Make Nice to the Court: Tips on How to Be Considerate

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By **Myron Moskovitz** | September 13, 2018

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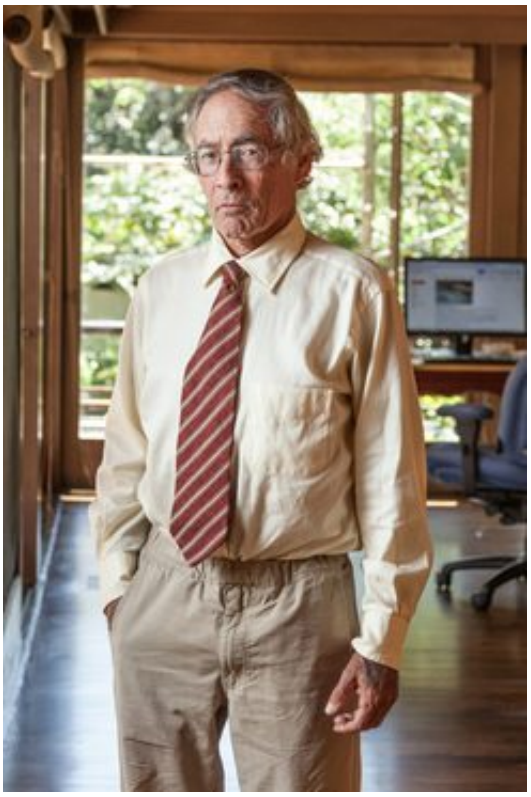
The draft brief discussed the settlement agreement and quoted a key sentence, but did not include the entire two operative paragraphs of the agreement. I told the attorney: "If I were the judge, I'd want to see the context of the sentence you quoted. I'd want to see the two operative paragraphs of the settlement agreement. His reply: "Why use some of my 14,000-word limit on that? They can go look up the settlement agreement in the record."



Myron Moskowitz, at his home office.

Yes, they certainly can. But why make them do that? Doesn't sound like much work, I agree. The research attorney or judge might need to find your cite to the record, then arise from her chair, then walk across her office to locate the record, then carry it back to her desk (or download it), then dig through it, and finally be able to read the full settlement agreement. Might take five minutes—maybe less. Not much of an inconvenience. But still … .

These are the people you are trying to persuade. They are busy, and sometimes their work is dull or difficult. You hope they will be influenced by your arguments and the law, and not by such trivial things like providing them with language that they will want to see. But you never know.

The bottom line: Be nice to them. Don't make them dig around for what they need. Just show it to them!

Being considerate means putting yourself in shoes of the other guy. If *you* were the judge or research assistant reading your brief, what would *you* want to see?

Here are some more suggestions about how to show the court that you are considerate of *their* needs, and not just your own:

- **Double-check to see that all your citations are accurate.** This includes both cites to the record and cites to cases. There's few things more annoying than reading "*Smith v. Jones* (1980) 22 Cal.App.3d 134," then finding the cited

volume, looking at the cited page—and seeing some case that is *not Smith v. Jones*. A research assistant's protracted search might locate it at page 1134 (or in Cal, rather than Cal.App.). By that time, however, your audience is fuming—and in no mood to cut you any slack regarding your brilliant arguments on the merits.

- **California Rule of Court 8.204(d) allows up to 10 pages of "attachments" to briefs.** I use this. If the appeal turns on some document that is not too long, I just attach it to the back of my brief. I've attached a key contract, a statement of decision, and even a map (introduced as an exhibit in the trial court). I know that the judge and research attorney will need to refer to this document frequently when working on the appeal. So why not make it easy for them by attaching the whole thing right in back of the brief?

- **Make your brief easy on the judge's eyes (some are a bit past their salad days).** The rules allow 1.5 line spacing, but I use 2.0. You are allowed to use 1.0 line spacing for your blocked & centered quotations, but I use 1.5. The rules don't say anything about page breaks, but I always start each major heading on a new page.

- **Shorten your briefs.** Many lawyers feel morally obliged to get as close as possible to the 14,000-word limit set out in the rules. "I owe it to my client to make every point I can," they say. No, you don't. You owe it to your client to give her the best chance of winning. Judges prefer shorter briefs, so make them happy. And shorter briefs allow you to focus on your strongest facts and arguments—the ones that count. Cut out the fluff that detracts from the heart of your case.

- **Strive for clarity**. Your statement of facts should tell the story clearly enough that someone who does not know the case at all will understand what happened—without needing to read any other document. Explain who each character is and what role he or she plays. Don't use pronouns if the reader will have to do any work to figure out who "he" or "she" refers to.

Many years ago, I attended a conference with a long-time California Supreme Court justice. An attorney in the audience asked him, "What bothers you most about the briefs you read?" No doubt the lawyer expected an answer about the quality of

the arguments, efforts to distinguish cases, or the like. But here's what he got. The Justice held his hands up high, for all to see. "See these scars on my fingers? Hammer down those goddamn *staples* that hold your briefs together!!!"

Little things mean a lot. Making nice gives you a better shot at victory.

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