

# Reflections on Effective Advocacy

By Maura Corrigan and Kurtis T. Wilder

**A**fter a combined 46 years of judging, the authors have resumed the practice of law as advocates. Having seen advocacy on both sides, we have strong beliefs on what works and what does not work when filing briefs and arguing before judges and justices. Here, we offer some of the insights we have shared with our colleagues at our firm and with our mentees.

In court, we encountered lawyers of varying degrees of competence and diligence. Most especially, we know lawyers and judges who observed the highest standards of our profession, which, after all, is “a disciplined group of individuals who adhere to ethical standards.”<sup>1</sup> The State Bar of Michigan is graced with thousands of lawyers who strive to do the right thing in every circumstance. Our lawyer’s oath actually requires this of us. (For Corrigan’s memories of swearing in young lawyers, see the sidebar on page 40.) We also saw lawyers improve their performance. We are cheering you on!

## Capture and preserve your first impressions of a case

When you first meet your client, what are your impressions on the merits of the case? What obstacles do you see? Write them down! Your first impressions could mirror those of the assigned judge.

As you launch the attorney-client relationship and gather the relevant facts, you also research the law controlling the case. But how you first saw the case may be far afield from your views of the case after you live with it. In your advocacy for your client, you could easily lose objectivity about the case’s problems and forget your early, more objective insights.

The assigned trial or appellate judge is initially unfamiliar with the facts and law involved in your case just as you were at the outset of the representation. The judge’s early impressions could easily influence their decision-making given the pressures of other matters in a heavy docket. Your early insights about the case continue to be enormously valuable.

## Get to the point

Simplicity, clarity, and economy of words should be your goal in legal writing. As Supreme Court justices, we digested more than 3,000 pages of motions, briefs, and commissioner and law clerk memos (with the assistance of four chambers clerks) each month. Our goal was to persuade our colleagues on the correct reasoning and outcome of each case.<sup>2</sup> Given the volume of required reading, we dearly loved and treasured non-bloviating legal writings. Some of

us even took to calling attorney work product lengths, not briefs!

Our second recommendation is to cut to the heart of your argument. Judges understand that every case is important to the litigant and their lawyer, but yours is not the only case. While you have lived with the case for some time, the judge assigned to the case has only a few days or weeks to learn the facts in *multiple* cases and identify the applicable law before voting on the decision in your case.

Think about your last motion docket or appellate argument to appreciate our point. Each of the 20–40 cases on the docket required a judge’s time and effort to prepare. Succinct briefings and oral arguments that surgically and economically identify the relevant facts and law help the court—and they help you! On the other hand, bloviated briefing and oral advocacy can become irrelevant. Make judges glad to see your name on a brief or the docket.

## Attack the argument, not the person

One logical fallacy, called “argumentum ad hominem,” crops up in legal writing. This argument is directed at the person, not the reasoning or logic of the point at issue. Make your case without irrelevant personal attacks.

In the heat of litigation, opposing counsel and opposing parties can seem like your mortal enemies. Character attacks are so inviting. Strive to eliminate them.

---

“Best Practices” is a regular column of the *Michigan Bar Journal*, edited by Gerard V. Mantese and Theresamarie Mantese for the Michigan Bar Journal Committee. To contribute an article, contact Mr. Mantese at [gmantese@manteselaw.com](mailto:gmantese@manteselaw.com).

---

In the heat of litigation, opposing counsel and opposing parties can seem like your mortal enemies. Character attacks are so inviting. Strive to eliminate them. They show lack of courtesy and respect. Such attacks are distracting to everyone but are especially unhelpful to the judge considering your written motion or brief. Character attacks can alienate the judge and poison the legal merits. The entire process of legal writing is for the judge. Your work is intended to help the court identify the law that should control the resolution of the dispute. Arguing anything else is a needless distraction.

The Michigan Rules of Professional Conduct (MRPC) are quite clear on the subject of courtesy and respect: "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials."<sup>3</sup>

The commentary to Rule 6.5 provides that respect for law and legal institutions is enhanced when lawyers treat clients and third persons with courtesy and respect. But a lawyer also may speak and write bluntly: "Obviously, it is not possible to formulate a rule that will clearly divide what is properly challenging from what is impermissibly rude."<sup>4</sup>

In Administrative Order No. 2020-23 issued last month, the Michigan Supreme Court, in accord with the State Bar of Michigan, recognized 12 principles of professionalism we must all abide by. The principles offer guidance on appropriate standards of personal conduct for lawyers and judges consistent with the highest standards of our profession. The themes of civility, cooperation, respect, and integrity permeate the principles. Lawyers are especially reminded not to disparage or attack others and avoid using hostile or demeaning words.

Use your good judgment about drawing the line and have someone review your work product. A peer or mentor can offer invaluable feedback on your tone.

## Remember your obligation of candor to the tribunal

The Michigan Rules of Professional Conduct are also quite clear that zealous advocacy is constrained by the requirement that each lawyer plays by the same rules.

MRPC 3.3 requires truthfulness and candor by the advocate.

Judges do pay attention to this rule. When you deny the obvious factual or legal truths, you damage your own reputation and likely harm your client. Eventually, the truth will be discovered. A court's discretionary decision-making authority is based in law. As the word "discretion" implies, a "range of principled outcomes" may be available to a judge. Lawyers making false statements or withholding information lack credibility. In the inevitable discovery disputes plaguing our system, especially those involving questionable lines of inquiry, judges are less inclined to give the benefit of the doubt to lawyers lacking credibility. The greater the credibility, the greater the latitude.

## Judges want to get it right in every case

Just as personal attacks on opposing parties or counsel do not advance your case, stereotyping the decision maker defeats effective advocacy. Governors can fill judicial vacancies until the next election, but while Governors Whitmer, Snyder, Granholm, or Engler may have appointed the judges, they are not Whitmer, Snyder, Granholm, or Engler judges. Nor do judges who seek and win election without prior appointment fit neatly into definitive categories. Labels are useless.

In our experience, judges want to get the law right and they make every effort to identify the principles that govern the disposition of each case. Successful advocates demonstrate how their case falls within big-picture principles. Many gray areas exist that offer creative lawyers the chance to persuade the decision maker toward a result consistent with the rule of law as well as the judge's personal judicial philosophy. Do not underestimate the judge's ability and desire to protect the fabric of the law.

## Conclusion

Judging is a noble profession and we were privileged to serve our great state in that capacity. The Michigan judiciary works hard to efficiently and fairly resolve the thousands of cases in our system in a manner

consistent with the United States and Michigan constitutions, our statutes, and common law. Lawyers can do a great deal to assist judges in that effort. We hope the suggestions in this article provide meaningful, common-sense ways in which you can maximize your impact before the court on behalf of your clients. ■



*Maura Corrigan is counsel to Butzel Long. She previously served as justice and chief justice of the Michigan Supreme Court, judge and chief judge of the Michigan Court of Appeals, director of the Michigan Department of Human Services, assistant U.S. attorney, and chief assistant and assistant prosecutor in Wayne County. Corrigan also served as a visiting fellow with the American Enterprise Institute. She currently concentrates her practice on appeals and litigation.*



*Kurtis T. Wilder, a shareholder at Butzel Long, is one of five people in Michigan history to serve as a trial judge, judge of the state Court of Appeals, and Michigan Supreme Court justice. He plays an active role for a number of Michigan non-profit organizations, most notably as chair-elect of the board of trustees of the Interlochen Center for the Arts and secretary of the board of directors of the Detroit Symphony Orchestra. He currently concentrates his practice in appeals, litigation, and mediation and facilitations.*

## ENDNOTES

1. *What is a Profession?* Australian Council of Professions <<https://www.professions.org.au/what-is-a-professional/>> [<https://perma.cc/99UL-WWJ4>] (website accessed January 5, 2021).
2. One of us, affectionately known as "Winston Churchill" for her tenacity, was also boringly well known for saying, "Cut to the chase!"
3. MRPC 1.0, Comment, and MRPC 6.5.
4. MRPC 6.5, Comment.

*(Continued on the following page)*

As chief justice, my standard swearing-in speech for new lawyers provided:

You will promise to uphold the Constitution of the United States, the state of Michigan, and the ordered liberty that those documents protect. Adhering to this oath is your first duty for the rest of your lives.

Your oath puts principle ahead of convenience, truth ahead of expedience, and justice before personal profit. This is a day for celebrating, but it is also the beginning of a serious enterprise.

One of a judge's happiest duties is to administer oaths to new lawyers. In doing so, we connect the oath taker with past generations of attorneys, and with the tradition of principled government that comes down to us from the Magna Carta.

To make and keep a vow is to keep faith with the past and with the future. By honoring your oath from this day forward you uphold the honor and dignity of this ancient profession you are privileged to enter upon today. You deserve congratulations, because you worked hard to arrive at this day. But, although it was often lonely work, you did not get here alone. To your families and friends—also, congratulations and thanks. While we are all standing here at your sides, you also stand on our shoulders. And in time, if you are faithful to your oaths, a new generation will stand on your shoulders, seeing and reaching higher because of your life and your work.

I hope that you remember this oath every day. I hope it sustains you on the days that are bound to come; days when nothing seems to go right, days when our profession is under attack, days when the practice of law seems more drudgery than a high calling.

Lawyers represent the best and the worst of our society. People love to hate us. We love to hate ourselves. It's not a new thing. Remember Carl Sandburg's line: "See how the hearse horse snickers, hauling a lawyer's bones." Never lose sight of who you are and what you are. Don't ever lose sight of your role in this, our precious democracy and our system of justice.

I have been so to have had the model of good lawyers and judges. People who knew the right questions to ask—not just in the cases, but in life.

When you think about beginnings, it is natural to think about endings, too. Will you be an example, a mentor for those who come after you? Will you ask, "What is the right thing to do? What is the good and the moral and the just thing to do?" Because what is right and what is good can be known. It will not vanish or change with the time. And no matter what labels might be put on you, I hope you will always be faithful to principle.

— Maura Corrigan

As attorneys, you will probably not be called on to dash into burning buildings or engage in hand-to-hand combat in the defense of freedom. But you do have a role to play—to be officers of the court, to uphold the constitution and the rule of law—and to live a life that is good and true.

Goodness is not just the absence of evil. Good lawyering does not mean just avoiding actions that lead to grievances and malpractice suits. There are sins of omission and sins of commission. Often the more deadly sin is the action that should have been taken but wasn't—the failure to do good.

You will have plenty of opportunities to do good. After you leave here today, you will have many pressing concerns: bills to pay, law practices to start, families who need love and attention.

But don't forget to look outside that circle of personal concerns to the larger world. Poet John Berryman called humanity "a huddle of need" and you will see the truth of that observation proved over and over.

Great lawyers have one thing in common: they left something good behind them. They built something, even while recognizing, as Mother Teresa did, that whatever we build can so easily be destroyed.

So, run the race that has been set before you. Play the hand that life deals you. Step up to the plate with grace and good humor, even if you fail. I want to conclude with the poem Judge Wade McCree wrote about his mentor, attorney Harold Bledsoe. He wrote this poem during Mr. Bledsoe's funeral. I hope that your life in the law will someday be captured in Judge McCree's beautiful words.

#### To Harold Bledsoe

When a tall tree falls, it makes a thund'rous sound  
To tell the forest that a giant is dead,  
And now there seems an empty spot of ground  
Where once a stalwart presence raised its head.

But if we look, the ground on which it stood  
Brings forth green seedlings, reaching for the sun  
To find their place as stalwarts in the wood  
Beginning as their parent had begun.

And so, the great soul whom we mourn today  
Has not left us without a legacy  
A host of fledglings studied 'neath his sway;  
Each one may someday be a mighty tree.

Thus god, his will inexorable ordains  
To make us mortals know that he still reigns.