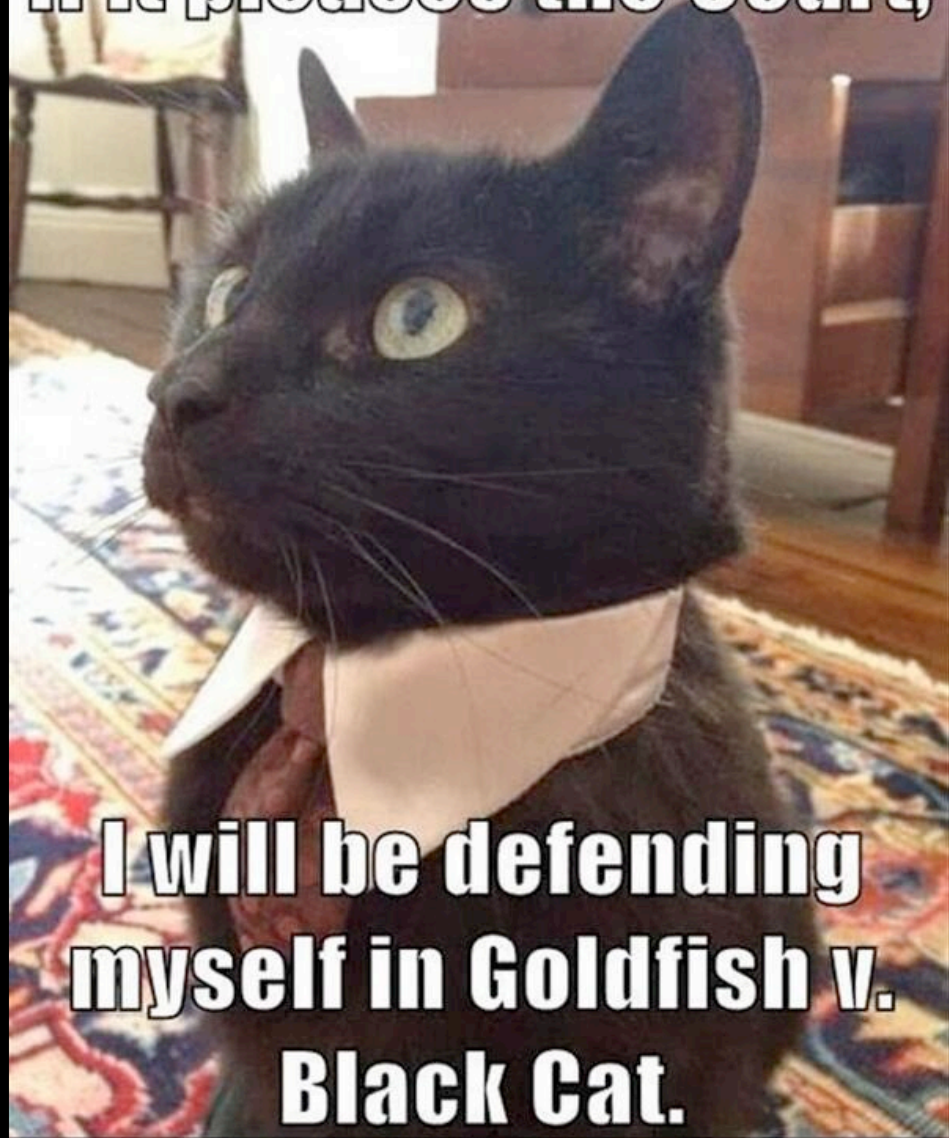


**Managing the Challenges
Presented by
Unrepresented Litigants**

If it pleases the Court,

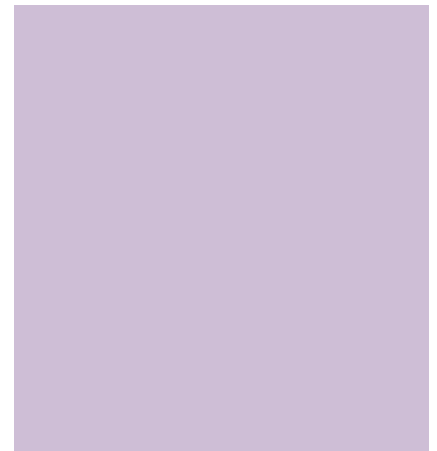


**I will be defending
myself in Goldfish v.
Black Cat.**



Traditional Judicial Model

- Highly structured
- Infused with ceremony and ritual
- Formal atmosphere
- Legal jargon
- Rigid application of Rules of Evidence
- Judge as umpire
- Parties represented by counsel



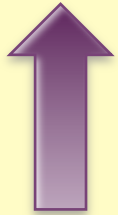


~~Traditional~~ Outdated Judicial Model





~~Traditional~~ Outdated Judicial Model



Rise of administrative
law proceedings



~~Traditional~~ Outdated Judicial Model



Rise of administrative
law proceedings

Traditional judicial
model not necessary to
maintain neutrality



~~Traditional~~ Outdated Judicial Model



Rise of administrative
law proceedings

Traditional judicial
model not necessary to
maintain neutrality



Unrepresented litigants
(URLs)

+ PMJJ Syndrome

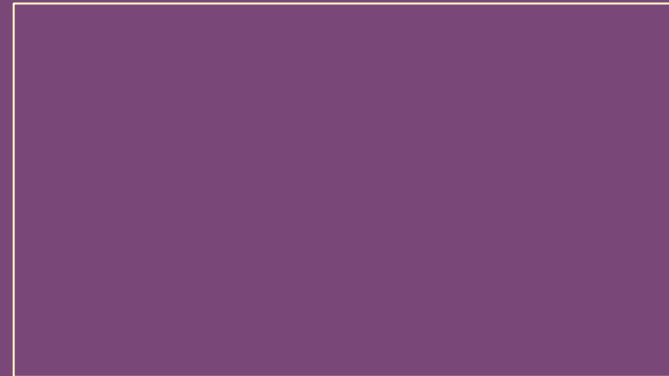
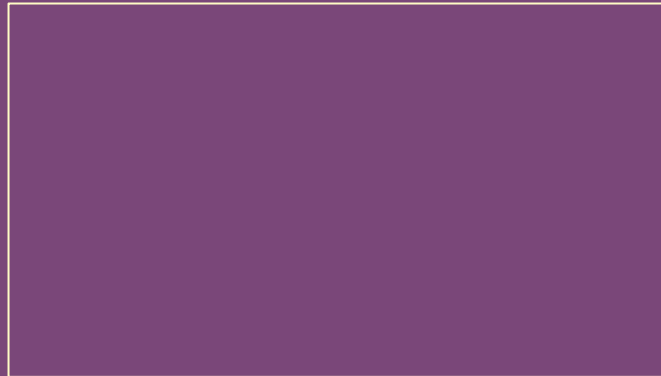
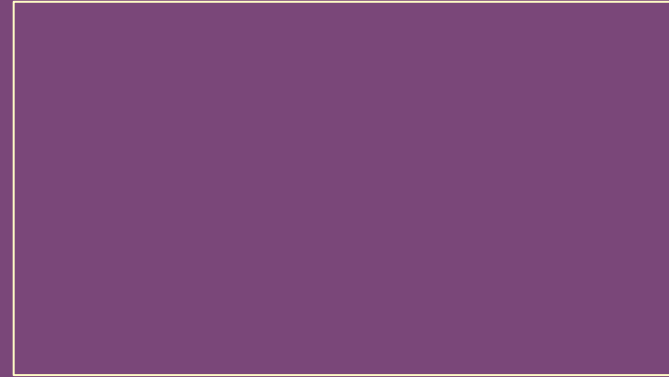
“On television, it looks simple enough: You go to court. You make your case, with feeling, before a sharp-tongued but well-meaning judge. After a few moments – and a commercial break – the judge renders a decision. It looks so easy, you wonder:

Who needs a lawyer?”

Dante Chinni, *More Americans Want to be Their Own Perry Mason*, CHRISTIAN SCI. MONITOR, Aug. 20, 2001, at 1.

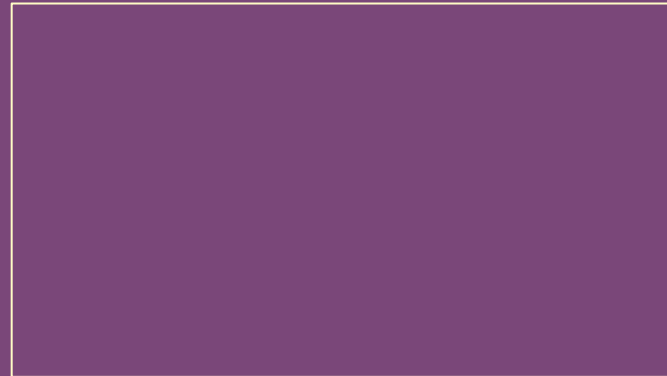
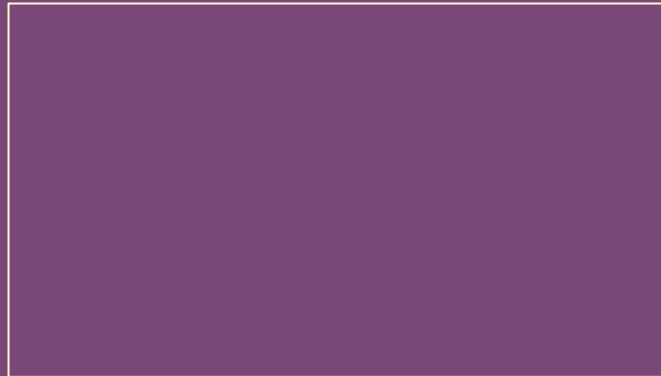


**Truly indigent
Meritorious claim**



**Truly indigent
Meritorious claim**

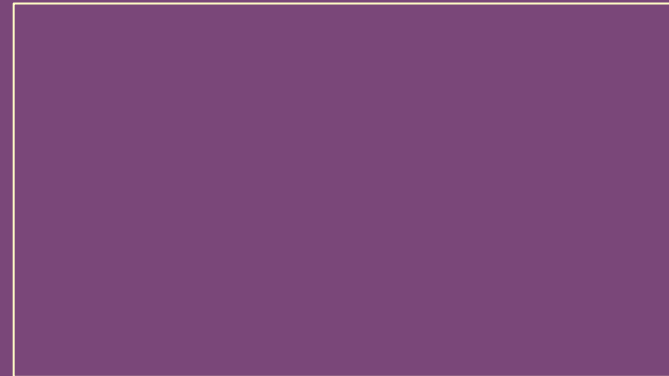
**Truly indigent
Worthless claim**



**Truly indigent
Meritorious claim**

**Truly indigent
Worthless claim**

**Not indigent
Meritorious claim**



**Truly indigent
Meritorious claim**

**Truly indigent
Worthless claim**

**Not indigent
Meritorious claim**

**Not indigent
Worthless claim**



~~Traditional~~ Outdated Judicial Model



Rise of administrative
law proceedings

Traditional judicial
model not necessary to
maintain neutrality



Unrepresented parties
(URLs)

+ The Two Dimensions of Judging

	Engaged	Passive
Neutral	Creates an environment in which all the relevant facts are brought out;	Leaves it to the parties to get their evidence and foundations before the court;
	Engages the parties, as needed, to bring out these facts, and their foundation;	Does not engage the parties, but rules on motions and objections;
	Ensures neutrality by making sure that each side gets its side fully out.	Relies on the balance of the system to ensure neutrality.
Non-Neutral	May intervene to deter or prevent one side getting story before court;	Acts as above and allows bias to cloud whether and how evidence is admitted and seen.
	May also allow bias to cloud how evidence is seen.	**Source: Richard Zorza



“Judicial neutrality and judicial passivity are very different, and should not be confused In the pro se context, the appearance of neutrality and true neutrality are often very different. . . . The apparent contradiction can be resolved by the development of a transparent style of judging. . . . Such transparency can be achieved by relatively simple courtroom techniques.”

Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 Geo. J. Legal Ethics 423 (2004).





A judge should be a “guiding force at a trial, not just a ceremonial presence or silent monitor presiding over rituals understandable only by the initiated.”

Cynthia Gray, *Reaching Out Or Overreaching: Judicial Ethics and Self-Represented Litigants*, 27 J. Nat'l Ass'n. L. Jud. 97 (2007).



Solutions:

- Take a more active role within the strictures of the present system.
- Take full advantage of the implications of a system that is not completely circumscribed by formal evidentiary rules.

Article: A Full and Fair Hearing: The Role of the ALJ in Assisting the Pro Se Litigant, 27 J. Nat'l Ass'n L. Jud. 447



Solutions:

Opportunities to Engage Unrepresented Litigants

- ◆ **PRE-TRIAL:** Before litigants file, when they are reviewing materials online or from the clerk's office.
- ◆ **PRE-TRIAL:** When a litigant is attempting to file by preparing and submitting an initiating document.
- ◆ **TRIAL:** During a hearing, when a litigant is presenting evidence and making arguments to the court.
- ◆ **POST-TRIAL:** After the hearing, when a litigant is receiving a decision.

+ Solutions: Pretrial

◆ Guidebook

- ✧ In plain language
- ✧ Contains general information, such as
 - Hearing procedure
 - How to prepare for a case
 - What to expect during a hearing
 - Glossary of terms
- ✧ For example, see Oregon Tax Court, Tax Appeals Handbook

+ Solutions: Pretrial

◆ Written communications

- ✧ In plain language
- ✧ Free of abbreviations
- ✧ No acronyms or initialisms
- ✧ No shorthand
- ✧ No slang the URL will not know

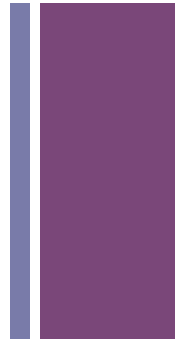
◆ Resource referrals



WHAT'S THE REAL CHALLENGE? HEARINGS!

“The process in most tribunals, even in relatively informal settings such as small claims courts and administrative hearings, rejects both the form and substance of the inevitable manner in which pro se litigants speak, i.e., narrative. **Indeed, it is obvious that narrative is the way in which most people, except perhaps lawyers and judges, speak and communicate.**”

Article: A Full and Fair Hearing: The Role of the ALJ in Assisting the Pro Se Litigant, 27 J. Nat'l Ass'n L. Jud. 447 (2007)



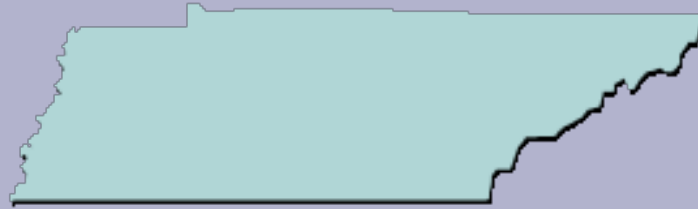
+ Solutions: Hearings

Engage in effective
communication

+ Solutions: Hearings

ENGAGE IN EFFECTIVE COMMUNICATION:

- Avoid legal jargon, acronyms, initialisms
- Clear and logical directions
- Neutral questions
- Give a basic introduction to courtroom protocol, process, and ground rules
 - Elements
 - Burden of proof
 - Standard
 - Appropriate kinds of evidence that can or cannot be presented
 - How you will make your decision based on the evidence presented.
- Non-verbal communication



Tennessee Bench Book

The rules are the same for both sides.

Talk to the judge.

Don't talk to or argue with the other side once the trial starts.

Show respect and be polite.

No yelling, arguing, cursing or name-calling.

Do what the judge tells you.

This is a court of law.

If you don't show respect, the judge may say it is contempt of court.

Then you may have to pay a fine or go to jail.

It can also make you lose your case.



Solutions: Hearings

Engage in effective
communication

Minimize
Obstacles



+ Solutions: Hearings

MINIMIZE OBSTACLES:

- Construe pleadings liberally
- Help unrepresented litigants avoid technical errors. Encourage attorneys representing other parties to do the same.
- Protect against witness obstruction by opposing parties or attorneys.



+ Solutions: Hearings

Engage in effective
communication

Minimize
Obstacles

Modify
practices

+ Solutions: Hearings

MODIFY PRACTICES:

- Neutral practices
- Design procedures
- Structured sequence
- Reorder the evidence
- Ask your own questions!

+ Solutions: Hearings

Engage in effective communication

Minimize Obstacles

Modify practices

Relax the Rules



RULES OF EVIDENCE

- Developed for untrained triers of fact—lay juries

but

- Administrative agencies are not jury systems

and

- ALJs and hearing officers have particular expertise

also

- ALJs uniquely qualified to assess credibility



+

“Orderly rules of procedure do not require sacrifice of the rules of fundamental justice.”

Hormel v. Helvering, 312 U.S. 552, 557 (1941).



Maine State Board of Property Tax Review

The Board has the power to

“Promulgate rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, governing procedures before the board.”

36 M.R.S. § 271(2)(C) (2014).



Maine Administrative Procedure Act

5 M.R.S. § 9057. Evidence

1. Rules of privilege. Unless otherwise provided by statute, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law.

2. Evidence. *Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude irrelevant or unduly repetitious evidence.*

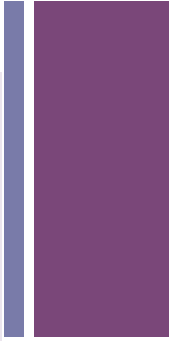
3. Witnesses. All witnesses shall be sworn.

4. Prefiling testimony. Subject to these requirements, an agency may, for the purposes of expediting adjudicatory proceedings, require procedures for the prefiling of all or part of the testimony of any witness in written form. Every such witness shall be subject to oral cross-examination.

5. Written evidence; exception. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.



- **Assessing Authority.** The assessors, municipal officer(s), chief assessor, or the State Tax Assessor, in the case of the unorganized territory, who renders, or fails to render a decision as required by statute *which decision or failure is appealable to this Board.*



+ DISCOVERY!

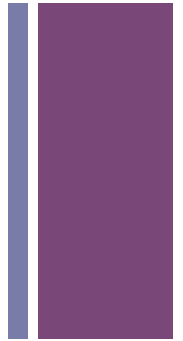
- **Discovery.** The Board shall have all authority granted under statute to obtain all necessary information available to enable the Board to conduct a proper hearing and to carry out its responsibilities under the law. Within **fifteen (15)** days of receipt of a written request for information any party shall file all records, documents and files requested by the Board.

+ BRIEFS!

- **Briefs.** The Presiding Officer may require that parties file **briefs** within such time as he may order. The parties shall indicate on the record at or before the close of testimony whether they desire to file **briefs**. **Briefs** which contain a statement of evidence or of facts claimed to be established by evidence shall include a reference to the specific portion of the record in which such evidence or facts may be found. When the transcript of the hearing is available, reference to oral testimony shall be by page number when possible. The Board may allow oral arguments in lieu of or in addition to **briefs**.



- Procedure Governed. These Rules shall govern all practice and procedure before the Board under applicable laws of the State of Maine, except as otherwise provided by statute or rule. **When the circumstances of a particular proceeding requires more detailed procedures than those set forth in these rules, additional procedures may be specified by the Board by order applicable to that particular proceeding.**





- **Liberal Construction.** These Rules shall be **liberally** construed to secure just, speedy, and economic determination of all appeals presented to the Board.
- **Deviation from Rules.** In special cases, where good cause appears, the Board may permit or order **deviation** from these Rules insofar as it may find compliance therewith to be impracticable, inexpedient, or unnecessary. Nothing in this section shall permit the Board to deviate from any procedural requirement or deadline that is expressly set forth in statute without provision for waiver or modification.

+ Solutions: Post-Trial

Orders and decisions

- Understandable
 - Explanatory
 - Thorough
 - Thoughtful
 - Unbiased
- Short and declarative
 - Positive language



ABA Model Code of Judicial Conduct Rule 2.2:

“(A) A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

(B) A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, *including self-represented litigants*, to be fairly heard.”

Comment 4 to Model Rule 2.2:

“It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”





RULE 2.6

Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that forces any party to settle. A judge may participate in case management conferences, judicial settlement conferences, and dispositional conferences, and such participation alone does not disqualify the judge from participating in later adjudicatory proceedings.

(C) A judge may take affirmative steps, consistent with the law, as the judge deems appropriate to enable an unrepresented litigant to be heard. A judge may explain the requirements of applicable rules and statutes so that a person appearing before the judge understands the process to be employed. A judge may also inform unrepresented individuals of free or reduced cost legal or other assistance that is available in the courthouse or elsewhere.



U.S. Equal Employment Opportunity
Commission Handbook for Administrative
Judges (July 1, 2002)

“The Administrative Judge may instruct pro se complainants regarding the correct method of questioning witnesses.”



U.S. Equal Employment Opportunity
Commission Handbook for Administrative
Judges (July 1, 2002)

“The Administrative Judge may instruct pro se complainants regarding the correct method of questioning witnesses.”

“The Administrative Judge may also facilitate the introduction of exhibits by asking questions about the relevance of proposed exhibits and instructing pro se complainants regarding the correct method of questioning witnesses.”



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“The Administrative Judge may explain the substantive legal standards and burdens of proof that apply to the case.”



“The Administrative Judge may instruct pro se complainants regarding the correct method of questioning witnesses.”

“The Administrative Judge may also facilitate the introduction of exhibits by asking questions about the relevance of proposed exhibits and instructing pro se complainants regarding the correct method of questioning witnesses.”

“The Administrative Judge may explain the substantive legal standards and burdens of proof that apply to the case.”

“Generally, the Administrative Judge should not reject, with prejudice, filings by a pro se complainant for failing to comply with technical requirements of form, unless the violations are repeated after a clear warning and instructions as to proper form.”

Why should we
change our
judicial model?

Shorter
hearings

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change our
judicial model?

Shorter
hearings

Less
combative
atmosphere

Why should we
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Avoid
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**Prevent a
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**Enhance the
perception of
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Actually
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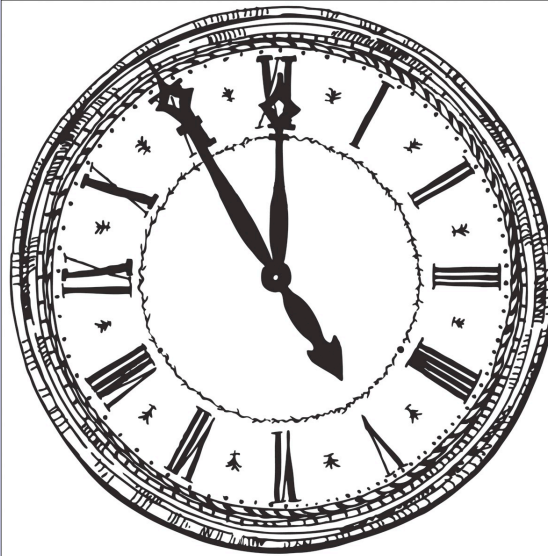
Enhance the
perception of
justice

Avoid
harm to
the parties

Reduce the
likelihood/likely
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appeals

+ Solutions

Time to
stop
“dealing
with”
URLs



Time to
start
working
with
them



Tennessee welcome

Be courteous and respectful to all parties.

Be in control of your courtroom but **realize achieving justice in each case is a work-in-progress.**

Use your ability, training and common sense to deal with all parties, whether represented by counsel or not.

You are here for a **season**, and you are a servant of the people who elected you and the Constitution and laws that guide you. Enjoy the experience and honor, and advance the cause of justice.

