

1 **RULE 2.6 Ensuring the Right to Be Heard**

2
3 (A) A judge shall accord to every person who has a legal interest in a proceeding, or
4 that person’s lawyer, the right to be heard according to *law*.

5
6 (B) A judge may encourage parties to a proceeding and their lawyers to settle matters
7 in dispute but shall not act in a manner that coerces any party into settlement.
8

9
10 **Comment**

11
12 [1] The right to be heard is an essential component of a fair and impartial system of
13 justice. Substantive rights of litigants can be protected only if procedures protecting the right to
14 be heard are observed.

15
16 [1A] The rapid growth in litigation involving self-represented litigants and increasing
17 awareness of the significance of the role of the courts in promoting access to justice have led to
18 additional flexibility by judges and other court officials in order to facilitate a self-represented
19 litigant’s ability to be heard. By way of illustration, individual judges have found the following
20 affirmative, nonprejudicial steps helpful in this regard: (1) providing brief information about the
21 proceeding and evidentiary and foundational requirements; (2) modifying the traditional order of
22 taking evidence; (3) refraining from using legal jargon; (4) explaining the basis for a ruling; and
23 (5) making referrals to any resources available to assist the litigant in the preparation of the case.
24

25 [2] The judge plays an important role in overseeing the settlement of disputes, but
26 should be careful that efforts to further settlement do not undermine any party’s right to be heard
27 according to law. The judge should keep in mind the effect that the judge’s participation in
28 settlement discussions may have, not only on the judge’s own views of the case, but also on the
29 perceptions of the lawyers and the parties if the case remains with the judge after settlement
30 efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an
31 appropriate settlement practice for a case are: (1) whether the parties have requested or
32 voluntarily consented to a certain level of participation by the judge in settlement discussions; (2)
33 whether the parties and their counsel are relatively sophisticated in legal matters; (3) whether the
34 case will be tried by the judge or a jury; (4) whether the parties participate with their counsel in
35 settlement discussions; (5) whether any parties are unrepresented by counsel; and (6) whether the
36 matter is civil or criminal.
37

38 [3] Judges must be mindful of the effect settlement discussions can have, not only on
39 their objectivity and impartiality, but also on the appearance of their objectivity and impartiality.
40 Despite a judge’s best efforts, there may be instances when information obtained during
41 settlement discussions could influence a judge’s decision making during trial, and, in such
42 instances, the judge should consider whether disqualification may be appropriate. See Rule
43 2.11(A)(1).
44
45

46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62

Comparison to Ohio Code of Judicial Conduct

The Ohio Code contains no provision analogous to Rule 2.6.

Comparison to ABA Model Code of Judicial Conduct

Rule 2.6 and Comments [1], [2], and [3] are identical to Model Rule 2.6.

Comment [1A] is new language not found in the Model Rule. The first sentence acknowledges that the number of litigants who represent themselves, voluntarily or involuntarily, is increasing and that for many of those litigants, the lack of familiarity with the law and the rules of procedure may prevent them from participating in a meaningful way. Judges sometimes struggle with the need to facilitate access while maintaining appropriate neutrality. The second sentence of the comment is included to provide some guidance, particularly to trial judges, about how to facilitate access while maintaining appropriate neutrality. The language is adapted, in part, from a comment proposed to the American Bar Association for inclusion in Model Rule 2.6 by Chief Justice Karla Gray of the Montana Supreme Court.