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Rule 2.08

Ensuring the Right to Be Heard

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In a scholarly submission, Professor Goldschmidt addresses the precedent impacting and challenges faced by judges who deal with pro se litigants. She laments the lack of guidance available to judges who choose to assist pro se litigants, whether out of an acknowledged duty or for reasons of judicial efficiency.

Professor Goldschmidt reviews U.S. Supreme Court authority on the issue of judicial assistance and concludes that, as a result of the Supreme Court's struggles with the extent to which a court should provide legal information or warnings, short of legal advice, to pro se defendants, it may be decades before the judiciary receives clarification that reasonable assistance to pro se litigants is permissible or about the distinction between legal information and legal advice.

Professor Goldschmidt observes that American judges and practitioners have resisted the notion that a duty exists to provide pro se litigants reasonable assistance in the litigation process and contrasts the American view with that of Canada, which recognizes a duty to assist.

Professor Goldschmidt includes the following materials in support of her submission:

- ▶ *Barrett v. Layton*, 2003 O.J. No. 5572 (Ontario Superior Ct. of Justice 2003) (trial judge must ensure that trial is fair where error by unrepresented litigant could result in injustice if error influences or determines outcome of trial)
- ▶ J. Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance*, 40 Family Court Rev. 36 (2002) (advocating a broader role for judges who preside over matters involving pro se litigants and proposing parameters under which a judge can provide reasonable assistance to pro se litigants).