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Career Development

Preparing For A Preliminary Conference In Court

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Junior attorneys are often anxious for the opportunity to appear before a judge in court. Such experiences should be encouraged by colleagues, supervisors and mentors, as a young lawyer is well served to gain as much "on his feet" courtroom experience as is practicable.

One of the first such experiences will likely be appearing before the court at a preliminary conference, generally the first court conference in a case. It is particularly suitable for coverage by a junior attorney because the issues are usually well defined in advance and requires generalized advocacy as opposed to the advancement of technical or complex legal arguments. Nonetheless, the preliminary conference remains an important aspect of a case as it presents the first opportunity to inform the court about, and shape its impression of, the facts and merits regarding a lawsuit.

In addition, based on counsel's input at the conference the court will likely enter a scheduling order that will control the pace at which the action proceeds.

Success at the preliminary conference requires proper advance planning. Not only is such planning clearly contemplated by the applicable rules, but it will help a junior attorney have a positive experience and gain much needed confidence as he prepares for future court appearances.

Preparation must begin well in advance of the scheduled date of the preliminary conference. Among the first considerations should be the requirements imposed by rule regarding counsel's obligation both prior to, and at, the conference.

In New York state court, Uniform Rule §202.12 identifies certain matters to be considered at a preliminary conference. Additional division or individual justice rules must be considered as well. For example, Rule 8 of the statewide Commercial Division Rules requires that all counsel confer prior to the conference regarding a host of issues, including settlement, the scope of discovery and a plan for electronic discovery.

Similarly, federal courts and judges have their own unique rules regarding matters that must be considered in advance of, and at, a preliminary conference. Federal Rule of Civil Procedure 16 sets forth explicitly the purposes of a preliminary conference and matters to consider at it. Further, Federal Rule 26(f)(1) requires counsel to confer regarding case management issues at least 21 days before the preliminary conference, highlighting the need for advance planning.

Do not come unprepared: Federal Rule 16 (f)(1)(B) provides for the imposition of sanctions where an attorney "is substantially unprepared to participate—or does not participate in good faith—in the conference."

At a preliminary conference, be prepared to succinctly summarize your client's case. The summary should provide the judge with a sense as to what the case is about, compelling reasons why your client will ultimately prevail, and (if your client is a claimant) the nature of the relief you contend the court will ultimately award your client.

Consider drafting bullet points you can briefly refer to during the preliminary conference to ensure that in the heat of the moment you do not inadvertently omit key facts. Remember, a preliminary conference is an opportunity to make a first impression upon the court. Advance planning will help ensure your first impression is a positive one.

In addition to a summary of the case, the court will most likely want to hear a brief description of the discovery counsel it believes will be necessary for the prosecution and defense of the action. Thus, in advance of the conference consider what kind of discovery is warranted by the facts and legal issues, and whether you anticipate discovery disputes or needing leave of court as discovery proceeds.

In a state court action, for instance, consider whether you need leave of court to conduct depositions outside of the jurisdiction. Or in federal court, consider whether you will need leave from the rules limiting the number and scope of interrogatories that may be served. The preliminary conference is a particularly good time to raise these issues because your adversary may be more inclined to be reasonable and agree as she is also looking to make a good first impression on the court.

Generally, the court will enter a case management schedule at the preliminary conference. Thus, a junior attorney will be well served to have carefully considered scheduling in advance of the conference. If the client wants to resolve the case quickly, be prepared to explain both why a compressed discovery period is appropriate and what substantial needs of the client are addressed by proceeding in an expeditious manner. Similarly, if you are going to advocate for an unusually extended schedule, offer a compelling rationale since courts are generally cautious when entertaining requests for lengthy discovery periods.

The court also will likely inquire at the conference regarding settlement and whether the parties are willing to consider alternative dispute resolution, such as mediation. The court's discussion of settlement provides the parties with an early opportunity to discuss compromise without exposing either side to concern that raising the topic may be interpreted as a sign of weakness. Should the court raise settlement, come prepared so you are positioned to take advantage of the opportunity.

Finally, gather intelligence concerning the judge in advance of the preliminary conference. For instance, talk to colleagues who have previously appeared before the judge to gain insight into the court's expectations. Consider attending court one morning as an observer both to get a feel for the surroundings and a sense for how the judge likes to handle preliminary conferences. That information may provide you with both guidance and comfort as you move forward in what can otherwise be an anxiety producing experience.

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