

Career Development

Filing Voluminous Motion Papers

BY MARK R. SEIDEN

A responsibility frequently given to junior lawyers is the finalization, service and filing of motion papers. At first blush these may seem like purely pedestrian tasks not worthy of discussion. But upon reflection, it should become obvious that the failure to properly execute these tasks can render motion papers less effective, or in extreme cases, such as where court ordered filing deadlines are not met, a nullity.

When motion papers include multiple affidavits, a large number of exhibits and a memorandum of law, a junior lawyer must prepare well in advance of the deadline for finalization, service and filing of motion papers as completion at the 11th hour will often not be possible. This column presents some suggestions that will aid junior attorneys in successfully meeting the deadlines when filing voluminous motion papers, and hopefully reduce the stress that can accompany the process.

Experience has taught me that when it comes to finalizing motion papers "Murphy's Law" holds true: "Whatever can go wrong, will go wrong." To lessen the impact of unexpected problems, a junior lawyer should take proactive steps toward finalizing motion papers several days in advance of the service and filing deadline. For example, if the motion papers include multiple affidavits with numerous exhibits, several days before the service deadline secure a pristine copy of each exhibit to be annexed to the affidavits. Gathering the exhibits well in advance allows ample opportunity to address any issues if usable copies of the exhibits cannot be located. It also permits an opportunity to have a more senior attorney review the exhibits to insure the accuracy of the documents selected.

Also, remember to review all applicable rules regarding the annexation of exhibits to motion papers. For example, many courts specify that where a deposition transcript is annexed as an exhibit, only the pages cited to in the affidavit or legal memorandum may be included.

Further, if there is a large quantity of exhibits, it is generally beneficial to make arrangements to have the documents copied before the affidavits



have been finalized to allow sufficient time for correcting errors in the copying process. When this is done, be sure to check the finished product as soon as practicable, as the advantage gained from early copying of the exhibits will be lost if errors are caught when there is insufficient time to make necessary corrections.

Of course, when the exhibits are copied prior to execution of the affidavits, be sure that any subsequent changes to the affidavits that impact the exhibits are accounted for.

Finalizing a memorandum of law is also a time-consuming task. A junior attorney is often responsible for insuring that authorities cited in the memorandum have been shepardized, that case and statutory citations meet the requirements of the Blue Book, that judicial decisions stand for the propositions for which they have been cited and that quotations of cases, affidavits and exhibits are accurate.

In addition, a junior attorney will often be responsible for the presentation of a "table of contents" and "table of authorities." Completion of each of these tasks is time consuming, particularly when viewed in relation to other responsibilities a junior attorney may have in connection with finalization of the motion papers.

Again, proper advanced planning and time management is the key to having sufficient time to properly perform these tasks.

Also consider the overall style and presentation of the memorandum of law. While substance should prevail over form, both clients and courts have a right to expect the highest-level of professional work product. Unprofessional looking work product makes a negative impression that detracts from the substance of the arguments presented.

The process of serving motion papers is

very deliberate and can turn upon a variety of factors. First and foremost, consider whether the manner and timing of service is dictated by stipulation between the parties, or court order. Assuming that is not the case, the applicable rules (be it the CPLR, the Federal Rules of Civil Procedure or local court rules) have provisions that speak to the manner in which motion papers are to be served. Become familiar with these provisions and understand how the applicable rules impact the desirability of employing each available method of service. Then, discuss with a more senior attorneys working on the case which method of service works best given the particular circumstances of the case.

E-Filing Issues

Cases subject to electronic filing requirements present an additional set of issues that require attention several days, and not merely hours, before the motion is finalized.

First, develop a complete understanding of the electronic filing system. If this is your first time e-filing in a particular jurisdiction, both carefully review the applicable rules and have a follow-up phone conversation with the court personnel who acts as liaison with counsel on e-filing issues.

While mastery of electronic filing certainly requires a complete understanding of the technological aspects involved, recognize that e-filing is accompanied by a host of unique court rules. Master these rules and insure compliance.

Further, in addition to paper copies, it will be necessary to make pdf copies of each document being filed with the court. Again, this is another time consuming task, and one you do not want to first turn to with only a few hours left to file the motion papers.

All of these suggestions are relatively easy to implement. The key to success lies in paying proper attention to the many details and moving pieces well in advance of the deadline. In doing so, you will not only be well ahead of the curve, you will also find the experience manageable.

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