



Self-Represented Litigants

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Background—Strategic Plan

- **Goal 1: Promoting Access to Justice:**
- The Arizona judiciary leads the nation in identifying and implementing best practices to transform the judicial branch from a system designed for judges and lawyers to a system open (and understandable) to all participants, regardless of their financial status, physical limitations, or ability to obtain legal representation. While the judicial branch has made significant improvements in promoting access to our courts, more is needed to ensure equal access to justice for all Arizonans.

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Background: Arizona Code of Judicial Conduct

- Rule 2.2, Impartiality and Fairness: a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.
- Comment 4 to that Rule: a judge may make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.
- Rule 2.6(A): a judge shall accord to every person who has a legal interest in a proceeding ... the right to be heard according to law.
- Rule 2.8B: a judge shall be patient, dignified, and courteous to litigants.

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Beginning A Proceeding

- 1. Record all interactions with self-represented litigants.
- 2. Make sure the parties understand what is to be decided at the current proceeding.
- 3. Outline the procedure to be followed at the hearing, including the responsibility for the burden of proof.
- 4. Indicate the time available for the proceeding.

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Beginning A Proceeding

- 5. Explain the governing law or explain the elements of the case in a manner that helps the parties focus their testimony.
- 6. Use simple language and invite questions.
- 7. Clarify that the judge's questions and interruptions have no purpose other than getting to the facts.
- 8. Pay attention and look like you are paying attention.

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Managing Evidence

- 1. Permit narrative testimony by a self-represented litigant.
- 2. Ask questions to get to evidence.
- 3. Ask questions concerning the nature of the evidence and avoid not admitting evidence for overly technical reasons (e.g. foundation or authentication).
- 4. Probe for details and for clarification.
- 5. Maintain control of the courtroom with courtesy and respect, and help litigants stay focused on matters relevant to the judge's decision.

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Managing Evidence

- 6. Clarify the relevance of testimony when it is uncertain.
- 7. A judge in a bench trial determines the facts and applies the law to those facts. As such, the judge can consider any evidence that does not draw an objection and can either admit or reject evidence. However, there is an additional option. The judge can admit evidence that may not appear to comply with the Rules of Evidence and in so doing, can give that potentially questionable evidence the weight the judge sees fit.

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Managing Evidence

- 8. When appropriate, tell litigants when they have failed to establish an important element, and then provide an opportunity to fill the gap.
- 9. Provide a final opportunity for litigants to add to their testimony or to present additional evidence.
- 10. When necessary, the judge should remind the parties that the judge must be neutral and fair.

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Concluding the Proceeding

- 1. Announce the decision, if possible, from the bench.
- 2. Explain the decision and consider acknowledging the positions and strengths of both sides.
- 3. Make sure that the litigants understand the decision and what is expected of them, taking the opportunity to encourage the litigants to explain any problems that they might have complying.
- 4. Where relevant, inform the litigants of what will be happening next in the case and what is expected of them.
- 5. Thank the parties for their participation and acknowledge their efforts.

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Discussion time!



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(1) Civil Traffic Hearing

- At a civil traffic hearing, the officer forgets to do an in-court identification of the defendant. Do you:
 - A. Ask the officer if he is done and, if he says yes, dismiss the action.
 - B. Ask the officer if he is done and, if he says yes, ask him if he's sure he is done.
 - C. Ask the officer if the defendant is in the courtroom.
 - D. Ignore the gaffe and let the defendant testify and admit she's the driver.
 - E. Ask the defendant if she has any motions.

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(1) Civil Traffic Hearing, 2

- At a civil traffic hearing, the defendant gets so worked up about how mean the officer was to her, she testifies as to the speeding charge but forgets to present any evidence as to the seat belt violation. Do you:
 - A. Ask her if she is done and, if she says yes, find her responsible for the seat belt violation.
 - B. Ask her if she is done and, if she says yes, ask her if she's sure she is done.
 - C. Ask her if she was wearing her seatbelt.
 - D. Ignore the gaffe because seat belt violations are stupid.
 - E. Ask the officer if he has any motions.

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(2) Protective Order Contested Hearing

- At a contested hearing, the petitioner begins to testify about events that are not in the petition. Do you:
- A. Ask the petitioner if she wants to amend the petition and hand her a form to amend it.
- B. Tell the petitioner she may only present evidence as to allegations contained in the petition.
- C. Ask the defendant if he's OK with her going beyond the scope of the petition.
- D. Both A and B.
- E. None of the above.

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(2) Protective Order Contested Hearing, 2

- Same scenario, but the petitioner starts talking about events that occurred after the date of the original petition. Do you:
- A. Ask the petitioner if she wants to amend the petition and hand her a form to amend it.
- B. Tell the petitioner she may only present evidence as to allegations contained in the petition.
- C. Ask the defendant if he's OK with her going beyond the scope of the petition.
- D. Both A and B.
- E. None of the above.

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(3) Criminal Arraignment Motion

- Defendant files a motion at the arraignment to dismiss because “the evidence is insufficient.” Defendant was charged with “Exhibition of Speed” but says no one was watching.
- Do you:
 - A. Deny the motion without explanation.
 - B. Grant the motion without explanation.
 - C. Set it to an evidentiary hearing.
 - D. Deny the motion with an explanation.
 - E. Wait for the State to respond.

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(4) Eviction Trial

- A tenant is representing himself in a residential eviction action and has been sworn in as a witness. The landlord alleged he repeatedly failed to clean up trash and clutter on the outside of the residence. The tenant claims the area is clean now and was within window of the 10-day notice. The tenant tries to hand you some photographs to prove his point.
- The landlord attorney objects based on foundation.
- Do you:

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(4) Eviction Trial, 2

- A. Ask the landlord attorney to explain her objection.
- B. Sustain the objection; but tell the tenant he can attempt to lay a foundation.
- C. Overrule the objection because eviction actions have limited discovery and relaxed rules of evidence.
- D. Tell the tenant that he has to explain when and how the pictures were taken and what they show.
- E. Ask the tenant who took the pictures, when they were taken, and whether the property looks the same now as it did when the pictures were taken.

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(5) Combined Traffic Arraignment

- SRL Defendant appears with a citation with the following charges:
 - Exhibition of Speed (criminal)
 - Excessive Speed (criminal)
 - Red light violation (civil)
 - Equipment--Headlights (civil)
- Defendant wants to plead Guilty/Responsible to everything so she does not have to return to court. You know very well your prosecutor (not doing PTCs that day) will make a very reasonable plea offer to the Defendant, including dismissing several of the civils and possibly reducing the criminal to civil.
- Do you:

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(5) Combined Traffic Arraignment, 2

- A. Take the plea and give the presumptive sentences.
- B. Take the plea but cut her a break when sentencing.
- C. Take the plea but cut her a break and tell her she won't have to go to TSS for the red light violation.
- D. Remind her that you have to take a guilty/responsible plea on all the charges but that the prosecutor may offer a better deal.
- E. None of the above.

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(6) Civil Motion for Summary Judgment

- Plaintiff files a motion for summary judgment. Defendant does not timely respond. Do you:
 - A. Look to the Answer to see if there is a contested fact and then deny it if there is.
 - B. Grant the motion and judgment.
 - C. Set it for a hearing.
 - D. Review the pleadings and grant the motion if there is no genuine issue of material fact.
 - E. Grant the motion without reading it. Defendant didn't bother reading it, so why should you.

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(6) Civil Motion for Summary Judgment, 2

- Plaintiff files a motion for summary judgment. Defendant does timely respond, and alleges a genuine issue of material fact, but does not include an affidavit to make her attachments admissible. Do you:
 - A. Send a corrective action to the defendant.
 - B. Grant the motion and judgment.
 - C. Set it for a hearing.
 - D. Review the pleadings and grant the motion if there is no genuine issue of material fact.
 - E. Deny the motion because every defendant deserves their day in court.

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(7) Eviction IA, 2 SRLs

- At an Eviction initial appearance, both the Landlord and the Tenant are unrepresented. Both are woefully unprepared. While discussing the matter with the court, the Landlord discloses the 5 Day Notice (which you note is also in the file) and the Tenant **admits** she has not paid rent for two months.
- The Landlord will not accept judgment for only the two months because she also wants some HOA fines included in the judgment. The Landlord does not have a copy of the lease with her today.

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(7) Eviction IA, 2 SRLs, 2

- Do you:
 - A. Proceed to trial that day because the Rules allow it and the parties should have been prepared.
 - B. Advise the LL that, if the trial takes place today, she most likely could not get the HOA fees without a copy of the lease.
 - C. Set the trial in 3 days because the Rules allow it and then explain to the parties they need to have all of their evidence then.
 - D. Evict the tenant because she admitted she did not pay the last two months' rent.
 - E. Dismiss the matter without prejudice.

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(7) Eviction IA, 2 SRLs, 3

- The trial proceeds that day and the LL, who says she doesn't understand what is happening because she has never done an eviction trial, does not mention or introduce the 5 day notice because she had already presented it to the judge during the initial. Do you:
 - A. Prompt her to introduce the 5 day notice.
 - B. Ignore the mistake if the tenant doesn't bring it up.
 - C. Dismiss the matter without prejudice.
 - D. Grant the defendant judgment without prejudice.
 - E. Grant the defendant judgment with prejudice.

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(8) Criminal Bench Trial

- In a criminal trial for assault, the defendant during a cross-examination of the arresting officer, asks the following question: “Didn’t I tell you as you were placing me in handcuffs that I only hit Mr. Johnson because I felt threatened?”
- The prosecutor objects based on hearsay.
- You should:

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(8) Criminal Bench Trial, 2

- A. Overrule the objection because it is something the defendant actually said.
- B. Overrule the objection because it is a statement from a party opponent.
- C. Sustain the objection unless that statement is also in a police report.
- D. Sustain the objection because it is hearsay.
- E. Sustain the objection and explain that if the defendant wants to offer something he said as evidence, then he will probably need to call himself as a witness and testify.

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(9) Order of Protection Contested Hearing

- A former boyfriend and girlfriend are not married but have a child in common. She requested and received an Order of Protection against him for harassing her by text messages. The judge that issued the Order of Protection denied her request to list their child as a protected party on the order.
- At the hearing to challenge the order, defendant attempts to offer evidence to show that she forgot to pick up their child from day care. She objects but does not state a legal reason for the objection.
- You should:

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(9) Order of Protection Hearing, 2

- A. Overrule the objection because evidence that someone is a bad parent impacts their credibility as a witness.
- B. Overrule the objection because judicial decisions should be based on all facts that are available.
- C. Sustain the objection and explain that because this is not a Family Court case involving parenting time, the evidence is not relevant.
- D. Sustain the objection unless he has documentation that independently establishes his allegation (e.g. an invoice with late charges).
- E. Overrule the objection because the Rules of Evidence do not apply.

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(10) Civil Stipulated Judgment, 2 SRLs

- You are reviewing your civil paperwork and find a stipulated judgment between 2 SRLs, although one is a payday loan frequent-flyer. The plaintiff waited two years to file the complaint.
- The stipulated judgment awards a principal of \$2500; prejudgment interest of \$1500; and post-judgment interest at the contracted rate of 198%.
- Do you:

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(10) Civil Stipulated Judgment, 2 SRLs, 2

- A. Sign the stipulated judgment.
- B. Sign the stipulated judgment but reduce the pre-judgment interest to \$500 (because the plaintiff waited two years to file); and reduce the post-judgment interest to the legal rate.
- C. Set the matter to a hearing.
- D. Sign the stipulated judgment but reduce only the post-judgment interest to 25% because you think that is fair.
- E. Sign the stipulated judgment but reduce only the post-judgment interest to 10% because it is a debt based in writing.

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(11) Small Claims Hearing

- Plaintiff alleges that she brought her car in for an oil change and that they did not properly secure the oil cap which led the car to leak oil and the engine to seize.
- During the presentation of her case plaintiff only presents her testimony where she testifies as to what the mechanic who replaced her engine told her about the oil leak, and she presents the invoice for the new engine.
- Defendant objects to the testimony as hearsay.
- You should:

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(11) Small Claims Hearing, 2

- A. Sustain the objection.
- B. Sustain the objection but tell her you can continue the hearing to allow her to bring a mechanic in to testify.
- C. Overrule the objection without explanation.
- D. Overrule the objection but explain that the evidence will be given the weight it is due.
- E. None of the above because you refuse to do small claims hearings.

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(12) Civil Bench Trial

- The Plaintiff is representing herself and has done a good job. She has established that she entered into a written contract with a local business to build a backyard barbecue grill and patio area and that the business failed to complete the project.
- You notice an additional stack of photographs and what appear to be estimates from another contractor on the Plaintiff's table in the courtroom. You ask the Plaintiff if she has any additional evidence to present and she says no.
- You should:

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(12) Civil Bench Trial, 2

- A. Feel sorry that the Plaintiff forgot to offer evidence of damages but sleep well knowing that the judge cannot help someone present their case.
- B. Explain that the Plaintiff is required to prove a specific amount of damages and ask whether she has anything that will complete what the judge needs to know about the case.
- C. Ask the Plaintiff whether she wants the judge to consider any of the other documents or photographs on her table.
- D. Announce that since she has rested and has not proven an essential element of her case, there is no point in hearing the Defendant's case.
- E. None of the above.

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(13) Civil Traffic Hearing

- The police officer testified that the defendant made an unsafe lane change and then cut through a Circle K parking lot to avoid an intersection. The police officer was testifying remotely and therefore could not draw any kind of diagram.
- The Defendant seemed credible and maintained that the Circle K was not near any intersection.
- You should:

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(13) Civil Traffic Hearing, 2

- A. Take a brief recess, call up Google maps, and see where the Circle K is actually located.
- B. Ask the Defendant whether he has any photographs of the area.
- C. Ask the police officer whether he wants to continue the case so he can offer additional evidence of the Circle K's location.
- D. Find the Defendant responsible but reduce the fine because you found the Defendant to be more credible than the police officer.
- E. Announce that you are familiar with the area and find the Defendant not responsible.

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(14) Eviction Initial Appearance

- The tenant admits that she has not paid rent for two months; but remains hopeful her request for rental assistance will be approved. In the interim, she is willing to make payments to the landlord on the amount of the newly signed judgment.
- You should:

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(14) Eviction Initial Appearance, 2

- A. Wish the tenant well and express hope that something can be worked out.
- B. Explain the Writ of Restitution, the first day it could be filed, and what that means.
- C. Explain that an eviction judgment has two parts (money and possession) and that paying money to the landlord does not mean that the landlord will not still seek possession.
- D. All of the above.
- E. None of the above.

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(15) Any Proceeding with a Sovereign Citizen

- You should NOT:
- A. Ask the person where they got their pharmaceuticals or their fashion sense.
- B. Lose your cool.
- C. Laugh on the record.
- D. Bar the person from making any more filings.
- E. All of the above.

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However...

Do NOT make yourself an expert witness or an advocate...

While I was on the stand being questioned by the Plaintiff's Attorney, Judge [redacted], rather than acting as an impartial overseer of the proceedings, started questioning me as if he were Plaintiff's Council. His ire and aggressive attitude was obvious, and it comes through quite clearly on the video. I truly felt as if I were being treated as a Hostile Witness by the Judge. Instead of asking clarifying questions, Judge Pro-Tem [redacted] actually took over for the Plaintiff's Attorney. He spent more time cross-examined me than the Plaintiff's Attorney did.

Judge [redacted] then proceeded to testify as if he were an Expert Witness or a licensed exterminator, incorrectly telling me... and stating on the record... that there is ONLY ONE WAY to treat Subterranean Termites and ONLY ONE CHEMICAL to use. He was wrong on both points - there are multiple methods and chemicals that trained professionals use to combat subterranean termites. The Judge presented himself as an expert on the subject, when in actuality [redacted]. Perhaps I should have called the Judge to the witness stand to flesh-out his credentials on treating termites.

(Warning letter to pro-tem judge in 19-242 to be mindful that his comments may give the impression he is advocating for one party and improperly basing his decision on facts outside of the record)

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Final Thoughts: Procedural Justice

- Litigants are given an opportunity to tell their story.
- Litigants perceive that they are treated with dignity and respect.
- Litigants perceive that the decision-making process is unbiased and trustworthy.
- Litigants understand their rights and the decisions that are made.
- Litigants perceive that court actors are interested in their personal situation to the extent the law allows.

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Questions?
Thoughts?
Feelings?



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