

A Typical Motion Session Before Judge Young, District of Massachusetts

By Jack Schechter

On May 21, 2009, the Massachusetts chapter of the Federal Bar Association hosted a seminar during which attendees were invited to observe a typical motion session before Judge William G. Young.

Conduct of a Typical Motion Session

Judge Young begins each motion session with a call. As each action with a motion on the calendar is called out by the clerk, counsel are asked to identify themselves as present and inform the court whether they believe the time they require for the motion will be 5, 10 or 20 minutes. These are the only options. Attorneys may not ask for more time. In fact, one attorney sought 15 minutes and received a friendly admonishment for not selecting from the menu of options. Judge Young then calls each case based on the amount of time the parties indicate they need. First call consists of the 5 minute cases; second call consists of the 10 minute cases; and third call is reserved for those requesting 20 minutes.

Throughout the motion session, Judge Young reminded counsel that he had already read their papers and encouraged them to forego regurgitating their briefs. Instead, he aggressively pushed them to answer difficult questions about the weaknesses he perceived in their positions. The motions heard included four motions to dismiss, three motions for summary judgment and a motion to certify a class. In all cases, save one motion to dismiss on jurisdictional grounds, Judge Young ruled from the bench after oral argument.

The Courtroom Staff

After the motion session concluded, Judge Young introduced his courtroom staff, including his docket clerk, courtroom deputy clerk; law clerks; and courtroom reporter. Each was encouraged to speak briefly about their respective roles in ensuring that Judge Young's motion sessions run smoothly.

Docket Clerk:

The docket clerk described his job as having three main components: (1) quality control for all filings, including everything filed using Case Management / Electronic Case Files (CM/ECF); (2) help desk for all filings; and (3) air-traffic controller, making sure that motions are prioritized in accordance with Judge Young's standard operating procedures.

Judge Young noted that, in his courtroom, his docket clerk is in charge of flagging all filings that require hearings, pursuant to his instructions. Judge Young allows no

hearings on discovery matters. In fact, Judge Young generally resolves all discovery matters himself, without involvement of his law clerks, unless a particularly interesting privilege issue is raised. For the most part, the only motions that are heard in Judge Young's Motions Session are motions for emergency relief (TROs), motions for preliminary injunctions, and motions to dismiss and for summary judgment.

Judge Young also noted that if a party captions its filing as an "Emergency," his docket clerk will come find Judge Young wherever he is and get the motion before him. Judge Young may not agree that such a filing raises an emergency and may not take any emergency action, but parties can rest assured that if they style a motion as seeking "emergency" relief, it will be brought to Judge Young's attention without delay.

Courtroom Deputy Clerk:

The courtroom deputy clerk described her function as the overall case manager in Judge Young's courtroom. She works to ensure that Judge Young's schedule is working in accordance with his chief requests: if possible, trials every day with everything else set for afternoons.

Judge Young described his courtroom deputy clerk as a leading expert on practice and procedure who understands the rules of civil procedure and the local rules better than many attorneys. He implored those in attendance who practice before him to call his courtroom deputy clerk if they have any questions about how Judge Young does things in his courtroom.

Law Clerks:

Judge Young introduced one of his law clerks. Judge Young has a number of law clerks and operates his court almost as a mini-law firm. The clerks prepare bench memos for the judge, including a summary of the record and the parties' arguments, as well as a recommended disposition. Judge Young differs from others because, for the most part, he does not use the clerks during jury trials. Rather, he relies on them to be prepared for the motion session and to support him during bench trials.

Judge Young noted that he reads papers in this order: (1) bench memo; (2) any surreply or reply; and (3) the parties' motion, memo in support and opposition. He conveyed his belief that replies and surreplies often reveal parties' weaknesses. While not categorically advising that attorneys refrain from filing replies and surreplies, Judge Young forewarned that such filings will flag for him the vulnerabilities in the filing party's position.

Courtroom Reporter:

Judge Young explained the role and skills of his courtroom reporter who has been with the judge for nearly 25 years. Judge Young encouraged attorneys to look at his reporter's 25 years of transcripts as an invaluable resource. He noted that his reporter's archives include 25 years of jury charges on all different types of cases. If counsel would like to know what to expect from Judge Young for a charge for a given type of case, they are encouraged to contact Judge Young's courtroom reporter to purchase a transcript of a past charge on a similar case.

Judge Young also mentioned that his courtroom reporter has developed a database with the transcripts of every expert who has testified before Judge Young. He suggested that it would behoove counsel when vetting an expert or preparing to depose an expert to see if his courtroom reporter has a transcript from that expert in his archival database.

Questions and Answers

Judge Young then opened the floor to questions. The following topics were discussed:

Transparency:

During the motion session, Judge Young repeatedly communicated his desire to be transparent about his thinking on each matter before him. If he felt a particular argument was strong or weak, he made that clear. Judge Young noted that the reason he comes well prepared, having read the parties' briefs, is that he believes oral argument is most effective when he pushes the argument forcefully to the places that he believes are most critical. He noted that if he is not pushing the argument aggressively, it likely indicates a rare occasion when the press of other business has precluded him from preparing for the motion session in his usual way.

Time Limits for Dispositive Motions:

When asked whether he ever varies the maximum time limits for oral argument on motions, Judge Young said that would be very much out of the ordinary and suggested that never is probably more accurate than rarely. When asked if this pertains to patent cases as well and whether a motion for summary judgment in a patent case would also get a maximum of twenty minutes for oral argument, Judge Young said he does not treat motions in patent cases any differently, although *Markman* hearings are a different animal altogether.

TROs/Preliminary Injunctions:

Judge Young briefly discussed his well-known practice of responding to requests for preliminary injunctive relief by scheduling a trial on the merits in short order. He explained that this remains his practice and believes it is fair and has many benefits, but noted that he also takes into consideration the fact that a schedule which is unduly accelerated may also result in less justice than a more reasonably paced schedule.

Laymen as Patent Jurors:

Judge Young quickly dismissed the notion that lay persons are not qualified for their role, even in complex patent matters. Judge Young emphasized his love for the jury system and his belief that the courts can and do make the typical jury of our peers function successfully in patent cases. Judge Young has never encountered a juror who complained he or she could not decide a matter because they were unable to understand the technology at issue. In no small part, Judge Young attributed this fact to the high level of skill and expertise of the Massachusetts patent bar.