

“The 3-3-3 Rule”

By Judge Michael G. Williamson

“Judge is the 3-3-3 Rule in effect for this case or is this a 10-10-10 case?” Those of you who have appeared in my courtroom may have heard this question asked, or you have probably heard me discuss these rules. But just in case, let me explain: Keep it Short! Few motions need to exceed three pages—thus **the first “3” in the Rule stands for 3 pages. That’s the length that works best for most routine motions.** Even if it is a really complex matter, try to keep the page count down to 10 pages (get it? 10-10-10). The more succinct your writing the better. Don't drag your motion out to the maximum page limit if you have nothing left to say. In the words of Chief Justice Roberts, "I've yet to put down a brief and say, 'I wish that were longer.'"

The second “3” relates to the maximum number of cases that you should cite for any proposition of law. Simply put: Avoid Excessive Case Citations! If there is a novel legal issue, cite a case or two that supports your position. One or two cases are ordinarily sufficient. Avoid long string cites unless you are trying to make a point. And citation of well-settled law is not helpful. For example, taking two pages to review the standards for summary judgment is a waste of space. These comments apply equally to bigger cases in which the 10-10-10 Rule applies (I know--it should be the 10-3-10 Rule--but that doesn't sound very good so I'm exercising some artistic license on the name of the Rule).

The third “3” applies to the length of your argument on most routine matters. Believe it or not, we bankruptcy judges have probably seen the type of motion that you have filed before (like maybe a 1000 times). So if it's just a motion for relief from stay on a car with no insurance and no payments have been made for four months--we get it. That's all we need to know. Three minutes of oral argument should be more than sufficient. We don't need a primer on the constitutional underpinnings of adequate protection.

While I've got the floor, here are some other practice pointers on oral argument and drafting of motions and memoranda for the court (I know I'm breaking the 3-3-3 Rule by going on at this point, so I'll *sua sponte* invoke the 10-10-10 Rule).

Preview Relief Sought. Explain at the beginning of your argument and in the introductory paragraphs of the motion the relief you are seeking before you lay out the factual and legal bases for the relief requested. Let us know what you want at the front end so we know where you're heading and will understand the relevance of the facts you proffer in support.

Avoid Legalese. Plain language is easier to understand. As Justice Scalia once said, "A good test is, if you use the word at a cocktail party, will people look at you funny?"

Avoid Minutiae. When drafting your motion or making your argument, first ask yourself what the court needs to know, then include that information in the motion or argument. You need to communicate the big picture in a fashion that it can be understood quickly by the reader or listener. Avoid minutiae. For example, a tedious recitation in a motion of every document in the loan file is neither needed nor helpful. In a similar vein, do not cut and paste the identical case history and introductory paragraphs from earlier motions into later ones.

Never Disparage Your Opponent. As Justice Ginsburg once said, "You should aim to persuade the judge by the power of your reasoning and not by denigrating the opposing side." Using words such as "outrageous," "disingenuous," and the like reflects poorly on you. If the opposing counsel makes disparaging remarks about you or your client avoid responding in kind. Keep the high road!

Be Intellectually Honest. If you have weaknesses in your position, "pull the teeth" by addressing them in your motion or up front in your oral argument explaining that while you concede that these weaknesses exist, they should not compel a different result. Similarly, address your opponent's best argument in your motion.

Provide Copies of Cases. Many judges welcome the filing of cases that will be relied on at the hearing so long as the cases are furnished to opposing counsel. Depending on a judge's practice, it is often useful to highlight the

portions of the cases that you will be relying upon. Include those highlights in the cases you provide to opposing counsel.

File Your Memo of Law Well Before Hearing. When you do file briefs or cases, they are of very little use to the court unless they are filed in a timely manner so as to allow sufficient opportunity for their review in advance of the hearing (delivery to chambers at the end of business hours on the eve of a hearing or on the day of the hearing is not timely). You should assume that the judge will rule from the bench, and briefs or cases filed at or immediately before the hearing will not be reviewed prior to the court's making its ruling.

(You'll note that I covered exactly 10 points in compliance with my 10-10-10 Rule.) See you in court.