

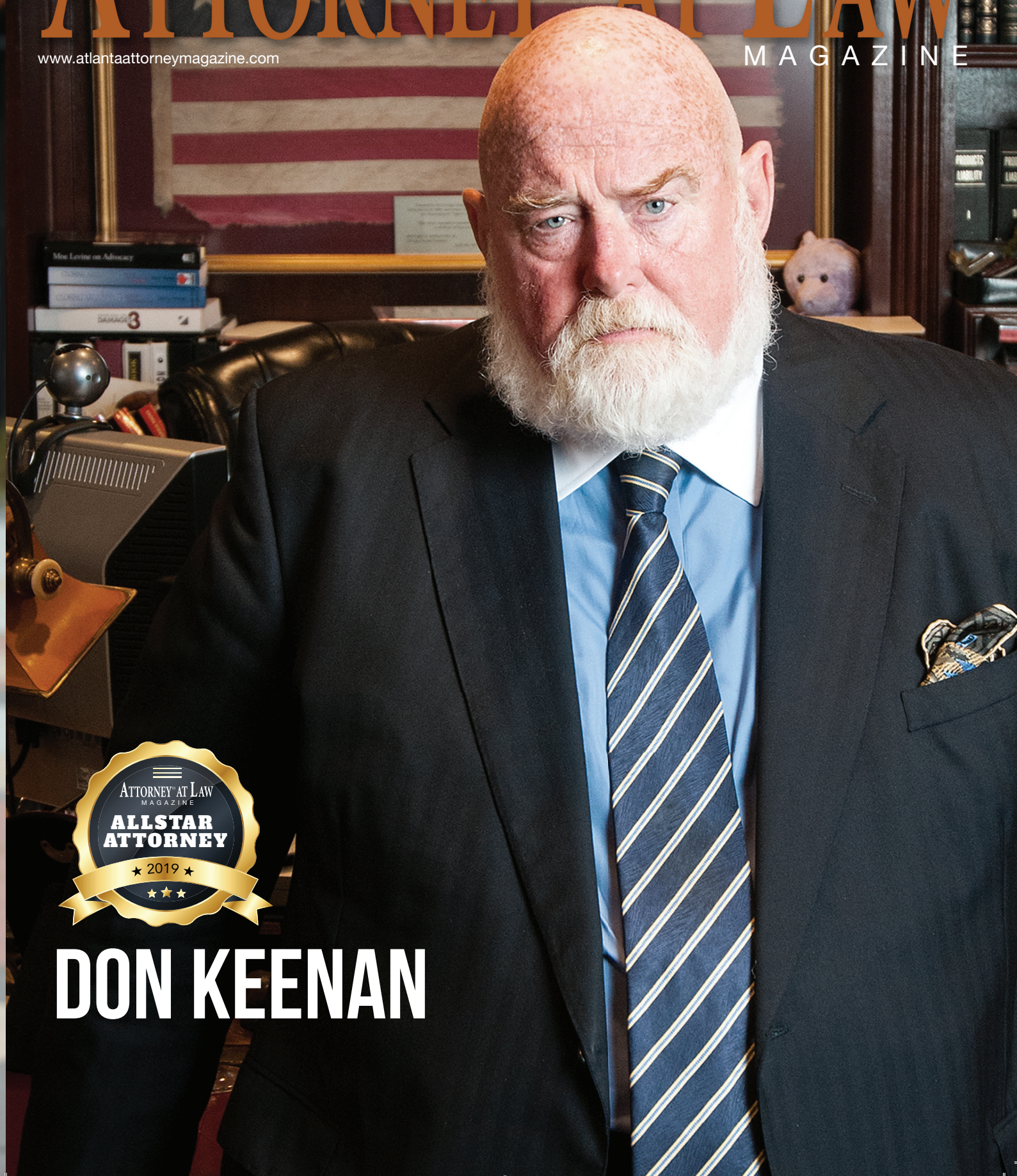


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DON KEENAN



DON KEENAN INVENTS NEW METHODS TO HELP OTHER ATTORNEYS

By Yona Pesman photography Bill Adler

Don Keenan finally figured out that he couldn't do the impossible: clone himself. So, the noted personal injury tractor trailer, med-mal, products and premises liability attorney chose the next best thing. He devised a new method through which he acts as case consult rather than lead attorney or co-counsel, meanwhile mentoring another generation of attorneys.

"When I leave the Earth, I'd like to think that I left it with new solutions that attorneys can use," he said. "I've been blessed with a successful career and built up a reputation whereby more lawyers were calling me to act as lead counsel, doing the heavy lifting of drafting cases and ultimately trying them. Finally, I was faced with expanding which I didn't want to do."

Keenan said he had insightful friends who suggested, "What if you were not in the case as attorney of record, but determining the end-game plan and doing focus groups?" In other words, could Keenan do some of the work by telephone and video rather than actually be present for all the cases he was asked to work on?

"I didn't have a clue how the relationship would work," he admitted. For instance, what were the ethics of working with referring attorneys as a consult? The ethics lawyers answered those questions. In the end, he realized that he could do 10 consults in the time it would take for him to fly to mediations or taking depositions for every lead counsel case he took. "As they say, necessity is the mother of invention," he laughed. "Because I couldn't take more cases, this became a viable alternative. But I didn't want to be a consul lawyer, period. I decided to cap my consul work to no more than one-third (of his caseload). This way, I haven't had to turn anything away."

Keenan explains that a case consult does essentially all of the work an attorney would do in a co-counsel case, with the exception of the actual court appearances, and presence at mediation and the trial. "The consult counsel is not an attorney of record and has no attorney/client relationship," his website www.keen-antrialconsult.com describes.

In order for an attorney to include Keenan as a consult lawyer in a case, the attorney must submit a one-page case overview allowing Keenan Law Firm to conduct a no-charge focus group to determine if the firm can add significant value to the case. A video conference is conducted to discuss the focus group outcome, and if there's an agreement, the end game strategy and fee arrangements are completed.

The advantages of such an arrangement are wide ranging, Keenan explains. Generally, personal injury lawyers work out of a small law firm. "Ten in a firm is huge," he says. "This reduces the kind of collaboration that goes on in bigger firms."

The small size also means the firms can't engage in block purchases. For instance, "how will a group hire an animator (to create an exhibit for trial) that costs \$150,000? But if there are 18 of us, we can negotiate a block rate and provide a guaranteed flow to the animator," Keenan explains, referring to the areas in which he groups his cases. There are 18 attorneys in his tractor-trailer consult group.

At least twice a year, members of each case category – which in addition to tractor-trailer, are nursing home, premises and

product liability, and medical malpractice – are invited to all-day case group workshops. There they can collaborate with other attorneys from around the country with cases in that group. "Each workshop group includes a lead counsel, a co-counsel and a consult," Keenan explains.

Sometimes outside experts are invited to participate in the workshop. For example, a trucking industry safety expert once made a presentation on the various hidden areas where liability can be established. Another time, Keenan Trial Consult rented an 18-wheeler and had an experienced truck driver take each of the attorneys on a "how to drive a truck 101" session. The medical malpractice group had a presentation by an expert in paperless hospital records who explained how to uncover things the hospital or doctor attempts to hide. The premises liability group had a presentation on the statistical epidemiology of cases and how to use that as an offensive weapon.

Attorneys are constantly moving in and out of the case groupings, says Keenan, based on whether they have current cases in those areas. So a year and a half ago, he developed a boot camp which entailed two days of drilling on the basics of how Keenan handles cases so that an attorney just bringing a case to the Keenan Case Consult can "drop into the respective case categories" for the workshops. "This creates an opening for others. And the phone keeps ringing. Of the 18 in a group, we have three brand new lawyers who went through the boot camp."

While the beachworkshops are essential much of the work occurs one-on-one with the attorney with frequent video conferences which averages about 10-12 a week and frequent visits to the lawyers office.

Without question, Keenan finds his work satisfying and fulfilling. "Lawyers typically aren't elusive with their praise, but mine are," he says proudly. "I even get letters from clients of the lawyers I've helped."

In addition to Keenan Trial Consult, the busy attorney also has a Keenan Trial Institute. "It's an actual college with eight undergrad and six graduate courses," he says of the program he started four years ago. www.keenantrialinstitute.com. "All of my referring attorneys are expected to attend the college, but they don't have to pay tuition fees which range from \$1,200 to \$1,400 per class. Each class has only eight students. Most of the faculty are referring attorneys who must have graduated from the institute. I always say that you think you know the materials but you're still missing a part until you've actually taught it."

Coordinating the myriad of cases that can be handled by all these attorneys in the various groups could be challenging, but Keenan sees the inherent efficiencies. "We used to do one or two focus groups a month" for cases. "Now with 62 referring lawyers, we can have focus groups going all the time," he says, noting that they are held in Atlanta, Santa Rosa Beach, Fla., and soon in a new Las Vegas office. "We won't be planting a flag in Law Vegas to

get street traffic. It will just be for our consults," making it easier for attorneys on the West Coast to participate in the workshops. "In the tractor trailer group, we have one coming from Seattle, two from California and one from Vegas, so it's a long distance" to travel to either Atlanta or Florida.

Keenan himself prefers to be home at night "to sleep in my own bed. It's a promise I made to my wife and my Labrador. I have a private jet and my own pilot, so I can leave at 4 a.m., make a speech in Washington, D.C., and come back to sleep here," referring to his Seaside, Fla. home. "There have been a couple of times when two cases would go to trial at the same time but in different locations, and I'd be doing arm-chair quarterbacking." Recently he was videoconferencing with four attorneys while staring out at the Gulf of Mexico.

But that doesn't mean he's just sitting back and enjoying the view. Keenan is always trying to figure out how best to assist the attorneys he does consults for. "Now I'm negotiating case financ-





ing,” he says which is controversial and outlawed in some states. He explains that when an attorney decides to represent a client in a malpractice case, for instance, the attorney goes to a financial institution and says, here are my anticipated expenses on the case, I want financing. The industry standard is to charge 32 percent interest, which is far too high for many attorneys. But Keenan says he may be signing a deal with a lending institution by the end of the year to provide block financing at the prime rate plus five percent. “It’s a lot cheaper” and would save his 62 attorneys a lot of money.

There are other advantages for attorneys who hire Keenan as a consult attorney. He points out that insurance companies and the defense side of a case “have a wealth of data and R&D aspects at their disposal. They’re big,” he says. “Plaintiffs don’t have any of it, but we are able to commission R&D projects that help an entire group of attorneys,” specifically mentioning an 80-page R&D report on the future of how stem cells will replace surgeries and treatments, and another R&D report on biomechanical limbs. “We ask the group, what do you want us to be researching? When a lawyer comes into the family – and that’s how we refer to it – they get top lawyer mentoring and a staff that does heavy lifting, plus the quarterly meetings to share information with the other attorneys.”

“I’m so excited about this consul arrangement. I’m shocked no one has done this before,” says Keenan who has been working as a consul attorney for TWELVE years. “Although we’ve gone

through growing pains, the statistics speak for themselves. Out of several hundred cases, only three have resulted in no recovery.” For Keenan personally, it is the mentoring that is most satisfying. “I can mentor 18 for the same time as one.”

Given the amount of time Keenan puts into each case, his firm has an agreed value of \$1.5 million or more before he accepts a consult case. He receives one-third of a settlement or verdict on a consult case versus 50 percent as a co-counsel or lead counsel. The consults in the last year yielded two 15 million dollar settlements and an average million dollar conclusion each month.

He truly enjoys teaching other attorneys how to be lead counsel. “Some attorneys say that I’m out of my mind to teach other attorneys” essentially how to compete with him, but he doesn’t see it that way.

However, he notes that it is important for him to continue acting as a lead attorney trying several of his own cases. “I’m a strong believer that the day I stop doing cases, I stop everything.”

The North Carolina native always knew he would be an attorney. Both his father and grandfather died in circumstances that would have made them plaintiffs in lawsuits if there had been appropriate laws at the time. “The person who got hurt was me,” he states. Thus, he often sees cases from the child’s perspective. “It’s rare to have an adult case that doesn’t have a child involved. If there’s a child involved in a vehicle collision, the child always gets injured first and the worst. Forty percent of my medical malpractice cases are children oriented. Same with products. There are very few regulations that protect children.”

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