

Things Every Water Attorney
Should Know About Practicing
in Front of the
New Division 1 Water Judges

First things first

- Backgrounds
- Experience with Water Law
- Approaches

How to Lose a Water Case in 15 Pages or More

Rule #1: Ugly is in the eye of the beholder

- Don't care about first impressions.
- Use an ugly font; better yet, use multiple ugly fonts.
- Leave as little white space on the page as possible and use small margins.
- Capitalize excessively to make your writing unreadable.
- Don't include headings and subheadings or do anything that might suggest your motion has some structure and organization.
- Emphasize your confusion over non-gender-neutral writing by using "she or he" repeatedly.
- Better yet, show you're not sure when to use she, he, or it by using all three, like "s/he/it." There's nothing like a few "s/he/its" to make your motion look like that.

Rule #2: Confuse and obfuscate

- Don't tell the judge what relief you're seeking: make the judge guess!
- The longer your motion, the less the judge will understand your case; the more arguments you present, the less likely your best argument will be persuasive.
- Remember: a motion is really mystery writing in disguise. Leave the main point for the last line on the last page so the judge will be stunned after wading through all your useless and confusing arguments to find out what your motion is *really* about.
- Use obscure acronyms; especially if your client's name is Bob Smith, then you can fill your motion with lots of BS.
- Don't use the technique of storytelling; it will only make your client's case come alive for the judge and might be too persuasive.
- Don't explain how the law applies to the facts and supports your client's position.
- Avoid common sense and pretend the judge doesn't have any.

Rule #3: Quote other judges and lawyers because your ideas don't matter

- Act like no one wants to hear what you have to say.
- Act like someone smarter than you said it before and just repeat that.
- Use lots of long quotations so you can show that you didn't do any independent research and analysis.
- Block quotations are key because they waste tons of space and no one reads them.
- Don't just quote—misquote! How else will you know if the judge actually read your motions and reviewed your citations?
- Quote everything from the original source, including irrelevant case citations and parentheticals.
- Better yet: quote from the headnotes!

Rule #4: Citations are for the lame and the weak

- Don't cite legal authority—it's more fun to make the judges and their law clerks do research from scratch.
- Don't cite binding cases from this jurisdiction and don't cite constitutions, statutes, or other laws.
- Never use a pinpoint citation—make the judge work for it!
- If more than one case supports a proposition, put every case into a string cite—no matter how redundant.
- Be sure to miscite your authorities to force the judge and the law clerk to rely on your adversary's work.
- Never explain why your citations are relevant, but if you are forced to explain, make the case more complicated than it is.
- Never use parenthetical explanations in citations—it makes the citation too clear.
- Just say that the case is "on point" and never explain why.

Rule #5: Make it personal

- Don't be analytical when you can be hyper-critical!
- To get really fancy, start every paragraph with "My adversary's argument is mendacious and ridiculous."
- Attack opposing counsel and their client with insults, condescending language, snide remarks, irony, and humor at their expense.
- Destroy them by denigrating their intelligence, motives, and integrity.
- Better yet, attack the judge! Tell the judge how you really feel. Judges need to be reminded that they're not that smart.
- If you choose to be deferential, make it sound phony: Use *respectfully* a lot. You can get away with anything so long as you use *respectfully*.
- Be superficial: It's not the substance that counts.

Rule #6: When all else fails, confound with words

- Write like a *real* lawyer by using legalese. Using *aforementioned*, *hereinafter*, and *said* will let the judge know you attended a good law school.
- Bore the judge with jargon and clichés: *the case at bar*, *wheels of justice*, *an exercise in futility*.
- Use wordy and abstract nominalizations by turning strong verbs into weak nouns: *allegation* instead of *allege*, *violation of* instead of *violate*, *confirmation* instead of *confirm*.
- Use metadiscourse—verbal throat-clearing—to add unnecessary words: *it is important to remember*, *it should be emphasized that*, *it goes without saying that*.
- Remember: you're a lawyer, not an editor, so you don't have time to spellcheck or proofread. Time is money for lawyers; don't sweat the small stuff like grammar or typos.
- Show what a lousy case you have by using doubtful, timid, and slippery equivocations.
- Show you lack the courage of your convictions by making five or six weak arguments rather than one strong one.

Rule #1: Ugly is in the eye of the beholder

- Don't care about first impressions.
- Use an ugly font; better yet, use multiple ugly fonts.
- Leave as little white space on the page as possible and use small margins.
- Capitalize excessively to make your writing unreadable.
- Don't include headings and subheadings or do anything that might suggest your motion has some structure and organization.
- Emphasize your confusion over non-gender-neutral writing by using "she or he" repeatedly.
- Better yet, show you're not sure when to use she, he, or it by using all three, like "s/he/it." There's nothing like a few "s/he/its" to make your motion look like that.

Rule #2: Confuse and obfuscate

- Don't tell the judge what relief you're seeking: make the judge guess!
- The longer your motion, the less the judge will understand your case; the more arguments you present, the less likely your best argument will be persuasive.
- Remember: a motion is really mystery writing in disguise. Leave the main point for the last line on the last page so the judge will be stunned after wading through all your useless and confusing arguments to find out what your motion is *really* about.
- Use obscure acronyms; especially if your client's name is Bob Smith, then you can fill your motion with lots of BS.
- Don't use the technique of storytelling; it will only make your client's case come alive for the judge and might be too persuasive.
- Don't explain how the law applies to the facts and supports your client's position.
- Avoid common sense and pretend the judge doesn't have any.

Rule #3: Quote other judges and lawyers because your ideas don't matter

- Act like no one wants to hear what you have to say.
- Act like someone smarter than you said it before and just repeat that.
- Use lots of long quotations so you can show that you didn't do any independent research and analysis.
- Block quotations are key because they waste tons of space and no one reads them.
- Don't just quote—misquote! How else will you know if the judge actually read your motions and reviewed your citations?
- Quote everything from the original source, including irrelevant case citations and parentheticals .
- Better yet: quote from the headnotes!

Rule #4: Citations are for the lame and the weak

- Don't cite legal authority—it's more fun to make the judges and their law clerks do research from scratch.
- Don't cite binding cases from this jurisdiction and don't cite constitutions, statutes, or other laws.
- Never use a pinpoint citation—make the judge work for it!
- If more than one case supports a proposition, put every case into a string cite--no matter how redundant.
- Be sure to miscite your authorities to force the judge and the law clerk to rely on your adversary's work.
- Never explain why your citations are relevant, but if you are forced to explain, make the case more complicated than it is.
- Never use parenthetical explanations in citations—it makes the citation too clear.
- Just say that the case is "on point" and never explain why.

Rule #5: Make it personal

- Don't be analytical when you can be hyper-critical!
- To get really fancy, start every paragraph with "My adversary's argument is mendacious and ridiculous."
- Attack opposing counsel and their client with insults, condescending language, snide remarks, irony, and humor at their expense.
- Destroy them by denigrating their intelligence, motives, and integrity.
- Better yet, attack the judge! Tell the judge how you really feel. Judges need to be reminded that they're not that smart.
- If you choose to be deferential, make it sound phony: Use *respectfully* a lot. You can get away with anything so long as you use *respectfully*.
- Be superficial: It's not the substance that counts.

Rule #6: When all else fails, confound with words

- Write like a *real* lawyer by using legalese. Using *aforementioned*, *hereinafter*, and *said* will let the judge know you attended a good law school.
- Bore the judge with jargon and clichés: *the case at bar*, *wheels of justice*, *an exercise in futility*.
- Use wordy and abstract nominalizations by turning strong verbs into weak nouns: *allegation* instead of *allege*, *violation of* instead of *violate*, *confirmation* instead of *confirm*.
- Use metadiscourse—verbal throat-clearing—to add unnecessary words: *it is important to remember*, *it should be emphasized that*, *it goes without saying that*.
- Remember: you're a lawyer, not an editor, so you don't have time to spellcheck or proofread. Time is money for lawyers; don't sweat the small stuff like grammar or typos.
- Show what a lousy case you have by using doubtful, timid, and slippery equivocations.
- Show you lack the courage of your convictions by making five or six weak arguments rather than one strong one.

Discussion Items

- Proposed orders & Rule 56 Motions
- Exhibits
- COVID
- Changes to Water Division One policies
- Differences between how Judge Hartmann conducted water trials
- Mediation
- Strict Proof
- Participation of the Engineers
- Trial Briefs
- Reading expert reports & questioning experts

Thank you for attending!