

## **Litigation**

It is our firm's experience that we must learn as much as we can about the nature of litigation in which you are involved. Accordingly, to best assist and represent you, we prepared this Guide which sets forth certain essential elements to most litigation matters.

Please take the time to utilize the document as a checklist to provide us with the information that we need as soon as possible. In turn we will review what you have prepared and determine what, if any, additional information we will require to proceed effectively and efficiently.

Although complying with our requests may be rather time-intensive, it has been our experience that the party who prepares best and earliest maximizes the likelihood of success and/or minimizes prospective damages.

Of course, this initial compilation of information and actions on your part will not take the place of our personal interaction by way of phone communications, conferences, etc. Nor do we expect you will be all-inclusive regarding the preliminary information you provide us, particularly since reviewing information, preparing strategies, and presenting a case is in constant evolution. Accordingly, as more information comes to our attention and/or to yours, it is necessary that we share that information on a timely basis. Nothing is irrelevant or immaterial until we jointly determine otherwise.

### **1. DOCUMENT COMPILATION**

- All correspondence submitted by you to adverse or relevant third parties (preferably in chronological order unless separation by category is more appropriate).
- All documents received from adverse parties or relevant third parties relative to the litigation (again, chronological or by category).
- Statements, notations, or other memos prepared by you and others, both favorable and unfavorable to your position, preferably in chronological order.
- A narrative, chronological diary of what you deem to be the history of the dispute with cross-reference to documents presented, as applicable.
- The names, addresses, phone numbers, positions, and a short narrative as to other parties (beneficial or adverse to your position) whom you reasonably expect would testify and/or support your position or that of the adverse party.
- Copies of any reports (both from experts and non-experts) who are aware of the circumstances in dispute. Identification of those individuals or entities who may be able to serve as experts or whose opinions are relevant, including their name, addresses, etc. and biographical information.
- Photographs, videotape, models and other demonstrative items and things which would assist us in more fully understanding your case and which may be used as evidence. Copies of sketches, drawings, plans and other pertinent materials which as well could be

particularly helpful. By providing the information noted above, you will save us considerable time as well as likely reduce your own time expenditures and costs associated with this litigation.

\* NOTE: Please do not make notations on original documents or photocopies that might be used in your case. It is particularly helpful, however, to obtain photocopies of such documents, with highlighting and a description of what you deem to be pertinent and significant points relating to each document.

## 2. STRATEGIC PLANNING

Oftentimes, we will meet with you shortly after completing our review of the documents you provided. We might also ask you to supplement your responses as appropriate.

Regrettably, all too many suits are filed by parties who have minimal (if any) supportable law or facts. Therefore, our meeting and communications with you subsequent to document review will allow us to commence the "strategy portion" of your case, i.e. whether by way of motion or other action we may be able to obtain the relief to which you are entitled or, alternatively, look to dismissal of all or certain of those causes of action which the adverse party may assert against you.

This second phase of our representation is critical and is the time to crystalize our thoughts, develop a "partnership approach" to handling your litigation, and utilize our respective abilities, knowledge, and experiences in handling your case.

During this second phase we will be able to outline a preliminary strategic approach as it relates to discovery and other matters, allowing us to remain steps ahead of the opposition.

As an aside, oftentimes we also discuss alternative dispute resolution alternatives such as mediation, early neutral evaluation or possibly arbitration. Each of these approaches allow for an expeditious and less expensive non-jury/non-court form of resolution. These alternatives, however, may not always be the best approach depending upon the individual case.

## 3. DISCOVERY OF PERTINENT INFORMATION

It is of great importance that we fully comprehend your position, but it is just as critical that we understand the position of the opposition. Discovery is the method by which we require the adverse party and others to provide us the opportunity to understand the case more fully.

Discovery requests oftentimes include the following:

- Depositions – The questioning of witnesses and parties (likely including you) under oath before a court reporter. Our firm normally utilizes a portable computer for purposes of taking notes, outlining your testimony and that of other parties or witnesses. We generally provide this information to our clients shortly after a deposition rather than order a transcript (which can be very expensive). Likewise, we can highlight certain issues for your further review and comment.
- Interrogatories – Through use of written questions, we may be able to avoid the undertaking of depositions or lay the proper factual foundation upon which depositions or other discovery will be conducted.

- Request for Admissions – These questions to the opposing party seek admissions or denials of pertinent information which may be used in motions requesting affirmative relief or dismissal/limitation of the claims made against you.
- Request for Production of Documents – In the same fashion that we request documents of you, we may obtain documents from the opposing party. It is critical that a request be specific and case-sensitive (which is the reason we asked for your thoughts as to which documents the other side will likely rely upon).
- Subpoenas – Parties not in the litigation may be subject to subpoena, both to take their depositions as well as to require their documents. Of course, subpoenas are also used to require parties and non-parties to appear at time of trial or at hearings.
- Request for View of Property and Things – This formal discovery request allows us and you to view a location or an item which is relevant to the dispute and may include videotaping, photographing or other means of developing demonstrative evidence for presentation at trial or attached to motions.

\* Our firm's motto in respect to litigation is "expect the unexpected." Accordingly, discovery is critical to avoiding surprises that we cannot reasonably expect to develop at the time of trial.

#### 4. MOTION PRACTICE

Through motions (i.e. pleadings filed with the court asking for relief such as dismissal, summary judgment, positive relief in your favor, etc.), a case may be more quickly disposed of, particularly if there are truly no genuine issues of facts or law. Internet resource libraries, statutory databases and other relevant research assets supplement the information we have learned through discovery allows us to seek a favorable disposition of your case professionally and with less cost prior to trial.

#### 5. COURT APPEARANCES

First and lasting impressions of judges, magistrates or arbitrators are extremely critical. At pretrials and other hearings preceding trial, a good litigator is capable of learning more about the opposition, can strongly assert positions favorable to one's client, and obtain an opinion of the Court's impressions of one's case. Except for preliminary attorney conferences (generally known as Case Management Conferences, primarily dedicated to scheduling and initial matters), our clients' participation in pretrials and other appearances before the Court are advantageous from a number of standpoints, including:

- Allowing the Court to recognize the party's dedication to the litigation;
- Allowing our clients to learn more about the case and to supplement our knowledge and approach; and
- Participating in settlement negotiations which oftentimes occur before trial.

If geographical difficulties or scheduling conflicts make it impossible or difficult to appear at a court appearance, arrangements can be made to allow for a waiver of appearance, though we prefer that non-appearance be a rare exception.

#### 6. TRIAL/ARBITRATION ON THE MERITS

It has been our experience that your participation in fine-tuning the strategy and testimony necessary for a successful trial or hearing is greatly minimized by your "partnership with us" in accomplishing all that proceeds the last phase of our representation. By this point in time, there should be nothing that we do not anticipate. Each Court issues its own orders as to what documents must be filed prior to trial such as trial briefs, witness lists, and exhibit list. It is our position to be so well-prepared and strategically sound that our final conferences, document reviews and the like are essentially completed weeks (rather than days) in advance of trial.

This is not to say that there may not be occasions where we are not required to work late into the evening to become as comfortable as we can be with presenting our case. However, planning for witnesses and their order of appearance; final strategy sessions; making you familiar and comfortable with your testimony; and rehearsing for our joint presentation before a judge, jury, magistrate or arbitrator will normally lead to a more expeditious, professional and successful trial. Fumbling, mumbling and general confusion on the part of the opposition (when compared to a professional and organized presentation of our case) can make all the difference, especially in an uphill battle.

## 7. FINAL THOUGHTS

The practice of law and litigation is no more scientific than any other matters which revolve around human relationships. Sometimes we need to be fluid, flexible and/or extremely creative. As the old saying goes, your case is truly only as strong as its weakest link.

We assure you of our best efforts on your behalf and cannot help but stress how critical our "litigation partnership" is to your success.