

Popular Threads on Solosez

How Did You Learn to Litigate?

Through reading rules, observing in court, mentor outside your firm, supervising atty, classes? Just curious.

Observing peers, trial and error, reading CLE material and rules, and asking/reading questions on Solosez!

Kyra Fischbeck Howell, Virginia

Various ways.

I clerked for an appellate judge then a federal district judge. Appellate briefs are almost nothing but complaining about flaws in the litigation process, and helping the court reach decision involves reading lots and lots of trial testimony. The procedures just ooze in through the pores after reading enough of that stuff.

Then I saw how a judge actually handled discovery and trials and decisions and researched the procedural points.

Then there was the medium law firm and doing discovery, taking depositions, drafting interrogs (and seeing how worthless they are), drafting other discovery, etc. More osmosis. And then you keep your own set of files with examples of different kinds of pleadings and requests, etc.

Also at the firm, I put together a lot of motions and briefs. So that forced me to think what was really relevant to establish in discovery or to fix holes in the discovery record. And also put together appeals or responses, giving me exposure from the other side to what errors were or were not committed.

And for the grand view, there was the NITA trial school that the firm sent me to. Wonderful--or at least it was in the mid-80s.

Of course, all along the way you have to keep current on reading new appellate decisions and changes in rules.

Ray Walden, Nebraska

Yes Yes Yes Yes and Yes!

Eric Allmendinger

See if another attorney in the area would be willing to let you second chair a trial.

Kurt Valentine, Missouri

All of the above...plus actually doing it. That first jury trial to verdict where you are first chair is the ultimate learning experience...win or lose.

Alan L. Inglis, California

Find out who the good lawyers are that try cases and watch them. Hang out in courtrooms. Take NITA's trial practices seminars and go to Gerry Spence's camp at the Ranch.

Daniel M. Mills, District of Columbia

First, I think your subject line should be "How DO you learn to litigate?" only because "Did" seems to indicate that once you get to a certain level, you are done. I don't think you ever stop--I think that's what makes the practice of Law interesting and why you see attorneys literally working until their death.

Second, you will find a wealth of materials on trials and just a smattering of writings on pre-trial work. This is backwards because you will spend only .00001% of your career delivering "Summations that Close the Deal" (tapes and written materials: \$499.95). There is the "Motion Practice and Persuasion" book published by the ABA that I have mined some nuggets from. I also like the practical binders that James Publishing puts out (though, I think some of them overlap each other quite a bit.)

And, last, read the Rules. This may seem obvious but sometimes you can get so caught up in secondary materials (especially, if you have any bibliomaniac tendencies,) that you forget to just read the rule. I compromise, I like a Civ Pro book that has the comments of the committee and the author. In Alabama, we have a two vol. set written by a former SCALA justice that's nice.

And, doubly last, watch people arguing motions, etc. Litigation requires visualization. This is much easier if you have an idea of what a courtroom looks like, how people do and don't act, etc.

James M. McMullan, Alabama

I believe that the best way to learn to litigate is . . . by litigating.

Nothing substitutes for actual trial experience. You have to develop self confidence and mental quickness under pressure. You have to develop "stage presence."

Figuring out how to get trial experience may be difficult. Being second chair, taking court appointments, doing small claims pro bono cases are some ways. I'm sure there are others. One of the advantages of working for a couple of years in a firm setting, at a legal aid office, or as an assistant prosecutor is the opportunity for trial experience. But not everyone has, or wants, that sort of opportunity.

Observing trials is useful, but not particularly time efficient.

Personally, I worked for 2 years in a small firm, took court appointments, worked for another 2 years as an assistant prosecutor, and did pro bono work.

Dan Ringer, West Virginia

I agree that the best way is to just do it. When I started for a small firm several years ago, it was the boss and me. I got thrown into the fire almost from day one. I learned. Quickly. In retrospect, it was the best way for me. I tend to "study and observe" things ad nauseum and have found that, after awhile, it only became an avoidance tactic.

You can do it! Go for it.

Sandra J. Slaga, Illinois

Same here. I was, according to my first boss out of law school, baptized by fire. - Given a court appearance the afternoon I was sworn in and didn't stop.

I had my first bifurcated jury trial a year later. Of course, it was a crappy case...but really fun to cut my teeth on.

Jeena R. Belil, New York

Of course knowing the rules better than anyone else in the courtroom is paramount to success. More than that however is getting up and doing it. NITA helps but it is a beginning not an end. Taking the next step, an advance NITA is a key as well.

In our County we used to have a great bar "Barristers" where the old-timers used to congregate after work (about 5:30 till about 7) you could learn more about trying a case in an hour and a half 3 times a week than in a week of classes at any school. Of course those were the days when we had trial lawyers not "Litigators" Actually if you want to learn how to litigate, don't visit with a trial lawyer. He is too busy winning cases to have the time to play paper games.

I had a case once where opposing counsel was not responding to discovery demands. Litigator would have made a motion for sanctions. As a trial lawyer, I sent in about a dozen notices to admit. They ignored those too. On the next court app. I announced Ready. The judge a former trial lawyer himself sensed a "problem" (or an ambush) and had a conference in chambers. The case did settle for about 250K more than I would have accepted two days before.

Trial lawyers get ready. They know the rules and from day one they plan out a strategy to push the case to trial. Discovery, motion practice, settlement negotiations do not slow down the process. It is a constant march to trial. If the case shouldn't be tried, a trial lawyer doesn't take the case. You would be shocked, SHOCKED I say to find out that most litigators do not try cases...ever.

Anthony Colleluori, New York

Trial competitions in school. Watching excellent AND terrible trial lawyers. Reading books on jury psychology. Doing... doing doing. Then watching even more trials.

Oh - I forgot to add that I not only watched these lawyers, but most importantly I sat down and talked with the good ones. They are almost always willing to share their wisdom & explain what went into what you watched in the courtroom or advise you on what should go into YOUR presentation.

Tanya Robinson, New York

I purposely started out with some Pro Bono cases so that an experienced volunteer mentor would be assigned to me and I would be covered by the malpractice policy of the legal services org that referred the cases .

Just yesterday I was telling my daughter (who is also my associate) about that first trial. I made it all the way through it. I did okay (but lost), however due to legislation that passed shortly after the trial my client eventually did get the result he wanted.

The reason I told the story to my daughter was because she was apprehensive about a contested matter coming up. I told her that it's been almost 28 years since that first case but I still vividly remember the Judge's

assistant coming up to me after Court and saying in a kind voice "You did an excellent job Mr. Forman, but I swear for the first ten minutes or so you looked like you were going to cry."

Kenneth Alan Forman, Florida