

CALLAHAN & BLAINE

California's Premier Litigation Firm™

Choosing the Right Lawyer: The Fallacy of Specialization

by Edward Susolik, Partner, Callahan & Blaine

Introduction

Frequently the most difficult decision that a company must make when dealing with litigation occurs within the first 30 days of a lawsuit being filed. Specifically, a company must quickly decide which lawyer or law firm it will retain to represent it in the litigation.

There is a great deal riding on making the right decision. As anyone knows who has been involved in a lawsuit as a party, attorney or juror, a stronger and more experienced trial attorney can make all the difference in the world in the success or failure of litigation. To quote the Grail Knight's message to Indiana Jones, "You must choose, but choose wisely."

As a fallback in choosing litigation counsel, many companies look to a "specialist" in the particular subject matter involved in the litigation. Superficially, such a choice would make sense, as these specialist lawyers have practiced for decades in this one narrow area and subject matter, and thus they know the rules, regulations and laws in that field. Perhaps they have written articles or even books on that area of law. To a layperson, such a specialist would appear to be the lawyer most qualified to handle litigation in that particular subject area.



Susolik

For example, at a recent meeting, the president of a major Orange County company commented that there are only approximately a dozen law firms in the United States who specialize in the narrow field her company does business in. However, the officer also commented that these lawyers had lost every case that they had ever litigated for companies in this business area. She was thus wondering whether her company should choose from that same group of law firms to handle a new case that had just been filed.

The answer is a resounding no. As explained below, choosing litigation counsel based on specialization in a subject matter area is a fallacy and red herring.

Choosing the Right Lawyer: The Specialty of Litigation, Trials and Winning

Rather than looking for lawyer with a narrow specialization, businesses should look for an attorney whose specialty is litigation and trial practice. The reality is that while there are hundreds of thousands of lawyers who do litigation, only a small percentage of such lawyers are true "litigators." An even smaller percentage are true "trial lawyers."

It is these true trial lawyers and litigators that businesses should turn to when confronted with lawsuits or the need to engage in litigation. For example, if a business has a multi-million dollar litigation arising out of a complex lease transaction, it is not going to win or lose that lawsuit because its attorney knows how to read leases, has drafted commercial leases himself or has handled prior lease lawsuits.

The bottom line is that using a wide variety of efficient and powerful techniques, a true litigator can learn virtually any specific sub-set of the law. At the end of the day, a case is won and lost because of a litigator's talents and abilities in the courtroom, discovery, the deposition room, law and motion and ultimately trial.

For example, a litigator who specializes in real estate law but cannot take a meaningful deposition is not a good advocate. Likewise, the "specialty

litigator" who lacks trial experience or is unable to connect with a judge or jury during trial is a weak advocate. Ultimately, every lawsuit that is litigated must have as its ultimate goal how the facts and legal issues will be decided before a jury and judge. If the "specialty litigator" is not a powerful trial attorney, the entire discovery, law and motion, deposition and pre-trial phase will be handled in a mediocre and unpersuasive manner.

Moreover, the opponent on the other side will feel no intimidation or pressure to settle with a weak legal adversary. Settlement is a powerful weapon in the arsenal of the "litigator/trial lawyer." It is one of the true ironies of litigation that the best settlements come from the lawyer who is an expert at trials and has prepared his case for trial. The trial lawyer who prepares his case for trial is the lawyer who gets the best settlements.

Choosing the Right Lawyer: A Checklist for Choosing the Lawyer Who Specializes in "Winning"

Ultimately, when a business owner is choosing a litigator, the ultimate "specialist" he or she should be looking for is the "specialty of winning." The following is a checklist of some of the critical factors to look for in selecting a "winning" litigator:

1. Does the lawyer or law firm have a track record of conducting actual trials in front of a jury? A litigator who has never conducted a trial cannot be an effective advocate in the pre-trial and discovery phases.
2. Does the litigator have a track record of winning cases and being successful? Look carefully at the lawyer's record in trial in handling complex cases. For example, Dan Callahan, the founding partner of my law firm Callahan & Blaine, has won a \$934 Million jury verdict (after a three month trial) in the area of complex business litigation, which is the largest jury verdict in Orange County history.
3. Does the attorney have experience and expertise in handling both plaintiff and defense cases. A true litigator is not relegated to one perspective or one point of view. A lawyer who is equally adept at both plaintiff and defense work is a very powerful asset, as that lawyer is able to understand the perspective and mindset of both sides of the litigation. Moreover, many cases have both a complaint and cross-complaint, so the attorney must be able to wear both plaintiff and defense hats.
4. Is the lawyer an expert in depositions and discovery? The testimony of a witness at deposition is what the witness must say at trial. Consequently, a litigator who is not able to conduct an aggressive and effective deposition is an ineffectual lawyer. Likewise, document production, third party subpoenas, interrogatories and other discovery devices frequently make or break a case. Again, a true litigator must be an expert in discovery, in order to win your case.

Conclusion

In conclusion, when a business becomes embroiled in a lawsuit, the legal specialty they should look for is the lawyer who is an expert in the art and science of litigation, and, more importantly, winning.

Edward Susolik

Edward Susolik is a senior partner at Callahan & Blaine, a boutique litigation firm with 28 attorneys. Callahan & Blaine specializes in complex litigation of all types, both plaintiff and defense. Mr. Susolik is in charge of Callahan Blaine's Insurance Department, and has successfully represented hundreds of corporations in disputes with insurance companies for over 25 years. Mr. Susolik can be reached at ed@callahan-law.com or 714.241.4444. Callahan & Blaine's website is found at www.callahan-law.com.