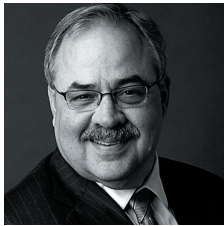


## “Things to think about when confronting business litigation.”

Joseph N. Mole, Partner, Frilot Partridge



Business Litigation encompasses everything from emotional lawsuits between cousins suing each other over a small family business founded by their grandfather to two giant companies squaring off like Sumo wrestlers. Nonetheless, certain principles remain true, regardless of the size or scope of the litigation, when parties use litigation as a tool to resolve disputes over their businesses. In the relative order of importance:

1. **Litigation is the least effective way to resolve a problem.** It is slow, costly, invasive and dangerous. Try everything else first. Only the lawyers are sure to come out ahead. If you are contemplating filing a suit, ask your lawyer if there are any alternatives he or she would recommend. Focus on what you want out of the litigation and choose the straightest path to that goal.
2. **Litigation is about exchange of information.** Litigators call it “discovery.” The litigation process begins with barebones allegations and denials, and then proceeds through a process of exchange of information. As each side discloses, or is forced to disclose, all remotely relevant information, the issues narrow and become focused, and sometimes change. The process is designed to give each side information that will illuminate the issues and shape the outcome at trial. This often leads to settlement. Think of it as a game or poker, where each player’s cards are slowly revealed, with the last card unknown until a judge or jury makes the final decision.
3. **Trial is a morality play.** At trial a judge and/or jury will only see a small selection of the facts developed in discovery. It is the lawyer’s job to select and present those facts. The court will judge you based only on what they see. A good trial lawyer shapes the facts into a story, with you as a character in the plot. You must be credible above all else, so your story must ring true, and your lawyer should not overreach or make claims he cannot support. What you ask the court to do or to give you must be seen as an equitable and fair result.
4. **You can begin to prepare now.** If you think you might ever sue or be sued in connection with your business, start acting like a good litigant. Everything you commit to writing should be written with the assumption that it will one day be shown to a jury. If you want to be arrogant or act like a jerk in

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correspondence or e-mails with customers, vendors, competitors or employees, do not ever engage in litigation. The process punishes those who appear to abuse or disrespect others in any way. You can be a ruthless businessman, but be respectful. Remember that e-mails are discoverable.

5. **Don't expect too much.** If you want something out of litigation other than a business result (money damages or declaration or enforcement of a legal or contractual right), such as revenge or emotional satisfaction, be prepared for disappointment. Courts resent being used for something they are not designed to do.
6. **Write your contracts clearly.** Document your business relationships in such a way as to eliminate guesswork as to key obligations and rights. Litigation is often caused by ambiguity. Gentlemen's agreements are fine until someone feels they are violated.
7. **Control your salesmen.** Trash talk about competitors can be fatal evidence in a business suit.
8. **Litigation is the least effective way to resolve a problem.**