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Practice Tips from the YLD Chair

by Marisa Trofimov

As the chair of the Young Lawyers Division, I am technically a young lawyer; however, I recently realized I have been practicing for almost 10 years. Over the years I've learned a lot about what it means to be a good attorney, thanks in large part to a very involved mentor who helped me along the way. Below are 15 tips I think every young attorney should know before delving into the practice of law to help preserve his or her reputation in the legal community and perhaps make life a little bit easier.

1) Remember that every email, letter and even quotes from telephone conferences can be presented to the court. It can be tempting, when you come across a rude attorney, to just give it right back, but remember it could come back to bite you. If you come across a truly obnoxious opposing counsel, there is nothing wrong with insisting that all communication take place in writing. There is no upside to taking the bait and sinking to his or her level. And, it is probably wise for most communication with *pro se* litigants to be in writing throughout a case.

2) Take everything every client says with a grain of salt. I have exactly one client in my entire career that I actually trust now without seeing verification. One. And I have been representing that client for eight years now. It is not necessarily that clients will purposefully lie to you, but they are frequently so emotional they see things through their own lens. Do not hesitate to ask clients for proof of what they are saying before relaying that information to an adversary or court.

3) Remember, it is not your case. You did not make the mess in which your client finds him or herself. It can go a long way toward settling a case down the road to separate yourself from your client to opposing counsel early on. It also does not harm your client in any way to be civil or even friendly to opposing counsel. Remember, it is very likely you may have to work with that same opposing counsel again.

4) Return phone calls, emails and letters promptly. My general rule of thumb is to try to return any client or attorney call within 24 hours (on weekdays, of course). If the question is not urgent, a quick email from you or contact from your staff indicating you will get back to them even in a week is perfectly acceptable. Sometimes all it takes for clients or opposing counsel to calm down is to recognize that you are paying attention.

5) Do not throw another attorney under the bus, so to speak, unless absolutely necessary. There is nothing a court hates more than having to serve as referee to two attorneys. And as I mentioned above, it is highly likely you will have to work with opposing counsel again. Even if you are drafting a motion certification to be signed by your client, making allegations against opposing counsel in that certification is not wise, unless it is in the rare instance where opposing counsel is acting unethically. It only serves to burn the bridge with the opposing counsel and anger the court.

6) Except in some extreme exceptions, if another attorney has already been retained on the other side call that attorney to introduce yourself and discuss the case before you run to court and file any application (again, there are exceptions to this rule). You never know when litigation can be avoided once two levelheaded attorneys take the emotion

out of a case. Plus, it is just plain polite to introduce yourself as long as it will not harm your client's case.

7) Always remember that you are the attorney, not your client. Even if you are representing other attorneys, they are typically too emotionally involved in the case to always make rational decisions. Remember that your job is to guide a client, not simply act as his or her puppet.

8) Be prepared, even over prepared. Even if you are confident that a case will settle, keep in mind being unprepared makes you look bad if the case does not settle. Other attorneys can also sense when you are prepared. It may be the difference between opposing counsel recommending settlement or litigation. Never give information to a client, an adversary, and especially the court if you are unsure of the answer. It is perfectly acceptable to tell them you need to find out the information, whether by conducting more research (a good excuse for clients), checking your notes, or asking your client.

9) Provide your adversary with courtesies (such as extensions on motion dates) when it will not negatively impact your client. You might need a return favor someday. For example, if an attorney (or even a *pro se* litigant) calls and requests your permission for a one-week extension of a motion, give it to them if it will not substantially harm your client. We all know the court is going to grant the extension anyway, so why make yourself look unreasonable when your objection will not change the court's decision (provided it will not harm your client). The same goes for when you serve papers on an adversary. There are those attorneys who will purposefully serve motions or letters demanding an immediate response right before opposing counsel's pre-planned vacation. (Or in my husband's case, right before the birth of each of our children by planned C-section. And it was the same attorney each time.) Other than angering the other attorney and possibly the court, there is nothing to gain by this behavior.

10) Treat court staff with respect. Believe me, I have run across my fair share of court staffers who give me the most asinine responses, frequently because they have no legal background and do not understand the consequences of their decision on other aspects of a case. But, they still deserve to be treated with respect. Just remember, the court staffers have to deal with all sorts of ridiculous *pro se* litigants, in addition to attorneys. And, if appealing to your sense of empathy doesn't convince you to treat them with respect, just remember they could work in that courthouse, granting or denying your requests, for decades to come. And believe me, they all talk.

11) Do not serve papers (motions, letters, etc.) on an adversary at the end of the day, especially on a Friday, if it can be avoided. Most Outlook email programs have a way to program when your email is sent, so use it.

12) Do not push the envelope when it comes to following Court Rules, Rules of Evidence or Rules of Ethics. Sure, you may get away with it one time, but both the judge and opposing counsel will certainly remember your behavior, and it will start to sully your reputation.

13) Beware of clients who have already fired a previous attorney. Sometimes clients do have a legitimate reason for firing a previous attorney. For example, maybe that attorney was one of the bad apples who never returned calls. But approach those clients with caution. The likelihood they will turn on you too is quite high, especially if you will

be their third attorney for the same issue. See the advice below if you have no control over which clients you are required to handle.

14) Always remember your client can end up being your worst adversary. The best way to combat this is to document, document, document, even if you can't bill for the documentation. It also may be helpful to send the client a formal letter or email if he or she is becoming unreasonable. Again, you may not be able to bill for this correspondence, but you will be happy you sent it if your client becomes even more adversarial down the road. Lastly, you can write a memo to the file on contentious issues so you have written your position in real time and can refresh your memory later if your client turns on you.

15) Try your best to leave work at work. You may not have much control over your work life as a young attorney, but there are things you can do. For example, I have made the choice not to give out my cellphone number to clients. After having received six phone calls on Thanksgiving Day during my first year of practice from the same distraught (and mentally ill) client with a non-urgent issue, it seemed like a no brainer going forward. You may not have that option if your firm supplies your cellphone, but you can choose not to socialize with clients outside of work or be Facebook friends with clients. For some practice areas, this might not work, but for individual clients I have found it helps not to blur the lines between work and personal life (especially when individual clients like to get free advice over lunch). Lastly, I have found that, for me, it is psychologically helpful to stay late and finish work, rather than do it from home. That way I do not associate home with my work. But again, that is what I have found works for me. It might not work for everyone.

Marisa Trofimov currently practices family law at the Deni Law Group, LLC in Flemington, and is chair of the Young Lawyer's Division of the NJSBA. She is a graduate of Yale University and Seton Hall University School of Law.