



Three Commandments for Litigants

So, you landed in a legal dispute. Perhaps you found it necessary to sue a company or an individual. Perhaps someone has filed a lawsuit against you. Or perhaps no one has filed suit yet, but you see the potential for litigation on the horizon. If you find yourself in litigation, or anticipating litigation, you now have some important obligations. Let's call them the "Three Commandments for Litigants." There will be nuances for every case, but these can provide a starting point for thinking about your duties as a litigant.

Thou Shalt Not Discard Evidence

You have a legal obligation to preserve all evidence that relates—or even potentially relates—to the litigation or legal dispute. This includes everything under the sun: electronic files and data, paper documents, tangible objects, you name it. Just by way of example, emails, text messages, social media postings, computer files, handwritten notes, and physical records all count as evidence. If something relates in any way to the litigation, the dispute, or the facts of the case, you have a duty to preserve it.

What does it mean to preserve evidence? It means to hang on to it. You should not delete, destroy, or discard anything that relates or potentially relates to the litigation or dispute. Don't delete emails or text messages. Don't throw away papers. If your computers automatically delete emails or other data on a certain schedule, change the settings so that nothing is lost, even inadvertently. Courts take the preservation of evidence very seriously. They can impose severe penalties for willful destruction or even just careless loss of evidence.

Thou Shalt Not Disclose Privileged Communications

Be careful not to disclose the substance of any of your discussions with your attorney to anyone who is not representing you. This applies to both written and verbal communications. Just by way of example, you should not forward any emails sent to or received from your attorney to anyone, and you should not talk to anyone about the legal advice or analysis your attorney has given you. There may be some limited exceptions, like certain communications with a spouse or therapist. But even those are tricky. Be sure to get advice from your attorney on how to handle those situations first.

Why does this matter? Because the discussions you have with your attorney are confidential and generally cannot be discovered by an adverse party. This is called the attorney-client privilege, and it's a very important protection. It frees up your attorney to candidly discuss all aspects of your case with you without fear of disclosure. Imagine how much your opponents would love to hear your attorney's assessment and case strategy. Sharing attorney-client communications with others can negate the privilege altogether.

Thou Shalt Not Discuss Your Case with Others

Except for discussions and exchanges of information directly with your attorney, almost everything that relates to the lawsuit is potentially discoverable. This means that opposing parties may be able to get their hands on it and try to use it against you. Just by way of example, if you have a conversation with a friend about any of the facts or circumstances surrounding the dispute, your friend could be subpoenaed to testify about your conversation. Or if you send an email to a colleague that talks about the case or the parties to the lawsuit, your colleague could be subpoenaed to hand over a copy of the email.

Be sure, then, to minimize any discussion of the case with others, even your close associates. This one is not a legal obligation per se, but a measure to avoid unwitting remarks that could damage your case. If someone asks you about it, you can mention that the case is still ongoing, but avoid getting into any specifics. If necessary (and with your attorney's blessing), you can always say that your attorney has advised you not to talk about the case. Remarks made "off the record" can come back to haunt you later.

Litigation is a big deal. Who said it would be easy? The good news is that following these rules will help you minimize your risk and help your litigation attorney get the best possible result for you. 🍷

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