

Procedural Fairness: Equal Access to Justice

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Justice of the Peace, Fayette County Pct 1

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Resources

- Texas Justice Court Training Center: <https://www.tjctc.org/>
 - Deskbooks, SRL page, Self-paced modules, Forms, etc.
 - Officeholding Deskbook includes information on the Texas Code of Judicial Conduct.
- Office of Court Administration: <https://www.txcourts.gov/oca>
 - Many resources and publications.
 - Rules, including TRCP, Texas Rules of Evidence, and Texas Code of Judicial Conduct: <https://www.txcourts.gov/rules-forms/rules-standards/>
- Texas Law Help: <https://texaslawhelp.org/>
- Texas Constitution and Statutes: <https://statutes.capitol.texas.gov/>

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Agenda

- What is Procedural Fairness/Justice and Why is it Important?
- The Role of the Judge
- Effective Communication
- Technology
- Scenarios: What Would You Do?
- Takeaways

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What is Procedural Fairness/Justice and Why is it Important?

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Procedural Fairness/Justice

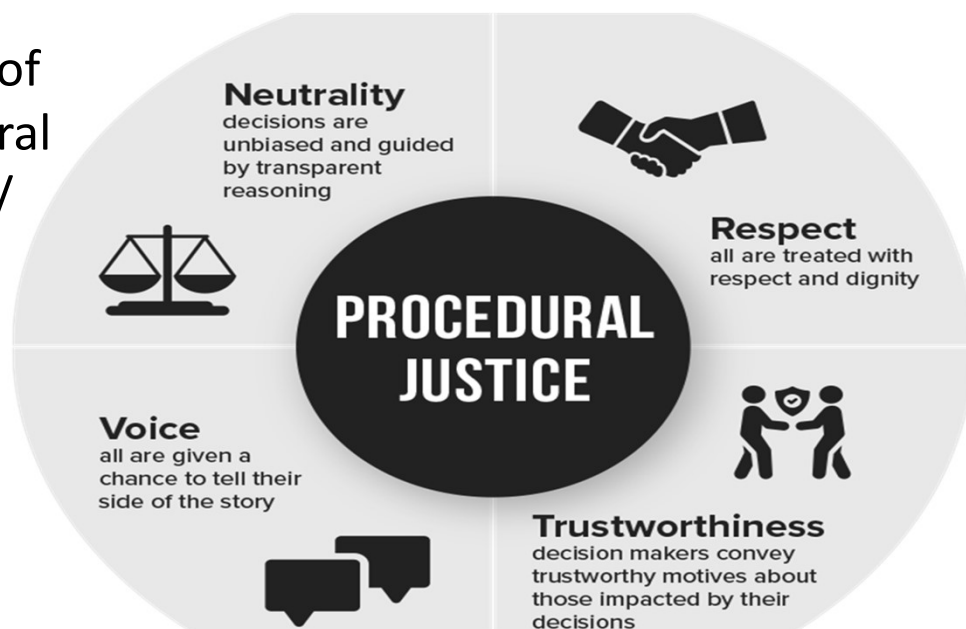
- Discuss:
 - What is your definition of procedural fairness/justice?
 - Why do you think it is important?

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Center for Justice Innovation Video on Procedural Justice

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Aspects of Procedural Fairness/ Justice



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Procedural Fairness Activity



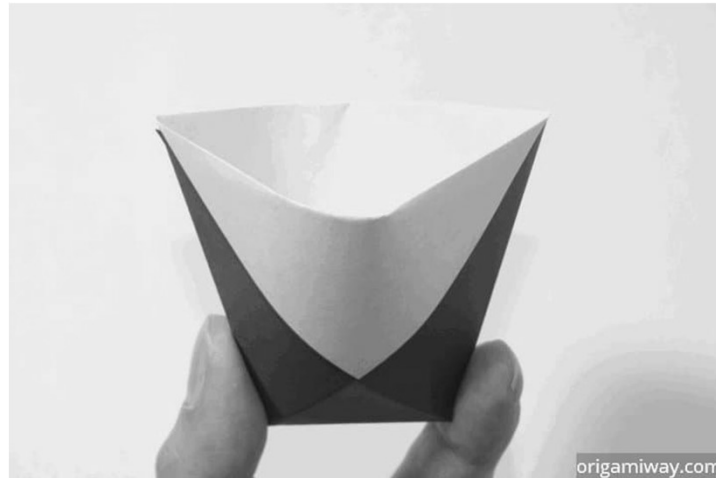
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Instructions

- There is one piece of square origami paper per person at your table. Take a piece of paper.
- Use the instructions (on colored paper) that are face down in the middle of your table to complete the task.
- You have 5 minutes starting now.

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What It Should Look Like



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Original Instructions – Who Had These?

How to Make an Origami Cup




Follow the steps below to make this Easy Origami Cup.
Difficulty: Easy

Here you can learn how to make an origami cup with step by step, easy instructions. We'll guide you every step of the way with clear easy to follow photos.



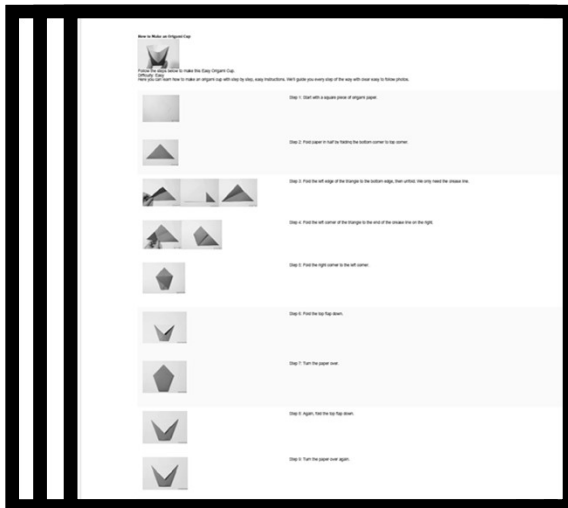
Step 1: Start with a square piece of origami paper.



Step 2: Fold paper in half by folding the bottom corner to top corner.

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How Other Instructions Looked



Original Instructions, but...

- In French
- In google-translated Spanish
- Missing random steps throughout
- Note: Don't bother. You probably won't make a very good one and it won't matter anyways.
- Note: If you are right-handed, stop looking at the instructions after Step 4 and figure out the rest on your own.
- Note: You must use only one hand to complete this task.
- Note: Only one person at the table can look at the instructions. That person must describe the instructions to everyone else at the table.

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Discussion

- Does yours look like the picture?
- How did your instructions impact your experience?
- Did anyone already know how to do the task without needing instructions?
- How does this activity relate to the concept of procedural fairness?



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Question

- If you were coming to ***your*** court for the first time and didn't know what was going on, what might be confusing or difficult? What could limit your access to justice?



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The Role of the Judge

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Setting the Tone

- Leading in the courtroom.
- Ensuring practices, procedures, forms, etc. are clear and fair for all parties.
- Actual vs. perceived fairness and impartiality.
 - Decorations/affiliations.
 - Professionalism.
 - Demeanor in and out of the courtroom.

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Respect – It Can Be Contagious

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Disability Accessibility Resources (1 of 2)

- National Center for State Courts' Needs of Persons with Disabilities page: <https://www.ncsc.org/courthouseplanning/needs-of-persons-with-disabilities>
- National Center for State Courts' Behavioral Health and State Courts page: <https://www.ncsc.org/behavioralhealth>
- OCA's Guide for Addressing the Needs of Persons with Mental Illness in the Court System: <https://www.txcourts.gov/media/1441120/guide-for-addressing-the-needs-of-persons-with-mental-illness-in-the-court-system.pdf>
- Judicial Commission on Mental Health: <https://texasjcmh.gov/>

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Disability Accessibility Resources (2 of 2)

- Disability Justice website: <https://disabilityjustice.org/justice-denied/elusive-and-inconsistent/>
- The Arc's Criminal Justice page: https://thearc.org/our-initiatives/criminal-justice/#what_arc_doing
- DOJ Civil Rights Division's *Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act*: <https://archive.ada.gov/cjta.pdf>
- Web Content Accessibility Guidelines: <https://www.w3.org/WAI/>
- Microsoft Office Accessibility Information: <https://bit.ly/46cYgZa>

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Unconscious Bias

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Unconscious Bias *(continued)*

TYPES OF UNCONSCIOUS BIAS



Affinity Bias

Feeling a connection to those similar to us



Perception Bias

Stereotypes and assumptions about different groups



Halo Effect

Projecting positive qualities onto people without actually knowing them



Confirmation Bias

Looking to confirm our own opinions and pre-existing ideas.

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Effective Communication

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Communicating with Parties

- Clear signage and instructions.
- Properly trained court personnel.
- No ex parte communications.
- Legal information/customer service vs. legal advice.
 - See OCA's Legal Information vs. Legal Advice publication:
<https://www.txcourts.gov/media/1220087/legalinformationvslegaladviceguidelines.pdf>
- Interpreters.
 - See TJCTC's *Interpreters & Spanish Legal Terminology* self-paced module:
<https://www.tjctc.org/onlinelearning/selfpacedmodules.html>

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Active Listening

- WAIT: Why Am I Talking?
- Are you just waiting for your turn to talk?
- *Really* listen.
- Repeat back what you've heard to make sure you've understood.
- Don't make assumptions/auto-fill.

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Active Listening (*Continued*)

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Technology

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Virtual Appearance – TRCP 500.10(a),(b)

- **Participant Method of Appearance:** A judge may allow or require a participant to appear at a court proceeding by videoconference, teleconference, or other available electronic means.
- **Judge Method of Appearance; Location:** A judge may appear at a court proceeding by videoconference, teleconference, or other available electronic means. However, even if appearing electronically, a judge must conduct the court proceeding from the judge's office at times prescribed by the commissioner's court, as provided by statute.

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Virtual Appearance – TRCP 500.10(c)

- **Factors:** In determining whether to allow or require electronic participation, the judge should consider factors such as:
 1. case type;
 2. the number of parties and witnesses;
 3. the type of evidence to be submitted, if any;
 4. technological restrictions such as lack of access or proficiency;
 5. travel restrictions such as lack of transportation, distance, or inability to take off work;
 6. whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with a disability;
 7. any previous abuse of a method of appearance; and
 8. any agreement or objection by the parties.

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Virtual Appearance – TRCP 500.10(d)

- **Notice:** If the judge allows or requires a participant to appear electronically, the judge must provide reasonable notice of the electronic participation and include the notice in the papers of the case. The notice must contain the information needed for participants to participate in the proceeding, including:
 - instructions for joining the proceeding electronically,
 - the court's designated contact information, and
 - instructions for submitting evidence to be considered in the proceeding.

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Virtual Appearance – TRCP 500.10(e)

- **Open Courts:** If the judge conducts a court proceeding at the judge's office in which all other participants appear electronically, then the judge must:
 - provide reasonable notice to the public of how to observe the court proceeding; and
 - provide the public the opportunity to observe the court proceeding, unless the judge has determined that the proceeding must be closed to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings in a written order adequate to support closure.

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Local Rules, Forms, and Standing Orders – TRCP 3a

- Local rules, forms, and standing orders must not conflict with other law or rules.
- Local rules, forms, and standing orders are not effective unless published on OCA's website.
- OCA website with information, instructions, and where the rules/forms/orders are posted and can be viewed:
<https://www.txcourts.gov/rules-forms/local-rules-forms-and-standing-orders/>

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Court Resources for the Public

- Look at your website regularly.
- Is everything up to date? Portraying the right image? How do you make changes?
- Is your court progressing with advances in technology?

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Scenarios: What Would You Do?

And how might you prevent the issue from arising in the first place?

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Scenario #1

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Scenario #2

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Scenario #3

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Scenario #4

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Scenario #5

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Takeaways

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What Stood Out?

- What are three things that you can take away from this class to improve how things are done in your court?