

TIPS FOR EFFECTIVE ADVOCACY

Courtesy of Judge Jay M. Quam, Hennepin County District Court

GENERAL COURTROOM TIPS

1. Remember that every judge is different.

- Get as much info on judge as possible
 - Sources:
 1. Clerks
 2. Website
 3. In-court observation
 4. Colleagues

2. Be prepared

- Some people think they can wing it. They can't. It shows. It hurts their case.

3. Tell the judge enough in your brief

- Decision is largely based on briefs
- Don't think you can effectively fill in essential material at the argument.

4. Don't tell the judge too much

- Give the judge the important facts
 - Fact sections that last forever are confusing and ineffective.
 - Don't make weak arguments
 - If you don't win on your #1 or #2 arguments, you won't win on #3-6.
 - The strength of arguments 3-6 dilute the strength of arguments 1-2.
 - The judge will spend less time analyzing your good arguments.

5. Be realistic about the strength of your arguments

- If your first reaction is that the argument is not very strong, the argument is probably not very strong.
- Avoid the mistake of convincing yourself that an argument has more merit than it actually does.

6. Bring your client to court if possible

- Invests them in the process
- Helps them understand process
- Makes the judge think the person is serious and committed

7. Take every chance you can to get first-hand experience

- Pro Bono
- Small cases
- Training opportunities

8. Don't count on prevailing on appeal

9. Reputation

- Remember that your reputation is always on the line and that judges talk about lawyers. A lot.
- There are lots of ways to get a judge to dislike you, but two things stand out: dishonesty and sandbagging.

10. Remember: there are a lot of bad lawyers

- It is not that hard to stand out: be competent = best way to go
- Shooting for brilliance is a sure-fire recipe for disaster

11. Feel free to ask the judge for feedback.

TIPS FOR EFFECTIVE ARGUMENTS

1. Learn how to present yourself well.

- How you deliver an argument is as important as the substance of the argument.
 - Think of the last time you saw a really bad speech.
- Ways to improve presentation:
 - Stand
 - Look at notes as little as possible
 - Inject appropriate emotion
 - Don't talk too fast or too slow
 - Don't be afraid to pause
 - Avoid verbal distractions

2. Don't talk too much

- Most lawyers act as if the more they talk, the better chance they have to win.
 - Reality: after you make your main points and address your case's weaknesses, and unless you are answering the judge's questions, you are likely losing ground.

3. Don't just repeat your brief

- Have an effective intro
 - Include a theme

- Summarize your requested relief
- Have an effective conclusion
 - Don't just trail off or say "if you don't have any questions, I'll just sit down."

4. Address your case's weaknesses

TRIAL TIPS

1. Jury selection

- Remember that most jurors are uncomfortable with voir dire.
- Many jurors are distrustful of lawyers.
- Easier to harm your case than help your case during jury selection.

2. Openings

- Present compelling, straightforward story with a theme.
- Don't go too long
- It is very important to get off to a good start.

3. Direct exam

- Witness preparation/performance is critical. If the witness does poorly, there is little you can do to save the testimony.
- Put on live witnesses, if at all possible
- Get to the point
- Don't overdo proof
 - Once may be enough
 - The judge/jury will definitely get it a second time
 - The judge/jury may accept a third time
 - 4th + time = the judge/jury will resent you for it
- Many lawyers spend too much time on direct examination

4. Cross exam

- Prepare your witness
- Find important points
- Don't cross just for sport or to satisfy your client
- Inconsistent statements are generally effective at eroding credibility.
- Be prepared, but also be prepared to react
 - There are always unexpected things that come up

5. Evidence

- Have exhibits prepared
- Think about how you will get the evidence in
 - Stipulation if possible
 - Know basis of admissibility
- Highlight important parts of evidence for the fact finder

- Don't plop a 75 page agreement in front of the judge/jury and think you have done your job because it is in the record.

6. Court trials

- Be prepared for a less restrictive application of the rules of evidence.
- Make it as interesting as if it were a jury trial
- Be prepared to argue even if briefs are requested

7. Closing

- Don't be too long
- Don't rely too heavily on notes
- Address your case's weaknesses