

COMMENTARY

Litigating in a Stress-Free Zone

By N. Ari Weisbrot

The life of the litigator is fraught with challenges. It is often tense, isolating, aggravating, sleep-depriving and nightmare-inducing. And, that's if you are doing it correctly.

The litigator must contend with hostile adversaries, skeptical judges and demanding clients. If you are not merely in it for the money, it can become personal — it should become personal. But, only in the sense that a good attorney will treat each matter as if it were his or her own. It should not become personal in the procedure, in the way the litigator interacts with his or her environment. Following is a short list of ideas lawyers can adopt to lower the tension, ease the frustration and focus on the things that matter.

1. Agree to reasonable adjournments. Don't make believe you need to check with your client and, when you refuse the adjournment, don't blame it on your client's intractability. I don't care how angry you are or how difficult the case is, instant karma's gonna get you. We know the court will grant the adjournment and all you have accomplished is assuring a contentious and tit-for-tat escalation as the lawsuit continues.

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2. Return my telephone calls. And my e-mails. This is just common courtesy. If I am contacting you, there is probably a reason. It shouldn't take too much of your time to respond, and you can probably bill your client for this exercise in common sense.

3. Stop typing on your computer while we are talking on the phone. I can hear the clicking.

4. Don't have your secretary dial the telephone. Unless you are president of the United States, your time is not more valuable than mine. You called me; wait on hold until I pick up. Don't make me wait until your secretary alerts you that she got through. I will just keep hanging up until you dial yourself.

5. Don't tell me how weak my case is. I probably already know it. And, if I don't, you may be wrong. It's a form of intimidation most common in kindergarten. It usually just makes me laugh at you.

6. Speaking of which, lose the condescending snickering during my deposition questioning. While you are trying to impress your client by mocking my questions, I am quietly winning the case. Just because you don't understand where I am headed, doesn't mean I'm the one who is confused.

7. Keep your cool. Any time you raise your voice, I know I scored a point. The louder you shout, the more confidence you are giving me.

8. Stop serving 150 interrogatories. There is almost no case in

the world that would justify a large number of interrogatories. All you are accomplishing is forecasting your strategy, while giving me 30-60 days to carefully edit the answers and interpose my objections. You can ask the very same questions during a deposition and rob me of the chance to put my spin on the answers and fill them with objections.

9. When producing documents, don't make 10 copies of the same 50 documents, shuffle them and later claim you produced more than 500 pages of documents. In fact, try to avoid duplicative document production altogether. It only makes me scrutinize the production that much harder.

10. Stop suing individual defendants who do not have personal liability. Once in a while, you may get lucky and survive a motion to dismiss. If you draw a bored jury or a weak judge, you may even obtain a judgment against the individual. But, whatever leverage you think you bought by naming all the corporate officers and directors and their spouses, you have paid with your soul (and the reputation of the legal profession).

11. Don't threaten bankruptcy. If your clients are paying you, why shouldn't they pay their debts? A fraction of businesses and a smaller fraction of individuals are actually insolvent. So why do a majority of litigants feel the need to bargain an unreasonable settlement off the back of the bankruptcy code? I get it. I am also guilty of this tactic. But, unless you are prepared to open your client's books and permit a thorough audit, I am not negotiating

your phony fire sale.

12. Don't take yourself too seriously. You get paid to tell someone else's story. I am sure you are very good at it, but 75 percent of all candidates pass the bar exam. Until you cure cancer, I am not likely to be sufficiently impressed.

13. Try to get to court on time. At

least one judge in Manhattan makes all the lawyers in a single case stay until the end of the calendar call if one of them is late. I don't know about you, but I have to get back to the office (or the golf course).

14. Proofread your letters. My client is the defendant. Yours is the plaintiff. When you reverse them, I can't take

you seriously.

15. The wheels of justice grind slowly enough. There is no need to artificially obfuscate the lawsuit. Hurry up and win your case. There will likely be more to follow. Sure, some delays are strategic and advantageous. But, most are just the product of bad habits or bad faith. ■