

When **Goliath** is your opponent

By Jonathan G. Stein

Being a solo about to litigate against a big firm can either give you a huge headache or the biggest rush. Your response to the situation depends on using your skills and advantages in the case. While you may not have the resources or the size, you have the ability to better learn your case, to frame the issues, and to keep up the pressure. These steps were helpful to me in my litigation against large firms.

1. Prepare your case early. The most important step is to prepare before you begin. If you represent the plaintiff, prepare your discovery before you file your complaint. This gives you the benefit of being able to get a jump on your opponents and force the issues. Make them respond to you, instead of you responding to them. The easiest way to do this is to prepare, prepare, prepare. If you represent the defendant, do not rush to file your answer. If possible, request an extension to file a responsive pleading. Then, when you are ready to serve your answer, you can serve your discovery as well. Once you can frame the issue, the large firm ends up on the defensive and you have an advantage.

2. The devil is in the details. Learn the details of your case. In a recent appeal, the difference between the large firm and me (along with co-counsel) was knowledge of the details. The lawyer who made oral arguments did not write the briefs. Thus, he was not as familiar with the details of the case, and stumbled when he was asked questions on specific points. By knowing the details, you will be in a position to point out the little mistakes that can add up to a big win.

3. Keep it simple. Even the simplest case is difficult. One way to litigate cases against big firms is to keep the issues as simple as possible so that you do not waste time on the case's fringes. As a case gets more complicated, it takes more time, which large firms have more of than you ever will. As a solo practitioner, you already know that you have to make the most of your limited resources—including time.

4. Don't become frustrated with their tactics. Big firms like to have three or four or five or . . . well, you get the point. They like lots of lawyers to work on files. In my appeal, there were three different lawyers—one to write the opening brief, one to write the reply brief, and one to make oral arguments. When you call, you may get a different associate on the phone every time. Don't let these tactics frustrate you. Use them to your advantage.

When you can, get concessions from one lawyer; you may be able to use these concessions later.

5. Relax and have fun. The most important thing to remember is that you have very little to lose. Everyone expects the big firm to win. (Maybe not the client, but that is where explaining the situation to the client up front is important.) If you win, no one expects it.

Use the above steps to help your case, save your sanity, and continue enjoying the practice of law!

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