Some Judges Attempt to Remove Barriers to Junior Attorney Participation

by Rachel C. Hughey

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Most lawyers agree that it is beneficial for junior attorneys to have courtroom opportunities, but those opportunities are not always readily available, particularly in large commercial matters. In many cases, young attorneys are the ones who have actively taken the lead on the briefing or witness preparation and could be an excellent choice—from both an efficiency and accuracy perspective—to take the lead on oral argument or witness examination, having the most knowledge of the law and facts. As U.S. District Court Judge William Alsup of the Northern District of California has recognized, "In my experience, junior lawyers have performed at least satisfactorily and, more commonly, very well during oral argument because they have typically prepared the papers (and, if the truth be told, may know the record and the case law better than their seniors)."[1] Nevertheless, clients often hesitate to trust their legal affairs to a first-timer, and firms may be wary of advocating for a less experienced attorney to be the one standing in court.

Further compounding the problem is that judges may be viewed as additional obstacles to providing junior attorneys with courtroom experience. Some judges do things that, intentionally or unintentionally, create a perception that they feel disrespected if a junior lawyer is at the lectern. They may also have courtroom rules—such as a requirement of one-lawyer-per witness or oral argument—that may deprive junior lawyers of opportunities. Presumably with an eye toward not being part of the problem, a number of judges have updated their procedures and have devised a variety of ways to avoid discouraging clients or supervising attorneys from giving less experienced attorneys opportunities to have courtroom experience.

In my home district, the District of Minnesota, a number of the judges have updated their Practice Pointers to make it clear that they welcome junior attorneys. Magistrate Judge Becky R. Thorson "strongly encourages" the parties to allow less experienced attorneys to participate and permits more experienced attorneys to provide the less experienced attorneys with assistance during oral argument.[2]

Magistrate Judge Hildy Bowbeer likewise "believes it is important for less experienced lawyers to gain experience in the courtroom" and "encourages the parties and their counsel to consider allowing a less experienced attorney who was deeply involved in the preparation of the motion papers to argue the motion in court."[3] While she "does not generally permit a 'tag team' approach to oral argument," her Practice Pointers indicate that "she will permit counsel for a party to split oral argument on a motion if so doing provides an opportunity for a less experienced attorney to present a portion of the argument." Magistrate Judge Elizabeth Cowan Wright, our district's newest magistrate judge, likewise "strongly encourages" litigants to find opportunities for junior attorneys to argue in court, and indicates that she is "amenable to permitting a number of lawyers to argue for one party if doing so creates an opportunity for a junior lawyer to participate."[4] She also indicates that she draws no inference about the importance of any motion, be it argued by a junior attorney or not. Judge Ann D. Montgomery also includes an encouragement to use junior attorneys, allowing for bifurcated oral argument and including an incentive of more time for oral argument.[5]

The judges in the District of Minnesota are not the only ones who have updated their courtroom procedures or issued orders indicating a willingness for junior attorneys to have courtroom opportunities. In 2017, ChIPs, a nonprofit organization that advances and connects women in technology, law, and policy, prepared a survey of 20 federal judicial orders encouraging opportunities for junior lawyers.[6] Many of those judges encouraged courtroom participation by less experienced attorneys, like the judges in the District of Minnesota, and issued orders that suggested a willingness to have junior attorneys appear in court. Some relaxed courtroom procedures that might have discouraged newer attorney participation, such as relaxing the one-lawyer-per-witness rule at trial, allowing more experienced attorneys to provide assistance to newer attorneys, or making it clear that the court draws no inference regarding the importance of a motion merely because it is argued by a newer attor-

ney. Some of the judges went even further and provided incentives for junior lawyer participation such as holding oral argument when it might not otherwise be given or allotting additional time for oral arguments when newer attorneys are involved.

This is not to say that judges will tolerate attorneys who are not prepared, do not have authority to make concessions that a senior lawyer would have, etc. A number of the orders in the ChIPs survey make it clear that the junior attorneys will be held to the same professional standards as other more experienced attorneys. Judge Denise Casper of the District of Massachusetts, for example, "strongly encourages the participation of relatively inexperienced attorneys in all court proceedings" but noted "a number of important caveats regarding professional standards, authority and supervision apply to this policy," including:

> First and foremost, all attorneys who appear in this session will be held to the highest professional standards. This includes relatively inexperienced attorneys with regard to knowledge of the case, overall preparedness, candor to the court and any other matter as to which experience is largely irrelevant…. [Second] an attorney appearing at an initial scheduling conference or status conference should have the authority to commit his/her party to a discovery and motion schedule and address any other matters likely to arise including but not limited the client's willingness to be referred to mediation.[7]

Judges Timothy Hillman and Dennis F. Saylor, also of Massachusetts, provide similar cautions.

It is gratifying to see judges around the country recognizing the importance of providing junior attorneys with courtroom experience and attempting to create an environment that would not discourage such experiences. I hope that clients will be more comfortable trusting their legal affairs to junior attorneys, and that firms will be more comfortable advocating for less experienced attorneys to have courtroom experience. ☉

Endnotes

[1]Ass'n of Bus. Trial Law., 24 ABTL Report-Northern California (Fall 2015), http://www.abtl.org/report/nc/abtlnorcalvol24no2.pdf.

[2]Magistrate Judge Becky R. Thorson, *Practice Pointers and Preferences* 4 (2018), http://www.mnd.uscourts.gov/Judges/practice-pointers/BRT.pdf.

[3]Magistrate Judge Hildy Bowbeer, *Practice Pointers and Preferences* 5 (2018), http://www.mnd.uscourts.gov/Judges/practice-pointers/HB.pdf.

[4]Magistrate Judge Elizabeth Cowan Wright, *Practice Pointers and Preferences* 5 (2019), http://www.mnd.uscourts.gov/Judges/practice-pointers/ECW.pdf (last visited Jan. 20, 2019).

[5]Judge Ann D. Montgomery, *Practice Pointers and Preferences* 2 (2019), http://www.mnd.uscourts.gov/Judges/practice-pointers/ADM.pdf (last visited Jan. 20, 2019).

[6]ChIPs Next Gen Comm., Judicial Orders Providing/Encouraging Opportunities for Junior Lawyers (Feb. 10, 2017), https://nextgenlawyers.com/wp-content/uploads/2017/02/JudicialOrdersRegardingNextGen.docx-2.pdf.

[7]Judge Denise J. Casper, *Courtroom Opportunities for Relatively Inexperienced Attorneys* 2 (2011), https://www.mad.uscourts.gov/boston/pdf/casper_standingorderrecourtroomopportunities.pdf (last visited Feb. 1, 2019).