

Memorandum

To: Hon. Janet DiFiore, Chief Judge of the State of New York;
Hon. Rolando T. Acosta, Presiding Justice of the Appellate Division, First Department;
Hon. Alan D. Scheinkman, Presiding Justice of the Appellate Division, Second
Department; Hon. Elizabeth A. Garry, Presiding Justice of the Appellate Division, Third
Department; Hon. Gerald J. Whalen, Presiding Justice of the Appellate Division, Fourth
Department

From: Women’s Bar Association of the State of New York (“WBASNY”)

Re: Proposed Model Rule to Encourage Development of Junior Attorneys

Date: September 22, 2018

PREFACE

When representing clients at oral argument or attending court appearances, it is often the most senior attorney who does the talking while the junior attorney sits by and listens. Judges throughout New York State, in both State and Federal courts, have noticed this issue and have taken it upon themselves to create part rules to encourage the involvement of junior attorneys in litigation proceedings, including allowing multiple attorneys to argue different issues in a motion. Women attorneys in particular are underrepresented in the courtroom when compared to their male counterparts. As the New York State Bar Association’s July 2017 report, *If Not Now, When?* concluded: “... female attorneys in speaking roles in court account for just about a quarter of counsel who appear in state and federal courts in New York. The lack of women attorneys with speaking roles in court is widespread across different types of cases, varying locations, and at all levels of courts.”

WBASNY commends the efforts of the judges who have promulgated individual part rules to encourage opportunities for junior attorneys to learn the litigation process first hand.

In an effort to promote such inclusion and opportunity in the courtroom for junior attorneys, WBASNY has drafted a proposed model rule (annexed hereto) that can be easily inserted into a judge’s already existing part rules.

EXISTING INDIVIDUAL PART RULES

Judge Jack B. Weinstein, a federal judge in Brooklyn, has taken it upon himself to create a rule for his courtroom that allows “a number of lawyers to argue for one party.” Judge Weinstein’s decision to allow multiple attorneys to argue for one party was based upon a study by the New York State Bar Association entitled “*If Not Now, When? Achieving Equality for Women Attorneys in the Courtroom and in ADR*,” which found an underrepresentation of female and minority attorneys in courtrooms.

Judge Weinstein stressed the importance of creating such rules to ensure that the upcoming generation of lawyers is properly trained. “It’s particularly important because we have so few trials these days so some of the youngsters don’t get the same training they used to. It’s important for everyone, and for the litigation process, that the upcoming generation understands the fundamentals and just gets up on their feet.”

Judge Weinstein’s rule also acknowledges that there are instances where the party may wish that the most senior attorney argue the motion and as such, his rule emphasizes that the “ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the court.”

Judge Wolford, a federal judge in the Western District of New York, has adopted the following rule titled “Opportunities for More Junior Lawyers”:

The Court strongly encourages litigants to permit more junior members of the litigation team to examine witnesses at trial and hearings, and to appear for oral argument before the Court. Indeed, in those instances where the Court is inclined to rule on the papers, a representation that the argument would be handled by a more junior lawyer will weigh in favor of holding oral argument. In addition, under circumstances where the more junior attorney is permitted to present the argument to the Court, the Court will entertain reasonable requests for the more senior attorney to supplement any argument that is made. The Court believes it is crucial to provide substantive speaking opportunities to young lawyers, and that the benefits of doing so will accrue to all members of the profession and their clients. Thus, the Court encourages all lawyers practicing before it to keep this goal in mind. It is the way one generation will teach the next to try cases and to maintain our district’s reputation for excellence in trial practice.

This rule has been adopted (in some form or fashion, and sometimes identically) by five other judges in the Western District of New York, including Chief Judge Geraci.

Other judges who have taken similar steps in their courtrooms are Justice Henry Nowak, a Supreme Court Justice in Erie County, whose part rules are succinct and state: “[t]he court will permit multiple attorneys to argue different points for each party. Such practice is encouraged when multiple attorneys researched and briefed various issues.”

Judge Ann Donnelly, another federal judge in Brooklyn, has created part rules to encourage the participation of inexperienced attorneys “in all court proceedings— including but not limited to pre-motion conferences, pre-trial conferences, hearings on discovery motions and dispositive motions, and examination of witnesses at trial.”

Proposed Model Rule

Opportunities for Junior Attorneys:

The Court believes it is crucial to provide substantive speaking opportunities to junior lawyers, and that the benefits of doing so will accrue to all members of the profession and their clients.

To that end, the Court strongly encourages litigants to permit more junior members of the litigation team to be active participants in court proceedings, including but not limited to pre-motion conferences, pre-trial conferences, oral argument of motions (including discovery and dispositive motions), evidentiary hearings, and examination of witnesses at trial, in an effort to provide junior attorneys with opportunities to gain meaningful experience in the litigation process.

The Court will permit multiple attorneys to argue different issues for each party. In addition, under circumstances where the more junior attorney is permitted to present the argument to the Court, the Court will entertain reasonable requests for the more senior attorney to supplement any argument that is made.

The Court recognizes that the ultimate decision of who conducts each proceeding is with the lawyer in charge of each case, and ultimately the represented party, and not the Court. However, the Court hopes that all lawyers practicing before it will endeavor to provide the next generation of attorneys with meaningful opportunities to participate in the litigation process.