

Litigation Management through Teamwork with Defense Counsel



Presented by

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Litigation Management through Teamwork with Defense Counsel

- ◆ What should we do and why should we do it?
- ◆ Litigation management is more than just “passing the baton” to defense counsel. It requires an understanding of the mechanics of a lawsuit, a grasp of the facts of the case and a case goal and objectives to accomplish that goal.



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- ◆ Relationship with defense counsel is extremely important. They are retained for their expertise in a specialized legal field in a particular geographical area. They are the experts.
- ◆ Who do they represent? Can represent you or your company, or, in the case of insurance, an insured or insurer.
- ◆ In the case of representing an insured, the insured is their client, but the insurer pays their bill and directs their activities.

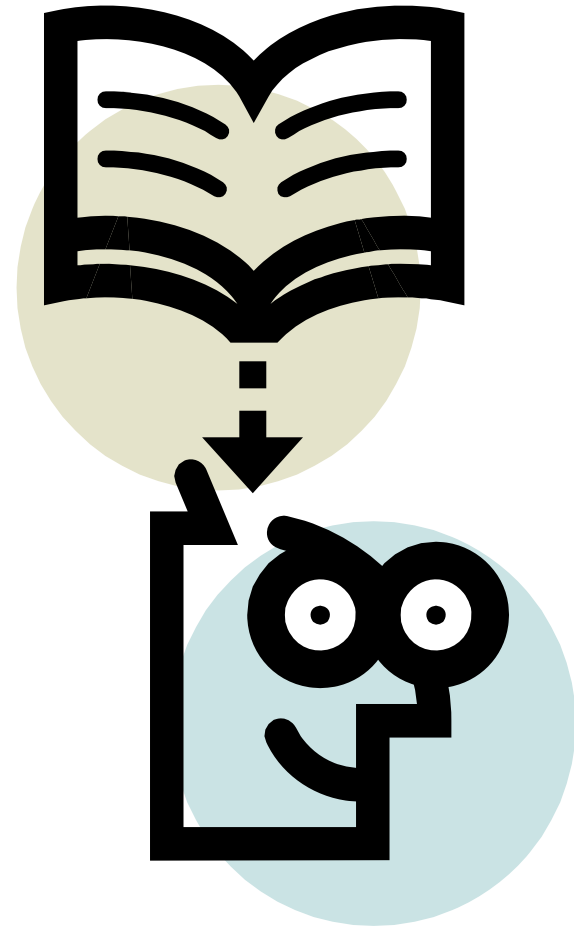
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- ◆ Most defense counsel know where their bread is buttered but they can't sacrifice their allegiance.
- ◆ Thus, there is a need to partner and collaborate on a strategy to reach an optimal conclusion for both the insured and insurer, equally balancing everyone's interests.



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- ◆ With the insurer's knowledge of the facts of the case, the attorney can rely on the insurer for information that has been obtained in a pre-suit investigation.
- ◆ The insurer can rely on the attorney to advise them of the nuances of the players and the field on which the litigation is played. (Attorneys, Judges, Venues, Laws)



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- ◆ Why is what you know important?
- ◆ Due to your thorough investigation, a framework can be developed of what additional information may be needed.
- ◆ Your investigation allows both you and counsel to benefit from the initial and most credible report of what the facts are, before memories fade and people disappear.
- ◆ It also is likely to result in a significant cost savings, having the bulk of the work done before counsel gets it....their cost can be significant.

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- ◆ Why is what counsel knows important?
- ◆ Early on, counsel can tell you about the laws of a particular state, the demographics and political attitudes of its populace, the reputations and abilities of counsel and their experts and the leanings of the Judge who will preside over your case.



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- ◆ How long has he/she been in practice?
- ◆ Are they well known or obscure?
- ◆ Trial experience? Settler? Big verdicts or settlements?
- ◆ Lazy or industrious?
- ◆ Trustworthy (or not?)
- ◆ Reasonable and realistic, or are they “pie in the sky?”
- ◆ Types of clients they get – specialized or general practice?
- ◆ Martindale Hubbell rating
- ◆ Service on local or state political boards or organizations?
- ◆ Visibility in the community
- ◆ Awards or recognitions
- ◆ Prior dealings with them... what to expect

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- ◆ Reasonable and realistic, or are they “pie in the sky?”
- ◆ Courage to make tough decisions? Afraid of reversal on appeal?
- ◆ Whose courtroom is it? Who is in control? Punctual?
- ◆ Any personal, political or professional relationships with any attorneys? Disclosed?
- ◆ Temperament?
- ◆ Recusal rate?

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- ◆ Rural or metropolitan?
- ◆ Size and demographics of population?
- ◆ Major industry in the area?
- ◆ Unemployment rate?
- ◆ How are jurors selected to serve? (i.e. driver's license, voting rolls)
- ◆ Where is the court located where the case would be tried? (i.e. center of large city, suburbs, rural town)
- ◆ Political leanings?
- ◆ History of small or large awards?
- ◆ What type cases "ring the bell," and what type "fall flat?"
- ◆ How are lawyers perceived there?

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- ◆ Once these things are known, then your analysis and discussion can focus on what you just learned and how you should proceed.
- ◆ What do we need to do?
- ◆ What collaborative plan have we agreed on and what is the budget to do so?



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- ◆ Do the facts, the amount in controversy, cost of defense and venue say “fold the tent” or “saddle up your boys and draw a hard line?”
- ◆ Most likely should we learn more information?
- ◆ What else do we need to learn to evaluate the case?

- ◆ Do we get the information informally or through discovery?
- ◆ Not every case needs the same type of approach.
- ◆ Questions you should ask are:
 - How can I get it?
 - What do I need?
 - What is the most expedient way to get it?
 - What is the cost involved?

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- ◆ Does the process we selected and what is involved justify the cost?
- ◆ What added value will it give us?
- ◆ Are we trying to send any messages to our adversaries?



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- ◆ Am I being kept informed?
- ◆ Do I know what is being exchanged and how it affects my case?
- ◆ Has anything occurred or do we anticipate anything occurring which could help or hurt our case?

- ◆ Do I reevaluate my position?
- ◆ What new information have I learned and what does it mean?
- ◆ Are we on track with our plan and budget that we agreed upon?
 - If we are off track, why did we fall off and how can we get back on track?

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- ◆ Am I partnering or abdicating?
- ◆ What can I do to assist in the process?
- ◆ How comfortable am I in questioning my defense counsel?
If uncomfortable, why?
- ◆ What do they know I don't and should?
- ◆ What do I know they don't and should?
- ◆ How can we arrive at the desired conclusion?
- ◆ This is a team effort!

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- ◆ Is the case moving forward or dragging?
 - If dragging, why?
 - Do we need court intervention?
- ◆ Do the billing entries comport with what you agree upon and at the cost estimated?
- ◆ Is counsel being realistic in his/her evaluation?
- ◆ Are the expenses incurred necessary? Why?
- ◆ Are there any surprises? This isn't a Birthday Party!
- ◆ Is counsel making it a practice of changing their stance on the strength of my case?

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- ◆ Do time entries reflect actual work or “busy work.”
- ◆ Are there multiple entries for the same type task? Do words such as “edit,” “revise,” “rework” and “amend” make frequent appearances on bills?
- ◆ Does more than one attorney work the file? Why?
- ◆ Are they reasonable and accurate with what was projected?
- ◆ Does the bill tell a story about how the case has progressed?

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- ◆ Do you trust them?
- ◆ Do they listen?
- ◆ Do we work well together?
- ◆ Are they responsive?
- ◆ Are they a good fit for this lawsuit?
- ◆ What is their best quality? Biggest drawback?
- ◆ Are they accurate and do they deliver good value for their services?
- ◆ Do they value our business?

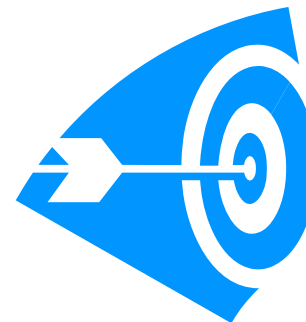
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- ◆ Have I communicated my expectations clearly?
- ◆ Have I insured we are on the same page?
- ◆ Have I offered feedback?
- ◆ Have I asked the right questions?
- ◆ Did we achieve our goals? Why or why not?
- ◆ What could I have done better?
- ◆ Were my expectations realistic?

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- ◆ Do not let it sit and fester. Ignoring it will not make it go away.
- ◆ Do not react emotionally. Think about why the problem developed.
- ◆ Call counsel and express why you are disappointed. Obtain their perception.
- ◆ Offer specific examples why your expectations were not met. (e.g. "They have not provided me an update, despite 3 telephone requests this month.")
- ◆ Do not speak in generalities. (e.g. He/she doesn't ever call me.")
- ◆ Can fences be mended? Can there be a "repair plan?"
- ◆ Convey what your expectations are and be prepared to offer a reasonable solution.



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- ◆ Don't get the reputation of being a chronic complainer.
- ◆ Don't "trash" your counsel to others.
- ◆ If someone seeks your impression and it is not favorable, explain the instance or trend you observed and cite specifics.
- ◆ Do not broadcast displeasure.
- ◆ If you are a frequent complainer, the focus may shift to an examination of your partnering skills and expectations.

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- ◆ Compliments are welcomed!
- ◆ A thank you to counsel for a job well done is a welcome sight.
- ◆ Constructive feedback to and from them is the sign of a positive relationship.
- ◆ This is a partnership!! You are on the same, not opposing teams!!