What Attorneys Hope Judges Know

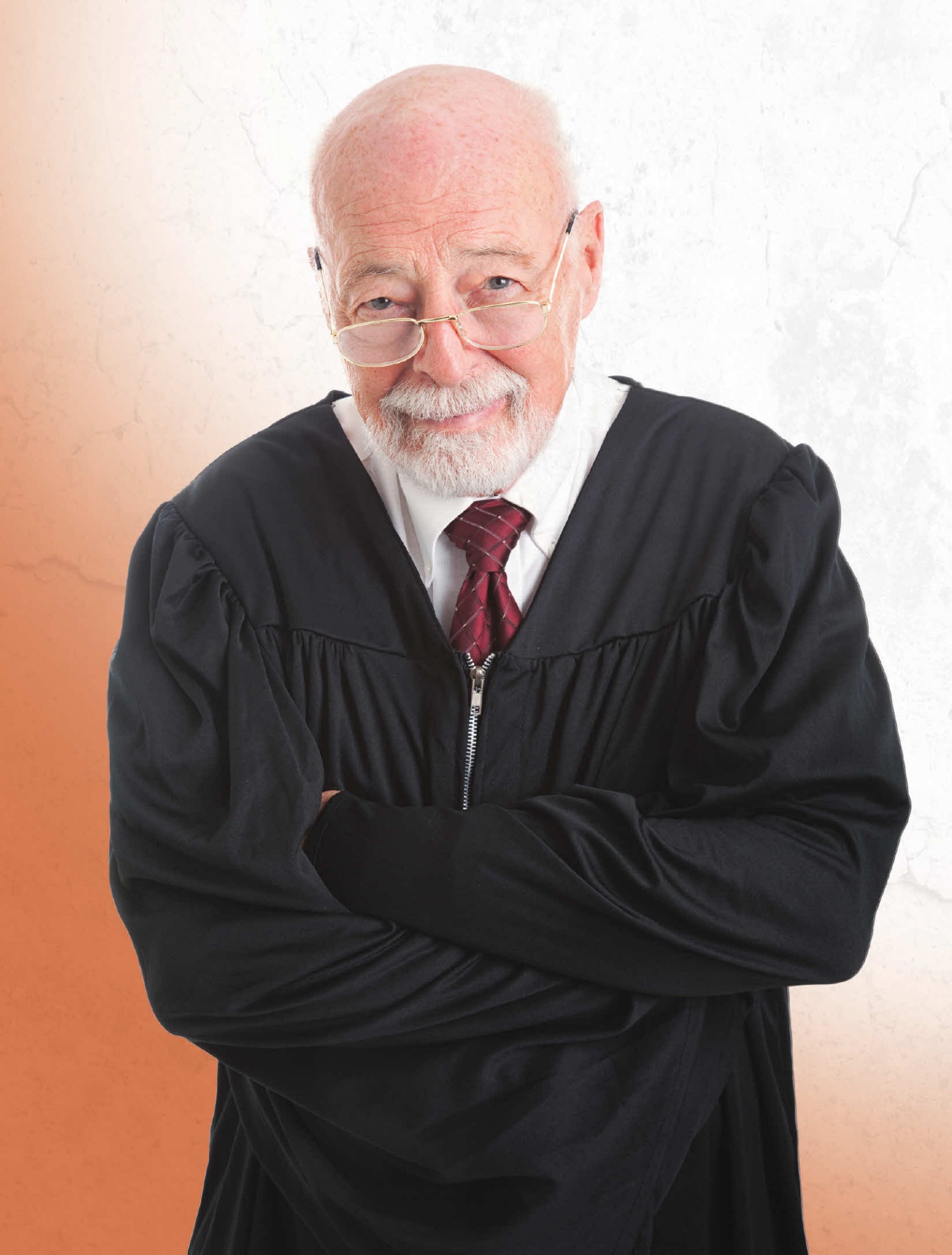
By Daniel E. Cummins

Many articles have been written from the perspective of providing advice and tips for attorneys on how to put their best foot forward before the court at oral argument or at a pre-trial or settlement conference. But what about the opposite perspective: what attorneys hope that judges may be aware of on the other side of the bench?

Following are some traits and attributes that attorneys may desire from judges in order to make dealing with the courts more productive at both the state and federal levels.

Preparation

In the same way that judges demand that the attorneys who appear before them for oral argument or court conferences be prepared, attorneys appreciate judges who likewise prepare for such court events. Most attorneys welcome a "hot" bench as a challenge to push the attorney to put forth the best argument possible during an intellectual conversational volley with the court on the applicable law as applied to the case at hand.



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Obviously, a judge can never be expected to be as prepared as the attorney who has lived the case, but familiarity with the file, whether it be by a memo from a law clerk or a quick perusal of the filings before the event, will certainly be productive in helping to move the matter along.

Preparing for an oral argument or a conference, or a list of such events scheduled to take place in any given day, may also allow the judge to come up with unanswered questions to be posed to the attorneys. Surely it will make the day more interesting for all involved and could serve to define the issues presented and speed things along in the court's schedule.

Punctuality

Most attorneys nervously avoid being late for court appointments, and so judges who are mindful of being punctual gain favorable reputations with the bar.

If for some reason the judge may be running late, the courtesy of sending tipstaff out to inform counsel of the delay and the anticipated time the proceedings will begin is always appreciated by those in attendance.

That way the attorneys present may be able to use the time productively to return phone calls and emails. The attorneys will also thereby be given an opportunity to let those scheduled for future appointments that day know there may be a slight delay.

Efficiency

Lawyers always appreciate those judges who run through a "call" of a long list of matters to determine which matters are resolved or can be continued so that those cases can be done away with. This not only allows those attorneys who have resolved matters to move quickly on with their day, but it also ensures to the remaining attorneys that the list of matters is being streamlined in an efficient manner.

In terms of decision-making on matters taken under advisement, although the Administrative Office of Pennsylvania Courts has guidelines calling for decisions to be rendered within certain soft deadlines, efforts to issue decisions well within those guidelines are greatly appreciated by members of the bar and their parties. Attorneys often spend hours working on crafting an argument and then anxiously awaiting the result in the hopes of a win.

Judges should not take an attorney's failure to call for an update on a delayed decision as disinterest. Rather, they should know that wise attorneys are loath to call a judge's chambers for the status of a decision for fear of irritating a judge who still has to decide the matter.

Loud and Clear

Attorneys know that judges do not like to have to repeat themselves in the courtroom.

The use of microphones is always welcome, particularly in large, cavernous courtrooms. It is also helpful when attorneys are allowed to approach closer to the bench when presenting oral argument or otherwise addressing the court. Such measures may cut down on the number of times a judge may have to reiterate a statement or question.

Another way judges may easily decrease the number of times they have to repeat themselves is to give some signal before speaking, such as a quick motion with the hand or pen or a purposeful look, when about to interrupt an attorney with a question or comment. Also saying "Counselor," then pausing ever so briefly to give the attorney the chance to stop talking, shift gears and focus on what the judge is about to say, may be helpful.

Such signals and pauses are particularly helpful at the appellate level, where an attorney's anxiety is already at a higher state. The attorney at appellate argument will be intently focused on getting his or her carefully planned oral argument out within the short time allotted by the court.

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Also at the appellate level, where the attorney is faced with multiple judges high up on the bench, it often takes a moment for the arguing attorney to figure out which judge is talking before the attorney can then process what that judge is saying. Based on the judge's briefly signaling and pausing before speaking, the attorney is able to hone in on what the judge is saying, thereby possibly preventing the need for the judge to repeat the statement or question.

Policing the Courtroom

The courts of Pennsylvania have held that the trial-court judge has significant authority to police the proceedings in his or her courtroom as may be required by conduct of counsel. *Commonwealth v. Sojourner*, 408 A.2d 1100 (1978).

Attorneys appreciate it when judges are firm with courtroom procedures and wayward attorneys. Attorneys like it when the court corrects other attorneys who speak out of turn or cut off opposing attorneys. Attorneys who appreciate professionalism in the bar also like it when the court steps in to chastise a less-professional attorney who directs the argument at an attorney instead of to the bench.

Most important, when an attorney is being unreasonable, bullying another attorney or making personal attacks, there is nothing better than seeing a judge swiftly and firmly put the offending attorney in his or her place.

In the non-offending attorney's eyes, the worst thing a judge can do in such situations is to lump him or her into a general chastisement over how the case is being handled or how civility is lacking these days. Nothing is more infuriating to the rule-abiding attorney than to see not only the vexatious attorney essentially get off scot-free but to be subjected to a generalized judicial scolding as well.

Moreover, the judge's directly chastising the offending attorney could have the deterrent effect of preventing the same misconduct by that attorney or by others who witness or hear about the judge effectively policing the courtroom.

Trial

At trial, the litigating attorneys appreciate judges who allow them, within reason, to direct the flow of their presentation of the case.

Attorneys hope that judges will work with them during trial, to the extent possible, on setting up an efficient order and timing for the presentation of lay and expert witnesses.

It also helps to understand that at times and through no fault of the litigating attorneys, unanticipated issues can arise for the first time during trial that will have to be addressed before the trial can proceed.

Simply put, attorneys appreciate judges who manage trials in a firm but unobtrusive manner that is fair to all involved. Chief Justice of the United States John Roberts once stated, "Judges are like umpires. Umpires don't make the rules. They apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ballgame to see the umpire."

Issuing Opinions

After spending hours researching an issue brought before the court by motion, hours preparing the written materials and briefs, and even more hours preparing for and attending an argument on the matter, attorneys always hope for an opinion or a detailed order to see where they got it right or where they got it wrong.

Obviously, the demands of the bench do not allow for an opinion or detailed order to be issued in every case, and most minor issues can be dealt with by one-line orders. Yet a well-written opinion is always appreciated, win or lose. Surely, when the court is faced with novel issues, the writing of an opinion will provide much-needed guidance to the bar for these emerging issues in future cases.

At the appellate level such opinions on important issues should be published or made precedential. What's the sense of taking the time to write an opinion and then listing it as non-precedential? Every morsel of appellate guidance will be gobbled up by a hungry bar and trial-court judges.

Collegiality

Continuing on the topic of providing guidance, attorneys appreciate judges who speak at CLE seminars and attend bar functions. A judge's participation in CLE events signals to the bar that judge's interest in remaining current on the law.

Not only does attendance at such events and functions allow judges to experience comradery with their fellow local bar members, but attorneys enjoy those interactions as well. This collegiality can carry over into the courtroom and thereby assist in generating respect and more cooperation between the court and the litigating attorneys, which in turn can assist in moving matters more swiftly toward their eventual resolution for the benefit of all involved.

Respect for Judges

Sure, attorneys get upset at times with judges when they lose an argument, but judges should know that most attorneys get over it quickly and, upon further reflection, are likely able to see how the judge's reasoning could support the particular decision handed down.

Overall, a common sentiment voiced by most practicing attorneys is one of respect for judges and for holding judges in high regard for choosing a life of public service that involves the sometimes heavy burden of sitting in judgment of others and their claims on disputed issues. ⚖

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