



Calm Before the Storm: Litigation Management During COVID-19

During the COVID-19 crisis, no one - including the legal profession - is immune from the potential effects of this rapidly-developing, novel change in the way we live and it will command a renewed focus. Preparing for the inevitable resumption of litigation during these months of social distancing and lull in activity is critical to good litigation management. Maintaining good communication, maintaining and building foundations for the litigation resumption, prioritizing and exercising civility and consideration are just a few examples of the necessary focus required to survive and prosper during these difficult times.

Good Communication

Courts are trying to adapt their overall schedules and case-specific schedules to the limits created by the coronavirus. Because each jurisdiction's courts are addressing the public health crisis differently, keeping up to date with changes, and communicating those changes to clients in a timely manner is challenging and vital. This communication can take many forms, including a communal chart, spreadsheet or email blast, but the key is to provide information that is up to date, succinct and easily distributable. Courts have to move fast in this environment and it is essential for litigation managers to receive, communicate and address these changes in an expedient fashion.

Building and Maintaining Foundations

If we think of the trial docket like a train, the coronavirus looks like it has caused the locomotive to come to a screeching halt. But, litigation managers should maximize this time, because the train could soon be moving full speed ahead. For example, this is a good time to analyze the details of those problem cases in preparation the resumption. Your lawyer-adversaries will almost certainly attempt to "make up for lost time," and it is incumbent on you to make ready for that possibility. One example that comes to mind is the retention and vetting of potential expert witnesses. The lull in litigation activity caused by the COVID-19 virus may create a much-needed opportunity to obtain authorization for a needed expert, reviewed that expert's testimonial experience in detail, conduct mock *Daubert/Frye* analyses and myriad related exercises that typically occur at the proverbial "eleventh hour." Now is the time to build the foundation with a request for authorization, supported with appropriate reasoning. Even if it is not approved right now, at least the underlying need and reasons have been communicated. Indeed, communication is critical right now, rather than be lulled into a false sense of peace a

quiet docket can create. This lull in the docket is the quiet before the storm and litigation managers should plan, create and act accordingly.

Prioritization

The aforementioned changes in courts' schedules combined with a potential sudden increase in activity, necessitates a focus on having the correct prioritization. Indeed, a case that may have been a top priority three weeks ago needs to be replaced by another case at this point. Thinking back to our train example, just because the trains may have pulled into the station in a particular order does not mean they will leave the station in that order. Consequently, the importance of litigation managers focusing on developing the correct prioritization at this time cannot be overstated.

Exercise Civility and Consideration

Preparing and prioritizing needs to be tempered with that fact that the COVID-19 crisis has changed all our lives. With this in mind, litigation managers need to be judicious about what is labeled as "Urgent" or "Time Sensitive." It would be remiss to ignore current realities and force counsel to operate as though it is business as usual. Some courts have already taken it upon themselves to admonish attorneys who have failed to recognize the gravity of the situation and scarcity of resources by arguing over relative trivialities. For example, one [U.S. Magistrate Judge in Florida](#) stated that counsel who opposed a recent motion to reschedule trial and extend deadlines should familiarize themselves with concepts such as "karma, goodwill, grace, compassion ..." and included the rhetorical question "Would the world end if the corporate deposition did not occur next week? Obviously not." In response to learning of an emergency motion, [a federal judge in Chicago](#) indicated "[t]he world is facing a real emergency. Plaintiff is not." People, including judges, have long memories; don't be one of those who contribute to making a bad situation worse. By the same token, judges, clients and our lawyer-adversaries remember those who temper their zeal with humanity.

In sum, we are all having to shift our focus, whether it is litigation or otherwise. Hopefully, the above focus areas assist in helping litigation managers effectively maximize their resources and efforts during this time.



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