



A MODEST PROPOSAL ABOUT
“SUPERLAWYERING”

by Pat E. Morgenstern-Clarren and Patricia A. Hemann

W e must begin with an admission: Neither of us has ever been named to a list of “SuperAdvocates,” “Up and Coming Legal Stars,” “Superwomen Lawyers,” “Best Lawyers in the State/Region/Continent” or any other such list. For the purpose of this article, we set aside questions of how such lists are formulated, the purposes for which the designations are used, and, most important, whether such lists help the profession in any way. Instead, our goal here is to offer encouragement to those lawyers who have not (yet) been crowned as “Supers” by sharing our thoughts on what makes a “super-lawyer” with a small s.

Rule #1: A superlawyer only takes cases that have merit.

There is a reason why lawyers are called counselors. They have an obligation to counsel a client, ongoing or prospective, when the client demands an action that has neither a basis in law nor a reasonable basis for extension of the law. Indignation is not a cause of action. The superlawyer faced with such a client will listen, sympathize, explain the law, and encourage the client to turn his attention to more fruitful enterprises.

Rule #2: A superlawyer communicates with her client promptly about EVERYTHING...

...the merits of the case, realistic results, anticipated legal fees and costs, court procedures, pending motions, and court rulings. Most complaints to disciplinary committees are made by clients who have been ignored by their counsel. The superlawyer calls, emails, or writes to her client regularly.

Rule #3: A superlawyer is timely as to all obligations.

Requesting an extension of time on the day a brief is due is not a timely act. Calling to request a continuance after the judge takes the bench is not a timely act. Appearing late for a status conference or, heaven forbid, for trial is not a timely act. A superlawyer keeps a calendar and tickler system and is beholden to them. A superlawyer who is unavoidably detained calls at the earliest possibility, arrives as soon as practicable, and briefly apologizes to those who have been inconvenienced by the delay before turning to the matters at hand.

Rule #4: A superlawyer is prepared for court appearances.

Having a vague understanding about the relevant law, a cloudy idea of the client’s goal, limited knowledge of potential recovery or liability,

and only a weak grasp of the facts raises a red flag to the court about the merits of the case and the seriousness with which counsel will pursue it. A superlawyer knows the facts, the extent of possible damages, the necessary discovery, and the law when appearing before the court at the first conference and at every session thereafter.

Rule #5: A superlawyer respects the role of the court in a dispute.

Copying the court on letters to opposing counsel (“Although I have followed all the rules, you persist in ignoring them and I am now compelled to bring this to the court’s attention”) is not helpful or professional. The same is true for informal lobbying of court staff (“Oh by the way, I thought you might be interested to know that: (a) the defendant keeps all his money in the Cayman Islands; (b) my opponent doesn’t like the way your judge runs the courtroom, but I think she’s great; or (c) my partner went to high school with the judge and they have been friends ever since.”). A superlawyer stays within ethical boundaries.

Rule #6: A superlawyer approaches research with an open mind, with a goal of being creative and trustworthy.

He reads the entire case, not just the headnote, to make sure he understands the principles underlying the decision and that they support his position.

A superlawyer takes care when turning that research into a brief to be submitted to the court. He uses spellcheck and gives thought to the rules of grammar. He labels exhibits and carefully references them. He cites case law from the circuit where the dispute is pending or explains that research has not disclosed any such law. Otherwise, if the case is pending in circuit A and the law cited is all from circuit Q, the judge may harbor a well-founded suspicion that the brief was not prepared for the case at hand, casting doubt on the merits of the position. A superlawyer realizes that the written word may be all a court sees of his case.

Rule #7: A superlawyer thinks twice about the way in which she presents her arguments.

Which is more persuasive to the impartial reader: “The defendant’s argument is ludicrous” or “The settled law in this circuit is directly contrary to the plaintiff’s position”? If a superlawyer must vent, she should do so in the first draft of the brief and then edit, edit, edit, to remove all disparaging comments about opposing counsel, other parties, and—yes, it must be said—the judge. Affectations of moral outrage

distract from rational argument and lead the court to wonder whether moral outrage is all the party has to offer. A superlawyer relies on the facts and the law to persuade.

Rule #8: A superlawyer knows how and when to approach settlement.

He does not wait for the court to set a conference but initiates discussions when best for the client. He makes a reasonable demand or offer, stating a rationale for the offer, and promptly responds to a counterproposal. He knows when court intervention is needed and works with opposing counsel to arrange it. He assures that decision-makers attend all negotiations and discusses appropriate responses with the client. A superlawyer understands that when settlement is the issue, he is a counselor as much as an advocate.

Rule #9: A superlawyer is ready to take a case to trial when necessary.

She does not take a case to get a quick, easy settlement. She has principled reasons for recommending settlement that are unrelated to her own financial interests. A superlawyer is both a litigator and a trial lawyer.

Rule #10: A superlawyer understands the difference between recording time and billing a client for it.

Time is legitimately recorded when an attorney performs services related to the client’s matter. There is, however, no immutable law that every tenth of an hour recorded must be billed. The superlawyer carefully reviews his recorded time before drafting the bill to see what was accomplished, in what amount of time, and with what result. The bill sent should then reflect the exercise of good billing judgment. The superlawyer asks himself this question before putting a stamp on the envelope: if somebody sent this bill to me for payment, would I think it was fair and reasonable?

Most lawyers must wait a while before being named to an official Super list, but following these simple rules is guaranteed to win you a place on ours. 

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