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Cosby lawyer seeks 'brand protection,' court wins

By Steven Crighton
Daily Journal Staff Writer

Beleaguered by media scrutiny in a multi-state legal battle over allegations of sexual misconduct, Bill Cosby sought a change in litigation strategy over the summer.

Just a few months later, two of the seven pieces of civil litigation against Cosby had been dismissed. Another one was voluntarily dropped. Dispositive motions are pending to end two of the others. And the media's focus on the ongoing courtroom drama, for the moment at least, has gotten a lot less dramatic.

The shift in momentum coincides with the appointment of Angela C. Agrusa, a Liner LLP partner, as lead counsel for Cosby in July.

Agrusa has devoted much of her practice to representing individuals like Cosby and companies like ExxonMobil in litigation that could be considered costly from both a financial and a public relations standpoint. She describes her role as that of a "brand attorney," working not just to win cases but to preserve what is often her client's most valuable asset — their name.

"Litigation comes in two forms — there's the court, and then there's the court of public opinion. The entirety of my career has been spent dealing with the court of public opinion," Agrusa said.

Agrusa said protecting a client's brand is about focusing on the long game, ensuring that whatever motions the team files are motions they can win. Agrusa said motions are also written with a broader audience than the

court in mind, as important filings are likely to be picked up by the media and communicated to the public.

"Anytime we put something in writing, it's cognizant of the court but also cognizant of the client's brand," Agrusa said. "Because it does get picked up by legal journals and ultimately others. In essence, everything we write is geared towards brand perception."

Jenner & Block LLP partner Daniel Rozansky, who represented Jay-Z in the recent infringement trial over his song "Big Pimpin'," said the importance of the brand tends to shift priorities when it comes to litigation.

Generally, he said, the top concern in such cases is limiting potentially sensitive information, particularly when the information can harm the celebrity's brand. That means that some of the fiercest fights in litigation tend to be against unfounded discovery.

"Your opponent is going to use discovery as a fishing expedition to use as leverage," Rozansky said. "Often in these cases, I object to far-fetched discovery and argue to the court that the information is being sought for no other reason than to embarrass or intimidate the client."

In discovery and beyond, Rozansky said the goal is to keep the focus of the litigation as narrow as possible. Broadening a complaint unnecessarily tends to invite unwanted discovery requests and makes the brand more vulnerable.

"You never want to use a complaint as a press release, because the words in the complaint will be used against your client down the road," Rozansky said. "And once you

file a complaint, that's going to be the road map for discovery. So my sole goal in filing a complaint is that it's a well drafted, narrow complaint that's going to survive a motion to dismiss."

Howard E. King, a partner at King, Holmes, Paterno & Soriano LLP whose celebrity clients have included Dr. Dre, Metallica, and Pharrell Williams, said from the outset of a case, deciding whether to embrace the media and grab as many headlines as possible or keep a low profile with the media is a strategic decision.

Depending on the notoriety of the case and the allegations involved, however, King said the former isn't always an option.

"You have to keep in mind that you only control half the case. You're going to have an opposing counsel who could be handling things completely differently than you," King said. "And they can use embarrassment as a means to facilitate a settlement."

As far as protecting the brand goes, King said settlements are often the preferred resolution. But he said that's not an option if the nature of the litigation is severe enough, as is the case for Cosby, who faces not just civil litigation but a looming criminal trial.

Given the media's attention on the trial, set for June, Agrusa said vindicating the Cosby brand requires a public victory.

"In the civil cases, they're legally arguing that the court should expand the existing laws for First Amendment and the statute of limitations. These cases can be won, but they're probably not going to go away ahead of that June trial date," Agrusa said.