CHICAGO

How Do *You* Measure A "Win"?

by David Goodman

Presidential Medal of Freedom recipient, Arthur Ashe, enjoyed outstanding success as a tennis player. During his career, he won the men's singles title at Wimbledon, the US Open, the Australian Open and, at one point, was ranked number two in the world in men's tennis. His wins could be quantified by titles, trophies, and earnings. Ashe famously observed that "[s]uccess is a journey and not a destination. The doing is often more important than the outcome." Ashe's insight is great advice for living a meaningful life. However, this is not the approach that you, the client, should want your lawyer to take in handling your case. For you, it is not about the journey, and the outcome is the only thing that is important. Success should be measured by whether you reach your destination: the outcome that you need. The objective of this post and the series that will follow is to raise questions and offer insights to help you gauge when and whether you are "winning."

In my 30 years of practice as a litigator, I have observed that far too many lawyers approach the disputes they handle as journeys with no understanding of the destination. The emphasis by litigators is too frequently placed on the "doing" rather than on the outcome. Litigators talk about the depositions they take, the motions they file, and the hearings they attend. But you, as the client, should be asking how these actions take you to the destination you need to reach: because a "win" to you is likely tied to achieving a specific business objective.

Law school trains lawyers to gather evidence, to examine witnesses, and to argue. If you have any doubt about that, just reflect upon your time spent with lawyers. Unfortunately, law school does not train lawyers to be pragmatic problem solvers, to focus on the individualized needs of our clients, or to provide great customer service. Proficiency in the use of the litigation tools and the rules is certainly important. However, litigation should never be an end in and of itself, and proficiency in litigation skills does not enable an attorney to "win." There is no one size fits all "win."

Too often litigators approach litigation with a focus on reaching a desired verdict rather than on achieving the client's objective in a way that accommodates the client's limitations. A starting point in your litigation engagement should be a collaborative dialogue through which you and your lawyer identify what you will consider a "win." A fundamental part of "winning" is for the attorney to take time to listen to the client and to develop an understanding of their needs, wants, or limitations such as financial constraints and timing. Each of those issues, concerns, and challenges should then be addressed in the strategy that is designed to meet the particulars of the client's case. Clients are well-served to ask themselves whether their objectives are understood by their lawyers or whether the "doing" proposed by their attorneys is tailored to achieve the client's desired outcome.

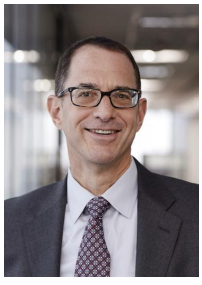
What does this mean in practice? Our objective through our postings and the approach presented is to challenge what too often is litigation orthodoxy identifying ways to improve dispute resolution as seen from the client's perspective. Through this blog series, we will suggest questions for clients to bear in mind as they assess whether their needs are being met. We will discuss actions that clients and their lawyers can take to get disputes resolved more expeditiously. After all, since legal services are frequently billed on an hourly basis, time is money, and expediting the process can reduce the expense of dispute resolution if done strategically. We will help clients evaluate whether they are receiving the status updates they need. Often, the most expensive part of dispute resolution is "discovery," the fact gathering that is a feature of most litigation. We will look at discovery from the client's perspective and investigate ways to keep the fact gathering phase under control. Our hope is that the posts will stimulate questions, dialogue, and growth.

Litigation, used appropriately, is a tool and not an end. If litigation is to be used successfully, the starting point for us, as litigators, is to listen to our clients to develop an understanding of their needs and goals. So while Ashe's philosophy, emphasizing the "doing" over the "outcome" may be appropriate to our growth as people, it is not conducive to success as litigators when measured from the client's perspective. A "win" is not a win unless it is part of a strategy that limits the "doing" to those actions that are required to achieve the client's objective and meet its business needs.

Is the litigation in which you are engaged meeting your strategic objectives? Is it interfering with meeting your strategic needs? Is there a better way to control the expense and avoid the surprises that you have encountered in litigation?

Let us know if there are topics that you would like us to address.

This article originally appeared on LinkedIn on August 21, 2020.



David Goodman

David Goodman is the founder of Goodman Law Group | Chicago. He draws on his thirty years of legal experience, many of them spent as a first chair trial lawyer, to help businesses manage their risks, harvest their benefits and protect their assets. Learn more at www.glgchicago.com

CHICAGO