

ASSESSMENTS OF PERSONAL INJURY CLAIMS-
INTERVIEWS AND INVESTIGATIONS

- I. “Getting to know you”-INTAKE PACKAGES AND FORMS**
- A. “Ricki Don’t Lose that Number.” Importance of Multiple Contact options
- B. “Sixteen Candles”-Considerations when representing a minor
1. Contingency contract must be approved by Probate Court
 2. Certified copy of Birth Certificate
 3. Copy of SSN card
 4. If Parents separated, proof of custody
 5. Who pays probate costs
 6. Guardianships-When gross settlement is in excess of \$10,000.00
 7. Traumatic Brain Injury issues in probate
- C. “Get a Job”-Employment Information
1. Valid work excuses
 2. Documenting lost wages
 3. The Underground Cash Economy
 4. Income Tax Returns
 5. Lost income
- D. “Health & Happiness” Health Insurance Coverages
1. Notify Health Insurance Carriers
 2. Medicaid
 3. Medicare
 4. Workers Compensation
 5. Self Insured Plans
 6. ERISA considerations
- E. HIPPA and other authorizations

II. “Crash Into Me” AUTOMOBILE INTAKE, INVESTIGATION & INTERVIEWS

A. “Who’s Sorry Now”-Establish liability

1. Assured Clear Distance
2. Comparative Negligence
3. Multiple Tortfeasors

B. “ “Hit Me Baby One More Time” Multiple Crashes/Serial Crashes

1. Sudden Emergency
2. Treatment

C. “Freeze Frame” Photographs or videos of all evidence

D. “Highway Patrolman”- Crash Reports

E. “Don’t Worry About the Government” GPS, Road grades, etc.

F. Can I Get A Witness” Find and Keep track of scene witnesses

III. “Slip Sliding Away” SLIP & FALL- INVESTIGATION & INTERVIEWS

A. “The Fear You Won’t Fall” Open and Obvious v Hidden Defects

1. 2 inch rule
2. Rebuttable presumptions

B. “Ice Ice Baby” Inclement weather and public walkways

IV. “Live Like You Were Dying”- WRONGFUL DEATH CASES

A. “We Are Family” Who has the ability to sign contingency contract for the estate?

B. “I Will Remember You” Documentation of contributions to the family

C. “I Will Survive”, Survivorship claims

V. “Accidents Will Happen” OTHER PERSONAL INJURY CLAIMS

- A. “The Boss of Me”-Improper Hiring, Training and Supervision
- B. “Pads Paws and Claws” Animal Injuries
- C. “Hit Me With Your Best Shot” Assault

15 minute BREAK

“I STILL HAVEN’T FOUND WHAT I’M LOOKING FOR”
THE DISCOVERY PROCESS

VI. “Tell Me Baby”-WRITTEN DISCOVERY

- A. Local Rules. Local Courts may reduce the number of interrogatories allowed. Be sure to verify the number of interrogatories allowed. Other local rules may affect your standard interrogatories.
- B. “Question of Time” Interrogatories
 - 1. Purpose of interrogatories
 - a. Streamline depositions
 - b. Identify witnesses for depositions
 - c. Provide personal information to evaluate Defendants
 - d. Identify all sources of recovery
 - e. Identify exhibits, photographs that may aid the Plaintiff
 - 2. Instructions-
 - a. Drafting detailed instructions as an introduction to your interrogatories, helps avoid objections that a question is too vague or ambiguous. It also makes it easier to draft clear interrogatories
 - b. The Instructions should also include a section regarding what to do if an objection of privilege is raised. The objecting party must create a log of the privileged materials and submit the log to you for review. This helps counsel determine which

documents if any should be pursued through a motion with the Court.

3. Interrogatories-Form & Service

- a. Civ. R. 33(A) requires that the number of interrogatories be limited to 40. The Court may extend the number of interrogatories upon good cause shown. The Courts count subparts to interrogatories as separate interrogatories. Only the first 40 interrogatories need to be answered.
- b. Civ. R. 33(A) also requires that interrogatories be served with both a printed and an electronic copy of the interrogatories via email or disk. Failure to serve properly will extend the response time of the served party.

4. Content for Defendant Tortfeasor

- a. Identification-Confirming the Defendant's identification information, address, family members, place of employment, criminal record, etc.
- b. Other Lawsuits pertaining to same crash or cause of action. Especially important in multiple car crashes with limited coverages.
- c. Insurance Coverages-Identify the sources of recover, including auto, home, umbrella, business and other coverages.
- d. Ownership of vehicle involved in crash or premises involved in injury.
- e. Crash Specific information.
 - i. Where were you coming from and planned destination.
 - ii. Cell Phone in use and carrier information
 - iii. Consumption of alcohol, drugs or prescription medication
 - iv. Citations received as a result of crash

- v. Identify passengers in vehicle
- f. Request information regarding defenses raised in Answer.
 - i. Failure of Service
 - ii. Comparative Negligence
 - iii. Joint Tortfeasor
- g. Obtain Defense Strategy
 - i. Identify Scene Witnesses
 - ii. Identify Trial Witnesses-Lay and Expert
 - iii. Identify Evidence to be presented at trial
- h. Statements by Plaintiff
- i. Expenditures alleged by Insurance Company to Plaintiff.
 - i. Extremely important for purposes of settlement or judgment.

5. Content for Defendant Insurance Carrier

- a. Identify the person responding on behalf of company
- b. Obtain coverage information for all insurance coverage held by Plaintiff or Car Owner or Family member.
- c. Request any statements made by Plaintiff or Defendant or Eyewitness
- d. Eyewitness information
- e. Trial witness information-Lay & Expert
- f. Photographs, videos, etc. regarding property damage, bodily injury or site of crash.
- g. Payments made through medical payment coverage

h. Explanations of factual basis for raised Defenses.

C. "Give A Little Bit" Requests for Production Civ.R. 34

1. Purpose of Requests for Production
2. Instructions-Be Wary. Often response is: Documents are available upon request for review and copying. If you fail to review and copy, it is your fault, not opposing counsel.
3. Contents-No limit on number of requests that you can make.
 - a. Photographic Evidence
 - b. Statements, taped, transcribed, etc.
 - c. Exhibits
 - d. Crash Report-sometimes find supplements that you do not have
 - e. Proof of any payments made to Plaintiff

D. "Ted, Just Admit It" Requests for Admissions

1. Civ. R. 36
2. Timely responses or Requests are deemed admitted.

E. "Video Killed the Radio Star" Considerations for Electronic Media

1. What is electronic media?
 - a. Office desktop computers, laptops, CD's, Travel Drives, Back uptakes, hand held personal organizers, cell phones, and fax machines.
 - b. Some electronic media is not intended to be printed, such as data bases, spread sheet formula, email information
 - c. META Data: Information about information. The raw data and the code necessary to make use of the

data. Email Meta Data contains original author, date and time of creation and routing. BLIND COPIES

d. Voicemails

2. Inherent problems with Electronic Media

a. Most of us are NOT computer or software experts

b. Volume

c. Disorganized-computer logic, not a record keeper's logic.

d. Records Retention policy established by IT people, not company or lawyers.

e. Obsolescence

f. Volatility

3. Conducting discovery of Electronic Data

a. Federal Rules currently undergoing revisions to address issues unique to discovery of electronic data. States will probably follow Federal lead.

b. Remember to request electronic data. Include it within your definitions of materials at the beginning of your interrogatories and requests for production.

c. Preserving Electronic Data-If electronic data will be key in your case, litigators should send a "Preservation Letter to all parties and non parties who may possess relevant evidence. Letter should be specific and should include Plaintiff.

d. Become familiar with electronic data sources or establish a good working relationship with an IT person who can guide you through discovery.

F. "Follow Through" Review Discovery Responses as soon as received.

1. When responses received, note which offer the materials for review and make request for specific time to review and copy the information immediately
2. Where “Will Supplement” is response, send written correspondence prior to trial requesting that the supplements be made.
3. Review electronic data with expert if necessary.

G. “It’s in the way that you use it” Uses for Written Discovery

1. Client should review own answers to interrogatories prior to the Client’s deposition.
2. Experts should review interrogatory responses of all parties prior to giving opinion or testimony.
3. Compare prelitigation materials, such as witness statements and police reports, to interrogatory responses
4. Issues in Electronic Data related to Personal Injury:
 - i. Event Data Recorders in Vehicles
 - ii. Intersection Cameras

VII. INFORMAL DISCOVERY INCLUDING PUBLIC SOURCES OF INFORMATION

- A. “We Shall Be Free” Freedom of Information Act
- B. “Somebody Told Me” Coroner’s Reports, Supplemental Police Reports
- C. “November Rain” Confirming weather conditions

VIII. “21 Questions” DEPOSITIONS CIV. R. 30

- A. “Prepare for the Fight” Preparing Your Client
 1. What is a deposition?
 2. Advice to Client

- a. Mental Approach
- b. Educate yourself
- c. Time Line
- d. Prepare the witness, DO NOT COACH
- e. Topics to discuss-
 - i. Be Honest
 - ii. When to Respond
 - iii. Understand the question
 - iv. Clarify
 - v. Wait until question is complete before answering
 - vi. Carefully consider answers before speaking
 - vii. Answer only the question that is asked
 - viii. What to do if you are uncertain
 - ix. Be alert to factual assumptions
 - x. Do not guess.
 - xi. Request the document
 - xii. Correct previous answer
 - xiii. You are entitled to a break
 - xiv. There is no such thing as OFF THE RECORD
 - xv. Personal Conduct

xvi. Weird but true situations

B. “This I Swear” Defendant’s Deposition

1. PREPARE YOURSELF
2. Prepare your Exhibits
3. Review interrogatory and request for production responses
4. Outline your goals
5. Review Jury Instructions pertinent to your claims
6. LISTEN to the answers given by deponent
7. Disputes with Counsel

C. “Who Are You” Non Party Deposition

1. Subpoena must be issued pursuant to Civ. R. 45
2. Must tender fees for mileage or witness need not appear
3. Ascertain any prejudices or biases
4. Be polite.

IX. “Can’t Get Past the Evidence” PREPARING EVIDENCE PRIOR TO TRIAL

A. Understanding the Rules of Evidence

B. Documentary Evidence

1. Medical Records
2. Medical Bills
3. Impairment Ratings
4. Lost Wage Proof

C. Testamentary Evidence

1. Eyewitnesses
2. Before and After Witnesses
3. Police Officer
4. Medical Providers
5. Custodians of the Records

D. Demonstrative Evidence

1. Skull
2. Medical Drawings

PERSONAL INJURY SETTLEMENTS

X. “Popular Demand” NEGOTIATION TECHNIQUES

A. “Inspiration on Demand” Demand Packages

1. Colossus- Valuing Cases by Computer
2. What drives up the value of a case
3. Dangers of Colossus

B. Relaying settlement offers to clients

C. Creative Negotiation

XI. “Neutral Ground” MEDIATION AS A SETTLEMENT TOOL

A. Why Mediation

B. When should you attempt mediation

C. Selecting a Mediator

D. Preparing for Mediation

E. Mediation presentations and tools

XII. “Call It a Loan” SUBROGATION TECHNIQUES

A. Identifying all the subrogation interests

B. Obtaining subrogation amounts

C. Validating Subrogation amounts

D. Negotiating reductions in Subrogation amounts

1. Make Whole Doctrine destroyed by *Northern Buckeye Education Council Group Health Benefits Plan v. Lawson*, (2003) 103 Ohio St.3d 188
2. Using evidence to reduce subrogation
 - a. police report
 - b. IME reports
 - c. Deposition testimony
3. Using persuasion to reduce subrogation
 - a. Recent Jury verdicts
 - b. Cost of Trial
 - c. Fairness to subrogee of outcome
4. The Miserable World of Medicare Subrogation

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