Legal Reference for Librarians

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Legal Reference for Librarians

HOW AND WHERE TO FIND THE ANSWERS

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PREFACE

REFERENCE QUESTIONS ABOUT LEGAL TOPICS OCCUPY A special niche in the universe of topics handled by reference librarians. On the one hand, law is a popular topic. It affects every aspect of our lives, and it only makes sense that library users would have questions about it. On the other hand, law is a complicated technical discipline, and legal materials are generally not user friendly, especially for the untrained layperson. This can put the reference librarian in the middle between users and the information they seek.

If that weren't enough, there is another issue that complicates legal reference interactions: the possibility of legal liability for the librarian if the question is not handled properly. The result can be a conundrum for a librarian who sees herself trapped between an enquiring user, difficult-to-use materials, and the threat of liability.

This book will try to help you unravel this conundrum, so that you can handle legal reference questions without fear. In part 1, we will look at the legal and ethical issues that are present in reference interactions. We will start, in chapter 1, by looking at the users who are asking for legal information. We will explore their status and look at how that status affects the kinds of information they are seeking and the potential for liability they present.

In chapter 2 we will look at the parameters of legal reference service, including where the threat of liability comes from and how it can be handled properly while still providing services to users. Chapter 3 will provide tips and tools for successfully assisting users with legal questions, covering everything from policies and training to handouts and public notices. By the end of part 1 you should understand the issues and have a solid plan for how to deal with them.

Part 2 of this book will increase your understanding of law and legal materials so that you can better assist users. We will look at law from a bibliographic perspective, exploring where law is published, its bibliographic structure, how it is navigated,

and how legal tools work. We will start, in chapter 4, by examining the structure of the legal system in America and how legal publications flow from that structure. Chapter 4 also includes an overview of the legal research process and how it applies to questions from library users. Then, in succeeding chapters, we will explore how to work with legal materials. Chapter 5 will discuss what are known as secondary legal materials—materials that help you find out about the law but are not themselves law. In chapters 6, 7, and 8, we will look at law itself, in the form of statutes, case law, and regulations, respectively.

Last but not least, the appendix to this book will provide you with a vast array of web-based legal resources—most available for free. You will have at your fingertips a guide to finding online sources of law for every state and the federal government, as well as aggregate and self-help sites. The hope is that you will end up not only with a better understanding of the issues present in legal reference interactions and a greater ability to guide users in using legal materials, but also that you will have the resources at your disposal to help answer their questions.

HOW TO USE THIS BOOK

Most readers will benefit from reading part 1 in its entirety. Doing so will provide you with an understanding of the issues involved in answering legal reference questions and provide you with some tools for handling them properly. If you will be helping users with legal questions on a regular basis, you will also want to read part 2. This will give you some background and an understanding of how legal materials work, which will in turn allow you to be more efficient in handling legal questions. If necessary or desirable, part 2 can also be used as a reference source, providing information on legal materials on an as needed basis. Finally, the appendix of online resources is purely a reference tool listing legal resources. That said, if you have the time and inclination, you might want to explore the listed resources for your state and for the federal government, as well as the aggregate and self-help sites listed in the first section. Again, familiarity with these resources can increase your efficiency in assisting users.

Answering legal reference questions need not be stressful or confusing. With a little knowledge, any librarian can competently answer such questions, or know when to refer them to experts. The goal of this book is to help you reach that level.

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In writing about legal reference it is only natural to mention specific publishers, publications, and websites. The author has no relationship with, and receives no compensation from, any publisher or website mentioned in this book. The opinions and comments about publishers and publications are strictly those of the author.

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PART ONE

LEGAL AND ETHICAL ISSUES

1

WHO IS ASKING LEGAL REFERENCE QUESTIONS, AND WHY DOES IT MATTER?

IT MAY SEEM STRANGE TO SPEND AN ENTIRE CHAPTER DISCUSSing who is asking legal questions at the reference desk. Rest assured, this actually is a very important issue, and understanding who is asking legal questions, and why, can have a big effect on how you go about assisting them.

You may be aware of the fact that nonlawyers who ask questions at the reference desk of a dedicated law library cause much anxiety and even fear among law librarians. You may have heard the term *pro se* being applied to such users and wondered what, exactly, that meant. A fear of such users may be one that you share, or it may be shared by your colleagues.

In fact, there are three broad reasons why pro se library users engender such a negative reaction. The first is that answering legal reference questions is thought to create potential legal liability for the librarian and the library. The second is that many librarians fear that users who are trying to handle their own legal matters without the help of an attorney are doing something that might end up being dangerous or damaging to the user's own interests. Quite reasonably, many librarians are uncomfortable being a party to such activity. Third is that legal questions are often very complex, and may deal with topics and materials that neither the librarian nor the user fully understand.

We will look at the risk of liability, and the ethical issues of potential harm to the user, in chapter 2. We will try to help with the complexity of legal materials in part 2 of this book. In this chapter we will look at who these users really are and why law librarians react to pro se users the way they do.

In fact, the pro se issue is just the beginning. In this chapter you will learn the distinction between three types of library users asking legal questions: the lay, or casual, user; the pro se user; and the self-represented litigant. These three different user groups present very different challenges and provide different possibilities for

liability. We will discuss the motivations people have for representing themselves in court and take a look at how big the problem is. By the end of the chapter you should have a much better understanding of who this user group is and why they do what they do.

WHO IS ASKING LEGAL REFERENCE QUESTIONS?

To begin with, let's dispose of one type of person who might be seeking legal materials at the reference desk, a group we might call legal professionals. Under this rubric we find lawyers, paralegals, court personnel, and law students. What they all have in common is that they do not raise issues of liability (why this is will be explained in more detail in chapter 2), and they are familiar with legal research and legal materials. This means that legal professionals generally only want assistance locating library materials that they already know they need. They will not be asking the librarian how to use various resources, how to do research, or for advice on legal issues. As a result, because legal professionals do not present a risk of liability and because the assistance they need from the reference librarian will usually be minimal, we can forgo any further discussion of this user group. Instead, let's turn our attention to people asking legal reference questions who are not legal professionals.

In this book we will draw a distinction between lay users, pro se users, and self-represented litigants. Most librarians, including most law librarians, refer to any nonlawyer library user who is asking legal questions as a pro se, without distinguishing further. In fact, the distinctions are important, as we shall see, and are worth understanding.

All three of these user groups have two important things in common: they are pursuing a legal topic in the library, including asking reference questions, and they have no training in law. Beyond that, the three groups vary widely.

Lay Users

The group we are referring to as lay users, or casual users, are researching a legal topic but are not doing so to pursue or protect their own legal interests. This distinction is crucial. It is the fact that pro se users or self-represented litigants are pursuing their own legal interests that raises the legal and ethical issues we will be discussing in the next chapter. A lay user who is researching a legal topic that is not related to his own immediate legal interests does not raise these issues.

Lay users might be asking legal questions for a variety of benign reasons. They might be working on a school homework assignment, or they might be curious about legal issues in general or about how the law works. They may want information about a recent Supreme Court decision or about a controversial legal topic. They may want information about a legal issue a friend or relative is struggling with. Lay users may be researching the history of law or investigating the nature of other legal systems.

The bottom line is that, so long as lay users are not dealing with their own legal interests, they do not pose any heightened risk of liability. As a result, they can be treated just like any other library user asking questions at the reference desk.

Pro Se Library Users

Pro se library users are those who are not trained in law and who are using the library to pursue their own personal legal issues or interests. The key distinction here is that pro se users have some sort of personal legal interest at stake. Without a personal interest at stake, they are simply lay users of the type described above, but once a personal issue is in play, they present the potential for creating legal and ethical problems for librarians.

The term *pro se* is actually Latin for "in person." In law the phrase is usually translated as "on one's own behalf" and is used to designate someone who is not represented by an attorney while pursuing some legal issue or interest. In

some parts of the country, particularly California, you may hear the term *pro per*. *Pro per* is a contraction of the Latin phrase "in propria persona," which means "in one's own proper person." In the usage of the courts and, by extension, librarians, *pro per* means the same thing as *pro se*, and they can be used interchangeably. However, *pro se* is by far the more common term.

When we think of someone who is pro se, we often think of someone who is representing him- or herself in court, but in fact there are a broad variety of pro se activities that don't involve litigation or appearing in court. As such we can draw a distinction between pro se library users and self-represented litigants. A user can be considered pro se whenever he is pursuing his own legal interests and doing something that would normally be done by a lawyer.

A pro se library user may be drafting his own will or trust, negotiating a lease or contract, handling legal issues related to a business, or pursuing a change in government or other advocacy issues. The important point is that, in pursuing their own legal issues, pro se users raise the potential for liability for the librarian and may be harming themselves as well. Sometimes the problems they are creating can be hidden for years. For example, if a pro se library user drafts a defective will, it generally won't pose a problem while that user is alive, but afterwards, it will cause problems for others.

Self-Represented Litigants

Self-represented litigants are, by definition, pro se, but are differentiated by being actively engaged in some sort of litigation or court action. While the legal and ethical challenges presented by self-represented litigants are about the same for librarians as those of other pro se library users, the situation of the self-represented litigant is very different. This can complicate the reference interaction.

To understand why, let me point out here that, as we will see in chapter 4, American law can be divided into two forms: substantive and procedural. Substantive law is what most people think of when they think of law. It is the rules of society. On the other hand, procedural law is the law that governs how litigation takes place. It covers how a lawsuit is started, what the parties have to do at each stage of the litigation, and how an aggrieved party can appeal a court decision. So, for instance, criminal law is the substantive law of what constitutes a crime and how crime should be punished. Criminal procedure is the process by which a prosecutor can indict someone who is alleged to have committed a crime, what actions the defendant can take to defend him- or herself, and so forth.

Pro se library users are generally interested in substantive law. They may want to know how to exclude someone from their will, or what elements are required for a contract to be legally binding. Pro se library users are rarely interested in procedural matters because procedural law is irrelevant to what they are doing.

Like other pro se library users, self-represented litigants are looking for information about substantive law. However, because of the fact that they are involved in litigation, they will also need information about procedural law. Procedural law is highly technical and complex. It usually involves producing various types of documents—petitions, answers, motions, briefs, and so forth—and requires that these documents be produced under strict deadlines and along complicated timelines.

For example, someone who has just been served with a petition for dissolution of marriage, and who has decided to represent himself, is faced with the need to find the substantive law of divorce—his rights to property, child custody, and many other things—but he also needs to find out about the procedural law of the divorce action, including what documents need to be filed when and so on. In most jurisdictions, there will usually be an immediate need to create a document called an answer, which has specific requirements, and get the answer filed with the court, usually within ten days of being served with the petition.

The result is that self-represented litigants have much greater information needs than other pro se library users, and they are under much

more pressure. Add to this the general anger and frustration about whatever dispute they are litigating, and it becomes logical that self-represented litigants might feel overwhelming stress, anxiety, and anger. Unfortunately, these feelings can overflow at the reference desk.

To sum up, lay users, pro se users, and self-represented litigants can be differentiated as follows:

- Lay users include any person without legal training who is doing legal research. This includes users whose research purpose is completely benign.
- Pro se users are lay users who are doing research to pursue their own legal interests. This includes those who are working on a nonlitigation legal matter, such as preparing a will or drafting a contract.
- Self-represented litigants are pro se users who are actively involved in litigation of some kind.

ABOUT THE PRO SE LIBRARY USER

Because of the important issues presented in the library by people who are handling their own legal interests, it is worth our while to explore who these people are, what motivates them, and what kind of experiences they can expect to have. In doing so, let's concentrate for now specifically on self-represented litigants.

The Right to Self-Representation

At the outset, it is important to understand that every American has the right to represent themselves in court in almost any legal proceeding. Although the right to self-representation is not in the U.S. Constitution, it was included in the very first Federal Judiciary Act signed by President Washington in 1789. The provision that allows self-representation survives to this day as Section 1654 of Title 28 of the *United States Code*. The current language reads as follows: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." This language directly opens the doors of the federal court system to self-represented litigants.

Many of the states also have provisions in their constitutions that protect the right to self-representation. In addition, in the landmark 1975 case of *Faretta v. California*, the U.S. Supreme Court found that the Sixth Amendment to the U.S. Constitution, which protects a defendant's right to have an attorney, protects by corollary an individual's right to proceed without representation. It is interesting to note that the Sixth Amendment was enacted the day after President Washington signed the Federal Judiciary Act and is therefore actually a younger law. Be that as it may, the holding of *Faretta* extends the right of self-representation to every court in the land.

It is also important to note that while every state has prohibitions against the unauthorized practice of law (more on which in chapter 2), each state also specifically excludes self-representation from its unauthorized practice provisions.

There is no question that every American has the right to represent him- or herself in court. The real question is, should they?

The Perils of Self-Representation

When they make the decision to represent themselves in a legal matter, most people don't really understand the task they are taking on. There are many reasons for this, and we will look at some in the next section. For now, let's look at the nature of this task that the self-represented litigant is taking on. In short, a person who decides to proceed in a legal action without representation is entering into a very serious conflict against a highly trained and experienced adversary. The system in which this conflict takes place, the courts, will attempt to be fair to all parties but cannot assist

one party more than another. In addition, this system is very complex, and no one will help the self-represented litigant understand it.

Let's pick this situation apart and look at the various perils that exist for self-represented litigants. First, the legal system in America is adversarial in nature. This means that any legal action consists of two opposing parties, each of which is expected to fight hard, within the rules and the law, with the idea that the truth will emerge from this honestly fought fight. A key part of the adversarial conflict is that the court must remain absolutely neutral toward both parties. The judge in a trial cannot, and will not, reach out to help a self-represented litigant just because he is being outdone by the experienced lawyer on the other side. Nor will the attorney on the other side be asked to help or moderate her attack just because her opponent is untrained in law. The self-represented litigant steps into the ring of litigation alone, without assistance.

Another peril is the complexity of the system in which litigation takes place. The practice of law requires rigorous legal training and often years of experience to become proficient. Many people assume that law school teaches law students the law, as if it were simply a set of rules. While law students will learn the basic concepts of the areas of law they study, the real task in law school is to learn legal analysis and the logical and reasoning skills that actually form the core of legal practice. These skills, often called "thinking like a lawyer," are the real tool that lawyers use to protect their clients' interests.

In addition to thinking skills, law school teaches lawyers to use the complex legal materials that are the tools of the practice of law. Lawyers understand how to parse a statute or analyze a court case and how to link the information in that law or case to the argument they want to make. This is a highly refined process that most people not trained in law simply can't do. These tools help the lawyer deal with both the law and the procedural requirements necessary to win a case. The result is that litigation takes place in an adversarial environment and is itself a highly complex process drawing on complicated legal tools.

Another peril of self-representation is one of judgment. Put simply, self-represented litigants are not in a position to bring to their own problems the sort of dispassionate judgment and advice required to effectively handle a serious legal situation. When they are at their best, lawyers not only aggressively protect their clients' interests but also offer a careful, balanced assessment of each client's situation and provide advice on how to proceed that is grounded in careful analysis of the facts and the law. This, quite frankly, is what really makes legal representation worth the expense. Self-represented litigants have to rely on their own judgment and typically have to do so when they are emotionally upset, under threat, and trying desperately to understand the law and procedure of the case.

Finally, there is the issue of risk. There are often significant interests at stake in litigation, which means that the self-represented litigant has much to lose. Let's look at some of the more common interests that can be at stake in litigation.

In criminal matters there is the threat of prison or jail, which means that your very right to liberty can be in peril. Similarly, in competency or mental health proceedings, there is the risk of forced hospitalization or treatment. Other constitutional rights can be at risk as well. For example, if you are convicted of a felony, whether or not you go to jail or prison, you can lose your right to vote, or to own or possess firearms.

Litigation can threaten your ability to live in your home. For instance, landlord-tenant conflicts can result in eviction, and mortgage foreclosure or condemnation actions can result in loss of a home. Other property can be at risk as well. Both civil and criminal litigation can result in large fines, damage awards, or sanctions, as well as court costs and the obligation to pay legal fees for the opposing party. Contract disputes can involve significant money or property, and zoning issues can affect how realty can be used or decrease its value.

Perhaps most fundamentally, litigation can affect rights and duties relating to your family and children. Divorce affects rights to property, where you can live, and the nature of your relationship with your children. Custody proceedings

can fundamentally affect both relationships and monetary interests. Paternity actions can lead to the creation, or loss, of rights related to children, as well as significant financial obligations. Finally, juvenile court actions can affect your right to live with and have custody of a child and even lead to permanent loss of parental rights.

There are very few legal actions that are so trivial in nature that they don't affect significant interests for those involved. So the question becomes, why do they do it?

Motivations for Self-Representation

Given the perils of self-representation, why would anyone do it? There are probably as many reasons for deciding to handle a legal matter without representation as there are pro se litigants. The decision to self-represent is a highly personal one and indeed may in some cases be more emotional than rational. We can, however, describe some common motivations.

The most prominent, of course, is money. Legal representation is extremely expensive, and getting more so every day. Only criminal defendants whose liberty is at stake—that is, who face a jail or prison term if convicted—have a right to an attorney at state expense if they cannot afford one. Everyone else, including criminal defendants who either do not face incarceration upon conviction or who have the resources to pay for counsel, and all civil litigants, must find and pay for their own attorney or go without.

This means that a significant number of people who represent themselves do so because they have no choice, no matter how serious the matter is. They can't afford an attorney, and no one is going to provide one for them. On the other hand, some self-represented litigants do have the money to afford an attorney but choose not to. This might be because they feel attorneys overcharge for their services, or because they think the matter can be handled easily and that it would be better to save the money. This can be an expensive mistake.

Another reason for self-representation is a distrust of attorneys. As a former practicing attorney myself, I wish I could claim that this fear is completely unjustified. To be fair, most lawyers are both honest and competent and can be trusted, but there are enough members of the bar who are incompetent or dishonest to warrant this fear in some limited cases. However, this fear is also partly based not on actual incompetence or venality but arises as a result of the often-unpleasant experiences people almost always have being involved in litigation. Attorneys deal with some very difficult and frustrating aspects of people's lives, and it is not surprising that they become a target for their clients' negative emotions.

In almost every legal matter, people have unpleasant experiences with the procedure or the outcome of the case. To take a typical divorce as an example, the process will often take much longer than anticipated, and both parties will end up losing, or giving up, things that are important to them. Under the circumstances, even if their attorney did the best job possible, the parties may begin to believe that their losses were because of their attorney's incompetence or deceit and not an inevitable part of the process. The next time one of the parties is confronted with a legal matter, they may decide they are better off going it alone.

On the other hand, some people represent themselves because they believe the system will protect them. As we have seen, this is a fundamental misunderstanding of how the adversarial justice system works, but some people believe it nonetheless. In this case, the self-represented litigant might believe that the court is obligated to do justice, and because of that, the court will protect them, no matter how bad a job they do at representing themselves. Of course, nothing could be further from reality.

A variation of this idea is the belief that proceeding pro se might confer a tactical advantage in litigation. They hope that, by not having an attorney, they will be seen as the weaker party, and therefore be given breaks and advantages by the court. Once again, this kind of treatment is explicitly against the rules and generally does not occur.

Some self-represented litigants have a blind belief in their own innocence, or in the righteous-

ness of their cause, and believe that the court will see this and act to protect them. This reasoning is based on the idea that a court is bound to do justice and that if they are truly in the right, the court will take care to make sure that they win. Unfortunately, the adversarial nature of our court system means that even the truly innocent or righteous need to protect their interests vigilantly.

Another pernicious idea is the belief that law is simple and that an attorney is therefore simply unnecessary. Much of the practice of law looks simple to the naked eye. Lawyers look things up in books, write documents, and go to court and argue. Anyone can do that, right? Portrayals of the practice of law in movies and on television have exacerbated this idea by emphasizing exciting courtroom clashes and witty office conversations while hiding the hard work of legal analysis.

This particular belief, that law is simple, can have a big effect on library reference interactions. It is very common for people untrained in law to approach the reference desk with the idea that the answer to every legal question, and the procedural directions for every legal action, are simply written in a book somewhere, if they can only find it. They assume that the reference librarians will know where that book is. In fact, as we will see later in this book, legal research is much more complicated than that. There are very few simple answers, and very few legal materials that simply guide someone through a legal process.

Another factor is mental illness. It is an unfortunate fact that a certain portion of self-represented litigants are mentally ill. As such, the desire to represent themselves arises from impaired judgment about their situation, their skills, the nature of the other parties, their interests, or the risks involved.

There is a final motivation for self-representation that is worth mentioning briefly, that of actual competence. Some litigants will proceed pro se because they have the benefit of previous experience and can actually represent themselves competently. For instance, a landlord who has extensive experience with landlord-tenant legal issues may well know enough to handle an eviction or debt collection matter properly. Similarly, a person with an extensive criminal background may actually know more about criminal defense than an inexperienced attorney.

Who Are These People?

There is very little hard demographic data on who proceeds in court pro se. A 1990 survey conducted for the American Bar Association looked at 1,900 domestic relations cases that took place in the Superior Court of Maricopa County, Arizona. It found the following:

- Lower-income people were more likely to represent themselves.
- Younger persons were more likely to self-represent than older persons.
- The most common level of formal education for self-represented litigants was one to three years of college.
- People with no children were much more likely to self-represent than people with children.
- People who did not own real estate or significant personal property were significantly more likely to self-represent than people who did own such assets.

How Big an Issue Is Self-Representation?

It would be nice to have solid figures about how common it is for pro se library users to present themselves at the average reference desk looking for help. We don't have any such figures. The one place that there has been some study of the issue is in academic law libraries.

Most law librarians in institutions open to the public believe that a significant portion of their users are members of the lay public. Statistics on pro se use of law libraries are hard to come by, but at least one study from the 1970s confirmed that pro se law library users were a significant percentage of the users of university law libraries. This study concentrated on law school libraries but found that in tax-supported law school

libraries in particular, an average of 20 percent of users were laypeople or pro se litigants, and that at some institutions this number was as high as 48 percent. More recent figures, admittedly based on a very informal survey, indicate that members of the public generate between 30 and 70 percent of reference questions at public law libraries in major metropolitan areas.

If we can't find figures from libraries, we can take a different approach. Although it is necessarily imprecise, if we can determine how common self-represented litigants are in the courts, we can extrapolate that a certain percentage of them are going to come to the library in search of legal information.

Unfortunately, while pro se representation is a national issue, statistics from the courts are frustratingly hard to come by, although there is no question that the high number of people proceeding pro se in legal actions is very real. In the past decade or so, the National Center for State Courts (NCSC) and committees or task forces in several states have collected statistics on pro se representation, but the offerings are far from complete. Some of the figures for individual states are as follows:

California: In 2004, over 4.3 million court users were self-represented in California courts. For family law cases, 67 percent of petitioners at filing (72 percent in the largest counties) were self-represented, and 80 percent of petitioners at disposition hearings for dissolution cases were self-represented.

Florida: At a family court in Osceola County in 2001, 73 percent of court hearings involved at least one pro se participant, up from 66 percent in 1999.

Iowa: In 2004, a random survey of a week of district court schedules in one county showed that 58 percent of cases set for trial that week involved at least one pro se party.

New Hampshire: In 2004, 85 percent of all civil cases in the district court and 48 percent of all civil cases in the superior court involved a pro se party.

Utah: In divorce cases filed in 2005, 49 percent of petitioners and 81 percent of respondents were self-represented. For small-claims cases, 99 percent of petitioners and 99 percent of respondents were self-represented. Seven percent of pro se litigants reported going to a library for assistance.

Wisconsin: In 2000, as many as 70 percent of family cases involved litigants who represent themselves in court. There was an increase in pro se litigants in family law cases from 1996 to 1999 in both the Tenth Judicial Administrative District and the First Judicial Administrative District, from 43 to 53 percent and from 69 to 72 percent, respectively.

Other publications have provided similar figures for state court litigation. According to an article in *Bench and Bar* (McEnroe, 1996), 88 percent of litigants in Washington, D.C., family court proceeded pro se, as did 60 percent in Santa Monica, California (an increase from 30 percent five years earlier). In Hennepin County, Minnesota (the county containing Minneapolis), more than 30,000 people a year represented themselves in Conciliation Court.

The volume of cases in the federal courts is less than those of the state courts, but at the federal level pro se litigation is also a significant issue. Recent statistical reports from the federal courts on the number of pro se civil filings in the U.S. indicated that of a total of 278,442 district court case filings, 77,703 pro se cases were filed during the twelve-month period ending September 30, 2012, compared to 200,739 non–pro se cases. This means that pro se cases constituted 28 percent of cases filed in the federal courts in 2012. Of the pro se cases filed during that period, 50,844 were filed by prisoners, and 26,859 were filed by nonprisoners. Nonprisoner pro se filings thus constituted about 10 percent of federal court filings.

These statistics only track the pro se status of the person filing the petition and not that of other parties to the action. For this reason, the actual incidence of pro se representation in the federal courts may be higher than the statistics

indicate. With such numbers, it is only logical to assume that pro se litigants are coming to law libraries for information and assistance.

The bottom line is that there are many, many self-represented litigants in our court systems. In the course of their legal action they will need information, and it is likely that they will come to the library in search of it.

BACK TO THE BROADER VIEW OF THE PRO SE LIBRARY USER

The section above has dealt specifically with the self-represented litigant. For reasons that were explained, this type of user is in a particularly acute situation and can be both problematic and demanding at the reference desk. Lest we forget, there is another type of pro se library user who, for all we know, may be even more common at the reference desk than the self-represented litigant. This other type of pro se user is the one who is handling some aspect of her legal affairs but is not actively engaged in litigation.

These are the people who are drafting their own will, prenuptial agreement, or contract, or pursuing some other nonlitigation legal matter. They are not as likely to be in crisis as the self-represented litigant, but they present the same issues relating to liability and ethical issues. For that reason, it is best for our purposes to consider the broader body of pro se library users as a single group. Anyone who is doing legal research in order to handle his own legal affairs without the assistance of an attorney falls into this group. The legal and ethical parameters of legal reference service described in the next chapter apply to them all.

CONCLUSION

Reference questions about law and legal resources have an unusual problem attached to them. This problem is the potential for liability for the librarian answering them—that is, if the answer can be seen as giving legal advice or engaging in the unauthorized practice of law. This means that legal reference questions must be approached with a certain amount of caution.

Those who are asking legal reference questions can be divided into four groups. This first are legal professionals. Such people do not pose any risk of liability, as information provided to them will not be construed as legal advice. In the second group are people asking legal questions but who are not pursuing their own legal interests. Examples include someone doing legal research to write a school paper or asking for information out of interest in law as a subject. Since they are not pursuing their own legal interests, such people also do not present any danger of liability, and their questions can be handled just like any other reference request.

The final two groups of users do pose risks. These are people who are pursuing their own legal interests in some way, and they break down into those who are actively engaged in litigation (self-represented litigants) and those who are not. While their situations are very different, both of these groups present the same risk for liability, and both can be referred to as pro se library users.

Having established who these user groups are, and that they are present in the library, we can now to turn to how to deal with them as users, in chapter 2.

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