

NO BIG DEAL

Want to Beat a Big Firm in Litigation?

Turn its Tactics to Your Advantage

M A R K R I C H M O N D

LIKE IT SAYS IN THE BIBLE, WHEN David faces Goliath, the big guy doesn't always win.

It's the same for lawyers engaged in litigation. The weapon isn't a slingshot but rather a combination of tenacity and focus, say small-firm lawyers who regularly take on and defeat opponents from the big-firm halls of Berber carpet and hand-sewn wingtips.

Just ask David Kaufman, whose solo practice is based in Fairfax County, Va., near Washington, D.C.

Kaufman recently won a contract dispute case against a



Mary Stowall (left) and Linda Friedman say devoting time and energy pays off

large Washington firm that he says clearly underestimated him from the very first day. It was his fifth major victory over a large firm in the past three years. This time, the brawl went on for more than a year and a half, he says.

"These guys just didn't do their homework," says Kaufman. "They thought they could run right over me."

Often, Kaufman says, attorneys from big firms assume they are smarter than small-firm lawyers and that their superior resources can be used to simply exhaust the opposition.

"The level of arrogance is really quite extraordinary," he says.

Kaufman says one large-firm tactic is over-inclusive responses to discovery requests, meaning dozens, sometimes hundreds, of boxes of documents are delivered for review—most of them utterly worthless. But the solo or small-firm lawyer must still review each box to find the few gems of genuine evidence.

But Kaufman sees such tactics as an advantage for smaller firms that are willing to do the work.

"It's a major strategy advantage for the little guy," he says. "By the time we went to trial, I had personally looked at every single piece of evidence several times. I knew everything about the case."

Another big-firm tactic is filing multiple motions in hopes that the small-firm attorney won't be able to effectively prepare for each one. But Kaufman knew that the local court rules in Virginia frown on frivolous motions and other time-wasting tactics, and used them to his advantage to expose the other side's delays, earning them several reprimands from the judge.

The judge wasn't the only one whose anger grew with each new delay. Kaufman says that for him, too, what started as a fairly routine case became a must-win crusade when the opponent insulted him that way.

"After a while, there was nothing more important than beating these guys," says Kaufman. "And thanks to their own lack of focus on the substance of the case, it turned out not to be all that hard."

Ultimately, says Kaufman, superior preparation and knowledge of the case's nuances earned him the win.

"I just ate these guys on cross-exam. Why? Because I knew the case best," he says.

SIZE DOES NOT DEFINE COMMITMENT

MARY STOWALL, ONE OF TWO NAME PARTNERS IN A SMALL Chicago litigation boutique, agrees that just because the big firms have more people doesn't mean they necessarily devote more time or energy to a given case.

"They're just not going to tap all that expensive talent," she says. "Corporate clients these days are much more focused on the bottom line."

Her partner, Linda Friedman, agrees. "It's a well-guarded secret that big firms don't work any different from small firms," she says.

There is one exception, Friedman says. While experienced lawyers from a small firm are in the thick of the case, partners at big firms are more likely to be devoting

time to rainmaking and managing other clients with inexperienced associates doing much of the actual case work.

Stowall and Friedman say money is not the driving factor for their firm, which concentrates on civil rights and employment discrimination. Friedman says that once they take a client, they will spend whatever is needed to present the best case.

"You don't focus on cost," she says. "You focus on what is necessary to do a quality job—even if you may not see it in the return. But it's all connected. You find that when you spend the time and energy, you do see a return."

Another reason small firms are able to compete successfully is that there is less bureaucracy than at big firms, says Friedman. Big-firm lawyers "have so many people looking over their shoulder," she says. "We don't get second-guessed as often."

Not to be overlooked, they say, is that they love what they do. They

choose cases they want—one recent high-profile win was a \$2.2 million arbitration award against a Wall Street firm for gender discrimination—and they let their shared values guide the management of the practice.

The result, they say, is an utter lack of jealousy or worry about who is pulling more weight, which allows them both to focus completely on their cases.

"We got to a place where we could do what naturally made sense to us, what we're passionate about," says Friedman.

Jonathan G. Stein is a relatively new lawyer who has already learned some of the lessons experienced attorneys like Kaufman, Stowall and Friedman espouse. Licensed for only about a year, Stein practices solo in Elk Grove, Calif.

Among the lessons Stein takes most to heart is Stowall and Friedman's advice about accepting cases that mean something to you.

In one of his cases, Stein represents a young father whose child was placed for adoption against his wishes. The adoptive family is receiving pro bono assistance from a large firm with offices throughout California.

"I'm an adoptive parent who has had a baby taken back from me," says Stein. "If this client was in the wrong, I'd be the first person to say so."

He's also learned to let the huge size of the opposing firm work against it. He says he has received correspondence from at least four different attorneys at the other firm. He knows that means no one there is as fully versed in the case as he is.

Stein says knowing he is the underdog in the case frees him to work without the weight of expectation around his neck.

"If I lose, it's expected. If I win, it becomes my best marketing tool," Stein says. "You've got to take the chance and stick up for the little guy, even if the little guy is you." ■



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