

May It Please the Court: Best Practices for a Young Attorney Taking the Podium

Four tips for arguing your first motion

By Julia Cherlow

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So you write a great motion and three days before the hearing the senior partner on the case says, “I just realized I have a conflict. Can you handle the hearing on our motion?” You panic—what, you mean me? Argue the motion? Are you crazy? The ink isn’t yet dry on my bar card.

Before you submit your resignation and exercise your fallback option of bartending, take a deep breath. You wrote the motion. You researched the case law. You know this stuff. This is your opportunity to get some experience under your belt and, with any luck, to impress your team and your client. And to feel like a “real lawyer.” When was the last time you saw a legal drama on TV that followed the ins-and-outs of an associate’s Westlaw search history?

While it’s exciting to think about your first Perry Mason moment, let’s be honest—appearing in court by yourself for the first time will be daunting. With the following four tips, however, you’ll be well on your way to making the most out of your first substantive court appearance.

Use Your Common Sense

You’ve made it this far in life. You must have good judgment. Use it.

- When you appear, dress like an attorney. Judges notice. This is not your opportunity to be fashion forward. A clean, well-ironed, conservative suit can go a long way. If you have a jacket, button it. If you wear a tie, make sure it’s tied neatly and that it doesn’t have any stains. If you plan to wear jewelry, make sure it won’t jangle if you move your hands. The microphone at the podium is sensitive, and excess jangling can be distracting.

- What if you don't know which courtroom you are supposed to be in? Ask someone. Most courthouses have an information kiosk where you can ask what courtroom your matter is in. The security officers at the door are also great resources—many have worked in the courthouse for years and are more than happy to direct you where you need to go.
- Once you get to the court room, check the docket at the door to see what number your matter is called for so you can get a sense of when you'll be up. Take a look at the matters before and after you—are there any summary judgement motions or other substantial motions where oral argument could go on for hours? Or are there mostly case management conferences, which are usually quite short? This can help you gauge how much time you have before you're called.
- When you enter the courtroom, look around to see if the judge is at the bench and/or actually hearing any matters. If so, be quiet and find a seat quickly. If not, quietly introduce yourself to the court clerk and provide a business card with your client's name and case number (or ask another attorney there the custom for that courtroom). Find a seat, ideally not too close to your opposing counsel. You may want to review your notes, and you don't want to unwittingly provide your adversary a sneak peek before the argument.

Prepare, Prepare, Prepare

You cannot prepare too much for your first oral argument. This includes preparing for both the practical and the substantive elements of the argument.

The practical:

- If you're appearing in federal court or state criminal court, you may need your bar card to enter the courthouse. Make sure you have one with you.
- Bring business cards. You likely will need them to check-in at the courtroom. Also, the courthouse is a great place to network. If you happen to run into a law school colleague or strike up a conversation with another attorney at the security check line, you will want to be able to give them your card.
- Bring three copies of the papers and the key cases that you plan to discuss: one for the court, one for opposing counsel, and one for yourself (with your notes and highlights).

- Check online to see if your judge issues tentative opinions online. If so, make sure you get a copy and incorporate it into your presentation (more on that below).

The substantive:

- Know the cases. Reread opposing counsel's brief and be ready to distinguish the key cases to show how you are right. Be prepared to show the judge where to find the point you are trying to make, either in the papers or the case law.
- Prepare a succinct outline. Start with the relief you are seeking (e.g., dismissal of plaintiffs' second amended complaint with prejudice), and then lay out the key reasons why you should win at a high level. Once you've set the groundwork this way, then you can go into details with citations to the key cases and record. But do not just summarize and repeat what you already argued in your papers.
- Be ready to go first or second, depending on the judge's preference. Draft your outline such that you can be flexible in this way. If you go second, don't feel like you have to hit all of the points in your outline, especially if the judge does not appear to be interested in those points (more on this below).
- Do some due diligence on your judge. Ask your colleagues in your office if the judge issues tentative opinions in the courtroom the day of the motion, and where you can get a copy. Also, query about the Judge's likes, pet peeves, and usual approach to matters like the one you will be arguing. This can be helpful background and help you avoid stepping into needless potholes.

Listen to the Judge

The judge is your only audience on a motion, and is likely to be your only audience for a long time. The judge will remember your face when you appear before the court in the future, the good things and the bad things. It is very important to make a good impression. You'll be well on your way to making a good impression if you follow these steps:

- If your judge issues a tentative ruling (online, or in the courtroom), make sure to adjust your argument to account for what the judge thinks is important.
- Pay very close attention to what your judge says. This includes the judge's spoken words, body language, and eye contact. This is all helpful information that too many lawyers

overlook to their client's detriment.

- Never interrupt the judge. You may have the most important point in the world to make, but it will completely miss the mark if you try to speak over the judge. Take a deep breath, and make a note to yourself if necessary. There will be a better time to make the point, or the judge may be signaling to you that the court “gets it,” and that you should “clam up” while you're ahead.
- Be respectful when you think the judge isn't getting your point. Never tell the judge that an issue is “really complicated,” or that “what the court doesn't understand is...”
- Welcome questions from the judge. They are gifts, as they provide helpful information about what the judge is thinking. Answer the question(s) directly. If you don't know the answer, say so. Generally, if it's important, your judge will grant further time to brief an issue if you can't provide a satisfying answer on the spot.
- And if the judge indicates to you that you are winning, be quiet. Don't try to argue additional grounds by which you think you should win.

Use Your Manners

Although last, this tip is just as important as the others. Using your manners in the courtroom can be the difference between winning and losing a motion, or even in winning or losing the case. It's an easy way to distinguish yourself (either way), and it can lay the groundwork for a good long term relationship with your judge.

- Be nice to the courtroom staff. Indeed, your relationship with the court clerk is a very important one, especially if your case goes to trial. Think of things you can do to make her life easier (i.e., providing a binder of the key cases relevant to your motion). The better the relationship you can develop early on, the more helpful it will be at trial.
- Don't talk negatively about your opposing counsel in the courtroom. You never know when the microphones might be on, or someone might be eavesdropping. It's unprofessional, and it's not worth it.
- Be old school. Stand up when speaking in court (unless the judge asks you to sit down). These formalities are there for a reason, and judges, for the most part, respect them.

- Concede a losing point. If you can tell the judge disagrees with you and is not likely to be persuaded, move on. You don't want to fight the judge. (See Point 3 above).
- Do not engage in unpleasant argument with opposing counsel. Remember the adage, "Don't wrestle a pig. You just get dirty, and the pig likes it." That's how the judge views it. Taking the high road, if difficult, is almost always rewarded.

Conclusion

While these four tips cannot guarantee a successful first appearance, they'll put you in good position to make the most of your first oral argument in court. And, in the back of your mind, remember that all attorneys survived their first time in court before they could get to where they are today, so you will survive (and hopefully thrive!), too.

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