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Inside Kirkland & Ellis' Trial Advocacy Training Program (1)

Seasoned litigators say it takes several trials to be truly effective in a courtroom, a principle that law firm Kirkland & Ellis has embraced actively for more than 40 years with intensive annual training for its litigation associates.

Most recently, the firm brought a cast of hundreds—87 litigation associates along with firm partners, mock juries and trained actors serving as witnesses—together for a three and 1/2 day advocacy training session near Washington.

Conference rooms were turned into courtrooms complete with court stenographers, and fledgling lawyers quizzed witnesses while partners took detailed notes to critique both the style and substance of their courtroom performance.

The annual training from the Kirkland Institute for Trial Advocacy is a rite of passage for the firm's entry-level litigators.

''You up your game every year,'' said Katie Lencioni, a Chicago-based litigation associate who took part in the exercise. ''The first year you are nervous, you don't know what you're doing. By the fourth year, you know what to do.''

Trial Tested The Washington session included third- and fourth-year associates. Earlier in the year, more than 200 other associates, observed by 56 partners, had undergone separate courtroom drills and practice trials to hone their skills at the firm's home base in Chicago.

A number of large law firms offer trial training, either in-house or with a mix of outside litigation and other experts. Kirkland has one of the largest such exercises in Big Law by number of participants.

Kirkland this year has invested about 500 partner hours, a big input of money and commitment, in trial advocacy, said James F. Basile, a San Francisco-based litigation partner who organizes the program. Partners take time away from their practices and this year, in Chicago and Washington, 93 partners total participated, along with 296 associates.

''We are a trial focused firm,'' Basile said. ''We are ready to go to trial and we take that very seriously in recruiting and training. And this is one component of our training.''

Providing hands-on expertise is part of Big Law firm pitches to recruit legal talent. Opportunities to hone courtroom skills have dwindled for novice lawyers because, nationally, there are fewer civil trials as more disputes are being settled before trial. Yet to be effective advocates, firms have to be ready to take client matters to trial.

''It takes five trials just to get over your nerves and be effective,'' said John F. Hartmann, a senior litigation partner in Chicago., who participated in the training as a judge.

To make the exercise more realistic, Kirkland and other firms use materials based on actual cases from the National Institute for Trial Advocacy, a Boulder, Colo., organization.

''We have 130 to 150 custom programs for firms a year and provide faculty for training,'' said Wendy McCormack, executive director of NITA, whose motto is ''Making Lawyers Sweat Since 1971.''

Other case files are based on real-life events like intellectual property theft, office sex harassment and notable criminal cases. A NITA case, *State v. Gray*, for example, presents the case of a police officer shooting an unarmed man nine times, and is based on police shootings that occurred in recent years.

Live from the Courtroom Kirkland's training in Washington this month was centered on a case it called ''World Oil,'' based on the 1978 Amoco Cadiz tanker oil spill off France's coast. In the World Oil case, the company is trying to recover a portion of the $1.2 billion in damages it had to pay for 230,000 tons of crude oil spilled.

On the second full day of the exercises, associates grilled expert witnesses, played by hired actors, on such details as exactly how the ship operated and whether its design was flawed from the outset. One associate closely questioned a naval architect—played by a trained actress—who was testifying to bolster World Oil's claims that the ship's design was at fault.

Other associates representing the shipbuilder and salvage operation, which were seeking to avoid sharing the blame for the accident and the bill for damages, followed to discredit her testimony. As the six-person jury looked on and the stenographer recorded the session, the associates argued that her conclusions were based on series of assumptions that were not grounded in reality because she had never set foot aboard the supertanker—which is at the bottom of the ocean.

Afterwards, Hartmann and fellow litigation partner Donna Welch gave genial, but pointed, tips on handling such a witness in a jury trial.

''Get the witness to admit that her assumption wasn't correct,'' advised Welch, ''then the other assumptions are questioned and her opinions fail.''

Hartmann advised using charts or writing on a white board so a jury can more easily see the points the lawyers want an expert to address, and have the expert—not the lawyers—make the points.

Otherwise, it ''looks artificial if the lawyer leads,'' said Hartmann.

Hartmann conceded that it's not easy for associates to be judged on their trial performance by their bosses. But he said he tries to address any unease at the outset of a session so ''we can have some fun, shed some nerves and get practical points. I try to tell them: 'this isn't something you have to worry about.' ''

''It's also a glue that holds together the firm,'' he said of the institute. ''We are now a very big firm, and it's how we help knit the firm together.''

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