

GENERAL PRACTICE, SOLO & SMALL FIRM SECTION

GPSOLO

**We Are
a Team**

A PUBLICATION OF THE AMERICAN BAR ASSOCIATION
JULY/AUGUST 2004 • VOLUME 21, NUMBER 5

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TEAM UP TO BEAT

By David Zachary Kaufman



You take the call, unsuspecting that your life will change in the next 30 seconds. It can be from a colleague or a client. But what is said is always the same: "I've got a problem, it's a very big problem, and you're the only one who can help." Calmly, you ask for more information. It quickly becomes clear that it really is a big case, big enough to strain your resources if you are a solo or small firm attorney. Okay, you can handle that, so you make an appointment.

When you meet and begin analyzing the case, you check out the other side's attorney. And you discover that it is not an attorney, it is a firm—and not just any firm, it's one of the biggest firms in the area, if not the nation. Now you gulp hard and think. If you're like me, you think things like, "They're smarter and better funded than I am. They have jillions and jillions of minions to throw at me! I'm gonna die! They're gonna bury me!"

I'm a strict solo, relying on technology and planning rather than on staff. My practice is almost 100 percent civil litigation, but I do have some outliers as well. Most of my cases come to me by referral from other lawyers. These cases come to me, in large part, because of my ability to cope with the big firms' paper factory and hardball tactics. What's my secret? It's not a secret at all. What I do, what you can do, too, is create a team of solos and small firms. A good team gives us the advantage and lets us take on the big cases and big firms and win.

Assessing Your Needs

Knowledge is the key. First, what are the is-

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THE BIG FIRMS

sues of law you will face? Do you have service issues? Statute of limitations issues? Substantive issues? Make a list of these issues. Second, what resources can your firm bring to the case? Make a list of these resources. Third, what resources and skills does the other side have access to? Make lists of these, too.

The next step is hard. You must apply a critical eye to your own skills and decide what help you need—objectively, and keeping the best interests of the client at the forefront of your mind. Get a friend you trust to help you with this evaluation. Between the two of you, figure out what you really need: brains, brawn, experience, knowledge, money, support, etc. Then go get it.

Assembling Your Team

On my most recent team, the substantive issues did not require a legal specialist. So I did not need to find help in analyzing and understanding the law. But the case required more hours than I could provide to respond to the blizzard of motions and discovery disputes we were expecting. I needed someone with great litigation experience, whose judgment I respected. I needed to have someone with me who could help me calm down when the other side's hardball tactics angered me and I was tempted to retaliate in kind. I wanted someone who thought creatively and who would argue persuasively. Fortunately, I knew someone who could do just that.

If you don't know someone who can meet your needs when you are forming your team, you have to find her or him. You should be looking for several qualities. At a minimum these should be legal acumen, interpersonal skills, and the ability to subordinate her or his ego to the team. Finding such a paragon can be easy or hard—it seems to depend on luck and your willingness to admit mistakes and re-

move team members who cannot meet your needs. The best way to find such a paragon is by networking—frankly, nothing else works. Only by networking can you get some assurance that the skills you desire are present. And these assurances are by no means guarantees.

Unexpectedly, in my most recent team, one skill I did not select for turned out to be critical: My teammate and I had the same writing style. I frequently mistook my teammate's writing for my own and vice versa. This permitted us to seamlessly draft briefs and pleadings with minimal editing

OBTAINING CONSENT: SOME SAMPLE EXCERPTS

To permit the retention of additional attorneys in a contingent case:

The undersigned recognize that it may be necessary for David Zachary Kaufman, Esq., and KAUFMAN LAW, A Professional Corporation, to associate additional attorneys to assist in investigating and pursuing ____.

To permit the retention of additional retained attorneys:

The undersigned recognize that it may be necessary for David Zachary Kaufman, Esq., and KAUFMAN LAW, A Professional Corporation, to associate additional attorneys to assist in investigating and pursuing _____. If this becomes necessary, their billing rates will be provided to you in advance for your approval. KAUFMAN LAW, A Professional Corporation, does not charge an administrative surcharge to any of these fees and costs.

Contingency fee-sharing disclosure statement:

Pursuant to the applicable Rules of Professional Conduct, I, the undersigned, hereby acknowledge that I have been advised by KAUFMAN LAW, A Professional Corporation, that the legal fee in my case will be shared on an approximate ____ basis. This is the anticipated division of services which are and have been rendered in this case. I have been advised that this fee arrangement between KAUFMAN LAW, A Professional Corporation, and ____ will not affect the total fee charged to me. Pursuant to the original retainer agreement I signed with my attorneys, the applicable attorney's fee (____%) is unchanged. I understand and consent to this fee sharing agreement.

SAMPLE RETAINER AGREEMENT BETWEEN MY FIRM AND TEAM MEMBERS

Dear Mr./Ms. _____:

It was a pleasure to meet with you to discuss our joint representation of the _____ Companies. This letter summarizes the relationship we have agreed to and sets the framework for our work for the client. If after reviewing this letter, you have no further questions about the terms of our relationship, please sign the enclosed copy and return it to me.

Scope of Representation:

In essence, I agreed to provide legal and consulting services to the _____ Companies, and, after reviewing the situation, decided that I needed co-counsel to assist me on this project. The exact parameters of this assistance are not yet fully defined, but will, at a minimum, require you and your associate, Mr./Ms. _____ to join me in representing the interests of the _____ Companies in several different forums; provide written legal analysis and other materials; and bring and prosecute several cases involving defamation, conspiracy to interfere with business relations, and violations of _____. These services will include legal research, reviewing legal documents, drafting opinions, and developing legal strategy to further your objectives.

I anticipate that either you or Mr./Ms. _____ will appear with me on the pleadings, assist me in formulating litigation strategy, and appear with me in court as required.

The client has been informed of this arrangement and has agreed to it.

Your Responsibilities:

Mr./Ms. _____ and/or yourself are expected to and agree to fully cooperate with me at all times and to provide all information relevant to the issues involved in this matter. You also agree that, should the Client(s) fail or refuse to cooperate with my law firm and I terminate my professional services to the client, your services will also terminate at the same time and in the same way.

Agreement Not to Compete:

Your Firm also agrees not to compete with me or my firm for future work with the _____ Companies, the _____ family, and its individual members.

Signed

and absolutely no friction.

Once you have identified the help you need and the people you want to work with, where are you? Nowhere. Under the ethical rules the client must approve adding attorneys from outside the firm. In some states, for contingency cases you must also obtain the client's signed consent to a fee-sharing agreement clearly setting out the way the contingent fee would be shared. (See the sidebar "Obtaining Consent," page 23, for a sample paragraph.) Obtaining consent will certainly require your explaining to the client the urgency and necessity of adding other attorneys to the project. I have never had a client fail to understand the need to have backup and support. But all clients want to be reassured that there is a plan, and they want to know who is in charge.

Don't forget to check for conflicts with the prospective team member. And be sure your malpractice insurance will cover this sort of situation. You must check with your carrier (not your broker) because your policy may not cover team situations, especially if you are a strict solo like I am. Be sure you get this assurance in writing, too: You may never need it, but, in these big cases, if you don't have it you've just bet your firm and your family home. You should insist your prospective teammates do the same and provide you with written assurance that they are covered.

Unless you relish the chance that you might lose the client to another member of the team, make sure you have a non-compete clause in the agreement you sign with the other team members. (See the sidebar "Sample Retainer Agreement Between My Firm and Team Members," at left.)

Financial arrangements should also be specified in the basic hiring agreement. By this I mean that you must answer a simple question: Are you responsible for paying the other attorneys and then billing the client, or should these other attorneys bill the client directly? I prefer to have all client contact through my firm. This permits me to directly control costs and quality. My clients like this approach—one bill for the entire team, and because the bill is through my firm, they know I stand behind the work. Of course, you are now responsible for the bills in the event you get stiffed by

the client. (Some of you might recall the article I wrote for the October/November 2003 issue of *GPSolo*, when I was almost out about \$100,000 on a team effort. Fortunately, it ended well, but my firm was almost out of business for a while.) The alternative is to let the team members bill your client directly. I don't recommend this approach because, although you are responsible for the total product and cost, you have relinquished control.

Choosing a Team Leader

One of the worst things that can happen in a group effort is for the work to bog down in endless discussion and debate. There must be a recognized leader of every team—someone whom all the team members respect and whose leadership they will follow. It doesn't have to be you, even though you brought in the client. But the identity of the team leader absolutely must be decided up front. How do you pick the team leader? Not by democratic election and not by who has the client. The best team leader may not be you, even though the client is yours. For the good of the client, you must set aside your ego in selecting a team leader.


What are the best characteristics of a team leader? A good team leader needs managerial and interpersonal skills. A good leader can harness the team's creative energies and persuade everyone to work together with minimal conflict. Perhaps most importantly, team leaders must be able to subordinate their own ego and be able to recognize that others may have more knowledge or skills. They must be able to convince others to put the success of the client (and the team) ahead of any personal interest. This is not easy, either. Most lawyers, and all solos, are firmly convinced that their way is best—and will argue for hours to prove it. But the client's interest must always come first, and all too often one team member must relinquish something (credit, a strongly held belief, etc.) for the overall success of the client. A great team leader is able to recognize each member's skills and fit these skills to the tasks best suited to them. Sometimes, unfortunately, a team member does not have the skills required. You made a mistake in whom you brought onto the team. In that

case the team leader must tell you, and, because it is your client, you must remove that person from the team.

I have found that the best legal strategist/planner does not necessarily make the best team leader. Personally, my talents lie more in the area of legal strategy than in team management. If I have someone on the team with good management skills, I will ask him or her to be the team leader. I retain hiring and firing rights, but otherwise the leader is in charge. That being said, when I work with a team of lawyers I know well, the advantages of having the best legal strategist as the team leader outweigh the disadvantages. In these cases, I generally act as the "official" leader, but I cede authority over particular decisions to the best-qualified team member. For example, one attorney I regularly work with is wonderful on direct. She decides what to do about recalcitrant witnesses and how to handle them; I have input, but in case of disagreement she decides. Another attorney I know can read and pick a jury far better than I; I ask him to handle jury research and selection. And there is one attorney with whom I am privileged to work on occasion who is a far better legal strategist than I; when we work together, he takes the lead and, in case of dispute, his vote breaks the tie.

I also tend to assume leadership of the team when I don't know the members well enough to spot a natural leader. The advantage of owning the client, and the fact that I have no ego when I am trying to win for the client, ensures that I listen to others and, as I learn their styles and abilities, cede authority to them.

Conclusion

If you pick the right people, people whose skills you can trust, and mold their skills into a team, you, too, can compete and win against the big firms. I know. I've done it, and it feels great! 

Set aside your ego in selecting a team leader. The best team leader may not be you, even though the client is yours.