

5 Things You Need To Know About Your Judge

By Zachary Zagger

Law360, New York (September 03, 2014, 8:34 PM ET) -- Knowing what to expect from a judge can be the difference between a favorable result for your client and an embarrassing experience you'll never forget. Here are five things a lawyer has to know ahead of an appearance before a judge.

Know the Judge's Particular Rules

While judges are bound by the rules of procedure in their jurisdictions, each judge has his or her own guidelines for handling certain cases. Experts said it's necessary to know these rules in order to be prepared for a case, meet deadlines and avoid annoying the judge.

"You need to know, based on your case and the judge handling it, what his or her procedural aspects of handling that case might be," said R.A. "Sonny" Ferguson Jr., a retired Alabama state court judge with over 21 years of private practice experience who is currently a partner at [Christian & Small LLP](#).

"It is not uncommon, which is unfortunate, to have the same set of facts presented and to have three judges handle those facts three different ways," he said. "You need to know which judge handles it which way."

Many attorneys said it is helpful to speak with other lawyers who have appeared before the judge or to even call the judge's clerk or assistant to find out if there are any particular ways the judge handles his or her docket. It could be as basic as how cases are called.

"Sometimes what a judge will do is say that arguments are 9 o'clock, but there are 25 cases listed, so you may be there for an hour and a half before your case is heard," said James V. Corbelli, a shareholder at [Babst Calland Clements & Zomnir PC](#) in Pittsburgh. "It would be helpful to know that and to know if the first one who signs up is the first one whose case is heard. Something as simple as showing up 10 minutes early might save you an hour to an hour and a half."

Know the Judge's Style

Even beyond certain courtroom or chamber rules, lawyers should be aware of a judge's specific style for running the proceedings.

"Most judges have a distinctive approach to how they run their courtrooms," said Andrew S. Tulumello, co-partner-in-charge of [Gibson Dunn's](#) Washington, D.C., office. "The unifying principle is that they are all trying to get it right. What you have to focus on is how you can be helpful to a court. That answer is going to vary court by court."

A main difference between judges is how much time they allow lawyers to speak or present arguments, lawyers said. In some courtrooms, the judge has a series of questions prepared for the lawyers to answer, whereas in others, the judge will allow more flexibility.

"Some judges will want to hear from lawyers at great length and give you an opportunity to really go into the full context of your position," Tulumello said. "Others really want the absolute core of your argument. Those are very different types of presentations, and to prepare going in you need some sense of what the judge will find helpful and useful."

When dealing with a judge that allows more argument time, a lawyer needs to be prepared, Corbelli said.

"If you have a judge whose demeanor is such that he will let you continue to argue and is not particularly decisive, then you better pick up on that and try to be a little more aggressive than your opponents so you are spending more time persuading," Corbelli said. "With other judges, they might get annoyed if you continue to argue and will make it known that your time is up."

The best way to handle the varying judging styles is to not only learn what to expect from a particular judge but also know your case in and out, lawyers said.

Know the Judge's Personality on the Bench

Each judge has his or her own personality that comes through from the bench. Some judges are formal and expect proper etiquette from lawyers appearing before them, whereas others are more laid back. It's important to know what to expect beforehand so as to not be thrown off guard, lawyers said.

"One of the main things you want to know: whether they are strict or whether they appreciate humor," said Morley Witus, a member at [Barris Sott Denn & Driker PLLC](#) in Detroit. "You want to know how to behave, basically."

Witus said he was once in front of a judge who made a big deal out of whether you called the place where lawyers can stand to argue a podium or lectern. Witus called it the wrong thing, and it annoyed the judge, he said.

"If there are any idiosyncrasies, you would like to know those ahead of time so that you don't violate some rule or preference," said Ferguson, who even recalled a judge who smoked on the bench when he practiced.

"Judges are just like lawyers," he said. "They are just one step removed, and they have their little issues and preferences."

Know the Judge's Experience With Your Case

Corbelli said it's important to know whether you are dealing with a "hot" judge, meaning a judge who has handled the case before or has at least read the briefs, or a "cold" judge, who is unfamiliar with the case.

"If you know a judge has read the briefs, then you are not going to start from square one," Corbelli said. "You are going to try to hit the highlights and really focus on persuasion more than starting at the beginning and explaining step by step."

It is also important to know whether the judge has any particular expertise in the subject area of the case, or whether he or she has written opinions on or handled similar cases in the past, lawyers said. This can help you determine how much background or explanation is necessary when presenting the case.

Corbelli, who handles noncompete and trade secrets cases, said he likes to know whether a judge has any experience with those types of cases or has written any opinions on those topics.

"Understanding how a judge has handled those particular cases before can be a tremendous benefit," he said. "If you can reference that prior opinion and you can show that your case is similar, it can definitely work in your favor."

Know the Judge's Personal Background

Knowing where a judge is from, where he or she went to school and other aspects of a judge's background can be helpful, lawyers said. While it might not help curry favor from the judge, it can be useful in framing an argument and choosing what to emphasize.

Learning whether a judge went to a prestigious law school or earned a degree at a night program, or whether he or she has a political bent, can aid an argument strategy, Witus said. It can also provide insight into the judge's personality.

"If you have a judge who is liberal, you may frame things a different way or emphasize different things versus a judge who is more conservative, whether you appeal to policy versus the law or equity or whatever it is," he said.

While knowing a judge's background can be useful, it will only get you so far, attorneys said. Ferguson, who played college football at Auburn University, said that when he sat on the bench in Alabama, a state with deeply divided sports allegiances between Auburn and the University of Alabama, parties would often wear a tie with Auburn's orange and blue colors or reference "War Eagle," a popular rallying cry among Auburn fans, in an attempt to sway him in their favor.

"If you have some commonality with the judge, there is a thought that you are going to get in the judge's good graces," Ferguson said. "I used to tell the people that when that came up, that it might get you a cup of coffee and I might get you to pay for it."

--Editing by Katherine Rautenberg and Edrienne Su.