

LAW AND LITIGATION

HELP YOUR ATTORNEY HELP YOU

Even the sharpest lawyers can't do justice to your case without your full cooperation throughout. Two commercial trial attorneys explain.



In our years as commercial trial lawyers, we've encountered clients of every stripe and character. Not surprisingly, the representation

proceeds much more smoothly when the client cooperates and actively engages in the matter. Allow us to explain what makes the difference between a good and bad client.

Good clients reveal everything about the case, warts and all. During the initial consultation and throughout the life of the litigation, clients need to speak candidly to their counsel and not outsmart themselves by telling their lawyer what they think the lawyer wants to hear. While we certainly want you to emphasize and focus on the most relevant and helpful information, your cause will ultimately suffer if you censor yourself. Always err on the side of disclosing information, even the embarrassing and unflattering variety. Your attorneys need to hear it in order to prepare for its disclosure and minimize any negative consequences.

Good clients listen to everything about the case. Your attorney needs to speak candidly to you and be comfortable advising you where you went wrong. A good client remains receptive to the constructive criticism and the tough-love feedback. Moreover, a good client is open to whatever instructions the attorney might give. For instance, responding to discovery requests might be cumbersome and

embarrassing, but a good client listens to and follows counsel's advice on which documents and records to collect.

WHO ARE THE KEY EMPLOYEES?

Good clients introduce us to the necessary players. Who made the decisions at issue in the lawsuit? For example, when a contract negotiation goes sour and litigation ensues, your attorney needs to talk to the people who actually sat at the bargaining table. Who prepared the negotiators? Which employees compiled materials for the negotiation? Who originally created those materials? There are also many administrative employees your attorney needs to meet. For instance, presuming you communicate via e-mail at work, you should identify who runs the client's IT department. Your attorney needs to talk to your IT director to ensure that necessary and relevant e-documents are retained and easily reproduced.

Good clients install litigation holds. A litigation hold requires an organization to preserve data relating to a specific legal action. Once you can reasonably anticipate litigation, even before a complaint is actually filed, you must take reasonable, good faith measures to preserve evidence, including documents and electronically stored information relevant to the litigation. Severe consequences, including monetary or even evidentiary sanctions, can result from failing to preserve this evidence. For example,

a court could instruct a jury that an adverse inference may be drawn if the judge is convinced the client has failed to preserve relevant evidence. Document preservation may mean laying out some cash, but the penalties of not doing so far exceed the cost.

Good clients understand the territory. For better or worse, litigation is a protracted and expensive process (perhaps to encourage all parties to settle early and cut their losses). Your attorneys will always strive to keep your lawsuit moving expeditiously through the legal system. But even with these best practices, your lawsuit might still take years to resolve. Trial dates are often rescheduled. Civil suits in particular tend to drag. An individual judge might have hundreds of lawsuits on her docket. Her time is at a premium, which makes it a challenge for your attorney to schedule a hearing, conference, or trial with her. The opposing side is also entitled to develop and prepare its side of the argument. Conflicts and emergencies—for the parties, the attorneys, and the court—arise frequently, and a good client accepts it when a January trial date unexpectedly moves to March or June.

OTHER SIDE OF THE COIN

Bad clients fail to tell their attorney what a "win" means to them. As trial lawyers, we train and prepare to exhaust all steps en route to a successful trial and, if necessary, a successful appeal.

But before we review every document and depose every witness, we need to know the client's strategic goal. Does the client have liquidity issues and need a quick, discounted settlement payment in order to stay afloat? Does the client want to remain in the case just long enough so third-party observers conclude the client is not an easy mark for would-be litigation trolls? Or does the client want to extract a pound of flesh from the other side, regardless of time or cost? Your attorney's idea of a "win" might not always mirror yours.

Bad clients neglect to pay the bills. Your attorneys are surely willing to discuss the bills and each line item with you, and any client is entitled to raise concerns about bills with his lawyer. Nonetheless, clients need to pay the bills, and pay them regularly. Obviously, a delinquency might strain the ongoing relationship between the attorney and the client. Furthermore, a delinquency could compromise the relationship with third parties (retained expert witnesses, paralegals, e-discovery firms, photocopying services, etc.). Litigation incurs many costs. A client who fails to pay the bills might lose favorable expert testimony, crucial administrative support, access to

document databases and repositories, and even the necessary photocopies for filing and service upon opposing parties and the court.

Bad clients refuse to get involved in the case. Ignoring a lawsuit will not make it go away. Clients know more about the factual underpinnings of a case than their attorneys do. Never hesitate to contact your lawyer and share as many details as possible. Be sure to return your attorney's telephone calls when he asks for your assistance in drafting pleadings, discovery requests, or discovery responses. And share your knowledge of the inter-relationships between the litigants and third parties. A bad client, for example, might fail to mention that an "impartial" third-party witness actually has known a litigant for decades and that, possibly, that personal or professional relationship might unravel that witness's testimony and prove a terrible embarrassment before the court.

Bad clients don't show up. Too frequently, corporate clients dispatch their "usual" corporate representatives or lower-level employees whose knowledge of the specific issues is less than desired. Your attorney must (and will) make clear to you which people should at-

tend a deposition, hearing, or trial. In our experience, however, we have had too many depositions rescheduled, meetings postponed, and conference calls canceled, because a client knowingly sends the wrong representative to appear. This type of behavior ultimately hurts the client in wasted time, money, and credibility. Nothing remains in a judge's mind more than the unfavorable impression acquired early on due to juvenile gamesmanship.

Clients who want to succeed must do everything possible to make their lawyers winners. Much of the end result hinges on how you perform your responsibilities for your litigation.

*By Matthew A. Taylor
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