

## THE INDISPENSIBLE LOCAL COUNSEL: PARTNERING WITH LEAD COUNSEL IN KANSAS LITIGATION

Increasingly, some of the nation's most complex and high-profile litigation is handled by a defendant's national or regional counsel with the assistance of local counsel from the forum jurisdiction. Kansas courts have served as the forum jurisdiction for numerous class action lawsuits and other sophisticated litigation over the years. Being retained as local counsel in Kansas offers a rewarding opportunity to work with other first-rate attorneys on prominent cases. Whether the role as Kansas local counsel is limited in scope or expansive, it is a vitally-important one, both to lead counsel and the client.

By heeding a few key principles when serving as Kansas local counsel, an attorney can greatly contribute both to the comfort level and satisfaction of lead counsel and to a positive outcome for the client. Keeping the following suggestions in mind can help an attorney become a top-notch local counsel – one who can provide indispensable assistance and help the lead counsel shine.

**1. Clearly understand the scope of your role, and be flexible to future modification of that role.** First and foremost, ensure that your anticipated role as Kansas local counsel is clearly defined. Subject to the required involvement of local counsel noted in Sections 2 and 3 below, make sure that you otherwise understand, up-front, who will have responsibility for initiating and/or responding to discovery, drafting substantive briefs, handling depositions, and participating in trial. In some cases, lead counsel may anticipate that he or she will handle virtually all aspects of the case with minimal assistance from local counsel. In other cases, lead counsel may serve in a more administrative role, requesting that local counsel take the laboring oar. Sometimes these roles will be plainly delineated in written local counsel

guidelines, but if no guidelines exist make sure your lead counsel spells it out to you. Then, retain flexibility about handling your designated aspects of the case. The role of local counsel is often subject to fluidity and revision as the case progresses and sometimes local counsel has minimal control over whether his or her role expands or contracts in size. Lead counsel who becomes swamped should be able to depend on local counsel to pinch-hit with research, brief writing or fact discovery whenever necessary. Similarly, building a trusting relationship and making a first-rate effort during the pendency of the case has the potential to lead to more responsibility as the case progresses.

**2. Fulfill your duty beyond just signing court filings.** Kansas Supreme Court Rule 116 requires in all *pro hac vice* admissions that “[t]he Kansas attorney of record shall be actively engaged in the conduct of the case; shall sign all pleadings, documents, and briefs; and shall be present throughout all court or administrative appearances.” Similarly, D. Kan. Rule 83.5.4(c) requires that “[a]ll pleadings or other papers signed by an attorney admitted *pro hac vice* must also be signed by a member of the bar of this court in good standing, who must participate meaningfully in the preparation and trial of the case or proceedings to the extent the court requires. “Because of local counsel’s duty to actively participate in the representation of the client, it is impermissible to blindly rubber-stamp filings and send them to the courthouse for filing. Local counsel is ultimately charged with supervising lead counsel’s conduct and accountability under K.S.A. 60-211 and F.R.C.P. 11 should not be taken lightly. Local counsel must

be satisfied that a reasonable basis exists for representations made within all filings pursuant to K.S.A. 60-211(b) and F.R.C.P. 11(b), even if questioning such basis with lead counsel could temporarily cause tension.

- 3. Offer your involvement in meet-and-confer opportunities with opposing counsel, particularly over discovery disputes.** Involvement of Kansas local counsel can be particularly helpful when discovery disputes arise, beginning with drafting of golden rule letters, all the way through filing motions to compel. Kansas local counsel should ensure compliance with local meet and confer requirements, such as the D. Kan. Rule 37.2 admonition that “[a] ‘reasonable effort to confer’ means more than mailing or faxing a letter to the opposing party” and the attendant requirement to “in good faith converse, confer, compare views, consult, and deliberate, or in good faith attempt to do so.” Often, bold discovery stances that may be the norm in some metropolitan jurisdictions may not be well received in Kansas courts. If your lead counsel comes across as uncivil, it could detrimentally impact the case, so local counsel’s guidance and involvement is important.
- 4. Know your local rules and informal practices inside and out.** Local counsel must demonstrate familiarity with the Kansas Rules of Civil Procedure and with local rules and practice to assist lead counsel knowledgeably and effectively. If you cannot adeptly advise lead counsel as to the nuances of prac-



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(Continued on page 6)

(Continued from page 5)

ting in the Kansas courts, then a huge opportunity is lost. Convey important procedural concepts early, and ensure continued compliance with all rules throughout.

5. **Provide evaluative information regarding the judge, local opposing counsel, and the jury pool.** The defense's strategy may hinge on the judge that was drawn, the opposing counsel in the case, or the track record of the jurisdiction for its jury results. Lead counsel must be able to depend on local counsel for education and insight as to Kansas courts and its players, *i.e.*, reputation, preferences and pet peeves of the judge on the one hand and qualifications, experience, and track record of opposing counsel on the other hand. If local counsel has access to recent jury verdicts that demonstrate an instructive trend with Kansas jury perceptions, it can be invaluable. If you lack the personal familiarity needed to provide this evaluative information, promptly solicit feedback from your colleagues at your firm. If you are a sole practitioner or colleagues within your firm have no helpful input, reaching out to members of the Kansas Association of Defense Counsel through our organization's list serve (<http://finance.groups.yahoo.com/group/kadclistserve>) is the next best thing.
6. **Respect the relationship lead counsel has developed with his or her client and steer clear of getting between them.** Lead counsel has, no doubt, worked hard to earn and develop the relationship with its client. There is no place for local counsel acting as a vulture with attempts to interject him or herself into the relationship or to selfishly try to capitalize on it. Short of some ethical impasse that requires intervention, the focus of local counsel should be on serving lead counsel well. Work hard to impress and cooperate with lead counsel

and it may be a rewarding relationship of its own in the future, but trying to shine the spotlight on yourself in front of the client for selfish gain will likely only come back to haunt you.

7. **Support the seamless defense strategies the client has developed in utilizing national or regional counsel.** One of the key benefits of a client relying on national or regional counsel is the consistency with which similar or copycat cases may be defended. The client's dissemination of information, consistency in pleadings, analysis of merited defenses, appropriate discovery responses and development of persuasive trial themes all may be enhanced when lead counsel oversees this continuity. If you handle a filing without review by lead counsel and it inadvertently compromises the client's position on an issue, that inconsistency will certainly be manipulated by opposing counsel to his or her benefit. Make sure not to compromise the tactical stability the client has endeavored to maintain by making a renegade filing or verbal statement.
8. **Defer to lead counsel's in-depth knowledge of the client and the facts, offering a fresh and objective perspective if warranted.** Particularly when a client is faced with copycat lawsuits across the nation, it is an asset to the client that its lead counsel knows the facts, the issues, the defenses (strong and weak), and likely knows the lead co-defense counsel as well as the lead opposing counsel behind the litigation. Maintaining consistency from case to case is vital and can make a difference between presenting a tried-and-true defense or rendering a crippling blow to the client. At the same time, if lead counsel seeks your fresh perspective on certain aspects of the case, be candid and offer them for what they are worth.
9. **Be a great host when lead counsel comes to town.** Enjoy the opportunity

for fellowship when your lead counsel comes to town. Provide recommendations on hotels and restaurants far in advance, and treat him or her to a memorable meal or event. You may find that a small gesture toward collegiality is the best memory that each of you have of the litigation, even years later.

10. **Swallow your pride and serve with grace.** Serving as local counsel is no place for unfettered hubris. Even if you happen to be a veteran, silver-haired dean of the trial bar in Kansas – accustomed to running the show with your own clients – make sure to defer to and respect the role of the lead attorneys, because the client relies on lead counsel for good reason. You may find it difficult to take instruction from another attorney, particularly if the lead law firm includes a team of fine attorneys many years your junior. But serving as local counsel takes the right demeanor and attitude. Develop an "At Your Service" attitude and get over any stigma that you must play second fiddle to lead counsel.

The success of the relationship between local counsel and lead counsel depends on many variables, but following the above "best practices" will go a long way to developing a productive and positive relationship. Enjoy the opportunity to be a part of a worthy team, and you could ultimately become an indispensable partner in the success of the defense in Kansas.

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