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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

How To Survive Litigation On The Fast Track

By **Stephanie Russell-Kraft**

Law360, New York (July 30, 2015, 1:40 PM ET) -- Whether they come in the form of arbitrations, requests for temporary restraining orders, or full-blown trials, expedited legal proceedings can be an incredible strain on a litigator's workload, mental health and family life. But cases on the fast track can also have a silver lining.

Here are the six most important things to keep in mind during a whirlwind proceeding:

Get on the Phone Early

Working collaboratively with opposing counsel can be a good thing in any case, but on a fast-track trial it's imperative, veteran litigators say.

"One of the things I like to do is pick up the phone and call the plaintiffs' lawyer and try to come up with an expedited discovery plan and see if we can come to an agreement between the parties," said Matt Mandel, head of the litigation department at Weiss Serota Helfman Cole & Bierman PL.

Anything else should be aired out with a judge, he added.

Buchanan Ingersoll & Rooney shareholder Rick Morgan also said it's best to get any potential conflicts out of the way as early as possible.

"Little time should be wasted before involving the court in discovery or scheduling disputes to ensure that deadlines do not impair the ability to fully explore the facts of the case," Morgan said.

Lastly, it's important to open up clear lines of communication with your client as early as possible.

Axinn Veltrop & Harkrider LLP IP partner Jeremy Lowe does this by scheduling twice per week standing conference calls with his client.

"That way, everybody is informed of exactly what the next steps are going forward," he said.

Focus Only on What Matters

Since expedited cases can move twice as quickly as standard proceedings, expert litigators say the key to success is to focus only on what matters and to immerse yourself into the heart of the case with minimal distractions.

"This is critical because you don't have the luxury of allowing things to percolate in your head for months or even years, and you want to make sure your strategy in approaching

the case is absolutely sound," said Rob Niccolini, a shareholder in the Washington, D.C., office of Ogletree Deakins Nash Smoak & Stewart PC.

You also don't have the luxury of figuring out one part of your case before developing the strategy for the next, according to John Dragseth, a principal at Fish & Richardson PC.

"You have to make your best guesses early and then adjust quickly as the case develops," he said.

And when you're short on time, don't focus on an issue that only has a 5 or 10 percent chance of success at trial, according to Michael Doluisio of Dechert LLP.

"You just don't have time to deal with that," he said. "You have to avoid distractions and be totally focused on developing your case and moving it forward."

Develop a Clear Work Plan

Aside from communicating with co-counsel and homing in on the most important issues, it's important to kick off a fast-track case with a clear and thought-out plan for who's doing what. Because once things get moving, you'll need people to know what their role is and to do their jobs well.

For Nancy J. Geenen, managing partner at Suann Ingle Associates, that means getting trial consultants involved in the earliest stage of planning her database management, technology and graphics.

"These consultants are in the courtroom all the time and will have advice for getting the trial prepared efficiently," she said.

An IT expert, for example, can be a lifesaver during a speedy trial, according to Jim Robenalt, a partner in Thompson Hine LLP's litigation group, who recommends looping these professionals in as early as possible.

"I had a case where we had limited time before a jury, and my opponent had clearly not spent time with his IT person," Robenalt said. "They were just all over the place with delays, finding the wrong clips, etc."

By the time the trial comes, every player from the associates to the contract attorneys should know exactly what they're doing. To that end, daily team meetings are also essential during fast-track trials, experts say.

"You can't have somebody go off the rails for a week or two, because you don't have time for that," Doluisio said.

Stay Organized

Staying organized is the key to any litigator's success, but the stakes are even higher when a case is moving quickly.

Martha Gaythwaite, chair of Verrill Dana's trial and litigation group, keeps her team organized with internal agenda and task lists, which she updates and modifies as a case progresses and deadlines are met.

"It's helpful to assign the updating task to a specific individual who updates the list at established intervals," she said. "In our law firm, the updating is usually assigned to a litigation paralegal who reviews the status of assignments and distributes an updated list to all members of the team on a weekly basis. If you're on a fast track, you may need daily

reports to help keep you focused.”

And in preparation for trial, the key to moving quickly is maintaining all records electronically, according to Jim Robenalt, who said those records should also be sorted by date, witness and document number.

“I’ve seen opposing counsel really missing points because they’re flummoxing around exhibit books and looking for something they know is there but can’t find,” he said.

Prepare for Last-Minute Changes

Sometimes it feels like fast-track trials can’t get any more stressful — and then they do.

Mandel was reminded of this during a recent case, in which the presiding judge told him on a Wednesday that he would “definitely not” be going to trial the next week.

“Then, on Friday, I find out it will ‘definitely be on Monday,’” Mandel said.

“Even when a judge says they won’t be calling you in for a hearing, they might still call you in,” he added. “You kind of always have to be ready.”

Niccolini recommends keeping staffers on call to deal with any unexpected hiccups once a trial has begun.

“You need people back at the office who can respond quickly to surprises, who can research issues you didn’t plan for, and help brief the issue,” he said, noting that these last-minute needs will often come up late in the evening or even overnight.

Remember Your Opponent Is in the Same Boat

If you find yourself struggling or stressed out during an expedited proceeding, remember one thing: Your opponent is likely facing the same problems, and that can be used to your advantage, according to Niccolini.

“You obviously don’t want to miss things yourself, but you also need to stay alert for issues that the other side might have missed,” he said. “I once won a directed verdict on certain claims because the other attorney wasn’t able to get a crucial witness to court in the narrow window the judge had set.”

When the judge wouldn’t allow a continuance, Niccolini’s opponent was left without evidence on several elements of his claim.

According to Mandel, fast-tracked cases can even be better than standard ones for the defense.

“The burden is always on the plaintiff, and if they have less time to prove their case it can work to the defense’s advantage,” he said.

And if your team is one that thrives under pressure, a shorter time frame could be your opportunity to shine, according to Doluisio.

“If the quality of your work is better, it can really show,” he said.

--Editing by Jeremy Barker and Emily Kokoll.

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