

## **3/3/14 BENSINGER STANDARD OPERATING PRINCIPLES** (prepared by Peter Bensinger, Jr. for Team Orientation)

### **GENERAL GUIDANCE**

#### **I. ENHANCE YOUR CREDIBILITY**

- A. A trial is a contest of credibility**
- B. Get it right**
- C. Be prepared**
- D. If your Mother says she loves you, check it out**
- E. Show, don't tell; what is the proof?**
- F. Bullshit no one ever**
- G. "I don't know" is a good answer**

#### **II. WHEN YOU WAKE UP, ASK**

- A. How are we going to win this case?**
- B. What is the key to winning?**
- C. What is the key evidence?**
- D. How are we going to get this in?**
- E. Who is going to tell this story?**

#### **III. YOU ARE THE CASE**

- A. Accept responsibility for the whole case**
- B. No ticket punching**
- C. See what has to be done and do it**
- D. Be a player, not a clerk**

#### **IV. BE THE TEACHER**

- A. Put yourself on the bench or in the jury box**
- B. Assume you know nothing about the subject matter**
- C. Teach the fundamentals; what do jurors need to know? How can I show this?**
- D. Baby steps**
- E. Think visually – what am I showing?**
- F. Ask “so what?” “Who cares?” “Why important?”**
- G. Explain why understanding X matters**

#### **V. ORAL PRESENTATION -- “LOUD AND SLOW” (FIRM MOTTO)**

- A. Speak loud and slow -- On calls, in meetings, in life**
- B. Short sentences in the active voice**
- C. No adjectives or adverbs unless essential**
- D. Do not interrupt with independent phrases**
- E. Avoid “um” and “like”**
- F. Avoid hedgy words (somewhat, pretty, I guess)**

#### **VI. HONOR YOUR TEAM**

- A. Logistics drive filings and trials**
- B. The junior team member is responsible for logistics**
- C. Treat staff with respect**
- D. Pitch-in and do whatever is necessary**
- E. It is your job is to save a failing team member**

## **VII. COMMUNICATE**

- A. Teams fail due to communication breakdowns**
- B. Maintain constant communication with team & client**
- C. Confirm with client proper distribution list; avoid creating unnecessary input by unnecessarily expanding distribution**
- D. Keep everyone in the loop; cc the team even when your communication is point to point.**
- E. Be transparent; get credit with client for what you do**
- F. Meet face to face**
- G. Avoid email culture; go down the hall; pick up the phone. Have a conversation.**
- H. Ask when you don't know**
- I. Never bullshit anyone (team; client; adversary)**

## **VIII. BE RESPONSIVE**

- A. We are in a service business**
- B. You need to be reachable**
- C. Tell your assistant whereabouts**
- D. Forward voicemail to your cell**
- E. Return calls the same day**
- F. Get cover, if you are unreachable**

**IX. BE A GOOD PERSON**

- A. Treat people how you want to be treated**
- B. No yelling, cursing or abuse. Ever.**
- C. Respect team members even in screw ups**
- D. Be nice to everyone. Staff, custodians, clerks.**
- E. Control yourself. You can't control everything.**

**X. KNOW THE LOCAL RULES, STANDING ORDERS, PROCEDURES**

- A. On every case, you need to read and know:**
  - 1. The local rules**
  - 2. General standing orders**
  - 3. Your Judge's standing orders and practices**
- B. When you are responsible for a filing, re-read:**
  - 1. The applicable Federal, State and local rules**
  - 2. General standing orders**
  - 3. Your Judge's standing orders and practices**
- C. Go elbow to elbow with the legal assistant to review the rules governing a filing; stay coordinated**

**XI. FOCUS ON WHAT COUNTS -- THE 80/20 RULE**

- A. 80% of discovery is wasted**
- B. 20% of discovery is considered**
- C. The case is tried on 20 documents**
- D. Focus on what makes a difference**

## **XII. MISTAKES**

- A. Everyone makes mistakes**
- B. Test of a champion is how you deal with mistakes**
- C. When you err, take responsibility, fix it and move on**
- D. Work the problem; do not lament or assign “blame”**
- E. Do not delay. Do not hope no one will notice**
- F. When you make a mistake, execute on the following:**
  - 1. Acknowledge the mistake (“I made a mistake”)**
  - 2. Work the problem (develop options, pros & cons)**
  - 3. Form a recommendation for fixing the problem**
  - 4. Go to the person affected & apologize face to face**
  - 5. Share your recommendation & agree on a plan**
  - 6. Execute the plan**
  - 7. Move on; let it go**
- G. Conduct an after-action**
- H. Leaders learn from mistakes. They don’t repeat them**

## **XIII. TRUST YOUR INSTINCTS – SPEAK TRUTH TO POWER**

- A. Your job is to speak your mind**
- B. If your gut is tight, say so**
- C. Act on your instincts**
- D. If you are right, you save the team**
- E. If you are wrong, you learn and recalibrate**

#### **XIV. MAKE YOUR CLIENT LOOK GOOD**

- A. Your client has a client**
- B. If the client looks good to the boss, you win**
- C. If you are right, but the client looks bad, you lose**
- D. Advance your client's career**

#### **XV. MAINTAIN BALANCE IN YOUR PERSONAL LIFE**

- A. Your personal life matters**
- B. Family matters**
- C. Your health and sanity matter**
- D. Exercise is a legitimate priority**
- E. Communicate your personal commitments**
- F. Work around personal commitments when possible**
- G. Protect yourself from feelings of resentment**
- H. A happy person is a better lawyer**

#### **XVI. REREAD THE KEY DOCUMENTS**

- A. Documents are key to winning**
- B. They contain gold**
- C. Re-read them to find the gold**
- D. Do not get lost in the forest**

## **ON WRITING**

### **I. SHOW, DON'T TELL**

#### **A. Show me the proof**

- 1. What the court actually said**
- 2. What the document actually says**
- 3. No ellipsis**

#### **B. No characterization or commentary**

#### **C. Visual persuasion**

- 1. How can I show this?**
- 2. How can I clarify and simplify this? (not make dumber)**

### **II. SHORT SENTENCES IN THE ACTIVE VOICE**

#### **A. No adjectives or adverbs**

#### **B. Let the nouns and verbs do the work**

#### **C. No interrupting phrases**

#### **D. Judicious use of commas**

#### **E. Follow Strunk & White**

#### **F. Omit needless words**

#### **G. Use shorter words**

#### **H. One idea per paragraph**

### **III. FORWARD ONLY FINISHED PRODUCT**

- A. You make the call**
- B. No love notes, blanks, alternatives**
- C. Blue Book citation with pin cites 1st time, every time**
- D. No missing parts: Cover, signature, cert of service**
- E. Do not send a draft over the page limit -- you cut first**



## **OPERATIONAL RULES**

### **I. EMAIL**

#### **A. Beware of loose email talk**

- 1. Do not treat email like idle conversation**
- 2. Do not put in email anything you would not want to see on the cover of the Wall Street Journal**

#### **B. Make no assumptions about sent email**

- 1. Do not assume because you sent the email, the recipient received it or paid any attention to it**
- 2. For any important email communication, call the recipient and get live confirmation**
- 3. If you can't, in your email ask for a reply and do not assume anything until you have a confirmation**
- 4. "But I sent an email" -- is no excuse**

#### **C. Write emails as "one screeners" when possible**

#### **D. Write email in short sentences**

#### **E. Break up points visually. Think of reading on PDA**

#### **F. Avoid full paragraphs when possible**

#### **G. Use email for reporting and conveying information**

#### **H. Avoid email for substantive debate (strings)**

#### **I. Debate in real-time face to face or on the phone**

#### **J. The email subject line should say the case name**

## **II. USE LYNC FOR TELEPHONE CONFERENCES**

- A. When you have a client telephone conference, have the team log into a chat IM session Lync**
- B. Limit comments to substantive points; no chatter**

## **III. GRAPHICS AND POWERPOINT**

- A. Read the Tufte books and Ritter on Trial Graphics**
- B. Use PowerPoint for show don't tell and juxtaposition**
- C. Limit the bullet lists**
- D. Beware of just reading your slides**

## **IV. DOCUMENTS -- FILE NAMING AND HEADERS**

### **A. File Names**

- 1. Every digital document should have a file name that begins with the date. "20130819"**
- 2. Then a space and a description that would help one find the document if one were using a file search tool to surface it. "20130819 Bayer Cipro appeal brief as filed"**
- 3. Do not give documents generic names. "Memo." "Brief." Name so doc can be found using search**

### **B. Headers on workproduct and draft filings**

- 1. Every piece of workproduct and drafts of letters or filings should have a header**
- 2. The header should be 8 pt, right justified.**
- 3. The header should start with autotext "file path and name." This shows on whose machine or server the document originated**
- 4. The header should then have "Bartlit Beck attorney workproduct"**
- 5. The header should end with autotext "last printed on." This will help distinguish one draft from another when you are making changes on the same day but not changing the file name.**

## **SOFTWARE & EQUIPMENT**

### **I. GADGETS**

- A. Dongle for VGA and ethernet**
- B. 8 gig flash drive or 64 gig to 128 gig SD card**
- C. External 160GB hard drive or bigger**
- D. Laser pointer**
- E. Remote Presenter**
- F. Hot spot for wireless email on the road**
- G. Timer**

### **II. KNOWLEDGE OF BASIC SOFTWARE**

- A. Word styles**
- B. Excel formulas and dashboards**
- C. PowerPoint custom animation**
- D. Access synchronization protocol**
- E. TrialMax**
  - 1. Loading .pdfs**
  - 2. Renaming sqibs**
  - 3. Screen capture F11**
- F. Textmap issue coding**
- G. Adobe OCR and redaction**
- H. “Beyond Compare” for folder comparisons**

**END**