

## WHY CAN'T WE BE FRIENDS?

**A new perspective on forging relationships between personal counsel, defense counsel, the carrier and their mutual clients.**



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There are hundreds if not thousands of articles out there on tips for dealing with difficult opposing counsel. But what if it's not opposing counsel who is being difficult? What do you do when your client's personal counsel is the one creating unnecessary strife? Whether you are the assigned defense counsel or the claims professional, you can't just tell the insured client or their counsel to take a long walk off a short pier, so you have to find a way to make it work. If you are personal counsel, have you examined your own behavior and asked yourself why you are making things more difficult than necessary?

I was inspired to put this piece together after spending a particularly rough summer sandwiched between the best personal counsel I have ever had the pleasure of working with and one of the worst. I may not be an expert in every nuanced subject of the law, but getting along socially has always been my strongest stock in trade. Yet even with an advanced degree in making people like and trust me, my skills were pushed to the limit. This left me questioning the reasons behind the oftentimes strained relationships between personal counsel, the carrier and assigned defense counsel.

Let's start with what I know about each role. More often than not, I am a carrier-selected and assigned defense counsel. I am excited about the new assignment—eager to meet the expectations of my institutional client while forging a relationship with my new client, the insured. But then I see that my first point of contact is someone else with an “Esq.” and the dread sinks in.

“Why?” you may ask. Well, that leads me to what I know about personal counsel: as personal counsel, I am eager to prove my value to a client I've been developing for any number of months or years, and I do not want some assigned panel counsel coming in and stealing my client. So what do I do? Obviously, I make it very difficult for assigned counsel to get direct access to my client. I insist on being the intermediary for all conversations, and if you are lucky enough, I might let you talk to the client on a conference call.

So what's wrong with all of that?

It doesn't help your mutual client.

### **Prevent the Problem**

From the beginning, defense counsel needs to make it clear that his/her goal is not to steal the client or undermine the relationship. You need to demonstrate your expertise early. You need to tell your claims professional about the special attention you will need to give to the relationship with personal counsel. Most importantly, you cannot allow personal counsel to impede your access to the client.

How do you do that? First, you pick up the phone and speak to personal counsel. Second, you explain to him/her that you are not here to steal the client. Rather, you are here and assigned because you are an expert in the particular area of law and working with you is in the best interest of the mutual client and the carrier. Third, try to make a new friend. I know, I know, sometimes that's hard, but get to know the person that is behind the client relationship that you are trying to develop.

Personal counsel, you are not escaping this “lecture” without doing your own bit of self-reflection. Don't stand in the way of defense counsel doing their job. Yes, that's your client, and you need to protect them/it/him/her but not at the expense of the assigned counsel. Don't forget that defense counsel is the one person with a direct line to the carrier, which will be making some very important decisions about the handling of the case. Don't alienate your primary connection to the ultimate decision maker.

If you are the claims professional in this threesome, cut your trusted defense counsel some slack. Understand that they are answering to many masters, and if and when appropriate, give them something that will help them bridge a gap with personal counsel.

Before you act, think about whether the position you are taking is in the best interest of the client. Undermining personal counsel's relationship with the client will not serve you as defense counsel. Alienating your only lifeline to the carrier will not help the client. Remember, at the end of the day, ensuring the best defense for the client is the only objective that matters. ■