


Orders Providing Opportunities For Junior Attorneys In The Courtroom

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One of the ongoing challenges that junior attorneys face is obtaining sufficient "stand up" courtroom opportunities. It is a reality of today's legal practice that many fewer cases proceed to trial than in previous decades. While there are myriad reasons for this decline, one of consequences has been a corresponding decline in courtroom opportunities for junior attorneys. Additionally, some judges have noticed a compounding trend—senior trial attorneys frequently appear for much more than the trial itself. See, e.g., GSI Technology, Inc. v. United Memories, Inc., No. 5:13-cv-01081-PSG (N.D. Cal. Mar. 9, 2016). Hearings that might once have been covered by a less experienced associate are being covered by senior counsel as well.

This has raised concerns, both from the bench and the legal community, about the career development and advancement of the next generation of lawyers. But judges are doing something about it and we can do the same here in Palm Beach County. For example, Judge William Alsup, of the Northern District of California, has sought to draw awareness to this issue for many years. Other judges and lawyers have taken up the cause, and organizations have developed resources such as www.NextGenLawyers.com, which provides the latest standing orders, news, and developments on this issue.

When it comes to how best to support junior attorney opportunities in the courtroom, different courts have approached this goal differently. Many judges have issued standing orders guiding counsel, or included provisions in orders setting hearings. Judge Alsup, for example, in a supplemental order accompanying orders setting initial case management conferences, actually seeks to create opportunities for junior attorneys:

If a written request for oral argument is filed before a ruling, stating that a lawyer of four or fewer years out of law school will conduct the oral argument or at least the lion's share, then the Court will hear oral argument, believing that young lawyers need more opportunities for appearances than they usually receive.

Judge Leigh Martin May, Judge Richard W. Story, Judge Mark H. Cohen, and Judge Timothy Batten, all of the Northern District of Georgia, also include similar provisions in their standing orders for civil litigation or instructions to counsel. Additionally, some judges, such as U.S. Magistrate Judge Christopher Burke of the District of Delaware, state that they will consider allocating additional time for argument where a junior attorney is arguing the motion.

Certain adjustments to proceedings may also be made to make the experience a positive one for all involved. Many judges allow for argument to be split between the junior attorney and more senior counsel. Judge Burke also allows senior counsel to provide some assistance to junior counsel during argument, where appropriate. Judge Alsup, in his trial guidelines, extends this further, encouraging lead counsel to permit junior attorneys to examine witnesses at trial, while at the same time relaxing the "one-lawyer-per-witness" rule so as to allow them to perform.

The definition of who qualifies as a "newer" or "junior" attorney varies somewhat from judge to judge. According to most judges, this includes attorneys who are between four to seven years out of law school. Judge Alsup, for example, defines a "newer attorney" as having less than four years of experience. Judge Barbara M.G. Lynn of the Northern District of Texas, on the other hand, sets the bar at seven years, seemingly recognizing that for many, even seven years of experience often does not equate to many opportunities to stand up in court.

This is not to suggest all hearings or other speaking opportunities in court should be handled by junior attorneys. Many such opportunities may be more appropriately handled by a more experienced attorney. Thus, it is important that no party be disadvantaged by choosing to use an attorney for a hearing. Judge Burke recognizes this in his standing order: "[T]he Court emphasizes that it draws no inference from a party's decision not to have a newer attorney argue any particular motion before the Court."

There are, of course, potential concerns associated with these policies. Having a junior attorney prepare for and argue a hearing may increase the costs to the client. Good mentors will take that factor into account in fairly billing the client. Additionally, the choice of whether or not to have a junior attorney argue a motion may convey a party's views on the importance of a motion to opposing parties. These kinds of orders allay that concern because the court is encouraging this practice and the order can say there will be no adverse inference. And there might not otherwise be the same opportunity for oral argument because the court would otherwise allow less time or rule on the papers.

In light of this growing, nation-wide trend, we respectfully encourage our judges to consider standing orders or divisional instructions encouraging junior attorneys to appear in their courtrooms. One way of doing so would be to include provisions encouraging such appearances, such as those discussed above, in each judge's standing order or orders specially setting a hearing. This would not only increase awareness of this issue in our local legal community, it would make it easier for senior counsel to explain to clients why they should agree to use junior attorneys at hearings and why their interests would be served by doing so. And we believe, given this chance, these lawyers will rise to the challenge of good advocacy.

All of the orders referenced in this article are available on www.NextGenLaywers.com.

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