

Trial Pros: McManis Faulkner's Bill Faulkner

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William Faulkner leads McManis Faulkner's business practice and has experience in both state and federal courts in Santa Clara County. Faulkner represents businesses and individuals in complex civil litigation, and works with individuals and families in cases involving will contests, trust disputes and related issues. He is often called into family law matters to provide specific litigation expertise where business concerns are involved.



William Faulkner

Faulkner assists many of the firm's clients in transactional and contract matters. He also serves as a judge pro tem for the Santa Clara County Superior Court in settlement conferences, as an early neutral evaluator for the U.S. District Court and as a private mediator and arbitrator.

A member of the Santa Clara County Bar Association and the Santa Clara County Trial Lawyers Association, Faulkner has long been a trustee and officer of the San Jose Museum of Art. He is also a fellow of Litigation Counsel of America.

Q: What's the most interesting trial you've worked on and why?

A: The most interesting case I've worked on was also one of the longest and largest of my career. Going on 16 years now and involving corporate defendants and lawyers from all across the county, the case involved a public nuisance suit against my client, the former owner of a paint company long-since sold, and other paint manufacturers, who sold lead-based paint from 1900 to the early 1950s.

Filed by major counties and cities in California, the suit is interesting in that it claims the mere presence of lead paint on the interiors of private homes is a public nuisance, while typically these types of claims are in the product liability realm. The trial, which resulted in a \$1.15 billion judgment styled as injunctive relief against the defendants, was also unique in that it was expedited in a six week trial. With the judge limiting time for each side, there were only 40 hours of trial time for each side. That roughly equates to a judgment of almost \$30 million per trial hour for defendants. The judge also permitted no recross examination. Needless to say, the trial was a challenge.

The case is now on appeal. Similar claims in at least seven other states have either been dismissed or rejected by courts or juries.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: One of the most amusing things I encountered in trial was a juror stating his opinion in a case involving an alleged agreement to split a \$70 million whistleblower fee. Prior to jury selection, both sides agreed on the use of mini-opening arguments. As part of the jury selection, one of the jurors

demographically thought likely to be plaintiff-friendly was asked his opinion of the suit after hearing the mini-arguments. His reply was “I get paid \$15 a day to sit on this jury and this guy (pointing to plaintiff) wants me to punch his lottery ticket? I don’t think so!”

While definitely amusing, the juror’s heart-felt response was one of the main reasons for a settlement very favorable to my client. It also demonstrated the power of mini-opening statements, a tool now used much more commonly, and how they can give much insight into potential jurors’ attitudes.

Another amusing anecdote involved cousins who jointly owned a transmission shop. One cousin, the opposing party to my client-cousin, while on the stand testifying why he should be awarded money from his cousin, admitted that as owners of the shop, they cheated on their taxes and the shop’s actual income was greater than reported. In the way that only Judge Bruce Allen could (may he rest in peace), upon hearing the testimony, Judge Allen immediately discharged the jury, dismissed the case and told both sides to take their dispute into the street as his courtroom would not be used by tax cheats to resolve their dispute. My client and I were very pleased with the result.

Q: What does your trial prep routine consist of?

A: My trial preparation is to approach every matter as if it will go to trial. While every case is different and has its own merits, I spend countless hours researching the law and preparing evidence so that I can anticipate and be ready for as many scenarios as possible.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: My advice to any attorney, whether it is on the eve of their first trial or they are a veteran trial attorney, is to have command of the evidence and to pare the evidence down to what is truly necessary. Whether paper or electronic, the evidence needs to be completely organized and available at your fingertips. Even if you have an assistant running a computer, you need to confirm they are proficient and ready to produce the evidence. You lose respect of the jury and the judge if you are fumbling papers or don’t have the computer ready to instantaneously show the evidence. And, be it a judge or jury, you don’t want them to lose sight of the important evidence in a haystack of unnecessary detail.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: One of the most impressive attorneys I know is Allen Ruby of Skadden Arps Slate Meagher & Flom, who was also my co-counsel during the whistleblower fee case mentioned prior. Not only is he very intelligent, but he has a unique conversational ability to relate to a jury during the presentation of evidence. It’s like he is talking to a witness in his living room for the benefit of the jury. Allen provides a clear conversation about what happened and has a natural ability to ask questions in a manner that is relatable. These are all outstanding attributes and one of the many things that make him a great trial attorney.

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