

Ten Tips for Persuading Judges

By The Honorable Paul M. Warner, US District Court

Where you stand on an issue depends on where you sit. I practiced law for over thirty years before I joined the federal bench. I was always a trial lawyer. I thought I knew how to persuade judges and juries. Now that I have been on the bench for a few years, I have a little different perspective. I will not guarantee that what I am going to share with you will work with every judge, but I suspect that it will help you with most of them.

1. An ounce of credibility is worth a pound of cleverness. Credibility begins with being prompt and ready to go. Be courteous and respectful. Never mislead the court. Be sure to tell the judge if you are arguing novel or new theories that will require the court to depart from established precedent.

2. Ensure that your memoranda and briefs are free of errors. Typos and citation mistakes reflect poorly on your credibility and attention to detail. Be temperate in your writing. Judges are not persuaded by the use of inflammatory language or rhetorical questions. Nor are they persuaded by the overuse of bold type, italics, underlining, exclamation points, etc. Resist the temptation to use any of these techniques. They do nothing but harm your credibility and the merit of your arguments.

3. Be prepared. Be thoroughly familiar with the facts and the law as they pertain to your case. Anticipate questions from the court. Be ready for questions by being prepared to cite applicable facts, rules, statutes, and cases to the judge when asked.

4. Be brief and concise, both orally and in writing. Most judges have heavy dockets. Time is a precious commodity for the courts. Therefore, remember no judge appreciates verbosity. Question every word you put in your brief or memorandum. Get to the point quickly when speaking in court. It has often been said, "I would have written you a shorter letter, but I did not have the time."

5. Do not overstate the facts or the law. Save hyperbole for someone who will appreciate it. The judge will not. Make sure the cases you cite really stand for the

proposition cited. Also ensure that any cases you have cited have not been recently overruled.

6. Make your argument in court, but do not “argue” with the court. Professionalism and demeanor both go to credibility. Style counts. You can be right, but you can also be dead right if you turn off the judge because of rude or boorish behavior directed to either opposing counsel or the court.

7. Be a good listener. Answer the question that is asked, and do so directly. If you do not know the answer, say so. Do not guess. In terms of persuading the court, here is a golden nugget: good answers to the judge’s questions are much better than good arguments.

8. Concede the obvious if it does not kill your case. Virtually every case or argument has strengths and weaknesses. Your willingness to acknowledge weaknesses actually enhances and strengthens your position with the court. It also helps your personal credibility with the judge.

9. Be yourself. Work within your own personality. Do not try to imitate others, even if you are impressed with their courtroom style. It rarely works. Persuasive advocacy comes in many shapes and sizes. Use what fits you.

10. Life is tough, but it is tougher if you are stupid or do stupid things. This principle applies with equal weight in the courtroom. When preparing to come to court, do not forget to bring your common sense, and a host of other human qualities that will impress the court and make the judge want to rule in your favor.

This article, originally published in the Utah State Bar Journal in 2010, is used with the permission of the Utah State Bar Journal and Judge Warner.