

Dealing with Pro Se Opponents

Does anyone have any advice on how to best handle a pro se opponent during a hearing or trial?

Primarily, I'm concerned with direct and cross examination, and the best way to handle those. Is it ever a good idea to call a pro se adverse party as a witness for direct examination?

Thanks for any thoughts.

Best advice I ever got came right from a Family Law magistrate. "Let them talk." Don't object too much. Most time people will run their mouths right into trouble. They think they are helping their case and they are really killing themselves.

When questioning, phrase your questions carefully. Make them clear so your average person can understand them. Then if you don't get the information you want, object as non-responsive. The court will usually tell them to knock it off if they start playing games.

Elizabeth Pugliese, Maryland

Well, pro ses are frequently very fuzzy on the law and procedure.

I personally, tend to present my case in chief; if I need to call pro se adverse party to prove something, fine, I'll do it. Judge swears them in and usually they gulp a little; they are told they have to tell the truth. I will ask leading questions to try to keep things concise; frequently they will want to go on and 'explain'. I usually let judge handle that; if they are evasive or tend to rattle on, my judges will say something like "you will have a chance to tell your side of the story but answer the question for now".

If they're evasive, non-cooperative, judge is going to know that and treat them accordingly.

Remember, remember, you address your statements and arguments to the court; not the other side; whether the other side is represented by an attorney or is pro se. Don't argue with them, don't raise your voice or get outraged. Remain professional. I tend to

give them a bit of leeway on rules but I will object when appropriate; Objection, hearsay, when they offer a letter or a 'notarized statement' or whatever.

Ronald Jones

My favorite “war story” involving a pro se party involved a defendant who was an elementary school teacher.

When she was invited to make an opening statement, she took out an easel and a whiteboard, and started to explain to the judge why she was right — in terms a 4th-grader could understand. The judge was not amused, and pointed out that the purpose of an opening statement was to lay out what the evidence was going to show, rather than to make her closing argument.

It went downhill from there.

Brian H. Cole, California

Years ago, I defended a legal malpractice jury trial in which the plaintiff, a pretty experienced and competent real estate agent, was in pro per. I moved in limine to order the plaintiff to testify in question and answer format, not a run-on narrative, so that I would have an opportunity to object. Based it on due process grounds, IIRC. Motion in limine granted.

The plaintiff put himself on the stand and tried to proceed by Q then A, lasted about 1.25 hours then we took a lunch recess. He was quite non-plussed and had a difficult time asking himself questions then answering them. That afternoon following our recess, he was so unhappy with proceeding in such Q&A fashion that he declined to keep going so the judge dismissed his lawsuit.

Michael L. Boli, California

Treat them as you would anyone else, but I tend to do more things in writing than I otherwise would.

As far as calling them as a witness, I guess it varies by case and practice area. If I am the plaintiff I pretty much always call the opposing party as my first witness in my case in chief, whether they are represented or not.

I like to examine them on everything before they have a chance to hear other witness testimony and figure out how to dance around inconvenient facts.

Ryan Phillips

It depends very much on the temperament of the pro se. If they are civil with me, trying to do the best they can with what little they know, rational, etc., then I try to be the same in return while simultaneously standing on my client's rights under applicable statute, case law, etc.

Putting stuff in writing as Ryan says is a good idea although don't put so much in writing that you end up advising them on stuff.

If the opposing pro se is not cooperative, calls me names, irrational as all get out, etc., then I am still civil as to not be would incur the judge's wrath. I also don't buy in to drama at all (in any circumstance) so being irrational, etc. in return would just walk me down that road. I guess what I do differently is to confront/challenge the pro se at every possible opportunity (e.g. object, prove their version of the facts to be wrong, etc.) and generally not cut them any slack.

I can't recall ever having a pro se on direct or cross, I'd agree with Elizabeth's advice. Let the pro se hang themselves. The crazy irrational ones generally do and you might find your hardest job is not laughing.

Andy Chen