

Judge Asks for Compromise

Colleagues:

Recently a situation arose in a hearing in Judges chambers that gave me pause. I would like to know, what would you have done in the situation?

A hearing on a civil traffic infraction in a very rural county, which is commonly held in chambers. I regularly appear before this Judge, and outside of hearings he refers to me by my first name. While reviewing the evidence I noticed that the charging document in the file violated a state statute that commonly causes it to be dismissed in other counties. We engaged in a discussion about the problem (most likely a software problem that incorrectly displayed the data). I informed the Judge that these were commonly dismissed in an adjacent county. Several more minutes of discussion, a review of the Statute and then the Judge states, "several other attorney's here today with charging document issues on a similar [State Court Rule] violation have taken the officer into the hall and resolved the issue with a reduction in the charge." (No other attorney had raised this issue). More technical discussion, and the Judge makes the same statement again. Ultimately, I took the officer into the hall and negotiated a reduced charge that saved my clients a significant amount of money and accomplished the client's goals. Clients were very happy!

I believe I could have pushed and the infractions may have been dismissed. However, the Judge could have called down to the clerk's office and a copy may have been available that satisfied the statute. If this problem is cured I have nothing to minimize the fines except the "good will" of the Judge. I believe the Judge was asking me to compromise and I did.

Â What would you have done? Would you have held firm with the Judge noting that the State had failed to meet the requirements with the risk of alienating the Judge and with the potential risk that you gave away a more favorable resolution? Would the opinion of the Judge, and the potential to clearly show him that you are a zealous advocate who will hold the State to the letter of the law, sway your actions?Â Or, would you be swayed by the potential to demonstrate you are reasonable and willing to compromise?

Talk among yourselves. I will be listening.

I think you did the right thing – the Judge certainly could have hammered your client and you got the best deal for the client given the cards that were dealt.

WDJiii

Walter D. James III, Texas

I have seen several tickets that came back incomplete or had wrong statutes and such.

The PA's, if it's pointed out, would just amend the charges.

Unless you're completely outside of the SOL and thus nothing could be refiled, what do you gain your client by pushing it?

More time and having to do it all over again?

Sometimes the bottom line is weighing what you gain versus what you lose. And having to start the process all over again can be a huge loss, especially if they have to pay the attorney more.

Erin M. Schmidt, Ohio

At which point did you consult with your clients to take their instructions anew on how to proceed?

Given this situation I would have asked the judge for a moment with my clients after his first making the statement which was meant to nudge you into the hall. I'd explain the situation, lay out the options and let them decide on how far they'd want to push it. "In my experience it should go this way but in the here and now it doesn't look like it will so what do you want to do?"

Anyway, you did go for the deal and your clients were very happy. You don't want happy clients?

Werner R. Kranenburg

Sounds like a case that would end up upstairs (Appellate review). Considering this was a minor traffic infraction, I'm not sure it would have been in the client's best interest to push it. And even if the client agreed to push it, would the value of pushing it be greater than the value of settling quickly. I suppose if your client were a millionaire with a disdain for injustice then maybe the cost would be ok. I don't believe that your personal sentiment on what transpired is really relevant as it's not your case or your life. I assume you had a lengthy discussion on the matter with your client and your client made the ultimate decision as the case should be.

Michael A. Huerta, New York

I would have done exactly as the judge proposed. I would have compromised the charge, and have happy clients. Why take a chance on a dismissal without prejudice, which means nothing except coming back to court for twice the time and fees if (when) it is re-filed.

Marc Matheny, Indiana

Any time the judge presiding over your case recommends that you resolve the case, you would have to have a very specific reason not to listen to what he says.

You had an issue that could have gotten your clients off, or could have had no effect on judge. If he decided to ignore your issue, your client would have an appeal, at significant expense, and maybe they'd win. Or, as you note, judge could have done a little work and found the information that eliminated your issue. Other judges in other counties have used your issue to give you complete victory. This judge used your issue to give you a compromise that your clients are happy with. If you disregarded his advice, he might have been motivated to demonstrate to you the error of doing that.

This is a win, and it was the right thing for you to do.

Patrick W. Begos, New York

You did a right thing - you obtained a guaranteed good result for your client. You could have pushed the error and the judge could have let the county fix what sounds like a clerical or filing error. Then you are doing motion practice on a traffic violation .

Bruce Wingate, New York

2nd that

Joe Gormley

I think you did the right thing also. Pushing the legal technicality and it being finally resolved with your client in a bad position with a hostile judge would be akin to "the operation was a success but the patient died" kind of scenario. You did the reasonable thing.

Graham W. Kistler, New York

I once had a small claims case where, at the first hearing, the judge flat-out said, "no way this case goes to trial. Figure it out, gentlemen." At every status hearing after that, he'd ask if we'd "figured it out." I wasn't the problem, the other attorney was. Finally, about 3 or 4 hearings in, the judge said to me, "what's your number?" I gave it to him. He then asked my OC the same. The attorney stammered something about "need to check with the partner (they were a mid-sized firm that rhymes with Shmonson

Froburn)" whereupon the judge looked at him and said, "Really? On a case like this? Tell you what - how 'bout you go out in the hall and ask him to come here and give me a number?" Suddenly, my OC had a number. The judge split the difference and said, "That seem fair to you?" I, of course, quickly said yes. My OC paused, and the judge looked at him. "I'm sure we can make that work," he responded.

It still took a few phone calls to nail it down, but the next week when we went in for the final hearing, it was right at the judge's number. And my client was very happy. And the associate who stammered in front of the judge? Well, he made an idiotic comment to me in the hallway afterward, which I made certain to communicate to the partner. He wasn't at the final hearing, and he didn't last 6 months after that.

Sometimes I think about that case, and how many others I've had that could have used a judge like that. Too bad more aren't more assertive. I think it would save a lot of time.

Greg Zbylut, California

Looks like the majority agrees you did the right thing. A technicality may win the day, but it can be costly overall for a number of reasons.

It is the client's interest that need to be looked out for.

In a situation like that I lay it out for the client so they can make a well informed decision.

Phil A. Taylor, Massachusetts

I would have presented the situation (pros and cons) to the client and let the client guide me.

Michelle Kainen, Vermont
