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Choosing the Right Litigation Attorney

Winning as a Specialty

by Edward Susolik, Partner, Callahan & Blaine

Specialization in law is frequently misunderstood, especially when it comes to choosing the right litigation attorney.

On the one hand, specialization can be important in selecting a transactional or corporate attorney. For example, tax law, bankruptcy law and probate law are examples of narrow areas of legal specialization in the transactional realm. For the specialist in those narrow areas of law, there is value added to the client for decades of experience of having performed the same activities and utilizing the same forms.

On the other hand, specialization in the area of litigation is much more complex. In the litigation world, there is a tendency of lawyers and law firms to identify themselves as having a niche or sub-specialty in an area of litigation. For example, a lawyer may tout himself as specializing in "real estate litigation," or a firm may have a "real estate litigation" department. Thus, superficially, it would appear to the business person that this a lawyer or law firm that should be retained when faced with a lawsuit arising out of a real estate problem.

Select the best litigator available

The main thesis of this article is that when selecting an attorney, the process a business should use is far different when choosing a litigation attorney than when selecting a transactional or corporate attorney. If a lawsuit has been filed against a business, or if a business has been damaged financially and needs to initiate litigation, that business should not per se select a litigator simply based on their "specialization" in the narrow area upon which the litigation is based. Instead, that business should select the best litigator and trial attorney available. Rather than looking for narrow specialization, the business should look for the litigator whose specialty is winning cases, whether through powerful, one-sided settlements or significant jury verdicts on the defense or plaintiff side. The reality is that while there are tens of thousands of lawyers who do litigation, only a small percentage of such lawyers are true "litigators." An even smaller percentage are true "trial lawyers."

It is these true trial lawyers and litigators that businesses should turn to when confronted with lawsuits or the need to engage in litigation. For example, if a business has a multi-million dollar litigation arising out of a complex lease transaction, it is not going to win or lose that lawsuit because its attorney knows how to read leases, has drafted commercial leases himself or has handled 100 prior lease lawsuits. It will win or lose that lawsuit based on the litigation and trial skills of its attorney.

Using a wide variety of efficient and powerful techniques, a true litigator can learn virtually any specific sub-set of the law. At the end of the day, cases are won and lost not because of a lawyer's 15 year history of having read the same cases or made the same arguments over and over. A case is won and lost because of a litigator's talents and abilities in the courtroom, discovery, the deposition room, law and motion and ultimately trial.

Edward Susolik

Edward Susolik is a partner at Callahan & Blaine, a boutique litigation firm with 23 attorneys. Callahan & Blaine specializes in complex litigation of all types, both plaintiff and defense. Callahan & Blaine's successes include a \$934 million jury verdict in a complex business litigation case, a \$38 Million employment law settlement and a \$50 million personal injury settlement, which is the largest personal injury settlement in United States history. Callahan & Blaine celebrated its 25th anniversary earlier this year. Mr. Susolik can be reached at esusolik@callahan-law.com or 714/241-4444. Callahan & Blaine's web site is found at www.callahan-law.com.



For example, a litigator who specializes in real estate law but cannot take a meaningful deposition is not a good advocate.

Any business owner who has been involved in litigation and had their deposition conducted knows the difference between walking out of a deposition happy and untouched because of the questioning lawyer's inability to obtain critical significant information, and walking out of a deposition room bloodied and exhausted, having been cross-examined by a powerful and aggressive litigator/trial lawyer at the peak of his or her skills and talents.

Likewise, the "specialty litigator" who has never conducted a trial or is unable to connect with a judge or jury during trial is a weak advocate. Ultimately, every lawsuit that is litigated must have as its ultimate goal how the facts and legal issues will be decided before a jury and judge. If the "specialty litigator" is not a powerful trial attorney, the entire discovery, law and motion, deposition and pre-trial phase will be handled in a mediocre and unpersuasive manner.

Moreover, the opponent on the other side will feel no intimidation or pressure to settle with a weak legal adversary. Settlement is a powerful weapon in the arsenal of the "litigator/trial lawyer." It is one of the true ironies of litigation that the best settlements come from the lawyer who is an expert at trials and has prepared his case for trial. The trial lawyer who prepares his case for trial is the lawyer who gets the best settlements.

Ultimately, when a business owner is choosing a litigator, the ultimate criteria and "litigation specialty" they should be looking for is to choose a "winner." The following is a checklist of some of the critical factors to look for in selecting a "winning" litigator:

1. Does the lawyer or law firm have a track record of conducting actual trials in front of a jury? A litigator who has never conducted a trial cannot be an effective advocate in the pre-trial and discovery phases.
2. Does the litigator have a track record of winning cases and being successful? Look carefully at the lawyer's record in handling complex cases. This requires some significant due diligence, as some results on the surface may seem compelling but in actuality prove to be less than persuasive when examined closely.
3. Does the attorney have experience and expertise in handling

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both plaintiff and defense cases? A true litigator is not relegated to one perspective or one point of view.

A lawyer who is equally adept at both plaintiff and defense work is a very powerful asset, as that lawyer is able to understand the perspective and mindset of both sides of the litigation. Moreover, many cases have both a complaint and cross-complaint, so the attorney must be able to wear both plaintiff and defense hats.

4. Does the lawyer or law firm have brilliant legal writing skills? Powerful and persuasive legal briefs are the *sine quo non* of a great lawyer. If a litigator cannot communicate to the court via the written word in a powerful and effective manner, don't hire that lawyer. Ask to see examples of the lawyer's written work and results.

5. Is the lawyer an expert in depositions and discovery? The testimony of a witness at deposition is what the witness must say at trial. Consequently, a litigator who is not able to conduct an aggressive and effective deposition is an ineffectual lawyer. Likewise, document production, third party subpoenas, interrogatories and other discovery devices frequently make or break a case. Again, a true litigator must be an expert in discovery, in order to win your case.

6. Does the attorney have a track record of success in multiple areas of litigation? One of the indicia of a true trial lawyer and litigator is spectacular results in multiple disciplines of litigation. For example, my law firm, Callahan & Blaine has won a \$934 million jury verdict in the area of complex business litigation, which is the largest jury verdict in Orange County history. At the same time, my firm also has a \$50 million settlement in a complex personal injury/municipal liability case. That is the largest personal injury settlement in United States history. Furthermore, the majority of our cases are on the defense, and we have obtained numerous significant defense verdicts in areas such as employment law, especially when large corporations have "bet the company cases" that need to be won at trial. This type of multi-faceted success demonstrates that one of the most important signs of great litigators – success in diverse and multiple areas of litigation.

Conclusion

In conclusion, when a business becomes embroiled in a lawsuit, the legal specialty they should look for is the lawyer who is an expert in the art and science of litigation, and, more importantly, in winning.