

Not From Around Here? Trying A Case As An Out-Of-Towner

Law360, New York (March 20, 2017, 10:12 AM EDT) -- Trying a case outside of your home jurisdiction presents unique challenges. The normal complexities of preparing for trial are magnified when you also need to familiarize yourself with new substantive and procedural rules and adapt to an unfamiliar environment. Here are four suggestions to handle those challenges.

Work With Great Local Counsel

Partnering with great local counsel is critical when you are trying a case outside your home jurisdiction. Being associated with a firm and attorneys who are known, and respected, in the local courthouse often helps out-of-town trial counsel establish credibility with the court, especially in difficult venues.

Local counsel who regularly appear in court can also provide trial counsel with insight that goes beyond what is explicit in the court's local rules, including information on the judge's preferred practices. For example, does the judge prefer to address motions in limine in advance of trial or as evidentiary issues arise? Does the judge spend a lot of time reviewing motions and use oral argument as a way to get answers to specific questions that were not addressed in the papers? Or does the judge primarily decide an issue based on what is presented during oral arguments? What is the judge's practice for jury selection? Working with local counsel who have this kind of information ensures that you are focusing on the most important issues during trial and allows you to build goodwill with the judge by following the court's preferred practices.

Local counsel can also be an important sounding board if opposing counsel tries to take advantage of an out-of-towner's unfamiliarity with a jurisdiction's customs. For example, in a recent trial, the plaintiff's counsel insisted that it was the standard practice to excuse potential jurors on hardship grounds if the potential juror's employer would be inconvenienced by the juror's time away from work, even though the juror would not personally suffer a hardship. On this, and other issues, opposing counsel told us over and over again that, "this is the way we always do it." However, our local counsel explained that, although hardship decisions were sometimes made that way, that was not always the case and she thought our judge would be open to our position. She was right.



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Local counsel will also have other important historical knowledge. For example, opposing counsel may make statements about your judge's rulings, or the rulings of other judges in the same courthouse, on similar issues in similar cases. Terrific local counsel will be able to tell you if those representations are correct and, if they are not, how they are wrong.

Excellent local counsel will have also developed strong relationships with courthouse staff, including clerks, court reporters and jury commissioners, which can help in the resolution of the administrative issues that inevitably arise in every trial.

Learn, and Follow, the Local Rules

It is essential to familiarize yourself with, and follow, the local rules for each stage of your case. This is an obvious thing to do, but we mention the obvious because we have seen so many out-of-town lawyers not take the time to learn the local rules. And they have paid the price. We have seen judges exclude important evidence because a lawyer did not follow the local rules, and we have seen lawyers fail properly to preserve issues for appeal.

Beyond these important substantive implications, failing to take the time to learn the jurisdiction and judge's requirements makes you look at best careless and at worst arrogant. You would not go to a dinner at someone's house and put your feet up on the dinner table! Nor should you appear as a guest in a courtroom without demonstrating the proper respect for the court's processes and procedures by learning the rules of the road. You should not only review the jurisdiction's rules but also look for any standing orders issued by the judge you are appearing before and talk to local counsel to ensure you are familiar with any unwritten rules that may exist.

Taking the time to learn the rules of the court you are in can also help prevent a disaster. For example, while the order for closing arguments is typically plaintiff followed by defendant, in New York, defendants make their closing arguments first. In a recent case in Manhattan, the jury sat down in the box and the judge called upon the out-of-town defense lawyer to make his closing argument. He had no idea that he was supposed to go first. You do not want something like that to happen to you.

Similarly, some judges require counsel to exchange opening presentations with opposing counsel in advance and require that any evidentiary objections to those presentations be dealt with before opening statements. Other judges place limits on the type of graphics that can be used and may not allow documents, even if they have been pre-admitted, to be displayed during openings. Many judges do not allow scientific articles that are being used on cross-examination to be published to the jury, but other judges allow them to be published if certain foundational requirements are met. If you are not aware of these rules in advance, you may lose an advantage or suffer the embarrassment of being scolded in front of the jury.

To repeat the obvious: it is vital to know all of the court's rules long before your trial starts.

Understand You are an Outsider

When trying a case in a new jurisdiction, it is important to understand, and respect, your role as an outsider. You will not have the same personal relationships in the courthouse that you have in your home jurisdiction. Teams brought in from out of town to try a case may encounter skepticism or even hostility from judges and staff, especially in smaller venues, where local lawyers regularly interact with the court and are well-regarded. Every interaction you and your team have with the court and its staff is

an opportunity to develop your reputation and build your credibility. Acknowledging that you are a guest in the courthouse, and sharing your sincere appreciation for the help you receive while you are there, goes a long way to doing that.

Be Yourself

The importance of authenticity is magnified when trying a case outside your home jurisdiction. While using references to local landmarks or history can help make your arguments relatable, adopting local expressions or style in an attempt to ingratiate oneself with the judge and jury almost always backfires. The time to try out cowboy boots for the first time is not in the middle of trial in Texas. Jurors who believe you are pandering to them will also likely question the sincerity and legitimacy of the case you are presenting.

There are many potential pitfalls that lawyers face when trying a case in an unfamiliar jurisdiction. Working with a great local firm, taking the time to learn the rules of the court you are appearing in, appreciating your role, and being yourself can prevent you from falling victim to many of them.

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