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Just How Liberal is Liberal?: Wyoming Courts' Treatment of Civil Pro Se Pleadings

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COMMENT

Just How Liberal is Liberal?: Wyoming Courts' Treatment of Civil *Pro Se* Pleadings

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I. INTRODUCTION

Wyoming case law treats *pro se* pleadings in conflicting fashion.[1] Precedent dictates both that courts hold *pro se* litigants to the same standards as attorneys

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[1] *See infra* notes 63–81 and accompanying text.

and that courts award *pro se* litigants leniency in their pleadings.[2] Statements such as, "[w]e remain committed to the rule that this court will not apply different procedural standards for *pro se* parties than we do for represented parties"[3] and "[a]s a *pro se* litigant, [appellant] was entitled to some leniency in the stringent standards applied to attorneys"[4] directly conflict with one another. This second line of cases requires only that courts treat *pro se* pleadings leniently, without specifically describing the level of leniency courts should grant.[5] This comment intends to persuade the Wyoming Supreme Court to affirm the second line of cases regarding leniency and specifically overrule contrary cases.[6] In addition, for purposes of consistency and uniformity, the court should introduce a factor approach to aid trial courts in determining when to grant *pro se* litigants leniency and the appropriate level of leniency for each situation.[7] This approach would be equitable and beneficial for judges, appellate review, the parties, and those the litigation has the potential to affect.[8]

Part I of this comment introduces the issues regarding inconsistencies in precedent.[9] Part II outlines the scope of this comment as focused through the lens of a family law litigant.[10] Family law is an appropriate extended example of the quandaries facing *pro se* parties because these litigants, often unrepresented, encounter unique, difficult, and socially important issues.[11] Part III addresses the two contradictory lines of cases, introduced above, concerning the treatment of *pro se* litigants.[12] Under one line of cases, the Wyoming Supreme Court requires *pro se* litigants to act as a similarly situated competent attorney.[13] Under the other,

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[2] *Compare* Libretti v. State (*In re* U.S. Currency Totaling $7,209.00), 2012 WY 75, ¶ 31, 278 P.3d 234, 241 (Wyo. 2012) (identifying that *pro se* litigants are afforded leniency from the stringent standards required by attorneys), *and* MTM v. State (*In re* KD), 26 P.3d 1035, 1036 (Wyo. 2001) (noting that "some allowances are made for *pro se* litigants"), *with* RM v. Dep't of Family Servs. (*In re* KMM), 957 P.2d 296, 298 (Wyo. 1998) (remaining committed to the proposition that the same procedural standards are applied to *pro se* litigants as are applied to those with representation), *and In re* GP, 679 P.2d 976, 984 (Wyo. 1984) (recognizing that *pro se* litigants will not receive any benefit based on their failure to obtain counsel).

[3] *In re KMM*, 957 P.2d at 298.

[4] *In re U.S. Currency Totaling $7,209.00*, ¶ 31, 278 P.3d at 241.

[5] *See In re KD*, 26 P.3d at 1035–37; *In re U.S. Currency Totaling $7,209.00*, ¶¶ 1–32, 278 P.3d at 234–42 (lacking a discussion on the appropriate types and level of leniency).

[6] *See infra* notes 157–84 and accompanying text.

[7] *See infra* notes 208–66 and accompanying text.

[8] *See infra* notes 168–81 and accompanying text.

[9] *See supra* notes 2–5 and accompanying text.

[10] *See infra* notes 20–58 and accompanying text.

[11] *See infra* notes 20–58 and accompanying text.

[12] *See infra* notes 59–124 and accompanying text.

[13] RM v. Dep't of Family Servs. (*In re* KMM), 957 P.2d 296, 298 (Wyo. 1998); *In re* GP, 679 P.2d 976, 984 (Wyo. 1984); Johnson v. Aetna Cas. & Sur. Co., 630 P.2d 514, 517 (Wyo. 1981) (holding litigants cannot obtain an advantage by appearing *pro se*).

the court compels leniency toward *pro se* litigants regarding minor procedural errors and the interpretations of their pleadings.[14] The differing precedents have created problems with uniformity throughout the district courts,[15] as well as potential claims for violation of Wyoming's Open-Courts provision in the state constitution.[16] Part IV discusses how other jurisdictions handle *pro se* pleadings.[17] Part V describes the benefits of a factor analysis in the treatment of *pro se* pleadings and outlines the essential elements that must be included in pleadings, regardless of whether a court chooses to review those pleadings with leniency.[18] The analysis concludes with a suggested list of factors courts should use to determine whether a pleading merits dismissal.[19]

II. THE UNIQUE CHALLENGES FACING *PRO SE* LITIGANTS IN FAMILY LAW

This comment is directed toward Wyoming's treatment of civil *pro se* pleadings and uses family law as a method of viewing the problem. However, readers should not construe the discussion as solely applying to the family law context. While a discussion of *pro se* criminal defendants and their distinct needs is beyond the scope of this comment, similar arguments also may be relevant to those individuals. Family law is an appropriate lens through which to view this problem because a clear majority of family law cases involve at least one *pro se* litigant.[20] Additionally, litigants in family law encounter a number of unique and important issues, which courts have an interest in resolving quickly, equitably, and effectively.[21]

The first of these issues relates to the fact that young children may be involved in family law disputes.[22] Whether it be divorce proceedings, guardianships, or

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[14] Libretti v. State (*In re* U.S. Currency Totaling $7,209.00), 2012 WY 75, ¶ 31, 278 P.3d 234, 241 (Wyo. 2012); MTM v. State (*In re* KD), 26 P.3d 1035, 1036 (Wyo. 2001); Apodaca v. Ommen, 807 P.2d 939, 943 (Wyo. 1991) (indicating those appearing *pro se* are entitled to leniencies).

[15] *See generally* Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, 27 J. NAT'L ASS'N ADMIN. L. JUDICIARY 97, 101 (2007) ("Uncertainty among trial judges about how to treat self-represented litigants is understandable given the mixed signals sent by appellate courts.").

[16] *See infra* notes 113–19 and accompanying text.

[17] *See infra* notes 128–56 and accompanying text.

[18] *See infra* notes 157–205 and accompanying text.

[19] *See infra* notes 206–66 and accompanying text.

[20] Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Role of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2047 (1999) (indicating that approximately eighty percent of family law cases involve *pro se* litigants); Jona Goldschmidt, *The* Pro Se *Litigant's Struggle for Access to Justice*, 40 FAM. CT. REV. 36, 42 (2002) ("[T]he great tide of *pro se* litigation today appears on the steps of the family courts.").

[21] *See infra* notes 22–58 and accompanying text.

[22] *See* Pauline H. Tesler, *Can This Relationship be Saved? The Legal Profession and Families in Transition*, 55 FAM. CT. REV. 38, 46 (2017) (arguing that legal stakes can hardly be greater in family

child custody orders, issues involving children and their wellbeing are inherently more important than civil suits for monetary damages.[23] The United States Supreme Court reinforced this concept by declaring the right to have a family a fundamental right, protected by the Due Process Clause of the Constitution.[24] Family issues that necessitate litigation may actually harm, or have the potential to harm, the welfare and development of children.[25] Resolving cases quickly alleviates some of the trauma a child experiences with uncertainties and stress that come with the litigation process.[26]

It logically follows that judges should have a greater interest in applying leniency, disregarding minor procedural errors, and obtaining an equitable result when children are involved.[27] As an extreme example, Rule 10(a) of the Wyoming Rules of Civil Procedure states, "[e]very pleading *must* have a caption with the court's name, a title, a file number, and a Rule 7(a) designation."[28] Justice Cardine wrote a dissent in *Anderson v. Sno-King Village Association* in which he recognized the rule's language as mandatory and would have dismissed the pleading for failure to provide a sufficient caption.[29] Justice Cardine scathingly remarked, "[i]f we are not going to apply the rules as they are written, we might as well abolish them."[30] Based on Justice Cardine's remarks, a judge feasibly may dismiss the pleading of a lawyer or *pro se* litigant based on an insufficient caption.[31] However, it seems highly inequitable, and potentially harmful, for a judge to dismiss the

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law disputes when young children are involved). Dispute resolutions necessitate long-term solutions that contemplate connections for years to come. *Id.* If not properly handled, disputes may leave families even more conflicted than they were prior to the proceeding. *Id.*

[23] *See Id.* at 46.

[24] *See* Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (internal citations omitted) (providing a non-exhaustive list of fundamental rights: "the rights to marry, to have children, to direct the education and upbringing of one's children, [and the right] to marital privacy.").

[25] *See* Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167, 239 (recognizing that shared parenting, especially where issues of continuing conflict, violence, and young children are involved, can cause lasting harm to children).

[26] *See* Mark Hardin, *Court Improvement for Child Abuse and Neglect Litigation: What Next?*, AM. B. ASS'N 2, https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/resourcecenter/ccj_article.authcheckdam.pdf (last visited Dec. 30, 2017) (noting that reducing judicial delay is key in sparing children from harm associated with spending unnecessarily cumulative time in foster care, as well as reducing fear, stress, and pain associated with uncertainty of what will be the judge's final decision).

[27] *See supra* notes 20–26 and accompanying text.

[28] WYO. R. CIV. P. 10(a) (emphasis added).

[29] Anderson v. Sno-King Vill. Ass'n, 745 P.2d 540, 546 (Wyo. 1987) (Cardine, J., dissenting). Although Justice Cardine interpreted an earlier version of the rule, the applicable statutory language changed from the word "shall" to the word "must"; thus, his comment is still relevant. *See id.*

[30] *Id.*

[31] *See id.*

claim of a *pro se* litigant based solely on failure to provide a sufficient caption.[32] This is especially true where there are allegations of abuse and neglect, or when a child is withheld from a parent for an extended period of time.[33] After all, society recognizes that it is beneficial for children to have a healthy relationship with both parents.[34] To dismiss a pleading based on the insufficiency of the caption rises to the level of placing form over substance, which could lead to inequities.[35]

Another issue litigants face is the inability to find an attorney to represent them.[36] In the criminal law context, the Sixth Amendment of the United States Constitution guarantees indigent defendants the right to an attorney.[37] The right to counsel applies to the states under the Due Process Clause of the Fourteenth Amendment.[38] However, there is no guarantee of a right to an attorney in civil cases.[39] While courts have the discretion to appoint an attorney to a civil litigant, there is no express requirement to do so, and court-appointed attorneys in civil cases are rare.[40] In the civil law context, some attorneys are willing to represent indigent clients on a contingent fee basis,[41] but contingent fee arrangements only work when the client seeks monetary damages.[42] Most prayers for relief in family law cases seek equitable relief in the form of injunctions or civil contempt judgments.[43] In fact, it is an ethical violation for an attorney to accept a contingency fee arrangement in domestic relation matters.[44] The absence of a constitutional guarantee to an attorney, the infrequency of court-appointed

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[32] *See* Hon. Robert Bacharach & Lyn Entzeroth, *Judicial Advocacy in* Pro Se *Litigation: A Return to Neutrality*, 42 IND. L. REV. 19, 20 (2009). Judges should seek to ensure that minor procedural technicalities do not result in dismissal of *pro se* pleadings. *Id.*

[33] *See* Tesler, *supra* note 22, at 46.

[34] Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 1002 (2005).

[35] Jameson K. George, *Ohio Construction Delay Claims: Blaming the Contractor for Plan Errors?*, 38 OHIO N.U. L. REV. 333, 348 (2011).

[36] *See* Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear* Pro Se*: Causes, Solutions, Recommendations, and Implications*, 17 GEO. J. LEGAL ETHICS 423, 425 (2004) ("[T]hose who appear in court without lawyers are, as a general matter, only 'choosing' to do so in the most formal sense. Rather, that 'choice' is a product of their economic situation and the cost of counsel.").

[37] U.S. CONST. amend. VI.

[38] Gideon v. Wainwright, 372 U.S. 335, 343 (1963).

[39] Turner v. Roger, 564 U.S. 431, 441–442 (2011).

[40] Julie M. Bradlow, Comment, *Procedural Due Process Rights of* Pro Se *Civil Litigants*, 55 U. CHI. L. REV. 659, 662 (1988).

[41] *Id.* at 670.

[42] *See id.*

[43] *See* 2 JUDITH S. CRITTENDEN & CHARLES P. KINDREGAN, JR., ALABAMA FAMILY LAW § 26:1 (2017).

[44] WYO. R. PROF. CONDUCT 1.5(d).

attorneys in civil cases, and the inability to take advantage of contingent fee arrangements leaves indigent litigants with the Hobson's choice of either spending valuable time searching for attorneys who may be willing to represent them *pro bono* or proceeding *pro se*.[45]

Family law litigants often confront an additional problem with continuing jurisdiction.[46] Continuing jurisdiction is prevalent in the family law context, as courts continue to have jurisdiction over issues regarding guardianships,[47] child custody,[48] and child support payments.[49] Litigants may have to appear in court for years once a dispute arises.[50] Indigent litigants who procure *pro bono* assistance are unlikely to obtain assistance for the duration of the dispute, and even those able to afford attorneys presumably run into financial problems when asked to pay an attorney for continuous representation and other costs of litigation.[51] Due to the implementation of the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) in 1997, litigants may find themselves in child custody dispute litigation in a different jurisdiction than where the decree was originally filed.[52] Under the UCCJEA, a court that entered the original decree may lack jurisdiction over child custody issues if all litigants have moved away from that state.[53] In an increasingly mobile world, litigants who are able to obtain attorneys in one jurisdiction may have to hire a second attorney, or proceed *pro se*, if the former attorney is not licensed in the new jurisdiction.[54] In contrast, jurisdiction in most other areas of the law ends upon entry of a final judgment.[55]

Based on the unique challenges and important interests at stake, courts should handle these types of cases with the utmost care.[56] Judges should

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[45] *See supra* notes 36–44 and accompanying text.

[46] *See* WYO. STAT. ANN. §§ 20-5-302, 3-8-205, 20-2-203, 20-4-147 (2018); *see generally Continuing Jurisdiction Law and Legal Definition*, U.S. LEGAL, https://definitions.uslegal.com/c/continuing-jurisdiction/ (last visited Jan. 9, 2018) ("Continuing jurisdiction refers to a court's power to retain jurisdiction over a matter even after entering a judgment, allowing the court to modify its previous rulings or orders.").

[47] WYO. STAT. ANN. § 3-8-205.

[48] WYO. STAT. ANN. § 20-5-302(a).

[49] WYO. STAT. ANN. § 20-4-147.

[50] *See Continuing Jurisdiction Law and Legal Definition*, *supra* note 46.

[51] *See* Brigitte M. Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 STAN. L. REV. 703, 726–28 (1971).

[52] *See Child Custody Jurisdiction and Enforcement Act Summary*, UNIF. L. COMM'N, http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act (last visited March 2, 2018) (stating that the UCCJEA was designed to prevent multiple states from exercising jurisdiction and creating competing child custody orders).

[53] *Id.*

[54] *See id.*

[55] *See* Nixon v. State, 51 P.3d 851, 853 (Wyo. 2002).

[56] *See supra* notes 20–55 and accompanying text.

recognize the unique complications litigants face in the family law context and be both understanding of the decision to proceed *pro se* as well as mindful of the consequences at stake.[57] Courts should weigh these issues against the gravity of an error in a pleading to determine if leniency or dismissal is appropriate.[58]

III. WYOMING'S HANDLING OF *PRO SE* PLEADINGS

Wyoming Rule of Civil Procedure Rule 8 provides the requirements for pleadings.[59] The rule states that the three aspects of a satisfactory pleading include a short, plain statement on the court's jurisdiction, a showing that the pleader is entitled to relief, and a description of the type of relief sought.[60] The rule also states that no specific form is required and that the "pleadings must be construed so as to do justice."[61] While this is true, violations of other procedural rules may lead to dismissal of the pleading, notwithstanding conformity with Rule 8.[62]

A. Conflicting Precedent

While Wyoming courts recognize that a litigant has the right to self-representation in a civil case,[63] Wyoming case law has created two materially different lines of precedent for handling *pro se* litigants.[64] The first line of cases proclaims that the court expects *pro se* litigants to act as a similarly situated competent attorney.[65] The Wyoming Supreme Court has upheld this concept on several occasions through statements such as, "[a] *pro-se* litigant will be granted no greater right than any other litigant and he must expect and receive the same treatment as if represented by an attorney."[66]

The court used this line of cases to dismiss a father's informal motion to obtain court-appointed counsel in an action to terminate his parental rights.[67] In

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[57] *See supra* notes 20–55 and accompanying text.

[58] *See infra* notes 206–66 and accompanying text.

[59] WYO. R. CIV. P. 8.

[60] *Id.* 8(a).

[61] *Id.* 8(d)–(e).

[62] *See supra* notes 27–35 and accompanying text.

[63] Johnson v. Aetna Cas. & Sur. Co., 630 P.2d 514, 517 (Wyo. 1981).

[64] *Compare* Libretti v. State (*In re* U.S. Currency Totaling $7,209.00), 2012 WY 75, ¶ 31, 278 P.3d 234, 241 (Wyo. 2012), *and* MTM v. State (*In re* KD), 26 P.3d 1035, 1036 (Wyo. 2001), *with* RM v. Dep't of Family Servs. (*In re* KMM), 957 P.2d 296, 298 (Wyo. 1998), *and In re* GP, 679 P.2d 976, 984 (Wyo. 1984).

[65] *In re KMM*, 957 P.2d at 298; *In re GP*, 679 P.2d at 984; *Johnson*, 630 P.2d at 517.

[66] *In re GP*, 679 P.2d at 984 (quoting Suchta v. O.K. Rubber Welders, Inc., 386 P.2d 931, 933 (Wyo. 1963)); *accord In re KMM*, 957 P.2d at 297–98; Osborn v. Manning, 685 P.2d 1121, 1124 (Wyo. 1984).

[67] *In re KMM*, 957 P.2d at 297–98.

In Interest of KMM, the district court rejected the handwritten letter requesting a court-appointed attorney, because the request did not comply with the motion rules required by the Wyoming Rules of Civil Procedure.[68] The father never filed the requisite motion, and the district court ultimately terminated his parental rights and placed the child in the care of the Department of Family Services.[69] On appeal to the Wyoming Supreme Court, the father contended the district court improperly denied his request for an attorney.[70] The Supreme Court upheld the district court's decision, explaining "[o]ne has the right to appear *pro se*; but when a person chooses to do so, he must be held to the same standards as if he were represented by counsel."[71]

The Wyoming Supreme Court justifies these rulings on the ground that any deferential treatment to a *pro se* litigant would condone the practice of representing oneself in order to gain leniency on procedural rules.[72] The Wyoming Supreme Court also expressed concern that litigants would attempt to place themselves at an advantage by representing themselves, expecting assistance from the court, other attorneys, or the other party.[73]

The Wyoming Supreme Court's second line of cases acknowledges "the litigant acting *pro se* is entitled to 'a certain leniency' from the more stringent standards accorded formal pleadings drafted by lawyers."[74] Many of these cases generally acknowledge that *pro se* litigants must reasonably adhere to both court rules and procedural requirements.[75] Nowhere in this line of cases does the court establish how to determine how much leniency *pro se* litigants are entitled, nor do they describe which practices do and do not reasonably adhere to court and procedural rules.[76]

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[68] *Id.*

[69] *Id.*

[70] *Id.* at 297.

[71] *Id.* at 298 (quoting Johnson v. Aetna Cas. & Sur. Co., 630 P.2d 514, 517 (Wyo. 1981)) (granting no leniency to a father who wrote a letter to the court seeking counsel when that father filed appropriate motions at other stages throughout the proceeding).

[72] *Id.*

[73] *Johnson*, 630 P.2d at 571.

[74] Osborn v. Emporium Videos, 848 P.2d 237, 240 (Wyo. 1993); *accord* Libretti v. State (*In re* U.S. Currency Totaling $7,209.00), 2012 WY 75, ¶ 31, 278 P.3d 234, 241 (Wyo. 2012); Young v. State, 46 P.3d 295, 298 (Wyo. 2002); MTM v. State (*In re* KD), 26 P.3d 1035, 1036 (Wyo. 2001); Apodaca v. Ommen, 807 P.2d 939, 943 (Wyo. 1991).

[75] *Osborn*, 848 P.2d at 240; *In re U.S. Currency Totaling $7,209.00*, ¶ 31, 278 P.3d at 241; *Young*, 46 P.3d at 297.

[76] *See In re U.S. Currency Totaling $7,209.00*, ¶¶ 1–32, 278 P.3d at 234–42; *In re KD*, 26 P.3d at 1035–37; *see also* Rory K. Schneider, Comment, *Illiberal Construction of* Pro Se *Pleadings*, 159 U. PA. L. REV. 585, 600 (2011) ("[D]espite consistently affirming [the liberal construction of *pro se* pleadings] the court has failed to flesh out precisely how relaxed a standard lower courts should apply.").

The problems are apparent in *Robinson v. Hamblin*.[77] In *Robinson*, the Wyoming Supreme Court considered whether the plaintiff, appearing *pro se* at the trial court level, had standing to challenge an insurance company's appointment of counsel to the defendant in a personal injury action.[78] The court ruled against the plaintiff on the issue based on his lack of interest in the defendant's right to obtain counsel and because issue was not raised in the trial court.[79] On the second justification, the court recognized the plaintiff was entitled leniency based on his *pro se* status, but "the trial court accorded [the plaintiff] every courtesy and consideration to which he was entitled."[80] The rest of the opinion lacks any discussion as to what courtesies and considerations the trial court applied.[81]

B. Problems with Precedent

The problems with the discrepancy in the Wyoming Supreme Court's rulings are threefold. First, the two lines of cases create confusion at the lower court level.[82] Second, there is a lack of guidance as to what constitutes liberal treatment to *pro se* litigants.[83] Third, district court judges' discretion is too broad, diluting legal principles of consistency and predictability.[84]

The Wyoming Supreme Court has not overruled either line of cases, making it difficult to predict how it may rule in the future.[85] This creates confusion in the lower courts.[86] District courts across the state can cite either line of precedent to accept or reject a *pro se* pleading if there is a procedural deficiency.[87] Decisions to grant leniency simply may come down to tolerance of the court regarding the claim, litigant, or nearly any other conceivable factor.[88] District court judges

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[77] *See* Robinson v. Hamblin, 914 P.2d 152, 154 (Wyo. 1996).

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *See id.* at 152–56.

[82] *See* Gray, *supra* note 15, at 101.

[83] *See* Schneider, *supra* note 76, at 600.

[84] *See* Engler, *supra* note 20, at 2015–16 (recognizing that some judges go so far as to silence unrepresented litigants to ensure their claims are not heard).

[85] *Compare* Libretti v. State (*In re* U.S. Currency Totaling $7,209.00), 2012 WY 75, 278 P.3d 234 (Wyo. 2012), *and* MTM v. State (*In re* KD), 26 P.3d 1035 (Wyo. 2001), *with* RM v. Dep't of Family Servs. (*In re* KMM), 957 P.2d 296 (Wyo. 1998), *and In re* GP, 679 P.2d 976 (Wyo. 1984).

[86] Gray, *supra* note 15, at 101.

[87] *See* Karin Elizabeth Lossi Anderson, *Attorneys Beware: Unprecedented Law Changing in Nebraska. Summary Judgment, Affirmative Defenses and City State Bank v. Holstine, 260 Neb. 578, 618 N.W.2d 704 (2000)*, 81 NEB. L. REV. 424, 431 (2002).

[88] *See* Engler, *supra* note 20, at 2015.

are torn between remaining impartial and hearing cases on their merits.[89] On the one hand, "extending too much procedural leniency to a *pro se* litigant risks undermining the impartial role of the judge in the adversary system."[90] On the other, it is a disfavored practice to dismiss a case without adjudicating its merits.[91] A more structured approach would alleviate confusion for district court judges and allow them comfort in ensuring they are making correct decisions.[92]

The absence of further discussion on what constitutes proper lenient treatment of *pro se* litigants adds to the ambiguity.[93] Judges often worry about what they are allowed to do and what they should do when faced with an unrepresented litigant.[94] Ninety-one percent of judges nationwide report that they have no general policy on how to handle *pro se* litigants in the courtroom.[95] While the second line of cases recognizes that some level of leniency should be afforded, there is no description as to what constitutes an appropriate level of leniency for the situation.[96] The Wyoming Supreme Court has commented that a trial court has awarded a *pro se* litigant leniency, but has never explained what that courtesy included.[97] A Wyoming Supreme Court opinion discussing potential factors and allowances would be beneficial in clarifying this confusion.[98]

The lack of Wyoming Supreme Court guidance has left trial court discretion too broad.[99] Based on the conflicting and vague precedent, courts might treat litigants differently based on the time and place they file their pleadings.[100] A

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[89] *See* Bacharach & Entzeroth, *supra* note 32, at 20 ("The first objective involves the measures used to assess whether the pleading sufficiently states a claim for relief. Part of this objective seeks to assure that mere procedural technicalities do not trip up the unwary litigant. The second, somewhat incongruous goal, deals with the basic notion that both the represented and unrepresented must follow the same procedural rules."); Goldschmidt, *supra* note 20, at 37; Donna M. Jones, Book Review, WIS. LAW., July 2003, at 38 (reviewing PATRICIA A. GARCIA, LITIGANTS WITHOUT LAWYERS: COURTS AND LAWYERS MEETING THE CHALLENGES OF SELF-REPRESENTATION (2002)).

[90] Bradlow, *supra* note 40, at 671.

[91] *Id.* at 680 ("[T]he *pro se* civil litigant's constitutionally protected interest is in a meaningful opportunity to be heard.").

[92] *See infra* notes 169–87 and accompanying text.

[93] Bradlow, *supra* note 40, at 659–60 ("[C]urrently, procedural treatment of *pro se* civil litigants is at best highly case specific, at worst inconsistent."); Schneider, *supra* note 76, at 600.

[94] Engler, *supra* note 20, at 1987–88.

[95] *Id.* at 2013.

[96] *See, e.g*, Libretti v. State (*In re* U.S. Currency Totaling $7,209.00), 2012 WY 75, 278 P.3d 234 (Wyo. 2012); MTM v. State (*In re* KD), 26 P.3d 1035 (Wyo. 2001).

[97] *See, e.g.*, *In re KD*, 26 P.3d at 1035–37; *In re U.S. Currency Totaling $7,209.00*, ¶¶ 1–32, 278 P.3d at 234–42; Schneider, *supra* note 76, at 600.

[98] *See infra* notes 169–87 and accompanying text.

[99] *See infra* notes 100–12 and accompanying text.

[100] Schneider, *supra* note 76, at 600 ("[D]istrict courts apply different degrees of relaxation, thereby rendering pleading leniency less reliable at preventing dismissal of *pro se* complaints.").

judge in one district may provide more allowances or consider different factors than a judge in another district.[101] This creates a system in which *pro se* litigants may or may not have their cases heard on the merits based simply on the district of filing rather than on an analysis of objective factors.[102] Procedural issues can arise early in the judicial process.[103] Judges may ultimately want to exercise discretion to obtain the most just results, but they must make decisions regarding dismissal before they are fully informed on the facts of the case.[104] The judge who mandates strict compliance with procedural rules may dismiss a *pro se* pleading, ultimately leading to an inequitable result.[105]

Not only are cases considered differently based on where they are filed, but also *when* they are filed.[106] Many judges are driven by docket control, which could create disparate treatment within the same court.[107] A judge may be more willing to accept a *pro se* pleading with errors at a time when there are vacancies in the docket, whereas a busy docket leaves "little incentive to expend precious judicial resources on educating and protecting unrepresented litigants."[108]

While it is plausible that the Wyoming Supreme Court intended to leave broad discretion to trial court judges, the overall lack of clarity has led to sweeping discretion and the potential for application in profoundly different ways.[109] *Pro se* litigants may mistake dismissal for defeat, not realizing they can refile or appeal.[110] This result could be particularly damaging in the family law context where, for example, parents may be separated from their children. By obeying procedural rules and exercising discretion to dismiss, judges may unintentionally perpetuate inequitable results to the most vulnerable in our society.[111] The implementation

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[101] *Id.*; Engler, *supra* note 20, at 2014 ("An examination of the decisions, however, suggests that the outcomes may be driven as much by the particular facts of the case as by a given judge's approach.").

[102] *See* Engler, *supra* note 20, at 2014; Schneider, *supra* note 76, at 600.

[103] JIMMY VAUGHT, BEING PREPARED TO SUCCESSFULLY MEDIATE OR LITIGATE FAMILY LAW 6 (2012).

[104] Bourke v. Grey Wolf Drilling Co., LP, 2013 WY 93, ¶¶ 40–41, 305 P.3d 1164, 1173 (Wyo. 2013) (holding issues of venue and jurisdiction must be decided before analyzing the merits of the case); *see also* Wyrough & Loser, Inc. v. Pelmor Laboratories, Inc., 376 F.2d 543, 547 (3rd Cir. 1967) ("[T]here also exists a strong policy to conserve judicial time and effort; preliminary matters such as defective service, personal jurisdiction and venue should be raised and disposed of before the court considers the merits or quasimerits of a controversy.").

[105] *See Bourke*, ¶¶ 40–41, 305 P.3d at 1173; *Wyrough*, 376 F.2d at 547.

[106] *See* Engler, *supra* note 20, at 1988–89.

[107] *Id.*

[108] *Id.* at 1989.

[109] *See supra* notes 82–108 and accompanying text.

[110] *See* Wilson v. Dooley, 2017 U.S. Dist. WL 4772579, at *6 (D. S.D. Sep. 13, 2017). It is presumed that *pro se* litigants understand the law. *Id.* Allegations of legal incompetence do not justify special treatment. *Id.*

[111] *See supra* notes 99–105 and accompanying text.

of factors would lead to more consistent results, clear up the ambiguity regarding the relevant legal framework, and still allow judicial discretion in applying that framework.[112]

C. The Open-Courts Provision

The combination of extensive trial court discretion, confusion as to which line of cases to follow, and lack of clarity as to the level of leniency that should be afforded *pro se* litigants could lead to a challenge under the Wyoming Open-Courts provision in the Wyoming Constitution.[113] The provision states, "[a]ll courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay."[114] The provision further provides, "[s]uits may be brought against the state in such manner and in such courts as the legislature may by law direct."[115] The Wyoming Supreme Court has established that, for there to be an Open-Courts violation, the litigant must establish that "he has a well-recognized common-law cause of action that is being restricted; and . . . the restriction is unreasonable or arbitrary when balanced against the purpose and basis of the statute."[116]

Common family law conflicts present situations that may generate suit under the Open-Courts provision if a pleading is rejected. For example, a *pro se* litigant may have a well-recognized cause of action if a former, or soon-to-be former, spouse withholds visitation of a minor child.[117] If a court dismissed the litigant's pleading, the litigant could argue that the extent of the confusion regarding the applicable law and the level of discretion entrusted to trial court judges has reached the point of arbitrariness.[118] This arbitrariness in administering procedural rules may be deemed to have unreasonably restricted access to the courts.[119]

D. Conclusion Regarding Pro Se *Litigants in Wyoming*

Based on precedent, it is unclear whether *pro se* litigants are required to act as attorneys or whether they are afforded additional leniency based on their *pro se* status.[120] Wyoming district courts have struggled to determine which line of cases

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[112] *See infra* notes 169–87 and accompanying text.

[113] *See* WYO. CONST. art. I, § 8.

[114] *Id.*

[115] *Id.*

[116] Kordus v. Montes, 2014 WY 146, ¶ 11, 337 P.3d 1138, 1141 (Wyo. 2014) (quoting Robinson v. Pacificorp, 10 P.3d 1133, 1137 (Wyo. 2000)).

[117] *See* WYO. STAT. ANN. § 20-2-202 (2018).

[118] *See supra* notes 82–108 and accompanying text.

[119] *See Kordus*, ¶ 11, 337 P.3d at 1141.

[120] *See supra* notes 63–112 and accompanying text.

to follow when interpreting *pro se* pleadings.[121] Even if a court follows the second line of cases, it is unclear what criteria it should consider when determining the appropriate level and type of leniency.[122] While judicial discretion is advantageous in many situations, too much ambiguity leads to disparate treatment of *pro se* litigants.[123] A more structured factor analysis would be advantageous in ensuring that *pro se* litigants are treated equally, reducing potentially inequitable dismissals, and allowing important cases to be heard on their merits.[124]

IV. OTHER JURISDICTIONS ON *PRO SE* PLEADINGS

When confusion arises in one jurisdiction, it is often beneficial to look toward other jurisdictions for guidance.[125] Thus, a review of other jurisdictions is warranted regarding whether leniency is afforded to *pro se* litigants, the amount of leniency afforded, and the different types of leniency applied.[126] Second, it is crucial to understand the reasons courts give for dismissing *pro se* pleadings as insufficient when leniency is not afforded.[127]

A. Leniency Granted to Pro Se *Litigants*

To begin, in the case *Haines v. Kerner*, the United States Supreme Court recognized that, in cases involving the Federal Rules of Civil Procedure, *pro se* litigants are held to "less stringent standards than formal pleadings drafted by lawyers."[128] In the same opinion, the Supreme Court recognized that it should not matter whether allegations are artfully pleaded.[129]

The Court of Appeals for the Sixth Circuit recognizes that *pro se* litigants should be given leniency in their pleadings.[130] In *Flynn v. People's Choice Home Loans, Inc.*, the Sixth Circuit affirmed a default judgment in favor of Flynn for mortgage and foreclosure improprieties but awarded him no damages.[131] The court

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[121] *See supra* notes 63–112 and accompanying text.

[122] *See supra* notes 93–98 and accompanying text.

[123] *See supra* notes 99–112 and accompanying text.

[124] *See infra* notes 169–87 and accompanying text.

[125] *E.g.*, Craig v. FedEx Ground Package Sys., Inc., 335 P.3d 66, 76–77 (Kan. 2014); Foster v. Roman Catholic Diocese of Vt., 70 A.2d 230, 232 (Vt. 1950); *In re* Marriage of Swing, 194 P.3d 498, 501 (Colo. Ct. App. 2008).

[126] *See infra* notes 128–41 and accompanying text.

[127] *See infra* notes 142–51 and accompanying text.

[128] Haines v. Kerner, 404 U.S. 519, 520 (1972).

[129] *Id.*

[130] Frengler v. Gen. Motors, 482 F. App'x 975, 976 (6th Cir. 2012); *see* Flynn v. People's Choice Home Loans, Inc., 440 F. App'x 452, 457 (6th Cir. 2011).

[131] *Flynn*, 440 F. App'x at 453.

held that the district court was sufficiently lenient with Flynn's claim because it attempted to decipher a claim from a pleading that was nearly incomprehensible and provided Flynn two opportunities to prove damages.[132] The district court was not required to schedule a damage hearing on Flynn's behalf to pursue the issue.[133]

Similarly, the Alaska Supreme Court also affords more leeway to pleadings drafted by *pro se* litigants.[134] The court clarified this rule in *Breck v. Ulmer*, in which it disapproved of the district court's failure to inform Breck, proceeding *pro se*, that her response to summary judgment should include affidavits.[135] The Alaska Supreme Court held trial courts should provide *pro se* litigants with information of the proper procedure necessary to accomplish their goals.[136] In another case, the Alaska Supreme Court held the *pro se* pleading must be clear enough for both the court and the litigant's opponents to discern the legal arguments the *pro se* party brings forth.[137]

The Supreme Court of Nebraska went one step further with its leniency toward *pro se* litigants in *Nebraska ex. rel. B.M. v. Brian F.*[138] The court affirmed its practice of allowing judges to suggest amendments to *pro se* litigants that would make their pleadings sufficient.[139] However, the court held that the trial court went too far in interpreting a pleading titled "modification of child support" as a request for termination of parental rights and then suggesting that the litigant amend with specific allegations.[140] The court clarified that the practice of suggesting amendments should be used sparingly.[141]

B. Dismissal of Pro Se *Pleadings*

Dismissal of *pro se* cases are common in the judicial system.[142] Approximately seventy percent of *pro se* cases are dismissed either *sua sponte* or by motion from the

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[132] *Id.* at 457.

[133] *Id.*

[134] Breck v. Ulmer, 745 P.2d 66, 75 (Alaska 1987).

[135] *Id.*

[136] *Id.* The Alaska Supreme Court ultimately ruled that while the trial court should have provided the *pro se* litigant information on the appropriate procedural steps in responding to summary judgment, the error was harmless, and the ruling of the trial court would not be reversed. *Id.*

[137] Casciola v. F.S. Air Serv., Inc., 120 P.3d 1059, 1063 (Alaska 2005).

[138] *See* Nebraska *ex rel.* B.M v. Brian F., 846 N.W.2d 257, 267 (Neb. 2014).

[139] *Id.*

[140] *Id.* at 267–68.

[141] *Id.* at 267.

[142] *See* Jonathan D. Rosenbloom, *Exploring Methods to Improve Management and Fairness in* Pro Se *Cases: A Study of the* Pro Se *Docket in the Southern District of New York*, 30 FORDHAM URB. L.J. 305, 311, 335–37 (2002). Rosenbloom relied on a study of 765 non-bankruptcy, non-habeas corpus *pro se* cases in the district court for the Southern District of New York. *Id.* at 311, 318.

opposing party.[143] Dismissing cases can be problematic when courts fail to justify their reasons for dismissal.[144] The Court of Appeals for the Third Circuit chastised a district court for its failure to provide a thorough analysis of the record when it dismissed a *pro se* plaintiff's claim.[145] The court concluded that the absence of a thorough analysis prevented the appellate court from conducting a meaningful review and was an abuse of discretion.[146]

Sua sponte dismissal is common and particularly troublesome for *pro se* litigants.[147] *Pro se* litigants who have their pleadings dismissed *sua sponte* are less likely to have an explanation on the record as to what defects exist, whereas dismissal by opposing party motion contain assertions in the motion and a court's ruling on the motion.[148] In *Tingler v. Marshall*, the Court of Appeals for the Sixth Circuit recognized that judicial dismissal *sua sponte* should be sparingly granted.[149] The court identified several problems with *sua sponte* dismissal, including impairing the court's role as an independent observer, the absence of an opportunity to amend the pleading, and creating an incomplete record for appeal.[150] Courts have an interest in hearing cases on their merits and could eliminate some of the problems associated with *sua sponte* dismissals by waiting for a party to bring the motion.[151]

C. Conclusion on Other Jurisdictions' Treatment of Pro Se *Pleadings*

Using the analyses above, several key concepts as to how other jurisdictions handle *pro se* pleadings become apparent. Courts generally give some leeway to *pro se* litigants in the pleading process.[152] Courts should do their best to decipher legal

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[143] *Id.* at 335–37 (noting that of the 765 *pro se* cases reviewed, 55.6% of cases were dismissed *sua sponte* and 14.4% were dismissed via motion to dismiss or summary judgement).

[144] *See* Reichart v. Wetzel, 673 F.App'x 133, 135 (3d Cir. 2001).

[145] *Id.*

[146] *Id.*

[147] *See* Rosenbloom, *supra* note 142, at 335–37.

[148] *See* Tingler v. Marshall, 716 F.2d 1109, 1111 (6th Cir. 1983), *superseded by statute*, 28 U.S.C. § 1915(e)(2) (2012), *as recognized in* Baker v. Ohio Cent. Sch. Sys. Region III, No. 97-3020, 1998 U.S. App. LEXIS 13621 at *4 (6th Cir. 1998) (quoting Franklin v. Or. State Welfare Div., 662 F.2d 1337, 1342 (9th Cir. 1981)) ("Such facts are not in the record since the defendant was never served with the complaint and did not have the opportunity to file an answer or any other pleadings.").

[149] *Id.* ("Such *sua sponte* dismissals are not in accordance with our traditional adversarial system of justice because they cast the district court in the role of 'a proponent rather than an independent entity.'").

[150] *Id.* at 1111–12; Osborn v. Emporium Videos, 848 P.2d 237, 241–42 (Wyo. 1993) (adopting the language in *Tingler* regarding the problems with *sua sponte* dismissal).

[151] *Tingler*, 716 F.2d at 1111.

[152] *See supra* notes 128–41 and accompanying text.

claims from inartful pleadings.[153] Some leniency may be provided for informing *pro se* litigants of any deficiencies in their pleadings.[154] When trial courts do dismiss an action, they should provide a full, thorough analysis of their reasoning to assist *pro se* litigants in understanding why their pleading was defective and to aid appellate courts in their review process.[155] Trial courts should be wary of dismissing claims *sua sponte*.[156]

V. A FACTOR APPROACH ANALYZING THE SUFFICIENCY OF *PRO SE* PLEADINGS

Currently, Wyoming courts do not consider specific factors when analyzing whether a *pro se* pleading is sufficient.[157] Precedent simply grants broad discretion to trial courts when determining whether a *pro se* litigant is expected to act as a competent attorney or whether the court should grant leniency.[158] There is no guidance as to what constitutes an appropriate amount of leniency or factors a judge should consider when making this determination.[159] Cases along this line simply say that judges should make some leniency and allowances for *pro se* litigants.[160]

Moving forward, Wyoming should follow the line of cases allowing additional leniencies for *pro se* litigants and, in doing so, courts should analyze factors based on a sliding scale.[161] A case by the Wyoming Supreme Court should clearly announce the abandonment of the strict compliance with procedural rules line of cases, affirmatively adopt the leniency standard, and provide for the analysis of factors in determining the proper amount of leniency.[162] *Pro se* litigants need leniency because they are inherently disadvantaged by their limited understanding of the law.[163] Unrepresented litigants unintentionally "forfeit important rights" at each stage of the process, including the pleading stage, based on their lack of legal counsel.[164] The purpose of affording leniency to *pro se* litigants is to ensure

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[153] *See supra* notes 128–41 and accompanying text.

[154] *See supra* notes 134–41 and accompanying text.

[155] *See supra* notes 142–50 and accompanying text.

[156] *See supra* notes 147–51 and accompanying text.

[157] *See, e.g.*, Libretti v. State (*In re* U.S. Currency Totaling $7,209.00), 2012 WY 75, ¶ 31, 278 P.3d 234, 241 (Wyo. 2012); MTM v. State (*In re* KD), 26 P.3d 1035, 1036 (Wyo. 2001); Robinson v. Hamblin, 914 P.2d 152, 154 (Wyo. 1996).

[158] *See supra* notes 63–81 and accompanying text.

[159] *See, e.g.*, *In re U.S. Currency Totaling $7,209.00*, ¶¶ 1–32, 278 P.3d at 234–42; In *re KD*, 26 P.3d at 1035–37; *Robinson*, 914 P.2d at 152–56.

[160] *See supra* notes 93–98 and accompanying text.

[161] *See supra* notes 74–81 and accompanying text.

[162] *See infra* notes 206–66 and accompanying text.

[163] *See* Engler, *supra* note 20, at 1988.

[164] *Id.* at 1989.

valid claims are heard, rather than dismissed due to procedural deficiencies unbeknownst to the petitioner.[165] Procedural formalities "should [not] allow those rules to operate as hidden, lethal traps for those unversed in law."[166] Although providing leniency may require additional time and effort, the alternative may foreclose access to the courts to some of the litigants who are in the greatest need of relief.[167] Treating unrepresented litigants' pleadings liberally can alleviate some of the strain in a system that is biased toward those well-versed in the law.[168]

A. Benefits of a Factor Analysis

A factor analysis for handling *pro se* pleadings would resolve some of the confusion current precedent creates and lead to more consistency for both judges and litigants.[169] Factors would give judges direction on how much leniency to grant *pro se* litigant pleadings.[170] They also would allow judges to reach more consistent results in their own courts and amongst courts throughout Wyoming.[171] Additionally, the factor approach would result in a more objective analysis of *pro se* pleadings.[172] Under current precedent, the same judge may differ in handling *pro se* pleadings based on docket, fluctuation in approach to case resolution, as well as the amount of time that has gone by since the judge last handled the issue.[173] The factor approach would simply remind judges of a list of things to consider when interpreting *pro se* pleadings.[174] Judges would be less open to criticism

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[165] Jonah Wexler, *Fair Presentation and Exhaustion: The Search for Identical Standards*, 31 CARDOZO L. REV. 581, 593 (2009).

[166] Gray, *supra* note 15, at 106 (quoting White v. Lewis, 804 P.2d 805, 815–16 (Ariz. Ct. App. 1990) (Lankford, J., dissenting)).

[167] *Id.* at 106.

[168] Bradlow, *supra* note 40, at 683.

[169] *See* Bacharach & Entzeroth, *supra* note 32, at 31 ("Without objective standards to provide guidance, courts have chosen to decide for themselves which *pro se* cases are plausible and which are not.").

[170] Robin J. Effron, *Reason Giving and Rule Making in Procedural Law*, 65 ALA. L. REV. 683, 687 (2014) ("By combining an explicit grant of discretion with factors that a judge must consider and a requirement that a judge must state specific reasons for her decision, such a rule would begin to capture the balance of flexibility and uniformity that has thus far been elusive.").

[171] *See* Bacharach & Entzeroth, *supra* note 32, at 30–31 ("[W]ith the deterioration in objective standards . . . judges likely gauge plausibility differently based on their ideologies, attitudes, and experiences.").

[172] Rhonda E. Stringer, *The Due Process Defense in "Reverse Sting" Cases: When do Police Overstep the Bounds of Permissible Conduct? Kelly v. State, 593 So.2d 1060 (Fla. 4th DCA 1992)*, 22 STETSON L. REV. 1305, 1335 (1993) ("Determining significant factors in a case and then attempting an objective inquiry into those factors will prove much more useful in formulating an objective test/analysis than simply basing decisions on personal standards and individual philosophies.").

[173] *See* Bacharach & Entzeroth, *supra* note 32, at 30–31; Engler, *supra* note 20, at 1988–89.

[174] Chris Guthrie, *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1, 41 (2007) ("Multifactor tests can help ensure that judges consider all relevant factors and can remind them of their responsibility to base decisions on more than mere intuition.").

from litigants for arbitrary dismissal because a factor analysis would ensure that judges throughout Wyoming treat *pro se* pleadings similarly.[175] Furthermore, the likelihood of success of an Open-Courts challenge for arbitrariness would greatly diminish.[176]

The factor approach would also benefit litigants by giving them more direction as to the flaws in their pleadings.[177] The current level of subjectivity leaves litigants unsure of whether their pleadings will be sufficient and allows for rejection of their pleadings based on opaque reasons.[178] If judges could point to deficient factors, litigants would have a better understanding of exactly why their pleadings are deficient and how they may be able to correct them in the future.[179]

The third benefit of a factor approach is that it gives judges something to fall back on when making decisions.[180] Sometimes, appellate courts criticize judges for scant analyses and for failing to articulate reasons for dismissal.[181] This problem may arise when judges are unsure on "what they can and cannot do—or what they should and should not do—in handling cases involving unrepresented litigants".[182] With a factor approach, judges can clearly explain to litigants and appellate courts their reasons for dismissal without worrying dismissal is based on an inappropriate rational.[183] Utilizing the factor approach would create a complete record for appellate courts when reviewing the decision of the trial court.[184]

Finally, the factor approach would not unduly restrict trial court judges' discretion.[185] Judges would have the factors for guidance but would still determine

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[175] *See* Effron, *supra* note 170, at 687.

[176] *See id.*; Kordus v. Montes, 2014 WY 146, ¶ 11, 337 P.3d 1138, 1141 (Wyo. 2014) (quoting Robinson v. Pacificorp, 10 P.3d 1133, 1137 (Wyo. 2000)).

[177] *See* Gray, *supra* note 15, at 121 (quoting Lucas v. Miles, 84 F.3d 532, 535 (2d Cir. 1996)) ("'[N]otions of simple fairness' suggest that a judge should give an explanation for a ruling to a self-represented litigant, if not to every litigant.").

[178] *See id.*

[179] *Id.*

[180] C. Antionette Clarke, *The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform*, 53 U. KAN. L. REV. 659, 716 (2005).

[181] *See* Cureton v. Nat'l Collegiate Athletic Ass'n, 252 F.3d 267, 276 (3d Cir. 2001); Reichart v. Wetzel, 673 F.App'x 133, 135 (3d Cir. 2001).

[182] Engler, *supra* note 20, at 1987–88.

[183] Maren J. Messing, *The Protective Sweep Doctrine: Reaffirming a Limited Exception*, 44 COLUM. J.L. & SOC. PROBS. 33, 66 (2010).

[184] *Id.*

[185] *See* Effron, *supra* note 170, at 687.

the overall weight of the factors as applied to the circumstances.[186] Interpreting pleadings as sufficient or insufficient would still be discretionary and judges could take comfort in knowing that there is still deference to their decisions.[187]

B. Beyond the Factors: Necessities in Pleadings

While this comment advocates for a factor approach, there are some requirements of a pleading that cannot be excused, even for the *pro se* litigant.[188] In the absence of certain requirements, judges should not even reach the factor stage of the analysis.[189] These necessities are due process rights, including subject matter jurisdiction and service of process.[190] Additionally, excessively abusive or vulgar language justifies a court rejecting further inquiry.[191]

The absence of subject matter jurisdiction is a dispositive ground for rejecting a litigant's pleading.[192] Case law on the topic confirms that courts have an affirmative duty to bring forth subject matter jurisdictional issues *sua sponte* to determine whether the court is able to resolve the dispute.[193] Courts need not waste precious judicial resources by prolonging a case over which the court ultimately has no jurisdiction to preside.[194] Subject matter jurisdiction is a fundamental due process right that a litigant cannot waive or overcome based on any compilation of factors.[195]

Service of process is another requirement that cannot be overcome via factors.[196] Parties have a fundamental due process right to service based on the necessity of notice.[197] The right to notice of a controversy is compulsory for a

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[186] *See* Messing, *supra* note 183, at 716.

[187] *See* Effron, *supra* note 170, at 687.

[188] *See infra* notes 190–205 and accompanying text.

[189] *See infra* notes 190–205 and accompanying text.

[190] Bradlow, *supra* note 40, at 676 ("[M]inimum due process protections include the requirement of adequate notice, the right to a neutral and detached decision maker, the right to hire counsel, the right to present evidence and confront and cross-examine witnesses, and the right not to be subjected to the jurisdiction or laws of a forum with which one has no significant contacts.").

[191] Gose v. City of Douglas, 2009 WY 131, ¶¶ 4–6, 218 P.3d 945, 947 (Wyo. 2009).

[192] *See* Guy v. Lampert, 2015 WY 148, ¶¶ 26–27, 362 P.3d 331, 340 (Wyo. 2015).

[193] Edsall v. Moore, 2016 WY 71, ¶ 10, 375 P.3d 799, 801–02 (Wyo. 2016).

[194] Thomas E. Baker, *Proposed Intramural Reforms: What the U.S. Courts of Appeals Might do to Help Themselves*, 25 SAINT MARY'S L.J. 1321, 1332–33 (1994).

[195] Cotton v. Brow, 903 P.2d 530, 531 (Wyo. 1995) ("Unlike personal jurisdiction, subject matter jurisdiction cannot be waived.").

[196] Walden's Lessee v. Craig's Heirs, 39 U.S. 147, 154 (1840) ("[S]ervice of process, or notice, is necessary to enable a Court to exercise jurisdiction in a case; and if jurisdiction be taken where there has been no service of process, or notice, the proceeding is a nullity."); *see also* Bradlow, *supra* note 40, at 676.

[197] Reynolds v. Moore, 2014 WY 20, ¶ 11, 318 P.3d 362, 365–66 (Wyo. 2014).

fair system.[198] However, judges and court staff should be entitled to direct *pro se* litigants to the applicable service of process requirements.[199] The duty of "[i]mpartiality does not require passivity."[200] Informing litigants where their pleadings are deficient is fundamentally different from aiding a litigant in correcting those errors and does not run the risk of hindering impartiality.[201]

The final reason a court may not reach the factor analysis is because of excessively abusive and vulgar language in the pleading.[202] The Wyoming Supreme Court has held that filings designed to attack the integrity of the court or an opponent through repeated and excessive abusive and vulgar language will not be tolerated.[203] While minimal disrespect toward the court or a party should not necessarily be grounds for dismissal, *pro se* litigants with heightened personal emotions regarding their claims may cross the line between tolerated behavior and unacceptable conduct.[204] Courts are not, and should not be, required to entertain such filings.[205]

Once a court has established an ability to move forward because the pleading satisfies due process and is not excessively crass, it should consult a list of factors to determine the sufficiency of remaining *pro se* pleadings.

C. Suggested List of Factors

Based on the current lack of clarity regarding interpreting *pro se* pleadings, a factor approach would be beneficial.[206] The following is a list of seven factors courts should use to determine if a pleading is sufficient to warrant scheduling a hearing: the court's ability to determine a cause of action, the type of relief sought, whether fundamental rights are at stake, the likelihood of success, the appropriateness of the relief sought, the number of pleadings filed by the litigant, and the likelihood the party will suffer prejudice if the court does not act on the pleading.[207]

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[198] *Id.*

[199] Goldschmidt, *supra* note 20, at 47.

[200] Gray, *supra* note 15, at 105.

[201] *See id.* at 105–07.

[202] Gose v. City of Douglas, 2009 WY 131, ¶¶ 4–6, 218 P.3d 945, 947 (Wyo. 2009).

[203] *Id.*

[204] *See id.* ¶¶ 2–5, 218 P.3d at 946–47; *see also, e.g.*, Phillips v. Carey, 638 F.2d 207, 208–09 (10th Cir. 1981); Theriault v. Silber, 579 F.2d 302, 303 (5th Cir. 1978); Koehl v. Bernstein, 740 F.3d 860, 861–63 (2d Cir. 2014).

[205] *See Gose*, ¶¶ 4–6, 218 P.3d at 947.

[206] *See supra* notes 169–87 and accompanying text.

[207] *See infra* notes 208–66 and accompanying text.

1. Court's Ability to Determine a Cause of Action

The court's ability to move forward with a claim is dependent upon a valid cause of action.[208] Precedent recognizes the importance of a court's ability to ascertain a claim for relief from the pleadings.[209] It should not matter how artful litigants are in their pleadings, so long as the courts and their opponents are able to decipher a legal claim.[210] Judges should interpret pleadings in a way that permits the court to proceed to the factual and legal issues.[211] No key words or requirements must be present.[212]

Most *pro se* litigants are untrained in legal requests and pleadings, which judges should consider in affording leniency to these litigants.[213] The failure to mention or title a claim by name should not be detrimental, so long as facts are alleged to indicate that the litigant has been injured and a viable claim exists.[214] However, judges should not be forced to create a claim where none exists, nor should they read in facts or allegations that are absent in the pleading.[215] Judges do not have the discretion to overlook insufficient factual bases in the pleading due to the necessity of notifying the opponent of the factual allegations against him.[216]

Judges should be wary of filings that do no more than criticize decisions the court has already made.[217] *Pro se* litigants may be dissatisfied with the outcome of their litigation and address their complaints to the court in an attempt to change the court's mind.[218] Without new factual allegations warranting modification of an order, the complaint contains no cause of action.[219] The appropriate avenue for disputing the court's decision is to file an appeal, not to continue filing within the court after it has entered a final judgment.[220] The doctrine of *res judicata*

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[208] *See* WYO. R. CIV. P. 12(b)(6).

[209] *See* Flynn v. People's Choice Home Loans, Inc., 440 F.App'x 452, 457 (6th Cir. 2011).

[210] 61 AM. JUR. 2D *Pleading* § 156 (2d ed. 2018).

[211] Gray, *supra* note 15, at 124–25.

[212] *See id.*

[213] Marcy G. Glenn, Pro se *Civil Appeals—Resources and Opportunities*, 45 COLO. LAW. 57, 60 (2016).

[214] Gray, *supra* note 15, at 124–25.

[215] 15 AM. JUR. 2D *Civil Rights* § 156 (2d ed. 2018); Gray, *supra* note 15, at 125.

[216] 61 AM. JUR. 2D *Pleading* § 156; Gray, *supra* note 15, at 125.

[217] *See* Jones v. Gemalto, Inc., 2015 U.S. Dist. WL 3948108, at *6 (E.D. Pa. Jun. 29, 2015).

[218] *See id.*

[219] *See* WYO. R. CIV. P. 8.

[220] *See* WYO. R. APP. P. 1.04.

bars a complaint of this nature, and the court would be justified in dismissing the complaint *sua sponte*.[221]

2. Type of Relief Sought

A judge should also consider the type of relief sought in determining whether he or she should accept a pleading as sufficient.[222] The leniency afforded to *pro se* litigants should extend further when important social policies and societal safety are at play.[223] Furthermore, the type of relief sought may help explain the petitioner's inability to obtain counsel through other arrangements such as contingency fees.[224]

Although monetary relief may make an instrumental difference in litigants' lives, there is often little harm in delaying the proceeding if the pleading is insufficient.[225] On the other hand, cases involving equitable relief often are more beneficial to societal values in general.[226] Injunctions, restraining orders, and child safety disputes often affect more than just the parties involved.[227] Injuries to others in society, or society as a whole, may occur when a court fails to hear a case requesting equitable relief on its merits.[228] For example, a suit in which one

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[221] Spriggs v. Pioneer Carissa Gold Mines, Inc., 378 P.2d 238, 239–40 (Wyo. 1963).

[222] Livingston v. Guice, 1995 WL 610355, at *2 (4th Cir. Oct. 18, 1995) (criticizing a district court judge for not considering the effects of plaintiff's request for a specific type of relief).

[223] *See supra* notes 20–58 and accompanying text.

[224] *See supra* notes 36–45 and accompanying text.

[225] *See* Endo Pharm. Inc. v. Teva Pharm. USA, Inc., 2014 U.S. Dist. WL 6850969, at *1–2, (S.D. N.Y. Dec. 4, 2014) ("Delay alone is insufficient to justify denial of a motion to amend the pleadings. For delay to bar amendment, a considerable time must have passed, without valid reason, between the filing of the pleading and the motion to amend."); Robert A. Matthews, Jr., *Amendments Sought After Scheduling Order Deadline*, 6 ANNOTATED PATENT DIGEST § 39.46 (2018) ("Modification of deadlines may be granted for good cause. One factor in determining whether this delay is sought for good cause is the prejudice it would cause the opposing party."); Johnson v. Aetna Cas. & Sur. Co. of Hartford, Conn., 608 P.2d 1299, 1303 (Wyo. 1980) ("[L]eave (to amend) shall be freely given when justice so requires.").

[226] *See* Merrill v. Bishop, 237 P.2d 186, 191 (Wyo. 1951) ("[E]quity delights to do complete justice, and that it constantly aims to settle the rights of all persons interested in the subject-matter, not in piecemeal, but in a single suit.").

[227] *See* Cathy Wang, *Gang Injunctions Under Heat From Equal Protection: Selective Enforcement as a Way to Defeat Discrimination*, 35 HASTINGS CONST. L.Q. 287, 288 (2008) ("The negative impact of these injunctions can also leave marks on society as a whole."); *see also* Hon. Marilyn S. Kite, *Leadership in the Legal Profession: Are Female Lawyers Making Progress?*, 34 WYO. LAW. 32, 32 (2011) ("[W]e should be talking about . . . the impact of our legal system on societal problems such as divorce and child abuse."); *Balancing Children's Rights into the Divorce Decision*, 13 VT. L. REV. 531, 533–43 (1989) (focusing on divorce impacts on children, parents, and society).

[228] *See Johnson*, 608 P.2d at 1303; *Balancing Children's Rights into the Divorce Decision*, *supra* note 227, at 533–43.

parent requests the court take a child away from the other parent and place the child with a guardian affects not only the two parents but the child, the guardian, the guardian's family, any siblings of the child, and society as a whole.[229] If the request is based on allegations of abuse or neglect, failing to hear the case on the merits may result in continued harm to the child and deteriorating physical and mental conditions that will need to be addressed later.[230]

Judges should look to the type of relief sought by the litigant to determine the implications to the community.[231] The type of relief sought can help a judge understand why a plaintiff has brought the case *pro se* and determine how much leniency toward the *pro se* party is necessary to achieve an equitable result.[232]

3. Fundamental Rights

Another significant consideration to the amount of leniency a court should extend a *pro se* litigant is whether a fundamental right is at stake.[233] While there is no finite list of fundamental rights, these rights are defined as rights that are "sufficiently basic to the livelihood of the nation."[234] Fundamental rights include, but are not limited to, express rights in the Bill of Rights, privacy, marriage, procreation, and directing the upbringing and education of one's children.[235]

Because these fundamental rights touch the very fabric of our nation, courts should prioritize adjudicating these claims on their merits rather than dismissing them for procedural error.[236] Issues regarding the health, safety, and upbringing of children should be a priority of the courts.[237] The more important the issue, the more willing the court should be to award leeway to the *pro se* pleading.[238] Judges should have a greater interest in resolving cases regarding fundamental

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[229] *See* Wang, *supra* note 227, at 288.

[230] *See* Art Hinshaw, *Mediators as Mandatory Reporters of Child Abuse: Preserving Mediation's Core Values*, 34 FLA. ST. U. L. REV. 271, 293 (2007) (advocating for rapid responses in child abuse cases to obtain better results in the child therapy process).

[231] *See supra* notes 222–31 and accompanying text.

[232] *See supra* notes 36–44, 222–31 and accompanying text.

[233] *See* Bradlow, *supra* note 40, at 660 ("A liberal construction of the pleadings enables a court to assess the nature of the interests at stake in the suit and to determine how much further procedural leniency, if any, is due in the particular case.").

[234] Carl Allen Roberts, Jr., Note, *Information Discrimination: Why the Privileges and Immunities Clause Should Protect an Individual's Right to Information*, 12 APPALACHIAN J.L. 247, 250–51 (2013) (quoting Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 388 (1978)).

[235] Doe v. Moore, 410 F.3d 1337, 1343 (11th Cir. 2005).

[236] *See* Bradlow, *supra* note 40, at 660.

[237] *See supra* notes 22–35 and accompanying text.

[238] Bradlow, *supra* note 40, at 660.

rights quickly and effectively and have less concern for procedural formalities than they otherwise would in pleadings drafted by lawyers on less important issues.[239]

4. Likelihood of Success

When considering a motion to dismiss a case, either *sua sponte* or by the defendant, judges view the complaint "in the light most favorable to the plaintiff" and determine whether "it is certain from the face of the complaint that the plaintiff cannot assert any fact which would entitle him to relief."[240] This does not prevent a judge from dismissing a case on other grounds, such as when a pleading contains a procedural deficiency.[241]

Judges should be more lenient with claims brought by *pro se* parties that have a higher chance of success.[242] Judges have an interest in ensuring that justice is carried out, and cases that are both unlikely to succeed and have additional pleading complications should not be afforded valuable judicial resources.[243] Dismissal of a claim that is unlikely to succeed may incentivize plaintiffs to amend the pleading, and the amendment alone may increase the chances of success.[244] For example, courts should dismiss *pro se* pleadings without prejudice when they contain conclusory allegations and bare factual support.[245] Plaintiffs can look over the judge's reasons for dismissal and amend their complaints, adding additional factual assertions, thereby increasing their likelihood of success on the merits.[246]

5. Appropriate Relief Sought

The court should consider whether the relief sought is appropriate for the situation.[247] For example, a mother may have a well-recognized cause of action

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[239] *See* New Mexico *ex rel.* Dep't of Hum. Servs. v. Williams (*In re* R.W.), 772 P.2d 366, 370 (Ct. App. N.M. 1989).

[240] *In re* Estate of Scherer, 2014 WY 129, ¶ 5, 336 P.3d 129, 131 (Wyo. 2014) (quoting Sinclair v. City of Gillette, 2012 WY 19, ¶ 8, 270 P.3d 644, 646 (Wyo. 2012)).

[241] Jessica K. Phillips, *Not all* Pro Se *Litigants are Created Equally: Examining the Need for New* Pro Se *Litigant Classifications Through the Lens of the Sovereign Citizen Movement*, 29 GEO. J. LEGAL ETHICS 1221, 1229 (2016).

[242] *See* U.S. Bank, N.A. v. SFR Inv. Pool 1, LLC, 124 F. Supp. 3d 1063, 1071 (D. Nev. 2015).

[243] *See* Young v. Leonard, 2006 U.S. Dist. WL 3447662, at *1 (S.D. Tex. Nov. 21, 2006) (discussing legislation designed to prevent wasting judicial resources in cases which are unlikely to succeed); *see also* Stephan Landsman, Pro Se *Litigation*, 8 ANN. REV. L. & SOC. SCI. 231, 237 (2012) (stating that judges are urged to waive evidentiary and procedural mistakes when appropriate in obtaining a just result).

[244] *See* Slavin v. United States, 403 F.3d 522, 524 (8th Cir. 2005) ("[D]istrict courts may deny leave to amend if proposed changes would not save complaint.").

[245] Gray, *supra* note 15, at 126.

[246] *Id.*

[247] White v. Home Depot, U.S.A., Inc., 2013 U.S. Dist. WL 4501328, at *4 (D. Md. Aug. 21, 2013).

for trespass when an ex-spouse wrongfully enters her house to see their child; however, her request to forbid the ex-spouse from seeing the child again is not a form of relief that is appropriate under the circumstances. Requests for equitable relief should be denied if "the moving party has an adequate remedy at law and will not suffer irreparable injury."[248] Requesting equitable relief when there is an adequate remedy at law may result in dismissal.[249]

Although courts have the ability to award different relief than was requested by the litigant,[250] they should be hesitant in accepting pleadings for the simple fact that a different type of relief may be available.[251] Courts should be wary of substituting their judgment for the judgment of the parties involved when determining the appropriate relief.[252]

6. Number of Pleadings Filed

Some litigants request judicial hearings on multiple topics, putting a strain on judicial resources.[253] The reasons for being less lenient with *pro se* litigants who file excessive numbers of pleadings are twofold. First, litigants who file excessive pleadings are more familiar with the system and should better understand what the court expects of them.[254] Second, over-litigious plaintiffs clog the system and take more than their fair share of judicial resources.[255]

The court should be more inclined to afford leniency to *pro se* plaintiffs who have not been through the system before.[256] They are, after all, less likely to understand the process.[257] A court's patience understandably wears thin when it

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[248] Morales v. Trans World Airlines, Inc., 504 U.S. 374, 381 (1992).

[249] *See* Hoffman v. Stevens, 177 F.Supp. 898, 904 (M.D. Pa. 1959).

[250] *See* Square D Co. v. Scott Elec. Co., 2007 U.S. Dist. WL 3488809, at *11 (W.D. Pa. Nov. 14, 2007).

[251] *See* Nebraska *ex rel.* B.M v. Brian F., 846 N.W.2d 257, 267 (Neb. 2014).

[252] *See id.*

[253] *See* Ardis v. Pensacola State Coll., 128 So.3d 260, 264 (Fla. Dist. Ct. App. 2013) (holding that courts have the authority to issue an injunction prohibiting further *pro se* filings where a litigant's excessive filings interfere with administering justice).

[254] *See* Richard L. Weber, *No Greater Rights*, N.Y. ST. B.J., July-Aug. 2007, at 11, 12–13. A key question in litigation is to determine whether a *pro se* litigant is abusing the process. *Id.* Litigants who file excessive and repetitive lawsuits are entitled less leniency by the court to curb waste of judicial resources. *Id.*

[255] *Id.*; Landsman, *supra* note 243, at 240 ("The often-repeated claim is that *pro se* litigants slow the clearing of dockets, delay the progress of cases, and increase administrative costs.").

[256] *See* Davidson v. Flynn, 32 F.3d 27, 31 (2d Cir. 1994) (declining to afford litigant the leniency normally afforded *pro se* parties based on his "extremely litigious" nature and familiarity with the system).

[257] *See id.*

sees filings by the same litigant with repeated procedural errors, especially when the court previously warned the litigant of the same type of error.[258] Judicial resources are better spent elsewhere to ensure everyone has equal access to the courts, rather than consumed scouring a pleading by a repeat party in an attempt to ascertain a claim in an otherwise nearly incomprehensible filing.[259]

7. Potential for Prejudice

Finally, judges should consider how dismissing a pleading might harm the party attempting to bring forth an action.[260] There are a variety of ways parties could be prejudiced based on dismissal including issues regarding the statute of limitations, health and safety concerns to the party or those associated with the party, and the risk of losing jurisdiction over parties or witnesses.[261] For example, a necessary witness to a child abuse allegation may plan to permanently leave the country in the near future. If the court has knowledge of this information, it weighs toward granting more leniency and accepting the pleading as sufficient in order to hear the case at a time the witness can attend.[262] Delaying the proceeding to a time where the court's subpoena power can no longer compel witness participation may be highly prejudicial to the litigant's case.[263]

When faced with these issues, a court's failure to be sufficiently lenient to a *pro se* party could be fatal to a litigant's case.[264] In the interest of justice, courts should be more lenient to *pro se* parties when rejecting the pleading would lead to a substantial risk of prejudice.[265]

VI. CONCLUSION

Pro se litigants often face a variety of problems in the judicial system, including lack of access to attorneys,[266] lack of understanding of the relevant law

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[258] *See* Galleher v. Astrue, 2014 U.S. Dist. WL 789207, at *2 (D. Kan. Feb. 26, 2014).

[259] *See* Weber, *supra* note 254, at 12–13.

[260] *See* Onodera v. Dowis, 2011 U.S. Dist. WL 3666748, at *8 (D. Colo. Jun. 6, 2011).

[261] ROBERT E. BENSON, ARBITRATION LAW IN COLORADO § 9.9 (2013); Zagano v. Fordham Univ., 900 F.2d 12, 14 (2d Cir. 1990); Langeland v. Monarch Motors, Inc., 952 P.2d 1058, 1063 (Utah 1998).

[262] *See* Langer v. Courier News, 186 N.W. 102, 102 (N.D. 1921).

[263] *See* Gonzalez v. Naviera Neptuno A.A., 832 F.2d 876, 881 (5th Cir. 1987) (recognizing prejudice in the inability to compel witness testimony when witnesses were located in Peru).

[264] *See* Castillo v. Cook Cty. Mail Room Dep't, 990 F.2d 304, 307 (7th Cir. 1993) (holding the district court's dismissal for a *pro se* litigant's naming an entity which could not be sued was error).

[265] *See supra* notes 260–65 and accompanying text.

[266] *See supra* notes 36–45 and accompanying text.

and procedure,[267] and the inability to get help from the court due to constraints of judicial impartiality.[268] The majority of these *pro se* litigants are found in the family law context and face additional unique difficulties.[269] Resolving family law cases fairly is exceptionally important to society, as these issues regard intimate family life, the raising of children, and the health and welfare of children.[270]

Courts struggle to deal with *pro se* litigants based on the conflict between providing fair hearings and remaining impartial.[271] Currently, it is unclear how courts should treat *pro se* pleadings in the state of Wyoming.[272] Two conflicting lines of cases allow judges to either treat the *pro se* litigant as they would a competent attorney or allow them some amount of leniency.[273] No published opinion in Wyoming explains the appropriate amount of leniency when interpreting these pleadings.[274]

The lack of clarity leaves excessively broad levels of discretion to trial court judges.[275] With this much discretion, similar pleadings might be treated differently depending on when and where they are filed.[276] A compilation of philosophies from other jurisdictions provides some guidance on how to deal with these litigants, but there is no set standard for what constitutes appropriate treatment.[277]

The due process requirements of jurisdiction and service of process are essential to a pleading.[278] *Pro se* pleadings that do not meet these requirements are subject to immediate dismissal.[279] Wyoming precedent also dictates that dismissal may be appropriate without reaching the merits when a pleading is drafted using excessively abusive and vulgar language.[280] Once a court recognizes it can proceed with a claim, it may then have to consider whether minor procedural errors are

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[267] *See supra* notes 161–68 and accompanying text.

[268] *See supra* notes 89–90, 200–02 and accompanying text.

[269] *See supra* notes 20–58 and accompanying text.

[270] *See supra* notes 20–58 and accompanying text.

[271] *See supra* notes 89–90, 200–02 and accompanying text.

[272] *See supra* notes 63–81 and accompanying text.

[273] *See supra* notes 63–81 and accompanying text.

[274] *See supra* notes 74–81 and accompanying text.

[275] *See supra* notes 99–112 and accompanying text.

[276] *See supra* notes 99–112 and accompanying text.

[277] *See supra* notes 128–56 and accompanying text.

[278] *See supra* notes 181–201 and accompanying text.

[279] *See supra* notes 188–201 and accompanying text.

[280] *See supra* notes 202–06 and accompanying text.

fatal to the claim, or whether to make allowances based on the litigant's *pro se* status.[281] Each *pro se* case is different and requires a variety of considerations.[282]

Adopting a factor approach when interpreting *pro se* pleadings would lead to more consistency in the system, providing both judges and *pro se* litigants with more guidance. The factor approach would both give judges more direction on what to consider and give the appellate court a more thorough record to review, without completely sacrificing judicial discretion.[283] A suggested list of factors to consider include: the court's ability to determine a cause of action, the type of relief sought, whether fundamental rights are at stake, the likelihood of success, the appropriateness of the relief sought, the number of pleadings filed by the litigant, and the likelihood the party will suffer prejudice if the court does not act on the pleading.[284] Using these factors, the court is more likely to achieve a just result and grant the appropriate amount of leniency to *pro se* litigants.[285]

While this comment views the issue through the lens of a *pro se* litigant in the family law context, none of it means to suggest that courts should not analyze these factors in other areas of *pro se* litigation. Striking a balance between neutrality and hearing cases on their merits is often a difficult line to draw.[286] With more direction and the use of factors, judges can achieve consistent, equitable results.[287] Although this is not a comprehensive solution to the *pro se* problem faced in the judiciary, it is a step toward creating a more certain, informative, and equitable system.

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[281] *See supra* notes 169–87 and accompanying text.

[282] *See supra* notes 208–62 and accompanying text.

[283] *See supra* notes 169–87 and accompanying text.

[284] *See supra* notes 208–62 and accompanying text.

[285] *See supra* notes 169–62 and accompanying text.

[286] *See supra* notes 89–90, 200–02 and accompanying text.

[287] *See supra* notes 169–261 and accompanying text.