DISPUTES

Continued from Page 1

The type of case and the amount of money involved can determine where such cases wind up. A lot of employment matters, for instance, involve federal law.

Some cases take years, involving pleading, discovery, depositions, motions, perhaps mediation, and potentially trial. Cases can be both expensive and unpredictable.

"For a business dispute, there are obviously two sides," Schrick said. "The plaintiff is a little more in control. The plaintiff decides when to file, initiates the litigation and has a goal, something they're hoping to accomplish. The defendant unfortunately is brought in and is kind of along for the ride, more often than not."

Among remedies are money damages (sometimes involving legal fees); orders to meet specific contract performance demands; or injunctions.

Winning a case, Schrick said, is all about planning ahead, doing things like implementing good policies and practices regarding document preparation and retention.

To create good evidence, "document, document, document," Meirink said. And use professional language. Because cases often involve parties unfamiliar with a company's backgrounds, the more complete the information the better if litigation becomes involved.

And, documents often require outside storage rental or, if electronic, adequate server space. Organization is key when it comes to the need to retrieve such documents, she said.

Meirink also recommends to position your case in your contracts; manage your clients, suppliers and partners; and review your insurance. And know what to do in case you're sued.

As for document retention, companies should keep employment records, accounting and tax records, contracts, insurance policies, licenses/permits, and electronic records, including emails.

How long to keep it depends on the record.

Among key considerations are to look to the statute of limitations; laws and regulations in your industry; and significance of particular documents.

For example, she said tax records should be kept for at least six years and employment documents for at least three years. But docs that are key to understanding your business (such things as corporate formation, annual financial statements and patents) should be kept permanently.

"It's probably better to err on the side of keeping them a little bit longer than risking destroying documents too early that could help you support or disprove legal claims," Meirink told the audience.

As far as document retention policies, she recommends keeping your policy clear, reasonable and evenly applied, and to consider the importance of each category of documents.

As for following the policy, make sure you secure your documents and discard the ones you don't need pursuant to your policy.

In documenting transactions or contracts, tell your story as part of the documentation, they said:

- Get facts in writing and confirm via email
- Follow your contract, policies and procedures
- Ensure your documents corroborate your actions
- Bring a witness
- Keep company business on company accounts and devices to ensure a complete record. Use periodic reminders and audits.

In all documents, write "for the courts," Schrick said. Don't ad lib if you don't have to. Be factual, be specific, keep it professional and objective, and consider a form for uniformity and completeness.

Imagine how that same document might look if it's being subjected to court review: That will help address how a document is drafted at the start.

Having a clear policy on disposal of documents and then following that policy may help in litigation, she said.

"Following policy is the best practice," Meirink said. "And make sure you do it evenly."

There are just as many "don't dos": The attorneys advised not to include anything false or speculative in writings; don't use ambiguous language; don't use insensitive, inappropriate or inflammatory language; don't exaggerate or make personal attacks; and don't make legal conclusions.

Contracts are loaded with "hotspots," Meirink said. Clauses dealing with arbitration, mediation, venue forum selection, and integration can all be stubborn facts in a lawsuit. So, too, can anything mentioned regarding liquidation damages and attorney fees.

Arbitration and mediation can be enforced by the courts, and mention of those options needs to be carefully worded in a contract.

"Pay attention to those clauses and what they mean, and when it comes time to a potential dispute arising make sure you understand the process you have to go through. Make sure you are consulting with an attorney to make sure you're taking the correct steps to not waive your right to mediate or arbitrate," Meirink said

She also had advice on what do if people are considering filing a lawsuit or if they get sued:

If you're initiating the case, make sure to preserve notice of your actions.

On the other hand, if you're a defendant and receive a summons:

- Know when and how you were served
- Pay attention to the response deadline
- Consider making an insurance claim
- And know that if you are set up as a corporation or an LLC that you can only be represented by counsel.

And, if you receive a subpoena, keep the packet, pay attention as to how you are served and know that such service is often negotiable.

At any time, a business should feel free to contact its attorney or look up the case on PACER or Judici, which are databases used by the courts.

Preserving details is important for both sides in a case, Schrick said.

"If you anticipate moving forward in a suit, you want to get ahead of the other guy's documents. You want to make sure to prevent them disposing of anything relevant to your case, if it's a physical piece of evidence, or something defective. And you do that by sending them a written note."

The attorneys each welcomed questions from businesses on the issues.

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