

What I Know Now that I Wish I Had Known When I Was Practicing

by Judge Royal I. Hansen

In the company of Judges Terry Christiansen, Stephen Roth, Robert Adkins, Elizabeth Lindsley, Dane Nolan and Christine Decker and Commissioner Michelle Tack, I sit in the state's newest courthouse, located in West Jordan. It is the second largest state judicial complex and represents a consolidation of the Salt Lake County suburban courts. The second floor is dedicated to the Juvenile Court and the third floor houses the District Court. Courts in Sandy, Murray and West Valley have been closed. The West Jordan Division is a full service court. It has county-wide civil and geographical criminal jurisdiction, including the South Valley Felony Drug Court.

It is a privilege to be the fourth sitting Judge Hanson/Hansen on the state trial court bench. I am honored to be mistaken for Judge Darwin Hansen of the 2d District, Judge Tim Hanson of the 3rd District and Judge Steven Hansen of the 4th District. The disappointment of litigants is almost palpable when they believe they have drawn Judge Tim Hanson and end up with an assignment to my court. We will miss the experience and service of Judges Dennis Fuchs, Dennis Frederick and Tim Hanson when they retire at the close of the calendar year. They have been great mentors and friends to the judiciary and bar.

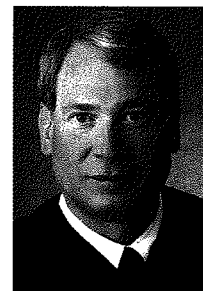
Judge John Paul Kennedy and I were invited to speak at a recent Salt Lake County Bar luncheon. Bar President Todd Shaughnessy invited us to address the topic "What I Know Now that I Wish I had Known When I was Practicing." This recounts some of the highlights, through four rules and three suggestions.

I started practicing at the 4th South Metropolitan Hall of Justice (replaced by the new Salt Lake City Library) in an era and location where lawyers and judges met regularly and informally to discuss cases and resolve issues. With the new courthouses and the current concerns for security, there is little interaction between bench and bar outside the formal courtroom setting. The West

Jordan Division has attempted to modify this problem by holding periodic civil and criminal attorney meetings where interested lawyers are invited to meet and discuss issues informally and share their concerns about the practice. From this history, I draw the first of four Rules, "Know the Practices and Procedures of Your Assigned Judge." When in doubt, contact opposing counsel and clarify through the judge's clerk or arrange for an informal conference with the judge. Attend bar functions and CLE programs when judges are invited to address their practices. Collect *Law Review* and *Bar Journal* articles by or about judges before whom you appear. The Utah State Bar Litigation Section sponsors a website for the Judges' Benchbook Project. Judges and courts recognize the importance of this interaction and are attempting to be accessible to the legal community.

Rule #2, "Know Your Audience and Thoroughly Prepare Before Filing Pleadings or Presenting Argument." Whom are you attempting to persuade? What relief are you seeking? How can you be an effective advocate? Put yourself in the position of your opponent or the judge to anticipate arguments which require rebuttal or response. Don't substitute increased decibels for oral argument that lacks merit. Come prepared to answer the questions that are most troublesome. A direct response to the court's questions is appreciated. Tell the court exactly what you are seeking and why the relief should be granted. Narrow your focus to include your best issues and how you can be most persuasive. When interrogating a witness or presenting oral

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argument, refrain from repetition. Consider that state courts are busy with heavy case loads. Cases are diverse and far-reaching, including most aspects of the criminal and civil law. District Judges share law clerks with several other judges and not every issue or case will be reviewed by a law clerk before it is decided. Rule 7(c)(2) of the Utah Rules of Civil Procedure provides for a memorandum page limit. It was adopted to encourage counsel to focus, narrow and distill the issues. Longer isn't better. Make sure you need an over-length brief before you request it.

I have adopted Judge Roth's "hearing notice" for complex motions. The moving party is instructed to submit a binder of courtesy copies for the pleadings of all parties 14 days prior to the hearing. At the same time, parties are invited to submit courtesy copies of cited cases and authorities which are important for the court's consideration. All copies and binders should be marked with the name of the assigned judge and the date and time of hearing. Utah law is controlling and an exhaustive search and report of the applicable statutory and case law is encouraged. When you cite a case, include a short quote of the relevant language. String cites are not favored. Focus on the elements of the cause of action or crime. Think of what the jury instructions or trial brief would state with regard to the law. Test your technology before making your presentation in the court room. (If it can go wrong, it will.) Always have a backup. Provide courtesy copies of exhibits for the judge and jury to allow the fact finder to follow your case as it is presented. After the court rules on an objection, motion, or case, refrain from reacting by facial or verbal expressions.

Rule #3, "Treat Court Personnel with Courtesy and Respect." I highly value my clerks and the support they render to the judicial process. They perform a remarkable service. In addition to keeping track of every case assigned to the judge, they field telephone calls and emails, schedule cases for trial and motions for hearing, prepare and file orders for each matter as it is decided, act as a liaison with the jury, and respond to the public and pro se litigants. When they are helpful, please compliment them and express appreciation for their service. Any statement made to my clerks should be appropriate for court room consumption.

Rule #4, "Your Reputation as an Attorney is Your Most Important Asset and That Reputation is on the Line Every Time You Interact with the Court." I have the daunting responsibility of occupying the seat formerly held by Justice Ronald Nehring while serving on the Third District Court. When I spoke with Justice Nehring about his counsel regarding service as a judge, this was the Rule he highlighted. Judges expect attorneys to be absolutely

honest and candid regarding all factual and legal representations made to the court. Being candid about weaknesses can enhance your strength as an advocate. Any ill-gotten, momentary success is not worth jeopardizing your professional reputation. Every time you appear in court or file pleadings, you are either adding to or subtracting from that reputation. Your reputation is more important than your scholarship, forensic skills, management qualities or negotiation abilities. Seek out a mentor in your firm, office or through the Bar that will consult regarding important decisions. Take seriously your responsibilities as an officer of the court.

Familiarity and utilization of the Supreme Court's Standards of Professionalism and Civility will bolster your legal reputation. Some important examples of civility and professionalism include the following:

- Each Rule 26 Scheduling Order should affirm that all parties will abide by the Standards while litigating the case.
- You should extend common professional courtesies to your adversary. What goes around, comes around.
- Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Standard #3. Judge Pullen of the 4th District recently issued a Ruling addressing the inappropriate conduct of an attorney. The Court published an order requiring remedial action by the offending attorney together with a letter of apology. (See the Ruling by Judge Derek P. Pullan dated March 15, 2006, which follows this article.)
- When drafting orders at the direction of the court, lawyers shall draft orders that accurately and completely reflect the court's ruling. Standard #8.
- Lawyers shall advise their clients that they reserve the right to grant extensions of time and continuances. Standard #14.
- Lawyers should not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information. Standard #17.
- During depositions lawyers should not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege. "Speaking objections" designed to coach a witness are impermissible.

Conduct inappropriate for the court room is inappropriate for depositions. Standard #18.

- Comment 14 of Rule 1.2, Rules of Professional Conduct, encourages lawyers to advise clients their representation will be consistent with the Standards. The "mad dog" lawyer who disregards civility and professionalism is not an effective advocate.

Finally, three suggestions for becoming a better lawyer. First, be involved with the bar through a committee or project. Don't leave professional service to others by default. Plan out each calendar year with a schedule for service to your profession. If you don't know how to get involved, call the president of the state bar association, Gus Chin, or president-elect Lowry Snow, or someone in bar leadership or administration, like John Baldwin. Tell them you would like to assist. County bars and specialty bar associations also provide ways to be involved and make a contribution. Second, attend bar meetings and conferences. Take the opportunity to make the acquaintance of your fellow lawyers. These associations will be a valuable network to facilitate the framework for litigation

or negotiations with a formerly faceless attorney that you now know and respect through bar service. Third, as a part of your regular case load, volunteer as pro bono counsel for someone who can not afford the services of an attorney. "And Justice For All" and Utah Legal Services have numerous opportunities to assist. You should be an advocate for the legal profession. Make yourself available to speak or lecture to schools or civic groups to underscore the importance of a democratic system based upon the rule of law.

When appointed to the bench, I received a plaque from Judge Frank Q. Nebeker of the District of Columbia Court of Appeals. It was my privilege to clerk for him after law school. The plaque reads: "Promptness, Impartiality, Patience, Ethical." It is affixed to my bench and daily reminds me of a public stewardship. That trust can only be accomplished with the assistance of the Bar. It is a privilege to be associated with the dispute resolution process and work with talented and capable attorneys. The quality of judging is enhanced by the assistance of good lawyering.

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