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Judicial Roundtable: The ABCs and 123s of What Makes a Great Professional

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25 Bankruptcy Judge Table Discussion Leaders

Judicial Roundtable:
The ABCs and 123s of What Makes a Great Professional

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I. Courtroom Advocacy: Oral Argument and Witness Preparation and Presentation

Effective courtroom advocacy requires skilled and effective counsel, as well as prepared and polished witnesses. To be effective counsel, an attorney must not only possess strong oral presentation skills, but also be effective in developing the evidentiary record. And to be an effective witness, one must be prepared and capable of providing straightforward, easy to understand testimony. With these common themes in mind, below are a few strategies for effective courtroom advocacy by both attorneys and witnesses. Also set out are some best practices to protect the record in the event of a future appeal.

A. *Effective advocacy from an attorney's perspective*

In its simplest terms, a lawyer's effective courtroom advocacy requires effectively and efficiently communicating your client's best possible case to the court. To do so, one must be prepared to (1) present evidence on every material factual issue, and (2) discuss the evidentiary record and every material legal issue involved. Throughout, it is also critical to be professional in demeanor and presentation.

Be Prepared. Being an effective courtroom advocate begins long before you step into the courtroom. First and foremost, effective courtroom lawyers know the factual background of their

[1] The authors are grateful for the drafting assistance provided by Alejandra Garcia Castro and Weldon P. Sloan, law clerks for Judge E. Lee Morris (United States Bankruptcy Court for the Northern District of Texas), and Amanda Filippi and Megan McDonnell, law clerks for Judge Tiiara N.A. Patton (United States Bankruptcy Court for the Northern District of Ohio).

cases backwards and forwards.[2] The factual background includes not only the facts specific to the matter you are litigating, but also those facts necessary or helpful for a contextual understanding of the nature of the particular dispute. This is important because while you may be juggling a dozen very important cases, the bankruptcy judge is likely juggling a few thousand cases. If you do not provide a framework, the bankruptcy judge is less likely to have the same degree of knowledge that you do about your case or the discrete factual and legal issues involved.[3]

An effective courtroom lawyer must also be well versed on all relevant legal issues involved in the matter brought before the court.[4] Even if your team members prepared the pleadings, you must still be sure to familiarize yourself with the statutory provisions and case law cited therein. Additionally, if your opponent cited other statutory provisions or case law in her responsive brief, you must also be prepared to discuss those other statutory provisions and case law. In either situation, being well versed on the legal issues at stake means being prepared to discuss the relevant strengths and potential weaknesses of your position, appreciating that you should never overstate, or worse, misrepresent, a given case's holding.[5] Judges frequently have their law clerks review each of the cases cited in support of material propositions. There is nothing more troubling for a judge to learn than of an attorney's overstatement, misrepresentation, or complete misunderstanding of a particular case's holding.

Importantly, being prepared also requires practice. Even the most seasoned litigators conduct practice examinations of each critical witness and rehearse all oral arguments before

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[2] George W. Hicks, Jr., *Oral Argument: A Guide to Preparation and Delivery for the First-Timer*, N.Y.L.J. (Aug. 16, 2019), available at https://www.kirkland.com/publications/article/2019/08/oral-argument_a-guide-to-preparation-and-delivery ("Your goal is to know every single thing about your case before you appear.").

[3] *See U.S. Bankruptcy Courts—Bankruptcy Cases Filed, Terminated, and Pending*, U.S. CTS. (Mar. 31, 2023), available at https://www.uscourts.gov/file/71472/download (listing the bankruptcy cases pending in each judicial district in the United States).

[4] *See* Hicks, Jr., *supra* note 2.

[5] *Moser v. Bret Harte Union High Sch. Dist*., 366 F. Supp. 2d 944, 979 (E.D. Cal. 2005) ("When an attorney repeatedly and vexatiously [misrepresents] . . . 'law' to the Court . . . [,] bad faith can be inferred[,] [and] [a]ppropriate sanctions can be imposed.").

appearing in court. You should do the same. You should seek to present your oral argument and witness questioning in a mock setting before you appear in court.[6] Ideally, this will involve a knowledgeable colleague serving in the role of the judge, tasked with the job of asking tough, probing questions to prepare you to think on your feet. Practice also enables you to distill your arguments into brief, understandable, and plainspoken concepts. The more succinct and plain an argument it is, the easier it is to understand and the more likely it is to be effective.[7]

Finally, you should strive to present your arguments with minimal reference to notes.[8] At a minimum, you should refrain from simply reading a filed pleading, brief, or script. At best, such regurgitation is highly ineffective and unpersuasive, offering little to no added value to the court. At worst, it may irritate or insult the judge, suggesting you believe that the judge failed to prepare for the hearing or is incapable of understanding the issues without having them literally read to her.

Be Professional. An effective courtroom advocate is never unprofessional. There are several aspects to professionalism. Initially, it starts with appropriate dress. While it may seem obvious, your choice of attire conveys the level of importance that you and your client have placed on the matter before the court and the proceedings in general, as well as the level of respect that you have for the court and the judge. In recent years, judges have frequently complained that the standard of attorney dress has precipitously declined.[9] Courtroom dress should be clean,

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[6] *See* Hicks, Jr., *supra* note 2.

[7] *New & Young Lawyer Track: Don't Just Go Through the Motions: Effective Motions Practice in Bankruptcy Court and Trial Advocacy Tips* (ABI. 2017 Se. Bankr. Workshop Written Materials, 072717 ABI-CLE 1193) [hereinafter "*New & Young Lawyer Track*"].

[8] Hon. A. Benjamin Goldgar, U.S. Bankr. Judge, Speech to the Chicago Bar Association, Bankruptcy & Reorganization Committee: *How to Lose Successfully in the Bankruptcy Court* (Mar. 13, 2007).

[9] *See*, *e.g.*, Hon. A. Benjamin Goldgar, *Nota Bene* (ABI 18th Ann. Cent. Sts. Bankr. Workshop Program Written Materials, 060911 ABI-CLE 5); *Plenary Session: Best Practices In and Out of Court* (ABI 32nd Ann. Spring Meeting Written Materials, 042414 ABI-CLE 837) [hereinafter "*Best Practices In and Out of Court*"].

professional, and non-distracting. You worked hard to become a successful attorney. Your courtroom attire should reflect your efforts.

An effective courtroom advocate always acts professionally in the courtroom—toward both the judge and opposing counsel. Among other things, attorneys should address their arguments and objections only to the judge. Addressing the same to opposing counsel is a surefire way to try the judge's patience, particularly when argumentative or confrontational.[10] You should also refrain from interrupting the judge. Purposeful interruption is never effective and always comes off as rude and disrespectful. The same goes for interrupting opposing counsel. Your turn will come to address the other side's arguments.[11] Additionally, you should refrain from being too familiar or casual in your speech. While most bankruptcy bars are small and close-knit, it is nevertheless important to keep a level of decorum in federal court. This includes refraining from the use of slang and jokes. As one bankruptcy judge put it, "Only I get to be funny."[12]

Finally, being an effective advocate requires familiarity with all applicable rules of professional conduct. Bankruptcy courts have an inherent power to sanction and may exercise that power when attorneys act particularly aggressive or hostile to the court or an opposing party or counsel.[13] Additionally, an attorney in bankruptcy court has a legal obligation under Bankruptcy Rule 9011 to ensure that any assertions that she makes in pleadings are true to the best of her

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[10] Goldgar, *supra* note 9 ("*Never* talk directly to the opposing lawyer when you are before the judge. *Always* direct your remarks to me even if you're answering your opponent. It's considered bad manners to exclude the judge from the discussion. All comments directed to opposing counsel are filtered through the judge, as if your opponent weren't there."); *Best Practices In and Out of Court*, *supra* note 9.

[11] Goldgar, *supra* note 9.

[12] *Id.* ("Don't be funny in court, and don't be familiar. Only I get to be funny, and even that wears thin fast. And you're not entitled to be familiar, either, no matter how casual I seem to be. You may think I like you. Maybe I do. Many of the lawyers who appear before me regularly are not only good lawyers but good people, and I'm glad to see them. But the formality and dignity of the proceeding still have to be maintained.").

[13] *See*, *e.g.*, *Krim v. First City Bancorporation of Tex. Inc. (In re First City Bancorporation of Tex. Inc.*), 282 F.3d 864, 865 (5th Cir. 2002) (finding sanctions by a bankruptcy court proper though an attorney argued "that his egregious behavior serves him well in settlement negotiations and is therefore appropriate").

knowledge.[14] Notably, an advocate may violate Bankruptcy Rule 9011 by merely acting negligently in reciting factual allegations passed on by others, as she has a legal duty to reasonably investigate such assertions.[15] And critically, if an attorney ever discerns that something she represented to the court was untrue or misleading, she has a duty to timely alert the court of her misstatement.[16]

B. *Effective advocacy from a witness's perspective*

While courtroom advocacy is associated with lawyers, thorough preparation is just as important for testifying friendly witnesses. Below are some pointers for effective witness testimony, whether given in court, at a deposition, or elsewhere.

Preparation. First, as a friendly witness, you should carefully review all materials that counsel has asked you to review or otherwise become familiarized with. This includes all exhibits that may be used during your direct testimony and those that counsel expects may be used during cross-examination.[17] Second, you should carefully think through all anticipated, significant areas of inquiry and how you will respond. At the same time, however, you should not simply memorize responses. It is important for the testimony to seem genuine and interactive. Robotic answers may cast doubt as to whether the testimony is truly yours or is simply a memorized script. The key to proper preparation is to understand your role as a witness and what counsel expects to establish through your testimony.[18]

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[14] FED. R. BANKR. P. 9011(b).

[15] *Plenary Session: Ethics Panel* (ABI Sw. Bankr. Conf. 2017 Written Materials, 090717 ABI-CLE 603); *see also In re Coquico, Inc*., 508 B.R. 929, 946 (Bankr. E.D. Penn. 2014) ("The 'pure-heart-and-empty-head' defense is not available to anyone faced with Bankruptcy Rule 9011 sanctions."); *Winterton v. Humitech of N. Cal., LLC (In re Blue Pine Grp., Inc.)*, 457 B.R. 64, 75–76 (B.A.P. 9th Cir. 2011), *rev'd in part*, 526 Fed. Appx. 768 (9th Cir. 2013) (affirming the standard applied below, but reducing the sanction imposed).

[16] *Needler v. Casamatta (In re Miller Auto. Grp. Inc*., 536 B.R. 828, 835 (B.A.P. 8th Cir. 2015) (imposing sanctions for counsel's failure to correct the debtor's misreported name).

[17] Robert R. Salman, *A Trial Testimony Guide for Witnesses*, 43 No. 8 PRAC. LAW. 15, 16 (1997).

[18] *Id.* at 18.

What You Say and How You Say It. As a witness, you must be able to explain both *what* you know and *how* you know it.[19] While you may feel nervous or unable to explain something perfectly, you should nevertheless be confident discussing what you can while being direct and honest.[20] What you say is important. However, your value as a witness also comes from how you say it and how credible you appear to the judge. Regardless of how smart you are, you will be an ineffective witness if the judge does not understand or believe you.

It is also important for a friendly witness to remember who the audience is. At a minimum, it will include both the judge and the appellate court in the event of an appeal. In certain circumstances, however, it may also include an opposing party or the principals of the opposing party. In the first instance, whether you believe that the judge is well versed about the dispute or not, for purposes of building a solid record you should assume that the judge and her law clerks are not well versed. Therefore, you should not cut corners or use industry-specific slang or lingo without some explanation. In the latter instance, convincing the opposing party may lead to a favorable pre-judgment resolution.

When explaining matters, be sure to look at and communicate directly to the judge and try to simplify complex concepts that could confuse the judge or an appellate court. Importantly, remember that your primary goal is not to show how smart you are, but rather to make your testimony as understandable as possible. Delivering your testimony in plain language demonstrates how smart you really are. Additionally, when answering a question, it is important to listen to what is being asked, for any objections, and to the court's ruling. If an objection is made, do not answer

[19] Jared M. Katz & Celia K. Rosas, *Four Tips for Enhancing Credibility When Preparing a Trial Witness*, ABA (July 29, 2022), available at https://www.americanbar.org/groups/litigation/committees/commercial-business/practice/2022/four-tips-enhancing-credibility-trial-witnesses/.

[20] *Id.*

unless and until the court overrules the objection.[21] If at a deposition, wait to answer until the end of counsel's discussion.[22]

When being questioned by opposing counsel, do not let the cross-examiner rattle you.[23] You should refrain from being defensive or snarky in responding and definitely avoid using any vulgar language, disparaging personal remarks, or hostile language.[24] Instead, keep calm, be respectful, and try to answer the question that is asked of you as directly as possible.[25] The incivility of a witness can sometimes lead to severe sanctions for a party.[26] Let the court discipline the rude cross-examiner instead of taking things into your own hands. "Your job is to remain calm and give clear and truthful testimony."[27] Remember that friendly counsel will have the chance during re-direct to rehabilitate any perceived damage done and to otherwise give you the chance to clarify your answers.

C. *Advocacy with an appeal in mind*

In addition to the advice outlined above, there are special considerations to factor into the advocacy mix when an appeal may be on the horizon. Appeals live and die by the record established at the trial court level. Accordingly, effective advocates will ensure that the trial-level record is as clear as possible. This includes simple steps like speaking clearly and avoiding the use of confusing acronyms that may be hard for a court reporter or appellate court to follow.[28] It also includes the preservation of all material points of error. This means, for example, pressing the

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[21] Salman, *supra* note 17, at 18.

[22] *Id.*

[23] *Id.* at 17; American Bankruptcy Institute Report on Standards of Professional Courtesy and Conduct, Jessica Gable, Reporter (August 2013) [hereinafter "*ABI Report on Standards*"].

[24] *ABI Report on Standards*, *supra* note 23.

[25] Salman, *supra* note 17, at 17-18.

[26] *See*, *e.g., Corsini v. U-Haul Int'l, Inc*., 212 A.D.2d 288, 630 N.Y.S.2d 45 (1995) (case dismissed for improper conduct where witness was also an attorney acting *pro se*), *appeal dismissed*, 87 N.Y.2d 964 (1996).

[27] Salman, *supra* note 17, at 18; *ABI Report on Standards*, *supra* note 23.

[28] *New & Young Lawyer Track*, *supra* note 7.

judge for a ruling on your objections.[29] An objection for which a ruling is never provided will be deemed waived in the absence of some articulated effort to obtain a ruling.[30] Further, it is critically important to obtain the admission of all relied-upon exhibits. The failure to obtain such admission will result in the appellate court not having the ability to rely upon such evidence, even if you referenced that evidence throughout your arguments at trial. And, with respect to those exhibits that are admitted, persuasive appellate planning requires an effective organization of the exhibits in a way that will be easy to follow and understand on appeal.

Effective advocacy with an eye toward potential appeal also means planning to present your best arguments, as opposed to a conglomeration of loosely organized, scattershot arguments. In this regard, presenting an issue to the trial court in a "vague and ambiguous manner" may be insufficient to preserve the issue for appeal.[31] Similarly, clear presentation to the trial court on an issue is particularly important when the issue is not mandatory to consider at the trial court level. Naturally, non-mandatory issues are the least likely to be considered on appeal where the presentation and preservation of the issue was unclear.[32]

II. Written Advocacy: Principles of Drafting, Word Choice, Organization, and Length

At the base of all drafting is the necessity for an attorney to know her client, her case, and her audience.[33] Writings should include facts relevant to the motion or pleading and case law supportive of legal arguments, and the writing process should incorporate careful proofreading.[34]

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[29] Lauren Horwitz, *Prepare for an Appeal Right from the Start*, ADVOCATE (Dec. 2020), available at https://www.advocatemagazine.com/article/2020-december/prepare-for-an-appeal-right-from-the-start.

[30] *See id.* (collecting cases).

[31] *GeoMetWatch Corp. v. Behunin*, 38 F.4th 1183, 1206 (10th Cir. 2022) (internal quotation omitted).

[32] *See* John F. Muller, *The Law of Issues*, 49 WAKE FOREST L. REV. 1325, 1365 (2014) ("If the lower court had an obligation to consider the variation, the variation should be deemed preserved. If the lower court had no such obligation, the variation should be deemed unpreserved.").

[33] Hon. Mary F. Walrath, Leah M. Eisenberg & James E. Van Horn, *Young Lawyers Track: Best Practices for Motion and Brief Drafting* (ABI Delaware Views from the Bench Written Materials, 091317 ABI-CLE 207).

[34] Walrath *et al*., *supra* note 33.

The Model Rules of Professional Conduct underscore these expectations. An attorney is required to be thorough and prepared,[35] as well as truthful toward the tribunal.[36]

Truthfulness. An attorney must exhibit candor toward the tribunal.[37] Applied to written advocacy, this duty specifically includes, among other things, a responsibility to disclose legal authority in the controlling jurisdiction that is directly adverse to your client's position[38] and a responsibility in *ex parte* proceedings to inform the tribunal of all material facts known to you at the time that will enable the court to make an informed decision, regardless of whether those facts are adverse.[39]

The duty of candor in written advocacy begins early in the case. Courts may issue sanctions against an attorney who signs a pleading, written motion, or any other paper that is not well grounded in fact.[40] Furthermore, the court may issue those sanctions against your client,[41] thereby heightening the risk of blowback if shortcuts are taken in the filing of pleadings that are misleading, untruthful, or incomplete. When filing motions and briefs, an attorney certifies that the factual contentions set out therein have evidentiary support.[42] Although an *inexperienced* litigator might be able to explain away an unintended misrepresentation based upon the litigator's own

[35] MODEL RULES OF PROF'L CONDUCT R. 1.1(a) (AM. BAR. ASS'N 2020).

[36] MODEL RULES OF PROF'L CONDUCT R. 3.3 (AM. BAR. ASS'N 2020).

[37] *Id.*

[38] MODEL RULES OF PROF'L CONDUCT R. 3.3(a)(2) (AM. BAR. ASS'N 2020).

[39] MODEL RULES OF PROF'L CONDUCT R. 3.3(d) (AM. BAR. ASS'N 2020).

[40] FED. R. BANKR. P. 9011(c); *Moser*, 366 F. Supp. 2d at 987–88 (imposing Rule 11 sanctions for repeated misstatements in pleadings, mischaracterizations of law, and frivolous objections to facts).

[41] *Moser*, 366 F. Supp. 2d at 949.

[42] FED. R. BANKR. P. 9011(b)(3); *Keister v. PPL Corp*., 318 F.R.D. 247, 262 (M.D. Pa. 2015) (emphasizing an attorney's responsibility to inquire as to the facts of the case and certify that there is a "reasonable basis in fact and law for the claims" (internal quotation omitted)).

misunderstanding or error,[43] a court may be more inclined to sanction a *well-trained* litigator who has shown a pattern of indifference to the facts.[44]

Word Choice. A top priority in written advocacy is the avoidance of legalese and jargon.[45] Legal writing can often be "wordy, unclear, pompous, and dull."[46] Plain English, implemented by the use of clear and concise sentences, plain words, and statements that are as direct as the circumstances will allow,[47] is recommended and preferred among the legal community.[48] When possible, do not use archaic or Latin words.[49] Legalese may overcomplicate and confuse the reader, and confusion on the part of anyone—the other party, the client, or, most importantly, the judge—should be avoided.

Organization. In structuring a motion or brief, it is important for counsel to be cognizant of all applicable rules, including the federal rules, local rules, and the specific judge's procedures.[50] The rules will contain requirements with respect to length, font, and other specific formatting guidelines. A failure to comply with the rules and procedures may result in the denial of the motion and/or sanctions.[51]

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[43] *See Moser*, 366 F. Supp. 2d at 977.

[44] *See* MODEL RULES OF PROF'L CONDUCT R. 3.3(d) (AM. BAR. ASS'N 2020); Fed R. Civ. P. 11; *Keister*, 318 F.R.D. at 270, 274–75 (imposing Rule 11 sanctions on an attorney with a habit of filing misleading papers and a "vexatious litigation history" in the same court).

[45] Walrath *et al*., *supra* note 33.

[46] Norman E. Plate, *Do as I Say, Not as I Do: A Report Card on Plain Language in the United States Supreme Court*, 13 T.M. COOLEY J. PRAC. & CLINICAL L. 79, 83 (2010).

[47] Plate, *supra* note 46, at 85.

[48] Hon. Jeffery P. Hopkins, Hon. Barbara J. Houser & Hon. Christopher S. Sontchi, CONCURRENT SESSION: *Best Practices in Oral and Written Advocacy from the Perspective of Newer Judges* (ABI 32nd Annual Spring Meeting Written Materials, 120414 ABI-CLE 401).

[49] For example, such terms as "hereinbefore," "arguendo," and "with reference to" can often be edited and rewritten with more commonly used words or phrases. Debra R. Cohen, *Competent Legal Writing—A Lawyer's Professional Responsibility*, 67 U. CIN. L. REV. 491, 496 (1999) (internal quotations omitted).

[50] Walrath *et al*., *supra* note 33.

[51] *In re Steinberg*, 33 Vet. App. 291, 297 (U.S. 2020) (suspending an attorney for continued failure to respond to court orders requesting his compliance with court rules).

In addition to compliant formatting, the substantive organization of a pleading should be tailored to include thoughtful headings,[52] a mindful recitation of the facts, the implementation of shorter sentences and paragraphs for conciseness and clarity, and visual aids when applicable.[53] An effective advocate should strategically determine whether and to what extent to submit additional documents to the court. If, for example, you believe that the court would benefit from a list of parties and their roles in the case or from having a copy of all cited cases (particularly unpublished ones), then you should provide those to the court.[54] Taken together, the structure, formatting, and supporting documentation will assist with framing the issue and the court's focus on the arguments.[55]

Length. Another crucial part of effective written advocacy is attention to length. Pleadings should be neither too short nor too long. Instead, they should be appropriately tailored and proofread to provide only those relevant, necessary, and required details that supply the court with the information needed to make a ruling.[56] This includes the applicable background of the case and a thorough (but not redundant) discussion of applicable legal authority.[57] While a judge may appreciate brevity, you should not make assumptions or expect the court to do so. Always cite to the authority you are relying on for the requested relief, address any evidentiary burdens,[58] and provide the bases for how such burdens have been met (or not met, as applicable). A judge may deny relief, even when unopposed, where the applicable evidentiary burden has not been satisfied.

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[52] Hopkins *et al*., *supra* note 48.

[53] Walrath *et al*., *supra* note 33.

[54] *New & Young Lawyer Track*, *supra* note 7.

[55] W. Clay Massey, *For Effective Written Advocacy, Remember to Properly Frame Your Issue*, ABA PRACTICE POINTS (June 2, 2020), available at https://www.americanbar.org/groups/litigation/committees/mass-torts/practice/2020/for-effective-written-advocacy-remember-to-properly-frame-your-issue/.

[56] Hopkins *et al*., *supra* note 48.

[57] MODEL RULES OF PROF'L CONDUCT R. 3.3(a)(2) (AM. BAR. ASS'N 2020); Hopkins *et al*., *supra* note 48.

[58] *New & Young Lawyer Track*, *supra* note 7.

III. Effective Out-of-Court Communication: Client Counseling and Interactions with Opposing Parties and Counsel

Effective lawyering extends to an attorney's conduct outside of the courtroom. Attorneys must be able to effectively communicate with clients and opposing counsel to maintain respect and demonstrate competency.

A. *Initial client meetings*

Essential to every client meeting is building trust.[59] Attorneys must always act professionally and treat their clients as the attorneys' utmost priority. Showing up on time to meetings, being prepared, and silencing phones are expected courtesies.[60] While it is important to show one's capability and expertise, attorneys should also be mindful of keeping clients at the center of every meeting. For example, at an initial client meeting, it is best to begin by asking the client to identify her goals and biggest concerns.[61] An attorney should periodically pause when talking to allow a client to express any questions or concerns.[62] Regularly asking the client questions not only ensures that the attorney and client are in sync but also demonstrates an attorney's care and attention.[63] The client—not the attorney—should be the center of all initial meetings.

B. *Dealing with opposing counsel*

An attorney should always attempt to maintain professionalism when interacting with opposing counsel. This begins with attorneys being mindful of their own reputations. Attorneys should approach interactions with opposing counsel with a problem-solving, rather than hostile,

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[59] Matt Starosciak, *Quick Tips for the First Meeting with a Prospective Client*, LEXISNEXIS (June 25, 2018), available at https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/quick-tips-for-the-first-meeting-with-a-prospective-client.

[60] Mark Herrmann, *9 Tips for Client Meetings*, ABOVE THE LAW (June 20, 2016), available at https://abovethelaw.com/2016/06/9-tips-for-client-meetings/.

[61] *Id.*

[62] *Id.*

[63] *Id.*

state of mind.[64] Indeed, applicable rules often require counsel to confer in good faith before bringing a matter before the court.[65] And an effective advocate will always attempt to confer when feasible, even when not required to do so by the rules. Judges tend to look favorably on attorneys who have attempted to productively work out disputes without court involvement.[66]

Also key to effective advocacy is to always maintain one's composure.[67] When possible, it is best to meet opposing counsel in person, as such a meeting allows individuals to fully understand the tone and context of what is being said.[68] Remember, opposing counsel will have objectives of their own. Understanding your opponent's viewpoints may enable all involved to engage in respectful and productive conversations and negotiations.[69]

Finally, avoid speaking poorly of opposing counsel to your client.[70] Such conduct may backfire because a client will occasionally lose confidence in counsel who is unable to get along with others. Moreover, the ability to settle a dispute is often dependent upon the client having some semblance of a belief that opposing counsel is being fair, or at least upfront, in negotiations. If opposing counsel has, instead, been portrayed as completely untrustworthy and unreasonable, it may be quite difficult, if not impossible, for you to convince the client that settlement is in her best interest.

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[64] John Gibeaut, *Ins and Outs of Getting Along: Good People Skills Make for Better Lawyering, Speakers Advise*, 83 A.B.A. J. 105 (Apr. 1997).

[65] Jim Wagstaffe, *Managing Uncooperative Opposing Counsel Checklist (Federal)*, LEXISNEXIS (2023).

[66] Kyle B. Haskins, *Feature, Courtroom Etiquette & Civility: How Attorney Behavior Defines What It Means to Be a Lawyer*, 31 FAM. ADVOC. 8, 10 (2008).

[67] Kara Loewentheil, *Dealing with Difficult Opposing Counsel: How to Keep Your Cool When Negotiations Get Heated*, ABOVE THE LAW (Mar. 24, 2017), available at https://abovethelaw.com/career-files/dealing-with-difficult-opposing-counsel-how-to-keep-your-cool-when-negotiations-get-heated/.

[68] Wagstaffe, *supra* note 65.

[69] *Id.*

[70] Herrmann, *supra* note 60.