

Getting Case Analysis Off to a Fast Start



By Greg Krehel

From your first conversation with a prospective client, you're learning about the dispute that led the individual or corporation to seek counsel. This article presents a method for systematically organizing and evaluating this knowledge. And it illustrates how the results of this dispute analysis process can be used to great effect in an initial case analysis session with your client.



From your first conversation with a prospective client, you're learning about the dispute that led the individual or corporation to seek counsel. There are many benefits to taking a systematic approach to analyzing this knowledge. Not least of these is the favorable impression you'll make on those who retain you.

The following article presents a method for organizing and evaluating the facts about any case. And it illustrates how the early results of this dispute analysis process can be used to great effect in an initial case analysis session with your client.

Standardizing the Case Analysis Process and Work Product

My partners at DecisionQuest and I have spent the past 15 years conducting jury research studies on all manner of civil and criminal cases. In the course of this work, we've had the opportunity to try many methods for analyzing case knowledge. We've developed a process that I hope you'll find both simple and useful.

When you take this approach to case analysis, you'll gain a thorough understanding of the dispute and clarify your thinking about it. And, as you sort out what you do know about the case, you'll find it easy to identify what you don't know and need to find out.

The process focuses on creating four analysis reports – a Cast of Characters, a Chronology, an Issue List, and a Question List. These reports provide a framework for organizing and evaluating critical case knowledge. If multiple people are involved in the analysis process, the reports provide a way to divide responsibility and share results. Moreover, once you standardize the analysis work product, it's easy to compare the findings in one matter to the analysis results from other similar disputes.

You should begin the dispute analysis process as soon as you've had your first discussions regarding a new matter. Perform an initial round of case analysis to organize the lim-

ited information you have about the case. Then meet with your client to review the reports you've created.

You'll discover that a case review session conducted as a structured walk-through of your dispute analysis reports produces far better results than an unstructured discussion of case details. It gives you a firm grasp on critical case details and confidence that you've eliminated any points of miscommunication between you and your client. We provide the agenda for such a meeting below.

The analysis reports we encourage you to create are essentially tables listing critical information. They are long on knowledge and short on prose. They are tools that you use throughout the organizational process, not a summary created once analysis is complete.

Please note that the value of early organization and evaluation is not limited to instances when you've already been engaged. I believe you'll find that performing a quick dispute analysis and sharing the results with your prospective client is a terrific way to differentiate your firm from the others seeking to be retained on a matter.

I encourage you to make these analysis techniques standard operating procedure, a process you employ on every case, even ones that may be simple. Why? First, we're all familiar with disputes that appeared minor but which turned out to be costly disasters. By analyzing all cases, including those that seem small, you ensure that you

aren't just seeing the tip of the iceberg. Second, even small matters have more facts, more players, and more issues than anyone can meaningfully organize and evaluate in his or her head. Third, the practice gained analyzing small cases makes you more proficient when working up larger ones. Finally, the amount of time required to analyze a case is proportionate to its size. If the case is as small as anticipated, it will take little time to do the analysis.

The Analysis Work Product

The analysis reports we encourage you to create are essentially tables listing critical information. They are long on knowledge and short on prose. They are tools that

you use throughout the organizational process, not a summary created once analysis is complete. In fact, once you begin to employ these analysis reports, you may find a narrative summary unnecessary. When you write a narrative case summary, a great deal of the total effort must be devoted to working on the style of the report (the outline, phrasing, and grammar). Is the narrative summary adding enough value to the analysis to justify the hours spent eradicating split infinitives and other grammatical evils?

You should create your case analysis reports using database software, not a word-processor. Database software makes the knowledge you're organizing far easier to explore and evaluate. For example, using database software, it's easy to filter your Chronology so that it displays only facts that have been evaluated as being particularly troublesome.

Another advantage database software has over word-processors is support for replication and synchronization. A replica is a special copy of a database file. Synchronization is the process of merging the changes made to the information in the replica back into the master version of the file.

When trial team members go on the road, they can take replicas of the case analysis file along, and make additions and updates to the Cast of Characters, Chronology, and other analysis reports. While these individuals work in replicas, trial team members back in the office are free to make changes to the master version of the case file. When a replica is returned to the office, it is synchronized with the master version of the case file, thereby automatically melding changes made in the replica with changes made in the master. These sophisticated features are available in some database packages. You won't find them in any word-processor.

Here are the details that should be captured in each of our recommended dispute analysis reports:

Cast of Characters

Create a Cast of Characters that lists the individuals and organizations you know are involved in the dispute. This report should also catalog key documents and other important pieces of physical evidence. Capture each player's name and a description of the role the person, organization, or document plays in the case.

Also include a column in which you can indicate your evaluation of cast members. Even if you don't evaluate

every player, it's essential to note the people and documents that are particularly worrisome, as well as the basis for your concerns. If you follow my recommendation that you build your dispute analysis reports using database software, you will find it easy to filter the entire cast list down to the problem players you've identified.

Chronology

A Chronology of key facts is a critical tool for analyzing any dispute. As you create the chronology, important factual disputes and areas of strength and weakness become obvious.

Begin by listing the fact and the date on which it occurred. As you enter each fact, be sure to make

the important details about the fact explicit. For example, rather than simply stating "Gayle phoned David," write "Gayle phoned David, and asked him to shred the Fritz Memo." Remember that your chronology should be a memory replacement, not a memory jogger.

Since you're analyzing the case within weeks of being retained, there will be many facts for which you have only partial date information. For example, you may know that Gayle called David about the Fritz Memo sometime in June of 1993, but be unsure as to the day within June. When you run into this problem, a simple solution is to substitute a question mark for the portion of the date that's undetermined, e.g., 6/?/99.

In addition to capturing the fact and the date, be sure

The value of early organization and evaluation is not limited to instances when you've already been engaged. I believe you'll find that performing a quick dispute analysis and sharing the results with your prospective client is a terrific way to differentiate your firm from the others seeking to be retained.

to list a source or sources for each fact. Now, in the early days of a case, it's likely that the sources of many of the facts you are entering in your chronology are not of a type that will pass muster come trial. However, by capturing a source such as "David Smith Interview Notes," you know to whom or what you will need to turn to develop a court-acceptable source.

The mission in early dispute analysis is to take a broad look at the potential evidence. Therefore, your chronology should be more than a list of undisputed facts. Be sure to include disputed facts and even prospective facts (i.e., facts that you suspect may

turn up as the case proceeds toward trial). You'll want to distinguish the facts that are undisputed from those that are disputed or merely prospective. Include in your chronology a column that you use for this purpose.

Finally, include a column that you use to separate the critical facts from others of lesser importance. A simple solution is to have a column titled "Key" that you set up as a checkbox (checked means the fact is key, unchecked means its not). If you're using database software, filtering the chronology down to the key items should take you about 20 seconds.

Issue List

Build a list of case issues including both legal claims and critical factual disputes. If the case has yet to be filed, list the claims and counter-claims or cross-claims you anticipate.

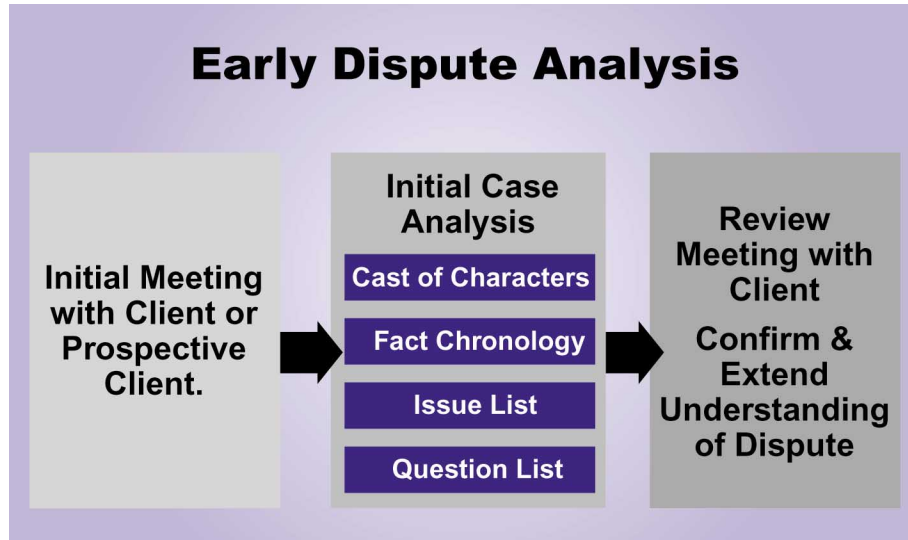
Rather than listing just the top-level issues, consider breaking each claim down to its component parts. For example, rather than listing Fraud, list Fraud: Intent, Fraud: Reliance, and so on as separate dimensions.

In addition to listing a name for each issue, create a more detailed description of it. The description might

include a brief summary of each party's position on the issue and, if it's a legal issue, the potential language of the judge's instruction.

As your case proceeds to trial, your Issue List will increase in importance. You'll use the Issue List to return to the Cast of Characters and Chronology and establish relationships between each fact, each witness,

each document and the issue or issues to which it relates. Once you've made these links, it will be easy to focus on the evidence that's being developed regarding each issue and to make decisions about case strategy based on this analysis.



Question List

When you start case analysis early, your knowledge of the dispute is sure to be incomplete. But as you map out what is known about the case, what is unknown and must be determined becomes clear.

Each time you come up with a question about the case that you can't readily answer, get it into your Question List. You'll want your report to include a column for the question and another column where you can capture notes regarding the answer. Also include a column for evaluating the criticality of each question. Use a simple A (extremely critical), B, C, and D scale to make your assessment. Other columns to consider for your Question List are "Assigned To" and "Due Date."

The Initial Case Review Session

Once you've completed your first round of case analysis, it's time to meet with your client to discuss the results. At the client review session, you'll: (1) confirm your initial understanding of the case and eliminate misunderstandings, (2) prompt your client to provide further details about the case, and (3) educate your client regarding case issues.

Before you head off to meet your client, decide whether

Before you head off to meet your client, decide whether you want to work offline or online during the client session. By offline, I mean using printed copies of your four analysis reports. By online, I mean working with a laptop and an LCD display, and capturing updates to your case knowledgebase in real time.

The first time you try our method, it probably makes sense to work offline. Once you're comfortable with the flow of the client review session, switch to working online; it's more efficient and more impressive to your client.

Here's the meeting agenda:

Review the Cast of Characters. Ask your client: Who and what is missing? How would you improve on the description I've provided of each key player? Which members of the Cast of Characters do you consider particularly important? Why? Which of these players do you feel are the most problematic? Why?

Review the Chronology. Ask your client: Can you provide complete dates for these partial dates I have listed? Can you provide additional sources for these facts? What important facts are missing? There don't seem to be that many bad facts in our chronology at this point. There must be other facts that will become problems for us. The sooner I know these facts, the more likely it is I can keep them from causing irreparable harm to our case. Are you aware of any such problem facts?

Review the Issue List. Use it to show your client about the legal and factual disputes likely to be at the heart of the matter. Ask your client: Do you see other issues in the case that I've overlooked? Do you know of any other facts, witnesses, or documents that pertain to these issues that you don't recall seeing in the Cast of Characters or Chronology?

Review the Question List. Use it to show your client the areas that will need to be investigated early in case preparation. Ask your client: Do you know the answer to any of these questions? What other questions do you have about the dispute that don't appear in my list? Which of the questions in the list can you take responsibility for getting answered?

If you've been working offline and marking up paper

copies of your reports during the meeting, when you return to your office, transfer your notes into your computer. If you've worked online capturing information in your computer as the session proceeds, your work to update your analysis reports is effectively done when the client meeting ends. Either way, after the meeting, print updated reports and send a copy to your client and anyone else on the trial team.

The analysis reports you've begun are "living" ones. As you head towards trial, keep working on your Cast of Characters, your Chronology, your Issue List and your Question List. These analysis reports will do far more than help you think about your case. They'll serve a myriad of concrete purposes. They'll help you keep your client up to date, plan for discovery, prepare to take and defend depositions, create motions for summary judgment, and make your case at settlement conferences and at trial.

Thank you for reading *Getting Case Analysis Off to a Fast Start*. I would enjoy your feedback. Please contact me at gkrehel@casesoft.com.

About the Author

Greg Krehel is CEO of DecisionQuest's CaseSoft division (www.casesoft.com). CaseSoft is the developer of litigation software tools including CaseMap and TimeMap. CaseMap makes it easy to organize and explore the facts, the cast of characters, and the issues in any case. TimeMap makes it a cinch to create chronology visuals for use during hearings and trials, client meetings and brainstorming sessions. In addition to his background in software development, Mr. Krehel has over 15 years of trial consulting experience.

Also of Interest ...

Chronology Best Practices: A fact chronology can be a tremendous asset as you prepare a case for trial. Yet the majority of chronologies fail to live up to their full potential. We've written an article that presents a series of simple ideas that will help you get the most out of your chron. Download a copy from: <http://www.casesoft.com/articles.htm>.