

Feature Article

Elizabeth K. Barton

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C., Chicago

To the Young Lawyer: Tips for Court Appearances

It is natural for young lawyers to be intimidated by court appearances. The first time I appeared in court as a new lawyer, I remember thinking to myself, “They sure don’t teach you *this* in law school.” Sure, I went through a course in trial advocacy, was on moot court competitive teams, and even participated in an international arbitration competition. I was given tips about what to say, what to wear, and how to behave generally in a courtroom. Yet, nothing would prepare me for the realization that I, a recent graduate surrounded by much more experienced attorneys (some of whom were admitted to the bar the year I was born), was responsible for representing my client on my own. That realization was empowering and thrilling, but, if I am being completely honest, mostly it was terrifying.

I recently attended a seminar for young lawyers where several panelists were members of the judiciary. Their wisdom and insight struck a chord with me that no matter how comfortable lawyers become in all different courtroom settings, we could always be reminded of a few “golden rules.” I have gathered up the best advice I have received from a variety of sources throughout my comparatively brief legal career. These might be helpful for new lawyers as they embark on their careers, and even for more seasoned lawyers who could use a reminder as they mentor younger attorneys.

Your Reputation Is Everything

The most obvious rule, but one that needs constant reaffirmation, is that your reputation is vital to your career. Consequently, you have to be vigilant about what you say and how you behave. This principle is true whether you are making representations to the court, interacting with court personnel, working with opposing counsel, managing your client, or in any other situation in which a lawyer might find herself. Your words and behavior affect your reputation, your client’s reputation, and the reputation of your employer.

The Honorable Paul Biebel, Jr. is the Presiding Judge of the Criminal Division for the Circuit Court of Cook County. He says, “Assume everything is transparent and you cannot hide anything. Front your troubles because if you don’t, you can bet the other side will.” Telephone Interview with Paul Biebel, Jr., Presiding Judge, Circuit Court of Cook County, Criminal Division (Feb. 24, 2014) [hereinafter Telephone Interview with Judge Biebel]. He warns, “Judges have long memories.” *Id.*

Cook County Associate Judge Neera Walsh adds that, if you lie, the judge might forgive you, but she will never forget. “The judge needs to trust you, and if you violate that trust even once, your reputation is

tarnished.” Telephone Interview with Neera Walsh, Associate Judge, Circuit Court of Cook County, Criminal Division (Feb. 21, 2014) [hereinafter Telephone Interview with Judge Walsh].

It comes down to always telling the judge the truth. Be precisely correct in what you say, whether it is discussing a case or relating the facts of your own case. Do not broaden the holding of a case, embellish it, or conceal distinguishing factors. Tell the bad along with the good. Do not fall into the trap of telling the court what you *wish* the case said, or give the judge the facts you would rather have instead of the ones you really do have. You owe the court candid and full disclosure. We all have difficult clients sometimes and we did not create the facts of the cases we are presenting, so all we can do is present them in the best possible light.

As I heard in a seminar, “Your reputation is your most valuable asset both before the court and in your career.” James F. Holderman, Judge, United States District Court for the Northern District of Illinois, ISBA Presentation: Tips for Young Lawyers for In Court and Out of Court (Nov. 13, 2013). The bottom line: make an impression, but make it a good one.

Be on Time: Always.

Always be on time is a cardinal rule, and a violation can cost you and your client. Tardiness is rude and disrespectful to the court and to all of the others who are waiting. You are not the only lawyer with deadlines, demanding clients, emails and phone calls to return, and (not to mention) billable hours.

A simple and effective tip from one of my current mentors, Ellen K. Emery, is that when you arrive, look at the call sheet before you sit down and write down the names of the three cases before yours. That way, by the time the clerk is calling your case, you should already be approaching the podium. You should never be one of those people climbing over others when the clerk calls your case, yelling, “Defendant!” She assured me that the court will appreciate your readiness.

Be mindful of the myriad of potential delays, including weather, traffic, security checkpoints, and the elevator, and factor them into your schedule. Anyone who has ever been to the Daley Center in Chicago at 8:50 a.m. on any given weekday can attest to the snail’s pace of the elevator banks. Do not risk it. But, if you are late despite your best efforts, simply call the judge’s chambers or opposing counsel and let them know. Just do not make it a habit.

By way of example, I had an initial status hearing in the Western Division of the Northern District of Illinois in Rockford at 9:30 a.m. The plaintiff’s counsel had called me the night before to ask whether I would be willing to conduct the hearing telephonically, and I had no objection. I never heard back from him that night, so I left Chicago at 6:30 a.m. the next morning, drove 100-plus miles in the rain, construction, and traffic, and made it to court with minutes to spare.

Once I was sitting in the courtroom, I overheard the judge’s clerk on the phone and it was obvious to me she was talking to opposing counsel regarding his alleged inability to make it on time due to the weather. I then listened as the clerk told the judge she was skeptical of the story and did not believe the attorney had even left Chicago.

Eventually, the case was called and opposing counsel appeared telephonically. The first question the judge asked was, “Mr. X, are you by a window? Please tell me what you see.” The attorney fumbled through an awkward explanation about being at a gas station, so he could not describe where he was. One thing was clear: the judge did not believe his story and scolded him for wasting the court’s time. After all, as the court pointed out, I had traveled from Chicago and made it on time, so what exactly was his excuse? Of course, the judge was fair throughout the remainder of the hearing, but I would not want that to be the judge’s first impression of me. Would you?

Be Civil, Ethical, and Professional

We all have our good days and bad days at work. The bad days can feel like they will never be outnumbered: you lose a motion, a deponent testifies against your client's position, you have a contentious relationship with opposing counsel who lacks civility and continues to unnecessarily badger you and your client, you have to work all weekend, and the list goes on and on. But through it all, the key is to remain civil, ethical and professional, especially when you appear in court.

Play Fair

Litigation is filled with conflict, emotion, and stress, so it is inevitable that someone will say something to you that is offensive. Ignore it and do not lose sight of your goal of effective representation. Responding in kind only results in collateral damage to your client. Act right when you win, and act right when you lose. Do not use facial objections, like eye rolling or smirking, because the judge certainly will hold it against you. The judge knows you are disappointed when you lose, but expects you to respect her decision and the system. Whichever outcome you experience, be mature and show class.

If you practice in civil litigation, Judge Biebel reminds us that 95% of civil cases settle before trial. So, it can only benefit you to be civil with opposing counsel from the get-go because it is likely you will have to work together to come to an agreement at the end anyway.

Do not seek to embarrass opposing counsel or "go in for the kill." When you are on the receiving end of that behavior, the best way to disarm your opponent is to take the high road because it absolutely drives them crazy. Often, it will throw them into such confusion that their tactics will backfire, and they come out looking unreasonable to the court.

My mentor warns young lawyers, particularly female ones, of the oldest trick in the book: don't let older lawyers interrupt you. Stand up for yourself, but remember, always direct your comments to the court and let the judge referee. It is important to resist the urge to answer your opponent's comments because to the court, it only sounds like bickering. Since the court is the ultimate decision-maker, address the court directly. This way, you will appear to be taking the high road.

Part of playing fair is showing everyone a little grace. Attorneys are bound to make mistakes, including you. When opposing counsel makes an untoward remark, an error in procedure, a misstatement of the law, consider first whether he or she made an honest mistake. To do so requires a level head. Think of how you can address the mistake in a gracious way, while correcting any misimpression that might have resulted. Inevitably, the time will come when you may need a little grace yourself.

You can never go wrong with the old adage "treat others how you want to be treated," because in spite of everything, the legal community is small and what goes around, comes around.

Look the Part

This comment might seem obvious, but dress like a professional. Personally, I never want someone thinking about my clothes instead of listening to what I have to say. My law school companion and current Cook County Assistant State's Attorney, Nancee Hofheimer, thinks it is important to consider your role. Are you a prosecutor? Do you represent a bank? If so, you will want to err on the side of formality. But, even if you are a criminal defense attorney showing up to a bond hearing on Saturday morning, Nancee reminds us that "jeans are never a good idea." Telephone Interview with Nancee A. Hofheimer, Assistant State's Attorney, Cook County State's Attorney's Office (Feb. 10, 2014) [hereinafter Telephone Interview with ASA Hofheimer].

My mentor has advised that if you want to be taken seriously, dress like the “heavy-hitters.” She thinks it is just as unprofessional to show up in a red mini-skirt and stiletto heels, as it is to show up in flip-flops and jeans. For men, your “uniform” should be a suit and tie. For women, the choices vary so much that it can be easy to make the wrong judgment call. But it is always best to err on the side of being conservatively dressed.

Last summer, Tennessee Circuit Judge Royce Taylor of Rutherford County issued a memo about female lawyers adhering to the dress code after one female attorney appeared before him in a sleeveless blouse. Judge Taylor wrote, “The unanimous opinion was that the women attorneys were not being held to the same standard as the men. I have advised some women attorneys that a jacket with sleeve below the elbow is appropriate or a professional dress equivalent Your personal appearance in court is a reflection upon the entire legal profession.” Jacob Gershman, *Tennessee Female Attorneys Urged to Wear Less Revealing Outfits*, Wall Street Journal Law Blog (Jun. 13, 2013, 12:19 PM), <http://blogs.wsj.com/law/2013/06/13/tennessee-female-attorneys-urged-to-wear-less-revealing-outfits/>.

Be Respectful to Courtroom Staff

Courtroom staff is a wealth of information. Approach the court and chambers staff with respect and a healthy dose of humility because chances are, if you are a new lawyer, the staff knows more than you do. They are experienced, knowledgeable, and have the judge’s respect and trust. Show courtroom staff, including bailiffs, judicial assistants, and clerks, the same respect that you show the judge.

Know Your Case

According to Judge Biebel, preparation is key. He says, “You could be the best lawyer in the world, but if you’re not prepared that day, well, then you’re not a good lawyer that day.” Telephone Interview with Judge Biebel, *supra*.

It is our job to be prepared. An early lesson I learned from one of my first mentors, Beth Ekl of The Sotos Law Firm, was that I did not have to be the smartest person there, I just had to be the most prepared. In my few years of practice, I have already learned that I will never be the smartest, the most experienced, or the most eloquent person in the room. But, I believe that knowing your case better than your adversary is the first step to being a successful advocate.

As young lawyers, we are asked to cover “simple” hearings all the time. You might hear from a partner, “It’s easy. Just get a briefing schedule.” Trust me, no matter how simple the partner tells you it will be, make sure you know the basics and know why you are appearing. You should know these basics about the case: What is the case about? When does discovery close? How much discovery is left? Are there pending motions? What is the legal standard for the motion being presented? And never, ever say, “I don’t know. This isn’t my case.” Judge Biebel agrees, “That’s just embarrassing.”

Put yourself in the judge’s position and consider the number of cases a judge has on her docket. It would be unfair to expect the judge (even with the help of clerks) to research every legal issue or master the facts of every case before her. Therefore, judges depend on lawyers to provide accurate information on the facts and the law, and to be honest and straightforward in their presentations. A good approach is to think, “If I were the judge, what would I want to know?”

Most days, you have less than 30 seconds to get your point across, so really think it through before you step up in front of the court. But, as Ms. Ekl points out, if you take notes to the podium, you must still listen to the court and answer the question the judge is asking you; do not just read off your script. This recommendation goes along with Ms. Emery’s advice to “talk it through with the judge.” When you are

arguing a motion, do not just reargue everything you wrote in your brief. You have to trust the court has read your motion and make sure to know your argument well enough so you can *ad lib* when necessary.”

If you are not prepared, however, just let everyone know. Judge Walsh assured me that judges realize things come up, but her advice is to be upfront about it so that something can be worked out. “It’s just a matter of valuing and respecting everyone’s time,” she says. Telephone Interview with Judge Walsh, *supra*.

Never try to fool the judge by answering questions you really do not know the answer to. As I have heard Ms. Ekl say, “No lie is too small. Judges are smart; they will figure it out.” Telephone Interview with Elizabeth A. Ekl, Partner, The Sotos Law Firm, P.C. (Feb. 11, 2014). Judges respect when lawyers admit that they do not know the answer, but offer to supplement or research and come back with an answer. In the end, they will appreciate the honesty.

Know Your Judge

Every judge has her own idiosyncrasies that must be accommodated. A young lawyer’s ability to be flexible and adapt to judges will go a long way toward improving that lawyer’s reputation in the legal community. If possible, ask other lawyers about a judge’s pet peeves and unique practices. Taking this step will mean fewer surprises and less anxiety. This step is particularly important for attorneys who practice in front of the same judge every day, like ASA Hofheimer. She focuses on appealing to a certain audience. “When I am assigned to a courtroom, I want to know what makes the judge tick. How do they like things run? What is the level of formality in their courtroom? What arguments are they responsive to?” Telephone Interview with ASA Hofheimer, *supra*.

Even after over a decade of practicing in federal court, Ms. Ekl admits that she still looks up a judge’s website before appearing in court to remind her if the judge has any applicable standing orders or unique rules. She advises that it is important to research the judge’s prior rulings on a particular issue. If the judge’s rulings are favorable to your case, make sure you emphasize why your case is similar. If the rulings are not in your favor, think about how you can convince the judge to distinguish your case or to think about the issue in a different way.

Know the Rules and Follow Them

In most courts, state and federal judges have individual practices and rules of which you must be fully aware. All lawyers should know a jurisdiction’s rules of evidence, procedure, and local practice. Consider carrying hard copies of the rulebooks for frequent and easy reference. Better yet, if electronic copies are available and can be placed on your mobile electronic device, use it for easy reference and reassurance. If you cannot find them yourself, call and ask the clerk if there are applicable rules and where they can be found. Check with veteran attorneys about protocols.

Think of it as a pyramid of rules, with the base being the state or federal rules of evidence and procedure, and then narrow your focus. Learn the local rules for the specific district or county. Find out if there are rules for the type of case you have (for example, commercial, mechanics liens, family law, etc.). Finally, does your judge have any standing orders? Find them all, read them, and know them, because the judge will certainly expect you to.

Choose Your Battles

Illinois’s revered lawyer, and personal favorite of mine, Abraham Lincoln told young lawyers, “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the

nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.” Abraham Lincoln, *Untitled Law Lecture circa 1850*, in Abraham Lincoln Association, *Collected Works of Abraham Lincoln* (Roy P. Basler et al. eds. 1953), available at <http://www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm>.

Do not fight over trivial issues or technicalities. You want to fight the battles that matter for your client and that actually mean something to the overall success of the case. Do not just file a motion because a partner tells you to. If your name is on the document and you are the one standing in front of the judge, be sure it is an argument you want to make and that you have a chance of winning.

Judge Biebel warns, “Don’t end up in the middle of the lake (or the ocean) in the fog; come back to shore.” Telephone Interview with Judge Biebel, *supra*. He advised me that it is always important to go back to square one and to focus on what really matters to the case, such as the cause of action, elements of the crime, or your defense. In fact, Judge Biebel thinks that sometimes young lawyers can be too combative by filing motions for sanctions, to compel, and for rule to show cause. But, he says this just gets in the way because judges really just want to hear the case. “Judges don’t like contentious lawyers,” he says. *Id.*

Judges do not want you to waste their time by filing frivolous motions just to prove a point or to demonstrate how smart you think you are. Judges especially want you at least to attempt to work it out before seeking court intervention. Therefore, it is important to show that you have done your part by documenting all of the discussions (or attempts) you had with opposing counsel before seeking judicial intervention. A fast way to lose credibility with the court is when you appear to be engaging in gamesmanship because flooding your opponent with motions means that you are also adding to the court’s burden. Lawyers who constantly file motions can seem unreasonable, and after awhile, they become the proverbial boy-who-cried-wolf.

Be True to Yourself

You will hear a number of people, including me, try to give you advice. While it is good to listen to that advice, do not try to become someone whom you are not. You should take that advice and mold it to fit your personality. Build your skills around who you are.

Discover your “lawyering personality” by observing how well-respected attorneys and judges act and speak. Ask them questions and seek their advice. We have a great tradition in the legal profession of sharing ideas, best practices, and (my favorite) war stories. In fact, some of the most valuable feedback ASA Hofheimer has received is just by asking a judge for comments after trial. She says it will make you a better attorney and judges are receptive to this idea. After all, as she reminded me: “Judges were lawyers once too.” Telephone Interview with ASA Hofheimer, *supra*.

Ms. Emery agrees that it is important to observe good lawyers in their element. She encourages young lawyers to watch high profile cases when they are happening locally. She remembers as a young lawyer watching trial greats like Gerry Spence and Richard “Racehorse” Haynes. “You’ll have to eat the billable time, but it is absolutely invaluable to watch good lawyers try a case.” But, she warns never to mimic someone else’s style because “you could end up looking pretty stupid.” Interview with Ellen K. Emery, Partner, Ancel, Glink, Diamond, Bush, DiCianni and Krafthefer, P.C. (Feb. 15, 2014).

Be Confident

Transitioning from learning the law to eventually imparting legal advice can seem daunting. Even now, I struggle with convincing myself that I can properly advise my clients, especially because I am often half their age (and look even younger). You might be inexperienced, but you do not have to act that way. I find that it is possible to appear confident, even when you are not.

Find ways to build confidence in your own way. For me, I am most confident when I am thoroughly prepared. I make outlines and notes that will help guide me through an argument or presentation before the court. I practice even the simplest of arguments by talking it through to myself, to my colleagues, and sometimes to non-lawyers, which ensures that I really have a handle on the issues. Even the best lawyers perform this exercise in preparation for oral arguments before the U.S. Supreme Court.

“As a lawyer, you need courage to make decisions and have confidence that you can do a good job,” Judge Biebel says. Telephone Interview with Judge Biebel, *supra*.

While some of our skills will not be finely tuned until later in our careers, reminding ourselves as young attorneys what we are expected to do can only make us better lawyers in the end. The ancient Greek philosopher, Anaxagoras, said, “Appearances are a glimpse of the unseen.” Peter Carravetta, Preface to the *Diaphora: Rhetoric, Allegory, and the Interpretation of Postmodernity* 191 (Purdue Research Found. 1991) (quoting Anaxagoras). The court might only have a brief period to judge you, your appearance, or your argument. So, when you are appearing in court, consider these tips and make sure the glimpse you present is your absolute best.

About the Author

Elizabeth K. Barton is an associate with the Chicago office of *Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.*, where she is a member of the firm’s litigation group. Her practice is focused on defending government entities in civil litigation, with a primary emphasis in the defense of Section 1983 allegations of police misconduct. Ms. Barton received her J.D. from The John Marshall Law School and her undergraduate degree from the University of Iowa, with honors. Ms. Barton is a member of the IDC Young Lawyers Division.

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Illinois Association of Defense Trial Counsel, PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org