

MARCH 8, 2011

DANE COUNTY BAR ASSOCIATION LUNCHEON

TOP 10 SIMPLE THINGS YOU DIDN'T LEARN IN LAW SCHOOL THAT WILL
MAKE YOUR JUDGE HAPPY

Judges John W. Markson

Judge Richard G. Niess

10. In written correspondence to the court, always begin by identifying the party you represent with a brief statement of the nature of the case. (For example, "I represent plaintiff Jones in this personal injury action.") It isn't always apparent to the judge, who usually doesn't have the file.
9. Always bring your calendar to court conferences and hearings. No exceptions.
8. Before filing a routine or procedural motion (e.g. adjournment, amendment to a scheduling order, etc.), always confer with opposing counsel first to obtain a stipulation. In fact, as a general rule, pick up the phone and talk to the other side before moving the court to resolve any of your differences.
7. At every hearing when the court must decide an issue, be prepared to identify who bears the burden of proof (if applicable), what the applicable burden standard is, and the various statutory or case law factors the court must apply to decide the issue.

6. In briefing to the court, less is more. 5 pages = good; 3 pages = superb. Lose the bombast.
5. If you want the court to do something, put it in a motion specifically identifying the relief requested and the authorizing/controlling statute. If the motion itself isn't clear, a short brief is helpful. Don't litigate back-and-forth through correspondence.
4. Don't air the case's dirty laundry to the court (e.g. lawyer spats). It is annoying and unhelpful.
3. In hearings or conferences with the court, immediately answer any question from the court directly and unambiguously, even if the answer is damaging to your position. Only *then* argue your case.
2. Be unerringly kind and respectful to court staff -- they hold the keys to the kingdom.
1. Work hard to gain and keep the court's trust and respect. They are hard-earned and easily squandered.

BONUS ROUND

1. In court trials, always have an extra set of exhibits for the judge. Otherwise, the judge, who is the object of your efforts, cannot follow the case.

2. No speaking objections before the jury.
3. If you file a document by fax, do not send an original. The statute prohibits it.
4. When the court asks you to send a status report on your case in 90 days, do it.
5. File papers with the branch, not the Clerk of Courts' office.
6. Briefs filed on the day of a scheduled hearing are usually worthless, even if by some miracle they actually make it to the judge in time. Getting a short brief to the judge in plenty of time before the hearing is good advocacy.
7. Never interrupt the judge when he or she is speaking, especially on the record.
8. Avoid beginning your argument by stating "Judge, this is really a simple case." It's often said and rarely true.
9. No emails to the court except with prior authorization. Emails are not part of the court record.
10. Gentlemen, please wear a coat and tie to court. All attorneys, please mute cell phones, and tell your clients to remove their baseball/seed/John Deere caps in the courtroom.
11. Some observations about juries:

- a. Jurors notice everything.
- b. Jurors respect lawyers who (1) are prepared and organized, (2) are courteous and respectful of the jurors' intelligence and time, (3) get to the point and stick to the theme, and (4) work hard for their clients.
- c. Jurors work very hard to do the right thing.