

DEVELOPING YOUR CASE IN 6 EASY STEPS

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Before committing to a case, it is important to evaluate the merits of whether there is a reasonable likelihood of prevailing. This article will set forth a rather simple but effective method of analyzing the issues. In order to get the greatest benefit from this process, it should be done in writing and in solitude.

The starting point is an overview of the case. Begin by describing the parties, what the case involves and what events combine to create the dispute. Writing about the events and the background of the clients in a narrative style forces an objective evaluation. Keep in mind that the overview may be amended or changed as the analytical process unfolds. The next four steps involve some aspect of fiduciary responsibility. The interaction of the people involved and their respective fiduciary responsibilities provide an important framework for what follows.

Next, there must be a time line of events. As the case develops, this written time line will become an invaluable reference document. It should be in an outline format with dates of events as bullet points. It is also a good idea to make a graphical time line with a horizontal line representing the overall time frame and hash marks representing significant dates. The time line can be used in client meeting to keep the conversations focused and as a check list of items for attention along the way.

The third section deals with the risks taken and the risk management measures involved. These will provide a basis for future research or the expertise that will be needed. This section will also lay the groundwork for the development of damages.

Fourth, suitability issues need to be clearly stated. Again, a narrative of events in one's own words helps in creating an objective view of the case. Perhaps this process will lead to a realization that, for example, the recommended investment was appropriate but not in for a client who could not reasonably expect to live long enough to enjoy any benefit from it. Suitability also may involve the accuracy of account information, the nature of the account, the frequency of account activity, whether the activity makes sense, or the size of the commitment, to cite a few related issues. This is also where the fiduciary responsibility of the broker and the firm play a big part and where damages come into play because it is here that the comparison of portfolio performance and indexes are often made. An Expert is invaluable when assessing suitability.

The fifth section is Supervision and the Supervisory Responsibility of the firm and its managers. Although the requirement of a firm to supervise its brokers dates back to the Securities Exchange Act of 1934, the requirement is not stated with specificity in the Act itself. The Compliance Manual

will provide necessary details as to what a manager's duties are when reviewing trade blotters, reviewing exception reports or reviewing any of these items with a broker. This is another area where an Expert may be needed.

The sixth and last section is the assessment of damages. A review of the above topics will help crystallize where the damages occurred and how to assess them. Perhaps the case involves an egregious misrepresentation of an investment vehicle and the client lost all his money. Then suitability, supervision, and the fiduciary issues related to both will be the starting points for damages. On the other hand, there might only be a dispute over the date a transaction should have occurred. In such an instance, the time line and overview would be the starting point for developing damages. Each section above will provide a different insight into what transpired and taken together will be your reference guide throughout the case.

ACTION STEPS

Allocate ½ hour to the task with no interruption. Allow for a lot of corrections and erasures, or, if you prefer, use the word processor. Complete the following items:

- 1. Overview**
- 2. Time Line of Events**
- 3. Risks Involved and Risk Management**
- 4. Suitability Issues**
- 5. Supervision and Supervisory Responsibility**
- 6. Damages**

This simple process keep everyone focused on the issues of the case and will provide a brief document which can be used over and over again as your case develops.

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