



North Carolina Law Life

5 Things Businesses Can Learn from the John Edwards Trial

By: Donna Ray Berkelhammer. Friday, June 1st, 2012

The big news in North Carolina is the **John Edwards** trial. Edwards, the former NC Senator and two-time presidential hopeful, was charged with six counts of violating federal election laws by taking donations used to hide his pregnant mistress. Small and medium businesses can learn a few things about litigation from Edwards' ordeal.



1. **Yes, you can be sued.** Edwards, an attorney, maintained from the beginning that he did not violate campaign finance laws. Yet, he was charged with six criminal counts. The jury found him not guilty of one count, and could not agree there was enough evidence to convict on the others. Similarly, in a civil context, we can never guarantee our clients will not be sued. We try to write contracts that are fair, and address issues as they arise, but we cannot stop other parties from feeling wronged and seeking their day in court (even when they are mistaken, dead wrong or have no real cause of action). This is what our legal system is for.

2. **Litigation is time consuming and slow.** Our **Constitution** guarantees the right to a **speedy trial**, but this only applies to criminal charges. In a civil case, once a complaint (lawsuit) is filed, you have to "serve" the other parties by giving them a copy of the lawsuit based on the rules of the court. This is sometimes difficult, either because they are actively ducking service or they have moved or the business has closed. Once served, the defendant may try to dismiss the case on technicalities — wrong court, wrong place, wrong parties, not enough specificity in the pleadings, etc. These technical challenges can take months to resolve. If the complaint survives, the defendant has 30 days to file an answer to the lawsuit. He can ask for at least one 30-day extension. Then discovery starts. Each party will ask for all documents (paper and electronic) reasonably relating to finding proof of the allegations in the lawsuit. The people involved will be deposed (interviewed by the other party's attorney). You will be asked to answer a lot of questions relating to finding evidence. Then, more motions, time for response, replies to the response, hearings before a judge, waiting for the court to rule. If the case is not dismissed on these motions, it will go to trial. Edwards' trial took about four weeks. The jury deliberated for nine days.

3. **Litigation is draining.** John Edwards is a former trial attorney who is used to the stress of the courtroom, and even he looks weary and beaten down. We are very direct and upfront with every potential litigation client that they should explore every other avenue before becoming involved in a lawsuit. Litigation — even when you are in the right — is unbelievably stressful and draining emotionally. It saps your energy, and your business and family will suffer. It doesn't matter if you are

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the plaintiff bringing the case or the defendant defending a case. The case will steal your peace of mind. You will be away from your business answering discovery, reviewing facts, assembling documents, meeting with experts, meeting with attorneys, preparing for the next steps and attending court proceedings.

4. **Litigation is expensive**. Even where you hire experienced counsel who have litigated many cases like yours, your facts are unique. We don't have cookie-cutter forms we can merely drop your facts into. It takes time to analyze where your facts fall within established case law and what specific claims you can bring. It takes time to find the flaws and the resulting strategy to fight a case brought against you. It takes time to review all the documents involved (both legal pleadings and your business documents). It takes time to respond to opposing counsel. If the case is in **federal court** or the **NC Business Court**, every motion must be accompanied by a brief. Briefs are extensive discussions of case law supporting why you are entitled to the action you are requesting in the motion. And in legal work, time = money.
5. **We love second chances**. Edwards, who campaigned on equalizing the "**Two Americas**," finds his **reputation** shredded. He has publicly acknowledged his sins, and had his dirty laundry aired. Whether he will be redeemed in the court of public opinion remains to be seen. In business, however, **failure** is often valuable experience that can pave the way to **future** success. We love **redemption**, **second chances** and the **second act**.

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