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This Week's Feature

The "Compleat" Local Counsel: Best Practices for Serving Your Lead Counsel Well

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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. Being retained as local counsel offers a rewarding opportunity to work with first-rate attorneys on prominent cases. Whether the role as 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 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 the "compleat" 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 local counsel is clearly defined. Make sure that you 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 if 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. 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 himself or herself

into the relationship or to selfishly try to capitalize on it. Short of some ethical quandary that requires intervention, the focus of local counsel should be on serving lead counsel. 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.

3. Do nothing to jeopardize the seamless defense strategies the client has developed by utilizing national or regional counsel.

One of the key benefits of a client relying on national or regional counsel is the consistency in 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 can 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 complete by making a renegade filing or verbal statement.

4. 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 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 defense. 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.

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 as to the particular jurisdiction and the 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 jury perceptions, it can be invaluable. If you lack the personal familiarity needed to provide this evaluative information, promptly solicit feedback from colleagues at your firm. If you are a sole practitioner or colleagues within your firm have no helpful input, reaching out to members of DRI or your state and local defense organizations is the next best thing.

6. Know your local rules and informal practices inside and out.

Local counsel must demonstrate sufficient familiarity with state law and local rules and practice to assist lead counsel knowledgeably and effectively. If you cannot adeptly advise lead counsel as to the idiosyncrasies of practicing in your jurisdiction, then a huge opportunity is lost. Convey important procedural concepts early, and ensure continued compliance with all rules throughout.

7. Do more than just sign the documents.

Because most jurisdictions impose an ethical duty on local counsel 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 Rule 11 should not be taken lightly. Local counsel must be

satisfied that a reasonable basis exists for statements made within all filings, even if questioning such basis with lead counsel could temporarily cause tension.

8. Offer your involvement in meet-and-confer opportunities with opposing counsel, particularly over discovery disputes.

Involvement of 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. Often, strong stances that may be the norm in metropolitan jurisdictions may not be well received by the court in more rural forums. If your lead counsel comes across as uncivil, it will only hurt the defense, so local counsel's guidance and involvement is important.

9. Be a great host when lead counsel is in 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. You may be the veteran, silver-haired dean of the trial bar in your jurisdiction – accustomed to running the show with your own clients – and find it difficult to take instruction from another attorney. You may even find that the lead law firm includes a team of fine attorneys many years your junior. Defer to and respect the role of these attorneys because the client relies on lead counsel for good reason. 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 your jurisdiction.

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