

YOUNG LAWYERS

BY BRONAGH M. KELLY, ESQ.



Bolstering Litigation Skills with Trial Institute Experience

Should I hire a family law practitioner who is a negotiator or a litigator? I often hear this question when people are at the beginning stages of their case, trying to determine which path to take.

A good family law attorney should be both a skilled negotiator and a skilled litigator. An attorney with strong negotiation skills can employ these abilities to better assist a client in reaching a firm and favorable resolution when one's litigation position is strong. Likewise, an attorney with strong litigation skills can help develop legal advantages that strengthen a client's negotiating position.

For young attorneys, however, getting litigation experience and, more importantly, trial experience, can be difficult. In today's world, trials are not as common as they once were and, thus, getting the practical courtroom experience can be rare.

When I heard about the National Family Law Trial Institute (NFLTI), I knew immediately it was a program in which I had to participate. The NFLTI is the preeminent litigation skills course dedicated exclusively to family law, taking place each May in Houston, Texas. It is designed to help attorneys who want to be better trial lawyers enhance their trial skills and way of approaching and analyzing cases.

During this intensive eight-day program, attendees develop skills training in all aspects of family law litigation, from opening statement to closing argument. Attendees are provided lectures and demonstrations on developing the theme of your case, opening statements, evidence, custody evaluations, psychological testing, business valuations, technology in the courtroom, direct and cross examination of parties and experts, and closing arguments.

About one month before the course begins, each participant is given the mock case file, consisting of deposition transcripts, forensic psychological evaluations, business valuations, and other trial materials. Each participant is also informed which party they will represent in the divorce action. You must arrive in Houston on day one ready to "go to trial." There is not a single free minute in Houston to learn the facts of your case.

Classes are determined based on the participants' level of experience, with a limit of six or eight per class. Each day is filled with a combination of lectures, demonstrations, and individualized training and exercises. Exercises are critiqued in the classroom by at least two experienced family law litigators, and are digitally recorded and streamed to another classroom for a private one-on-one evaluation with a third faculty member. Once you receive your critiques, you get right back up and do it over again. With each repetition, you eliminate bad habits and incorporate the

suggestions and advice received, in order to hone your skills and develop expertise and confidence as a persuasive litigator. The week culminates with a final start-to-finish trial in one of the courtrooms of the Harris County Civil Courthouse.

Throughout the week, we learned not just litigation skills but also new ways of thinking and analyzing different issues. We witnessed the importance of knowing the case better than your own client and ensuring that the theme of your case permeates throughout, thereby capturing the attention of the judge and enabling him or her to feel the case, rather than just listening to a droning of the facts. The NFLTI also gives attorney participants a chance to practice their own courtroom style and really solidify the type of litigator each participant wants to be.

Watching yourself on video is, in my experience, one of the best ways to improve your courtroom presence. It is one thing to hear how you can adjust your stance, look up and speak more clearly, but being able to see yourself and having the opportunity to self-critique in order to pick apart your performance is so much more effective. When you get back in the video room a second, third or fourth time, having listened to the critiques and made the adjustments, the difference and improvement that you can see is incredible. In a real trial, you get one shot at your opening statement, one chance to cross-examine the opposing party's expert and one opportunity to sum it all up in closing for a judge (assuming your

case is not reversed and remanded for a new trial!). Imagine getting a re-do three or four times, having had the advice and critique from experienced judges and family law litigators, telling you what you could improve! This is what we got to do at the NFLTI.

The week is educational, informative and exhausting! By the time you walk into the courthouse on the final Saturday morning, you have put in hundreds of hours of hard work, had the opportunity to learn from some of the best in the business, get individualized advice on how to improve as a litigator and received advice tailored for how to be the best lawyer you can be.

Although the fact pattern is the same for all participants, the verdicts in each of the trials are all different. Everyone has a different theme, how they wish to portray their client, how they examine and cross-examine lay witnesses and experts, and how they can spin some not-so-favorable facts to their client's best interest.

For another great learning opportunity not strictly focused on family law, consider attending the Young Lawyers Section Trial Academy at the State Bar of Nevada's Annual Meeting.

As young lawyers, we cannot compete with the number of trials or evidentiary hearings many of our opposing counsel will have under their belts. What we can do, however, is invest in our own careers by taking every opportunity to practice, improve and become the best litigators we can be. We can ensure that when that next trial comes around, we have all the tools in place to represent our clients and present their case to the court to the very best of our abilities. **NL**

BRONAGH M. KELLY is an associate attorney at Woodburn and Wedge in Reno. She is the current State Bar of Nevada Young Lawyers representative for the Access to Justice Commission and serves as the communications chair for Northern Nevada Women Lawyers Association. A graduate of Queen's University Belfast in Ireland, she practiced commercial defense litigation in New York City from 2011 until she relocated to Reno in 2016.

PRO BONO *Honor Roll*

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