

**Dec. 4, 2008 Luncheon Address**  
**ABA Access to Justice Symposium**  
**Grand Hyatt Buckhead, Atlanta, Georgia**

*There was an old woman,  
Who lived in a shoe;  
She had so many children,  
She didn't know what to do.  
She gave them some broth,  
Without any bread;  
She whipped them all soundly,  
And sent them to bed.*

The key line: "she didn't know what to do" provides us rich food for thought against the backdrop of the theme for this Symposium: *Real people, Real needs, Real solutions – Access to Legal Representation in Civil Litigation.*

Our legal system belongs to the public. However, the reality is that judges, court staff, lawyers and other legally trained personnel hold the keys to the courthouse. As stakeholders in the legal system, we have an obligation to help those citizens without the means and knowledge to access our system on their own to gain access.

This past Monday upon returning to work after Thanksgiving, my first case of the day was a modern day version of the woman in the shoe. "How may I help you, Ma'am?" I asked, bracing for her answer. "I'm here for justice for me and my children," she responded. My heart sank at the sight of the self represented litigant and her children, for I knew even before beginning the scheduled hearing that this woman and her family, like countless others, held high expectations of our legal system's ability to right wrongs and solve problems. Too often we fall short of those expectations due to lack of time, resources and understanding. While the sheer volume of people coming to court without legal counsel can be overwhelming, even tackling each case one at a time poses challenges for the court because of the typical inability of a self represented litigant to frame his or her issue or need in a manner for which there exists a legal remedy and to prepare properly for an evidentiary hearing. In this particular case, the poor woman was ill prepared to make her case. Service of process hadn't occurred and so her ex-husband wasn't present. I had to inform her that the hearing would have to be rescheduled for that reason. She had extreme difficulty in explaining the problems she was experiencing and relied heavily on her minor children in filling in evidentiary gaps. Her extreme stress about making ends meet and caring for her children without the financial support of her ex-husband and

the mental abuse the children were experiencing from their father made it extremely difficult to understand her and identify needs which could be solved. Fortunately, I was able to extend some services to her based on prior orders in her case.

On behalf of self represented litigants like the woman who appeared before me on Monday, judges such as myself who are charged with affording them their proper day in court and court personnel across this country who do their best to assist these citizens, thank you for convening and participating in this important symposium.

I am pleased to have received the invitation to speak this afternoon and briefly share with you my perspective as a trial judge on the challenges presented by self represented litigants. I consider it my responsibility to help make the case for the critical need for support from the legal community and the community at large to make legal counsel available at public expense to low income persons in adversarial proceedings where basic human needs are at stake.

Judicial education in this area emphasizes the importance of judges recognizing why litigants appear in court without counsel. While not always, most often it is because of the inability to afford an attorney. Judges have the responsibility to develop effective case management techniques that facilitate

fair hearings and prompt decisions, especially those who must represent themselves. Further, we are charged with identifying and creating practical resources for pro se litigants to use in preparing their cases.

As judges, we are cautioned that the process used to resolve disputes strongly influences a litigant's level of satisfaction with the result and feeling about the overall legal system.

Ultimately, the judge is responsible for the process and it will be his or her face associated with the feeling of justice denied.

The majority of self represented litigants make an effort to acquire familiarity with the rules. They try to comply with court protocol and procedures, and recognize their duty to be prepared for court. However, they typically need help with what I will call the three P's: drafting their pleadings, understanding and complying with court protocol and preparation for the presentation of their case. In providing assistance in these areas, judges are cautioned about the importance of holding SRLs to the same standards as parties who are represented. Judges must not become advocates for SRLS or appearing to favor them. To avoid these danger areas in the courtroom, there is a dire need for bar associations and community organizations to assist SRLS in preparing their cases.

I presently serve in the Family Division of the Superior Court of Fulton County and I would like to share what our Court has achieved over the last decade to make our Court more user friendly, especially for pro se litigants. The judges and court staff were not able to do it alone. We collaborated with local bar associations, legal aid and non profit agencies, individual lawyers and law firms to address the need for our judges to improve our delivery of services. Our court budget was woefully inadequate. We reached out for assistance from grants and fundraising amongst the bar to help support our program. Additionally, we continue to rely heavily on the donation of in kind services from volunteer lawyers to be able to do what we have done.

Our premise was simple: Better prepared pro se litigants would ease the challenges judges typically face with deciphering their pleadings and rendering fair decisions despite a lack of evidence. Ethically, we are required to construe a pro se pleading liberally to identify the action or defense suggested by the facts. Additionally, we have a duty to explain the process, the general rules, what kinds of evidence can be presented, etc. so that pro se litigants can participate in the process to the fullest extent possible. We must be careful not to permit pro se litigants to enter agreements which violate public policy or waive substantive rights unknowingly.

Historically, self represented litigants would be directed to the law library to figure out how to ask for what they need. Often, they relied on in appropriate advice from persons engaged in the unauthorized practice of law.

Our Family Division is designed to reduce the confrontation nature of domestic disputes, and particularly to assist self-represented litigants through an interdisciplinary team approach using the Family Division Judges, Judicial Officers, mediators, staff psychologist, social services coordinators, guardians ad litem, community volunteers who serve as court ambassadors and other support staff.

**Family Division services include:**

**Family Law Information Center (FLIC)** – FLIC assists individuals who want to represent themselves in domestic legal matters assigned to the Family Division, or simply educate themselves about domestic legal issues. FLIC offers; a) legal forms and instruction (available on the Family Division website and in FLIC); b) attorney consultation (one free 30 minute consultation per person); c) legal clinics and educational sessions for the benefit of the public; d) reference materials and resource lists; and e) Notary services. For calendar year 2007 FLIC served 11,873 walk-in customers, responded to 21,114 telephone calls,

sold 5638 information packets and provided 1018 attorney consultations.

**I-CAN!** – This interactive community assistance network is available on the internet and helps users complete domestic legal forms for filing with the Court. It is available in English and Spanish. Since it launched in October 2007 Georgia I-CAN! has served more than 3000 users.

**The One Stop** – The One Stop assist petitioners seeking Temporary Protective Orders (TPOs) from domestic violence or stalking. Petitioners can come to the One Stop for assistance through the entire process of obtaining a TPO, whereas previously, petitioners had to navigate on their own from one office to another in the court complex in order to complete the process. Petitioners can also obtain assistance with social service needs and safety planning from the Partnership Against Domestic Violence and the Atlanta Volunteer Lawyers Foundation will provide representation in court at no cost to people who qualify. During calendar year 2007 the One Stop served more than 2350 walk-in customers, including more than 2200 petitioners.

**On Site Mediation** – Family Division uses the services of mediators provided through the Superior Court Alternative Dispute Resolution (ADR) Office to provide mediation services

parties also need assistance post decision – how to appeal a decision, how to enforce a judgment.

Although cases involving self represented litigants pose challenges, those challenges are not insurmountable. With the help of a committed bar and other community groups, collectively we can make a difference in the lives of these citizens. There is nothing more rewarding for me than to preside over a matter where I feel I made a difference by being available, listening and fashioning a remedy for a person in need. We can't let the volume of cases flooding courthouses across our country and shrinking resources define our legal system. We cannot forget there are real people with real needs who need our help in obtaining solutions.

Once again, I thank you for the opportunity to share with you today and commend you for your commitment to the ABA's long held core value that society must provide equal access to justice.

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Judge Gail S. Tusan presides in the Family Division of the Superior Court of Fulton County (Georgia). She serves on the faculty of the National Judicial College where she instructs judges on handling disputes involving self represented litigants. She is a Past President of the Atlanta Legal Aid Society and former volunteer lawyer with the Atlanta Volunteer Lawyers Foundation.