

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Over 600 Years of Wisdom

BY LAURA A. JOSEPHSON-BERNAT JD/MBA

“THINK ABOUT A PIECE OF PROFESSIONAL (or personal) advice that you wish you had learned” earlier in your career. Edward Casmere, the 2024-25 Chair of ISBA's Bench & Bar Section Council, asked us to share these nuggets during our Annual Business Meeting. I couldn't resist passing along some of this guidance to my niece, who is studying for the bar exam, as we walked around the St. Louis Arch following the meeting. Others also may benefit from this advice derived from over 600 years of judging and lawyering.

“Being an attorney or a judge is an

extension of who we are, but not who we are.”—*Elizabeth Bleakley*

“Pick your battles. Don't argue with opposing counsel over little issues. Only stand your ground when it's necessary.”—*Judge Julie Katz*

“Go to lunch when asked. When I was starting my practice two other lawyers with their own practices went to lunch together almost every day and would invite me along. They had each been practicing 20 years longer than me. Most of the time I didn't go because I thought I was too busy or didn't have the money to go out for

Continued on next page

Over 600 Years of Wisdom
1

New Rule: Service of Process
in Cook County
1

Striking a Balance Between
Justice and Impartiality
4

Recent Appointments and
Retirements
6

New Rule: Service of Process in Cook County

BY JUDGE E. KENNETH WRIGHT, JR. AND ROBERT G. MARKOFF

IN THE MID-1980S, COOK COUNTY municipal courts (small claims) suffered a large scandal related to “sewer service.” Court-appointed process servers were attesting to having served summons in cases where they did not even attempt service. Hundreds of judgments had to be vacated due to fraudulent returns of service.

In response to the service problems, the First Municipal District, encompassing the City of Chicago, issued a municipal court rule that all original summonses had to

be placed with the Cook County Sheriff before a court could appoint a process server. Although a municipal court rule, it gradually became accepted practice throughout the county, and was eventually codified in Illinois Code of Civil Procedure Section 2-202 (“Section 2-202”).

A new law recently signed by Governor J. B. Pritzker now allows licensed private detectives and their employees to serve process in Cook County without court

Continued on page 3

Over 600 Years

CONTINUED FROM PAGE 1

lunch. I wish I would have gone to lunch with them every time they asked. Looking back, I was short sighted. I missed out on their lunch discussions – 40 years of collective wisdom and legal knowledge.”—*Kimberly Duda*

“Add value.”—*Judge Michael Chmiel*

“Be kind to others, but also be kind to yourself. For if I am not for me, who will be for me? And if I am not for others, who will be for them?”—*Judge James Shapiro*

“Be true to your word and demonstrate your positive personal values in all that you do. We know that attorneys work hard and sometimes have difficult clients. Do what is right. Always act with integrity. Your reputation is everything.”—*Judge Maureen Schuette*

“When someone tells you who they are, believe them.”—*Mike Cortina*

“Care about Google reviews. Online reviews are the primary selling points (or deal-breakers) for potential clients shopping for the right attorney. Lawyers who represent clients with an eye toward future feedback will find themselves going the extra mile for current clients, both in terms of communication and case outcome. Lawyers who shrug off online reviews do so at their own peril.”—*Evan Bruno*

“You have the right to tell anyone to stop harassment. You can say, ‘That makes me uncomfortable, please stop.’”—*Laura Josephson-Bernat*

“Make someone smile today.”—*Judge Patrice Ball-Reed*

“Grow and develop talent and succession planning to fortify the committees, section council, and ISBA. This is built into the elected roles of the Assembly and the Board of Governors, where after a specific term, you sit off the group, and then you can run again if you choose to do so. So I hope people realize that is the reason, not because the valued/tenured member is being ‘cast aside’ which I think is a dreadful thing that the ISBA is definitely not doing. It also

gives our tenured and valued members the opportunity to explore other interests they have with the ISBA.”—*Ava George Stewart*

“When you meet people, don’t just shake their hand, but ask what you can do to help them.”—*Judge (Ret.) Barbara Crowder*

“Get young lawyers involved in the ISBA Young Lawyers Division.”—*Albert Durkin*

“Never be afraid to advocate for yourself. Also, if someone is too busy to answer your question, go back when they’re not busy or ask someone else; do not allow yourself to fail at a task out of fear of ‘bugging’ someone else for help.”—*Louisa Nuckolls*

“No matter how you are feeling during the day, take a moment and say this might just be the best day ever.”—*Judge Mary Colleen Roberts*

“Continue being proactive.”—*Edward Casmere*

“Subscribe to the golden rule: do unto others as you would have them do unto you.”—*Dennis Orsey*

“It is OK to ask for what you want or need (i.e. a raise, a promotion, time off, etc.)”.—*Justice Debra Walker*

“Build relationships and give unselfishly. Building relationships will increase your satisfaction with your professional experience, improve civility in our profession, allow you to help others, and create a lasting impression in our profession.”—*Anna Krolikowska*

“From Commander Kelstrom, the first judge before whom I ever appeared, ‘My head can only absorb what my ass can endure.’”—*Judge Brian Weinthal*

Please email me wisdom you wish you had learned earlier in your career. Hopefully I will receive enough additional advice for a subsequent article. ■

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Bench & Bar

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The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

New Rule

CONTINUED FROM PAGE 1

appointment. The new law is effective as of January 1, 2025.

Prior to the amendments introduced in Public Act 103-0671, Section 2-202 mandated that service of process in Cook County must first be attempted by the Sheriff. Depending on what type of case you had, you would have to file several different types of documents with the Sheriff's office in Cook County in order for the Sheriff to serve process on the defendant. Say you were a landlord in Cook County trying to evict a delinquent tenant—once you filed your complaint with the court, you would have to file two copies of a Summons and two copies of your Complaint with the Sheriff, and pay the \$60 Service of Process fee in order to have the Sheriff's Civil Process Unit serve the defendant in your case.

Once the Sheriff attempted and was unable to serve process on a defendant, a plaintiff could file a Motion to Appoint a Special Process Server to allow a licensed private detective or detective agency to serve process on a defendant. Looking at our example of the landlord in Cook County, the landlord plaintiff would file this Motion to Appoint a Special Process Server with the court and, in its discretion, the court may or may not grant the motion. The motion would list the specific private detective agency the landlord wanted appointed and the agency's certificate number, and the detective agency or an individual private detective would send a copy of their license or certificate to the sheriff of the county (the detective or agency only need supply their license or certificate to the Sheriff once).

Under Section 2-202, a special process server is, "any person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor and Locksmith Act of 2004 or a registered employee of a private detective agency certified under that Act..."

Section 2-202 previously provided

that process could be served by a licensed private detective or detective agency without special appointment by a court in any county with a population less than 2,000,000 (any county in Illinois besides Cook County).

Public Act 103-0671 amends Section 2-202 to state that process may be served in Cook County by the Sheriff or by a licensed private detective or detective agency in the first instance. This means that plaintiffs may elect to have a private detective or detective agency serve process on the defendant, rather than having to go to the Sheriff and have the sheriff serve process first. Cook County service of process now conforms to the rules followed in all other Illinois counties. There is, however, one exception: the person serving process, or the employer, must remit \$5.00 for each service to the Cook County Sheriff.

As the concerns related to improper service were addressed over the years, process server associations attempted to accomplish the amendment just signed into law to no avail. The Cook County Sheriff objected to their efforts. The new law was recently proposed by a labor law attorney. To everyone's surprise, the Sheriff agreed and worked with legislators to write the law.


From what the authors can discern, the Sheriff was driven by two concerns: manpower and revenue. Deputies may now be diverted to more pressing responsibilities without the Sheriff's office suffering a great loss of revenue.

To make the point clear, let's go back to the example of the landlord plaintiff in Cook County. Before the passage of Public Act 103-0671, the landlord plaintiff would have to file the required documents with the Sheriff and pay the Service of Process fee or motion the court to appoint a special process server. Now, after the recent amendments, the landlord plaintiff would be able to choose between going to the Sheriff's office for service of process or having a licensed private detective

or detective agency serve process in the first instance. These amendments allow plaintiffs to choose the method of service that they feel is most appropriate in their case. It may also allow plaintiffs to serve process on the defendant in a timelier fashion, rather than having to take the time to motion the court to appoint a special process server.


The amendment to the Illinois Code of Civil Procedure does not change the long-established ability of a court to appoint anyone over the age of 18 and not a party to the action to serve process. A court-appointed process server does not need to remit the \$5.00 fee to the sheriff.

Here's an odd fact: Paragraph (a) of Section 2-202 begins with "Process shall be served by a sheriff, or if the sheriff is disqualified, by a coroner of some county of the State." Cook County does not have a coroner. It has a medical examiner. ■



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Striking a Balance Between Justice and Impartiality

BY JUDGE E. KENNETH WRIGHT, JR.

IN RECENT YEARS, COURTS

across the United States have experienced a marked rise in the number of self-represented litigants (SRLs). In Illinois, data from a decade ago indicated that over half of the state's 24 judicial circuits reported 70% or more of litigants in civil matters appeared without legal counsel.¹ It is likely that this percentage has continued to increase.

Self-represented litigants encounter substantial difficulties navigating the intricacies of legal procedures. By the time a final judgment is rendered, they may not fully comprehend how they reached that point nor why the judgment was not in their favor. Most SRLs lack any formal legal training and often are without meaningful access to the education and experience that attorneys acquire in law school and through years of practice. As legal professionals, we bear an ethical responsibility to enhance access to justice by mitigating the barriers that disproportionately burden SRLs. Their presence in our judicial system is a given; the pressing question is how best to support and assist them.

Consequences of Self-Representation

The disadvantages SRLs face, especially when parties represented by counsel oppose them, are well-documented and severe. According to the 2022 Justice Gap Report published by the Legal Services Corporation, 92% of low-income Americans do not receive adequate or any legal assistance for their substantial civil legal needs.² Cost is one of the most significant barriers to securing legal representation.³ Studies suggest several reasons why individuals elect to represent themselves, including (1) financial constraints, (2) confidence in their own

ability to manage their case, (3) reliance on advice or support from family or friends, and (4) a desire to avoid involving attorneys for personal reasons, such as maintaining relationships between the parties or retaining control over the process.⁴

Nonetheless, self-representation imposes considerable demands on litigants. SRLs must prepare evidence, master the relevant case law and statutes, and follow procedural rules. Many become overwhelmed by the complexity of the process. Additionally, the legal arguments and decisions they encounter are often replete with specialized terminology that may be difficult for a layperson to decipher. SRLs may fail to understand the structural requirements of legal pleadings or the formalities that must be observed in court proceedings. Empirical evidence consistently shows that litigants who have counsel are significantly more likely to achieve favorable outcomes. The judiciary's role is to render decisions based on the merits of the case, not on the procedural proficiency of the parties involved. Thus, the legal profession must continue to explore and implement strategies to close the justice gap and ensure that SRLs are not unduly disadvantaged within the legal system.

Resources Available

Each individual approaches learning differently, and thus, various methods of instruction are necessary. To assist SRLs in their legal pursuits, courts, bar associations, and related organizations have issued a range of resources, including handouts, guidebooks, kiosks, and self-help websites. These materials aim to inform litigants of the steps necessary to initiate, defend, or navigate a lawsuit. However, the extent to which these resources aid their intended audience remains uncertain due to a lack of comprehensive research.

Despite the availability of these

resources, courts continue to witness SRLs at a distinct disadvantage due solely to the absence of legal counsel. While some litigants may find these materials useful, others may not benefit from them at all. Numerous publications issued by legal aid groups, courts, and governmental entities are designed to guide litigants through the legal process. Some are case-specific, and though undeniably helpful in certain circumstances, they often fail to meet the needs of all litigants.

One significant barrier is language. Many litigants may not speak or read English fluently, underscoring the need for multilingual guides. For those who cannot read, videos may serve as an effective alternative, offering instruction on legal processes in various languages. These videos should cover both general litigation procedures and case-specific issues.

“It is more effective to train one judge on how to assist a self-represented litigant than to teach hundreds of self-represented litigants how to be a lawyer.”—Justice for All Initiative Guidance Material, National Center for State Courts

The adversarial system is predicated on the assumption that both parties will be represented by counsel, with the judge serving as an impartial arbiter. But, this model falters when one or both parties are unrepresented. SRLs, lacking the legal education and procedural expertise of attorneys, struggle to navigate the court system effectively.

Under Rule 2.2 of the Illinois Code of Judicial Conduct, judges must uphold and apply the law impartially. However, as noted in Comment 4 of the Rule, providing reasonable accommodations to SRLs, when consistent with the law and court rules, is not a violation of judicial impartiality.⁵

A 2022 article, *Judges in Lawyerless Courts*, advocated for a reevaluation of the traditional role of trial judges, suggesting that they take a more active role in guiding SRLs.⁶ The reform calls for judges to provide accommodations, offer relevant information and simplify court processes for those without legal representation.⁷ This involves “helping unrepresented individuals develop facts, identify claims and defenses, access[ing] what assistance and information the litigant received prior to entering the courtroom, and correcting misunderstandings,” all while maintaining judicial neutrality.⁸

While difficult, it is not an insurmountable objective to ensure that SRLs are afforded a fair opportunity to be heard. For example, judges can encourage representation by lawyers, thereby providing litigants with the necessary *pro bono* legal expertise without compromising judicial neutrality. And judges can explain procedural rules, legal standards, and terminology, ensuring that self-represented parties understand the process and can present their case fairly. Finally, judges can facilitate both sides presenting all relevant facts.

Certain areas of law—such as landlord-tenant disputes, debt collection, family law, bankruptcy, and small claims—see a higher concentration of low-income, self-represented litigants.⁹ While broad systemic changes may be challenging to achieve, courts that handle a significant volume of *pro se* cases can implement targeted reforms and maintain the integrity of the legal process.

Right to Counsel

The constitutional framework does not guarantee the right to counsel in civil cases. However, states have the discretion to establish this right through legislative action. Currently, four states have enacted laws that provide a right to counsel for low-income tenants facing eviction proceedings.¹⁰ Although each state’s eligibility criteria vary, empirical evidence highlights the substantial benefits of these provisions.

A recent article reported that in Kansas City, Missouri, the implementation of right-to-counsel laws led to 91.5 percent

of tenants avoiding eviction, a marked improvement from the 99 percent eviction rate before these laws were enacted.¹¹ In New York City, 84 percent of tenants with legal representation remained in their homes, with a 34 percent reduction in default judgments.¹² Similarly, in Cleveland, Ohio, 93 percent of tenants with legal counsel successfully avoided eviction or involuntary relocation.¹³ In California, tenants with full representation were given twice the duration to vacate post-eviction rulings compared to their unrepresented counterparts.¹⁴

Some jurisdictions with right-to-counsel laws have also experienced a decrease in eviction filings, indicating that landlords may be deterred from pursuing potentially unlawful evictions when tenants are represented. Furthermore, the implementation of right-to-counsel laws appears to yield significant fiscal benefits by reducing homelessness.¹⁵

The statistical evidence indicates that the benefits extend beyond individual case outcomes, reducing overall court caseloads as well. Legal representation often facilitates early resolution of disputes, thereby reducing the need for prolonged litigation. Consequently, adopting right-to-counsel provisions in civil cases with a high incidence of SRLs should be considered a viable strategy to enhance access to justice.

Conclusion

To tackle the disparities experienced by individuals representing themselves in legal matters, it is crucial to seek out and put into practice new and creative solutions. The growing number of SLRs in courts underscores a significant disadvantage for many litigants, as only a few are able to navigate the process successfully. It is the responsibility of legal professionals to identify effective steps to bridge this divide, ensuring that cases are resolved on their merits rather than the limitations of inadequate representation. ■

1. <https://www.illinoiscourts.gov/Resources/8b247871-22b1-4684-b241-a39b-6606f8a4/2017%20-%202020%Strategic%20Plan.pdf>
2. <https://justicegap.lsc.gov/resource/executive-summary/>
3. <https://justicegap.lsc.gov/>
4. Natalie Anne Knowlton, et al., Inst. for the Advancement of the Am. Sys., cases without counsel: research on experiences of self-representation in U.S. family court 1, 12-21 (2016).
5. Rule 2.2, article XI. Illinois Code of Judicial Conduct of 2023, <https://jib.illinois.gov/code.html>.
6. Ann E. Carpenter, et al., *Judges in Lawyerless Courts*, 110 Geo. L.J. 509 (March 2022).
7. *Id.*
8. *Id.*
9. Tonya L. Brito & Daniela Campos Ugaz, Colloquium: The Legal Profession’s Response to Social Change: Asymmetry of Representation in Poor People’s Courts, 92 *Fordham L. Rev.* 1263, 1267 (March 2024).
10. “Right to Counsel In Eviction Cases: A Public Health Imperative,” *Health Affairs Forefront*, May 17, 2024, <https://www.healthaffairs.org/content/forefront.right-counsel-eviction-cases-public-health-imperative>.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*



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Recent Appointments and Retirements

- 1) Pursuant to its Constitutional authority, the Supreme Court has appointed the following to be Circuit Judge:
 - Gregory M. Minger, 11th Circuit, September 20, 2024
- 2) Pursuant to its Constitutional authority, the Supreme Court has appointed the following to the Appellate Court:
 - Hon. Celia Gamrath, 1st Dist. September 5, 2024
 - Hon. Amy C. Lannerd, 4th Dist. September 18, 2024

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