

## 5 Tips For Getting New Lawyers Trial-Ready

By Erin Coe

*Law360, San Diego (October 09, 2014, 3:53 PM ET)* -- With fewer cases heading to trial and with those that do often considered the types of high-stakes battles that clients insist be handled by partners, associates are left scrambling for opportunities to gain crucial experience before a jury.

The percentage of federal court cases that are resolved through trial has plummeted over the last several decades to less than 2 percent, according to Don Rushing, co-chair of Morrison & Foerster LLP's global litigation department.

"The American civil jury trial is indeed an endangered species," he said. "Yet a firm's ability to provide trial-capable lawyers is a high-value proposition for clients faced with a possible jury or bench trial. Firms that develop the next generation of trial lawyers will enjoy a competitive advantage for this reason."

Having trial expertise helps attorneys prepare and value a case in order to counsel a client on an appropriate resolution, according to litigators.

"Only when you have tried a jury case and lost can you appreciate how difficult it is to prove fundamental fairness to a jury, even if you have the law on your side," said Lynn Kappelman, co-chair of Seyfarth Shaw LLP's national trial practice. "Juries don't often rule on sophisticated, technical legal arguments; they go with their gut. ... When attorneys have enough experience with juries to be able to say, 'You have a strong case on the merits, but it would lose in front of the jury,' you become an invaluable adviser."

Here are five tips for firms to help lawyers develop the skills they need for trial, according to litigators.

### Focus on Lawyers Who Want Trial Experience

At Seyfarth, associates are asked to self-identify if they are interested in working on trials, which allows the firm to concentrate its efforts on offering training sessions and trial duties to the lawyers who want them, according to Kappelman.

"Most firms staff associates ad hoc on a trial whether they are interested or not and whether they have training or not," she said. "But not all associates want to be trial lawyers. We want to spend our time and attention on training the folks who want to litigate cases. We don't want to give opportunities that are few and far between to folks who aren't interested in them."

Seyfarth associates who show interest in developing their trial skills must then commit to the firm's trial training program, which includes attending various 90-minute presentations by the firm's experienced trial lawyers on topics like arguing motions in limine and preserving objections on trial for appeal, she said.

"When a trial opportunity arises, we know exactly who to go to, and they already have the substantive training they need," she said.

### **Offer Meaningful Training**

A mistake some firms make is they throw attorneys into trial before they've been given enough tools to know what they need to do, according to Kappelman.

"You don't wake up one day and understand how to try a case and the techniques used; someone has to share that with you," she said. "And you don't want to learn by losing your first multimillion-dollar trial. Trying a case is something you need training for before you go before a jury."

Firms need to make sure they provide their associates with top-to-bottom skills training, according to Bruce Hurley, a trial attorney at King & Spalding LLP.

"Lawyers should receive real-world instructions on topics like how to prepare for a deposition, how to take a deposition and how to get witnesses ready for a deposition," he said. "That should be real-time, on-the-job training that is also part of a formal training process. Depending on the dockets, some attorneys might get more experience than those on different dockets, making it important for firms to have institutional training."

Crowell & Moring LLP provides a one-week trial academy at which young attorneys across the firm are brought together to work with experienced trial lawyers and play different roles in a mock trial, according to Gregory Call, co-chair of Crowell & Moring's litigation group.

"The young attorneys participate in direct and cross-examinations, openings, closings, voir dire and all the things that happen at trial," he said. "It's valuable for lawyers to get an opportunity to stand up and do a cross-examination, and then hear what people think about what they did well and what they could have done better."

If firms don't want to put on internal trial academies or seminars, they can turn to various external trial programs that do just that, such as the National Institute for Trial Advocacy or the American Board of Trial Advocates.

"It's important for firms to support associates who want to be part of immersive training sessions and for associates to indicate their interest in them," Hurley said. "By developing their skills, attorneys are enhancing their value to the firm and their own value."

### **Assign Attorneys to a Trial**

While participating in practical training programs and getting feedback from trial veterans are useful for lawyers, there is no better form of education than actually having a job on a real trial.

"Creating a relationship with the judge, the witness and the jury is not something that can be taught or

explained; it's something each attorney has to feel and learn by doing," Kappelman said. "If you're only writing briefs and motions, you never get a feeling for those relationships, and it's an important skill to learn."

Crowell & Moring regularly staffs associates on cases at trial to handle a variety of roles, according to Call. Some are given behind-the-scenes jobs, such as preparing examinations and arguments, while others are tasked with examining witnesses or arguing motions at trial.

Call said the firm focuses on taking a strategic approach to cases. At the outset, it has its attorneys look at jury instructions and make plans as to how to develop needed evidence and obtain rulings that impact the trial outcome. Its young attorneys also are taught to take and defend depositions, argue motions and handle discovery disputes with the trial and dispositive motions in mind. These experiences are critical to helping lawyers understand how the different pieces of litigation build toward a trial, according to Call.

"By having a real role on a case, associates can see how what they are doing is relevant to the outcome of a possible trial, and when a trial happens, they are part of it," he said.

Seyfarth also strives to make sure that its associates assigned to trials get to do more than carry the briefcase, according to Kappelman.

"There are always opportunities to argue motions in limine or interview a minor witness," she said. "The times we've done that, the jury loves it. Jurors love seeing a younger or junior lawyer cut their teeth and get an opportunity to ask questions and argue a motion."

### **Seek Out Pro Bono and Secondment Assignments**

Firms also should be on the lookout for trial work for their associates through pro bono cases that involve adversarial proceedings and secondments to district attorney and city attorney offices to assist in prosecuting criminal cases, according to litigators.

Bar associations in San Francisco, for instance, have pro bono programs that give associates a chance to represent tenants in unlawful detainer cases, according to Rollin Chippey II, a trial lawyer at Morgan Lewis & Bockius LLP.

"Attorneys are able to get trial experience from cradle to grave," he said. "They are drafting complaints, responding to discovery and participating in a short two- or three-day trial. Having that full experience can really educate a young lawyer about what is needed for a trial."

Firms also can develop secondment programs with district attorney or public defender offices to help lawyers present evidence and arguments before a trier of fact in the criminal context, Chippey said.

"Having an associate partake in a secondment program for 30 or 60 days might have an impact on the law firm's short-term bottom line, but in terms of training lawyers, firms will recoup their costs tenfold because it's going to get lawyers in the courtroom and get them the experience of a trial," he said.

"These types of experiences give young lawyers context and show how drafting a complaint, drafting an answer and preparing a deposition all matter in the resolution of a dispute."

Hurley said King & Spalding's Houston office has partnered with a district attorney's office in nearby Fort

Bend County, which lets the firm's associates try misdemeanor cases on a pro bono basis.

"The cases can include an opening, jury selection, presentation of evidence and closing arguments," he said. "It allows associates real-world opportunities to try lawsuits."

### **Encourage Clerkships**

Clerkships and internships also can be a great source of learning for rookie trial lawyers, according to Chippey.

"You get exposed to the things you're going to do as a lawyer," he said. "You learn what's not only important but effective with the judge. And you get an opportunity to review papers, see arguments and hopefully trials from a variety of people, and that exposure helps you develop your own style and skills."

Chippey said he's an advocate for replacing lawyers' continuing legal education requirement with a public service requirement, in which associates would work 60 to 120 hours for a clerk or judge. He said such a switch would be particularly helpful in a state like California, where state courts have sustained severe budget cuts over the last several years.

"I believe that especially with the budget crisis that California courts have had to face and the remarkable caseloads they have had to endure, having a public service requirement would be beneficial not only to the attorneys but the system as a whole," he said. "Being in the courtroom would have value and teach lawyers how to be helpful to their firms and their community."

--Editing by Katherine Rautenberg and Patricia K. Cole.