COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT
APPEALS COURT
2025-P-0235

Bruce Friedman,
Defendant/Appellant,

v.

The City of Malden,
Plaintiff/Appellee.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT
(Lower Ct. Docket No. Middlesex 2481CV02456)

BRIEF OF THE DEFENDANT/APPELLANT

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DATE March 19,2025

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STATEMENT OF THE ISSUES PRESENTED

1. Did the trial court err by denying the Defendant/Appellant's Special Motion to Dismiss Plaintiff/Appellee's complaint in its entirety under M.G.L. c. 231 § 59h where the court denied without prejudice the Defendant/Appellee's motion without a hearing and specifically citing Defendant/Appellee's failure to comply with Superior Court Rule 9A?

2. Did the trial court err by denying the Defendant/Appellant's Special Motion to Dismiss Plaintiff/Appellee's complaint in its entirety under M.G.L. c. 231 § 59h where the Defendant/Appellee expressly asked the court to take judicial notice of his status as a Pro-Se litigant, and all relevant case law and guidance regarding his fundamental rights to be heard, his entitlement to present his case in court despite his limited legal knowledge, and his right to a fair hearing process that accommodates his self-representation under the principle of due process under the law. Where the Defendant/Appellee

expressly asked the court to make reasonable accommodations to help him to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law and to construe his pleadings liberally despite the most recent guidance proffered in the 2025 edition of the Supreme Judicial Court Judicial Guidelines for Civil Cases with Self-Represented Litigants?

STATEMENT OF THE CASE

This is an appeal of the Middlesex Superior Court's decision denying the Defendant/Appellant's Special Motion to Dismiss under M.G.L. c. 231 § 59h for failure to comply with Superior Court Rule 9A.

STATEMENT OF FACTS

The Plaintiff/Appellee's Complaint was filed on September 13, 2024, Appendix at ARA-006 ("ARA-006"). The Defendant/Appellant was never served ("ARA-004-005").

On the very Date that the Defendant/Appellant learned about the lawsuit, he filed an Appearance and Request to Extend/Postpone his Answer Date ("ARA-079-080").

In this appearance and request he notified the Court that his appearance was as a Pro-Se Defendant, and specifically requested that the court to take judicial notice of his status as a Pro-Se litigant, and all relevant case law and guidance regarding his fundamental right to be heard, his entitlement to present his case in court despite his limited legal knowledge, and his right to a fair hearing process that accommodates his self-representation; under the principle of due process under the law. He specifically asked the Court to make reasonable accommodations to help him to understand the proceedings and applicable procedural requirements and to construe his pleadings liberally.

On December 9, 2024, the Court denied his request ("ARA-081") for failing to comply with Superior Court Rule 9A. Defendant/Appellant Friedman Answered the complaint and served his Counterclaims the next day ("ARA-082-107").

On January 24, 2025, Defendant/Appellant Friedman filed his Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59h ("ARA-110-114"). Again, in this Special Motion, Defendant/Appellee Friedman asked the Court to take judicial notice of his Pro-Se status, his right to be heard, his right to a hearing, and for the Court to assist him as it is able and for his pleadings to be construed liberally. Along with the Special Motion, Defendant/Appellant Friedman filed an Affidavit ("ARA-115-134").

On January 29, 2025, the Honorable William F. Bloomer denied Defendant/Appellant Friedman's Special Motion to Dismiss under M.G.L. c. 231 § 59h in a handwritten ruling stating "***01.29.2025 Denied without prejudice for failure to comply with Superior Court Rule 9A.***" ("ARA-135").

On the date of this denial, Plaintiff/Appellee had failed to secure service of Co-Defendants, Manza Arthur and William Galvin, their service was secured and recorded with the Court on February 10, 2025 ("ARA-140-142").

As of the date of this brief, Plaintiff/Appellee has failed to secure and record service of the Massachusetts Attorney General as required under Mass. R. Civ. P. 4(d)(3). On February 18, 2025, Defendant/Appellant Friedman filed notice with the trial court of this failure ("ARA-145-163").

PROCEDURAL HISTORY

The Plaintiff/Appellees' original complaint filed September 13, 2024, asserted three causes of action, one under M.G.L. c. 30A, § 14, one under M.G.L. c. 249, § 4 and one under G.L. c. 231A.

The Plaintiff/Appellee never served the Defendant/Appellant.

The Defendant/Appellant filed an appearance and a request to extend the dates to respond because of imminent major orthopedic surgery on December 6, 2024, the very day he learned of the suit.

On December 9, 2024, the Court denied Defendant/Appellant's request to extend dates for failure to comply with Superior Court Rule 9A.

On December 10, 2024, the Defendant/Appellant filed his answers and counterclaims, he asserted two causes of action, one under M. G.L c. 66 §§ 10 and lOA, and one under G.L. c. 231A.

On December 30, 2024, Plaintiff/Appellee filed an ex-parte motion for a special process server to serve co-defendants Manza Arthur and William Galvin.

On December 31, 2024, the court approved Plaintiff/Appellee's ex-parte motion to use a special process server.

On January 24, 2025, Defendant/Appellant filed his Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § and his affidavit in support of said motion.

On January 29, 2025, the court denied Defendant/Appellant's Special Motion to Dismiss the

Plaintiff's Complaint in its entirety under M.G.L.c. 231 § 59h for failure to comply with Superior Court Rule 9A.

On January 29, 2025, the Defendant/Appellant filed his Notice of Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59h.

On February 4, 2025, the Defendant Appellant timely filed his Notice of Appeal.

On February 10, 2025, service was obtained on the co-defendants Manza Arthur and William Galvin, the AGO was not served as required under Mass. R. Civ. P. 4(d)(3).

On February 18, 2025, Defendant/Appellant filed his Notice of Incomplete service indicating that service was still not obtained on the AGO as required under Mass. R. Civ. P. 4(d)(3).

ARGUMENT

I. IN DENYING DEFENDANT/APPELLANT'S SPECIAL MOTION TO DISMISS UNDER M.G.L. C. 231 § 59H FOR FAILURE TO COMPLY WITH SUPERIOR COURT RULE 9A, THE TRIAL COURT ERRED IN THE APPLICATION OF SUPERIOR COURT RULE 9A TO M.G.L. C. 231 § 59H.

This Court reviews the denial of a motion to dismiss de novo. M.G.L. c. 231 § 59h does not require compliance with Superior Court Rule 9A. Superior Court Rule 9A does not discuss M.G.L. c. 231 § 59h nor does it contemplate Special Motions to Dismiss. Superior Court Rule 9A(d)(1) does reference Ex Parte, Emergency, and ***Other*** Motions (emphasis added), as exempt from 9A, however special motions to dismiss and M.G.L. c. 231 § 59h are not specifically addressed.

Superior Court Rule addresses Motions to dismiss pursuant to Mass. R. Civ. P. 12, and reasons that such motions are subject to Rule 9A because such motions often are the initial filing in response to a complaint, counterclaim or cross-claim, and in

order to avoid the entry of a default for failure to respond in a timely fashion.

A special motion for dismissal under M.G.L. c. 231 § 59h is clearly different in application, constraint and legislative intent. Despite the fact that a Special Motion to Dismiss under M.G.L. c. 231 § 59h could also be an initial filing in response to a complaint, counterclaim or crossclaim, that is where the application in common ends.

A Special Motion to Dismiss under M.G.L. c. 231 § 59h is tolled against service of the complaint to sixty (60) days. No such toll exists for 12(b) motions. A 12(b) motion is treated

There is no codified law or case law which indicates that a special motion for dismissal under M.G.L. c. 231 § 59h is subject to Superior Court Rule 9A. For this reason alone, the Court should reverse the lower court's decision.

The legislative intent and subsequent case law interpretations of M.G.L. c. 231 § 59h are to swiftly

and decisively dismiss litigation brought by a party who intends to use litigation as a tool to prevent public participation of protected petitioning activities. Superior Court Rule 9A is designed to create a dialogue, conference, and reduce areas of conflict. This requirement exacerbates, inflames and enhances the efficacy of a litigant who asserts civil claims, counterclaims, or cross claims based on a party's exercise of its right of petition under the constitution of the United States or of the commonwealth. To force a party exercising their rights to file a special motion under M.G.L. c. 231 § 59h is incongruent with the expedited, tolled and exacting process required in the processes utilized by the trial court.

II. PLAINTIFF/APPELLEE THREATENS THE VERY VIABILITY OF THE DEFENDANT/APPEALLENTS ABILITY TO TIMELY FILE HIS SPECIAL MOTION IN THEIR MISMANAGEMENT OF THE CASE AND DOCKET. FORCING DEFENDANT/APPEALLANT TO USE THE 9A PROCESS JEOPARDIZES HIS SPECIAL MOTION TIMEFRAME.

The Plaintiff/Appellee has mismanaged this case from the onset. The case was filed on The Complaint on September 13, 2024. Defendant/Appellant Friedman learned of this case on December 6, 2024. Per M.G.L. c. 231 § 59h he has until February 4, 2025, to timely file his special motion.

Service of co-defendant was not completed prior to February 4, 2025. On February 18, 2025, Defendant/Appellant filed a notice that the Plaintiff/Appellee had still failed to secure service. On March 5, 2025, the co-defendants counsel filed an appearance, however Plaintiff/Appellee has still failed to file proof of service of co-defendants.

To force Defendant/Appellant to comply with 9A, the court imposed a requirement that at a minimum delayed his ability to quickly and timely file his special motion and as transpired in this case impaled his ability to timely file his motion.

It is patently unfair to saddle filers of G.L. c. 231 § 59h special motions with 9A requirements where adverse parties have the ability to delay and

ultimately derail the strict timeline requirements of the statute.

III. REQUIREING DEFENDANT/APPELLANT TO COORDINATE AND COLABORATE WITH ADVERSE PARTIES WHO ARE USING STRATEGIC LITIGATION TO PUNISH OR INTIMIDATE HIM IS INCONSISTANT WITH EQUITY, FAIRNESS AND THE PURPOSE OF ANTI-SLAPP LAWS.

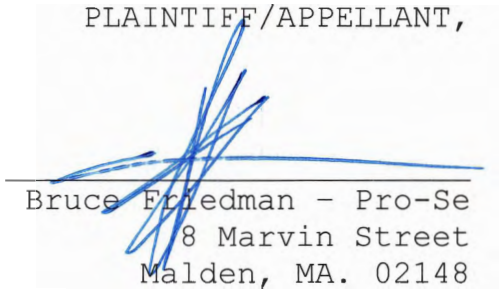
Forcing a defendant who is subject to strategic litigation used to punish or intimidate them to collaborate, coordinate and work with the very plaintiffs who intend to punish or intimidate them flies in the face of the legislative intent, practical implementation of and the integrity of process of M. G.L. c. 231 § 59h. To have to attempt good-faith communications, calendaring and scope narrowing conversations with one's tormentor is not practical nor is it reasonable to ask. There are no issues to be narrowed and no reduction of controversy where one seeks relief under a special motion filed under M.G.L. c. 231 § 59h, and as such no value, judicial economy or other value to be gained by forcing 9A on a filer of this special motion.

or other value to be gained by forcing 9A on a filer of this special motion.

CONCLUSION

For all the reasons set forth herein, the Court should reverse the Superior Court's decision, publish binding case law omitting M. G.L. c. 231 § 59h from 9A compliance and remand this matter for an immediate hearing to hear Defendant/Appellant's M. G.L. c. 231 § 59h special motion without requiring him to follow Massachusetts Superior Court Rule 9A.

PLAINTIFF/APPELLANT,



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CERTIFICATE OF COMPLIANCE WITH R.16(k)

I, Bruce Friedman, hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). I used Microsoft Word, Courier New 12-point font, and by using the word-count function ascertained that the brief contains 2,148 words, which number complies with the length limit of Rule 20.

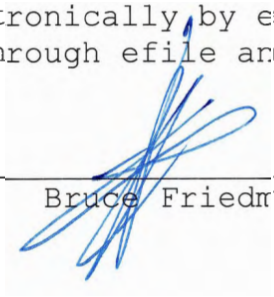
Dated March 19, 2025

Bruce Friedman - Pro-SE

CERTIFICATE OF SERVICE

I, Bruce Friedman, hereby certify that this day I served a copy of this brief and record appendix upon the counsel for the City of Malden, Ms. Alicia McNeil; amcneil@cityofmalden.org and to counsel for Co-Defendants Supervisor of Records and Secretary of the Commonwealth, Ms. Julie Frohlich at Julie.Frohlich@mass.gov electronically by email and sent by the undersigned and through efile and serve.

Dated March 19, 2025



Bruce Friedman - Pro-SE

ADDENDUM

Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

Title II ACTIONS AND PROCEEDINGS THEREIN

Chapter 231 PLEADING AND PRACTICE

Section 59H STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION; SPECIAL MOTION TO DISMISS

Section 59H. In any case, except a case brought pursuant to section 11I1/2 of chapter 12, in which a party asserts that the civil claims, counterclaims, or cross claims against said party are based on said party's exercise of its right of petition under the constitution of the United States or of the commonwealth, said party may bring a special motion to dismiss. The court shall advance any such special motion so that it may be heard and determined as expeditiously as possible. The court shall grant such special motion, unless the party against whom such special motion is made shows that: (1) the moving party's exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and (2) the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

The attorney general, on his behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed, may intervene to defend or otherwise support the moving party on such special motion.

All discovery proceedings shall be stayed upon the filing of the special motion under this section; provided, however, that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery shall remain in effect until notice of entry of the order ruling on the special motion.

Said special motion to dismiss may be filed within sixty days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper.

If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. Nothing in this

section shall affect or preclude the right of the moving party to any remedy otherwise authorized by law.

As used in this section, the words "a party's exercise of its right of petition" shall mean any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

In criminal cases the court need not hear any motion, or opposition thereto, grounded on facts, unless the facts are verified by affidavit. No motion to suppress evidence, other than evidence seized during a warrantless search, and no motion to dismiss may be filed unless accompanied by a memorandum of law, except when otherwise ordered by the court.

Amended May 6, 1978, effective June 5, 1978; amended June 26, 1980, effective September 1, 1980; amended effective March 1, 1985; amended July 18, 1989, effective October 2, 1989; amended October 6, 2004, effective November 1, 2004.

Rule 9A. Civil Motions

(Applicable to civil actions)

(a) Motion Practice and Format of Papers.

(1) Motions. A moving party must serve with the motion, which shall contain a request for a hearing (if desired), (1) a separate memorandum stating the reasons, including supporting authorities, that the motion should be granted and (2) affidavits or other exhibits evidencing facts on which the motion is based. These papers are referred to below as the “Motion Papers.” The moving party shall initiate a conference with the other parties for all dispositive and discovery motions subject to Rule 9C. Motions for summary judgment must also comply with section (b)(5), below.

(2) Oppositions to Motions. A party opposing a motion may serve (1) a memorandum in opposition that includes a statement of reasons, with supporting authorities, that the motion should not be allowed, together with a request for a hearing (if desired) and (2) affidavits or other exhibits evidencing facts on which the opposition is based, as well as (3) any cross-motion (including but not limited to a motion to strike) and (4) memorandum and affidavits supporting the cross-motion. These papers are referred to below as the “Opposition.”

(3) Reply/Opposition to Motion to Strike. The moving party may file a reply memorandum limited to matters raised in the opposition that were not and could not reasonably have been anticipated and addressed in the moving party’s initial memorandum (“Reply”). The moving party may also file an opposition to any motion to strike or cross-motion. No other reply or surreply submission shall be filed without leave of court, which will be granted only in exceptional circumstances.

(4) Facts Verified by Affidavit. The court need not consider any motion, opposition, or reply based on facts unless the facts are verified by affidavit, are otherwise apparent in the record, or are agreed to in a writing signed by the interested parties or their counsel.

(5) Format and Length of all Papers Except Exhibits. All papers addressed by this Rule 9A, except exhibits, must conform to the following requirements:

(i) Paper size. Papers must be on 8 1/2" by 11" paper.

(ii) Typeface. Papers must be in 12-point, double-spaced type. The caption, footnotes, and indented quotations may be single-spaced in 12-point type.

(iii) Title. The title of each document must appear on the first page next to or below the caption.

(iv) Length. The memorandum supporting the motion or cross-motion and the memorandum in opposition may not exceed 20 pages, and the reply may not exceed 5 pages. Any appendix permitted by Superior Court Rule 9C(b) is not included in the page limit. Nor is an addendum that sets forth, verbatim and without argument, pertinent excerpts from key documents, statutes, regulations or the like.

(v) Email Addresses. Each attorney or self-represented party filing motion or opposition papers must include his or her email address on the papers, or certify in the filing that he or she does not have an email address.

(6) Leave of court. Advance leave of court is required to exceed the page limit or file a surreply. All requests for leave of court must: (1) be captioned as a pleading, (2) not exceed one page in length (not counting the caption and title), (3) state the grounds and specific relief sought (e.g., a specific proposed new page limit) and (4) include a certificate of service. The request must be sent directly to the session clerk, ATTN: Session Judge. The request must be served on all other parties, but the court need not await a response to such request before ruling. Any leave granted to the moving party for additional pages applies to the opposing party's memorandum as well, unless otherwise ordered. The title of any surreply and any memorandum exceeding 20 pages must note the date on which leave was allowed.

(7) No Automatic Extension of Time Pending Leave of Court. A request for leave of court under Paragraph (a)(6) does not extend the date for filing the Rule 9A Package (See Rule 9A(b)(2)) to which it relates, unless the court orders otherwise or all parties agree.

(8) Attorney Certifications. All dispositive and discovery motions shall include the certificate required by Superior Court Rule 9C.

(b) Procedure for Serving and Filing Motions.

(1) Service.

(i) General: All Motion Papers, Oppositions, and Replies must be served on all parties and filed with the clerk in accordance with the procedure set forth in this Paragraph (b). Compliance with this Paragraph shall constitute compliance with the "reasonable time" provisions of the first sentence of Mass. R. Civ. P. 5(d)(1).

(ii) When Service on Non-Parties is Required: Papers must be served on specifically named non-parties in compliance with this Rule if (a) the Motion

seeks to add the nonparty as a party to the case; (b) the Motion seeks an order or other relief against the nonparty; (c) the issues affect the personal information or other interests of the non-party. The non-party need not be served, however, if excused by a court order issued in advance for cause or if a statute or rule expressly authorizes ex parte relief.

(iii) Electronic Service: Motion and opposition papers may be served entirely electronically if the parties agree in writing to the method of service and the electronic format. The parties should note on their filings “served via email” so that scanned signatures are accepted by the court, except that all papers signed under penalties of perjury must bear original signatures when filed with the clerk. The agreement may be revoked only upon 10 days written notice to all parties. All 9A certifications must be filed in hard copy with original written signatures.

(2) The Rule 9A Package.

(i) The parties must cooperate in filing with the court a “Rule 9A Package.” The Rule 9A Package consists of the original Motion Papers, the Opposition, and the Reply, any other papers for which leave of court is granted under Paragraph (a)(6), and any appendices or other papers permitted or required by this Rule, statute, or order of the court.

(ii) Time for Filing or Withdrawal of the Motion. Within 10 days of service of the Opposition, the moving party must either (1) file the Rule 9A Package with the court or (2) notify all parties that the motion has been withdrawn and will not be filed. If the moving party does not receive an Opposition within 3 business days after expiration of the time permitted for service of an Opposition, then the moving party must file with the clerk the Motion Papers together with an affidavit reciting compliance with this Rule and receipt of no Opposition in a timely fashion, unless the moving party withdraws the motion and has so notified all parties.

(iii) Notice of filing. The moving party must give prompt notice of the filing of a Rule 9A Package by serving all parties with a copy of a notice of filing in a separate document that lists the title of each document included in the Rule 9A Package, and by filing the notice with the Rule 9A Package. No other list of documents need be included in the Rule 9A Package.

(iv) Exhibits. Exhibits, attached to a motion, memorandum or affidavit, or contained in a separate appendix, must be separated from one another by off-set tab dividers, or page markers if filed electronically, and the pages of the exhibits must be consecutively numbered. If more than one exhibit is included, a Table of Contents or Exhibit Index shall precede the exhibits.

(3) Time Periods in General. The time periods prescribed below apply unless a different time period is set by statute or order of the court. Where papers are served by

mail, these time periods are extended by 3 days in accordance with Mass. R. Civ. P. 6(d).

(4) Motions Except Motions for Summary Judgment.

(i) Time for service of Opposition All Oppositions must be served no later than 10 days after service of the Motion Papers.

(ii) Effect of cross-motion/motion to strike. The provisions of Paragraph (b)(4)(i) apply to cross-motions (including motions to strike) served with the Opposition to a motion. When a cross-motion is brought, the time for filing the Rule 9A Package for the original motion is extended to be coterminous with the date for filing the cross-motion. The Rule 9A Packages for the original motion and the cross-motion must be filed together by the original moving party.

(5) Motions for Summary Judgment.

(i) Statement of facts. A motion for summary judgment must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue to be tried, set forth in consecutively numbered paragraphs, with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents ("Statement of Facts"). Only such facts as are material to deciding the motion shall be included in the Statement of Facts.

The Statement of Facts as served shall not exceed 20 pages in length and shall not include:

a. Background facts not material to decision of the motion. Such facts may be included in a party's memorandum of law even though they are not in the statement.

b. Quotations from any contract, trust, agreement, or other transactional document, or any characterizations of the document (except if admissible through percipient witnesses). The Statement of Facts may only establish the existence and authenticity of the document and the date it became effective.

c. Quotations from any statute, regulation or rule.

Quotations from material described in paragraphs b and c may be included, without argument or commentary, in an addendum to the party's memorandum of law.

This Statement of Facts must be a separately captioned document. Failure to include the Statement of Facts constitutes grounds for denial of the motion. The Court may disregard a Statement of Facts in whole or part if it is unnecessarily long or otherwise materially out of compliance with this rule.

(ii) Service of motion papers. The moving party must serve a copy of its Motion Papers, and the Moving Party's Statement of Facts, on every other party. The Moving Party's Statement of Facts must also be sent contemporaneously in electronic form by email to all parties in Rich Text Format (RTF) or such other format as to which the parties agree. The email transmission of the Moving Party's Statement of Facts is excused if (1) the moving or any opposing party is self-represented, (2) the attorney for the moving party certifies in an affidavit that he or she does not have access to email, or (3) the attorney for the moving party certifies in an affidavit that an opposing party's attorney has no email address or has not disclosed his or her email address.

(iii) Opposition. Within 21 days after service of the Motion Papers, any party opposing the motion must serve on the moving party the original and one copy of the Opposition, and must serve on all other parties one copy of the Opposition.

(A) Response to Moving Party's Statement of Facts. The Opposition may include a response to the Moving Party's Statement of Facts. The opposing party must reprint the Moving Party's Statement of Facts and set forth a response directly below the appropriate numbered paragraph, including, if the response relies on opposing evidence, page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. The response to the numbered paragraphs shall be limited to stating whether a given fact is disputed and, if so, cite to the specific evidence, if any, in the Joint Appendix that demonstrates the dispute. It shall not:

a. Deny a fact unless the party has a good faith basis for contesting it.

b. Include a statement that a fact is not supported by the materials cited by the moving party, unless the responding party has a good faith basis for contesting it.

c. Include commentary on whether the fact asserted is relevant or material to any issue raised in the case, although a responding party may indicate, where appropriate, that the fact is admitted only for the purposes of the summary judgment motion.

d. Assert any additional facts. Additional facts may be included in the response only in the manner provided in section (b)(5)(iii)(B) below.

e. Make legal arguments or advocacy-oriented characterizations concerning the sufficiency, relevance or materiality of the moving party's factual proffers.

Where the obligation to send the Moving Party's Statement of Facts in electronic form has been excused, the response thereto may be in a separate document. For purposes of summary judgment, each fact set forth in the moving party's statement of facts is deemed to have been admitted unless properly controverted in the manner provided in this Paragraph (b)(5)(iii)(A).

(B) Statement of additional facts. Opposing parties who argue that additional facts warrant denying summary judgment shall include those facts in the opposition memorandum, each to be supported with page or paragraph references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents. They may not submit a separate statement of additional facts, except in support of a cross-motion for summary judgment.

(C) Service of response to statement of facts. The opposing party's response to the Moving Party's Statement of Facts must be served contemporaneously by email as described in (b)(5)(ii) above, unless such service is excused.

(D) Exhibits for Joint Appendix. Where the opposing party relies upon evidence not included in the exhibits served with the Motion Papers, the opposing party must serve the moving party with such evidence in the form of new exhibits for inclusion in the Joint Appendix, in accordance with Paragraph (b)(5)(v) below.

(E) Citation of evidence. The opposing party must cite to the Joint Appendix in accordance with Paragraph (b)(5)(v) below.

(iv) Filing of Rule 9A Package.

(A) Joint Appendix and Statement of Facts. The Rule 9A Package must also include the Joint Appendix and a Consolidated Statement of Facts, which must include the opposing party's responses to the Moving Party's Statement of Facts. Similarly, in cases with multiple parties, all parties moving or opposing summary judgment shall coordinate their statements and responses so that there shall be a single statement and response covering all motions. Unless the obligation to send the Moving Party's Statement of Facts or the response thereto in electronic form has been excused, only the Consolidated Statement of Facts (and not any intermediate versions thereof) may be filed so that the court has only a single document.

(B) Service of Statement of Facts and Joint Appendix. Upon filing the Rule 9A Package, the moving party must serve on the opposing parties the Notice of Filing described below and the following, in paper and electronic form, unless electronic form is excused: (1) the Consolidated Statement of Facts filed with the clerk; (2) the Joint Appendix, unless the parties otherwise agree

(C) Effect of cross-motion/motion to strike. The provisions of Paragraph (b)(5)(i)-(iv) apply to cross-motions for summary judgment and any other cross-motion (including a motion to strike) served with the Opposition to a motion for summary judgment. A separate Consolidated Statement of Facts must be served with any cross-motion for summary judgment. All parties moving for or opposing summary judgment shall coordinate their statements and responses so that there shall be a single consolidated document containing the respective statements of material facts and responses thereto. When a cross-motion (including motion to strike) is brought, the time for filing the Rule 9A Package for the original motion is extended to be coterminous with the date for filing the cross-motion. The Rule 9A Packages for the original motion and the cross-motion must be filed together by the original moving party.

(v) Joint Appendix.

(A) Contents, Format, Citation, and Service. All exhibits referred to in the memoranda supporting or opposing a motion or cross-motion for summary judgment, or in the Consolidated Statement of Facts, must be filed as a single joint appendix, which must include an index of the exhibits (“Joint Appendix”). The initial moving party, with the cooperation of each opposing party, is responsible for assembling the Joint Appendix and index. All pages of the Joint Appendix must be consecutively numbered by page, and each exhibit must be separated by an off-set tab divider, or page marker if filed electronically. The exhibits served by the moving party with its Motion Papers must include the consecutive numbering and offset tabs. Where an opposing party relies upon any evidence included in the moving party’s exhibits, the opposing party must cite to that evidence using the form of designation of the moving party. If the opposing party designates new exhibits in accordance with Paragraph (b)(5)(iii)(D), it must serve those new exhibits, together with an index of the new exhibits, on the moving party with the Opposition, and it must serve the index on the moving party in electronic form (unless electronic service is excused). Those new exhibits must begin with the next consecutive designation following the last designation by the initial moving party (consecutive page numbering and off-set tab dividers). The opposing party must serve the original and one copy of those new exhibits with its Opposition. If the summary judgment package is e-filed,

the moving party is responsible for delivering a courtesy copy of the Joint Appendix to the Session Clerk, if the clerk or hearing judge requests.

(B) Certification. The initial moving party must certify that the Joint Appendix includes all exhibits served with the Opposition, except for any exhibit(s) designated by the opposing party but not provided to the moving party. The burden is on the opposing party to move to file any designated exhibit not timely submitted. All memoranda of law filed in support of or in opposition to a motion for summary judgment shall reference the exhibit numbers as well as a paragraph in the statement of material facts.

(vi) Decision on Certain Motions Without A Hearing. The following types of summary judgment motions may, in the court's discretion, be denied on the papers without a hearing notwithstanding Rule 9A(c)(3) (but shall not be granted without a hearing unless the hearing is waived):

(1) Multiple summary judgment motions by a single party, or subsequent summary judgment motions by parties sharing similar interests and making the same arguments as those the court has already resolved.

(2) Motions for partial summary judgment that will save little or no trial time, will not simplify the trial and will not promote resolution of the case.

(3) Motions for summary judgment where a genuine dispute of material fact is obvious on the face of the papers.

(vii) Sanctions for noncompliance. The court need not consider any motion or opposition that fails to comply with the requirements of this Rule, may return noncompliant submissions to counsel with instructions for re-filing, and may impose other sanctions for flagrant violations of the Rule.

(c) Hearings on Motions.

(1) Marking. If the court believes that a hearing is necessary or helpful to a disposition of the motion, the court will set the time and date for the hearing and notify the parties.

(2) Request for Hearing. A request for a hearing must set forth any statute or rule of court which, in the judgment of the submitting party, requires a hearing on the motion, as well as any reason why the court should hold a hearing. After reviewing the motion, the court will decide whether a hearing should be held and, if a hearing is to be held, will notify the parties in accordance with Paragraph (c)(1). Failure to request a hearing shall be deemed a waiver of any right to a hearing afforded by statute or court rule.

(3) Presumptive Right to Hearing. Requests for hearings on the following motions will ordinarily be allowed: Attachments (Rule 4.1), Trustee Process (Rule 4.2), Dismiss or Judgment on the Pleadings (Rule 12), Adopt Master's Report (Rule 53), Summary

Judgment (Rule 56), Injunctions (Rule 65), Receivers (Rule 66), and Lis Pendens (G.L. c. 184, sec. 15). Motions that are not set down for hearing in accordance with Paragraph (c) will be decided on the papers filed in accordance with this Rule.

(d) Exceptions. The provisions of this Rule do not apply to the following motions:

(1) Ex Parte, Emergency, and Other Motions. A party filing an ex parte motion, emergency motion, or motion for appointment of a special process server is excused from compliance with Paragraph (b) of this rule. Ex parte motions must be served within 3 days of a ruling on the motion. Emergency motions, other than ex parte motions, must be served on all parties forthwith upon filing; provided, however, that a party filing an emergency motion shall certify in the motion that it has made a good faith effort to contact and confer with all parties regarding the subject of the motion, and shall set forth in the motion whether any party assents to or opposes the emergency motion. The nature of the emergency must be clearly specified in the motion.

(2) Motions Involving Incarcerated Parties. Administrative Directive No. 92-1, which governs civil actions filed by a plaintiff who is incarcerated, exempts that part of subdivision (b)(4)(i) of this Rule that requires the filing of the Rule 9A package. Such exemption also applies to motions in civil actions where a defendant is incarcerated and self-represented, but all parties, incarcerated or not, must serve copies upon all other parties in the case. Upon release, a previously incarcerated party shall promptly file and serve notice of change of address. All provisions of Rule 9A shall take effect (a) for the previously incarcerated party, the day of release; and (b) for the non-incarcerated party, the day of notification of the other party's release.

(3) Motions governed by E-filing Rules: A motion governed by a Statute or a Court rule or order for e-filing is exempt from any requirement of this Rule to the extent inconsistent with such e-filing requirements.

(4) Review of Decision of Administrative Agency: Motions governed by Standing Order 1-96, to the extent the standing order specifies alternate procedures.

Added July 21, 1988, effective October 3, 1988; amended July 18, 1989, effective October 2, 1989; amended December 6, 1989, effective January 31, 1990; amended December 17, 1991, effective March 1, 1992; amended December 10, 1993, effective January 1, 1994; amended effective April 1, 1998; amended October 6, 2004, effective November 1, 2004; amended January 22, 2009, effective March 2, 2009; amended October 24, 2012, effective January 1, 2013; amended September 24, 2013, effective January 1, 2014; amended February 20, 2014, effective April 1, 2014; amended September 24, 2015, effective January 1, 2016; amended July 26, 2017, effective September 1, 2017; amended July 31, 2018, effective November 1, 2018; amended August 3, 2023, effective September 1, 2023.

Rule 9B. Certificates of Service

(Applicable to civil cases)

The last page of every paper served in accordance with Mass. R. Civ. P. 5(a) shall contain a brief statement showing the date and manner of service of the paper; the names and addresses

(mailing or email) of all counsel (or parties) served; and the party represented by each counsel served. The statement may be in the following form:

I hereby certify that on [date] a true copy of the above document was served by [hand/mail/email] upon:
Attorney name [or *pro se* party's name]
Address [mailing or email]
Attorney for _____ [or *pro se* party]

Adopted July 18, 1989, effective October 2, 1989; amended August 3, 2023, effective September 1, 2023.

Rule 9C. Additional Requirements for Dispositive and Discovery Motions

(a) General Rule: Counsel for each of the parties shall confer in advance of filing any motion, except motions governed by Rule 9A(d) and Standing Order 1-96, and make a good faith effort to narrow areas of disagreement to the fullest extent. Counsel for the party who intends to serve the motion shall be responsible for initiating the conference, which conference shall be by telephone or in person. All such motions shall include a certificate stating that the conference required by this Rule was held, together with the date and time of the conference and the names of all participating parties, or that the conference was not held despite reasonable efforts by the moving party to initiate the conference, setting forth the efforts made to speak by telephone or in person with opposing counsel. Motions unaccompanied by such certificate will be denied without prejudice to renew when accompanied by the required certificate.

(b) Dispositive Motions: When conferring about any motion under Mass. R. Civ. P. 12, counsel for each of the parties shall make a good faith effort to narrow areas of disagreement that may be resolved through amendment of the pleading, curative action in respect to defective service, or other means related to the subject of the motion to dismiss. When conferring about any motion under Mass. R. Civ. P. 56 or 41(b)(2)(second sentence), counsel for each of the parties shall discuss whether the moving party should refrain from making any motion qualifying for decision without a hearing under Superior Court Rule 9A(b)(5)(vi) and make a good faith effort to narrow areas of disagreement that may be resolved through amendment of the pleading, a stipulated dismissal of specified claims or parties, or otherwise.

(c) Discovery Disputes: All motions arising out of a party's response to an interrogatory or a request for admission or arising out of a party's response to, or asserted failure to comply with, a request for production of documents shall be accompanied by a brief. With respect to each interrogatory or request at issue, the brief shall set forth separately and in the following order (1) the text of the interrogatory or request, (2) the opponent's response and (3) an argument. Alternatively, the text of the interrogatory or request and the opponent's response may be provided in an appendix to the brief, as long as the brief includes an argument addressed to each interrogatory or request. No argument may be included in the appendix.

Adopted July 18, 1989, effective October 2, 1989; amended October 6, 2004, effective November 1,

2004; amended June 15, 2007, effective October 1, 2007; amended September 24, 2015, effective January 1, 2016; amended July 31, 2018, effective November 1, 2018; amended June 14, 2021, effective September 1, 2021; amended August 3, 2023, effective September 1, 2023.

Rule 9D. Motions for Reconsideration

(Applicable to Civil Cases)
A Motion for Reconsideration shall be based on (1) newly discovered evidence that could not be discovered through the exercise of due diligence before the original motion was filed; (2) a change of relevant law; or (3) a particular and demonstrable error in the original ruling or decision. A Motion for Reconsideration shall otherwise raise no new grounds for relief not raised in the original motion or opposition and shall not reiterate previously advanced arguments.

Motions for Reconsideration shall be served and processed consistent with Rules 9A and 9C. A Motion for Reconsideration shall identify, in the first paragraph, the newly discovered evidence, change of relevant law, or particular and demonstrable error in the original decision on which the motion is based. A Motion for Reconsideration based on a particular and demonstrable error in the original ruling or decision must be served pursuant to Rule 9A within 21 days of entry of the original ruling or decision.

A Motion for Reconsideration and supporting memorandum shall be contained in a single document and shall not exceed 10 pages in length. The words "MOTION FOR RECONSIDERATION" shall appear clearly in the title of the motion. Any opposition shall not exceed 10 pages in length. Upon filing, the clerk shall transmit the motion and supporting papers to the Justice who decided the original motion, but if that Justice has retired or is otherwise unavailable, the clerk shall transmit the motion to the Regional Administrative Justice for the region where the case is pending. If, upon reviewing the motion and supporting documents, the Justice desires to hold a hearing on the motion for reconsideration, he or she may schedule a hearing thereon. Alternatively, he or she may refer the motion for reconsideration to the Regional Administrative Justice for the region where the case is pending.

Motions seeking reconsideration of decisions made pursuant to Mass. R. Civ. P. 50(b), 52(b), 59(b), 59(e) or 60(b) are considered made or served for purposes of those rules on the date of service pursuant to Rule 9A, provided that the moving party shall also simultaneously file and serve a "Notice of Motion for Reconsideration" in the same manner as provided in the final sentence of Rule 9E.

Added December 6, 1989, effective January 31, 1990; amended October 6, 2004, effective November 1, 2004; amended July 26, 2017, effective September 1, 2017; amended August 3, 2023, effective September 1, 2023.

Rule 9E. Motions to Dismiss and Post-Trial Motions

(Applicable to all civil cases.)
Motions to dismiss pursuant to Mass. R. Civ. P. 12 are subject to Rule 9A. Because such motions often are the initial filing in response to a complaint, counterclaim or cross-claim, in order to avoid the entry of a default for failure to respond in a timely fashion, a party responding by a motion to dismiss must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple "Notice of Motion to Dismiss" reciting the title of the motion and the date of its service on the parties.

2004; amended June 15, 2007, effective October 1, 2007; amended September 24, 2015, effective January 1, 2016; amended July 31, 2018, effective November 1, 2018; amended June 14, 2021, effective September 1, 2021; amended August 3, 2023, effective September 1, 2023.

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Motions for Reconsideration shall be served and processed consistent with Rules 9A and 9C. A Motion for Reconsideration shall identify, in the first paragraph, the newly discovered evidence, change of relevant law, or particular and demonstrable error in the original decision on which the motion is based. A Motion for Reconsideration based on a particular and demonstrable error in the original ruling or decision must be served pursuant to Rule 9A within 21 days of entry of the original ruling or decision.

A Motion for Reconsideration and supporting memorandum shall be contained in a single document and shall not exceed 10 pages in length. The words "MOTION FOR RECONSIDERATION" shall appear clearly in the title of the motion. Any opposition shall not exceed 10 pages in length. Upon filing, the clerk shall transmit the motion and supporting papers to the Justice who decided the original motion, but if that Justice has retired or is otherwise unavailable, the clerk shall transmit the motion to the Regional Administrative Justice for the region where the case is pending. If, upon reviewing the motion and supporting documents, the Justice desires to hold a hearing on the motion for reconsideration, he or she may schedule a hearing thereon. Alternatively, he or she may refer the motion for reconsideration to the Regional Administrative Justice for the region where the case is pending.

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Added December 6, 1989, effective January 31, 1990; amended October 6, 2004, effective November 1, 2004; amended July 26, 2017, effective September 1, 2017; amended August 3, 2023, effective September 1, 2023.

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Post-trial motions pursuant to Mass. R. Civ. P. 50, 52, 59 and 60 are subject to Rule 9A. A party serving any such motion must serve the motion on all parties pursuant to Superior Court Rule 9A(b)(2) and, in a timely manner, must also file with the court a simple "Notice of Motion" reciting the title of the motion and the date of its service on the parties.

Added October 6, 2004, effective November 1, 2004.

Rule 9F. Requests to Amend Tracking Order

All motions seeking to amend the Tracking Order to permit additional discovery must identify the following: (1) the number of times the Tracking Order has previously been enlarged in the case; (2) a brief summary of the discovery that has been conducted to date; (3) the discovery remaining to be conducted; (4) a brief summary of the nature of the claims in the case; and (5) any other information deemed relevant by the movant(s).

Added August 3, 2023, effective September 1, 2023.

Rule 10. Extra Charges by Officers

(Applicable to all cases)
When any officer claims extra compensation in serving a precept, the same shall not be allowed unless the officer return with his precept a bill of particulars of the expenses, with his affidavit that such expenses were actually incurred, and that the charges are reasonable.

Rule 11. Attorney not to Become Bail or Surety

(Applicable to all cases)
No attorney shall become bail or surety in any criminal proceeding in which he is employed, or in any civil action or proceeding whatever in this court except as an endorser for costs.

Rule 12. Attorneys as Witnesses

(Applicable to all cases)
No attorney shall be permitted to take part in the conduct of a trial in which he has been or intends to be a witness for his client, except by special leave of the court.

Rule 13. Hospital Records

(First paragraph applicable to civil actions only; remainder of rule applicable to all cases)
Any party, or his attorney, in any action for personal injuries, may file an application for an order for a copy of any hospital records of a party, together with a copy of the proposed order and an affidavit that he has notified the other party, or his attorney, of his intention to file said application seven days at least prior to said filing and that he has not received any objections in writing thereto. The order shall issue as of course upon the receipt of such application.

In the event of an objection, no order shall issue unless the parties comply with Superior Court Rule 9A.

Supreme Judicial Court

Judicial Guidelines for Civil Cases with Self-Represented Litigants

2025 Edition

"Until we create a world in which all who need counsel in civil cases have access to counsel, we must do all we can to make the court system more understandable and accessible for the many litigants who must represent themselves."

- Hon. Ralph D. Gants (1954-2020)
Former Chief Justice of the Supreme Judicial Court
State of the Judiciary Address, October 30, 2019

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Statement from the Supreme Judicial Court Regarding the Judicial Guidelines for Civil Cases with Self-Represented Litigants (2025 Edition)

The Supreme Judicial Court recommends that all judges and other court staff refer to these Guidelines for guidance in civil cases with self-represented litigants. The Guidelines provide a helpful compendium of principles and approaches applicable to these cases, drawn from the Massachusetts Code of Judicial Conduct; governing case law; relevant court rules, orders, and policies; and widely accepted best practices. The Guidelines are not intended to establish a new set of rules independent of those underlying authorities, but rather to present their contents in a more readily accessible format. We encourage all interested persons to consult the Guidelines as an important resource for civil cases with self-represented litigants.

Chief Justice Kimberly S. Budd

Justice Frank M. Gaziano

Justice Scott L. Kafker

Justice Dalila Argaez Wendlandt

Justice Serge Georges, Jr.

Justice Elizabeth N. Dewar

Justice Gabrielle R. Wolohojian

Preface by the Supreme Judicial Court Committee on Judicial Guidelines Concerning Self-Represented Litigants

These Judicial Guidelines for Civil Cases with Self-Represented Litigants (2025 Edition) update and supersede the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants that were approved by the Supreme Judicial Court in 2006 (2006 Guidelines). The 2006 Guidelines were among the first efforts by a state court system to address the judicial role in civil cases in which one or more parties appeared without counsel. Based upon the law and ethical requirements that existed at the time, the 2006 Guidelines offered judges practical advice on how to exercise their discretion to afford self-represented litigants the opportunity to have their cases fairly heard, without compromising judicial neutrality. Massachusetts appellate cases frequently cited the 2006 Guidelines for their persuasive value, and other jurisdictions looked to them as a model.

Over time, however, it became evident that the 2006 Guidelines needed to be revised to take into account important developments, e.g., subsequent appellate decisions involving issues relating to self-representation; the adoption of a new 2016 Massachusetts Code of Judicial Conduct that includes specific provisions concerning accommodations for self-represented litigants; the emergence of nationally recognized best practices for judges in cases with self-represented litigants; the development of new technologies; and the expansion of court initiatives and resources to support the diverse and growing population that comes to court without lawyers.[1] As a result, in May 2021, Chief Justice Kimberly S. Budd and the Justices of the Supreme Judicial Court appointed a special committee of judges (Committee)[2] to review and revise the 2006 Guidelines. The new Guidelines are the result of more than three years of effort by Committee members, advisors, and staff.

February 2025

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[1] Like other state courts, the Massachusetts courts have evolved to respond to the rapid growth in self-representation. For example, the Trial Court's strategic planning process has placed specific focus on access to justice and the court user experience. Six of the Trial Court's seven departments have authorized limited assistance representation, and some have integrated alternative dispute resolution and other diversionary programs into the litigation process. The Trial Court has adopted a robust language access plan and specific standards for accommodating litigants with disabilities. Efforts are in progress to simplify and standardize court processes and forms. Court websites provide copious information to all court users, and Court Service Centers - brick-and-mortar as well as virtual - are available to assist litigants across the state. Technological access to the courts, including the advent of remote hearings during the COVID-19 pandemic, is now available.

[2] The members of the Committee are: Chair, Hon. Richard J. McMahon (ret.), Probate & Family Court; Hon. Julie J. Bernard (ret.), District Court; Hon. Amy Lyn Blake, Appeals Court; Hon. Debra A. DelVecchio, Boston Municipal Court; Hon. Robert G. Fields, Housing Court; Hon. Robert B. Foster, Land Court; Hon. Sylvia Gomes, Juvenile Court; Hon. Valerie A. Yarashus, Superior Court. Advisors to the Committee: Hon. Cynthia J. Cohen (ret.), Appeals Court, and former Chair of the SJC Steering Committee on Self-Represented Litigants; Hon. Dina E. Fein (ret.), Housing Court, and former Special Advisor to the Trial Court for Access to Justice Initiatives. Staff Liaison to the Supreme Judicial Court: Chip Phinney, Chief Counsel for Judicial Policy, Supreme Judicial Court. Staff Liaison to the Executive Office of the Trial Court: Elizabeth R. Cerda (currently Clerk Magistrate, Waltham District Court) and Erin Harris, Access to Justice Coordinator (per diem).

Introduction

Large numbers of self-represented civil litigants appear daily in the courts of the Commonwealth. While the court system has undertaken a variety of initiatives to address their needs and meet the practical demands of serving the public, judges bear the ultimate responsibility to ensure that cases involving self-represented litigants are fairly heard and decided. This is not an easy task. Having been schooled in the adversary system, judges often find that cases involving self-represented litigants present special challenges. The purpose of these Judicial Guidelines for Civil Cases with Self-Represented Litigants (2025 Edition) is to assist judges in meeting these challenges efficiently, effectively, and in a manner that provides meaningful access to justice for all litigants – represented and unrepresented alike.

The Guidelines provide statements of principle as well as suggested techniques for managing litigation with one or more self-represented parties. They are intended to help judges comply with the Massachusetts Code of Judicial Conduct, governing case law, court rules, orders, and policies, and widely accepted best practices for handling cases with self-represented litigants. In accordance with these authorities, the Guidelines provide that judges may, generally should, and sometimes must, adapt the litigation process to provide reasonable accommodations for the self-represented. These accommodations are especially critical in cases involving essential civil legal needs, such as shelter, sustenance, safety, health, and child custody,[3] where the stakes are extremely high and most self-represented litigants are compelled by economic circumstances or other impediments to represent themselves. At the same time, the Guidelines recognize the obligations of judges to maintain impartiality and fairness toward all parties, represented as well as unrepresented. The Guidelines also acknowledge the realities of administrative imperatives, and the fact that judges – notwithstanding their unique role in the court system – do not operate alone or in a vacuum, and that other court resources are a critical component of serving the self-represented.

The Guidelines are organized by general topic, covering legal and ethical principles; general practices; courtroom management; settlement and alternative dispute resolution; the litigation process; post-hearing matters; and the judge's wider role in promoting access to justice. Within these general topics, individual guidelines address more specific points, such as explaining the applicable law or handling evidence. Thus, while the Guidelines are best understood as a whole, they are also designed so that judges can quickly refer to a particular guideline for guidance on a specific issue. Each guideline is also accompanied by commentary. The commentary is integral to the Guidelines, providing supporting citations, explanations, illustrations, and other resources.

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[3] See Resolution 5, Reaffirming the Commitment of Meaningful Access to Justice for All, adopted by the Conference of Chief Justices and Conference of State Court Administrators at their 2015 Annual Meeting (calling upon state courts to facilitate access to effective assistance in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody).

Massachusetts has a strong tradition of commitment to justice for all of its residents. The Guidelines are intended to assist judges in ensuring that this tradition is manifest in the day-to-day work that they undertake in managing cases, courtrooms, and litigants across the Commonwealth. Further, while primarily directed at judges in their adjudicative role, the Guidelines also provide a roadmap for the administration of justice. Judges acting in their administrative capacity have the responsibility to ensure that court operations are structured to facilitate and encourage compliance with the Guidelines. Finally, to the extent relevant, the Guidelines are also intended to be a resource for appellate judges as well as trial court judges, and for court staff in addition to judges.

Terminology

Appropriate judicial responses to the challenges associated with self-represented litigants range from discretionary to mandatory. Accordingly, the Guidelines incorporate language and terms intended to reflect the range of appropriate responses:

- the use of "shall" or "must" signifies that compliance with the guideline is mandatory pursuant to the Code of Judicial Conduct, other court rules and standing orders, or governing case law;

- the use of "should" signifies that compliance with the guideline is advisable pursuant to the Code of Judicial Conduct, other court rules and standing orders, governing case law, or widely accepted best practices; and

- the use of "may" signifies that compliance with the guideline is discretionary pursuant to the Code of Judicial Conduct, other court rules and standing orders, governing case law, or widely accepted best practices.

Guidelines

1. General Legal Principles

1.1 Ethical Framework. Judges do not compromise their impartiality by making reasonable accommodations to ensure that self-represented litigants have their matters fairly heard. As set forth in the Massachusetts Code of Judicial Conduct and its comments, judges may exercise their discretion to make reasonable accommodations for self-represented litigants and, in some instances, may be required by law to do so.

Commentary

Effective January 1, 2016, the Supreme Judicial Court approved a new Massachusetts Code of Judicial Conduct (S.J.C. Rule 3:09) that specifically addresses ethical considerations relating to cases with self-represented litigants. Rule 2.2 of the Massachusetts Code of Judicial Conduct requires judges to "perform all duties of judicial office fairly and impartially." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.2 (2016). Comment 4 to Rule 2.2 explicitly states that "[i]t is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants are provided the opportunity to have their matters fairly heard."

Rule 2.6 (A) of the Code further provides that "[a] judge may make reasonable efforts, consistent with the law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." Comment 1A to Rule 2.6 explains that "[i]n 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," provided that such "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." *Id.* Comment 1A to Rule 2.6 also lists examples of accommodations that judges may properly make to ensure that self-represented litigants have the opportunity to be fairly heard. It provides that "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."

1.2 Affording Constitutional Due Process. Judges must provide self-represented litigants with accommodations that are necessary to afford them constitutional due process.

Commentary

The right to due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Articles 10 and 12 of the Declaration of Rights in the Massachusetts Constitution, requires judges to make such accommodations for self-represented litigants as are necessary to ensure a fair proceeding. Depending on the circumstances, such accommodations may include giving self-represented litigants clear notice of critical questions in the case and taking steps to elicit relevant information from them. See *Turner* v. *Rogers*, 564 U.S. 431, 435, 449 (2011) (incarceration of indigent self-represented parent on finding of civil contempt for failure to pay child support violated due process, where proceeding lacked adequate procedures to ensure a fair determination of whether the parent was able to comply with the support order; parent did not receive clear notice that his ability to pay would constitute a critical question in his civil contempt proceeding, and he did not receive a form designed to elicit information about his financial circumstances); *Department of Revenue Child Support Enforcement* v. *Grullon*, 485 Mass. 129, 133-138 (2020) (judge erred in finding self-represented defendant in civil contempt for failure to pay child support, where defendant did not receive adequate procedural due process protections in accord with *Turner*; among other shortcomings, judge did not inquire into whether defendant had present ability to pay his child support, and did not provide defendant with opportunity to respond to statements and questions about his financial status). See also commentary to Guideline 1.3.

In assessing the accommodations and procedural safeguards necessary to protect the due process rights of self-represented litigants, judges must "consider the private interest that will be affected, the risk of an erroneous deprivation of such interest through the procedures used, the probable value of additional or substitute procedural safeguards, and the government's interest involved." *Adoption of Patty*, 489 Mass. 630, 638 (2022), citing *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976).

1.3 Ensuring the Right to Be Heard. Judges must ensure that self-represented litigants are provided the opportunity to meaningfully present their claims and defenses.

Commentary

"[S]elf-represented litigants must be provided the opportunity to meaningfully present claims and defenses." *Cambridge St. Realty, LLC* v. *Stewart*, 481 Mass. 121, 132-133 (2018), quoting *I.S.H.* v. *M.D.B.*, 83 Mass. App. Ct. 553, 561 (2013). See also *Carter* v. *Lynn Hous. Auth.*, 450 Mass. 626, 637 n.17 (2008), quoting Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants § 3.2 (2006) ("self-represented litigants must be provided 'the opportunity to meaningfully present their cases'").

The right of self-represented litigants to meaningfully present their claims and defenses is rooted in the constitutional right to due process, which "includes 'the right to be heard at a meaningful time and in a meaningful manner.'" *Guardianship of V.V.*, 470 Mass. 590, 592 (2015),

quoting *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). See *Adoption of Patty*, 489 Mass. 630, 631-632 (2022) (conduct of virtual trial concerning termination of self-represented mother's parental rights violated her right to due process under Fourteenth Amendment to United States Constitution and art. 10 of Massachusetts Declaration of Rights, where trial was plagued by technological issues and inadequate safeguards, resulting in self-represented mother's inability to participate and causing her to miss presentation of evidence against her); *Morse* v. *Ortiz-Vazquez*, 99 Mass. App. Ct. 474, 484 (2021) ("judges must ensure that all parties, represented and unrepresented alike, receive a fair trial and that principles of due process are followed"; holding that judge abused discretion in denying self-represented tenant's motion to file late answer in eviction proceeding, where prejudice to tenant, depriving him of statutory right to present affirmative defense, far outweighed any inconvenience to landlord); *Glendale Assocs., LP* v. *Harris*, 97 Mass. App. Ct. 454, 455, 464-465 (2020) (judgment in favor of landlord was "not consonant with due process" where judge entered default against pro se tenant even though tenant had denied allegations against him and had been litigating case, thereby denying tenant opportunity to present defense and to confront and cross-examine witnesses against him).

Depending on the context, the right of self-represented litigants to meaningfully present their claims and defenses may also be protected by applicable statutes, regulations, court rules, and standing orders. See *Cambridge St. Realty*, 481 Mass. at 132-134 (citing both due process cases and Housing Court standing order requiring that "each judge … must, consistent with applicable statutes and the rules of court, exercise sound judgment in a manner that affords the parties a fair opportunity to develop and present their claims to the court," in holding that self-represented tenant was denied fair opportunity to present her claims where she did not have notice of trial until afternoon when it occurred and court denied her request for a continuance, in violation of another standing order provision, that would have enabled her to receive assistance through a lawyer for the day program); *Carter*, 450 Mass. at 633-635 (citing Federal regulations that required hearing on decision to terminate Section 8 rental assistance, and that authorized hearing officer to consider all relevant circumstances, in holding that family affected by termination was entitled to opportunity to present evidence and arguments and statement of findings by hearing officer addressing evidence and arguments presented).

To ensure that all litigants, including self-represented litigants, receive due process, judges must play "an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016). The judge's function is "to provide a self-represented party with a meaningful opportunity to present [his or] her case by guiding the proceedings in a neutral but engaged way." *Morse* v. *Ortiz-Vasquez*, 99 Mass. App. Ct. at 484, quoting *CMJ Mgt. Co.* v. *Wilkerson*, 91 Mass. App. Ct. 276, 283 (2017). As discussed in the commentary to Guideline 1.1, comment 1A to Rule 2.6 of the Code of Judicial Conduct provides examples of accommodations that judges may properly make to ensure that self-represented litigants have the opportunity to be fairly heard. At the same time, as with any other litigant or attorney, judges also have the authority to place reasonable limits on self-represented litigants' presentation of their positions. See Guideline 3.1 and related commentary.

1.4 Exercising Discretion. A judge's decision to make or decline to make an accommodation for a self-represented litigant ordinarily will be reviewed for abuse of discretion. The standard for "abuse of discretion" is whether the judge made a clear error of judgment in weighing the factors relevant to the decision such that the decision falls outside the range of reasonable alternatives. The judge should ensure that the record reflects the factual basis for the judge's decision. If the record reflects that the judge failed to recognize that the court had discretionary authority and/or failed to exercise it, that itself is an abuse of discretion.

Commentary

The appellate courts have generally applied an abuse of discretion standard of review to lower court decisions to provide or deny accommodations to self-represented litigants. See, e.g., *Department of Revenue Child Support Enforcement* v. *Grullon*, 485 Mass. 129, 130 (2020); *Cambridge St. Realty, LLC* v. *Stewart,* 481 Mass. 121, 122 (2018); *Morse* v. *Ortiz-Vasquez*, 99 Mass. App. Ct. 474, 484 (2021). A "judge's discretionary decision constitutes an abuse of discretion where . . . the judge made a clear error of judgment in weighing the factors relevant to the decision, such that the decision falls outside the range of reasonable alternatives" (citations and internal quotation marks omitted). *L. L.* v. *Commonwealth,* 470 Mass. 169, 185 n.27 (2014). In *L. L.*, the Supreme Judicial Court adopted this new articulation of the abuse of discretion standard of review in place of the prior iteration of the standard, which permitted a reviewing court to reverse a judge's discretionary decision only where it concluded that "no conscientious judge, acting intelligently, could honestly have taken the view expressed by him [or her]." *Id*. Although the revised standard is less deferential than the prior standard, it continues to give "great deference to the judge's exercise of discretion; it is plainly not an abuse of discretion simply because a reviewing court would have reached a different result." *Id*.

A judge's failure to recognize that the judge has discretionary authority to act in a given instance, or the failure to exercise that discretionary authority, also constitutes an abuse of discretion. Judges should also take care that the record adequately reflects their exercise of discretion when they choose to grant or deny an accommodation. See *Carter* v. *Lynn Hous. Auth*., 450 Mass. 626, 635-636 (2008) (where record did not indicate any awareness by the hearing officer of his discretionary authority to take mitigating circumstances into account, and did not contain any factual findings that would demonstrate his awareness, the case was remanded for further proceedings).

1.5 Applying the Law. While the law – including but not limited to the elements of claims and defenses, the allocation of burden of proof, the rules of evidence, and the rules of procedure – applies to all litigants whether or not they are represented by counsel, this principle does not prevent judges from adjusting procedures or technical requirements, so long as the opposing party's right to have the case fairly decided is not prejudiced.

Commentary

Although "[a] pro se litigant is bound by the same rules of procedure as litigants with counsel," *International Fid. Ins. Co.* v. *Wilson,* 387 Mass. 841, 847 (1983), some leniency should be accorded to self-represented litigants in determining whether they have met procedural rules and other requirements. See *Tynan* v. *Attorney Gen.*, 453 Mass. 1005, 1005 (2009) ("some leniency is appropriate in determining whether the papers of a self-represented litigant comply with applicable court rules"); *Carter* v. *Lynn Hous. Auth.*, 450 Mass. 626, 638 (2008) ("Vulnerable tenants" who are self-represented "must not be deprived of protected interests solely on the basis of their lack of familiarity with the intricacies of regulations that, ironically, were designed to protect those very interests"); *Lamoureux* v. *Superintendent, Mass. Correctional Inst.*, 390 Mass. 409, 410 n.4 (1983) ("A handwritten pro se document is held to a less stringent standard than pleadings drafted by an attorney and is to be liberally construed"); *I.S.H.* v. *M.D.B.*, 83 Mass. App. Ct. 553, 561 (2013) (self-represented defendant father residing in Florida did not waive objection to Massachusetts court's exercise of personal jurisdiction over him, even though he did not use words "personal jurisdiction," where it was sufficiently clear from his reluctance to come to Massachusetts, his statements about proceedings in Florida, and his undisputed nonresident status that he was not appearing in Massachusetts voluntarily); *Loebel* v. *Loebel,* 77 Mass. App. Ct. 740, 743 n.4 (2010) (self-represented mother's "inability to articulate in the moment the precise procedural vehicle to obtain . . . a hearing" to provide further support for her argument for custody of her children "should not have ended the matter"; holding that judge abused discretion in denying mother opportunity to present new evidence to address best interests of children); S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016) (judge may construe pleadings liberally and modify manner or order of taking evidence or hearing argument to facilitate ability of self-represented litigants to be fairly heard).

Judges should bear in mind that the rules of evidence may be relaxed in certain types of proceedings where parties are frequently self-represented, including proceedings under G. L. c. 209A and G. L. c. 258E, and small claims. See commentary to Guideline 5.5 for a more in-depth discussion of these exceptions.

Judges should also be wary of "interpreting . . . too broadly" decisions holding that pro se defendants must comply with relevant procedural and substantive rules and "as a consequence abdicating [their] proper role as a judge." *Commonwealth* v. *Sapoznik*, 28 Mass. App. Ct. 236, 241 n.4 (1990) (holding that judge who failed to intervene in trial or to rule on admissibility of evidence absent any objection by pro se defendant erred in admitting prior bad act evidence against defendant; "the judge should have recognized . . . that the prosecutor was engaging in improper tactics and taking advantage of the defendant's unrepresented status" and "should have promptly intervened, not to be of assistance to the defendant, but to assert a judge's traditional role of making sure that all the parties receive a fair trial"). On the other hand, judges cannot go so far

as to create new procedures that entirely disregard the requirements of statutes and court rules. See *Mmoe* v. *Commonwealth*, 393 Mass. 617, 620 (1985) ("The broad powers of a . . . judge to adopt procedures to promote justice . . . do not include the power to fashion procedures in disregard of the Massachusetts Rules of Civil Procedure") (holding that judge committed reversible error by considering not only pro se litigant's complaint, but also her independent oral statements and written materials presented over three days of hearings, in ruling on defendant's motion to dismiss for failure to comply with Mass. R. Civ. P. 8 and 9). In sum, judges should adopt a balanced approach that provides the accommodations that are necessary to enable self-represented litigants to present their case and ensure a fair proceeding, while respecting the rights of other litigants and the requirements of the law.

1.6 Providing Legal Information. Judges and court staff do not compromise their neutrality by providing self-represented litigants with information about the law and the legal process. On the other hand, judges and court staff may not provide self-represented litigants with legal advice, e.g., guidance about which course of action they should take to further their interests.

Judges should be familiar with court resources that provide information and support to self-represented litigants and should make referrals to those resources as appropriate.

Commentary

Judges and court staff may properly provide legal information as needed to self-represented litigants, including information about how the court system works, what they need to file, how to complete forms, and where they can find further assistance. Judges and court staff should be knowledgeable about resources that are available to help litigants who lack counsel – including Court Service Centers, Trial Court law libraries, court webpages, Lawyer for the Day programs, lawyer referral services, and legal aid programs – and should refer those litigants to these resources as appropriate. See *Rental Prop. Mgt. Servs.* v. *Hatcher*, 479 Mass. 542, 549 n.8 (2018) (noting that "[n]onattorneys may provide information to self-represented litigants to help them understand their legal rights," and that "the Massachusetts Trial Court . . . provides walk-in court service centers at certain large courthouses where non-attorneys 'help people navigate the court system' by assisting with forms, providing information about court procedures, and answering questions about how the court works"); *In re Powers*, 465 Mass. 63, 68 (2013), citing Supreme Judicial Court Steering Committee on Self-Represented Litigants, Serving the Self-Represented Litigant: A Guide by and for Massachusetts Court Staff 3-7 (2010) (describing duties of clerk's office) ("The clerk's office . . . provides legal information (as opposed to legal advice) to persons seeking restraining orders or other relief from the court as to how the court system works, what they need to file, and how to complete court forms. . . . Further, the clerk's office provides language assistance to those seeking legal redress who are unable to speak, understand, or read English," and "court staff [are] permitted to act as 'scribes' when litigant[s] [are] unable to complete form[s] due to language barrier[s]." "In addition, the clerk's office provides self-represented litigants with information about the availability of trial court libraries, and how to contact lawyer referral services or legal aid programs to obtain legal advice"); S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016) (judges may "make referrals as appropriate to any resources available to assist the litigants").

Within the context of a particular proceeding, judges may also properly "provide brief information about the proceeding and evidentiary and foundational requirements" to enable self-represented litigants to understand what they have to do to present their case. *Id.*

Unfortunately, however, confusion about the distinction between legal information and legal advice may lead judges and court personnel to be overly cautious and unduly reticent when providing information to self-represented litigants, to avoid any appearance of impropriety. This practice has an adverse effect on self-represented litigants and increases the gap in access to justice. See Lauren Sudeall, *The Overreach of Limits on "Legal Advice,"* 131 Yale L. J. F. 637 (2021-2022).

The table below, the content of which is derived from a manual previously produced by the Supreme Judicial Court Steering Committee on Self-Represented Litigants, Serving the Self-Represented Litigant: A Guide by and for Massachusetts Court Staff 3 (2010), provides guidance for distinguishing between permissible legal information and impermissible legal advice.

Legal Information	Legal Advice
• A written or oral statement that describes and explains court processes, procedures, rules, practices, legal phrases or terms, and options available to court users.	• Advising court users whether to bring particular cases or problems before the court.
• Answering questions about how the court system works.	• Suggesting which of several procedures or options court users should follow.
• Identifying for court users standard court forms and/or sample pleadings that meet the court users' needs.	• Providing advice or information for the purpose of giving one party an advantage over another.
• Providing general instructions on how to complete court forms.	• Assisting court users in developing a strategy regarding their cases.
• Answering questions containing the words, "Can I?" or "How do I?"	• Telling court users what to say in court.
	• Predicting for court users what a judge is likely to do in a case.
	• Answering questions containing the words, "Should I?"

See the Massachusetts Court Service Center website (https://www.mass.gov/info-details/asking-for-help-with-court-matters) for additional examples of information that court employees can provide to self-represented litigants.

2. General Practices

2.1 Legal Representation. At the earliest opportunity in cases involving self-represented litigants, judges should explain to self-represented litigants that:

- **self-represented litigants have a right to represent themselves;**
- **self-represented litigants have the right to hire and be represented by counsel throughout the case, or to be represented by counsel for discrete portions of a case under rules permitting Limited Assistance Representation;**
- **where a Lawyer for the Day program, clinic or other program is available, self-represented litigants may be eligible to take advantage of these services;**
- **counsel for the opposing party does not represent and may not advise a self-represented litigant except to suggest that the self-represented litigant secure independent counsel; and**
- **while the judge may provide some legal information at various stages of the case, the judge will not be able to provide legal advice to them as an attorney would be able to do, because the judge must remain impartial.**

Judges are expected to be knowledgeable about civil matters in their court department where indigent litigants have a right to appointed counsel. In such cases, judges must inform litigants of that right and explain the process for obtaining appointment of counsel. In addition, when there is a right to appointed counsel, and a litigant chooses to self-represent, judges should explain the challenges of representing oneself in litigation.

Judges should refer litigants to resources that provide information about obtaining counsel but may not personally solicit legal representation for a litigant.

Commentary

"[I]ndividuals in criminal and civil matters have a constitutional right to represent themselves." *Commonwealth* v. *Means,* 454 Mass. 81, 89 (2009). Where individual litigants appear without counsel, judges should inform them not only of that right, but also of available options to seek counsel if they wish to be represented.

In particular, where indigent civil litigants have a right to appointed counsel, judges must inform them of that right. See, e.g., *L.B.* v. *Chief Justice of the Probate and Family Court Dep't*, 474 Mass. 231, 246 (2016) (indigent parent who presents meritorious claim to remove guardian for minor child, or to modify terms of guardianship, has due process right to counsel, and to be so informed); *Guardianship of V.V.*, 470 Mass. 590, 592-593 (2015) ("an indigent parent whose child is the subject of a guardianship proceeding is entitled to, and must be furnished with,

counsel"); *Adoption of Meaghan*, 461 Mass. 1006, 1007 (2012) (child and indigent parent are entitled to appointed counsel in adoption proceeding, whether it is commenced by state agency or prospective adoptive parents); G. L. c. 119, § 29 ("Whenever the department or a licensed child placement agency is a party to child custody proceedings, the parent, guardian or custodian of the child, or a parent or guardian of an adult who is the responsibility of the department . . . shall have and be informed of the right to counsel at all such hearings . . . , and that the court shall appoint counsel if the parent, guardian or custodian is financially unable to retain counsel"); S.J.C. Rule 3:10, § 2, as appearing in 475 Mass. 1301 (2016) ("If any party to a proceeding appears in court without counsel where the party has a right to be represented by counsel under the law of the Commonwealth, the judge shall advise the party or, if the party is a juvenile, the party and a parent or legal guardian, where appropriate, that: (a) the party may be entitled to the appointment of counsel at public expense; and (b) the Committee for Public Counsel Services will provide counsel to the party at no cost or at a reduced cost if the court finds that the party wants but cannot afford counsel").

Where litigants have a right to appointed counsel and nevertheless choose to represent themselves, judges should inform them of the challenges of doing so, noting in particular that they cannot rely on the judge or opposing counsel for legal advice, as discussed below. In appropriate cases, the judge may decide that it would be prudent to assign standby counsel.

Where litigants do not have a right to appointed counsel, judges should direct those litigants to resources such as Court Service Centers, Lawyer for the Day programs, and online websites where they can obtain information about lawyer referral services, pro bono counsel, and legal aid organizations. Judges also should explain that litigants may retain counsel to represent them for only certain tasks or portions of the case. See Trial Court Rule XVI: Uniform Rule on Limited Assistance Representation. Judges may not, however, personally solicit counsel for an unrepresented litigant. See Supreme Judicial Court Committee on Judicial Ethics, Frequently Asked Questions.

Judges should also advise litigants appearing without counsel of the consequences of representing themselves. Judges should inform litigants appearing without counsel that judges must remain impartial. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.2 (2016). Although judges can provide legal information about the proceedings, they cannot provide legal advice the way a lawyer would. See Guideline 1.6; S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A. Although judges are permitted to make reasonable accommodations for self-represented litigants, those litigants generally still must comply with applicable procedural requirements. See Guidelines 1.1, 1.5; S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.2 comment 4 & Rule 2.6 comment 1A. Judges should also warn self-represented litigants that counsel for the opposing party does not represent them and cannot advise them, except to recommend that they seek independent counsel. See Mass. R. Prof. C. 4.3, as appearing in 471 Mass. 1442 (2015).

2.2 Plain Language. Judges should use plain language in all oral and written communications with self-represented litigants, avoid legal jargon, and minimize the use of complex legal terms. Judges should make reasonable efforts to ensure that litigants understand what has been communicated to them.

Commentary

Most self-represented litigants are unfamiliar with complicated legal terms. The use of such terms can delay proceedings and necessitate lengthy explanations of concepts that are more readily understood if stated in plain language.

While Massachusetts has not codified the use of plain language, judges should use plain language whenever possible. On January 31, 2023, then-Chief Justice Jeffrey A. Locke issued an Order on Forms Management for the Massachusetts Trial Court which provides that "all new and revised forms and instructional materials must use plain language." The Order adopted the Massachusetts Trial Court Readability Guidelines for Printed Self-Help Materials and Forms (https://www.mass.gov/doc/readability-guidelines-for-printed-self-help-materials-and-forms/download). The following suggestions contained therein are useful not only with regard to forms but also with regard to oral communications:

- assume that the court user has a fifth-grade or lower literacy in English;
- use the active voice. (e.g., "Submit the form" vs. "The form should be submitted."); and
- define difficult legal terms, but do not necessarily eliminate them.

Further instructions on the use of plain language can be found in the Superior Court Guidelines for Drafting Model Jury Instructions (2021), which explain in Section 1.1 that plain language and clarity should be used because "we serve justice better if we provide instructions that jurors of all backgrounds can actually absorb and follow." These Guidelines offer a multitude of practical suggestions for how to use plain and clear language, such as:

- use short sentences and paragraphs;
- be brief;
- use simple words;
- avoid abstract terms;
- avoid legalisms;
- avoid the passive voice;
- use positive rather than negative statements; and
- be direct.

To learn more about plain language best practices, judges should consult Applying Plain Language at the Trial Court, a training program is available through the TC Learning Center (https://tclearning.csod.com/login/render.aspx?id=defaultclp) and at PlainLanguage.gov (http://www.plainlanguage.gov).

2.3 Language Barriers. Judges must be attentive to language barriers experienced by self-represented litigants and must ascertain whether a litigant has limited English proficiency. Judges must provide qualified interpreters to self-represented litigants who are of limited English proficiency throughout the court proceeding.

Commentary

The importance of language access in our courts must not be overlooked. Not only is language access required by the Massachusetts General Laws, but the failure to provide adequate language access is a form of national origin discrimination prohibited by Title VI of the Civil Rights Act of 1964 and by Executive Order 13166, as it relates to recipients of Federal funds. See U.S. Dep't of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455-41472 (June 18, 2002). Pursuant to G. L. c. 221C, § 2, judges must not require any litigant with limited English proficiency to go forward with any stage of a legal proceeding without the assistance of a qualified interpreter, or a certified interpreter if no qualified one is available. See G. L. c. 221C, § 2. Because "certified" and "qualified" interpreters are defined with specificity by G. L. c. 221C, § 1, judges should not assume that friends or family members accompanying the litigant are proficient enough in English to serve as translators or interpreters. See G. L. c. 221C, § 1 (defining "certified interpreter" as one duly trained and certified under the coordinator of interpreter services and "qualified interpreter" as one who has passed an examination and been qualified for interpreting in the federal courts in Massachusetts.)

When, during court proceedings, a judge becomes aware of the need for an interpreter, the judge should suspend or continue the hearing until an interpreter is available. Judges are encouraged to familiarize themselves with the process and procedure for court staff to request an interpreter when one has been ordered by the court, as set forth in Section 8.03 of the Standards and Procedures of the Office of Language Access. Additional information regarding language access services in the Trial Court can be found in the 2014 Trial Court Language Access Plan (http://www.mass.gov/doc/massachusetts-trial-court-language-access-plan-0/download) (LAP) and the Standards and Procedures of the Office of Language Access (http://www.mass.gov/doc/standards-and-procedures-of-the-office-of-language-access/download).

The rights of individuals who are deaf or hard of hearing are addressed separately in Guideline 2.4, as those rights are governed by the Americans with Disabilities Act (ADA), and G. L. c. 6, § 194, rather than Title VI of the Civil Rights Act and G. L. c. 221C.

2.4 Disabilities. Judges must be attentive to self-represented litigants with disabilities and ensure that they are given reasonable accommodation. When it is questionable whether a self-represented litigant is competent to adequately represent their own interests, judges should consider utilizing options that are available in their court, such as guardians ad litem, court clinicians, or appointment of counsel.

Commentary

Under the Americans with Disabilities Act (ADA) and Massachusetts law, qualified court users with disabilities are entitled to request certain aids and services that are needed for them to participate equally in the services, programs, and activities of our courts. See 42 U.S.C. §§ 12101-12213; Massachusetts Constitution, as amended by Article 114 of the Amendments; Massachusetts Equal Rights Act (MERA), G. L. c. 93, § 103(a); G. L. c. 221, § 92A (providing that individuals who are deaf or hearing-impaired shall be appointed a qualified interpreter to interpret the court proceedings and assist in communications with counsel). These laws collectively support fair and equitable treatment of individuals with disabilities.

Under the ADA, disability is defined as "a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarding as having such an impairment." 42 U.S.C. § 12102. Some examples of qualifying ADA disabilities are ADHD; vision impairments; emotional or mental illness; a specific learning disability (e.g., dyslexia); cancer; cerebral palsy; hearing impairment; diabetes; epilepsy; HIV infection; intellectual disabilities; mobility impairments; drug addiction; and alcoholism. See 28 C.F.R. § 36.105 (b).

Judges should allow "reasonable" requests for accommodation from court users with disabilities, i.e., those that do not fundamentally alter the nature of the court's services, programs, or activities, or result in an undue financial or administrative burden. See Exec. Order No. 13217, 66 Fed. Reg. 33155 (June 21, 2001) ("States must avoid disability-based discrimination unless doing so would fundamentally alter the nature of the service, program, or activity provided by the State"). Some examples of accommodations that may be "reasonable" are reassigning a hearing to an accessible site; allowing frequent breaks; and providing an assistive listening device or computer-assisted real-time transcription (CART).

Judges are encouraged to familiarize themselves with the most current information on ADA Accessibility at the Courts (https://www.mass.gov/ada-accessibility-at-the-courts), and direct questions to the ADA Coordinator for that court location.

In general, judges have the power to appoint guardians ad litem, both as a matter of inherent authority and by virtue of various statutes, to protect the rights of persons who lack the capacity to do so on their own. See, e.g., *Bower* v. *Bournay-Bower,* 469 Mass. 690, 698-699 (2014) ("a probate court possesses broad and flexible inherent powers," including "authority . . . to appoint a guardian ad litem in order to protect the interests of a person in a proceeding before it or to ensure the proper functioning of the court"); *Commonwealth* v. *Nieves*, 446 Mass. 583, 593 n.9 (2006) ("A judge has inherent authority to appoint a guardian ad litem"); *Adoption*

of Georgia, 433 Mass. 62, 68 (2000) (citing judge's inherent and statutory authority to appoint guardian ad litem); G. L. c. 190B, § 1-404 (a) (authorizing appointment of guardian ad litem under Massachusetts Uniform Probate Code for "a minor, a protected person, an incapacitated person or a person not ascertained or not in being [who] may be or may become interested in any property, real or personal or, in the enforcement or defense of any legal rights"); G. L. c. 203E, § 305 (authorizing appointment of guardian ad litem under Massachusetts Uniform Trust Code to "act on behalf of a minor, incapacitated or unborn individual or a person whose identity or location is unknown"); G. L. c. 208, § 15 (authorizing appointment of a suitable guardian to appear and answer for a defendant incapacitated by reason of mental illness in divorce action); G. L. c. 215, § 56A (authorizing appointment of guardian ad litem to investigate in proceedings relating to care, custody or maintenance of minor children and in certain other matters); G. L. c. 231, § 140C1/2 (authorizing appointment of guardian ad litem in settlements involving personal injury to minor or incompetent person). See also Supplemental Probate and Family Court Rule 5 ("[W]henever it shall appear that a minor, intellectually disabled person, a person under disability, an incapacitated person, a person to be protected or a person not ascertained or not in being is interested in any matter pending, a guardian ad litem for said person may be appointed by the court at its discretion").

Judges should acquaint themselves with the practice for appointment of guardians ad litem in their court department.

2.5 Indigency. Judges must ensure that inability to pay court costs and fees due to indigency does not prevent self-represented litigants from proceeding with their cases in a timely manner or obtaining necessary documents or services. Judges must familiarize themselves with the statutes and case law regarding indigency and waiver of costs and fees, and must promptly determine questions of indigency and waiver requests.

Commentary

Under the Indigent Court Costs Law, G. L. c. 261, §§ 27A-27G, indigent parties may request waivers or reductions of various court fees and other costs incurred during litigation. See *Adjartey* v. *Central Div. of the Hous. Court Dep't,* 481 Mass. 830, 840 (2019); *Reade* v. *Secretary of the Commonwealth*, 472 Mass. 573, 574 (2015), cert. denied, 578 U.S. 946 (2016). An application for waiver or reduction of court fees and costs is first reviewed by the court clerk, but if the application is incomplete or does not adequately demonstrate indigency, the matter is referred to a judge. The judge's responsibilities in reviewing applications for waivers due to indigency are set forth in G. L. c. 261, § 27C, and discussed in great detail in *Adjartey, supra*, at 840-846.

Judges should be familiar with the requirements of the statute and guidance contained in *Adjartey*. Among other things, judges must be mindful of the confidential nature of affidavits of indigency and must be cognizant of the importance of issuing decisions on applications for indigency waivers as soon as possible. When indigency determinations are delayed, and applicants are unable to obtain relevant documents or services in advance of an upcoming court appearance, judges should exercise their discretion to postpone hearings to ensure that all parties have sufficient time to prepare. See *Adjartey, supra*, at 841-843.

3. Courtroom Management

3.1 Courtroom Decorum. In accordance with the Code of Judicial Conduct, judges must maintain order and decorum in proceedings before the court, whether those proceedings are held in person, virtually, or in a hybrid format. Judges must also be patient, dignified, and courteous to all participants, including self-represented litigants, represented litigants, attorneys, witnesses, and staff, and must require similar conduct of lawyers, court personnel, and others who are subject to the judge's direction and control.

For additional information regarding conducting remote hearings, see Guideline 5.8 below.

Commentary

Judges "shall require order and decorum in proceedings before the court." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.8 (A) (2016). Further, "judges have the inherent power to deal with contumacious conduct in the courtroom in order to preserve the dignity, order, and decorum of the proceedings." *Commonwealth* v. *Ulani U.*, 487 Mass. 203, 208 (2021), quoting *Sussman* v. *Commonwealth*, 374 Mass. 692, 695 (1978).

As part of their obligation to maintain proper decorum, judges must treat everyone in the courtroom with patience and courtesy and ensure that other participants do so as well. S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.8 (B) (2016). In particular, judges should treat self-represented litigants with the same respect that they would accord to represented litigants and counsel. See, e.g., *Commonwealth* v. *Jackson*, 419 Mass. 716, 721 (1995) (recognizing that self-represented litigants should be addressed with titles connoting equal respect to that afforded opposing counsel); *Commonwealth* v. *Stokes*, 11 Mass. App. Ct. 949, 949-950 (1981) (requiring self-represented defendant to conduct trial from prisoner's dock, not counsel table, was improper, absent showing of necessity). To avoid the appearance of favoritism, judges and court staff under a judge's control should also avoid overly familiar exchanges with counsel who regularly appear before the court.

While judges must facilitate the ability of all litigants, including self-represented litigants, to be fairly heard, judges retain broad discretion to control the presentation of arguments and evidence to ensure efficient use of the court's time. See *Demoulas* v. *Demoulas* 428 Mass. 555, 590 n.32 (1998), quoting *EEOC* v. *Steamship Clerks Union, Local 1066,* 48 F.3d 594, 609 (1st Cir.), cert. denied, 516 U.S. 814 (1995) ("[L]itigants have no absolute right to present their arguments in whatever way they may prefer. . . . The trial judge has broad authority to place reasonable limits on the parties' presentation of their positions"); Mass. G. Evid. § 403 (2024) ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence"). See also *Babaletos* v. *Demoulas Super Markets, Inc.*, 493 Mass. 460, 464-468 (2024) (trial judge did not abuse discretion in setting reasonable time limits on parties' presentation of evidence); *id.* at 469 (appendix offering guidance for judges concerning imposition of time limits).

In highly contentious cases, maintaining decorum can be challenging, and it may be especially difficult during hearings conducted remotely. Judges should not tolerate improper behavior by any party or counsel. Examples of improper behavior include general rudeness, interruptions, bullying, or raised voices.

The following tips may be helpful in maintaining courtroom decorum and addressing inappropriate conduct:

- Judges should not conduct in-person court sessions without the presence of a court officer and should not hesitate to request additional court officers for a particular case or situation, if warranted.

- To forestall inappropriate behavior in the courtroom, judges may wish to explain courtroom etiquette and procedures at the outset of the proceeding. Remote hearings should begin with an explanation of the ground rules for a virtual proceeding, as discussed in Guideline 5.8.

- Judges must insist that all participants be respectful of the court and all individuals present in the courtroom. Judges must not allow participants to talk over one another or make demeaning or inappropriate comments, facial expressions, or gestures.

- Judges may find it helpful to set expectations by reviewing the issues that will be addressed, and, where appropriate, establishing time limits for the parties' presentations. If litigants stray into irrelevant or inappropriate content, or they fail to adhere to time limits, judges should issue reminders as necessary.

- When addressing inappropriate behavior, judges should strive to remain composed. Judges should take pains to avoid creating the appearance of favoring any party on the merits.

- If an individual is particularly disruptive, a brief recess may calm or reset the courtroom. Persons who are out of control should not be allowed to remain in the courtroom if they can be removed.

The behavior of self-represented litigants who are persistently disruptive sometimes can be hard to interpret. It is not always immediately obvious (either in real time or from reviewing a transcript on appeal) whether a self-represented litigant is intentionally trying to disrupt the court process or genuinely does not understand the proceeding, due to impairment of some kind. See *Commonwealth* v. *Haltiwanger*, 99 Mass. App. Ct. 543 (2021). For example, the litigant may be unable or unwilling to stop talking – in a manner that is far outside the norm. In deciding how to respond to such a situation, the judge should keep in mind the stage of the proceeding and the purpose of the event. If the disruption occurs at a critical stage of the case (such as a waiver of counsel colloquy) the judge should consider making factual findings in the event that competence is raised as an appellate issue. See *id*. at 556-557. See also Guideline 2.4 on accommodations for self-represented litigants with disabilities.

A related issue is when self-represented litigants repeatedly file frivolous and groundless pleadings or motions. When a litigant persists in such conduct after being warned not to do so, a judge may issue an appropriately tailored order to prohibit the litigant's future filings absent leave from the court. See, e.g., *Bishay* v. *Superior Court Dep't of the Trial Court*, 487 Mass. 1012, 1013 (2021); *State Realty Co. of Boston* v. *MacNeil,* 341 Mass. 123, 123-124 (1960).

3.2 Bias, Prejudice, and Harassment. Judges must perform all duties of judicial office without bias, prejudice, or harassment, and must refrain from manifesting bias or prejudice or engaging in harassment. Judges also must not permit lawyers, court personnel, and others subject to the judge's direction or control to engage in such prohibited behavior.

Commentary

"A judge shall perform the duties of judicial office, including administrative duties, without bias, prejudice, or harassment." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.3 (A) (2016). "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice or engage in harassment, including bias, prejudice, or harassment based upon a person's status or condition." *Id.*, Rule 2.3 (B). Such behavior "impairs the fairness of the proceeding and brings the judiciary into disrepute." *Id.*, Rule 2.3 comment 1.

"[E]xamples of status or condition include but are not limited to race, color, sex, gender identity or expression, religion, nationality, national origin, ethnicity, citizenship or immigration status, ancestry, disease or disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation." *Id.*, Rule 2.3 comment 2.

Bias consists of "decisions made or actions taken on the basis of stereotyped attitudes regarding individuals of various racial and ethnic groups[,] rather than a fair, impartial appraisal of the merits with respect to each individual or situation." Evan R. Seamone, *Understanding the Person Beneath the Robe: Practical Methods for Neutralizing Harmful Judicial Biases*, 42 Willamette L. Rev. 1, 19 (Winter 2006) (quoting Mass. Supreme Judicial Court, Comm'n to Study Racial and Ethnic Bias in the Courts, Equal Justice: Eliminating the Barriers, final report 1994). Bias may be either explicit or implicit. "With explicit bias, individuals are aware of their prejudices and attitudes toward certain groups." U.S. Department of Justice, Understanding Bias: A Resource Guide (http://www.justice.gov/crs/media/1188566/dl?inline=).

"Unconscious or implicit bias is a discriminatory belief or association likely unknown to its holder. Multiple studies confirm the existence of implicit bias, and that implicit bias predicts real-world behavior." *Commonwealth* v. *Buckley*, 478 Mass. 861, 878 n.4 (2018) (Budd, J., concurring). "Although everyone has implicit biases, research shows that implicit biases can be reduced through the very process of discussing them and recognizing them for what they are." U.S. Department of Justice, Understanding Bias: A Resource Guide, at 2.

Any "words or conduct that may reasonably be perceived as manifesting bias or prejudice or engaging in harassment" must be avoided. S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.3 comment 1 (2016). "[E]xamples of manifestations of bias or prejudice include but are not

limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; improper suggestions of connections between status or condition and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey an appearance of bias or prejudice to parties and lawyers in the proceeding, jurors, the media, and others." *Id.*, Rule 2.3 comment 3.

Furthermore, a "judge also shall not permit court personnel or others subject to the judge's direction and control to engage in such prohibited behavior," and "shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice or engaging in harassment against parties, witnesses, lawyers, or others, including bias, prejudice, or harassment based upon a person's status or condition." *Id.*, Rule 2.3 (B) & (C). See also S.J.C. Rule 3:07, Mass. R. Prof. C. Rule 4.4 (a), as amended, 490 Mass. 1321 (2022) ("In representing a client, a lawyer shall not (1) use means that have no substantial purpose other than to embarrass, harass, delay, or burden a third person, . . . or (3) engage in conduct that manifests bias or prejudice against such a person based on race, sex, marital status, religion, national origin, disability, age, sexual orientation, or gender identity").

However, judges and lawyers may "mak[e] legitimate reference to a person's status or condition when it is relevant to an issue in a proceeding." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.3 (D) (2016); see S.J.C. Rule 3:07, Mass. R. Prof. C. 4.4 (a) (3) & comment 1B.

3.3 Ex Parte Communication. To minimize the risk of being exposed to prohibited communications, judges should ensure that self-represented litigants are informed that:

- **parties may not communicate about the case with the judge outside formal court proceedings;**
- **the judge, as a general rule, is prohibited from communicating with a party unless all parties are aware of the communication and have an opportunity to respond; and**
- **the parties must file all written communications to the judge (e.g., pleadings, motions, affidavits) with the clerk's office along with a notice that copies of those materials also have been provided to the opposing party.**

If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge must make provision to promptly notify the parties of the substance of the communication.

Commentary

The Code of Judicial Conduct generally prohibits judges from having ex parte communications with a party or the party's counsel without notice to and participation by all other parties or their representatives. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.9 & comment 1A (2016); see also Mass. R. Civ. P. 5 (a), as amended, 488 Mass. 1402 (2021) (requiring service of papers filed with the court on all parties); *Olsson* v. *Waite*, 373 Mass. 517, 533

(1977) (it is "unacceptable that one party should place . . . information before a judge intending that [the judge] rely on it in a contested matter without furnishing a copy of it to the other parties. It is contrary to the basic rules of fairness governing litigation under our adversary system, and it is not to be countenanced regardless of any rule of court on the subject"). Although it is understandable that misunderstandings may arise when a party is proceeding without counsel, "[a] judicial decision brought about by ex parte communications with the judge has no place in our adversary system." *Id*. Accordingly, to avoid such misunderstandings, judges should take care to inform self-represented litigants that they must adhere to the foregoing guidelines in communicating with the judge.

"Whenever the presence of a party or notice to a party is required by [Rule 2.9 of the Code], it is the party's lawyer, or if the party is self-represented, the party, who is to be present or to whom notice is to be given, unless otherwise required by law. For example, court rules with respect to Limited Assistance Representation may require that notice be given to both the party and the party's limited assistance attorney." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.9 comment 2 (2016).

The Code specifies certain exceptions to the general prohibition against ex parte communications. These include: (1) ex parte communications for scheduling, administrative, or emergency purposes; (2) ex parte communications in specialty courts, as authorized by law; (3) consulting with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges; (4) ex parte communications made with the consent of the parties in an effort to settle civil matters; and (5) ex parte communications otherwise authorized by law. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.9 (2016). Judges contemplating receiving or engaging in ex parte communications under any of these exceptions should consult the Code for additional applicable limitations and requirements.

4. Settlement and Alternative Dispute Resolution

4.1 Raising the Possibility of Settlement. In general, judges may encourage parties to resolve matters in dispute; however, in cases involving self-represented litigants, judges must be mindful of special challenges that self-represented parties are likely to face when attempting to negotiate. Accordingly, in deciding whether to encourage settlement efforts in cases involving self-represented litigants, judges should take into account:

- **whether self-represented parties have or will be given sufficient information about the law and potential court outcomes to make a knowledgeable decision;**
- **whether self-represented parties will be vulnerable to pressure because of a power imbalance, cognitive or emotional issues, or other factors; and**
- **whether self-represented parties with language access issues will be provided with the services of an interpreter.**

In proceedings under G. L. c. 209A, it is never appropriate for judges to attempt to reconcile the parties settle the case, or refer the parties to alternative dispute resolution.

Commentary

"A judge may encourage parties and their lawyers to resolve matters in dispute." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 (B) & comment 2 (2016). See also Mass. R. Civ. P. 16, as amended, 466 Mass. 1401 (2013) ("In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference to consider: . . .[t]he possibility of settlement"). Nevertheless, in deciding whether to encourage settlement discussions in a particular case, a judge should consider various factors, including whether any of the parties are self-represented and the relative sophistication of the parties in legal matters. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 2 (2016).

Where a self-represented litigant is involved, the judge must also consider whether settlement discussions would be adversely affected by an imbalance of power between the parties. See S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, Rule 6 (i), as amended, 442 Mass. 1301 (2004) ("The court shall give particular attention to the issues presented by unrepresented parties, such as . . . the danger of coerced settlement in cases involving an imbalance of power between the parties"). In particular, the judge should consider "whether there is a history of physical or emotional violence or abuse between the parties." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 2 (2016). Due to the imbalance of power that may exist where there is a history of abuse between the parties, "no court may compel parties to mediate any aspect of an abuse prevention proceeding under G. L. c. 209A, § 3." S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, Rule 5.

Judges may inquire whether self-represented litigants have consulted available resources to educate themselves about the law, such as the Court Service Center, handouts, Lawyer for the

Day programs, etc. Judges should also be acquainted with dispute resolution services offered by the judge's court department and whether they provide such information – keeping in mind that it is not legal advice to provide information about the law (e.g., elements of claims and defenses) or to identify the various outcomes that could result if the case were litigated to a conclusion.

In cases where a judge is the fact finder, the judge should refrain from commenting on the strength of the evidence before or during trial as a means of encouraging the parties to settle. See discussion *infra* in Guideline 4.2.

With regard to language access issues, note that § 8.01 of the Standards and Procedures of the Office of Language Access (2021) (http://www.mass.gov/doc/standards-and-procedures-of-the-office-of-language-access/download) specifically authorizes assignment of court interpreters for alternative dispute resolution, such as mediations and conciliations, within a courthouse facility.

4.2 Judicial Participation in Settlement Discussions. In cases where settlement may be appropriate, judges generally may provide parties the opportunity to discuss settlement in the presence of the judge and may participate in the discussions, as long as the judge does not act in a manner that is coercive.

Caution is required, however, when the judge will be the trier of fact. If the case does not settle, and the judge has obtained information that could influence the judge's decision-making at trial or has expressed views that could call the judge's impartiality into question, the judge should consider whether disqualification may be appropriate.

During trial, fact-finding judges should not attempt to encourage settlement by offering their assessments of the strength of the parties' evidence before the evidence is closed.

Commentary

"A judge . . . , in accordance with applicable law, may participate in settlement discussions in civil proceedings and plea discussions in criminal proceedings, but shall not act in a manner that coerces any party into settlement or resolution of a proceeding." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 (B) (2016).

Where a judge engages in settlement discussions involving one or more self-represented litigants, the judge, like a neutral in court-connected dispute resolution, "has a responsibility, while maintaining impartiality, to raise questions for the parties to consider as to whether they have the information needed to reach a fair and fully informed settlement of the case." S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, Rule 6 (i), as amended, 442 Mass. 1301 (2004).

In deciding whether to participate in settlement discussions, "[t]he judge should keep in mind the effect that the judge's participation may have not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if these efforts are unsuccessful and the case remains with the judge." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6

comment 2 (2016). "Judges must be mindful of the effect settlement or plea discussions can have not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during such discussions could influence a judge's decision-making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate." *Id*., Rule 2.6 comment 3. See *id*., Rule 2.11 (A) ("A judge shall disqualify himself or herself in any proceeding in which the judge cannot be impartial or the judge's impartiality might reasonably be questioned"). When a judge inquires about the parties' interest in settlement, such inquiries should ordinarily be conducted on the record. In courts that provide for judicial mediations or judicial settlement conferences that are conducted off the record by agreement of the parties, the record nevertheless should reflect the nature of the process that will be utilized and the parties' agreement.

A judge's involvement in settlement discussions can be especially problematic when the judge will be the fact finder. See *Furtado* v. *Furtado*, 380 Mass. 137, 151-152 (1980) (observing that when a judge participates in settlement discussions and subsequently serves as the trier of fact, the judge "must be most scrupulous both to avoid losing his impartiality and to maintain his unfamiliarity with disputed matters which may come before him and with extraneous matters which should not be known by him," potentially requiring disqualification depending on the circumstances). In particular, where the judge is the fact finder, the judge must avoid commenting on the strength of the evidence before or during trial as a means of encouraging the parties to settle their dispute. See *Adoption of Georgia*, 433 Mass. 62, 64-65 (2000), quoting *Preston* v. *Peck*, 271 Mass. 159, 164 (1930) ("[i]f a judge reaches a decision on an issue of fact before the testimony on that issue is completed and thus closes [her] mind to a fair consideration of competent evidence not yet heard, [she] has deprived the party of his right to a full and fair hearing upon the whole evidence"); *Adoption of Tia*, 73 Mass. App. Ct. 115, 121 (2008) (in making comments during trial assessing the evidence and encouraging settlement discussions, judge "departed from her appropriate role, both in assessing the strength of the evidence well before the evidence had closed and in trying to urge consideration of a settlement in a case where she was the ultimate fact finder"); cf. *Pestana* v. *Pestana*, 74 Mass. App. Ct. 779, 782 (2009) (statement made by the trial judge during a settlement conference indicating a mistaken understanding of his legal authority to defer sale of the former marital home was one factor considered in deciding to remand the matter for clarification).

Judges engaging in settlement discussions should also be mindful that such discussions are generally confidential and inadmissible as evidence. See Mass. G. Evid. § 408 (2024) (conduct or statements made during compromise negotiations are inadmissible to prove or disprove the validity or amount of a disputed claim); § 514 (mediation privilege).

4.3 Alternative Dispute Resolution (ADR). When a case is appropriate for ADR, judges should inform the parties of the availability and benefits of such services.

Judges should familiarize themselves with potential ADR options, including those that are offered by the courts, those that are court-connected but offered by others (such as bar associations or volunteer organizations), and those that are provided in the community. Judges should be aware of ADR programs that provide free or low-cost services and should make that information available to litigants who may be eligible for them. When referring parties to a court-connected ADR process, judges should take steps

to ensure that the ADR processes in their court provide self-represented litigants with the tools needed to make an informed decision.

Judges may require parties and/or their attorneys to attend a screening session or an early intervention event regarding court-connected dispute resolution services and in some cases may require them to participate in dispute intervention as permitted by S.J.C Rule 1:18, Uniform Rules on Dispute Resolution. Judges should inform litigants that they are not required to settle their case.

Judges should work closely with any available court-connected ADR programs to ensure that, in those matters in which one or more litigant is self-represented, the ADR process integrates relevant legal information and mechanisms to enhance greater access to justice.

Commentary

In determining if a case is appropriate for ADR, judges should be mindful of any safety concerns. Accordingly, in cases brought under G.L. c. 209A, judges shall not "compel parties to mediate any aspect of their case," although the parties may separately be referred for information gathering purposes to the Probation Department in the Probate and Family Court or victim/witness advocates. See G. L. c. 209A § 3; see also Guidelines for Judicial Practice: Abuse Prevention Proceedings § 1:01 commentary (Oct. 2021) and Guideline 4.1 and related commentary.

S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, as amended, 442 Mass. 1301 (2004), governs referrals to ADR programs for all departments of the Trial Court. See *id.*, Rule 1 (a). These Rules specifically direct courts, including judges, to give special attention to the needs of self-represented litigants who participate in ADR. "The court shall give particular attention to the issues presented by unrepresented parties, such as the need for the neutral to memorialize the agreement and the danger of coerced settlement in cases involving an imbalance of power between the parties. In dispute intervention, in cases in which one or more of the parties is not represented by counsel, a neutral has a responsibility, while maintaining impartiality, to raise questions for the parties to consider as to whether they have the information needed to reach a fair and fully informed settlement of the case." See *id.*, Rule 6 (i).

Courts may refer parties only to an ADR provider that is on the list of approved providers compiled by each Trial Court department, except in exceptional circumstances where special needs of the parties cannot be met by a program on the list. See *id.*, Rule 4 (a), and 6 (a). In some instances, these services may be available at no cost to parties who lack the financial resources to pay for them. In making a referral, courts must inform parties that they are free to select any approved provider on the list, subject to reasonable limitations, or any other ADR provider of their choosing. See *id.*, Rule 6 (a). In addition, the Housing Court and the Probate and Family Court offer court-based "dispute intervention" with housing specialists and specialized probation officers, respectively, who serve as neutrals, "identif[y] areas of dispute between the parties, and assist[] in the resolution of differences." *Id.*

In civil cases, courts may require parties and/or their attorneys to attend a screening session or an early intervention event regarding court-connected ADR services, except for good cause shown. *Id.*, Rule 6 (b). In general, the court cannot require the parties to participate in dispute resolution services. *Id.*, Rule 6 (d). However, the Probate and Family Court may require

parties to participate in dispute intervention and any court can require participation in a pilot program that is created under Rule 4 (c). *Id.* Courts must inform the parties that they are not required to make offers and concessions, or to settle their case. *Id.*, Rule 6 (i).

4.4 Review of Settlement Agreements. Judges should personally review settlement agreements involving one or more self-represented litigants, including agreements resulting from ADR, whenever review has been requested by any party or the agreement will become a final dispositive order, judgment, or decree entered over the judge's signature, unless a comparable review has been conducted by a court facilitator acting under judicial supervision in connection with a court's own in-house ADR program.

Reviews of settlement agreements should incorporate the following practices:

- **engaging in colloquy directly with all parties to the proposed settlement and counsel for any represented parties;**
- **determining whether the self-represented litigant understands the agreement and its consequences, including the relinquishment of statutory or other legal rights;**
- **determining whether the self-represented litigant has entered into the agreement knowingly and voluntarily;**
- **if settlement approval is required or permitted by statute or other law, determining whether the agreement meets the specified legal standard;**
- **informing the parties if the settlement agreement will be entered as a court order and confirming that they understand the legal consequences of the agreement;**
- **if a self-represented litigant has limited ability to understand or speak English, ensuring that the agreement has been interpreted, consistent with Guideline 2.3, verbatim into the self-represented litigant's primary language by a qualified court interpreter, and encouraging the self-represented litigant to obtain a written translation of the settlement documents, including any court order.**

A judge shall not approve any settlement that the judge concludes is unconscionable or otherwise contrary to law.

Commentary

The principle that judges should review settlement agreements with the parties when they include self-represented litigants was endorsed by the Supreme Judicial Court in § 3.4 of the 2006 Guidelines. Self-represented litigants may not be fully aware of their legal rights or potential court outcomes, and they may also be unusually vulnerable to pressure. See *Adjartey* v. *Central Div. of the Hous. Court Dep't*, 481 Mass. 830, 837 (2019) (observing that "[t]he challenges inherent

in navigating a complex and fast-moving process are compounded for those individuals who face summary process eviction without the aid and expertise of an attorney"); *In re Powers*, 465 Mass. 63, 66-67 (2013) (noting that, in most small claims and civil motor vehicle infractions cases, "the litigants represent themselves and know little of the applicable law or court procedures" and therefore "might not . . . be in a position to vindicate their rights" without assistance); S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, Rule 6 (i), as amended, 442 Mass. 1301 (2004) (noting "the danger of coerced settlement in cases involving an imbalance of power between the parties" where one or more litigants are unrepresented). Review of settlement agreements in cases involving self-represented litigants is therefore an important safeguard. Accordingly, judges, including judges with administrative responsibilities, are strongly encouraged to have systems in place that allow for thorough settlement review prior to the entry of judgment. See S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, Rule 9 commentary (encouraging "judicial participation in the review of agreements" involving unrepresented parties).

In some instances, judicial review and approval of settlement agreements is expressly authorized or required by law. For example, in small claims cases, if an agreement for judgment is proffered when the parties are present, the clerk-magistrate or judge presiding over a hearing "shall review the agreement and, if it includes a payment order, inquire of the defendant to ascertain that he or she is able to pay the payment order and understands the consequences of not complying with the payment order." Uniform Small Claims Rule 7 (a). In summary process eviction cases, judicial approval of a compromise agreement between the parties converts the agreement into a binding court order. See *Dacey* v. *Burgess*, 491 Mass. 311, 315 (2023); *Adjartey*, 481 Mass. at 856 (Appendix). A marital separation agreement between a divorcing couple is specifically enforceable only where the court has found that it is fair and reasonable and not the product of fraud or coercion. See *Knox* v. *Remick*, 371 Mass. 433, 436-437 (1976); *Slaughter* v. *McVey*, 20 Mass. App. Ct. 768, 773, rev. denied, 396 Mass. 1103 (1985); *Dominick* v. *Dominick*, 18 Mass. App. Ct. 85, 91, rev. denied, 392 Mass. 1103 (1984). A settlement for damages arising out of a personal injury to a minor or incompetent person is subject to judicial review and approval at the request of a party. See G. L. c. 231, § 140C1/2. See also G. L. c. 152, § 15 (judicial approval of tort settlements where workers' compensation insurer has lien); Mass. R. Civ. P. 23 (c), as amended, 471 Mass. 1491 (2015) (court approval of class action settlements).

More generally, judicial review of settlement agreements involving self-represented parties should be the norm, especially in cases where the interests at stake involve essential civil legal needs such as housing, family disputes, and consumer debt. This is in keeping with the national consensus to provide special attention to case types involving essential civil legal needs. See Resolution 5, Reaffirming the Commitment of Meaningful Access to Justice for All (https://ccj.ncsc.org/__data/assets/pdf_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf), adopted by the Conference of Chief Justices and Conference of State Court Administrators at their 2015 Annual Meeting (calling upon state courts to facilitate access to effective assistance in adversarial proceedings involving basic human needs, such as shelter, sustenance, safety, health, and child custody). These high-stakes cases routinely include a very large percentage of self-represented litigants, most of whom are compelled by economic circumstances or other impediments to represent themselves.

In assessing voluntariness, the judge should be alert to potential coercion in any form. In assessing whether a self-represented litigant has knowingly entered into a settlement agreement, the judge should keep applicable legal protections in mind and confirm that the self-represented litigant has not waived them unknowingly.

The judge may also wish to ascertain whether the litigant had the benefit of self-help resources provided by the courts or others and refer the litigant to appropriate resources if it appears that the litigant could benefit from them. This is consistent with the policy stated in S.J.C. Rule 1:18, Uniform Rules of Dispute Resolution, Rule 6 (i), as amended, 442 Mass. 1301 (2004), that "a neutral has a responsibility, while maintaining impartiality, to raise questions for the parties to consider as to whether they have the information needed to reach a fair and fully informed settlement of the case." Cf. *Commonwealth* v. *Scott*, 467 Mass. 336, 345 (2014) ("A guilty plea is intelligent if it is tendered with knowledge of the elements of the charges against the defendant and the procedural protections waived by entry of a guilty plea"); Mass. R. Prof. C. 1.0 (g), as amended, 490 Mass. 1301 (2022) (defining informed consent as "agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct").

While this Guideline is directed at settlements that are dispositive of the case, judges may in their discretion conduct similar colloquies with respect to temporary orders.

Finally, it should be noted that some Trial Court departments provide ADR services through court personnel acting under judicial supervision. These services include mediation with housing specialists in the Housing Court, see *Dacey,* 491 Mass. at 315; *Adjartey*, 481 Mass. at 856 & n.17 (Appendix); Interim Housing Court Standing Order 1-23 (3) (ii) (E); mediation with assistant judicial case managers under the Pathways program in the Probate and Family Court, see Pathways Case Management Initiative in the Probate and Family Court (https://www.mass.gov/info-details/pathways-case-management-initiative-in-the-probate-and-family-court); and dispute intervention with probation officers in the Probate and Family Court, see Probate and Family Court approved Alternative Dispute Resolution (ADR) programs (https://www.mass.gov/info-details/probate-and-family-court-approved-alternative-dispute-resolution-adr-programs#:). Court personnel providing these ADR services are subject to the ethical standards set out in S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, which require neutrals to make every reasonable effort to ensure that the parties understand the process, and that they understand and voluntarily consent to any agreement reached in the process. See S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution, Rule 2 (defining a "neutral" to include a "housing specialist, probation officer, and any other court employee when that individual is engaged as an impartial third party to provide dispute resolution services"); Rule 9 (setting out ethical standards applicable to neutrals, including provisions concerning impartiality and obtaining parties' informed consent).

In cases such as these, where a settlement agreement has been reached as a result of a court's own in-house ADR program conducted by court personnel acting under judicial supervision, a judge (or other authorized judicial officer) may approve the settlement without convening the parties so long as the judge is satisfied that the court facilitator's review adhered to the practices enumerated in this Guideline.

5. The Litigation Process

5.1 Adapting the Litigation Process for Self-Represented Litigants. Judges must afford self-represented litigants due process and provide them with the opportunity to meaningfully present their claims and defenses. In order to fulfill this obligation, judges may, generally should, and sometimes must, adapt the litigation process to provide reasonable accommodations to the self-represented.

Appropriate accommodations include, but are not limited to: construing pleadings liberally, explaining legal concepts, providing information about procedural and evidentiary requirements, making referrals to available resources, and asking questions to elicit or clarify facts necessary for decision. See Guidelines 5.2 through 5.8 for guidance as to specific aspects of the litigation process.

Commentary

As discussed in Guidelines 1.2 and 1.3 and the related commentary, the constitutional right to due process requires judges to make such accommodations as are necessary to give self-represented litigants the opportunity to meaningfully present their claims and defenses and ensure a fair proceeding. See, e.g., *Turner* v. *Rogers*, 564 U.S. 431, 435, 449 (2011); *Adoption of Patty*, 489 Mass. 630, 631-632, 638, 648 (2022); *Department of Revenue Child Support Enforcement* v. *Grullon*, 485 Mass. 129, 133-138 (2020). "[J]udges must ensure that all parties, represented and unrepresented alike, receive a fair trial and that principles of due process are followed. . . . '[T]he judge's function . . . is to be the directing and controlling mind during the . . . proceedings, and to provide a self-represented party with a meaningful opportunity to present his or her case by guiding the proceedings in a neutral but engaged way.'" *Morse* v. *Ortiz-Vazquez*, 99 Mass. App. Ct. 474, 484 (2021), quoting *CMJ Mgt. Co.* v. *Wilkerson*, 91 Mass. App. Ct. 276, 283 (2017) (internal quotation marks and brackets omitted). Judges must play "an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016).

"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," provided that these "accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality." *Id*. Examples of permissible accommodations include construing pleadings liberally; providing brief information about the proceeding and evidentiary and foundational requirements; asking neutral questions to elicit or clarify information; modifying the manner or order of taking evidence or hearing argument; attempting to make legal concepts understandable; explaining the basis for a ruling; and making referrals as appropriate to any resources available to assist the litigants. *Id*. See Guideline 1.1; see also Guideline 1.6 (judges and court staff may properly provide legal information explaining how the court system works, but not legal advice).

These accommodations not only are permissible as a matter of judicial ethics, but also are recommended best practices that judges should follow in cases involving self-represented litigants to ensure that they understand the proceedings and that their cases are decided fairly on the merits. See, e.g., *Ensuring the Right to Be Heard: Guidance for Trial Judges in Cases Involving Self-Represented Litigants*, Institute for the Advancement of the American Legal System (November 2019), 11-16; *Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers*, Judicial Council of California (April 2019), 2-1–2-8; "Proposed Best Practices for Cases Involving Self-Represented Litigants," in Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, American Judicature Society (2005), 53-57; Rebecca Albrecht et al., *Judicial Techniques for Cases Involving Self-Represented Litigants*, Judges' Journal 42:1 (2003).

Furthermore, in some cases, depending on the circumstances, judges must make certain accommodations for self-represented litigants to meet the requirements of due process or other applicable statutes or court rules and orders. For example, judges may be required to:

- liberally construe pleadings or other arguments presented by self-represented litigants, see *Boston Hous. Auth.* v. *Y.A.*, 482 Mass. 240, 247 (2019) (reversing lower court order against tenant, where tenant's "mention of domestic violence as a possible factor in her failure to make the required [rent and arrearage] payments was a sufficient signal to the judge to inquire further to elicit additional facts in order to determine whether [tenant] was entitled to [Violence Against Women Act] protection"); *I.S.H.* v. *M.D.B.*, 83 Mass. App. Ct. 553, 561 (2013) (judge erred in concluding that self-represented litigant waived objection to personal jurisdiction, where it was sufficiently clear from litigant's statements that he was objecting to court's exercise of personal jurisdiction, even though he did not use words "personal jurisdiction"); *Loebel* v. *Loebel*, 77 Mass. App. Ct. 740, 743 n.4 (2010) (self-represented mother's "inability to articulate in the moment the precise procedural vehicle to obtain . . . a hearing" to provide further support for her argument for custody of her children "should not have ended the matter"; holding that judge abused discretion in denying mother opportunity to present new evidence to address best interests of children);

- allow reasonable flexibility in applying procedural rules, see *Morse*, 99 Mass. App. Ct. at 484-485 (citing principles of due process in holding that judge abused discretion in denying self-represented tenant's motion to file late answer in eviction proceeding, where prejudice to tenant, depriving him of statutory right to present affirmative defense, far outweighed any inconvenience to landlord); *Glendale Assocs., LP* v. *Harris*, 97 Mass. App. Ct. 454, 455, 464-465 (2020) (entry of default judgment against tenant for failure to file answer was "not consonant with principles of due process" where tenant had denied allegations against him and had been litigating case); and

- make sure that self-represented litigants have notice of critical questions in the case, such as issues that would be dispositive, and elicit information from them concerning these critical questions when necessary, see *Turner*, 564 U.S. at 435, 449 (incarceration of indigent self-represented parent for failure to pay child support violated due process, where parent did not receive clear notice that his ability to pay would constitute critical question in his civil contempt proceeding, and he did not receive form designed

to elicit information about his financial circumstances); *Grullon*, 485 Mass. at 137-138 (judge erred in finding self-represented defendant in civil contempt for failure to pay child support, where judge did not inquire into whether defendant had present ability to pay); *cf. Boston Hous. Auth.* v. *Y.A., supra.*

5.2 Explaining the Litigation Process. At the earliest opportunity, and at each court appearance, judges should take steps to ensure that self-represented litigants understand the litigation process, including discovery, motion practice, and trial. Judges should explain the nature and scope of the particular event before the court and the process to be followed. Judges should also explain that the litigation process is governed by court rules that apply to all parties, including self-represented litigants, and should direct self-represented litigants to resources to assist them in understanding what is required of them.

Commentary

In fulfilling their "affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard," judges may "provide brief information about the proceeding and evidentiary and foundational requirements" to a self-represented litigant. S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 & comment 1A (2016). Judges may also "attempt to make legal concepts understandable" and "make referrals as appropriate to any resources available to assist the litigants." *Id*. This should be done on the record. See generally Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants,* American Judicature Society (2005), 2 ("It does not raise reasonable questions about a judge's impartiality for the judge to explain to all parties how the proceedings will be conducted, for example, to explain the process, the elements, that the party bringing the action has the burden to present evidence in support of the relief sought, the kind of evidence that may be presented, and the kind of evidence that cannot be considered").

Guidance on how to provide explanations that give the parties appropriate legal information, rather than impermissible legal advice, can be found in Guideline 1.6 and the related commentary.

5.3 Explaining the Trial or Hearing Process. Judges should take steps to ensure that all litigants, including self-represented litigants, understand the process and ground rules for trials and evidentiary hearings. While the content will depend upon the nature of the event, in many cases the judge should inform the parties about:

- **the role of each participant, including the judge and staff; and**
- **the scope of the issues to be decided.**

The judge should also explain to the parties that:

- **where applicable, a case may be tried with either a judge or jury as fact finder;**

- **the case will be decided based upon on the law and the evidence;**
- **each side will have the opportunity to present evidence;**
- **the judge will guide the proceedings and decide what evidence can be considered;**
- **the judge may ask questions, but the questioning should not be interpreted as providing assistance to one side or the other, or as indicating the judge's opinion of the case;**
- **the litigants, not the court, are responsible for subpoenaing witnesses and records; and**
- **except when examining or cross-examining witnesses, self-represented litigants, as well as counsel for any represented party, should address their remarks and questions to the judge and not to the opposing party or opposing counsel.**

Commentary

As discussed in the commentary to Guideline 5.2, providing self-represented litigants with information about the proceedings and applicable procedural requirements for trials and other evidentiary hearings is both appropriate and encouraged. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016) (judges may properly "provide brief information about the proceeding and evidentiary and foundational requirements" to enable self-represented litigants to understand what they have to do to present their case). Where applicable, judges should inform litigants of the options for trying the case with or without a jury, and how that decision may impact the way the proceeding is conducted. See Superior Court Rule 20 (2) (h) and 20 (8), and Land Court Rule 14 for examples of non-jury trial options.

Furthermore, where both parties are self-represented and there is no jury, judges may "facilitat[e] the ability of all litigants" to be fairly heard on the merits of their case by modifying trial procedure or adopting an informal process. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 & comment 1A (2016). For example, judges may allot each party a set amount of time to tell the judge relevant facts, without interruption from the opposing party, and the judge will ask questions as needed. See generally Jona Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers,* American Judicature Society (1998), at 57 ("Most judges provide self-represented litigants with a detailed explanation of trial procedures, as time permits, and then allow narrative testimony").

Judges may properly question witnesses, even if doing so may strengthen one party's case, so long as the examination is not partisan in nature, biased, or a display of belief in one party's case over the other's. See *Commonwealth* v. *Shepherd*, 493 Mass. 512, 533 (2024), quoting *Commonwealth* v. *Carter,* 475 Mass. 512, 525 (2016) ("A judge may properly question a witness, even where to do so may reinforce the Commonwealth's case, so long as the examination is not partisan in nature, biased, or a display of belief in the defendant's guilt"); *Commonwealth* v. *Hassey,*

40 Mass. App. Ct. 806, 810 (1996) ("a trial judge may question witnesses to clarify the evidence, eradicate inconsistencies, avert possible perjury, and develop trustworthy testimony," but "may not, however, weigh in, or appear to do so, on one side or the other; the judge must avoid the appearance of partisanship"); see also *Adoption of Norbert*, 83 Mass. App. Ct. 542, 547 (2013) (judge's questioning was excessive, but did not deprive mother of impartial justice); Guidelines 5.4 and 5.5.

In some instances, a judge must examine a witness to ensure that there is sufficient evidence in the record from which a determination can be made. See *Boston Hous. Auth.* v. *Y.A.*, 482 Mass. 240, 247 (2019), citing S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 & comment 1A (2016) (tenant's "mention of domestic violence as a possible factor in her failure to make the required [rent] payments was a sufficient signal to the judge to inquire further to elicit additional facts in order to determine whether [tenant] was entitled to [Violence Against Women Act (VAWA)] protection"; "where a judge is given reason to believe that domestic violence is or might be relevant to a landlord's basis for eviction, the judge must ensure that he or she has sufficient evidence to make a determination whether the tenant is entitled to VAWA protections"); see also *Department of Revenue Child Support Enforcement* v. *Grullon*, 485 Mass. 129, 137-138 (2020) (judge erred in finding self-represented defendant in civil contempt for failure to pay child support, where judge did not inquire into whether defendant had present ability to pay child support).

Judges should be prepared to direct litigants to resources regarding subpoenaing witnesses and should instruct them about courtroom decorum. See Guidelines 1.6 and 3.1.

5.4 Explaining the Applicable Law. At the outset of any hearing or trial, judges should take steps to help self-represented litigants understand the issues to be decided and the standard of proof they must meet. Using plain language, the judge should and sometimes must inform the litigants of the elements of their respective claims and defenses, the applicable burden of proof, and who must carry the burden on various issues.

The judge may find it helpful to convey this information in the same way that these concepts are explained to a jury in plain language jury instructions.

Commentary

In *Turner* v. *Rogers*, 564 U.S. 431, 435, 449 (2011), and *Department of Revenue Child Support Enforcement* v. *Grullon*, 485 Mass. 129, 134-136 (2020), the United States Supreme Court and the Supreme Judicial Court respectively held that, to meet the requirements of due process, self-represented defendants must receive notice that their ability to pay is a critical issue in civil contempt proceedings where they face incarceration for failure to pay child support. Although most civil cases involving self-represented litigants do not entail the potential loss of liberty, they may result in the loss of a home or custody of a child, or in significant financial losses. Therefore, judges should routinely identify the critical issues to be decided. Judges should also explain the elements of the claims and defenses and the standard of proof that must be met. This practice will help to promote more efficient proceedings and more accurate and fair outcomes. See *Ensuring the Right to Be Heard: Guidance for Trial Judges in Cases Involving Self-Represented Litigants*, Institute

for the Advancement of the American Legal System (November 2019), 7 ("Although clearly beyond its precise holding, *Turner* v. *Rogers* provides the basis for articulating a right to 'informational justice' for self-represented parties. In order to participate effectively in a legal matter, both parties need to have a clear understanding of: . . . the legal elements that must be established, [including] the standard of proof that must be met, . . . [w]hat sort and types of evidence can be presented to meet those requirements, [and] [t]he affirmative defenses available to the other side, if there are any. . . .[L]aying this informational groundwork at the beginning of a . . . hearing, or trial significantly improves the likelihood of a just outcome to the proceeding" and "eliminates many of the procedural concerns that arise in appellate case law").

When explaining these concepts, the judge should use plain language. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016) (reasonable accommodations for self-represented litigants include making legal concepts understandable). Practical guidance on how to use plain language when dealing with complex legal concepts can be found in the Superior Court Guidelines for Drafting Model Jury Instructions. See Superior Court Guidelines for Drafting Model Jury Instructions, Section 1 (March 18, 2021). Additional guidance on plain language can be found in Guideline 2.2 and the related commentary.

5.5 The Judge's Role at Trial. Whether or not the parties are represented by counsel, the judge's role at trial remains the same. The judge's function is to direct, control and guide the proceedings in a neutral but engaged way.

Commentary

The trial judge's active role at trial is well-established by case law. "Whether a party is represented by counsel at a trial or represents himself, the judge's role remains the same. The judge's function at any trial is to be 'the directing and controlling mind at the trial, and not a mere functionary to preserve order and lend ceremonial dignity to the proceedings.'" *Commonwealth* v. *Sapoznik*, 28 Mass. App. Ct. 236, 241 n.4 (1990), quoting *Commonwealth* v. *Wilson*, 381 Mass. 90, 118 (1980). In cases involving one or more self-represented litigants, this role includes "provid[ing] a self-represented party with a meaningful opportunity to present her case by guiding the proceedings in a neutral but engaged way." *CMJ Mgt. Co.* v. *Wilkerson*, 91 Mass. App. Ct. 276, 283 (2017); see also *Morse* v. *Ortiz-Vazquez*, 99 Mass. App. Ct. 474, 479-480 (2021).

5.6 Evidence. While the rules of evidence apply to all litigants whether or not they are represented by counsel, judges must be mindful of their obligation to ensure that self-represented litigants are provided the opportunity to meaningfully present their claims and defenses. To that end, judges should exercise their broad discretion over evidentiary matters to:

- **establish the procedure that will be followed for the introduction of self-represented litigants' testimony;**
- **explain the process for offering evidence, including digital evidence;**
- **reduce procedural barriers to the entry of evidence;**

- **question witnesses to elicit or clarify information;**
- **explain foundational requirements and, if necessary, ask questions to determine whether those requirements are met;**
- **exclude or strike inadmissible evidence sua sponte;**
- **require counsel to explain objections in detail; and**
- **explain evidentiary rulings.**

Commentary

The judge's role as "the directing and controlling mind at the trial" includes direction of the process and procedure for the taking of evidence. *Commonwealth* v. *Sapoznik*, 28 Mass. App. Ct. 236, 241 n.4 (1990), quoting *Commonwealth* v. *Wilson*, 381 Mass. 90, 118 (1980). In all cases, judges "should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth, (2) avoid wasting time, and (3) protect witnesses from harassment or undue embarrassment." Mass. G. Evid. § 611 (a) (2024).

In cases involving self-represented litigants, judges may be particularly proactive in evidentiary matters. As explained in the Code of Judicial Conduct, in order to fulfill the judge's affirmative role in facilitating the ability of self-represented litigants to be fairly heard, the judge may, for example, provide information about evidentiary and foundational requirements, ask neutral questions to elicit or clarify information, and modify the manner or order of taking evidence or hearing argument. S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 (A) & comment 1A (2016). Judges may also act sua sponte to exclude evidence when the circumstances warrant it. See *Commonwealth* v. *Lucien*, 440 Mass. 658, 664 (2004) (holding that "judge has discretion to exclude irrelevant evidence, sua sponte, provided he does not exhibit bias in the process"); *Commonwealth* v. *Haley*, 363 Mass. 513, 517-519 (1973), S.C. 413 Mass. 770 (1992) (discussing judge's power to exclude evidence sua sponte); *Sapoznik*, 28 Mass. App. Ct. at 241 n.4 ("At times during the course of any trial, even when a party is represented by counsel, it may become necessary for a judge to intervene although there has been no objection to the admissibility of certain evidence").

In non-jury cases where both parties are self-represented, it can be useful for the judge to allow them to give narrative testimony. See commentary to Guideline 5.3. When that procedure is utilized, the judge will be assumed to have applied evidentiary principles correctly to the parties' accounts. See *Commonwealth* v. *Batista*, 53 Mass. App. Ct. 642, 648 (2002) ("A trial judge sitting without a jury is presumed, absent contrary indication, to have correctly instructed himself as to the manner in which evidence was to be considered in his role as factfinder").

When self-represented litigants are unable to meet the procedural requirements for the presentation and preservation of evidence (such as providing multiple copies or having to pay fees

to obtain court records), judges and court staff should make reasonable accommodations when appropriate. This is especially true with regard to digital evidence, where the consideration and preservation of the evidence may present special challenges.

Because it has become commonplace for self-represented litigants to seek to rely upon digital evidence that exists on their cell phones, judges should familiarize themselves with the protocols for the presentation and preservation of digital evidence set forth in the Massachusetts Guide to Evidence, § 1119 (2024). Section 1119 (d) specifically provides that "[b]ecause self-represented litigants may be limited in their ability to present and object to digital evidence, a judge should make reasonable efforts, consistent with the law, to ensure that self-represented litigants are fully heard." Accordingly, when a litigant is unable to produce digital evidence from a personal device in a format that is suitable to mark as an exhibit, § 1119 (c) provides that the judge may not refuse to consider it and should, instead, inspect it. Protocols for receiving and preserving digital evidence are set forth in the Note accompanying § 1119.

For additional cases indicating that a judge may take a proactive role in evidentiary matters, see *Commonwealth* v. *Jackson*, 419 Mass. 716, 722 (1995) (rejecting defendant's contention that he was prejudiced by the judge's interruptions where they were an attempt to assist defendant by explaining how to show that witness made a prior inconsistent statement, and also concluding that the judge correctly excluded or curtailed repetitive, argumentative and improperly phrased questions); *Griffith* v. *Griffith*, 24 Mass. App. Ct. 943, 945 (1987) (where self-represented litigant tended to stray into irrelevant considerations, judge was warranted in attempting to narrow the issues, ask questions, and direct the course of trial); *Adoption of Seth*, 29 Mass. App. Ct. 343, 350-351 (1990) (interests of efficiency often require that judges become directly involved in the case; judge did not abuse his discretion by suggesting psychiatrist be called because suggestion was based on impressions formed from participation in the case, not from prejudicial information gleaned from extrajudicial source).

In some proceedings (e.g., small claims), the applicable rules may permit even greater informality and participation by judges in eliciting facts. See *McLaughlin* v. *Municipal Ct. of the Roxbury Dist.*, 308 Mass. 397, 403 (1941) (no error where judge took charge of small claims procedure, because statute governing those procedures was intended to provide a simple, prompt, and informal means of disposing of such claims and gave judge wide discretion to manage case). These include:

- Proceedings under G. L. c. 209A and G. L. c. 258E. See Mass. G. Evid., § 1106 (2024) ("In all civil proceedings under G. L. c. 209A (abuse prevention) and G. L. c. 258E (harassment prevention), the law of evidence should be applied flexibly by taking into consideration the personal and emotional nature of the issues involved, whether one or both of the parties are self-represented, and the need for fairness to all parties"); *Frizado* v. *Frizado*, 420 Mass. 592, 597-598 (1995) (in a civil proceeding under G. L. c. 209A, "the rules of evidence need not be followed, provided that there is fairness in what evidence is admitted and relied on"); *A.P.* v. *M.T.*, 92 Mass. App. Ct. 156, 161 (2017) (applying same principle to proceedings under G. L. c. 258E).

- Small claims. See Small Claims Standards (2002), § 6:10 ("The court should not require strict adherence to the rules of evidence in small claims trials"). See also *id.*, § 1.00, commentary ("The small claims experience is different from other court proceedings because litigants, other than commercial litigants, generally appear without lawyers. . . . Trial Court personnel should recognize this fact and make every effort to assist small claims litigants as they try to navigate the unfamiliar territory of the clerk-magistrate's office and the courtroom on their own").

5.7 When Opposing Party Is Represented by Counsel. Judges must give lawyers the opportunity to present their clients' cases and advocate for their clients' interests, while, at the same time, conducting the proceedings in a manner that enables self-represented parties to meaningfully present their claims and defenses.

Judges may wish to alert the parties at the beginning of the trial that, in order to manage the case efficiently and allow both sides to participate fully, it may be necessary for the judge to play an active role in guiding the proceedings.

Judges must maintain control over the courtroom and not permit either the self-represented litigant or the lawyer to interrupt each other or obstruct the other's presentation. In cases where a self-represented litigant is testifying in narrative form, judges should pay particular attention to ensure that objections from counsel are handled in a manner that does not impede the testimony of the self-represented litigant while also ensuring a fair hearing for the represented party.

Commentary

"At times during the course of any trial, even when a party is represented by counsel, it may become necessary for a judge to intervene although there has been no objection to the admissibility of certain evidence." *Commonwealth* v. *Sapoznik*, 28 Mass. App. Ct. 236, 242, n.4 (1990). "'[T]he judge is not required to sit idly by while counsel for either side questions a witness in an effort to obtain an answer which could be the basis of either a motion for mistrial or a claim on appeal that prejudicial matters were brought to the attention of the jurors.'" *Id.*, quoting *Commonwealth* v. *Wilson*, 381 Mass. 90, 118 (1980). This does not mean that a judge must become a lawyer for a self-represented litigant; however, the judge should recognize when opposing counsel is "engaging in improper tactics and taking advantage of the [self-represented litigant's] unrepresented status" and "promptly intervene[ ], not to be of assistance to the [self-represented litigant], but to assert a judge's traditional role of making sure that all the parties receive a fair trial." *Id.*

Judges may require counsel to explain objections in detail, and judges should explain their evidentiary rulings. Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, American Judicature Society (2005), 39-40. To avoid the appearance of partiality, judges should explain that any questions the judge may ask are for the purpose of clarifying the testimony and should not be taken as an indication of the judge's opinion of the case. See *Commonwealth* v. *Hassey,* 40 Mass. App. Ct. 806, 810 (1996) (judge must avoid appearance of partisanship in questioning witnesses). This is particularly important in cases involving one self-represented litigant and one represented party.

5.8 Jury Trials. **Jury trials with self-represented litigants present special issues and require some additional actions by judges to make sure that the trial proceeds as fairly and smoothly as possible. The judge must remain in the role of the neutral presiding judge, while making sure that appropriate information is shared with the self-represented litigant. Judges should explain to the self-represented litigant that while judges can provide procedural information about what will be happening and some procedural guidelines, the judge cannot help self-represented litigants with the choices that they must make and the substance of their claims, defenses, and/or strategies.**

At any time before a jury trial commences, judges may raise the issue of whether to have a jury or jury-waived trial. This issue is of particular importance when one or more parties are self-represented. The judge should encourage all of the parties to think about the advantages and disadvantages of proceeding with or without a jury. The judge should not coerce the decision, but may point out that it can be challenging to conduct a jury trial without an attorney and that there is the option of a trial without a jury, where the judge is the fact finder.

Judges should instruct the jury that they are not to consider questioning by the judge to be an indication of the judge's opinion as to how the jury should decide the case. Judges also should instruct the jury that, if for any reason they believe that the judge has expressed or hinted at any opinion about the facts of the case, they should disregard it.

Judges should instruct the jury on the right to self-represent in the pre-charge and final jury instructions.

Commentary

In jury cases, judges should instruct the jury that they are not to consider questions asked by the judge as any indication of the judge's opinion as to how the jury should decide the case and that if the jury believes that the judge has expressed or hinted at any opinion about the facts of the case, they should disregard it. See Massachusetts Superior Court Civil Practice Jury Instructions §§ 1.2.1 (a), 1.2.2 (c) (Mass. Continuing Legal Educ. 3rd ed. 2014, & 2018 supp.); cf. Criminal Model Jury Instructions for Use in the District Court § 2.120 & supp. instruction 6 (Mass. Continuing Legal Educ. 3rd ed. 2009 & 2019 supp.).

5.9 Remote Trials and Hearings. **These guidelines apply equally to trials and hearings conducted in person, hybrid, and remotely, i.e., by telephone, video, or another virtual platform.**

When a self-represented litigant is participating in a trial or hearing remotely, judges must take steps to ensure that the remote trial or hearing comports with the requirements of due process and provides the self-represented litigant equal access and a meaningful opportunity to be heard. In particular, judges must ensure, preferably in advance of the remote trial or hearing, that the self-represented litigant:

- **has access to the technology necessary to participate in the trial or hearing;**
- **understands the process to be used for the trial or hearing, including but not limited to the availability and use of breakout rooms and document sharing; and**
- **understands the procedures to be used when the technology does not work as intended.**

If the self-represented litigant does not have access to the preferred technology for a remote proceeding, the judge must determine what technology the self-represented litigant does have available that will enable the litigant to participate in the trial or hearing and take reasonable steps to assist the self-represented litigant with such technology. If the judge cannot ensure that the self-represented litigant has appropriate access and a meaningful opportunity to be heard, then the trial or hearing may not be conducted remotely.

Commentary

Massachusetts appellate courts have found no per se violations of due process because of trials or hearings conducted hybrid or remotely as a result of the COVID-19 pandemic. However, special consideration must be given to put safeguards in place to address the potential pitfalls of reliance on technology. This Guideline is derived in large part from guidance that the Supreme Judicial Court provided in *Adoption of Patty*, 489 Mass. 630 (2022), regarding such safeguards. In that case, the Supreme Judicial Court concluded that "the use of an Internet-based video conferencing platform to conduct a trial on the issue whether to terminate a party's parental rights does not present a per se violation of due process provided that adequate safeguards are employed." *Id*. at 631. The court, however, ruled that the mother's due process rights were indeed violated because "[l]amentably, the first day of the two-day virtual bench trial conducted in this case was plagued by technological issues and inadequate safeguards, resulting in the self-represented mother's inability to participate either by video or by telephone, interrupting the testimony of the witnesses presented by the Department of Children and Families (department) during its case-in-chief, causing the mother to miss all but a few minutes of the department's evidence against her." *Id*. The court determined that the conduct of the virtual bench trial violated the mother's right to due process under the Fourteenth Amendment to the United States Constitution and art. 10 of the Massachusetts Declaration of Rights and vacated the decree. *Id*. at 631-632.

When conducting remote trials or hearings, judges "must ensure, preferably in advance of the hearing, that the participants understand the procedures to be used when the technology does not work as intended." *Id*. at 641. Judges should constantly and consistently make sure that the technology used to conduct the remote trial or hearing is functioning properly. When technological difficulties inevitably arise, judges should suspend the hearing and resume the hearing after the technological difficulty is resolved. *Id*.

Judges should take steps in advance of remote trials or hearings to make sure that self-represented litigants have the necessary technology to connect to the remote proceeding. *Id*. at 645. If a self-represented litigant does not possess this technology, judges should explore whether it would be possible to assist in obtaining access to such technology. *Id*. Furthermore, judges should consider encouraging the parties to share documents and exhibits in advance because it may be difficult to share such exhibits during a remote hearing by telephone. See *id*. at 646. If a remote hearing or trial is conducted using video conferencing, the judge should ensure that there is a plan for presenting evidence and other documents at the hearing.

Judges should take into consideration not just access to technology, but also a self-represented litigant's technological capabilities in using the technology. In some instances, the differing needs and abilities of the parties and witnesses when it comes to technology may make a hybrid format or other creative solutions appropriate. See Remote Hearings and Access to Justice During Covid-19 and Beyond (http://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf), National Center for State Courts (discussing the "digital divide" and noting "that access considerations require creative and inclusive practices beyond a blanket requirement for litigants to participate in hearings remotely"). See generally *Idris I.* v. *Hazel H.*, 100 Mass. App. Ct. 784, 789-90 (2022) (affording a meaningful opportunity to be heard in a remote hearing should include establishing a process for the exchange and use of documentary evidence).

To assist both the parties and the court in Superior Court hearings, judges should consider referring attorneys and self-represented litigants to the Superior Court Civil Committee, Tips for Attorneys and Self-Represented Litigants Appearing in Remote Civil Hearings Before the Superior Court, May 4, 2020 (https://www.mass.gov/info-details/tips-for-attorneys-and-self-represented-litigants-appearing-in-remote-civil-hearings-before-the-superior-court).

6. Post-Hearing Matters

6.1 Post-Trial Submissions. Where a judge has discretion to decide whether to require post-trial submissions, such as proposed findings of fact and conclusions of law or a proposed judgment, the judge should consider the hardships and challenges that self-represented litigants may face in preparing such submissions.

When post-trial submissions are required, the judge should explain that these documents must comport with evidence admitted at trial. The judge should also inform the parties how and when to submit them.

Commentary

This Guideline is consistent with provisions in the Code of Judicial Conduct permitting judges to exercise their discretion to make reasonable accommodations for self-represented litigants, so long as the accommodations do not give them an unfair advantage or create an appearance of judicial partiality. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016).

Note that in the District Court and the Boston Municipal Court, in most cases judges need not render specific findings of fact and conclusions of law after jury-waived trials unless at least one party submits proposed findings and conclusions. See Mass. R. Civ. P. 52 (c), as appearing in 450 Mass. 1404 (2008). By agreement, the parties may also waive written findings of fact by the judge in certain proceedings in Superior Court and Land Court. See Superior Court Rule 20 (2) (h) and 20 (8); Land Court Rule 14 (a) (approval of the judge is required in Land Court).

6.2 Issuing the Decision. Judges may exercise their discretion in deciding whether to announce and explain their decisions from the bench with the parties present, or to take the matter under advisement. In deciding which course to take, judges should be mindful of any exigent circumstances.

If there is no immediate need to enter an order, and the judge wishes to take the matter under advisement, the judge should inform the parties that the judge would like to consider their evidence and arguments. If possible, the judge should give the parties a timeframe within which the decision will be issued. The judge should also inform them that the decision will be sent to the mailing address and/or e-mail address that the court has on file for them. If any party has a language access issue, the judge should inform the litigant that it is important to get the decision translated when it arrives.

The judge should make clear that until the decision is issued, any existing temporary orders remain in effect, and the parties must continue to comply with them. If the decision being issued is a temporary order, the judge should explain that there will be further proceedings for which the parties must prepare.

Commentary

This Guideline is consistent with the provisions in the Code of Judicial Conduct that permit judges to make reasonable accommodations, such as explaining the basis for a ruling, in order to help self-represented litigants understand the proceedings and applicable procedural requirements. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016).

When one or more of the parties present before the court is of limited English proficiency, and there is an interpreter available in person or virtually to provide contemporaneous interpretation, the judge should consider this factor in deciding whether to rule from the bench. Consideration should always be given to safety, security, and courtroom management in deciding when and how to issue a decision.

6.3 Content of the Decision. Decisions should be issued in plain language, make the outcome of the proceeding clear, and provide an understandable explanation for the rationale behind the decision.

Commentary

To make decisions more intelligible, judges should consider the following recommended best practices:

- clearly explain the basis for the court's rulings and the legal concepts supporting the result;
- avoid legal jargon, abbreviations, acronyms, or shorthand; and
- include information about any further hearings, referrals, or other obligations.

See Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants,* American Judicature Society (2005), 20-21. See also. S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016). For more guidance on the use of plain language, see the resources listed in the commentary to Guideline 2.2.

6.4 Appeals and Other Post-Judgment Matters. Judges should be familiar with available resources for self-represented litigants relating to appeals and other post-judgment matters. Upon inquiry, or when otherwise deemed appropriate, judges should direct self-represented litigants to those resources.

Commentary

Judges may make referrals as appropriate to resources available to assist litigants. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.6 comment 1A (2016). Numerous resources exist to assist litigants in complying with or enforcing the decision, taking an appeal, and pursuing other post-judgment matters such as motions for a new trial and motions to stay. See, e.g., Massachusetts Trial Court Law Libraries Handbook: Representing Yourself in a Civil Case

(2018) (https://www.mass.gov/info-details/representing-yourself-in-a-civil-case-ix-after-the-courts-decision), which provides explanations for self-represented litigants about enforcement (execution, payment hearings, supplementary process, contempt, and summary process), appeals of court decisions, and the impact of an appeal on enforcement.

Self-represented litigants also may obtain in-person and remote assistance with regard to appeals and other post-judgment actions from the Trial Court's Court Service Centers (https://www.mass.gov/info-details/learn-about-court-service-centers). In addition, detailed resources are available online from Trial Court websites, the Appeals Court website, the Supreme Judicial Court website, and websites sponsored by legal aid organizations, such as masslegalhelp.org.

7. The Judge's Wider Role in Promoting Access to Justice

7.1 Services for Self-Represented Litigants. All judges, and especially those with administrative responsibilities, should encourage, support, and initiate efforts in the courts to improve services for self-represented litigants.

Commentary

The excellence of our courts depends not only on what takes place in individual courtrooms, but also on the infrastructure that supports the fair and efficient adjudication of cases. Thus, the Code of Judicial Conduct provides not only that judges must decide their cases competently and diligently, but also that they must be mindful of administrative imperatives. See S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 2, Rule 2.5 (B) (2016) ("A judge shall cooperate with other judges and court officials in the administration of court business"); *id.*, comment 2 ("A judge should seek the necessary resources to discharge all adjudicative and administrative responsibilities").

The prevalence of self-representation has created many challenges for litigants and the courts. It is therefore essential that judges support efforts to ensure that self-represented litigants are able to navigate the court system effectively and have their cases fairly heard and decided.

Judges with administrative responsibilities can play an especially important role in improving access to justice for the self-represented by taking steps that facilitate the ability of judges under their authority to follow these Guidelines and adopt best practices in handling cases involving self-represented litigants.

Judges can also promote access to justice for the self-represented by supporting and improving existing self-help services, such as Court Service Centers, Lawyer for the Day programs, interpreter services, courthouse navigation aids, and online guidance. In addition, judges can learn about and support other innovations that are commonly used with success in other jurisdictions, such as the development of simplified uniform forms and the use of guided interview and document assembly programs that make it easier for self-represented litigants to complete and file court papers.

7.2 Activities. Judges are encouraged, consistent with the Code of Judicial Conduct, to engage in activities to improve access to justice for self-represented litigants and other court users. Such activities might include:

- **attending, developing, or speaking at educational programs concerning best practices for cases involving self-represented litigants;**
- **serving on court committees tasked with improving services for those who come to court without lawyers; and**

- **encouraging lawyers to increase access to legal services for those who cannot afford them by providing pro bono or reduced fee services, participating in court-based Lawyer for the Day and conciliation programs, or, in appropriate cases, providing clients with limited assistance representation (LAR).**

Commentary

"Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice." S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 3, Rule 3 comment 1 (2016). For that reason, under the Code of Judicial Conduct, "[a] judge is encouraged to participate in activities that . . . promote access to justice for all," and "to initiate and participate in appropriate community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice." *Id*., Canon 1, Rule 1.2 comments 4 & 6. These provisions are consistent with the national consensus that the judiciary must take a leading role in improving access to justice, as reflected in Resolution 5, Reaffirming the Commitment to Meaningful Access to Justice for All, adopted by the Conference of Chief Justices and Conference of State Court Administrators in 2015, which urged members to provide leadership in achieving the aspirational goal of 100 percent access to effective assistance for essential civil legal needs.

Within the courts, judges can and should promote access to justice by working with their colleagues to develop and support services and practices that make it easier for self-represented litigants to obtain assistance, navigate the litigation process. and have their cases fairly heard. See commentary to Guideline 7.1, *supra*.

Within the wider community, judges may be involved in activities that promote access to justice, subject to the requirements of S.J.C. Rule 3:09, Code of Judicial Conduct, Canon 3, Rules 3.1 & 3.7 (2016). A specific example identified in the Code is that judges "may promote broader access to justice by encouraging lawyers to provide pro bono publico or reduced fee legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work." *Id*., Rule 3.7 comment 6.

a Saturday, Sunday, or legal holiday). Mass. R. E. F. 4(c)(1) and (2). Reference should be made to the Mass. R. E.F. for details.

A sentence has been added to Rule 3 to reflect the provisions of G.L. c. 261, § 27C, regarding waiver of the filing fee on the ground of indigency. The statute provides that if an affidavit of indigency "is filed with the complaint or other paper initiating the proceeding, the clerk shall receive the complaint or other paper for filing and proceed as if all regular filing fees had been paid." G.L. c. 261, § 27C(1). The statute states that the filing fee is "conditional" until the court grants or denies the request for waiver and if the request is denied, the statute allows the fee to be paid within five days.

Reporter's Notes (1973) Rule 3, substantially enlarges Federal Rule 3, and drastically alters prior Massachusetts practice, by eliminating the trifurcation of delivery to an officer, service, and "entry". Henceforth, an action is considered commenced, for all purposes, including the applicable statute of limitations, when either the plaintiff mails to the clerk the complaint and any required entry fee, *or* the clerk *receives* the complaint and the fee. The requirement of certified or registered mail is calculated to minimize problems of proof. The phrase "proper court" means the court in which requirements of venue and jurisdiction (personal and subject matter) are met.

Rule 4: Process

(a) Summons: Issuance. Upon commencing the action the plaintiff or his attorney shall deliver a copy of the complaint and a summons for service to the sheriff, deputy sheriff, or special sheriff; any other person duly authorized by law; a person specifically appointed to serve them; or as otherwise provided in subdivision (c) of this rule. Upon request of the plaintiff separate or additional summons shall issue against any defendant. The summons may be procured in blank from the clerk, and shall be filled in by the plaintiff or the plaintiff's attorney in accordance with Rule 4(b).

(b) Same: Form. The summons shall bear the signature or facsimile signature of the clerk; be under the seal of the court; be in the name of the Commonwealth of Massachusetts; bear teste of the first justice of the court to which it shall be returnable who is not a party; contain the name of the court and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend; and shall notify him that in case of his failure to do so judgment by default may be rendered against him for the relief demanded in the complaint.

(c) By Whom Served. Except as otherwise permitted by paragraph (h) of this rule, service of all process shall be made by a sheriff, by his deputy, or by a special sheriff; by any other person duly authorized by law; by some person specially appointed by the court for that purpose; or in the

case of service of process outside the Commonwealth, by an individual permitted to make service of process under the law of this Commonwealth or under the law of the place in which the service is to be made, or who is designated by a court of this Commonwealth. A subpoena may be served as provided in Rule 45. Notwithstanding the provisions of this paragraph (c), wherever in these rules service is permitted to be made by certified or registered mail, the mailing may be accomplished by the party or his attorney.

(d) Summons: Personal Service Within the Commonwealth. The summons and a copy of the complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual by delivering a copy of the summons and of the complaint to him personally; or by leaving copies thereof at his last and usual place of abode; or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by statute to receive service of process, provided that any further notice required by such statute be given. If the person authorized to serve process makes return that after diligent search he can find neither the defendant, nor defendant's last and usual abode, nor any agent upon whom service may be made in compliance with this subsection, the court may on application of the plaintiff issue an order of notice in the manner and form prescribed by law.

(2) Upon a domestic corporation (public or private), a foreign corporation subject to suit within the Commonwealth, or an unincorporated association subject to suit within the Commonwealth under a common name: by delivering a copy of the summons and of the complaint to an officer, to a managing or general agent, or to the person in charge of the business at the principal place of business thereof within the Commonwealth, if any; or by delivering such copies to any other agent authorized by appointment or by law to receive service of process, provided that any further notice required by law be given. If the person authorized to serve process makes return that after diligent search he can find no person upon whom service can be made, the court may on application of the plaintiff issue an order of notice in the manner and form prescribed by law.

(3) Upon the Commonwealth or any agency thereof by delivering a copy of the summons and of the complaint to the Boston office of the Attorney General of the Commonwealth, and, in the case of any agency, to its office or to its chairman or one of its members or its secretary or clerk. Service hereunder may be effected by mailing such copies to the Attorney General and to the agency by certified or registered mail.

(4) Upon a county, city, town or other political subdivision of the Commonwealth subject to suit, by delivering a copy of the summons and of the complaint to the treasurer or the clerk thereof; or by leaving such copies at the office of the treasurer or the clerk thereof with the

It should be noted that there may be additional requirements in connection with service of process imposed by statute. See, for example, G.L. c. 223, § 31, which provides that where service is made at the defendant's last and usual place of abode in District Court actions, "the officer making service shall forthwith mail first class a copy of the summons to such last and usual place of abode. The date of mailing and the address to which the summons was sent shall be set forth ... in the officer's return."

Reporter's Notes (1975) Rule 4(c) has been amended to make clear that process in the types of actions covered by Rule 4(h) need not be served by any of the individuals enumerated in Rule 4(c).

Rule 4(h) has been inserted to correct a serious inconvenience resulting from the apparent applicability to such Probate Court matters as petitions for instructions and accounts of Rule 4's general service requirements. If Rule 4, as originally promulgated, applied to this type of case, the cost of service might frequently assume excessive proportions. A petition for instructions involving a trust with numerous beneficiaries could require substantial service charges; an account in a common trust fund with over a thousand participants would impose massive expenses.

Prior to July 1, 1974, it was unquestioned that notice of the pendency of a petition for instructions, or the presentation for allowance of an account could be--and invariably was--effected by citation, served in hand or by publication. Moreover, a statute, G.L. c. 215, § 46, authorized the court to direct service to be made by registered mail, thus permitting appreciable saving in service costs. (Another statute, G.L. c. 4, § 7, equating certified mail with registered mail for this purpose, permitted an even less expensive procedure.)

As the amendatory legislation accompanying the Rules, Acts, 1974, c. 1114, repealed neither G.L. c. 215, § 46, nor G.L. c. 4, § 7, many probate courts continued to issue citations in the old form even after July 1, 1974. Others required service in accordance with Rule 4.

To eliminate the confusion, and to maximize flexibility in the particular class of actions affected, Rule 4(h) now explicitly approves both methods of procedure: In any Probate Court action seeking instructions or the allowance of an account, service may--but need not--be made by citation. In those rare cases whose strategy dictates service by an officer, the usual Rule 4 procedure is available.

Although the change in Rule 4(c) and the language of Rule 4(h) are both declaratory of existing practice as to accounts, the Supreme Judicial Court, in the order of February 24, 1975 promulgating the amendments, specifically made the new material retroactive to July 1, 1974. Thus service between July 1, 1974 and February 24, 1975 was valid, so long as it was made either: (1) In accordance with a citation; or (2) In accordance with Rule 4.

Reporter's Notes (1973) Rule 4 deals with process and service. It extensively changes Federal Rule 4 to meet state conditions and to adopt such existing state law as the "long-arm" statute, G.L. c. 223A, §§ 1-8.

person then in charge thereof; or by mailing such copies to the treasurer or the clerk thereof by registered or certified mail.

(5) Upon an authority, board, committee, or similar entity, subject to suit under a common name, by delivering a copy of the summons and of the complaint to the chairman or other chief executive officer; or by leaving such copies at the office of the said entity with the person then in charge thereof; or by mailing such copies to such officer by registered or certified mail.

(6) In any action in which the validity of an order of an officer or agency of the Commonwealth is in any way brought into question, the party questioning the validity shall forthwith forward to the Attorney General of the Commonwealth by hand or by registered or certified mail a brief statement indicating the order questioned.

(e) Same: Personal Service Outside the Commonwealth. When any statute or law of the Commonwealth authorizes service of process outside the Commonwealth, the service shall be made by delivering a copy of the summons and of the complaint: (1) in any appropriate manner prescribed in subdivision (d) of this Rule; or (2) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction; or (3) by any form of mail addressed to the person to be served and requiring a signed receipt; or (4) as directed by the appropriate foreign authority in response to a letter rogatory; or (5) as directed by order of the court.

(f) Return. The person serving the process shall make proof of service thereof in writing to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a sheriff, deputy sheriff, or special sheriff, he shall make affidavit thereof. Proof of service outside the Commonwealth may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the Commonwealth, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or such other evidence of personal delivery to the addressee as may be satisfactory to the court. Failure to make proof of service does not affect the validity of the service.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

(h) Certain Actions in Probate Courts: Service. Notwithstanding any other provision of these rules, in actions in the Probate Courts in the nature of petitions for instructions or for the

allowance of accounts service may be made in accordance with G.L. c. 215, § 46, in such manner and form as the court may order.

(i) Land Court. In actions brought in the Land Court, service shall be made by the court where so provided by statute.

(j) Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 90 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Amended February 24, 1975, effective July 1, 1974; December 17, 1975, effective January 1, 1976; June 2, 1976, effective July 1, 1976; December 13, 1982, effective January 1, 1982; March 29, 1988, effective July 1, 1988.

Reporter's Notes

Reporter's Notes (2021) With the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), parties may electronically file case initiating documents and may serve documents on other parties electronically.

However, where a case is electronically filed, service of process must be accomplished consistent with the provisions of Rule 4, i.e., through a sheriff or deputy sheriff, constable, or person specially appointed by the court. See Rule 4(a) (unless there is written consent or the court has otherwise ordered); Mass. R. E. F. 6(c). There is no electronic service of process on a defendant.

Rule 6 of the Mass. R. E. F. provides as follows:

> (c) Service of Case Initiating Documents Shall Be By Conventional Methods. Unless otherwise determined by the court, or unless the responding party has consented in writing to accept electronic service or service by some other method, case initiating documents shall be served by conventional methods, together with a notice to the responding party stating the case has been electronically commenced.

Reporter's Notes (1996) With the merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure in 1996, two differences that had existed between the two sets of rules have been eliminated. Prior to the merger, the District Court version of Rule 4(f) required proof of service to be made to the court and to the party; in addition, the District Court version included constables among those who are not required to make an affidavit of service. The merged set of rules adopts the version of Rule 4(f) contained in the Massachusetts Rules of Civil Procedure. Under the merged set of rules, proof of service in the District Court is required to be made only to the court and constables are required to make affidavit of service.

Rule 4(a), unlike Federal Rule 4(a), puts the onus of delivering process to the server upon the plaintiff or his attorney, rather than upon the clerk. It explicitly allows the plaintiff or the attorney to obtain the blank summons form in advance.

Rule 4(c) permits special court appointment of process servers.

Rule 4(d) somewhat changes the Massachusetts rule that in actions of tort or contract, not involving an attachment, the summons need not contain a copy of the declaration. Under Rule 4(d), the summons does not *contain* the complaint, but the two must be served together.

Rule 4(d)(1) allows process to be "left at [defendant's] last and usual place of abode," G.L. c. 223, § 31. The Rule makes clear that service on a statutorily authorized agent may also require the giving of additional notice, and that the plaintiff must consult the statute and fulfill its requirements. If service in any of the modes prescribed by Rule 4(d)(1) is impossible, the plaintiff may obtain an order of notice. See G.L. c. 223, § 34; c. 227, § 7. Divorce proceedings brought in the Superior Court, c. 208, § 6, although governed by these rules, are, in matters of notice and service, controlled by G.L. c. 208, § 8.

Rule 4(d)(1) incorporates prior law covering service upon infants and incompetents. No statute treats the situation precisely, of G.L. c. 206, § 24. At common law, an infant or an incompetent must be served like any other defendant, and service must precede the appointment of a guardian ad litem, Taylor v. Lovering, 171 Mass. 303, 306, 50 N.E. 612, 613 (1898); Reynolds v. Remick, 327 Mass. 465, 469, 470-471, 99 N.E.2d 279, 281-282 (1951).

Rule 4(d)(2) governs service upon a business entity. Basically, it allows the entity to be served via its officers, manager, or service-receiver designated by appointment or statute. A domestic entity may, alternatively, be served by leaving the papers at the principal office with the person in charge of the business. This somewhat widens prior Massachusetts practice. For an example of the kind of statutory notice covered by the proviso clause of Rule 4(d)(2), see G.L. c. 181, § 4. The "order-of-notice" provision follows Rule 4(d)(1).

Rule 4(d)(2), unlike the cognate Federal Rule, does not refer to "partnerships". Because Massachusetts law so clearly treats partners as individuals for purposes of suit, Shapira v. Budish, 275 Mass. 120, 126, 175 N.E. 159, 161 (1931), use of the federal language would work an undesirable change in substantive law.

Rule 4(d)(3), like Federal Rule 4(d)(4), covers service upon the sovereign or one of its agencies. Service is complete upon delivery to the Attorney General's office *or* upon the mailing of the papers to him by registered or certified mail.

Rule 4(d)(4) governs service upon political subdivisions of the Commonwealth subject to suit. It simplifies the procedure set out in G.L. c. 223, § 37, and applies the principles of the rest of Rule 4 to service of political subdivisions. Rule 4(d)(4) requires the plaintiff to bring the fact of suit to the attention of the person who is most likely to sound the litigational alarm; but it does not require him to do more.

Rule 4(d)(5) applies the principles of Rule 4(d) to service of public entities subject to suit under a common name.

Rule 4(d)(6) is designed to ensure that the Attorney General receives prompt notification of any possible court test (however collateral) of an order of an officer or agency of the Commonwealth. The Rule seeks to minimize the inconvenience to the public which results when such test does not come to the Attorney General's attention until late in the litigation. Rule 4(d)(6) is therefore a mandate of convenience. Failure to observe it will not vitiate otherwise valid service; courts should, however, be alert to compel observance of its requirements.

Rule 4(e) controls out-of-state service. It embodies the procedure set out in the long-arm statute (G.L. c. 223A, §§ 6-7), which in turn relied heavily upon Federal Rule 4(i) (a section omitted, therefore, from these rules). Rule 4(e) is largely self-explanatory and is flexible enough, when read with Rule 4(d)(1) and (2) and G.L. c. 223, § 37; c. 223A, §§ 1-3, to cover most order-of-notice situations. See also c. 227, § 7.

Rule 4(f) requires direct filing by the server. It should be emphasized that any delay by the process server does not bar the plaintiff. See Peeples v. Ramspacher, 29 F.Supp. 632, 633 (E.D.S.C.1939).

Rule 4(g) tracks Federal Rule 4(h) verbatim. It follows the spirit of the Federal Rules, refusing to allow “technicalities” to obstruct justice. See Rule 15 (covering amendments to pleadings) and Rule 60 (covering relief from judgments). It will work no substantial change in Massachusetts practice. See G.L. c. 231, § 51.

Rule 4.1: Attachment

(a) Availability of Attachment. Subsequent to the commencement of any action under these rules, real estate, goods and chattels and other property may, in the manner and to the extent provided by law, but subject to the requirements of this rule, be attached and held to satisfy the judgment for damages and costs which the plaintiff may recover.

(b) Writ of Attachment: Form. The writ of attachment shall bear the signature or facsimile signature of the clerk, be under the seal of the court, be in the name of the Commonwealth, contain the name of the court, the names and residences (if known) of the parties and the date of the complaint, bear teste of the first justice of the court to which it is returnable who is not a party; state the name and address of the plaintiff's attorney (if any), be directed to the sheriffs of the several counties or their deputies, or any other person duly authorized by law, and command them to attach the real estate or personal property of the defendant to the value of an amount approved by the court, and to make due return of the writ with their doings thereon. The writ of