

One Last ‘Reality Check’: Kat Hacker of Bartlit Beck on Running Mock Trials

“What our practice is all driving towards is trial and that moment where you stand up and you have somebody decide are you going to win or are you going to lose,” Hacker said.

“Mocks are the first opportunity to get that feedback about your case—and a pretty close corollary to trial.”

By Ross Todd
October 13, 2022

It’s easy to understand the enthusiasm **Kat Hacker** has for mock trials.

Early in her tenure at **Bartlit Beck**, Hacker presented in a mock trial for one of the firm’s Fortune 50 technology clients—a client who hadn’t previously seen her on her feet in court. But after the client saw her performance during the mock, Hacker was tapped to second chair a trial for the company the very next year.

“From the beginning of my career, I recognized the importance of mocks for our teams and our clients, but also for our newer attorneys to get opportunities to learn and to grow and to advance professionally,” said Hacker, who now has more than 100 days of actual trial time under her belt on top of all her work on mock trials for the firm. “They play this dual role of both helping the case and the client, but also helping us as a firm and us as lawyers continue to refine our own practice.”

“What our practice is all driving towards is trial and that moment where you stand up and you have somebody decide are you going to win or are you going to lose,” Hacker said. “Mocks are the first opportunity to get that feedback about your case—and a pretty close corollary to trial.”

Bartlit Beck partner **Jason Peltz** reached out to suggest I speak with Hacker about mock trials as part of the Litigation Daily’s “Who’s the Best You’ve Ever Seen?” series discussing certain slices of



Courtesy photo

Kat Hacker of Bartlit Beck.

litigating and winning cases. He called Hacker the firm’s “go-to for mocks,” which he said are “among the most powerful instruments for case evaluations and trial preparation.”

But before I dug into the topic with Hacker yesterday, I had to come clean: I’ve seen plenty of opening statements, cross-examinations and even trial technicians in action. But I’ve never had a front-row seat for a mock trial.

Indeed, Hacker agreed, mocks usually take place out of the sight of the press and the public. But she added in the sorts of cases her firm handles, which often involve gearing up for trials with potential

high stakes, there's "almost no downside" to doing mock trials, despite the costs.

"With the stakes that you have at trial, you don't want the first time you're getting feedback on your themes or your evidence or your case from a jury to be after they've already deliberated," she said.

While she typically tries one or two cases per year, she said that she probably does work on more than twice as many mock trials—four to six per year. And while she stressed that there's no one-size-fits-all approach to mock trials, the firm most often uses a classic case-testing model that folks at Bartlit Beck call "the clopening."

"It's half-opening because it's the first time these jurors are hearing about your case, but also half-closing because you want to argue the case," Hacker said. "You're not just going to introduce it."

Hacker said that the firm tries to keep all the proceedings to one day with the plaintiff side presenting for an hour or two, and then the defense following with an hour or two after a break. She said there's an emphasis on presenting the themes, evidence and actual graphics that the team plans to use at trial. Here, she emphasized the graphics—and she wasn't talking about bullets on a PowerPoint slide. "We're really focused on doing newsroom-style, interesting, approachable visuals that are memorable," Hacker said. She pointed to research showing how much of the human brain is dedicated to vision. Good visuals, she said "can help jurors think about, remember communicate your story and your ideas."

"You'll have jurors you think were asleep the whole time and they get in deliberations and you're listening in and they say the reason they're voting for or maybe against your side was this one specific graphic," she said. "Sometimes jurors come up with nicknames for a graphic and that's when you know you really have one that's a keeper."

Hacker said that the firm typically takes the number of jurors who will actually hear a case and brings in three-times as many mock jurors. The lawyers will present the case to the jurors in a big group

and then divide them into groups for three separate mock deliberations to gather more information. Besides getting three separate opportunities to see how the overall case lands with a jury, Hacker said the approach allows lawyers to see if there are any key themes landing across all the deliberations.

"It starts to help you coalesce around things that really are resonating across groups, and not just driven by maybe one very opinionated juror in a single group," she said.

In terms of the setting, Hacker said that she has a strong preference for hotel conference rooms over traditional focus group settings with two-way mirrors. For one, the hotel conference room approach is more conducive to bringing in larger groups and gathering more information. But she added that she thinks having jurors deliberate in rooms where there's an un-manned closed circuit camera in the corner is less obtrusive to deliberations than the two-way mirror approach.

"With the mirror glass, you have this zoo visitor effect where they feel like they're constantly being watched and everything they say is being evaluated," Hacker said. "It affects their feedback and it affects how honest they are and how open they are."

Hacker said the firm also likes to bring in lawyers who have not worked on the case to present the opposite side during mock trials. "They'll always surprise the team with a new angle that you just have not thought of," Hacker said. "That will happen from opposing counsel at trial. So it's much better to have that experience and for somebody to put new eyes on a case in a mock trial beforehand."

But Hacker added the most valuable new perspective comes from the mock jurors themselves.

"It's good for everybody to have some new and fresh perspective from the jurors on the case, because sometimes you've been working with the case for a year or two—longer, three years—and you've been living in the weeds," she said. "It helps to just have that reality check from people of how they're going to perceive your case at trial."