

SVENSON
BARRISTERS



Ethics and Practicalities in Dealing with Self Represented Litigants (SRLs)

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Often more
challenging than
appearing against a
lawyer.

The right to a fair hearing



Disadvantages faced by SRLs

- Lack of legal skill; and
- Lack of objectivity

Tomasevic v Travaglini
(2007) 17 VR 100



Adversarial-----> Inquisitorial?



"What a judge must do to assist a litigant in person depends on the litigant, the nature of the case, and the litigant's intelligence and understanding of the case."

Abram v Bank of New Zealand (1996) ATPR 41-507

“...the court must assume the burden of endeavouring to ascertain the rights of parties that are obfuscated by their own advocacy.”

Neil v Nott (1994) 121 ALR 148

Don't Forget, Lawyers can be Self Represented Litigants too!



“...the advice and assistance which a litigant in person ought to receive ...should be limited to that which is necessary to diminish...the disadvantage which he or she will ordinarily suffer when faced by a lawyer, and to prevent destruction from the traps which our adversary procedure offers to the unwary and untutored. But the court should be astute to see that it does not extend its auxiliary role so as to confer upon a litigant in person a positive advantage over the represented opponent.”

Rajski v Scitec Corporation Pty Ltd
(New South Wales Court of Appeal,
unreported, 16 June 1986)

F: Litigants in Person Guidelines [2001]

FamCA 348

Explaining the manner in which the trial is to proceed.

Taking basic information from witnesses called, such as name, address and occupation.

If there is any change to normal procedure requested by other parties, informing the SRL of the potential of the change to cause injustice to the SRL, and their right to object.

Advising of any right to object to inadmissible evidence.



F: Litigants in Person Guidelines [2001]

FamCA 348

Where it is in the interests of justice, the judge may:

Advise relation to the applicable law.

Question witnesses.

Identify applications or submissions that ought to be put to the court.



Microsoft Corporation v Ezy Loans Pty Ltd (2004) 63 IPR 54 -a good example of when the court will not intervene.

Appellant alleged respondent used Microsoft software without licences.

Respondent was self represented.

Trial judge did not intervene during cross examination when respondent was agreeing to propositions that were adverse to his case.

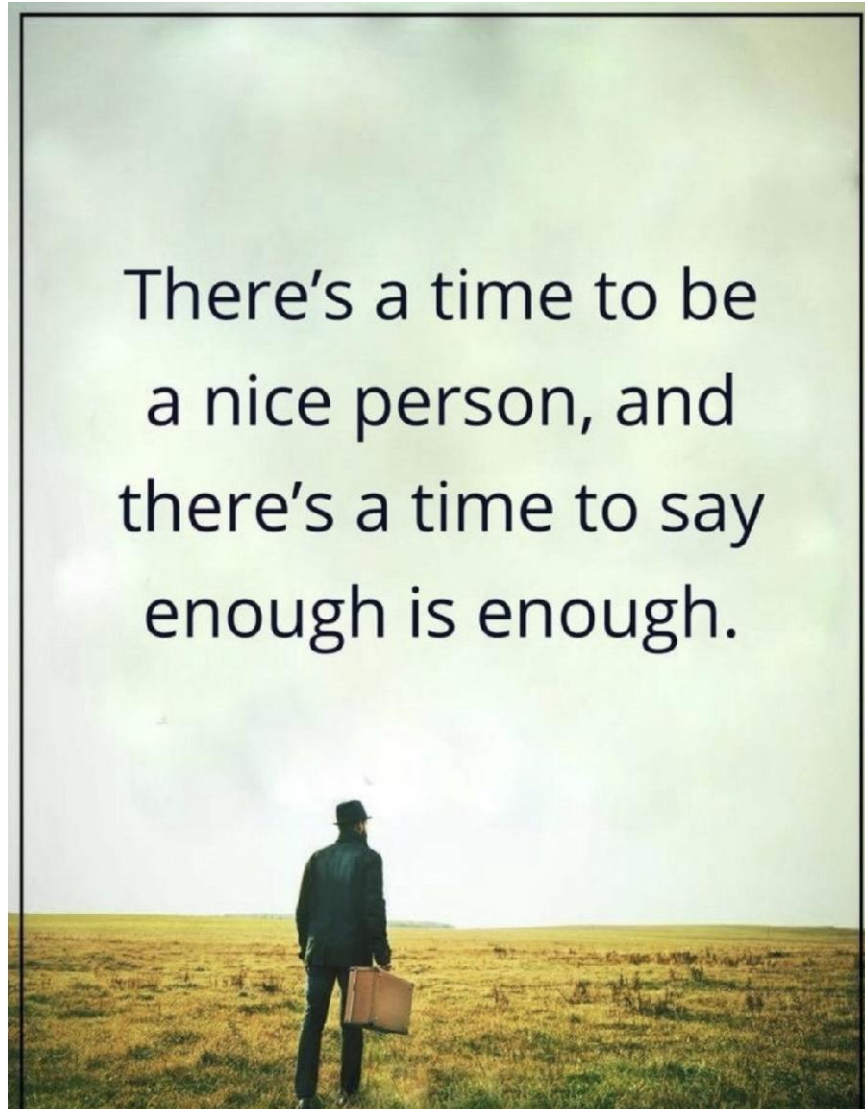
This was because the trial judge “did not, however, get the impression that this was because Mr Davis [the respondent] did not understand the issues and, in the circumstances, I do not think that intervention by the court would have been appropriate.”



A black and white photograph of a nuclear explosion, showing a large, dark, billowing cloud rising from the ground, surrounded by a layer of white, puffy clouds. The image has a grainy, historical quality.

Application to Recuse

There's a time to be
a nice person, and
there's a time to say
enough is enough.



Professional Conduct Rules

"Where, as here in the case of the respondent, a party is represented by competent and experienced lawyers and is opposed by litigants in person, the party and its lawyers have a duty to assist the court to understand and give full and fair consideration to the submissions of the litigants in person."

Serobian v Commonwealth Bank of Australia
[2010] NSWCA 181

Civil Procedure Act 2010

*Legal Profession Uniform Law
Australian Solicitors' Conduct
Rules 2015*





30.1 A solicitor must not take unfair advantage of the obvious error of another solicitor or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact.

*Legal Profession Uniform Law
Australian Solicitors' Conduct Rules
2015*

Self- represented Litigants: Guidelines for solicitors

QUEENSLAND LAW SOCIETY



Guidelines for solicitors dealing with self- represented parties

LAW SOCIETY OF NEW SOUTH WALES



Practice Directions





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