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A Starter's Guide to Opposing Counsel

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You learned to live for days off a good cup of coffee, graduated law school, passed the bar, and started your illustrious career. So, why is being a new lawyer so hard? There are likely a variety of reasons. But, in my experience, one of the hardest things about being a new lawyer can be summed up in two words: opposing counsel.

At times, it will seem you spend more time with opposing counsel than your own clients, or even your own family. So, it is crucial to develop good working relationships with opposing counsel as soon as possible. This will also assist you in building your reputation, which can assist in smoother dealings in the future.

Do your Homework.

It is always an excellent idea to know whom you are dealing with. Many attorneys list their professional biographies on their website. The Ohio Supreme Court provides information online about every Ohio attorney, including licensure, law school, and professional disciplinary histories. The Ohio Association of Justice's listservs is also invaluable as, unless the opposing counsel is brand new, chances are other members have dealt with him or her and can give you great insight.

Find out as much information as you can about the opposing attorney, including:

- Are they laid back or heavy handed in their practice style?
- Do they regularly grant simple extensions and stipulate to lesser motions, or do they oppose everything?
- Do they attack opposing counsel in their court filings or do they stick to facts and law?
- Do they push for settlement early on or wait until the day before trial?
- Will they abide by a court order or will they continue to throw up roadblocks if they can?
- Will they produce third parties for depositions or trial absent a subpoena?
- Are they generally responsive or do they frequently delay or ignore communications and requests?

You can better anticipate opposing counsel's tactics, and be ready to counter them, by discovering as much as possible about your opposing counsel. This helps place you in the best position to assert your client's interests without getting lost in strategic detours.

Also, be prepared for opposing counsel to research you as well.

Consideration.

We all know consideration is a bargained-for exchange sufficient to support a simple contract, but that's not all. Attorneys sometimes forget the word carries another meaning. As Merriam-Webster advises, consideration also means sympathetic regard shown to another.

Throughout the legal community, we all strive to advocate our client's interests. This does not mean we cannot be courteous and respectful to one another in doing so. The legal profession is a very small community and you may often find yourself opposing the same counsel, and, at other times, having lunch beside them.

Emotional outbursts, long delays, denying simple requests without cause, and similar behaviors will harm your new relationship with this particular counsel. Worse, it can have a negative impact on your reputation and harm future relationships with other opposing counsel. Keep your emotions in check. It is your job to advocate for your client using the law and facts. Sometimes emotion seeps into your case, and, at times, this can be helpful (i.e. arguing to a jury), but overall, your personal emotions do not belong in your client's case or in your dealings with opposing counsel. If your client expects you to put on a show, advise opposing counsel as a professional courtesy your client demands a hard approach, and still, keep dramatics to a minimum.

Finally, choose your words with care. Using statements such as "opposing counsel misrepresented" may annoy both opposing counsel and the judge. Choose a more professional approach like, "opposing counsel fails to appreciate," or "it appears opposing counsel failed to consider." The judge will understand your position, and it will not appear you are casting doubt on opposing counsel's ethics.

How Firm is too Firm?

As a new attorney, you are still developing your professional reputation. Some attorneys will attempt to "test the waters" to see how you respond. Opposing counsel may use tactics such as long delays, repeated excuses, repeated extension requests, or simply ignore you. On the other hand, some attorneys may try to figuratively run over you; they may be extremely bold in their approach, threaten to involve the court in simple matters, or attempt to dominate hearings. No matter how difficult it may seem at first, you must take control in these situations in order to protect your client's interests and protect your own reputation.

Professional courtesy is always appreciated and encouraged, but deal with it head on if the opposing counsel makes your life difficult. Simply telling opposing counsel what problems you have with their behavior may be enough (i.e. "your responses were due last month; you already had two extensions"). But, make sure your concern is genuine and not simply a complaint. Do not be afraid to ask opposing counsel if there is a reason for their particular behavior; this will help you understand their position. Even if there is a good reason, continue to advance your client's interests, but make allowances where possible. Do your best to amicably work with opposing counsel, but do not fear court intervention, and seek it when necessary. And finally, get everything in writing! Follow-up emails are a great way to confirm important communications, or to document undue delays. You never know when you may need to file your own motion to compel.

Attend Professional CLEs!

Finally, the Ohio Association of Justice hosts several CLEs throughout the year in addition to two separate conferences. There are often professionalism CLEs available during this time. Take advantage of this. Many such CLEs, particularly professionalism CLEs, touch on different approaches for dealing with opposing counsel and defense strategies. Learn as much as you can and use what you learn. This will help you better serve your clients, will assist/aide you in building a good reputation, and will greatly improve your professional day!