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THE BATTLE BEFORE THE BATTLE

By Katherine Gallo

When I was a research attorney in the Law and Motion department for Alameda County Superior Court, I handled the ex parte calendar. My judge instructed me to obtain the facts and arguments from counsel, do my own research if necessary, and present the ex parte application and my recommendation to her. Early in my career at the court, I handled an ex parte application on a case that had apparently been up and back from the Court of Appeal. When I asked for the facts of the case from counsel, he shot back at me saying *"The judge knows this case because she was writted."* I told him I needed to know the facts of the case so I could provide her with my research and recommendation. He refused. When I walked back to the judge's chambers, I overheard the counsel tell his client *"She must be new because everyone knows this case."*

I was furious with the attorney's arrogance. I gave the judge *my spin* and told her that I was unable to advise her because the lawyer refused to give me the facts of the case. I then punctuated my frustration with *"He told me you knew the case because you were writted."* Her response was *"I have a hundred cases a week, why does he think I remember his case? Go get the facts!"* Just the response I wanted.

Over the years I have seen lawyers be absolutely oblivious to the fact that court staff not only has access to the judge, but has the judge's ear. Judges rely heavily on their staff to make their courtroom run smoothly. They will covet a good clerk, bailiff and research attorney, as you do with your assistant, office manager and paralegal. Judges will go out of their way to make sure that their staff is happy. It is not uncommon for a judge to admonish an attorney on the record about their unprofessional behavior with the staff. It is a real buzz kill for the attorney then facing argument before the same judge regarding the merits of their case as it is readily apparent that their confidence has been rocked.

Karen Koehler in her Velvet Hammer Blog recently provided helpful hints on how to deal with court staff:

- Learn their names and address them properly
- Always say please and thank you
- Don't walk up to the bench and expect they are there to serve you instantly. Wait until they are finished with their task and ready to help you

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- If they ask you to do something do it
- If you need clarification, ask for it
- Always say please and thank you
- Do not rearrange any furniture in the courtroom without first getting the bailiff's permission
- Do not set up equipment without first getting the bailiff's permission
- Do not create any trip or other hazards. If you need to tape down extension cords bring your own painter's tape (not duct tape)
- It's okay to talk to staff during recess about life, so long as they want to talk
- Do not try to hand anything directly to the judge. All things must be passed through the clerk
- Always say please and thank you
- Do not bang on the courtroom door trying to get in at the beginning of the day or after recess. Staff will let you back in when it is time
- Do not hang around the courtroom after the court excuses everyone for lunch or at the end of the day. Get out of there so staff can go on break or leave.
- When the Judge is off the bench, don't act as if staff are invisible. They can see and hear even if they are being quiet.
- In emails, always say please and thank you

However, there is another point of view that needs to be discussed. Not every courtroom staff is friendly. There are many horror stories of how staff has treated the attorneys. This includes treating the courtroom as their turf and you are intruding, road blocking proper access to the judge or research attorney, refusing to or unable to answer basic questions, not knowing how to handle the calendar in the specialty departments, not calendaring hearings and delaying serving orders, aggressive behavior by the bailiff and, the most heinous of all, treating counsel differently (i.e., being hometowned and D.A. v. criminal defense). You wonder if the judges even know that this is happening and how their courtroom is being perceived by the bar.

Many lawyers practice in different counties. An attorney making a first appearance before a judge may not be aware how that courtroom wants things done. There are no uniform procedures. Every

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courtroom is different with no written rules. The lawyers are already going into battle to advocate their client's position. They don't need to go into a hostile environment.

The moral of the story: The law is an adversarial process, but it shouldn't be one prior to the case being called to order. We are a profession. We should be professional and we should be treated professionally.

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