

Manager/Supervisor Risk Management

#80– 8/14/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: CIVIL LITIGATION – THE SUPERVISOR’S INVOLVEMENT IN DISCOVERY

Unless they are a named defendant, a supervisor/manager’s involvement in the litigation process should be pretty limited. Unfortunately your participation in any litigation process is obviously a time-robber that will take you away from your normal work. We can approach this topic with a list of “don’ts:”

Don’t hesitate to contact YCPARMIA with questions, or to share your concerns about the lawsuit. YCPARMIA manages all litigation and defense counsel reports to us.

Don’t sit on a lawsuit. If you, or one of your workers, receives a Summons and Complaint, immediately provide the originals of anything you receive, the circumstances of the receipt including date, time, place, and method of receipt to the appropriate person in your entity for processing (generally we only have 20-30 days to respond, so time is precious). Do not sign an acknowledgement of receipt of service.

Don’t discuss anything with any attorney or investigator until you have confirmed that they are representing your entity. Sharing your knowledge with the other side cannot help your entity, and may result in you being called as a witness for the plaintiff.

Don’t hesitate to call defense counsel. They need to know the good and the bad. You can request that your involvement be kept confidential. Let them decide if your information is relevant or has value.

Don’t leave interrogatories or document requests in your to-do pile. There are court imposed time limits for responding, and failure to comply can result in sanctions or exclusion of evidence.

Don’t respond directly to the plaintiff’s attorney. Everything that is given to the other side should go through defense counsel (including public document requests); they need to review what the other side is going to get before it is given. Not everything is discoverable.

Don’t identify yourself as the “person most knowledgeable” if you are not. Carefully choose your expert. The plaintiff will often direct discovery regarding entity policies, practices and records toward the “person most knowledgeable.” That is not necessarily the person with the best title or the ultimate responsibility. It is the person that will be able to provide the information demanded without appearing evasive or ill-informed. We have had over-controlling managers deposed who talked about the way things should be rather than how they really are, and found their credibility shredded in the process.

Don’t worry about your deposition. Before you are deposed, defense counsel will spend time preparing you by explaining the process, the issues, and what you might be asked; they will also take you through the information that you have, and make suggestions on your responses.

Next topic: Civil litigation – Concluding a claim