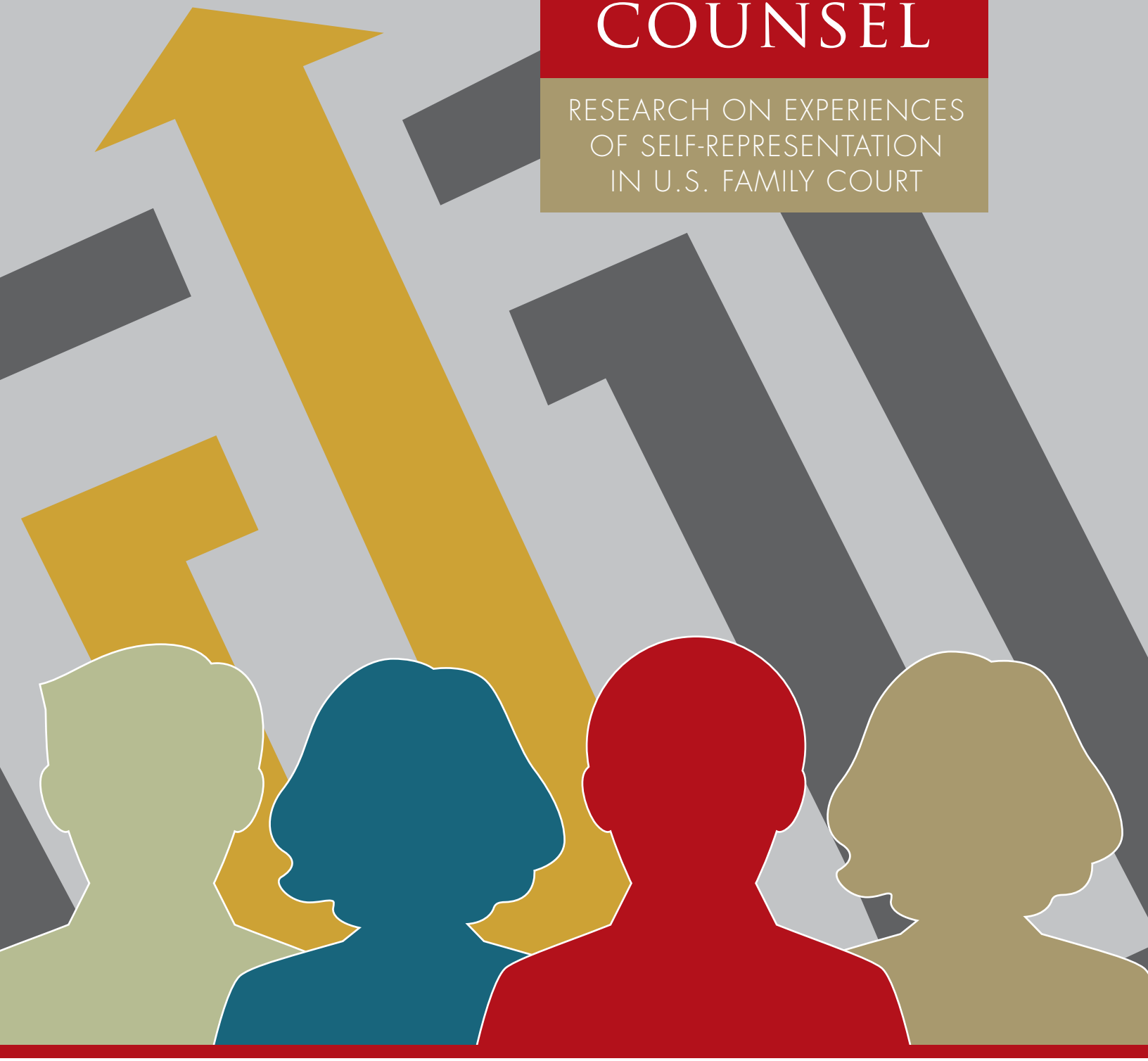
CASES WITHOUT COUNSEL

RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT



HONORING FAMILIES INITIATIVE

10 YEARS OF IAALS REBUILDING JUSTICE

SJI State Justice Institute

CASES WITHOUT COUNSEL

RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT

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IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system. We are a "think tank" that goes one step further—we are practical and solution oriented. Our mission is to forge innovative solutions to problems in our system in collaboration with the best minds in the country. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable American legal system.

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Honoring Families is an initiative of IAALS dedicated to developing and promulgating evidence-informed processes and options for families involved in divorce, separation, or parental responsibility cases that enable better outcomes for children and that provide greater accessibility, efficiency, and fairness for all parties, including those without counsel.

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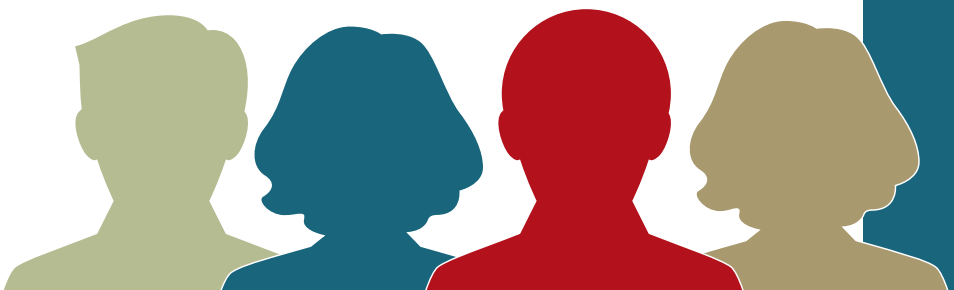
Above all, countless thanks to the litigant and court professional study participants. The stories and voices of self-represented litigants inspired us, and the narratives of court staff and judges reminded us that our family courts are comprised of a dedicated cadre of men and women.

Your Participation Means Everything.



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EXECUTIVE SUMMARY

The Issue

Every year, hundreds of thousands of people enter United States courts seeking a divorce, separation, or resolution of a child-related dispute (e.g., custody or child support).[1] Family cases are the way in which the vast majority of Americans will be involved with our courts over the course of their lives. Some individuals hire a lawyer to represent them in the process. However, a large—and by all estimates growing—number do not have legal representation for portions or all of their case.[2] In some courts, upwards of 80-90% of family cases involve at least one self-represented party.[3] In many cases, both parties lack the assistance of an attorney. As the system was originally designed for represented parties, difficulties ensue for litigants and courts alike when parties are not represented. As a result, courts have responded in a range of ways. All too often, however, litigants themselves are not part of this conversation.

The Study

Cases Without Counsel: Experiences of Self-Representation in U.S. Family Court ("Cases Without Counsel" or "CWC") is a qualitative empirical research study exploring the issue of self-representation in the United States from the litigants' perspective. Through one-on-one extended interviews, the study collected information and narratives directly from 128 individuals who have represented themselves in family court in one of four jurisdictions (listed from West to East): Multnomah County, Oregon; Larimer County, Colorado; Davidson County, Tennessee; and Franklin County, Massachusetts. Additionally, to create an appropriate context for the litigant experience, the IAALS study team interviewed 49 judicial and non-judicial professionals who routinely engage and interact with self-represented litigants in those jurisdictions. The voices of participants provide a rare window of insight into the world of self-representation. This report focuses on consistent themes that emerged across jurisdictions, which will be useful as family courts, lawyers, and communities across the country navigate how best to serve litigants outside of the traditional picture of two represented parties.

The Results

The individual experiences of self-represented litigants in family court vary considerably. There are countless factors at play—some beyond the sphere of control of courts, the organized bar, and public policymakers. Nevertheless, discussions with litigants and court professionals in four very different states allowed the Cases Without Counsel study to capture

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1 *See* Robert C. LaFountain, Nat'l Ctr. for State Cts., Examining the Work of State Courts: An Overview of 2013 State Court Caseloads 4-8 (2015), *available at* http://www.courtstatistics.org/~/media/Microsites/Files/CSP/EWSC_CSP_2015.ashx.

2 Jud. Council of Cal., Task Force on Self-Represented Litigants, Implementation Task Force: Final Report 2-3 (October 2014) (discussing the rise in self-representation in various states over the last 30 years), *available as Attachment A at* http://www.courts.ca.gov/partners/documents/EA-SRLTaskForce_FinalReport.pdf.)

3 *Id.*

4 M24.

"It feels really good to know that at least my voice will be heard… I've felt very powerless."[4]

– Cases Without Counsel Self-Represented Litigant Participant

broad themes that bear on the issue of self-representation from those most directly affected. Most importantly, the study highlights a very real justice gap within the United States and gives urgency to the challenge of creating client-centric family law courts and processes.

The study includes a relatively diverse group of litigant participants, though largely with the benefit of familiarity with the English language and American culture. The IAALS study team found that, in general, participants were rational, resourceful, and articulate with respect to their situations.

The following are the major themes revealed through the study. These themes arose time and again in the interviews, and thus constitute strong findings with respect to participants generally even if they do not describe every individual's experience.

Reasons for Not Having an Attorney

- Self-represented litigants in family court largely desire legal assistance, advice, and representation but it is not an option for them due to the cost and having other financial priorities. Attorney services are out of reach, while free and reduced-cost services are not readily available to many who need assistance.
- While cost is the predominant factor, there are other considerations.
  - There is a certain level of concern about how the involvement of an attorney will affect the ongoing relationship of the parties, whether based on perception or prior experience.
  - There is some sentiment concerning the desire to have a voice in the process (i.e., to tell their story to the court in their own words).

The Family Court Process from the Litigants' Perspective

- Bringing difficult family situations to a formal courthouse can leave litigants feeling intimidated, isolated, and vulnerable.
- Self-represented litigants grapple with understanding the process, what to expect, and what is expected of them. They describe feeling lost or "in the dark," relating both to the individual steps and the big picture of the case.
- Given the personal importance of their cases, litigants actively work to identify and utilize resources to help them understand the law and the court process. However, resources leveraged do not always address topics clearly or effectively enough to eliminate the need for more specific guidance.
  - The internet is one of the most important sources of information for litigants, although they find in-person assistance to be invaluable.
  - The helpfulness of court staff varies, and the sometimes fuzzy line between legal information and legal advice poses a challenge for both courts and litigants.
  - Litigants sometimes avail themselves of attorney consultations for assistance.
- The paperwork can become overwhelming. Forms, while helpful, are not sufficient because many are unclear about the appropriate content to include when completing them. The cycle of litigant mistakes and court rejections is taxing for both.
- Litigants struggle with how to present their case to the court, including hearing or trial preparation, evidentiary matters, and courtroom procedures.
- Not surprisingly, proceeding without an attorney is easier for those who have a simple case or previous court experience. It is also easier for those who are well-connected personally or those who are educated and/or engaged in professional work.
- Generally, self-represented litigants report positive interactions with court professionals and more negative interactions with opposing counsel.

Effects of Self-Representation

- Self-represented litigants feel they are at a disadvantage as compared to represented parties.
  - Court professionals who pressure self-represented litigants to get a lawyer leave the impression that the process will not be fair to those who are self-represented.
  - Litigants can feel outmatched by opposing counsel.
  - Mistakes due to lack of knowledge or experience lead to a litigant's sense that they are harming their case or jeopardizing their rights by not engaging legal counsel.
- Self-representation can negatively impact outcomes. By implication, this can directly affect children in family law cases.
  - Judges confirm that the inability to effectively present their case from an evidentiary standpoint works against self-represented litigants.
  - Some litigants have described simply giving up their rights when faced with the reality of the court process, including the time and energy required.
- Self-representation adds substantial stress and anxiety to an already taxing emotional period in the life of a family.
  - Litigants dealing with personal and professional obligations while their family is in transition must also take on functions and responsibilities that otherwise would have fallen to a trained professional.
  - Attorneys can alleviate the pressure to get everything right and can serve as a buffer, allowing litigants the time and emotional space to process emotional issues outside of court.
- Nevertheless, those who are able to succeed without incurring the expense of an attorney come out of the process with a feeling of empowerment.

Finally, as those at the center of an issue can best speak to what changes would make a positive difference, an important piece of the Cases Without Counsel study involved asking both litigant and court professional participants their suggestions for improving the system. These suggestions are contained in a companion *Honoring Families Initiative* publication setting forth recommendations for moving forward. Reflecting a collective responsibility to address the challenges of self-representation, *Cases Without Counsel: Our Recommendations after Listening to the Litigants* includes the input of a variety of family justice system stakeholders.[5]

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5 Natalie Anne Knowlton, Inst. for the Advancement of the Am. Legal Sys., Cases Without Counsel: Our Recommendations after Listening to the Litigants (2016).

INTRODUCTION

Cases Without Counsel: Experiences of Self-Representation in U.S. Family Court ("Cases Without Counsel" or "CWC") is a qualitative empirical research study exploring the issue of self-representation in the United States from the litigants' perspective.[6] The study includes data from in-depth interviews with 128 self-represented litigants and 49 court professionals in four family courts (listed from West to East): Multnomah County, Oregon; Larimer County, Colorado; Davidson County, Tennessee; and Franklin County, Massachusetts.

The decision to collect qualitative data rather than quantitative data was strategic. Qualitative research is designed to explore experiences, behaviors, perceptions, and feelings from the participants' perspective and in the participants' own words. It is especially useful when there is neither theoretical nor empirical consensus around an issue. Such clarity is often lacking when an issue develops rapidly, as has the self-represented litigant experience. While the findings are not statistically representative of the views of all self-represented litigants and the court professionals who interact with them, this inquiry allowed the study team to gather detailed and nuanced information on a complex issue, while reducing the number of presuppositions necessary to direct the data gathering. The participants relayed their own truths within the context of their experiences of proceeding through the family court process without legal representation.

The Cases Without Counsel study was generally modeled on a comprehensive qualitative study undertaken by Dr. Julie Macfarlane in three Canadian provinces ("Macfarlane study"), which grew into the National Self-Represented Litigants Project.[7] The IAALS study team aimed to similarly illuminate the self-represented litigant experience, with a focus on U.S. courts.

The following research report contains consistent themes that emerged across jurisdictions through the voices of participants. It begins with the study's methodology and the demographics of study participants. Then, three parts explore different aspects of the self-represented litigant experience: 1) reasons for not having an attorney; 2) perspectives on navigating the family court process; and 3) effects of self-representation. Each of the substantive parts is followed by broader considerations, drawing from the national commentary on the topic. With the close connection between this study and the Canadian counterpart, this report contains comparative insights where relevant. The IAALS study team hopes that, as a result of this study, litigants' voices will continue to be more clearly heard and included in the important conversation about how to improve the family court system.

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6 In keeping with the relevant literature, this report uses the term *self-represented* to describe the litigant study population. The IAALS study team recognizes the other terms used to refer to litigants without legal counsel (e.g., *pro se*) and acknowledges that some litigants feel they lack any sort of representation (e.g., *unrepresented*).

7 Dr. Julie Macfarlane began with a qualitative study consisting of interviews and focus groups with more than 250 self-represented litigants in civil and family cases, and ultimately formed the National Self-Represented Litigants Project (NSRLP). Dr. Macfarlane published study findings and recommendations in 2013, but since then has continued to collect data and information from Canadian self-represented litigants. New intake data, including a comparison to the 2013 demographic data, was published in 2015. Julie Macfarlane, The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report (2013), *available at* https://representingyourselfcanada.files.wordpress.com/2014/05/nsrlp-srl-research-study-final-report.pdf; Erin Chesney et al., Tracking the Continuing Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2014-2015 (2015), *available at* https://representingyourselfcanada.files.wordpress.com/2015/05/nsrlp-intake-report-2015.pdf. NSRLP also connects self-represented litigants with resources, provides education, and facilitates dialogue on this issue. Dr. Macfarlane and former Project Manager Sue Rice lent their expertise as consultants to the IAALS study team, providing ongoing feedback on study methodology and data analysis from the perspective of researchers who have already walked the complex path of obtaining in-depth information from litigants.

PART ONE

METHODOLOGY & PARTICIPANTS

Participating Jurisdictions

The Cases Without Counsel study was active in the family courts in four U.S. jurisdictions:[8]

- **Multnomah County, Oregon:** Multnomah County is part of the Portland metropolitan area and is Oregon's most populous county, with a population of approximately 776,700. With respect to Multnomah's residents: 81% identify as Caucasian; 7% identify as Asian; and 6% identify as Black/African American. Moreover, 11% identify as Hispanic or Latino.[9] Per capita annual income is approximately $31,000, and 40% of the population is college educated. Domestic relations matters in Multnomah County are handled in a dedicated family court in downtown Portland, which also has jurisdiction over juvenile, domestic violence, probate, and civil commitment matters.
- **Larimer County, Colorado:** Larimer County includes the following Colorado municipalities: Fort Collins, Loveland, Estes Park, Berthoud, Wellington, and Timnath. County population is approximately 324,000, of which 93% identify as Caucasian. In addition, 11% identify as Hispanic or Latino. Per capita annual income is also approximately $31,000, and 44% of the county's population is college educated. All domestic relations matters in Larimer County are heard in the Larimer County District Court, located in Fort Collins. District Court judges handle a diversified docket of domestic relations, civil, criminal, probate, juvenile, and mental health cases, with magistrate judges assigned to domestic and juvenile cases.
- **Davidson County, Tennessee:** Davidson County has a population of approximately 668,000, with Nashville as its county seat and most populous city. Approximately two-thirds of Davidson County's population identify as Caucasian, and 28% identify as Black or African American. Per capita annual income is $29,000, and 37% of the population is college educated. Generally speaking, the Circuit Court handles divorce cases and related child issues, specifically in the Third and Fourth divisions; unmarried parents seeking to resolve parentage, parenting time, child support, and/or custody issues must petition the Juvenile Court.
- **Franklin County, Massachusetts:** Franklin County is a rural jurisdiction in western Massachusetts. With a population of 70,800, Franklin County is the least-populous county on the Massachusetts mainland. Ninety-five percent of the population identify as Caucasian. Annual per capita income is $29,600, and 34% of the population is college educated. Family cases are handled in the Franklin County Probate and Family Court, located in the city of Greenfield.

The IAALS study team selected study jurisdictions on the basis of two primary factors. First, the courts in study jurisdictions had to express a willingness to participate, including support from court leadership. This entailed supporting IAALS' access to public case filing records and facilitating interviews with judges and court staff. Second, the study team sought to achieve some measure of diversity across jurisdictions in terms of geographic location, population demographics, court resources available for self-represented litigants, and manner of processing and handling family cases. While participating jurisdictions are not representative of family courts across the country, the diversity provides a better sense of which themes may be specific to a jurisdiction and which themes may be more universal.

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8 The statistics that follow are based on U.S. Census data and U.S. Census Bureau estimates. United States Census Bureau QuickFacts, http://www.census.gov/quickfacts (last visited April 5, 2016).

9 Race and ethnicity in the U.S. Census are considered separate and distinct identities, with Hispanic or Latino origin asked as a separate question.

Judges and Court Staff

Recruitment

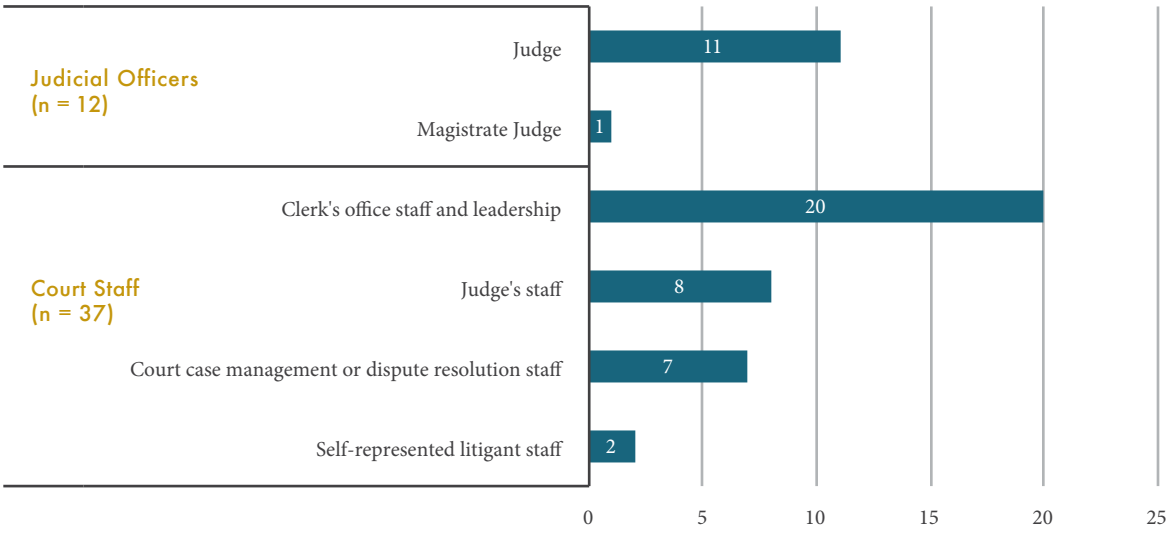
Within participating courts, IAALS researchers worked with a designated liaison to identify appropriate and willing judge and court staff participants. The court liaison also coordinated interview scheduling and facilitated the logistics of researcher visits.

Court Service Provider Participants

Considering all jurisdictions together, the study included interviews with 49 individuals who routinely interact with self-represented litigants in the course of their court duties. Twelve of these individuals were judicial officers and 37 were non-judicial personnel.

With respect to the latter, these participants came from a wide swath of roles within participating courts, including clerks' office staff and leadership (54%), judges' staff (22%), court case management or dispute resolution staff (19%), and staff whose role consists solely of assisting self-represented litigants (5%). Together, these judge and court staff interviews capture a variety of perspectives from within these courts.

Figure 1, Breakdown of Court Staff and Judicial Officer Interviewees



Self-Represented Litigants

Recruitment

Researchers accessed publicly available case filing records in each participating jurisdiction to identify contact information for parties to family cases in which:

- One or more of the following family[10] case types was at issue: divorce/dissolution (including civil unions); separation; child custody, visitation, or allocation of parental responsibility; child support; spousal support, alimony, or maintenance;
- The filing date fell between July 1, 2013, and June 30, 2014;[11] and
- There was an indication in the record that both parties had notice of the case.

To ensure that only appropriate individual parties were included in the recruitment lists, researchers removed references to government agencies, organizations, and other third-party entities, as well as references involving individuals with correctional facility or foreign addresses,[12] duplicate records, and invalid addresses.

The most crucial criterion for inclusion in the study—whether a party represented him or herself—could not be identified from the court records.[13] For this reason, the study team asked recipients of recruitment materials to self-identify as a party who proceeded without legal representation for any portion of their family case. The study defined self-representation broadly, to include litigants who were represented at some point in the case, because any person representing themselves at least part of the time would have a perspective on self-representation, and perhaps those having experience with attorneys in their case could provide unique insights into self-representation. The CWC study also aimed to explore why people may have lost their attorney or obtained an attorney during the process.

The outreach strategy evolved over the course of the study due to challenges in connecting with the family court self-represented litigant population. The study team hypothesized that slow participation rates may have been a function of any one or a combination of variables, including: limited time and energy for individuals focused on meeting the needs of families without the help of a spouse or significant other; reticence to recount (and thus re-live) what may have been a difficult and emotionally charged experience; a wariness of discussing the details of their court experience with a third party (a sentiment perhaps compounded by unfamiliarity with IAALS and its mission); and a lack of grounding in the empirical research process and the ends to be achieved thereby.

Initially, postcards were mailed to randomly selected subsets of the recruitment lists; ultimately, personalized letters were distributed, offering a monetary gesture of appreciation for participation.[14] Because responses to these materials remained relatively slow across jurisdictions, every individual in each recruitment list received at least one outreach letter, with many receiving multiple letters over the course of the study period. The mailings helped to ensure that the study reached

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10 To the extent possible, the Cases Without Counsel study focused on divorce, separation, and parental responsibility cases. We recognize, however, the interconnected nature of these case types with related matters such as guardianship, juvenile delinquency, dependency, truancy, paternity, child abuse and neglect, and civil protection orders.

11 This timeframe was selected with the hope of generating a mix of respondents with completed and ongoing cases.

12 "Prisoners" are considered a "vulnerable population," which IAALS did not seek Institutional Review Board approval to study.

13 There is a lack of a consistent definition for what constitutes a self-represented litigant and a corresponding inconsistency among many jurisdictions in terms of how state courts count self-represented litigant numbers. *See* Nat'l Ctr. for State Cts., Developing Standardized Definitions and Counting Rules for Cases With Self-Represented Litigants (2013), *available at* http://www.courtstatistics.org/~/media/Microsites/Files/CSP/Other%20Pages/SRL%20Project%20%20Final%20Report%20121913.ashx. In order to ensure that the study's broad definition of self-representation was consistent across study jurisdictions, we did not use participating courts' case management data in helping identify self-represented litigant participants.

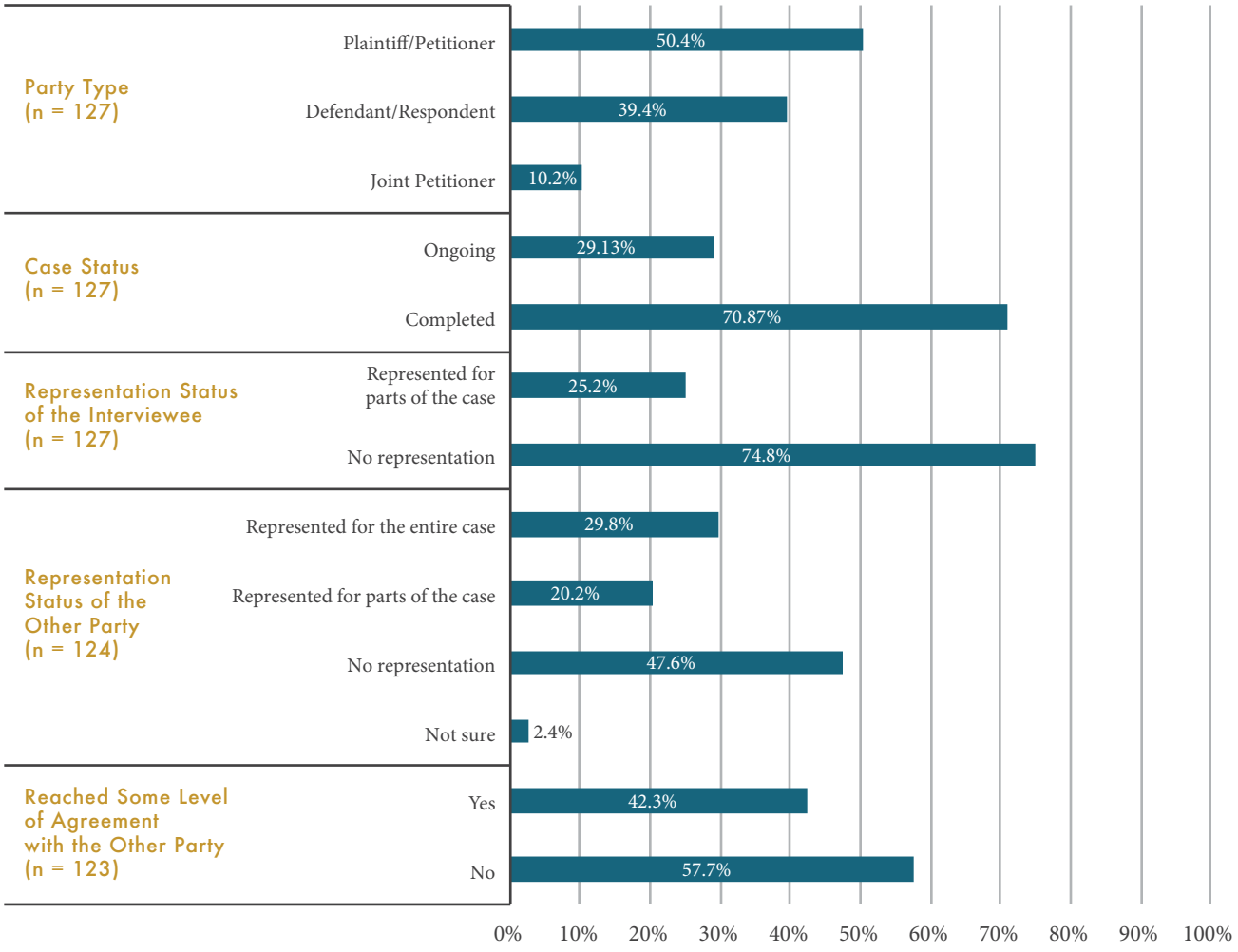
14 Participants could select a $25 gift card either from Amazon (delivered electronically and immediately) or American Express (delivered via postal mail and shortly after the conclusion of the interview). These choices were offered in order to be responsive to varying levels of internet access and personal preference.

a broad spectrum of litigants and yielded about 85% of respondents. To prompt participation by individuals engaged with and thinking about their cases, there was also an in-court recruitment component that yielded the remaining 15% of respondents. Specifically, posters and postcards were sent to each courthouse for hanging and distribution. Depending on the particular jurisdiction or particular court staff member within the jurisdiction, the approach varied from active discussion of the study to passive availability of the materials. While the practical realities of recruiting self-represented litigants for study participation made sampling bias an inevitability, it was not apparent from the data that participants were biased in any particular direction.

Self-Represented Litigant Participants

In total, the study included interviews with128 self-represented litigant participants from the four study jurisdictions: 54 from Larimer County, Colorado; 31 from Davidson County, Tennessee; 30 from Multnomah County, Oregon; and 13 from Franklin County, Massachusetts. Figure 2 below presents a summary of participant case information across all jurisdictions.

Figure 2, Self-Represented Litigant Case Information

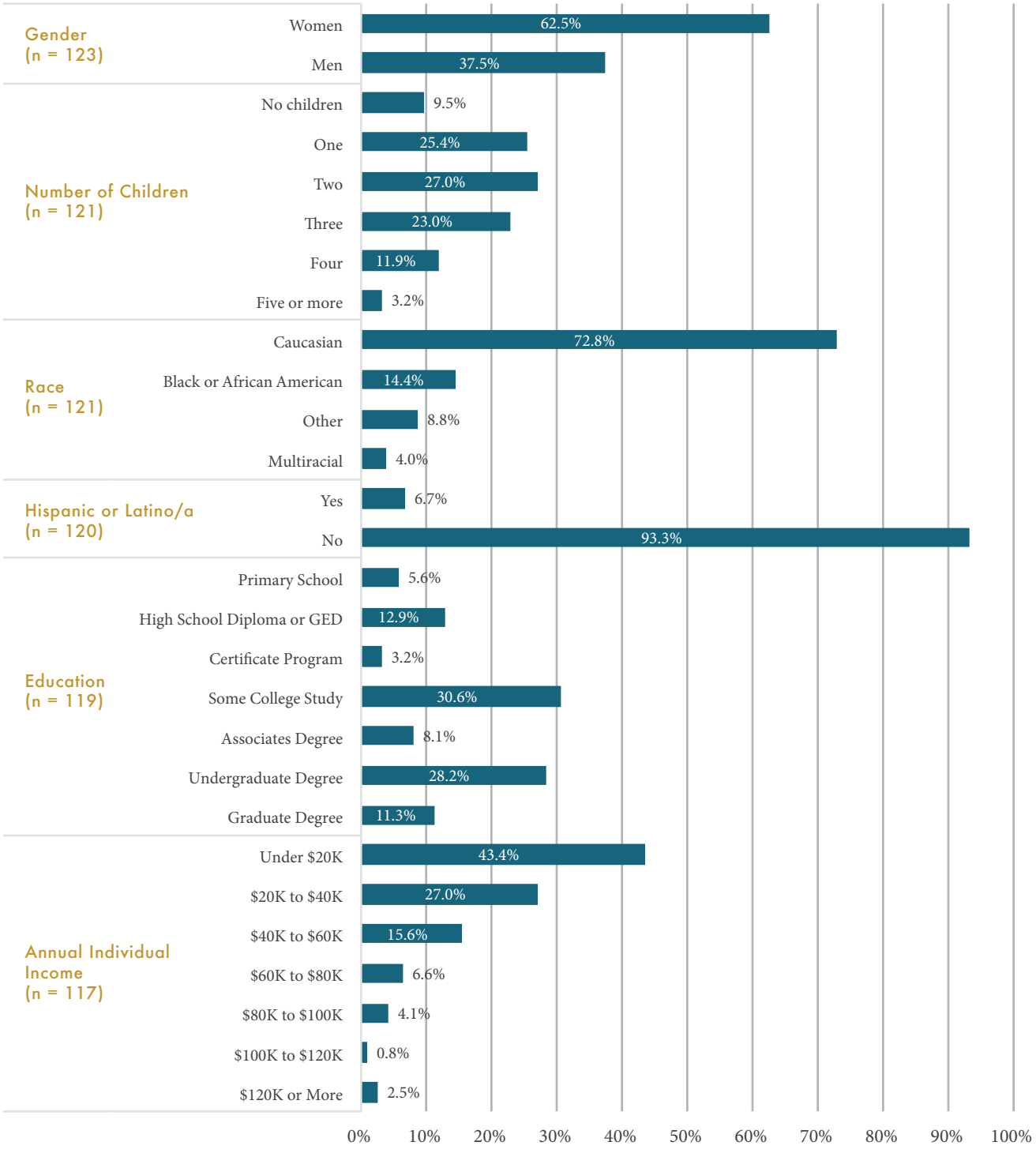


Exactly half of the participants were the plaintiff/petitioner in their case, while slightly fewer (39%) were the defendant/respondent and a much smaller proportion filed a joint petition (10%). Almost three-quarters (71%) reported that their case was completed, while the remainder had an ongoing case (29%). With respect to representation status, a full three-

quarters reported representing themselves for the entire case, while the remaining 25% reported having representation for part but not all of their case. About half of the interviewees (48%) indicated that the other party self-represented for the entire case; smaller proportions indicated that the other party had attorney representation either for the entire case (30%) or for parts of the case (20%). Most participants (58%) had not reached any sort of agreement with the other party, either before or during the court process.

Participants also represented a range of demographic characteristics. Figure 3 presents a detailed breakdown of self-represented litigant participant demographic characteristics.

Figure 3, Self-Represented Litigant Demographic Characteristics



Just under two-thirds (63%) were women, while the remaining third (38%) were men. Participant family sizes were mixed, with about one-quarter each having one (25%), two (27%), or three (23%) children. About three-quarters (73%) identified as White, while the next largest group identified as Black or African American (14%).[15] Participants were largely educated, with half (48%) having a college degree and about another third (31%) having had some college study. Participants tended toward the lower end of the economic spectrum, as nearly half (43%) reported an annual income below $20,000 and only 14% reported earning more than $60,000 per year.

Litigant participants were quite homogeneous when it came to country of origin and native language. The vast majority (93%) cited the United States as their country of origin.[16] A similar proportion (92%) of participants indicated English was their first language.[17] This could be a function of the nature of the study and recruitment materials. Presumably, the challenges of self-representation would be greater for those unfamiliar with American culture and/or non-English speakers.

Materials, Procedure, and Analysis

Interview Protocols

The IAALS study team developed three separate semi-structured interview protocols: one for judges;[18] one for court staff;[19] and one for self-represented litigants.[20] The particular questions in the protocols were tailored to capture the unique perspective of each participant group. Generally speaking, each protocol addressed the same issues and contained questions designed to elicit responses on the following topics:

- Demographic information
- Self-represented litigant expectations
- Factors influencing/motivations for self-representation
- Impacts of self-representation (on courts, cases, and litigants)
- Positive aspects of the family court process/experience
- Difficulties/frustrations in the family court process/experience
- Recommendations (for courts, court staff, and other family justice system stakeholders)

All interviews concluded with an opportunity for participants to provide additional feedback or to address issues not already covered during the interview. Participants were also informed that they could contact IAALS researchers after the conclusion of the interview with additional thoughts or comments.

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15 The race categories used in this study were mirrored after the US Census.

16 Other participant countries of origin include Canada, China, Colombia, England, Lebanon, Mexico, and South Sudan.

17 Other participant first languages include Arabic, Chinese, Sign Language, Spanish, and Tribal Language.

18 Appendix A.

19 Appendix B.

20 Appendix C.

Interview Procedures

Judge and court staff interviews were conducted in person, onsite at the courthouse, and were generally scheduled for 30 minutes, though some interviews were shorter and some slightly longer.[21] All litigant interviews were conducted telephonically and were scheduled for one hour; as was the case with judge and court staff interviews, the actual duration of self-represented litigant interviews varied considerably. Interviews were conducted in English, with the exception of four self-represented litigant interviews which were conducted at least partially in Spanish with the assistance of a interpreter.

Prior to beginning each interview, the researcher conducting the interview reviewed the consent form with participants and provided an opportunity for questions related to participation. Part of the consent process entailed requesting permission to be audio recorded for the purposes of obtaining a full, accurate transcript to facilitate analysis. All those who consented were audio recorded; for the few who did not consent, the researcher took detailed notes during the interview.

Data Analysis and Reporting

The IAALS study team reviewed a series of subsets of interviews and used those, along with protocol-specific topics, to generate a coding scheme to facilitate data organization and identification of emerging themes. As is consistent with qualitative analysis practices, the team took an iterative approach to developing the coding scheme, adding and revising codes at various stages of the analysis process in order to ensure a complete and fully defined coding scheme. All interviews were coded and analyzed using QSR NVivo qualitative analysis software.

This effort aims to capture and bring to life the voice of the litigant. Accordingly, the results of the study are mainly presented through direct quotes from the interviews. Included quotes were selected as an accurate articulation of a particular sentiment, experience, or theme emerging from the data more broadly. Generally working from transcripts of audio recordings, the quotations are word-for-word, with the correction of minor grammatical/typographical errors and the elimination of filler words common in speech but distracting in written form (e.g., “um” or “uh”).

Finally, as a function of the extensive amount of data collected and in an attempt to make the findings relevant to the largest possible audience, the study team focused on themes common across all study jurisdictions for the purpose of this report. In communicating the results, quantifiers such as *many* and *few* are used to indicate how often an experience or viewpoint arose during the discussion for our group of participants. These descriptions should not be read to measure prevalence among the entire population of self-represented litigants or judicial and court staff, particularly in light of the semi-structured interview format in which topics were raised and discussed organically and therefore not every issue was addressed by every individual. Nevertheless, the reader is encouraged to be mindful about how the findings and the recommendations highlighted here might apply to the issue of self-representation more universally.

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21 Due to scheduling constraints, one interview was attended by four court staff members and, thus, was more of a focus group setting.

PART TWO

FACTORS MOTIVATING AND INFLUENCING THE DECISION TO SELF-REPRESENT

An exploration of the issues surrounding self-representation in family courts necessarily begins with the factors that litigants weigh and consider in deciding whether to obtain counsel or represent themselves. These factors provide insight into the situations, perceptions, and needs of family court litigants. It is important to note that this section focuses on self-represented litigant (SRL) participants' decision-making process at the outset of the case—or at the outset of self-representation if a lawyer was initially involved—and unless otherwise indicated does not address how the initial assessment may or may not have changed once they were actually moving forward with self-representation. Indeed, consistent across jurisdictions, more than 85% of self-represented litigant participants who commented on the issue expressed their desire for legal assistance in the form of advice and/or representation.

The Cases Without Counsel study revealed four main, interconnected themes with respect to factors considered in deciding on self-representation: 1) financial issues; 2) the assessment of one's ability to self-represent; 3) a preference for self-representing; and 4) experience with and perceptions of attorneys. This report takes a dive into the nuances that emerged within each of these four main themes. Although each theme is addressed separately, the decision to self-represent is often multifaceted, involving a blend of reasons. In fact, self-represented litigant interviewees cited an average of 2.7 motivators in this discussion. In addition, there is some unavoidable overlap across the various themes, a function of organizing complex data into categories. For example, the same perception, attitude, or issue may be raised by one person in relation to their perceived ability to handle the case and by another person in relation to a past experience with an attorney. Topics are discussed within each relevant theme, even if they appear elsewhere.

Financial Considerations

Across jurisdictions, issues pertaining to the cost and affordability of legal services featured prominently in the vast majority of self-represented litigant participants' stories. With just over 90% of all participants indicating that financial issues were influential—if not determinative—in this decision, it was the most consistently referenced motivation for proceeding without an attorney. Indeed, concern over finances came through clearly in the interviews:

- "The retainer fee was kind of steep for a single mother."[23]
- "Cost was the number one driver in my decision."[24]
- "It's too expensive."[25]
- "It was a financial thing."[26]
- "It was more of a financial issue—most things are today."[27]
- "Cost was the largest factor."[28]
- "The money was definitely the biggest part of it."[29]

22 D3.
23 M6.
24 D34.
25 L36.
26 M5.
27 D5.

Some litigant participants referred to the financial issue broadly, without elaborating on the point. Many of the interviews, however, explicitly explored the line between affordability and cost priority—in other words, differentiating between one's ability to afford legal counsel and one's preference for allocating money elsewhere. The two sections that follow explore each of these facets of the financial motivation to self-represent.

(In)Ability to Afford Legal Representation

Most self-represented litigant participants for whom finances were a factor in self-representation expressed that affordability was an issue for them. To put the comments into context, the portion of participants who specifically raised affordability concerns (in contrast to discussing financial concerns more generally) was just under 60% for those with a personal annual income of under $20,000 and about 50% for those with an income between $20,000 and $40,000. The proportion of individuals who raised affordability concerns then leveled off over the next three income categories (between $40,000 and $100,000) at nearly 40%.

According to one litigant participant, "it was out of my reach to even think about hiring an attorney."[28] Another, in describing how she came to be self-represented, explained: "It's not really a decision, it's a financial barrier—you can't give what you don't have."[29] The notion that self-representation is less a decision than a necessity was echoed by a number of other interviewees. One reported: "it wasn't optional, and it's still not optional to go spend $4,000 or $5,000 on an attorney—that's more of a luxury really."[30] Another individual stated: "I would have never tried to represent myself if I had been able to afford an attorney."[31]

A few interviewees explicitly touched on how the division of a single household into two played into their assessment of whether they could afford an attorney. One study participant, a nurse, commented: "I had lost the income of my spouse at that time. My focus was really on making sure that I was able to keep my home, able to keep my vehicle—those things that I needed in order to continue making a living."[32] A small-business owner described how, "between the circumstance of the separation and assuring that there was adequate support for two households" he had depleted much of his financial reserves.[33] Similarly, a newly single mother portrayed her situation as follows: "I had just given up half of everything I'd ever owned…I also had a hefty mortgage payment that nobody else was helping me with, and helping kids with college.… So, I didn't have money to go get an attorney."[34]

Most interviewees who stated that they could not afford legal representation did not comment further as to how they made this assessment. A few respondents, however, did describe having expended effort, time, and/or resources in the course of determining that representation was not an option financially. "It cost me 50 bucks to find out I couldn't afford a lawyer," said one self-represented litigant.[35]

Several participants described having an attorney at some point in the process, but running out of funds to maintain representation. "Once I pretty much figured out that my funds were drawn on the lawyer that I had," said one litigant, "I talked to a few other lawyers, I did some quick research and just decided that I'm going to have to go it on my own.…I had already applied for another loan to try to get another lawyer and I was denied the loan."[36] Another participant

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28 M30.
29 D25.
30 D30.
31 D14.
32 L53.
33 F13.
34 D30.
35 M18.
36 F1.

reported that after accruing $6,000 in legal fees, her attorney refused to continue without additional payment. This individual was unable to afford representation from that point forward. A third litigant told a similar story of having to proceed without an attorney after accruing $8,000 in legal fees, the entirety of which he still owes.

The inability to afford an attorney was also the factor that court participants estimated to be the most common driver of self-representation. According to one court staff participant, "most of the people that I talk with want legal help and advice, and they can't afford it."[37] "Nine times out of ten," explains another court staff participant, "they simply can't afford [an attorney]."[38] According to one judge, for most of the litigants who appear before him, self-representation is "a necessity born of their financial situation versus the desire to represent themselves."[39] This sentiment was echoed by other court participants.

"People don't have ready cash for the retainer," said a participating judge, "so even if they could potentially afford it over time, they don't have the money that a lawyer wants to get into a case."[40] This individual's prior experience in family law practice suggested that even the simplest case requires a retainer of $3,000 or more, and from her vantage point on the bench, attorneys' fees are commonly between $10,000 and $20,000 in family cases. She noted, "I never see fees less than $5,000 at the end of a case."[41] Another judge remembered practicing law before joining the family court bench: "I practiced and I was amazed at how much I was needing to charge people to have a law practice.…It's so expensive. I don't think I could afford a lawyer."[42] A third judge mentioned having college-educated adult children who would not be able to afford more than a one-time consultation should they find themselves enmeshed in a family case.

Related to the issue of affordability, several court participants commented on litigants' perceptions that legal help is unattainable. One court staff interviewee cited an awareness issue, opining that some litigants do not fully understand what is involved in getting legal counsel or how much it actually costs. With respect to the process of finding and vetting a potential family law attorney, another court participant remarked, "very few pro se litigants would even know how to start."[43] The uncertainty of legal fees in family cases may also play into this discussion of affordability. One judge participant responded that "expense and, somewhat, the uncertainty of the expense of the attorneys," is the most common driver of self-representation.[44] He suggested that uncertainty concerning fees may be perpetuated by horror stories, shared among family and friends, of runaway legal fees in a divorce case.

Concerning the issue of free or low-cost legal assistance, "There are some people who just don't have money to be able to get [representation], and then there are other people who don't understand that they actually would qualify for some help."[45] However, running counter to that impression, a participant who was disabled and on Social Security detailed extensive efforts consisting of calling Legal Aid, contacting a host of private attorneys, asking the court where to locate legal resources, etc. Ultimately, he explained, "everywhere I tried to go it was like a no-go; it was like a roadblock that I couldn't get over."[46]

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37 MCS6.
38 FCS6.
39 LCS1.
40 LCS3.
41 *Id.*
42 DCS1.
43 FCS5.
44 LCS5.
45 MCS1.
46 F7.

Cost Priority and/or Cost Savings

Cost priority—that is, the notion that one might be able to afford legal services, but prioritizes other uses for the money—resonated with about 20% of participants. These individuals expressed that they weighed how to prioritize available resources and reduce transaction costs. According to one individual interviewed, "I was 100% motivated by the fact that I didn't want to spend the money unnecessarily. I had the money; I could have [hired an attorney], but I chose not to."[47] Notably, there were participants who considered financial priorities even when obtaining representation was not realistically a financial option. Indeed, the issue was frequently discussed by those who reported an annual income of less than $40,000. "Even if I had had the money to hire an attorney," said an interviewee, "I would have done a little bit more research to see how difficult the process was to do it for myself—because, why spend the money if it's not necessary?"[48]

Several interviewees referenced children as being influential in this cost-benefit assessment:

- "As I was having conversations with the attorneys, it became clear to me that representation was not an efficient use of resources that were very, very limited that I could actually be using toward my children."[49]
- "I'd much rather put that money toward supporting children than trying to fight to get them."[50]
- "We have kids in college, and there just wasn't any reason to spend money on something—we just didn't need it."[51]

For at least one individual, the cost-benefit assessment was made jointly with the opposing party. She explained:

> My ex-partner and I looked at the expenses involved in each of us having a lawyer. We looked at the expenses of one of us having a lawyer and one not having a lawyer. We looked at the expenses of being represented for paperwork, by a paralegal, just to make the process clear so that we didn't have to return. And that's the method that we chose.[52]

Another, who—at the time of the divorce—found himself and his spouse facing a rent and a mortgage, payments on two vehicles, and two insurance policies, concluded the money that would have been spent on an attorney would be better spent split between themselves.

A few participants talked about how cost concerns motivated them to research what representing themselves would entail. "I think if attorneys were $20 an hour it would have been a no-brainer to have somebody else do it for me," said an interviewee, "but at $300 an hour, it became 'I think I can carve out some time to do this.'"[53] Another participant explained: "I could see right off the bat it's going to cost me $20,000, so I better go do some research. It's going to be worth my time to go find out about my case."[54]

The issue of cost priority also arose in almost 20% of the court participant interviews. "The common misconception is people representing themselves must be poor," explained one court staff interviewee: "It used to be, if you had the money you hired an attorney. Now people are like, 'Do I really want to spend that money on an attorney?' So, it's just become a much wider spectrum."[55] This individual described this shift as largely having occurred when the market turned in the last recession.

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47 D26.
48 L53.
49 F13.
50 M12.
51 L40.
52 M5.
53 M10.
54 M1.
55 LCS12.

Assessment of and Confidence in Ability to Represent Oneself

While financial reasons featured prominently in the vast majority of study participants' stories, the second most commonly referenced consideration in self-representation was the litigants' assessment of and/or confidence in their ability to represent themselves, a factor for approximately 60% of self-represented litigant participants. This factor was also referenced frequently in the court professionals' interviews. Litigant interviewees reported a number of considerations relevant to assessing their ability to self-represent, including case complexity, access to help, familiarity with courts and the process, and education and professional experience. The sections below explore each of these considerations.

Level of Case Complexity

Just over 40% of self-represented litigant interviewees engaged in a discussion about the complexity of their case. Individuals who described their case as easy, simple, straightforward, or using a similar descriptor seemed to convey more confidence in their abilities. Some cited the absence of assets, property, and/or children as contributing to their sense that the case would be easy or straightforward enough to handle without representation. "There were no children involved, no custody, no alimony," one individual explained, commenting that "even if attorneys were reasonable, financially reasonable, I wouldn't have gone that route anyway."[56] Said another interviewee, "The most important fact of it was that I believed it'd be a very simple case. We were only married for a short period of time…no children, or assets, or alimony."[57] Several interviewees similarly expressed that they felt there was nothing for the parties to fight over.

Court staff participants, too, suggested that the complexity of issues in a case influences litigant decisions around self-representation. In fact, about 40% of court participants thought case complexity was influential in terms of litigant perceptions of their ability to represent themselves.

Access to Help

Whether or not an individual had access to resources—legal or non-legal, online or in-person, court or community—was also influential for some self-represented litigant interviewees. This might include the advice of family members or friends, depending on the litigant's specific connections. "I think another influencing factor," offered a participant, "was that I had a friend that had gone through the same process and kind of was able to point me in the right direction in terms of accessing online information and…kind of mentored me through the process."[58] One self-represented litigant found utility in having attorney friends and family available for questions, noting that he and his spouse "had a couple of people in each of our corners that we could turn to."[59]

In a few instances, participants consulted attorneys who explicitly suggested that the case could be handled without legal representation, which in turn influenced perceptions of ability to self-represent. One litigant went to an attorney who, after passing along resources and providing insight on how to conduct the necessary research, suggested to the individual: "It's not worth you paying me to do this stuff when you can do it by yourself."[60] Another participant explained: "I did some research on my own and I thought I understood what the issues were and how to proceed and so then I did consult with an attorney to say 'Am I on the right track here?' and they said 'Yes.' So that made me feel I had confidence to do it."[61]

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56 L43.

57 L33.

58 L59.

59 L15.

60 L20.

61 M8.

A few court professionals connected litigants' assessments of their ability to the availability of resources, including court forms and instructions. "For people who don't have that much money, whatever that means, they're going to do it themselves," explained one court staff participant.[62] He went on to say, "Those are the people who may be educated or savvy on the computer and will look at the forms and say 'I could do this.'"[63] Another participant suggested that litigants seem to perceive that if there is an available form, "they must be able to do it themselves."[64] Interestingly, however, litigant interviewees themselves did not make a connection between the availability of court forms and instructions and the decision to self-represent. Rather, it was the reassurance provided by a human contact that gave them confidence in their ability to proceed without an attorney.

Familiarity with Courts or Legal Processes

Personal experience with and in the court system also appeared to be influential for several study participants. For one litigant, assistance received through legal aid services in a prior child support case helped him better understand the paperwork required in a more recent family case. Another participant expressed the following perspective: "My first divorce, that's really what gave me the impression that this wasn't that difficult, and that if you just kind of did some research, you could figure it out."[65] For one interviewee, now a Ph.D. in public health, prior employment in the court system was influential: "It was sort of demystified for me that I worked with judges, and so I respected their authority but they didn't intimidate me. I think all of that was kind of part of what made me feel like I could represent myself."[66] Another reported that professional experience in law offices contributed to his familiarity with the process and comfort navigating it without an attorney.

Level of Education and Professional Experience

Education and professional experience also came into play during several participants' comments on their confidence in their ability to self-represent. The majority (78%) of self-represented litigant study participants had at least some college study, with 41% holding a degree (29% undergraduate and 12% graduate).

As stated by an interviewee with a bachelor's degree in nursing, "I really feel like because of my education level, that had a lot of influence on my ability to get through the paperwork and kind of understand it."[67] This individual envisioned how "somebody with a lower education level would possibly be confused by the questions [in the paperwork] or the whole process, mainly because it is very overwhelming and parts of it can be really confusing if you're not able to…get the gist of what they're talking about."[68] Another self-represented litigant, a student close to earning an undergraduate degree, explained, "I'm used to trying to research things very intensively, find accurate and reliable information, just being resourceful…how to ask the right questions to the right people. I'm an educated person. I've kind of been through it, and it was all of that that really helped me in the end."[69]

One participant—employed in the business and consulting industry—was able to leverage his day-to-day analysis and presentation experience during the court process: "I also present all the time. I present my work, my knowledge, my logic, and what the expected outcome is. And because I can do that, it served me when I was in court."[70] "I'm professionally

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62 FCS7.

63 *Id.*

64 MCS5.

65 M10.

66 M8.

67 L53.

68 *Id.*

69 M6.

70 F13.

educated and spent ten years in the professional world," said another, who relied on professional experience reviewing legal paperwork to navigate her family case.[71] Likewise, an office manager cited his extensive experience in the office environment, remarking: "Certainly, I'm not afraid of paperwork and the process of keeping track of all that sort of thing, which, I think, in a large part is easily half of the battle."[72]

Preference for Handling the Matter without an Attorney

For the most part, CWC participants did not wish to represent themselves, and in fact, would have welcomed the involvement of an attorney. Nevertheless, just under one-quarter of self-represented litigant participants expressed a preference to handle the matter without attorney representation. In other words, regardless of whether they felt they *could* represent themselves, they felt as if they *wanted* to represent themselves. The underlying sentiments driving litigants' preference to self-represent included the relationship between the parties, agreement between the parties, a desire to retain control, and a do-it-yourself mentality.

Relationship Between Parties

Many interviewees discussed the amicable nature of their relationship with the other party—or the desire to achieve an amicable relationship—in relation to a preference for proceeding without representation. "The whole point of trying to do it without an attorney was to…come to an agreement jointly," said one participant, "so that…we would be able to communicate regarding kid matters."[73] This individual goes on to explain: "I didn't want to ruin the relationship…or what was left of it, so the decision to file [without an attorney] was mostly so that we could maintain a good relationship.[74]

For some participants, refraining from seeking representation in order to maintain a positive relationship was a joint decision with the other party. "My ex-husband and I, we decided to do this," explained one individual:

> He had gone through the courts before, and he was familiar with how ugly things could get, and neither of us felt that. And so, we thought, why even open the can of worms? We don't want to be influenced to the point where somebody says, 'No, you need to get this.' We didn't want that. We wanted to keep it as honorable as possible.[75]

With respect to his relationship with the other party, another participant remarked: "The foundation is we both have a history of working together to solve problems.…That really created an environment of 'how do we do this together,' as opposed to sitting on opposite sides of a legal argument."[76] "We were actually still pretty close when we started the process," said a third individual, "so we didn't want it to be messy, and we didn't want other people controlling our fate."[77] Another participant's intention with proceeding without an attorney was to be as "agreeable as possible" without putting herself at a financial disadvantage. "Getting my own attorney was Plan B," she noted, "but Plan A was seeing if my ex-husband and I could work through it amicably first."[78]

Other litigants pursued self-representation in response to the other side not having an attorney. "The other party kept insisting that we not get attorneys, and that it might be easier, it might be cheaper if we didn't get attorneys," explained

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71 D26.

72 L35.

73 L17.

74 *Id.*

75 L42.

76 L4.

77 L15.

78 L58.

one litigant. This individual went along with the suggestion in hopes that "maybe if I cooperated we could solve it, get something out of the whole thing—friendship or at least try to divide things equally, where we walk away with some respect."[79] One litigant felt "fairly confident" that her ex-husband would not pursue legal help. She noted, however: "I think I would have been more inclined to get legal help if he had—I probably would have sought out a lawyer."[80]

Court participants also touched on the idea that parties who got along or were in agreement on issues may prefer to proceed without an attorney. In one judge participant's perspective, "people who are getting along well don't need attorneys because they can work out the agreement."[81] A court staff participant opined: "Especially if you have an amicable split—those are usually going to be the ones that are like 'we can do this on our own.'"[82] Another court staff interviewee offered the following perspective: "Even those that do have assets and debts that need to be divided, a lot of them, I think, are used to working it out so they don't need an attorney for that."[83]

Agreement with Other Party Reached or Anticipated

Relatedly, a few self-represented litigants simply preferred to handle the matter themselves based on the fact that an agreement had been reached—or the belief that an agreement could be reached—with the other party without the assistance of an attorney. To put these comments into context, approximately 42% of all self-represented litigant participants reported having reached some degree of agreement with the opposing party either before or during the court process.[84]

"We just were in 100% agreement on everything," said one participant. "There was no reason to have an attorney."[85] Another individual explained, "It seemed like if we could come to agreement then there was kind of a path laid out that [the other party] could follow to file the divorce, and you didn't have to use an attorney. That seemed a lot more reasonable cost wise."[86] Similarly, a participant described how she and the other party "didn't want to be trying to finance a lawyer when we thought that we could agree on most everything ourselves."[87]

Desire to Retain Control over Case

A few participants referenced a desire to have control over the case, for a variety of reasons. According to one litigant, "I didn't want my case kind of being taken over by somebody who maybe didn't quite understand where I wanted to be and where I wanted to go with it."[88] Another simply stated: "I felt like I wanted the control."[89] "It felt really important to me," said yet another, "so I don't know that I would have felt comfortable just handing it over and expecting someone to know exactly what I wanted in every nuance of it."[90] A litigant commented, "By the time I hired the private attorney, I was two and a half years into my fight and I had so much mud in the water, so to speak, that it was hard for [my attorney] to

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79 L29.

80 M22.

81 LCS4.

82 LCS12.

83 LCS6.

84 It should be noted that not all of these agreements necessarily held up through to the end of the court process. Further, a majority of participants (58%) indicated that no agreement was reached before the case concluded.

85 L40.

86 L22.

87 L25.

88 L17.

89 L51.

90 M14.

decipher it, and that's when I decided the best person to tell my story to the judge is me."[91] Echoing this sentiment, another interviewee explained, "I feel like even if I was represented by an attorney, no one—not even an attorney—could explain it or tell it how I would, how I was able to tell the judge."[92]

One individual—driven by prior experience with an attorney in a family law case—expressed: "You've got to have the power over your own case. You've got to be the person telling the story, because an attorney won't—and, in all fairness, can't—represent you entirely the way you would like to be represented."[93] Expanding on this perspective, the participant discussed the unique nature of a family case. "[E]ven if you have an attorney that's really trying to do their best for you," he said, "they can't know every detail of your situation. Family matters are years in the building… How can any attorney be expected to know and understand so many years of interaction?"[94]

Do-it-Yourself Mentality

Following from the litigant participants' comments on the desire to retain control and speak for themselves, court professionals (many of whom were concentrated in Franklin County) commonly cited a do-it-yourself mentality as being influential for litigants. Describing these "do-it-yourselfers," one court staff participant explained: "People who are used to handling things themselves, they really see this as another thing you do yourself. If you need a new shed, you build your new shed. If you need to change your child support order, you do it yourself."[95] This individual goes on to note a new culture: "I've especially seen it with a new generation of people in their thirties…They read on the internet, they understand things, they're pretty well-prepared usually."[96] Another professional made a similar comment but related it to a more traditional mentality: "There are people out here who just want to do things on their own, and they get really, really mad if someone brings them into court and tries to air their laundry. And they're not going to put one penny towards an attorney…There's an old-time culture of taking care of business by yourself."[97]

Citing the impact of technology on self-represented litigants' assessment of their ability to represent themselves, one judge participant described seeing a "Home Depot" mentality. Said this individual, "It's just sort of an evolving emphasis on self-sufficiency and self-involvement, I think, that coupled with technology makes people think [self-representation is] a good starting place."[98] This interviewee went on to suggest, "I think younger people in particular, they're used to getting information quickly online in chunks and that's their expectation for the court. And the court's been slow—really slow—in responding."[99] Relatedly, one court staff participant offered the following perspective: "I think with the internet, TV, all of those media kind of public viewing sites…I do think the perception has definitely shifted to, 'yeah, I can do this.'"[100]

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91 D8.
92 D3.
93 M6.
94 *Id.*
95 FCS1.
96 *Id.*
97 FCS7.
98 MCS2.
99 *Id.*
100 FCS8.

Experience with and Perceptions of Attorneys/Attorney Involvement

About 20% of self-represented litigant participants indicated that prior experiences with or perceptions of attorneys influenced their decision about hiring a lawyer in their family case. Approximately half of participants who were asked reported that they had retained a lawyer in the past—that is, before the case at issue in the study. Other participants' remarks suggested that dissatisfaction with attorney involvement in the subject family case influenced the decision to self-represent. The comments generally fall into one of two categories: a sense that the attorney either increased conflict and animosity between the parties or did not bring value to the process.

One litigant recounted her experience with an attorney in an earlier divorce:

> Our two attorneys set the whole thing up and they kept us angry at each other. They would refuse to address critical things that were causing a lot of strife between us because they knew that the more they could keep us not communicating, the more they could be in control of the situation. So seeing that has really ruffled my feathers, and I will never, ever, ever again let an attorney have full rein in my case.[101]

Likewise, a participant who had previously been divorced remembered that the attorneys involved in the prior case "wanted us to pit ourselves against each other, and that's not what it was about."[102] This experience turned him off to the idea of hiring an attorney in his more recent family case. A couple of participants expressed similar sentiment in relation to why they did not continue with their attorneys in the case at hand:

- "I just wanted an amicable separation and ending of the relationship, and so did my ex-husband. We didn't want to go through litigation; we just wanted to decide to do it a certain way and then have the process go through as easily and quickly as possible. I didn't like that the attorney was very aggressive."[103]
- "[T]here was just basically a kind of tit-for-tat between the two attorneys, my representative and my ex's attorney on the most insignificant factors…and I just found that that was such an inefficient use of limited resources."[104]

With respect to the value proposition, one participant found an attorney in a prior divorce to be of very little help. "I decided this time when I filed," said the interviewee, "to not go that route and pay for somebody who wasn't going to be helpful."[105] This feeling was echoed by a handful of litigants in discussing why they decided to self-represent after having an attorney in the case at issue:

- "I just felt like I wasn't getting my money's worth…she wasn't doing a whole lot."[106]
- "I was doing all the work for him and paying him."[107]
- "The lawyer…didn't listen to me and didn't understand what I was saying. I felt like I was much more in charge of the situation than [my attorney] would be even if she had had the time and desire to actually listen to the facts of the matter."[108]

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101 M6.

102 L52.

103 D20.

104 F13.

105 L13.

106 M15.

107 L10.

108 F12.

For a few self-represented litigant participants, perceptions of—as opposed to actual experience with—attorneys influenced their decision concerning self-representation. One interviewee felt "there was absolutely no reason to have a lawyer; it just adds more complication to the process."[109] Participants also connected attorney involvement to perceptions of increased levels of acrimony and related concepts, discussed above.

Court participants also talked about the impact of litigants' perceptions of attorneys, perhaps even to a greater degree than did the self-represented litigants themselves. In one court staff participant's view, "A lot of people have very negative views of attorneys, and there are some bad attorneys out there, so I don't blame them."[110] Another court interviewee suggested:

> I think that there's a perception that lawyers are going to make people more angry with each other and cause it to be a bigger fight over things. So, that's a matter of perception about what lawyers do—people don't seem to understand that lawyers can negotiate on their behalf; that it's not all about litigation.[111]

Reflections on Motivations

Financial issues—especially those related to affordability—were the most commonly referenced factor driving Cases Without Counsel litigant participants to represent themselves, even if other considerations also played a role. These findings are consistent with that of the Macfarlane study, which found that "[b]y far, the most consistently cited reason for self-representation was the inability to afford to retain, or to continue to retain, legal counsel."[112] This is all the more striking in light of Macfarlane's observation that "Some people are uncomfortable acknowledging a lack of financial resources, for obvious reasons."[113] The Canadian study respondents also touched on similar nuances as did CWC respondents with respect to financial motivators, discussing exhaustion of financial resources, frustration with the dearth of affordable services, difficultly maintaining representation, and related themes.[114]

Additionally, the CWC findings are largely consistent with volumes of research coalescing around the now well-known national reality that litigants, especially those in family court, often cannot meet the high fees set by private attorneys. The cost of representation in a family case is difficult to assess, particularly with all of the variables that may play into the final tally. However, estimating a low hourly fee of $100,[115] it is easy to imagine the monthly and cumulative burden that legal fees would place on a litigant earning $1,666 a month pre-tax ($20,000 annually)—particularly for divorce and separation litigants whose case type implies a change in financial circumstances and who often have children. Indeed, 43% of CWC study participants reported earning less than $20,000 per year, despite the fact that about 80% of participants had more than a high school education.

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109 L40.

110 LCS8.

111 FCS1.

112 More than 90% of the Canadian study sample referred to financial reasons. Macfarlane, *supra* note 7, at 39.

113 *Id.*

114 *Id.* at 39-44.

115 A recent effort to gauge the cost of divorce across the states suggested that the average hourly attorney fee is $260 in Oregon, $230 in Colorado, $200 in Massachusetts, and $304 in Tennessee. Elyssa Kirkham, *The Best and Worst States to Get a Low-Cost Divorce*, MSN.com (Feb. 3, 2016), http://www.msn.com/en-us/money/everydaymoney/the-best-and-worst-states-to-get-a-low-cost-divorce/ss-BBp3Rb5. In California, the average family law attorney charges approximately $300 or more an hour, with retainer requirements of approximately $5,000. Bonnie Hough, *Self-Represented Litigants in Family Law: The Response of California's Courts*, 1 Cal. L. Rev. 15, 16 (2010), *available at* http://www.courts.ca.gov/documents/01_15_Hough.pdf.

Furthermore, the 2008 financial crisis affected an estimated 40% of American households.[116] An American Bar Association survey of judges, administered in late 2009, found that 60% of respondents reported an increase in self-representation immediately after the recession, and 49% reported an increase in domestic relations case filings.[117] The effects of the recession were widespread, substantially affecting employment and retirement for millions of Americans.[118] Some commentators have cited changes in consumer spending patterns post-recession,[119] suggesting a focus on saving that perhaps influences litigants' thinking with respect to legal services expenditures. One CWC participant commented: "I'm saving myself a lot of money that I don't have."[120] Indeed, as in the CWC study, court professionals who took part in the Macfarlane study "emphasized that if they needed to retain counsel they would be in the same position…unable to afford legal counsel."[121] In the context of legal representation, the financial reality for individuals is exacerbated by the limited supply of free and low-cost legal services.[122]

There were those in the CWC study who indicated representation was not necessarily cost-prohibitive, but who represented themselves in order to preserve or allocate elsewhere financial resources. This theme was also consistent with Macfarlane study findings,[123] as she explains: "There is a reluctance to pay rates of $350-400 an hour for work that the client often feels that they have little control over, and no real means of scrutinizing whether they are receiving value-for-money."[124] The intangible nature of legal services and litigant difficulties perceiving the value of such services similarly came through in CWC interviews, with one court staff respondent suggesting litigants "want to know, if they're going to spend *X* number of dollars, what are they going to get for that?"[125] He went on to explain: "You pay the plumber, you pay the guy to shovel the snow, to fix your roof, but that's the tangible thing. You see what you get." Predictability—or lack thereof—also plays into this conversation. Referencing an example put forth by a CWC court professional, a criminal defense attorney can sit down with a third-offense DUI client and predict the sentence with some degree of certainty, whereas a family lawyer has far less ability to predict outcomes in a divorce or separation case.

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116 Michael D. Hurd & Susann Rohwedder, *Effects of the Financial Crisis and Great Recession on American Households* 21 (Nat'l Bureau of Econ. Research, Working Paper No. 16407, 2010), *available at* http://www.nber.org/papers/w16407.pdf.

117 Linda Klein, ABA Coalition for Justice, Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts (Preliminary) 2-3 (July 12, 2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyReport.authcheckdam.pdf .

118 *See* Hurd & Rohwedder, *supra* note 119, at 2.

119 *See*, *e.g.*, Kathleen Madigan, *Post-Recession, Have U.S. Consumers Abandoned Their 'Shop 'Til You Drop' Mentality?*, Wall St. J. (Apr. 14, 2015, 3:58 PM), http://blogs.wsj.com/economics/2015/04/14/post-recession-have-u-s-consumers-abandoned-their-shop-til-you-drop-mentality; Jeff Guo, *These charts show just how historically bad the recession was for U.S. consumers*, Wash. Post (Oct. 3, 2014), https://www.washingtonpost.com/news/storyline/wp/2014/10/03/these-charts-show-just-how-historically-bad-the-recession-was-for-u-s-consumers/.

120 L20.

121 Macfarlane, *supra* note 7, at 40.

122 According to Legal Services Corporation, the largest funder of civil legal aid in the country, "The demand for legal aid far outstrips the resources available….Recent studies indicated that legal aid offices turn away 50 percent or more of those seeking help. The size of the population eligible for legal assistance has increased dramatically from 2007." *About LSC—Who We Are*, Legal Serv. Corp., http://www.lsc.gov/about-lsc/who-we-are (last visited April 5, 2016).

123 Macfarlane, *supra* note 7, at 40-41.

124 *Id.* at 40.

125 FCS5.

While financial motivators for self-representation predominated among litigant respondents, the CWC study illustrated that it is a multifaceted decision. For example, self-represented litigant respondents sometimes indicated a desire to represent themselves or confidence in their ability to represent themselves in conjunction with financial motivators. Participants in the Cases Without Counsel study discussed financial issues in a fashion similar to Macfarlane's Canadian self-represented litigants: "While cost was clearly a major factor in self-representation for almost every respondent, many [self-represented litigants] were explicit about their inability to pay for legal counsel, while others were more circumspect and advanced a range of blended reasons for self-representation of which money was just one."[126]

The CWC interviews—of both litigants and court professionals—suggest that a litigant's perception of case complexity influences his or her confidence in navigating the system without an attorney, with higher levels of confidence for simpler cases. Of those CWC litigant interviews in which case complexity was discussed,[127] 80% reported that this influenced their decision to proceed without an attorney. This issue has been discussed elsewhere in the research and literature on self-representation.[128]

Broadly speaking, high numbers (approximately 60%) of CWC litigant participants expressed a positive assessment of their ability to represent themselves at the outset of the case, with many specifically citing familiarity with the process, level of education, or professional experience as factors in that assessment. The Macfarlane study similarly found that confidence in ability "was often associated with prior experiences that the individual believed equipped them well for tackling a court procedure."[129] Additionally, among those respondents, "the largest group expressing initial confidence had university degrees[.]"[130] Indeed, CWC participants with graduate degrees expressed confidence in their abilities at a rate of about 80%.

It is worth noting that only 10% of participants in Macfarlane's study expressed "confidence from the outset that they could handle their case themselves."[131] As described above, much higher numbers of CWC litigant participants indicated they felt confident in their abilities, at least at the outset. The reason for this difference is not clear, but it is one of only a few areas of divergence.[132] Though not specifically asked, some CWC participants described how the assessment of their ability changed over time. While there were participants whose confidence increased over the course of the case simply by virtue of increasing familiarity with the court process, the general sentiment among CWC participants addressing this issue was one of becoming deflated, which broadly aligns with Macfarlane's finding that some self-represented litigants "began with a sense of confidence, which usually drained away quickly when faced with the reality of the court process."[133]

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126 Macfarlane, *supra* note 7, at 39.

127 Case complexity was discussed in 49% of all CWC litigant interviews.

128 *See, e.g.,* Bonnie Rose Hough & Laurie D. Zelon, *Self-Represented Litigants: Challenges and Opportunities for Access to Justice*, 47 Judges J. 30 (2008).

129 Macfarlane, *supra* note 7, at 48.

130 *Id*. at 50.

131 *Id*. at 48.

132 It is important to note that neither interview protocol contained a direct prompt to inquire about levels of confidence; rather, the discussions concerning confidence arose naturally from the questions on motivations and expectations. *See infra* app. C and Macfarlane, *supra* note 7, app. E at 133-34.

133 *Id*. at 50.

As discussed above, CWC study participants generally did not prefer to handle their case without an attorney—a perspective shared even by many of those who felt confident in their ability to self-represent. It seems that higher numbers of Macfarlane study respondents "expressed a personal determination to take their matter forward themselves" than did CWC litigant participants, with some becoming increasingly resolute as the case progressed.[134] Still, there was a group of CWC litigant participants who did express a desire to represent themselves. Further, a desire to maintain or facilitate an amicable relationship with the other party seemed to be influential for those with a preference to self-represent. In other words, the perception for these individuals was that involving an attorney would work counter to the goal of maintaining amicability. Certainly, some CWC participants explicitly articulated this belief; others simply implied it by virtue of connecting their decision to self-represent with the goal of maintaining an amicable relationship.

CWC participants who commented negatively on experiences with attorneys or perceptions of attorneys gave explanations that were consistent with Macfarlane's findings, detailing feelings that counsel "did nothing," made mistakes or was otherwise incompetent, or did not listen or communicate.[135] While it is not possible to substantiate respondent claims related to attorney competence, lack of or inadequate communication between clients and counsel featured throughout the stories of those with negative perceptions, potentially indicating that the litigant did not know or sufficiently understand what the attorney was doing, which in turn fostered sentiments of attorney laziness or incompetence.

Though some participants recounted negative perceptions of or experiences with attorneys, most would have welcomed an attorney's assistance for parts of or the whole case. As noted above, the desire for legal advice or representation was substantial among CWC litigant participants, with more than 85% of those commenting on the issue expressing a desire for such legal assistance.

Taken together, the Cases Without Counsel narratives on factors influencing self-representation suggest that study participants did not so much leave attorneys out of the family court process; rather, attorneys effectively removed themselves by pricing services out of the reach of these litigants. Additionally, for the small but definitive subgroup of respondents for whom this was not the case, the benefits that an attorney might bring to the table were outweighed by the questionable impact (perceived or real) that attorney involvement might have on the case. This suggests opportunities for the private bar and public legal service providers for delivering, messaging, and marketing legal representation.

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134 Approximately one in five Canadian study participants expressed this view. Among most of these individuals, Macfarlane notes that "a common rationalization was that no lawyer could possibly understand the case, and what it meant to them, as well as they did themselves." *Id*. at 49. Among CWC litigant participants, only a few came to this conclusion—the bulk expressing a preference for handling the matter cited issues pertaining to the other party.

135 *Id*. at 44-48.

PART THREE

EXPERIENCES NAVIGATING THE PROCESS

An express goal of the Cases Without Counsel study was to give self-represented litigants the opportunity to detail their experiences in making their way through the family court process. This section presents consistent themes that emerged across jurisdictions concerning litigant approaches and strategies in bringing their cases to resolution. Specifically, interviews discussed sources of help and guidance; the opaque nature of the legal process; difficulties completing and filing paperwork; and facing in-court appearances. The types and availability of resources vary from jurisdiction to jurisdiction, and this report does not address the resources specific to each jurisdiction.[136] Rather, the consistent information presented here can help ensure that the dialogue on self-represented litigant resources includes the perspective of litigants, as well as court staff and judges.

Preparing and Seeking Sources of Advice, Information, and Support

The vast majority of self-represented litigant study participants actively worked to identify resources and conduct research. Over 90% of self-represented litigant participants reported using at least one resource to help them understand and navigate the process; more than 85% leveraged multiple resources. This section discusses common themes related to online resources, in-court resources, legal assistance, and friends and family. With respect to each of these categories, the general sentiment was that—to the extent available—resources were more helpful than unhelpful. However, each category also has important challenges for litigants, outlined below. The underlying challenge for all resources seems to be tailoring general advice to a specific situation.

Online Resources

The internet—including both court-affiliated and independent websites—was the most utilized source of information for litigant participants, with almost three-quarters reporting seeking help online. Study participants spoke of accessing forms online where available,[137] in addition to researching substantive legal issues and obtaining guidance on the family court process. Just over two thirds of all study participants indicated that online resources were helpful. "Online is by far the easiest today," said one individual, who conducted the bulk of her research using online sources.[138] Another described: "The county, I believe—or maybe it's the state bar—has all the documents online with instructions, and I can't tell you how valuable that was as a resource. It was pretty amazing, and I don't think most people know that it exists."[139] For a few, internet search engines were the best resource they encountered during the process. When asked, one participant responded, "Google. I mean, I went online and I looked up [the state's] laws for child support and I downloaded the handbook. And I read it cover to cover."[140] This was especially true for the internet-savvy: "You can do it online. You can find out anything online."[141]

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136 Though not relevant to the aims of this broad report, IAALS will provide each jurisdiction with a report detailing findings on relevant resources.

137 In the Davidson County Circuit Court, forms are available to self-represented litigants only for couples who have no dependent children, land, businesses, or retirement benefits and are in agreement on the division of property and debt ("Agreed Divorce"). *Court-Approved Divorce Forms-Instructions to Divorce Forms*, Tenn. St. Cts., http://www.tncourts.gov/sites/default/files/docs/agreed_divorce_instructions_-_march_2012.pdf (last visited April 5, 2016).

138 L1.

139 M10.

140 D25.

141 M15.

Nevertheless, while helpful, such resources were not necessarily sufficient. Drawbacks discussed include limited availability of information and difficulty finding the information available (navigability issues). In terms of the former, some litigants did not find online resources to be enough to get them through the process. One study participant explained: "I don't recall from my situation having internet resources that I could use to help me navigate this on my own."[142] "There's not as much information on [the court's] website as I wish there was," expressed another litigant.[143]

In terms of navigability, several study participants across jurisdictions commented on difficulties locating the desired forms and information through online sources. Said one self-represented litigant, "It wasn't self-evident; it wasn't user-friendly or intuitive in any way to find the forms you were looking for and then to understand which ones you should be using."[144] Another participant noted: "I just think that even the web interface for that could be much simpler."[145] "I did look at them," one litigant said, referring to the court's web pages, "but they're messy…and hard to navigate."[146]

Court Staff and In-Court Resources

Court clerks, judicial clerks, dedicated self-help center staff, and other in-court resources such as law libraries and informational programs were also commonly accessed sources of information where available. Participants were likely to indicate such in-court resources were useful, particularly in the sense that they found it helpful to work with a live, knowledgeable person and to be able to ask questions specific to their situations.

The main referenced challenge centered on court staff erring on the side of caution in walking the line between providing legal information and legal advice. Several self-represented litigant participants reported hearing court staff provide stock responses to the effect of "I cannot give legal advice." "Even just kind of basic questions I had," said one self-represented litigant, "they weren't able to give me assistance because it would be legal advice."[147] According to another participant, "Every time you would try to ask a question, I got told: 'We can't give you advice; we can't help you. Figure it out; look it up.'"[148] Yet another noted: "They have this absolute knee jerk, 'We don't give legal advice' response, and so you can't even ask them 'Which form do I file first?'…Any question you ask, they say 'we're not giving legal advice.'"[149] Finally, a study participant offered: "I noticed there were a lot of questions about process.…The people at the courthouse, I didn't feel like they were skilled at or empowered to answer those types of questions."[150] This highlights a discrepancy in understanding between litigants and court staff concerning what questions can appropriately be answered.

Court staff also reflected on the line between legal information and legal advice when litigants seek answers to their questions. There were those who expressed a more withholding attitude:

> Our number one problem…is [self-represented litigants] want us to tell them what to do, which is a natural – it's a natural thing. Anytime, if you go to an auto body shop, you want them to tell you what to do. You come to court, I want the clerk's office to tell me what to do, tell me how to do this. And that is our issue with a lot of it because there is – we can get you there but I can't tell you the rules of the court. I can't tell you, you know, when you're supposed to file something. I can't tell you the time limits…you have to follow. I can't tell you all those things, so that to us is the number one issue.[151]

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142 D32.
143 M6.
144 F13.
145 L46.
146 M23.
147 L53.
148 L38.
149 M8.
150 M14.
151 DCS4.

And others who reported being more forthcoming:

> [A former judge] said it was simple. "Never make any statements that involve the word 'should.'" I think that was borderline brilliant. What you really ought to do, what you should do, no, no, no. Here are three options that seem to fit the scenario that you're presenting. The strategy that's involved in doing one of those is the decision you have to make. I think the strategy is one of the things that falls into – I can give you options but I can't suggest a strategy.[152]

Attitudes and understandings were found to vary not only from individual to individual but also based on court culture.[153] However, across jurisdictions, the tension is certainly real. As one court staff participant framed the issue: "The biggest problem [is that] these people have legitimate legal questions that the court can't answer."[154]

Briefly, it should also be noted that there were study participants who did not have knowledge of some of the in-court resources available, even after their case had concluded.

Legal Advice and Representation

About half of study participants reported that they had experience working with an attorney in their case, whether through formal representation for some of the case or interaction with an attorney in their family case short of securing representation. Among these participants, negative experiences outnumbered the positive.

Litigants who described negative interactions with their attorneys focused on feelings of being treated poorly, perceptions that the attorney did not add value to the process, questions about competency and ability, and difficulty with attorney fees. To illustrate:

- "[H]e was a jerk, you know? And I, even at the end when I got the $9,000 bill, I was just like, 'If I would've known I was paying you this much, I never would've let you yell at me.'"[155]
- "I think [my lawyer] is a travesty to the attorneys that actually do work.…I paid too much money for somebody to just leave me high and dry."[156]
- "I gave her a $3,000 retainer fee and she billed – my bill right now stands at just under $12,000 for two days in court, most of it was paperwork and she was pretty much ripping me off."[157]
- "I thought [things submitted to prove the case] could have been helpful, why are we not using these things?...[A]nd then there was information that was submitted that wasn't accurate."[158]

Litigants detailing positive experiences with attorneys touched on the benefits of having representation from a substantive and procedural standpoint, but also in terms of having assurance and emotional support. One litigant participant, who hired an attorney after being self-represented, described having representation as a "huge stress relief," explaining: "I can call my attorney and if I have a question on anything that I might not know the answer to or might be a little insecure about…she'll walk me through the process, and I'll be taken care of right."[159] Another, who obtained representation for the

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152 FCS3.

153 For example, Larimer County is subject to a Chief Justice Directive encouraging the provision of assistance to self-represented litigants and specifically outlining what constitutes acceptable and prohibited conduct. This document also provides educational information to litigants concerning what kinds of questions they can expect to have answered. Colo. C. J. Directive 13-01 (June 12, 2013), *available at* https://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf. In contrast, the Davidson County Juvenile Court has a disclaimer for self-represented litigants affirming an understanding that any questions are best directed to an attorney. *Pro Se Disclaimer*, Juv. Ct. Clerk, Metro. Nashville & Davidson County (2014), *available at* http://juvenilecourtclerk.nashville.gov/wp-content/uploads/2014/10/ProSe-Disclaimer.pdf).

154 LCS10.

155 M25.

156 D13.

157 F4.

158 L35.

159 D5.

final three months of the case, described his attorney as a "voice of reason" and a "buffer," providing the right amount of information to make informed decisions but not burdening him with all of the details when he was "in a fog."[160]

Some study participants beyond those who were formally represented in their case reported having received legal advice. The most common strategy participants cited for obtaining legal advice was taking advantage of initial or periodic consultations—whether free or paid. Participants described using consultations for guidance, strategy, and document review, suggesting some creativity in exploring non-traditional means of securing legal services.

Most of those employing this approach found consultation(s) to be useful—for a few litigants, the limited advice was just what the participant needed to move forward on his or her own. Of his multiple consultations, one participant remarked: "I think the amount of lawyer help that I had was kind of perfect."[161] Another self-represented litigant, who kept some funds on file with an attorney and consulted periodically throughout her family case, noted "It was really, really, really comforting to me—I don't think I could have done it myself without having access to that guidance."[162] This data highlights that litigants perceive legal advice—at any level—to be emotionally supportive, helping them to navigate the process with less stress. Very few self-represented litigant study participants reported receiving legal advice or representation through legal aid services, free or reduced-cost representation by a private attorney, or law school clinics. Many who attempted to access these resources could not, due to issues of ineligibility or unavailability.

- "I applied for legal aid to the point where they knew me on a first name basis, and they denied me every time.…They didn't have the staff or the time."[163]
- "The local Legal Aid Society only did divorces where there was physical abuse involved."[164]
- "[The opposing party] actually had a legal aid lawyer, so I couldn't even apply because of conflict of interest."[165]
- "I called legal aid here and they couldn't represent me—ever—because they represented my ex-wife in the divorce. So, I just had to do it by myself."[166]
- "I've tried plenty of times to find a pro bono attorney and I keep getting told I make too much money."[167]
- "Most of [the attorneys] had said that they don't deal with child custody issues, so it was kind of hard to find a free attorney."[168]
- "I keep trying to go back to [the law clinic] but they are full—they're not taking on any more cases now."[169]

Friends and Family

Another resource participants discussed was friends and family. These litigants reported seeking either legal guidance or in-person emotional support at the courthouse from these individuals.

Litigant interviewees sought help from friends and family members with various levels of experience, including divorce attorneys, others who had been through the family court process, and those with no legal experience. There were mixed—if not predominantly negative—reviews on the legal advice provided by friends and family. Nevertheless, some found

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160 L29.
161 M16.
162 M14.
163 L19.
164 D14.
165 M26.
166 M30.
167 D2.
168 D12.
169 D2.

receiving help with paperwork to be useful. Those who commented on the helpfulness of having friends and family for emotional support largely reported positive experiences. According to one participant, who brought his fiancée to the courthouse, "it keeps you at an even keel where you're not too antsy or anticipating too much, or [too] emotional."[170] "I did find it helpful," said another study participant, "very helpful, for the support and knowing that I'm not going there alone and trying to understand the situation alone."[171] Yet another interviewee recounted: "I had a couple friends show up just to give me a little bit of moral support and comfort. Not that they could do anything other than give me a hug, but it was good to have them at least there."[172]

Court staff participants, too, referenced the benefits to litigants of having friends and family with them in the courthouse. However, these participants also discussed the challenges associated with the presence of individuals who are not a party to the case. One court staff respondent explained: "We get plenty of cases where people bring their family, their friends. Sometimes it's a good thing. Every so often, it's a bad thing because one side is jealous that maybe so-and-so is with the boyfriend that caused their relationship to break up, and now they're going to sit there and look at that person in court."[173] In another individual's experience, "sometimes the support person will do more talking than the actual litigant, and we have to quickly tell that person, 'No.'"[174] "I do believe that a lot of people do bring people in because they don't understand the process," said a different court staff participant, "but if they are not a party to the case and they are starting to really cause some conflict, I will ask them to please sit down."[175]

Understanding the Flow and Stages of the Family Court Process

The interviews suggest that a great many self-represented litigants struggle with understanding how to navigate the process and knowing what to expect at various stages. Said one participant: "The entire process was extremely difficult… But, as far as the actual divorce and trying to navigate through that to even get to a court date and trying to get some kind of resolution that was fair, that was impossible without an attorney."[176]

Some described a sense of feeling lost or being in the dark. One participant, citing her lack of understanding around the process as the most stressful part of the court experience, opined:

> If you were going on a trip, you would get a map and you would know where you were going. You would have a destination. You would know the route you were taking. The most stressful part is that I didn't really have an understanding of that until almost the end of the process.[177]

Similarly, another remarked:

> It felt very much like wandering through a room with no lights on, and you'd bump into something, you'd ask somebody about it, and they'd shine a little flashlight and say, 'go that way'.…Nobody ever turned the lights on in the whole room to give us an idea of exactly what it should look like and how the process should look.[178]

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170 D13.
171 F7.
172 M6.
173 FCS5.
174 DCS7.
175 LCS11.
176 D32.
177 M14.
178 L4.

"You kind of sit in the dark…when you don't have a lawyer," explained a participant, "and that's kind of hard because you don't really know what's happening."[179]

Litigant study participants also discussed the uncertainty that accompanied this overarching lack of understanding. In the words of one participant, "There were just so many unknowns, just trying to sort through things and read through things on your own—it was incredibly stressful."[180] Another litigant described being anxious that there was something obscure—a form, deadline, or some other expectation about which she had no knowledge or way of knowing—that would impact the flow or outcome of her case. Similarly, for one participant, the uncertainty he experienced in his divorce case became all-consuming:

> Just wondering if you're doing everything right and being meticulous enough…Is there another step that I should be taking? Is there a motion I could be putting in that would allow them to not do this? Is there something I could be doing…it's the predominating thought in your mind…everything else in your life becomes a momentary distraction.[181]

"I have a Master's Degree—technical stuff I can usually navigate," another participant explained, "but it was very nerve-wracking because this is a really important situation. You want to do it right, you don't want to get yourself in trouble, and you don't want to get in trouble with the court."[182]

A few participants discussed how their gaps in understanding of or knowledge about the process impacted their case. For example, describing his experience, one participant recounted: "You make a lot of mistakes—and that's part of why things have been coming out so wrong, because I made a lot of mistakes. And the court cuts you no slack…it's to the point where I'm like, 'I give up my rights' because it's so wrong."[183] Another participant remarked, "I told the judge about that, that I was on Social Security for a learning disability, and they still didn't really care. They still went on. Me having a lawyer would have helped me understand a lot more and possibly get visitations with my daughter."[184]

Court staff and judges also commented on frustrations that they perceived to be related to self-represented litigant gaps in understanding of and expectations about the process. From the perspective of one court staff participant, "a lot of the frustration is that…they've done step one, they've done step two, and didn't know there was a step three."[185] Another court staff participant suggested: "They want to know everything that's going to happen as soon as they get here, through the whole process, and you can't possibly give them all that information."[186] This participant highlighted the positive impact of helping self-represented litigants understand the process, to the extent possible:

> Just like when you go to the doctor and you understand what's happening. It really just calms everyone down. I'm not saying what's going to happen—what the judge is going to decide. What I'm saying is, if they understand the procedure, it makes more sense and they kind of just settle down.[187]

A few litigants raised the issue that legal terms and sophisticated technical language contributed to gaps in their understanding and expectations of the process. From one self-represented participant's perspective, "The whole system

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179 D30.
180 L39.
181 F1.
182 L22.
183 L19.
184 F7.
185 D8.
186 FCS4.
187 *Id.*

is really such an intellectualized system that it is very difficult to get it without having studied it. It really is like speaking another language."[188] Another explained:

> Lawyers have written the documents…so they know the verbiage and they know what this is for and what that's for. But, for me to try to read through all of that and then actually comprehend what is going on, it may take me hours and I may not even get it because I don't have the training.[189]

In discussing the esoteric legal terminology encountered in the process, another interviewee suggested: "It's almost like a self-enforcing economy—you write laws in a language that the average person can't understand and then you have to pay for someone to interpret those for you."[190] "Even if you were a high school graduate or perhaps even a college graduate," suggested a court staff participant, "if you've never had contact with a court system before, there's a whole world of terminology that people aren't familiar with, and it makes it really difficult."[191]

Completing Forms, Filings, and Other Paperwork

Another common thread appearing throughout many litigant interviews was difficulty with forms, filings, and other paperwork required in their family court case:

- "I didn't know anything about the paperwork."[192]
- "The stack of paperwork that you get and trying to get everything together is a little overwhelming."[193]
- "In the middle of it, you kind of feel like you're just drowning in paperwork."[194]
- "Just trying to accumulate the right documentation was stressful."[195]
- "The hardest thing, the most time-consuming, was those forms."[196]
- "The amount of paperwork, the format that they want things written in and the amount of things that have to be notarized is insane."[197]
- "I think the most difficult were the forms—they just went on and on and on."[198]
- "It sure is a lot of paperwork…It's so easy to get married—it takes one signature on a little piece of paper—and to get divorced is so hard."[199]

Delving deeper into litigant challenges related to case paperwork, self-represented litigants commonly cited difficulty understanding how to fill out forms, making the point that form availability is important but not sufficient. "I think, honestly, the most intimidating part of the process," one participant explained, "was the paperwork and trying to understand what information was required."[200] This individual went on to note that it is not a matter of being educated:

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188 M16.
189 D13.
190 L46.
191 FCS2.
192 D5.
193 L24.
194 L39.
195 M5.
196 L42.
197 M12.
198 L42.
199 L25.
200 L17.

"I have a graduate degree…and even for me, it was very, very challenging." Furthermore, those who identified a portion of the process for which attorney assistance would have been particularly desirable frequently mentioned completing and filing documents and forms. Agreeing that the paperwork was "stressful," another participant recounted, "I had to submit income statements and also the documentation for child custody. And I wish I had an attorney there to explain all of it."[201]

Whether because they made mistakes, omitted necessary information, or submitted the wrong form altogether, several self-represented litigant interviewees reported having their paperwork returned, sometimes cycling through several iterations before the court accepted the forms. One participant remembered: "[T]he mistakes I made partway through the process made me have to resubmit and re-document, and delay things."[202] Understanding the reasons for the rejection and/or how to cure errors was not always apparent.

A few litigant participants commented that the court did not always adhere to expectations concerning documentation. One described having spent "a ridiculous amount of time filling out paperwork and putting documents together, and then when it came to ultimately filing those things, they weren't even considered, or accepted, or filed at all."[203] Another noted that "it was difficult to discern what the court wanted, and we wound up filling out quite a bit of paperwork that wasn't used because the website indicated that we would need it."[204]

Judge and court staff participants similarly suggested that forms, paperwork, and other court documents were a substantial source of frustration for self-represented litigants, largely mirroring the themes litigant interviewees reported.

Said one court staff participant, "The forms are too technical; the instructions…[are] as clear as they can be, but they're legal forms. Attorneys go to school and learn all of this legal stuff, and you have a party that's coming in with maybe a high school education at best trying to do these forms."[205] "They do get a little frustrated," said a court clerk, "because they may have to come several times or redo a document."[206] As would be expected, this individual noted, this situation happens for self-represented litigants "more than if someone's represented by counsel—they're not going to have to go through that."

With respect to the frequency with which some self-represented litigants' paperwork is returned, one court clerk explained: "It's rare that they get the forms correct on the first go around, and often they're still not correct on the fourth or fifth go around—and that becomes very frustrating for them."[207] Another described sitting with self-represented litigants in the hall and going through forms to identify errors. "Many times," said this individual, "they have to go right back down to the clerk's office and start fresh."[208] The overlap between the litigant and court participant comments on this subject paint a picture of inefficiencies in rounds of filing, review, rejection, and return.

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201 L60.

202 L59.

203 L41.

204 M5.

205 MCS8.

206 DCS12.

207 MCS5.

208 DCS15.

Preparing for Trial and Participating in Hearings

Of the litigant participants who reported their case was completed, just under half of were unable to reach any degree of agreement in their case, indicating that the issue(s) in dispute were resolved in court. Though the interviews did not always directly address whether the litigant had participated in court hearings, many interviewees indicated having done so. Litigant comments surrounding court appearances demonstrate that participants often found this aspect of the process to be difficult and a source of frustration.

Knowing what to expect in court—or what was expected of them in court—was problematic for some litigants. One study participant explained: "I wasn't sure if I would be asked questions about the reasons for divorce, or if I would be having to defend myself on any point."[209] Another participant described: "When I was summoned, there was no breakdown of what I needed to bring to court." He went on to explain that when the court date arrived, "There were a few things that I didn't have that I needed.…And then I went from there, because they obviously gave me an idea of what I needed at that point." A third questioned: "How can I be prepared? What kind of questions are you going to ask me? What kind of stuff should I bring? What kind of proof do I need? You don't really know any of that stuff going into it."[210] One interviewee remembered struggling to identify and present relevant evidence: "I felt like I needed to have a lawyer's level of knowledge to know what to expect."[211]

Some litigants specifically discussed difficulties associated with introducing and presenting evidence. Recalling her experience amassing trial exhibits, one participant remarked: "I had to know what wording to use, why [it was] relevant to the case, and then present the evidence. So, that was very difficult, very frustrating, mainly because I didn't know what to expect or what I needed to have for that."[212] Another participant described the court as "a very structured environment that is not layperson-friendly."[213] This individual suggested that an "attorney's support there would have taken away a lot of the anxiety I was feeling, just making sure that I wasn't going to get knocked out of court for having the wrong document."

One self-represented litigant remembered feeling more comfortable after she was four or five exhibits into the trial and had begun figuring out what the judge was looking for on both the process and evidentiary fronts. This individual opined, however, that "somebody with a lower education level would be a lot more intimidated and might not be able to get their point across."[214] She explained that the opposing party in her case had a lower level of education and went on to suggest: "I think to some degree it was to my benefit that they had a lower education because they weren't able to respond appropriately or understand the process as well as I was."

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209 L33.

210 M13.

211 L53.

212 *Id.*

213 F13.

214 L53.

Judge and court staff participants echoed the stories of many litigant participants, often observing struggles with trial preparation, evidentiary matters, and other courtroom procedures. With respect to evidence, according to one judicial participant, "They don't know what it is; they don't know how to present it."[215] "Just the mechanics of presenting evidence, they don't know," recounted another, explaining:

> That's perfectly logical, I mean, how would they know?…They have a whole course in law school on evidence and still, people are lawyers and they don't understand… Why should they care about it? They shouldn't, they're not lawyers; they don't care about those things. And they, as human beings, they shouldn't—but I have to, and that's my job, and I can't give up that role.[216]

Court staff and judicial officers perceived self-represented litigants as struggling with a range of evidentiary-related issues:

- Completing and exchanging requisite pretrial disclosures;
- Conducting discovery;
- Compiling and submitting exhibits;
- Identifying relevant evidence;
- Entering documents and other materials into evidence;
- Distinguishing between relevant and irrelevant evidence;
- Remembering to bring admissible evidence to court;
- Conducting cross-examination; and
- Asserting evidentiary objections.

Broadly speaking, one judge suggested: "I think they understand generally what the law is, assuming it's not something more complicated…but they don't know properly how to get the case before the court."[217] Several court participants commented on the perceived root of these difficulties. In one participant's opinion, "The biggest problem that they have is figuring out what they need to say to the court to argue their case."[218] This individual and other court staff described a frequently occurring scene: self-represented litigants having serious difficulty distinguishing between non-legal and legal issues. For example, another court staff participant noted: "It's the inability to focus on a legal issue that's before the court that is such a challenge for pro se litigants, because they bring to it a lifetime of issues and problems that they want a solution for."[219]

A judge participant remarked: "I know that very frequently people get very frustrated when I'm cutting them off because they're telling me something I don't need to know."[220] A court staff participant reported witnessing a similar situation: "When they're [in court], they couldn't care less about procedure and rules. All they want to do is get to their story. They don't understand why sometimes the judge will cut them off when all they're trying to do is tell their side of the story."[221] This individual suggested that a common litigant reaction to this scenario boils down to the following sentiment: "'There is no way you're going to be able to come to a fair conclusion in my case if you don't hear what I have to say.'"

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215 LCS2.

216 LCS1.

217 LCS2.

218 DCS8.

219 FCS6.

220 MCS1.

221 DCS7.

Another judge—suggesting that the most common self-represented litigant frustration is "feeling like they didn't get to tell me about all their feelings"—explained:

> They want to—and I do let people—vent to some extent. But, there are time limits and relevance issues, and, also, I don't like to escalate hearings by letting people bring in all sorts of accusations and things…I want people to have a chance to speak and have their story heard, because sometimes just that in itself can make people relax and feel like they got a fair hearing. But I can't do that; I can't let them stand up and slander each other, and it's not productive to do that.[222]

Judicial participants were specifically asked for their perspective on applying the Rules of Evidence to cases involving self-represented litigants. Only a few reported *not* encountering challenges. "I don't have a problem being pretty active with self-represented litigants," noted one judge participant, explaining, "I think judges err usually the other way; I think judges err by not being active enough. And I think that's not neutral because that gives one party who's smarter or savvier or more computer literate a big advantage over another party."[223] However, by approximately three to one, judicial respondents indicated that the rules of evidence can be problematic in cases involving self-represented litigants. This judge goes on to suggest: "I've thought sometimes we should just come up with some really simplified way of doing evidence, but that's not the way our legal system works…it makes things more and more complicated rather than more and more simple usually."[224]

Another judge broadly suggested: "You have to bifurcate out two self-represented from one self-represented and one lawyer; you have to differentiate that experience."[225] With respect to those cases in which both parties are self-represented, interviewees described relaxing evidentiary rules and procedures. "If they're both self-represented," said a judge participant, "the rules of evidence get real loose simply because the people don't know when to object to hearsay or anything else, and if somebody's not objecting, the court's probably going to let the evidence in."[226] Another noted, "When they're both self-represented, I probably give them a little more leeway."[227]

Some commented on challenges that arise in cases where one litigant is self-represented and the other has an attorney. "What happens at that point," said one participant, "is that the objections get asserted by the lawyer…on the other hand, the self-represented person doesn't know to object, and so the lawyer feels free to try to elicit anything that they can get that's going to help their case which would not otherwise be in. So, that part is very problematic."[228] Another judge described: "[W]hen you have a lawyer, they'll make all sorts of objections and the other side won't have a clue as to what objections they could make. And one thing I won't do is make objections for people."[229]

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222 LCS3.

223 *Id.*

224 *Id.*

225 MCS2.

226 DCS2.

227 LCS4.

228 MCS1.

229 LCS3.

Several judge participants acknowledged the natural tension between ensuring a fair process and upholding established rules and standards. One participant, describing the nature of the judicial role during hearings involving self-represented litigants, explained: "[W]hat we're doing is being sort of mediators/litigators, because we're asking questions we need to know to make a decision, rather than having other people ask them, so everything gets a little fuzzy and that's problematic in many respects."[230] Another judge echoed this sentiment: "There is a certain…advisor kind of role that we have, and actually I mostly find that enjoyable but it's also exhausting because you're constantly on and you're constantly trying to be as evenhanded as you can and, at the same time, help people get a fair hearing and being careful not to be overbearing or over-instructing."[231]

Reflections on Experiences

By and large, CWC study participants found resources for self-represented litigants—to the varying degree available in each jurisdiction—to be helpful. Nevertheless, many described having considerable difficulties. Understanding what to expect from the process, either at the beginning or moving from one stage to another, was one of the most frequently discussed challenges. Similarly, the Macfarlane study found that self-represented litigants often did not know what to expect when entering the process.[232] Macfarlane's study also described frustrations concerning the accessibility and usability of online resources,[233]as well as difficulty knowing which form(s) to use and the negative consequences associated with incorrectly or inadequately completed forms.[234] In addition, the Canadian study made findings with respect to navigating the line between legal information and legal advice, concluding that "in the absence of clear directions that determined how much assistance of this type they should give," those in the court charged with providing self-represented litigants with information "had little choice but to err on the side of withholding."[235]

Finally, and not surprisingly, multiple facets of trial preparation and participation were sources of difficulty and frustration for CWC litigant participants due to a lack of understanding. This is a frequently recurring theme in the self-represented litigant literature. A 2009 American Bar Association (ABA) survey of state trial court judges detailed the cumulative perspective of almost 1,000 judges on the issue of self-represented litigant participation at trial:

- 94% of respondents indicated that failure to present necessary evidence was a common problem;
- 89% said that ineffective witness examination was an issue for self-represented litigants;
- 81% cited self-represented litigant failures to properly object to evidence as problematic; and
- 77% referenced ineffective arguments mounted by self-represented litigants.[236]

The ABA survey findings illustrated that not only were the aforementioned issues challenging for self-represented litigants, it was these areas in which litigants were negatively impacted by not having representation.[237] As discussed in Part Four, CWC judge participants expressed similar sentiments with respect to the negative impact on outcomes that can result from self-representation.[238]

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230 MCS1.

231 MCS3.

232 Macfarlane, *supra* note 7, at 53-55.

233 *Id.* at 63-67.

234 *Id.* at 56-63.

235 *Id.* at 69.

236 Klein, *supra* note 120, at 3, 11-13.

237 *Id.*

238 *See infra* p. 44.

CWC judge study participants also reported difficulties interacting with self-represented litigants at trial. A substantial and increasing body of training and guidance has emerged over the last decade for assisting judicial officers with conducting trials involving self-represented litigants.[239] However, concerns with respect to the appearance of impropriety, trial flow when one party is represented, and other issues stemming from self-represented litigants' inability to grasp procedural and evidentiary processes were common points of discussion in the CWC judge participant interviews.

From the court perspective, inefficiencies and frustrations also emerged in CWC narratives with respect to self-represented litigant participation in hearings and trials. This qualitative data is consistent with much of the quantitative literature. For example, 90% of judges surveyed as part of an Arkansas self-represented litigant needs assessment study indicated that "cases with one or more self-represented parties are handled less efficiently than those with attorneys on both sides."[240] Pressed further on the issue, respondents cited issues pertaining to expenditures of staff time and slowed procedures, among other things.[241] A majority (78%) of respondents to the 2009 ABA survey of judges indicated that the court is negatively impacted when parties are not represented.[242] A recent docket study of dissolution cases in Maricopa County, Arizona, found that two-thirds of continuances were due to parties not being prepared to proceed with trial.[243]

The issue of the complex language of the courts and law arose frequently among the litigants in Macfarlane's study during conversations on forms[244] and in the context of court hearings.[245] Some CWC litigants and court participants also touched on the impact abstruse language can have on litigant understanding of the process and its various components. It is not a stretch to imagine how this lack of understanding can translate into accessibility issues for the self-represented.

The CWC study highlights the struggles litigants and courts face in terms of several broad aspects of the court process; other studies have detailed the many tasks that litigants must engage in.[246] For example, one study identified almost 200 discrete tasks that self-represented litigants must perform in civil cases.[247]

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239 The ABA Model Code of Judicial Conduct was amended in 2007 to reflect that making "reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard" is not a violation of Rule 2.2 regarding fairness and impartiality. Am. Bar Ass'n, Model Code of Judicial Conduct . r. 2.2 cmt. 4 (2011). Many states have amended codes of judicial conduct in accordance with or similar to the Model Code. *See*, *e.g.*, Tenn. Code Jud. Conduct R. 2.2 cmt. 4 (2012); Colo. Code Jud. Conduct 2.2 cmt. 4 (2010); Mass. Sup. Jud. Ct. r. 2.2 cmt. 4, r. 2.6(A) cmt. 1(A) (2016).

240 John M. Greacen, Services for Self-Represented Litigants in Arkansas: A Report to the Arkansas Access to Justice Commission 11 (July 26, 2013), *available at* http://www.arkansasjustice.org/sites/default/files/file%20attachments/Arkansas%20Final%20Report%207-26-13.pdf.

241 The study author notes a discrepancy with the sentiment regarding slowed procedures: "Every empirical study of this question conducted in the United States shows the opposite result – cases with two attorneys on average take substantially longer to reach disposition than cases with at least one unrepresented party." *Id*.

242 Klein, *supra* note 120, at 3-4, 10-13.

243 The study examined a sample pool containing 113 case files that shared the following characteristics: dissolution cases; involving children/ with a decree of dissolution issued before June 30, 2013, and issued through trial; and in which both parties are self-represented. Judicial officers were also interviewed, to supplement the information obtained in the case sample pool. Nicole Zoe Garcia, Examining Dissolutions Amongst Self-Represented Litigants in the Superior Court of Arizona in Maricopa County 20-23 (May 2014), *available at* http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/accessfair/id/344/rec/12.

244 "Virtually every SRL in the sample" reported Macfarlane, "complained that they found the language in the court forms confusing, complex," with some self-represented litigants finding the language "simply incomprehensible – referring to terms and concepts with which they were unfamiliar." Macfarlane, *supra* note 7, at 60.

245 Many self-represented litigants in the Canadian study "commented about the impact of legal language used by judges and lawyers which they felt distanced them from the proceedings and made it hard for them to be sure they were following what was happening in the courtroom." *Id*. at 97.

246 Commentators have warned that "courts routinely underestimate the tasks required for self-representation" and that is certainly not the intent here. Laura K. Abel, *Evidence-Based Access to Justice*, 13 Univ. of Penn. J. L. & Soc. Change 295, 305 (2010).

247 *Id*.

The discussion during CWC litigant interviews raises questions with respect to whether available resources and sources of legal information are adequately geared toward helping litigants anticipate what needs to be done and understand how to do it. CWC participants routinely discussed uncertainties with respect to what came next in the process, what information to include in forms and other submissions, and what the court expected for hearings—among other things. For these litigants, the resources that they leveraged to help them with their family cases did not always address these topics clearly or effectively enough, or at all. Indeed, a primary conclusion emerging from the 2013 Maricopa County, Arizona, docket study was that "somehow, somewhere along the way, the parties are failing to get or receive specific information that would ultimately make the trial process easier on the parties and the judges."[248]

Courts in the study jurisdictions and across the country are responding to the reality of self-representation, and a growing number of courts, attorneys, and bar associations are leveraging innovative models to increase the availability of legal services for litigants. However, to the extent that the findings detailed above on litigant difficulties align with literature and cited research efforts that are nearing a decade old—if not older—it is clear that there is still much work to be done, for the benefit of all those involved in the family justice system.

248 Garcia, *supra* note 247, at 31.

PART FOUR

INTERACTIONS WITH OTHERS, CHALLENGES ENCOUNTERED, AND THE ROLE OF EMOTION IN SELF-REPRESENTATION

For litigants, there is far more to self-representing in a family case than simply attempting to maneuver through the legal steps of the case. Working without an attorney means contact with various players in the court process, dealing with issues inherent to being a layperson working within a system designed for legal experts, and trying to maintain equilibrium during an extremely taxing period in their lives. The Cases Without Counsel study sought to inquire about each of these issues—the interactions with others, the challenges encountered, and the emotional landscape—in interviews with both litigants and court professionals. To be certain, the interviews demonstrate that the pool of possible experiences is both wide and deep, with many variables affecting litigant perceptions.

Interacting with Others in the Process

Throughout the course of their family case, CWC litigant participants interacted with numerous people in the process—court clerks, dispute resolution staff, self-help center staff, judicial officers, and opposing counsel. This section examines the quality of such interactions as interviewees navigated the family court process.

Interactions between Self-Represented Litigants and Court Professionals

Participants articulated a variety of impressions regarding interactions with individuals working in the courts. Notably, however, they were far more likely to describe these interactions in a positive light than a negative one. In fact, reports of positive experiences outnumbered the negative by approximately three to one:

- "Everybody I interacted with was gracious, professional…used initiative coming forward with good suggestions. I just want to celebrate them all."[249]
- "They were very polite and very courteous with me."[250]
- "They were all very nice, friendly, accommodating, very generous with their time and advice. It was a good experience from that standpoint."[251]
- "I think people going through [divorce]—it's very emotional and can be high stress for a lot of people. And I just thought they were really professional and helpful through all of it."[252]
- "They were great; everybody was great."[253]
- "I felt like everybody was really cool. I absolutely love the judge…It was a good experience, actually."[254]
- "Every time we dealt with somebody within that system, they were very friendly and helpful."[255]

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249 F12.

250 L1.

251 L59.

252 L25.

253 M1.

254 M3.

255 L4.

Of those who reported having a negative experience, a portion opined that the unpleasant treatment or lack of respect stemmed from their status as a self-represented litigant. One individual, who felt the judge treated her poorly, suggested, "I don't know what [an attorney] would've done differently than me, but it's something about being represented that they take you more seriously."[256] Another stated, "a lot of the judges there, they don't respect people that represent themselves, nor do they allow people that represent themselves to talk…[it was] like I wasn't being heard."[257] One participant spoke with a lawyer in the courthouse after the hearing, who explained to this individual that "there are certain judges that if you come in and are not represented, they don't take your case seriously."[258]

A few litigants described how treatment by court professionals impacted their behavior. Describing his experience in the clerk's office, one self-represented litigant suggested that court staff become irritated when people do not know the process: "They get so many of the same questions…I feel like they're kind of frustrated because people are coming in constantly, just bringing them paperwork." He continued, "I didn't really like asking too many questions in that office because I feel like they're frustrated, they kind of have an attitude because they have so many of the same questions or people getting confused."[259] This individual's response to the perceived frustration was to refrain from asking questions. On the other hand, "the personality, the friendliness" of court staff in one litigant's jurisdiction made her feel more comfortable engaging with staff.[260]

Not all litigant participants reported having a purely positive or negative experience. Many described a mixture of favorable and unfavorable treatment, suggesting that interactions naturally vary from time to time and person to person. One litigant participant related, "It depended on what clerk you got at the desk and what mood she was in for the day to determine what information she's going to tell you."[261]

Interactions between Self-Represented Litigants and Opposing Counsel

About half of self-represented litigant participants had interactions with opposing counsel—approximately 20% reported that the other party in their case was represented by an attorney part of the time and just under 30% indicated that the other party was represented from beginning to end. Those participants reported a variety of experiences, although there were about three times as many reports of negative interactions as there were positive.

The majority of participants' negative experiences in this context centered on poor treatment by opposing counsel. Said one litigant in response to an inquiry into which parts of the process were most stressful or difficult to handle without an attorney: "I think interacting with the other counsel. That was horrible and just really emotionally draining."[262] Self-represented litigant participants used, among others, the following descriptors in their narratives around encounters with opposing counsel:

- "disrespectful"
- "underhanded"
- "unfair"
- "rude"
- "aggressive"
- "intimidating"
- "dishonest"
- "brash"
- "bully"

256 D11.
257 D38.
258 M12.
259 M13.
260 L49.
261 D25.
262 L46.

Another common thread for litigant participants who recounted unfavorable experiences with opposing counsel was the sentiment that opposing counsel made the situation more difficult than necessary or otherwise did not participate constructively in the process. An interviewee described thinking that opposing counsel did not have the other party's interests in mind: "I think it would have gone much quicker and a lot smoother," explained this participant, "if my ex-wife's interests had been represented more by her attorney and [it] may have just helped us through it, as opposed to creating a somewhat competitive atmosphere."[263] He goes on to explain:

> I think [the opposing party] was glad to have someone putting a voice to her, but we would meet outside of the attorney and I'd say, 'Hey, what's going on, this is crazy' and she would more or less agree.…Because my ex-wife is reasonable and we have a pretty good relationship, I think, we were able to work through it, but in a tighter, more pressure cooker relationship that could have really been horrible.[264]

A third participant detailed numerous attempts to settle with the other party, to no avail: "Why is it that, when I'm representing myself, [opposing] attorneys just won't even give me the time of day? They won't look at me, they won't talk to me—nothing."[265] Several study participants felt as if opposing counsel purposely created unnecessary delays, played games, or excluded them from essential steps in the process.

Reported experiences with opposing counsel were not all negative, however. Among individuals detailing positive narratives, reports of opposing counsel exhibiting favorable or respectful treatment was the most common theme. One litigant said:

> I think, considering the circumstances…[the other party's attorney] maintained a professional air. And, so we were able to meet and talk at times when necessary…I didn't have high expectations that he was going to be really friendly. But, at the same time, he was courteous and respected my position even though I was self-representing.[266]

Several litigant participants commented on opposing counsel's helpful contributions. According to one self-represented litigant, "Once my ex retained an attorney, it became really easy to rely on him to do the paperwork generation, which basically shifted that burden onto her attorney."[267] Several others made similar comments with respect to the benefit of relying on opposing counsel to generate and process paperwork.

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263 *Id.*

264 *Id.*

265 M6.

266 F13.

267 M10.

Perceptions of Bias and Disadvantage in the Court Process

In addition to sentiments surrounding interactions with court professionals and opposing counsel, a substantial portion of self-represented litigant participants discussed feeling at a disadvantage and experiencing bias in the court process resulting from being without representation. Further, some of the feedback from court staff and judges aligns with this perception.

Pressure to Have an Attorney

One experience litigant participants commonly relayed involved court staff and judges admonishing them to get an attorney. "[With] the first judge, it did not go well at all," explained one litigant:

> She actually told me twice that I needed to get a lawyer…She made it sound like that was her ruling—that I had to get a lawyer or they weren't going to welcome me back into court. She sided with him and I felt like it was just because he had the lawyer, because she told me twice I needed to get one.[268]

Another felt as if "nothing I said was valued or educated enough." This individual went on to explain, "every time I brought something up, 'well, if you had a lawyer, you wouldn't have to do this.'"[269] Yet another described, "I kind of lost it after the first judge. She told me to get a lawyer twice and I'm like, 'OK, great, so I've lost—I've already lost.'"[270]

Relatedly, some self-represented litigants spoke of opposing counsel in terms of feeling overwhelmed or outmatched. Said one litigant participant, "I felt like because they had—the other side had—a lawyer, I didn't really stand a chance."[271] Another described her experience at trial: "I wasn't at her level, she's an attorney…doing what she has to do to protect her client."[272] "I knew that I was totally overmatched," recounted one litigant, noting, "Her attorney was very experienced. She's been in the field for 30 years, and she knew exactly what to do. And I knew nothing about what to do, and that was apparent from the very beginning."[273] Finally, in discussing the outcome of her family case, another self-represented litigant described getting "out-lawyered."

Established Relationships between Lawyers and Judges

For several litigant participants, an obvious relationship between the judge and opposing counsel fostered or fueled perceptions of unfairness. Said a participant, "One thing that I found out is that the lawyer and the judge were friends, and the whole time I was in court, I was the outcast, and she was cutting up and laughing with the attorney."[274] Another, who described her jurisdiction as having remnants of the "old boy system," specifically hired an attorney for part of her case who she knew had a personal relationship with the judge on her case: "I tried to play into that 'good old boy' scenario, just making sure I had the right people in my court."[275] A third described, "I felt like I wasn't heard, but I didn't feel like I was even given a fair chance. It's like the judge and attorney probably knew each other and I was like an outsider."[276]

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268 M21.
269 D2.
270 M21.
271 M21.
272 M1.
273 D14.
274 D22.
275 D8.
276 M2.

A few court participants also touched on this issue. "They'll feel like the process is unfair," explained one judge participant, "because the lawyer almost always will know me, and I'll know the lawyer…So the feeling, I think, is why it's a real struggle to make sure that the person feels like they got a fair hearing."[277] A court staff interviewee detailed a telephone conversation she had with a self-represented litigant distressed at having noticed that the opposing attorney practiced frequently in the court and feeling that this relationship with the court resulted in the attorney having complete advantage. This participant noted, "That was a reminder that there are some who feel that they are terribly disadvantaged because it's the other side being represented."[278]

Impact on Outcomes

There appears to be some consistency to the perception that self-represented litigants are at a disadvantage, related to challenges in understanding, gathering, presenting, and admitting the factual support for their position. Across jurisdictions, a broad majority of court interviewees, both judges and court staff, who commented on the issue articulated that self-represented litigants are not knowledgeable about the proper process for getting evidence before the court, which can and does impact final case outcomes. "I think it can tremendously affect the ultimate outcome," said one participating judge.[279] "If I don't get the information I need to make a decision," said another, "then it absolutely does."[280] According to a third judge participant:

> As a general rule, if people have lawyers…we get the exhibits we need, we get the outside information we need and almost always they'll bring other witnesses to tell us other things to verify what people are saying, so we get a much broader range of information from which to make a decision. And, so, I think that people who are represented generally have better outcomes.[281]

One judge expressed that the most personally frustrating aspect of handling cases involving self-represented litigants is not having enough evidence on which to make an informed decision. "All I want to do is make a good decision based on all the information, especially with respect to kids," said this individual, who went on to explain: "I often feel like I just don't know enough, and so I'm shooting in the dark. But I have to make a decision. So that's very frustrating."[282] One court staff participant noted: "If you can afford an attorney here, you're going to get a better outcome."[283]

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277 LCS3.

278 FCS6.

279 DCS3.

280 FCS1.

281 MCS1.

282 LCS3.

283 FCS12.

Interplay between Personal Issues and Process Issues

Not surprisingly, more than half of self-represented litigant study participants discussed experiencing emotional difficulties navigating the family court process. Stress, nervousness, and anxiety were the most commonly referenced feelings. One self-represented litigant participant explained, "I was mostly nervous because I was afraid that if I did something wrong it might hinder my ability to see my children or to be a part of their lives."[284] Another stated, "The emotional ups and downs of the stress of it…it can be debilitating, I'll say that, and without any exaggeration. It can be debilitating when you have that amount of stuff, your life, your children, hanging over your head—and it's in the balance of your hands."[285]

Time Spent on Case Preparation

Some litigant interviewees reported they had to devote a great deal of time researching and preparing for their family case, which contributed to feelings of stress and and being overwhelmed. "There's a lot of research," one participant exclaimed, noting, "It wasn't, 'Oh, I can browse and spend a couple hours tonight and do this'; it was hours and hours of research."[286]

Some litigants further expounded on the impact of having to dedicate sizeable amounts of time managing a family court case while also taking care of financial, professional, and personal obligations. As one participant remarked, "It takes up a majority of my time, like, any little bit of time—which I don't have. I work full time and I have four kids, so it's always chaotic, and so trying to do that on any little bit of time that I have—taking up all lunches, any breaks, even work time, in your added time that you do have."[287] "Even when I'm not doing direct work," one individual explained, "there [is] just a lot, a lot of thought and pen put to paper about arguments, sway, opinions, possible factors, possible witnesses, possible arguments that they're going to bring up, possible defenses for the possible arguments that I think they might possibly bring up. Yes, it was daily."[288]

For many litigant interviewees with children, the effects of the amount of time required to research and keep up with case activities were compounded. "It's stressful," said one individual, "because you have to stay on top of everything… you're constantly trying to research things…it's exhausting and when you're exhausted and you're the head of household, it's going to wear on your kids."[289] This study participant describes settling her custody case because she did not have "any more juice to fight." Another explained, "I have no days off without my children." He cited difficulty finding "time to research this, do this stuff, go to the law library, print out the resources, spend dedicated time…strictly thinking about what to do."[290] Another remarked, "It causes a strain because it's to the point where you're so focused on that, that it's hard to pull yourself away and balance everything."[291] "It was time-consuming," described a participant: "It left me with little time for my daughter."[292]

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284 D5.
285 F1.
286 L32.
287 M4.
288 F1.
289 L11.
290 F1.
291 L19.
292 M17.

The Emotional Nature of Family Cases

A few self-represented litigants discussed the impact that their compromised emotional state during their family case had on their experience and what they were able to achieve through the court process. One litigant acknowledged, "I spent a lot of time doing the papers and redoing them, because I didn't feel confident that I was getting it right.…I was in a bad situation after everything that had happened."[293] This individual opined, "If I was to sit down today and had to fill them out, it probably wouldn't be nearly as difficult as it was at that time." Another self-represented litigant participant said, "The stuff that I had to go over was so traumatic and emotional that as soon as I would sit down to start assembling my case, I would just be so upset that I just couldn't even focus." "I actually asked a friend of mine to help me just type the damn thing because I knew what I wanted to say," this participant explained, "but I just could not stay focused enough without getting upset to type it all out."[294]

Speaking more broadly, one participant reflected, "The fact that you are the one going through it, I think, limits your perspective…I don't know if you can foresee what some of the problems may be when you're deciding and making agreements." Another described walking around in a fog, "and you have all your baggage and you don't really know what's going on."[295] She talked about the desire to have someone next to her: "If I would have had somebody say to me, 'Are you sure about that?' just one time, I might have said, 'No, not really.'"[296]

A lack of social support can exacerbate the emotional stress. In recounting her experience, one participant said:

> My family situation just really dissolved all at once with my divorce, and it was really scary. I had no support. I had no family structure. I had nobody. It was just me with my son. It's intimidating. I certainly went out trying to locate somebody to talk to, just somebody to listen to me…The problem is that everybody's situation is so unique; nobody wants to touch it. Nobody wants to talk about it. Nobody wants to hear it. It's traumatic.[297]

Court participants, too, spoke of the impact of personal and emotional issues on self-represented litigants' capacity to navigate the process. One court clerk interviewee gathered from her interactions with self-represented litigants: "If they're unstable or not in a good position in their life at that point, I think it's harder for them to listen to me."[298] Another remarked, "No matter what, once you've put those emotions in there, everything is just overwhelming." At this point, the individual suggested, the process from the self-represented litigant's vantage point is "so impossible to understand because you're so focused on how you feel and what you want to happen that it's hard to see the big picture."[299]

The toll exacted by the sensitive nature of family cases is not limited to the litigants themselves; rather, some court interviewees reported that self-represented litigants can let their emotions get the better of them when interacting with court staff and judges. Said one judge participant, "When people are coming in with an attitude and everybody in the office is bending over backwards trying to help them, that's pretty frustrating and you finally give up on them."[300] "When I have people at the counter calling me the "B word" or saying "F you" because something didn't happen right in court, that's my frustration," explained a court staff participant, remarking, "I get frustrated that people don't give you [the same courtesy] you've given them."[301]

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293 L43.
294 M6.
295 L5.
296 *Id.*
297 M6.
298 MCS7.
299 LCS12.
300 DCS2.
301 DCS10.

A few litigant participants separated the emotional issues of a divorce from the challenges of self-representation, expressing that the former was the primary source of difficulty. As one participant concluded, "At the end of the day the difficulty is the fact that you're breaking up with someone—that's the difficult part."[302] Another commented, "[R]epresenting myself didn't stress me out; the situation in general is stressful."[303]

Feelings Associated with the Process

Many litigant participants had emotional responses tied to the process of self-representing. Given the long list of challenges stemming from navigating a family case without an attorney, it is unsurprising that many such responses were negative. Participants who spoke unfavorably of their experience in the process described feeling intimidated, isolated, scared, hopeless, and vulnerable. Several related their feelings to the lack of available resources. "I felt very intimidated," explained a participant, "but I also felt like I had absolutely no choice, like there is nothing out there for me."[304] "I knew I didn't know what I was doing," said another participant, "and that really made me both angry and feel helpless."[305] One participant opined, "I think that if I would not have represented myself and I would have had a lawyer do it, I would have not felt so vulnerable, so bullied, and so much like I had to give up everything."[306] Describing her experience, a third litigant commented:

> First of all, it's an extremely emotional time for most people, to go through a divorce. You're either already confused—How am I going to survive? What am I going to do? How am I going to get through this? Where am I going to go? You're already thinking all of those things in your head, and then you're put into this extremely terrifying situation with the courthouse and no help.[307]

For some, the courtroom and courthouse environment contributed to feelings of stress or fear. "The court atmosphere itself is stressful," said one individual, "nobody wants to be there." Another described the courtroom as "a cold, sterile environment—it's worse than a hospital."[308] "Even though you've been there a million times," said a participant, "there's always an anxiety factor to it all."[309] A court staff participant observed that, from a litigants' perspective, the courthouse is "a different world."

Although negative emotions and feelings prevailed when litigant participants discussed their experiences representing themselves, a sizeable proportion expressed some emotional benefit to getting through the process on their own. By a wide margin, the most commonly cited positive impact of self-representing was a feeling of accomplishment or empowerment. "To be able to go through it feels like you're stepping up, you're growing up, you're doing this for yourself," remarked one litigant. "You're becoming a better person because of the steps that you're taking. It does make you feel pretty good about yourself in the end, even though it's one of the most difficult situations you could ever be put in."[310] Similarly, another individual commented: "It made me feel logical, like 'I'm a business professional; I don't need to go spend several thousand dollars for somebody to tell me that this paperwork's OK.'"[311] Yet another remarked:

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302 M10.
303 F8.
304 F1.
305 D14.
306 L5.
307 F14.
308 D30.
309 F11.
310 L13.
311 D26.

> It made me feel like I could make autonomous decisions in my life without having to involve legal processes other than just for the documentation. So, that was in itself empowering, being able to say "I don't want to be married to this person" and then having kind of minimal complications to make that true.[312]

For some, this feeling of empowerment was recognized in retrospect, after the obstacles of the case had been tackled. "I would say part of it was overwhelming," explained one study participant who also noted that, "another part would be empowering to know that I did that for myself; that I was able to achieve the outcome that I had hoped for."[313] Similarly, a participant described: "At first I was really nervous, but after, I felt kind of empowered; I was like, 'Wow, I can do this!'"[314]

The Emotional Benefits of Having an Attorney

Some study participants discussed how having an attorney or source of legal support may have reduced some of the emotional distress associated with the family court process. This could manifest itself in alleviating the burden and anxiety associated with trying to get everything right. According to one litigant, "It is stressful, I think, especially doing it on your own, because you don't have that other person doing all that research for you, filling out all the paperwork for you."[315] Another suggested: "The attorney's support there would have taken away a lot of the anxiety I was feeling, just making sure that I wasn't going to get knocked out of the court for having the wrong document."[316] Similarly, another self-represented litigant commented, "not having the representation, I didn't have that security blanket—somebody that's there in my corner and literally to help me out and making sure that [I'm not] done wrong and that I don't make a mistake."[317]

This could also manifest itself in providing an emotional buffer, allowing the litigant to process emotions without having those emotions affect the case. One individual, admitting he was unable to think clearly in the situation due to the emotions associated with the end of his marriage, described the potential benefit of having an attorney as having someone who is not enmeshed in the personal aspects of the case. A participant who had an attorney before running out of funds to maintain representation, remarked, "That was the most stressful part of the whole thing…I can't hand everything else to somebody else and say 'OK…I'm gonna go deal with my emotions over here; you deal with the nuts and bolts of the trial.'"[318] This individual went on to suggest: "I think a large portion of [the stress] could have been set to the side a lot easier had I had that person that I could call and say, 'How do I need to feel about this?' and they could give me that reassurance."[319]

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312 M5.

313 M23.

314 L14.

315 M21.

316 F13.

317 D5.

318 F1.

319 *Id.*

Reflections on Interactions, Challenges, and Emotions

The Cases Without Counsel narratives highlight a host of nuanced issues that, taken together, suggest that feelings of being at a disadvantage or concerns with respect to fairness were relatively common among self-represented litigant study participants. The Macfarlane study reached similar conclusions, detailing participant feelings of being judged, treated differently, or otherwise disadvantaged on the basis of not having representation.[320]

A considerable proportion of CWC self-represented litigant participants did not feel as if the process was fair or afforded them equal standing with represented parties. It is easy to imagine that, for these individuals, their vision of the court system becomes one of distrust and dissatisfaction. Recent research efforts illustrate that there is room for improvement with respect to increasing public trust and confidence in U.S. courts, particularly because the data demonstrate that monetary issues dominate motivations for self-representing. A late-2015 public opinion survey conducted on behalf of the National Center for State Courts (NCSC) broadly found "a disturbingly pervasive belief in an unequal justice system that systematically produces different results based on race, income, and other socio-economic factors."[321] Additionally, an overwhelming majority of the NCSC public opinion survey respondents (91%) agreed with the sentiment: "You are more likely to win [sic] court with a lawyer by your side."[322]

Indeed, some of the relevant literature suggests there are valid reasons to think that representation status affects the fairness of the process. The narratives from participating CWC judges and court staff support other research findings with respect to the impact of self-representation on case outcomes.[323] In the 2009 ABA survey of state trial judges, 62% of respondents reported that self-represented litigants are negatively impacted and that outcomes are worse for these individuals than their counterparts with representation.[324] Similar findings emerged in a 2012 study of self-representation in Arkansas, in which 80% of surveyed judges indicated that "self-representation has a negative impact on case outcomes."[325] An important characteristic of these and similar studies is that "[w]e are seeing the issue from the point of view of the judge, the person who often is the finder of fact and who will ultimately determine an appropriate judgment. This is a direct measure on the impact to the case."[326]

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320 Macfarlane, *supra* note 7, 110-11 (noting that many self-represented litigants who participated in the study "appraise their experience in a rational and balanced way in coming to the conclusion that the justice system is 'broken'. Their basic complaint is clear—that instead of a user-friendly, practical means of resolving disputes the courts offer a false promise of 'access to justice'.").

321 Memorandum from GBA Strategies to the Nat'l Ctr. for State Cts., Analysis of National Survey of Registered Voters 1 (November 17, 2015), *available at* http://www.ncsc.org/~/media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC_2015_Survey%20Analysis.ashx [hereinafter NCSC Survey Analysis]; *The State of State Courts: A 2015 NCSC Public Opinion Survey*, Nat'l Ctr. for State Cts., http://www.ncsc.org/2015survey (last visited April 5, 2016). A similar survey was conducted in England and Wales last year, finding, among other points, that "one in five people who have been involved in courts say they came out with a worse opinion of them than when they started" and also that "less than half (48 per cent) of people believe that if they had to go to court, their outcome would be fair. Katherine Vaughan et al., Citizens Advice, Responsive Justice: How citizens experience the justice system 2 (November 2015).

322 NCSC Survey Analysis, *supra* note 325, at 5.

323 *See*, *e.g.*, Russell Engler, *The Toughest Nut: Handling Cases Pitting Unrepresented Litigants Against Represented Ones*, 62 Juv. & Fam. Ct. J. 10, 11 (2011) ("Studies consistently show that representation is an important variable affecting case outcomes, including in the area of domestic relations."); *see also* Abel, *supra* note 250.

324 Klein, *supra* note 120, at 4. Broadly speaking, the study found "strong consensus that parties are hurt by failure to present necessary evidence, suffer from procedural errors, are ineffective when examining witnesses, and fail to properly object to evidence." *Id*. at 11.

325 Greacen, *supra* note 244, at 11.

326 Klein, *supra* note 120, at 3.

The personal and emotional issues that accompany family disputes also affect the self-represented litigant experience. The legal community often disregards or overlooks these non-legal outcomes; nevertheless, they are important components of the conversation because understanding the underlying emotional state of a person entrenched in a family case is essential to fully comprehending the experience of self-representing. One commentator urges:

> Not every outcome of interest is legal: consider, for example, comparative health outcomes between represented and unrepresented individuals, including the effects of the stress and uncertainty associated with navigating legal proceedings on depression and mental health more generally. Civil justice research must step back from narrow definitions of effectiveness that are limited to case outcomes and consider the broader, systemic effects of representation on individuals and those around them. [327]

Macfarlane's self-represented litigant interviewees[328] described depression, physical ailments, and feelings of isolation: "SRL respondents described a wide range of impacts and consequences for them arising out of their decision to self-represent. Many if not most of these were unanticipated, at least to the degree that they became a problem."[329] These findings are largely consistent with CWC narratives, in which many participants described negative impacts on their mental health and broader lives, including their relationships with others.

Anecdotally, questions arise as to whether many of the emotional and personal issues described by CWC and Canadian study litigants are a function of the nature of the underlying dispute than the act of self-representing. Certainly, family cases present complicated non-legal issues and impacts that are characteristic of the case type.[330] A few of the CWC participants were explicit during their interviews in clarifying that stresses and negative feelings had more to do with their situation or with the process generally rather than with the act of self-representation. However, a larger number of participants described how the stress of having to process the paperwork, manage the case, and advocate in court, along with the uncertainty and confusion regarding steps in the process, were at the root of these negative emotions. In other words, the stress and related feelings resulted from having to take on the functions and responsibilities that otherwise would have fallen to an attorney.

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327 Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 Wisc. L. Rev. 101, 110 (2013).

328 Sixty percent of the study participants were family litigants and 31% had a civil court case. Macfarlane, *supra* note 7, at 8. In contrast, all 128 CWC self-represented litigant participants had a family case.

329 *Id*. at 108.

330 While family issues are often especially emotional case types, research shows that civil justice situations broadly have wide-ranging non-legal impacts, including violence, damage to relationships, loss of confidence, fear, and damage to health. Rebecca L. Sandefur, Am. Bar Found., Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study 9-10 (2014), *available at* http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa._aug._2014.pdf (noting that almost half (47%) of the civil justice situations reported by study participants resulted in at least one of these consequences; approximately one fifth (21%) resulted in two or more).

Furthermore, the mental and emotional health distress that self-represented litigants in family cases experience may ultimately affect final case outcomes. A handful of the CWC litigant participants recognized that the emotional issues they were experiencing at the time compromised their ability to think clearly and prepare. These observations are consistent with behavioral and medical research that highlights the myriad ways in which stress impacts learning, memory, and health.[331] While this reality is arguably true for all litigants—represented or not—those with an attorney have a reduced responsibility to compile paperwork, direct the flow of the case, formulate strategy, and interact with the court.

The information gleaned from the CWC study regarding the interactions in and impacts of navigating the family court process without an attorney presents a panoramic view of the collective experience of self-representation, encompassing both the negative and the positive. Doubtless, the voices of self-represented litigants, court staff, and judges—those closest to the issues—provide a unique opportunity for the legal community and stakeholders to take into account real-life perspectives in discussions related to the growing numbers of self-represented litigants in family court. Surely, some aspects of the process already work well for those who self-represent; however, the CWC study demonstrates that there are areas of improvement that, if addressed, could benefit litigants and the legal community alike.

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331 Stress also impacts learning, memory, and health. *See* Centre for Studies on Human Stress, http://www.humanstress.ca (last visited April 5, 2016); Serusha Govender & Sara Cheshire, *Chronic stress can hurt your memory*, CNN.COM (June 19, 2014, 1:34 PM), http://www.cnn.com/2014/06/17/health/memory-stress-link (citing Cheryl D. Conrad, *A Critical Review of Chronic Stress Effects on Spatial Learning and Memory*, 34 PROGRESS IN NEURO-PSYCHOPHARMACOLOGY & BIOLOGICAL PSYCHIATRY 742 (2010)).

CONCLUSION

The Cases Without Counsel study builds upon and contributes to other research in this field, both qualitative and quantitative. The themes are consistent, and present a challenge to those committed to access to justice for all. It is the hope of the IAALS study team that hearing directly from affected individuals will spur positive action, starting with careful consideration of the recommendations contained in *Cases Without Counsel: Our Recommendations after Listening to the Litigants.*[332]

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332 Natalie Anne Knowlton, Inst. for the Advancement of the Am. Legal Sys., Cases Without Counsel: Our Recommendations after Listening to the Litigants (2016).

APPENDIX A

JUDGE-SPECIFIC SERVICE PROVIDER INTERVIEW PROTOCOL

Demographic Questions

1. How long have you been at [your organization: fill in Larimer County Courthouse, etc.]?

   - ☐ Less than 1 year
   - ☐ 1-5 years
   - ☐ 6-10 years
   - ☐ 11-15 years
   - ☐ More than 15 years

2. How long have you been doing this type of work (i.e., have you had a similar position or positions anywhere else? If so, how much time have you spent in these kinds of positions in total)?

   - ☐ Less than 1 year
   - ☐ 1-5 years
   - ☐ 6-10 years
   - ☐ 11-15 years
   - ☐ More than 15 years

Interview Topic Guide

1. Certainly, litigants come to court looking for a resolution of their case. Do you think the expectations of self-represented litigants are aligned with the actual court experience?
2. How prepared do self-represented litigants tend to be when they come to court?
3. How often do self-represented litigants have friends or family with them to help/support?
4. Do you find the line between providing information to move the process along and remaining neutral difficult to navigate?
5. What do you think are the most common motivations for self-representation?
6. Do you think self-representation has an impact on outcomes in family law cases? If so, can you describe the impact?
7. Do you think self-representation has an impact on the level of litigant satisfaction with the court process in family law cases? If so, can you describe the impact?
8. Certainly evidentiary and other rules apply to all litigants, but we have heard some feedback suggesting there can be struggles when it comes to applying the rules to SRLs. Do you tend to agree or disagree with that sentiment? Can you speak about your experience in applying rules with SRLs?
9. What is the most common frustration for self-represented litigants?
10. What is your most common frustration when it comes to handling cases with SRL cases?

11. Have you seen a change in the characteristics of SRLs coming to court? [Note to interviewer: We are defining change in the broadest of terms (i.e., tap into full experience in this kind of work, rather than limiting to a certain time range; we are also defining characteristics very broadly (i.e., demographics, numbers, etc.))]

12. Have you seen any other significant changes in the last 3-5 years that have impacted your work with SRLs?

13. In many courts, there are large numbers of SRLs in family cases. What do you think this means for the court—now and into the future?

14. What part of the process [in terms of SRLs moving through the legal process in family cases] works well for you?

15. If you could make one major change, what would you want to tell policy-makers?

16. What do you find to be rewarding about this work?

17. Do you have any additional comments or thoughts before we end the interview today?

APPENDIX B

COURT STAFF-SPECIFIC SERVICE PROVIDER INTERVIEW PROTOCOL

Demographic Questions

1. What is your role (indicate all that apply with explanatory notes if necessary)?

   - ☐ Court-annexed pro bono service provider
   - ☐ Court-annexed mediator
   - ☐ Court clerk
   - ☐ Translator
   - ☐ Court staff
   - ☐ Other
   - ☐ Non-judicial facilitator

2. How long have you been at your organization?

   - ☐ Less than 1 year
   - ☐ 11-15 years
   - ☐ 1-5 years
   - ☐ More than 15 years
   - ☐ 6-10 years

3. How long have you been doing this type of work (i.e., have you had a similar position or positions anywhere else? If so, how much time have you spent in these kinds of positions in total)?

   - ☐ Less than 1 year
   - ☐ 11-15 years
   - ☐ 1-5 years
   - ☐ More than 15 years
   - ☐ 6-10 years

4. Are you an attorney?

   - ☐ Yes
   - ☐ No

Interview Topic Guide

1. What do litigants come to you asking for/expecting? [Note to interviewer: perhaps phrase the question as "What do litigants come to court asking for/expecting?"]

2. For most people, is this the first place they come to for help or have they gone somewhere else? [Note to interviewer: perhaps change phrasing to "Who/where in courthouse are litigants going first to ask for help?"]

3. How often do self-represented litigants have friends with them to help/support?

4. For non-attorneys: Do you find the line between providing information and giving advice difficult to navigate?

5. Where relevant: What has been the impact of [insert state statute/guide on court staff provision of information] on your interactions with SRLs?

6. What do you think are the most common motivations for self-representation?
7. Do you think self-representation has an impact on outcomes in family law cases? If so, can you describe the impact?
8. Do you think self-representation has an impact on the level of litigant satisfaction with the court process in family cases? If so, can you describe the impact?
9. What is the most common frustration for self-represented litigants?
10. What is your most common frustration when it comes to working with SRLs?
11. Have you seen a change in the characteristics of SRLs coming to court? [Note to interviewer: we are defining change in the broadest of terms (i.e., tap into full experience in this kind of work, rather than limiting to a certain time range; we are also defining characteristics very broadly (i.e., demographics, numbers, etc.))]
12. Have you seen any other significant changes in the last 3-5 years that have impacted your work with SRLs?
13. In many courts, there are large numbers of SRL in family cases. What do you think this means for the court—now and into the future?
14. What part of the process [of SRLs moving through the legal process in family cases] works well for you?
15. If you could make one major change, what would you want to tell policy-makers?
16. What do you find to be rewarding about this work?
17. Do you have any additional comments or thoughts before we end the interview today?

APPENDIX C

SELF-REPRESENTED LITIGANT INTERVIEW PROTOCOL

Demographic Questions

1. Are you the plaintiff/petitioner or the defendant/respondent in your case? (Please let us know if you have any questions about these terms.)

   - ☐ Plaintiff/Petitioner
   - ☐ Defendant/Respondent
   - ☐ Joint Petitioner

2. Where are you in your case (with respect to process/procedure)? _____

3. Has the other side been represented by a lawyer?

   - ☐ Not at any point in the case
   - ☐ For part(s) of the case
   - ☐ The entire case
   - ☐ Not sure

4. Did you come to agreement with the other party at any time?

   - ☐ Yes, before we began the court process
   - ☐ Yes, at some point during the court process
   - ☐ No

5. What is your personal income level from any source at the time of this interview?

   - ☐ Under $20,000
   - ☐ $20,000 to $39,999
   - ☐ $40,000 to $59,999
   - ☐ $60,000 to $79,999
   - ☐ $80,000 to $99,999
   - ☐ $100,000 to $119,999
   - ☐ $120,000 or more
   - ☐ Prefer not to answer

6. What is your occupation?

7. What is your highest level of education completed?

   - ☐ Primary school
   - ☐ High school diploma or GED
   - ☐ Certificate program
   - ☐ Some college study
   - ☐ Undergraduate degree
   - ☐ Graduate degree
   - ☐ Prefer not to answer

8. What is your first language?

9. What is your country of origin? (If you immigrated to the U.S., where are you from?)

10. How do you identify yourself on the U.S. Census (select all applicable)?

- ☐ White
- ☐ Black or African American
- ☐ American Indian or Alaska Native
- ☐ Asian – Indian
- ☐ Asian – Other
- ☐ Pacific Islander – Native Hawaiian
- ☐ Pacific Islander – Other
- ☐ Other:
- ☐ Prefer not to answer

11. Do you identify as Hispanic, Latino, or of Spanish origin?

- ☐ Yes
- ☐ No
- ☐ Prefer not to answer

12. If you have ever had a lawyer in the past (before this case), was the experience:

- ☐ Positive
- ☐ Neutral
- ☐ Negative
- ☐ I have never retained a lawyer before this case

13. Did the experience you reported in Question 12 influence your decision about hiring a lawyer in this case?

- ☐ Yes
- ☐ No
- ☐ Not sure
- ☐ I have never retained a lawyer before this case

14. Have you been represented by a lawyer in this case?

- ☐ Not at any point in the case
- ☐ For part(s) of the case
- ☐ Not sure

15. If you answered "For part(s) of the case" in Question 14:

a. How much have you spent on legal fees?

b. How much of that is still owing?

16. In this case, have you used any of the following:

- ☐ Pro bono legal services
- ☐ Alternative service agreements (e.g., Legal Zoom, Rocket Lawyer)
- ☐ Unbundled legal services/ limited scope representation
- ☐ Family or friends
- ☐ Other sources of legal advice
- ☐ No
- ☐ Not sure

Interview Topic Guide

Deciding to represent yourself

1. What were your expectations at the outset of this case regarding the court process and what you could achieve?
2. Tell me about how you came to represent yourself.
3. How, if at all, did the following factors influence how you came to be self-represented [Note to interviewer: if needed, preface each with an example.]

    a. Cost of hiring an attorney?

    b. Financial priority of hiring an attorney?

    c. Your assessment of your ability to represent yourself?

    d. Preference for handling the matter yourself?

    e. Dissatisfaction with prior legal representation? [Note to interviewer: the applicability of this question will depend on whether the interviewee indicated prior representation, above.]

4. If you could get legal advice or representation for particular portions of the process, would you?

    a. If yes, what would those portions be?

    b. If yes, do you feel the advice would need to come from an attorney or could it come from another type of professional authorized to give legal advice?

    c. If no, can you tell me why?

Resources

5. What resources have you used to help you with the legal process? [Note to interviewer: ask open-ended question then move to the following jurisdiction-specific prompts. When queuing prompts, please ask whether the interviewee knew about the resources, in addition to whether s/he used the resource.]
6. Tell me about the most helpful resource(s).
7. Tell me about the least helpful resource(s).
8. How do you feel you were treated by the people you encountered in the court process—for example, court staff, judges, and others with whom you may have spoken?
9. Did you bring family/friends with you to the courthouse for support?

Your experience and appraisal

10. How close was what happened in the legal process to what you expected? What are the major differences? [E.g., with respect to the court process, your interaction with the actors in the justice system, challenges, rewards.]

11. What parts of the process did you find to be the most stressful or difficult handling without an attorney?

12. What part of the process worked well for you?

13. How did representing yourself in this case make you feel?

14. Can you talk a bit more about the impact of representing yourself on your life?

15. What, if anything, was the impact of representing yourself on your children?

16. Can you talk about the time you have spent representing yourself in this case?

17. What advice would you give to someone else who was going to be representing themselves?

18. If you could make one major change with respect to the process and procedures that you experienced in your case, what would you want to tell policy-makers?

19. Thinking of your experience as a self-represented litigant:

a. What was your biggest surprise?

b. What was your biggest disappointment?

c. What was the best moment?

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