



## The Voice

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### **Take a Look Back: Are You Managing Cases Adeptly and Successfully?**

Published 11-23-16

by Anne S. Cruz

While focusing on the forward press in a lawsuit, many cases linger when a few fundamental strategies could streamline efforts and obtain swifter results. With a few strategic steps, the benefits of talking to the other side, developing and refining a specific plan for a case, and pressing advantages when established can help clients reach their end goals effectively. Successful, adept case management results from employing these few best practices.

#### **Build a Conversation**

In this ever-increasing digital age, building the conversation channel with the opposing side early can pay dividends at the start of a case and later. Crucially, an actual verbal conversation with the other side may give counsel early insight into where the opponent is headed on discovery issues, settlement, and the case in general. While written communications—namely e-mail—certainly are an effective tool, they should not be the only communication avenue. An attorney loses the ability to obtain context, mine information, and probe the opposing counsel for details on the opposing side's intentions in a matter in written communications. While this point sounds simple, it is a fundamental that remains true and is easily discarded. If the conversation line is open, talking early and often can help a lawyer manage a case more effectively.

Certain procedural options relevant to attacking the pleadings or venue choices may be discovered in conversation, which may uncover underlying facts that would not become known early otherwise, and opportunities would be missed. Early clues from the opposing side on possible discovery issues and intentions can help counsel immediately narrow the scope, saving time and effort in discovery disputes. Likewise, discussions may reveal legal theories that may be successful if they are pursued early. Sadly, in some cases, conversations may prove incredibly difficult with opposing counsel based on the atmospherics. Nevertheless, it is crucial for counsel not to default to e-mail use only. Build the verbal conversation and stay the course.

#### **Construct a Targeted Strategy**

Whether the ultimate end goal for a client is a successful judgment from a motion, a jury verdict from a trial, or a settlement, the legal strategy to get there must be targeted at the outset and then continually evaluated and refined through the course of a matter. At the beginning, counsel should thoroughly research the legal theories and elements at play, coupling them with a targeted discovery plan. A case handled with haste and no strategy can mangle or unfold by happenstance, which eliminates options and costs time and effort. In most cases, a review of the applicable jury

instructions is a key practice at the inception of a matter and an important touchstone throughout a case to confirm what evidence has been developed to address each element.

## Check the Plan

Instead of staying a litigation course without rechecking it, counsel should spot-check their efforts against the initial plan at various mid-points through fact and expert discovery phases of a case. By reviewing the strategy, the effectiveness of the current discovery mechanisms and litigation tactics can be evaluated. There is nothing more ineffective than not evaluating the key plan and legal elements at play in a case until the time of preparing pleadings for dispositive motions, procedural disputes, or expert discovery, or upon the eve of the trial. The fact and expert discovery that is still needed can be identified and cross-checked against the applicable legal elements. The best discovery tools to obtain that information can be used timely.

## Focused Dispositive Motions

Will these motions get a case where counsel wants it to go? Dispositive motions have benefits and burdens. There are many reasons to file a dispositive motion such as a motion for summary judgment. Regardless of the type of case, if a dispositive motion is contemplated, counsel must do it early. In many jurisdictions, increasing budget constraints have made even the simple reservation of a hearing for a motion for summary judgment a task that must be done at the inception of a case. Apart from ensuring that a hearing is obtainable, all of the ground work to support such a motion must be done at the outset of a case to streamline the discovery sought effectively. Development of those facts and strategically discussing them with opposing counsel can sometimes yield stipulations and dismissals pertaining to certain claims before an entire motion is needed. Conversely, efforts focused on developing such facts may lead to early or proactive filings of motions, even by plaintiffs, to press a case. Dispositive motions may also allow counsel to ferret out evidence and legal theories that the opposing side intends to use, including the identities and potential opinions of experts. The timing of a motion can provide beneficial leverage for settlement discussions and formal mediations. All of these benefits from dispositive motions can only be obtained with focused efforts on content and timing.

## Identify Leverage Points to Reach the End Goal

When counsel has had a client clearly define the end goals for a case, counsel can identify the leverage points that may achieve those goals as soon as possible. In particular, when settlement is the goal, settlement negotiations should revolve around leverage points identified from discovery. Identifying the best leverage points that the client has to press effective settlement discussions as soon as they have emerged is paramount. Timing can be everything. Mitigating litigation burdens and costs in a case as early as possible when favorable facts have been established for a client in discovery is crucial. Without scheduling moments for mid-point evaluations of a matter, the time from development of the facts until earnest settlement discussions begin can often stretch as counsel are challenged with keeping up with the day-to-day activities of a case. Ultimately, counsel wants a client to be satisfied with the result. To best achieve the client's end goal so that the client is satisfied, counsel should employ adept case management.



[Anne S. Cruz](#) is an attorney with **Tucker Ellis LLP** in Los Angeles, California, who focuses on business and product liability litigation. She is the chair of the Publications Subcommittee of the DRI Women in the Law Committee.

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