



The Due Process Advocate

*"No Person shall be . . . deprived of life, liberty, or property without the due process of law"
- Fifth Amendment of the United States Constitution*

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A DESPERATELY-NEEDED ADVOCACY BUSINESS IS EMERGING TO RESTORE DUE PROCESS RIGHTS

Due process advocacy is an emerging business as courts are slowly but surely "stacking the deck" against self-represented litigants who choose to represent themselves. Due process advocates are helping defendants navigate their way through the maze of obstacles that many court systems and administrative agencies have established to compromise due process rights.

The roots of due process advocacy go back several decades; as court dockets became more and more crowded and limited judicial resources caused courts all over the country to focus on what we will graciously refer to as "expedited proceedings."

Court procedures, in the final analysis, were often designed to accommodate the crowded court dockets and not necessarily to ensure justice. Unfortunately, the easiest short-cuts to implement were often those that prevented litigants, especially self-represented defendants, from having their day in court (i.e. being afforded the opportunity to assert their due process rights without delay or interference).

Due process rights are not rocket science. In a vast majority of cases, defendants in a legal action deserve, and should expect, all of the following:

1. Reasonable notice of any proposed action against them, and the grounds for the action, for which they must appear and answer in court;
2. An opportunity to present the reasons why any proposed action should not be taken against them;
3. The right to present their own evidence as well as a right to know the opposing party's evidence;
4. The right to question witnesses who testify against them;
5. The opportunity to be represented by an attorney (it's a right in most criminal matters);
6. An unbiased court and a decision by the court that is based only on the evidence presented;
7. The basic right to obtain a record of the proceeding and the evidence presented against them; and
8. The basic right to receive written findings of fact and rulings of law (or reasons) for its decision from the court.

Due process advocates are quick to recognize when these fundamental due process procedures are missing or not being observed (intentionally or unintentionally). Advocates understand just how fast a case can be lost when a defendant doesn't understand how he or she is being denied these fundamental rights. Due process denials can happen so fast and so subtly that they often go unnoticed during a legal proceeding - until it's way too late.

JUDGE GENIE SAYS...

#1 BY EHS/GES
MARCH 9, 2019



Sometimes, however, due process violations are anything but subtle. One such memorable case involved a title action heard by a jury. At the end of the plaintiff's case at trial, the jury was excused for a break.

The judge instructed the jury as follows:

"Members of the jury, you've now heard the testimony from the Plaintiff. We're going to take a short break. Then we'll get you back out here and we'll continue into the afternoon. Let's not speak among ourselves or with others."

Then, after the jury left, the judge offered this somewhat cryptic announcement that:

"Well, for your edification, if you don't -- at close of their -- at close of your case, they have the opportunity to make certain motions based on the sufficiency of the evidence, which I assume is what they're about to do..."



Following the judge's lead, the defendant (a government-sponsored enterprise) proceeded with: "Your Honor, we'd like to move for entry of a directed verdict..."

Sure enough, moments later, the judge de-railed the trial, and dismissed the case in favor of the defendant, with this bewildering proclamation of legal prowess:

"The standard really is, viewing the evidence in a light most favorable to the Plaintiff, can a reasonable juror find for the Plaintiffs. And I -- in my opinion, no reasonable juror could find by the probabilities that the Defendants breached their fiduciary duty, nor did they breach the implied duty or covenant to act reasonably and in good faith. And certainly, there was absolutely no evidence whatsoever concerning the training, experience, and supervision of lawyers and their agents. So case dismissed. I'll let the jury know."

In this case, it was painfully obvious that the judge wasn't going to take the chance that the jury would find in favor of the plaintiffs - so the judge just dismissed the case and sent the jury home. No sense having a jury when the judge has everything all figured out in advance!

Due process abuses like this are commonplace in courts, but due process advocates are helping to level the playing field by making sure their clients understand the profound significance of the Fifth Amendment to The Constitution of the United States:

"No person shall be ... deprived of life, liberty, or property, without due process of law."

DUE PROCESS ADVOCATES & PAID CONSULTANTS WANTED

If you are an established advocate or consultant with a special interest in due process issues, please don't hesitate to contact me to explore a working relationship:

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