



Feature: Managing Your Lawyer **Greg Hawkins, JD, and Claude T. Hawkins**

For most professional surveyors, litigation is like the typhoon that ravishes a remote country—unfortunate but far away. Yet, a lawsuit is an undeniable possibility for even a well managed survey company. Win or lose, both the process and the result can prove disheartening, sometimes devastating. Always expensive.

More frequently, you need competent legal counsel for something more mundane—a contract, a partnership, a lease , or the myriad legal pitfalls of employee relations. Get these wrong and litigation will soon follow.

There are steps you can take to improve your odds when you work with a lawyer. Some are straightforward, the same types of business management routines you practice daily. Others will require planning, but your efforts literally can be worth more than gold.

Additionally, as you use these techniques you will discover many answers to your most significant, but unspoken questions. Is my lawyer qualified? Can I trust this person to work diligently for me?

This information could have proven invaluable in the dispute between Reba Pinson and Hopkins Surveying Group, Inc. Ms. Pinson became involved in a boundary line dispute and contracted with David Hopkins' company to perform a survey. Although Ms. Pinson settled the boundary line disagreement, she remained unsatisfied (Does this have a familiar ring?) and filed suit against Hopkins Surveying, alleging "a breach of contract and an intentional misrepresentation of the ability and quality of the service to be rendered."

Reba Pinson argued that when she went to pay for the survey, David Hopkins admitted to errors. Mr. Hopkins denied, "...that any admission of mistakes in the survey was ever made." The Chancery Court ruled in favor of Hopkins Surveying. Then Ms. Pinson appealed the ruling.

A Cooperative Effort

Whether defending against a potentially ruinous lawsuit or the comparatively simple task of negotiating a contract, you may feel tempted to simply lay your problem at your attorney's feet, then step back and hope for the best. This is the most common

lawyer/client relationship and some lawyers prefer this arrangement. It is, however, the least effective. Often it is the most expensive.

Except for basic legal work, the interaction between client and lawyer should be viewed as a cooperative effort. Obviously, you pay for and expect the lawyer to do the heavy lifting. But do not discount the value of your participation.

Preparing For Your Consultation

Before your consultation, preparation is essential. Write a synopsis or "facts statement" of your situation. List the events, in chronological order, that brought you to the lawyer.

In the first draft aim for a "Just the facts, ma'am" type of summary. Reduce your final draft to one or two pages, something your lawyer can read in a few minutes. Next, gather the documents pertaining to your situation. Put these in chronological order and add a sheet with the contact information of every person involved with the case. Include a sentence or two describing this person's involvement.

This represents the first significant service you can contribute to your cooperative effort, both for yourself and for your lawyer.

What To Tell Your Lawyer

A well-qualified lawyer is predisposed to your benefit from the moment you begin to speak, mentally calculating strategy and tactics as you talk. Still, from your lawyer's perspective, only specifics move the process forward. With this in mind, you should prepare what you want to say as carefully as you prepared the written material. Again, "Just the facts, ma'am."

Don't be dismayed if your lawyer interrupts your story, even redirects your narrative. In all likelihood he is more concerned with potential legal solutions than your feelings at this point.

If you want to stimulate your lawyer to put forward his finest efforts, you must get organized. Working with an organized client has a motivating influence on lawyers. If you can place the facts before your lawyer in an organized manner, he will not only be surprised—because it is an uncommon experience—but also he is more likely to think, "This is someone I can work with."

Evaluate Your Lawyer's Response

It is possible that your lawyer will immediately lay out a strategy. Equally likely, your lawyer will need time for research and thought before committing to a course of action. Whatever the circumstances, expect a reasonable explanation of the preliminary steps he will take.

According to Hartley & Hartley Attorneys at Law, in Santa Monica, California, "A well-qualified lawyer can give you an estimate in your first conversation about what he or she thinks the legal issues are, and any lawyer who's worth hiring will tell you what he

or she doesn't know."

You should be wary of any lawyer unable to communicate in simple and clearly understandable language. If he cannot communicate adequately with you, it is doubtful he will do better with a judge, a jury or opposing counsel.

Develop a Reporting Schedule

You cannot expect your lawyer to inform you of his every action. Still, you endanger your peace of mind if you rely on your lawyer's discretion to determine a reporting schedule. One of the most frequent complaints made by clients is that their lawyers kept them in the dark.

Discuss with your lawyer specifically how often you want a progress report, how much detail you require and if you want the report by phone or in writing. Keep in mind that you will be billed for every phone call and report.

Remember that this is your business at risk. As your case progresses, you will be left to wonder what is happening unless you make it clear to your lawyer that you expect to be kept informed.

Memorialize Your Discussions

Under the best of circumstances, memory fades with time. Your lawyer will take notes of your conversations. Follow his example. Always take careful notes whenever you talk with your attorney.

At your first meeting, and thereafter, ask your lawyer to memorialize your discussion in a letter. This letter or "précis," which means a "concise summary of essential points," becomes a key element of the reporting system. Compare any discrepancies between your lawyer's précis and your written notes then discuss these differences openly, but without antagonism.

Resolve the Working Relationship Early

Human nature dictates that people make accommodations more readily at the beginning of a relationship. This includes your lawyer. Every point you fail to resolve with your lawyer early in the process, including fees and expenses, will prove more difficult to correct later.

Your lawyer will prepare a "Representation Agreement." This is a critical contract between you and your attorney, so read each word carefully. Ask questions and request changes to anything that seems unreasonable or unclear. The reporting system, both the lawyer's précis after each conference and the progress reports, is a good addition to this agreement.

In For the Long Haul

At some point during the slow course of litigation, you are likely to discover that your case is not making the progress you expected. Delays and extensions are part and parcel of litigation. And keep in mind that there is another lawyer out there working to

spoil your lawyer's good work. Then again, your lawyer may be the one missing deadlines and asking for extensions.

This is where your reporting system demonstrates its true value. Unlike the vast majority of legal clients, because of your lawyer's précis after each consultation, you have a record of your lawyer's planned strategies. Because of the progress reports you know how and when your lawyer implemented these strategies, as well as the results.

Your reporting system puts you in a position to ask critical questions, like, "Why did this happen?" or "Why didn't this happen?" You can follow-up with, "How do you plan to counter this?"

What Do Your Feelings Tell You?

Trust yourself. Are you comfortable with the tone and quality of the meetings—your attorney's answers and the questions he asks you? Can you work with this person over an extended period of time?

"We estimate that somewhat more than half of the legal malpractice actions are caused in one way or another by a mismatch between client and lawyer," says Hartley & Hartley.

Bear in mind that the best time to change lawyers is early in the process. But if you want to find the best-qualified lawyer for your situation, remember that lawyers are plentiful, in virtually endless variety, for every situation and personality. Do not hesitate to keep looking if your instincts and gut feelings tell you to select different legal counsel.

The End Game—Final Resolution?

In the seven page opinion of the legal dispute between Hopkins Surveying and Reba Pinson, David Hopkins testified that the survey, "...was accomplished in an accurate and reliable manner using those methods, standards, and practices which are reasonable customary in the trade." More than four years after Ms. Pinson's original complaint, the Tennessee Court of Appeals agreed with Mr. Hopkins. And the Appeals Court assessed the costs against Reba Pinson.

However, the Appellate Court opinion does not mention the collateral costs of litigation—the lost work hours or damage to self-esteem. Nor does it indicate the anguish and frustration that existed while the case moved through the legal system. Did they suffer any sleepless nights? How many antacid tablets did they consume?

Striking a Balance

Managing your lawyer is a balancing act. You should not attempt to direct your lawyer's every move. It would prove counterproductive and too costly. Nor would the lawyer allow it.

On the other hand, this is your case and you must live with the results. Granting complete control to your lawyer is imprudent. As Jean Hill, an attorney for the Utah

Department of Education, stated in the Salt Lake Tribune on March 18, 2001, "All of the strategic decisions that the lawyers make can affect the final decisions in the case, and the client is stuck with the decisions of the attorney." Don't get stuck; participate.

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