



MORE IS MORE:
IDEAS FOR EFFECTIVE
PRE-TRIAL COMMUNICATIONS
WITH THE COURT

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INTRODUCTION

- The importance of communication with peers, courts, and litigants
- Overview of feedback from judges and staff

TIP 1 – SEEK CLARIFICATION (ONLY WHEN NEEDED)

- Respect for Judicial Resources
- Streamlined Case Management
- Build Professional Reputation

TIP 2 - BE PREPARED AND ORGANIZED

- Local rules, practices, and preferences for pleadings, stipulations, deposition designations, and exhibits
- Coordination with opposing counsel
- Review and organize exhibits for effective presentation



QUESTION:

A JUDGE SETS ONE OF YOUR CASES FOR A MOTION HEARING. WHILE PREPARING, YOU REALIZE YOUR EXHIBITS WILL, AT LEAST IN PART, BE DUPLICATIVE OF THE OPPOSING PARTY'S EXHIBITS.

SHOULD YOU ORGANIZE A BINDER OF JOINT EXHIBITS TO PRESENT TO THE COURT? OR DEAL WITH DUPLICATIVE EXHIBITS AT THE HEARING?

TIP 3 – USE AVAILABLE TECHNOLOGY

- Reduce Administrative Burdens
- Accept and Master Remote/Virtual Advocacy
- Digital platforms/communications promote transparency and collaboration

QUESTION:

YOU HAVE A MOTION FOR SUMMARY JUDGMENT PENDING IN A STATE CIRCUIT COURT. ANY HEARING IN THAT COURT WOULD REQUIRE THREE HOURS OF TRAVEL.

DO YOU WAIT FOR THE JUDGE TO TAKE UP THE MOTION?

REQUEST A RULING ON THE PLEADINGS?

REQUEST A HEARING (IN PERSON OR VIA ZOOM)?

TIP 4 - AVOID EX-PARTE CONTACT

- Review the relevant rules of professional conduct and local rules on communications
 - Rule 3.5 of the Arkansas Rules of Professional Conduct
 - Local Rule 7.3 of the Local Rules of the U.S. District Court for the Eastern and Western Districts of Arkansas (Communications with the Court)
 - Rule 2.9 of the Judicial Code of Conduct
- Easy fix: copy opposing counsel is an easy way to avoid ex parte contact.
- Know the difference in administrative and legal questions
- Use your resources

TIP 5 – KNOW THE RULES

- Ensures professionalism and respect for the Court and larger judicial system
- Streamlines the litigation process
- Tips for staying on top of Court rules (Where do you look?)

TIP 6 - MAINTAIN CANDOR TOWARD THE COURT

- Rule 3.3 of the Arkansas Rules of Professional Conduct
- Reconciling advocacy for clients with duty of candor
- Benefits to addressing weaknesses in your case directly

QUESTION:

MAY 1: YOU SERVE OPPOSING COUNSEL WITH DISCOVERY REQUESTS.

JUNE 5: YOU EMAIL OPPOSING COUNSEL INQUIRING ABOUT RESPONSES.

IF YOU GET NO RESPONSE FROM OPPOSING COUNSEL, WHAT'S YOUR NEXT BEST STEP?

WHAT FACTORS MAY IMPACT YOUR PLAN OF ACTION?

TIP 7 - DISCOVERY DISPUTES

- Clearly state the issue
- Reference relevant rules and law (**including specific procedures and requirements of the Court**)
- Propose a solution

TIP 8 - USE CLEAR AND CONCISE LANGUAGE

- Remember obligations when communicating with unrepresented parties (initial demands, fact investigation, pre-litigation settlements)
- Rules focus on “concise” statements of relief requested, facts, etc.
- Keep in mind any page limit/word restrictions

“Brevity is the soul of wit.”

Keep it simple. Tiresome interminable oral arguments rarely persuade a judge. Overly wordy “briefs” will not buoy the case nor convince the arbiter. A memorandum of law need not be a hornbook or an encyclopedia. Too much information may prevent the advocate from providing specific support for the legal question. If it is not on point, there is no need to say it. Legal issues are ones that can be condensed to one or at most two sentences. If the legal issue to be decided cannot fit into two sentences, it is not judiciable. Sometimes more is not better. Perhaps that is why rules of procedure limit the page length for certain motions and for certain briefs. If the discovery request is overly lengthy or broad, it might be found to be excessively burdensome. It is no wonder that the rules of professional conduct disallow frivolous or overly burdensome litigation and discovery tactics.

Sometimes more is not better . . .

Hon. Rebecca B. Connelly, *Shakespeare’s Lines Offer Lessons for Lawyers*, XLII ABI JOURNAL 6, 22-23, 68-69, June 2023.



QUESTION:

**WHEN IS A PRETRIAL BRIEF
NECESSARY? WHEN MIGHT IT BE
MOST USEFUL?**



TIP 9 – PRE-TRIAL BRIEFS

- Structured Presentation of Key Facts and Legal Arguments
- Enhanced Judicial Efficiency and Preparedness
- Facilitates Effective Oral Advocacy

TIP 10 - MAINTAIN PROFESSIONALISM AND RESPECT

- Follow the rules & play fair
- Involve the court *only* when necessary in pretrial disputes
- Timely notify the court of matters that require immediate attention
- Maintain awareness of mistakes and competence

SUMMARY

1. Seek clarification when needed
2. Be prepared and organized
3. Use Technology
4. Avoid Ex-Parte communication
5. Follow the Rules
6. Candor to the Court
7. Discovery Disputes
8. Clear & Concise Language
9. Use Pre-trial briefs
10. Be professional always

- Final thoughts on the importance of effective communication with the Court

Q&A

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