

## Early Assessment is Key to Grasping the Ultimate Cost of Litigation

By Douglas Q. Meystre., Esq.

An important matter that should be considered by every potential litigant is the likely transactional cost of pursuing, or defending, a case. This should be addressed and discussed at the very outset of any matter because the foreseeable transactional costs, including attorneys' fees, can be the critical factor in analyzing how best to approach a lawsuit or a potential lawsuit.

Even cases that seem at the outset to be matters of principle usually end up being analyzed largely as matters of principal. It is, therefore, imperative that an initial frank discussion take place concerning the number of hours that may be expected to be spent on a case, the billing rates of the lawyers and paralegals who will be working on the matter, and the out-of-pocket expenses, such as expert witness fees and suit related costs, which will have to be incurred. While accurate predictions of future billable hours are almost impossible to make, clients can be given a pretty clear sense of the minimum fees and expenses to be expected and also can be given a sense of the range above that minimum to which the fees and expenses might run.

The process required to make a reasoned estimate of fees and expenses for a client provides benefits beyond the estimate itself. The better job a lawyer and a client do at the beginning in identifying the factual and evidentiary issues, the problems of proof and defense, and the legal issues applicable to the facts, the better job they will do in assessing probable outcomes and costs. They will be more able to plan a course of action that makes sense from both a practical perspective and a legal perspective, including early consideration, if appropriate, of alternative approaches such as mediation, arbitration or negotiation.

While this may all sound rather elementary, it does not always play out that way in the real world. People usually do not come to lawyers to discuss litigation unless things have really broken down or they have already been served with a summons and a complaint. They are often angry and their competitive juices are flowing. They want a zealous lawyer who will be a warrior on their behalf. They want the lawyer to understand the strengths of their side of the case and the weaknesses of the opponent's position.

These feelings and expectations of clients who are faced with litigation are all totally appropriate. As lawyers it is our goal and duty to be zealous on our client's behalf and both to understand and advocate the strengths of their cases and to discover and expose the weaknesses of their opponent's cases. We should also recognize how important the case is to our clients and how much they want and need to prevail.

On the other hand, we cannot ignore the fact that our clients are entitled to sound legal analysis and to a frank appraisal of their case so they can make reasoned judgments on how best to proceed. We would do our clients a disservice if we were to fail to provide them with an objective assessment of their case, including our estimate of the probable transactional costs of pursuing their claims or defenses. This objectivity should not be considered a lack of zealousness and ought not to be seen as such. Rather it is something we hope our clients will appreciate when all is said and done and something that spares them unpleasant financial surprises or unexpected outcomes during the litigation process.

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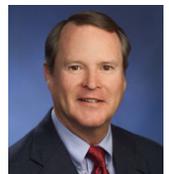
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