

Chief Justice Chase T. Rogers
CT Bar Association
Keynote Address
June 11, 2012

Good evening.

I want to begin by saying I am especially grateful for your support and advocacy this past legislative session regarding two of the Governor's bills that were of particular importance to the judiciary, namely, the *Court Fees* bill which will guarantee money for legal services and technology improvements for the Branch, and the *Act Establishing a Commission on Judicial Compensation*.

I would now like to spend the remainder of my allotted time discussing an issue of mutual concern for both the bar and the bench. The number one concern I have is the increasing number of self-represented parties. This is because we are going to have serious problems continuing to provide quality justice unless we tackle this issue head on. When I addressed you at the 2011 annual meeting, I devoted most of my remarks to this growing trend. What we now have in 2012 is a phenomenon that is not going to go away and that requires a proactive response from both the Judicial Branch and the bar.

Our own statistics bear out the presence of self-represented parties in Connecticut state courts. In fiscal year 2011, the percentage of family cases in which there was at least one party self-represented was 85 percent. By fiscal year 2011, 28 percent of our civil cases had at least one self-represented litigant. Anecdotally, I can tell you that in one term two self-represented parties recently appeared before the Supreme Court.

And please don't think for a moment that this influx is limited to Connecticut. Not so long ago, in courtrooms from California to Connecticut, self-represented parties were viewed as an anomaly and judges would often advise, "He who is his own lawyer has a fool for a client." But now this has become a national trend that continues to challenge our country's legal system.

Just to focus on a few other states, in New York, 1.8 million litigants appear in state courts without an attorney, 78 percent of litigants in traffic cases are self-represented and, like us, 90 percent of housing matters involve at least one self-represented party while 97 percent of individuals dealing with child support issues do so without full benefit of counsel. Likewise, in Wisconsin 70 percent of family cases have a self-represented party, and in Massachusetts, 92 percent of defendants in housing matters are self-represented.

What is the problem with these numbers? The blunt answer is the Judicial system is based on lawyers advocating for their clients. A recent survey of judges in New York indicated the following: 63 percent of judges responding felt that it was difficult to ascertain facts as evidence is not properly presented, 73 percent indicated unrepresented litigants failed to present necessary evidence, 70 percent felt there was confusion over issues and 84 percent felt there was lack of knowledge about the law.

Meanwhile, the reality of this legal landscape is that many law firms are struggling to stay afloat because their client base has shrunk. As a result, attorneys have had to take a hard look at the business of running a law office. And, we all know the difficulty that law school graduates now face in getting jobs.

The answer is clear: both the courts and the bar must continue to change the way we do business. Before I go any further, however, let me just say that inaction is *not* an option.

In fact, to resist change is to risk irrelevance. And it is a serious mistake to simply ignore it or try to blame it on Access to Justice measures that the Judicial Branch has undertaken. Now, I know that some think that the Judicial Branch has caused or contributed to this situation by providing various resources for self-represented parties. Let me assure you that this is not the case. We did not create these conditions, however, we have to respond to them to ensure that all parties have access to justice. I should note

that, like us, almost every state's court system now provides self-help information on their websites. The resources range from videos of instruction, legal clinics, interactive forms, and a directory of pro bono attorneys. Clearly, then, Connecticut is not unique and courts throughout the nation are attempting to respond to this need.

If it's not the Branch's actions creating this trend then what is it? Rapid changes in technology have contributed to a significant increase in self-represented parties. The Internet has evolved into a vast repository of information that is readily accessible by doing a "Google" search, and research that used to take days may now be obtained within minutes through a home computer.

Moreover, we live in a society that encourages a do-it-yourself mentality. More than a decade ago, urban anthropologist Dr. Jennifer James predicted that this do-it-yourself trend -- which started when people began pumping their own gas in the 1970s -- would eventually impact all professions including the law. I don't think that anyone in this room could deny that is where we are today.

Finally, we know that an entire industry has already been built around providing advice on complicated matters. The ease of accessing such information, coupled with aggressive marketing, has created the false impression that advice from a website is as reliable as going to a lawyer with years of experience and education.

The irony of all of this is that LegalZoom.com has, according to Bloomberg Business Week, filed an IPO in the amount of \$120 million earlier this month. Frankly, I would much rather see that money going to the legal profession.

So, how can we -- meaning the judiciary and the bar -- continue to respond effectively to these challenges in order to achieve our respective goals?

I can assure you that the Judicial Branch will continue to seek effective solutions, and I know that the Connecticut Bar Association and the American Bar Association have, for some time, been discussing ways to confront this challenge. I am not sure that any of the following ideas are the answer, but they certainly merit discussion among yourselves.

One proposal, in particular, that has generated a lot of dialogue is unbundling legal services, otherwise known as limited scope representation. Many of you may have helped organize or attended the symposium sponsored by the CBA and the Connecticut Bar Foundation back in October, where attendees discussed both the benefits and concerns arising from limited scope representation.

I have heard that some members of the bar fear that limited scope representation will encourage litigants to dissect their cases in an effort to save money. The contrary view is that unbundling increases the value of an attorney in the eyes of a litigant who would not have otherwise sought such services at all.

I also understand that some lawyers believe that judges won't allow lawyers to withdraw from a case once they have filed a limited appearance. To address this particular issue, the Judicial Branch has drafted a Certificate of Completion, which would allow for an automatic withdrawal of a limited appearance.

Attorney advertising is another area that is being reviewed by both the Judicial Branch and the CBA. In the old days, people looking to hire an attorney relied on word of mouth or the Yellow Pages. These days, people turn to the Internet. The rules regarding lawyer advertising need to reflect this trend and, on Friday, our Superior Court judges will be voting on a rule change that some believe will help small law firms compete for business.

Under the proposal, Internet matching services will be allowed to advertise legal services in Connecticut without providing the name of at least one Connecticut attorney

responsible for the content of the website. Here is how it would work: A client would submit information about a case to the website. Connecticut attorneys who participate in the matching service may then review the submitted information and, if interested, respond to it. The client would then determine whether he would like to contact the Connecticut attorney based on the response received. This advertising model would allow small firms in Connecticut an affordable way to have an Internet presence.

Another area that has generated a lot of discussion is whether there should be mandatory continuing legal education which is a decision the bar will have to make. Aside from the merits of whether to have mandatory CLE in Connecticut, there is the question of cost to the Branch since we would have to oversee it. I am in the process of establishing a working group comprised of both members of the bar and the bench to review the costs associated with the proposal, and I can assure you that all viewpoints on this issue will be carefully considered.

And, of course, you all know the amount of work that the ABA has done in this area.

For instance, the ABA's Commission on Ethics 20/20 recently submitted its report to the House of Delegates, after a three-year study of how technology and globalization are transforming the practice of law.

The Commission will also be developing a report about alternative law practice structures, which should be very useful for practicing attorneys such as yourselves.

Finally, what do we do with our talented unemployed law school graduates. Here's just one idea that I have been thinking about -- what about a model that looks like Teach for America but instead would be Law for America where graduating students would commit to a year or two of legal services for those who can't afford it thereby gaining experience which would be useful to you as potential employers.

So clearly, we all have our work cut out for us. I am not sure how some of these issues will unfold, but I can tell you one thing, there is not a judge in the state of Connecticut who doesn't breathe a sigh of relief when a litigant walks into court with a lawyer. We not only want you to remain relevant, we need you to stay relevant so that access to justice may be achieved.

In summary, we have no reason to believe that the number of people who decide to represent themselves will substantially decrease any time soon. Compounding this situation is that businesses have enthusiastically responded to a new untapped clientele. The result is less business for you and more self-represented parties for the courts. While we have to accept that this is our new reality, I am confident that Connecticut attorneys will rise to this challenge and confront these issues head on.

Thank you, again, for inviting me to address you tonight. It has truly been my honor and privilege.