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Art & Skill of Representation

Some Unwritten Rules

Friends, this topic is very close to my heart, as I have witnessed at many occasions the court room drama very closely in various positions e.g. as a Litigant, Chartered Accountant, Lawyer and also as a Judge.

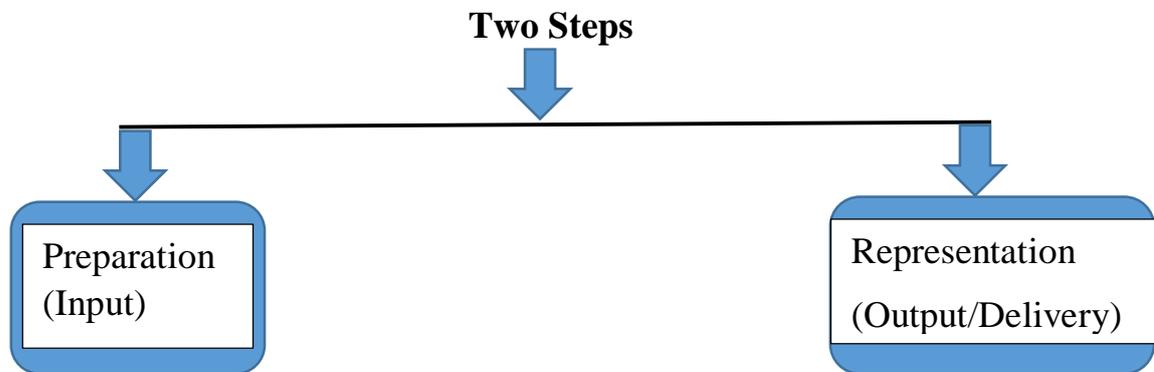
Though the topic is highly subjective and different experts would carry varying opinions in given situations and thus no clear and fixed rules can be given but on the basis of experience coupled with our keen observations, some of the fundamental rules (do's and don'ts) can be shared, which are likely to work well in most of the situations.

For making my deliberations on the topic as interesting, I want to make it participative and therefore to achieve this objective, I have created Multiple Choice Options (MCOs) based on the practical situations as we may be required to exercise in the court room, at times.

If you would sincerely tick your choices, it would help me to articulate my talks as much useful as possible, for you.

Art & Skill of Effective Representation

I. The Representation involves following:



Give your opinion:

- (a) I cannot say
- (b) The above statement is correct
- (c) I don't agree with the statement
- (d) It involves third part also viz. Follow Up (with the court)

II.

Thorough
Preparation

Ensures

Good & Effective
Representation

- (a) TRUE
- (b) FALSE

III.

Ineffective
Representation

Implies

There was inadequate
preparation

(a) TRUE

(b) FALSE

IV. Prioritise and choose aptly, as it matters most in the court room, according to your preference and understanding:

- a) Technical knowledge of the subject
- b) Human Engineering
- c) Court Crafting

V. Prioritise and choose aptly, as it matters most in the court room, according to you:

- a) Background of your Case
- b) Background of the Judges before you
- c) Background of the Opposite Counsel

VI. How would you begin your arguments in the court room:

- a) With the narration of facts
- b) With your explanation on Law
- c) Quotation of case laws relevant in the case
- d) Punch line of the issue involved in the matter.

VII. What would you like to mention firstly before the Judge to draw attention of the court:

- a) Judicial precedents available from highest possible court of the country
- b) Cases decided by the concerned Judges before whom your case is fixed
- c) Precedents based upon internationally accepted principles

VIII. What all would you put before the court and cover them well in your arguments:

- a) Legal precedents against you
- b) Legal precedent in your favour
- c) Both of the above

IX. What would you choose as a pitch of your arguments:

- a) Strong diction (with loud voice) to create dominance effect in the court room
- b) Soft and subtle, however easily audible to the Judges ('Respectful but Firm')
- c) Complaint full voice with revengeful tone and tenor
- d) Slow sound with begging gestures

X. In the court room, you would show up with the body language and posture of a:-

- a) Fighter and combat man
- b) Reformist (of the society)

- c) Saviour and Protector (of the client)
- d) Cool and calm personality seemingly with a balanced attitude
- e) Strong personality (having all the traits as mentioned in 'a' to 'd', above)

XI. What is more important in the court room:-

- a) Your impression about the Judges
- b) Judges' impression about you
- c) Judges' impression about the opposite counsel
- d) Opposite counsel's impression about the Judges

XII. If the chance is given to you:-

- a) Would you like to start the arguments
- b) Would request the opposite counsel to start the arguments
- c) Depends upon your mood
- d) Depends upon the mood of the opposite counsel
- e) Depends upon the mood of the Judge
- f) Depends upon the facts and circumstances of your case

XIII. The impression you would like the judges to make about you would be that of a:-

- a) Good story teller (who gives wide coverage on facts and case laws)
- b) A person with good sense of humour and can be a good stand-up comedian
- c) An interesting personality having wide knowledge of worldly affairs
- d) A strong personality (who should not be made annoyed with unwanted queries)

- e) A professional who is sincere and honest in his working and generally comes prepared and makes relevant talks and confines to his points and minds his own business and cannot be swayed away or shaken easily and remains persistent till his points are noted.
- f) A gentleman with a smiling face who would do his work as per guidance of the Judges and would never interrupt the hearing during the arguments of the opposite counsel.

XIV. On a 'Ridiculous' or 'Inappropriate' query (as you may feel) from the court, you would:

- a) Laugh at it and tell it so to the Court and suggest the Court to raise some other query
- b) Raise strong objection to it and warn the court of complaint to higher authorities for such conduct.
- c) Ignore it and/or refuse to answer it.
- d) Gracefully request the court that it is not an appropriate and pertinent query and so it need not be asked and answered
- e) Keep straight face (with stable mind and cool and calm posture) and answer the query if possible or wisely rephrase the query gently and answer the rephrased query skilfully.
- f) Depends upon facts and circumstances of the case and situational strategy to be followed.

XV. While addressing the court you would like to maintain eye contact with:-

- a) The Senior Judge
- b) The Junior Judge
- c) More dominating Judge, who is taking more interest in your case

- d) Both of the Judges
- e) None of Judges, rather keep the focus on your file and papers
- f) None of the Judges, rather keep the focus on the conduct and arguments of the opposite counsel
- g) None of the Judges, rather have frequent looks upon the audience sitting at your back who should be impressed and whose instant response must be known to you.
- h) Make no distractions from your own arguments and thus none of (a) to (f) above

XVI. If time for complete hearing of the matter is insufficient, and the court asks you to choose any one of the following, your choice would be:-

- a) Explanation of law applicable as contained in the statute
- b) Relevant case laws
- c) Satisfying the court with the requisite factual understanding along with substantiation of the relevant facts with cogent evidences available on record which have been either erroneously rejected or altogether ignored while deciding the case against your client by the lower court/ authority.
- d) Effective rebuttal of the arguments of the opposite counsel which might prejudice the mind of the court.
- e) Demonstrating to the court that the action of the officer who passed order against your client was malafide.
- f) Satisfying the court that the 'principle of consistency' as well as 'judicial discipline' demand that the court should decide this matter in favour of your client.

XVII. If during the hearing, insufficient time is available with the court for a matter you are arguing, you would like to ensure that:-

- a) All the points you have prepared must be argued, irrespective of the fact whether the Judges are able to jot down and understand them or not
- b) Cover only most important points in your arguments and ensuring that these are properly understood and noted by Judges, and for the remaining points submit 'Brief Synopsis' to the court for all the points giving full coverage on facts and relevant case laws, and placing reliance upon the same at the conclusions of the hearing.
- c) All the arguments/points raised by the Opposite Counsel are rebutted/jettisoned

XVIII. If a factual query is asked by the court, whose answer is not known to you instantly, you would:

- a) Answer it on the basis of your memory and guess work or whatever comes to your mind
- b) Try to dodge the query and instead answer something else
- c) Request the court to wait for a while and sift through the files and give whatever answer is found appropriate at that stage
- d) Request the Court to give another date to get the desired information correctly
- e) Reply back to the court that the query is not pertinent to the issue involved

XIX. If you notice any disagreement between the Judges themselves on any point, you would prefer to:

- a) Make an exit and take another date on your request
- b) Continue with your arguments persistently and conclude the hearing somehow.
- c) Request the Opposite Counsel to seek another date
- d) Pick up a quarrel with the Opposite Counsel so that confusion is created and case is adjourned by the Court automatically

XX. If an Assessment Order (passed under Income Tax Law) can be challenged on the grounds of Limitation, Validity of Re-opening and Merits of the Addition, then your sequence of arguments ideally would be:

- a) Merits, Re-opening and Limitation
- b) Re-opening, Limitation and Merits
- c) Limitation, Re-opening and Merits