

4 Ways To Deal With A Volatile Judge

By **Aebra Coe**

Law360, New York (April 25, 2016, 5:18 PM ET) -- When a judge has a bad temper — or is just having a bad day — and that foul mood permeates the courtroom, it's often up to the attorneys to make the best of what could be a bad situation for everyone on both sides of a case.

When navigating a case overseen by a combative judge, attorneys need to remember, above all else, that their client's interests are of the utmost importance and that their own ego will likely have to take a back seat in order to reduce the tension in the room, Steptoe & Johnson LLP partner Michael Dockterman says.

"You have to deal with all kinds of judges and they have to deal with even more kinds of lawyers," Dockterman said. "For whatever reason, when a judge is being temperamental, you have to remember that your job is to win the case for your client, not to win a contest with the judge."

And whether it means taking a blow to the ego for the team, finding creative ways to communicate, or thoroughly preparing for the onslaught, experts explain that it is not just helpful, but obligatory for attorneys to advocate for their clients by rising above the drama and responding with grace when a judge becomes irate.

Here, longtime litigators offer up four ways to effectively defuse a seething jurist and make it through an eruption unscathed.

Don't Forget Your Manners

Gruber Elrod Johansen Hail Shank LLP partner Tricia DeLeon's first tip for any attorney who encounters a less-than-cordial judge is to make sure to be impeccably polite in return.

"It's difficult for a judge to be angry with you if you are respectful and courteous," DeLeon said.

She explains that ways to show respect and courtesy can include simple things like being on time, standing whenever the judge enters the room, addressing them as "your honor," asking permission to approach the bench before handing them copies of pleadings, and remembering to bring a copy of exhibits or pleadings to hand to the judge's law clerk.

Donald Prophete, a partner at Constangy Brooks Smith & Prophete LLP, similarly advises attorneys to look to courtesy as a first and last resort, warning that getting sucked into an emotionally charged alpha-

dog battle with a judge usually ends badly and can damage a lawyer's personal reputation as well as their client's position.

"Even if the judge is dead wrong on the law or his ruling, treat him or her with the utmost respect that the position deserves," Prophete said. "You may not like the individual in the robe, but you should always love the significance of the robe. Be firm, but extremely polite in your disagreements with the judge."

Have A Laugh (At Your Own Expense)

Dockterman says self-deprecating humor has been a useful tool that has helped him in many tense courtroom situations.

"It is not usually hard for me to find something I've screwed up so I can make fun of myself," he said. "Smiles in the courtroom go a long way. But the most important thing, I have found, is not to take myself so seriously when dealing with a judge who is not buying any of what I'm doing."

Dockterman recalls a time years ago when a judge was repeatedly not allowing him to introduce exhibits or ask a whole series of questions of witnesses, all in front of the jury. Dockterman says he politely asked multiple times if he could make offers of proof, and eventually the judge snapped at him, "Who are you trying to impress?"

He responded, "Originally, you, but that's not working very well so now I'm just hoping for something I can tell my mother tonight." Dockterman says the jury held its breath, but the judge finally smiled and softened, and all the jurors chuckled.

"Things went a lot better after that," he said.

Prophete says that he too has found humor to be a powerful tool in cooling down hot tempered judges.

"It's difficult to berate a lawyer mercilessly when you are laughing with them," he said. "Humor humanizes in sometimes difficult situations."

Do Your Homework

According to DeLeon, judges can sometimes become irritated when a lawyer adheres to the rules of procedure and local rules, but fails to stick to the "local, local rules" specific to that judge. She says getting to know the court staff and discovering a judge's specific demands as well as their pet peeves can go a long way toward keeping the peace.

DeLeon recalls a former judge she once worked with who was known to lose her temper, particularly if attorneys came to court unprepared. She says she got to know the court's coordinator and made it a habit to find out what the judge's mood was on a given day.

If she learned that the judge had a busy morning or had worked through lunch, she'd acknowledge those things and then state that she'd cut to the chase in order to not waste any of the court's time.

Prophete says litigators can also get to know a judge's clerk, prior clerks, and lawyers who practice regularly in front of the judge in order to be able to follow their practices "to a tee."

“Any lawyer who ventures before a judge without having done his or her homework on that judge's practices and idiosyncrasies risks being subjected to the wrath of that judge,” he said.

Take A Timeout To Cool Off

Shook Hardy & Bacon LLP Miami managing partner William Geraghty says that, rather than having an open debate in front of the jury over an objection, he prefers to ask the judge for sidebar so that the attorneys can have a discussion with the judge in a “more mild-mannered, calm fashion where everybody doesn’t feel the need to keep moving.”

He explains that every litigator should strive to achieve a friendly, calm atmosphere in the courtroom in order to put the jury at ease and if a judge becomes angry or irritated that goal quickly slips out of reach.

DeLeon also extolls the virtues of taking an issue up in a lower-stress environment. She says there was a time a judge was being “particularly stern” with the parties in front of her on the docket so she asked to approach the bench and also requested an in-chambers meeting.

“When the meeting was granted and the government attorney and I went back into chambers, the judge’s demeanor changed,” she said. “He was reasonable and, to my surprise, even friendly. We went back on the record in open court [and] it was a good day for my client.”

Dockterman advises that, when it comes to a volatile judge, waiting out the storm tends to be the best option.

“Just take the rulings professionally and move on, at worst asking if you can submit a pocket brief the following morning and asking to revisit the issue then,” he suggested. “There is always a higher tribunal.”

--Editing by Rebecca Flanagan and Patricia K. Cole.

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