



3 Tips For Switching From The Corporate Track To Litigation

By Linda Chiem

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Law360, New York (June 9, 2015, 6:04 PM ET) -- The often high-stakes practice of litigation involves tackling various complex matters under intense deadlines, so corporate deal makers interested in switching to litigation have to fine-tune their communication skills and become focused strategists to succeed in trial work.

For corporate, finance or transactional attorneys, becoming a litigator does not necessarily mean adopting a more adversarial nature, but it does involve adapting their approach to getting that win for their client, experts say.

Here are three tips for lawyers looking to become litigators after living on the corporate track:

Find Mentors and Learn the Landscape

Experts say it's highly unlikely that any corporate attorney would switch to litigation during boom times and a robust deal-making climate like the one we've seen in recent years. But slowdowns in corporate work might prompt some to make the leap, especially if they're looking to grow in a practice area that's less predictable and involves dealing with people on different levels.

So as with any practice, it's important for attorneys looking to get into litigation to find mentors or have access to experienced litigators who can steer them along the path and explain the nuances of litigation work — taking depositions, engaging in discovery, drafting motions to the court or arguing a trial before a jury, experts say.

“I would advise a corporate transactional person to start looking for opportunities on bigger cases that are staffed with a larger number of attorneys,” said John van Loben Sels, a Silicon Valley-based partner and head of [Fish & Tsang LLP](#)'s litigation practice. “There’s more chances for an inexperienced attorney to get the kind of work you’ll need to build litigation skills.”

Legal consultant Peter Zeughauser said rarely, if ever, will you see a seasoned corporate attorney switch to litigation. But up-and-coming corporate associates who are still finding their legs in the field, for various reasons, might look into litigation. When that happens, they should reach out and talk with a litigation partner at their firm and chart out a plan, he said.

“If you want a career in litigation, there are trial skills that you would need to acquire, and firms provide training to their associates” for that, he said. “It’s a new area of law with sets of statutes and rules that lawyers practice by.”

“But in both corporate and litigation, clients are trying to get a result, and you need to understand the result they want and deliver it in a way that’s reflective of the value they attribute to the result,” Zeughauser said.

Fine-Tune Your Communication Skills

Good transactional attorneys already come with skills that are useful and translate well in litigation. They have an innate attention to detail as well as solid reading and writing skills, and they know how to talk and negotiate with their clients and other parties.

But going into litigation, they’ll have to fine-tune their verbal skills and learn to lose the legal jargon and speak to their audience — whether it’s opposing counsel, a jury or a judge — on a relatable level, experts say.

“Trial lawyers are a different breed. They talk differently, they walk differently, but they’re storytellers,” said Dave Carothers, a trial attorney and partner at [Carothers DiSante & Freudenberger LLP](#). “A person who can tell a story in a way that’s comfortable, that’s conversational, that makes sense, and can basically stand on the other side of the fence and tell their neighbor a story.”

They also have to be prepared for working in environments that might not always be as collaborative or predictable as they are when drafting deal documents or securing financing for a transaction.

"They have to be prepared, coming from the genteel nature of transactional work, that it's different" in litigation, said Jay M. Levy, a Miami-based litigator. "This is an adversarial process. It doesn't work anywhere near the same way as in transactional where there are drafts of contracts and people are pliant and communicative."

To put it plainly, it can require toughening up and knowing when to pick your battles, he said.

"It's not a question of getting nasty, it's getting even," Levy said. "The idea is to get even and get a result for your client, and you do need a thicker skin."

Van Loben Sels said there is an element of litigation that corporate attorneys need to be prepared for, especially when talking to opposing counsel.

"You're not going to be dealing with attorneys who are as cordial as a group, and they're not working toward the same goal," he said. "In a deal, everybody is pushing in the same direction and you want to watch out for your client's interests, but you want a deal done that's good for both sides."

"Litigation is not about moving in the same direction, [and] that can be off-putting to some transactional folks, but that doesn't mean you have to be a jerk," van Loben Sels said. "The best litigators are also the most professional and collegial. But you cannot pretend that you're not going to run into the other kind of litigator who maybe is needlessly contentious."

Be Able to Think Fast, Adapt and Strategize

Corporate attorneys who might have grown used to examining deal documents to make sure covenants and clauses are in the right place will have to adapt to a far less routine practice if they're making the move to litigation.

When both sides have opposing views and facts to back up their interpretation of the problem that gave rise to the dispute, lawyers have to contend with a lot of curveballs that get thrown their way. Evidence and witness testimony might not be as clear-cut as originally thought, the client might insist on making a risky argument, or a judge might hand down a surprise ruling on a motion for summary judgment.

"We're looking at it from a completely different angle where it probably made a lot of sense when it was drafted and there was a meeting of the minds," Carothers said. "But we're brought in at the end of the road when there's a problem and we're looking at with the beauty of 20/20 hindsight."

As legal strategists with an eye trained squarely on achieving an end victory for the client, litigators have to know how to think on their feet and switch tactics if they have to, experts say.

"There will always be something that comes up that will come out of left field, [and] the ability to not freak out, breathe and react is absolutely critical," Carothers said. "Some have that naturally or quickly learn it."

--Editing by Jeremy Barker and Philip Shea.