

Courts Come to Order With Judges, Litigants—But No Lawyers

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A court day with no lawyers used to be rare for many Kansas judges, but Judge Lori Bolton Fleming now regularly presides over hearings similar to the divorce case she heard in late September. The man showed up with no lawyer and no paperwork, when he was supposed to bring a completed divorce decree with him. Bolton Fleming pulled out the necessary form and began filling it out with him.

Across the U.S., more people are forgoing lawyers in state civil courts. Some can't afford an attorney, have had bad experiences with them or prefer to take advantage of advice and tools posted online. Unlike criminal defendants, who have a right to a public defender, people appearing in civil court for cases including housing, debt collection or protections from abuse have no such guarantee.

Some rural areas, such as the counties Bolton Fleming oversees, have an added challenge: Few or no lawyers practice nearby. Those who remain can be choosy; they might, for example, limit their acceptance of domestic cases that can be lengthy and emotionally involved. "It's just supply and demand—they will take paying clients," Bolton Fleming said. Eighteen of the 105 counties in Kansas have two active attorneys or fewer. Two of those counties have no active attorneys.

Organizations such as Kansas Legal Services receive federal funding to represent low-income people in civil matters but say they are overstretched. The group can help about half the people who seek out their services. [...], The large numbers of self-represented litigants can slow down court proceedings and back up busy dockets. The trend also leaves judges to walk the fine line of helping litigants navigate the complexities of the legal system while maintaining their role as impartial adjudicators. Some litigants reference documents they have, such as paystubs, but fail to admit them as evidence. Others leave out key facts. Bolton Fleming says litigants often want to cite cellphone photos as proof without understanding they either have to print out a copy of the media or turn over their phone to be part of the permanent case file.

Glenn Braun, chief judge of Kansas' largely rural 23rd Judicial District said he had seen pro-se cases—in which people represent themselves—increase sharply in the last three to five years. He has discussed with other judges what to do when they have pro-se litigants who suggest financial arrangements that don't seem fair—as when divorcing couples propose sharing custody and splitting child-care payments 50-50 even though one makes five times more than the other. In some cases, the lack of attorneys means people on two sides of a contentious domestic dispute are cross-examining each other—an emotionally fraught process that can escalate into outbursts or violence.

Recent studies estimate that in civil and family-law cases, more than 70% that go to court have at least one party self-represented. The increased availability of legal forms online and a shift to favor business clients have also contributed to the number of pro-se filings.

Kristine Vince hired an attorney to represent her in her recent divorce in the Kansas City area. She liked the attorney, but opted for a lower-cost alternative for a subsequent proceeding: a former lawyer who coaches and provides other support for pro-se litigants, including hosting a Zoom group where they can share their experiences. "If you feel like you can write it up and you know how to do it, then you can save money," she said.

To adapt to the increased number of self-represented litigants, some legal experts have suggested simplifying legal forms and filing processes. Kansas courts have set up self-help centers and made legal forms accessible online. "Filing for amicable divorces could be like getting a driver's license" said Colleen Shanahan, a professor at Columbia University's law school.

Another solution : some want to encourage lawyers to move to less-served areas by reducing higher education costs so law-school graduates don't feel pressure to take high-paying corporate positions. [...]