

MISTAKES TO AVOID WHEN TRYING A CASE

Reprinted from a handout by Honorable Joseph D. Phelps, Circuit Court of Montgomery County

1. Make sure to have a carefully prepared plan for trial--order of witnesses, written outlined of what your witnesses will say. A planned examination is especially important when preparing for an expert witness. Remember to be flexible only after thorough preparation.
2. Lawyers make a mistake when they argue with or make argumentative remarks to opposing counsel. Don't argue with the other lawyer or make fun of him/her. Don't let the other lawyer provoke you into getting mad, this will inevitably hurt your client's case by irritating the Court and the jury.
3. Don't interrupt a witness. If the witness is nonresponsive, make an appropriate objection to the Court. Jurors always tend to identify with the witness. Badgering a witness will hurt your client's case. Never call a witness a "liar" or use other inflammatory language.
4. Don't interrupt the Court. If the judge starts ruling with you, stop talking. If he starts ruling against you, wait until he finishes before you attempt to "reason with him."
5. Don't thank the judge when he sustains an objection that you make.
6. Don't raise your voice either at the jury or at the Court. Avoid theatrics. Always try to call attention to the facts of your client's case and not to yourself. Ego trips hurt. A "low key approach" helps.
7. Don't make side remarks to the jury or "stage whispers" to co-counsel or clients. Avoid contact with jurors during recesses or on the way to and from Court. Lawyers make a mistake when they nod or "wink" at jurors. It makes the jurors self-conscious and uncomfortable.
8. Never misquote a case or misquote the law to a jury or exaggerate what a case says. Never mislead the judge with half the law. Never cite a case that has been expanded upon or distinguished or overruled.
9. Don't belabor cross-examination. Always have a well-planned and effective set of questions prepared, especially for experts.
10. Don't have an arrogant attitude with the Court or with opposing counsel.
11. Don't fail to have a planned opening and closing. Don't ramble. Don't engage in repetitious argument. A lot of cases are lost by lawyers talking too much and "turning off" jurors.
12. Avoid repeating what a witness answers in your next question.
13. Avoid starting questions with "OK" -- "all right" -- "I see."
14. Don't let the judge intimidate you. If you feel you are right, you have the right and the responsibility to object and to insist on your position. Do so in a professional manner, but protect your record.
15. Don't object to the Court not charging the jury on some point of law on which you have not requested a written charge. Give the Court of Alabama Pattern Jury Instruction citation to support each charge, when applicable. Don't orally request the Judge to charge the jury on some point of law which you haven't given him some law to support your position or a requested written jury instruction.
16. Don't show the jury and exhibit or let one get before the jury that has not been admitted into evidence.
17. Don't "cheap shot," that is avoid putting inadmissible material in a question and avoid going into something that has previously been excluded by the Court on a Motion in Limine.
18. Don't give the Judge requested jury charges just as he completes his oral charge.
19. Always be professional -- act like a lawyer. Try to help the Court. The Judge will see this and will appreciate it. Jurors also get a favorable impression from a display of professionalism.
20. Don't tell the Judge what the law is and then fail to have a case or a citation of authority with which to back up your statement.
21. Judges can see that jurors appreciate a hard working, enthusiastic, and positive approach to a case. If you are too relaxed, nonchalant, unenthusiastic and have a "don't care attitude," the jury will read this and their attitude may be governed thereby.
22. Lawyers make a mistake when they become emotionally involved in a case.
23. Don't turn your back on the jury when questioning a witness, they will lose interest and may miss some important point you are trying to make.

COURT ROOM DECORUM

Reprint form a handout by Honorable William R. Gordon, Circuit Court of Montgomery County

- A. When court is in session, counsel should address the court and should not address opposing counsel directly on any matter related to the case.
- B. Examination of witnesses' (position).
Attorneys should examine the witnesses from the counsel table, lectern or wherever reasonably directed by the court, except in the presentation of exhibits or demonstrations.
- C. Counsel should not at anytime in the courtroom:
1. Sit on the jury rail
 2. Sit on the counsel table
 3. In bench trials counsel should not sit in the jury box when examining a witness
 4. Counsel should not hang or lean on the judge's bench at any time
 5. Counsel should not rattle pocket change during the course of a trial
 6. Counsel should not wander around the courtroom during the course of a trial
 7. Counsel should refrain from clipping his/her fingernails during the course of the trial.
- D. Method of Examination of Witnesses: Witnesses should be treated with fairness and consideration. They should not be crowded nor shouted at; they should not be ridiculed, humiliated nor otherwise abused. The untruthful or hostile witness can be examined firmly and extensively without abuse.
- E. Addressing the Court: Counsel should stand to make objections or in addressing other matters. Argument for objection, and a response by opposing counsel, should be made only after permission to do so is given, or if argument is requested by the court. Ruling once made must be obeyed.

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