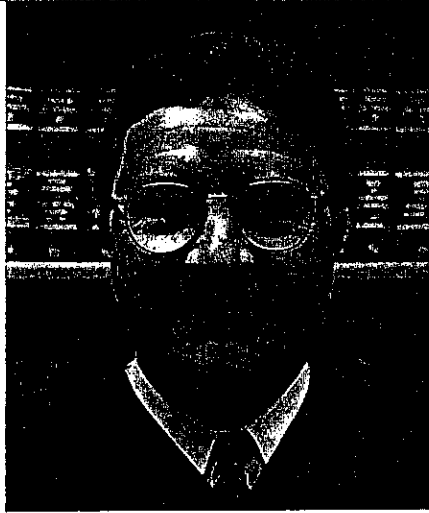


VIEWS FROM THE BENCH



Ten Tips for New Attorneys

By Judge G. Rand Beacham

This article will be published near the time that the Utah State Bar announces the names of those who have successfully run the gauntlet of the 1997 Bar Examination. Scores of new law school graduates will then take the formal oath and be added to the ranks of practicing attorneys. This article is addressed to those new attorneys.

As a relatively new judge, I sincerely sympathize with you and anyone else who is faced with new responsibilities and risks. Your immediate future may be difficult. Many of you have acquired or perfected a considerable ego during law school but, unless your ego has entirely overcome your senses, you will begin practicing law with a genuine feeling of insecurity. No one can give you any immediate comfort; you *should* feel insecure, because you now have demanding professional responsibilities, but virtually no experience in real-world legal practice. Some of you will become litigators and will soon find your way to the courthouse door, even without having been taught to do so. Until you have more experience, your litigation and courtroom work will be fraught with potential for embarrassment or humiliation. Consequently, I offer the following tips for new attorneys who want to avoid some of the

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typical mistakes of the inexperienced litigator.¹

1. FIND A MENTOR. Law school has taught you much of the subject matter that you need to know, and some subject matter that you may never need to know. Law school has taught you little about the actual daily practice of law, however, in spite of more progressive curricula adopted in the twenty years since I began law school. You should not try to invent every wheel by yourself. You need to learn from the experience of some trustworthy practitioner who has successfully done the things you are learning to do.

If you are lucky enough to have a job in a

firm or office with experienced attorneys, do not blithely assume that you will give the help you need; some law firms provide good mentoring, while others may give you the proverbial Viking swimming lesson – they will throw you out of the boat to see whether you can swim to shore on your own. If you are starting a practice and hanging out a shingle, you especially need a good mentor. In any event, you must find an experienced attorney who will commit to being your mentor. Take advantage of mentoring programs if they are available, or take it upon yourself to find someone. Even an attorney with whom you will be competing may appropriately feel flattered by your request for his or her advice, direction and form documents.

2. LEARN THE RULES. If you intend to litigate, you must learn to apply the rules of procedures, evidence and appeal to real-life situations. Do not expect judges and other attorneys to waive the rules just because you are new. Regardless of the extent of his or her experience, the attorney who knows and follows the rules always has a great advantage over the attorney who tries to work from vague memory or on the basis of perceived practices (i.e., "We've always done it this way."). Do not file any pleading or motion without first reviewing

the applicable rules, and at least, reading the relevant annotations to the rules.

3. TALK IS CHEAP. Inexperienced lawyers may not appreciate the value of simply discussing a dispute candidly with opposing counsel. You may file unnecessary motions because you are too intimidated by experienced opponents to talk to them, or because drafting motions and memos is what you know best. You should adopt a firm practice of making a good faith effort to discuss a problem with opposing counsel on a professional level before spending your time and your client's money to file a motion and ask the court to resolve the problem. Doing this will help develop the respect of good attorneys. It will also allow you to appear in court and tell the judge that you have tried to solve your own problems. If the judge learns that you do not simply run to the courthouse to resolve every problem that you encounter, you will be more welcome there when it is truly necessary.²

4. READ IT BEFORE YOU SIGN IT. Your first impression to a judge may be made through your written work. Before you get to a hearing and have the opportunity to demonstrate your true brilliance, you may have already portrayed yourself as a careless dolt by submitting sloppy, mistake laden motions and memoranda. I recently received a memorandum in support of a motion for sanctions which argued that the opposing party's argument was neither "well-rounded [sic] in fact" nor "warranted by existing law or a good fake [sic] argument" for a change in the law. The attorney probably dictated the memo and failed to proof-read it.³ Regardless of the merits of your argument, you will severely weaken your persuasiveness by submitting written work which contains obvious mistakes. If you don't care about it enough to correct it, a judge may hesitate to rely on it. Learn to edit what you draft, and proof-read everything that you sign or submit.

5. COURTESY COPIES. If you want a judge to be persuaded by your argument, make it easy for him or her to locate your argument and study it. If the judge has to dig through the entire court file on the night before your hearing in order to locate your motion and the supporting and opposing papers, and then the judge has to try to understand and remember your arguments without being able to highlight sentences

or make notes near the text, you have put yourself at a serious disadvantage. Rule 4-501 of the Code of Judicial Administration already requires the moving party to deliver courtesy copies of motions, memoranda and other papers to the judge (not the clerk) at least two working days before a hearing; do not send them before you have a hearing date, and then always include a cover letter or other paper showing the judge when the hearing is scheduled.

I think it is a good practice for the moving party to provide courtesy copies of all papers filed by all parties; a partial set of papers just creates the task of finding the others. I also recommend that you provide courtesy copies for motions submitted without hearing, even though Rule 4-501 does not require it. If you send a complete set of courtesy copies to the judge with a copy of your Notice to Submit for Decision, you help the judge avoid spending time just trying to locate what has been filed. All judges appreciate being able to get to the task of the actual decision without having to waste time sorting through a file.

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6. SAVE SANCTIONS FOR SEVERE SITUATIONS. A Rule 11 motion for sanctions against an opposing party or attorney is a serious matter, and such motions should not be thrown around indiscriminately, like Dikembe Mutumbo's elbows. Unsupportable motions for sanctions are often filed by attorneys who are too emotional and unprofessional, or are simply "blowing smoke" to pad a weak argument. Do not add a Rule 11 motion to every routine dispute in which the problem is simply that you really, really don't like your opponent and his or her argument. Remember the boy who cried wolf: If you ask for sanctions too often, perhaps no one will take you seriously when sanctions are actually warranted. Furthermore, filing an unsupportable Rule 11 motion may, ironically, give your opponent a valid Rule 11 motion against you.

7. USE NORMAL ENGLISH. Young attorneys sometimes try to sound more experienced by adopting stilted and formal language. Some terms used in legal matters have precise and technical meanings, of course, and are used by any competent lawyers. The problem occurs when an attorney stumbles into using awkward or verbose language which communicates nothing more than normal speech.

This may happen more in hearings and trials than in written materials, and it often happens in direct examination of a witness by an inexperienced and nervous lawyer. For example, the questions "Upon your initial gaining of access to the defendant's dwelling place, what, if anything, were you able to observe of the interior of the dwelling?" is actually a less effective question than "What did you see when the door opened?" Similarly, asking "Did you come into contact with her?" in place of "Did you talk to her?", and "Did she indicate anything to you in response to that contact?" in place of "Did she say anything?", may make you sound more like a television lawyer, but it communicates less substance to your listeners. Using unnecessarily formal language in questioning also prompts some witnesses to try to answer in similar language, leaving the fact-finder to wonder what you were talking about.

Remember that your goal is to have the witness understand your questions and to have the judge or jury understand both your question and the witness's answer. You will do that best when you use accurate language that he or she will readily understand.

8. AVOID MULTIPLE NEGATIVES IN CROSS-EXAMINATION. Most attorneys like to cross-examine witnesses, because the ability to use leading questions makes it much easier to get the desired answer. Even inexperienced attorneys can do well on cross-examination if they are reasonably well prepared. There are negative forms of leading questions, however, that make the answers sound at least ambiguous. For example, if the question is "It is true, is it not, that you did not see the other car before the impact?", and the answer is "No," does the witness mean that he did or did not see the other car? On the other hand, if you ask "You did not see the other car before the impact, did you?", the answer will be clearer. Do not be lured into using old fashioned forms like "It is

true, is it not" by some misguided desire to demonstrate how esoteric and scholarly you can sound. If you ask a question such as "It is true, is it not, that you did not fail to deny that you are a liar?", who will understand the answer, regardless of what it is?

9. STAY ABOVE THE FRAY. The native combativeness and the developed verbal skills of litigators occasionally lead to curt and caustic verbal exchanges. The president of the American Bar Association recently reported the results of his nationwide survey of presidents-elect of state and local bar associations on the subject of "civility." Ninety percent of the survey respondents believed civility was a problem in their jurisdiction, and that the problem was defined by diminished respect among lawyers. Disrespectful conduct outside the courtroom is one problem, but inside the courtroom it is even more pointless and destructive. You will never find a judge who is favorably impressed or persuaded by histrionics or snide carping between attorneys. It always hurts your argument, which hurts your client. No matter how little experience you have, or how much experience your opponent has, you will have a great advantage, if you remain dignified and professional, especially when your opponent descends into unprofessional personal attacks.

10. QUALITY AND INTEGRITY; CREDIBILITY AND RESPECT. I believe that the only really lasting assets of a good attorney are quality of work and personal integrity. Do not be seduced into doing poor quality work by the pressure of billable hours and heavy financial expectations; do whatever it takes to do good quality work and to avoid being known for sloppy, shallow or careless work. Do not trade your personal integrity for anyone's money, power or security; you may not always be a lawyer, but you will always be yourself if you maintain your integrity.

If that sounds a bit corny or sentimental, consider this: Among your knowledgeable clients and competitors in the legal marketplace, your effectiveness and worth as an attorney will be measured by your ability to get the results that you want. Your actual effectiveness, both in court and out of court, will depend in large part upon your personal credibility with attorneys, clients and judges. Judges will always base their decisions on the legal merits of the opposing cases, but even a great argument may be tainted by an attorney's known lack of credibility.

In my opinion, credibility as an attorney results entirely from quality work and personal integrity. An honest attorney with a reputation for shoddy work is not credible. A highly skilled attorney who is known to lack

integrity is not credible. If you become known for quality work and personal integrity, you will have the confidence of knowing that attorneys, clients and judges are inclined to believe you and trust you.

Maintaining that credibility over time will result in genuine respect within your legal community. By the time that you conclude your legal practice, the strength of your credibility and the satisfaction of the respect shown to you will be far more valuable to you than money, letterhead position or popular notoriety.

GOOD LUCK!

¹Some of this may seem painfully obvious to you, but you will soon find that it is not obvious to all practicing attorneys.

²A friend and former colleague once told me about a solo practitioner who had forgotten to respond to an opponent's written discovery requests, and was reminded by being served with a Motion to Compel Discovery, a demand for sanctions and a weighty supporting memorandum on the terrors of Rule 37. He responded with a one-sentence Memorandum in Opposition: "Why didn't they just call me?" When the court called the case for hearing on the motion, the judge began by addressing counsel for the moving party with a question: "Why didn't you just call him?" The motion was denied.

³Several years ago, while proof-reading a promissory note which I had dictated and given to a substitute secretary, I found that, without correction, it would have required the maker to repay the principal together with "a crude" interest. Fortunately, I found and corrected the mistake before my client had to determine how to calculate and collect crude interest.

⁴There are some judges who prefer not to receive courtesy copies. If you have any questions about your judge, ask the judge's clerk.

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