

The Challenges and Opportunities of Self-Represented Litigants

Hon. Evelyn McLean
Justice of the Peace
Williamson County, Pct. 3

Mary Alcala
Court Administrator
Williamson County, Pct. 3

1

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2

Agenda

- Introductory Activity
- Why Focus on Self-Represented Litigants?
- A Walk Through the Court in SRL Shoes
- Scenarios (If Time)

3



Introductory Activity

4



Why Focus on Self-Represented Litigants?

5

Many People Are Self-Represented

A 2015 study of civil litigation in state courts found that both sides were represented by lawyers in less than one-quarter of civil cases

[A] driving factor for the increase in self-represented litigants (SRLs) is that many litigants do not believe that lawyers can solve their legal problems in a timely and cost-effective manner.

(Hannaford-Agor, Graves, and Miller, 2015); (Sandefur, 2010-11).

6

Importance for JP Courts

- For many people, the JP court is their only interaction with the justice system.
- Even lower rate of lawyer representation than other courts.
- “The Peoples’ Court”

7

What We Owe the Court System and the Public:

A judge shall be patient, dignified and courteous to litigants... and should require similar conduct of lawyers, and of staff, court officials and other subject to the judge’s direction and control.

Canon 3B.(4)

Neutral
Fair
Accessible

8

Reminders from Procedural Fairness Class Earlier in the Program

- Provide good customer service.
- Be professional, neutral, and impartial.
- Communicate effectively and use active listening.
- Do not engage in ex parte communication except where explicitly authorized.
- Give legal information and resources, not legal advice.

9

Reminders from Procedural Fairness Class Earlier in the Program (*continued*)

- Treat everyone with respect.
- Be aware of disabilities, language barriers, and other needs.
- Acknowledge and address unconscious bias.
- Use technology to enhance access to justice and have good virtual hearing policies.
- Ensure practices, procedures, instructions, forms, notices, signage, etc. are clear and fair for all parties.

10

When Communication Goes Wrong

*“Does your
campground
have a BC?”*

11



A Walk Through the Court in SRL Shoes

12

Bob gets sued in justice court

13

Bob gets a notice of hearing

- *What information is given? How far in advance?*
- *Can he tell and what he needs to wear, do, etc.?*
- *Are there legal terms or abbreviations?*
- *Are any temporary issues (constructions, closure, etc.) communicated? What if something happens after initial notice was already sent?*

14

Court Website

- Up to date?
- What information can be provided here to help Bob know what to expect?
- When else might a court website be helpful?
- Anyone using chatbots on their court website? How's it working?
 - NCSC's new guide, *Court Chatbots: How to Build a Great Chatbot for Your Court's Website*: <https://bit.ly/48ga2TM>

15

PETER DAVID WAGNER
11512 SUNNY CREEK LN
MANOR TX 78653

Re: PETER DAVID WAGNER

This is to advise you that Trial Before Court on the following listed charge(s) has been set for 04/26/2017 at 9:00 AM. At that time please enter your appearance before this court located at Travis County Courthouse, Room 112, Austin, Texas 78701.

Cause No. ()
.J5-CR-16-004929 |)
|)

Trial Before Court

Sincerely,

Judge Herb Evans
Justice of the Peace
Precinct Five, Travis County

CC: NOTICE TO APPEAR:

16

What/Who greets Bob when he walks into your courthouse?

- *How easy is it to find where he needs to go?*
- *Are the signs up to date?*
- *Are the court rules & expectations clear?*

19

Is there information overload?

"Finding the Way to Justice: Language Access Wayfinding," Pathu Sriphanlop, Admin Analyst; Ana Parrack, Dep. COM Superior Court of California

20

Is the information conflicting?

"Finding the Way to Justice: Language Access Wayfinding," Pathu Sriphanlop, Admin Analyst; Ana Parrack, Dep. COM Superior Court of California

21

Do you need a professionalism upgrade?

"Finding the Way to Justice: Language Access Wayfinding," Pathu Sriphanlop, Admin Analyst; Ana Parrack, Dep. COM Superior Court of California

22

Are they language accessible?

"Finding the Way to Justice: Language Access Wayfinding," Pathu Sriphanlop, Admin Analyst; Ana Parrack, Dep. COM Superior Court of California

23

What is the technology situation?

- Kiosks? AI bots?
- Online check in system?
- Clear instructions on how to access and use?
- What do you have in your courts?? What are the benefits and drawbacks? How often is technology used by customers? Do you have enough technology to meet the need?

24

Options for Feedback?

- Place for people to leave suggestions/complaints?
- How does the court respond to feedback? Does the court make changes?
- Any examples?

25

<https://www.innovatingjustice.org/publications/court-signage>

26

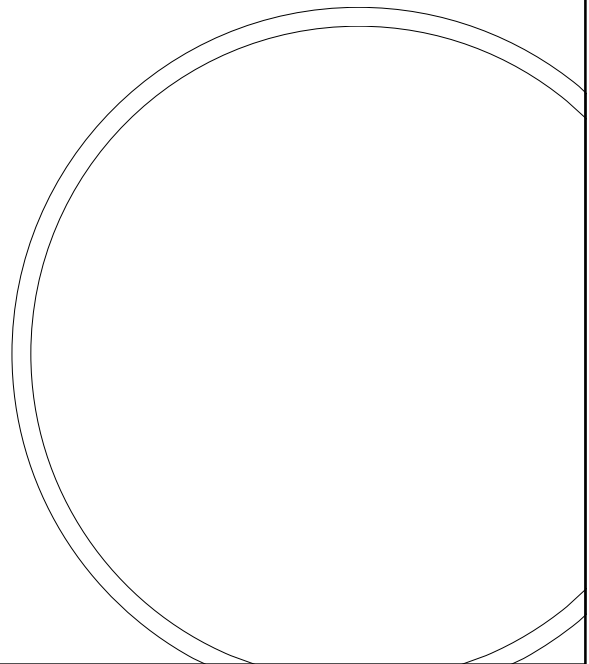
**Bob finds
your court
and 'checks in'
with the clerk**

27

**What does the
public think of your
office?**

Are you...

- *Helpful?*
- *Using non-legal terminology?*
- *Providing resources?*



28

What if There's a Problem?

What if someone arrives at the wrong time?

What if they're in person and are supposed be virtual or vice versa?

What if they appear virtually but then their internet drops?

What if they try to tell you the specifics of their case (ex parte)?

What other problems might arise?

29

Interpreters

30

Interpreters - Disability

- If a person needs an interpreter due to a disability (including deafness, blindness, and other disabilities), they must be provided an interpreter free of charge pursuant to the Americans with Disabilities Act.

31

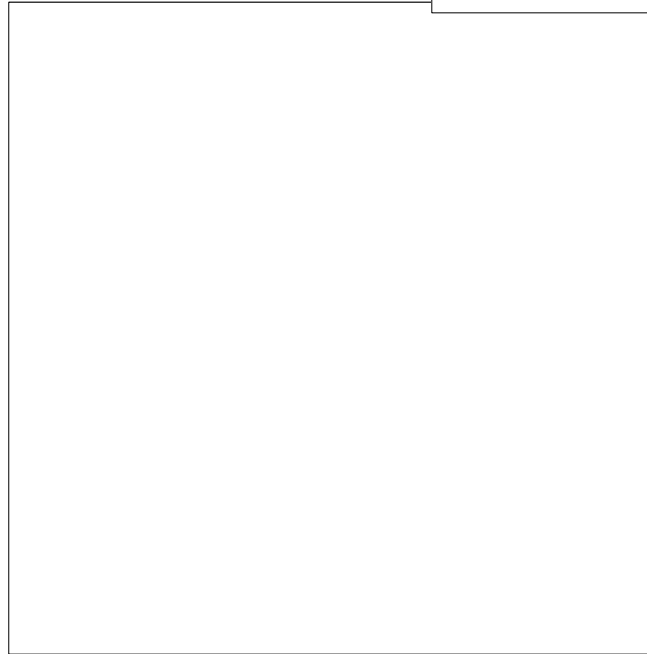
Interpreters – Spoken Language

- While TX state law would suggest that *spoken language* interpreters do not have to be provided for free to individuals who are not indigent, they really should be provided at no cost for **all** people who need them in both civil and criminal cases.
 - U.S. DOJ has issued a letter outlining the reasons for this, citing multiple U.S. Constitutional Amendments and Title VI of the Civil Rights Act.
 - <https://www.justice.gov/opa/press-release/file/1580546/download>
 - There are potential liability concerns for counties when there are barriers to interpreter services.

32

What if You Don't Know What Language They Speak?

See Your "*I Speak...*"
*Language Identification
Guide* handout.



33

Procedures and More Information

- For more information about the requirements for having interpreters and the procedures and resources for appointing them, see TJCTC's "Interpreters & Spanish Language Terminology" self-paced module:
- <https://www.tjctc.org/onlinelearning/selfpacedmodules.html>.

34

Interpreters Discussion Question

- Have you ever had a difficult time finding an interpreter?
- What was the reason?
- What did you do?

35

This is a sample text.
Insert your desired
text here.

This is a sample text.
Insert your desired
text here.

Legal Information vs Legal Advice

36

<ul style="list-style-type: none"> • Court rules • Procedures • Administrative practices • How the court generally functions • Public information • Information that is legal fact 	<ul style="list-style-type: none"> • Refer people to law libraries, state statutes, rules, or forms • Explain the meaning of terms used in the court process • Answer questions concerning due dates and deadlines (without calculating specific dates)
<h2>Legal Information</h2>	

37

<ul style="list-style-type: none"> • Recommend or suggest a certain action • Apply the law to an individual factual circumstance • Interpret an aspect of the law • Give opinion of the merits of the case 	<p>This is a sample text. Insert your desired text here.</p>
<h2>Legal Advice</h2>	

38

A JP (and their staff) **shall** assist ex parte with:

This is a sample text.
Insert your desired
text here.

- Determining where jurisdiction of an impending claim or dispute may lie.
- Determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum.

Canon 6C(2): ex parte communication

39

- See OCA's Legal Information vs. Legal Advice publication:
- <https://www.txcourts.gov/media/1220087/legalinformationvslegaladviceguidelines.pdf>

More on Legal Info vs Advice

40

- SRL info packets and forms (English and Spanish)
 - <https://www.tjctc.org/srl.html>
 - Make available at any point in the process where applicable.
- Legal Aid
 - Provide info for how to contact (on SRL page above).
 - Some courts have a legal aid table in the building/outside the courtroom.
- Other community resources/services you can provide?

Providing Resources

41

<p>Examples of Legal Information/ Resources</p>	
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42

- How do you handle it if a person doesn't know what to do and is just getting frustrated and upset that you can't give them legal advice?
- What can you say to them? How can you help them?

Legal Information vs. Advice Discussion Question

43

What Would
Your Court
Accept?

44

DEFENDANT'S MOTION FOR CONTINUANCE

NOW COMES Defendant, Jim Smith, in the above-entitled and number cause, and files this Motion for Continuance from its present setting of January 15, 2019 at 9am pursuant to TRCP 503.3(b) and shows the Court the following:

1. This case is presently set for a jury trial on January 15, 2019.
2. Defendant will be engaged in another appointment where his attendance is required and would not be available on January 15, 2019.
3. This motion is not made for the purposes of delay but in order that justice be done.

Defendant, Jim Smith, prays that the Court grant the Motion for Continuance and reset the trial in February of 2019.



Jim Smith, pro se

45

JS-CV-129123

I can't make my trial date
because I'm out of the state that
day.

Jim Smith

46

To: JusticeCourt5@county.gov

From: JimSmith@emailaddress.com

Subject: Jim Smith versus Bob Smith

I am sending this email because I am asking for my court date to be rescheduled. I have a doctor's appointment at that time and can't cancel my appointment.

Jim

47

What If...

The request for a continuance was submitted in Spanish? Another language? Does this impact what the court should do?

48

**Bob is in the
courtroom**

49

**How does the
court let Bob
know what he
needs to do?**

- How do you let him know where to go or where to sit?
- How does he know when he should talk?
- Does he know how long he'll have to wait?

50

Bob is in Trial

51

How does the court communicate during trial?

- How does the clerk support the judge and the parties?
- What if a party needs to use the bathroom during the trial?
- What if someone else who is waiting has a question while the trial is going on? How do they get help?

52

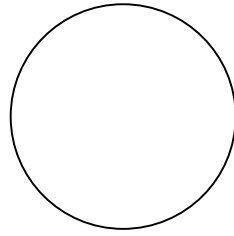
Bob finds out what happened in his case

53

How does the court wrap things up?

- How and when does he get the judgment and any other documents he needs?
- Is everything in writing that needs to be and copies given to everyone who needs them?
- Does he know about the right to appeal? Have the procedures been explained in plain language?

54



Scenarios

55

Scenario #1

A defendant appears at the window with a speeding charge. You need to give them their options.

What is a wrong way to do it?

What is a right way to do it?

56

Scenario #2

A defendant comes to the window and is surprised that they now have a conviction on their record. You check and see that they did enter a plea of no contest before the conviction was entered. They say they didn't know that would result in a conviction.

What is a wrong way to get someone's plea?
What is a right way to do it?

57

Scenario #3

The judge received an email from SRL – how do you respond?

What is a wrong way to do it?
What is a right way to do it?

58

Scenario #4

You need to get a defendant to fill out their personal information (including email and phone number) and they are resistant. How do you explain why they need to provide the information?

What is a wrong way to do it?

What is a right way to do it?

59

Scenario #5

A plaintiff has a judgment on a case. They call the court and state that they have not been paid yet. They want to know what they need to do now. How do you respond?

What is a wrong way to do it?

What is a right way to do it?

60

Thank you!