

Why Corporations Use PEDR Interview Protocol

Date:

Code:

Thanks very much for agreeing to talk with me today. [John: I have done a lot of interviews in my academic career. Virtually all of them really enjoyed the conversation and I expect that you will too.]

The length of our conversation today will depend on how much you want to talk. Do you have any time constraints today?

A reminder that when my colleague, [Peter Benner / John Lande], and I write and talk about this research, we will not disclose your name, the name of particular businesses, or anyone you might refer to. To further protect confidentiality, please do not mention anyone else's name and, instead, use generic descriptions such as the CEO, general counsel, a manufacturing business, etc.

We don't expect to quote people by name, but if we do want to quote you by name, we will do so only with your written consent.

Do you have any questions before we begin?

1. Let me start by asking a few questions about your background to help me frame my questions.
 - a. In what year did you graduate from law school?
 - b. What is your current position and when did you start there?
 - c. What kinds of business does your company do?
 - d. What kinds of matters do you mostly handle?
 - e. Approximately how many lawyers are in your company's legal department in total?
 - f. Approximately how many of these lawyers focus primarily on litigation?
 - g. [If subject apparently worked in other legal jobs:] What are the other major legal positions you have had since you graduated from law school and what types of matters did you handle in those jobs?

Thank you very much. That's very helpful. Before we get into the heart of the interview, is there anything else about your background that would be helpful for me to know?

2. As you know, I want to ask you about what we are calling “planned early dispute resolution” or “PEDR.” This may involve a variety of different processes that I will mention – and the critical element is that the companies do them on a systematic basis rather than just ad hoc. That doesn’t mean that they use them in every case, but rather that they routinely consider how to handle disputes at an early stage – or even how they can prevent disputes from arising.

I understand that you work for a company (or have worked for a company) that has used a substantial PEDR strategy. Is that correct? I am going to list a number of elements of such strategies and ask if your company’s strategy included them and, if so, ask you to describe how they worked.

- a. Regular and strategic use of ADR clauses in contracts
- b. Early case assessment
- c. Case management software tracking progress of each litigated case
- d. Regular periodic review of ECA to review case strategy
- e. Inside counsel designated as “ADR counsel” or something like that to serve as resource and/or manage ADR activities etc.
- f. Periodic training of in-house lawyers about DR
- g. Provide written materials for inside counsel about early or efficient case management
- h. Provide written materials for outside counsel about early or efficient case management
- i. Alternative fee arrangements (i.e., other than hourly fees) to incentivize efficient legal services focused on company’s goals
- j. Systematic use of mediation or other ADR processes
- k. Provide other resources to help lawyers or business people manage disputes?
- l. Other efforts to change the culture in the legal department, company, or law firms who handle disputes?
- m. Do you have any documents or articles about your company’s program that you could share with me?

3. When was your company’s strategy initiated?

4. Who was primarily responsible for initiating the strategy? Please tell me their positions, such as CEO or general counsel, not their names.
5. What prompted them to initiate the strategy?
 - a. What were the problems with the prior approach?
 - b. What were the objectives in developing the new strategy?
 - c. To what extent was the goal to implement a business strategy rather than improving litigation outcomes? [If they say that both were goals, ask: Which was more important?]
 - d. Compared with these goals, how high was the priority of saving costs?
6. When developing the strategy, did they consult with others such as law firms that frequently represent them – or oppose them?
7. How much were the business leaders involved in initiating or designing the strategy, if at all?
 - a. How much do they know about it?
 - b. If someone asked them to describe it, what do you think they would say?
8. How well do you think it has worked? Why do you say that?
9. In what kinds of situations does it work best?
10. Are there cases to which is it not well-suited?
11. Have there been any changes in the system? If so, what was changed and why?
12. Are the individuals primarily responsible for initiating the system still at the company? If not, what changes, if any, happened after their departure?
13. Is there anything else that would be helpful for me to know about this system?
14. Have you worked at other companies with a PEDR strategy?

[If so, ask questions 3-14 for each such company – or as many companies as they will take the time to discuss.]
15. For companies considering adopting a PEDR strategy, what is the most

important factor that would make it successful?

- a. What are the barriers to adoption?
- b. Who should be responsible for developing the strategy?
- c. What should be the role of outside counsel in developing such a strategy?
- d. What interests within or outside of the company make this more difficult?
- e. Is there personal risk to any company manager or inside counsel to pursuing such a strategy?

16. What questions didn't I ask that I should have asked?

17. What other companies use PEDR systems?

- a. Who works there who knows about why it was set up and how it works?
- b. May I use your name in contacting them?
- c. Can you give me their email addresses?

Thank you very much for doing this interview. I hope that you enjoyed it. I really appreciate your time and insights.