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Dana Fox talks about what he's learned switching from a defense to a plaintiffs practice

Dana Fox spent four decades defending catastrophic injury and wrongful death cases. His move to BD&J – late in his career – was driven in part by a desire to test whether his trial instincts would translate when the burden flipped.

By David Houston

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After trying roughly 85 cases to verdict as a defense lawyer, Dana Fox thought he understood how personal injury cases are built, valued and tried.

Three months after joining plaintiffs' firm BD&J PC, he said he's discovering that while the rules of the game are the same, the mechanics and the mindset are not.

"The biggest shift is this: As a plaintiffs' lawyer, you go first," Fox said. "You're not reacting. You're constructing the entire case from the ground up."

That structural difference, he said, reshapes everything from early investigation to trial presentation. On the defense side, the objective is often to destabilize a single element of the plaintiff's claim. On the plaintiff's side, there is no such luxury. "You have to prove every element,"

he said. "That requires a different level of front-end work — a different way of thinking about how the case comes together."

Fox spent four decades as a corporate defense lawyer, 16 at Lewis Brisbois Bisgaard & Smith LLP defending catastrophic injury and wrongful death cases. His move to BD&J, late in his career, was driven in part by a desire to test whether his trial instincts would translate



Kelley and Dana Fox | Ricardo Pineda/Daily Journal photo

when the burden flipped. His interaction with plaintiffs has been an obvious but important difference.

"For 40 years, I typically met plaintiffs for the first time at deposition," Fox said. "Now I meet them at the beginning, as my clients. That changes how you understand the case."

And he said that has had an impact on him and the way he works.

"When you spend real time with a client, you gain a deeper under-

standing of the damages — not just the medicals, but the life impact," he said. "That can inform how you frame the case from Day One."

At the same time, Fox said his defense background has highlighted a blind spot he sees in some plaintiffs' practices: a lack of appreciation for how cases are evaluated on the other side.

"Defense lawyers don't operate in a vacuum," he said. "They're re-

porting to clients, to insurers, to risk managers. Those people need information to do their jobs."

Understanding that dynamic is informing how he constructs a case, and his approach to settlement, he said.

"If you want a case to resolve for significant value, you have to give the defense what they need to evaluate it," Fox said. "Don't hide the ball. Help them get there."

On the defense side, Fox said he often confronted juror skepticism toward corporate defendants. On the plaintiff's side, he expects to encounter a different set of predispositions.

"There are jurors who are skeptical of plaintiffs, of lawsuits, of advertising," he said. "Just like anti-corporate bias, you have to deal with that directly."

Fox has yet to try his first case for a plaintiff — his initial trial is

expected in May — but he is already thinking about how to recalibrate his courtroom presentation.

The core principles, he said, remain the same: credibility, clarity and control of the narrative. But the narrative itself is different when the lawyer carries the burden of proof from the outset.

"You're telling the story first," he said. "You're setting the framework the jury will use to evaluate everything that follows."

The move has also introduced a unique dynamic: Fox will be trying cases alongside his daughter, Kelley Fox, a 10-year attorney who worked at Lewis Brisbois too, but not directly with her father.

That partnership, while personally meaningful, also presents its own trial considerations.

"I have to introduce her as my co-counsel — not just as my daughter," he said. "The jury has to see her as a lawyer in her own right."

For Fox, the transition is less about switching allegiances than about expanding perspective.

"If you've evaluated cases fairly on the defense side, that shouldn't change on the plaintiff's side," he said. "What changes is how you build the case — and how you understand the person behind it."

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