

Delaware's Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants

PREAMBLE

The following Guidelines, which were adopted by the Delaware Supreme Court effective May 11, 2011, are designed to address concerns that Judicial Officers may have regarding balancing self-represented litigants' perceptions of procedural fairness while maintaining neutrality in the courtroom, particularly when one party is self-represented and one has an attorney. Judicial Officers in Delaware have reported that it can be difficult to decide how much and when to intercede when there is a self-represented litigant and there is tension between trying to see that justice is done for the self-represented litigant and not impacting an opposing party who is represented. These Guidelines are not intended to alter the Code of Judicial Conduct or Judges' obligations thereunder, or to create additional standards under which Judges may be disciplined. They should, however, provide guidance to all Judges of the State of Delaware.

1. Principles

- 1.1 It is proper that Judges exercise their discretion to assume more than a passive role in assuring that during litigation the merits of a case are adequately presented through testimony and other evidence. While doing this, Judges shall remain neutral in the consideration of the merits and in ruling on the matter.
- 1.2 In adjudicating cases with self represented parties, as well as attorneys, judges should recognize that neutrality does not preclude communication between the fact finder and the litigants in the courtroom when it is intended to provide self represented parties with the opportunity to have their matters fairly heard according to law.
- 1.3 Asking questions, modifying procedures and applying common sense to obtain the facts necessary to adjudicate cases are tools to assure neutrality and unbiased process of law in the decision making required of all judges in the State of Delaware.

2. General Practices

- 2.1 Plain English: Judges should¹ use plain English and minimize the use of complex legal terms when conducting court proceedings.
- 2.2 Language Barriers: Judges should be attentive to language barriers experienced by self-represented litigants. Judges should take the necessary steps to provide qualified interpreters to self-represented litigants who are not fully conversant in English or who are hearing impaired, pursuant to the policies of the Delaware Court system.
- 2.3 Legal Representation: Judges should inform litigants that they have the right to retain counsel and the right to be represented by counsel throughout the course of the proceedings. Judges should also acknowledge that parties have a right to represent themselves. Judges should confirm that the self-represented litigant is not an attorney, understands the right to retain counsel, and will proceed without an attorney. Judges also may wish to discuss with the litigant what it means to represent oneself in litigation.
- 2.4 Application of the Law: Judges should apply the law without regard to the litigant's status as a self-represented party and shall neither favor nor penalize the litigant because that litigant is self-represented.
- 2.5 Materials and Services for Self-Represented Litigants: Judges should encourage the provision of information and services to better enable self-represented litigants to use the courts. Judges also should encourage self-represented litigants to use these resources.
- 2.6 Opportunity to be Heard: Judges should advise parties that they are afforded the opportunity to state their case in a meaningful way, that they have chosen to do so on their own behalf and that the judge's duty is to apply the law to the facts in a fair, neutral and unbiased manner.
- 2.7 Managing the Case: Judges should alert self represented parties to judicial expectations concerning preparation and conduct during in-court proceedings and manage those proceedings in a manner most likely to provide judges with

¹ The term "should" is used throughout the Guidelines to indicate that the conduct referenced is recommended but not mandatory.

the relevant information needed to make informed and just decisions.

- 2.8 Preparation: Judges should be familiar with the major legal issues likely to arise in cases involving self represented parties.

3. Guidelines for Pre-Hearing Interaction

- 3.1 Trial Process: Judges should make a reasonable effort to ensure that self-represented litigants understand the trial process.² Judges should inform litigants that the trial will be conducted in accordance with applicable evidentiary and court rules.³

- 3.2 Brevity and Consistency: Because providing extensive information on substantive and procedural matters may be confusing to a self represented party, Judges should consider adopting a brief and consistent statement of issues that the Judge wishes to explain prior to the commencement of litigation.

- 3.3 Settlement: In cases in which settlement may be appropriate, Judges may discuss the possibility of settlement. This may occur at any stage in the litigation, but particularly at a case management, pre-trial or status conference.

- 3.4 Alternative dispute resolution (ADR): When a case is appropriate for ADR, Judges should discuss with self represented litigants the availability and benefits of such services in the Judge's particular court. This may occur at any stage in the litigation, but particularly at a case management, pre-trial or status conference.

4. Guidelines for Conducting Hearings

- 4.1 Courtroom Decorum: Judges should maintain courtroom decorum cognizant of the effect it will have on everyone in

² Judges may wish to provide an explanation of substantive and procedural matters at the beginning of court proceedings.

³ When one party is represented by counsel, judges should inform counsel of the potential need to modify courtroom procedure to learn the facts of the case and that if counsel believes that the court is overreaching, an objection should be raised.

the courtroom, including self-represented litigants. Judges should ensure that proceedings are conducted in a manner that is respectful to all participants, including litigants, attorneys, witnesses and Court staff.

- 4.2 Stress: Judges should be cognizant that self represented parties are generally under stress of unfamiliar environment and should attempt to ease the anxiety in the courtroom so participants are more likely to fully participate in the proceedings.
- 4.3 Evidence: Judges shall adhere to the applicable rules of evidence, but may use their discretion, when permissible, to provide self-represented litigants the opportunity to meaningfully present their cases. Judges may ask questions to elicit general information and to obtain clarification. Judges should explain why the questions are being asked and that they should not be taken as any indication of the judge's opinion of the case. Judges should explain their rulings, particularly on the inadmissibility of evidence.

5. Guidelines for Post-Hearing Interaction

- 5.1 Issuing the Decision: Judges should exercise discretion in deciding whether to issue a decision at the close of the hearing while both parties are present, or to inform the parties that the matter will be taken under advisement and that a written decision will be mailed to them. In cases where there is no immediate need to enter an order, the Judge may inform the parties that the Judge wishes to consider their evidence and arguments before making a decision. If possible, the Judge should give a time frame within which the case will be decided.
- 5.2 Appeals: If asked about the appellate process, Judges may refer the litigant to the appropriate authority.