

Representing Yourself in Court: A Brief Guide from a Judge's Perspective



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REPRESENTING YOURSELF IN COURT: A BRIEF GUIDE FROM A JUDGE'S PERSPECTIVE

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This Guide is one in a series developed by the AFCC Access to Family Court Services Task Force. For additional information and resources, go to the Center for Excellence in Family Court Practice in the online AFCC Resource Center at www.afccnet.org

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INTRODUCTION

Representing yourself in family court is challenging. There are many laws and procedures that you need to know. Deadlines for filing documents can be strict. If you file documents late, or not at all, the judicial officer who decides your case may not be able to consider your side of the case. On top of all that, family court cases can be emotional. When you represent yourself, there is no attorney to help you sort out facts from emotions, understand what is happening with the case, and plan a case strategy with you. Although it is almost always better to be represented by an attorney, it is not always possible. This guide provides a brief overview, from a judicial officer's perspective, of what you need to know if you are going to represent yourself in court.

REASONS FOR BEING SELF-REPRESENTED

People represent themselves in court for different reasons. Most often, it is because they cannot afford an attorney. Sometimes they don't have time to get an attorney because they have a hearing coming up very quickly. And in some cases, people think they are able to represent themselves best.

It is generally a good idea to have an attorney in family law cases, if it is financially possible. The break-up of a relationship, payment of child support, and parenting of children are legally complicated and emotional issues. Most people are best served by having someone with special training in family law, and without emotional ties to the outcome, handle their case and serve as a buffer between them and the other side, and between them and the judicial officer.

ALTERNATIVES TO BEING SELF-REPRESENTED

Oftentimes, people believe legal representation is like a light switch: it's either on or off. That is not always the case. When someone is represented for the whole case, it is called *full representation*. That means the attorney handles everything, including writing the documents that go to the court, communicating with the other side (and their attorney if they have one), figuring out and gathering the information and documents needed to settle the case or go to trial, and questioning witnesses and arguing to the judicial officer in court.

If you cannot afford full representation, there is a less expensive form of partial representation known as *unbundled legal services*. This allows you to select from a menu of legal services and customize your representation. For example, by making a written agreement with an attorney who is willing to provide unbundled legal services, you can choose to have an attorney represent you in court, but draft all the papers yourself. Or you may choose to hire an attorney to draft all the papers to submit to the court. Then, once in court, you would do all the questioning of witnesses and make argument to the judicial officer yourself. Another form of unbundled services allows the attorney to handle all aspects of one part of the case (for example, the financial part) while you handle all the other parts of the case. Unbundled legal services are designed as a more affordable option that provides some representation, including legal advice and the experience of a family law attorney, without being an "all or nothing" proposition.

RESOURCES FOR SELF-REPRESENTED PARTIES

If you expect to be representing yourself, for all or part of your case, it is important to understand the law and the court procedures. Many courts have places where you can find important information, such as what documents to file, when they must be filed, how many copies you need, and where they must be sent. Start by checking with the clerk's office at your courthouse. The office where you would go to file your papers might also be able to direct you to places that have helpful information. This may include a self-help center, a self-help kiosk, a family court facilitator program, or another court facility or program designed to assist people who are representing themselves.

Some places have volunteer attorney programs, and you might be able to get advice about what things you can ask for in court (such as child support or parenting time), what facts you should or should not present to the judicial officer (for example, you should include only facts that relate to the specific issue the judicial officer must decide), and what settlement offers to make or accept. Generally, the only people who can give legal advice are attorneys. Anyone who offers you legal advice but is not licensed to practice law in your area may be committing a crime. This is true whether they give you legal advice in person, in writing, or on the internet, so be careful!

If your court does not have a place to get help, you can look for resources on the court's own website or the website for your state's or province's courts. There is likely to be a lot of information on the websites about what the expectations are in your courthouse; the websites may also provide links to places where you can get further information about the law.

ROLES

It is important that you know and understand the roles of the people you may meet during the court process, so you have realistic expectations of what they can and cannot do to help you.

Your lawyer: If you are reading this guide you are not likely to be fully represented; however, you may be using unbundled legal services or have a volunteer lawyer. If that is the case, your lawyer can give you legal advice, draft documents for you, argue in court, and negotiate a settlement for you.

Opposing counsel: This lawyer represents the other party in your case. This lawyer's duty of loyalty is to the other party, not to you or even your children. The other party's lawyer cannot lie to you about the law or court procedure. In fact, opposing counsel may be helpful to you and direct you to information or resources, but he or she is not obligated to help you with your case. Most importantly, opposing counsel *cannot* give you legal advice.

Children's Advocate: This person may be appointed to represent your children's best interests if you and the other party are not in agreement about a parenting schedule or how decisions will be made for your children. The children's advocate may or may not be an attorney and their specific role is different in different places. Make sure you learn about the children's advocate role under your local rules and statutes, or ask the judicial officer to explain it to you.

Judicial officer: The judicial officer may be a judge, court commissioner, magistrate, referee, or another bench officer. The judicial officer is the decision-maker. He is generally there to hear both sides of the case and make decisions if you and the other party are not able to resolve your dispute by coming to your own agreement. The judicial officer cannot give you legal advice. He must follow the law and the court procedures. This is important because everyone needs to be able to count on the judicial officer to apply the rules fairly and equally.

Clerk (or judicial assistant): This is the person in the courtroom who may be helping you when court is not in session. The clerk helps the judicial officer keep track of the cases, takes notes about what the judicial officer orders during the hearing, and helps make the courtroom work flow smoothly.

Bailiff: The bailiff makes sure everyone in the courtroom remains civilized and the courtroom environment stays safe and quiet. The bailiff may also be the person with whom you check in so the judicial officer knows you are there for your case.

Court reporter: This is the person who records everything that anyone in the courtroom says during the hearing. The court reporter's records are the official records of what happened in court. If there is a disagreement about something that was said at a court proceeding, the court reporter can turn those notes into a written version (transcript or record) so you can read exactly what happened in court during the hearing. Not all courtrooms will have a court reporter; if you know you want to have a record of what happens in court on a certain day, you may need to hire your own court reporter. Talk to the court clerk about what you need to do.

BEFORE YOU BEGIN

Know the Law

You will be very disappointed if you ask the judicial officer for an order that she is not allowed to make. For example, a judicial officer in a divorce court cannot terminate a parent's rights. Therefore, it is very important to know what the law says a judicial officer can and cannot do so you can ask for things that are possible.

Statutes: All places have family law statutes. These are the laws that were passed by the legislature about family law. In some places these are referred to as *codes*. These codes are a good place to start in understanding what the rules are about child custody and visitation, child support, spousal support (alimony), and the division of marital property. In many countries, family law codes are national so the rules are the same no matter what part of the country you are in. In the United States, family law codes are decided state by state. One state's rules may be very different from the rules of another.

Appellate Cases: In most places, appellate cases are also part of the law that must be followed. In appellate cases, a trial court has made a decision and one of the parties has asked a higher court, a Court of Appeal, to review it. The Court of Appeal does not hear the evidence again. Instead, that court reads the record of the case and decides whether there was an error in applying the law or if the judicial officer made a decision without enough supporting evidence. If the Court of

Appeal believes the judicial officer made a correct ruling, the decision is *affirmed*. If the Court of Appeal believes there were enough errors, the case is *remanded*, meaning sent back to the trial court, or *reversed*, meaning the trial court's ruling is changed. If the Court of Appeal chooses to publish its decision, that decision becomes the law and must be followed by future trial courts in the same area. You should be familiar with the important appellate cases affecting the issues in your case.

Know the Procedures

Sometimes it is just as important to know the procedures as it is to know the law. *Procedures* are the rules the court follows, like what time court begins each day and how the other side must be notified of a court date. If you showed up for your trial the day after it was scheduled, it would be too late! The same rule applies to the papers you give to the other side and file with the court. A paper filed too late, or missing important information, might lead to a bad result, such as the court denying your request or making you refile it.

Statutes: Just as there are statutes that let you know the rules about what judicial officers must consider for child support or visitation, there are also statutes that tell you what documents must be filed, what must be in those documents, and when they are due. You should be familiar with those so you do not miss an important deadline or fail to include important information.

Rules of Court: Many places also have rules of court to follow. These rules often contain the details for the more general rules you find in the statutes. They may include things like page limits, requirements to negotiate before the hearing, and other important things that could affect your case.

Local Rules: Some places have local rules in addition to all of the above. Local rules may include a wide variety of issues, such as the correct address and room number to file your papers, the location for each courtroom, and the courthouse hours of operation. They may also include information about child care at the courthouse, scheduling a mediation before a hearing, and court holidays. You can usually find the local rules for your court online, or ask for them at the clerk's office.

Take a Field Trip

Do not know how a family courtroom works? Go down to court for a day and watch the proceedings. Unless the public is not permitted to observe proceedings in your jurisdiction, watching what happens in the courtroom is probably the best way to understand how you should behave in a courtroom. If you can observe the judicial officer who will be hearing your case, you can see what seems to work and not work with your judicial officer.

YOUR PAPERWORK

You might go to court for many things. You or the other party might be seeking temporary orders before trial to get a temporary parenting schedule or child support. You might go to court to have a final trial. Or you might go to court to change something from an existing order. In

each of these cases, some form of paperwork is generally required to let the court know what you are asking for and why you are asking for it. Very few things are done in court without you and the other party filing papers in advance. Expect to do so.

If forms are required, use them. Many jurisdictions require you to use certain forms when you file a request with the court or respond to one. If your jurisdiction requires them, use them. If you do not use the proper forms, it is possible the judicial officer will not hear your side of the story. Most requests for orders, or responses to requests by the other side, require you to file a written version of your testimony. This is your opportunity to tell your side of the case in writing. This is often known as a *declaration* or *affidavit*. This is more than just writing a letter because, while it is your story, certain rules must be followed. In all cases, a declaration or affidavit must contain only those things the *declarant* (the person telling the story) knows from his or her own personal knowledge, *not* something he was told by someone else. The declaration or affidavit must also be signed and sworn to be true.

When writing your own declaration, you should know why you are writing it and what facts are important for the judicial officer to know. For example, it may seem very important to you that the other party brought the children back late, and you might want to let the judicial officer know this, but that fact would only be important if the hearing was about decision-making and parenting time for the children. It would not be very important for a hearing about financial issues. Adding facts that are not relevant to the issues before the court is likely to annoy the judicial officer, who is looking to hear each side's facts to make the best decision possible. You do not want to make the judicial officer's job harder by making her search for facts that matter in between facts that don't matter. Some jurisdictions have limits on the number of pages you can submit. You don't want to waste those pages on things that will not matter to the judicial officer.

It is also important that your declaration contain facts, not conclusions. Facts are evidence and evidence is all a judicial officer may consider when making a decision. Conclusions are not the same as facts. For example, telling the judicial officer, "The other party abused me," is a conclusion you drew from facts that you know and the judicial officer does not. Say instead, "The other party struck me against my left cheek with a balled fist. The blow knocked me down." These are facts from which a judicial officer could very well reach a conclusion that you were abused. Let the judicial officer draw his own conclusions by providing sufficient facts.

To make it easier for a judicial officer to understand your story, you should organize your declaration in a logical way. Declarations and affidavits that jump from one topic to another, or from one event to another, make it hard for the judicial officer to understand what has happened. Often your organization will be *chronological*, the order in which events happened. Describing earlier events first might help the judicial officer make sense of events that happened later. Sometimes it makes sense to organize events in a different way. For example, if you are going to talk about the custody of children, child support and spousal support or alimony, you might want to address facts about the children first, start to finish, then address incomes and expenses of the parties, and then facts about child support followed by facts about spousal support.

No matter how you organize your thoughts, it is important you think the whole thing through before you even start writing. You might want to make an outline of your thoughts first, filling in

facts as you go, or create a list of “bullet points” to make sure you don’t forget important events as you write.

Depending on your jurisdiction, you might need to include declarations of third parties. A *third party* is any person who is not you or the other parent. Sometimes third parties were present for events when you were not and you want the judicial officer to know about those events. The rules for all declarations are the same. They must be from the declarant’s own personal knowledge and they must be factual.

BEFORE YOUR HEARING

Talking to the other parent or her attorney may be uncomfortable, but it is important you and the other side have met and discussed the issues in your case. This means you discuss the issues you have asked the court to consider, and try to resolve them without a court hearing. This requires that you express your wishes and the reasons for them with the other side and listen to the other side’s wishes and their reasons for them. Even if you do not completely resolve your disputes this way, such a meeting might resolve parts of your case, making it easier to focus the judicial officer on the remaining issues. It is also a good way to learn about the other side’s position and needs. There may be some ways that you and the other side can reach an acceptable outcome if you understand what they really need. For example, the other parent may say they want alternating weeks with your children, but their real concern might be about making sure they have good quality parenting time. Or they may be asking for a specific amount of money when affording the monthly rent is the real issue. These discoveries can occur when you have direct discussions before going in front of a judicial officer.

Nobody wants to feel like they are wasting their time. Judicial officers have no problem deciding important issues when they know you have done all you can to resolve as much as you can. A judicial officer can get frustrated if he is just serving as a referee because you and the other party were not able to sit down and talk like rational adults.

Is something else required? Often there are steps you must take before a judicial officer will let you have your hearing. Where parenting time or decision making for children is involved, many jurisdictions require you to schedule and keep a mediation appointment first. Has that happened? If you expect to call witnesses to testify, were you required to provide a witness list or notice that you were going to be taking testimony? Were there any deadlines to do that?

If you are calling witnesses other than the two parents, you should think carefully about who to call. You will not have unlimited time to call all the witnesses you want, so plan carefully. Are there witnesses who are the only ones who saw something important for the judicial officer to know about? If several people were present to witness an event, who are the best ones for you to call? Who will explain most clearly, or had the best view? This requires planning and coordination.

IN THE COURTROOM

Dress appropriately: It may seem like something that goes without saying but dress appropriately. Some courts have a dress code written in their Court Rules. Even without a rule, you will want to dress neatly, cleanly, and modestly: as if you are the visiting member of somebody else's church. There are several reasons for this. First, you want to show the judicial officer you take your case seriously. Second, you want to show your respect for the courtroom and the judicial officer. Finally, you want the judicial officer to hear the information you present, not be distracted by your appearance.

Be organized and prepared: Your papers should be neat and organized. This sends the message to the judicial officer that you know what you are doing. You should be able to get to important information by having it organized so it is easy for you to find. It is also a good idea to have extra copies of important documents, just in case some of your papers didn't get to the judicial officer in time.

Know what you are asking the court to do: If you are asking the court to make an order, be clear and specific about what you are asking the court do. You might want to have the exact language you are looking for ready. Even a draft of a proposed order is fine. You might not get everything you have requested, but that should not be because the judicial officer did not understand what you wanted. For example, it is not helpful to the court when somebody asks for "50/50 custody." That could mean each of you never sees the children for six months at a time! If what you want is alternate weeks, or you want one parent to have Mondays and Tuesdays, the other to have Wednesday and Thursdays and you alternate Friday through Monday morning, be specific in your request.

Take notes: When the judicial officer is talking, it is usually important. If she is asking questions about something, that is a topic you want to make sure you answer clearly and completely. If the judicial officer is making orders, you want to make sure you write them down and understand exactly what they mean. While there may be other sources to go back to (we have talked about the court reporter's transcript), you will do much better clarifying anything that is unclear before you leave the courtroom. The judicial officer will never remember the case better than right at that moment.

Know the rules of evidence: The one time you can interrupt in a courtroom is to voice a legal objection. Legal objections are very specific and require the word, "object" or "objection," followed by a one or two-word phrase *only*. You should know what the objections are and recognize them when you hear them so you can object and answer objections correctly. Once you have objected, wait for the judicial officer to make a ruling on the objection or, if the judicial officer is not clear on the reason you have objected, be prepared to explain. When the other side objects, prepare to answer the objection if the judicial officer allows you to do so. Objections may include:

Hearsay: This is when the witness is saying what someone else said.

Relevance: This is when the testimony is not related to the issues in the trial.

Foundation: This is when the testimony is leaving out where and when something happened, or how the witness knows what happened.

There are also a few other, less common objections. The hearsay objection can be tricky because there are so many exceptions to the rule. For example, an out-of-court statement made by you or the other parent, or a statement made by someone who was extremely excited, may be permitted. While some judicial officers are a little more flexible about the rules with self-represented parties, you should not expect any special favors just because you do not have a lawyer. The judicial officer has the obligation to apply the same rules to both sides of the case.

Ask permission: When you want to speak, unless you have just been invited to do so, it is appropriate to ask the judicial officer, "May I speak now, Your Honor?" If you want to provide a document, ask whether you may hand it to the clerk or to the witness. Politeness is always appreciated. It also helps you know whether it's your turn to speak or not.

Speak only to the judicial officer or the witness: Unless you are asking questions of a witness, you should only speak to the judicial officer and never to the other party or counsel. Any talking you need to do with the other side should be done outside the presence of the judicial officer. You should also never speak over or interrupt anyone (except when making legal objections, as noted above). Interruptions make the judicial officer's job harder.

Be respectful: Be respectful not just of the judicial officer, but of everybody in the courtroom -- the bailiff, the clerk, the court reporter, the opposing party, and their attorney. You never know who is watching and you want the judicial officer to see you are a respectful person in general, not just when you're in front of the judicial officer.

Be thankful: Whether you get the outcome you want or not, thanking the court and staff is never a bad idea. You are not thanking them for the outcome, you are thanking them for taking the time to hear you out and consider your requests. This is an element of politeness that both sets the tone for the courtroom and may stay in the mind of the judicial officer if you ever return.