

Disputes Lawsuits

AND HOW
TO TELL THE
DIFFERENCE

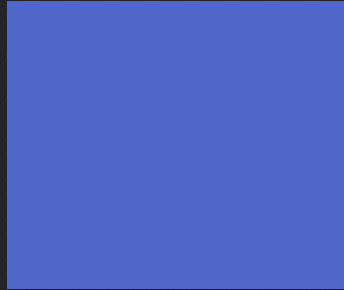
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Litigation: It's not just in the courtroom

- It's not “black and white”
- Litigating and preparing for litigation involves *strategy*
- Attorneys tend to be more specialized-consider associating or discussing with litigation counsel

“Houston: We have a problem”

How to tell when you have a dispute



Bad Actor

Someone consulting
or seeking advice
of counsel

Can't seem to get
client's desired
result

Client wants to
discuss attorney
fees, recovery of
attorney fees

Competing
documents/
interpretation of
documents

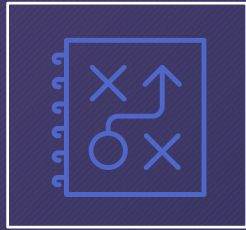
Status conference/
anything involving
questions for a
judge

Unrepresented
parties contacting
you

Client mentions
fight with other
family member,
business partner

Signs a Dispute is Looming

Make a Game Plan.



**Develop a strategy
early and stick with it**



You can Ask:

Have I seen all the documents?

Could pre-litigation mediation/
discovery be helpful?

Is other counsel involved?

Who are the actual parties here?

What personalities am I dealing
with?

Mental health check

Do I have the skillset?

Make a Game Plan.

Limit

Limit engagement in different stages, if necessary

Focus

When the focus shifts, be ready

Prepare

Expect the unexpected

Why do we care?

Statutes of
Limitations

Spoliation of
Evidence

Subpoena
Power

Costs

Witnesses

Adjustor and
Adjustor
Files

Politics/
Political
Climate

“Anticipation
of Litigation”

Conflicts of
Interest

Admissibility
of Evidence

Time and
Timing

Jurisdiction

Resolution is
Possible

Involves a
Neutral/
Mediator

Why do we care?

Statutes of Limitation

It's not helpful to run up against deadlines

Spoliation of Evidence

Sometimes, you have to act fast

Subpoena Power

Are there things that you don't know?

Why do we care?

Costs

The client needs to know the costs and assess those

Witnesses

You need to think about affidavits, availability, etc.

Adjustors and Adjustor Files

If things get heated, the conversation may change

Why do we care?

Politics/
Political
Climate

You need to
know your
audience

“Anticipation
of Litigation”

Think about
how you can
protect your
client file

Conflicts of
Interest

You should be
discussing and
considering
this early on

Why do we care?

Admissibility of Evidence

You need to know if your facts are even admissible at trial

Time and Timing

Sometimes, the timing of a filing gives you the leverage you need

Jurisdiction

You need to know which courts have jurisdiction and strategize

Why do we care?

Resolution is Possible

You may be able to get further than you think

Involves a Neutral/
Mediator

Mediators can develop creative solutions for resolution

Just File Already!

CONSIDER:

What are the downsides to filing?

How much time has been spent negotiating?

What does my client want out of this?

What will filing get me that I do not have now?

Have we been here before?

Approaching Risks/ Costs with the Client

Approaching Risks/ Costs with the Client

You can ask...



Do they actually want this?



Is this something we're pursuing out of principle?



What if the facts aren't what you think?



Are you okay with nothing?



Do we know how other cases like this have gone?

Know when to cut ties.

Sometimes, a dispute is just ... a dispute.

- Too expensive
- Lack of evidence
- No remedy at law
- No chance of recovery
- Bad timing
- Bad venue
- Reputation
- Counterclaims
- Your sanity

QUESTIONS/ COMMENTS?

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