

# Paradigm

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# Ten Things Companies Should Look for in Litigation Counsel

Attorneys value a great relationship with a company that is loyal to our firms and rewards our efforts by continually providing us with new assignments and cases to handle. And clients value finding an attorney and/or law firm they can trust. After nearly 30 years of practicing law, my experience has shown there are some characteristics that a client should look for in selecting their litigation counsel. These are my top ten:

1. **Setting Realistic Expectations**
2. **Results**
3. **Creativity**
4. **No Fear**
5. **Passion and Compassion**
6. **Honesty About Whether to Try a Case or Settle**
7. **Not Churning the File**
8. **Great Advocacy**
9. **Litigation Experience and Industry Knowledge**
10. **Polished Shoes**

These top ten are by no means the only things that companies can or should look for, as every company has specific guidelines that they require their counsel to follow. Please feel free to take some or none of this advice as you apply it to your situation.

## 1. Setting Realistic Expectations

One of the most important things is honesty in stating the chance of success and the expected cost of litigating the case. At the very inception of the case or when a lawyer has developed enough facts, it is critical to fully analyze the case and give a fair and honest assessment of what it will cost to litigate the case. Just about every company or insurance carrier our firm works with requires that we set forth a detailed budget of the cost of litigation. At times, the chance of success or the budget may change, so constant vigilance is required to make certain that the initial assessment and budget are accurate and reflective of what has transpired in the litigation. No one likes surprises when it comes to litigation.

## 2. Results

At the end of the day, law firms and lawyers will be judged by the results they obtain. Will the results be outstanding or just mediocre? Law firms and lawyers are in the service business. Thus, they must make a conscious effort to deliver outstanding service to clients on a consistent basis.

## 3. Creativity

It is not enough to be just a great writer or just a great trial lawyer. All great organizations thrive and grow because of creativity. Clients should value innovative thinking. They should look for counsel who “think outside the box” and who can anticipate how opposing counsel will come at them.

## 4. No Fear

Companies deserve to know the truth and nothing but the truth. Lawyers should not fear that the company or the carrier doesn’t want to hear bad news. If the case is one that should be settled, your lawyer should tell you. If a case is



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one that has a very high verdict value, your lawyer should tell you. If the case has turned against the client halfway into discovery, or if some witness has testified in a manner that was totally unforeseen, to the detriment of the theory of the case, your lawyer should tell you. And if reasonable settlement efforts have been unsuccessful, your lawyer should not be afraid to try the case. Fear has no place in successful legal relationships.

### **5. Passion and Compassion**

We have all seen lawyers who just don't care about the work they do. When a lawyer is passionate about what they do, it shows. It shows in the way their file is organized, it shows in their writing and their demeanor with opposing counsel and their clients. Even more importantly, I believe that it is critical that attorneys and law firms have compassion. I have seen many serious cases in my practice and been involved in cases that we won that could have gone the other way. By being compassionate, it allows one to see beyond one's point of view and at times leads to a favorable compromise that is a win-win for everyone involved.

### **6. Honesty About Whether to Try a Case or Settle**

Companies cannot have confidence and trust in their chosen counsel if they are told, on a consistent basis, that a case should be tried and then counsel switches gears at the courthouse steps or as the case is on the eve of trial and begins to advocate for a settlement. We all know, and companies know, that change in strategy in some cases is

inevitable. But it is also fair to say that this change can be anticipated. Clear and constant communication in a matter with a company will lead to avoiding any last minute change in strategy.

### **7. Not Churning the File**

A lawyer or law firm should never churn any file or case, or just "bill the file." Companies and executives know when and which law firms are just churning the cases or doing tasks just to get more billable time on a file. A lawyer should be accountable and have a clear goal with everything that he or she does on the case, making sure it furthers the theory of the case.

### **8. Great Advocacy**

Companies hire lawyers to be their advocate or the advocate for their insureds. Being a great advocate requires great advocacy in every facet or task of the matter assigned, not just in the courtroom. Great advocacy should be displayed in all of a law firm's communications with opposing counsel, with the client and with the court.

### **9. Litigation Experience and Industry Knowledge**

Actual litigation experience within the topic or issues at hand is a very

important factor in selecting counsel. It is important for companies to know that the attorney they are hiring has actual experience on a topic which would make them or their firm more efficient at arriving at an acceptable solution. Another key is for counsel to have knowledge of the particular industry. If counsel knows the industry, they can anticipate the discovery process and better pinpoint the information that will be needed to be successful in the litigation.

### **10. Polished Shoes**

Let's face it. Appearance matters. Companies should seek out counsel who are polished. That requires your intended counsel to be the best version of themselves. When I obtained my LLM in Trial Advocacy degree many years ago, one of the best defense trial lawyers in the country teaching the course emphasized that 80 percent of all communication is nonverbal. A lawyer's appearance matters; especially with clients, companies and the court.

These are the standards our firm, and other Primerus firms, hold, and I believe clients should demand this from any litigation counsel representing them. 

