



**NCSC**  
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## Self-represented litigants and the code of judicial conduct

Rule 2.2 of the 2007 American Bar Association *Model Code of Judicial Conduct* provides: “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Comment 4 to that rule explains: “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”

35 jurisdictions (34 states and the District of Columbia) have added a version of comment 4 to their codes of judicial conduct.

- 16 state supreme courts have adopted comment 4 from the model code exactly or with only minor language changes: **Arizona, Connecticut, Georgia, Hawaii, Kentucky, Minnesota, Nevada, New Jersey, North Dakota, Oklahoma, Pennsylvania, Tennessee, Utah, Washington, West Virginia, and Wyoming.**
- 3 jurisdictions have adopted comment 4 and additional commentary.
  - The **Colorado** code includes the model comment 4 to Rule 2.2 and adds a new comment 2 to Rule 2.6 that provides:

The steps that are permissible in ensuring a self-represented litigant's right to be heard according to law include but are not limited to liberally construing pleadings; providing brief information about the proceeding and evidentiary and foundational requirements; modifying the traditional order of taking evidence; attempting to make legal concepts understandable; explaining the basis for a ruling; and making referrals to any resources available to assist the litigant in preparation of the case. Self-represented litigants are still required to comply with the same substantive law and procedural requirements as represented litigants.

- The **D.C.** code includes the model comment 4 to Rule 2.2 and adds a reference to Comment [1A] to Rule 2.6. Comment 1A to Rule 2.6 states:

The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. Pursuant to Rule 2.2, the judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; however, in the interest of ensuring fairness and access to justice, judges should make reasonable accommodations that help litigants who are not represented by counsel to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. In some circumstances, particular accommodations for self-represented litigants may be required by decisional or other law. Steps judges may consider in facilitating the right to be heard include, but are not limited to, (1) providing brief information about the proceeding and evidentiary and foundational requirements, (2) asking neutral questions to elicit or clarify information, (3) modifying the traditional order of taking evidence, (4) refraining from using legal jargon, (5) explaining the basis for a ruling, and (6) making referrals to any resources available to assist the litigant in the preparation of the case.

- **Iowa** includes the model comment 4 to Rule 2.2 and adds: “By way of illustration, a judge may: (1) provide brief information about the proceeding; (2) provide information about evidentiary and foundational requirements; (3) modify the traditional order of taking evidence; (4) refrain from using legal jargon; (5) explain the basis for ruling; and (6) make referrals to any resources available to assist the litigant in the preparation of the case.”
- 5 states have adopted the model comment 4 to Rule 2.2 but added a caveat.

- The **Idaho** code includes the model comment 4 to Rule 2.2 but adds:

A judge’s ability to make reasonable accommodations for self-represented litigants does not oblige a judge to overlook a self-represented litigant’s violation of a clear order, to repeatedly excuse a self-represented litigant’s failure to comply with deadlines, or to allow a self-represented litigant to use the process to harass the other side.

- The **Kansas** code includes the model comment 4 to Rule 2.2 but adds:

On the other hand, judges should resist unreasonable demands of assistance that might give an unrepresented party an advantage. If an

accommodation is afforded a self-represented litigant, the accommodation shall not relieve the self-represented litigant from following the same rules of procedure and evidence that are applicable to a litigant represented by an attorney.

In addition, a comment to Rule 2.6 of the Kansas code states:

Increasingly, judges have before them self-represented litigants whose lack of knowledge about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A judge's obligation under Rule 2.2 to remain fair and impartial does not preclude the judge from making reasonable accommodations to ensure a self-represented litigant's right to be heard, so long as those accommodations do not give the self-represented litigant an advantage. If the judge chooses to make a reasonable accommodation, such accommodation shall not relieve the self-represented litigant from following the same rules of procedure and evidence that are applicable to a litigant represented by an attorney.

- The **Maryland** code provides: "Increasingly, judges have before them self-represented litigants whose lack of knowledge about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A judge's obligation under Rule 2.2 to remain fair and impartial does not preclude the judge from making reasonable accommodations to protect a self-represented litigant's right to be heard, so long as those accommodations do not give the self-represented litigant an unfair advantage. This Rule does not require a judge to make any particular accommodation."
- The **Nebraska** code includes the model comment 4 to Rule 2.2 but adds, "on the other hand, judges should resist unreasonable demands for assistance that might give an unrepresented party an unfair advantage."
- The **New Mexico** codes includes the model comment 4 to Rule 2.2 version but adds: "When pro-se litigants appear in court, they should comply with the rules and orders of the court and will not be treated differently from litigants with counsel."
- 8 states have included in the text of Rule 2.2, not as a comment: "A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." That version was proposed by the Conference of Chief Justices and the Conference of State Court Administrators in a 2012 resolution (<https://tinyurl.com/lqyp4rz>). The resolution

also suggests that states modify the comments “to reflect local rules and practices regarding specific actions judges can take to exercise their discretion in cases involving self-represented litigants.”

- The **Arkansas** code includes the CCJ/COSCA version (although it uses the term “accommodations” rather than efforts) and adds a comment that explains:

The growth in litigation involving self-represented litigants and the responsibility of courts to promote access to justice warrant reasonable flexibility by judges, consistent with the law and court rules, to ensure that all litigants are fairly heard. Examples of accommodations that may be made include but are not limited to (1) making referrals to any resources available to assist the litigant in the preparation of the case; (2) liberally construing pleadings to facilitate consideration of the issues raised; (3) providing general information about proceeding and foundational requirements; (4) attempting to make legal concepts understandable by using plain language whenever possible; (5) asking neutral questions to elicit or clarify information; (5) modifying the traditional order of taking evidence; and (6) explaining the basis for a ruling.

- The **Indiana** code includes the CCJ/COSCA version and adds a comment that explains:

A judge’s responsibility to promote access to justice, especially in cases involving self-represented litigants, may warrant the exercise of discretion by using techniques that enhance the process of reaching a fair determination in the case. Although the appropriate scope of such discretion and how it is exercised will vary with the circumstances of each case, a judge’s exercise of such discretion will not generally raise a reasonable question about the judge’s impartiality. Reasonable steps that a judge may take, but in no way is required to take, include: (a) Construe pleadings to facilitate consideration of the issues raised. (b) Provide information or explanation about the proceedings. (c) Explain legal concepts in everyday language. (d) Ask neutral questions to elicit or clarify information. (e) Modify the traditional order of taking evidence. (f) Permit narrative testimony. (g) Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order. (h) Inform litigants what will be happening next in the case and what is expected of them.

- The **Louisiana** code includes the CCJ/COSCA version and adds a comment that explains:

Steps judges may consider in facilitating the right of self-represented litigants to be heard, and which (they might find) are consistent with these principles include, but are not limited to: making referrals to any resources available to assist the litigant in preparation of the case; providing brief information about the proceeding and evidentiary and foundational requirements; asking neutral questions to elicit or clarify information; attempting to make legal concepts understandable by minimizing use of legal jargon; and explaining the basis for a ruling.

- The **Maine** codes includes a version that states in the text of the rule:

A judge may take affirmative steps, consistent with the law, as the judge deems appropriate to enable an unrepresented litigant to be heard. A judge may explain the requirements of applicable rules and statutes so that a person appearing before the judge understands the process to be employed. A judge may also inform unrepresented individuals of free or reduced cost legal or other assistance that is available in the courthouse or elsewhere.

- The **Massachusetts** code includes the CCJ/COSCA version in the text and adds comments that explain:

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[1A] The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of ensuring fairness and access to justice, judges may make reasonable accommodations that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. The judge should be careful that accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. In some circumstances, particular accommodations for self-represented litigants are required by decisional or other law. In other circumstances, potential accommodations are within the judge's discretion. By way of illustration, a judge may: (1) construe pleadings liberally; (2) provide brief information about the proceeding and evidentiary and foundational requirements; (3) ask neutral questions to elicit or clarify information; (4) modify the manner or order of taking evidence or hearing argument; (5) attempt to make legal concepts understandable; (6) explain the basis for a ruling; and (7) make referrals as appropriate to any resources available

to assist the litigants. For civil cases involving self-represented litigants, the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants (April 2006) provides useful guidance to judges seeking to exercise their discretion appropriately so as to ensure the right to be heard.

- The **New Hampshire** code includes the CCJ/COSCA version and adds a comment that explains:

The growth in litigation involving self-represented litigants and the responsibility of courts to promote access to justice warrant reasonable flexibility by judges, consistent with the law and court rules, to ensure that all litigants are fairly heard.

- The **Ohio** code includes the CCJ/COSCA version and adds a reference to a comment to Rule 2.6 that explains:

The rapid growth in litigation involving self-represented litigants and increasing awareness of the significance of the role of the courts in promoting access to justice have led to additional flexibility by judges and other court officials in order to facilitate a self-represented litigant's ability to be heard. By way of illustration, individual judges have found the following affirmative, nonprejudicial steps helpful in this regard: (1) providing brief information about the proceeding and evidentiary and foundational requirements; (2) modifying the traditional order of taking evidence; (3) refraining from using legal jargon; (4) explaining the basis for a ruling; and (5) making referrals to any resources available to assist the litigant in the preparation of the case.

- The **Wisconsin** code includes the CCJ/COSCA version, and the state supreme court published but did not adopt a new comment that, it stated, "may be consulted for guidance in interpreting and applying the rule."

A judge may exercise discretion consistent with the law and court rules to help ensure that all litigants are fairly heard. A judge's responsibility to promote access to justice, combined with the growth in litigation involving self-represented litigants, may warrant more frequent exercise of such discretion using techniques that enhance the process of reaching a fair determination in the case. Although the appropriate scope of such discretion and how it is exercised will vary with the circumstances of each case, a judge's exercise of such discretion will not generally raise a reasonable question about the judge's impartiality. Reasonable steps that a judge may take in the exercise of such discretion include, but are not limited to, the following: 1. Construe pleadings to facilitate

consideration of the issues raised. 2. Provide information or explanation about the proceedings. 3. Explain legal concepts in everyday language. 4. Ask neutral questions to elicit or clarify information. 5. Modify the traditional order of taking evidence. 6. Permit narrative testimony. 7. Allow litigants to adopt their pleadings as their sworn testimony. 8. Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order. 9. Inform litigants what will be happening next in the case and what is expected of them.

- 3 states have adopted other comments regarding judges' treatment of self-represented litigants.
  - The **California** code states: "When a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard."
  - The **Missouri** code states in a comment: "A judge may make reasonable accommodations to afford litigants the opportunity to have their matters fairly heard."
  - The **Montana** code states in a comment:

A judge may make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

A comment to Rule 2.5, which requires competent diligent disposition of judicial and administrative duties, states:

In accomplishing these critical goals in the increasing number of cases involving self-represented litigants, a judge may take appropriate steps to facilitate a self-represented litigant's ability to be heard.