

## Reaching Out or Overreaching

### Judicial Ethics and the Self-Represented Litigant



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## Thesis

Without raising reasonable questions about impartiality, judges may exercise discretion

- To make equitable, procedural accommodations
- To provide self-represented litigants reasonable opportunity to have cases fully heard

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## Premises

- Not mere referee or moderator
- Control orderly presentation of evidence
- Cases should be decided on merits
- Procedural rules should work to do substantial justice

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## Practices

- Liberally construe pleadings
  - Overlook failure to cite correct legal theory
  - Look behind label of document
  - Overlook poor syntax and sentence construction
  - Consider other submissions
  - Freely allow amendment

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## Practices

- Explain basis for rulings
  - Inform of defects in pleading
- Ensure orders are clear
- Use plain English
- Treat pro se litigants with courtesy, dignity, and respect

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## Demeanor

- Do not
  - Use disdainful comments, tone
  - Make negative comments about self-representation
  - Treat attorneys with familiarity
  - Address pro se litigants less formally than counsel

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## Accommodations

- Direct litigant to resources
- Allow reasonable continuances to hire lawyer, prepare case
- Give basic introduction to courtroom protocol
- Do not dismiss based on technical rules

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## Accommodations

- Instruct pro se litigant on how to achieve action litigant is obviously attempting
- Before approving settlement, determine that waiver of substantive rights is knowing and voluntary

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## Accommodations

- Ask questions for clarification
- Explain process, elements, burden of proof, evidence
- Call attention to omissions in evidence
- Relax rules of evidence

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## Unreasonable Accommodations

- Create claims, defenses
- Amend or redraft pleadings
- Assume facts
- Disregard substantive law, requirements of jurisdiction
- Prejudice other party

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## Diligent Litigant

- Attempts to
  - Acquire familiarity with rules
  - Comply with procedures, orders
  - Request assistance
  - File pleading
  - Offer support for argument

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## Non-Diligent Litigant

- Abuses dignity of courtroom
- Is grossly negligent, lacks good faith
- Engages in pattern of delay
- Deliberately fails to comply with clear, specific order

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## Arguments Against

- Encourages self-representation
- Invites undesirable, open-ended participation by judge
- Favors unrepresented litigants
  - Over badly represented ones
  - Over represented parties

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## Arguments Against

- Litigant who chooses to represent self must be held to same standards
- Judge should not become advocate for one side

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20<sup>th</sup> National College on  
Judicial Conduct and Ethics  
October 19-21, 2006  
Chicago

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[www.ajs.org/ethics](http://www.ajs.org/ethics)

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