Saving Courtroom Time and Improving the Process in Tough Times: Suggested Techniques for Judges in Self-Represented Cases

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Introduction

These are tough times in America's courtrooms. Even more than before, judges are faced with increasing caseloads, more self-represented litigants, and budget pressure to reduce courtroom staff.

While every judge will develop his or her own approaches, judges who have participated in and studied the research conducted by the Self-Represented Litigation Network into courtroom dynamics, suggest the following techniques that can increase courtroom efficiency. They are effective, will work in any financial environment, and do not undercut the underlying value of access to justice for all litigants.

Please note that while some of the suggestions may appear to require taking extra time at the beginning of the process, experience has shown they can result in an overall time saving, as well as more relaxed and more satisfied court staff and litigants.

1. Have courtroom staff check-in litigants and give them orientation materials.

This helps save your time at the beginning of the hearing, helps filter out any litigants that are not ready, and helps litigants prepare to use their time more efficiently.

2. If possible, have available staff review the file before the hearing to highlight the most relevant papers and issues. In any event, review the file on your own and make a quick list of the issues to be addressed.

This review has been shown to significantly reduce the on the bench time taken at the beginning of the hearing and throughout the hearing. Regardless of whether the file has been pre-reviewed, your focus on the issues at the hearing will save time, convince the parties that you are on top of things and that they do not need to repeat everything. (Research shows that many litigants are surprisingly sensitive to the judge's level of preparation and knowledge.)

3. Start the hearing with a quick summary of the case history and of the issues that will be addressed.

This summary similarly helps the litigants focus, helps you maintain control, makes it easier to avoid repetition, and thus saves bench time. It reassures litigants that their concerns will be addressed.

4. Explain at the beginning of the hearing that you may be asking questions, and that this will not indicate any view on your part, merely that you need to get the information to decide the case.

This makes it much easier to ask questions. It also reassures litigants that you are thinking about their concern for fairness. (Some judges also find it useful to explain key governing evidentiary rules, such as hearsay, as they are likely to be applied in practice.)

5. Make clear that you will hear all sides.

Research has shown how quickly most litigants respond to cues that they will be fully heard. They then feel less need to interrupt, or to tell everything in one long narrative. It relaxes everyone, which also saves time.

6. Work through issues one by one and move clearly back and forth between the two sides during the exploration of each issue.

In the hearing itself, move back and forth between the parties, taking each issue one by one. This significantly helps the litigants focus their use of time, and creates a sense of progress in the hearing.

7. Do not be afraid to ask questions and follow up questions to focus the litigants and get the information you need to decide the case in a timely manner.

Self-represented litigants usually appreciate it when judges help them focus on the relevant issues. The time saving is obvious. If you have indicated at the beginning of the hearing that you may do so, it is often useful to remind the litigants of that earlier indication at the time do you ask the questions.

8. Use body language to maintain control as you move back and forth between the parties and to signal to litigants to stop when they try to interrupt.

Many judges find that, once they have established the pattern, they can control this process through the use of body language, such as by holding up a finger, or moving their finger from one side to the other. This is obviously very time effective.

9. Before making a decision on an issue, ask the parties if they have anything else to say.

Litigants report that that this is very reassuring, particularly if the judge explains early that they will do this. The technique reduces litigants trying to cover everything at once, and cuts back on their interrupting, thus reducing the time needed for the hearing.

10. Whenever possible, announce your decision from the bench simply and clearly, with explanation.

While some judges have been reluctant to issue decisions immediately, fearing outbursts or security problems, as a practical matter in most cases such complications do not occur. Rather, the announcement of the decision increases the chance of comprehension, and that litigants will understand their obligations. It also provides an opportunity to clear up any confusion or ambiguities, and to resolve any problems that may be clear to the parties, but not necessarily to the judge. This reduces time spend when the case returns to court.

11. Make sure that the litigants understand your decision, what they have been ordered to do, and the consequences of non-compliance.

Some judges specifically ask litigants to repeat their obligations. Others merely ask for confirmation of understanding. The more attention paid to this, the greater the likelihood of compliance, and thus a reduction in time spent when the case unnecessarily returns to court for enforcement. For limited English proficiency litigants there is a particular risk of non-comprehension, and therefore of unintentional, and devastating, non-compliance.

12. Put in place systems that get the litigants a written order, without them being required to take any additional steps.

Research in one court has shown a 50% reduction in returns to court when the court provides a written order, rather than requiring the parties to submit a proposed post-hearing order. Such orders can be generated by software, by volunteers, or even by court staff or the judge writing on carbonless multi-copy paper.

13. Where appropriate, prepare the litigants for the next steps in the case, including for future hearings, and possible future orders.

When the judge tells the litigants what generally is going to happen at a future hearing, and/or the overall direction that the case is taking, the parties are able to prepare themselves for the hearing and for potential changes in their lives. This reduces hearing time and increases the chances of pre-hearing agreement.

14. Direct the parties to any resources that are available to assist with compliance or enforcing the order.

Such resources might include self-help services focused on compliance and enforcement, nonprofits that can help with jobs or counseling, or other informational and assistance resources.

15. Develop materials on compliance and enforcement that you or your staff can provide to litigants.

Such materials might include forms and software designed to assist in obtaining the courts enforcement assistance, as well as materials that make clear the consequences of failure to comply with the courts orders.

Many of these techniques are explained in the Judicial Education Curricula developed by the Self-Represented Litigation Network. These are available on www.srln.org. Many are also illustrated in two Judicial Education Videos that accompany the curricula. These videos are for judicial education use only, and are available from the Knowledge and Information Service of the National Center for State Courts.

We welcome additional suggestions and comments, which should be sent info@srln.org. Note: this document has been prepared in association with the Self-Represented Litigation Network. Opinions expressed are not necessarily those of the Network or its participants or funders.