

PERSONAL INJURY FOR SOLO/SMALL FIRMS

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Introduction

Personal injury litigation is the mainstay for many small firms and solo practitioners. Your clients are individuals, real people with life-altering injuries. Representing the personal injury client requires hard work, *organization* and a commitment to full justice (maximum monetary recovery) for every client. To succeed in personal injury work there are a few lessons or practices that I have found pay great dividends (large verdicts/settlements). As a theme/mantra I would summarize:

THINK BIG . . . WORK HARD . . . PLAN LONG

I. OFFICE ORGANIZATION:

The case file is the core of any litigation practice. The “paper file” should mirror the electronic file. At our office we use the Eurofiles (Bindertek) paper file (notebook) system and Microsoft Word. (for Macintosh[®]). Our litigation support is principally Adobe Acrobat (Professional edition).

When a new file is set up, the paralegal should give the secretary the information obtained in the initial client interview and should work with the secretary to open up the new file. The secretary first opens an electronic file, showing the new client under the client's name and assigns the client a new 4-digit number. This is useful for expenses, records and billing.

The client's electronic file then has subfiles showing:

- Deadlines/To Do
- Client Interview
- Fee Agreement
- Authorizations
- Costs
- Correspondence
- Notes/Memos
- Legal Research
- Investigation
- Pleadings
- Interrogatories/Answers
- Deposition Summaries
- Document Production
- Medical/Hospital Records
- Medical Bills
- Damages
- Insurance
- Witnesses
- Exhibits
- Settlement/Arbitration/Mediation.

In a computer-networked office, this allows anyone on the litigation team to access this information at any time. We have separate software programs which list the client's name, address and personal statistical information and which are then integrated into the calendar program.

It is absolutely essential for the paralegal/legal assistant to have full computer support. The paralegal should have a computer on his or her desk and that computer should be assisted with complete software programs to maximize the paralegal's time and efficiency. At our office we use the following software: programs:

- a. Microsoft Office (for Macintosh🍏) (Word, PowerPoint, Excel)

- b. Now Up-to-Date 3(Calendar program)
- c. Now Contact (personal contact/information manager)
- d. Filemaker Pro (database program).
- e. Adobe Acrobat Professional (pdf; catalog; store/scanned documents).
- f. LiveNote (real-time transcripts and litigation management).
- g. QuickTime (for settlements, video, website)
- h. Adobe Go-Live (website in-house)
- i. KeyNote (Macintosh presentation software)

The computerized calendar should be networked such that the attorney's secretary, paralegal and all others in the office can view the calendar and see important appointments. An example of the monthly, weekly and day views available are attached The word processing system should permit the paralegal to electronically open all the files to see court papers, notes, correspondence, memos, etc., without having to leave the desk every time]information is necessary from the file. The Now Contact program allows the client's information to be listed on the computer, as well as names of other attorneys, witnesses, etc.

Electronic mail/Voice Mail . E-mail requires the sender to type in a message and send it to the other person's computer. It is often easier to pick up the telephone and leave the voicemail message for the intended party (secretary, attorney, paralegal). It also has the advantage of being much more easily accessible remotely. Every office should have voicemail.

Faxing From Computer Screen. Having the ability to fax from the computer screen is of great assistance. In scheduling depositions you can call up a form letter, fill in the blanks, hit one button and it will send it.

Dictation. All paralegals should have their own Dictaphone/dictating station (preferably electronic, e.g. Olympus)

Video Presentation. In personal injury practice, visual materials for presentation (photographs, camcorder, tapes, x-rays, still shots, etc.) can now be presented at trial on a screen (projection or plasma or through a visual presenter. Assembling these exhibits and working to prepare them (in e-format) is a key part of trial prep for attorneys and paralegals. It has now become cost-effective for a small law

firm to use a digital camera or videocamera, transfer the images into the computer for presentations as part of the settlement brochure. CD-ROM/DVD technology is great for settlements and trial.

Portable Computer. A portable computer (e.g. Powerbook®) is of great use at depositions and interviews in the field. You can download pertinent portions of the file and bring them anywhere. This can be valuable in sending and receiving emails, documents, pdfs, faxes, typing up notes and planning depositions. At our office we have an office Powerbook® that is available to anyone who needs it.

Remote Dictation Despite the advantages of voicemail, secretaries prefer typing from a tape/recorded file since it is more easily stopped and started than a computerized voicemail message. Using a digital recorder and then sending the efile allow paralegals, attorneys and others to have your words in real time.

Internet. Consider hosting and managing (in-house) your own webpage/domain and email server (e.g. Apple xServe server). Get the maximum bandwidth (e.g. 1.54 megabit T-1 internet connection). With the use of Adobe Go-Live software you can author, edit and manages your own website with real-time data and instant posting to the world wide web.

Document Scanning. In a PI litigation practice document management is essential to organization and success. Digital document management is achieved by scanning documents (that are not in digital form) to 300dpi images as a PDF document with a copier/scanner. This allows documents be scanned as Adobe PDF files at 35 pages per minute and be on the file server or the world wide web in a matter of minutes. Once a document is scanned as a PDF file it can then be included in an electronic brief for filing as a CD-ROM "corresponding" brief or available for download on the web.

Adobe Acrobat and Adobe PDF

I am a strong advocate of Adobe PDF technology in litigation. I gave a talk on “Adobe Acrobat in Litigation” at a technology convention, LegalTech (New York, NY, Feb. 2002) with Adobe speakers and have hooked ever since. Adobe Acrobat and Adobe PDF allow, for example, a 90 page brief and 100,000 pages of documents or deposition pages to be placed on a single CD-ROM. The PDF format also enriches the document by allowing hyperlinks, bookmarks and digital signatures. The PDF format and

Acrobat software also allow detailed document retrieval and search capability with full text searches where "hits" are placed directly on the images. Unlike TIFF image files Adobe PDF can be searched because the technology can store the image information on one level and maintain a text version of the document on another, hidden layer. Acrobat also allows encryption and password protection. Adobe Systems has prepared a complete discussion of the legal solutions and benefits with Adobe Acrobat and Adobe PDF. A February 2005 article in ABA LawPractice Management praises the virtues of Acrobat.

E-filing. Increasingly courts permit (and in some cases require) electronic filing. I have filed electronic briefs in a number of state and federal courts. The advantage Adobe Acrobat and Adobe PDF is that the format is free and does not require a particular computer platform or software.

DVD, Powerpoint, KeyNote. By approaching all cases with an eye toward digital formats, depositions, documents and photographs are presented at mediation or in court with eye-popping clarity and organization in DVD, Powerpoint or Keynote formats. In the NHC Fire Litigation, for example, over 60 depositions were taken with digital video cameras recorded directly to a hard drive. This allowed seamless editing and incorporation into a powerful Keynote presentation on a 50" Plasma TV at mediation.

Video Conferencing. Our firm has video conferencing in-house with a Tandberg video conferencing system and the ability to stream or broadcast proceedings over the web in QuickTime.

Digital Video. Depositions have traditionally been taken on VHS and then "digitized." The use of digital cameas for depositions, however, makes it much mores efficient to take the deposition in digital video to DV tape or directly to a hard drive. Apple's I-Movie, I-DVD and Final Cut Express software allow the firm to edit and produce in-house digital video for CD-ROMs, DVDs and web streaming.

II. ACCIDENT/CASE INVESTIGATION & PREPARATION

The real case is not in your office, it's at the accident scene or place where the injury happened. At a minimum, if possible, each of the following items should be considered when preparing the personal injury case:

Diagrams. Scene diagrams made by police and witnesses that document the relative

- positions of vehicles;
- uncropped police photographs of vehicles, roadway, and debris to verify the point of impact and final positions of vehicles;
- site diagram that provides information about the roadway, number of lanes, lane widths, curves, grading, lights and signs; and
- aerial photographs.

If possible, witnesses should be interviewed at the scene where the collision occurred. Interviews conducted using only photographs can limit witness recollection and perspective. Videotaping interviews at the scene is recommended if information about the site will be critical to the outcome of the case.

Another tool to facilitate witness interviews is a scene diagram with an overlay to allow each witness to prepare a sketch of the events. Witnesses should be asked about vehicle speed and direction of travel, accident avoidance maneuvers they observed, points of impact, points of rest, and roadway conditions.

Vehicle damage evidence. Photographic documentation of the vehicle is critical to any expert analysis. Verification of the vehicle's post-accident condition is also essential to chain-of-custody testimony. Witnesses most able to provide this testimony are vehicle occupants, rescue personnel, police investigators, and tow-truck operators. Type of photographs that will be useful in this area include--

- photos of the vehicles at the collision scene,
- photos of the vehicles kept at storage facilities,
- photos of the interior of the client's vehicle, and
- photos and measurements of an undamaged vehicle of the same make and model as the one that was involved in the accident.

Occupant injuries. In many cases, evidence as to exactly what happened to vehicle occupants can be most persuasively presented through the testimony of rescue workers, emergency room personnel, and treating physicians. A biomechanical engineer or another forensic engineer specializing in the correlation between force and injury may be critical. While most cases require only a simple approach to keep expenses low and the issues clear-cut, crashworthiness cases are more complicated.

Visual techniques to illustrate key points should match the potential value of the case. Juries will pay more attention when television and slide presentations accompany an expert's explanation. The basic goal is to give the jury a visual "instant replay" of the collision and resultant injuries. Some visual aids used to highlight significant events include:

- side, front, rear, and overhead views of the vehicle interior showing occupant movements related to the overall motion of the vehicle;
- rescue records, emergency room reports, surgical reports, x-rays, and MRI films;
- enlargements, overhead screen exhibits, and slides of pertinent medical records;
- computer graphics, video-enhanced illustrations or storyboards depicting occupant movements in the vehicle.

Serious injuries from motor vehicle collisions may include:

- head injuries, which include scalp damage; skull fracture, extracerebral bleeding, and brain damage. Brain damage may or may not be caused by a direct blow to the head and may not directly correlate to the site of a blow. Brain damage may result from rotation of the head due to violent body motion.
- spinal cord injuries, which may be caused by compression, hypoextension, or hyperflexion. These injuries are usually the result of poor restraint of the occupant's upper torso during an accident.
- internal injuries, including damage to the aorta of the heart. These injuries are often due to a heavy impact to the chest. A poorly designed seat belt can cause internal injuries by compressing organs during impact.

Human factors. It may become important either to explain mistakes made by a motorist defendant or to rationalize the conduct of a client. This involves the field of human factors. A driver's control of a vehicle is not

absolute. A driver who jabs the brakes hard enough to lock the wheels wants to stop immediately, but the physics of the situation produces a skid. The driver's control of the vehicle depends on perception time and reaction time. Perception time is the lag between seeing a situation and recognizing it as a hazard. Average perception time for inexperienced drivers has been measured in the range of .75 to 1.25 seconds. If the driver is moving down the road at 60 mph, the vehicle will travel from 66 feet to 110 feet before the driver even perceives a problem.

Reaction time is the time required to decide whether to turn, brake, or accelerate once a hazard has been recognized. Reaction time includes decision making and implementation. The minimum reaction time that can be anticipated also ranges from .75 to 1.25 seconds--another 66 to 110 feet. This means that a vehicle traveling at 60 miles per hour will cover a minimum of 132 feet and up to 220 feet between reception of a sensory input and initiation of evasive action. That can be a lifetime.

Selection of experts. Several sources are available to help locate a suitable expert. The best advice is to locate a forensic specialist with training and expertise in the area of controversy expected to be the focus of the case. Sometimes a literature search can be helpful to find experts who have written on the subject. Traditionally, courts have found that a witness can serve as an expert based on "knowledge, skill, experience, training, or education." To assist the expert in giving testimony, use of exhibits, including slides, photographs, and films, is supported by the Federal Rules of Evidence and has been allowed.

Coherent Picture. The physical evidence, witness statements, and injury information are like pieces of a jigsaw puzzle. They fit together in a unique manner to provide a picture of the motor vehicle collision. All the pieces may not be available and some will be distorted. But there usually is enough information to understand much of what happened. Once the pieces begin to form a coherent picture, the attorney finally is in a good position to evaluate the viability of the case and decide on the legal theories to pursue.

Reconstruction Expert. Accident reconstruction. Selecting appropriate witnesses to give accident reconstruction evidence is critical to presenting the case persuasively. Competent experts range from police officers to engineers with advanced degrees. The experts'

level of sophistication should match the complexity of the case. Illustrative exhibits may be drawings, computer animations, a “storyboard” of illustrations depicting vehicle movements, or photographs of scale-model vehicles shown at progressive positions on a representation of the collision scene.

The reconstruction expert must examine the accident scene to become familiar with conditions of the road at the point of impact and of the road leading to and from that point. Important details include traffic volume, shrubbery that may have decreased visibility, the grade of the road, and its coefficient of friction. The expert should take photographs of the scene at this time to coordinate with police photographs. Precise measurements can be obtained without the vehicles in place by referring to police photos. Photographs should also show the accident scene as it would have appeared to approaching drivers. The expert should verify all measurements noted in the traffic accident report. Road widths should be measured; if a painted centerline exists, measurements should be made from it to both edges of the roadway.

Basic Tools of Investigation

1. Camera, flash, film (Digital Video camera mini-DV tapes)
2. Ruler, yardstick, tape-measure, measuring wheel, calculator
3. Maps, street directories, access to aerial photographs
4. Clay, plaster of paris, or molding materials for impressions
5. Plastic bags, brushes
6. Tool box with tools, flashlight, and jack
7. Dictating machine, tapes
8. Witness statement forms, with instructions
9. Pre-prepared diagram forms, graph paper
10. Notary kit to notarize statements by witnesses
11. Exhibit stickers with name, address, telephone number of law firm
12. Business cards, pre-drafted letters of introduction
13. Written set of instructions for the investigator

Basic Keys to Automobile Accidents

1. Obstructions to sight lines of each driver
2. “Second impact” causes and effects
3. Cause(s) of intoxication or fatigue of each driver
4. Alleged or perceived mechanical failures causing or contributing to the accident
5. Agency or “errand” by any driver

6. Point of impact (POI) approximation
7. Time and distance calculations for each driver
8. Calculation graphics
9. Sight and sound witnesses, identifications and interviews
10. Police witness interviews
11. Reproduction and identification of photographs of scene, cars, victims
12. Matching of the client's injuries with forces/impacts
13. Preparation to meet the "seatbelt defense"
14. Inspection and photography of all signs, signals, lines and traffic devices
15. Determination of actual speed limit
16. Identification of traffic violations charged

Keys to Premises Accidents

1. Immediate "sense impression" of cause of fall
2. Immediate sighting of "the cause" of fall
3. Immediate announcements, admissions, and statements
4. Injuries matched with forces and impacts
5. Canvass of the "neighborhood"
6. Independent eyewitnesses or after-action witnesses
7. Age and original origin of defect
8. Aggravating factor(s) for defect worsening
9. Legal owner, occupier, maintainer of premises
10. Source(s) of water for any ice
11. Cause of wax or polish build up
12. Physical or mental reasons for instability of immobility
13. Potential government Tort Claim Notice
14. Architectural or construction errors or defects
15. Prior history of safety, health or building violations or complaints
16. Immediate visitation of the scene with client.

Legal Investigator. Why You Should Employ A Legal Investigator. Good legal investigators are worth their weight in gold. With any substantial personal injury practice, it is well worth the time and money and, more importantly, in the best interests of clients, to have an investigator on staff. A full-time or part-time staff investigator is eventually going to decrease file costs and unnecessary time. Subcontracting with an outside investigator will only profit that investigator or agency. Independent contractors will be available according to their schedule, not the schedule

of the attorney or the client. For any trial lawyer seeking to develop or maintain a personal injury practice, there is no merit to subcontracting investigation to an outside firm.

Supply your investigator with the following items:

1. Proper equipment
2. Reference materials and publications
3. Forms, systems, and the standard operating procedures of your practice
4. CLE and related seminars
5. ATLA membership
6. State TLA membership, NALI, etc.
7. Introduction to community contact people
8. Continuing supervision and training

The Client. If one truly listens to the client, one can get the theme of the case and even the exact manner of the accident's occurrence. The critical step in any accident is to immediately visit the scene of the accident with the client. Stop, look, listen to the client, turn the facts and witness statements over in your mind and replay the accident. If the collision or fall does not correspond with the client's version or your theory, then do it again! Something is missing or out of sequence if the client's injuries do not match up with the reenactment trauma. In fall-down cases it is vital to have the client describe or demonstrate the circumstances so that the attorney or investigator and staff can reenact the manner of the fall, the reasonably probable cause thereof, and the injuries incurred. Clients and their families can often assist in providing before-and-after photographs and videos. Be careful of overkill. The client and family can also help to duplicate or obtain facsimiles of products or automobiles that were involved in the accident.

Things to Remember About "Client Reconstruction" Assistance

1. Caveat: the "witness for the prosecution" set-up
2. Caveat: the ER complaints and initial medical histories
3. Caveat: the potential "dive bomber"
4. Caveat: medical causes for falling down
5. Caveat: the seatbelt
6. Use models, charts, etc., to illustrate and interrogate
7. Obtain photographs of everything with which the client impacted
8. Obtain photographs of initial bruises, cuts, etc.
9. Do not overlook anything which may have made a second impact

10. Obtain clothing and shoes worn by client

The Police. The investigating police officers often make the most indelible conclusions about liability, causal relationships, and fault. Occasionally, an investigating police officer has had training in accident reconstruction or enough experience with a certain manner of force and contact that they may be of great assistance in reconstructing an accident.

Tips for Developing the Reconstruction Analysis of Police

1. Personal rapport between you and your investigator
2. Integrity
3. Honest investigation, not supposition
4. Corroboration of all measurements
5. Canvas of neighbors for additional witnesses

EMTs. The first aid squad usually is first at the accident scene with any intention of identifying and attending to injuries. Called at about the same time as the police, the EMT vehicle will arrive almost simultaneously with the police care. Every member of that squad is a potential eyewitness and reconstructionist for determining and proving exactly how your client suffered the injuries incurred during the accident. All of what they see and hear is not recorded on the ambulance log or in the “incident report.” To confirm the location of the victim at the scene, the drag or scuff marks, the initial symptoms and complaints, or any damaging outbursts or spontaneous utterances from the parties, you and your investigator or staff must obtain detailed statements from the EMTs and ambulance drivers who respond to the scene of the accident. These individuals are often the source for locating additional witnesses and bystanders, or spontaneous admissions about liability from the plaintiff and defendant.

Ideas About the Utilization of EMTs to Assist Reconstruction

1. Obtain the identity of all emergency personnel
2. Review on radio logs of communications
3. Do not try to make them sign statements right away.
4. Provide scale diagrams of their use.
5. Have photographs available.
6. Remember your reputation for integrity and honest investigation.
7. Ask their opinion about the \$64 Question.
8. Use referrals, reference, introductions
9. Caveat: Prior police experience
10. Caveat: the “Ambulance Chaser Syndrome”

Emergency Personnel, Doctors and Nurses. Never underestimate or assume “no talent” for accident reconstruction by the ER nurses and doctors at the hospital where your client was rushed. The ER personnel often have some past experience, training or expertise in treating trauma victims, which gives ER personnel an evidentiary qualification and foundation for an opinion about the cause and origin of the wounds and traumatic injuries sustained by the plaintiff. For example, some nurses and physicians have military experience in the treatment of accident victims involving the forensic evaluation of whether wounds were self-inflicted or the result of a true accident. “Malingering” is a standard differential diagnosis and should be considered. It is important that you and your investigator establish a rapport and a working relationship with the nurse or doctor. The initial contact is extremely important and may be decisive in obtaining help, accurate information, or even basic facts from the ER personnel.

Helpful Hints in Approaching the ER Personnel

1. Professional courtesy
2. Integrity
3. Photographs of client and suspected “instrumentality”
4. Diagrams of the accident scene and cause(s)
5. Survey of the “neighborhood” for other witnesses

Treating Doctors & Surgeons. Most surgeons, especially orthopedic surgeons, have an excellent working knowledge of the forces, pressures, directions, and mechanisms of traumatic injury. For example, most tibial plateau injuries occur due to a flexed knee striking the dashboard of an automobile; likewise most fractures of the foot can be classified by the type and direction of the trauma. Therefore, in almost every personal injury case the potential exists for using the treating physician or consulting/operating specialist in such a way that the defendant’s version of the accident will be soundly and scientifically rebutted. For example, a certain fracture is probably more the result of a stepping accident, not a slip/trip type of fall; certain injuries are consistent with a belt/shoulder harness being in place; and certain head injuries in comparison with other injuries of less severity can point to the initial site of impact as well as the instrumentality.

Facts to Consider Before Engaging the Treating Physician in a Conversation About the Bio-Mechanical Causes or Non-Causes of Specific Injuries

1. Remember your professional reputation.
2. Attitude of the doctor
3. Opinion about malingering
4. Prepare yourself in advance
5. Use positives of x-rays
6. Use photographs, models, diagrams
7. Instrumentality
8. Force and dynamics estimations or calculations
9. Pounds per square inch equivalents
10. Analogize to famous accidents

III. RESOURCES:

There is a wealth of information on Law Office Management. Here are several useful websites:

- Findlaw's Law Practice Management page provides links to the most helpful sources:
<http://www.findlaw.com/19lawpractice/lpm.html>
- ABA Law Practice Management Section Publications:
<http://www.lawpractice.org/catalog>
- ABA Law Practice Today
<http://www.lawpracticetoday.org>
- Lawyers Weekly USA: <http://www.lawyersweeklyusa.com>
- National Law Journal:
<http://www.law.com/jsp/nlj/index.jsp>
- Lawyer Lounge:
<http://www.lawyerlounge.com>