

EXPERT ADVICE

Selecting Litigation Counsel

When it comes to choosing the right lawyer to plead a case, it's all about character.

BY JANIS OZAKI | FEBRUARY 1, 2018

When a contested matter presents itself for resolution—and particularly if it's a difficult case—an old adage rings true: Honesty is the best policy.

Selecting honest litigation counsel is not only the right thing to do; it is best for the client. Here are the reasons why honesty should be top of mind when selecting litigation counsel:

REPUTATION COUNTS

Legal communities are surprisingly small with many repeat players. There are only a limited number of judges sitting in every district and county and they often preside over the same courtrooms for many years. Throughout a career, a litigator may have multiple cases before the same judge. Therefore, law firms and attorneys who repeatedly demonstrate honesty, professionalism, and competence are noticed and remembered. Over time, they develop reputations that precede them, which reflect well upon clients and help set a positive tone for cases.

EFFECTIVENESS WITH JUDGES AND ARBITRATORS

Attorneys' communication skills are critical to case outcomes because judges and arbitrators make decisions based on the information attorneys present. Attorneys who present credibly are believable and persuasive. They present substantiated facts, offer accurate interpretations of the law, stick to meritorious arguments, and avoid exaggeration. Moreover, they anticipate and acknowledge weaknesses, counterarguments, and unfavorable facts and law and perform the mental work to rebut them.

The extra effort it takes to communicate this way is worthwhile. Judges and arbitrators appreciate honest communication because it facilitates and expedites decision-making. When decision-makers trust the information attorneys present, they spend less time verifying facts and law and more time on substantive analysis. And, when attorneys take the laboring oar of identifying and resolving weaknesses in their cases, decision-makers are not left starting from scratch; they can carry forward and supplement the bulk of the work the attorneys performed.

CONNECTION WITH JURORS

If a case is going to a jury, it is critical that litigation counsel is honest and authentic. While judges and arbitrators consider only the evidence and law before them, jurors often incorporate other factors into their decision-making process. High on this list of other factors is whether the attorneys appear honest and trustworthy.

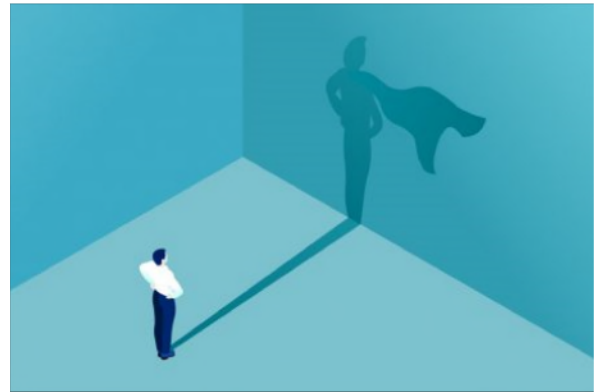
Throughout a trial, jurors register nonverbal cues regarding interpersonal dynamics and credibility. Based on these cues, they make determinations such as whether the attorney believes her client, whether the client believes her attorney, and whether the judge believes the attorney. These determinations, combined with the evidence and law before them, ultimately inform whether a juror believes an attorney's presentation of the case.

TRANSPARENCY

Honest counsel embrace difficult conversations. They educate clients about major hurdles and weaknesses in their cases. They promptly communicate case developments, even when they are unfavorable. They candidly discuss attorneys' fees and costs. They understand that clients need full information to understand their exposure, to properly budget and to effectively strategize.

TRUST EASES THE RELATIONSHIP

Litigation can be stressful, especially when the stakes are high. The last thing clients need is friction with their own attorneys. Honest litigation counsel help clients feel at ease because they can be trusted. They have the conviction to act independently as well as the aptitude to be collaborative. Most importantly, they always have their clients' best interests at heart.



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