



AMERICAN CODE OF CONDUCT FOR
TRIAL LAWYERS AND JUDGES INVOLVED IN CIVIL CASES WITH
SELF-REPRESENTED PARTIES

Approved by the Board of Regents
October 2011

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AMERICAN CODE OF CONDUCT FOR TRIAL LAWYERS AND JUDGES INVOLVED IN CIVIL CASES WITH SELF-REPRESENTED PARTIES

This Code is intended to help judges and lawyers in the conduct of civil cases involving self-represented litigants. Most rules of civil procedure, professional conduct, and evidence explicitly or implicitly assume that all of the parties in a case are represented by legal counsel. Our systems for pretrial scheduling, for discovery, for motion practice, and for presentation of evidence assume that the parties are represented by lawyers charged with knowledge of the rules. Judges and lawyers who find themselves dealing with self-represented parties, however, frequently must guess about the applicability of the normal rules to such parties, and about the best way to deal with self-represented parties. This code attempts to address problems that frequently arise in such cases. The term “self-represented party” refers to a natural person who represents himself or herself in a civil case, whether by choice or necessity. Such parties are frequently referred to as “pro se litigants” or “litigants in pro per.” This code does not apply to the conduct of criminal cases.

1. Purpose and Scope

(a) The purpose of this code is to provide guidance to judges and trial lawyers in civil cases in which a self-represented person is a party.

(b) This code supplements, but does not replace or supersede, applicable rules of civil procedure, professional conduct, and evidence.

2. The Right of Self-Representation and its Consequences

(a) Subject to statutory and common law rules that restrict access to the civil justice system for minors or on the basis of mental incapacity or insolvency, every natural person has the right to represent himself or herself in a civil proceeding regardless of whether he or she can afford or wishes to retain legal counsel.

(b) Self-represented parties, like all other participants in the judicial process, should be treated with civility, respect, and courtesy. Like all parties who come before the court, such parties are entitled to a fair and efficient process.

(c) Neither the court nor the lawyer should criticize a self-represented party on the ground of the party’s lack of legal training or litigation experience.

(d) It is appropriate for the court or the lawyer to advise a self-represented party to retain counsel as to some or all issues, or as to some or all proceedings, and to allow a reasonable period of time during the litigation for the self-represented party to retain counsel.

3. Duties to the Court

(a) In cases involving a self-represented litigant, the lawyer owes the same duties to

the court as the lawyer owes to the court in other cases, including the duties to act with honesty and reasonable dispatch and to refrain from prosecuting frivolous claims or defending on frivolous grounds.

(b) The lawyer and the court may reasonably expect and hold a self-represented party accountable to act with honesty and reasonable dispatch, and to refrain from prosecuting or defending on frivolous grounds. Because the self-represented party may require guidance from the court in understanding these duties, the court should take a more active role in overseeing litigation involving self-represented parties. This oversight role should not include legal advice or other assistance that compromises impartiality.

(c) A lawyer's duty of zealous representation of a client and duty to uphold the administration of justice apply regardless of whether the opposing party is self-represented. In cases where opposing parties are self-represented, the lawyer has a duty to refrain from practices that are intended primarily to take advantage of the unrepresented litigant's unfamiliarity with the law rather than to further legitimate legal rights of the represented client.

4. **Communication**

(a) The lawyer should explain to his or her client the difficulties involved in dealing with a self-represented party in civil litigation and the limitations suggested in this code and imposed by applicable rules with respect to the lawyer's communications with self-represented parties.

(b) The court should hold an in-person pretrial conference at the outset of the case to explain to the parties the pretrial process, the parties' discovery obligations, and any relevant confidentiality obligations, and to answer questions. In this setting, the court should also (i) inquire as to whether the self-represented party is represented by legal counsel as to any aspect of the case; (ii) prescribe the circumstances under which extra-judicial communications between the lawyer and a self-represented party will be permitted, provided that the court should dictate when extra-judicial communications are permitted only if the parties have experienced problems with extra-judicial communications and have brought the matter to the court's attention; and (iii) advise the self-represented party as to the rules governing ex parte communications with the court and its staff, making it clear that such rules apply to all parties regardless of legal representation.

(c) During proceedings in court, the lawyer should refrain from communication directly with a self-represented party and should instead direct all comments, inquiries and answers through the court.

(d) In addressing the court, the lawyer should avoid unnecessarily technical explanations or ambiguity so as to avoid misunderstanding or confusion for the self-represented party.

(e) In the presence of counsel, the court should explain all time deadlines to both counsel and self-represented parties.

(f) The lawyer should generally avoid unnecessary oral communications with self-represented parties outside the presence of the court. Such oral communications to the self-

represented party as may be necessary on topics such as discovery and settlement should be memorialized in writing by the lawyer.

5. **Pleading and Motion Practice**

(a) The court should prescribe or permit, and the lawyer should encourage the use of, simplified pleading and motion forms by self-represented litigants so that procedural disputes may be minimized and the case may be resolved on the merits efficiently and fairly.

(b) The lawyer should avoid unnecessary technical challenges to pleadings and other papers filed by self-represented parties, with the objective of seeking the efficient and fair resolution of the case on the merits.

(c) Before bringing any motions for non-compliance or contempt, the lawyer should notify the self-represented party, in writing, of all outstanding orders and the consequences of non-compliance.

6. **Discovery**

(a) At the outset of the case, the court should advise the parties concerning their duties of initial disclosure, if any, and should make such orders as are appropriate to simplify and limit the number of depositions and other discovery so as to be proportional to the dispute in the particular case and to reduce the burden on all parties.

(b) At the outset of a case that may require or permit the disclosure of confidential information, the lawyer should seek the direction of the court as to measures that will protect such information in the hands of both represented and self-represented parties.

(c) The lawyer should avoid unnecessary and burdensome discovery requests and depositions relating to claims or defenses of self-represented parties.

7. **Trial**

(a) Rules of evidence apply to all parties, including self-represented parties. The lawyer in a case involving a self-represented party is entitled to make the same evidentiary objections as in cases in which all parties are represented by counsel.

(b) The lawyer has no obligation to assist a self-represented party in the presentation of evidence.

(c) Subject to the lawyer's obligations under Rule 3.3(a)(3), ABA Model Rules of Professional Conduct, the lawyer has no duty to present evidence of facts that are unfavorable to the lawyer's client in a case involving a self-represented party.

(d) The lawyer may insist that a self-represented party provide evidence under oath and from the witness stand. Unless there is justification for doing so, lawyers should not oppose narrative

testimony of self-represented parties as an efficient means of presenting the party's case.

(e) The court should make reasonable accommodations to assist a self-represented party to present his or her case efficiently.

8. **Stipulations**

(a) In the presence of the court, the lawyer should endeavor to stipulate to facts that are known to be true or that may be readily verified.

(b) The lawyer's requests for stipulations should be made in writing to the self-represented party in advance of the hearing at which they are discussed.

9. **Settlement**

(a) The terms of any settlement with a self-represented party should either be prepared or witnessed by a neutral third party or dictated into the record before the court.

(b) The court should take reasonable steps to assure that the self-represented party understands the terms of settlement and agrees to all of them.

10. **Security**

The lawyers should promptly bring to the court's attention any concern relating to security for any party.

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