

Top 10 Litigation Mistakes

Litigation mistakes can occur at any time, from the moment you file your lawsuit to the time the jury goes out to begin deliberations. This list will give you an idea of some of the things that can go wrong.

Litigation mistakes can occur whether you are representing yourself in a small business matter against a former business associate or an attorney with 25 years of experience and countless trials. One of the reasons it may be advisable to hire an attorney to represent you in litigation is that a litigation attorney knows the rules of litigation, whereas you, as a small business owner, do not.

1. **Not hiring an attorney.** Once a lawsuit has been filed, you will have to deal with a myriad of issues relating to the case itself, including procedural issues for litigation, timing issues, evidence issues, and the trial itself. Litigation is complicated, expensive, and stressful. If you are not up to handling all of these issues yourself, it may be a mistake not to have hired an attorney to represent you.
2. **Not being thoroughly prepared.** You are the person who best knows the facts of your case and the issues; however, litigation necessarily requires that you prove your case to someone else -- the judge and the jury. You must prepare every aspect of your case fully.
3. **Not being courteous and not maintaining the proper courtroom demeanor at all times.** It is important to be polite, courteous, and respectful to all parties, including the judge, jury, court personnel, your witnesses, opposing counsel, the opposing party, and opposing witnesses. You can be certain that the jury and the judge will observe every move you make while you are in front of them. This includes not being overly antagonistic, argumentative, disruptive, or making too many objections in any portion of the litigation. Although litigation necessarily involves two parties with different views on factual events, nevertheless you will be working with the opposing party and opposing counsel for its duration.
4. **Not following the local and state or federal rules.** Every state has its own rules and procedures governing litigation. And in addition to every state having its own rules, each county and each courtroom will also have their own rules and procedures. Wherever you litigate your case, it is critical that you be

aware of and follow the rules, which, if not followed, will have severe consequences for your case.

5. **Not paying attention to timing and deadlines.** Litigation is filled with rules regarding timeliness and deadlines for completing and responding to certain tasks. Possible consequences for missing a deadline include the elimination of important evidence or witnesses or losing the trial itself. You should familiarize yourself with all timing and deadlines.
6. **Not thoroughly investigating and preparing your witnesses and not thoroughly preparing your evidence.** This includes not making certain that your witnesses and evidence are admissible in court. Your witnesses and evidence are the keys to proving your case. You need to know everything about the witnesses and the evidence in order to present your best case possible and to avoid any surprises. You also need to make sure your witnesses are available to testify on your behalf, both at depositions and in court.
7. **Not establishing and proving each and every element of your case, including damages; or not proving damages for your case and only proving liability.**
8. **Asking a question under oath or in open court to which you don't already know the answer.**
9. **Not considering the other side's case.** The other side will have its own theory of the dispute, which you should anticipate and be prepared to dispute and dismiss. You should be prepared for damage control. The other side will present its own evidence, witnesses, and theories. You should prepare your responses to the other side as carefully as you prepare your own case.
10. **Not telling a good, believable story that is understandable and makes sense.** You must present your case to the jury not only in a manner that makes sense, but also in a manner they can understand. If there are technical or other difficult subject matters involved in your case, explain them in understandable lay terms. You need to explain the chronology of the case. If there are gaps in your evidence, explain those as well. You have to present your story in a manner that makes them want to believe you and rule in your favor.