

# PUBLICATION

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## A Young Lawyer's Tips and Tricks for Defending Financial Institutions

July 08, 2019

**The biggest challenge a young lawyer faces in preparing for trial is to figure out how to tell his or her client's story, whether it be to a judge, jury, arbitrator or some other audience. When it comes to defending financial institutions and banks, this problem is amplified by the complex nature of these entities, so it is not surprising that many young associates serving on a litigation or trial team may feel overwhelmed. As someone who has been assisting with the defense of institutions for my entire legal career, I would like to share some tips and tricks for inside and outside counsel to consider.**

### **Know Your Role**

Throughout the entirety of the litigation process, from pre-suit to trial, it is absolutely essential to always remember one's role within the broader perspective. As outside counsel, it is our job to effectively tell the stories of our clients to the audience. While young lawyers may not have this particular privilege at trial, it is important to keep this in mind at all times. I recommended regular meetings with the senior lawyers on the matter to discuss trial strategy and theories of the case. In between meetings, young lawyers should try to ensure that every action taken furthers development of the theme. This will help to eliminate second guessing and surprises at trial.

### **Identify Your Point(s) of Contact for Document Retention**

Because financial institutions and banks employ so many individuals, it can be difficult for an in-house lawyer and outside counsel to manage the collection of information necessary for litigation. This is critical, as the documents and testimony serve as the foundation of the story told by outside counsel at trial.

I have found that determining the points of contact for information and document collection is very helpful when done early. Some in-house lawyers prefer to collect documents and information on their own before sharing with outside counsel; others prefer to introduce outside counsel to other internal employees so they don't have to facilitate every single communication. Both methods have their merits, but I have found that establishing the ground rules from day one helps facilitate the evil necessity known as document collection.

Many financial institutions and banks have individuals whose job functions include litigation-specific tasks. For example, many financial institutions have designated persons whose specific job responsibilities include testifying about various internal processes. These people are the most critical in assisting a trial lawyer because they are inherently familiar with the institution. Good trial lawyers establish relationships with these people early in the litigation process in an effort to actively develop theories of the case.

### **Give Clients Lead Time on Tasks**

From a practical standpoint, it is critical to give in-house counsel and other internal employees as much lead time as possible on all tasks, especially when those tasks involve travel, preparation and testimony. Although this sentiment is probably universal for all outside counsel and not unique to financial services litigation, it is important to remember that financial institutions have many more rules and regulations by which you must abide, making litigation more prevalent than most other industries.

### **Familiarize Yourself with Your Client's Business**

You become an infinitely more valuable member of your trial team when you have a basic understanding of the rules and regulations that affect your client's business. While I would never advocate for someone to sit down and attempt a straight-through reading of rules and promulgations set forth by entities like the SEC, FDIC or CFBP, I have found it valuable to set up things like Google alerts and occasional Westlaw searches for recent developments in the law. Unlike cases involving traditional torts or contract law, financial services litigation is a constantly evolving world with new rules and regulations (and thus, cases). Remember, it is your job to "translate" the often-rigid elements of the law into relatable and understandable moments for the audience. Staying at the forefront shows that a lawyer is committed to his or her client's interests and helps him or her to be a more effective storyteller.

### **Protect Your Client's Client**

It is important to remember that, like us lawyers, our financial institution clients are in the service industry. Thanks to the evolution of technology and the Internet, modern consumers are afforded many choices when it comes to holding and investing assets. Therefore, it is critical that we protect our client's interests in keeping these consumers top of mind throughout the litigation process and at trial.

Within the context of litigation, this means that we must do our best to limit plaintiffs' reaches and requests in discovery, especially when it comes to the disclosure of information from our clients' non-party customers. Financial institutions and banks – again, more so than other industries – are under statutory and common law duties to protect their clients' respective information. As lawyers, we need to respect these duties and protect this information to the extent permitted by law.

### **Keep the End Game in Sight**

As you progress through litigation and toward trial, the strategy of many plaintiffs' lawyers will switch to trying to paint the financial institution as a bad actor. This is a common tactic designed to scare defense lawyers and eventually influence juries. It is important to keep the focus on the causes of action alleged and the evidence necessary to prove or disprove those theories, especially if a dispositive motion may be in play. Everything else is irrelevant from a legal perspective.

Of course, if opposing counsel indicates that he or she will try to influence the jury by using irrelevant and inflammatory remarks to demean the financial institution, it would be wise to file a motion in limine seeking to prevent such testimony from the opposing side and counsel. Doing so puts the judge on notice of such comments and will present a stronger objection to any inflammatory remarks at trial.

In short, litigating cases on behalf of financial institutions is not altogether that different from other tort or contract-based cases. Generally adhering to the tips and tricks laid out above, as well as using the vast knowledge and experience of the Baker Donelson Financial Services Litigation Team, is a good start for a young associate.