Twenty Tips For Young Lawyers

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1. You win or lose a motion by the middle of the second page.

As a motion or opposition to a motion is an exercise in persuading a judge to do what you are requesting, it is vital that there be a cogent statement at the outset articulating what you want and why what you propose makes sense. Remember that busy judges look at motions by the bushel basket and that inexperienced law clerks act as filters. As first impressions important, do not squander the reader's receptiveness with boring matters of form. If you are able to get to the point promptly, the paper will be inherently more persuasive. Conversely, it is annoying to a judge to have to read for a couple of pages in order to decipher what you want done. It should go without saying that the cogent introduction is written LAST.

2. The name on the upper left hand corner of a pleading tells the reader how much to trust or distrust the contents.

Your most important capital stock is your reputation for integrity, quality, and fair play. Good reputations are established slowly and destroyed instantaneously. Honorable lawyers get better cooperation from their colleagues in the legal community. A judge who trusts you may be more apt to address your motion first, saving other matters for more careful review. Sooner or later, something important to your career will depend upon your ability to persuade a judge to act promptly on a "trust me" basis. Judges faced with such exigent circumstances will ask themselves, "has this lawyer ever misled me?" or "would this lawyer mislead me?" Remember, judges often talk with each other about lawyers practicing in their courts; word gets around.

3. The problem with wrestling with a pig is that the pig likes it, and you get dirty.

Be careful. Criticizing an opponent's behavior detracts from your own presentation, creates the impression you have nothing useful to say about the merits, and makes you look petty.

4. Time wounds all heels.

This is the corollary to the pig-wrestling problem. A shifty, rude, difficult opponent eventually will display such behavior to the court. Good litigators know how to provoke jerks into betraying themselves sooner than later. It does no good to tell the judge that counsel misbehaved during a deposition; it can do wonders to show a judge a page or two of a deposition transcript that shows the opponent misbehaving - especially if you have not exposed yourself by retaliating in kind.

5. Heed Sir Edward Coke's writing advice:

> He that busily hunteth after affected words, and followeth the strong scent of great swelling phrases, is many times at a dead loss of the matter itself, and so abandon colorful language and long words: to speak effectually, plainly and shortly, it becometh the gravity of this profession.

Sir Edward Coke, Ninth Preface to Coke's Reports (1616). This Elizabethan English still rings true.

6. It is malpractice not to familiarize yourself with a judge before whom you appear.

Be conversant with decisions of a judge before whom you appear - especially opinions that a judge has designated for publication. Such decisions are available free on court websites and Google Scholar. They will indicate how the judge thinks about various legal questions. You will see what the judge regards as persuasive and as counter-persuasive. The opinions also may indicate the judge's procedural preferences for handling various situations. Since a trial judge's opinion does not bind other judges or even that judge in another case, most opinions are designated to be published either because the judge intends

to inform the bar about some issue or in a self-congratulatory hope of adding something useful to the law. Likewise, keep a file for each judge of their articles and other short presentations (like this paper). Judges who see that you are conversant with their writings might be flattered and will not be annoyed. Even a curmudgeon will regard it as a badge of your competence that you pay attention to the judge's work.
Similarly, before trying a case in front of a judge you do not know, sit in on a trial to watch that judge in action.

7. It is <u>not</u> malpractice to respond early to discovery or to file other papers before deadlines.

Early responses can pay off in a variety of ways. They create the impression that you are organized, cooperative, and giving the litigation a high priority. Judges appreciate that. If later in case it becomes important to seek accelerated relief or an order shortening time, courts will be more inclined to cooperate if you have an established pattern of beating deadlines. Conversely, a pattern of last-minute responses and filings creates an impression that your need for shortened time is a self-inflicted emergency.

8. Always prepare a trial brief.

At a minimum, your brief should list the essential elements of the relief you want, refer to pertinent authorities interpreting those elements (especially decisions of the relevant court of appeals), list witnesses, and list exhibits.

Seasoned litigators routinely prepare for trials with an outline that matures into a trial brief and a trial notebook.

The fact that a judge does not insist on a trial brief being filed, does not mean that a trial brief is not appreciated. You particularly score an inherent advantage if you file an optional trial brief and your opponent does not.

9. Cultivate mentors.

The advice of seasoned attorneys who have been successful is invaluable. Most of a lawyer's real education in practice, especially regarding how to deal with opposing counsel or tricky negotiating situations, is invaluable.

10. Read the daily published decisions of the court of appeals.

They are available on-line. Do not limit yourself to bankruptcy cases. Many incidental matters pertinent to procedure and evidence are in nonbankruptcy decisions that fix the law of the circuit binding on all trial judges within the circuit. Many such points translate to bankruptcy litigation and may have escaped the judge's notice. Competent counsel point them out.

11. Do not limit your research to bankruptcy cases when the issue involves a rule of procedure or a rule of evidence.

All of the Federal Rules of Evidence and most of the Federal Rules of Civil Procedure apply in bankruptcy. Most of the decisional law on those rules has been established in nonbankruptcy matters in district courts and courts of appeal. Klein's Second Quandary is why procedural and evidentiary precedents are generally only cited from bankruptcy decisions.

12. Dress for court.

Why should anyone else care what you wear to court? Perhaps they should not, but they do in subliminal ways. A lawyer who shows up looking sloppy and treating court as an informal exercise, creates an impression that the sloppiness extends to the quality of your legal work.

13. Polish and proofread your written work.

Sloppy presentation detracts from the merits of a writing. Misspellings and other typographic errors indicate that the author does not care about the quality of the work and, perhaps, has also been sloppy about the research and the reasoning. Get someone else to proofread your product.

14. Always bring to court the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence.

First, it is a badge of competence. Second, they might actually come in handy.

It is a good lawyerly habit always to look at the text of a relevant statutory section or rule whenever you are drafting a document or rendering advice.

To someone who says, "I am not sure I should be relying on a lawyer who has to look everything up," you can retort, "you should be cautious about relying on a lawyer who does not choose to be so careful as to look things up."

15. Master the local rules.

Duh? Take the time to read the local rules of procedure. Re-read them from time to time. It can be difficult to persuade judges to do what you ask when you are not conforming your request to local procedures. While you are at it, figure out the local unwritten rules - such rules are officially disapproved and discouraged but show a vigorous tendency towards recrudescence.

16. **Always have copies for opponents of papers you are going to be presenting in open court as an exhibit or otherwise - in the same organized form as for the court.**

One more than one occasion in my courtroom, counsel has handed up the bench a neatly tabbed binder of exhibits and handed opposing counsel a stack of the same exhibits not in a binder and not tabbed. My practice is either to trade with the opposing counsel, who gets the binder made for the court while the court fumbles through the loose exhibits, or to make the offender exchange with the opposing counsel so that the one doing the fumbling is the offender. My rationale is that the presentation of the case is facilitated when counsel have easy access to exhibits. And, of course, every time I try to find something among loose exhibits I remember who created the problem.

17. When you are talking with court staff, think of yourself as appearing in a de facto hearing and act accordingly.

It is incredible how often court staff reports to a judge how a particular lawyer has been impatient, condescending, or downright rude to staff. You need the staff more than they need you; and they are in a position to influence the speed of transmission of your papers and requests to the judge.

18. NEVER blame your staff for something that goes wrong.

Regardless of whether your staff blundered, YOU are the person responsible to assure that things are done correctly.

Many judges will think less of you when you say that some underling made the mistake. It is your mistake, period.

Perhaps a mistake in omission to supervise and verify someone else's work, but your mistake nonetheless. Part of being a professional is to assure that details are correct.

It is much better merely to apologize and say that you will see to a correction.

19. Do not rope-a-dope a judge.

If a judge tells you to adjust a procedure in the future and you do not comply in a subsequent matter, the judge will draw a number of inferences, none of which are good for you.

20. Be cautious about the "all-the-other-judges-permit-it" argument .

Parents are rarely persuaded by children who counter a rejection by saying that "all the other kids get to do it."

Judges are even less likely to be persuaded. Worse, if the judge later checks with the "other judges" and discovers that your representation was inaccurate, all the judges will be on notice to mistrust you.