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Tell your attorney truth, whole truth and nothing but truth

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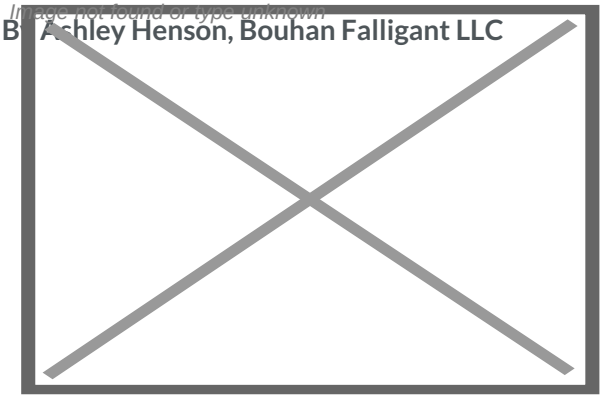

Risk Management article originally in the Savannah Morning News BiS column

When it comes to the attorney-client relationship, honesty is the best policy.

If you run your company long enough you will likely be involved in litigation at some point. And when that happens, you will want your attorney to provide you with the best defense possible.

However, your attorney cannot piece together the whole story if she or he only has half the facts. You may find a detail embarrassing or unnecessary. You may be concerned about sharing confidential business information, but understand that attorney-client communication is protected. Attorneys are not compelled to divulge client secrets, and the more they know, the better they can perform their duties and protect your business.

Being candid with your attorney will allow her or him to prepare for any possible attacks that may be used against you. You do not want your attorney to be surprised in the courtroom.

Also, remember that opposing counsel will seek out any information that he thinks will help his client's case. That information may include things you would rather not reveal. If you tell your attorney all of the details in the beginning, she or he can advise you on how to handle anything the adverse party may spring on you.

Furthermore, if you destroy or hide information, it is likely a court will admit the evidence anyway and construe it against you. You do not want to appear to have obstructed the truth in any way. Doing so could, at the least, make the case longer and more expensive or—worse—cause you to lose the case.

Keep in mind that what you tell your lawyer will not necessarily reach the courtroom. Your attorney will act as a gatekeeper to decide what is or is not relevant to a case and will work to exclude evidence that is detrimental to your case.

The information that is revealed will come out through a process known as discovery. The discovery process consists of several components.

Initial disclosures are often the first component of discovery. These disclosures cover basic information such as the names and addresses of potential witnesses.

Next, you may receive interrogatories. These are written questions seeking answers to questions not answered in the initial disclosures. These written responses are made under oath, but you may object if you feel that a question is unfair or difficult to understand.

Another type of discovery is a request for production. The opposing side may request that you share any documents relevant to the case. You may object to these requests if after a diligent search you find that the document in question never existed, no longer exists, or is no longer in your possession. You may also object if the request is unduly burdensome, overly vague, or irrelevant to the case.

You may also be served with a request for admissions, which ask you to admit or deny certain facts. It is important to answer these requests promptly and truthfully because these requests come with a penalty for not answering, answering falsely, or answering late.

If you do not have a reasonable objection to a discovery request, make sure to turn over everything your attorney requests. In the event opposing counsel suspects that you have not been forthcoming with information, she or he can file a motion to compel you to produce a document which will add additional time and expense to the litigation.

Finally, your attorney or opposing counsel may want to depose you or other witnesses. A deposition is a testimony given under oath in the presence of a court reporter. During a deposition, it is important that you only state the facts that you know to be true. Do not guess or speculate. Sometimes “I don't know,” is the best answer. Also, do not try to offer additional background or explanations. Only answer the questions you are asked.

Litigation is generally uncomfortable for all parties involved, but by being straightforward and upfront with your attorney you can make the process less painful and more efficient.

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