**Diversity in the Courtroom: New Lawyers**

U.S. Magistrate Judge Celeste F. Bremer | February 2020

“Fewer cases are going to trial and, as a result, there are fewer opportunities for lawyers in Court, especially newer lawyers. The Court feels strongly that the legal profession, including the Court, owes a duty to provide opportunities in court for newer lawyers, many of whom are more representative of our community at large.”

Standing Order on Diversity in the Courtroom

 Chief Judge John Tunheim, D. Minn.

https://www.mnd.uscourts.gov/Judges/practice-pointers/JRT.pdf

**Other Judges with Accommodations for New Lawyers**

**Magistrate Judge Becky Thorson, D. Minnesota**

“To facilitate a speaking opportunity for a less-experienced attorney, the Court may make accommodations, upon timely request. These might include, for example, allowing the argument to be split between counsel, providing additional time for argument, and/or permitting the less-experienced attorney who makes the argument an opportunity to consult with a colleague at counsel table.”

https://www.mnd.uscourts.gov/Judges/practice-pointers/BRT.pdf

**Magistrate Judge Kate Menendez, D. Minnesota**

“The Court strongly encourages litigants to be mindful of opportunities for newer lawyers to conduct hearings before the Court, particularly for motions where the lawyer drafted or contributed significantly to the underlying motion or response.”

https://www.mnd.uscourts.gov/Judges/practice-pointers/KMM.pdf

**Magistrate Judge Hildy Bowbeer, D. Minnesota**

See sample Practice Pointers attached.

https://www.mnd.uscourts.gov/Judges/practice-pointers/HB.pdf

**Judge Rosann Ketchmark, W.D. Missouri**

“The Court shall grant a request for oral argument on a contested substantive motion if the request states that a lawyer of no more than six years out of law school will conduct the oral argument (or at least a large majority).”

https://www.mow.uscourts.gov/sites/mow/files/RKOral%20Argument%20Permitted%20for%20New%20Attorneys.pdf

**Judge Beth Phillips, W.D. Missouri**

“[S]he will automatically grant a request for oral argument on a contested motion if the requesting party certifies that the argument will be presented by a lawyer who graduated from law school within six years prior to the motion being filed.”

https://www.mow.uscourts.gov/sites/mow/files/BP-oral-arg-new-lawyers.pdf

**Judge Kelly Mahoney, N.D. Iowa**

“Judge Mahoney encourages participation during motion hearings by lawyers who drafted or contributed to the motion or resistance and/or prepared for the hearing. If a party is represented by multiple attorneys, the attorneys may divide between themselves who participates in portions of the hearing.”

https://www.iand.uscourts.gov/sites/iand/files/KEM\_Preferences.pdf

**Other Sources:**

1. **Kip T. Bollin. *Standing Up*, 65-JUL Fed. Law. 3 (June/July 2018).**

Judges in California, New York, Delaware and Texas increasingly encourage more-experienced lawyers to involve newer attorneys in oral argument when they have contributed to the case. Discusses concerns regarding choice of counsel or increase in the cost of litigation if such orders are issued. FBA Task Force created to address this trend.

1. **Michael Rader, *Rising to the Challenge: Junior Attorneys in the Courtroom*, New York Law Journal (April 27, 2017), https://www.law.com/newyorklawjournal/almID/ 1202784731997/rising-to-the-challenge-junior-attorneys-in-the-courtroom/**

Allowing young attorneys opportunities in the courtroom is not only preparation for the future, but an important strategy for serving clients in the present.

1. **Elizabeth A. Fegan. *From Litigator to Trial Lawyer*, 65-MAR Fed. Law. 6 (March 2018)**

Encouraging younger lawyers to be assertive and ask for opportunities to appear in court.

1. **Levine, Dan. *Judge [Alsup]: Give New Lawyers a Chance*, The Recorder (California) (July 3, 2008)**.
2. **Next Generation Lawyers, https://nextgenlawyers.com (last visited February 13, 2020)** (collecting judicial orders that encourage and provide for opportunities for younger lawyers).
3. ***Potpourri: Mediation, Encouraging Participation by Younger Lawyers and the Role of Delaware Counsel,* American Bankruptcy Institute: Delaware Views From the Bench 2017, prepared by Mark Minuti and Monique Bair DiSabatino (September 13, 2017)**

Suggests that Courts should grant a request for oral argument “if it is at all practicable to do so;” consider allocating additional time; and permit more experience counsel to work with younger counsel.

**MAGISTRATE JUDGE HILDY BOWBEER**

**Practice Pointers and Preferences**

[pages 1–8 omitted]

**OPPORTUNITIES FOR LESS-EXPERIENCED LAWYERS**

* Magistrate Judge Bowbeer strongly encourages parties and lead counsel to consider opportunities for less-experienced lawyers to take speaking roles in conferences, hearings, trials, and other litigation proceedings. In furtherance of this goal, she is willing to consider modifying her typical courtroom procedures where appropriate in order to facilitate, or remove potential barriers to, those opportunities.
* **Pretrial Planning:** The Rule 26(f) process, the Rule 16 conference, and final pretrial conferences are occasions for counsel to discuss with their respective clients, with each other, and, where applicable, with the Court, case-appropriate opportunities and accommodations for less-experienced lawyers to participate more fully throughout the litigation. These opportunities for participation include, for example, the Rule 16 conference and other court conferences, depositions, meet and confers, motion practice, settlement conferences, and trial.
* **Motion Hearings:** Indisputably, the decision of who should argue a motion is that of lead counsel in consultation with the client. But a less-experienced lawyer who was deeply involved in the preparation of motion papers may be more knowledgeable about the facts, circumstances, and law underlying that motion, and therefore of greater assistance to the Court’s understanding, than the more senior lawyer who might ordinarily make the argument. Accordingly, Magistrate Judge Bowbeer encourages the parties and their counsel to consider having that less-experienced lawyer handle all or part of the oral argument on a motion in which he or she was significantly involved. To facilitate a speaking opportunity for a less-experienced attorney, Magistrate Judge Bowbeer is willing, upon timely request, to make reasonable accommodations such as, for example, allowing the argument to be split between counsel, providing additional time for argument, and/or permitting the less-experienced lawyer who makes the argument an opportunity to consult with lead counsel if an issue arises that requires the latter’s input.
* **Settlement Conferences:** Magistrate Judge Bowbeer expects that lead trial counsel will attend all settlement conferences, as the client will look to that attorney for insight and guidance about the strengths, challenges, and costs of its case and the comparative value of a possible settlement. That said, the parties and their counsel are encouraged to consider whether a less-experienced attorney who has played a significant role in the litigation should also attend the settlement conference. That less-experienced attorney may be able to bring an additional valuable perspective to the process if, for example, he or she has built a relationship of trust with the client, is particularly familiar with key documents or testimony, or is conversant with the case law around a pivotal legal issue.
* **Trials:** In cases in which the parties have consented to Magistrate Judge Bowbeer for all purposes, including trial, counsel are encouraged to discuss with their respective clients and with opposing counsel case-appropriate opportunities and accommodations for less-experienced lawyers to participate at trial, and to discuss this subject with Magistrate Judge Bowbeer during the final pretrial conference. To facilitate those opportunities, Magistrate Judge Bowbeer may permit, upon timely request and to the extent consistent with available time and the attention and understanding of the jury, accommodations such as splitting of oral arguments on disputed issues, allowing additional time for oral arguments, permitting a less-experienced lawyer to conduct a portion of the examination of a witness, permitting both a less-experienced and more experienced lawyer to defend the same witness and make non-cumulative objections, and/or splitting of opening statements and closing arguments.
* **No Adverse Inferences:** Magistrate Judge Bowbeer will draw no inference about the importance or merits of a particular issue, witness, or motion based on the relative seniority of the lawyer involved. She will not assume, for example, that a motion is less meritorious or less important because a less-experienced attorney has been selected to argue it. At the same time, she recognizes that there may be a number of reasons why a client or lead counsel may choose not to have a less-experienced attorney take on a particular speaking role, and she will draw no adverse inference from that choice. But regardless of the selection of counsel for any speaking opportunity, all attorneys appearing before Magistrate Judge Bowbeer are expected to be adequately prepared and thoroughly familiar with the factual record, the applicable law, and the materials filed with the Court, and to conduct themselves in accordance with the highest standards of professionalism and civility.

