

**WHAT YOU DON'T KNOW *WILL* HURT YOU:
ADDRESSING THE INEQUITIES OF PRO SE
LITIGATION IN OHIO DOMESTIC RELATIONS
COURTS**

*Allison Mikiciuk**

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* J.D. Candidate, 2021, University of Dayton School of Law.

I. INTRODUCTION

Obtain an undergraduate degree. Devote three years to law school taking endless courses about the law, its meaning, and how it applies. Complete multiple internships and externships to learn how the law functions in practice versus in the classroom because, as first-year students are told repeatedly, there is a *major* difference. Spend years studying and then take an exam that only 72.5% of students in Ohio are lucky enough to pass on the first try.¹ Before even being admitted to the bar and becoming practicing attorneys, this is the training that lawyers go through. Once admitted, lawyers continue to rack up years and years of practical experience in the courtroom while further perfecting their lawyering skills. Why is this significant? Because these are the people that pro se litigants are competing against in court when their opponent has legal representation and they do not. The very people that pro se litigants are expected to be on the same level as because, in the eyes of the court, “[l]itigants who choose to proceed pro se are presumed to know the law and correct procedure, and are held to the same standards as other litigants.”²

The family court system was not designed for pro se litigants.³ As a result, self-represented parties face many impediments that parties with attorneys would not. Unlike trained attorneys that have spent at least three years of their life studying law and how it functions, self-represented parties

¹ See Press Release, Supreme Court of Ohio, Ohio Bar Exam Results Released (Apr. 24, 2015), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/042415.asp>; Press Release, Supreme Court of Ohio, July Ohio Bar Exam Results Release (Oct. 30, 2015), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/103015.asp>; Press Release, Supreme Court of Ohio, Ohio Bar Exam Results Announced (Apr. 22, 2016), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/042216.asp>; Press Release, Supreme Court of Ohio, Ohio Supreme Court Announces July Bar Exam Results (Oct. 28, 2016), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/102816.asp>; Press Release, Supreme Court of Ohio, More Than 200 Applicants Pass February 2017 Bar Exam (Apr. 28, 2017), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/042817.asp>; Press Release, Supreme Court of Ohio, 664 Pass the July Bar Exam (Oct. 27, 2017), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/102717.asp>; Press Release, Supreme Court of Ohio, 195 Pass the February Bar Exam (Apr. 27, 2018), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/042718.asp>; Press Release, Supreme Court of Ohio, Ohio Bar Exam Results Announced (Oct. 26, 2018), <http://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/102618.asp>; Press Release, Supreme Court of Ohio, Ohio Bar Exam Results Announced (May 1, 2020), <https://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/050120.asp>.

² *Calicoat v. Calicoat*, No. 28014, 2018 Ohio App. LEXIS 4763, at *27 (Ohio Ct. App. Nov. 2, 2018) (quoting *Dunia v. Stemple*, No. 2007 CA 9, 2007 WL 2684988, at *3 (Ohio Ct. App. Sept., 14, 2007)); *O'Rourke v. O'Rourke*, No. 17CA37, 2018 Ohio App. LEXIS, at *18 (Ohio Ct. App. Sept. 27, 2018); *Gould v. Gould*, No. 16CA30, 2017 Ohio App. LEXIS 2999, at *30 (Ohio Ct. App. July 12, 2017); *Barton v. Barton*, 86 N.E.3d 937, 952 (Ohio Ct. App. 2017); *Sparks v. Sparks*, No. CA2010-10-096, 2011 Ohio App. LEXIS 4681, at *10 (Ohio Ct. App. Nov. 7, 2011); *Yocum v. Means*, No. 1576, 2002 Ohio App. LEXIS 3871, *9–10 (Ohio Ct. App. July 26, 2002). This Comment uses the terms pro se litigant and self-represented parties interchangeably.

³ Debra Cassens Weiss, *Self-Represented Litigants Perceive Bias and Disadvantage in Court Process, Report Finds*, ABA J. (June 9, 2016, 6:15 AM), https://www.abajournal.com/news/article/self-represented_litigants_perceive_bias_and_disadvantage_in_court_process/.

lack familiarity with court terminology, forms, and procedures.⁴ To make matters worse, Ohio divorce and custody law is known for being extremely complex and confusing.⁵ Because of this, the legal system relied on by so many becomes incomprehensible, wholly removing it as a useable means of seeking redress.⁶ As pro se filings continue to increase, these barriers are only amplified.⁷

In 2006, the Supreme Court of Ohio released the Report and Recommendations on the Task Force on Pro Se and Indigent Litigants.⁸ They acknowledged the challenges of pro se litigation and sought to reform the system in a way that allowed all parties, represented or not, to have meaningful participation in the justice system.⁹ The report stated that this was possible through the use of “standardized forms and procedures, enhanced guidance and support for pro se litigants, and wide, convenient availability of information”¹⁰

It is now 2021, and though some changes have been made and new programs have been implemented, this is still not enough. While standardized forms and a handful of pro se-gearred programs and resources are now available, the programs lack visibility and are disadvantageous to litigants.¹¹ With self-representation on the rise, Ohio must address this issue and cultivate a solution.

By implementing a pro se workshop that self-represented parties are required to attend, providing consistent and uniform resources, and conducting statewide training for all court staff, litigants will receive better access to justice, resulting in equitable outcomes while simultaneously lessening the burden that pro se litigation has on the courts. Beginning with the overall increase in self-representation, this Comment will address why this is significant and the inequities the litigants face in domestic relations court. The following part will move into methods of pro se assistance currently used within Ohio and will evaluate their efficacy. Subsequently, the impact of ineffective pro se assistance will be addressed. Finally, this Comment will

⁴ See Tiffany Buxton, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE WESTERN RES. J. OF INT’L L. 103, 116 (2002).

⁵ See *Ohio Family Law Help and Advice*, FAM. L. RTS., <https://www.familylawrights.net/ohio/> (last visited Apr. 22, 2021).

⁶ Buxton, *supra* note 4, at 116.

⁷ *Judicial Business*, U.S. CTS., <https://www.uscourts.gov/statistics-reports/judicial-business-2017> (last visited Apr. 22, 2021) (stating that although there was a 20% decrease in pro se filings, they still accounted for 50% of new cases in federal courts).

⁸ See generally SUP. CT. OF OHIO, REPORT AND RECOMMENDATIONS OF THE SUPREME COURT TASK FORCE ON PRO SE & INDIGENT LITIGANTS (2006), http://www.supremecourt.ohio.gov/Publications/prose/report_april06.pdf.

⁹ *Id.* at 1.

¹⁰ *Id.*

¹¹ See, e.g., *Domestic Relations and Juvenile Standardized Forms*, SUP. CT. OF OHIO & THE OHIO JUD. SYS., <http://www.sc.ohio.gov/JCS/CFC/DRForms/default.asp> (last visited Apr. 21, 2021); *Home, Greater Dayton Volunteer Laws. Project*, <http://www.gdvlp.org/> (last visited Apr. 21, 2021).

conclude with a proposed solution of a court mandated pro se assistance program, increased resources, and statewide court staff training.

II. BACKGROUND

A. Family Law in Ohio

In Ohio, family law matters are handled by the Domestic Relations Divisions of the courts of common pleas.¹² These courts have jurisdiction over all proceedings involving divorce or dissolution of a marriage, annulment, legal separation, and spousal support, as well as allocation of parental rights and responsibilities.¹³ Common proceedings falling within this jurisdiction are marital proceedings such as divorce or dissolution, post-decree cases such as change of custody or modification of child support, and various miscellaneous case types such as domestic violence and parentage.¹⁴ The bulk of filings in Ohio domestic relations courts are for divorces and dissolutions.¹⁵ For example, in 2018, 41,852 divorce and dissolution cases were filed with the courts.¹⁶ In comparison, only 6,133 custody and visitation motions and around 25,000 support cases were filed.¹⁷

B. A Brief History of Pro Se Litigation

Latin for “on one’s own behalf,” the term pro se has been used in the court system when a litigant represents themselves, rather than proceeding with legal counsel.¹⁸ Unlike for criminal defendants, there is no constitutional right to counsel in domestic relations disputes.¹⁹ In response, most states have recognized a litigant’s right to represent themselves either in their state constitutions or by statute.²⁰ In Ohio, the right to proceed pro se is derived from article I, section 16 of the Ohio Constitution which states: “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have

¹² SUP. CT. OF OHIO, 2018 OHIO COURTS STATISTICAL SUMMARY 31 (2019), <https://www.supremecourt.ohio.gov/Publications/annrep/18OCSR/2018OCS.pdf>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Domestic Relations Statistical Summary*, STARK CNTY. GOV’T: THE STARK CNTY. FAM. CT., <https://www.starkcountyohio.gov/family-court/resources/family-court-statistical-reports/domestic-relations-statistical-summary> (last visited Apr. 21, 2021).

¹⁶ SUP. CT. OF OHIO, *supra* note 12, at 32.

¹⁷ *Id.* at 33.

¹⁸ *Pro Se*, CORNELL L. SCH, LEGAL INFO. INST., https://www.law.cornell.edu/wex/pro_se (last visited Apr. 21, 2021).

¹⁹ *Compare* Jagodzinski v. Abdul-Khaliq, No. 17-CA-22, 2018 Ohio App. LEXIS 2041, at * 11 (Ohio Ct. App. May 9, 2018) (citing Alexander v. Alexander, No. CT06-0061, 2007 Ohio App. LEXIS, at *7 (Ohio Ct. App. July 24, 2007)) with Gideon v. Wainwright, 372 U.S. 335 (1963).

²⁰ Nina Ingwer VanWormer, Note, *Help at Your Fingertips: A Twenty-First Century Response to the Pro Se Phenomenon*, 60 VAND. L. REV. 983, 987–88 (2007).

justice administered without denial or delay.”²¹

Beginning in the 1970s, self-representation in family court has increased, and parties represent themselves in a variety of proceedings such as divorce and child support.²² In the Montgomery County Domestic Relations Court alone, at least 20% of the cases filed between 2014 and 2018 involved a self-represented party.²³ Litigants represent themselves for a multitude of reasons, however, some are more prominent than others.²⁴ While factors such as not wanting to involve another person in a private affair or negative attitudes towards lawyers and the legal system undoubtedly impact this decision, the most common reason for a party proceeding pro se is the inability to afford legal counsel.²⁵

Again, there is no constitutional right to counsel in domestic relations matters.²⁶ Therefore, if a party wants representation, they must retain private counsel or seek legal aid assistance if they are eligible.²⁷ For a private family law attorney, the average fee is two hundred and fifty dollars per hour.²⁸ On average, attorney fees in an Ohio divorce case can add up to almost ten thousand dollars.²⁹ If the case involves highly contested issues, such as custody of minor children or division of property that require that the case goes to trial, the cost can increase significantly.³⁰ Thus, if a party cannot afford these costs and does not qualify for legal aid, their only feasible option is to represent themselves.

C. Expectations of Pro Se Litigants in Court

When a litigant represents themselves, they are held to the same legal standards as a party with counsel.³¹ Like an attorney, they are expected and

²¹ OHIO CONST. art. I, § 16; *see* *Rue v. Rue*, 862 N.E.2d 166, 171 (Ohio Ct. App. 2006) (stating that it would go against the Open Courts provision of Ohio’s Constitution to hold that a divorce litigant who cannot afford an attorney is barred from being heard).

²² Jessica Dixon Weaver, *The Legal Profession’s Monopoly on the Practice of Law: Overstepping Ethical Boundaries? Limitations on State Efforts To Provide Access to Justice in Family Courts*, 82 *FORDHAM L. REV.* 2705, 2708–09 (2014).

²³ *DRDM Excel Spreadsheet*, MONTGOMERY COUNTY DOMESTIC RELATIONS COURT (source with author).

²⁴ *See generally* INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *CASES WITHOUT COUNSEL RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT* (2016), https://iaal.sdu.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

²⁵ *Id.* at 2, 12–13; Dixon Weaver, *supra* note 22, at 2709.

²⁶ *Jagodzinski v. Abdul-Khaliq*, No. 17-CA-22, 2018 Ohio App. LEXIS 2041, at * 11 (Ohio Ct. App. May 9, 2018) (citing *Alexander v. Alexander*, No. CT06-0061, 2007 Ohio App. LEXIS, at *7 (Ohio Ct. App. July 24, 2007)).

²⁷ *See infra* Part III.A.ii.

²⁸ *How Much Will a Family Lawyer Cost?*, LEGALMATCH, <https://www.legalmatch.com/library/article/how-much-will-a-family-lawyer-cost.html> (last visited Apr. 21, 2021).

²⁹ *How Much Does Divorce Cost in Ohio?*, LAWYERS.COM, <https://www.lawyers.com/legal-info/family-law/divorce/how-much-does-divorce-cost-in-ohio.html> (last visited Apr. 21, 2021).

³⁰ *See How Much Will My Divorce Cost and How Long Will It Take?*, NOLO, <https://www.nolo.com/legal-encyclopedia/ctp/cost-of-divorce.html> (last visited Apr. 21, 2021).

³¹ *In re A.A.V.*, No. 2017-CA-6, 2018 Ohio App. LEXIS, at * 5 (Ohio Ct. App. Jan. 12, 2018) (quoting *Yocum v. Means*, No. 1576, 2002 Ohio App. LEXIS 3871, *8 (Ohio Ct. App. July 26, 2002)).

presumed to know the relevant law and follow court procedures.³² In Ohio, this means comporting with the Ohio Revised Code and the Ohio Rules of Civil Procedure.³³ If a self-represented party appeals their case, they are even expected to comply with the technical requirements of an appeal, including writing a proper brief.³⁴

While putting together and presenting their case, self-represented parties cannot rely on court staff or judges for legal assistance beyond direction to preliminary resources.³⁵ Although court staff may provide procedural assistance, such as where to find court forms, they may not give a litigant any legal advice, such as what to research or what to say to the judge.³⁶ This is governed by the court's need to comply with its absolute duty of impartiality and fundamental tenet of neutrality.³⁷ Once inside the courtroom, a self-represented party is not likely to receive leeway from the judge or magistrate. The Ohio Code of Judicial Conduct requires a judge and magistrate to uphold and promote the impartiality of the judiciary while avoiding impropriety or any appearance of such.³⁸ Although the Code of Judicial Conduct allows judges to make "reasonable accommodations to a self-represented litigant consistent with the law" so that matters are fairly heard, these accommodations are restricted in scope.³⁹ Commonly accepted accommodations are limited to:

- (1) providing brief information about the proceeding and evidentiary and foundational requirements;
- (2) modifying the traditional order of taking evidence;
- (3) refraining from using legal jargon;
- (4) explaining the basis for a ruling; and
- (5) making referrals to any resources available to assist the litigant in the preparation of the case.⁴⁰

Outside of these considerations, Ohio courts have continuously held that a self-represented litigant cannot expect or demand special treatment from a judge.⁴¹

³² *Id.*

³³ *Legal Assistance/ Self Help*, MONTGOMERY CNTY., https://www.mcohoio.org/departments/child_support_enforcement_agency/services/legal_assistance_self_help.php (last visited Apr. 21, 2021).

³⁴ *Helms v. Helms*, No. 2016-CA-27, 2017 Ohio App. LEXIS 1812, at * 5 (Ohio Ct. App. May 12, 2017)

³⁵ *See I Plan to Represent Myself in Court. What Should I Know?*, LEGAL AID SOC'Y OF CLEVELAND, <https://lasclev.org/i-plan-to-represent-myself-in-court-what-should-i-know/> (last visited Apr. 23, 2021).

³⁶ *Id.*

³⁷ D. Allan Asbury, Senior Counsel, Ohio Bd. of Pro. Conduct, *New Magistrates Orientation: The Self-Represented Litigant*, 6–7 (2019) (on file with University of Dayton Law Review).

³⁸ OH. CODE JUD. CONDUCT Canon 1 (OHIO SUP. CT. 2020).

³⁹ *Id.* at r. 2.2 cmt. 4.

⁴⁰ *Id.* at r. 2.6 cmt. 1A.

⁴¹ *See, e.g.,* *Barton v. Barton*, 86 N.E.3d, 937, 952 (Ohio Ct. App. 2017); *Yocum v. Means*, No. 1576, 2002 Ohio App. LEXIS 3871, *10 (Ohio Ct. App. July 26, 2002); *Hutchinson v. Hutchinson*, No. 26221, 2014 Ohio App. LEXIS 4494, at 9 (Ohio Ct. App. Oct. 17, 2014).

D. The Supreme Court of Ohio's 2006 Task Force on Pro Se and Indigent Litigants

In April 2006, the Report and Recommendations for the Supreme Court Task Force on Pro Se and Indigent Litigants (“Task Force”) was released.⁴² The Ohio Supreme Court launched the Task Force to identify improvements that could be made to pro se and indigent litigant programs in hopes of making the legal system more “user friendly.”⁴³ Recognizing that not all citizens were being afforded the fundamental right of access to justice, the Supreme Court of Ohio was sure that the Task Force and its recommendations would assist them in fulfilling their duty of justice for all.⁴⁴

Three recommendations made by the Task Force were the implementation of standardized forms, self-help centers on court websites, and increasing unbundled legal services.⁴⁵ By implementing standardized forms, the Task Force stated that this would provide self-represented litigants with a “safe harbor,” meaning that the form, regardless of any others that were developed by a local court, would be accepted for filing in any jurisdiction.⁴⁶ When creating the forms, the use of plain language was recommended in order to enable them for use by self-represented litigants.⁴⁷

To provide self-represented litigants with access to information regarding court procedures and processes, the idea of local courts creating “self-help centers” was endorsed.⁴⁸ The self-help center would provide access to different court forms, instructions, and links to community services that could help pro se litigants.⁴⁹ Having all this information in one place was said to be “vital to the efficient and equal access to justice.”⁵⁰ Along with the self-help center, the Task Force recommended that courts implement a system to review cases that are filed by self-represented parties and to designate and train specific court staff to assist the self-represented.⁵¹

Lastly, the Task Force suggested increasing the amount of unbundled legal services available to unrepresented litigants.⁵² Rather than retaining full legal representation, these unbundled services would allow litigants to obtain assistance with things such as knowing their legal options, strategies that could be used to get their requested relief, or help in preparing a key document in their case.⁵³ Although they would not provide assistance with their entire

⁴² See generally SUP. CT. OF OHIO, *supra* note 8.

⁴³ *Id.* at 1.

⁴⁴ *Id.*

⁴⁵ *Id.* at 16, 21, 28.

⁴⁶ *Id.* at 15–16.

⁴⁷ *Id.* at 18.

⁴⁸ *Id.* at 21.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 22.

⁵² *Id.* at 25–26.

⁵³ *Id.* at 25.

case, it was argued that the implementation of these services would not only help the party obtain a better outcome but also create a smoother operating justice system.⁵⁴

E. The Supreme Court of Ohio Report and Recommendations of Ohio's 2015 Task Force on Access to Justice

In 2015, a second task force was put together by the Supreme Court of Ohio, and they developed a report titled the Report and Recommendations of Ohio's 2015 Task Force on Access to Justice ("2015 Report").⁵⁵ Like the 2006 Task Force, the 2015 Report identified what measures could be taken to better improve access to justice for self-represented individuals.⁵⁶ The Report also addressed which recommendations from the 2006 Task Force had been executed by the court.⁵⁷ It found that Domestic Relations Courts in Ohio had implemented standardized forms and the safe haven approach.⁵⁸ Additionally, the standardized forms were developed with general directions as well as plain language.⁵⁹

Looking at the self-help center recommendation, the 2015 Report found that courts have not yet taken steps to develop the service.⁶⁰ However, when it came to creating specific guidelines for court staff to assist pro se litigants, the courts had done so.⁶¹ In terms of increasing the availability of unbundled legal services for self-represented litigants, the 2015 Report revealed that there had been only limited implementation, stating that the recommendation was "partially implemented through collaborations between local courts and assisted pro se legal aid clinics."⁶²

III. ANALYSIS

A. Ohio's Current Pro se Services

In Ohio, there are multiple resources that currently exist for self-represented parties. Four of the more prominent resources available are: (1) online resources; (2) Legal Aid services; (3) The Greater Dayton Volunteer Lawyers Project; and (4) court resource centers and family law clinics.

⁵⁴ *Id.*

⁵⁵ *See generally* SUP. CT. OF OHIO, REPORT AND RECOMMENDATIONS OF THE SUPREME COURT OF OHIO TASK FORCE ON ACCESS TO JUSTICE (2015), <https://www.supremecourt.ohio.gov/Publications/accessJustice/finalReport.pdf>.

⁵⁶ *See generally id.*

⁵⁷ *Id.* at 93–97.

⁵⁸ *Id.* at 95.

⁵⁹ *Id.* at 94–95.

⁶⁰ *Id.* at 95.

⁶¹ *Id.* at 95–96.

⁶² *Id.* at 96.

1. Resources Available Online

There are various online resources that may assist a self-represented litigant with their case. Ohiolegalhelp.org is a resource that was created in 2018 in response to the 2015 Report.⁶³ In an attempt to provide free and accurate legal information to Ohio residents, the website allows a party to select an area of law that they need help with and then asks various questions regarding the legal issue (divorce, separation, child support, etc.), their location, and other demographic information.⁶⁴ Based on that information, the website provides a list of legal help and lawyers in their area, any local government and community resources that may be available, and any relevant forms and letters.⁶⁵ By being so user-friendly and written in easy to understand language, this information is a good starting point for pro se litigants as it can either tell them what their next steps are or, if they are still not sure, lead them to someone who can.

Additional online resources for pro se litigants are available and some vary by county. Many courts provide a self-help section on their websites for self-represented litigants.⁶⁶ For example, Greene County has a “Self-Represented Parties” location on their website where they generically explain the process of filing a case, what it means to represent yourself, and answer frequently asked questions regarding self-representation.⁶⁷ Non-county specific resources are also available, including a brochure prepared by the Ohio Judicial Conference, which contains base-level information regarding obtaining legal advice, what will occur in the courtroom, the role of the judge, and how to prepare your case.⁶⁸

2. Legal Aid Services

Currently, Ohio has eight legal aid societies that provide legal services to low-income individuals and one specialized statewide legal aid that provides legal services specifically to seniors.⁶⁹ These programs help clients with a multitude of legal issues; however, family matters often require

⁶³ *About Ohio Legal Help*, OHIO LEGAL HELP, <https://www.ohiolegalhelp.org/about-ohio-legal-help> (last visited Apr. 21, 2021).

⁶⁴ *See Home*, OHIO LEGAL HELP, *supra* note 63.

⁶⁵ *See Other Family Resources*, OHIO LEGAL HELP, *supra* note 63.

⁶⁶ *See, e.g., Self Help Resource Center*, FRANKLIN CNTY. MUN. CT., <https://www.fcmsselfhelpcenter.org/> (last visited Apr. 21, 2021); *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., <https://www.co.greene.oh.us/420/Self-Represented-Parties> (last visited Apr. 21, 2021); *Pro Se Litigants*, MONROE CNTY. CLERK OF CTS., https://www.monroecountyohio.com/government/clerk_of_courts/pro_se_litigants.php (last visited Apr. 21, 2021).

⁶⁷ *Self-Represented Parties*, *supra* note 66.

⁶⁸ *Representing Yourself in Court: A Citizens Guide*, OHIO JUD. CONF., <https://www.seols.org/wp-content/uploads/2018/04/Representing-Yourself-A-Citizens-Guide.pdf> (last visited Apr. 21, 2021).

⁶⁹ OHIO ACCESS TO JUST. FOUND., *Ohio’s Civil Legal Aid System Offers Hope to Low-Income Ohioans*, OHIO STATE BAR ASS’N (Nov. 25, 2019), <https://www.ohiobar.org/public-resources/commonly-asked-law-questions-results/courts-and-lawyers/ohios-civil-legal-aid-system-offers-hope-to-low-income-ohioans/>.

higher amounts of assistance.⁷⁰ Legal aid services are funded both privately and publicly and often rely on volunteer services from local attorneys and law students.⁷¹ To be eligible to receive assistance from legal aid, an individual must meet specific income criteria.⁷² In most instances, this requires a person to have an income that is less than 125% of the federal poverty guidelines.⁷³

In addition to one-on-one representation, multiple legal aid societies in Ohio have developed online resources aimed at providing individuals with advice, brief services, and referrals to other agencies.⁷⁴ These online resources include things such as links to relevant court forms, information about the local courts, and general information on various domestic relations issues such as parenting time, divorce, and filing information.⁷⁵

3. The Greater Dayton Volunteer Lawyers Project

A prominent resource aimed at assisting self-represented litigants in the Dayton area is the Greater Dayton Volunteer Lawyers Project (“GDVLP”).⁷⁶ Created in 1988, the GDVLP serves the Miami Valley by providing pro bono attorney services to civil litigants.⁷⁷ GDVLP provides services to roughly 1,000 cases each year, with family law being the largest area receiving help.⁷⁸ Through the help of volunteer attorneys, the GDVLP is able to provide litigants with information and tools useful in preparing for court and, in many instances, providing one-on-one representation.⁷⁹

When seeking aid from the GDVLP, litigants must go through a standard intake and screening process, which is handled by Legal Aid of Western Ohio.⁸⁰ In certain counties, the GDVLP conducts information clinics known as “Ask an Attorney Day,” where parties can speak directly to an attorney through Skype, who provides them with “basic legal information and options.”⁸¹ To take advantage of this service, a litigant must make 125% or less of the federal poverty guidelines.⁸² The GDVLP also offers pro se clinics that aid parties in filling out court forms and then provides directions on how

⁷⁰ See generally SE. OHIO LEGAL SERVS., 2018 ANNUAL REPORT (2018), <https://www.seols.org/wp-content/uploads/2019/05/2018-SEOLS-Digital-final.pdf>.

⁷¹ Home, SEOLS, <https://www.seols.org/> (last visited Apr. 21, 2021); OHIO ACCESS TO JUST. FOUND., *supra* note 69.

⁷² Eligibility Guidelines, LEGAL AID OF W. OHIO, <https://legalaidline.lawolaw.org/eligibility-guidelines/> (last visited Apr. 21, 2021).

⁷³ Who Does Legal Aid Help? Am I Eligible?, LEGAL AID SOC^Y OF CLEVELAND, <https://lasclv.org/who-does-legal-aid-help/> (last visited Apr. 21, 2021).

⁷⁴ OHIO ACCESS TO JUST. FOUND., *supra* note 69.

⁷⁵ See, e.g., *Domestic Violence & Family Issues*, SEOLS, *supra* note 71.

⁷⁶ See generally Home, GREATER DAYTON VOLUNTEER LAWS. PROJECT, *supra* note 11.

⁷⁷ *Id.*

⁷⁸ About Us, GREATER DAYTON VOLUNTEER LAWS. PROJECT, *supra* note 11.

⁷⁹ Need Legal Help?, GREATER DAYTON VOLUNTEER LAWS. PROJECT, *supra* note 11.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

to file them in court.⁸³

Although this is a great program for self-represented individuals, it does have its pitfalls, one of which includes funding.⁸⁴ Therefore, the program must rely on the legal community stepping up to assist those in need.⁸⁵ This includes both volunteering as well as making monetary contributions to the program. Furthermore, the work that can be handled within the pro se clinic is limited. For example, the clinic cannot do shared parenting agreements.⁸⁶ Additionally, the legal assistance programs provided by the GDVLP only take place on certain days of the month and are subject to the screening and intake process.⁸⁷

4. Court Resource Centers and Family Law Clinics

Currently, multiple Ohio domestic relations courts offer on-site resources for self-represented individuals.⁸⁸ Courts such as Montgomery and Greene County call this resource their Compliance Department.⁸⁹ This department reviews paperwork submitted for filing by self-represented parties and ensures that it complies with relevant Ohio and local rules.⁹⁰ Hamilton County, on the other hand, has what they call a self-help center.⁹¹ This center provides the resources needed to draft and print legal documents and provides “six stations stocked with instruction manuals, computers, printers, and software needed to empower litigants in pursuing their legal options.”⁹² In addition to their self-help center, Hamilton County also has a Domestic Relations Family Law Clinic.⁹³ At the clinic, volunteer lawyers and law students provide free assistance to low-income individuals with custody, visitation, child support, and divorce matters, but they do not represent the litigants in court.⁹⁴

Like Hamilton County, Franklin County offers a Self-Represented Resource Center on a walk-in, first-come-first-serve basis.⁹⁵ The center

⁸³ *Id.*

⁸⁴ *About Us*, GREATER DAYTON VOLUNTEER LAWS. PROJECT, *supra* note 11.

⁸⁵ *Id.*

⁸⁶ *Need Legal Help?*, GREATER DAYTON VOLUNTEER LAWS. PROJECT, *supra* note 11.

⁸⁷ *Id.*

⁸⁸ *See, e.g., Self-Represented Resource Center*, FRANKLIN CNTY. CT. OF COMMON PLEAS, <https://drj.fccourts.org/DRJ.aspx?PN=SRRC.htm> (last visited Apr. 21, 2021); *Compliance Office*, MONTGOMERY CNTY., *supra* note 33; *Self-Help Resources*, HAMILTON CNTY. CT. OF DOMESTIC RELS., https://www.hamiltoncountyohio.gov/government/courts/court_of_domestic_relations/self_help_resources (last visited Apr. 21, 2021); *What is Compliance?*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

⁸⁹ *Compliance Office*, MONTGOMERY CNTY., *supra* note 33; *What is Compliance?*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

⁹⁰ *What is Compliance?*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

⁹¹ *Self-Help Resources*, HAMILTON CNTY. CT. OF DOMESTIC RELS., *supra* note 88.

⁹² *Id.*

⁹³ *Hamilton County Domestic Relations Family Law Clinic*, HAMILTON CNTY. CT. OF DOMESTIC RELS., *supra* note 88.

⁹⁴ *Id.*

⁹⁵ *Self-Represented Resource Center*, FRANKLIN CNTY. CT. OF COMMON PLEAS, *supra* note 88.

works in connection with Capital University to assist those who do not have the financial resources to pay an attorney.⁹⁶ Similar to legal aid, in order to receive assistance, a party must have an income no more than 250% above the federal poverty guidelines.⁹⁷ If someone is above the threshold, they can use the center's forms and computers but are ineligible to receive assistance with preparing legal documents.⁹⁸ Franklin County makes it clear that they will only answer questions to assist with properly completing paperwork; under no circumstances will they provide legal advice.⁹⁹

B. An Evaluation of Ohio's Current Services

As demonstrated above, there are many programs in Ohio designed to assist self-represented parties with their cases.¹⁰⁰ When evaluating such resources, however, there is a common theme of inconsistency. In the 2015 Report, the Ohio Supreme Court addressed this inconsistency when they identified a lack of a coordinated statewide effort.¹⁰¹ The Supreme Court stated: "While many courts have online dockets and legal aid organizations have their own websites, no one single resource exists to direct Ohioans to legal information, standardized forms, and guidance on navigating the civil legal system."¹⁰² More than five years later, this is still the case.

Although the current programs are a step in the right direction, they are still not where they should be. As discussed, each county's website functions differently, and the scope of information that they provide varies from site to site.¹⁰³ Some provide a list of available community resources, while others merely provide a list of potentially relevant court forms and state that the court may not provide legal advice.¹⁰⁴ Of significance is the amount of detail that some counties go into regarding the difficulty of self-representation and what to expect, whereas others do not address it at all.¹⁰⁵ For example, Greene County has a six-paragraph section dedicated to "The Reality of Self-Representation."¹⁰⁶ The section addresses not only the complexity of the law but the work and factors that go into presenting your own case.¹⁰⁷ Thus, this section provides litigants with an overview of what

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See *supra* Part III.A.

¹⁰¹ SUP. CT. OF OHIO, *supra* note 55, at 6.

¹⁰² *Id.*

¹⁰³ See, e.g., *Self-Help Resources*, FRANKLIN CNTY. CT. OF COMMON PLEAS, *supra* note 88; *Self-Represented Resource Center*, HAMILTON CNTY. CT. OF DOMESTIC RELS., *supra* note 88.

¹⁰⁴ See *Legal Services and Help with Self Representation*, MONTGOMERY CNTY., *supra* note 33. *But see Court Services*, CHAMPAIGN CNTY. FAM. CT., <http://www.ccfamct.us/court-services> (last visited Apr. 21, 2021).

¹⁰⁵ See *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66. *But see Court Services*, CHAMPAIGN CNTY. FAM. CT., *supra* note 104.

¹⁰⁶ See *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

¹⁰⁷ *Id.*

to truly expect as a pro se litigant trying to make their way through the court system. If a litigant's case is being handled in Greene County, they are in luck because its website is one of the more informative ones and can lead to many valuable resources.¹⁰⁸ However, if litigants are in a county that merely provides them with local court forms and lets them know that the court, under no circumstance, can provide legal advice and must remain completely neutral, they are starting their legal journey even more disadvantaged.¹⁰⁹

Aside from county-specific websites, there are also county-neutral resources that deserve attention, specifically, Ohiolegalhelp.org. This website was created in response to the 2015 Report and does the best job at providing a centralized location with an abundance of legal information for pro se individuals.¹¹⁰ It is easy to navigate: click which area of law you need assistance in, input some demographic and geographical information, and be instantly directed to the relevant forms, services, and resources available to you.¹¹¹ The biggest flaw with this resource is the fact that parties do not know that it exists. This loops back to the issue of county court websites not guiding individuals directly to the most specific and beneficial resources. It is hard enough for litigants to work their way through the court system; they should not also have to scour through Google searches in an attempt to (hopefully) stumble across such a helpful resource.

C. *The Impact of Ineffective Services*

Courts have a constitutional duty to ensure that all litigants are receiving adequate access to justice.¹¹² When self-represented parties lack knowledge about the court system and do not receive adequate and meaningful assistance from them, this access is denied.¹¹³ Without proper resources, self-represented parties, as well as the court system, suffer.

1. The Impact on the Litigants

Domestic relations law in Ohio is complex and requires that even well-established and trained attorneys devote time and energy into knowing its ins and outs.¹¹⁴ Without proper resources, pro se litigants can suffer not only legal consequences but intense emotional impacts as well.¹¹⁵

Self-representation places high amounts of strain on an individual during an already trying time in their lives. Overwhelmed with figuring out

¹⁰⁸ *Id.*

¹⁰⁹ *Compare Court Services*, CHAMPAIGN CNTY. FAM. CT., *supra* note 104, with *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

¹¹⁰ *About Ohio Legal Help*, OHIO LEGAL HELP, *supra* note 63.

¹¹¹ *See generally Home*, OHIO LEGAL HELP, *supra* note 63.

¹¹² *See* OHIO CONST. art. I, § 16.

¹¹³ *Asbury*, *supra* note 37, at 3.

¹¹⁴ *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

¹¹⁵ *See INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS.*, *supra* note 24, at 3.

how to present their case, what rules they need to know, and how to fill out paperwork, self-represented litigants grasp at straws to understand the process, often feeling as if they are alone in the dark.¹¹⁶ Due to the nature of domestic relations, it is often not just the litigant who is directly impacted but also their families.¹¹⁷ Parties are at risk of losing substantial time with their children and, in some cases, losing custody of them altogether.¹¹⁸ Because of the stress of trying to represent themselves, litigants have stated that they have simply “giv[en] up their rights when faced with the reality of the court process, including the time and energy required.”¹¹⁹

In addition to the emotional rollercoaster, the legal ramifications of having ineffective pro se resources are just as severe. Because of its complexity, it is well-recognized that self-represented litigants suffer worse outcomes in domestic relations court than those represented by attorneys.¹²⁰ Topics presented during the course of litigation are often convoluted and require intense research and courtroom preparation.¹²¹ Although online resources are extremely valuable to self-represented parties, their broad overviews and non-specific nature leave litigants searching for more guidance.¹²² When searching for such guidance, self-represented litigants are limited in viable options due to the court’s inability to provide any type of legal advice.¹²³ Court staff is strictly limited to providing generic legal information, such as a description of court facilities and procedures, legal terminology, and information about known legal concepts and court practices.¹²⁴

When it comes to how a litigant will present their case, a whole new set of problems arise. Even though the individual represents themselves, standards such as the rules of evidence still apply and are expected to be followed.¹²⁵ Judges have confirmed that a self-represented party’s “inability to effectively present their case from an evidentiary standpoint works against [them].”¹²⁶ Because a pro se party is held to the same standards as represented parties, the failure of an unrepresented party to properly present their case for review can lead to arguments not being reviewed at all.¹²⁷

Finally, by not having an attorney, self-represented parties may forgo

¹¹⁶ *Id.* at 2.

¹¹⁷ *Id.* at 3.

¹¹⁸ *Id.* at 45.

¹¹⁹ *Id.* at 3.

¹²⁰ *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66; *Ohio Family Law Help and Advice*, FAM. L. RTS., *supra* note 5.

¹²¹ *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

¹²² *See* INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *supra* note 24, at 2.

¹²³ *Asbury*, *supra* note 37, at 7.

¹²⁴ *Id.* at 10.

¹²⁵ *See Sparks v. Sparks*, No. CA2010-10-096, 2011 Ohio App. LEXIS 4681, at *10 (Ohio Ct. App. Nov. 7, 2011).

¹²⁶ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *supra* note 24, at 3.

¹²⁷ *See Sparks*, 2011 Ohio App. LEXIS 4681, at *10–11.

services that could significantly increase their success rates in court purely because they do not know that they exist. In domestic relations court, different support measures are available for eligible litigants that can assist with things such as reducing court fees or obtaining extra protections.¹²⁸ Two examples of this include an affidavit of indigency and the Servicemembers Civil Relief Act.¹²⁹

Consider the affidavit of indigency. Although self-representation eliminates the cost of hiring an attorney, litigants are still responsible for paying court fees.¹³⁰ Depending on what is being filed, fees range from fifty to three hundred dollars, with filings such as a parenting time modification or divorce costing two- or three-hundred dollars, respectively.¹³¹ Imagine: a self-represented party walks up to the compliance window in the courthouse and tells the staff member that they want to change their current parenting time arrangement. They are told that it will require filing a Motion to Modify Parenting Order or Shared Parenting Plan, which costs two-hundred dollars.¹³² Already proceeding pro se because the cost of an attorney is too expensive, the individual decides that they cannot file right now because they cannot afford the upfront cost, so they leave the courthouse.

What the individual did not know was that they have a right to file an affidavit of indigency.¹³³ An affidavit of indigency, also known in some courts as a poverty affidavit, is a written statement that the individual is low-income and is unable to pay the necessary court fees.¹³⁴ Information, such as gross monthly income, assets, and number of dependents, is provided in the affidavit, which allows the court to either reduce filing fees significantly or waive them all together.¹³⁵ Courts are required to approve applicants with a gross income less than 187.5% of federal poverty guidelines but are not prevented from also approving applicants with incomes exceeding the guideline.¹³⁶

Similar to a poverty affidavit, the Servicemembers Civil Relief Act (“SCRA”) provides valuable protections to members of the uniformed services, which could greatly help them in court.¹³⁷ The purpose of the SCRA is to:

(1) provide for, strengthen, and expedite the national defense

¹²⁸ See, e.g., OHIO REV. CODE ANN. § 2323.311 (West 2020); 50 U.S.C. § 3901–4043.

¹²⁹ See generally § 2323.311; § 3901–4043.

¹³⁰ See *Pro Se Litigants*, MONROE CNTY. CLERK OF CTS., *supra* note 66.

¹³¹ See *Filing Fees*, CUYAHOGA CNTY. DOMESTIC RELS. CT., <http://domestic.cuyahogacounty.us/en-US/Filing-Fees-Court-Costs.aspx> (last visited Apr. 21, 2021).

¹³² *Id.*

¹³³ § 2323.311 (B)(1).

¹³⁴ See *I Am Low-Income and Am Involved in a Civil Case. Is There a Way to Reduce or Eliminate Fees?*, LEGAL AID SOC’Y OF CLEVELAND, *supra* note 73.

¹³⁵ § 2323.311 (B)(7).

¹³⁶ *Id.* § 2323.311 (B)(4), (6).

¹³⁷ 50 U.S.C. § 3901–4043.

through protection extended by this [Act] . . . to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.¹³⁸

A significant benefit of the SCRA is that it prevents a default judgment from being entered against litigants who are unable to appear in court due to their military service duties and gives them the ability to stay court proceedings for a minimum of ninety days until they can appear in court.¹³⁹

Also of vital importance is the SCRA's child custody provision.¹⁴⁰ This provision insulates the custody rights of the servicemember by putting restrictions on temporary orders based on deployment or anticipated deployment and limits a court's ability to consider of deployment when determining a child's best interest.¹⁴¹ These extremely weighty protections could prevent unfortunate circumstances, such as a soldier returning home and finding out that he has lost custody of his child after the court found it would be in the best interest of the child to remain with the other parent based on the soldier's deployment.¹⁴² Servicemembers should have the opportunity to be made fully aware of the SCRA provisions, and although the military has an annual obligation to provide such notice, a self-represented litigant may not realize that the burden is on them to present this information to the court and thus could lose the protections that the SCRA is meant to provide.¹⁴³

2. The Impact on the Court System

In addition to impacting the self-represented party directly, pro se litigation similarly burdens the court system itself. A survey conducted by the American Bar Association revealed that 78% of judges felt the court system was negatively impacted by the lack of representation.¹⁴⁴ In addressing the negative impact of pro se litigation on the court system, three common themes arise: (1) the slowing of court procedures; (2) the threat to impartiality; and (3) the risk of erroneous decisions.¹⁴⁵

¹³⁸ *Id.* § 3902 (2012).

¹³⁹ *See generally id.* § 3931.

¹⁴⁰ *Id.* § 3938.

¹⁴¹ *Id.*

¹⁴² See Nakia C. Davis, *Child Custody and the SCRA: My Child or My Country*, ABA (Apr. 01, 2008), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol_35_2008/human_rights_spring2008/hr_spring08_davis/.

¹⁴³ § 3938a.

¹⁴⁴ See Richard W. Painter, *Pro Se Litigation in Times of Financial Hardship—A Legal Crisis and Its Solutions*, 45 FAM. L. Q. 45, 46 (2011).

¹⁴⁵ *Id.* at 46–47.

Because they do not know the ins and outs of the difficult system that is domestic relations court, self-represented parties inevitably clog the court's dockets.¹⁴⁶ From not being familiar with the court rules, such as how to present evidence, to being unprepared for hearings, which requires an adjournment and rescheduling, the court system repeatedly has to accommodate the unknowing party.¹⁴⁷ Pro se litigants' lack of knowledge leads to a high need for assistance, subsequently placing a strain on court staff to assist them, taking away from the duties they are supposed to be performing to ensure the court is running efficiently.¹⁴⁸ This pressure on the court staff has been found to cause resentment towards self-represented parties.¹⁴⁹

The adversarial nature of the court system and the role of impartiality that the court serves leaves courts constantly fighting the battle of providing adequate assistance to pro se litigants without breaching the "fundamental tenet of neutrality."¹⁵⁰ This means that judges, magistrates, and court staff consistently walk the fine line of procedural assistance versus the administration of legal advice.¹⁵¹ Although many will err on the side of caution and provide lower amounts of assistance, some courts may "compromise [their] impartiality to avoid injustice toward unrepresented parties."¹⁵²

When a pro se litigant does not know how to properly present their case, it can lead to a detrimental result.¹⁵³ It is well known that self-represented parties often struggle with their ability to present evidence in the proper manner, which is something that judges have stated directly influences a negative outcome for the pro se litigant.¹⁵⁴ By failing to present the necessary evidence, ineffectively examining witnesses, and making futile arguments, there becomes a lack of relevant facts from which a judge can make their decision.¹⁵⁵ This can lead to worthy claims being denied solely because they were not properly presented, leading to the possibility that justice is not being done.¹⁵⁶ Therefore, judges are left with a feeling of worry when "it appears a different legal result could (likely would) occur if the pro

¹⁴⁶ See SUP. CT. OF OHIO, *supra* note 55, at 69.

¹⁴⁷ See Stephan Landsman, *Celebrating the 40th Anniversary of the Federal Judicial Center: The Growing Challenge of Pro Se Litigation*, 13 LEWIS & CLARK L. REV. 439, 449 (2009).

¹⁴⁸ *Id.*

¹⁴⁹ See Steven K. Berenson, *A Family Law Residency Program?: A Modest Proposal in Response to the Burdens Created by Self-Represented Litigants in Family Court*, 33 RUTGERS L.J. 105, 112–13 (2001).

¹⁵⁰ See *id.* at 113–14.

¹⁵¹ See *id.* at 114–15.

¹⁵² See *id.* at 115; Painter, *supra* note 144, at 46.

¹⁵³ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *supra* note 24, at 3.

¹⁵⁴ *Id.*

¹⁵⁵ Painter, *supra* note 144, at 46.

¹⁵⁶ See Berenson, *supra* note 149, at 115–16; Maeve McClenaghan, *Family Courts: Self-Representation Hinders Justice Say Magistrates*, THE BUREAU OF INVESTIGATIVE JOURNALISM (June 1, 2014), <https://www.thebureauinvestigates.com/stories/2014-06-01/family-courts-self-representation-hinders-justice-say-magistrates>.

se party took appropriate action.”¹⁵⁷

IV. PROPOSAL

As discussed above, the biggest concern about the current services for self-represented parties is the lack of visibility that is needed to be effective. The Ohio domestic relations court system needs to take a more assertive role in ensuring that self-represented litigants have access to the resources they need to represent themselves as fully as possible. To do so, this requires not waiting for pro se litigants to come to them, but for the court system to initiate the process and take the first steps to inform litigants what options are available to them. Thus, this Comment proposes three solutions: (1) a required pro se workshop for parties before representing themselves; (2) consistent distribution of uniform resources to pro se litigants; and (3) statewide training for all court staff.

A. Implementation of a Mandatory Pro Se Workshop

The best way to avoid a problem is to have a plan in place to deal with it before it happens. In the realm of pro se litigation, this can be done through implementing a mandatory pro se workshop that self-represented parties are required to attend before continuing with their cases. The seminar should be modeled after the parenting education classes that Ohio counties require parents with children going through a divorce to attend before their divorce is finalized.¹⁵⁸

1. The Model: Ohio’s Parenting Education Seminar

Section 3109.053 of the Ohio Revised Code permits domestic relations courts to require “parents attend classes on parenting or other related issues” during any divorce, legal separation, annulment proceeding, or in any proceeding regarding allocation of parental rights and responsibilities.¹⁵⁹ In response, courts have mandated through their local rules that all parents involved in any type of divorce or legal separation action involving minor children must attend an educational seminar titled “Helping Children Succeed after Divorce.”¹⁶⁰ The length of the seminar in each county varies, but most are three or four hours long.¹⁶¹ The premise of the seminar is for the court to

¹⁵⁷ Berenson, *supra* note 149, at 115 (quoting Jona Goldschmidt, *How are Courts Handling Pro Se Litigants?*, 82 JUDICATURE 13, 17–18 (1998)).

¹⁵⁸ See, e.g., OHIO BUTLER CNTY. DOMESTIC RELS. DIV. LR 26(B); OHIO MONTGOMERY CNTY. DOMESTIC RELS. DIV. LR 4.32.

¹⁵⁹ OHIO REV. CODE ANN. § 3109.053 (West 2020).

¹⁶⁰ See, e.g., OHIO BUTLER CNTY. DOMESTIC RELS. DIV. LR 5, 26; OHIO MONTGOMERY CNTY. DOMESTIC RELS. DIV. LR 4.32; OHIO GREENE CNTY. DOMESTIC RELS. DIV. LR 4.4; OHIO WARREN CNTY. DOMESTIC RELS. DIV. LR 4.2.

¹⁶¹ *Parent Education*, MONTGOMERY CNTY., *supra* note 33. *But see Mandatory Parent Education Class*, BUTLER CNTY. CT. COMMON PLEAS DOMESTIC RELS. DIV., <http://www.butlercountydrcourt.org/index.cfm?page=mandParentClass> (last visited Nov. 6, 2020).

assist parents in understanding the impact that a divorce or separation can have on children through the presentation of material covering a variety of issues that could arise.¹⁶²

For example, Butler County breaks their four-hour seminar into two parts.¹⁶³ The first part looks at the divorce experience in relation to the parents' point of view.¹⁶⁴ During this part, topics such as the stages of a divorce, possible emotions, and psychological tasks are discussed in depth.¹⁶⁵ Part two then transitions to the impact that divorce has on children, including how to talk to children about the divorce, the impact divorce has based on age group, typical child responses, and where to turn for help for your children.¹⁶⁶ The parenting education seminar is not intended to make the parent an expert on divorce law and its processes, nor are they suddenly transformed into a perfect parent.¹⁶⁷ Rather, the parents gain three critical things: (1) a general knowledge of the process that they are about to experience; (2) the impact that the process is going to have on not only them but their children; and (3) most importantly, resources and information on where to get help if they need it.¹⁶⁸

2. The Proposed Pro Se Workshop

This Comment proposes that Ohio domestic relations courts create a pro se workshop, modeled after the parenting education seminars, that self-represented litigants are required to attend before proceeding in their cases. Instead of providing information solely on divorce or separations, individuals should be given materials regarding the procedures of different domestic relations matters, such as modifications of parenting time or child support. This would enable litigants to get a general idea of what is about to occur, as well as put on full display the many expectations that the courts would be requiring litigants to conform to and follow precisely.

In addition to providing knowledge of the procedural matters, the seminar should discuss the impact that self-representation can have on an individual and the challenges that lie ahead. Just as Greene County does in the portion of their website titled "The Reality of Self-Representation," individuals should be made well aware that this will not be an easy road.¹⁶⁹ Things such as the complexity of the law and procedure, the time that it takes to prepare for court, and the emotional toll that self-representation takes on a

¹⁶² See *Mandatory Parent Education Class*, BUTLER CNTY. CT. OF COMMON PLEAS DOMESTIC RELS. DIV., *supra* note 161.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See, e.g., *id.*; *Parent Education*, MONTGOMERY CNTY., *supra* note 33.

¹⁶⁸ See e.g., *Parent Education*, MONTGOMERY CNTY., *supra* note 33; *Mandatory Parent Education Class*, BUTLER CNTY. CT. COMMON PLEAS DOMESTIC RELS. DIV., *supra* note 161.

¹⁶⁹ *Self-Represented Parties*, GREENE CNTY. DOMESTIC RELS. CT., *supra* note 66.

person should be fully disclosed.¹⁷⁰

Most importantly, the seminar should direct litigants to community resources that are available to them. In doing so, it should lead them to websites such as Ohiolegalhelp.org so that they can take advantage of such a tremendous legal resource.¹⁷¹ If the seminar does this, litigants would at least be made aware of all of the great programs discussed above and provided with information on how to apply for legal aid assistance if they have not already done so.¹⁷² Programs that parties have no idea exist would be made visible. This would leave less to the unknown and give litigants the knowledge that they need to have proper access to justice.

3. Overcoming Potential Problems

As with any proposal, there are some potential problems that need to be addressed: concerns regarding delayed court proceedings, the blurry line of legal advice, and potential abuse of the program.

Unlike Ohio's parenting education seminar, the proposed pro se workshop would not be able to take place while court proceedings ensued.¹⁷³ As soon as a party declares that they will be representing themselves, proceedings would need to be put on hold to give the self-represented party time to attend the workshop. This means that the opposing party and their counsel would be forced to delay their case. Although this may seem problematic, it is analogous to the often-requested continuance to retain an attorney.¹⁷⁴ When a party requests such a continuance, it is within the sole discretion of the judge or magistrate to determine whether to grant or deny it.¹⁷⁵ In some cases, the court will allow a continuance of two to four weeks to allow the party to find an attorney.¹⁷⁶ Therefore, it should be of no concern for the court to briefly delay proceedings to give a self-represented litigant the opportunity to learn about resources that are available to them and what will be expected of them moving forward. However, to avoid longer delays than necessary, strict deadlines would be imposed. Litigants would be given a set window of time to attend the workshop. If they fail to attend the workshop within that time period, the court would no longer be required to stay proceedings. At this point, the party would be provided with a self-representation manual to use as a resource throughout the rest of the

¹⁷⁰ See, e.g., *id.*; *About Ohio Legal Help*, OHIO LEGAL HELP, *supra* note 63.

¹⁷¹ See generally *About Ohio Legal Help*, OHIO LEGAL HELP, *supra* note 63.

¹⁷² See generally *Home*, GREATER DAYTON VOLUNTEER LAWS. PROJECT, *supra* note 11; *Hamilton County Domestic Relations Family Law Clinic*, HAMILTON CNTY. CT. OF DOMESTIC RELS., *supra* note 88.

¹⁷³ OHIO REV. CODE ANN. § 3109.053 (West 2020).

¹⁷⁴ *General: Requesting a Continuance*, LAWHELPNC.ORG (June 25, 2012), <https://www.lawhelpnc.org/resource/requesting-a-continuance>.

¹⁷⁵ See OHIO MONTGOMERY CNTY. DOMESTIC RELS. DIV. LR 4.20; OHIO GREENE CNTY. DOMESTIC RELS. DIV. LR 3.9; Ohio HAMILTON CNTY. DOMESTIC RELS. DIV. LR 1.2.

¹⁷⁶ *A Continuance to Obtain an Attorney – Can I Get One?*, L. OFFS. OF BELLENOT & BOUFFORD, <https://www.bbesq.com/articles/family-law/get-continuance-obtain-attorney/> (last visited Apr. 23, 2021).

proceedings, with the option of attending the workshop at a later date.¹⁷⁷

By having members of the courts staff relay this information to self-represented litigants during the workshop, the worry of incidental legal advice being given follows closely behind.¹⁷⁸ The key to getting ahead of this concern is proper training of the instructor. Before administering the workshop, staff should be required to go through a training process on what their role is. This training should include information about what questions they are allowed to answer and what guidance they are to provide. Effective training will eliminate the risk of crossing the line from procedural guidance to legal advice.¹⁷⁹

Lastly, whenever a new program is created, there is always a risk that it may be abused. In this case, the risk is that parties who can afford an attorney will opt to represent themselves and use the workshop and referred resources as a means of doing so. However, this risk is inherently low and should be of little concern for multiple reasons. To start, proceeding as a self-represented party would require them to take time out of their presumably busy schedules to attend the pro se workshop. In this day and age, very few people are likely to want to give this time up if they can avoid doing so. If the time commitment is not enough, the amount of work and preparation that must go into self-representation is likely a sufficient deterrent to dissuade someone from willingly representing themselves. If someone attends the workshop, despite being able to afford an attorney, they would soon learn how difficult self-representation is going to be and everything that goes into it. After hearing this, it is hard to believe that someone would willingly subject themselves to such a daunting process.

In the end, however, if the workshop benefits someone other than a pro se litigant, so be it! This should not be seen as a negative. The goal of the workshop is to inform litigants about resources available to them and enable them to best obtain justice through the court system. The workshop is not meant to provide an advantage to pro se litigants but merely attempt to put them on even ground with those that are represented by counsel. Therefore, the benefit of providing so many people with access to resources that truly need it is not tarnished or done away with merely because someone who could afford counsel is choosing to represent themselves. The more people that can benefit from visible legal resources, the better.

B. Uniform Distribution of Resources

When looking at the current resources made available by Ohio domestic relations courts to self-represented parties, each court seems to offer

¹⁷⁷ See *supra* Part IV.B.

¹⁷⁸ See SUP. CT. OF OHIO, *supra* note 43.

¹⁷⁹ See *infra* Part IV.C.

something different.¹⁸⁰ Similarly, a quick search on the internet may yield multiple pro se handbooks or “how-to” guides.¹⁸¹ What is not currently available is a uniform guide for self-represented litigants specifically within the area of Ohio domestic relations. Accordingly, this Comment makes a second proposal: the creation of an Ohio domestic relations self-representation manual.

Similar to the pro se workshop, the idea behind the manual will be to inform the litigant about what to expect as a self-represented party, the impact that self-representation can have, and the legal resources that are available. Unlike others that exist, this manual should be tailored to domestic relations court.¹⁸² The manual should begin with an introductory section. Within this section should be information regarding what it truly means to be a self-represented party. This will alert the party to how difficult it is to represent themselves in court and the many impacts it can have to adequately prepare them for the journey they are about to begin.¹⁸³ An overview of the different types of domestic relations proceedings should also be provided, for example, a general overview of the divorce process. Following such, the manual should provide an “expectations” section. It is this section that will tell the party that they will be expected to follow all applicable Ohio laws, including the rules of civil procedure and evidence. The manual should further designate where all applicable law can be located. This means that each court must personalize this portion of the manual to reflect the location of their applicable local rules. Information about the local county clerk’s office should also be included so that parties are aware of where their documents are to be filed.

Of critical importance within the manual is the inclusion of a “resources” section. This section should provide all of the local resources that are available to self-represented parties. The local legal aid society should be listed, as well as any other county-specific resources that may be available. For example, in Montgomery County, the manual should direct litigants to programs such as the GDVLP.¹⁸⁴ A resource that all manuals should include, regardless of their county, is Ohiolegalhelp.org.¹⁸⁵ Lastly, each manual should conclude with a terminology section. This will include commonly used court terms and explain any legalese that a self-represented party may come across. It should also include a brief description of the different types

¹⁸⁰ See *supra* Part III.A.

¹⁸¹ See, e.g., *Step-By-Step Guide to Pro Se Litigation or How to Represent Yourself in Court*, LUCAS CNTY., <http://co.lucas.oh.us/DocumentCenter/View/8052/Pro-Se-Pamphlet?bidId=> (last visited Apr. 23, 2021); *Representing Yourself in the United States District Court A Guide for Pro Se Litigants: A Handbook for Pro Se Litigants*, U.S. DIST. CT. N. DIST. OF OHIO (Sept. 2019), <https://www.ohnd.uscourts.gov/sites/ohnd/files/ProSeGuide.pdf>.

¹⁸² See, e.g., *Step-By-Step Guide to Pro Se Litigation or How to Represent Yourself in Court*, LUCAS CNTY., *supra* note 181.

¹⁸³ See *supra* Part III.C.1.

¹⁸⁴ See *generally Home*, GREATER DAYTON VOLUNTEER LAWS. PROJECT, *supra* note 11.

¹⁸⁵ See *generally Home*, OHIO LEGAL HELP, *supra* note 63.

of hearings that occur in domestic relations court.

Although each manual will vary slightly by way of including local court rules and resources, the consistency and uniformity of the resource will come into play by each court being required to provide this resource to any self-represented party as soon as they declare that they will be proceeding without representation. All manuals should be equipped with a disclaimer stating that it is not being provided as legal advice but merely a procedural tool that can be used to assist them in navigating their way through their case. In comparison to the pro se workshop, this manual will require far fewer court resources to be expended as it can simply be handed out to parties in court.¹⁸⁶ In sum, creation of this manual is an easy way to educate self-represented parties and provide them with better access to justice.

C. Increased Training of All Court Personnel

In addition to the implementation of a mandatory pro se workshop or the creation of a uniform self-representation manual, courts must also focus on providing their staff with proper training on how to assist self-represented litigants.¹⁸⁷ When assisting litigants, court staff are faced with the battle of knowing what they can and cannot say and being very careful not to cross the fine line into giving legal advice. To lessen this struggle, courts should provide training to *all* court staff similar to what was provided by the Ohio Board of Professional Conduct at their 2019 New Magistrates Orientation.¹⁸⁸ At this training, attendees were provided with self-tests that they could employ to determine if the information that they are about to convey is appropriate.¹⁸⁹ For example, magistrates were encouraged to look at the word choice used by the litigant when they asked their questions.¹⁹⁰ If a question involved words such as “should” or “would,” these were deemed advice words, whereas if the question started with “where is” or “how do I,” these were deemed information phrases and less likely to require legal advice as a response.¹⁹¹

The magistrate orientation also provided a list of dos and don'ts for staff to keep in mind.¹⁹² One of the most critical dos and don'ts the training provided was “[do] provide *options*,” but “[d]o not provide *opinions*.”¹⁹³ This statement alone is a great way to ensure that court staff are allowed to guide litigants in the direction of beneficial resources that are available to them. Because of the fine line that exists between procedural assistance and legal

¹⁸⁶ See *supra* Part IV.A.2.

¹⁸⁷ See SUP. CT. OF OHIO, *supra* note 43.

¹⁸⁸ See *generally* Asbury, *supra* note 37.

¹⁸⁹ *Id.* at 12–16.

¹⁹⁰ *Id.* at 12.

¹⁹¹ *Id.*

¹⁹² *Id.* at 13–14.

¹⁹³ *Id.* at 14 (emphasis added).

advice, court staff have been known to err on the side of caution and therefore provide lower amounts of assistance.¹⁹⁴ This is easily avoidable. By providing all court staff with adequate training, and not just magistrates and litigants, staff will feel confident in answering questions and do so with ease.

V. CONCLUSION

The Constitution of the State of Ohio makes it clear that the courts should be an attainable path of redress for every single person—not just the wealthy and well-educated—but every resident of the State.¹⁹⁵ This right is threatened when those who have no option but to represent themselves in Ohio domestic relations courts have to navigate the chaotic and intricate legal system without proper assistance. This does not have to be the case. Through providing simple yet crucial resources to self-represented litigants, the path to justice can be restored for not only some but all.

¹⁹⁴ See Berenson, *supra* note 149, at 115.

¹⁹⁵ See OHIO CONST. art. I, § 16.