

MJG'S CIVIL MOTION PROCEDURES

You wait in the back of a courtroom listening to attorneys at the podium. “Does s/he know what they’re talking about?” or perhaps “They are not even quoting the right law.” Do you ever wonder what the pack in the back of the courtroom is thinking about you when you are up there?

The judge is the ultimate audience. Why do we rarely consider persuasive efforts, rather than merely applying sheer intellectual muscle like a legal bulldozer... until we walk out of the courtroom wondering what happened to that perfect motion, especially when you were unopposed!

The following questions and observations were compiled from comments among attorneys in my firm during an accumulated long litigation practice, combined with the shocking recognition that judges have, if they are lucky, 150 days a year to try cases. If every attorney took “only their five minutes,” a judge could hear only four disputes at a motion calendar!

Of course there are legitimate differences that require a judicial determination. But so many other disputes, particularly with the increased expense of litigation, ought to be resolved by counsel. Remember that no matter how atrocious you believe opposing counsel’s conduct, s/he may feel the same about you, and that the court is relying upon both of you to resolve your differences so as to not waste the court’s precious time.

DRAFTING THE MOTION

1. Is a motion necessary?
 - i. Have you spoken with opposing counsel?
 - ii. Agreed order v. adverse ruling?
 - iii. Is the relief worth the time in court?
2. Scheduling: Are you demonstrating to the Judge your inability to address a single matter?
3. Drafting: Clearly identify:
 - i. The issue;
 - ii. The burden of proof;
 - iii. The duty and source (statute, rule, common law);
 - iv. How the duty was breached;
 - v. The authority for the remedy sought; and,
 - vi. If discovery is at issue, then quote the objected to production, interrogatory or admission request, and response.
4. Citations. Check annotations! Shepardize!
5. Proposed order. Prepare when drafting the motion to avoid quick drafting the night before leading to invited and other errors. Compare to the motion, especially the prayer for relief, confirming that the motion seeks your goal.
 - i. Blank lines for court to draft extra text.
 - ii. Is the relief clear?
 - iii. Blank for deadline dates.
 - iv. Who must do what, and when.
 - v. Specific dates to avoid counting days.
 - vi. Judgment? Comply with Chapter 55.
6. Notice of Hearing.
 - i. Motion Calendar: If there are many citations, issues, documents, or any testimony, then the motion is not appropriate for motion calendar.
 - ii. Emergency: Really?
 - (1) Where is the blood? Everything is important to a client, it is your role to provide perspective, not to let the judge

do your job of telling the client that what is important to the client is not imperative to the public welfare.

(2) Timeliness. Deciding to wait until the last minute does not create an emergency.

7. Motion for Re-Hearing!
 - a. Threshold. Proper subject?
 - b. Procedure. Do not set, judge will deny or set.

BEFORE THE HEARING

Cancelled?! Notify Judicial Assistant, other parties, your witnesses and your client.

1. Service. Timely with a notice of hearing on all parties, and filed?
2. Confirm by telephone with opposing counsel that hearing is still scheduled and necessary.
3. Provide opposing counsel copies of citations and documents you have brought for the judge and not disclosed in the motion. Consider how the judge will react to delays in providing these materials. If there is more than a citation or two, should the motion be reset, and if on motion calendar, to a special set?
4. Court Package (copies in sequence) Not fancy. If you have a binder, you better not be in a motion calendar!:
 - i. Notice of Hearing;
 - ii. Motion;
 - iii. Citations (only 1 or 2 if motion calendar);
 - iv. Motion to dismiss? Include the Complaint.
 - v. Proposed order, original and copies for all parties including you.
 - vi. Pre-addressed stamped envelopes for all parties, including you.
 - vii. Shepardize citations. (Yes, again!); and,

- viii. Outline presentation. If you do not have tremendous experience, practice it, even videotape your presentation and watch with another to critique (You may destroy the tape after reviewing!![Unless you kill yourself first!!!]).

WAITING FOR HEARING

1. Sign-in if at Motion Calendar, and introduce yourself to the Bailiff.
2. Introduce yourself to opposing counsel.
 - i. Lack of civility transcends words. The Court perceives inappropriate efforts to sway emotions.
 - ii. S/he will not bite. Opposing counsel is human, if both of you are early, get a cup of coffee together.
 - iii. Discuss, especially discovery issues and non-dispositive issues, whether there is an avenue of resolution. Tried it before? Try again because the sight of the courtroom doors can change minds!
3. In the courtroom:
 - i. Cellphone and electronics off/silent mode.
 - ii. Quiet. If you need to speak, exit to the vestibule.
 - iii. Provide Bailiff your Court packet.

THE HEARING

1. Have with you:
 - i. Copy of materials in Court packet;
 - ii. Pleadings; and,
 - iii. Pen and paper.
2. Speak to be understood.
 - i. Loud (not shouting), even-toned, slow and clear.
 - ii. Use notes.
 - iii. **DO NOT INTERRUPT ANYONE!** This

is not television or movies. This is reality where we live and work in the same community. If opposing counsel is rude, the judge likely will not comment, but certainly will see it!

3. Introduction. Normally: Movant first, but take direction from the judge, if judge directs.
 - i. Name, and party you represent;
 - ii. Case “short” name if case is not announced; and,
 - iii. Motion being heard.
4. When called upon, state clearly in order:
 - i. Issue;
 - ii. Relief sought;
 - iii. Burden of proof;
 - iv. Short statement of facts; and,
 - v. Short summary of law.
5. Listen to the Judge
 - i. Answer questions. “Yes” and “No” work well, then provide explanation.
 - ii. Persuasion. Is there a practical implication to stress?
 - iii. Concede what you must, do not obfuscate, or you will undermine your credibility, for this and your future appearances.
 - iv. Take notes for order drafting. If there is uncertainty, ask immediately, do not wait and schedule another hearing because you did not pay attention. Asking for clarification is not a time for more argument.
6. When the judge rules, it is over! The attorneys for the next matter are right behind you. Remain professional, shake hands with opposing counsel, and wish a good morning.

AFTER THE HEARING

1. If directed to draft an order:
 - i. Draft swiftly, follow the judge’s direction
 - ii. Exchange the draft with all parties with time for comment before submitting to the Judge.
 - iii. If opposing counsel is drafting order:
 - (a) Respond swiftly to a draft order;
 - (b) If an order is submitted without your review, and you have a material issue (not minor) call the Judicial Assistant and follow up with a letter to the court briefly stating the lack of notice to review and the proposed text sought with a copy to all parties.
2. Call your client immediately, good news or bad!
3. If there another hearing scheduled, then make certain the hearing is calendared.
4. Communicate to your client what they must do to comply with the order:
 - a. Diary response deadlines.
 - b. If a money judgment is in your client’s favor do not go to the Clerk’s window for payment!! Consider need to:
 - i. Obtain and record a certified copy (confirm in Chp. 55 format).
 - ii. Docket on Secretary of State’s execution docket.

