
Twelve Most Common Mistakes by Beginning Attorneys

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If you wish to avoid making one of the twelve most common mistakes beginning lawyers make, memorize the following list.

MISTAKE #1: MOST BEGINNING LAWYERS DO NOT PROPERLY KEEP TRACK OF THEIR TIME.

True, a majority of you will be starting legal jobs where time-recordkeeping is not required. But most attorneys, at some point in their careers, will work for an entity that requires that its lawyers keep track of their time. The time to learn how to do it properly is **IMMEDIATELY**.

The key to effective time-recordkeeping is minimizing the interval between the work done and the entry of the time record. Those lawyers who complain least about time-recordkeeping are usually those who note the time spent on a matter at the moment they switch to a different matter. Keep a piece of paper, or perhaps the actual computerized timesheet, at the side of your desk, and make new entries whenever you change the matter you work on. Yes, there will be times in your practice when you cannot do this. In those cases, learn to make a note of time spent at the earliest opportunity. This will soon become second nature.

If you do not follow these rules, you inevitably will forget time that you actually spent working on matters. Even as early as the next day, it is often impossible to accurately reconstruct how you spent your time. This leads to two obvious problems. First, clients will not be charged for the time actually spent on a matter. Second, you will not appear to your supervisors to be working as diligently as you actually are. Neither misrepresentation will help as you seek advancement and promotion.

But beginning lawyers often compound the problem. **They deliberately underreport the amount of their time for fear that they have taken too long to complete the particular task or project.** The justifications are many, most

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stemming from basic insecurity regarding work efficiency. Beginning lawyers assume they are slow and are taking more time than necessary. Moreover, they are afraid the billing attorney will immediately discover how slow they are when it comes time to bill the client and review how much time the beginning attorney has spent. Voila, the lawyer thinks, I'll only charge part of my time.

Again, the client will be undercharged and the beginning attorney's total hours worked will be undercounted, both undesirable results. **Always charge your time as accurately as you can, no matter how much time you have spent on the project.** How are you, a brand-new attorney, supposed to know how long it takes to do a particular task? You have virtually no basis whatsoever for your impression that you took too long. You have no idea how long another attorney would have taken. Let the billing attorney decide if you took too long. That attorney has a much better base from which to make that judgment. That attorney may well expect to write off some of a brand new attorney's time. Senior attorneys are expected to be more efficient. That's one reason they have higher billing costs.

I have never heard attorneys complain about having to write off a beginning attorney's time. I *have* heard many attorneys complain that a particular attorney is not billing *enough* time in a particular month. "What is she doing all day?" "I see him around here in the evenings; is he spending all of his time gossiping with other associates?" **Always keep an accurate record of your time.**

This means you must neither underbill nor overbill. Find out your firm's rules and follow them scrupulously. If you think it smart to overbill, you will soon find out how wrong you are. **Law is a profession of trust.** A partner who thinks you are overbilling time will immediately make a mental note that you are a possible problem, because a lawyer who will steal from a client -- in essence what overbilling amounts to -- is often one who will steal from the law firm as well.

MISTAKE #2: MOST BEGINNING LAWYERS DO NOT RESPECT DEADLINES ENOUGH.

Apparently it is possible in some colleges to routinely obtain extensions for papers not submitted on time, and to schedule your own exams and other due dates. Students are not being put to the test of being on time frequently enough to learn the habit. After graduating from law school, where deadlines again seem to be more relaxed than those imposed by judges, some beginning lawyers have a difficult time adjusting to the tight working schedules many legal projects require.

The consequence of not taking timely legal action can be drastically severe. Do you really think you would enjoy learning this lesson the hard way? Do you want to explain to your client that their suit is barred because you "almost" had the complaint ready when the statute of limitations ran? Do you want the supervising attorney to ban you from ever working on any of her matters again? Do you want to be fired? Of course not!

And it is no excuse that the supervising attorney should have supervised you more closely. You are a professional. Actually, in the case of missing a deadline, you were presumed professional and just proved that presumption incorrect. Always advise the assigning attorney immediately of any special problems, or reasons why you cannot or are unable to do what is expected of you.

Do not think you are safe merely by having met the deadline. You have to meet the deadline with your draft in time to give the supervising attorney ample

opportunity, accounting for their busy schedule, to review the draft, edit the draft, explain what additional research needs to be done, etc. Do not cut those things close or you will cut your own throat. I have never seen partners as livid as when they are put under severe time pressure by an associate's late work product. Some of these attorneys have long memories.

Another manifestation of beginning attorney disrespect for the clock is a cavalier attitude about firm hours. Years ago, I had the misfortune of witnessing the following dialogue between a senior partner ("SP") and a beginning attorney ("BA").

SP: I was looking for you yesterday morning and couldn't find you.
Your secretary said you weren't in, but it was already 10:30 AM.
The firm's official work hours are 9 to 5.

BA: I never get up before 10, but I always work late, so don't worry, I'll work as hard as anyone.

SP: What did you do about classes in college and law school?

BA: I was always able to take afternoon ones. I'm just not a morning person.

SP: What if the clients are morning people?

BA: They'll leave a message and I'll call back later that same day.

SP: What if it's an emergency?

BA: How big an emergency can it be? I'm a lawyer, not a doctor.

If you think BA's answers are perfectly reasonable, then perhaps you should reconsider working in a legal job. **Law is a service profession.** Many times you will have to do things when the clients need them, or want them, even though it is extremely inconvenient for you personally. Often, you will be asked to perform tasks that do not even seem to you to be lawyer jobs, such as collating, delivering, copying, whatever. Do them promptly and efficiently, without whining. It turns out that in actuality, many lawyers joined the profession wanting to be served, rather than do the serving. Many times have I heard lawyers lament: "I thought I wanted to be a lawyer but what I really wanted was to be a client." Many attorneys move on and join the clients, becoming clients themselves. The successful attorneys serve their clients promptly and well.

MISTAKE #3: MANY BEGINNING ATTORNEYS DO NOT PROOFREAD THEIR WORK.

Again, many students appear able to get through college, law school, and the bar exam without learning either how to spell or the basic rules of grammar. But clients and judges expect all written work they see to be perfect. Based on that expectation, when mistakes appear, the assumption will be that the attorney does not pay enough attention to detail. So, the judge wonders, are these citations accurate? So, the client wonders, is the contract carefully drafted? **Most people in the law understand that one word can make all the difference.** Most clients do not proofread their attorneys' work for them, because **law is a trust profession.**

Teach yourself to proofread carefully. Do not trust the word-processing program to do it. Everyone understands that word-processing does not pick up everything. As painful as it is, **you have to get things right.** First few mistakes – "She doesn't pay enough attention to detail." Several more – "She's sloppy." Would you want to

be, or hire, a “sloppy” attorney? Several more mistakes – “He’s stupid. Get him out of here.”

MISTAKE #4: MANY BEGINNING LAWYERS DON’T BOTHER TO “SHEPARDIZE” OR “KEYCITE” THE CASES THEY ARE SUBMITTING TO THE ASSIGNING ATTORNEY.

Later, as happens more often than you would believe, it turns out that one of the cases has been reversed, turning it from helpful to your cause, to harmful. Pray that these mistakes are caught by someone other than the judge the assigning attorney argues before. The sloppier you are, the less credibility you have.

MISTAKE #5: MANY BEGINNING LAWYERS APPEAR AVERSE TO ACTUALLY READING THE APPLICABLE COURT RULES.

My experience is that some beginning attorneys assume that senior attorney’s knowledge of the rules is somehow incorporated into their assignment. It never occurs to them that in many cases the senior attorney has no better understanding of the actual rule than the beginning attorney. In fact, the senior attorney is often relying on the beginning attorney, without actually saying so, to make sure that they are fully complying with all applicable rules. In general, this problem is more acute with state and local rules than with federal rules, but often arises with appellate rules at every level.

Do you think it’s a good idea to say to the assigning attorney, “You should have told me you wanted me to check the rules!” Courts rarely have patience for someone who “does it another way that’s just as good.” Neither do assigning attorneys.

MISTAKE #6: MANY BEGINNING LAWYERS DON’T REMEMBER WHO THE CLIENT IS.

A beginning attorney is given some facts by an assigning attorney, is asked to draft a memorandum of law, goes off to do the research, drafts and carefully proofreads the memo, submits same to the assigning lawyer. Assigning lawyer reads it and asks the firm hiring partner, “Why did you hire another commie?”

What’s the problem? The memo is an evenhanded treatment of the cases and how they apply to the relevant facts given by the assigning lawyer. The beginning attorney has forgotten that he is **an advocate for the client’s position** (my kids used to say “avocado”). The assigning lawyer, unless she is a judge, does not want an evenhanded memo. She wants an advocacy piece. She wants to know how the cases and facts can be used to make a convincing argument for the client’s position. Be an “avocado.”

I have had beginning lawyers, after making this exact mistake, tell me “My legal writing instructor in law school told me to do it this way.” If this is true, the assignment must have been to prepare a memo as a judge’s clerk, or the instructor didn’t know what he was talking about. Remember that you are an advocate for your client – so advocate! This doesn’t mean that you should fail to point out problem cases in your memo or ignore problem arguments. Your task is to distinguish them or answer them in as convincing a manner as you can. Be an avocado.

Because this is a common mistake, it is usually forgiven . . . once. After that, the common phrase used to describe the offending associate when the senior lawyers

have lunch together is “Whose side is he on, anyway?” Remember, most beginning attorneys are younger than the attorneys they work for, and are subject to all the prejudices the older typically feel against the younger. “They are too spoiled, too lazy, too liberal.” By writing a memo that is evenhanded, and not an advocacy piece, you play into the prejudice that you are not an advocate, and are too “politically correct” to work for “our clients.”

MISTAKE #7: MANY BEGINNING LAWYERS TALK FREELY WITH FRIENDS AND SIGNIFICANT OTHERS ABOUT FIRM AND CLIENT MATTERS.

This highly unsafe and unethical practice is indulged in because the matters are interesting and amusing. The blabbers ask that the matter not be repeated, and think “there’s no chance the firm or client will ever find out.” I remember the story of one associate who didn’t think the confidentiality rule applied to other associates at the firm who weren’t working on the matter, and proceeded to fill them in at lunch about a particularly delicious tidbit. He was fired.

There is only one way to be safe: **do not talk about it outside the working team within the firm.** You have not been paying attention to the world if you do not understand that people love nothing better than to repeat other people’s secrets. Didn’t you attend Law School?

“Well, lawyers shouldn’t hide anything, anyway. All the facts should be put on the table and the judge decide. Lawyers are too secretive.” Wrong. Law is a profession of trust. The clients expect confidentiality, and if they don’t get it, they won’t tell the lawyers anything. The firm expects loyalty, and if it doesn’t get it, goodbye.

MISTAKE #8: MANY BEGINNING LAWYERS DEAL WITH THEIR OWN INSECURITY BY MAKING FUN OF CLIENTS AND SENIOR LAWYERS TO OTHER BEGINNING LAWYERS.

Some beginning lawyers, who would never under any circumstances talk about anything confidential, nevertheless appear compelled to make fun of clients and senior lawyers in the firm. (At least, they never do it to the person’s face.) Isn’t it safe just to kid around with your peers, making fun of the foibles of your bosses? Isn’t that human nature?

Yes, it is human nature. Unfortunately, it is also human nature for Beginning Lawyer Smith, who heard these riotous tidbits at lunch to slip them into a conversation with the particular senior lawyer he works with, usually attached to the phrase “Beginning Lawyer Jones said...” Then we all have a good laugh and Beginning Lawyer Smith gets an extra secret laugh at the expense of Beginning Lawyer Jones, who has been called on the carpet by the billing attorney for the client he ridiculed.

Here is the billing attorney’s question to Beginning Lawyer Jones; “Do you think Client X would willingly pay you to help them with this problem if they knew you were making fun of them?” Probably not. There is plenty of opportunity for humor in the practice of law without demeaning other people. Find some other way for dealing with your insecurity. For example, making fun of opposing parties is fair game, within your working group -- have at them!

MISTAKE #9: MANY BEGINNING ATTORNEYS DO NOT TREAT SUPPORT PEOPLE WITH RESPECT.

This is almost a guaranteed marker for failure as an attorney. What makes people think, that because they graduated from law school, they have a license to be abusive to secretaries, paralegals, mailroom personnel, information technology people, and so on? I have no clue. Beginning attorneys should understand from the start that they will not be able to do their jobs effectively unless the support people cooperate. You will not get that cooperation if you do not treat those people with respect. In most instances, they know more about and understand better how to get the job done better than you do. Do not throw away a strong asset. Learn from them. If you build a good relationship, they will probably save you from certain disaster many times.

If a senior lawyer hears you yelling at a secretary, how does she know that your next target won't be a judge's clerk, a prothonotary, or client representative? People who have to yell are either people who do not know how to get things done, or people who procrastinate until the last possible minute and then try to shift the blame.

MISTAKE #10: SOME BEGINNING ATTORNEYS ARE NOT SCRUPULOUS ABOUT EXPENSES.

For some beginning attorneys the huge starting salaries and high billing rates mislead them into thinking that money is no object when it comes to presenting the best possible legal position for the client. This can translate into carelessness about expenses, because the amount at stake seems so insignificant in comparison to the fees being paid. With so much money being spent, who is going to notice that I ordered an expensive bottle of wine for lunch and charged it to the client? Who is going to notice, now that I have spent a month at this hotel while I searched documents, if I have my girlfriend over this weekend and charge up some big room service tabs?

It may seem impossible to believe that beginning lawyers would put their careers at risk like this, but it happens. Treat client money as if every penny counts, because every penny does count. Treat law firm money as if every penny counts, because every penny does count. Even if you are not fired for making this mistake, which you probably will be, you will be under a horrendous dark cloud. **Law is a trust profession.**

MISTAKE #11: MANY BEGINNING ATTORNEYS ARE AFRAID TO ASK QUESTIONS WHEN THEY DO NOT UNDERSTAND SOMETHING.

Many beginning attorneys will not ask questions because they do not want to reveal how much they do not know. But if you do not know, shouldn't you want to learn? Better to learn now, the easy way, by asking a simple question, than to learn the hard way by making a bad mistake.

Senior attorneys understand that law schools make varying efforts to relate their programs to the problems attorneys face in actual practice. For most attorneys, the first few years of practice are a time of intense learning. View them as such. Observe other attorneys carefully. Note their strengths and weaknesses. Learn from both. Read the advance sheets in your practice area. Immerse yourself in constant learning. Never be afraid to ask a question. Senior attorneys will be impressed that you are trying to learn as fast as you can, not that there are many things you don't

know. They know that already.

MISTAKE #12: MANY BEGINNING LAWYERS DON'T UNDERSTAND THAT THEIR REPUTATION IS THE MOST IMPORTANT THING THEY HAVE.

An attorney's reputation begins to build on the first day of law school, and continues to grow (or decline) throughout that attorney's entire career. That reputation will have elements of skill, personality, integrity, ethical standards, imagination, judgment, and diligence. Each encounter with another attorney either builds on or detracts from that reputation. That is why it is so important to follow ethical standards closely, treat other attorneys with respect, and always do as good a job as you possibly can.

Like it or not, other attorneys will talk about you just as you will talk about other attorneys. Are they saying favorable things about you, or unfavorable things? That depends on your skill, personality, integrity, ethical standards, imagination, judgment, and diligence. Like it or not, attorneys are supervised only slightly by the courts, applying the Code of Professional Responsibility. **By far the most important attorney monitoring comes from the informal discussions of fellow attorneys.**

Your personal reputation for trust and service is something you have to build your entire career. If you make the mistakes outlined above, they will become part of your reputation, and will be difficult to overcome. Now you know what the most common mistakes are. They are easy to avoid. Many attorneys have survived making them, but that should not be your excuse for repeating them.

CONCLUSION

Accurate recordkeeping and billing, attention to deadlines, careful proofreading, doublechecking the validity of authority, and familiarizing yourself with the court rules are expected. Failure to do so will appear sloppy to supervising attorneys, clients, and judges. While thoroughness and anticipation of opponent arguments are essential in writing a memorandum, don't forget that it is your responsibility to develop the best possible argument on behalf of your client. Behave professionally toward your colleagues and support staff. Don't squander your client's or your firm's money. Ask questions. Finally, and most importantly, realize that all of these factors contribute to, or detract from, the most valuable asset you have: your reputation.