

THINGS YOU DIDN'T LEARN IN LAW SCHOOL THAT WILL MAKE
YOUR LIFE EASIER AND/OR YOUR JUDGE HAPPY

JAMES E. DOYLE AMERICAN INN OF COURT

March 21, 2012

Judge John W. Markson

Judge Richard G. Niess

TRIAL-RELATED TIPS

1. Avoid trial strategies that seem cool in the moment, but are really just vapid mindlessness. Lose the Perry Mason and Matlock shtick.

A) Evidentiary Objection Examples:

- i. "Objection: The document speaks for itself."
- ii. "Objection: Counsel is badgering the witness."
- iii. "But, Judge, opposing counsel did the same thing and I didn't object." Tit for tat.

B) Procedural Examples:

- i. Mistrial motion in a bench trial.
- ii. Motions *in limine* in a bench trial, unless needed to plan your presentation.

- iii. Summary judgment motions in a case scheduled for a bench trial, unless the witnesses would be coming from far away.
 - iv. “State your name for the record and spell it for the court reporter”. (This one makes a judge’s teeth hurt).
2. Fully know and strategically use the rules of evidence and procedure. Choose your battles wisely.
 3. In selecting the theme of your case, pick one horse and ride it; don’t saddle the whole herd.
 4. Don’t question witnesses who are unnecessary to your case. A closed mouth gathers no foot. And wasting a jury’s time bears its own penalty.
 5. No leading questions on direct examination; the jury wants to hear from the witness, not the lawyer.
 6. Don’t lecture the witness on his/her obligations in answering a question (e.g. “You have to answer the question ‘yes’ or ‘no’.”). It is the court’s prerogative to instruct the witness, not yours. And, whatever you do, don’t jump down the witness’s throat or argue with the witness; the jury will hate you for it more often than not.
 7. Wait until the question is fully asked before you jump in with an objection. Otherwise the objection is premature, the judge has nothing to rule on, and you will drive your court reporter to drink.

8. Direct your comments to the court, not opposing counsel. A trial is not a poker game.
9. Cases are rarely won on cross-examination of the opposing party's expert, but often lost. "Don't dull your sword on your opponent's shield."
10. Use depositions sparingly on cross-examination. They are mind-numbing and hard to follow. Cross-examination is not a reading test for the witness. Nor should it stray into nitpicking inconsequential deposition inconsistencies.
11. If you must use depositions, give them a chance to work, i.e. SLOW DOWN when you read them. Your court reporter, the jury (if it is awake) and ultimately your client will thank you.
12. Try your case, not opposing counsel, no matter how much of a sumbitch you think he is.
13. Stop with the endless repetition already! Stop with the endless repetition already! Stop with the endless repetition already! (Annoying, isn't it?) Contrary to popular opinion, the judge is likely not an idiot, and the jurors are certainly not.
14. Don't steal the thunder of your closing summation by loading up witness questions with argument.
15. Remember that jurors are not as impressed with you as you are.
16. Neither are judges

GENERAL TIPS

17. At the beginning of any court appearance, please state your name clearly so the judge doesn't spend the first half of the hearing trying to figure out who you are, rather than listening to your arguments. As elected officials, we are loath to admit we don't recognize someone.
18. Don't abuse the "5 day rule" for submitting orders to the court for signature. It is not a vehicle for ambush.
19. When the court asks you to draft an order following a motion hearing, don't interpret it as license to recast the court's decision or throw in whatever helps your client. Very few orders cannot be adequately covered by "For the reasons stated by the court on the record at the hearing, the motion is _____". Work out any niggling disputes over the wording with opposing counsel before submitting the order for signature. In fact, if you tell the judge opposing counsel has reviewed and approved the order, you will get it signed and entered quicker (otherwise, the 5 day rule controls).
20. If you move for summary judgment, suppress your inner lawyer's urge to dispute the facts submitted by the opposition just because you can. You will lose your motion.
21. If there are material factual disputes in a case, don't file a summary judgment motion just "to educate the judge." You're wasting your client's money because the judge won't remember the motion for more than 2 weeks after it is denied.

22. Affidavits “on information and belief” are not admissible evidence. Nor are affidavits setting forth legal argument.
23. Breathless, hyperbolic motions that scream at the judge in *16 point bold font (italicized and underlined to boot)* are counter-productive and may not generate the type of attention you seek.
24. Alert the court immediately in writing when a case has settled, especially jury trials. Grant your fellow attorneys the courtesy to clear off the court’s calendar so their cases may move up in the queue.
25. When you tell court staff that closing paperwork is on the way, don’t make them chase you for it months later. Remember, they hold the keys to the kingdom.
26. Once the court begins its ruling on a motion, your turn to talk has ended. Even if the judge is committing reversible error, wait until she’s finished before helpfully pointing that out.
27. File important or time-sensitive documents with the branch, not the main Clerk of Courts’ office. Otherwise, the judge might not see them for days.
28. Prepare for pretrial scheduling conferences; your case will progress more efficiently with just 5 minutes of forethought. In particular, be as accurate as possible when estimating time needed for future hearings/trials, keeping in mind the difference between real time and lawyer time.