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Young Litigators: Trying Cases Early in Your Career

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Baker Donelson Associate Nick Diegel sat down with the Firm's Professional Development Shareholder, Cameron Hill, to discuss his recent trial experience. Nick shares how he prepared for his trial and lessons learned from one of his first major trial experiences in his career.

Nick, a Business Litigation associate in the Firm's Knoxville office, was part of a team representing an employment agency in a three-day jury trial.

C: Tell me about your role in the case.

N: At Baker Donelson, this was my first trial, but at my prior firm I tried two cases. One was a bench trial, and one was a four-week jury trial in Chattanooga, where I served as ancillary support from Knoxville. So, I have a couple of trials under my belt. The most recent was the first to really offer a good opportunity to do more substantive work.

I worked with [Mark Baugh](#), shareholder and Chief Diversity and Inclusion Officer in our Nashville office, on this case. I had never worked with him before, and last spring, Mark brought me in as second chair. I started with taking some depositions and also handled the direct examination of our only live witness. The rest of our witnesses were presented by a video deposition due to COVID restrictions. Mark also had me conduct the jury examination and voir dire.

C: That's a pretty active responsibility, to conduct voir dire. Tell me about that. Where did you get the information and the ideas for the types of questions to ask?

N: Mark and I went through the causes of action in the complaint, and we looked at the law that applies to it. We considered the factors that we thought might be applicable and certain biases we would find, that might affect the jury's ability to be impartial in its decision. This case involved a gender discrimination claim, so we were looking for jurors who were or felt like they had been discriminated against before, felt like they were not treated fairly in the workplace, or were promised things they never received. Those were all very important factors we wanted to weed out.

C: How much latitude did the court give you with your questions?

N: There weren't really any objections. Things were a little strange under the COVID protocol. The court had us submit five questions, did its own voir dire for about 30 minutes, then opened the floor to both sides. Each side had four challenges and we ended up with a jury of 12 very diverse jurors.

C: What was the most challenging part of trying the case with COVID protocols in place?

N: The hardest part for us was the lack of availability of live witnesses. We had the foresight to take video depositions, instead of just using a court reporter, so if we had witness unavailability due to COVID, we ended up playing a video for the jury. It wasn't ideal, but it was a lot better than just reading off the transcript.

C: What were some of the challenging legal issues that the case presented?

N: The biggest dispute we had was about punitive damages. The case involved claims of gender discrimination under the Tennessee Human Rights Act and alleged violation of the Tennessee Maternity Leave Act. Both claims are subsumed under the Tennessee Human Rights Act. And, the plaintiff raised a claim for punitive damages. Our position, when we were working on the jury instructions, was that they were not entitled to present this issue to the jury because the Tennessee Human Rights Act does not entitle a plaintiff to punitive damages. There was also a promissory estoppel claim for which the plaintiff sought punitive damages. After proof closed, we ended up filing a motion with the court seeking dismissal of punitive damages claim, and we prevailed.

The issues about punitive damages trickled all the way through trial. We discussed this before trial, and ended up just waiting until after the proof to have the court address it. Ideally, we would have had it resolved before then, but because of COVID protocols it ended up not being raised until the end.

C: How else did the COVID protocols affect your pre-trial motion practice?

N: Each side had to designate exhibits and witnesses beforehand. A couple of weeks before trial, the court expected the parties to resolve and file motions on all proof objections, such as relevance and hearsay. We ended up in a situation where the plaintiff objected to some of our deposition designations too late, and the court never ruled on them.

C: With trials, something unexpected always happens – sometimes good, and sometimes bad. What happened in your trial that you weren't expecting to happen?

N: Right before trial, the plaintiff changed her theory from what we had been discussing. Opposing counsel and I had been in close contact weeks prior, working on all these pre-trial issues, and we were under the impression that the plaintiff was going to take one position at trial, then the trial started, and plaintiff completely changed course on that position while testifying on direct examination. Mark and I were both shocked. We were fine with the change because it helped our case, but we weren't expecting it.

C: Tell me about working with opposing counsel. Any observations about that relationship that you found instructive for how you would handle your next case, or how you may advise a younger associate in the Firm?

N: I always think it's helpful to observe opposing counsel to see if there is something that they do that you can learn from and implement in the cultivation of your own practice. Every attorney has something unique to offer.

I was familiar with opposing counsel in this matter before the case, but I had never been on a case across from him. He is well-respected in the local bar, and it was great to observe him in action. I thought he handled himself very well, with very persuasive argument and very persuasive testimony. He was persuasive in the way he elicited testimony and the way he cross-examined, knowing when to be aggressive and when to back off. It was just very interesting to watch, and it's something I plan to try to implement in my future practice.

C: What other tips and recommendations would you be giving a younger associate in the Firm who's getting ready for trial? What would you recommend?

N: Take a deep breath and go back to the fundamentals. I jumped into this case about midway through and didn't have the luxury of having a full grasp when I started trial preparation. The first thing I'd say is to look at the pleadings and the issues, research the law, and seek to understand them. If you don't understand the

claims, you're not going to be able to effectively try a case. Then, look at the discovery, and see what kind of facts you're working with, because, while you can't change the facts, you can use them to your advantage when the opportunity presents itself.