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WIT AND WISDOM

FROM COLUMBUS BAR ASSOCIATION ATTORNEYS

# Surviving Frightening Frissons

By: ROBERT G. PALMER

“What does that mean?” Your client, scared and anxious, just heard the judge grant the defendants’ motions for directed verdict. Everyone was leaving the courtroom. You invite your client into one of the small rooms off the courtroom to explain Rule 50(A)(4) and the year it will take for the Court of Appeals to decide if the judge was right. Not a good scenario.

Although I had a good relationship with my client, his little girl was dead. A motorist stopped in line at a traffic light, waved her across in front of his car. The guy coming from the other direction didn’t see her skipping across in front of him until he saw her little body flying through the air to her death on the roadway. There were legal issues, but questions of fact about every material issue. It never occurred to me – or to the defense counsel who made the motions – that the judge would direct a verdict.

Now, when preparing any client for trial, I always tell this story so that if the judge makes a mistake and grants a directed verdict, the client at least knows that it is possible and what it means to resolve their case.

But, directed verdicts are the least of my concerns when it comes to client relationships. In the trial setting, having prepared the client for the power of the judge to decide what evidence comes in (and the abuse of discretion appellate standard of review) will help you get the settlement authority you need. That is based upon trust in your ability and judgment. The ultimate settlement authority is best expressed by the phrase “I will follow your advice.”

Unless you have earned your client’s confidence, you may hear the morning of trial, “No, I will not take that amount. It’s insulting!” Clients need to understand that the truth is what the jury will believe; the truth is from the snapshot, first impressions they take of the plaintiff and from the evidence the judge allows in. They need to know that racism may prevent them from obtaining the just result they deserve. They need to know that jurors may decide the case on factors over which the clients have no control. They need to know that trials are enjoyed most by lawyers, not clients. Nevertheless, some clients believe they know better than you, or, and I mean this literally, that God has told them how much the defendant will or must pay.

One client, who had a serious injury from a collision with a truck, “knew” that the jury would award her seven figures because of the horrible, debilitating pain she suffered from RSD. Certainly, I could blackboard damages in excess of \$1.0M. But, that wasn’t a likely result. The client steadfastly refused to take the \$750,000 offer. After a series of meetings with the client, at which counsel and co-counsel strongly recommended settlement, her refusal to settle was reduced to a detailed writing. The client signed this disclosure and recommendation of settlement and headed for the courtroom. After a week of trial, the jury asked a question during deliberations. “Can we tell the plaintiff how to spend the money we award?” It was good that the plaintiff would apparently win. But the award was for \$26,000. All post trial efforts, by new counsel, failed to change the verdict. However, because of the due diligence during settlement and the clear, detailed documentation, the matter was over.

One experienced personal injury lawyer told me early on, “Tell your clients they will be lucky to get half of what you can get. That way they will think you are really good when you tell them the settlement amount.” I never thought that was very smart – or ethical – to do. Why? If you tell your client that you got double what you told them, he would likely think you didn’t

know how much the case was worth to begin with. And, he would wonder how much you left on the table.

Client expectations of settlement amounts must be confronted early on. One client went to the defendant doctor's office to tell him that he wanted \$6.0 million. Another could not possibly accept \$1.0 million for "her daughter's life." Another would not even consider \$12,500 for all of the pain and aggravation he suffered from the low impact rear-end collision. Every client has a friend or acquaintance that got more or knows someone who got more for the "same thing" than you can possibly negotiate for them. You need to spend the time talking about the case and what you can realistically do for him. If not, you may well find your client sorely disappointed, seeking new counsel, or, worse, seeking counsel to sue you.

Client management. Make it a top priority from the outset of your representation. If you do, you'll have a much better chance of experiencing a good scenario – the thrill of a great settlement or verdict.



ROBERT GRAY PALMER practices plaintiffs' tort litigation with a concentration on insurance bad faith, professional negligence and personal injury cases. He is a fellow of the American College of Trial Lawyers; Bar Register of Preeminent Lawyers; Advocate Member in ABOTA; Columbus Bar Foundation, trustee and president (1996-97) and named to Ohio Super Lawyer and Best Lawyers in America. He has served on the Council of Delegates, Columbus Bar board of governors, chaired the OSBA negligence law committee, and has been active in the Association of Trial Lawyers of American and the Ohio Academy of Trial Lawyers.