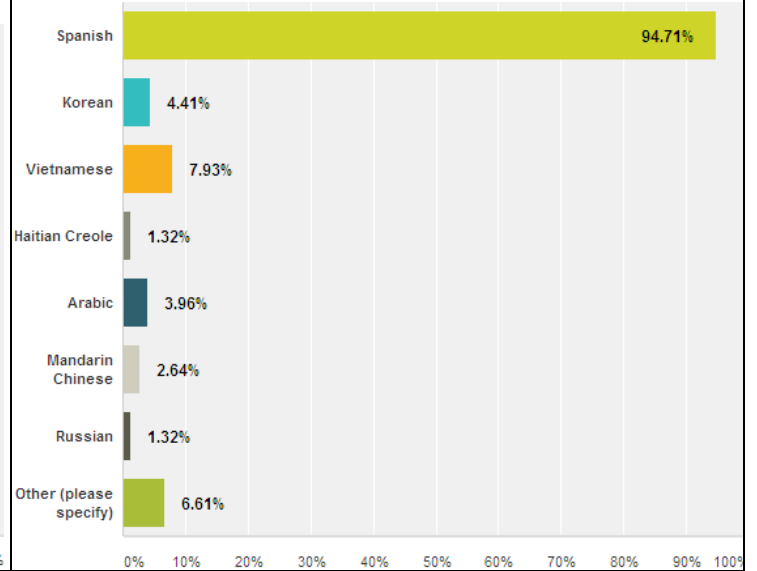


Figure 25:
When self-represented defendants DO have limited English proficiency, what is (are) the most common language(s) for which an interpreter is needed?
 (You may choose more than one language.)

Answered: 227 Skipped: 4



Filtering the data by court type did not reveal a great deal. Compared to the overall sample, circuit judges were slightly less likely to identify any of the languages except Korean as being ones for which SRLs needed interpretation. Circuit judges did provide a greater percentage of comments in the “Other” field than did the overall sample, even if many of their remarks were to the effect that their SRLs had not needed any foreign language interpreters. General district judges were more likely than the overall sample to indicate their courts’ SRLs needed interpreters for Korean, Vietnamese, and Mandarin Chinese. J&DR district judges were more likely than the overall sample to identify that SRLs needed Spanish interpreters and interpreters for “Other” languages, but none indicated a need for Korean or Russian interpreters.

In addition to your responses above, is (are) there any other defining demographic characteristic(s) of self-represented plaintiffs / petitioners that you would like to identify (e.g., most are elderly, most are homeless, most are unemployed, etc.)?

In addition to your responses above, is (are) there any other defining demographic characteristic(s) of self-represented defendants that you would like to identify (e.g., most are elderly, most are homeless, most are unemployed, etc.)?

Judges were asked to identify significant characteristics of SRLs that earlier questions may have failed to elicit. A total of 115 judges offered responses regarding SRL plaintiffs or petitioners, although a fourth of these were to say that there were no other defining characteristics. A total of 113 judges offered responses regarding SRL defendants, with a fourth indicating they perceived no other defining characteristics. Circuit judges were slightly more likely to say there were no other defining characteristics than were district judges. Among the substantive remarks, the most common descriptions that judges used with respect to both SR plaintiffs and defendants were “poor” or “indigent” and “unemployed” or “underemployed/working poor”.

No judge described most SRLs as affluent, educated, or older individuals who chose to represent themselves because they did not think they needed a lawyer.

When plaintiffs / petitioners in civil proceedings represent themselves, what is (are) the most common reason(s) they do so?

When defendants in civil proceedings represent themselves, what is (are) the most common reason(s) they do so?

The last questions in the demographic sections sought judges’ perceptions of why most SRLs choose to represent themselves. Answer choices were identical for plaintiffs / petitioners and defendants except that there was one additional answer for plaintiffs / petitioners, as follows:

Plaintiffs have trained employees who appear for them (as in many small claims cases).

Judges were expected to select one answer; however, the survey allowed them to select two responses if those options were too close to choose only one. For this reason, the percentile totals exceed 100.00%.

For both plaintiffs / petitioners and defendants, judges overwhelmingly indicated the most common reason they represent themselves is that they cannot afford counsel, yet cannot get representation from legal aid (see Figure 26). An analysis of the responses, however, indicates notable differences in the reasons given for plaintiffs / petitioners versus defendants as well as among the three court types. First, judges were more likely to identify the inability to afford

counsel or to get legal aid representation as a reason for defendants to represent themselves (80.36%) than they were for plaintiffs / petitioners (73.80%). This difference held true among the individual court types as well. After this reason, the next three most common reasons attributed for self-representation were the same:

- No attorney is willing and available to take their cases on a pro se basis;
- They believe the cost of representation exceeds its value for their cases; and
- They believe they are as capable of handling their own cases as attorneys would be.

Figure 26: Percentage of Judges Indicating the Most Common Reason Individuals Represent Themselves in Civil Proceedings

ANSWER	Plaintiffs / Petitioners				Defendants			
	Overall (n = 229)	Circuit (n=94)	Gen. Dist. (n=66)	J&DR Dist. (n=69)	Overall (n = 224)	Circuit (n=92)	Gen. Dist. (n=65)	J&DR Dist. (n=67)
They cannot afford counsel yet cannot get representation from legal aid.	73.80	79.79	51.52	86.96	80.36	83.70	67.69	88.06
No attorney is willing and available to take their cases on a pro bono basis.	24.89	24.47	21.21	28.99	27.68	27.17	27.69	28.36
They believe the cost of representation exceeds its value for their cases.	24.45	20.21	42.42	13.04	21.43	19.57	33.85	11.94
They believe they are as capable of handling their own cases as attorneys would be.	29.69	29.79	34.85	24.64	23.66	22.83	21.54	26.87
Plaintiffs have trained employees who appear for them (as in many small claims cases).	4.37	0.00	15.15	0.00				
I don't know.	7.86	7.45	7.58	8.70	8.04	6.52	10.77	7.46
Other (please specify)	3.06	2.13	3.03	4.35	2.68	1.09	6.15	1.49

For both plaintiffs / petitioners and defendants overall, between 21 and 30 percent of the judges identified each of these as a most common reason; however, among these three reasons, judges identified the last (belief in capability) most often for plaintiffs / petitioners and the first (no pro bono attorney) most often for defendants. The special answer option (that plaintiffs have trained employees who appear for them) was identified by only 4.37% of the judges overall; however, this option was offered to capture representational issues in small claims proceedings in general district court and was selected by 15.15% of the judges from those courts.

Nearly 74% of all the responding judges believed that the inability to afford counselor to get legal aid representation was the principal reason plaintiffs / petitioners represent themselves.

This included a bare majority (51.52%) of the general district judges and 86.96% of the J&DR district judges. For 42.42% of the general district judges, plaintiffs' / petitioners' belief that the cost of representation exceeds its value for their cases was the primary motivator perceived for self-representation; the general district judges were more than twice as likely as the circuit judges (20.21%) and more than three times as likely as the J&DR district judges (13.04%) to have chosen that response.

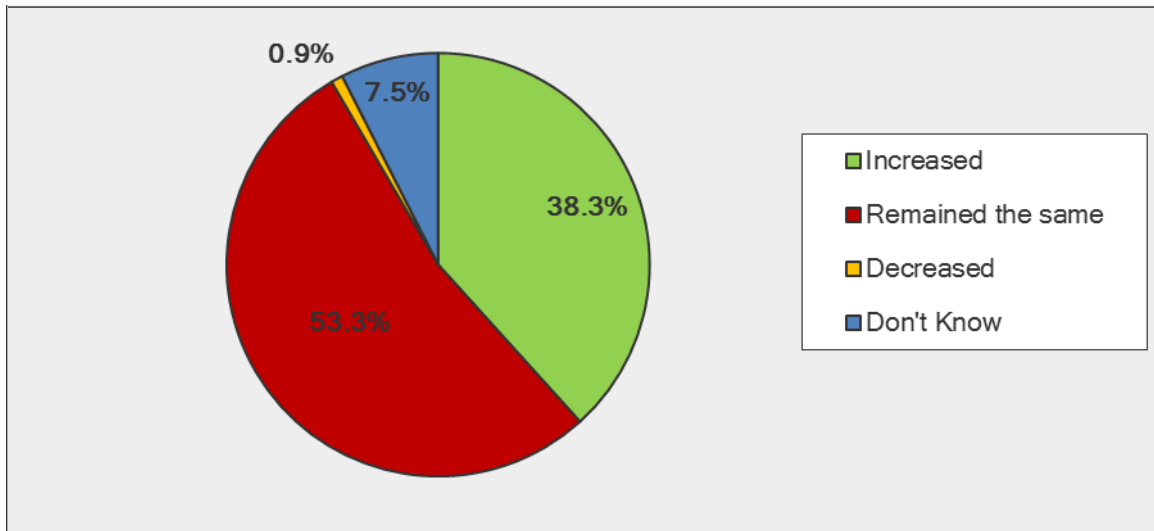
As to why defendants chose to represent themselves, the general district responses were again noticeably different from those of the other courts' judges with respect to these same two possible reasons—although the percentile differences were not quite as pronounced. The general district judges were 15% less likely than circuit judges and 20% less likely than J&DR district judges to have selected the inability to afford counsel or to get legal aid representation as the principal reason for self-representation, and they were 14% more likely than circuit judges and 22% more likely than J&DR district judges to have selected that cost of representation exceeds its value. Examining the court types individually, the greatest difference in distribution of responses among the four principal choices was for defendants in the J&DR district courts for which the judges were more than seven times more likely (88.06% versus 11.94%) to have pointed to the inability to afford counsel or to get legal aid representation than to the belief that cost exceeds value.

Quantity of Self-Represented Litigant Cases

The next section of the survey sought judges' perceptions of the quantity of cases their courts were handling that involve SRLs; specifically, whether that quantity has changed over time. If the judges indicated that SRL cases had increased or decreased, they were then asked to explain why that change might have occurred.

Compared to when you began to serve on your current court, has the number of self-represented litigants increased, remained the same, or decreased? n = 227

Figure 27:
Compared to when you began to serve on your current court, has the number of self-represented litigants increased, remained the same, or decreased?



Overall, of the 227 judges who answered this question, a slight majority (53.30%) believed that the number of SRLs in their respective courts has remained the same compared with 38.33% who believed the number of such cases had increased, and two judges (0.88%) who thought the number had decreased (see Figure 27). Seventeen judges (7.49%) did not know whether there had been a change. The perspectives among the three court types varied, with 50.00% of the circuit judges believing that SRL cases had increased compared to only 32.31% of the general district judges and 27.94% of the J&DR district judges. J&DR district judges were the most likely (61.76%) to indicate that SRL cases had remained the same. The two responses that reported that the SRL cases had decreased were both from J&DR district judges.

On average (mean), the judges who believed that SRL cases had increased had served five more years than the judges who believed that cases had remained the same or did not know whether a change had occurred (see Figure 28).

**Figure 28:
Years Served on Current Court by Judges Answering
Whether Change Had Occurred in SRL Case Quantity**

Judges Said SRL Cases Have:	Mean Years on Court	Range of Years on Court
Increased <i>n</i> = 87	12.45	1 to 30
Remained the same <i>n</i> = 121	7.09	1 to 23
Decreased <i>n</i> = 2	11	2 to 20
Don't Know <i>n</i> = 17	7.12	0 to 21

The survey does not reveal a significant relationship between where a judge works and perceptions about whether the numbers of SRL cases have changed, although there were some minor differences, with urban judges being three percent more likely than the overall survey sample (41.33% v. 38.33%) to have perceived an increase in SRL cases and rural judges being slightly more likely than the overall sample (55.56% v. 53.30%) to believe that SRL cases had remained the same (see Figure 29). Judges in suburban courts were the least likely to have perceived an increase in SRL cases, but they were within 2.50% of the overall sample. The two J&DR district judges who said they perceived a decrease in SRL cases were both from rural jurisdictions.

**Figure 29:
Percentages of Judges Answering Whether Change Had Occurred in SRL Case Quantity
by Character of Their Court Jurisdictions**

Jurisdictional Character	Increased	Remained the Same	Decreased	Don't Know
Urban <i>n</i> = 75	41.33	50.67	0.00	8.00
Suburban <i>n</i> = 89	35.96	53.93	0.00	10.11
Rural <i>n</i> = 63	38.10	55.56	3.17	3.17
Overall	38.33	53.30	0.88	7.49

If the number of self-represented cases in your court has changed, what explanation would you give for that change?

Judges who answered the previous question by indicating that SRL cases had increased or decreased during their tenure were also asked to explain why they believed that change had taken place. This question allowed an open-answer response and was not mandatory. Of the 89 judges who perceived some kind of change in the number of SRL cases, 88 submitted responses, all but seven of which were substantive. One of the judges who said that SRL cases had decreased did not comment. Another judge attributed the decrease to a change in the demographics within the court's jurisdiction. By far, most of the explanations that were offered for a perceived increase in SRL cases related to the poor state of the economy. Some of these economic conditions were specifically attributed to the Great Recession and its aftermath;

however, some of the answers, particularly from rural courts, seemed to be speaking generally about a poor local economy. Tangentially related to these economic responses were explanations related to the cost of attorneys which was either rising or becoming unaffordable because litigants' economic situations had worsened. There were many references to online and court-provided resources (e.g., forms) that have simplified filing and other aspects of litigation for SRLs, and there were almost as many references to TV shows and other media content that have given individuals a misguided sense of their capabilities for representing themselves. A less frequent explanation was an increase in population; two judges thought that people have become more litigious. One suburban judge mentioned the fairly recent increase in the limit of the amount in controversy for small claims cases

Several judges referenced specific case types in which SRL litigation seemed to have increased. Protective orders, divorce, and other domestic issues were the most common cases, but petitions for restoration of rights were also mentioned.

Challenges Posed by Self-Represented Litigants

In both the 2000 and 2007 judges' surveys, questions were asked to ascertain the type and degree of problems or concerns that judges perceived in cases involving SRLs. The 2014 survey asked judges about issues related to SRL performance in cases and about judges' degrees of concern regarding possible situations arising when one or both parties were self-represented, specifically:

With respect to the following issues in your courtroom, please indicate how often a self-represented litigant is likely to:

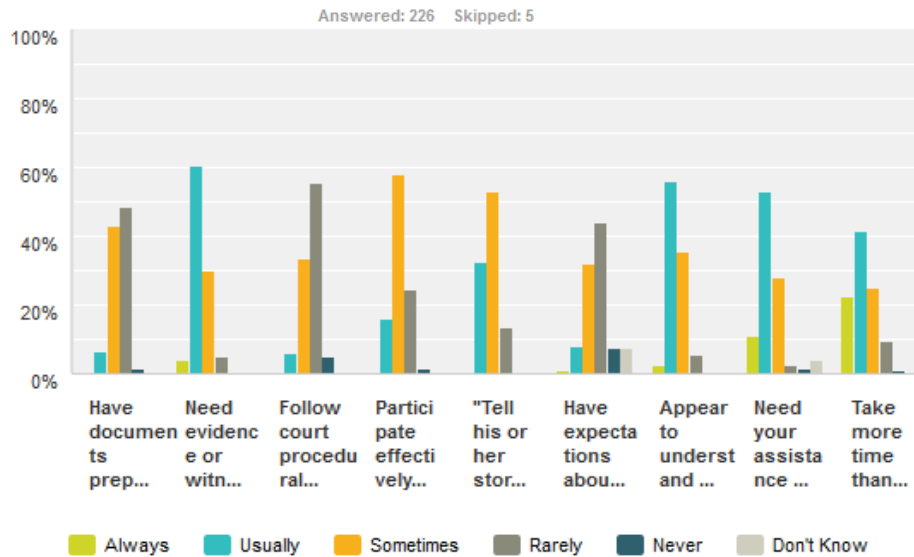
- *Have documents prepared correctly,*
- *Need evidence or witnesses (but not have them),*
- *Follow court procedural rules effectively,*
- *Participate effectively in proceedings,*
- *“Tell his or her story” effectively,*
- *Have expectations about the likely outcome that are as realistic as those of represented litigants,*
- *Appear to understand the court’s rulings,*
- *Need your [the judge’s] assistance to complete the hearing, and*
- *Take more time than represented litigants.*

Judges responded using a five-point Likert scale of likelihood (Always to Never) with an additional option of “Don’t Know.” This question was answered by 226 judges. Judges' assessments of SRLs on all of these performance issues were primarily negative (Figure 30). For example, 42.92% of the judges said that SRLs sometimes have documents prepared correctly, and 48.67% said SRLs rarely do. The most favorable assessment of SRLs was that almost 59%

of the judges thought SRLs usually or always appear to understand the court’s rulings. Also, more of the judges believe SRLs usually or always tell their stories effectively (32.74%) than believe they rarely or never do (13.72%); still, the majority of the judges (53.10%) responded that SRLs tell their stories effectively only “Sometimes.”

With respect to the following issues in your courtroom, please indicate how often a self-represented litigant is likely to:

Figure 30 (All Responses):



General district judges rated SRL performances more highly than did the judges in other courts, as might be expected given that many general district proceedings are geared to parties who represent themselves (Figures 31-33). Circuit judges were more likely to rate SRL performances negatively in all performance areas than were the judges in the overall survey sample. J&DR judges were not quite as negative in their assessments of SRLs. Their ratings of SRLs were comparable to those of the overall sample for effective participation, expectations of outcome, and understanding of rulings. They gave worse ratings to SRLs than the overall sample in all of the other performance categories except for “take more time than represented litigants.”

Figure 31 (Circuit only)

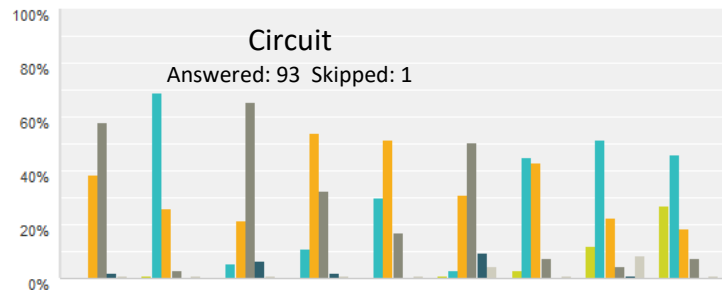


Figure 32
General District only)

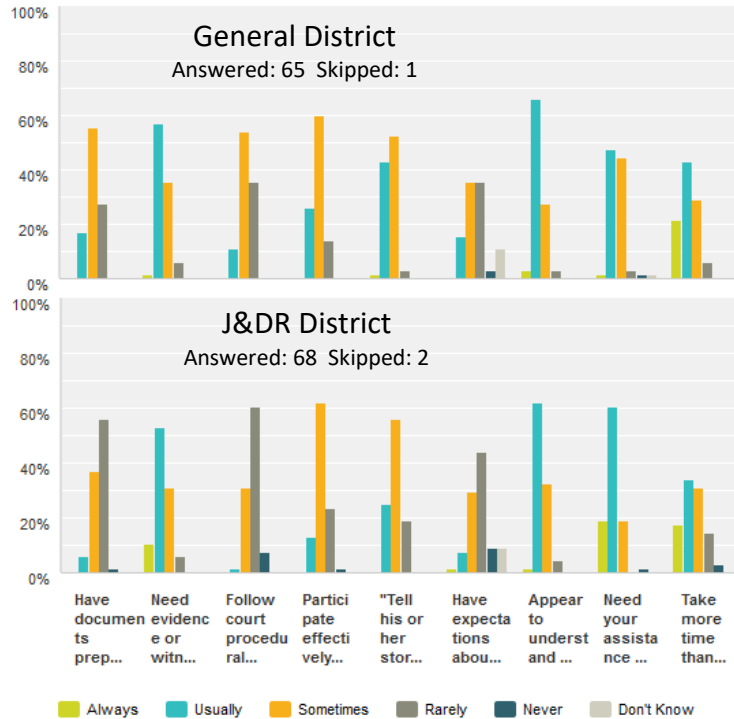


Figure 33
J&DR District only)

If counsel represents one of the parties but the other party is self-represented, what is your level of concern with the following situations or perceptions?

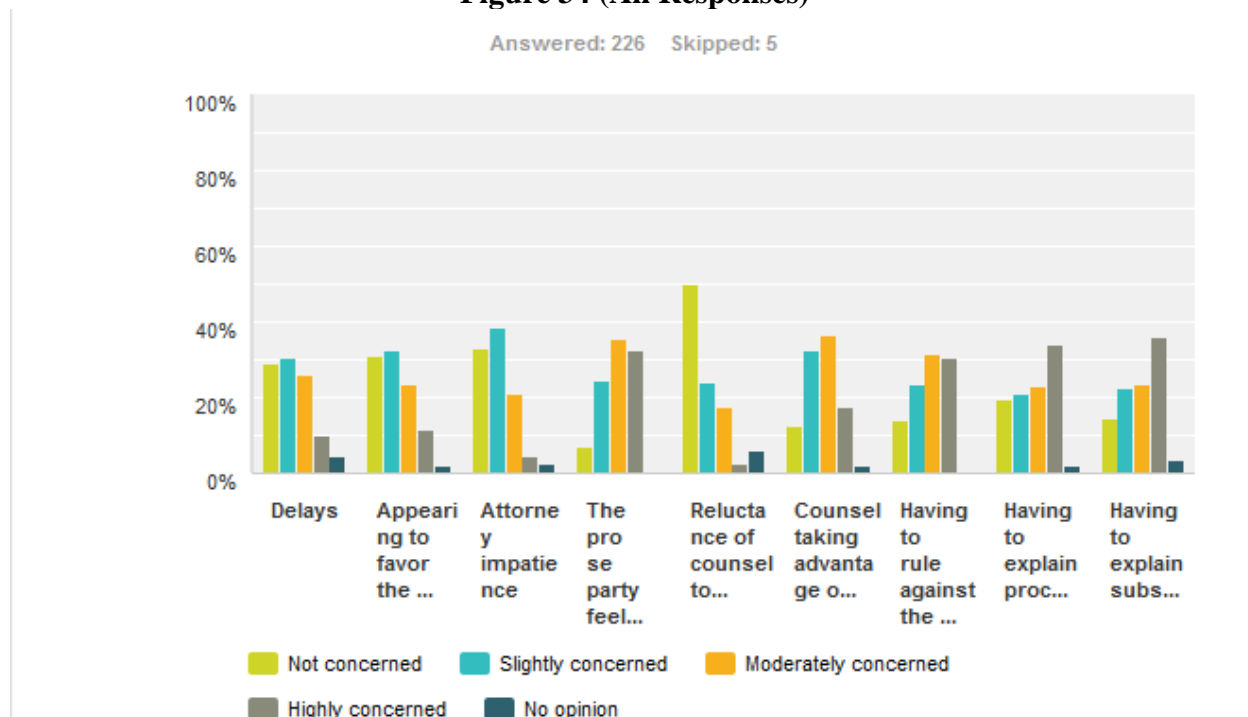
- *Delays,*
- *Appearing to favor the pro se party over the represented party,*
- *Attorney impatience,*
- *The pro se party feeling that he / she is being “railroaded,”*
- *Reluctance of counsel to “press his / her advantage” over the pro se party,*
- *Counsel taking advantage of the pro se party,*
- *Having to rule against the pro se party for procedural noncompliance,*
- *Having to explain procedure to the pro se party, and*
- *Having to explain substantive legal issues to the pro se party.*

The survey asked judges to indicate the degree of their concerns about a range of circumstances that might arise in cases in which one party is represented and the other is not. Judges could answer using a four-point Likert scale (Not Concerned to Highly Concerned) or indicate “No Opinion.” A total of 226 judges responded (Figure 34). Judges were least concerned about reluctance of counsel to press an advantage, with half the judges saying they were not concerned at all and 23.89% saying they were only slightly concerned. If one assesses concern on the basis of which issues received the greatest combined percentage of “Moderately-” and “Highly concerned” responses, then judges expressed the highest overall degree of concern

about the SRL feeling railroaded (32.74% highly concerned and 35.40% moderately concerned or 68.14% combined). The next highest aggregate level of concern was about having to rule against the SRL for procedural noncompliance (30.53% highly concerned and 31.42% moderately concerned or 61.95%). Slightly lower in aggregate concern, but with the most judges indicating they were highly concerned, were having to explain substantive legal issues to the SRL (35.84% highly concerned) and having to explain procedure to the SRL (34.07% highly concerned).

If counsel represents one of the parties but the other party is self-represented, what is your level of concern with the following situations or perceptions?

Figure 34 (All Responses)

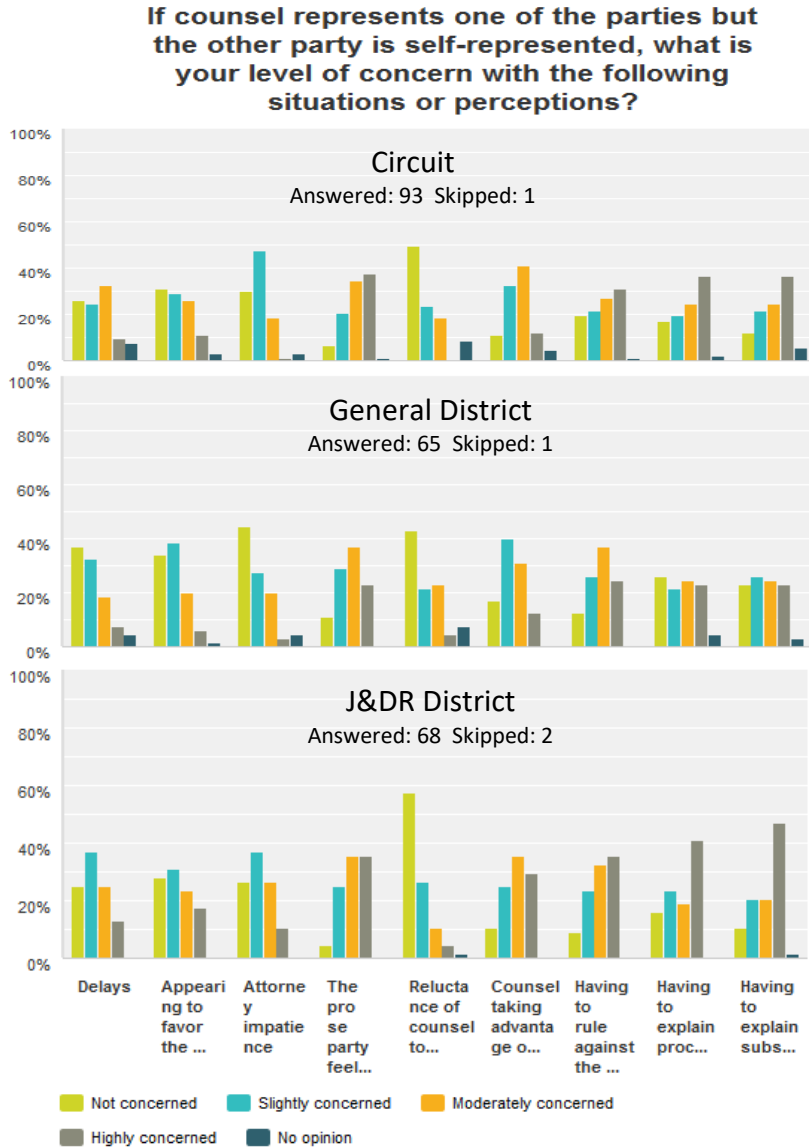


The majority of the judges in all three courts indicated the same five circumstances (the SRL feeling “railroaded”, counsel taking advantage, having to rule against the SRL, and having to explain procedure or substantive law) were much more concerning to them than the remaining four (Figures 35-37). There are noticeable differences, however, in the degree of concerns among the courts. With one exception (reluctance of counsel to press advantage), J&DR district judges were more concerned than the overall sample about all of the identified issues. On the other hand, general district judges were less concerned about all but two of the issues—reluctance of counsel to press advantage and having to rule against the SRL for procedural noncompliance.

General district judges also differed from the overall sample in terms of the circumstances that elicited the greatest concern (having to rule against the SRL for procedural noncompliance) and the least (attorney impatience). Responses from the circuit judges exhibited

no clear pattern, being more concerned about five circumstances (delays, appearing to favor the SRL, the SRL feeling “railroaded”, and having to explain procedure or substantive legal issues) and less about the other four than the overall sample. The individual circumstances that prompted the greatest and least concern for the circuit judges were the same as those of the overall sample.

**Figure 35
(Circuit only)**



**Figure 36
(General District only)**

**Figure 37
(J&DR District only)**

When BOTH parties are representing themselves, what is your level of concern about the following issues arising?

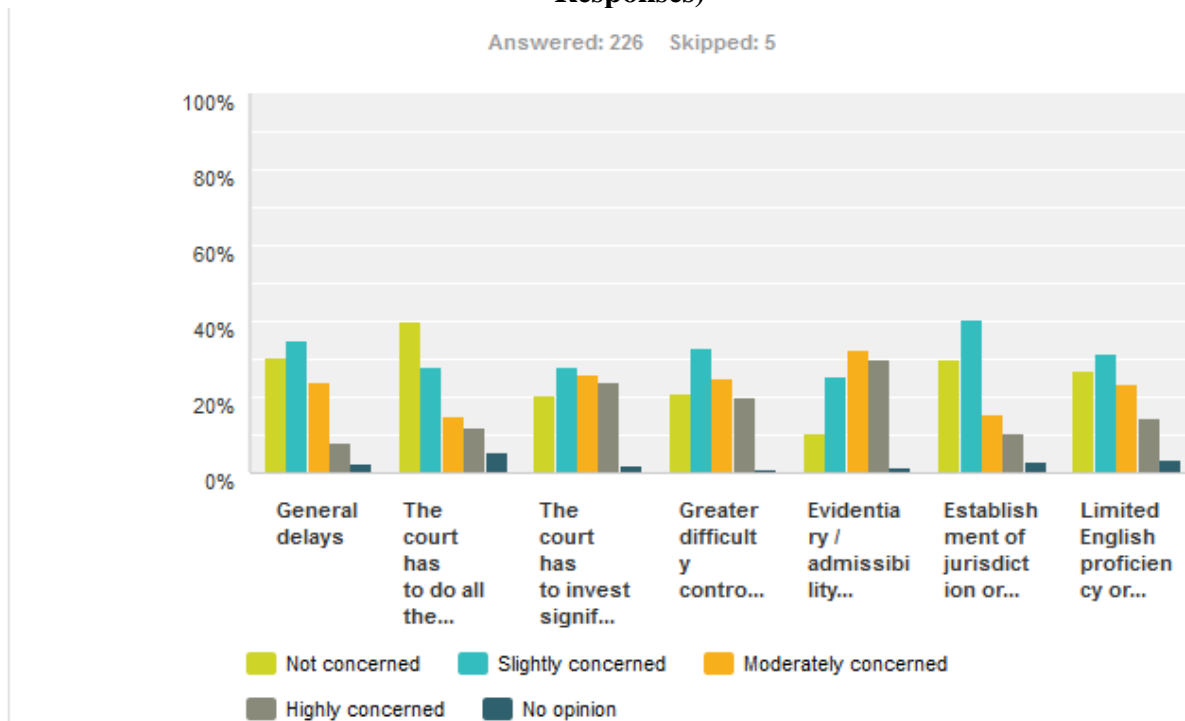
- **General Delays,**
- **The court has to do all the research for the parties,**
- **The court has to invest significant time explaining court procedures to the parties,**
- **Greater difficulty controlling the litigants,**

- **Evidentiary / admissibility problems,**
- **Establishment of jurisdiction or venue, and**
- **Limited English proficiency or other language barriers.**

The last question in this section of the survey asked judges to indicate the degree of their concerns about a range of issues that might arise in cases in which both parties represent themselves. Judges could answer using a four-point Likert scale (Not Concerned to Highly Concerned) or indicate “No Opinion.” This question was answered by 226 judges (Figure 38).

When BOTH parties are representing themselves, what is your level of concern about the following issues arising?

Figure 38 (All Responses)



The issue about which the most judges were concerned—receiving both the greatest percentage of “Highly concerned” responses (30.09%) and the highest aggregate percentage of “Moderately-” and “Highly concerned” responses (62.39%)—was “Evidentiary / admissibility problems.” The issue that raised the second highest level of concern among the judges was that of the court having to invest significant time explaining procedures (26.11% Moderately concerned and 23.89% Highly concerned or 50.00% total). The two issues that concerned the judges least were “Establishment of jurisdiction or venue” (30.09% Not concerned and 40.71% Slightly concerned) and “The court has to do all the research for the parties” (39.82% Not concerned and 27.88% Slightly concerned).

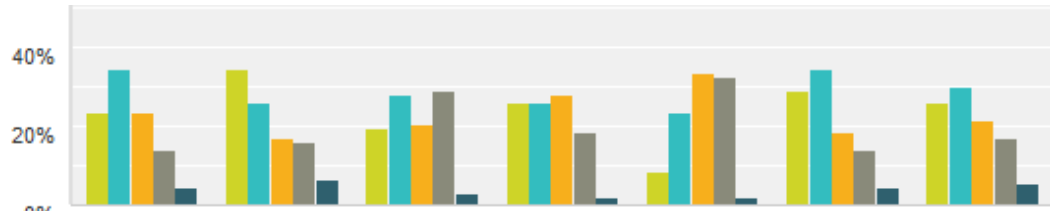
General district court judges were less concerned as a group about any of these issues than were judges in the other courts, possibly due to their experience handling small claims cases (+Figures 39-41). Nevertheless, in all three court types, the issues that concerned judges the

most were the same: evidentiary/admissibility problems, followed by the court having to invest significant time explaining court procedures to parties. The issue that least concerned judges in all three types of courts was establishment of jurisdiction or venue, followed by (order depending upon court type) the court having to do all the research for the parties and general delays.

When BOTH parties are representing themselves, what is your level of concern about the following issues arising?

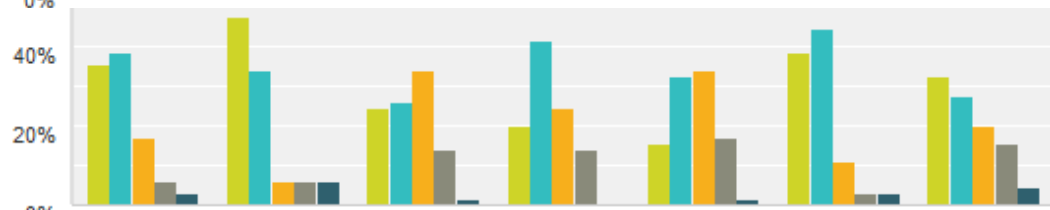
**Figure 39
(Circuit only)**

Answered: 93 Skipped: 1



**Figure 40
(General District only)**

Answered: 65 Skipped: 1



**Figure 41
(J&DR District only)**

Answered: 68 Skipped: 2



■ Not concerned
 ■ Slightly concerned
 ■ Moderately concerned
■ Highly concerned
 ■ No opinion

Policies, Procedures, and Services

The next section of the survey sought information about resources and services that were available to SRLs, either in the courthouse or within the court's local jurisdiction, and about any special policies or procedures courts used to handle SRL cases.

Please indicate whether and in what form(s) the following types of assistance are available in or provided by your court to assist self-represented litigants (check all that apply):

The first question in this section asked about the assistance that SRLs might obtain from or at the court, contemplating other entities that might assist SRLs at a courthouse. The question asked about specific types of assistance:

- Forms to be filed,
- Procedural Instructions,
- Referrals for Legal Assistance,
- Information about the Law, and
- Interpretation / Translation

and about the method(s) or format(s) in which that assistance was available:

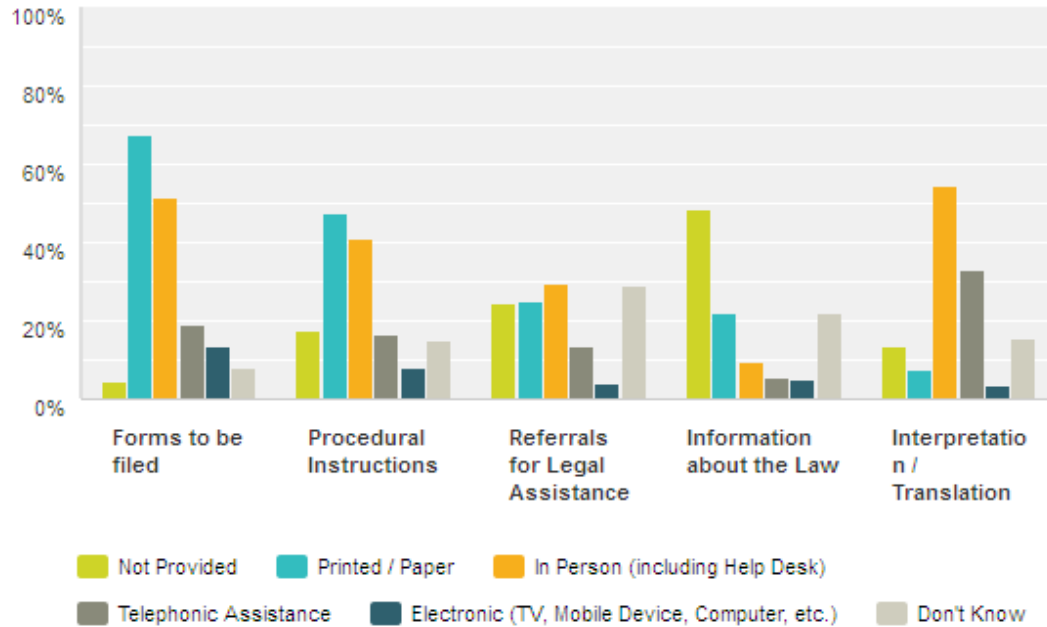
- Printed/Paper,
- In Person (including Help Desk),
- Telephonic Assistance, or
- Electronic (TV, Mobile Device, Computer, etc.)

The question included an open field in which judges could identify "Other" types of assistance. This multi-part question was answered by 226 judges (Figure 42). Judges could answer that multiple types of assistance were available in or provided by their courts and indicate multiple means by which each type of assistance was provided. They also could report that a type of assistance was not provided or that they did not know; indeed, for all types of assistance, there were some judges who said they did not know what was available, sometimes commenting that this issue was one with which court clerks would be more familiar. Circuit court judges were more likely than their district court counterparts to indicate they did not know the availability of resources; likewise, with the marginal exception of providing information about the law, the circuit judges were more likely than the overall sample to say a given resource is not provided. Circuit courts appear to have greater availability of electronic forms of assistance than district courts.

Please indicate whether and in what form(s) the following types of assistance are available in or provided by your court to assist self-represented litigants (Check all that apply)

Figure 42 (All Responses)

Answered: 226 Skipped: 5



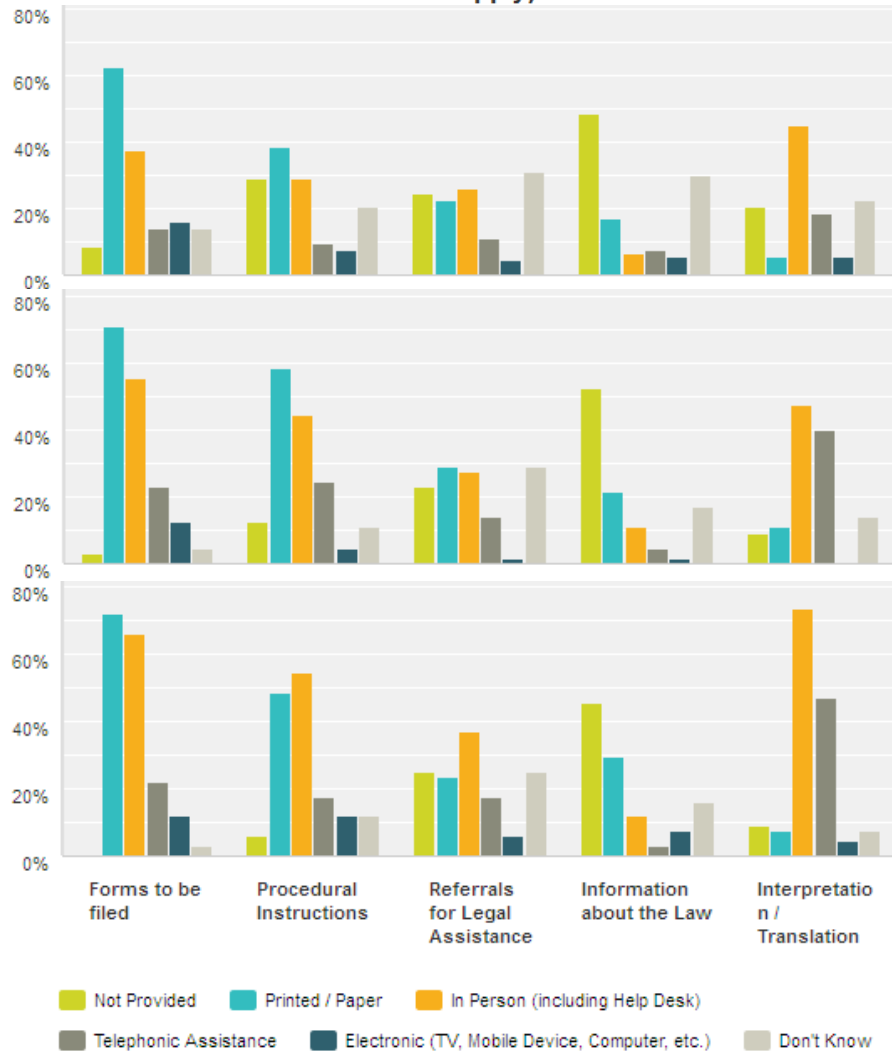
Forms to be Filed

Forms that SRLs can complete and file were the most common type of assistance that an SRL could obtain at or from the court and were the type of assistance most likely to be available in a printed, paper format with 67.70% of the judges so indicating (Figure 42). Aside from Interpretation/Translation services, forms were also the type of assistance judges most often said were provided in person (51.33%). Comparing the different courts (Figures 43-45), J&DR district judges were the most likely to indicate that forms were available in printed / paper format (72.06%) and in person (66.18%); however, for electronic forms, circuit responses (16.13%) exceeded ones for general district (12.31%) and J&DR district (11.76%).

Please indicate whether and in what form(s) the following types of assistance are available in or provided by your court to assist self-represented litigants (check all that apply):

**Figure 43
(Circuit only)**

Answered: 93 Skipped: 1



**Figure 44
(General District only)**

Answered: 65 Skipped: 1

**Figure 45
(J&DR District only)**

Answered: 68 Skipped: 2

Procedural Instructions

Procedural instructions were available primarily in a printed/paper format (47.35%) or in person(41.15%) (Figure 42). Procedural instructions were more likely to be provided in print / paper than in person in general district courts (58.46% versus 44.62%) while in person led print / paper in J&DR district courts (54.41% versus 48.53%) (Figures 43-45).

Referrals for Legal Assistance

Referrals for legal assistance are a less common court offering for SRLs. Fewer than half the judges indicated such referrals were provided in any format. Most commonly, responses revealed that referrals are made in person (29.65%) followed by printed/paper communication (24.78%) (Figure 42). The highest percentages of judges indicating that in-person, telephonic, and electronic referrals are made from or by their courts were associated with J&DR district

courts (36.76%, 17.65%, and 5.88%, respectively) (Figures 43-45). Indications of printed / paper referrals were most common from general district judges (29.23%).

Information about the Law

Information about the law was the least common form of assistance for SRLs, perhaps due to clerks' concerns about the unauthorized practice of law and the limited numbers of professionally-staffed help desks in Virginia courts. Almost half the judges (48.67%) said such assistance is not provided, and almost another quarter (22.12%) said they did not know if such assistance is provided (Figure 42). Where judges said information about the law is provided by or within the courts, the most common method was printed / paper (22.12%). This percentage exceeded the aggregate responses for the other three forms of delivery: in person (9.29%), telephonic (5.31%), and electronic (4.87%).

Interpretation / Translation

Interpretation/translation was the form of assistance that the greatest percentage of judges (54.42%) said was available or provided in person (Figure 42). Almost a third of the judges (33.19%) said interpretation / translation assistance also is available telephonically.

J&DR district judges were much more likely (73.53%) to report the availability or provision of in-person interpretation/translation assistance than were judges in general district (47.69%) and circuit (45.16%) courts (Figures 43-45). Circuit court judges were much less likely (18.28%) to report such assistance by telephonic means compared to J&DR district (47.06%) and general district (40.00%) judges. The availability of printed translations was reported most by general district judges (10.77%) and least by circuit judges (5.38%). No general district judge reported the availability of interpretation/translation assistance via other electronic means.

Other

Twenty-one judges (15 from the circuit courts) used the "Other" field to identify forms of assistance at the court they felt were not covered by the specified answer options or to comment on the question and responses. Most of the remarks related to the role that clerks play in providing many of these forms of assistance; however, two circuit judges noted there is a public law library to assist pro se litigants, and one J&DR district judge mentioned there are mediators on site to provide assistance and pro bono support from the bar association to petitioners in protective order cases. One of the general district judges said that civil litigants receive a three-page handout on procedures and forms and a court explanation about some of the requirements.

If there are any programs operating outside the court but in your jurisdiction to assist self-represented litigants, please identify the provider(s) [select all that apply]:

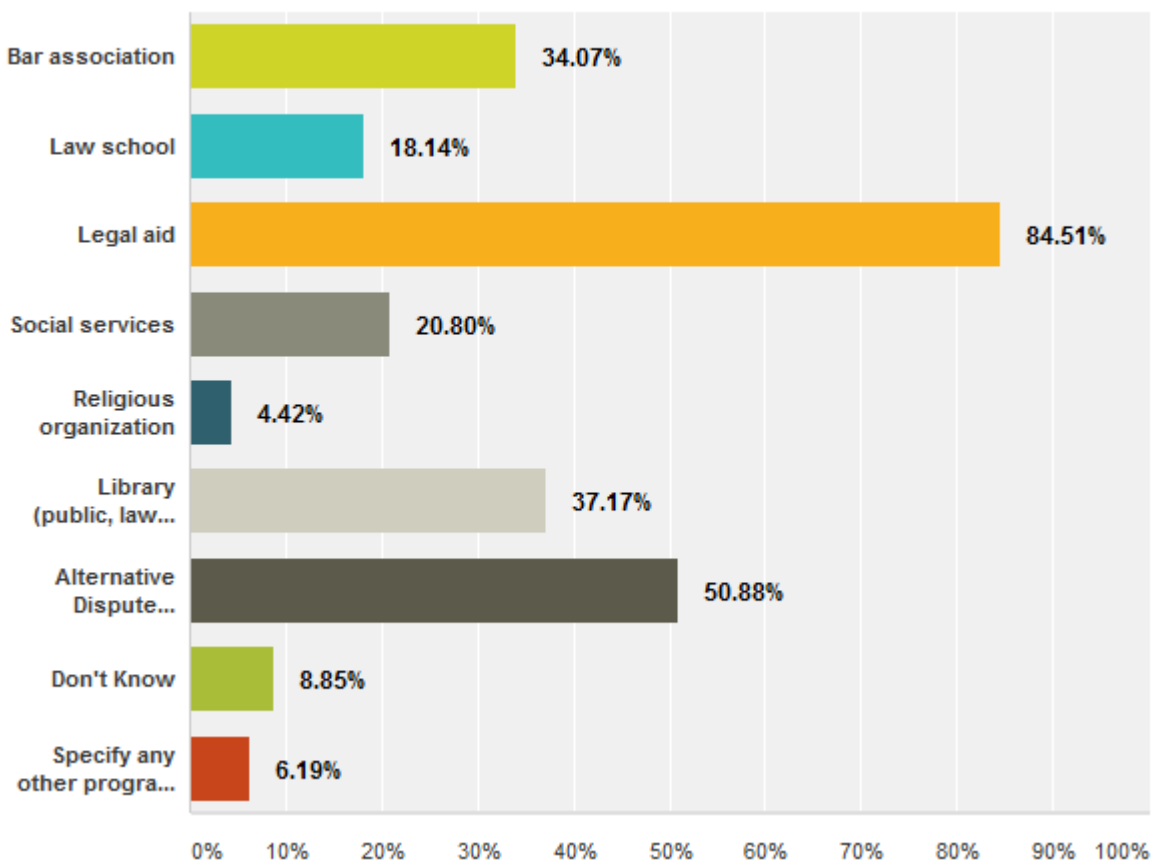
The second question in this section of the survey focused on sources of assistance for SRLs that were available outside the court but within a judge's local jurisdiction. Answer options included bar association, law school, legal aid, social services, religious organization, library (public, law, etc.), alternative dispute resolution service (e.g., mediation), "don't know",

and an open response asking the judge to specify any other program or elaborate on the other answer options.

Two hundred and twenty-six judges responded to the question. By far the most commonly identified type of program—by 84.51% of the judges—was Legal aid (Figure 46). The judges’ responses indicated that the next three most common types of programs assisting SRLs were alternative dispute resolution (ADR) (50.88%), library (37.17%), and bar association (34.07%). Religious organizations were the least likely source of assistance, identified by only 4.42% of the judges.

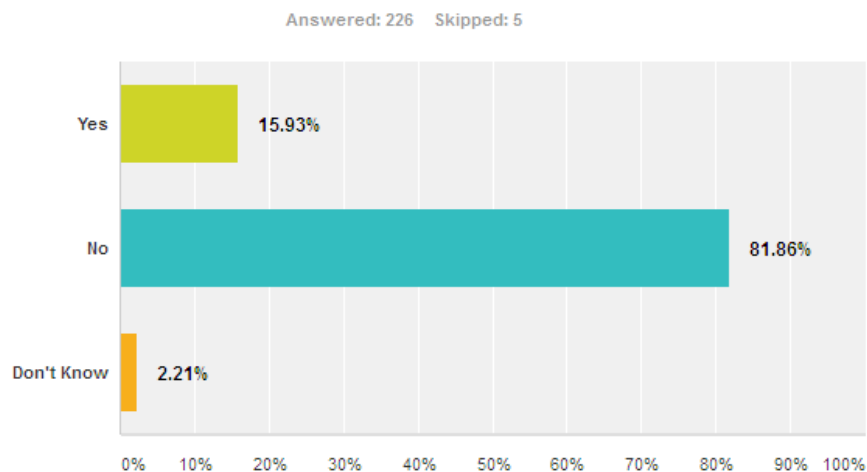
Figure 46:
If there are any programs operating outside the court but
in your jurisdiction to assist self-represented litigants,
please identify the provider(s)
 [select all that apply]

Answered: 226 Skipped: 5



Does your court have any policies or procedures that specifically address the docketing and hearing of self-represented litigant cases?

Figure 47:
Does your court have any policies or procedures that specifically address the docketing and hearing of self-represented litigant cases?



The next question in this section of the survey asked whether the court had developed any policies or procedures that were specifically designed to address the docketing or hearing of SRL cases. The same question was asked of trial judges in the 2007 survey, and, in 2014 just as then, a significant majority of the 226 judges who answered the question (81.86%) said their courts had no such policies or procedures (Figure 47). The percentage of judges in 2014 saying that their courts had such policies or procedures (15.93%) was lower than that reported by the responding judges in 2007 (18.87%). The 36 affirmative responses came from 12 circuit, 17 general district, and seven J&DR district judges.

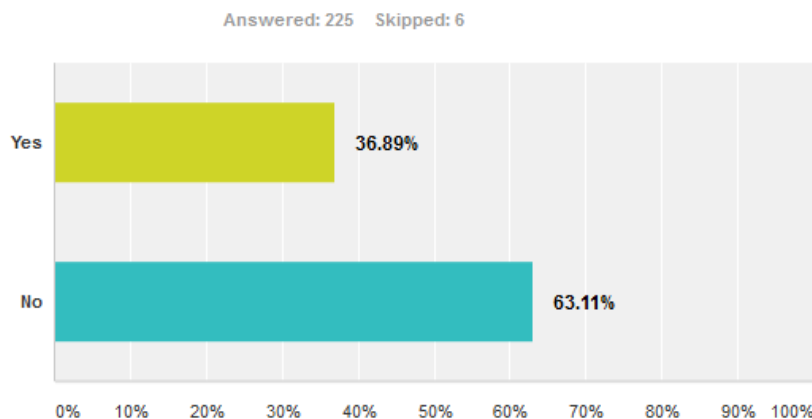
Please describe your court’s policies and procedures for docketing and hearing self-represented cases.

Judges responding “Yes” to the question of having any policies or procedures for docketing and hearing SRL cases were asked a follow-up question soliciting a description of those policies and procedures. Thirty-four of the 36 judges responded. Some of the most extensive responses were among those from the 12 circuit judges who described having their law clerks assist SRLs with procedural (not legal) issues and of contact with SRLs to keep them informed of requirements, including use of pretrial conferences at which cases may be set for trial. Some of the general district judges described efforts to set SRL cases at special times of the day, with one judge explaining that the aim is to provide “more time for those cases to be heard as they take longer.” J&DR district judges described efforts to schedule SRL cases separately from those in which all parties are represented and to afford more time for cases that require longer hearings (e.g., custody).

In proceedings involving a self-represented litigant, do you, as a judge, use a “script,” protocol, or other standard set of steps for any stages of litigation?

Judges were asked about any unique protocols they might engage to address SRLs' claims. Scripted advice or instructions to SRLs are one common example of a unique protocol. Similar questions were asked in the 2007 survey. Of the 225 judges who answered the question above, 83 (36.89%) answered affirmatively (Figure 48). This rate was slightly greater than in 2007 (32.55%). The highest rate of affirmative responses came from the J&DR judges, 29 of 68 (42.65%), and the lowest rate from circuit judges, 28 of 93 (30.11%).

Figure 48:
In proceedings involving a self-represented litigant, do you, as a judge, use a “script,” protocol, or other standard set of steps for any stages of litigation?

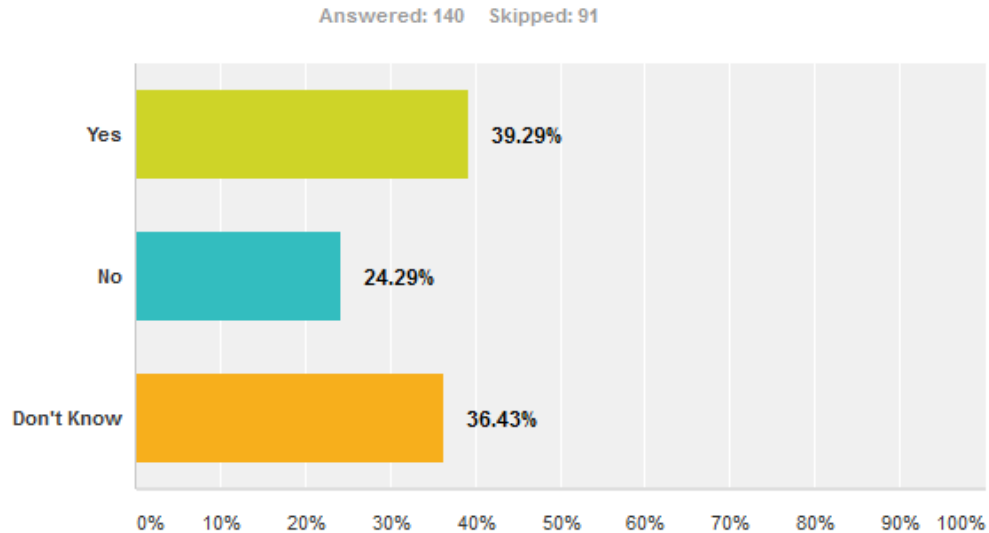


Different follow-up questions were asked of the judges depending upon whether they answered “Yes” or “No.”

If you do not use a “script,” protocol, or other standard set of steps in proceedings involving self-represented litigants, would having such resources be helpful to you?

The 142 judges who had indicated they did not use a script or other special practices in SRL proceedings were asked whether they thought such resources would be helpful to them. Among the 140 judges who answered, nearly 40 percent (39.29%) answered “Yes” (Figure 49). Less than a quarter of the judges (24.29%) answered “No” while the remainder (36.43%) said they did not know.

Figure 49:
If you do not use a “script,” protocol, or other standard set of steps in proceedings involving self-represented litigants, would having such resources be helpful to you?

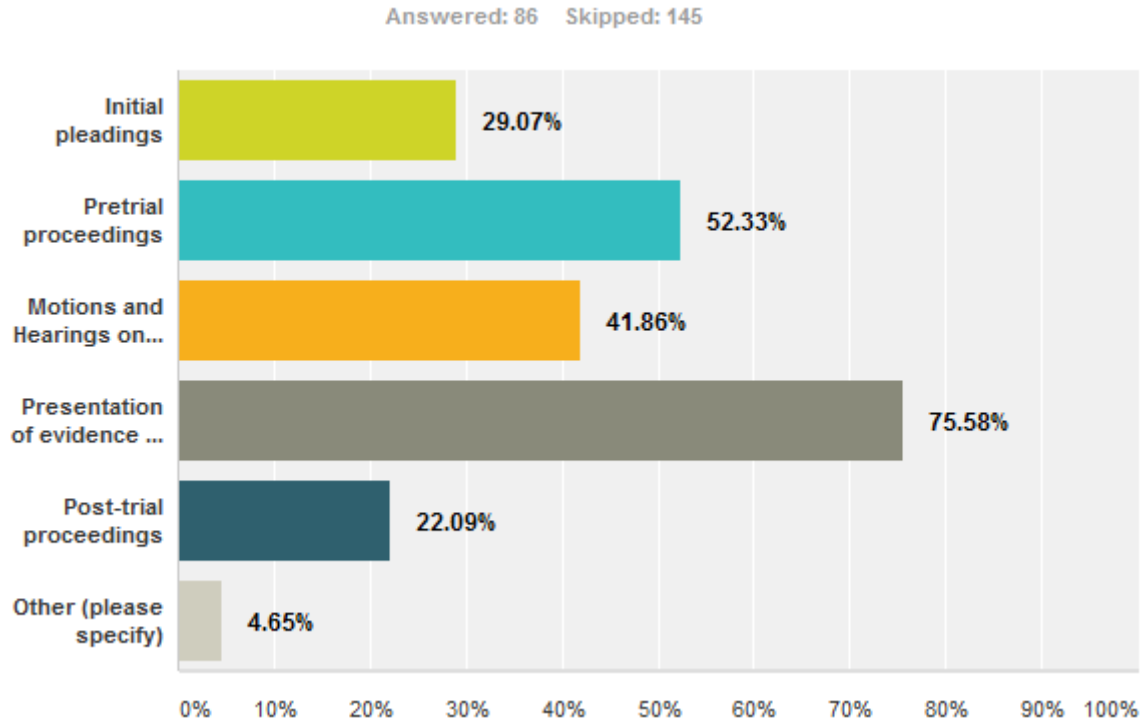


In proceedings involving a self-represented litigant, for which of the following stages of litigation do you use a script, protocol, or other standard steps?

- *Initial pleadings*
- *Pretrial proceedings*
- *Motions and Hearings on motions*
- *Presentation of evidence at trial*
- *Post-trial proceedings, and/or*
- *Other (please specify)*

Of the judges who answered that they did use scripts or other distinct steps in SRL cases, the survey asked for which stages of litigation the judges used those steps. Judges could select more than one stage of litigation. As in the 2007 survey, judges in 2014 were most likely (75.58%) to indicate their use of scripts or other steps in the context of the presentation of evidence at trial (Figure 50).

Figure 50:
In proceedings involving a self-represented litigant, for which of the following stages of litigation do you use a script, protocol, or other standard steps?



Please describe any scripts, protocols, or standard steps that you use and their source(s) (e.g., self-generated, court-generated, etc.).

The last question in this section of the survey was also directed at the judges who answered that they did use scripts or other distinct steps in SRL cases. This question requested descriptive information about the scripts, protocols or steps that judges used and allowed for extended, open responses. Seventy of the judges entered a response (23 circuit, 23 general district, and 24 J&DR district).

Some courts use letters, forms, or other court-generated documents that attempt to inform SRLs about terminology, procedures, the role of the judge, and general expectations for litigation. In a handful of responses, the judges referenced language or resources acquired from desk or benchbooks, prebench training and conferences, OES, Rules of the Supreme Court, the local bar, and *Timesaver Guidelines*.¹² The district judges tended to provide more detailed responses than the circuit judges.

¹² Prince William County Circuit Court (2014); <http://www.pwcgov.org/government/courts/circuit/Documents/CC%20Timesavers%202012%20final.pdf>.

Judges' Recommendations and Final Comments

The final section of the survey consisted of four open-answer questions intended to allow the judges more general opportunities to comment about the challenges presented by and options for addressing self-represented litigants.

If you had the authority and resources to establish a self-represented litigant assistance program, what would be the principal components of your program?

The first question in the section presented judges with a hypothetical scenario in which they had both the authority and resources to establish a SRL assistance program and asked the judges what the principal components of the program would be. Some judges focused on providing SRLs with greater ability to assist themselves with form-driven pleadings, online and paper tools, and educational seminars or workshops. Other judges emphasized increasing legal aid and pro bono services..

How should the Supreme Court of Virginia / Office of the Executive Secretary assist judges in handling self-represented litigants?

The second question asked judges what assistance the OES should provide to trial judges in the handling of SRLs. There were 144 responses. Many judges seemed open to receiving relevant training at judicial conferences and suggested the development of materials such as scripts and protocols in handbooks and brochures. A J&DR district judge provided a list of suggestions:

- Ongoing education in dealing with SRLs.
- Making more materials available to SRLs on various issues that come before the courts, in a more widely available format.
- A more easily understood website or assistance to courts in setting up local court websites linked with the locality website.
- Continuing to ask the legislature for the resources in both funding our clerks and in ensuring we have enough judges to handle the time-consuming SRL cases we see in the GDC/JDR courts.
- Examining funding for help centers.
- Provide assistance to judges in dealing with their own localities in looking at access issues such as transportation.

Some judges also thought they and their peers would benefit indirectly if better forms were developed for use by SRLs. This provides a good transition to the third question asked:

How should the Supreme Court of Virginia / Office of the Executive Secretary help self-represented litigants better prepare for appearances in court?

The third question in this section asked the judges what the OES should do to help SRLs better prepare for appearances in court. The 140 responses in this section echoed the themes and ideas that had appeared in response to earlier questions. Some judges suggested the development of better forms, educational videos, and brochures to help SRLs meet procedural requirements and better present the substance of their cases. Many emphasized that such materials should be presented in easily understood terms.

Please share any additional thoughts you may have regarding self-represented litigants and improving access to civil legal services.

The final question in this section requested any additional input that judges wanted to offer on the subject of SRLs and improving civil access to justice. Sixty-four judges entered remarks although more than a fourth of these were “none” or “See above.” Some judges expressed their gratitude for the opportunity to provide input and their desire for help in handling SRL cases. Comments referenced the workloads faced by the courts, the importance of judicial demeanor, the changes in the cost and character of the legal profession, the need for more mediation services, and the increasing anger of those who come to court now.

Appendix B

Responses to the 2015 Clerks' Survey: Analysis

Survey Sample

The 2015 Clerks’ Survey was administered from March 20 to May 8, 2015. During the survey period, 272 Virginia clerks accessed the survey instrument and answered at least one question. Of the total sample of 272 Virginia clerks participating in this survey, 208 answered the minimum number of mandatory questions that constitutes fully completing the survey. Of the total sample number, 103 were circuit court clerks (37.87%), 70 were general district court clerks (25.74%), 56 were juvenile and domestic relations (J&DR) district court clerks (20.59%), and 43 were combined district clerks (15.81%). The sample represented 86.90% of the current Virginia trial court clerks—85.83% of the state’s 120 circuit court clerks, 88.61% of the general district clerks, 80.00% of the J&DR district clerks, and 97.73% of the combined district clerks. These data are displayed below in Figure 51 (the percentage exceeds 100 percent due to rounding). The number of clerks who comprise this sample is sufficient to make it representative of all Virginia trial court clerks, both collectively and in their respective categories.

Figure 51: Description of Survey Sample of Clerks

Court Type	Population	Sample	% of Population	% of Total Sample
Circuit	120	103	85.83	37.87
General District	79	70	88.61	25.74
J&DR District	70	56	80.00	20.59
Combined District	44	43	97.73	15.81
TOTAL	313	272	86.90	100.01

With respect to the survey population, Virginia’s trial courts are divided into two levels. The circuit courts are trial courts of general jurisdiction, and their clerks are elected constitutional officers who are independent of judicial supervision. Circuit clerks’ offices are funded by a mixture of state and local funds that are not part of the Judicial Branch budget. The district courts are courts of limited jurisdiction, divided jurisdictionally between general district and juvenile and domestic relations district benches. In most municipalities there are separate clerks’ offices serving the respective district court benches; however, in some less-populated localities, a single “combined” clerk’s office serves both benches of the district court. District court clerks are fully-funded employees of the state Judicial Branch.

Research Methodology

The research design centered on a self-reporting, descriptive survey instrument designed by OES staff in consultation with the Committee on Access for Self-Represented Litigants of the Virginia Access to Justice Commission. For the benefit of comparison, some questions were similar to ones asked in a survey of trial judges administered in 2014. The instrument included 26 questions; however, some questions were specific to certain court types, and some were voluntary. Clerks could answer a maximum of 14 questions; however, they could answer as few as seven to complete the survey.

The response sets to the survey questions were varied and included dichotomous (yes-no) answers; a multiple choice checklist (allowing multiple selections); and single-answer numerical

inputs. There were also optional open-ended questions that encouraged explanations of or elaborations on answers to prior questions, and allowed clerks to share additional thoughts about self-represented litigant issues. The study participants' identities were not required on the survey; confidentiality was assured for those who wished to maintain it.

During the period from March 20 to May 8, 2015, the survey was open in SurveyMonkey and a clerk could exit and return to the survey instrument to complete or edit responses, as long as the clerk accessed the survey from the same computer. Only one completed survey was permitted from any given computer. Based upon testing prior to the official administration of the survey, most clerks needed fewer than 20 minutes to complete the instrument.

The analytical tools built into SurveyMonkey were used to analyze the response data when possible; however a significant number of the survey's questions called for open responses. Survey results are presented in order of the survey questions.

Survey Results

Court Type

In which type of trial court do you work?

The initial question of the survey, results from which are displayed above in Figure 51, was intended to identify in which of four types of trial court clerk's offices the respondent was working. All 272 of the clerks who accessed the survey answered this question. A clerk's answer determined which of the parallel sets of court-specific, forms-related questions he or she was next asked.

Circuit Courts

What is the number of your Circuit?

The intention of this question was to gather some information about the geographic jurisdiction of responding clerks both to confirm the representativeness of their responses and to allow identification of any correlations between specific jurisdictions, regions, or types of jurisdictions (e.g., rural, suburban, or urban) and responses to other questions. This voluntary question was answered by 57 of the 103 circuit court clerks who began the survey (55.34%) which was 47.50% of all circuit clerks. Clerks who wished to maintain their anonymity could skip the question, and it would appear that skipping was the election of several clerks in single-municipality jurisdictions where providing the circuit number would have conclusively identified them. Responses indicate at least one clerk in 24 of Virginia's 31 circuits responded to the survey. These included six of the single-municipality circuits associated with more heavily populated urban and suburban parts of Virginia, specifically Circuits 1 (Chesapeake), 3 (Portsmouth), 4 (Norfolk), 14 (Henrico), 17 (Arlington), and 31 (Prince William). Even without assuming that the 46 anonymous clerks were geographically dispersed, responses to this question

indicate the survey was answered by circuit clerks from every region of the state and from every type of jurisdiction.

Based upon your experience and input from your staff, what are the three most common court forms submitted by self-represented (pro se) litigants in your court (e.g., CC-9999)?

The survey sought to identify the most common forms used by SRLs in each type of trial court. Clerks were asked to identify the three most common SRL forms in their courts. Some clerks identified more, and some identified fewer. Most clerks answered in terms of form numbers, as was suggested in the survey questions, but some used text descriptions of forms. Consequently, this analysis has sometimes had to rely on educated interpretations of which form(s) clerks were identifying. Where there was more than one form that might match a generic text description (such as for change of name or restoration of driving privileges), a clerk's entry was fractioned over the most applicable forms; therefore, there is no exact count to report for specific forms.

This question was answered by 71 of the 103 circuit clerks who began the survey. The clerks' responses indicate that **Applications for Change of Name** (either for adults, CC-1411, or minors, CC-1427) and the related Order for Change of Name (Adult) (CC-1412) are, collectively, the forms most commonly used by SRLs. The next most common forms used by SRLs are those related to **Petitions for Restoration of Driving Privileges**, led by that for Habitual Offenders (CC-1465(B)) with that for Third Offenses being reported roughly half as often.

Collectively, **documents related to divorce** were the third most common group of "forms," but this was a subject area where clerks were least specific about form numbers. Among the divorce-related forms specifically mentioned were the Commonwealth of Virginia Report of Divorce or Annulment (Vital Statistics form VS-4) and Acceptance/Waiver of Service of Process and Waiver of Future Service of Process and Notice (CC-1406). The last group of forms clerks frequently associated with SRL use was that for **expungements** with the Petition associated with Acquittal/Dismissal (CC-1473) being mentioned about twice as often as that for Absolute Pardon (CC-1472). Other forms identified by at least five clerks included petitions for "handgun permits"/"restoration of gun rights" (presumably SP-248), Certificate of Assumed or Fictitious Name (CC-1050), and the Petition for Proceeding in Civil Case without Payment of Fees or Costs (CC-1414, the *in forma pauperis* petition).

Based upon your experience and input from your staff, what are the three court forms with which self-represented (pro se) litigants have the most difficulty or need the most assistance in your court (e.g., CC-xxxx)?

The forms or court documents most commonly used are not necessarily the ones that are most difficult or with which assistance is needed; in fact, one might expect SRLs to avoid difficult forms or give up when confronted by them. Therefore, the survey asked the clerks of the different trial courts what three forms in their courts were the ones that SRLs found most difficult or with which they had the greatest need for assistance. Patterns of responses were comparable to those of the previous question about the most commonly used forms in that some

clerks provided more or fewer than three responses and that circuit clerks were less inclined to answer in terms of specific form numbers. When there was more than one form that might match a text description (such as for change of name or restoration of driving privileges) or when a clerk provided more than three responses, that clerk's entry was fractioned over the most applicable forms; therefore, there is no exact count to report for specific forms.

This question was answered by 71 of the 103 circuit clerks who began the survey. These clerks indicated the forms with which SLRs have the most difficulty or with which they need the most assistance are those associated with **restoration of driving privileges**. Primarily, they identified the Petitions for Habitual Offender (CC-1465(B)) and for Third Offense (CC-1470), but they also referenced related forms:

- CC-1465(D) Order Restoring Driving Privilege—Habitual Offender,
- CC-1471 Order Restoring Driving Privilege—Third Offense,
- DC-263 Application for Restricted Driver's License, and
- DC-265 Restricted Driver's License Order and Entry into ASAP

The next most commonly identified forms were those associated with **change of name**, both for adults and minors (petitions/Applications for Change of Name (CC-1411 and CC-1427)). **Expungements** (forms CC-1472 and CC-1473) and **divorce** were the last two major categories identified by circuit clerks; however, as was the case with the previous question, clerks did not tend to identify specific form numbers when referencing divorce, but implied that divorce documents collectively were difficult for SRLs.

Please suggest any changes to court forms or improvements to court form instructions that would make them easier for self-represented litigants to use.

Of the 103 circuit clerks who started the survey, 56 skipped this question entirely. Of the 47 who wrote something, 16 provided no substantive suggestion but merely expressed frustration with the forms. The remaining 31 responses (30 percent of the respondents) provided suggestions that ranged from recommendations to provide examples and detailed instructions to remarks about specific forms. One clerk suggested the appointment of a committee of clerks and deputy clerks to provide more input and suggestions for making forms more user-friendly for SRLs. Summaries of the more detailed suggestions follow, organized by form.

DMV—Restricted License Applications and Petitions for License Restorations

These forms appear to be very difficult for SRLs to complete, and simpler language would be beneficial. The forms should set forth the process for filing for a full or partial license restoration, including informing applicants of the need to obtain a transcript/driving history from DMV in order to complete forms, and the relevant information from DMV's compliance summary that is needed for petitions for restoration of driving privileges. It would be helpful to add language to forms indicating that VASAP is required if underlying charges relate to driving under the influence.

Name Change Applications

Current form language confuses SRLs as to what name to put where with sections titled “In Re” and “Comes Now.” Instructions should clarify where to insert current names, where to insert the intended changes, and what previous name changes should be put on an application.

Divorces and Adoptions

There are currently no state-issued forms for divorces or adoptions (e.g., by stepparent). A packet of forms and instructions that set out the process and specifics for filing a motion or other divorce paperwork would be helpful.

Garnishments

SRLS do not have the requisite experience to fill out forms CC-1485 and CC-1486 (the Suggestion for Summons in Garnishment and the Garnishment Summons).

Expungements

Add space to petition forms to allow listing of charges. Provide written explanations to clarify the gray area of expungements with regard to charges that are dismissed but not eligible for expungement.

Other

CC-1406, Acceptance/Waiver of Service of Process and Waiver of Future Service of Process and Notice: This form is extremely difficult for SRLs to complete. It would be helpful to add, after the style of the case “**BELOW TO BE FILLED OUT BY DEFENDANT**” and to include one or more spaces where the Defendant can put initials to acknowledge that he has read and understood all the areas in which he is waiving service of process and notice.

- A version of CC-1414, the Petition for Proceeding in Civil Case without Payment of Fees or Costs, is needed for inmate litigants to comply with the Virginia Prisoner Litigation Reform Act.
- Printing: One clerk advised that better instructions are required regarding how to print public-use forms; previously, according to the clerk, the print icon in green also instructed the user to employ that icon for submission to court. Shading of form fields should be removed automatically when a form is printed.
- Fields that must be completed should be made to stand out in some manner, such as bolded text.
- Instructions need to be free of legalese and geared for a middle-school reading level.

General District Courts

What is the number of your District? (Use “32” for District 2A.)

The intention of this question was to gather some information about the geographic jurisdiction of responding clerks both to confirm the representativeness of their responses and to allow identification of any correlations between specific jurisdictions, regions, or types of jurisdictions (e.g., rural, suburban, or urban) and responses to other questions. This voluntary question was answered by 45 of the 70 general district court clerks who began the survey (64.29%) which was 56.96% of all general district clerks. Clerks who wished to maintain their anonymity could skip the question. Responses indicate at least one clerk in 23 of Virginia’s 32 districts responded to the survey. These included six of the single-municipality districts associated with more heavily populated urban and suburban parts of Virginia, specifically Districts 2 (Virginia Beach), 3 (Portsmouth), 7 (Newport News), 14 (Henrico), 17 (Arlington), and 31 (Prince William). Even without assuming the 25 anonymous clerks were geographically dispersed, responses to this question indicate the survey was answered by general district clerks from every region of the state and from every type of jurisdiction.

Based upon your experience and input from your staff, what are the three most common court forms submitted by self-represented (pro se) litigants in your court (e.g., CC-xxxx, DC-4xx, etc.)?

Some answers regarding the three forms most often used by SRLs in General District Courts described the form – for example “all civil warrants” or “all protective orders” – instead of identifying a form number. And again, some clerks identified fewer or more than the three forms requested. Consequently, this analysis has not attempted to make an exact count of the responses for particular forms. There was more than enough information among clerks’ responses to determine which forms were most often used.

By far (identified by clerks more than three times as often as any other forms), the forms that SRLs use most often in General District Courts are those for the **Warrant in Debt** (DC-412) and the **Summons for Unlawful Detainer** (DC-421). The distinct form for Warrant in Debt—Small Claims Division (DC-402) was mentioned separately by a handful of clerks. According to the clerks, the two forms associated with **garnishment**, the Suggestion for Summons in Garnishment (DC-450) and the Garnishment Summons (DC-451) were the distant third- and fourth-most often used forms among SRLs. Forms for **Warrant in Detinue** (DC-414 and its small claims counterpart, DC-404) and for **protective orders** (DC-383 and DC-384) were the only others the clerks identified often enough to note.

Based upon your experience and input from your staff, what are the three court forms with which self-represented (pro se) litigants have the most difficulty or need the most assistance in your court (e.g., DC-4xx)?

The forms SRLs find most difficult in General District Courts or with which they need the most assistance typically are also the ones they most commonly use. More than half the clerks referenced the **Summons for Unlawful Detainer** (DC-421) and **Warrant in Debt** (DC-412) specifically, and a few other clerks identified the small claims counterparts for these forms. Collectively, about as many clerks also pointed to one or both of two **garnishment** forms, the Suggestion for Summons in Garnishment (DC-450) and the Garnishment Summons (DC-451). About a third of the clerks identified forms for **protective orders** (DC-382 through DC-385, collectively) as being problematic for SRLs with the DC-383 Petition for Protective Order being the one most often referred to specifically. Among **other forms**, the Warrant in Detinue (DC-414), Tenant's Assertion and Complaint (DC-429), and Summons to Answer Interrogatories and Writ of Fieri Facias (DC-440) were each included among the responses of at least seven clerks.

Please suggest any changes to court forms or improvements to court form instructions that would make them easier for self-represented litigants to use.

Of the 79 general district clerks who began the survey, 32 skipped this voluntary question entirely. Seven of the 38 clerks responded that they had no suggestions, while another seven said they believed any problems related more to the limited competency of SRLs than to the forms themselves, many of which have good instructions backed by clerical help.

Twenty-four clerks provided substantive suggestions for changes or improvements that might help SRLs. Many of these suggestions were general, advocating better instructions with more details, plain language at a middle school reading level, and samples of completed forms. Terms such as “Homestead Exemption” need to be explained more effectively or avoided. A number of clerks said much additional work and unnecessary delay could be avoided just by improving form designs so as to provide more room for the inclusion of required information, such as names, addresses, and phone numbers when there are multiple plaintiffs or defendants or separate spaces/fields in which to enter amounts of fees, rent, and damages; using space on the reverse of a form or on another sheet was recommended. Even where space is provided for an address, forms do not always indicate an address is the information a litigant is supposed to provide in that field. Summaries of more detailed suggestions follow.

DMV—Restricted License Applications

One clerk suggested the forms associated with restricted drivers’ licenses (RDLs) should be processed by DMV rather than the clerks’ offices. A party should just get a printout from a clerk’s office showing what the judge ordered and either the receipt of payment or entry into a payment agreement. The litigant could then take this document to DMV which has all the other necessary information.

Garnishments

Garnishment forms need to be simplified, particularly to help defendants understand how to calculate interest and which box to check on the Suggestion form (DC-450).

Interrogatories

Defendants usually miss sections, even when given a sample booklet provided by the court.

Other

- With each relevant form, include a list of the items (evidence) a party needs to bring to court to prove his/her case.
- Develop interactive online forms similar to TurboTax that can walk litigants through the completion of forms, explain various decision points, automatically fill in repeated fields (e.g., dates), help calculate monetary sums, etc. Such software would also help avoid situations in which mandatory fields are left blank and would complement the transition to electronic filing.
- Online forms should be designed so fields are legible when printed, copied, faxed, etc. Shading on fields inhibits legibility and is not necessary once a field is completed.
- SRLs have an easier time working with color-coded forms. They have an easier time remembering the color of a form than its name.
- With respect to the unauthorized practice of law (UPL), help clerks to help SRLs rather than having the clerks tell SRLs that they must take forms to someone else who can help them. For example, allow clerks to paraphrase and write on forms what SRLs tell them.

Juvenile and Domestic Relations District Courts

What is the number of your District? (Use “32” for District 2A.)

The intention of this question was to gather some information about the geographic jurisdiction of responding clerks both to confirm the representativeness of their responses and to allow identification of any correlations between specific jurisdictions, regions, or types of jurisdictions (e.g., rural, suburban, or urban) and responses to other questions. This voluntary question was answered by 42 of the 56 J&DR district court clerks who began the survey (75.00%) which was 60.00% of all J&DR district clerks. Clerks who wished to maintain their anonymity could skip the question,. Responses indicate at least one clerk in 23 of Virginia’s 32 districts responded to the survey. These included six of the single-municipality districts associated with more heavily populated urban and suburban parts of Virginia, specifically Districts 2 (Virginia Beach), 3 (Portsmouth), 4 (Norfolk), 8 (Hampton), 17 (Arlington), and 31 (Prince William). Even without assuming the 28 anonymous clerks were geographically dispersed, responses to this question indicate the survey was answered by J&DR district clerks from every region of the state and from every type of jurisdiction.

Based upon your experience and input from your staff, what are the three most common court forms submitted by self-represented (pro se) litigants in your court (e.g., CC-xxxx, DC-5xx, DC-6xx, etc.)?

As in the General District Courts but to a lesser extent than in Circuit Courts, some J&DR District clerks did not identify forms by number when indicating which forms SRLs most commonly submitted; such answers included:

- Motions to Amend Custody, Visitation, or Support (separate forms for each);
- Motions for Temporary Custody, Visitation, or Support;
- Request for Restricted Operator's License (adults/support matters)

This form of answer and the fact that a few clerks made fewer or more than three responses makes a precise count of clerks’ answers difficult. Nevertheless, there was sufficient information to identify the most common SRL-submitted forms.

The most common form submitted by SRLs in J&DR District Courts is the **Motion to Amend or Review Order** (DC-630) followed closely by the **Motion for Show Cause Summons or Capias** (DC-635). The distant third- and fourth-place forms identified by the J&DR District clerks were DC-620 (an affidavit used in Uniform Child Custody Jurisdiction and Enforcement Act cases) and DC-511 (a petition often used to initiate a custody case in juvenile and domestic relations district court), respectively. As was the situation for responses for the other courts, a number of other forms were identified by at least one clerk; however, the only other form identified by at least four J&DR District clerks was the Affidavit--Default Judgment Servicemembers Civil Relief Act (DC-418).

Based upon your experience and input from your staff, what are the three court forms with which self-represented (pro se) litigants have the most difficulty or need the most assistance in your court (e.g., DC-6xx)?

Forty-eight J&DR District clerks answered this question. Their responses indicate the most commonly used forms among SRLs are also the ones SRLs find most difficult. A majority of the clerks believe SRLs have the most difficulty with form DC-635, the **Motion for Show Cause Summons or Capias**. A majority of the clerks also believe form DC-630, the **Motion to Amend or Review Order**, is one of the forms that give SRLs the most trouble. The third-most frequently identified form (identified by 20 clerks) was DC-620, the affidavit used in Uniform Child Custody Jurisdiction and Enforcement Act cases. Twenty-one other forms were mentioned at least once among the J&DR District clerks' responses. Among these, the forms that stand out are those associated with subpoenaing witnesses, especially the Subpoena Duces Tecum (DC-336), and the Affidavit--Default Judgment Servicemembers Civil Relief Act (DC-418).

Please suggest any changes to court forms or improvements to court form instructions that would make them easier for self-represented litigants to use.

Twenty-nine of the 56 J&DR district clerks who began the survey responded to this opportunity to suggest changes or improvements to forms and form instructions. Like several of the circuit and general district clerks, a number of the J&DR clerks made general suggestions about simplifying the language used in forms and providing more examples/samples of completed forms. Also, there were a few clerks who observed that SRL problems may not lie with forms themselves.

Consistent with clerks' identification of the most difficult form for SRLs, the majority of the more specific suggestions focused on the Motion for Show Cause Summons or Capias (DC-635). The most common suggestion offered was that separate civil and criminal versions of this form should be created.¹³ There are too many options on the form for SRLs to select the correct one easily, and, knowing their case could be dismissed if the motion is not completed correctly increases SRLs' anxiety and need for clerical assistance. The form makes references to numerous sections of the Virginia Code that have no meaning to SRLs, increasing the likelihood they will mark the wrong code section as having been violated or submit show cause motions for matters that are not even contained in a court order. After simplifying and creating different versions of this form, providing clear, concise instructions and examples would also help.

Motion to Amend or Review Order (DC-630)

Compared to DC-635, clerks believe DC-630 to be much easier for SRLs. Nevertheless, there were some suggestions for improvement including:

¹³ In May 2016, the Judicial Council of Virginia approved a new "Motion for Civil Show Cause Summons or Capias" (Form CC-1458) for the circuit courts. Being strictly related to civil decrees, the circuit form is visibly simpler than DC-365; however, time will determine whether the new circuit form is sufficiently simple and straightforward to avoid the problems that SRLs have experienced with its district court counterpart.

- Clearer instructions so SRLs know when they are considered petitioners and when respondents;
- SRLs need better guidance for identifying WHAT the current order says, WHAT the SRL wants changed, and the REASON justifying the request amendment [SRLs tend to use this form for every issue or matter for which they are requesting review by a judge. A judge cannot respond to *ex parte* information, but SRLs frequently use the REASON section as a narrative to explain matters that bother them without stating a valid reason for amending an order.]; and
- Additional space is needed on the form for identification of parties [Many times there are multiple respondents in custody and/or visitation matters, and individuals sometimes have different mailing and physical addresses].

Affidavit (UCCJEA) (DC-620)

It would be helpful to simplify the language and make the text larger to improve legibility.

Motion to Rehear/ Motion for New Trial (DC-368)

As with other forms, there is no space on the front of the form for parties' addresses, only names. Although space for this service information is provided on the reverse of the form, individuals apparently do not turn the form over to complete that side, so motions sent to other jurisdictions are frequently returned. The clerks often perceive the underlying problem in such instances as being the unwillingness of SRLs to read the forms and follow instructions; they want someone else (usually the clerks) to tell them what to do. Nevertheless, revising the allocation of space on this and other forms may help reduce problems related to omitted contact information.

Acknowledgement of Suspension or Revocation of Driver's License (DC-210)

Most SRLs do not understand why they have to complete an Acknowledgement of Suspension when they are asking for an extension of time to pay. Logically, there might be justification for a separate form for use with payment plans.

Subpoena Duces Tecum (DC-336)

As with DC-635, this form can be confusing because of the number of boxes SRLs must choose to mark. Wording is confusing as well because terms come directly from the Code.

Other

- One clerk observed that electronic filing—presumably with some form of online forms-completion assistance—would be very helpful to SRLs.
- Another clerk, without referencing a specific form but probably thinking of DC-635, suggested a form specifically for J&DR district court civil matters which would address support *and* violations of other J&DR district court orders. DC-635 currently addresses only civil support among a list of other issues that do not apply to J&DR civil matters.

Combined District Courts

What is the number of your District? (Use “32” for District 2A.)

This voluntary question was answered by 32 of the 43 combined district court clerks who began the survey (74.42%) which was 72.73% of all combined district clerks. Clerks who wished to maintain their anonymity could skip the question. Because combined district clerks’ offices generally serve rural, sparsely populated communities, there are several districts of the state that have no such clerks offices; rather, courts in most judicial districts are served by separate general and J&DR district court clerks’ offices. Responses indicate at least one combined clerk in 12 of Virginia’s judicial districts responded to the survey. These included districts on the Eastern Shore (District 2A) and Northern Neck (District 15) and in central Virginia (District 16) as well as Districts of the Southside (5, 6, 10, and 11) and west of the Blue Ridge (23, 25, 27, 29, and 30). Even without assuming the 11 anonymous clerks were also geographically dispersed, responses to this question indicate the survey was answered by clerks from most rural regions of the state and the city of Salem.

Based upon your experience and input from your staff, what are the three most common court forms submitted by self-represented (pro se) litigants in your court (e.g., CC-xxxx, DC-4xx, DC-6xx, etc.)?

Clerk’s responses regarding the forms most commonly submitted by SRLs in Combined District Courts were, as might be expected, consistent with the responses of the General District and J&DR District Court clerks. The five forms most often identified by the clerks of Combined District Courts were:

- DC-412 Warrant in Debt;
- DC-630 Motion to Amend or Review Order;
- DC-421 Summons for Unlawful Detainer;
- DC-635 Motion for Show Cause Summons or Capias; and
- DC-511 Petition

Among a number of other forms identified by clerks, the only form identified by at least four clerks was the Petition for Protective Order (DC-383).

Based upon your experience and input from your staff, what are the three court forms with which self-represented (pro se) litigants have the most difficulty or need the most assistance in your court (e.g., DC-4xx, DC-6xx, etc.)?

Clerk’s responses regarding the forms that are most difficult for SRLs or with which they need to most help in Combined District Courts were largely consistent with the responses of the General District and J&DR District Court clerks. Thirty-seven clerks responded, but one just said “None.” The five forms most often identified by the clerks of Combined District Courts were:

- DC-412 Warrant in Debt;
- DC-421 Summons for Unlawful Detainer;
- DC-630 Motion to Amend or Review Order;
- DC-635 Motion for Show Cause Summons or Capias; and
- DC-383 Petition for Protective Order

Among the 18 other forms identified by at least one clerk in their responses, the forms related to garnishment (DC-450 and DC-451) and the affidavit used in Uniform Child Custody Jurisdiction and Enforcement Act cases (DC-620) were the only ones referenced by at least four clerks.

Please suggest any changes to court forms or improvements to court form instructions that would make them easier for self-represented litigants to use.

Nineteen of the 43 clerks of combined district courts who began the survey entered responses to this question; however, three of those responses were to the effect that the clerk had no suggestion. Four other clerks repeated the position expressed by some clerks of other courts that the forms and instructions are not the problem; rather, they believe SRLs would make fewer errors and need less assistance from clerks if the SRLs would read the forms and instructions. Among the 12 substantive responses, most were general suggestions that clerks of the other courts have made:

- Use plain language that conforms to simple reading levels;
- Develop a comprehensive forms manual that includes clear, simple instructions for all forms *and* samples of completed forms that are visually tied to the instructions (e.g., by number references);
- Avoid complex boxes tied to Code sections; and
- Add space for addresses under those for party names on the front of forms.

There were a few specific form suggestions that have not already been covered in the sections for general district and J&DR district courts (above):

Motion to Amend or Review Order (DC-630)

Every motion to amend requires the completion of two additional forms that are then attached—the Affidavit--Default Judgment Servicemembers Civil Relief Act (DC-418) and the UCCJA Affidavit (DC-620). It is very time consuming for clerks at the counter to have to explain three forms to someone wanting to file a motion to amend. The clerks would like to see some kind of condensation of the three forms; for example, instead of completing separate DC-418s, just include a simple yes/no question regarding military service supported by some form of evidence in support of that answer.

Motion for Show Cause Summons or Capias (DC-635)

Revise the form to ask basic questions related to former court decisions and the current pleading:

- What was the court date of the earlier decision?

- What was the judge’s decision?
- What would you like for the judge to do now?
- Why do you want these changes?

Policies, Procedures, and Services

After the court-specific sections regarding forms, the remaining sections of the survey were applicable to all the clerks. The first of the remaining sections sought to learn what resources are available in court jurisdictions to help SRLs and what practices courts have for handling SRLs and their cases.

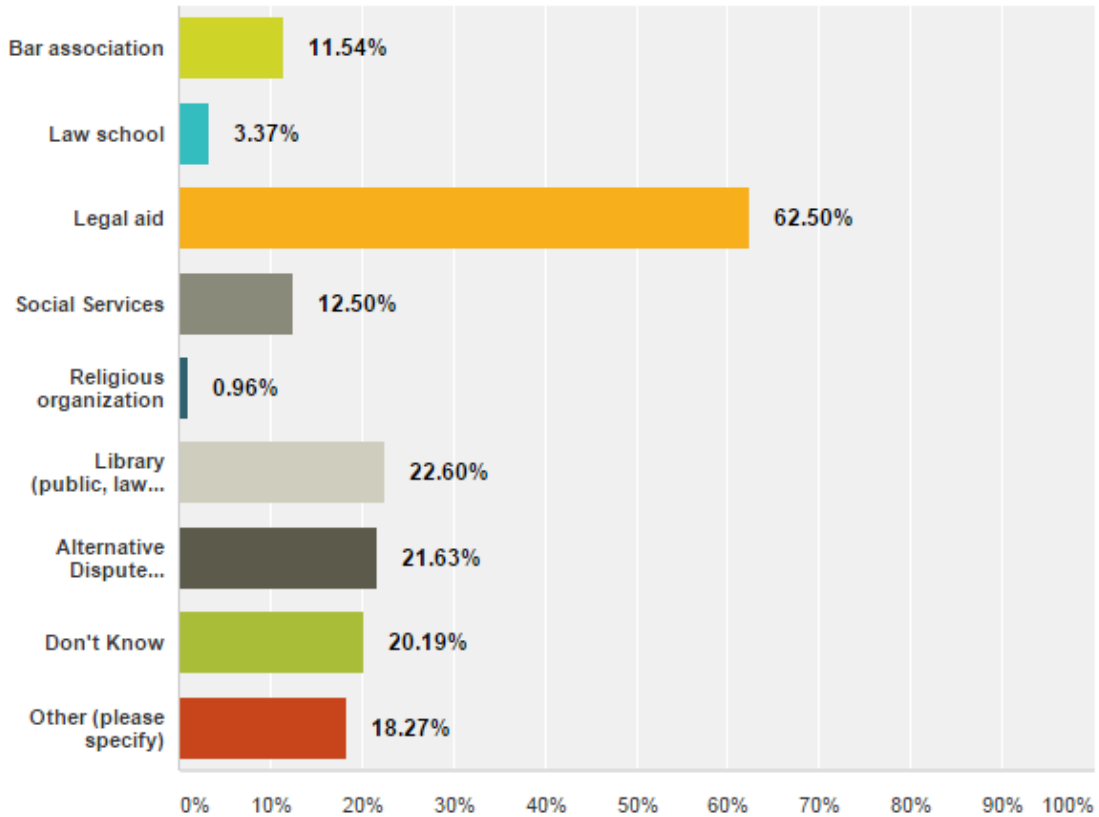
If there are any programs operating outside the court but in your jurisdiction to assist self-represented litigants, please identify the provider(s) [select all that apply]:

The first question in this section of the survey focused on sources of assistance for SRLs available outside the court but within a court’s local jurisdiction. This question was identical to one asked of trial judges in their fall 2014 survey. Answer options included bar association, law school, legal aid, social services, religious organization, library (public, law, etc.), alternative dispute resolution service (e.g., mediation), “don’t know”, and an open response asking the clerk to specify any other program or elaborate on the other answer options.

Two hundred and eight clerks responded to the question. Compared to the less than nine percent of the judges who responded that they did not know what programs operated to assist SRLs in their jurisdiction, 20.19% of the clerks made this response. As in the judges’ survey, by far the most commonly identified type of program mentioned by clerks—included in 62.50% of their overall responses—was legal aid (Figure 52). In contrast, however, 84.51% of the judges identified Legal Aid. Comparing clerks of the different court types, J&DR district clerks were the most likely to mention legal aid resources in their jurisdiction (74.47%) while combined district clerks were the least likely (37.84%).

Figure 52:
If there are any programs operating outside the court but in
your jurisdiction to assist self-represented litigants, please
identify the provider(s)
 [select all that apply]

Answered: 208 Skipped: 64



After Legal Aid, clerks most often identified a library (22.60%) or an alternative dispute resolution (ADR) service (21.63%). Mentions of libraries were fairly consistent across the court types, ranging from a high of 25.17% among circuit clerks’ responses to a low of 18.92% among those of combined court clerks. Answers that included ADR programs, on the other hand, were widely divergent, with mentions by 21 clerks in J&DR district courts (44.68%) being almost as many as the 24 total mentions among responses of the clerks in all three other court types. Social services (12.50%) and bar association (11.54%) were the next most common responses, with clerks of J&DR and combined courts being more likely to identify the former and clerks of circuit and general district courts being more likely to identify the latter. Seven clerks (3.37%) identified a law school while only two (0.96%) mentioned a religious organization.

Thirty-eight clerks entered a response in the “Other” answer field, but 10 of their explanatory responses did not identify any other program resources; rather, they generally confirmed they were not aware of any programs or definitively stated there were no programs in their jurisdiction. Of the remaining 28 entries by clerks, nine identified victim-witness

coordinators, frequently specifying that these individuals only assisted in the filing of protective orders and one adding that coordinators did so only when not otherwise occupied. Similarly, one other clerk mentioned a “Police Department representative” who assists with protective orders. Seven clerks mentioned legal aid offices, but most qualified their statements by noting such offices were 30 minutes to an hour from the court (not necessarily in the same jurisdiction) or were so under-resourced as to be very limited in their abilities to assist all the SRLs the courts see.

A few clerks mentioned Court Service Units although one opined that a “[m]ajority of the General District courts do not have a Court Service Unit to help with filings.” A few clerks pointed to what are probably pro bono resources (i.e., “Lawyer Referral Service,” “some legal resource organizations in Northern Va.,” “the state bar association website,” and “some of our [local] attorneys”). Other identified resources include:

- VASAP personnel (assist persons with DUI/Drug convictions in completing applications for Restricted Driver’s Licenses) ;
- Law Library located *in* (rather than outside) the courthouse (Circuit court);
- LegalZoom ;
- SAFE ; and
- Crater Center for Aging.

What types of information / resources does your court provide routinely to self-represented litigants (e.g., forms, procedural instructions, referrals for legal assistance, etc.)?

The second question in this section of the survey asked what assistance courts provide to SRLs. The survey allowed clerks to provide open responses with three examples (forms, procedural instructions, and referrals for legal assistance) providing guidance.

Among the 197 substantive responses, the most common identified one or more of the three examples. Approximately half of the 197 substantive responses indicated the court provided forms or instructions. Among those responses, there were 50 responses that indicated courts were providing copies of rules, pamphlets, and other legal information. Some litigants apparently received paper copies of such information while others were directed to the resources online. Lastly, in this context of forms and legal information, there were 12 clerks who said their courts provided assistance in completing forms or petitions or in scheduling hearings. The responses of far more clerks indicated a discomfort with offering such assistance for fear of committing the unauthorized practice of law.

Given the complexity of interpreting and counting many responses, drawing distinctions among the trial court clerks is difficult. On a percentile basis, perhaps the general district clerks (54 completing the question) had the greatest number of courts offering assistance with forms, procedural instructions, and general legal information. Among all three categories of district courts, answers clearly indicating the provision of “procedural instructions” were more common than those clearly mentioning forms. Surprisingly, despite the circuit courts not being as “forms-driven” as the district courts, a greater percentage of the responding circuit clerks clearly indicated that their assistance included the provision of forms than included the offering of

procedural instructions. For the courts that provide forms-related assistance, the responses should not be understood as indicating that assistance is provided with respect to every possible form; rather, in some cases the remarks indicated a focus on “basic”, high-volume, or problematic forms, examples included name changes, divorce, and expungement documents—types among those the clerks had identified earlier in response to other survey questions.

The most commonly reported type of assistance (115 responses) identified by the participating clerks was a referral to a legal aid organization and/or to a lawyer referral service provided by a bar association. In several instances, this was the only method of assistance the clerk reported. Eighteen clerks indicated SRLs are told to consult an attorney, but most of these responses did not create the impression that SRLs were directed to any particular legal service providers. Sixteen clerks identified court referrals to other types of organizations distinct from legal aid/lawyer referral services. These were referrals to Drive to Work (1 Circuit), SAFE (1 GD), the DMV/DMV website (1 GD, 1 JDR, 1 Combined), mediation (4 JDR), the Division of Child Support Enforcement (2 JDR), Loudon Abused Women’s Services (1 JDR), the Court Service Unit/Intake Department (1 JDR, 1 Combined), ACTS/Turning Points [under the umbrella of the Office of Criminal Justice/LOP] (1 JDR), the Department of Social Services [not specifically DCSE] (1 JDR, 1 Combined), contacts for victims of domestic/sexual violence (1 JDR), and victim/witness services (1 JDR). Among the responding clerks from the circuit, general district, and JDR district courts, more than half of each group indicated their courts referred SRLs to legal resources; only 17 of 37 combined district clerks (46%) said their courts make such referrals. It is possible there are fewer resources to which to refer SRLs in the Virginia jurisdictions where combined district courts are located. Several clerks remarked that when their courts refer SRLs to legal aid, the court staff are mindful (and troubled) that those organizations may not have enough resources to help such litigants.

Among the remainder of the types of assistance to SRLs mentioned by clerks were advice to consult the Code of Virginia or other legal codes (2), online resources, and law libraries. Among the references to online resources, 10 seemed to be referring to content on the court’s website whereas 20 seemed to be referring to websites of other organizations (e.g., legal aid, OES, Westlaw, etc.). There were only nine responses that mentioned referrals to law libraries, whether at the court or elsewhere.

Among the information / resources you identified in response to the prior question, are there any that were developed specifically by your court or its Circuit/District?

The next question in the survey referenced the information / resources that were the subject of the prior question and asked clerks whether any of those forms of assistance to SRLs were developed specifically by the responding court or its Circuit/District. Of the 208 clerks who responded, 114 (54.82%) said “No”—that none of the resources were developed by their court or its Circuit/District. Another 23 clerks (11.06%) responded “Don’t Know / Not Applicable,” meaning presumably that they either did not know the origin of any resources they distributed or that they provided no resources at all. The 71 clerks (22 circuit, 25 general district, 16 JDR district, and 8 combined district) who said “Yes” were asked the following question¹⁴:

¹⁴ Clerks who answered “No” or “Don’t Know / Not Applicable” skipped this follow-up question and proceeded to the question about policies and procedures.

Does your court have any policies or procedures that specifically address the docketing of self-represented litigant cases?

The survey next asked clerks whether their courts had any policies or procedures that specifically addressed the docketing of SRL cases. Two hundred eight of the 272 clerks answered this question. Thirty-four clerks (16.35%) answered affirmatively (13 circuit, 14 general district, 5 JDR district, and 2 combined district). Those who answered affirmatively were asked a follow-up question while all others were advanced to the survey's final three open-response questions. The follow-up question was:

Please describe your court's policies and procedures for docketing cases involving self-represented litigants.

Thirty-two of the 34 clerks who were asked this question provided substantive responses. These responses indicated their policy may not call for any differences in procedures or scheduling than would apply to any other cases. A common response by the circuit clerks was that SRLs are advised to contact the judges' office/secretary/court administrator to schedule a court date, which is the same approach that would be taken by an attorney.

Although the number of responses to this question is too small to be reliably generalizable, General District courts seem to be more inclined to have special procedures or dockets for SRLs, perhaps a consequence of their small claims experience.

What challenges does your office encounter when attempting to provide permissible legal information versus prohibited legal advice to self-represented litigants?

The last three questions on the survey were posed of all clerks and provided them an opportunity for lengthy, open responses. Of these three questions, the first asked clerks to elaborate on the challenges their offices encounter in trying to help SRLs without violating the prohibition against the unauthorized practice of law. One hundred eighty-four clerks answered the question.

The answers suggest that many SRLs do not appear to understand the difference between legal information and legal advice—a lack of understanding which should not be surprising given that many clerks admitted they and their staffs have difficulty defining the line between these concepts. Legal terminology adds to difficulty in communicating with the most educated litigants, let alone with SRLs who may be poorly educated or may have limited English proficiency. Many SRLs come to the court with incorrect expectations about what clerks may do for them as public servants, with several survey responses noting SRL disbelief when told that circuit courts do not have forms, documents, or procedural guides for many cases (e.g., divorce and district appeals). One response specifically mentioned the challenge of dealing with plaintiffs who download online divorce forms that do not conform with Virginia procedures.

Clerks offered several suggestions for addressing the difficult question of providing information while avoiding giving legal advice. Some clerks want more training and written guidelines to help improve their understanding of where the legal advice line is drawn, and to help them more effectively explain the limitations to SRLs. Signs that warn SRLs might help dispel the impression that clerks are being uncooperative [e.g., "Clerks can only provide the

appropriate legal forms and guidance in filling them out. They are not permitted to give legal advice.”]. Also helpful would be messages to help SRLs understand why clerks may not provide legal advice; that is, communicating the courts’ obligation of neutrality and the consumer protection interests underlying prohibitions against legal advice.

As the Access to Justice Commission seeks to improve access to justice in Virginia, what can it do to help clerks' offices in working with self-represented litigants?

The second of the three final questions asked clerks what the Access to Justice Commission could do to help them in working with SRLs. Among the 132 substantive responses were many common themes, several of which have been mentioned in responses to previous questions.

Forms

Clerks advocated improvements to existing forms and the creation of new ones. Improvements to forms included simplification of language and design, placing an emphasis on ease of use and the ultimate purpose that the forms are intended to serve in the Judiciary before the interest in tracking the Code. Many circuit clerks lamented the lack of forms, particularly for divorce cases. While some clerks would have all forms be improved (or created) for all causes of action, others focused on specific case types—guardianship petitions; general, durable power of attorney; (no-fault) divorce; petitions for gun rights; motion/order to reinstate; bills of complaint; and final decrees. Clerks indicated a need for forms to be available in paper and online formats to accommodate citizens with different preferences, skills, and access to technology. Several clerks suggested form completion / document assembly software.

Clerks’ ideas about the nature of form improvements sometimes pointed in different directions. In writing about forms and orders and focusing on the **motion to amend**, one clerk said the current form is too generic. In contrast, another clerk said there are in some cases too many forms and that some should be condensed.

How-to Resources (Printed and Online)

Complementing recommendations for more and better forms were many suggestions for providing how-to resources. At the most basic, these responses pointed to the need for more and better instructions for completing forms, including supplying completed sample documents. More complex suggestions recommended resources that would tell SRLs how to prepare for different case types—forms to complete, documents / evidence to bring, witnesses to call, etc. Again, clerks advised both print and online brochures, pamphlets, and manuals. Translated resources were also mentioned. One clerk offered the more sophisticated idea of using videos, both to provide instructions for filling out the most popular forms and to demonstrate court proceedings via mock trials—helping SRLs to know what they should expect by showing them how to dress, behave, present evidence, etc. This option might be particularly helpful for those who learn better by seeing and doing than by reading instructions, or have weak literacy skills.

Website

A number of clerks said they need to have a better website to which they can refer SRLs. In particular, the clerks pointed to the need for a more user-friendly court system website that was easier to navigate. Responses suggested the website should have the types of online resources that have been referenced above. Development of Virginia's Judicial System Court Self-Help Website, <http://selfhelp.vacourts.gov/> has addressed some of the clerks' concerns; other remain.

Help and Self-Help Centers (including Kiosks)

Many clerks recommended that courthouses establish centers / areas, analogous to those in some libraries, where SRLs might access legal resources or, preferably, obtain assistance from trained individuals. These centers would have the types of form and instructional resources discussed above, as well as referrals to various legal services and government agencies. At the very least, clerks proposed computer terminals or kiosks SRLs might use to consult resources before or instead of approaching the clerks.

The most sophisticated suggestions envisioned a center that could perform comprehensive triage with respect to SRL needs, directing the litigants to an array of options appropriate to each. One clerk who advocated for the development of local or regional resource centers suggested the Supreme Court of Virginia pursue a pilot program, starting in more densely populated jurisdictions. This clerk believed the use of staff attorneys in such centers might pay for themselves by reducing clerk and judge workloads (and the need for more of those positions) as well as by serving the *greater* end of improving access to justice.

Attorney Resources

Overlapping the recommendations for help centers were responses suggesting the Commission help to provide legal counsel to answer questions and help SRLs complete paperwork. Instead of calling for paid staff attorneys, some of the clerks envisioned volunteer programs, from court-located attorney-for-a-day services to recruitment of more pro bono or low-cost attorneys or better resourced legal services agencies. One clerk advocated rewards for attorneys who make themselves available to help low-income litigants.

Training for Judges, Clerks, and Court Managers

A number of clerks expressed the desire for more customer service training and written guidance on best practices for helping SRLs. The particular concern behind most of these suggestions was the uncertainty described above with respect to where the line is for the unauthorized practice of law. In conjunction with the development of comprehensive forms for such circuit matters as divorce, one clerk advised that circuit judges be trained in the use of the forms and should set aside time on their dockets to hear SRL cases. Although this clerk's court had not developed such forms, he believed some SRLs in his jurisdiction had actually benefited from divorce forms that other jurisdictions (e.g., Fairfax, Chesapeake, and Norfolk) have approved, even though the forms were tailored to those jurisdictions

Civic Education and Messaging

Tying into recommendations for how-to resources and concerns about UPL were responses that advocated educating the public about the courts. These suggestions ranged from broader civic education efforts to teach the function and processes of the courts to narrowly focused messages (e.g., signs or handouts) intended to shape expectations and understanding about what assistance the clerks may and may not provide. A few clerks suggested educational programs / workshops sponsored and run by local bar associations for the benefit of the public and businesses. One clerk suggested exploring whether it would be advisable for judges to educate SRLs when they come to court. The court system website was another option suggested for providing public education.

Staffing

Apart from the idea of staffed court help centers, there were three suggestions that clerks' offices be provided appropriate staffing to support the needs in their jurisdictions.

Other

One clerk asked that statewide guidelines be developed for handling frivolous filings; another suggested that the requirements for processing restricted license petitions be transferred to the Virginia Department of Motor Vehicles which possesses the necessary license information; a third clerk requested that a study committee be convened to explore mechanisms for effectively supporting clerks' work with SRLs.

Please offer any other suggestions that might improve access to justice in Virginia (you may also use this space to supplement answers to questions above):

The survey invited clerks to offer any other suggestions that might improve access to justice in Virginia or to supplement their answers to previous questions. Sixty-four clerks entered a response, but 19 of these responses were to the effect of "see above," "none," or "N/A." Many of the remaining responses mentioned new or better forms and instructions, using plain language and translations, having online and paper resources, developing help centers, and expanding the availability of attorney resources / legal aid.

One suggestion was to provide an "easier way to refer pro se litigants without the need for a credit card. The local Bar Association should provide assistance as to how to refer pro se litigants to an attorney who can assist them with their particular issue." Another clerk indicated that outside agencies (not just DMV) should provide assistance to SRLs. Similarly, another suggestion was to have "county offices that provided assistance on landlord/tenant laws and local ordinances."

A few clerks, beyond simply requesting more staff for the clerks' offices, thought higher salaries are needed to hire better educated deputy clerks who would be more qualified to handle SRL needs.

Another said that Virginia needs to increase the pay rate for court appointed attorneys handling civil matters such as abuse / neglect or failure to pay child support; this clerk said the

current rate is excessively low in relation to the amount of work such cases can require. As a specific example of how to help / provide instructions to litigants who come to clerks' offices with no knowledge of the process, one clerk suggested the provision of "a motion & notice [of] hearing similar to DC-371." One circuit clerk believed implementation of a family court would be beneficial.