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3 South Florida Attorneys on List to Lead iPhone MDL, But There's Competition

By [Ross Todd \(/therecorder/author/profile/Ross Todd/\)](https://therecorder.com/author/ross-todd/) | May 10, 2018 at 05:01 PM

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Mark Dearman, Robbins Geller Rudman & Dowd

Three South Florida plaintiffs lawyers are on a list to lead the multidistrict litigation targeting iPhone battery performance, but there's competition from two other teams.

The three teams lined up against Apple Inc. laid out starkly different visions for what the structure of the plaintiffs' team should look like.

[U.S. District Judge Edward Davila of the Northern District of California \(https://www.law.com/therecorder/almID/1202788062867/Among-NDCal-Judges-Davilas-Docket-Lags/\)](https://www.law.com/therecorder/almID/1202788062867/Among-NDCal-Judges-Davilas-Docket-Lags/), who is overseeing about 80 class actions claiming

Apple intentionally and surreptitiously slowed down older iPhones to nudge consumers to buy newer devices, heard **leadership pitches** (<https://www.law.com/therecorder/2018/05/04/in-apple-mdl-leadership-fight-a-contrast-in-styles/>) in a courtroom filled with about 40 lawyers and another 10 or so on the phone.

Two individual lawyers — Steve Berman of Seattle's Hagens Berman Sobol Shapiro and William Audet of San Francisco's Audet & Partners — pitched separate lean leadership structures.

But most of the lawyers present Thursday were part of a broad a coalition led by Joseph Cotchett of Cotchett, Pitre & McCarthy in Burlingame and Laurence King of San Francisco's Kaplan Fox & Kilsheimer.

The coalition is proposing a much more formalized structure involving 42 lawyers at 40 firms, each with designated tasks.

Among the leaders would be Mark Dearman of Robbins Geller Rudman & Dowd in Boca Raton, who was proposed as executive committee chair and would serve as administrative counsel. His assignment would be to delegate assignments and monitor the pretrial work.

Dearman also would be responsible for communicating with the judge, distributing court orders and notices, maintaining a master service list, keeping track of attorney time records and submitting reports to the court.

Stephen Rosenthal of Podhurst Orseck in Miami has been proposed as co-leader of the experts committee with Doug McNamara of Cohen Milstein Sellers & Toll in Washington with responsibility for researching and retaining experts and overseeing their disclosures, reports and depositions.

Joshua Eggnatz of Eggnatz Pascucci in Davie would be part of a 13-member steering committee, which would perform assignments requested by the lead counsel and executive committee on an ad hoc basis.

Speaking on behalf of the coalition at the hearing, Kaplan Fox's David Straite said starting small and asking the court for permission to grow later could tip the plaintiffs' strategy to Apple via staffing. Straite and others who spoke on the coalition's behalf said it was modeled on the large structure that U.S. District Judge Charles Breyer endorsed in the Volkswagen vehicle emissions cases.

"This team was proposed as a cohesive unit," Straite said. "A lot of work went into [figuring out] who works well with others ... not because of politics but because we vetted and cooperated and worked together for several months."

To start the hearing, Davila laid out some preliminary thoughts on the competing pitches. The judge told Berman that while he thought the case would involve "significant discovery," he didn't anticipate the need for people "highly skilled" in computer coding to handle the case.

Davila said he was open to Audet's suggestion that a special master or mediator be brought on early in the case to try to push toward a quick resolution. But the judge expressed initial skepticism toward the coalition's large structure.

"I think that's a little large, and I think I'd like to see something that's a little more efficient," Davila said. He added he's looking for something a bit more "lean and mean" but said he wanted to pick a team focused on "cooperation and communication" with everyone.

Davila also took the unusual step of asking all the plaintiffs counsel if they received third-party financing to help fund the case. All three groups said they had not.

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In a rare move in the run-up to the hearing, Apple's counsel at **Gibson, Dunn & Crutcher (https://www.law.com/law-firm-profile?id=119&name=Gibson-Dunn)** filed **a brief expressing concern about the coalition's proposed structure (https://images.law.com/contrib/content/uploads/documents/403/15146/AppleReply.pdf)**, calling it "a recipe for gridlock, not efficiency." At the hearing, Gibson Dunn's Christopher Chorba said it was unusual for Apple or his firm to get involved at the selection stage for opposing counsel.

"Two of the three applications before you are saying the same thing we are," said Chorba, speaking of the smaller pitches' critique of the large one. "We very rarely agree in these cases, but we do agree on that."

"So you're suggesting start small and grow if you need?" asked the judge.

"Exactly," said Chorba.

Davila said at the end of the hearing that he hoped to issue an order shortly.

Ross Todd is bureau chief of The Recorder in San Francisco. He writes about litigation in the Bay Area and around California. Contact Ross at rtodd@alm.com. On Twitter: @Ross_Todd.

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