

Enhancing Procedural Fairness

Draft Menu of Best Practices

PRINCIPLES OF PROCEDURAL FAIRNESS:

- Voice
- Understanding
- Neutrality
- Respect

Courtroom Management/Environment

- Courtroom Rules: Rules should be simple, clearly posted, and consistent throughout the courthouse. Efforts should be made to use respectful language. (*e.g.* “Please: No hats. No talking on cell phones. Thank you for keeping the courtroom quiet and respectful.”) Court staff should enforce rules using a respectful tone of voice.
- Calendaring Cases: Explain to court participants the order in which cases will be called (*e.g.* need lawyer to be present, jail cases take priority, etc.). This demonstrates respect for defendants who are waiting.
- Seating: Consider how attorney-only or police-only seating impedes perceptions of neutrality.
- Start time: Court session should begin promptly at the time scheduled to demonstrate respect of defendants’ time. You can thank audience members for being on time to show mutual respect. If court does not start on time, court staff may should update audience members of when they expect court to start.

Opening Soliloquy

- Humanizing the Experience: Introduce yourself to the court by name. Consider offering a brief statement of small talk (*e.g.* sympathy re: long security lines or the bad weather).
- Pace/Schedule: If court is particularly busy, acknowledge this and how it may impact the court session (*e.g.* “I appreciate everyone’s help in getting through this morning’s busy caseload efficiently. I apologize if I seem rushed.”). This strategy can help relax the audience, as well as make the judge seem approachable.

- Rules & Procedures: Court staff may choose to recite the basic rules and format of the court proceedings at the beginning of each court session. These procedures can also be posted in the courtroom. For courtrooms with a security glass divider, court staff may consider explaining why it is there and how they may ask questions of court staff, if needed.
- Decision-Making Process: The judge may consider explaining to the court audience that decisions will be made after considering all of the relevant evidence, including testimony from the prosecutor, the defendant, his/her attorney, and any victims/witnesses.
- Other Relevant Information/Influences: Consider if there are other factors that will affect your conduct/mood. Adjust your behavior accordingly, and when appropriate, explain those factors to the court. (*e.g.* “I apologize if I appear drowsy today. I am getting over a cold.”)

During Each Court Appearance

- Greeting Defendants:
 - Greet each defendant by name and with eye contact. Also, greet both lawyers respectfully. You may choose to thank the defendant for appearing on time or another appropriate casual greeting.
 - State the purpose of each appearance in plain language (*e.g.* possible plea bargain). You can invite the defendant to tell you what he/she thinks the purpose is.
- Verbal Communication with Defendants:
 - Ask defendant if he/she feels he/she had enough time to discuss case with counsel.
- Non-verbal Communication with Defendants:
 - Make eye contact.
 - Consider your body language and reduce intimidating behaviors.
 - Engage in active listening. Repeat back your understanding and ask questions as needed.
- Addressing Lawyers:
 - Minimize legalese so that defendants can follow the conversation. If necessary, explain legal jargon in plain language afterwards.
 - Demonstrate neutrality by treating lawyers respectfully and without favoritism.

- Decision-Making Process: Explain what factors you will consider before making a decision to demonstrate transparency. Explain that both the prosecution and the defense will have opportunities to speak.
- Using a script: Scripts can be helpful to outline key points, but should be personalized and not simply read verbatim. Be careful to use natural cadence and tone with scripts that you have memorized (*e.g.* understanding of plea agreements).
- Sidebars: Before lawyers approach the bench, explain that sidebars are brief discussions that should not go on the record, and that the defendant’s lawyer can summarize the conversation afterwards.
- Staying on task:
 - Avoid reading or completing paperwork when a defendant is before you. When needed, consider explaining: “I need to review your case file for a moment.”
 - Breaks are an important tool to keep you focused and in a mindset to promote procedural fairness. You can use a visual reminder at the bench or ask court staff to remind you to take breaks. Before you take a break, explain to court participants when you expect to return.
- Orders:
 - Orders: Ask defendants to repeat their understanding of what the order says. The order should be provided in clear, plain language and typed in a large font.
 - Community service/probation intake: Explain where to go next. Consider having escorts to direct defendants to the off-site intake office.
 - Notice of next court appearance: Ensure that defendant’s next court appearance instructions are given clearly – both orally and written.

Special proceedings:

- **PLEAS**
 - Consider ways to use plea allocutions (and/or sentencing hearings) as an opportunity to give voice to defendants, either directly or via their attorneys.
 - Expand rote questions to ensure true understanding. Consider asking defendants to repeat back to you their understanding of what rights they are surrendering by pleading guilty.
 - If a defendant seems unsure about his/her desire to plead guilty, offer a short recess so he/she can discuss with counsel and reflect on the terms of the plea. Also,

consider having a planned response for defendant who want to take a plea but also claim they are not guilty.

- Explain why defendants must disclose any mental illness/medications to ensure they are of sound mind when making a plea decision. These are personal questions to be asked in open court; whenever possible, ask questions privately.

- **DEFERRED PROSECUTION/SENTENCING**

- Explain the key aspects of the deferred prosecution agreement and process. Explain that a single judge – who specializes in overseeing these cases – will be responsible for the case as long as the defendant is in compliance.
- Convey to defendants and to the audience that it is in everyone’s best interest if the defendant is able to successfully complete the DPA.

- **SENTENCING**

- Explain what factors will (and will not) be considered in making a sentencing decision. Explain that you will consider what the defense attorney and prosecutors say, but you do not have to follow their recommendations.
- Explain the terms of the sentence, including the benefits of compliance and the consequences of non-compliance. Ask defendants to repeat back what is expected of them and when. Provide a written summary in plain English.
- Demonstrate your interest in the defendant successfully completing his/her sentencing requirements. Direct defendants to voluntary service providers or referrals that may be able to help support the defendant in getting their life on track.
- If the sentence includes probation, briefly explain the intake process and how their case will be monitored by probation going forward.

In-custody defendants:

- Be aware of holding area conditions; acknowledge or improve if possible.
- Consider addressing that the use of shackles is beyond your control.
- Consider opportunities for defendants to acknowledge and/or interact with family members in the audience or explain why contact with family members will not be possible.
- Upon release, make sure defendant understands (and has reminder mechanism for) return date.

Special Populations:

- In general, procedural justice principles have been shown to be effective on all populations, so no/minimal special provisions should be needed.
- Use the case file and your interaction with the defendant to assess any special needs (*e.g.* interpreter, more time to understand things, cultural sensitivities).
- Enhance respectful and non-intimidating body language with Limited English Proficiency and hearing disabled defendants.
- Provide a list of voluntary referrals to additional services, when warranted.
- Prepare scripts and/or a game plan to respond to challenging populations/scenarios.

Environmental Factors:

- Courthouse security: Any security measures, such as checkpoints and/or metal detectors, should be administered with respect.
 - o Explain procedures.
 - o Reduce waiting time.
 - o Whenever possible, make indoor waiting area accessible and respectful.
 - o A helpful and respectful sign at security can help counteract any confusing or disrespectful treatment court participants may experience.
- Info Desk: Clearly designate the hours of the information desk. Direct court participants to another source of information when the desk is closed.
- Signage: Use an easy-to-read font and minimal use of capital letters.
- Accessibility: Consider the signage for and practical ease of use of handicap accessible entrances, elevators, etc.
- Décor: Consider opting for nice pictures or other culturally neutral images vs. photos/paintings of former judges that are not reflective of the diversity of the community.

System Performance

- Performance Measures: Consider adding procedural justice performance measures to court administration protocols.
- Participant Feedback: Provide court participants an opportunity to give feedback via a Comment Box or other survey method.