PRIMA'S 2019 RISK MANAGEMENT
WEBINAR SERIES

Avoiding Liability: Early and Regular Communication with Your Legal Team

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Effective Communication is Key or Your Attorney May Hear This…



Communication Basics from Lawyer's Perspective

- Regular communications to avoid creating unreasonable client expectations.
- Explaining matters so client can participate intelligently in decision making.
- Prompt communication of certain actions. Ethical rules may require it.

Communication Basics from Client/Risk Adjuster's Perspective

- Continuous communication and case updates on existing litigation.
- Quick updates on changes or new facts regarding a case, don't sit on pertinent information.
- Gather and disclose case information early on to start developing a strategy.
- The more information the better. Working a case for long periods of time only to find out it's bad is counterproductive.

Attorney/Client Communication

Consultation	v.	Putting Out Fires
↓		↓
Proactive	v.	Reactive
↓		↓
Prevention/ Pre-Litigation Mitigation	v.	Litigation

Early Consultation (Proactive)

- An ounce of prevention is better than a pound of cure.
- Don’t wait for a lawsuit.
- Identify problems early.
- Start preserving records, videos, reports etc. the day an event happens, DO NOT WAIT.

Discuss Program Reviews

PEOPLE

POLICY

TRAINING

SUPERVISION

DISCIPLINE

Proactive Policy Discussions

- Policy Revisions
  - §1983 claims of unconstitutional custom, policy and practices:
    - Arrest policies
    - Use of Force policies
    - Disciplinary process policies
  - ADA review
    - Coordinators
    - Self-evaluation

Discuss Program Reviews

- Oversight and Supervision:
  - School resource officers
  - Confidential Informants
  - Harassment and Discrimination
- Task Forces:
  - IGA's
    - Indemnification provisions
    - Forfeiture allocations
    - Supervision of other agency's employees (joint employers?)
- Training Programs

Discuss Employee Issues

- Before adverse employment actions are taken against an employee.
- FMLA/ADA issues.
- Complaints/grievances.

Discuss Critical Incidents

- Before a claim is filed or a lawsuit is served.
- Clock is ticking to preserve evidence.
- Minimize exposure.
- Brainstorm next steps.

Questions to Ask Your Attorney

- What are the allegations/defenses?
- What are the issues?
- Do you need to narrow the issues?
- What information do you need?
- Why do you need the information?
- What value is the information?
- How are you going to use the information?
- How are you going to get the information?
- When are you going to get the information?
- What is the source of the information?

Prompt Evaluation of Critical Incidents

- Timely identification of anticipated claims and begin prompt evaluation of claims.
- Key documents must be gathered.
- Key witnesses must be located and interviewed; or not…

Factors that Influence Early Evaluations

Start with the basics:

- Police reports and ambulance reports
- Witness statements
- Scene inspections with attorney
  - Contributing factors at scene? Blocked signage, overgrown tree, etc.?

Key Documents

- Police reports
- Physical evidence (property or evidence room)
- Photographs
- Videos, audio, dispatch logs
- Employment records of involved employees
- Public court records (civil, criminal, divorce, traffic, property)
- Policies
- Cell Phone records
- GPS & CDR (vehicle black box data)
- Internet search, social media information before it’s hidden

Ask Attorney about Comparative Fault of Parties or Non-Parties

- Accident reports
- Police reports
- Recordings
- Witness statements
- Expert witnesses:
  - Fire origin and cause investigators
  - Accident reconstructionist

Discuss Early Negotiation Strategies

- Aggressive
  - Unable to identify common goals
  - Repeatedly makes “hard” deadlines
  - Will not make basic concessions
  - **33% of Negotiators**

- Cooperative
  - Identifies common goals
  - Concedes weak points
  - Works together with opposing side for common goal
  - **66% of Negotiators**

How to Deal with Aggressive Negotiators

- Recognize the style!
- Be prepared to demonstrate the credibility of your facts and recognize that aggressive negotiators will try to ignore or refute them.
- Adopt a favorable opening position and clearly communicate a willingness to learn more and develop a mutually agreeable solution.
- Don’t be afraid to make the first offer!

Practical Problems with Defense Strategies

- Through experience, we already have a good idea of what claim is worth.
- Because we know what claim is worth, we place a “fair value” on plaintiff’s claim.
- Recognize a negotiating process will occur when you determine the settlement value of the claim.

Questions & Discussion