Use 'Triple Play' and Be Your Own Advocate

By Julia Swain

Women need to take a "triple-play approach" to advance in the legal profession, a communications skills coach told members of the Women in the Profession Committee at a recent meeting.

Jezra Kaye discussed how women attorneys can be their own advocates of career success. Kaye discussed the challenges faced by women with self-promotion and provided tips to improve career prospects.

In seeking out advancement, Kaye suggests a triple-play approach as follows: make your main point (I want to be lead attorney on this case); give support for your main point (I have been lead attorney in the past. I have worked on similar cases.); and, make your main point again (That is why I should be lead attorney).

The triple-play leads to "the ask," which many women find very challenging. One source found that men will ask for something if there is a 10 percent chance of getting it; while women will not ask for something if there is a 10 percent chance of straining a relationship. However, "the ask" is the last critical step in self-promotion. In the above example, "the ask" would be "So how do we make this happen?" or, "Will you appoint me lead counsel?"

A continuing challenge for women attorneys, Kaye explained, is the disparity with their male counterparts in compensation and advancement. Although women have made great strides in career growth within the legal field, attrition has resulted in about 60 percent of the women who attended law school to depart from the legal field when partnership advancement comes around. Kaye said women attorneys' salaries were only 75 percent that of men in 2008.

Kaye explored some of the reasons behind this disparity between genders in the legal profession. She explained that a shift has occurred in the legal field from being profession oriented to being business oriented. With a focus on economic outcomes, Kaye explained that men have more channels and availability for rainmaking. According to Kaye, the shift, which required increased billable hours, less availability for family time and decreased quality of life, hit women disproportionately.

Kaye explained how certain implicit assumptions adversely impact women in the work place. For example, a common implicit assumption is that the serious work of society must be done by people who put work first throughout their professional lives. As women are believed to prioritize family, such an implicit assumption favors male success.

Men are also more effective self-evaluators. A woman attorney, who was a member of her firm's compensation committee, noted that men frequently seek out professional superiors and ask for and about promotions; while there was not one woman who did so. Self-promotion is key to actual promotion.

Kaye explored how women can effectively make statements of success. As business is outcome oriented, including an outcome in the personal success statement is important. For example, "Under my leadership, the department has been transformed;" instead of "This department has been transformed."

Lastly, to be an effective self-promoter Kaye says do not apologize; emotionalize; hedge; preamble; or, under-sell yourself. Kaye supports the three Bs of being brief, bold and be gone.

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Leadership Conference

Photo by Mark Tarasiewicz

The American Bar Association Commission on Women and Young Lawyers Division presented the fourth Women in Law Leadership Academy on April 29-30 in Philadelphia. The WILL Academy empowers and trains women lawyers to achieve success and leadership skills. Pictured (from left) are Eileen Letts, chair of the Academy Planning Committee; Roberta D. Liebenberg, a senior partner at Fine, Kaplan and Black, R.P.C., chair of the ABA Commission on Women in the Profession; Chancellor Scott F. Cooper; and Maria A. Feeley, a partner at Pepper Hamilton LLP and a co-chair of the Academy Program Committee.

Practice Pointers in Bad Faith Cases

By Nipa Patel

Two prominent attorneys who have negotiated and obtained settlements and verdicts in bad-faith cases provided practice pointers at the May 5 meeting of the Rules and Procedure Committee.

The panelists were Louis A. Bové, recognized for negotiating the largest Pennsylvania settlement in a bad-faith matter, and Mark W. Tanner, credited with obtaining the largest insurance bad faith verdict in Pennsylvania.

Bové focused on the Pennsylvania bad faith statute and the Unfair Insurance Practices Act which, combined with case law, set forth the standards to establish bad faith and articulate the relief that courts will provide.

Bové suggests getting creative with ancillary state law claims as there is no right to a jury in state statutory bad faith cases. By asserting claims for breach of contract, unfair trade practices consumer protection violations, misrepresentation or removal to federal court, you ensure getting a jury trial in these cases.

Both presenters discussed obtaining assignments from an insured in order to proceed against their carrier. However, once the assignment is made, you give up the right to collect against the insured. Tanner cautions attorneys to obtain affidavits from the insured, in advance of assignment, to avoid finding out too late that a legitimate bad faith claim did not exist in the underlying action.

Tanner also discussed the importance of engaging in aggressive discovery, especially in cases involving punitive damages claims. During discovery, he suggests requesting all cases in which a carrier is sued for bad faith and exploring evidence of emotional/physical distress of an insured. This evidence can prove or disprove a carrier's repetitive or reprehensible behavior and can establish or negate requirements for punitive damages.

Tanner also walked through *Jurinko v. Medical Protective Company*, 305 Fed. Appx 13 (3d Cir. PA 2008), a case he argued up to the Third Circuit. Through *Jurinko*, he identified the inconsistency of Pennsylvania Suggested Standard Jury Instructions (PSSJI) §13.21 and §14.00 and Pennsylvania case law.

PSSJI §13.21 provides: "Failure to offer policy limits does not evidence bad faith where there was no possibility of settlement within the policy limits." It also goes on to state that "[t]here must be an expressed willingness on the part of the third party …, to accept and offer of policy limits."

Despite the instruction, this bright-line rule does not appear to reflect Pennsylvania law or the realities of settlement negotiations. Tanner criticized PSSJI §14.00, which instructs juries: to consider defendants' wealth when determining an award; and that a punitive damage award need not bear any relationship to the compensatory award. This language is facially inconsistent with Pennsylvania cases, which discuss the constitutionality of punitive damage awards and limit awards to a 1-1 or 2-1 ratio of punitive to compensatory awards. In support, Tanner relies on *Campbell*, 538 U.S. 408 (2003) and *Jurinko*, 305 Fed. Appx 13 (3d Cir. PA 2008). Tanner cautioned not to accept the instructions as law and he urges attorneys to work on changing this.

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Podcast Spotlight

Visit philadelphiabar.org to listen to the podcast from this meeting.