

Fear of Practicing in Federal Court
Presented by
United States Magistrate Judge Mark Roberts
United States District Court
Northern District of Iowa

1. Should you be afraid? Maybe.
 - a. Practicing in a court with which you are unfamiliar should produce a helpful degree (not a debilitating level) of fear.
 - b. If you were to find yourself in another country where you've never lived or practiced, where the rules were new and unfamiliar, you might be scared to practice there.
2. Where does the fear come from?
 - a. Federal Court and State Court are not exactly alike.
 - b. Uncanny Valley: My theory is that some of the fear of practicing is produced by the uncanniness of the resemblance between Iowa State court and federal court.
 - c. Imposing buildings.
 - d. Different "cultures."
 - i. I think the culture is different in state court and federal court.
 - ii. There's a danger of over-generalizing. My experience was that the culture changed, if not from county to county than from judicial district to district.
 - iii. What is it about that culture?
 1. On both benches, the judges are very busy.
 2. State courts are courts of general jurisdiction and limited geography.
 - a. State courthouse doors seem more wide open.
 - b. State judges are dealing with everything from paternity to probate and medical malpractice to murder.
 - c. Thus, I found in state practice a laudable flexibility of the judges as they navigate among a wide variety of cases.
 3. Federal courts are courts of limited jurisdiction and broad geography.
 - a. Federal judges also see a great variety of cases, but federal courts have limited jurisdiction and zealously make sure we don't act outside of our jurisdiction. That's not to say state judges aren't careful about their jurisdiction, it's just that (I think) there's often less of a question about the existence of jurisdiction in state court.
 - b. Grand jury and open discovery.
 - i. In the criminal context, the federal government uses grand juries all the time. In the state court, my understanding is grand juries are more rarely used.
 - ii. Thus, in federal court there's a finding by someone other than a prosecutor that there is probable cause to believe an offense has been committed.
 - iii. In federal criminal cases, defendants have access to the Government's discovery file, but depositions

- are almost unheard of. Federal defendants also have access to grand jury transcripts.
- iv. Thus, my impression is that this adds up to more flexibility in criminal discovery than in state court.
4. Cliques and strangers: My impression is that both court systems have areas of practice with lots of repeat players and some areas where the field is wide open.
 5. Summary judgment standards.
 - a. “The judgment sought shall be rendered **forthwith**¹ if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981 (emphasis added).
 - b. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56 (a).
 - c. My personal view is that the standards are essentially the same, but the Iowa appellate courts have been less likely to uphold summary judgment.
 6. Summary judgment timing.
 - a. “The motion shall be filed not less than 60 days prior to the date the case is set for trial, unless otherwise ordered by the court.” Iowa R. Civ. P. 1.981(2).
 - b. “Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.” Fed. R. Civ. P. 56(b).
 - c. In state court you need to try to find the “sweet spot” to file your motion. If you file it too early, my experience was that you’d hear about the discovery the other side still needed to do – and alert them to the defects in their case they might be able to fill. If you file right at 60 days before trial, you’re not giving the judge much time to rule.
 - d. In the Northern District of Iowa we require that discovery be completed fairly early. We also require that any dispositive motion be filed at least five months before the trial ready date.
 - i. We’d like to think this is good for the parties and the Court.
 - ii. I suspect this is a key component of the “fear.” It requires litigants to think and plan ahead. It also

¹ Iowa Rules directing something be done forthwith: Rule 1.807 (transferring cause), Rule 1.955 (entering judgment on verdict), Rule 1.708 (ceasing a deposition), Rule 1.444 (notifying a party they may plead further), 1.442(5) (judicial officer transmitting documents to clerk for filing), Rule 1.308 (filing affidavits proving service by mail), Rule 1.808 (transmitting record of action brought in wrong county).

means you must start working on your discovery and experts right away.

3. Distance.
4. Jury makeup and selection.
5. Do's:
 - a. Read the rules – including the Local Rules.
 - b. Read the Scheduling Order and Discovery Plan AND the Trial Management Order.
 - c. Cooperate with opposing counsel.
 - d. Call the Clerk of Court. The clerk's office is filled with nice people who want to help you. They want to help you avoid problems or fix problems if they do occur.
 - e. Come to the courthouse. I always found it very helpful to have been to the courtroom long before the first day of trial. It helps reduce anxiety if you know where to park and how long it takes to get through security. It also helps to visualize how your presentation may go and explain things to you client and witnesses.
 - f. Review technology with Court IT staff.
 - g. Attend hearings.
 - h. Be on time.
 - i. Plan how to fill trial time with witnesses.
 - j. Be nice.
6. Don'ts:
 - a. Lie, mislead, shade the truth, lack candor, or fail to disclose.
 - b. File a motion without meeting and conferring with opposing counsel.
 - c. Invite emergencies (i.e., do plan ahead).
 - d. Forget the microphones are on.
 - e. Rely on getting a continuance.
 - f. Rely on informal discovery deadline extensions.
 - g. Be late.
 - h. Be afraid to ask.
 - i. Be surprised if the answer is "no."
 - j. Call a United States Magistrate Judge "the magistrate."