VIRGINIA SELF-REPRESENTED LITIGANT STUDY:

Summary of SRL-Related Management Reports for General District Court, Juvenile & Domestic Relations Court, and Circuit Court

National Center for State Courts

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Executive Summary

The National Center for State Courts (NCSC), contracted by Blue Ridge Legal Services (BRLS), has undertaken a study to analyze data from the Virginia courts' existing case management systems to measure the legal representation status of litigants in civil cases. This report describes case management reports that OES should consider producing on a regular schedule in an effort to better understand cases with self-represented litigants.

Listed below are the suggested case management reports and recommendations for additional data collection that could improve those reports:

- Data Quality
  Recommendation: The CMS should have a means for the data entry clerk to clearly denote that a party is self-represented.
- Caseflow Management
  Recommendation: The CMS should capture representation status by party by event over the life of the case.
- Case Outcome
  Recommendation 1: The OES should introduce additional data codes for the "Final Disposition" and "Judgment For" fields to capture more information about dismissed cases.
  Recommendation 2: The OES should, at a minimum, collect ZIP Code information for litigants.
  Recommendation 3: The OES should complete the claim and award amount field for each case.
- Workload
  Recommendation: Continue to account for cases with SRLs in the workload model.

Introduction

The National Center for State Courts (NCSC), contracted by Blue Ridge Legal Services (BRLS), has undertaken a study to analyze data from the Virginia courts' existing case management systems to measure the legal representation status of litigants in civil cases. Funded by a Legal Services Corporation (LSC) Technology Initiative Grant, the Virginia Self-Represented Litigant Study will devise protocols, queries, and reports that can improve the justice system's understanding of the nature of legal representation in the state's civil cases, identify potential unmet needs, and characterize the relationship between legal representation and case outcomes.

The Virginia Self-Represented Litigant Study (hereafter, the Study) has four objectives. The first is to identify, collect, and evaluate the completeness, reliability, and consistency of civil case type data elements that are relevant to a study of legal representation status. The second objective is to use the collected data to characterize the state of legal representation in Virginia's civil cases by providing descriptive statistical summaries of the data that are as accurate and informative as can be produced based on the evaluation conducted in the first objective. The third objective is to design management reports to display various aspects of legal representation in civil cases in a way that meets the needs and goals of the courts and legal service providers. The fourth and final objective of the Study is to analyze the underlying data for relationships that may suggest ways in which representation status is related to outcomes in civil justice. Each of these objectives will be met using civil case data from the state's case management systems for the Circuit Court, General District Court, and Juvenile & Domestic Relations Court.

The remainder of this report addresses the third objective of the Study. Section II describes the types of management reports to be created, including the data elements to include in each as well as any limitations related to the data that is currently collected. Section III provides recommendations for how to address any noted data limitations.

Management Reports

Management reports specific to cases with self-represented litigants (SRLs) should provide a detailed picture of the nature and extent of self-representation in court cases throughout Virginia. These reports have two basic purposes: 1) to ensure that all courts are entering these data correctly and consistently and 2) to begin to understand the nature and extent of self-representation among the courts, and how that varies by case type and by court.

Data Quality Reports

Data quality reports evaluate the consistency, completeness, and reliability of data within and across jurisdictions. These reports should be produced at least quarterly.

As these reports are produced, a cumulative picture will emerge to help define a baseline for each court and case type. When the data changes in comparison to that baseline, the meaning of increases or decreases in cases with SRLs or other patterns of self-representation can be explored. Where the data reflect significant change (as trends emerge), one can investigate the causes of those changes and any policy or court management implications that arise. For example, representation status by case type in each court may show that there are representation patterns within a court that vary dramatically from the remainder of the courts in the state for that same case type. Alternatively, if those variations signal a problem with data quality, having this information will allow OES to identify when training is needed to correct data quality issues.

Data Elements
- The total number of cases in each case type.

- The total number of cases with SRLs as well as the distribution of plaintiff and defendant SRLs in each case type using four representation profiles: both parties represented, plaintiff-only represented, defendant-only represented, and neither party represented.
- The mean and median, by representation profile, for each case type in each court as well as for similarly situated courts (size, region, urban/rural) throughout the state, and for the case type (e.g., unlawful detainer, protection order, etc.) and court type (GDC, JDR Court, Circuit Court) as a whole.
- The number of cases for which representation status data is missing or incomplete.

Data Limitations[1]

The case management systems (CMS) of the Virginia courts currently contain the data needed to compile this type of data quality report. The most notable limitation in the data is the absence of a specific entry or flag to denote the presence of a self-represented litigant, hence the inclusion in the report recommended above of the data element capturing the number of cases for which representation status is missing or incomplete.

Caseflow Management Reports

Caseflow management reports evaluate court processes by measuring clearance rates, the number and age of pending cases, and the time between events in the life of the case. These reports should be produced at least quarterly.

As these reports are produced, a cumulative picture will emerge that will allow one to see if there are differences in the caseflow patterns of cases with and without SRLs as well as track the events for which representation is obtained or not obtained. Where the data reflect significant differences (as trends emerge), one can investigate the causes of those differences and any policy or court management implications that arise. For example, representation status by event data may show that litigants are expending their limited resources to obtain representation for events that they should be able to handle themselves instead of reserving those resources for more complex or consequential events. Having this information is critical to being able to provide guidance to litigants and to providing legal representation.

Data Elements

- The total number of filings, dispositions, and pending cases in each case type.
- The total number of filings, dispositions, and pending cases with SRLs as well as the distribution of plaintiff and defendant SRLs in each case type using four representation profiles: both parties represented, plaintiff-only represented, defendant-only represented, and neither party represented.
- The clearance rates for cases with and without SRL, by the four representation profiles.
- The age of active pending cases for cases with and without SRLs, by the four representation profiles.
- The number of events for cases with and without SRLs, by the four representation profiles.
- The time to event for cases with and without SRLs, by the four representation profiles.
- The time to disposition for cases with and without SRLs, by the four representation profiles.

Data Limitations

The case management systems (CMS) of the Virginia courts currently contain most of the data needed to compile these types of caseflow management reports. The most notable limitation in the data is the absence of

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[1] For a detailed description and analysis of the data provided for this Study see Virginia Self-Represented Litigant Study: Descriptive Analysis of Civil Data in General District Court; Virginia Self-Represented Litigant Study: Descriptive Analysis of Civil Data in Juvenile & Domestic Relations Court; Virginia Self-Represented Litigant Study: Descriptive Analysis of Civil Data in Circuit Court; Virginia Self-Represented Litigant Study: Outcome of Civil Cases in General District Court, Juvenile & Domestic Relations Court, and Circuit Court.

representation status by party by event over the life of the case. This information is most crucial for domestic relations cases (dissolution, custody, child support, TPR), where the life of the case can be quite long and the court workload is affected by the parties' knowledge and ability to move their case forward at different stages.

Case Outcome Reports

Case outcome reports evaluate the relationship between representation status and case outcomes (e.g., plaintiff win, defendant win) as well as party demographics and case outcomes. These reports should be produced at least quarterly.

As these reports are produced, a cumulative picture will emerge that will allow one to see if there is disparity in outcomes based on the representation profile of the parties. Where the data reflect significant differences in outcomes (as trends emerge), one can investigate the causes of those differences and any policy or court management implications that arise. For example, outcome data by representation status may show that represented defendants are more likely to receive a positive outcome than defendants that are not represented no matter the representation status of the plaintiff. Having this information allows OES to provide information to litigants to help them make informed decisions regarding their representation status and to those who provide legal representation.

Data Elements

- The total number of disposed cases in each case type.
- The total number of disposed cases with SRLs as well as the distribution of plaintiff and defendant SRLs in each case type using four representation profiles: both parties represented, plaintiff only represented, defendant only represented, and neither party represented.
- The outcomes (e.g., default judgment, plaintiff win, defendant win) for cases with and without SRLs, by the four representation profiles.
- The outcomes for cases with and without SRLs, by the four representation profiles, by party ZIP code and/or other relevant demographic characteristics such as income or employment status.
- The claim versus award in each case type. This will most easily be captured for those cases that have monetary damages claimed, but it might also be useful to know if non-monetary compensation is requested or awarded.

Data Limitations

The case management systems (CMSs) of the Virginia courts do not currently contain most of the data needed to compile this type of case outcome report. The most notable limitation in the data is the absence of a specific outcome variable. Current CMS data elements capture the manner of disposition (e.g., granted, denied, dismissed, settled) and/or the manner by which the case was concluded (e.g., order, trial, purge, withdrawal. These data elements must be combined to determine whether the plaintiff or defendant prevailed in the case, but that determination is not always possible, resulting in inconsistent and sometimes unknown case outcomes.

The current CMSs do not capture the demographic characteristics for individual parties. While ZIP Code information may be available, this is not a discrete data element and may be combined with other parts of the party's address, making it difficult to capture as part of a routine data report.

Lastly, while the current CMSs may contain fields for the amount of monetary damages claimed and awarded, that information is not always complete, leading to missing data that must be interpreted as either not applicable or truly missing. In terms of non-monetary compensation, the current CMSs are not designed to capture such information as discrete data fields so the information, if available at all, would only be found in text fields that are not easily searchable.

Workload Reports

Workload studies are conducted to determine the impact of different types of cases on judicial and staff time. By identifying cases with SRLs, the results of workload studies can better calculate the impact of those cases on the court.

Data Elements

OES, working with the National Center for State Courts, has previously developed a workload model.

Data Limitations

Cases with self-represented litigants are already captured as part of the Virginia workload model. The case management systems (CMSs) of the Virginia courts currently contain the data field needed to compile this type of data. The most notable limitation in the data is the absence of a specific entry or flag to denote the presence of a self-represented litigant, which could lead to undercounting SRLs.

Recommendations

In order to gain the most benefit from case management reports, more and better data is needed. Based on the above summary of case management reports, the National Center for State Courts suggests that the OES implement the following changes to the way in which data are captured within the state's various case management systems.

Representation Status

To ensure confidence in the presence or absence of legal representation, the case management systems (CMS) for all courts should have a means for the data entry clerk to clearly denote that a party is self-represented. This could be done by adding a "Pro-Se" check box to the CMS or by requiring that "Pro Se" be entered in the attorney field to affirmatively indicate that the petitioner or respondent is not represented by legal counsel. This code should not be designated automatically or entered when no other value is provided, but should be selected during the process of data entry to prevent ambiguity about whether the value was a result of incomplete data.

The attorney field should also not be left blank during data entry, as this makes it impossible to interpret the meaning of this lack of data. A default or entered value of "None" could mean at least two different things: 1) the party was self-represented; 2) there is missing information and representation status is unknown.

If more thorough analysis of litigants' choices to retain counsel wish to be made, separate data entries should be collected on representation status at each case event. For example, the presence of legal representation could be noted at the initiation of litigation (at filing for petitioners, and at initial response by respondents, if such exists), at each court appearance (e.g., hearing or trial), and at case disposition. Those data would permit an examination of whether plaintiffs or defendants are more or less likely to respond to the representation status or degree of contest between the parties, as reflected in filings, hearings, or time to disposition, by changing their own representation status.

Disposition Data

The OES should consider modifying the disposition data captured by the state case management systems to ensure that all case outcomes can be classified as plaintiff win, defendant win, or non-dispositive. Specifically, the OES should introduce additional data codes for the "Final Disposition" and "Judgment For" fields to capture additional information about dismissed cases in the two case management systems for General District Court and Juvenile & Domestic Relations Court. Cases disposed by dismissal constitute more than 25 percent of those analyzed for these two courts, and while non-suits and unserved outcomes are recorded separately, the

dismissal category does not provide any data about whether dismissals are voluntary or not, due to defect or inactivity on the part of the plaintiff or defendant, or upon advisement of a settlement.

In the Circuit Court, the OES should attempt to introduce data elements and codes that provide more information about the outcome of cases for descriptive and analytical purposes. Fields capturing the conclusion or judgment of cases tend to use "Other" generously and combine various outcomes such as settlements, non-suits, and voluntary dismissals in a way that obscures information about the possible reasons why a case is concluded prior to judgment, or what the fate of the underlying claim(s) might be.

If the OES has a current process allowing judges and/or court clerks can propose and discuss data definitions and rules for their use, that process should be used to consider these issues. If not, OES should consider convening focus groups of judges and clerks from each court (General District Court, Juvenile & Domestic Relations Court, Circuit Court) to discuss and determine how to improve the disposition data categories and codes.

Litigant Demographics

While the best demographic data to use would be that of individual litigants, OES could consider collecting ZIP Code information for litigants. While not as precise as knowing the demographic data on individual litigants (for example, age, income, race/ethnicity, employment status, etc.) knowing the ZIP + 4 digits for litigants would give confidence to any inferences being made regarding the relationship between case information (filings, outcomes, representation status) and demographic data associated with the ZIP Code while at the same time not raising concerns about privacy or inappropriate use of personal information. ZIP + 4 is used on Virginia driver's licenses and other records and written documents from state agencies and thus should be readily available to litigants.

Claim and Award Data

To ensure confidence in the interpretation of claim and award amount data, the CMS should contain entries in the claim and award amount fields for all cases, regardless of what that value should be, in order to distinguish cases where a numerical value is not appropriate, such as when equity relief alone is sought, from those where the valid entry should be $0.00.

Conclusion

The purpose of establishing a consistent approach to reporting cases with self-represented litigants (SRLs) is to allow comparative data to be produced within and among jurisdictions, facilitating the understanding of the nature and extent of self-representation in the state courts.

The value of identifying cases with self-represented litigants goes beyond merely documenting the volume of such cases and understanding whether that number has increased or decreased over time. First, evaluating the outcomes of parties with and without legal representation is necessary to evaluate whether and how those who do not have access to legal representation are disadvantaged by that fact. For certain case types (e.g., small claims) self-representation may be preferred if not legally required, while for others with much higher stakes (e.g., family law cases involving children) lack of access to legal representation may prove a serious disadvantage.

Second, information on representation status, when organized at the level of discrete events throughout the life of a case, can provide a profile of these SRL cases that allows courts to focus resources where they are most needed. The availability of event-level data and reports using SRL data would greatly increase the court's understanding of how SRLs are progressing through the court process. Court managers would be able to see the events for which SRLs obtain attorneys as well as determine when a case is delayed. Such information would be

beneficial in determining the best use of court and self-help center resources for ensuring that SRLs are provided the assistance they need.

Finally, an accurate count of cases with self-represented litigants is more than a matter of statistical reporting or resource allocation. The inability to identify and manage cases with self-represented litigants raises the risk of delay, lack of compliance with court orders, and unequal access to justice.