

**ILLINOIS SUPREME COURT COMMISSION ON ACCESS TO JUSTICE
ILLINOIS JUDICIAL CONFERENCE COMMITTEE ON EDUCATION**



**SELF-REPRESENTED LITIGANTS
IN CIVIL MATTERS:
SUGGESTED BEST PRACTICES AND
RELEVANT COURT RULES**

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**SUPREME COURT OF ILLINOIS
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Self-Represented Litigants in Civil Matters: Best Practices and Relevant Court Rules

Introduction

The first section of this document includes suggested best practices for handling civil matters in which one or more of the parties are unrepresented. These best practices were adapted from similar materials developed and in use in several states. The goal is to provide practical guidance to judges. These are suggested practices that can be adapted to local needs and practices.

The best practices are followed by checklists judges can use as a guide for explaining the trial process to self-represented litigants. The final section provides a summary of court rules recently adopted by the Illinois Supreme Court regarding standardized court forms and limited scope representation.

I. Managing Cases Involving Self-Represented Litigants

A. Suggested Best Practices for Conducting Proceedings Involving Self-Represented Litigants

Introduction

The following suggested best practices aim to provide practical guidance to judges trying to ensure that self-represented litigants can present their case to the court in a meaningful way without compromise to the neutrality of court proceedings.

General Principles

These three basic principles are the foundation for the suggested best practices that follow:

- 1) While not compromising the neutrality of courtroom proceedings, the judge should ensure that the facts of the case are adequately presented;
- 2) At the same time, the judge should also recognize that neutrality of the court is not compromised merely because there is communication between the judge and the litigants in the courtroom, when such communication is intended to provide self-represented parties with the opportunity to be fairly heard; and
- 3) Answering questions and simplifying procedures needed to obtain the necessary facts to decide the case may aid in fairness, neutrality and an unbiased process of law to all litigants.

Overview

Self-represented litigants who appear in court may not be familiar with courtroom decorum and procedures. Some of the following practices may help create an atmosphere in which self-represented litigants are able to more effectively present their cases:

- **Language:** Given that many self-represented litigants may never have appeared in court, it is important to use plain language whenever possible and minimize the use of complex legal terms during court proceedings. If the self-represented litigant is not fully conversant in English or is hearing impaired, the judge should take the steps to provide a qualified interpreter in accordance with court system policies before proceeding with the hearing.
- **Legal Representation:** While many self-represented litigants already may have attempted to find a lawyer to represent them, it is good practice to remind litigants that they have the right to retain counsel, including on a limited scope basis, while also acknowledging their right to represent themselves. It is a good practice to advise self-represented litigants of the possibility of free legal representation through local legal aid or pro bono programs. Finally, the judge may also wish to discuss with the litigant what it means to represent oneself in litigation.
- **Application of the Law:** It is good practice for the judge to remind the litigants that he or she will apply the law without regard to the litigant's status as a self-represented party and will neither favor nor penalize the litigant because the litigant is self-represented.
- **Rights and Responsibilities:** In plain and simple language, judges ought to inform self-represented litigants of their rights and responsibilities under the law, including their right to apply for the waiver of fees pursuant to 735 ILCS 5/5-105, as well as their rights and responsibilities regarding settlement agreements, dismissal motions, summary judgment motions, trial, and other case dispositive procedures.

- **Materials and Services for Self-Represented Litigants:** When appropriate, the judge may encourage self-represented litigants to use available resources developed to educate self-represented litigants about their legal problem and the operations of the court system through free online legal self-help centers, pro bono programs, legal advice desks and other legal information resources either provided directly at the courthouse or in other locations in the community such as public libraries.

Pre-Hearing Interaction

- **Trial Process:** Many self-represented litigants have very little, if any, understanding of the trial process. The judge should make a reasonable effort to ensure that self-represented litigants have a basic understanding of the process. The judge may wish to provide an explanation of substantive and procedural matters at the beginning of court proceedings. At that time, the judge may remind litigants that the trial will be conducted in accordance with applicable evidentiary and court rules.
- **Providing Explanation:** Because providing extensive information on substantive and procedural matters may be confusing to a self-represented litigant, the judge may consider issuing or articulating a brief and consistent statement explaining the trial process prior to the start of litigation. (Judges may use, for example, the “Explaining the Trial Process to Self-Represented Litigants” addendum to this guide).

The judge may also consider providing a simple written handout explaining the trial process in plain language. When one party is represented by counsel, the judge may 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.

- **Settlement:** In cases where settlement may be appropriate, the judge may discuss that possibility. This may occur at any stage in the litigation, but particularly at a case management, pre-trial or settlement conference.

- **Alternative Dispute Resolution (ADR)**: When a case is appropriate for ADR, the judge may discuss with self-represented litigants the availability and benefits of ADR services in the judge's circuit. This may occur at any stage in the litigation but particularly at a case management, pre-trial or status conference.
- **Record on Appeal**: The judge should explain to the litigants that they have a right to appeal decisions made by the trial court. The judge should further explain that pursuing an appeal will require preserving the common law record which includes all pleadings, motions, admitted trial exhibits and written orders entered by the trial judge.

In addition, the judge should explain that the litigants are responsible for retaining court reporters to produce a transcript or they may use other alternatives such as using electronic recording devices available in the courthouse or other means including a bystander's report or submitted an agreed statement of facts.

Conducting Hearings

- **Courtroom Decorum**: The judge should maintain decorum in the courtroom, cognizant of the effect it will have on everyone present, including self-represented litigants. The judge should ensure that proceedings are conducted in a manner that is respectful to all participants, including litigants, attorneys, witnesses and court staff.
- **Stress**: Recognizing that self-represented litigants may be under stress, the judge may attempt to ease the anxiety in the courtroom so that participants are more likely to participate fully in the proceedings. Examples of things judges may try to ease anxiety include calling a recess to allow a person a chance to calm down before further action is taken; providing the litigant with an opportunity to go out of the courtroom, have a glass of water or otherwise "take a break."
- **Evidence**: The rules of evidence are often the most confusing part of a hearing to self-represented litigants. While the judge should adhere to the rules of evidence, the judge may use his or her discretion, when permissible, to provide self-represented litigants the opportunity to present their case in a meaningful way.

- **Questions:** The judge may ask questions to elicit general information and to obtain clarification. The judge should explain why the questions are being asked and should explain that such questions should not be taken as any indication of the judge’s opinion of the case. The judge is encouraged to explain his or her rulings, particularly on the inadmissibility of evidence. The judge should also make clear which exhibits are offered and admitted into evidence.

Post-Hearing Interaction

- **Issuing the Decision:** The judge may exercise discretion in deciding whether to issue a decision at the close of the hearing while both parties are present or to inform the litigants that the matter will be taken under advisement and that a written decision will be sent 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 argument before making a decision. If possible, the judge should provide a time frame within which the case will be decided.
- **Appeals:** If asked about the appellate process, the judge may refer the litigant to the appropriate authority.

B. Explaining the Trial Process to Self-Represented Litigants¹

Introduction

Judges may use this section as a checklist for explaining the trial process before proceeding with a hearing. When explaining the trial process, it is proper to do so in the same manner that a judge would explain it to a jury. Although judges may explain rules, court policies and procedures, judges may not tell litigants what legal action to take. The following are examples of specific explanation that judges may wish to give.

¹ This material is largely based on Guideline 2.1 of the Massachusetts Court System’s “Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants with Commentary.”

Burden of Production and Proof Checklist

- ✓ Parties bringing the action are responsible for presenting evidence to support their claims. A self-represented litigant must adhere to the essential requirements of presenting a case; a judge will not assume anything in support of the case if it has not been properly presented.
- ✓ The parties, not the court, are responsible for subpoenaing witnesses and records.
- ✓ There are limits on the kinds of evidence that may be admitted.
- ✓ The elements of a plaintiff's claim must be proven by evidence admitted by the court, according to the required legal standard.
- ✓ In the judge's discretion, the elements of claims and defenses, as well as the burden of proof may be explained in the same manner that they would be explained to a jury.

Communication with the Judge Checklist

- ✓ Parties may not communicate about the case with the judge outside formal court proceedings.
- ✓ The judge, as a general rule, is prohibited from communicating with a party unless all parties are aware of the communication and have an opportunity to respond or be present.
- ✓ Parties must file all communications to the judge (complaints, motions, affidavits) with the circuit clerk's office along with a notice that copies of those materials have also been given to the opposing party.

Judge as Fact Finder Checklist

- ✓ In most proceedings the case will be heard without a jury. In these proceedings, the judge is the fact finder and the facts are determined by the judge from the evidence presented. For example, if Party A presents a witness who testifies the light is red and Party B presents a witness who testifies the light is green, it is the judge's responsibility to determine the color of the light. That determination becomes a fact of the case.

Courtroom Conduct Checklist

- ✓ Except when examining or cross-examining witnesses, litigants should address their remarks and questions to the judge. They should not direct comments to the opposing party or counsel for the opposing party.

C. Amendment to the Code of Judicial Conduct

In June 2013 the Supreme Court announced the amendment of Supreme Court Rule 63(A)(4) – Canon 3 of the Code of Judicial Conduct, effective July 1, 2013. As amended, paragraph (A)(4), regarding judges’ adjudicative responsibilities, states (the additional language is italicized):

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. *A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.*

Standardized Forms: Supreme Court Rule 10-101

A. Supreme Court Rule 10-101

On November 28, 2012, the Supreme Court adopted new Supreme Court Rule 10-101 with immediate effect. The new rule delegated authority to the Supreme Court Commission on Access to Justice to establish a process for developing and approving standardized, legally sufficient forms.

Under Rule 10-101(c) the forms produced by this process “may be used by any party wherever they are applicable and must be accepted for filing and use by all courts.” Rule 10-101(d) further states that courts may not require parties to use altered standardized forms except under limited circumstances.

The rationale for universal, standardized form is that for self-represented litigants, they simplify (and make more accessible) the task of completing documents required to pursue a matter at the trial court level. Simply put, unrepresented litigants who are not familiar with court rules or procedures may find it easier to complete standardized forms that use plain language, contain embedded instructions, and provide information and articulate their objectives via checkboxes instead of written narrative.

B. The Development of Standardized Forms

Supreme Court Rule 10-101 and a corresponding administrative order² from the Supreme Court explain that the Commission on Access to Justice and the Administrative Office of Illinois Courts are responsible for the process of developing and adopting standardized forms.

The administrative order includes further guidelines for the process. These guidelines provide for an open development process that gathers input from a diverse group of judges, clerks, court personnel, and lawyers; incorporates user testing with the public, and involves public comment. The guidelines also require features to ensure that each form is accessible to self-represented litigants, including:

- The use of plain language
- The inclusion of instructions and a background statement for self-represented litigants
- Availability in print and interactive electronic

To effectuate this mandate, the Commission on Access to Justice created a Forms Committee to oversee and approve the development of standardized forms in coordination with the Administrative Office of the Illinois Courts, Civil Justice Division, as specified in the administrative order.

C. The Use of Standardized Forms

Forms approved by the Commission on Access to Justice will be published on the Supreme Court's web site.³ The forms may be used by self-represented litigants and lawyers.

The use of standardized forms is not required under Rule 10-101. However, when they are used, the rule states that they must be accepted for filing and use by all courts.⁴ The comments also explain that judicial practices that create multiple versions of a standardized form or that alter a form will undermine the purpose of standardize forms and the ability to support their widespread use through technology.

² M.R. 25401, filed November 28, 2012.

³ The home page for forms is www.state.il.us/court/Forms/forms.asp.

⁴ Comment (c) to the rule emphasizes the importance of this feature: "Standardized forms can only be effective if they are required to be accepted by all courts in the state."

The one exception to the bar against altered forms is in Rule 10-101(d), which states that standardized form *orders* (emphasis added) “may be altered as necessary or appropriate to adjudicate a particular issue, claim or action.” Rule 10-101(e) also provides for supplementing standardized forms with additional material. Comment (e) suggests that some cases may need exhibits in order for a pleading to be legally sufficient.

III. Limited Scope Representation

Introduction

In June 2013 the Supreme Court approved changes to Supreme Court Rules 11, 13 and 137, and additional comments to Rules of Professional Conduct 1.2, 4.2 and 5.5 related to limited scope representation. The effect of the amendments, which took effect July 1, 2013, is to permit and facilitate this type of representation in civil matters at the trial court level.

The most notable practices permitted under the rule changes are that (1) lawyers are permitted to make limited scope appearances in civil matters and (2) lawyers may provide document preparation assistance to pro se litigants without making an appearance in the underlying matter.

Limited scope representation has been explicitly recognized in the rules governing the legal profession in Illinois since the Supreme Court adopted the Rules of Professional of Conduct of 2010, which included a revision to Rule 1.2(c).

The concept of limited scope representation is simple: a lawyer and client agree that the lawyer will represent a client in only a portion of his or her case. This practice is often called “unbundling” because the lawyer provides one or more discrete services (such as document preparation or representation in a deposition), and not the complete bundle of services (including investigation, legal research, negotiation, drafting, and court representation) that typically comprise a full representation.

The option of paying for select, discrete services can make legal representation affordable to a person of limited means who cannot pay the up-front cost of a retainer or the price of an ongoing full representation arrangement.

2013 Changes to Limited Scope Representation Provisions:

- Supreme Court Rule 11 (amended to clarify when a lawyer making a limited scope appearance must be served)
- Supreme Court Rule 13 (amended to allow lawyers to file limited scope appearances regarding one or more specific aspects of a proceeding, and then withdraw on motion after completing the agreed scope of representation)
- Supreme Court Rule 137 (amended to permit lawyers to assist self-represented persons in drafting or reviewing pleadings, motions and other documents without filing a general or limited scope appearance)
- Comments to Rule of Professional Conduct 1.2 (amended to cross-reference the types of limited assistance permitted by Rules 13 and 137)
- Comments to Rule of Professional Conduct 4.2 (amended to clarify communications by a lawyer with a person represented on a limited basis)
- Comments to Rule of Professional Conduct 5.5 (amended to cross reference Rules 13 and 137 as examples of how lawyers may assist persons without representation)

B. Rule Amendments in Detail

The most significant aspects and intent of the limited scope representation amendments and related commentary to each rule are summarized here.

Supreme Court Rule 11

The amendment to this rule – which specifies the manner of serving documents in a case – added a new paragraph (e), which clarifies the service requirements after an attorney files a Notice of Limited Scope Appearance. The amended rule specifies that service of all documents must be made on **both** the attorney making the limited scope appearance and the party, until the attorney’s appearance has ended under the provisions of Rule 13(c)(7).

Supreme Court Rule 13

Rule 13 concerns appearances and withdrawals. The amendment to this rule added a new paragraph (c)(6) and established the limited scope appearance in civil proceedings.

In accordance with the general principle of limited scope representation, a limited scope appearance under the rule allows an attorney to provide in-court representation for a litigant regarding a discrete aspect of a case or a specific proceeding in a case.

Paragraph (c)(6) spells out the requirements for doing so: an attorney must memorialize the agreement to provide limited scope representation in a written agreement with the litigant, and the attorney must complete and file the form Notice of Limited Scope Representation attached to Rule 13. That form requires the attorney to state that a written agreement has been made, and to identify the scope of the appearance being entered. The form contains a short checklist that suggests the types of situations in which an attorney might make a limited scope appearance: a court proceeding on a particular date, a trial, in a deposition, in various aspects of a family law matter, or regarding a discrete issue within a proceeding or proceedings covered by the appearance.⁵

Paragraph (c)(7) addresses the end of a limited scope appearance. An attorney's withdrawal upon completion of the specified representation can be accomplished by oral motion pursuant to Paragraph (c)(7)(i) or by written notice pursuant to Paragraph (c)(7)(ii). (Withdrawal for any other reason is subject to the requirements of Paragraph (c)(2) and (c)(3).) An oral motion under (c)(7)(i) is appropriate if it is made at a proceeding attended by the party represented by the attorney.

The rule specifies that the court must grant the motion unless the party objects that the agreed scope of representation has not been completed. In that case the rule provides for an evidentiary hearing regarding the objection. The rule states that the motion must be granted unless the court "expressly finds" that the scope of representation specified in the Notice of Limited Appearance has not been completed.

⁵ This list is illustrative but not exclusive. The form allows attorneys to identify "other" aspects in which they are appearing.

The alternative method of withdrawal is detailed in Paragraph (c)(7)(ii), which requires the attorney to provide written notice to the represented party, the other parties and counsel, and the judge. The represented party has 21 days from the date of service to file an objection using the form notice attached to Rule 13.

If an objection is filed, the attorney is required to notice a hearing, which will proceed along the same lines as a hearing under Paragraph (c)(7)(i). In the absence of an objection, the attorney's limited scope appearance automatically terminates following the 21 days.

In both instances the underlying principle is that withdrawal from a limited scope appearance appropriately terminates unless there is a finding that the scope of representation agreed to by the attorney and litigant has not been completed. The amended commentary to Rule 13 cautions:

“A court’s refusal to permit withdrawal of a completed limited scope representation, or even its encouragement of the attorney to extend the representation, would disserve the interests of justice by discouraging attorneys from undertaking limited scope representations out of concern that agreements with clients for such representations would not be enforced.”

Supreme Court Rule 137

As amended, Rule 137 allows attorneys to provide assistance in drafting or reviewing documents to self-represented litigants. Neither an attorney appearance nor an attorney signature is required. The new paragraph (e) specifies that when assistance is provided in drafting or reviewing a pleading, motion or other paper, the self-represented party must sign the document. Paragraph (e) also states that an attorney may rely on the self-represented party's representation of facts without further investigation, unless the attorney knows the representations are false.

The comment added to Rule 137 reiterates that an attorney providing assistance under paragraph (e) is not required to sign or note his or her involvement in the matter. The comment also emphasizes that even if an attorney is identified in connection with assistance provided under the rule, he or she will not be deemed to have made a general or limited scope appearance.

Comments to Rule of Professional Conduct 1.2

Rule 1.2 states that an attorney may limit the scope of representation. Comment [8] to this rule was amended to add a cross reference to the Supreme Court Rules 13(c)(6) and 137(e) (concerning limited scope appearances and assistance in drafting and reviewing documents).

Comments to Rule of Professional Conduct 4.2

There were two amendments to the comments to Rule 4.2 concerning communication with represented persons were amended. Comment [2] now states that Rule 4.2 applies to communications with a person represented by counsel providing limited scope representation under Rule 1.2(c). Comment [8A] was added to clarify when a lawyer is deemed to know when a person is represented by counsel on a limited scope basis. The comment specifies a Notice of Limited Scope Appearance or other written notice as the bases for such knowledge.

Comments to Rule of Professional Conduct 5.5

Comment [3] to Rule 5.5, concerning the unauthorized practice of law, was amended to add a reference to assistance provided under Rule 137(e) and Rule 13(c)(6) to non-lawyers proceeding *pro se*. The comment clarifies that such assistance is permitted under Rule 5.5.