

Ten Things I Wished I Knew Thirty Years Ago

By James McLaren, AAML Fellow and Past President, Columbia, South Carolina



James T. McLaren

1. Treasure your professional and personal friendships within the legal community and in the Judiciary:

Lawyers and Judges are among my best friends, both personally and professionally. I treasure those relationships. Make a list of your friends within the legal community—make it a point to take one of them to lunch or otherwise socialize with one colleague a week. Send personal notes.

2. Never impute ill-motive to a colleague:

While we live in a professional world in which we blame the opposing spouse for this or that, that method of doing business should never apply to your opponent. Lawyers are just doing their jobs. Everyone makes mistakes. There is rarely a good reason to impute ill-motive or intention to an otherwise honest mistake. If you are wrong in assuming ill-motive, hard-feelings and animosities will arise that will last throughout your career.

3. Professional courtesy is for you to extend, not for the client to decide or withhold:

Rarely does it ever make sense to withhold an extension or to call time, especially in family law cases. There is generally nothing to be gained. Matters of professional courtesy should not be considered client decisions. Never respond to a request for an extension by saying, “I’ll check with my client.” You will make the same request many times during your career.

4. Do not become your client—maintain professional independence at all times:

Family law is a tough, emotionally-charged business. If you become your client and fail to maintain professional independence, and to assert that independence, you will not be serving your client’s interests in the least.

5. Never become complicit with your client:

Your law license and freedom should be very important to you. Never encourage, participate in, or use wiretaps, unlawful access to emails, etc. If these circumstances are disclosed to you, get out of the case—no if’s, but’s, or wherefore’s. Do not allow a client to hide assets or to “park” money in your escrow account.

6. If you make a mistake, admit it, take responsibility, apologize, and fix it.

Every lawyer makes mistakes or inadvertently steps over the line. It just happens, despite your best efforts. Don’t hide it, confront and deal with the problem head on (and right away). Take responsibility, apologize, and fix it.

7. Listen to your clients, they want you to listen and hear what they have to say: clients do not want to be lectured on the law nor do they want to be chided about their conduct:

▲ In your initial conferences, 50 of every 60 minutes should be spent listening and appreciating the problem that your client brings to you and understanding what they want to accomplish.

▲ Clients are not terribly interested in being lectured about the law.

▲ Clients do not want you to argue with them.

▲ Listen to the problem and reason together so that you come to a consensus on a reasonable approach to the case and what can be expected as an end result.

8. Have a balanced life, the law can be all consuming if you allow it to be:

During the first ten years or so of my practice, I literally worked 365 days a year, with little if any exceptions. When our first child was born, that gave me more than enough reason to take stock of whom I was and what I was doing. I wanted to be a father and a husband. My golf handicap, which had gone from 7 to 18, drove me to the point of sports insanity. That is when I decided to divide my life into compartments: (a) Husband and Father; (b) Lawyer; (c) Personal Time. While I continue to work hard and long, I do my level best to compartmentalize those aspects of my life.

9. Never set a deposition or settlement conference on a weekend or holiday:

Weekends and holidays are your personal time. Once you break this rule, you will spend many of your weekends taking depositions or settling cases. We all do enough work on weekends getting ready for trials and the like, but at the very least you can control when depositions and settlement conferences are set. Set them for workdays. Do not give away your precious weekends and holidays.

10. Being a zealous advocate for your client does not necessarily mean “winning”:

There is no goal line in a family law case. “Wins” and “Losses” are measured by however you and your client chose to measure them. Reason with your client. Encourage them to be kind and generous, even in adversarial circumstances. After a while, we all know where the cases should end, or at least where many of the component issues should end up. Exercise your professional independence to drive the case in that direction.

11. Preparation, Preparation,

Preparation: Preparation is the key to achieving the best result for your client. There is no substitute for thorough

preparation. Preparation can overcome bad facts or law.

12. Never “let them know what you are thinking”:

As the Godfather said, “*Never let them know what you are thinking.*” A good trial lawyer can take a spear in the chest and never acknowledge or show the hurt or damage. When you acknowledge the hurt or damage, you are simply adding an exclamation point to the score just made by your adversary. The same goes with the rulings of judge—never show reaction; rather, simply move to the next issue and get along with it. Displays of disappointment, anger, or disagreement are not helpful.

13. Be confident in your advice:

Clients rely upon us to analyze the facts and law, and to then formulate a reasonable action plan. Be confident in your advice—that is what you are paid for. With that said, never be afraid to re-evaluate and to adjust your plan. The law is not black and white, it is gray.

14. Never react in anger—anger lowers your IQ and is simply not becoming of a lawyer:

In the course of the everyday practice of law, we all have plenty of reasons to be angry. Empirical studies demonstrate that when you respond in anger, you are responding at a time when your IQ and reasoning power is lower. Take a deep breath. Take an hour, take a day. Don’t press the send button right away—put everything in perspective and deal with the situation in a calm, well-reasoned manner.

15. Give back:

As lawyers, we all have the duty to give back to the profession. That can happen in many ways. Write an article or give a CLE on the subject that you think would be helpful to your colleagues. Join and be active in professional associations which promote the betterment of the practice. Help

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young lawyers—they need your help the most. Guide and educate them. Do not capitalize on inexperience by crushing or embarrassing a younger lawyer. Befriend younger lawyers and they will be your friends for a lifetime.

16. Be willing to concede issues and positions that really should not be contested—give the court a reasonable and rational approach to make a decision:

In my view, judges least like a polarized environment in the courtroom and in the process. Having two lawyers taking polar opposite positions wears a judge down day-by-day, hour-by-hour. If you have the reputation of suggesting reasonable rationale approaches, your positions will be more readily accepted by judges (and you will make everyone's life more happy and pleasant). Stated in the opposite, take extreme positions and, even when justified, over time, the court will come to disregard whatever you have to say and you will not be an effective advocate.

17. Learn to operate in chaos, embrace it – keep your theme and plan in view and on track, without exception:

Chaos is your friend if you learn to operate in that environment. Family law, especially family law trials, are fraught with chaos and unexpected events. Keep sight of your theme of the case and your goals.

18. No whining:

All of us encounter uncooperative witnesses who wander off the reservation. They refuse to answer your questions and tell the story they want to tell, without regard to the question asked. Never ask the judge to instruct the witness to answer the question – that is what I call “whining”. Rather, control the witness with follow up questions such as, “*Did you hear my question?*” “*What did I ask you?*” “*Do you need me to repeat the question?*” Your worst nightmares happen when you seek the court's assistance (i.e., “whining”) and the Court says “*The witness answered the*

question, move on.” You just empowered the witness.

19. Making money is not what it is about—it is about working hard and caring about your clients— do both of those things and the money will take care of itself:

If you practice law solely to earn a living, you will not be successful. If you work hard and care about your clients, and they know that you are doing that, you will be a successful lawyer and the money will take care of itself.

20. As lawyers, we belong to one of the noblest professions—we are charged with the responsibility of speaking for others at the worst of times—treasure and respect that obligation:

Think about what we do as lawyers. Lawyers enter the lives of clients at the worst point in their lives, especially in a divorce setting. Everything is going wrong, their worlds are collapsing around them. You have the responsibility of guiding them out of that morass of chaos and speaking for them throughout that process. There is no higher responsibility.

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