KA Keller/Anderle LLP
BUSINESS TRIAL LAWYERS

Why You Should Hire a Trial Attorney for a Case That Will Never Go to Trial

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Litigation can feel like a never-ending safari. And actually going to trial can seem as likely as encountering a white rhino. In 2015, there were 4,734 federal civil jury trials, down almost 40% from 7,933 in 2000. Federal trials have also gotten shorter. In 2015, only 14 lasted twenty days or more, compared to 85 in 2000. Local trends are the same. In California, there were 1,726 civil jury trials in 2015, down more than 50% from 3,868 in 2000. And here in Orange County, there were only 176 civil jury trials in 2014, down from 364 in 2000.

These statistics raise the question: if trials are becoming an endangered species, why hire a trial attorney? The answer: dispute resolution, like any other business decision, should be cost-effective. Seasoned trial attorneys are best equipped to save companies money because they know how to avoid distractions and focus on what is important in a case. And hiring a veteran trial attorney shows the other side you're serious, and prepared to go the distance.

Trial Lawyers Frame the Case for Trial from the Outset
The only way to become a trial lawyer is by trying cases. Due to the scarcity of civil jury trials, it takes many years, often in public practice as a prosecutor or criminal defense attorney, for an advocate to develop into an effective trial attorney. Trial advocacy is a skill mastered only in the courtroom, not in the classroom or from an office.

Unfortunately, many people who claim trial expertise have conducted few, if any, actual trials. Perhaps they've "been members of a trial team," which could mean being one of dozens who worked on a case in the office, but never examined a witness in court. The client needs to bluntly ask, how many jury trials have you personally "first chaired" to jury verdict? Not mediations, not arbitrations, not summary judgment motions or bench trials, but trials to jury verdict. Surprisingly often, the answer will be none.

Spending years in front of juries trains an attorney to appreciate from a case's outset what a jury will find to be significant. This vision separates trial lawyers from litigators. Even before the first discovery request is served, a trial lawyer conducts an extensive internal review and frames the case in a tight narrative supported by meritorious legal theories and intuitive storytelling themes. The narrative is grounded in the causes of action or defenses most likely to survive pretrial motions and end with a jury verdict.

Discovery is the process by which trial attorneys *refine*, not *discover*, the narrative. The story becomes the fulcrum upon which a trial attorney decides between what is important and what is meaningless. By framing the case for trial from the start, less becomes more. Every aspect of pretrial litigation is custom-fit to distill the narrative. Trial attorneys avoid litigation jousting over things that do not affect the story, and that waste the client's time and money. And trial attorneys understand that overindulgence in discovery will merely educate the opponent about their respective clients' trial strengths and weaknesses.

Trial Lawyers Conduct Discovery by Agreement
Trial attorneys start discovery with agreements, not disputes. From the very beginning of every case, plaintiff or defense, trial attorneys seek to agree on discovery covenants. These agreements naturally move cases towards trial and avoid litigation that seeks to stall and delay going to trial. Discovery disputes should rarely be taken to court, and only when the issue is critical to the narrative. By slimming down the discovery process, the client will benefit from increased efficiency. They will also be likely to see a courtroom far earlier than they normally would.

Trial Attorneys Use Depositions to Prepare for Trial
Whether taking or defending a deposition, a trial-focused approach creates austerity in depositions. The best trial attorneys take only necessary depositions, and those tend to be bespoke. Meandering questioning of witnesses fritters away time and money, while misuse of potent impeachment evidence may accomplish nothing more than to educate the opposition about its weaknesses. This is especially true of experts. Every question should be surgical, purposeful, and tied to the trial theory.

When defending depositions, trial attorneys lean on experience to thoroughly prepare their witnesses to give trial testimony during the deposition. Near the end of the deposition, when the opponent and witness are exhausted, trial attorneys seize on opportunities to elicit testimony helpful to their own case. A transcendent deposition may cause the opponent to abandon calling the witness at trial, while preserving the trial attorney's ability to introduce choice parts of the deposition testimony at trial.

Trial Attorneys Emphasize Teamwork
Adept trial attorneys pair with accomplished pretrial litigators to prepare cases for trial. This teamwork has been the norm for hundreds of years in England, where barristers and solicitors develop cases together. Work is not leveraged through multiple layers of lawyers of different experience and billing rates. Instead, each task is handled by the one lawyer best suited for the task. "One task, one attorney" is the rule, not the exception. And the team uses streamlined communication and technology to assure unimpeded work flow and avoid duplication.

Trial Attorneys Use Their Experience to Leverage Better Settlements
Trial attorneys enjoy immeasurable leverage in settlement negotiations. In civil dispute resolution, the best negotiating tool is the looming threat of trial against a top-notch trial lawyer. An opponent with few, if any, jury trials under the belt, has an inherent incentive to settle. Fear of the unknown is a powerful motivator. Dread over being exposed to the client as a trial novice is another. Meanwhile, the experienced trial lawyer is comfortable sizing up the boundaries of what a real-life jury may actually do, and crafts a settlement offer accordingly. Judges, for their part, quickly determine which lawyer seems to be the more knowledgeable practitioner. The pressure mounts on the novice. (And the novice might be a 40-year litigator who has somehow always avoided a jury, and whose client has no idea that is the case.) Even while posturing for the client, the trial rookie becomes queasy hearing the jurors' footsteps coming up the courthouse stairs, and frequently settles immediately before the panel is sworn.

If Your Case Goes to Trial…
Finally, while jury trials are getting rarer, they are sometimes inescapable, especially in bet-the-company scenarios. If your case turns out to be the white rhino and your company's fate will be entrusted to "12 good people and true," you need a seasoned, fearless, winning trial lawyer at your side. A trial attorney with nerves of steel honed by years of experience is your best insurance policy against injustice in a legal system designed to reward the best advocate.

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Jennifer L. Keller, one of Keller/Anderle's founding partners, is among the nation's premier trial attorneys. Her practice focuses on high-stakes commercial, intellectual property, white collar criminal and securities litigation. She has received innumerable awards for excellence as a trial lawyer, including: *Benchmark Litigation*'s "Top 100 Trial Lawyers in America; The *Lawdragon* "500 Leading Lawyers in America;" and 10 times on the Los Angeles and San Francisco *Daily Journal*'s list of "California's Top 100 Lawyers." Ms. Keller is a Fellow of the invitation-only American College of Trial Lawyers, widely considered the most significant honor a trial attorney in North America can receive. Contact her at 949.476.8700 or jkeller@kelleranderle.com.

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