

ACC Value Practice: *Virtual Trial Teams****Nelson Mullins' Value-Based Staffing for Clients in Complex, High Stakes Litigation******David E. Dukes, Partner, Nelson Mullins Riley & Scarborough LLP******J. Mark Jones, Partner, Nelson Mullins Riley & Scarborough LLP***

"Virtual trial teams" offer companies a value-based staffing option that transforms competitive collaboration into client value. In-house clients in high stakes jury trials are increasingly partnering their most experienced and effective trial counsel with attorneys from other firms who have deep knowledge in science or medicine areas to match talent to the needs of the case.

In-house counsel play a key leadership role in setting the tone, selecting the team, identifying the team leader, and ensuring that communications and processes are set to support collaborative teamwork and efficiencies.

Participating on virtual trial teams in various roles, including as lead trial attorney and trial team captain, the authors, as litigators at Nelson Mullins Riley & Scarborough LLP, understand how powerful and impactful virtual trial teams can be. They also understand the battleground practical realities of trials, and keys to success.

This ACC Value Practice explores key issues to consider in constructing virtual trial teams. In addition, it emphasizes how value-based client service relationships, staffing options, and project management practices can result in value-add for the corporate client.

Creating the Team: Key Roles

What are some of the key roles to consider in designing a virtual trial team in a large patent, pharmaceutical, or other complex case?

- ***Lead trial attorney*** - a highly experienced lead trial attorney who has a successful track record of connecting with jurors and reducing complex scientific and technical evidence to simple concepts and themes; philosophy is to fix the problem, not the blame, and to keep the team working together and motivated in the face of unfavorable developments; must know how to create and maintain a supportive, collegial atmosphere in which the lines of communication stay open and constructive despite the intense pressure of trial;
- ***Attorneys with deep subject matter knowledge*** - attorneys who have a particularly deep understanding of the science, technology, or other subject matter at issue who are responsible for, among other things, developing experts witnesses and successful challenges to the other side's scientific case theories;
- ***Trial team captain*** - responsible for making sure the team acts as one cohesive unit;
- ***Law specialist*** - attorney with strong command of the applicable law who may take charge of the legal briefing, arguing key motions and jury charges, and protecting the record for appeal; and

- ***Vital support attorneys, paralegals and staff*** - other attorneys, paralegals and support staff.

Assigning Responsibilities and Project Management Practices

Some key responsibilities for each player on the core virtual trial team are listed below.

- **The Lead Trial Attorney** - the lead trial attorney should understand and focus intensely throughout the case on the things that make a difference in jury trials. Key responsibilities include:
 - develop and test simple, persuasive themes and a compelling narrative;
 - create easy to comprehend demonstrative exhibits that visually re-enforce key case themes;
 - invest the time to prepare witnesses – so they connect with jurors on direct and handle themselves with confidence on cross;
 - develop a winning jury selection strategy; and
 - craft a proposed verdict form and jury charges that are as friendly to the client's position as the law will support and that the trial judge will accept.
- **Attorneys with Deep Knowledge of the Science or Technology at Issue** - attorneys with deep subject matter knowledge are often essential to success in jury trials that are scientifically or technically complex. Including these players on the team offers numerous potential advantages over staffing a team with generalists--including credibility with expert witnesses. Some attorneys who have deep knowledge of the subject matter also have extensive jury trial experience and can act as lead trial attorney or examine key witnesses at trial. Important supporting role responsibilities include:
 - develop the key scientific facts and case theories during discovery;
 - prepare retained experts and other science witnesses;
 - mount and defend against *Daubert* challenges to experts; and
 - create witness outlines and demonstrative exhibits.
- **The Trial Team Captain as 'project manager'** - an especially important role on a virtual trial team where the challenges of communication and coordination are often magnified by law firm lines, geographical distance, and even firm cultural differences. In the virtual trial team setting, an important priority of the team captain is to be supportive of team members from other firms and to promote a collaborative, unified team attitude. The Trial Team Captain serves as the lead project manager, identifying key actions, coordinating

efforts, promoting collaboration, and helping to ensure smooth execution. Key roles include:

- schedule and run trial team strategy meetings and calls to make sure that the client and all team members are on the same page about key decisions and in the loop on important developments;
 - identify, staff, and supervise pretrial and trial tasks;
 - ensure the team is achieving its discovery objectives and responding in a reasonable and defensible way to the other side's discovery;
 - facilitate the routine coordination of attorneys on the team who need to collaborate on various pretrial submissions, witness outlines, demonstrative exhibits, and other tasks;
 - review draft briefs and witness outlines and other work product to be a quality control check, to ensure consistency, and to avoid unnecessary duplication in motions and outlines; and
 - ensure the team is ready for each trial day and operating smoothly.
- **The Law "Specialist"** - having an experienced law "specialist" in especially complex cases to handle the time-consuming responsibility of creating and arguing motions and other submissions can be a very efficient approach that allows the trial attorneys to focus their efforts on the demands of trial. Key focus areas for the lawyer playing this role include:
- supervise the drafting of motions and related briefing;
 - argue key motions before and during trial;
 - draft and argue jury charges; and
 - protect the record for possible appeal.
- **Other Attorneys Who Play Vital Support Roles** - all successful courtroom attorney teams in large, complex cases include a strong support group of attorneys. Important roles include:
- prepare witnesses;
 - create draft outlines; and
 - develop presentation graphics.
- **Paralegals, Graphics Specialists, and Other Support Staff** - the support staff team will vary in composition and size depending on the nature and scale of the case, and typically consists of paralegals, graphics specialists, a courtroom technology presenter, and logistical personnel.

Keys to Success

In-house counsel play a critical role in assigning responsibilities and managing trial team dynamics.

Well-managed virtual trial teams openly discuss from the outset the reality that disagreements will occur, ways to avoid them, and how to resolve them efficiently and effectively. Some insights on keys to success:

- **Select collaborative team members and promote relationship building** - select team members who are compatible and who have a reputation for being good team players; promote relationship-building among the various members well before trial.
- **Select a Trial Team Captain early on** - having a clear leader in place helps establish expectations regarding process and collaboration so that the team is working in a synchronized fashion, all driving towards achieving client objectives on the same timeline.
- **Stay involved** – clients should participate on status calls and provide input on any adjustments to overall strategy to help ensure that the team is executing on strategic client goals and has the benefit of in-house input on key issues.
- **Communicate early and often** - emphasize the importance of good communication, and incorporate into overall project management practices “cadence meetings” (brief, frequent standing meetings) among the trial team. Conduct a “lessons learned” discussion at the end of the trial to incorporate continuous improvement into the company's litigation processes and practices.
- **Set the tone and clear expectations** - perhaps most importantly, set clear expectations about the need for the team to work collaboratively and unselfishly to produce a win.

Value for Clients

Value-based staffing practices using virtual trial teams allow clients to leverage talent and experience across the various firms they work with, and to harness the power of competitive collaboration.

Value-add for the corporate client includes:

- Ability to leverage talent across spectrum of firms;
- Flexibility to match the right talent to the right role;
- Opportunity to leverage talent and experience: the best trial lawyer may not be the lawyer who is most knowledgeable about the subject matter – both are necessary and together they maximize potential for success;
- Value-based staffing models that break down barriers and serve the client as a team;

- Efficiency through defined staffing models, clear expectations, project management and leadership;
- Focus on results: everyone understands their role and every role is important to get to the 'win;'
- Trial team members from across various firms contribute a diversity of styles, experience and approaches – enhances potential for identifying leading practices and continuous improvement;

Closing Insights

Virtual trial teams in high-stakes cases are a growing trend, and are producing favorable results in courtrooms around the country. In-house clients play a key role in setting the tone, fostering relationship building, identifying and resolving conflicts, and creating an atmosphere of close collaboration and collegiality.