

Tip of the Month

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Think Globally, Act Locally: Your Ethical Duties as Local Counsel

Although you may associate this phrase with a poster in your elementary school encouraging you to recycle, it can now serve as your mantra when you are retained as local counsel. The obligation to "think globally, act locally" perfectly captures the balance you must strike as local counsel. While lead counsel may mistakenly attempt to limit your role to only appearing for local hearings, your duties to the client and ethical obligations are much more broad.

Being designated as "local counsel" is no different than being lead counsel for the client in the sense that your non-delegable, fiduciary duties to the client are the same. That being said, the ABA Model Rules of Professional Conduct do allow you to limit the scope of your representation if necessary. Rule 1.2(c) permits a lawyer to limit the scope of their representation if the limitation is reasonable under the circumstances and the client gives informed consent. Accordingly, your fee agreement should be with the client, not the lead attorney, in order to properly obtain their consent to the scope of your representation. As a practical matter, it also sets the tone and expectations for your relationship with lead counsel.

Consider these practice tips when serving as local counsel to avoid the risk of malpractice that comes with this arrangement and to ensure a smooth working relationship with lead counsel and your mutual client:

- **Division of labor** – Quite simply, you should know who is responsible for what tasks in the case. In addition to your fee agreement with the client, itemize the work to be performed by each attorney in a separate agreement. Collaborate with the lead attorney so that the work is done timely. Further, if the lead attorney is admitted pro hac vice in your jurisdiction and both of your names appear on the pleadings, allow sufficient time for both of you to review and revise pleadings before filing. Even if you didn't write the brief, you are entitled to review it if you have an appearance in the case.
- **Calendaring** – Be sure to treat the case just as you would any other matter in your office when it comes to calendar management. Ensure that you and lead counsel calendar all court dates and deadlines so that nothing falls through the cracks. Communicate with lead counsel on these items like you would with another attorney in your office.
- **Communicating with the client** – Rule 1.4 requires you to keep the client reasonably informed about the case and any material developments. Coordinate with lead counsel so that the client receives the necessary status updates. Sometimes lead counsel will try to restrict your communication with the client in an effort to protect their attorney-client relationship. Make certain you have open communication with the lead attorney and client, such as ensuring everyone is copied on every e-mail, so you comply with this Rule.

Although being retained as local counsel is a nice nod to your well-deserved reputation, it is not without risk. As with any case, be sure you can competently represent the client in the type of case and are able to devote the necessary time and attention to the matter. Avoid the potential malpractice pitfalls when serving as local counsel by remembering to:

- Reduce exposure to a potential malpractice claim by narrowly defining the scope of the engagement.
- Reuse good practice management tools as if you were lead counsel. Serving as local counsel provides an opportunity to build new relationships, including ones with potential clients. So make a good impression.
- Recycle and reprocess your old notions about what it means to be local counsel. Some attorneys assume that lead counsel solely shoulders the burden of the responsibility for the representation. In reality, attorneys who act as local counsel are subject to the same ethics rules. So toss that misconception in the trash!