

Delaware Practitioner: Questions and Answers

A Q&A with Matthew Lintner, counsel with Potter Anderson & Corroon



Matthew Lintner practices at Potter Anderson & Corroon, focusing on corporate and commercial litigation before the Court of Chancery and other courts. Mr. Lintner frequently litigates actions involving corporate governance and the fiduciary obligations of directors and officers of Delaware corporations. Mr. Lintner has experience litigating complex disputes

both within and outside of the State of Delaware, having served as a partner in an AmLaw 100 law firm in California and as a Deputy Attorney General for the State of California. He received his J.D. from Stanford Law School and holds a B.A. from Dartmouth College.

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Q: At the beginning of your career, you spent more than a decade litigating cases in California and in Washington DC. You have litigated in Delaware for eight years. How does the practice of law in Delaware compare to those other jurisdictions?

A: There is an emphasis upon collegiality in the Delaware bar that may initially seem like a quaint throwback to an earlier time, but it turns out to be one of the key ingredients to the success of the system. In California, unless you have a highly specialized practice, it is not particularly likely that you will face your opposing counsel in another matter. Nor, for that matter, are you likely to be before the same judge with any level of regularity. In Delaware, you are very likely to be working with your opposing counsel in another matter, and will routinely be before the same judges. Those relationships help to ensure that all parties cooperate to move the litigation forward in a reasonable and efficient manner. Much of the rigamarole that can arise in litigation is avoided in Delaware, allowing the parties and the court to focus on the merits of the action.

Q: Does the practice of law in Delaware require different skills than might be required in other jurisdictions?

A: The practice before the Court of Chancery places a high premium on coming to terms with a complicated factual record in a very short period of time. Complex litigation in California might take three or four

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years to process. Complex litigation before the Court of Chancery is routinely processed in a fraction of that time. If a complex matter needs a final resolution within a period of a few months, or even a few weeks, the Court of Chancery will make that happen. That pace demands that lawyers be able to develop and come to terms with the underlying record in timeframes that would be quite unusual outside of Delaware. As a Deputy Attorney General for the State of California, I once proposed an abbreviated schedule for complex litigation to a federal judge, who patiently explained to me that the several hundred pending methamphetamine cases on his docket made that schedule entirely impossible. You do not hear that in the Court of Chancery. But the pace also puts a very high premium on the early development of a coherent strategy. You need to have a vision of what discovery is needed and what your trial will look like essentially from the time of an initial filing.

Q: Delaware cases can be exceedingly complex. What tools do you use to make sure you can present your theory of the case with the requisite clarity?

A: Delaware cases are complicated, but any time parties are fighting about large amounts of money, matters become complicated. The difference in Delaware, and particularly the Court of Chancery, is that you are before a forum particularly well suited to grapple with that complexity. You will not be before a jury, and you will not be before a judge burdened by a criminal docket. The Court of Chancery, both by design and by mindset is well suited to accommodate complex, fast moving business litigation, and fully able to sort through all of its complexity. You have the luxury of not having to sacrifice important components of your case on the altar of oversimplification.

Q: Is there one skill which you view as essential in practicing before the Court of Chancery?

A: The briefing process is key in the Court of Chancery, and the ability to present a compelling narrative in your statement of facts is essential. The statement of facts dominates a typical brief both in number of pages and in importance. The Court sits in equity, and the facts you present need to establish that your client deserves the aid of equity. The primacy of the factual record is reflected in the opinions coming out of the Court, which typically contain detailed and compelling narratives of the facts. The Court of Chancery places so much emphasis on the record in no small part because many of the principles applicable in corporate governance cases afford a great amount of discretion to the Court in their application. While that might seem like a formula for haphazard outcomes to a practitioner with extensive experience before courts outside of Delaware, there is actually a remarkable consistency of outcomes in Delaware: the party with the better ability to appeal to equity, with the better story to tell, is likely to win.

Q: What advice would you give to an experienced practitioner from out of state dealing with a case in Delaware for the first time?

A: Be prepared, because the court is going to be prepared. A California state court judge might have ten matters on his or her motion calendar on a given day. Questioning is sometimes aimed at figuring out the basic parameters of a matter and how to most efficiently move it along to the next stage in the process. In the Court of Chancery, motions are allotted as much time as is needed and the questions tend to be substantive and quite focused. Unlike many state court or even federal judges, who need to deal with such a broad array of issues that they cannot possibly be expert in all of them, each member of the Court of Chancery focuses intensively upon corporate governance and questions of fiduciary duty. Out of state counsel are often tempted to assume that Delaware counsel exaggerate the level of familiarity with the record and the applicable law that the Court of Chancery will evince, but they become true believers after their first hearing.