


The Art Of Co-Lawyering For Small Firms And Solo Attys

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By [Rachel Rippetoe](#) | 2024-06-14 16:46:12

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There are plenty of horror stories that can be told about small firms and solo practitioners bringing outside attorneys onto a case as part of a co-lawyering arrangement, the Sacramento-based attorney Karen Goodman told a group of attendees at the California Lawyers Association's Solo and Small Firm Summit on Thursday.

In one particularly harrowing example, she pointed to a solo attorney who brought on a litigation specialist as he prepared a traumatic brain injury case to go to trial. When the new lawyer didn't get along with the client, however, they brought on a third attorney, a traumatic brain injury expert, to negotiate a \$1 million settlement. The problem: the third attorney's partner got his hands on the client trust account and spent all the money, leaving all three to have to pay back the pilfered funds.

"This is an example of lawyer number one really giving up the captain of the ship because someone still has to be responsible for this," Goodman said. "If you're bringing in co-counsel, you have to commit to regular communications. Because the person's not down the hall. You have to make an effort so that there is an understanding of who's doing what, so that our clients' interests are protected at all times."

Goodman, who operates her own practice, joined Wilson Elser Moskowitz Edelman & Dicker LLP attorney Carole J. Buckner to lead a session on Thursday all about navigating relationships with other lawyers — whether they're established attorneys from other firms working as co-counsel, contract attorneys or "robot lawyers."

Co-Counsel

Goodman said most solo and small firm attorneys have usually dealt with a "disappearing co-counsel" at some point in their career, where it doesn't seem that the lawyer you enlisted to help on a case is doing much of anything.

If an attorney sees that their co-counsel is slacking, it's important to be proactive, Goodman said.

"If it's somebody you've brought in and they're not doing their job, you may have to discuss with your client whether this lawyer needs to be replaced," Goodman said. "I don't think you sit around and wait on it and just complain, 'Jesus, this lawyer's not around.'"

But co-counsel relationships can falter on either side of the agreement. Goodman said she's often been brought in on cases only to see the initial lawyer step back and let her take on the bulk of the work.

"I've had those instances where people decide, 'Karen's involved. Karen has had to try a case.' They can go on vacation. They can start their retirement," she said. "Doesn't work that way with co-counsel; it really does require a sharing of responsibilities."

Being proactive is truly key, Buckner said, because it's never productive when two attorneys working on the same side end up in their own dispute.

"I think sometimes people would tend to ignore it, but after the fact, when I see the legal malpractice for the State Bar claim, people will tell me, 'Yes, I did kind of know. I knew that was an issue. I probably should have dealt with it,'" Buckner said. "So if you have that bad feeling, tackling it and dealing with it in a proactive manner is, I think, really going to put you in the best position."

It's very important that the attorneys brought into a case by the lead lawyer actually meet with the client and that the co-counsel themselves have regular in-person meetings, Buckner said.

"What you're really doing there is you're creating a team," Buckner said. "You're creating a cohesive work together with the client to get the job done."

Contract Attorneys

Another option for lawyers who are trying to build a larger team for a case they're taking to trial is to hire contract attorneys. Slightly different from co-counsel, who have an independent practice but enter into a fee-sharing agreement with another lawyer or firm, contract attorneys usually work for a contract service and work under the umbrella of the original attorney's firm or practice. Although some have their own firms, as well.

Sometimes lawyers think that when they hire contract attorneys to bolster the work they're doing for the client, they can keep it under the radar, but Buckner said this is a bad idea.

"It is often going to be a material or significant development in a case, so it is something that you're going to want to make sure the client is aware of," she said.

If a lawyer knows there's a possibility they'll bring in a contract lawyer at the beginning of a case, they should work it into the fee agreement with a client, Buckner said. But sometimes attorneys don't know that extra help is needed until the middle of a litigation. In this case, attorneys need to be particularly vigilant that they're "checking all the boxes," Buckner said.

This includes making sure the attorneys they bring on are not only qualified but also don't have any conflicts that would muddy their representation. An attorney needs to consider what scope of information the contract lawyer has access to both in the particular case they're working on and other cases across the firm. The attorney also wants to make sure that whatever lawyer they bring into the case has professional liability insurance.

Although it is also possible for an attorney to add contract attorneys onto their existing insurance policy, Buckner said.

"I think it's a trap for the unwary if you have a lawyer working on your files that's not insured either by you or separately, for a lot of reasons, including that violation of the rule of professional conduct," Goodman said.

In terms of what to bill clients for contract work, Buckner said it could work a few ways.

"You could pass through the rate you're paying the contract lawyer if you have an hourly arrangement," she said. "If you have some other arrangement, you can pass through the hourly rate that your firm is billing to the client for that engagement, as long as a client consents to that."

Goodman said it's important not to delegate too much decision making to contract attorneys.

"You're still the captain of the ship, and you should act like a captain of the ship," she said. "Give them tasks that they are responsible for, supervise the task, give them feedback and help them deliver the best work for your clients."

"I think supervision of contract attorneys is really tricky, because they're typically not physically housed in your office," she added. "They're working on specific projects, so you need to keep them on a relatively short string. 'What are my deliverables? What do I expect?'"

Trial Tech (Robot Lawyers)

The trickiest kind of co-counsel is not a lawyer at all, but rather an AI "consultant." Working with technology vendors to store and disseminate trial data has become much more commonplace in recent years, Goodman and Buckner said. But if attorneys aren't careful, it can get them into trouble.

"You're either going to do trial tech in-house, which means you've got a really good paralegal that's really trained on this, or you're going to have a trial tech person that you outsource and bring them in, because the juries absolutely expect that," Goodman said. "It is now, to me, the exception to the rule when both sides don't present trial tech materials in terms of nice displays, nice presentations, graphics, timelines, things that bring the exhibits and what happened to life, as opposed to people using foam boards."

Foam boards are "becoming as rare as dinosaurs," Goodman said. But she said attorneys should apply the same basic principles they do in selecting a co-counsel as they do with working with a virtual assistant: "Who's the captain of the ship? What's reasonable and necessary for the best interest of the clients? How do I present my client's story so that it's most persuasive?"

And robot lawyers usually require working with real life people, as well, Goodman said.

"Even though we're ethically obligated to be familiar with it, you better bring somebody in that really knows the stuff," she said. "It's an area that's easily overlooked by folks like the solo and small firm practitioners, because we don't have a big staff on that, but we've got to go out and engage somebody when we get a case that requires it."

--Editing by Nicole Bleier.

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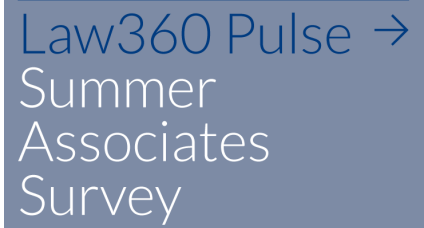
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