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UTILIZING PRACTICAL CLIENT/COUNSEL COLLABORATION TO ACHIEVE COST EFFICIENT EARLY RESOLUTION GOALS

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I. THE NEW NORMAL IS HERE. IN FACT, IT'S NORMAL.

Relationships and reputation still matter. They are no longer dispositive.

Lawyers have long taken pride in being the "go-to-lawyer" for a given client. They also know that their clients both appreciate their service and take comfort when they are representing them. That's still important, but it no longer assures a lawyer a steady stream of cases.

Many clients grade their firms by objective standards.

Guideline compliance, budget accuracy, total case cost, cycle time and timekeeper utilization are being compiled on individual lawyers and their firms. Companies increasingly insist that this objective criteria be used for assignment purposes. If you aren't competing on these criteria, your business is in jeopardy.

II. PRINCIPLES TO COMPETE ON AN OBJECTIVE GRADING SCALE

Goals must be defined. Clients and firms must agree on the rules.

A successful collaboration depends on communication. The law firm needs to understand what the client hopes to achieve by measuring data. This allows strategic steps to deliver quicker resolutions, or increased use of mediation, or whatever result is sought.

The law firm culture must embrace the change.

Senior partners who say, "This doesn't apply to my cases," or lawyers who shake their heads and mutter, "That isn't the way I do things" will make a compliance effort futile. The entire firm must collaborate on developing and promulgating concrete steps to meet the client's demands.

You get what you reward. If compensation is based on hours billed, you will get hours.

If the end of the year compensation review includes questions about quick resolution of cases, creative uses of discovery, risk transfer successes and instances in which money was saved for the client, those results will increase. If the only question is, "Why didn't you meet goal?" other accomplishments will take a secondary place.

III. GETTING STARTED, CASE BY CASE

Many clients focus on reducing Total Case Cost, cutting fees, costs, cycle time and indemnity.

Although the goals for individual clients may vary, creating a commitment to resolve cases quickly and less expensively will resonate with a broad swath of your client base. Commit to looking for resolutions at the beginning of cases. Endeavor to eliminate unnecessary expense. Call the plaintiff lawyer and try to resolve problems with the Complaint before filing Preliminary Objections.

Start with defining goals for the case.

An early conference with the file handler should address the following:

How do we want this case to resolve?

Why is this case in suit?

What are the unanswered questions about this matter?

What do we need to know (do) to get this matter resolved?

Who should find out the answer? How long should it take?

Document the answers, including the "don't knows."

Accountability matters. Assign the time frames and the duties for each party. Revisit and demand compliance.

IV. RESOLUTION FOCUSED FILE HANDLING

Avoid the litigation treadmill. Follow the path for this case.

A stunning amount of time can be wasted by rote, unfocused file handling. Do what's needed for this case. Don't be afraid to "bat out of order." If the sole question is value, ask for an immediate mediation. If the issue is scope of damages, consider a pre-emptive independent medical examination. Don't allow it to wander along before the appropriate case path is decided.

View discovery as a toolbox, not a checklist.

Before doing anything ask:

Do I need this?

Do I need this now?

The phone is your friend.

Call, e-mail, send a message in a bottle. Get to the people who have the answers. You won't always get cooperation, but you will get enough to make a difference.

V. I KNOW HOW THIS CASE SHOULD END…..HOW DO I GET THERE?

One size doesn't fit all.

Understand your adversary, your jurisdiction and your goal. Does this plaintiff lawyer know his cases and would be open to an early resolution? Is the lawyer unfocused until discovery is largely complete? Use the strategy that fits the circumstances. Consider blind offers, informal meetings, mediation, early pre-trials. Be relentless and strategic.

If you have a case that needs to try, examine the possibility of early trial listings, binding arbitrations and high-low agreements. Do only the discovery you need (more on this below under Risk Sharing) and seek stipulations on uncontested or unimportant issues.

Many cases involve possible Risk Transfer possibilities. This is a value added defense that works best when seeded on the front end. Move that consideration front and center. Coordinate with your client on strengths and weaknesses of arguments. Discuss the theories for transfer and consider your response to possible risk transfer requests. Share your analysis with plaintiff or co-defendant before filing the motion in order to pressure resolution.

VI. CLOSED FILE DATA CAPTURE

Your clients have the data…..you should too.

Collect cycle time, fees, costs, and indemnity paid…..at least. The technology is available to sort this information for you. If you don't want to invest in technology, a lot of information can be entered on an Excel spread sheet. Is the type of case important, premises vs. auto? If so, measure it. If you have a recurring type of injury, measure that as well. Be able to compare results by client and by lawyer. Require Uniform Task Codes for every matter. Look at your budgets. Are they accurate? Do you revise when there are changes in the case?

Use the data to improve your efficiency.

Does lawyer X always file 7 sets of Interrogatories? Who closes files with the lowest (and the highest) Total Case Cost? Ask why and see what lessons can be learned.

Meet with your clients.

Ask them what matters to them. Share your data and ask how you compare with other firms. At worst, you will find out your cycle time is above average. That lets you fix it. If you are doing something very well, leverage that into a request for more work.

Collect good ideas and make them firm policy.

Duh. Share (and reward) creative lawyering. Make sure a good idea gets circulated. One firm found that arbitration level cases were routinely appealed and the costs rose dramatically after appeal. They began to suggest non-appealable high-lows pre-arbitration. It saved the client money.

VII. EXCUSES YOU HAVE BUT CAN'T USE

If you are simply too busy to practice this way, no problem. Continue as usual and you will soon have plenty of down time. Uncooperative lawyers, judges and experts will all be frustrating. Multi-party cases and catastrophic accidents make creative lawyering more difficult. Accept that you won't hit a home run in every case. Win the little battles, get a stipulation done, dismiss a non-liable party. It will matter in dollars and cents and prepare you to recognize and exploit the bigger opportunities.

WHEN A CASE GOES SOUTH, I'LL GET FIRED.

Lawyers are, by nature, not risk takers. If we take every possible deposition, order every record and file every possible motion, we can't be criticized for missing something. Plus, we all recall the three cases where we found the smoking gun in the records. We don't reflect on the 3,000 cases where we didn't find anything. There will be cases where you will make a strategic step to skip a witness deposition or an IME. Be strategic and evaluate the risk/reward. You need prior records in a rear end hit on a 55 year old steelworker. You may not with a 14 year old.

There must be agreement about shared risk and strategy in every case. Lawyer and client must agree on the what and the why, and it needs to be documented. The plan should be logical, supported by analysis and reflect the strategy of both lawyer and client.