Tips From the Bench

Big Case Dispute Resolution
Reflections on Handling Mega Cases

by Judge Jerome LaBarre
Multnomah County Circuit Court

Recently a CLE program was presented here about how to handle "bet-the-company mega class action" cases. This triggered a flood of memories for me about cases from long ago and from recent times. As I reflected, I started remembering what I have learned - frequently the hard way - about ways a lawyer can be successful in handling them.

Early in my career I got to work on mega cases and I continued handling big cases throughout my law practice. Since I came on the bench in 1999 I have been privileged to be assigned many large, complex cases. Some have been class actions, some large dollar individual cases, and some major injunction suits. As I write this, I am completing work on one. Many of these cases have gone the distance, but I have seen even more of them settle. From these interesting and challenging experiences I have arrived at certain conclusions on what works. Of course every case that settles starts out as a case that needs to be evaluated for trial. Also, to succeed in settlement, the case must be one that you prepare to win at trial.

More Similar than Different

Obviously, big cases have many daunting challenges. But there are a surprising number of similarities to the routine case, particularly at trial. Every case has a beginning, middle and end. The time typically involved picking a jury and in delivering opening statements is usually not that different. The biggest difference is the amount of time it takes to put on evidence. The focal point of every trial is convincing the jury.

All cases are about telling a persuasive story. It's obviously a lot harder to boil down a mega case to an appealing elevator speech. But that same process is involved. In summary, one case might be 100 times bigger than another case. But it is not necessarily 100 times harder to prepare, try and settle. In approaching them, trial attorneys should concentrate on the fundamentals.

It's All About That Handful of Questions on the Verdict Form

Jury verdict forms tend to be short. Those questions on jury verdict spell victory or defeat. The case may have hundreds of thousands of documents, but at the end it will come down to a small number of mostly "yes" or "no" questions. I have learned from experience that especially in large cases you need an organizing principle. This is one of the great ones - start with the verdict form and work backward. At the outset of the case, start drafting your jury verdict. It also becomes a wonderful tool for settlement negotiations. In the big case at the beginning your opponent may be as confused as you are about how to proceed. By pointing out how you have evidence on most or all of what is needed for your success on the verdict form, it can work wonders in setting the stage for settlement.

It's interesting to reflect on the fact that even cases involving hundreds of millions of dollars can have verdict forms as short as small dollar cases. A recent mega case had a jury verdict that was just two and one half pages long and contained only five questions.

Early Settlement of Big Cases

Everyone would like to settle every case early. But we all know it is not easy. In large dollar cases I have frequently seen deeply entrenched positions and huge barriers to good settlement communications. One approach that can be helpful to start moving things in a good way is to do some visualizing. Put yourself in the other side's position - "walk a mile in their shoes." Try hard to identify and understand the other side's perspectives, motivations and feelings. Some key questions to ask yourself:

- What do they really want and need out of the case?
- What do they fear?
- From the settlement decision perspective, what will they respond to? What are their pressure points?
- Can something be done like a draft complaint and a settlement demand letter that can really get their attention and open up productive discussions?
- Who is the real decision-maker on the other side, and how can you send a message which will be appealing to that person?

Investment experts boil down the stock market to a battle between greed and fear. In many ways the same thing is true in settling big cases. To successfully negotiate a settlement, an attorney must strike the right balance between them.

Conclusion

I have seen cases which have taken seven weeks to try and others which have been tried in seven hours. The fundamentals and parts of the trial are the same. One should not minimize the challenges of big cases. But by the same token, a trial attorney does not need to be scared away from them.

News from the Courthouse

by Xiomara Torres Mattson
Court Liaison Committee

Presiding Court Report

New Judges
Judges Bronson James and Leslie Bottomly were recently appointed and have both begun their service on the bench.

New Trial Court Administrator
Former Interim Trial Court Administrator Barbara Marcille is the new TCA, as of March 1.

New Courthouse
Beneficial features of the new courthouse will include attorney-client conference rooms, a large conference room (the overflow jury room) where meetings and trainings can be held, more gender-neutral restrooms, and four lactation rooms. The DA's office and Public Defense Services Commission appellate lawyers will be housed in the new courthouse. Security screening options are still being discussed for attorneys, court staff, and others who now have expedited access badges for entering the courthouse. There will be an open house to share more information about the new building from 4-6 p.m. on Thursday, April 21, in the downtown jury orientation room.

eCourt
eCourt Open Hours continue to be held on certain Fridays during the noon hour to offer eFiling tips and answer questions. The court's website has details on the dates and topics for eCourt Open Hours.

Washington County Circuit Court went live in the Odyssey system in March, and eFiling will become mandatory in that county on May 31.

UTCR 5.100
When submitting proposed orders and judgments, certificates of readiness are now required. **Beginning May 2, the court will no longer accept filings without the required certificate**.

Supplementary Local Rules
Work is starting on the 2017 Supplementary Local Rules (SLRs). Please email Presiding Judge Nan Waller or Chief Civil Judge Stephen Bushong by the end of April with any suggestions for changes or additions. Changes will be made in May and June and the comment period for the proposed draft 2017 SLRs will begin in July.

Cody Berne
2016 Recipient of Michael E. Haglund Award

by Erin White
Legal Aid Services of Oregon

Cody Berne

Cody Berne is the 2016 recipient of the Michael E. Haglund Pro Bono Award. This award goes to a young lawyer who, in the tradition of Mike Haglund, founder of the Volunteer Lawyers Project (VLP), has displayed a special commitment to pro bono services via a VLP or MBA YLS project in the previous year.

Cody grew up in Portland and served as a wildland firefighter and a police officer before attending UC Davis School of Law, where he represented clients as a member of the UC Davis Prison Law Clinic and the UC Davis Civil Rights Clinic. In 2014, he was admitted to the OSB and became an associate at Miller Nash Graham & Dunn, where he practices business litigation with a focus on securities litigation. Cody also began volunteering for the Domestic Violence Project (DVP) with Legal Aid Services of Oregon (LASO) in 2014, where he has volunteered 116 pro bono hours. Additionally, Cody has served on Miller Nash Greaham & Dunn's pro bono committee, where he and his colleagues encourage participation in ongoing pro bono projects and look for new ways to get involved. For example, recently the firm teamed with LASO to establish a new Virtual Legal Aid Clinic to provide quarterly videoconference consultations to low-income clients living in central Oregon.

Maya Crawford, Statewide Pro Bono Manager with LASO, has worked with Cody through the DVP and says of him, "Cody is a thoughtful and diligent advocate. He jumped right into volunteering with the DVP and has not shied away from tough cases. We appreciate his dedication to serving domestic violence survivors." When asked why he chose to volunteer with the DVP clinic, Cody says that while a lot of experience practicing law might have a long term impact, "DVP has an immediate impact for people who may not otherwise have assistance." What he enjoys most is the immediate impact and "the opportunity to serve, meet with a client, and try to solve a problem. It's really a great feeling to go into court and know you can add insight and value and help them keep this piece of paper that can help keep them safe." Cody also highlights the professional benefits of serving in the DVP clinic, where he can use skills learned in law school and have the opportunity to meet judges and gain courtroom experience, something a lot of newer associates don't get to do. He encourages others to participate, saying the DVP clinic is "a great opportunity to gain court experience, especially for young lawyers."

Cody embodies the spirit of the Mike Haglund award through

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