



New Lawyer Tips

Trademark & Unfair Competition
Eric E. Johnson
ericejohnson.com



Konomark
Most rights sharable

New lawyer tips

- Take a legal pad and pen to every meeting. (Legal pad = 8.5 x 11 or 8.5 x 14, your choice.)
- When meeting a senior attorney to be assigned work: (1) bring a legal pad and pen to take notes during the meeting, (2) bolster your notes after the meeting, either by adding to your handwritten notes or typing up some notes.
- Figure out how to do things yourself. If you do ask for help from a more senior attorney, do that after you've spent significant effort and time trying to figure it out for yourself. In particular: Consult practice guides, look at the rules, consult forms ("forms" = old documents from other matters, and consult other resources.

New lawyer tips

- **Become a master of the facts. Read the file. Take time with it. Perhaps create a summary or synthesis document for yourself – which may then have value to others.**
 - As a new lawyer, you probably aren't going to be better than your supervising attorney in terms of writing, arguing, understanding the law, strategizing, negotiating, interacting with clients, and generally knowing what to do . . .
 - but you can often get ahead of the partner or senior supervising attorney by learning more about the facts of the case/matter!
 - This allows you to have real, unique value as a member of a team – something you contribute other than just being cheaper per hour or having more available time!
 - When I was a very new associate, I created a document identifying all the people involved in the facts of a matter – their names, job titles, what they did, etc. – and it made me famous! (At least among the three other people working on the case. 😊)

New lawyer tips

- **Become a master of the facts. Read the file. Take time with it. Perhaps create a summary or synthesis document for yourself – which may then have value to others.**
 - As a new lawyer, you probably aren't going to be better than your supervising attorney in terms of writing, arguing, understanding the law, strategizing, negotiating, interacting with clients, and generally knowing what to do . . .
 - but you can often get ahead of the partner or senior supervising attorney by learning more about the facts of the case/matter!
 - This allows you to have real, unique value as a member of a team – something you contribute other than just being cheaper per hour or having more available time!
 - When I was a very new associate, I created a document identifying all the people involved in the facts of a matter – their names, job titles, what they did, etc. – and it made me famous! (At least among the three other people working on the case. 😊)

This is essentially a particular application of the idea of “taking ownership” and “taking initiative” – which everyone knows you're supposed to do, but sometimes it's hard to perceive the opportunities to do that in a way that's not overstepping. (It can be especially hard when you're new to an employer and new to the career!)

New lawyer tips

- Don't be consumed with worry about the time you spend and the client's bill. Take the time you need to do it thoughtfully and do it right. Let the partner worry about the bill and writing off your time as appropriate.
- For a client meeting, witness interview, meeting with opposing counsel, and the like, do your note taking in stages: (1) take handwritten notes, (2) translate your contemporaneous handwritten notes into a more complete and enduring form, either (A) immediately afterward, translate your handwritten notes into a memo to self (or file), or (B) if you don't have time to immediately write up a good memo then (i) make an audio recording of your recollections, (ii) then later turn the audio recording into a memo to self.

New lawyer tips

- Don't drink that much at workplace events. At least try to stay behind others.
- If you at a meeting or in a room with other people and you are bored or find that what's going on leaves you with excess mental capacity, mentally go around the room practicing names in your head. If you've learned all the names, you could work on interests, names of spouses, names of kids, sports allegiances, etc.

New lawyer tips

- Consider going to some learning opportunity, such as a CLE (continuing legal education) event. (Often CLEs feature practitioners speaking about new developments, emerging trends, special techniques, etc.) Take notes contemporaneously. Afterward, re-write your contemporaneous notes into stable/enduringly-usable notes. Then, consider turning your notes into a memo that you send to other members of your firm. That way they get some benefit of the time/money investment you made by going to the event.

New lawyer tips

- Broaden your idea of what a memo is! If the word “memo” causes sudden, painful flashbacks to your first-year legal writing course, then RELAX! A “memo” is just like a “letter” – in that it’s a document that carries communication formatted in a particular way. Putting your research or other intellectual product in the form of a memo shouldn’t be onerous. What matters is functionality – that the document explains itself as to what it is and that it preserves the value of your work. This is exactly what’s so nice about the memo format: It forces you to be clear about the to, from, date, and subject.

New lawyer tips

- If you were asked to research something, figure something out, do some analysis, etc., then you should probably put the product of your thinking in a memo. The most wonderful word to start a memo is “You” – as in “You asked me to analyze the Alpha/Beta trademark assignment agreement, looking in particular for any aspects which might provide grounds for invalidating the trademark. This memo provides that analysis.”

You asked me to find any and all instances since 1950 in which a registered trademark ceased to be valid on account of becoming generic. I searched for such cases using Eastlaw’s ALLFEDS and ALLSTATES databases. In addition, I searched the following blogs, which sometimes report on USPTO administrative actions and unlitigated disputes.

You asked me to
to analyze the value of the trademark claims in the *Marker v. Marcker* litigation, for which we are entering settlement talks. I provide that analysis in this memo. I set out three scenarios with three different valuations. Each scenario corresponds to a different set of assumptions about how the court might interpret the remedies provision of the state unfair competition statute at Arkassippi Civil Code § 8815.

New lawyer tips

- **Never bullshit. Don't say you know something if you don't.**
 - Note that apparently there's advice going around that law students should do this on an essay exam. E.g., "Pick a position and argue it." I disagree with that for exams. But worse, I think it sets a bad precedent for real life practice. If something is highly uncertain – such as the likelihood of success of a claim or defense – say that. And then explain why by *constructing arguments*.

New lawyer tips

- Look for writing opportunities that spring from work you've already done for practice.
 - If you research something novel for litigation or if you create some novel way of structuring a transaction, considering writing it up for a bar journal / bar magazine.
 - Such writing is a traditional way to make rain!
 - Check with your employer first, of course, and make sure whatever you're writing about isn't a client confidence, obvs.
 - A partner / supervisor might want to be the first listed author. But that's okay.

New lawyer tips

- **Dig.**

EXT CAVE DAY

ROSTAGNO and GENNARO move into the dark, dripping cave, where at least a dozen other WORKERS are gathered in a tight circle, staring at something intently. Rostagno fights his way to the center of the group. One of the WORKERS hands him something and Rostagno examines it carefully.

It's a chunk of amber, a shiny yellow rock about the size of a half dollar.

GENNARO

If two experts sign off on the island, the insurance guys'll back off. I already got Ian Malcolm, but they think he's too trendy. They want Alan Grant.

ROSTAGNO

Grant? You'll never get him out of Montana.

GENNARO

Why not?

ROSTAGNO

Because he's like me. He's a digger.

Rostagno turns and holds the amber up to the sunlight streaming through the mouth of the cave. With the light pouring through it, the amber is translucent, and we can see something inside this strange stone - - - a huge mosquito, long dead, entombed there.

ROSTAGNO

(smiles) Hay que lindo eres vas hacer a much gente feliz. (Oh you're so beautiful. You will make a lot of people happy)



New lawyer tips

- **Dig.**
 - You may never cease to be surprised at how much remains unearthed in the law and the facts.
- **Invest effort in fresh breath.**
 - You are moving into a phase of your life where no one will tell you if you have bad breath.
 - Since self-identification is hard, consider erring on the side of needless preventative measures.
 - I suggest a multipronged approach. Not just mints, just dissolvable strips, not just gum, not just a toothbrush and toothpaste at the office, not just a small stowable portable bottle of mouthwash, not just drinking water, some combination of these.