

Talk with SAA litigation lawyers about their day-to-day work and what they have learned from previous professional experiences - From cause to effect, navigating dispute resolution successfully



Adriana Dobre (Counsel)

Raluca Constantin (Associate)

Mihai Iorga (Associate)

In this article we set out to deal with the practical aspects of the lawyer's daily life working in the field of dispute resolution, with the purpose of revealing the extent to which the lawyer plays a role in obtaining the outcome pursued by his/her client. Thus, we will try to point out our vision on (i) how the lawyer can help to control what appears uncontrollable or difficult to control - the civil trial - and (ii) on how, with a lot of work, skill, anticipatory spirit and spontaneity the lawyer can change the fate of a trial (and its results).

It is useful to mention that the below is a summary of the extended version of the original article drafted in Romanian. Thus, a more detailed version is available in Romanian.

I. The first steps in taking over the mandate of representation - Let's be rigorous and proactive from the very beginning! Failing to plan is planning to fail. Don't make optimistic estimates.

Work ethics and discipline, planning, ensuring a proper framework for taking over a new litigation project and the first steps following the taking over of a new matter are essential aspects in the activity of a litigator.

You need to know your client, the client profile and the client needs and to trust your client. A thorough understanding of the factual situation is also mandatory. These ingredients are the basis of a successful court representation activity.

Another important aspect is not to make hasty estimates regarding the chances to win the litigation and to make the client believe that the chances to win the trial are high. It is hard to predict the outcome of the trial considering the fact that the jurisprudence is not a source of law according to the Romanian legal system, thus the jurisprudence on the same topic is very inconsistent and much more during the trial certain events may occur and change your calculations, for instance having a poor expert report.

More information on this topic is available in the Romanian extended version of this article.

II. Is the settlement of the dispute in court the best option for the client?

Honesty in presenting to the client the odds of success of a potential litigation, and drawing up alternatives to settling the dispute in court, almost certainly strengthens the trust between the client and the lawyer. Thus, the client must be perceived as a long-term partner, and the lawyer's loyalty towards the client's interest shall always prevail over his/her natural desire to obtain a new representation mandate. The decision to engage in litigation

shall not be adopted based on the business interest of the law firm, but rather always based on the business interest of the client.

Therefore, in those cases where an amicable settlement of the dispute would bring greater benefits than the resolution of the dispute in court, the client shall be informed with regard to the possibility of concluding a settlement with the other party and with regard to the advantages and the disadvantages of this option.

An important step further is the way in which the settlement agreement is drafted, the lawyer must pay attention to the provisions regarding confidentiality, liquidated damages for the breach of the agreement and the mechanism for closing the trial.

Another important step is to make the client aware of the weakness of some contractual provisions or structures used in the activity that is being litigated and to propose a solution (maybe together with the M&A team) in order to improve the situation of the client in a potential future litigation.

Thus, it is not all about filing a claim in court and invoicing the fee for the respective representation. Despite the fact that the lawyer loses a mandate in settling such a case, he/she earns the trust of the client in the long run. The client, on the other hand, gains a clear understanding of the fact that the lawyer in question is more interested in solving the potential litigious matter with close attention to the client's interest, rather than obtaining a generous representation fee for a future dispute that could be lost.

III. Let's do more to be that lawyer who generates the causes of success! Work, work, work and a touch of emotional intelligence.

In our opinion, beyond the **impeccable diligence**, which is a crucial characteristic of an exceptional litigator, we would say that the ingredients that the lawyer can add to the case, in order to be sure of success are not very difficult to assume.

That key element by which the lawyer ensures the client's chances of success in a court dispute is a **thorough knowledge of the case** by carefully following each evolution of the case. It is that simple - in dispute resolution, convenience (even the slightest momentary relaxation) goes strongly against long-term professional success. **Litigation advocacy is only to a small extent advocacy of the genius or advocacy of the outstanding speaker, but it is advocacy of proactive work, committed attention and sustained preparation of the case, throughout the entire course of the trial.**

Not least, might we talk about **human skills**! The lawyer is not only a legal professional, but he/she is also a human being, as is the client, as is the judge and the opponent. Law is not an abstract science, and lawyers work with and for people, so it is necessary **to know how to understand people, to develop interpersonal relationships, to think in advance, to be empathetic in certain situations.**

Therefore, the ingredients that the lawyer can skilfully add to the success of the case are related to a mandatory combination of professional and human skills. Then, in order to succeed in the long run as an exceptional litigator, one needs to put in a lot of work, availability, patience, curiosity, fighting spirit, as well as empathy.

IV. Errors in litigation and how to deal. Above all, remember that the lawyer is a strategic partner in the making of justice.

The errors which can be committed by the lawyer prior or during the trial is a topic that can generate endless debates, but we try in the longer version of this article in Romanian to focus strictly on a few specific issues that we have recently come across.

An issue we could blame on the current Romanian justice system is that of **not fully recognizing the fundamental importance that the lawyer plays in the making of justice**. The lawyer is not an auxiliary of the act of justice, he/she is an indispensable partner in any trial. Even though the lawyer is in a completely different position from that of the judge, presiding over a case, his/her role in the architecture of the justice system is not inferior or secondary, because the lawyer almost always proves to be a trustworthy partner of the court in finding the judicial truth.

In this regard, it is our opinion that earlier rather than later, the lawyers' role as an equal partner of justice must be recognized, as the lawyer is the person most engaged in the construction of the case, in the administration of evidence and the most interested in obtaining a full clarification of all issues of the case. A litigator cannot expect a good result in the dispute if he/she is not fully aware of all the details of the case file. Thus, in order to expect great results from the court one should assume the role of the person knowing the casefile the best (out of all his opponents in the case, as well as of all of the members of the court).

In the Romanian extended version of this article, we have approached several examples of procedural errors and potential remedies, but here we decided just to talk about the error not to consider the crucial role of the lawyer in the making of justice.

Instead of a conclusion

Guided by the above, as well as by other principles and guidelines, our team formed by **Raluca-Adriana Constantin** and **Tudor Mihai Iorga**, under the coordination of **Adriana Dobre**, has recorded an impressive number of wins in judicial and extrajudicial disputes, even in those cases in which the factual situation was not favorable to our client, or in those instances in which we have encountered surprising difficulties on the part of our client or on the part of the court.

Even if we manage extremely different mandates, both from the perspective of our clients (international companies, Romanian companies or individuals) and from the perspective of the different types of legal issues we cover (contractual liability, tax law, labor law, company law, real estate law, tort liability, administrative litigation), our success rate is impressive, of over 90% wins of all cases.

We end up with these lines hoping that we have touched upon some interesting aspects regarding the dispute resolution activity, as the topic revolving around the success of a lawyer in the field of litigation can only be palpated in a few pages and viewed from certain angles, without it being exhausted.