

Personal Injury/Workers Compensation

Avoiding Problems with Tort Clients

After an accident, both plaintiff and defendants, aside from any physical injuries, may be overwhelmed by anxiety and uncertainty. Whether an attorney



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represents plaintiffs, defendants or insurance carriers, he must communicate early, clearly and often to reduce the parties' level of anxiety and uncertainty and to bring the matter to a successful resolution. The failure to do so can leave clients dissatisfied or unhappy with the attorney's services and create the possibility of grievance or malpractice claims. As a lawyer cannot guarantee results in a tort matter, it is important to manage the relationship and bring about the best possible resolution.

Steps to Take

Shortly after an accident, it is important to focus on the scene as certain information may soon evaporate. This information frequently includes photos or videos from security, traffic or surveillance cameras and cell phones. It is also important to investigate information and obtain documentation concerning conditions at the scene, along with eyewitnesses and complaints, which may be important later to establish or defend against liability.

Both counsel for plaintiff and defendants must also research all possible sources of insurance coverage to provide for compensation for the plaintiffs and protection and indemnification to the defendants. Any failure to obtain this information, or to investigate or take advantage of potential insurance coverage, will also be blamed on the attorney.

When the attorney initially meets with a plaintiff, a range of possibilities should be provided concerning the outcome, as well as the timetable for resolving a matter. Everyone is under the misconception that his case is worth a million dollars, liability is in his favor and the case will be resolved within a few weeks. It is also important to make clear who will be handling the matter in terms of attorneys and support staff and to periodically update the client as to the status of his/her matter, including the most recent developments and what will happen next. This must be done even if nothing has happened.

If there is a period of long delays, an explanation should be provided for clients, especially if it is something the attorney is not responsible for or has no control over such as a backlog to schedule a court conference, depositions or trial.

If the attorney is waiting for additional information or discovery from a client or another party, the attorney must periodically send written follow-ups to document that he is doing what he can to move the matter along and any delay is not his fault. If there are legal expenses involved, such as filing fees, or administrative costs to obtain documents or records, or fees for experts, make sure it is clear in the retainer who will advance the money for same and

when reimbursement is due, and be certain that your agreement complies with the options available under the rules of ethics.

If the attorney represents the plaintiff, he must carefully investigate the client's medical history, as well as the future prognosis of the injury and disability. If there is limited coverage and clear liability, the attorney should attempt to resolve the case without resort to litigation. Defense counsel must also quickly and carefully conduct a medical investigation as past medical records and legal files are subject to periodic destruction with the passing of time, making potentially valuable information for the defense unavailable.

Avoid Delays In Court

Once the court is involved in a tort case, the following tips can help avoid delays and wasted time in court.

It is well worth the time to have someone in the office remind all of the parties of an upcoming court appearance. It is also helpful to remind other counsel to do their homework to prepare for the conference in terms of providing discovery, dates for depositions or taking steps toward resolving some of the issues or discovery disputes. These subjects were not covered in law school but so many conferences are wasted, resulting in long delays in resolving a matter because attorneys in firms both large and small can forget about the conference, or fail to prepare for same.

Similarly, when depositions are approaching, they are frequently subject to delay and postponement simply because of the lack of adequate follow up. Some of the common excuses for adjourning depositions such as "it wasn't on our calendar," "we couldn't reach the client," or "an attorney is not available" can be prevented.

After a discovery schedule is received from the court, follow-up in writing to make sure the dates are on the calendar, the client has been notified and an attorney will be available. If there are special considerations, such as a client traveling from out of town, or an interpreter or other special accommodation is needed, make sure these special circumstances are known to all.

The attorney can also put into practice the "early confirmation" of the deposition. Rather than waiting until the afternoon of the day before the event, take steps to confirm a few days before to allow additional time for the other offices to reach their clients and to hear back from them. Frequently, contact left until the day before does not provide sufficient time for this to occur.

These simple steps can also help prevent problems with your clients because of last minute scheduling changes such as arranging to take a day off or not needing to do so. The attorney can also avoid the problem of not being able to reach the client by making sure there are alternate ways to reach the client such as cell number, work number, email address, along with the name of a relative or friend or other contact who can always get in touch the client in case the attorney is unable to do so. This

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will avoid problems in reaching clients regardless of whether they are plaintiffs or defendants. Also explain to the client the importance and necessity of the deposition and help reduce his anxiety and concerns by gaining the client's confidence and adequately preparing him.

Once discovery is complete, or earlier, if it is not really necessary, the attorney should explore the possibility of resolving the case in a cost effective manner. Many tort cases can be resolved through mediation or arbitration, especially with the help of a trained facilitator and appropriate high-low parameters. Sometimes ADR can help avoid risks to both plaintiffs and defendants while reducing anxiety and uncertainty and allowing both parties to resolve the matter in a much shorter period of time.

Regardless of the status of negotiations, to prevent problems with clients, it is important that they be kept apprised of all negotiations. Any settlement demands, especially if they are within the coverage provided by the policy, should be conveyed to the defendant and/or insurance carrier. At the same time, any offers, even if they are somewhat low, or less than the client or the attorney was hoping for, should be conveyed to the client. It is the decision of the client whether to accept, reject or counter an offer. Not keeping the client informed can lead to grievance and/or malpractice claims. This duty continues through the trial and appeal of a matter. It is also important to document the attorney's communication and the client's acceptance or rejection of any offers or demands.

Finally, it is important to timely respond to inquiries from clients whether by phone, email or in another manner. The failure to do so will only increase the

possibility of ill will, along with grievance or malpractice claims.

Following some of these steps can help resolve tort cases and leave clients happier and, at the same time, reduce

the possibility of problems with clients.

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