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Location Awareness for New Litigators

ABA Section of Litigation Young Advocates Committee
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I recently coached a youth basketball team made up of 12 kids ages 5 through 7, including my two sons Alexander and Abraham. Unsurprisingly, I spent much of the practices teaching the kids where to stand on the court, which way to run when their team has the ball or when the other team has the ball, and which basket to shoot on. In litigation, as in sports, being aware of your location and that of the other players—not just physically, but in your case and your law firm—is also important.

Location Awareness in Obtaining Admission to the Bar

The importance of location awareness becomes evident before you ever begin practicing as an attorney. After law school, you have to choose the states in which you would like to be admitted to the bar. The most important consideration is probably which state you plan to practice in. If you have a job lined up, the decision is easy. If you don't, you probably take into account a number of factors such as where you want to live and where you are most likely to find a job. You may also consider practicing in different states or research how to obtain admission to multiple bars.

Location awareness is also important once you are admitted to a state bar and want to represent clients in different courts. Your admission to a state bar does not automatically authorize you to practice in a federal court in your jurisdiction. You will want to check with your local federal district court for application procedures to become admitted to practice therein. You may also consider whether you should become admitted to the U.S. court of appeals for your jurisdiction or to the U.S. Supreme Court.

Location Awareness in Your Practice

After you become admitted, the locations in which you will be litigating and the locations involved in your case will be relevant to how and where you litigate. In particular, location awareness is important for identifying, understanding, and complying with the applicable rules of practice and procedure. The “rules of practice and procedure” are not limited solely to the codified court rules applicable to your

cases. They also include statutes, standing orders, forms, court-specific procedures, and general principles of common sense.

The starting point for learning the rules of practice and procedure in any case is the applicable court rules. If your case is located in federal court, the Federal Rules of Civil Procedure apply, and those are supplemented by each district court's local rules. If your case is located in state court, you will need to locate the applicable local-court rules. Different states use different terminology to refer to these rules. For example, the Connecticut Practice Book contains the superior court rules and rules of appellate procedure. These rules include different chapters for appearances, motions, judgments, small claims, family matters, criminal matters, appellate procedure, and a host of other proceedings. In these court rules, you will find deadlines for responding to discovery requests and pleadings, the motions that are available to dispose of an adverse party's claims and defenses, procedures for taking depositions, and technical requirements such as what motions are required to have separate blank order pages attached and what motions must be filed with an accompanying memorandum of law. I have seen a number of motions denied based on these last two rules.

In addition, some of the most important rules of practice and procedure are located in state and federal statutes governing venue, service of process, personal jurisdiction, subject-matter jurisdiction, and the substantive claims in your case. So, if you want to start a lawsuit, and assuming you have correctly identified and located the defendant, you need to read the applicable state statutes to know whether your state will have jurisdiction over the defendant, how to serve the defendant, and in which court the complaint must be filed.

Other rules of practice and procedure may be included in forms promulgated by the court, in standing orders issued by the courts where you are litigating, and in notices sent to you by the court. In Connecticut Superior Court, for example, the procedures for making sure your motions are scheduled for argument and heard, and the notices you are required to provide to the court and adverse parties for doing so, are printed on the calendar containing the list of cases to be heard on a certain date. In addition, each judge may have issued specific rules of practice or standing orders regarding communications with their chambers, pretrial and trial preferences, scheduling orders, or other matters. For an example of this in federal court, visit the "judges" page on the website for the U.S. District Court for the Southern District of New York.

You should also be mindful that some of the applicable local rules of practice and procedure may not be located anywhere in codified form. For example, if you represent a plaintiff and are considering the court in which to file your lawsuit (or you represent a defendant considering whether to move to transfer a lawsuit brought against your client), you may want to know which courts require electronic filing, which courts are not capable of handling electronic filing, and which courts are completely offline so you

cannot even go online and access the docket to check the status of your case. Almost all new attorneys primarily use their computers and the Internet to conduct research, prepare filings, manage their cases, and schedule events. Litigating a case in a court where there is no electronic filing and no online access to the docket can cause increased uncertainty about what papers your adversary has filed with the court and when, whether the court has received your filings, and the overall status of the case.

Finally, when the time comes for you to actually appear in court, one source for the applicable rules of practice and procedure is common sense. You need to know where the courthouse is, the courtroom in which your hearing is being held, and how you are going to get there on time. Although this point seems obvious, the importance of showing up for court at the right place at the right time requires emphasis; you do not want to get an unfavorable decision because the judge appeared on the bench at the scheduled time and you weren't there because you couldn't find a place to park your car.

Location Awareness in Your Law Firm

When you are assigned to work on a case, not only do you need to know your physical location and the applicable rules of practice and procedure, but you also need to be aware of your place on the litigation team.

As a brand new associate, you may be expected to conduct only discrete research tasks, but you will be expected to understand the role of your research in the case. Do you know what the assigning attorney will use your research for? Will your research support a particular argument? If so, you should expect to be asked to construct an argument based on your research. Of course, in addition to understanding your role in the context of the representation of your client, you will also be expected to be aware of the physical locations relevant to your research, including which state's laws apply, which court's opinions are binding, whether the judge before whom the case is pending has decided similar issues, and where to find cases and statutes that may govern the issue you are researching.

Before long, you will also be expected to represent a party in a dispute largely on your own, with the supervision of an experienced attorney. The amount of supervision provided will vary from case to case and from partner to partner, so in addition to the physical locations relevant to your case, you need to understand your role in the representation of your client in the dispute. The supervising attorney may expect you to be the main contact person and do the bulk of the work. You may be expected to run a conflicts check, prepare a retainer agreement, confer with the client, understand the procedural and substantive aspects of the case, draft pleadings, determine which motions to file, draft and argue those motions, conduct discovery, lead settlement negotiations, and eventually try the case.

As a new associate, understanding your role in the litigation and the representation of your client can have a meaningful impact on your development as an attorney. Take the following scenario: A partner

walks into your office one day and asks you to draft a complaint for breach of contract on behalf of a client. If you do not understand your role in the law firm and the representation of the client, you might just prepare a summons and complaint, email it to the partner and wait for his or her response. However, if you understand your role, you will do much more, including making sure there are no conflicts of interest and that the client has signed a written retainer agreement; explaining the case to the client and describing the costs and risks of litigation; evaluating the prospects of recovery; and considering what pre-lawsuit requirements, if any, must be followed before commencing the lawsuit. Thus, in this scenario, where your client is seeking to file a lawsuit for breach of contract, you should review the contract because it may contain certain pre-lawsuit notice requirements. In addition, depending on the claim you are bringing, statutes and/or common-law principles may require a pre-lawsuit demand or notice to be served on the adverse party. Furthermore, to effectively serve these notices and to properly commence the lawsuit later on, you will need to conduct research to determine the accurate name and location of the party being sued, including—if you are suing a corporate entity—whether the name of the entity you are suing is accurate and has a legal existence.

This article describes only a few of the ways that location awareness is important to the development of your litigation practice. Knowing your location—both physically and in the context of your case and your law firm—will help you reduce the chances of ending up out of bounds or shooting at the wrong basket.

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