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Civil LITIGATION

Effective advocacy: some valuable advice

"Brevity is important." — Chief Judge Carl L. Bucki, Chief Bankruptcy Judge for Western District of New York

This summer, I am mentoring and coordinating assignments for a talented, rising 3L at the University at Buffalo School of Law, who returned to our law firm for a second year as a summer associate. During quieter periods between assignments, we have discussed how discrete research and writing projects fit into the larger proceeding of a pending case and, in those moments, I have had an opportunity to reflect on advice I received as a young litigator.

This reflection dovetailed with a program I attended at the annual gathering of the bankruptcy bars of the Western District of New York — a wonderful joint venture of the Erie County and Monroe County Bar Associations. This year's event fell on a warm, sunny Friday in June. Attendees were invited to submit questions to a panel of the bankruptcy judges presenting at the conference, who graciously answered questions for an hour in a lecture hall after lunch.

This article offers a sampling of what the bankruptcy judges shared last month, as well as some select advice received from trusted mentors during my early days of law training.

Good writing counts. "Aim for brief, concise, pithy." Those were the words of instruction I received on my first motion drafting assignment. I was reminded of that exchange with a senior litigation partner — which occurred nearly 15 years ago — during the recent afternoon Q&A session when Chief Judge Bucki respond-



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ed to the question of what advice would the judges give to young practitioners. Judge Bucki responded, without pause, "Brevity is important." The judge continued by saying that every time he looks at court papers, he thinks about someone having had to pay for the submission. To the extent possible, the chief judge would like to keep costs out of the justice equation. The response struck me as a variation on a theme of similar advice from Abraham Lincoln who, in an 1850's lecture to law students, said that although the law may be a profitable profession, "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how often the nominal winner is a real loser — in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough."

First impressions count. "If your name is on papers and you are unknown to the Court, lots of first impressions will be made on the quality of your written submission. Be obsessive regarding the quality of the papers you send into Court." — Judge Robert E. Littlefield, Jr., U.S. Bankruptcy Judge for the Northern District of New York.

Judge Littlefield's comment resonated as I thought back to my legal writing professor's oft-repeated maxim, "There is no such thing as good writing, only good

rewriting." In 14 years of practice, I have yet to find an exception to this principle.

Use correct form. "Use a separate memo of law in pleading form when submitting argument to the court. Do not cite law in affidavits or in letters." — Judge Paul R. Warren, U.S. Bankruptcy Judge for the Western District of New York.

Those who have appeared at Special Term before Hon. Evelyn Frazee (ret.) will have heard the judge's regular admonition against submission of "briefadavits" or "affirandums of law." Many local rules in New York provide that affidavits must not contain legal argument but only factual and procedural background relevant to the motion the affidavit supports. *See, e.g.,* U.S. District Court for Northern District of New York Local Rules of Practice, Rule 7.1(a).

Indeed, at least a few federal court decisions have struck affidavits of counsel because they contained legal argument. Local practitioners will do well to develop the habit of creating a separate memorandum of law before submitting legal argument — especially those appearing on cases in Judge Warren's courtroom.

Effective advocacy involves good form and accuracy. "If you're going to cite a case as authority, be sure any quote is thoroughly vetted and proofread." — Judge Michael J. Kaplan, U.S. Bankruptcy Judge for the Western District of New York. Judge Kaplan advised that he does not appreciate it when authority is cited, and the Court goes to look up the case and finds the proposition cited does not actually square with that for which the brief says it stands.

Pro bono matters. "Have new law-

yers take one, two or three cases through VLSP. It is a practice opportunity, and it will give the lawyer a chance to see what debtors are actually going through.” — Judge Bucki. I agree with the judge. Good quality pro bono helped me to develop as a lawyer and as a person. VLSP cases provided firsthand experience delivering news — both good and bad — to clients. My first argument in federal court was on

a motion for summary judgment on an assigned civil rights case. My preparation for oral argument on multiple interesting questions of law served as a good data point regarding how much preparation is required for good, effective argument.

Civility counts. Finally, Judge Littlefield offered a concise reminder for a time when participants in public discourse seem to be increasingly challenged to

work constructively and disagree respectfully. “Be civil. You can still be an effective advocate and be civil.”

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