

Over 50 Years of Law Practice Tips

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Having been fortunate to serve clients on every continent other than Antarctica in transactions of every size and in every kind of business and having been privileged to have mentored many newer lawyers, over 50 years of experience as an international and domestic business lawyer has taught me many things.

I have compiled a list of many of the lessons I have passed on to others over 50 years, and this article sets out the latest iteration of my tips for others to consider.

1. If something does not make sense, it usually does not make sense for a reason. Finding that reason is not always easy.
2. Ask questions and continue to ask questions, just like peeling back the layers of an onion.
3. Make statements in the form of a question.
4. Focus your thinking by diagramming the deal or what happened or was supposed to have happened.
5. Understand the underlying economics of a particular matter.
6. Learn financial statements and how each statement impacts the other statements.
7. Do your own income tax return at least once to understand the schematic of the Internal Revenue Code.
8. Research the income tax regulations on a specific matter at least once in your career.
9. Framing a question properly will often suggest the answer or options.
10. Ask if anyone in the firm has a file or precedent for your legal issue.
11. Whatever you say in writing, whether in an email, fax, letter, or otherwise, can and will be used against you and will be distorted.
12. Re-read calmly whatever you write before sending it and ask yourself if you really want to say whatever you wrote.
13. Ask how it would look if whatever you write appears on the front page of your favorite newspaper.
14. It may be best to use bcc's and not cc's to clients on letters or emails to opposing lawyers, or better yet, forward what you send to avoid a bcc recipient from replying to people who do not know who was bcc'd and to preclude a waiver of the attorney-client privilege.
15. No typo's or typos — clients and adversaries will find them!

16. Use spellcheck.
17. Proofread all documents even after using spellcheck. Spellcheck is not a substitute for proofreading.
18. Know the differences between:
 1. effect-affect
 2. principal-principle
 3. your- you' re
 4. its-it's
 5. lose-loose
19. No split infinitives.
20. Avoid the passive voice.
21. The ultimate reader of your email, fax or document is a judge or arbitrator.
22. *Listen* to the client or other side and ask questions. Hear and process what is said, and what is not said.
23. Ask questions! It's best if all questions have a purpose.
24. Silence your cell phone and other devices before a meeting starts; preferably, put the device away and help cause everyone in the meeting to focus on the agenda.
25. Have an agenda for each meeting and stick to it.
26. Start meetings on time. Those who miss the start will learn not to do that again, especially if you bar them from attending the meeting if they are late.
27. Do not multitask during a meeting or call. If you do, you cannot be listening, and you are being rude to the person you are talking to. Better to end the call or meeting or not have it.
28. There is no such thing as " boilerplate."
29. Pay attention to the so-called "boilerplate" provisions in contracts that generally appear in a "General" or "Miscellaneous" final section of a contract. The other side often (1) may consider those clauses to be "boilerplate" and in drafting or reading them often pay less attention to them and (2) may be tired or bored by the time they get to read those provisions if the other side reads a draft starting with page 1 straight through to its conclusion.
30. The agreement you are using as a model is the end product of negotiation in another deal. Do not copy someone else's mistakes.
31. Start with the basics of legal principles and definitions, including looking at Black Law's Dictionary or other sources of definitions because those precedents may give you words and concepts that will aid in your drafting or mark-up.
32. Check to see if there is a statute on whatever the issue is, including statutes providing for statutory construction, definitions of terms, rules of construction for contracts, and other statutes that may use or define a particular term that can offer some guidance.
33. Is there a Federal issue lurking somewhere, including any Constitutional question?
34. Is there a public policy matter underlying the legal rule in issue, and are your facts distinguishable so that the public policy underlying the legal rule may or may not be violated depending on the result?
35. Excluding Constitutional, criminal and tort cases, most reported court decisions usually result from (1) a client not seeking or getting good legal advice before the particular matter eventuated into a litigation, (2) a lawyer not giving particularly good legal advice either in the underlying matter or in the litigation itself, (3) the client did not use a lawyer and made a mistake, or (4) there was a serious miscommunication in the underlying matter.
36. If a trial or intermediate appellate courts made no errors, the quantity of reported judicial decisions would be reduced

materially. An appeal, therefore, and planning for that appeal, may be an appropriate part of litigation strategy because error at the trial court or intermediate appellate court level is very possible, either on a procedural or substantive matter.

37. It may not make sense to rely solely on online research and not consult books.
38. Check findlaw.com or cornell.edu for free legal research links before using Westlaw or Lexis.
39. Consider not using the word “should” in communications with clients if its use could be deemed to create a standard of conduct for the client or for our firm.
40. Have multiple original copies of a power of attorney signed and where appropriate, acknowledged, because you never know who will want to keep an original.
41. Have only one original copy of a promissory note signed.
42. Ask the client to obtain the original signed promissory note when it is paid off.
43. Do not allow what you do to fall to or be viewed as the lowest common denominator.
44. Shortcuts often result in mistakes or less than comprehensive documents.
45. Document client instructions in confirmatory emails and do that in a nurturing and not accusatory way.
46. Price and cost are two different things.
47. Negotiating and bargaining are two different things.
48. Generally, it takes 3 hours of preparation time for every 1 hour of a meeting or negotiation.
49. Try to be elegant in whatever you do, for yourself, and for appearances with others.
50. There are excuses, but there is no such thing as a good excuse.
51. We recruit for skills. We hire for attitude. We promote for both.
52. Under-promise and over-deliver.
53. The best interests of our entire firm are paramount to the self-interest of any one person or group of persons in our firm.
54. Understand the client’s goal and think as if you were the client and your money or business is involved, bringing to that thought process all your skills and experience as a trusted legal advisor.
55. Document everything. Undocumented anything often results in ambiguity.
56. Strategy and tactics are two different things.
57. What is your unique selling proposition?
58. As a glassblower-artist for 31 of those 47 years, sometimes the old tried and true ways are just as good or better than the new ways.
59. No matter what you know, there is always more to learn, whether from others or from your own mistakes.
60. The remaining number of years in your life may not include as many years as your current age may suggest.
61. Hope is not a strategy.
62. All business is personal.

I welcome comments from others and am always happy to discuss the story behind each of these tips.