

TECH, ZOOM, PRACTICE & PROFESSIONALISM: PRACTICING IN THE SECOND CIRCUIT

By A. Maresa Semper



On March 7th, the Tallahassee Bar Association hosted a panel of judges—joined by their judicial assistants—who shared their insights on post-COVID practice in the Second Circuit and professionalism in the field. If you missed the TBA's first CLE

Luncheon of 2023, here's what you need to know: Zoom is here to stay, the Golden Rule still applies, and it is advisable to familiarize yourself with a judge's practice preferences prior to appearance.

Where to Find Judges' Preferences & Related Resources

Manuals, forms, and procedures, specific to judges in both circuit and county courts, are available on the Second Circuit website. Clicking on "circuit judges," or "county judges" will direct you to the pages where these materials can be found.

On the Use of Virtual Conferencing Post-COVID

We've come a long way. The pandemic forced the world to adapt. Today, capabilities are leveraged and allow for the delivery of legal services with increased flexibility and efficiency. These gains are largely related to the adoption of virtual meeting platforms into daily operations. Judge Ashenafi-Richardson shared that the feedback she's received at the county court level has been overwhelmingly positive and, as a result, the court will continue to operate in a hybrid format. This structure is convenient both for attorneys, who often have to be in multiple courts and counties, and also for litigants, some of whom have limited access to transportation.

Judge Allman expressed that—at least in the Second Circuit—judges still experience the occasional car Zoom, but overall attorneys take Zoom seriously and have come a long way from Zooming via deer stand. A quick tip from Judge Marsh: when it comes to Zoom, treat it like a physical courtroom. The expectations for professionalism

are not diminished in virtual platforms. Regarding dress, if it would not be acceptable in a physical courtroom, it is not acceptable in a virtual appearance. As Judge Marsh stated, "we are professionals, this is our craft."

On the Pet Peeves of Judicial Assistants & Common Mistakes to Avoid

Effective emails preferred. The hybridization of contemporary courts means that, while many appearances can be facilitated virtually, attorneys can still approach staff in person. Judicial Assistant Blanca Delgado-Chavez recommended against attorneys approaching en masse. Rather, she expressed that an effectively crafted email can often be the best mode of communication. Running late or have a quick word you need passed to the judge? Ms. Delgado-Chavez always has her laptop with her and can convey this information to Judge Ashenafi-Richardson when delivered effectively.

Judicial Assistants Delgado-Chavez and Marci Goodwin both shared quick tips on drafting an effective email, including putting the case number in the subject line and, if the matter is in regard to a same day hearing, stating "hearing today" in the subject as well. For another quick tip, consult with co-counsel to reach mutually agreed availability before requesting a hearing date.

Last minute motions. Judicial Assistant Ryan Randolph also shared that last minute motion filings are not advised and will likely not be heard by the judge on the same day; he recommended instead that attorneys reschedule their hearings.

On the Pet Peeves of Judges & Common Mistakes to Avoid

Judges are not omniscient. Judge Baker-Carper cautioned attorneys not to assume that the court knows your case or specialized area of law to the same degree of granularity as you do. Her advice? "Take your time, explain yourself, explain the law, explain where you're coming from." Judge Allman has worked in criminal law for over

forty years and shared that “every day, I’m amazed at what I don’t know.” Judge Ashenafi-Richardson underscored this point with, “we are trying to stay on top of the law, we are trying to be the most learned person in the courtroom, but we couldn’t do it without you.”

Preparation is pivotal. Judges want to be prepared. Judge Allman offered the following advice: if there is material you want the judge to read, provide it in advance. Well enough in advance, Judge Dempsey suggested, that the material can actually be read. Judge Dempsey also shared that urgent information can be emailed to a judicial assistant. But note one caveat: “don’t send an email or a letter when you should be filing a motion, because we practice law by motion not email.”

For witnesses, Judge Jones advised that attorneys ensure they are professionally dressed when appearing virtually and prepared as if they were coming to court in person (this includes having and being familiar with all the necessary documents).

Communication is key. Judge Ashenafi-Richardson shared that The Florida Bar recently identified lack of communication as the number one cause for bar complaints. She noted that in her fourteen years with the county court, this is the area in which she has seen the most deterioration within the profession. Failure to respond to the court or to fellow attorneys creates inefficiencies in the legal process and erodes professionalism between practitioners.

Judge Newlin urged attorneys to communicate ahead of time if they need to appear via Zoom. Similarly, Judge Jones underscored the importance of letting the court know if a case or matter has been resolved prior to hearing, eliminating the need altogether. This will free up time that can be given to another litigant. A quick tip from Judge Miller: treat all written communication to judicial assistants as if the judge is copied on it.

Functional formatting. Judge Newlin also offered a quick tip for attorneys on proposed orders. Send them to the judicial assistant in a clean, simple, editable word document, without any special formatting or tables and charts.

Timing is everything. Judge Baker-Carper advised attorneys to be judicious with allotted time. As she put it, “don’t try to squeeze a three hour hearing within a one hour timeframe.”

On Professionalism, Generally

Reading is fundamental. When asked for their biggest piece of professionalism advice, the panelists underscored the importance of maintaining functional awareness of the rules relevant to one’s practice area.

The golden rule. Another rule, not codified by statute but nonetheless of critical importance, is to treat others as you’d like to be treated (or better). “Take care of yourselves and be kind to each other . . . if you see someone going through a tough time . . . help them,” said Judge Ashenafi-Richardson, who also noted the importance of addressing and taking steps to care for one’s mental health. In a similar vein, Judge Baker-Carper reminded the audience that “it’s okay to have a bad day . . . but don’t let your bad day define you.”

Judge Miller reminded the audience of a sentiment at the core of the professional code of conduct: “lawyers are an important part of the administration of justice . . . and it is so important that we see that you are tied to that greater purpose.” Of equal import, he added that attorneys must not forget their duty of candor, diligence, and respect. As Judge Jones said, “you are creating your reputation and relationships from the first day you start practicing law.”

Thank you to each of the judges and JAs for providing sage words and advice to fine-tune and raise the high level of practice here in the Second Circuit.

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