

Tips From the Bench

Winning a Business Case

Three of the Keys to Success

by Judge Jerome LaBarre
Multnomah County Circuit Court

Some of the most challenging cases to present involve business disputes. This is true whether you are plaintiffing or defending a case in court, in arbitration or in mediation. While there are no "one size fits all" answers for all cases, in my experience there are certain keys to success which really work. I learned things the hard way in the long years that I tried business cases. Now as a judge, these lessons ring true.

Business cases usually require making a presentation to people unfamiliar with the complexities of the industry, companies or transactions involved. Your task is formidable. You must simultaneously educate and persuade the jurors (and keep them awake in the process). There are typically thousands of documents and electronic transmissions involved, and there can be complicated layers of detail to unravel. For a plaintiff there is a real danger you will get a "ho-hum" response leading to defeat. For a defendant there is a risk that they might not "get it" and you lose your case because they missed the point.

Here are my top three keys to success:

1) Organize Your Case to Tell a Story. Sound organization of your case is imperative in handling business litigation. Recent brain research indicates that when decision makers hear facts, they seek to develop a story line. As an attorney it is your job to get command of the facts and present them in a way which will convey a compelling story. I have found that organizing the story chronologically is usually best. At its core the story must be simple and show the righteousness of your position. Do not forget to focus the effort in equal parts on liability and damages.



2) Establish a Theme - and Stick With it. At the heart of your case's story is your theme. It can also be a great organizing principle in the preparation and presentation of your case. A good way to discover a theme is to start with your verdict form or its equivalent. Make sure that the theme shows up in every part of your case. It can also help give you a direction in deciding on pretrial discovery and other decisions in your case. Your theme is basically a short "elevator speech" or bumper sticker statement about why you should win.

3) Seek Simplicity. Less is more when it comes to presenting a business case. Once you start trial preparation your goal is to make the complex simple. You must cut to the essence. While discovery may turn up thousands of documents, they do not all merit becoming trial exhibits. 50 exhibits are usually better than 500. Your theme and good organization promote simplicity and simplicity in turn promotes your theme.

In conclusion, the best way I know to win a tough business case is to organize and simplify it so that you can tell a story with a compelling theme.

MBA Officers Elected

Steve Blackhurst, Ater Wynne, is president. He graduated from the U of O School of Law in 1973. He is a firm partner and is in the litigation group. Steve has been on the board since 2008 and was the treasurer last year. He previously chaired the MBA Judicial Screening Committee; was a commissioner of the Oregon Law Commission, past president and past director of the OADC, past lawyer representative of the Ninth Circuit Judicial Conference and is a member of the ABA Litigation Section.

Bonnie Richardson, Folawn Alterman Richardson, is secretary. Bonnie is a co-founder and managing partner of her law firm. She is a trial lawyer, representing clients in legal malpractice cases, trust litigation, insurance coverage disputes and complex business litigation. She has been an MBA board member since 2009. Bonnie has served on the MBA Equality committee and has chaired the MBA CLE committee. Bonnie received the MBA Pro Bono Award of Merit for her work with the Oregon Law



Steve Blackhurst



Bonnie Richardson

Center. She currently co-chairs an international workgroup for foreign exchange students.

Julia M. Hagan, Gevurtz Menashe, is treasurer. She practices in the areas of family and juvenile law and guardianship of minors. She is a 1984 graduate of Lewis & Clark Law School and a 1979 graduate of Santa Clara University.

Julia has been on the board since 2009 and previously chaired the MBA Judicial Screening and Court Liaison committees. She is the MBA liaison to the Multnomah County Criminal Justice Advisory Committee.



Julia Hagan

Sarah J. Crooks, Perkins Coie, continues on the MBA Board as past president.

MBA Seeks Public Member for Judicial Screening

Non-attorney members of the public are invited to apply for a three-year term on the MBA Judicial Screening Committee. This MBA committee confidentially screens judicial and pro tem candidates for appointment to the Multnomah County Circuit Court bench. Public member criteria are listed below.

- Public members must work or reside in Multnomah County and be at least 21 years of age. No person may serve as a public member who is (1) a lawyer or former lawyer in any jurisdiction, (2) employed by a lawyer, (3) married to or a domestic partner of a lawyer, or (4) the parent, child or sibling of a lawyer. Desirable qualities of public members include integrity, honesty, discretion, familiarity with the legal system and the ability to communicate effectively.
- Applicants should be prepared to submit the following additional information: reason for interest in serving as a public member; employment and educational background; prior public or community service; and the names and contact information for at least three references.

For an application and information on the committee's process, visit www.mbar.org/documents.htm. For a Word version of the application or for more information, call 503.222.3275 or email Carol Hawkins, carol@mbar.org.

Judicial Brown Bag

The MBA Court Liaison Committee hosted its spring judicial brown bag on May 20, in presiding court. Presiding Judge Jean Maurer, Judges Henry Kantor, Christopher Marshall and Leslie Roberts were the panelists and the topic was discovery disputes. The

discussion was quite interesting as both the judges and the members of the bar had plenty of questions for each other. All involved found the meeting to be fun and informative.

The MBA presents judicial brown bags twice a year - once in the fall and once in the spring -

and these are great opportunities for informal discussions with the judges. If there are topics you would like to have covered in future judicial brown bag events, please contact the MBA at mba@mbar.org, or Eric Dahlin, Court Liaison Committee Chair.

Family & Friends Golf at McMenamins Edgefield

Thursday, July 14

Back by popular demand, the MBA Family & Friends golf outing is at McMenamins Edgefield in Troutdale. Invite your clients, bring your family, tell your friends! Join us for an afternoon of pitch and putt golf, putting contest, games and face painting for the kids, prizes and fun! Play nine holes; tee times begin at 2 p.m. \$20 for adults; \$15 for children (17 and under). This event is co-sponsored by the OWLS Foundation. See insert or register at www.mbar.org.

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If you are interested in serving as a mentor with the MBA Mentor Program or would like to be a mentee this year, please check out the information and sign up using the form available at www.mbar.org.