

SENATE JUDICIARY HEARING  
MAY 7, 2013

Honorable Todd A. Hoover, President Judge  
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**Testimony of Todd A. Hoover, President Judge, Common Pleas Court of Dauphin County**

Good Morning Senator Greenleaf and honorable panel members. Thank you for the opportunity to speak at this hearing. My name is Todd A. Hoover. I am currently President Judge of Dauphin County, a position I have held for over three years.

For the last twenty years, I have been honored to serve on the bench of the Dauphin County Court of Common Pleas. Before, being elected to the bench, I practiced in the state and local courts of Pennsylvania as an Assistant District Attorney for four years, then as a private practitioner for ten years. Over these last twenty years on the bench, I have observed a significant increase in *pro se* representation and the need for self help resources in the Court of Common Pleas.

The unrepresented party is not just another entry into our dockets. While they may be economically disadvantaged, these parties are often contributing citizens in their neighborhoods and Dauphin County. Many are underemployed, undereducated, and unskilled. Some are middle-class citizens who are financially overextended and cannot afford to hire an attorney. All of these citizens deserve equal treatment in the courthouse and by our legal system.

Unrepresented litigants are the most vulnerable of our citizens, usually frightened and confused by a legal system they do not understand. They have much to lose in the legal proceedings which have entangled their lives.

Dauphin County is blessed to have an excellent courthouse self-help center and a top-notch *pro bono* program. Dauphin County's model self-help center continues to expand its offerings to increase access to the legal system. In my opinion, the courthouse doors are indeed open to all. I can say with confidence that the filing fees for *in forma pauperis* status persons allow equal access to justice. However, the real question is, once they have that access, can unrepresented litigants received equal justice under the law?

Providing representation to vulnerable, unrepresented litigants not only helps the litigants, but helps safeguard the integrity of the legal system as a whole.

### **Time-Consuming Drain on Resources**

Cases involving unrepresented litigants take more time to process than cases where both sides are represented by counsel. Unrepresented litigants look to courthouse staff to help them. Judges and courthouse staff must spend substantial time on these cases, time which could be devoted to other cases. In addition to their time consuming nature, frequent inquiries from unrepresented parties place courthouse staff and judges in difficult ethical dilemmas.

### **Screening/Mediation/DCBA**

If we were able to provide attorneys to people with legal problems early on, we could often avoid the filing of many of the cases which **clog our dockets**. Many of these cases would not be brought if the parties had consulted with an attorney before filing an action.

Furthermore, each step in the litigation process is unduly delayed because the unrepresented litigant is completely **unfamiliar with the process**. Not surprisingly, unrepresented parties often need to return to court because filings are incorrect or incomplete, and procedural **items are missed**. Valuable court time is spent on cases which are ultimately **dismissed**.

Because meaningful settlement discussions are rarely possible with unrepresented litigants, many cases which should be settled early on proceed **unnecessarily to trial**. When those cases go to trial, the trials last substantially longer than those involving represented litigants. We have **repeated continuances**. **The unrepresented party** cannot present their case or resolve cases that otherwise could be resolved if an attorney were involved on both sides. Having attorneys on both sides **simplifies the process** of reaching fair agreements. Unrepresented parties will sometimes agree to **unreasonable terms** so as not to antagonize the adversary.

### **Negative Impact on the Quality of Justice**

From the beginning, an unrepresented litigant faces difficulty **navigating a system** which lawyers have gone to law school to learn. It's like forcing someone to play poker without telling them the rules, and where the chips are the player's children, finances, home or job. **The misunderstanding of the process** begins at the inception of the case

The unrepresented party often incorrectly alleges important dates in the complaints, which may be poorly and incompletely drafted. The unrepresented party's lack of knowledge about the law results in **confusion** over issues.

**As judges**, we have difficulty **ascertaining the facts** in these cases, because the unrepresented party fails to properly present necessary **evidence**. Unrepresented litigants are rarely aware of the **burden of proof** associated with their case. The **testimony** from an unrepresented litigant is usually excessive and unrelated to any of the issues at trial.

There are rarely **objections** by unrepresented litigants, resulting in the presentation of long-winded, extraneous and irrelevant matters.

Unrepresented litigants are usually unable to present effective **witness examination** and arguments. Although legal issues are paramount to proper resolution, unrepresented parties are generally unfamiliar with the appropriate and requisite case law.

The basic constitutional due process questions of notice and opportunity to be heard require the judge to explain the various **civil legal procedures**, the subject of several courses in law school, to the unrepresented litigant in five minutes or less. The Court has to **explain matters** that would otherwise not be discussed, such as the trial process, the meaning of evidentiary rulings, and why evidence was not admitted.

### **Ethical Catch-22**

As you can probably imagine, it is difficult to remain **neutral** in a proceeding in which unrepresented parties face able counsel, and the unrepresented party lacks the ability to introduce into evidence a decisive document, or even ask the right question.

This difficulty in maintaining neutrality is particularly challenging in cases in which a party's home, access to health care, ability to feed, clothe or educate one's children, or escape from domestic violence, are at stake.

It stretches our **neutrality** when judges attempt to engage in a case involving unrepresented litigants. Even more, it is painful to see an obvious **unfair advantage** for the party with experience and proper counsel over those who cannot afford legal assistance.

Judges are not the only ones in the courthouse walking this ethical tightrope. **Opposing counsel** must avoid **overstepping lines** when the opposing party is unrepresented.

Finally, the entire courthouse staff faces the struggle of attempting to explain the legal process to the unrepresented litigants, help them understand the pleading procedures, and provide the correct forms, **without crossing the line** to improperly providing legal advice.

### **Low-Income Parties Face More Complex Issues**

We are all familiar with the recent economic crisis; however, the effect of the **economy** on low-income individuals and their families is much more devastating, than to those who have blessings of emergency savings, higher education, and/or family support structures.

Legal issues significantly affect the day-to-day lives of low-income citizens. Low-income litigants are involved in family law, consumer credit problems, landlord-tenant issues, custody filings, and child support conferences. While the issues they face, and too often face alone, run the gambit, we find that litigants in **family court** are the first to feel the effects of the economic crisis.

### **Conclusion**

Like many President Judges across the state, I see our court system pulled in many directions when faced with unrepresented parties. How can we best serve the public, access and ensure equal justice for all parties, provide for efficient case management, wisely use our limited budgets, and maintain the integrity of the legal process?

It is my opinion that the lack of sufficient funding for legal services to the indigent in civil matters has, and will continue to have, a counterproductive effect on our legal system, and will continue to overburden the courts, court administration and court-related departments, and will directly lead to unfair results with the potential to do harm to those without financial resources.

**Biographical sketch of Todd A. Hoover, President Judge, Dauphin County Common Pleas Court**

President Judge Hoover was born in Harrisburg and graduated from Upper Dauphin High School. Judge Hoover is a 1976 graduate of Indiana University of Pennsylvania with a degree in Criminology and a 1979 graduate of Delaware Law School. From 1979-1983, Judge Hoover served as Dauphin County Deputy District Attorney.

For the next decade (from 1983 to 1993), Judge Hoover was a sole practitioner with a broad general practice including Criminal Defense, Family Law, Wills & Estates. He also served as special counsel to the Domestic Relations Office, a Dauphin County Divorce Master, solicitor for Pennsylvania State Police Court Martial Board, and solicitor for Middle Paxton Township Zoning Hearing Board.

President Judge Hoover was originally elected to bench in November 1993 and retained in November 2003. Currently, he serves as President Judge of Dauphin County. President Judge Hoover presides over Criminal Cases, Orphans' Court, and the Dauphin County Grand Jury.

President Judge Hoover has been a guest lecturer at Widener School of Law and Temple University. He has spoken at state and national conferences on the use of Family Group Decision Making as an alternative sentencing practice in Juvenile Delinquency and Adult Offenders.

In 2008, he received the Pennsylvania Bar Associations Pro Bono Judge Award. In 2011, the Pennsylvania Supreme Court appointed Judge Hoover to serve as Co-Chair of the Constable Handbook Committee. In 2012, the Pennsylvania Supreme Court appointed Judge Hoover to serve as Chairman of the Juvenile Court Procedural Rules Committee. In 2013, the Pennsylvania Supreme Court appointed Judge Hoover to the Statewide Committee on Elder Abuse.