



Federal Judges' Practice Tips for Young Lawyers

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Appearing before a federal judge can be a nerve-racking experience for a young attorney. Fortunately, several judges of the United States District Court for the Northern District of Illinois, Eastern Division took the time to offer their advice about how young attorneys should conduct themselves and prepare for various proceedings in the courtroom. On February 3, 2010, the Intellectual Property Committee of the Young Lawyers Section of Chicago Bar Association hosted its Third Annual Judges Panel. This year's distinguished panel consisted of Chief Judge James F. Holderman, Judge John W. Darrah, Judge Rebecca R. Pallmeyer, and Magistrate Judge Morton Denlow. In addition to discussing substantive points on intellectual property law, the judges offered helpful tips for practicing lawyers. They emphasized the importance of preparation and professionalism.

Attorney Preparation

Before appearing in court, Judge Pallmeyer recommended that all lawyers ask themselves "what will the judge want to know?" Even when appearing for a routine status, lawyers need to know critical deadlines, the status of the case, and the next plan of action. Too frequently, Judge Pallmeyer lamented, lawyers appear in court without knowing key information about their case, including such basics as whether discovery is closed. Judge Pallmeyer explained that getting a favorable ruling requires more than just showing up in court; it takes a lawyer's common sense and anticipation to give the judge the information he or she needs to know, so the judge can help the parties move the matter forward. All too often, lawyers appear and report that they do not have the authority or ability to commit to anything in the future. Judge Pallmeyer explained that this wastes the court's time and puts the matter at a standstill until the next hearing date.



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Whether to Pursue Preliminary Injunctions

The judges offered the collective view that lawyers should think twice before moving for preliminary injunctions and decide whether the costs are worth it to their client's overall goal. Typically, motions for preliminary injunctions involve limited discovery and a mini-trial based on abbreviated facts. The parties are disadvantaged because the process is rushed without the ability to evaluate the merits or explore settlement. These motions can be prejudicial to the losing party, if not dispositive of the case. To test the confidence of moving parties in preliminary injunction actions, Judge Denlow noted that he frequently requires plaintiffs post high bonds.

Rather than rush through preliminary injunction proceedings, the judges expressed their preference for expedited trials rather than preliminary injunction hearings, and stressed their willingness to be available. If a plaintiff is concerned about incurring damages while waiting for trial, the judges recommend that the plaintiff request updated accountings from the potentially infringing defendant. This creates a record of the damages for the end of the trial.

Courtroom Technology in the Northern District of Illinois

In this technological age, the judges were asked whether the Northern District has the capability to conduct paperless trials. Judge Darrah presides in one of the most technologically advanced courtrooms on the 12th floor of the Everett McKinley Dirksen United States Courthouse. He described this technology as "super cool" and said it helps keep jurors interested during trials. The courthouse has computers, Elmo document projectors, and monitors for the judges, juries, and lawyers. Judge Darrah described one of the best features as the "John Madden telestrator," which allows parties to mark, enlarge, or highlight key portions of documents on monitors. He cautioned, however, that unlike paper exhibits marked at trial, these markings do not automatically become part of the record for a possible appeal. This means parties need to be sure that they mark paper copies as well to ensure the markings are maintained for the record.

Judge Holderman, who is responsible for the courthouse's technology and budget as Chief Judge, explained that he welcomes suggestions from attorneys to bring to his attention any type of technological improvement or equipment that they believe the court should have to help facilitate trial practice, they should let him know. He considers it important for the court to have helpful and necessary technology for its practitioners. Furthermore, the court's technology is accessible to all practitioners, who are invited to go in to the courtroom in advance of a hearing or trial to familiarize themselves with the court's technical capabilities. Finally, any party seeking to bring in electronic equipment or a large quantity of boxes and exhibits must obtain an order from the U.S. Marshals – yet another reason to take advantage of the court's resources.

Settlement

Finally, the judges explained how they conduct settlement conferences. Judge Denlow, who is credited with settling hundreds of cases, emphasized that every case can be settled. For a successful settlement conference, lawyers for each side should bring a client representative who has full authority to settle the case. The judges felt settlement conferences without these authoritative clients present are a complete waste of time. Judge Denlow requires that each client representative listen to the arguments presented by the other side's lawyer. Typically, he explained,

this is the first time that a party to a case can see its adversary's perspective and use it to question the strength or merit of the client's own case.

The judges expressed unanimously that the parties should explore settlement at each stage of the case. If one party wants to open settlement negotiations, but does not want to make an initial foray because it does not want to appear weak to the opposition, Judge Pallmeyer suggested that that party advise her of its desire to negotiate so that she can raise the idea to the parties.

The Lesson for Young Lawyers: Civility

At the end of the session, Judge Holderman advised that the single most important thing lawyers must do is cooperate with and be civil towards one another. Echoing this sentiment, Judge Denlow explained that if he could teach the next generation of lawyers one thing it would be how to pick up and dial a telephone; all too often lawyers resort to communicating over email, instead of dealing cordially with the actual person on the other side.

The Third Annual Judges Panel was moderated by Ashly A. Iacullo, an attorney at Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP and Steven Reynolds, an attorney at DLA Piper. Ashly Iacullo serves as the chair of the Intellectual Property Committee of the Young Lawyers Section of the Chicago Bar Association. Steve Reynolds serves as the vice co-chair of the Committee.

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