

Rules for YIPs to apply to all constituents: Clients, Colleagues, Judges, Chambers, etc.

1. Make Their Lives Easy
2. Make Them Look Good

EXAMPLE

You have been working hard on a summary judgment motion. You have been communicating with the senior attorney on the case and the principal declarant. There are some facts that are not clear to you in the declarations. You are tired, and you've been wordsmithing the declaration extensively and just want to be done. You're pretty sure the declarant isn't focusing on the declaration the way they should be, and they seem annoyed when you email them. You are concerned but it seems "good enough." You're not sure if the senior attorney handling the case is fully aware of what is going on.

How do you apply the above principles:

A. To the Declarant?

1. Carefully review the draft. Picture the declarant sitting in a deposition being questioned as to each word in the declaration. With that hat on, what words would you change? Is there anything that needs to be narrowed or made more specific so that vagueness cannot be used against the declarant?

* Zeal, especially youthful zeal, often risks missing the forest for the trees. It is important to view the declaration from the opposing side's perspective. If you were analyzing the declaration for purposes of cross-examination, what weaknesses would you see? What lines of attack would occur to you?

* Similarly, it is easy to fall into the habit of accepting a client's narrative without pushing back hard enough, which, as the hypothetical suggests, can lead to complacency. This is a dangerous position for an advocate. We must remain

self-aware of our own internal reactions. Be honest with yourself. Are you probing deeply enough? Are you seeing the nuances? Are you being overly cautious when you should be more aggressive in your analysis?

2. Have you reviewed FRCP 56(g)? It provides: “(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.” Is there a material fact that needs tightening up in the declaration so that you can plead for the alternative relief that the Court treat a material fact as established in the case, even if the Court denies the summary judgment motion?

* Consider asking whether a more strategic approach might be to focus narrowly – seeking the relief you are most likely to obtain rather than gambling on total victory.

3. Is the client sophisticated in the field of law or not? Craft your email with that in mind . If your client is an attorney (e.g. a bankruptcy trustee), you don’t need to send them a “War and Peace” length email. Rather the content and length of your email should take account of their level of sophistication.

* Know your audience and carefully tailor your communications accordingly. Do not rush emails. As a general rule, do not send them from your phone. Draft in a Word doc, then review and revise with the intended recipient in mind.

4. Create a redline showing any edits, and save the new draft under a new version number (e.g. Declaration_Jones_v4_JH redline). Do not write the comments in comment bubbles, because that violates the “make their lives easy” principle. Comment bubbles are hard to see, especially from a cell phone. Redlines are generally easy to see. But to make sure they can

readily view the changes on their phone, send it to them in Word and in pdf. Sometimes pdf is easier to view.

* When submitting work to someone more senior or a client only submit a version that represents your best, most fully developed effort, i.e. the kind of work you would stand behind if you were a solo practitioner operating as “The Law Offices of You,” and were ready to present for public consumption.

5. Are you keeping them in the loop with case events, so that they are not in dark about what is happening?

* Clients do not like surprises – ever!

6. Make sure you are not jamming them up by making the unwise assumption that they are available at your convenience to sign the declaration. Have the declaration finalized and ready for signature well in advance of the filing deadline.
7. If you were in their shoes, what would make your life easy and make you look good? Once you have that answer, do that for them.

B. To the Senior Attorney?

1. Keep them apprised of your specific concerns regarding the declarant well in advance of the filing deadline. Summarize the open issues in short, numbered paragraphs. Numbering the paragraphs makes it easier for the senior attorney to respond to any questions. E.g. Paragraphs 1, 3, 5 below look good. I want to speak with you about the points you’ve raised in paragraphs 2 and 4 below.

* See A.4 and A.5, above.

2. Ask what their expectations are. What work product do they want from you. When do they want it by? Date and time of day are important here.

3. If you are struggling with an issue in the declaration or the brief, or if there is a pivot point (do I argue A or B), you should get to the senior attorney sooner rather than later to get help/clarity.
 - * Make sure you have pushed the analytical analysis as far as possible before finalizing your position. Trust your judgment and be willing to take a clear stand on your approach. The judgment of lawyers differs widely. Yours matters. At the same time, engage the senior lawyer earlier rather than later, so that you are ironing out the path together, if you are struggling with an issue.
4. Carefully check every legal citation and make sure that you have accurately stated the proposition for which it stands, and that the case is still good law. Pretend you are the one the judge is asking a question about the case in oral argument. Is there any risk that the attorney arguing the motion is going to be embarrassed by a careless parenthetical that overstates the point for which it has been cited?
 - * Case parentheticals are an art form. They should capture the key holding you want to emphasize in the most concise way possible.
5. Have you double checked the Court's local rules and the Judge's procedures? Even if you think you remember them off the top of your head, it's better practice to check and verify. There are many judges and they make changes to their practices and procedures frequently enough that you should be concerned about missing something.

You are building/establishing credibility with all parties, and you should always keep that in mind as a goal. You want all constituents to think of you as being reliable, trustworthy and as generating high quality legal work. That's a long, slow, and very important process.

