

TUESDAY, AUGUST 2, 2011

LITIGATION

## No matter is too great: Practical lessons for litigating a complex case

By Marwa Elzankaly

Over the past 11 years of my practice, I have handled a wide variety of cases, from commercial disputes (big and small), to class actions, to prosecuting and defending civil rights cases. I have represented my clients in state court and federal court, before local, state and federal administrative agencies, and in both state and federal appellate courts. Through it all, the ultimate lesson learned consistently is that with some diligence, tenacity, strategic thinking, persistence, and the power of positive relationships, no matter is too great or too complicated.

**Diligence:** Any seasoned lawyer knows the key to litigation is preparation. Being prepared means know your client; know all the players; know your opposing party; learn as much of the facts as possible; and know the law. Ask detailed questions and get all of your client's documents.

Also, do your homework! With online tools like Westlaw, Google, and Wikipedia, there is not a shortage of information available to the public and to you.

---

Find similar cases, call the lawyer in charge and learn from his or her experience.

---

You might be amazed at the number of admissions and helpful (or harmful) statements you can find on a party's Web site, blog, social networking page, or in news articles. Do not forget to look at a party's public filings with a federal, state and local government agency. A simple search in a federal or state court might turn up similar litigation a party of interest is or was involved in.

But look beyond your own research. Talk to someone who has done this before. Most lawyers can be very generous with their time when given the chance to share their experience and expertise. Find similar cases, call the lawyer in charge and learn from his or her experience. The wealth of information available today can put you well ahead of the game before it starts and before the burdens of formal discovery attach.

**Tenacity:** One of the strongest benefits of a diverse practice is that it teaches you to always "think outside the box." At first glance, it may seem that the law is completely against your client, or the facts look pretty bad. But

take a closer look and ask yourself this: Perhaps there is a key distinguishing fact or a subtle exception to the law that completely changes its application. The point being — dig deep into the issues before you give up on the law and do not take it for granted that your client's case necessarily falls into any specific category.

**Strategic thinking:** Your client's case might involve multiple parties, multiple individuals and multiple legal entities. There may be more than one appropriate jurisdiction where a single action can legally be filed, or it may be that resolving your client's situation requires more than one action filed in different courts. Strategic thinking necessitates that you always consider the big picture and look at the entire matter as a whole, not in bits and pieces. Ask yourself: Where are you and your client located; and where are the other parties? Consider how one matter might affect another. Keep in mind when there are multiple parties on the same side and when they might have shared or competing interests. Determine how you might best work with counsel representing a co-party and carefully consider what to share (or not).

**Persistence:** Litigation can take many years to come to any resolution, and in the course of any litigation, you might have your major wins and your occasional set backs. The key is to not give up or be discouraged if things do not immediately go your way. Having done your homework, and assuming you have a sound basis for doing so, you must forge ahead for your client, and know that getting a favorable result might mean an occasional set back, even perhaps taking your client's case on a first appeal, or more.

**Positive relationships:** Never underestimate the power of a positive working relationship with your colleagues, your client, your opposing or co-counsel, witnesses, or with court personnel. Know that you can be firm in your position, and represent your client's best interests, without being abusive or taking abuse from others.



**Marwa Elzankaly** is a partner at *McManis Faulkner*, where she focuses on commercial and general civil litigation in both state and federal courts. She can be reached at (408) 279-8700 or [melzankaly@mcmanisfaulkner.com](mailto:melzankaly@mcmanisfaulkner.com)