



CHIEF'S FILE CABINET

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HERE COMES THE JUDGE

The Comedian Flip Wilson had many great sketches. One that I recall with particular fondness was started off by some stating “here comes da judge, here comes da judge”. Every time it came on television people instantly recognized it was going to be following by some form of hilarity and humor involving Flip’s character.

But let me put you in a different setting. Let’s say you are sitting in a courtroom and you hear the command “all rise”. There is nothing funny about that announcement.

What they are talking about is here comes the real judge. In our justice system a judge commands respect in the courtroom. They are considered the backbone of the American judicial system. We have to understand that in spite of the fact that we have a lot authority in our badges, they often have the final word on some of the decisions that we have made. If you don’t think so, wait till the first time you have to go to court. Court is not a place for the uninformed.

Many departments don’t prepare their personnel for a presentation in court for the simple reason that they haven’t had a lot of lawsuits in the past. That is a fallacious and very dangerous position to take. We live in a litigious society. You can be sued for things you do and you can be sued for things you didn’t do. You can sue for things you did do but you did them wrong. Many equate court appearances with arson and fire investigation, but you can be there for many other activities such as code violations and issues of liability caused by complicated occupancy problems.

So why is it important for us to have a training session to teach our people the basics of being prepared for court? All too many people that read the columns in this magazine tend to think that court proceedings are not part of the sprinkler and fire prevention business. We need to disabuse ourselves of that observation because it is simply no longer true.

If you are advised that you are soon to be part of a legal proceeding, it is time for you to begin to do your homework. What I am about to say is almost contradictory to doing your homework but it fits the context of the conversation. You better have done your homework a long time ago if you are involved in a lawsuit. The number one thing that will cause you grief in a courtroom is not having adequate documentation. That is what recordkeeping systems are for. They may seem extraneous at the time but keeping track of names, places, dates, events, activities, observations etc need to be structured in such a fashion that if you have a set of circumstances that requires documentation, you have some source to be able to go back.

It is legitimate that you ask me this question, what records? I am not going to give you a laundry list of them. I am going to say however, that almost every formal process and procedure has some form of documentation associated with it and you should be an expert in complying with whatever that



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documentation is. For example, if you go out and conduct an inspection and you are supposed to turn in an inspection report, turn it in. If you conduct a fire investigation and you interview someone as a possible witness or maybe even a perpetrator and you suspect you are going to have to go to court, you better have notes. I can't give you a laundry list of all the records that are going to be required. You need to develop the mindset however that everything you do that has the possibility of a third party observer criticizing, if there is any documentation associated with it, do it immediately. Don't wait until the litigation notice arrives on your desk.

You should become reasonably comfortable with the concept of participating in a deposition. The definition of a deposition is: the testimony of a party or witness in a civil or criminal proceeding taken before trial, usually in an attorney's office.

A deposition is when they bring you in a room and ask you a whole bunch of questions before you go to court. What you are doing is depositing facts and the opposite attorney who is working on the side of whoever is suing you is going to do everything they possibly can to get you to tell them something that they can use against you. Depositions are used as a tool for making discoveries. Sometimes, depending upon the nature of a case, depositions are also made up of written questions requiring written response. As you might expect under the concept of discovery the attorneys are usually looking for evidence that supports their point of view. You are usually asked to take an oath and can be found guilty of perjury if you give false information. It's a serious business

Therefore, the most immediate thing that you should be thinking about when you receive a copy of a legal notice is to go back and collect all of your records and thoughts and put them in some organized fashion. This is not cheating. To the contrary, it is an essential part of the judicial part of disclosure. What you should do is go find those things that you can prove and put them into a sequence in which you have that information readily available and then be prepared to use them during your deposition.

If you have ever been in a deposition, you may not need to be too concerned about this next couple of paragraphs but if you have ***never*** been in a deposition you ought to pay real close attention. The number one thing that is going on in a deposition is you are being interviewed to see if you will let slip some piece of information that will be the basis for some kind of legal judgment. Therefore, you have to be really careful listening to what the attorney is asking you for before you answer. My number one advice to anyone going into a deposition is to not be too quick on the trigger. You are unlikely to be in a deposition without your own attorney sitting alongside of you. If you fire back an answer sometimes especially if you are angry, you will often not give your attorney ample time to voice an objection. There are times when the objection invalidates what you may get ready to say. On the other hand, if you don't give them a chance to get the objection in, it goes into the record.

In the deposition process, you should be really careful to answer only the question you are being asked. If they ask you if you did something you should describe what you did. You shouldn't go into extensive



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elaboration on why you did it, when you did it, where you did it until they ask you those questions. A good example would be that they could ask you a question such as: were you the person who conducted a fire inspection at 2020 Wilson Avenue on December 15th, 2008? You can answer that simply by saying “yes”. On the other hand, if they ask you a question, what violations did you find during that inspection, you need to hesitate for just a second and let your attorney determine whether it is an appropriate question? The attorney might come back with a statement like, that question is overly broad and doesn't provide you to give a specific response.

I probably should have put this paragraph in before, but the first thing you need to think about when you are told you have a legal presentation is to meet with your legal staff before you ever do anything. You need to sit down with them and tell them everything that you possibly know when they ask you, you do not want to twist any facts nor do you want to misrepresent anything when you are talking to your own counsel. Tell them the unvarnished truth because they are the ones who will have to help you sort out whether that is going to be good or bad for the community you represent.

Remember that it is perfectly legitimate in a deposition to refer to your own notes. If you are asked a question that you know you have documented, it is perfectly appropriate for you to state that you want to refer to your notes before answering. There is usually a person in the room who is a legal stenographer who is keeping track of all of the things that you are saying and doing. Therefore when you make that request, the stenographer will make the notation that you produced the facts that were included in your personal documentation.

The next thing you need to know about legal action is make sure you get a chance to look at your own deposition before it is used to hang you. Once a deposition has been done, they will send you a copy and you are allowed to look through it to see if there are any errors of fact. Bluntly speaking, hopefully you haven't done anything to misrepresent anything in that deposition that causes you to have to undergo major revisions. Those major revisions can actually be detrimental to you in the long run. Instead hopefully you might be able to clarify spelling, maybe a number or perhaps change a comment with a semi-colon but the purpose behind a deposition is to make sure that you are thoroughly aware of everything that you said under oath.

Then there is preparation for the court appearance. Once you are ready to go to court this is no time to do things at the last minute. You should take the time to review your file, review your deposition, met with your attorney one more time and then be prepared to answer the questions when you are asked to tell the truth, the whole truth, and nothing but the truth.

In the final analysis lawsuits are not a lot of fun. They might be humorous for some folks who do it all the time but it might be terrifying for people who have not done one before. But you are a professional. The more prepared you are by making sure that you have all your facts right at your finger tips, the less intimidating and the less threatening that a court appearance might be. If the justice system works the



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way it is supposed to, the facts will be given appropriate consideration and whatever the outcome of the court is, should be generated by the facts.

Just remember this, justice may be blind but she is not deaf!

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