

**Best Practices:
for Inviting Appropriate Interaction from Self-Represented Litigants**

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Self-represented litigants are often intimidated by the process and unsure when/if they are supposed to speak. Obviously there are times when it is *not* appropriate for the self-represented litigant to speak up, and you can communicate this verbally and nonverbally (see bottom of page). The problem is, many times the way a judge shuts down inappropriate interaction also shuts down appropriate interaction. To get necessary information and check comprehension, normally you will NOT want to completely shut down interaction, so how do you communicate an openness to interaction when you really want it in addition to just saying it?

Behaviors that can communicate “Open to interaction:”

- ❖ Verbally invite interaction (with a sincere tone). Tell them early in the process when they will have the opportunity to speak/ask questions.
- ❖ Use fairly extensive eye contact or eye contact at least at appropriate points. If eye contact will be limited, tell them why.
- ❖ Remember the power of your voice: use a sincere, inviting tone, natural pace, expressive inflections, appropriate pauses (wait 5-10 seconds).
- ❖ Include prompts such as a gesture indicating the speaker should continue along with a verbal prompt such as “go on.”
- ❖ Be sure to have upright posture or slight forward lean.
- ❖ Turn your body fully toward the self-represented litigant when listening (and speaking) to him/her.
- ❖ Do something to show that you’re listening--taking notes (let listeners know that’s what you’re doing if your eye contact is limited), asking questions or paraphrasing (also checks your understanding).
- ❖ Others: raise your eyebrows slightly and relax your mouth, tilt your head slightly to the side, use open hand (palm up) gestures.

Behaviors that could help avoid or control inappropriate interaction:

- ✓ Tell them early in the process when they will speak and remind them when necessary that it isn’t the right time--follow with when they can.
- ✓ Acknowledge emotions, then engage their logical brain.
- ✓ Keep your voice level or take the volume down a notch or two.
- ✓ Use the litigant’s name (with appropriate title), a couple of times in a row if necessary. Have direct eye contact while you do this.
- ✓ Pause—have a pointed silence with direct eye contact.
- ✓ Use strong gestures—palms down gestures, “stop” sign, pointing IF necessary (it’s a very strong gesture that’s easily overused).
- ✓ Respectfully redirect the rambling litigant by briefly paraphrasing what he/she said, then changing direction: “What we need to do now....”
- ✓ Remind them of consequences (WIIFM, “on the record,” closure, etc.).

Best Practices (continued)

for Nonverbal Communication with Self-Represented Litigants

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- Be aware of the **power of your voice** – tone and vocal inflections are key components in conveying respect.
- Maintain **eye contact** with the speaker when possible – it shows you're attentive, allows you to see her/his "body language," and helps you regulate the interaction (but don't be offended if others don't keep eye contact with you). --If you will be looking elsewhere for a significant amount of time, let people know what you're doing (for instance, taking notes: "I need to write this down in detail. I am listening. Please continue.>").
- Remember that what you consider your "**neutral**" **facial expression** can come across as more severe than you intend (due to drawing eyebrows together in concentration as well as the effects of aging). If you want to look open to communication but still impartial, lift your eyebrows slightly and relax your mouth.
- Use **gestures** both to control the courtroom (palm downward gestures, signals to "stop," etc.) and to invite participation (palm upward gestures) when appropriate. Pointing can help indicate whom you are referring to, but use pointing only when necessary—it's a strong gesture that can have an "in-your-face" feeling to the person on the receiving end of it, and pointing is an easy gesture to overuse.
- **Orient your body** toward the speaker and sit up straight or lean slightly forward – this demonstrates that you're engaged in the process, it reinforces that the speaker should be directing his/her remarks to you, and it encourages more active listening on your part. Treat both parties the same in body orientation.

OVERALL: Transparency, Equivalency, Congruency

- Whenever feasible, be clear about what you are doing and why.
- Treat all parties in as equivalent a manner as possible—turning toward them, amount of eye contact, etc. When there are unavoidable major discrepancies (for instance, how much time you spend listening to each side), be transparent about the reasons (for instance, "I have already reviewed Ms. Brown's motion for [action requested]. Now I need some information from Mr. Adams regarding....").
- Make sure that your nonverbal communication sends the same message as your verbal communication to reduce uncertainty and reinforce your message. If verbal and nonverbal behaviors contradict each other, remember that people generally put much more weight on the truthfulness of the nonverbals.