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Seven Questions to Ask Yourself Before Handing in Your Research Project

Bethany Rabe – March 28, 2017

In the last newsletter, I offered "[Six Questions to Ask the Partner Before Starting Your Research Assignment](#)." Since you've no doubt been getting plenty of research assignments as a result of following that sage advice (right?), I now offer you seven questions to ask *yourself* before *handing in* those projects.

1. Have I Briefly Oriented the Reader?

Yes, your introduction should tell the reader what the partner asked you to research, but your findings section should briefly identify where your assignment fits into the broader law as well. Take a step back. Does your memo jump in to a subrule without identifying the rule itself? Does it discuss an exception to an exception? Your partner may be thinking of something she read in isolation, and it will be helpful to her to see where it fits.

I say *briefly* for a reason—you don't want to hand in *[Your Name] on Torts* if the partner just needed to know about the economic loss rule. But, again, do spend a few sentences explaining how things fit together; this not only will help her now but also will be useful in turning your memorandum into a motion or opposition.

2. Did I Reference Relevant Statutes or Regulations?

Please, please, please don't hand in a research assignment that omits relevant statutes. Those of us who "grew up" with Westlaw and Lexis are prone to jump to case law immediately, but you should resist the urge. Your state may have statutes governing the very topic that the partner wants to know about. Attorney-client privilege, other privileges, punitive damages, vicarious liability, alter ego, aspects of lawsuits against partnerships or corporations, right of publicity, defamation, and attorney fees are off-the-top-of-my-head examples of topics that may be governed by statutes (and if you practice in a statute-heavy jurisdiction, like California, there are many more). Cite them, explain them, and note any changes in them. Then explain the case law.

Ditto for regulations. Your statute might not be very specific, but you may find that regulations on that topic are more instructive.

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3. Have I Accounted for and Explained any Changes in the Law?

The law changes frequently. If you're asked to pull case law on the standard for a motion to dismiss in federal court, you wouldn't grab pre-*Twombly* cases (I hope!). Be just as aware that major shifts in the law happen in other areas. For example, if I asked you to pull case law interpreting Nevada's anti-SLAPP statute, you'd have to be careful: it's changed twice in the last five years. Federal dilution law changed significantly in 2006. Expert discovery under the Federal Rules of Civil Procedure got a major overhaul in 2010. We all know that proportionality replaced "reasonably calculated" not long ago. Prechange case law won't necessarily have a "red flag" or other indication that it does not apply to your current project, so check the date of the case, look at what law the court is applying, and value the case accordingly.

That said, there's no reason why you can't use case law that predates a big change if you can justify it. Perhaps the change didn't affect the holding you seek to use, or maybe a statutory amendment just codified what was already out there in the common law. It is nevertheless important to ask yourself the question. Identify the year that things changed, and why/how they changed, in your memo.

Bonus tip ([harkening back to my last column](#)): Remember that this varies by jurisdiction. If your state relies on federal statutes in crafting state statutes and the federal law changes, any state law changes may not happen for a few years, if at all.

4. Have I Accounted for Renumbering?

When I was a young pup, if you wanted to beg the court to let you do some discovery instead of granting the other side's motion for summary judgment, your entreaty was based in Federal Rule of Civil Procedure 56(f). Now, you'd invoke Rule 56(d)(2). The rules of civil procedure are especially prone to renumbering, but other statutes can be renumbered as well. This can affect you in at least two ways.

First, when the partner says she wants research into Rule 56(f), she may mean "Rule 56(f) as I knew it ten years ago." Clarify.

Second, if you're not cognizant of the change, when you are crafting searches for what you know as Rule 56(d)(2), you're going to miss out on a whole lot of useful case law interpreting Rule 56(f), especially if there was no substantive change.

Again, though, remember that state law renumbering (if it happens at all) may lag.

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5. Do Other Sources of Authority Have Anything to Say Here?

There are sources other than case law that can be dispositive on an issue. The local rules of your court are one of the most important. If the local rules lay out the procedure for a motion for reconsideration, you don't have to go scouring the case law (and racking up a big research bill) for case law on the procedure for a motion for reconsideration. Of course, once you know what rule governs, you may want to do some additional searching to see how courts have applied it, but identifying the local rule goes a long way.

The same goes for a judge's personal preferences, which can sometimes be listed on the court's website or distributed to counsel early in a case. If you are new to a case, the scheduling order may have significant information beyond deadlines, such as how the court will handle protective orders or discovery disputes.

6. Have I Identified the "Bad" Cases?

Would the partner like to receive an opposition brief that starts with something like "Although opposing counsel disingenuously declined to mention . . ." ? No? Then please make sure that you identify the "bad" cases along with the good. (Plus, your state's ethics rules no doubt have a rule about disclosure of unfavorable precedent.)

7. Have I Reached a Conclusion?

In all but the most neutral assignments ("I need to know the state of the law on X"), the partner wants to know your opinion. Include it. If you would need further information before drawing a conclusion on a certain issue, or if you think that there are additional areas of research that should be pursued, make sure that you include notation of such at the end of your memo.

Conclusion

I hope that this checklist will assist you in handing in thorough research assignments that the partner will find helpful. Stay tuned for the next Young Advocates Committee newsletter, where I will address research pitfalls that you'll want to avoid.

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