

MEETING THE CHALLENGES OF SELF-REPRESENTED LITIGANTS

A BENCH BOOK FOR GENERAL SESSIONS JUDGES OF THE STATE OF TENNESSEE

An initiative of the Tennessee Supreme Court Access to Justice Commission

Approved by
The Tennessee General Sessions Judges Conference
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INTRODUCTION

A challenge for judges in seeking justice in their courts increasingly involves the issue of how to interact with self-represented litigants. There is a growing and accepted school of thought that a judge must be pro-active in seeking and adopting policies and procedures that are friendly to all parties, including those represented by counsel and those representing themselves. Many authorities now recognize, as does the Tennessee Supreme Court, that for a judge to do nothing to address the needs or problems faced by self-represented litigants actually advances injustice and contributes to the loss of respect for the judicial system by a substantial portion of the public.

This particular Benchbook seeks to address these issues in a compact and economical manner that can be used by courts on a daily basis. It can serve as a guide for judges in seeking to administer justice to all parties. For this reason, this Benchbook will not go into great detail regarding all reasons or foundations for the policies stated but will instead go directly to the heart of the recommended procedures. Many articles and documents have been formulated across the United States and beyond on these issues. This Benchbook is intended to be informative and concise for the busy judge. It recognizes that judges must balance many cases every day and use their discretion to make decisions, while at the same time considering rules of procedure, rules of evidence, and judicial ethics. Judges also have their own styles, and courts have their own culture.

The bottom line is for all courts and judges to seek “justice for all” in as neutral and unbiased and ethical a manner as possible.

Our desire is that this Benchbook be of assistance to the judiciary and the judicial system as a whole by serving the interest of courts, parties, communities, and jurisdictions.

A DAY IN THE LIFE OF A TYPICAL COURT: **A SUGGESTED FORMAT**

I. Before Court Begins: Establishing the Framework of Achieving Justice

A. LOCAL GUIDELINES (OR RECOMMENDATIONS) AND HANDOUTS: Each court should draft and maintain local guidelines (or recommendations) dealing specifically with self-represented litigants. For your consideration, a model set of local guidelines (or recommendations) has been drafted that can be used by any court that chooses to do so. Each court is free to create its own set of guidelines or to modify this set of guidelines for each specific jurisdiction.

The local guidelines should be made available in handbook or brochure form as well as online through a county or court website if possible. The local guidelines can describe for all litigants and attorneys the policies and procedures of the local court system. The guidelines can and should also address specific issues dealing with self-represented litigants, including:

- (1) **The importance of considering the use of legal counsel** prior to filing an action in court or after being served with court process on a case.
- (2) **A brief explanation of local procedures in court.** These can include:
 - (a) Calling of the docket
 - (b) Dress code expectations and rules regarding cell phones, proper court etiquette, emphasis on need to be on time, etc.
 - (c) Need to have live witnesses and not just written reports.
 - (d) Exchange of exhibits with opposing side prior to beginning of trial or hearing.
 - (e) Simple terminology of courts.
 - (f) Procedures of plaintiff's case and direct examination and cross examination, followed by procedures of defendant's case, etc.

- (g) Other specific rules of local court
- (h) Explanation of the appeal process, including deadlines for appeal.

B. HANDOUTS/BROCHURES FOR PRO SE LITIGANTS: Each court is encouraged to have simple rules or handouts which can be read easily by self-represented parties and other non-lawyers which give simple information about the court and “what to expect in court.”

C. COURTHOUSE KIOSK: Your county or court can sponsor a location for a kiosk/service center for assisting self-represented litigants and other non-lawyers who have cases in court.

D. USING PROGRAMS OR TRAINING TO ASSIST SELF-REPRESENTED PARTIES AND OTHER NON-LAWYERS WITH THEIR ACTIONS IN COURT:

Courts are encouraged to utilize or develop programs to help self-represented parties with court actions and to help streamline court procedure for all who are involved in judicial proceedings. Examples to be used by judges:

(i) **“LAWYER OF THE DAY” PROGRAMS:** Use of “lawyer of the day” or similar programs are specifically endorsed as ethically acceptable as long as they operate within the confines of ethical rules and guidelines.

Any lawyer operating within a “lawyer of the day” program should, of course, avoid real conflicts of interest, improper contact with parties, and other ethical violations.

As long as the self-represented party understands the limitations under which a “lawyer of the day” is operating, such limited roles of lawyers are acceptable ethically. This includes advising litigants of court procedures and rules of evidence, attempts to resolve or mediate issues, and other simple acts of representation or “unbundled services.”

(ii) **“LEGAL ADVICE CLINICS”:** Pro bono legal advice clinics are where lawyers meet with pro se litigants and give advice on what to do or what not to do, or advise litigants of what to expect in court, and

provide other valuable legal and common sense advice.

(iii) **“PRO SE DOCKET DAY”**: Where lawyers are assigned on a rotating basis to assist pro se parties on what is clearly explained to be a one-day event only.

“Pro Se Docket Days” can also be a time when judges have a day of special instructions for people representing themselves where courts can give explanations of judicial expectations, simple rules of evidence and procedure, and assist self-represented parties in having a greater understanding of what is going to happen in court.

E. **LEGAL AID BROCHURES**: Legal Aid organizations should be allowed and encouraged to develop and distribute issue specific information brochures or pamphlets to assist pro se litigants.

F. **ROLE OF CLERKS**: Judges and clerks should coordinate and understand limitations of clerks and their staffs, along with judicial secretaries or administrators. The Guidelines for Tennessee Court Clerks Who Assist Self-Represented Persons should be followed by all clerks and their personnel, which allows clerks to assist the public in a cordial and pleasant manner without providing legal advice.

G. **FORM DEVELOPMENT AND USE**: The Tennessee Supreme Court Access to Justice Commission is in the process of creating standardized pleadings or other forms for use by the public. Any form approved by the Tennessee Supreme Court shall be considered universally acceptable as legally sufficient in all Tennessee courts. To date, the Court has approved several forms, including forms for divorces without children, and additional forms will be made available as those forms are approved by the Court.

Judges should permit use of such forms and make allowances for self-represented litigants to access and file the forms in an atmosphere friendly to self-represented persons. Clerks and judicial administrators and secretaries should be familiar with the forms and the procedures for filing the forms. The public’s confidence in the judicial system will be enhanced by an efficient and professional approach to the use of court-approved forms.

H. COLLABORATION WITH LOCAL BAR ASSOCIATIONS AND STAKEHOLDERS: Courts are encouraged to work with local bar associations and other stakeholders to promote development and improvement of programs to assist self-represented parties. All of these programs shall be designed to accommodate the reality of the abundance of self-represented parties in today's world, not to discourage the use of attorneys.

I. ETHICS OPINIONS: All policies and rules formulated by judges and courts should be regularly re-evaluated to take into consideration developing law in the area of self-represented litigants. This is an ongoing ethical responsibility of judges.

J. USE OF PRO SE MEDIATION SERVICES: The use of mediation services for self-represented litigants is consistent with the orderly administration of justice. It is appropriate for courts to encourage use of mediation services for self-represented litigants. (See suggested script.)

II. Judicial Greeting and Address to the Public at the Beginning of Each Docket

1. Be courteous and respectful to all parties.
2. Be in control of your courtroom but realize achieving justice in each case is a work-in-progress. Use your ability, training and common sense to deal with all parties, whether represented by counsel or not. You are here for a season, and you are a servant of the people who elected you and the Constitution and laws that guide you. Enjoy the experience and honor, and advance the cause of justice.

A Suggested Script---for the Judge

INTRODUCTION

“Good Morning.

Today, _____ Court of _____ County is handling a Civil docket; that means we hear non-criminal cases. This includes automobile accidents, debt collection, and landlord/tenant cases. We also hear home improvement, property, employment and auto repair contract cases.

What I will do first is read the list of cases I will hear today. I need complete silence in the court. That means no talking or making noises. Turn off your cell phones. When I call your name, please hold up your hand and answer “here.” We need to know if you are here and have a lawyer. I may also ask questions about your case. This helps me know how long it will take to hear each case.

After I go over the case list, you will have time to go outside the courtroom and talk to people on the other side of your case. This is a last chance to settle the case yourselves. If you still can’t agree, you will get a trial.

You must give each other any papers, pictures, or proof you plan to use in court (that you plan to hand to the judge as an exhibit). Give the other side copies if you have them. If you don’t have copies, let the other side read your papers or see your pictures. The other side must then return your papers and pictures to you. This will save time when we start your case. This is what lawyers must do and we expect the same if you represent yourself. Everyone must be polite in court. No cursing, yelling or being rude to anyone. The bailiff can help with this if there is a problem.

Lawyers are here only to help their client. They don’t speak for the court.

OPTIONAL SCRIPT REGARDING MEDIATION

(For General Sessions Court with mediation programs, please insert optional script for mediation services here. See mediation script on page 10.)

RULES FOR THE TRIAL

1. Burden of Proof The person who filed the lawsuit is called the plaintiff. If you are the plaintiff, you must prove you should win based on the law and the facts. That means that you have stronger evidence or proof than the other side, no matter how slight the difference is. It is not based on the greater number of witnesses or number of papers or exhibits but is based on who has the most convincing overall proof. For instance, looking at the scales of justice, the plaintiff must show the evidence tilts the scales in his or her favor.

The person who was sued is called the defendant. If you are the defendant, you have a chance to tell your side. You also have the right to sue the plaintiff before the trial date. This is called a **counter-complaint**. If you file a counter-complaint, you are now a counter-plaintiff and must prove your case. You must also show the proof tilts the scales of justice in your favor on your counter-complaint.

2. It May Help to Have a Lawyer Before the trial, either side can hire a lawyer. A lawyer is trained in the law and can help you present your case. The lawyer also knows the rules for giving proof and when to object to something. Both sides should think about getting a lawyer.

The court knows you may not be able to afford a lawyer. You have the right to speak for yourself in court if that is what you choose to do.

The court will be fair to both sides if they have a lawyer or not.

3. How the Trial Works If you are the plaintiff, you go first. Your witnesses will testify. Then the other side can question your witnesses. Everyone must show respect and be polite. That means no yelling, cursing, rude comments, or name-calling. Ask the witness questions. Don't testify yourself while a witness is on the witness stand. Don't make personal comments about the witness or what they say. If you have exhibits, your witnesses (or you) will identify them.

After the plaintiff finishes, it is the defendant's turn. If you are the defendant, you can testify and have witnesses testify. The other side gets to question all your witnesses. If you have exhibits, your witnesses (or you) will identify them.

4. Rules about Proof There are rules about the proof you can use. These are called Rules of Evidence. One of the rules says you cannot use hearsay as

testimony. **Hearsay** is when you say what you heard from someone else. Most of the time, you can only testify about what you know or saw. You cannot testify about what someone else knows.

There are many rules about proof. You may not know all these rules unless you are a lawyer. You may not know when to object to the other side's proof. The judge cannot act as your lawyer. The judge can stop a witness if the testimony is not helping to explain the case or is simply repeating what another witness has already testified about.

5. The Judge Does Not Take Sides The judge must be fair and treat everyone the same. The judge must let both plaintiff and defendant tell their side.

6. Getting More Time There are rules that may let you get more time before the trial starts. This is called a continuance. You may be able to ask for more time to get your case ready for trial. Ask the judge if you think you need more time and wish to delay the case. The decision to hear the case today or delay the case to a new date is up to the judge.

7. Rules About Use of Exhibits You may have letters, estimates or other proof that a witness is testifying about. These are called exhibits. Have the witness look at the proof. The witness must testify that they know about the proof. Then you can ask the court to accept the proof. You can only use the proof if the witness personally knows about it.

8. Rules and Recommendations About How You Act The rules are the same for both sides. Talk to the judge. Don't talk to or argue with the other side once the trial starts. Show respect and be polite. No yelling, arguing, cursing or name-calling. Do what the judge tells you. This is a court of law. If you don't show respect, the judge may say it is contempt of court. Then you may have to pay a fine or go to jail. It can also make you lose your case.

9. Start of Trial Mr./Ms. _____, you may now testify yourself or call your first witness.

10. During the Trial The judge may tell you or any witnesses to stick to the point. This is to keep the case moving. The judge may remind you to ask the witness questions and not testify yourself. Do what the judge says.

The court wants to find the truth. The judge may ask questions about the case. This is to make sure you get to the point. **Example:** You said the defendant harmed you. Did this cause damages? What are your damages?

11. End of Trial Both sides present their witnesses and proof and then rest their case. The judge may let both sides give a closing argument. This is not testimony. It is a last chance to say what proof you gave showing that you should win. You remind the judge what testimony your witnesses gave. The person who filed the lawsuit goes first, then the defendant. The judge may let the Plaintiff answer what the defendant says. This is because the person who filed the suit must prove he or she should win. The judge may give you a time limit. You must stop when the time is up. So tell your most important points first.

12. Appeal The judge will say who won the case. In General Sessions Court, both sides have 10 days to file an appeal. If you disagree with the judge's decision, an appeal is a chance to change the decision. When you appeal, the case will be sent to Circuit Court for a brand new trial in front of a different judge.

There are rules for how to appeal. Ask the General Sessions Clerk's Office how to appeal and how much it costs.

If you can't afford the fees, tell the Clerk. You may be able to file for free if you meet the rules. The other side in your case will be told you appealed.

If the other side in your case files the appeal, they pay the court fees to appeal. You will be told if they appeal.

Even if someone is allowed to appeal for free or at a reduced cost, a judge can later order all costs to be paid by either side or both sides.

OPTIONAL SCRIPT REGARDING MEDIATION

You may want to try mediation. Mediation is a way to try to settle any kind of case outside a courtroom. You and the person on the other side of your case meet with a mediator. If you have a lawyer, they should come, too. Both of you talk about the things you disagree on. You talk about the things each one of you want. Mediators don't take either side. The mediator is not a judge. They don't make the decision. They try to help you agree on something that is fair for everyone. They help you write out an agreement. Both sides must feel OK about the agreement and ask the court to OK it.

If you can't agree during mediation, you can always come back to court.

Then we will have a hearing on your case.

If you are not a lawyer and are representing a corporation or Limited Liability Corporation, listen closely. Under Tennessee law, only a lawyer can speak for a corporation or an LLC. If you don't have a lawyer with you, I can't hear your case. But you can try mediation.

[Note For Judges: Court systems are encouraged to use/recommend mediation services as available. Your local rules can specify what the parties need to do to seek mediation. Your court system can make it clear whether mediation services are available on the day of the hearing or must be accessed in advance.

If your court works with a community mediation center, has a mediator of the day program, or frequently uses local mediators, you can provide the self-represented litigant with information on the mediation program in your county. If you are unsure as to what to tell the parties about mediation, ask the mediation program to provide you with correct information.

If your court does not use a community mediation center or does not frequently work with mediators, you can tell the parties that they may be able to use a Supreme Court Rule 31 mediator.

If you have questions about mediation, please contact the AOC. You can direct parties that are interested in mediation to the AOC for help finding a mediation center or Rule 31 mediator.]

CONCLUSION

Thank you for your interest in meeting the challenges of self-represented litigants. This Benchbook is designed to be of assistance to judges as we seek justice for all persons who enter our courtrooms. Please feel free to add your own language or court practices to these materials and to customize to the needs of your own court system.

This Benchbook has been prepared as a part of the
“Access to Justice” initiative of the Tennessee Supreme Court.

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