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Expanding Access to the Court Without Compromising Neutrality

Introduction

Some judges instinctively feel that involving themselves actively in a hearing or trial—as is often necessary if the judge is to obtain needed information from self-represented litigants—may cause one or more of the parties to the proceeding to perceive that the judge failed to maintain judicial neutrality. On the contrary, such active involvement is not only fully consistent with access to justice, and often required by it, but can enhance the court's neutrality/

The Court of Appeal has explicitly recognized the necessity for, and has approved, such judicial behavior:

We know the litigants, both plaintiffs and defendants, are unrepresented by counsel in the vast majority of cases—as was true here. We also know this fact influences how these hearings should be conducted—with the judge necessarily expected to play a far more active role in developing the facts, before then making the decision whether or not to issue the requested permanent protective order. In such a hearing, the judge cannot rely on the pro per litigants to know each of the procedural steps, to raise objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights.

Ross v. Figueroa (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d 289.

⁴ The concepts in this chapter derive in significant part from those developed in R. Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality, When Parties Appear Pro Se*, 23 *Georgetown Journal of Legal Ethics*, 423 (2004).