

CAALA VEGAS 2017
ROCK OF AGES

SECTION 21

**LEGAL STAFF
TRACK**

THE FUNDAMENTALS OF INTAKES: TOWARD AN EFFECTIVE AND EFFICIENT PROCESS

By James West

The importance of the intake process should not be underestimated. It not only provides information about why a caller is reaching out to the firm, but it also does much more. A potential client's call is usually that person's first interaction with the firm, and that first impression is vital to the prospective relationship and reputation of the firm. The call is also necessary for obtaining information to the firm to assess the potential case and ultimately decide whether that potential case should be accepted or rejected.

For law firms representing plaintiffs, intake calls often involve individuals who have been harmed, threatened, offended, or who are otherwise devastated because of what happened to them or to one of their loved ones. Frequently, questions arise during the intake process ranging from callers seeking advice to callers wanting to tell a complete story and get off their chests what happened to them or to someone they care about. It is imperative to find a process that works to manage these calls, as well as to understand the underlying reasons as to why a lot of the information is needed and obtained. Proper training, including working with others who have experience in handling these intake processes, is often useful and necessary to a firm having an intake process that is both efficient and reliable.

I. Introductions to the Firm

It is important to bear in mind that when a potential client calls the firm about their potential case, that one call often forms a lasting first impression on that caller. The reputation of the firm is at stake during the course of that call, a point that should not be taken lightly. For firms that represent plaintiffs, the callers are often individuals rather than a representative of companies, and they have stories to tell and are looking for someone simply to help them. As such, it is important to be polite, sympathetic, and understanding as to why they are calling. The person doing the intake should listen to the caller carefully and to be responsive to them without passing judgment and without giving advice.

The intake process is challenging for any firm because it is time consuming and often leads to a number of cases being rejected. It is easy to see this as a process where much of the time spent on the phone may be futile, or at least may seem futile at the time, depending on how many cases and what types of cases the firm accepts or rejects. However, potential clients who call for the first time should never get a sense that their case is not important or that what they have to say is not valuable. A lot of the callers have no experience working with attorneys, or at least with law firms handling litigation cases on their behalf, so this is a world that is completely unfamiliar when they call. Bearing those things in mind will go a long way to making the intake process one in which the potential client is comfortable and that builds confidence in that person and the firm.

The potential client should get a sense that the person doing the intake knows what he or she is doing, cares about them, and that the information that is taken will be handled appropriately. The intake process should also be one in which the person doing the intake stays in control of the call both to manage the length of the call and to give the potential client confidence that the firm knows what information is needed.

II. Case Assessment Issues

A. Description of Injury and Condition

In my experience working in the intake process, both doing the intakes myself and as an attorney who reviews the intakes that are done, I have found that there is an overwhelming tendency to focus on the facts of what happened rather than the injury that the client ultimately suffered. One of the most intuitive

things to do when a potential client calls in is to ask, “What happened?” However, if that question, which is entirely open-ended, is asked from the beginning of the call, the response is usually something that leaves a lot to be desired. Sometimes it may be a rambling story that is hard to follow because the caller wants to get issues off his or her chest. Or, it may be a few words that seem relatively unrelated to the major facts and issues that are ultimately important in the case. The bottom line is that starting with that question is usually much less productive than starting off with an understanding of the injury the potential client has suffered and the progression and details of their condition.

Knowing about the injury and the potential client’s condition is one of the most valuable pieces of information that will be obtained from any intake call. Sometimes the injury is easy to understand, such as a death or an amputation, or something similarly straightforward. Sometimes the injury is complex and not easy to put in words, such as lingering conditions or types of mild brain injury. In this respect, getting to the bottom of the potential client’s actual injury is not nearly as easy as it sounds. In fact, I believe it is one of the hardest things to determine for several types of injuries, and it is one of the most incomplete aspects of intake forms based on my experience.

Often, there is a tendency to mix the facts of the case (meaning what happened) with the injury that resulted and the current condition of the potential client. To distinguish these things during the call, it is often important to have tools or taglines to use with potential callers. For example, if you begin by asking a potential caller what their injury is, they will still usually resort to starting with the facts of the case, often backing the story so far back in time that the information cannot be absorbed because it is not in any comprehensible context. To break through this tendency, you may consider asking, “Why don't we start at the end of the story?” This will get the potential caller to focus on what happened as a result of the incident they are calling about rather than starting with what happened, or, even worse, with irrelevant information leading up to what actually happened.

Taking the approach of starting with the injury and condition of the potential client may not work for everyone. It may be much more productive for some firms to start with the facts of the case and what happened, ideally to fetter out certain types of issues. However, it is my experience that during the intake process, it is often much easier to put the facts of what happened in context once the injury is understood. It also focuses the caller on answering the questions of the person doing the intake rather than simply telling their story the way they see fit to tell it, which usually will be in an order that is much less efficient than a guided intake process will achieve. If there is any reluctance of the potential caller to answer the question and shift back to the facts, it often becomes necessary to maintain control of the conversation and to remind them that you need them to answer a few pointed questions so that you can understand everything in the right context. Taking control of the conversation here, from the beginning, is key. Do so nicely, and even offer them the opportunity to fill in any gaps or relay additional information at the end of the call (which rarely will happen because they will be guided through the call in a formulaic yet efficient manner).

The importance of understanding the nature and type of the injury the potential client suffered and what their current condition is cannot be stressed enough. If the injury is significant enough (which depends on the firm’s parameters as to the types of cases they are taking), it is usually important to get the full scoop of the potential client’s current condition as well as their limitations in term of activities of daily living. Regarding the current condition, it is often useful to understand precisely what they can and cannot do. For example, for significant injuries, consider asking whether they are able to walk, whether their walking ability requires any type of assistance, whether they are able to eat or are on a feeding tube, whether they have any numbness or paralysis, whether they have bowel and bladder control, whether they have a trach tube or require breathing assistance, and whether they have any limitations in their ability to communicate. If the potential client has had significant medical treatment from a serious injury, it is often useful to find out the dates and types of treatment, particularly for any stays at any type of inpatient, rehabilitation, or residential facilities as well as the dates and results of any pertinent diagnostic testing.

Information about the potential client's injury and condition is extremely useful for determining the value of the case. The types and level of treatment that the potential client has received in the past will impact an assessment of economic damages because it will inform the firm as to what types of treatment may be needed in the future. Any serious injuries that have occurred will inform the firm of whether the potential client likely has a reduced life expectancy, which will affect economic damages and likely will affect non-economic damages. The information is also useful for determining whether the potential client may be incompetent, which is useful to know for purposes of whether a guardian ad litem is needed, including what forms may be needed down the line.

B. What Happened?

Obviously, obtaining information about the essential facts and events that led to injury is also one of the most important parts of the call. As above, there is a tendency for the caller to want to get a story off his or her chest and to jump into the facts of what happened. Although it may not be the most important part during the intake process in some circumstances, it is undeniable that this part of the intake process should not be overlooked or short-changed in any respect. That said, it is important to keep control of the conversation and obtain the information efficiently and effectively without costing the firm too much time during the intake process. The best way to do so is by having a pre-planned approach to these types of questions, coupled with sufficient training to implement the approach.

In terms of taking this information, remember to guide the conversation and not to lose control of it. Listen to the caller. However, always consider what the firm may actually need from this portion of the intake. Try to keep the caller focused and avoid long tangents for unrelated material, but do so in a sensitive and respectful way, bearing in mind that the caller does not understand what may or may not be important.

The importance of this information really varies on the types of cases that the firm handles and the types of calls the firm receives during the intake process. Generally, the information as to what happened to the potential client allows the firm to assess liability, assess the extent of damages (in conjunction with the injury and current condition), and classify the case (*e.g.*, auto accident, medical malpractice, employment, etc.). Each different area of practice will require some level of focused questions, and the answers to those questions will be of varying importance to the overall assessment of the potential case. For example, if the caller is calling about an auto accident, it is useful to obtain information about the vehicles that were involved; the location of the accident; the speeds, directions, locations of vehicles and persons involved; roadway conditions; witnesses; and numerous other aspects of the surrounding circumstances. If the case is about a defective product, it is useful to obtain information about the make, model, manufacturer, and year of the product; how the product was used; and how it malfunctioned and caused injury. If the caller is calling about a medical malpractice case, it is important to obtain information about the facility, the doctors involved, who they believe did something wrong, why, and when the events occurred. It may be useful for firms to have various types of intake forms to handle these different types of calls to know exactly what to ask. In addition, it may be useful to incorporate in intake training procedures the types of specific information that are needed for the specific types of cases the firm handles to ensure that the person doing the intake obtains the needed information for each case type.

C. Dates and Times

Another key piece of information that will be obtained from any intake call is the date that the injury occurred. This information is vital for the firm to assess the statute of limitations for the potential case. That said, there are a lot of complexities and issues that can arise relating to this information. First, the person doing the intake should be extremely cautious as to not to give any advice about the statute of limitations. Frequently, attorneys do not even give advice when complex statute issues arise. It is often a very complicated analysis, and there may not be a black or white answer for different types of cases.

Moreover, even though the caller is only a potential client, the intake process arguably forms an attorney-client relationship. Therefore, it is imperative not to give advice on major issues such as the statute of limitations that the potential client or the caller then relies on, because doing so could negatively affect the firm if the advice that was given is incorrect. Any persons from the firm who are doing intakes who are not attorneys want to avoid giving any legal advice whatsoever.

A good example about the complexity of statute of limitations issues is in medical malpractice cases. First, medical malpractice cases have a shorter statute of limitations than other types of cases, such as personal injury cases. A personal injury statute is generally two years (*C.C.P.* §335.1), whereas a medical malpractice statute against private hospitals and providers is generally one year (*C.C.P.* §340.5). A medical malpractice statute, however, is a little bit more complex because it runs from the date that the person knew or should have known that the wrongdoing caused harm. (*Id.*) This obviously can involve many many different types of interpretations and leads to complex analysis. It is based on a reasonable person standard rather than a simple question of when this potential client knew or suspected wrongdoing. For example, if a person in their shoes should have suspected wrongdoing earlier, then the statute of limitations may run earlier than the one-year period from which the caller actually suspected wrongdoing. There are both bench and jury trials that are held on these issues, and they are anything but straightforward or simple. The purpose of raising this example is to emphasize the complexity of the issues and the notion that giving advice on the statute of limitations is almost always ill-advised during the intake process.

The date of the injury is important in several respects for the assessment of the case. It is useful for determining what follow up may be needed, what information may be obtained later, and how to request certain key documents. For example, if the injury is a death, the date of death is useful for requesting autopsy reports. The date of injury is also useful for requesting police reports and various medical records.

Another key date to obtain during the intake process is the date of birth of the potential client. This is also useful for obtaining key documents such as medical records, death certificates, birth certificates, marriage certificates, and other documents. It is also useful to understand the age of the client to be able to evaluate what their life expectancy is, assess future damages, and determine and put the facts of the injury in context in light of how old they are.

Another date that is frequently important involves looking at when they are calling versus when the date of the injury occurred. If it appears that the call takes place for a significant period after the injury arose or after the accident occurred, it is often useful to ask the caller why they are calling now rather than earlier. Frequently, it is useful to give the caller some assurances that you are not criticizing them for doing so, but that the information may be useful for the firm. The importance of that information is so the firm can assess whether there is any tolling of the statute of limitations, which may relate to when they discovered any aspects of wrongdoing and how and when they made those discoveries.

D. Marital Status and Family Dynamics

Understanding whether the potential client or a decedent is or was married is also extremely useful for evaluating a potential case. If the potential client or decedent is or was married, then there likely will be a loss of consortium claim where the spouse of the injured party will be named as a plaintiff to the lawsuit.

Information on marital status is also useful in setting up any follow-up meetings or phone calls with the family. Frequently, if there is a spouse involved, it is necessary to have an intake meeting with everyone involved so that all potential plaintiffs can be included in the meeting and can sign the firm's attorney-client retainer agreement once it is determined that the firm is accepting the case. It is also useful to know who was involved in the lawsuit to know the number of depositions that may need to take place and

the amount of discovery that will be undertaken. In that respect, it is useful not only to determine whether there is a spouse involved, but also whether they were involved in any respect in the accident or incident that occurred. If so, they may need to be deposed at a later time, and this affects an initial evaluation in determining who has additional information about the accident and what discovery may later be needed. Finally, it is often useful to know whether there are any children or other family members involved and to understand overall the type of family or the family dynamics that exist. This information sometimes may be useful in assessing whether there are any issues with how a jury may see the case or circumstances related to the case.

E. Medical History

If the case involves any type of injury (*e.g.*, personal injury, medical malpractice), it is useful to obtain information about any significant medical history. This information can be very useful in determining the potential value of the case because it can drastically affect whether certain injuries were actually caused by the incidents at issue. For example, if there is an accident and after the accident the potential client is unable to walk, it is of course useful to know their ability to walk before the accident. If and when the case moves forward, the defense is going to look at the medical history in any type of injury case and try to argue that their clients were not responsible for actually causing the harm that was done because it was pre-existing. Therefore, it is useful to know of any skeletons in the closet from the beginning to have a better understanding as to whether these types of defenses can be defeated. The medical history also affects the life expectancy of the potential client, and having that information may be valuable if there is a need to rely on future damages.

F. Work History

Information about the potential client's employment history is usually very useful in evaluating cases. If the injury is substantial enough to take the potential client out of work, then it is necessary to know what type of work they did and how much they were paid in their positions so that the value of their time out of work can be analyzed.

It is important to bear in mind the types of information that are used to prove claims of loss of earnings. Frequently, it is necessary to rely on tax filings or similar types of documents that report legitimate past earnings rather than simply relying on a verbal report of what the past earnings were. Although the potential client or caller is not required to do a prove up during the intake process, it is often useful to ask them what their reported income was versus what their earnings were to avoid any misunderstandings and have accurate information as to what may be provable. If the potential client was being paid under the table, it may create a much different situation than if all of their earnings were reported and can eventually be proven at trial. It is also essential to know how long the potential client has been out of work, and whether they expect to return to work, in order to help assess their level of injury. For example, if a caller is reporting that they have suffered some type of brain damage from the accident but they have returned to work as an engineer, then their claims of what their injuries are may be subject to scrutiny and their credibility as a caller may be more suspicious.

III. Source of the Call

It is almost always imperative to obtain information about how the caller found the firm. Knowing whether the caller was referred to the firm by another attorney or law firm is necessary for several reasons. The information will allow the firm to keep track of the referrals that are made so that they can keep the referring attorneys informed as to whether the case is accepted or rejected (and the progress of the case if it is accepted later) and assess whether any referral fees need to be made. If the caller found the firm from other sources such as Google, Yelp, Avvo, or other platforms, it is useful for the firm to be aware so that they can track the sources for marketing purposes to know what marketing is and is not effective. This is true whether or not the firm actually accepts the case.

CASE INTAKE

By Angie Fuerte

1. Taking a call from a Potential Client

- Name
- Phone Number
- Mailing Address
- Date of Birth
- E-Mail Address

2. Always ask for an emergency contact, closest relative phone numbers

- Husband/ Wife
- Mother/ Father
- Brother/ Sister

3. Begin to get into the details of the accident with;

- What was the date of loss?
- What time did the accident occur?

4. Ask the Potential Client to describe the details of the accident

5. Ask Questions

- Were there any witnesses?
- Vehicles
- Auto Insurance
- Injuries
- Police Report
- Prior Injuries
- Background
- Occupation / What do you do for a living
- Time off work due to the accident?
- Any health insurance?

6. Accident/ Injury Photographs

7. Google Earth the Scene of the accident

- Verify the scene with the accident details PC provides
- Speed Limit
- Traffic lights/ Stop Signs
- Traffic Cameras

8. Determine if the case will be retained or rejected



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VEHICULAR ACCIDENTS:

Preservation of evidence letters

Vehicle inspections and photograph

Hit and Run First party claim with contact issue

Product liability, i.e. Airbag – Safety Harness – Brake and/or any other issues contributed to loss

Event data recorder – EDR aka vehicle black box

SCENE INVESTIGATIONS:

Vehicular Accidents:

Canvas Area for witnesses and security cameras

Provide POE Letters to business or area residents if there is a chance footage might exist

Traffic Signal Phasing (Must be done time and date very similar to the condition when incident occurred)

Posting flyers looking for witnesses

Premises Liability:

Dog Bite – Contact all area residents re vicious propensities of the dog

Dog Bite – Track down the US Mail Carrier for interview

Slip/Trip and Fall – Must inspect the area of incident for causation for:

Lighting – Water – Carpet Faulty Construction – Neglect

WITNESS INTERVIEWS:

Preserve statements ASAP

Witnesses do disappear and/or forget important facts

Lose interest if not contacted few days or weeks after the incident.

Must keep in touch with your witnesses once a month or so to make sure still around



PRODUCT LIABILITY:

Preserve evidence – Preferably the product itself if still available

Purchase same product to identify the manufacturer

Vaping Devices – Preserve all parts including batteries

Purchase same type of battery that was in the damaged device for review and evaluation for its authenticity

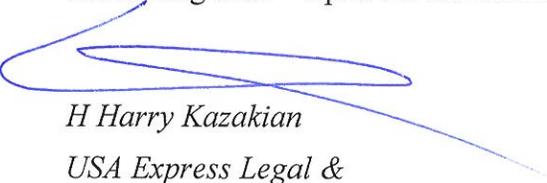
DRONE VIDEOS/PHOTOS OF AREA OF INCIDENT

Recommended to review your case ASAP and see if will benefit from Aerial videos and photos

SECURITY CAMERA FOOTAGE:

Will show 3 to 4 short videos and photos / Total time – 10 seconds each

Remaining time – Open for discussions and questions



H Harry Kazakian

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VEHICLE ACCIDENTS

Preservation of Evidence (POE) letters
Vehicle inspections and photographs
Hit and Run First Party Claim with contact issue – schedule vehicle inspection ASAP
Product Liability, i.e. airbag, safety harness, brakes and/or any other issues contributed to loss
Event Data Recorder – EDR aka vehicle black box; download data ASAP if needed
Negligent Entrustment
Course and Scope

SCENE INVESTIGATIONS

Vehicle Accidents:

Canvas area for witnesses and security cameras
Provide POE letters to business or area residents if there is a chance footage might exist
Traffic signal phasing (must be done at a time and date very similar to the conditions when incident occurred)
Posting flyers looking for witnesses

Premises Liability:

Dog Bite – Contact area residents re: vicious propensities of the dog; Track down mail carrier for an interview
Slip/Trip and Fall – Must inspect the area of incident for causation re: Lighting – Water – Carpet – Faulty Construction – Neglect

WITNESS INTERVIEWS

Preserve statements ASAP
Witnesses do disappear and/or forget important facts if delayed
Lose interest if not contacted few days or weeks after the incident
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PRODUCT LIABILITY

Preserve evidence – preferably the product itself if still available
Purchase same product to identify the manufacturer
Vaping devices – preserve all parts including batteries
Purchase same type of battery that was in the damaged device, review and evaluate its authenticity

DRONE VIDEOS/PHOTOS OF AREA OF INCIDENT

Recommended to review your case ASAP to see if it will benefit from aerial videos and photos.

FINANCIAL INVESTIGATIONS

Review your case to see if financial investigations are warranted due to insufficient policy limits.



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Court Closures and Holidays for the remainder of 2017 and for 2018

Monday	September 4, 2017	Labor Day
Monday	October 9, 2017	Columbus Day
Friday	November 10, 2017	Veterans Day
Thursday	November 23, 2017	Thanksgiving Day
Friday	November 24, 2017	Day after Thanksgiving
Monday	December 25, 2017	Christmas Day

Monday	January 1, 2018	New Year's Day (2018)
Monday	January 15, 2018	Martin Luther King, Jr. Birthday
Monday	February 12, 2018	President Lincoln's Birthday
Monday	February 19, 2018	President's Day
Friday	March 30, 2018	Cesar Chavez Day
Monday	May 28, 2018	Memorial Day
Wednesday	July 4, 2018	Independence Day
Monday	September 3, 2018	Labor Day
Monday	October 8, 2018	Columbus Day
Monday	November 12, 2018	Veterans Day
Thursday	November 22, 2018	Thanksgiving Day
Friday	November 23, 2018	Day after Thanksgiving
Tuesday	December 25, 2017	Christmas Day



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INVESTIGATION ASSIGNMENT REQUEST

FAX 800.861.5311

Date / /

Client Information
Company: _____ Claims Rep or Requestor: _____
Address: _____ Phone No: _____
Attorney: _____ Fax No: _____
Address: _____ Phone No: _____

Case Title: _____
Claim or your file No: _____ Attorney File No: _____
Date of Loss: _____ Court Case No: _____

Insured/Client: _____ Driver _____
Address: _____ Phone No: _____
CDL: _____ SSN: _____ DOB: _____
Vehicle Make _____ Model: _____ Year: _____ Plate: _____ Color: _____

Claimant/Other Party 1: _____ Claimant/Other Party 2: _____
Address: _____ Address: _____
City, State, Zip: _____ City, State, Zip: _____
Phone No: _____ Phone No: _____
Vehicle Make _____ Model: _____ Year: _____ Plate: _____ Color: _____
Address: _____ Phone No: _____

Witness 1: _____ Witness 2: _____
Address: _____ Address: _____
City, State, Zip: _____ City, State, Zip: _____
Phone No: _____ Phone No: _____

INVESTIGATION

OBTAIN

- [] Insured/Client Statement [] Photo & Diagram Scene [] Payroll Records
[] Other party's Statement [] Inspect & Photo Vehicle [] Police Report
[] Recorded witness Statement [] Medical Clinic Inspection [] Death Certificate
[] In Person Witness Statement [] Medical Clinic Background [] Driving Record
[] In Person Recorded Witness Statement [] Surveillance/Activity Check [] Vehicle Registration
[] UM Statement [] Employment/LOE [] Other _____
[] Background Check [] Neighborhood Canvas
[] Court Index [] Asset Check
[] Product Liability [] Other _____

CALL BEFORE COMMENCING ASSIGNMENT / Phone: _____

[] RUSH

Need by: _____ (Date)

Special Instruction/Facts of Loss: _____

WORK AUTHORIZED BY: _____ Date: _____

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RECORDS REQUEST

FAX 800.861.5311

RUSH

Date ___/___/___

1. Contact Person: _____ Address: _____ Client/Insured: _____ Policy/File No: _____ Date of Incident: _____ Firm File No: _____ BILLING INFORMATION	2. Firm: _____ Handling Attorney/Adjuster: _____ Address: _____ Phone: _____ Records Pertain To: _____ Court Case No: _____
---	--

Deliver to: 1 2 Other _____

Date Requested: _____ Date Required: _____ IME Date: _____

Case Name: _____ Court: _____

Court Address: _____

Representing Client/Respondent: _____

Record Pertain to: _____ Date of Birth _____ SS# _____

- SDT RE DEPOSITION
- SDT MEDICAL RECORDS
- SDT FOR TRIAL
- SDT FOR ARBITRATION
- AUTHORIZATION

- PERSONAL APPEARANCE
- PERSONAL APPEARANCE WITH RECORDS
- RECORDS TO TRIAL / ARB
- DATE: _____ TIME: _____ DIV / DEPT: _____
- CLINIC OBSERVATION REPORT (\$45)

Other Counsel:

Name: _____

Address: _____ Phone: _____

Special Instructions: _____

Furnish ___ set(s) of records Billings Duplicate X-Rays /MRI/CTs Transcribe (illegible hand written notes)

Locations:	Name	Address	
1.	_____	_____	<input type="checkbox"/> Medical <input type="checkbox"/> Employment <input type="checkbox"/> _____
2.	_____	_____	<input type="checkbox"/> Medical <input type="checkbox"/> Employment <input type="checkbox"/> _____
3.	_____	_____	<input type="checkbox"/> Medical <input type="checkbox"/> Employment <input type="checkbox"/> _____
4.	_____	_____	<input type="checkbox"/> Medical <input type="checkbox"/> Employment <input type="checkbox"/> _____
5.	_____	_____	<input type="checkbox"/> Medical <input type="checkbox"/> Employment <input type="checkbox"/> _____
6.	_____	_____	<input type="checkbox"/> Medical <input type="checkbox"/> Employment <input type="checkbox"/> _____

INVESTIGATION: OBTAINING INFORMATION AND PRESERVING EVIDENCE

By Joseph Jones

ONLINE INVESTIGATIONS:
DO IT RIGHT

PRESENTED BY: JOSEPH JONES
CERTIFIED SOCIAL MEDIA INTELLIGENCE EXPERT

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1

WHAT KINDS OF THINGS ARE
PEOPLE POSTING?

- Information on litigation
- Family relationships
- Social relationships
- Work information
- Romantic relationships
- Religious views
- Political views
- Crimes they are committing
- Whatever stupid thought enters their brain...



2

HOW TO FIND EVIDENCE

- **REAL internet searching**
 - Using OSINT tactics
 - Boolean search terms - use your " " and "
 - There are dozens of other "search operators"
- **Avoid using unlawful methods**
 - i.e. "friending" represented parties or guessing passwords
 - **DO NOT** use your personal account
 - Either use a blank account or a good "decoy"
- **Social Media**
 - Look for content on major & specialty platforms
 - Check friends and family
 - Nothing is secure...

3

INVESTIGATION: OBTAINING INFORMATION AND PRESERVING EVIDENCE

By Joseph Jones

HOW TO FIND EVIDENCE

For those who think their Facebook content is "Private"
<https://findmyfbid.com/>

- www.facebook.com/search/usernumber/photos-of
- www.facebook.com/search/usernumber/photos-commented
- www.facebook.com/search/usernumber/stories-by
- www.facebook.com/search/usernumber/stories-tagged

HOW TO PRESERVE EVIDENCE

- Anything found with SMI is **EVIDENCE!!!**

Lester v. Allied Concrete Co., a Virginia state court reduced a jury award by over \$4,000,000 and ordered the plaintiff and his counsel to pay the defendants over \$700,000 in fees and expenses, because of deliberate deletion of Facebook photos.



HOW TO PRESERVE EVIDENCE

- **NO SCREEN PRINTS!!!**
- Document who found the evidence, when they found it, and how they found it
- Extract metadata
 - MD5 Hash = 32 character hexadecimal string AKA digital fingerprint
 - The who, when, and where of the post

INVESTIGATION: OBTAINING INFORMATION AND PRESERVING EVIDENCE

By Joseph Jones

CLEAN METADATA EXAMPLE

Public Account - @jones | Metadata [Instagram/MetaData0000000001/Preview](#)

Field Name	Value
Event Creation	20201112 12:41:54Z
OS Item Type	image
Item ID	292020188
Postward Account	3625798498
Account Type	0
Content Type	0
Content Expiration Time	01110000 12:26:26 PM
Instagram ID	44163746720144047_126206188
Media Type	image
Instagram Type	0
Author ID	020206188
Author	Stephen Hawking
Author Account	stephenhawking
# Comments	011
MD5 Hash	822625468270209444200148001261710882
Location Name	
Account Name	stephen
Location Description	
Location City	
Location Date	
Caption	
URL	https://www.instagram.com/p/CE1_gf8a301/

SUBPOENAS FOR SOCIAL MEDIA INFORMATION

- Stored Communications ACT – SCA (18 U.S. Code 2701)
 - Protects personal information stored by ISPs
 - Prohibits ISP's from knowingly disclosing information—18 U.S. Code 2702(a)
 - Only exception is disclosure to government for criminal investigations
- Can Only Be Issued For Subscriber Information:
 - Name, Address, IP Address, Length of Service, and Telephone Number
- Ways Around It:
 - Federal Rule of Civil Procedure 34: communication subject to discovery
 - Flagg v. City of Detroit: court can compel originator to direct ISP to release information as normal discovery procedure
 - Court may compel ISP provider to produce information

CASE LAW RE: INTERNET/SOCIAL MEDIA INVESTIGATIONS

- Moroccan v. Marc Anthony Cosmetics- Screenshots of Facebook posts are inadmissible
- Tienda v. State Of Texas- Specific indicia used to authenticate social media evidence
- Thompson v. Autoliv asp, Inc.- Requests for production must be narrowly construed
- Romano v. Steelcase Inc.- Parties must turn over posts if requested properly
- Katz v. United States-Use of decoy accounts is acceptable

www.boscolegal.org/case-law-relevant-social-media-investigations

INVESTIGATION: OBTAINING INFORMATION AND PRESERVING EVIDENCE

By Joseph Jones

CONTACT INFORMATION

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ADDITIONAL RESOURCES

- **Google** Subpoena Information Link:
<https://support.google.com/faqs/answer/6151275?hl=en>
- **Facebook** Subpoena Information Link:
<https://www.facebook.com/help/473784375984502>
- **Instagram** Subpoena Information Link:
Same as Facebook now that it owns Instagram
- **Twitter** Subpoena Information Link:
<https://support.twitter.com/articles/41949>

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ADDITIONAL RESOURCES

- Overview of why SMI is important
<https://www.boscolegal.org/legal-services/social-media-investigations>
- In depth article including additional case law
<https://www.boscolegal.org/social-media-investigations-the-facts/>
- Webinar on utilizing SMI for investigations
<https://www.boscolegal.org/press>

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SETTLEMENT DEMANDS

By Dan Johnson

Objective: The Do's and Don'ts of a Demand and how it impacts the end results

- Reasoning and purposes of the Demand
- Letter presentation and Delivery methods
- Timing of submission relative to Statutes
- Formats and styles
- Language to communicate
- Cut and Paste pitfalls
- Layout order
- Photography of evidence and injury
- Identify and address obstacles
- Time allotment to respond
- Your response – When and Why

**FRAMEWORK FOR AN OFFER TO SETTLE WITHIN POLICY LIMITS:
A POLICY LIMITS DEMAND LETTER**

By Jason R. Sanchez

I. Overview

It is an *Offer* to settle, not a *Demand*—rooted in principles of Contract Law

1. "Both an offer and an acceptance are required to create a contract." CACI 307
2. "An offer must be sufficiently definite, or must call for such definite terms in the acceptance that the performance promised is reasonably certain." *Ladas v. California State Automobile Assn.*, 19 Cal.App.4th 761, 770 (1993).
3. "Terms proposed in an offer must be met exactly, precisely, and unequivocally for its acceptance to result in the formation of a binding contract; and a qualified acceptance amounts to a new proposal or a counteroffer putting an end to the original offer." *Panagotacos v. Bank of America*, 60 Cal.App.4th 851, 855-856 (1998).

II. Understanding the insurance company's duty to its insured provides the Framework

- A. *Rappaport-Scott v. Interinsurance Exch. Of the Auto. Club* 146 Cal.App. 4th 831, 836 (2007)

"The covenant of good faith and fair dealing implied in every insurance policy obligates the insurer, among other things, to accept a reasonable offer to settle a lawsuit by a third party against the insured within policy limits whenever there is a substantial likelihood of recovery in excess of those limits. The insurer must evaluate the reasonableness of an offer to settle a lawsuit against the insured by considering the probable liability of the insured and the amount of that liability, without regard to any coverage defenses. An insurer that fails to accept a reasonable settlement offer within policy limits will be held liable in tort for the entire judgment against the insured, even if that amount exceeds the policy limits.

An insurer's duty to accept a reasonable settlement offer in these circumstances is implied in law to protect the insured from exposure to liability in excess of coverage as a result of the insurer's gamble—on which only the insured might lose."

- B. *Comunale v. Traders & General Ins. Co.*, 50 Cal.2d 654 (1958)

"[T]he implied obligation of good faith and fair dealing requires the insurer to settle in an appropriate case although the express terms of the policy do not impose such a duty. [The insurer] must take into account the interests of the insured and give it at least as much consideration as it does to its own interests." (*Id.* at 659)

- C. *Crisci v. Security Insurance Co. of New Haven Connecticut* 66 Cal.2d 425, 429 (1967), the "prudent insurer" test:

"In determining whether an insurer has given consideration to the interests of the insured, the test is whether a prudent insurer without policy limit would have accepted the settlement offer."

- D. *Johansen v. California State Auto. Asso. Inter-Insurance Bureau*, 15 Cal.3d 9 (1975)

"[T]he only permissible consideration in evaluating the reasonableness of the settlement offer becomes whether, in light of the victim's injuries and the probable liability of the

insured, the ultimate judgment is likely to exceed the amount of the settlement offer."

E. The Framework: An insurance company therefore has a duty to accept:

1. Reasonable offers to settle,
2. At a time when liability is reasonably clear, and
3. The damages are likely to exceed policy limits.

III. Fitting the information of your case into the Framework

A.

B. Subject Line

1. What: Offer To Settle
2. Who: Your Client/Their Insured
3. When: DOL
4. What else: Policy Number and Expiration date of Offer to Settle

C. Opening

1. Provides the reader with the Who, When, How, What, and Why.
 - a. Who: Your Client/Their Insured
 - b. When: DOL
 - c. How: Short Explanation of events that caused your clients injuries/damages (*Liability*)
 - d. What: The *purpose* of your letter
 - i. Unequivocal Offer to Settle
 - ii. Laying out the terms of the Offer to Settle – (*Reasonable*)
 - 1) Settle for Policy Limits
 - 2) Deadline for Acceptance
 - i. *Is it also Reasonable?*
 - (a) What information does Insurance Company already have?
 - (b) Enough time needed to evaluate
 - iii. Method of Acceptance
 - 1) To timely accept:
 - (a) Confirm acceptance in of the offer to settle
 - (b) Confirm policy limits of the Insured by providing a certified copy of the Declarations page for all policies providing coverage
 - i. Note: *Boicourt* letter prior to Offer to Settle letter
 - a. *Boicourt v. Amex Assurance Co.*, 78 Cal.App.4th 1390 (2000)—a carrier's refusal to disclose policy limits could give rise to a bad faith claim because it prevents plaintiffs from making an offer to settle.
- (c) Provide a declaration signed by the Insured, under penalty of perjury, confirming:

- i. NO other policies providing coverage,
- ii. NO excess or umbrella coverage, and
- iii. Insured was not in the Course and Scope of any employment
- iv. Release shall not release any other person or company other than named insured.
 - a. *Rodriguez v. Oto*, 212 Cal.App.4th 1020 (2013)—an injured person who signs a release which unambiguously and expressly releases "all other persons, firms or corporations liable or, who might be claimed to be liable" may be deprived of their rights to pursue any other third person.

- 1. Government Entity
- 2. Products Case
- 3. Any responsible party

iv. Statement of Economic & Non-economic (Exceed policy limits)

IV. Liability

A. Accident v. Collision v. Incident

- 1. Accident—an event that happens by chance or that is without apparent or deliberate cause.
- 2. Collision—an instance of one moving object or person striking violently against another.
- 3. Incident—an event or occurrence.

B. Explanation of the facts

- 1. Auto Case—Facts contained in the Traffic Collision Report
- 2. Dog bite case—Facts leading up to the incident
- 2. Trip and Fall—Facts leading up to the incident

C. Applicable Law:

- 1. Auto Case—Relevant CA Vehicle Codes
- 2. Dog bite—California Code of Civil Procedure section 3342 (a)
- 3. Trip and Fall—Building codes for stairs, lighting, etc.

D. Applicable CACI Instructions

E. Statement that liability rests with the insured.

V. Damages

A. Physical Injuries

- 1. Describe the treatment received as a result of the injuries
- 2. Go step-by-step
 - a. Ambulance to ER
 - b. Admission to ER
 - i. Films in ER
 - ii. Identify Doctors by name
 - c. Surgical Consult by Dr. ___

- d. Surgery
 - i. Date
 - ii. Performed by Dr. ____
 - iii. Description of surgery
- e. Discharge

B. Economic Damages

1. Summary of the Medical Bills to Date
2. Loss of Earnings (Past and Future)
3. Property Damage
4. Future Medical Care

C. Non-Economic Damages

1. Not just Pain, Suffering and Emotional Distress
2. CACI 3905 A. identifies past and future items of non-economic damages:
 - a. Physical Pain
 - b. Mental Suffering
 - c. Loss of enjoyment of life
 - d. Disfigurement
 - e. Physical Impairment
 - f. Inconvenience
 - g. Grief
 - h. Anxiety
 - i. Humiliation
 - j. Emotional distress
3. Include information that hits as many as possible.

VI. Conclusion

A. Remind the Adjuster of their duty to their Insured

1. Cite *Communale*: "[T]he implied obligation of good faith and fair dealing requires the insurer to settle in an appropriate case although the express terms of the policy do not impose such a duty. [The insurer] must take into account the interests of the insured and give it at least as much consideration as it does to its own interests." *Id.* at 659
2. Remind them that under *Johansen*, in determining whether or not to accept the offer, the test is whether or not the ultimate judgment is likely to exceed the amount of the policy limits offer—and that they can be held liable for the entire judgment against their insured, even if the amount exceeds the policy limit, if they fail to accept a reasonable settlement offer.

B. Go over the framework again:

1. Restate that the offer is a clear opportunity to settle,
2. Within policy limits,
3. At a time when liability is reasonably clear based on available information, and
4. That the damages and any judgment, exceed the available limits.

C. Reiterate the deadline for acceptance and the method of acceptance.

[SAMPLE OFFER TO SETTLE LETTER]

_____, 20[##]

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insurance Adjuster Name]
Insurance Company
Address
Phone number
Fax

OFFER TO SETTLE WITHIN POLICY LIMITS

Re: Your Insured:
Claim Number:
My Client:
Date of Loss:

Insurance Carrier:
Policy Number:
Policy Limits: (If known)

Expiration Date of this Offer: [DATE] at 5:00 p.m. Pacific Standard time

Dear Insurance Adjuster:

As you are aware, we represent CLIENT regarding the severe personal injuries he/she suffered in the incident occurring on [DATE].

The purpose of this letter is to provide a clear, final, and unequivocal opportunity to settle within the policy limits of your insured’s policy providing coverage for the DATE incident, [whatever those policy limits might be or the limits themselves, if known], in an effort to resolve this matter without resorting to litigation. This opportunity to settle within policy limits includes a full and final settlement of all claims, including all liens asserted by third parties on CLIENT’s recovery, against UNDERLYING DEFENDANT/INSURED(s).

This offer is being made at a time when the liability of your insured is reasonably clear as defined by California case law. This offer shall remain open for 30 days, and will expire by its own terms on [DATE], at 5:00 p.m. Pacific Standard Time. This offer must be timely accepted in writing.

To timely accept this offer, each and every one of the following three conditions must be satisfied in writing before [DATE] at 5:00 p.m. Pacific Standard Time:

1. Confirm in writing your acceptance of this offer to settle within policy limits;
2. Confirm the policy limits of your insured and provide a certified copy of all policies covering this incident;
3. Provide a signed declaration from your insured(s) under penalty of perjury confirming the following:
 - a. Your insured(s) was/were not within the course and scope of any employment at the time of the incident on _____; and

- b. Your insured(s) has/have no additional, excess, or umbrella insurance coverage which could provide coverage for the losses described herein.
4. Send an appropriate release for CLIENT's signature that releases only UNDERLYING DEFENDANT/INSURED(s). Do not include in the release any other person, firm, corporation, company or entity.

The economic and non-economic damages sustained by CLIENT due to the negligence of your insured(s), as detailed below, are believed to be substantially in excess of your insured's policy limits. It is likely that if the case proceeds to litigation and trial, the award rendered by a jury will greatly exceed the policy limits. Nevertheless, because of the limited insurance coverage available to cover this loss, this offer to settle is hereby made.

I. THE COLLISION

On [DATE], at approximately [TIME], CLIENT was traveling on his way home southbound on his motorcycle in the number one lane of [ROADWAY] in the [CITY]. [UNDERLYING DEFENDANT/INSURED] was traveling northbound on [ROADWAY] in the number one lane preparing to make a left turn onto westbound [ROAD]. After waiting for two pedestrians to cross westbound [ROAD], and without checking for oncoming traffic, [UNDERLYING DEFENDANT/INSURED] proceeded with her left turn, turning directly in front of CLIENT's motorcycle. Unable to avoid the collision, CLIENT was catapulted into the air and ricochet off a tree about 57 feet south of the area of impact, where CLIENT lay unconscious in the number two southbound lane of [ROADWAY].

Surveillance video from a nearby jewelry store captured the collision and shows [UNDERLYING DEFENDANT/INSURED] making a left turn directly in front of CLIENT's motorcycle in violation of California Vehicle Code Section 21801(a) which states:

“The driver of a vehicle intending to turn to the left or to complete a U-turn upon a highway, or to turn left into public or private property, or an alley, shall yield the right-of-way to all vehicles approaching from the opposite direction which are close enough to constitute a hazard at any time during the turning movement, and shall continue to yield the right-of-way to the approaching vehicles until the left turn or U-turn can be made with reasonable safety.”

A copy of the surveillance video and the Traffic Collision report, which identifies [UNDERLYING DEFENDANT/INSURED] as the cause of the collision, scene photographs, and photographs of the motorcycle are enclosed on a disc for your review.

Liability for this collision rests with your insured, [UNDERLYING DEFENDANT/INSURED].

II. DAMAGES

A. Physical Injuries

CLIENT, through no fault of his own, was catastrophically injured as a result of your insured's careless, reckless, and negligent actions.

Upon CLIENT's arrival to the [Hospital] emergency room, he was treated by Dr. [Name], who immediately

intubated CLIENT and inserted a Foley catheter as well as a nasogastric tube. A CT scan of CLIENT's brain showed a subarachnoid hemorrhage and a CT of his chest showed an aortic dissection. Pelvic x-rays revealed a fracture of the superior and inferior pubic ramus and a slight fracture of the iliac wing. CLIENT had to undergo blood and plasma transfusions. Dr. [Name] consulted and stated that the prognosis was guarded. He commented on additional injuries that included a Type B multifocal pulmonary contusion, left hemothorax, small apical pneumothoraces, bilateral adrenal hematoma, a Grade I left renal contusion and laceration. Dr. [Name] cannulated the right femoral vein for a central line. Dr. [Name] performed a neurology consultation and planned to obtain an EEG and a brain MRI to determine whether CLIENT suffered a diffused axonal or hypoxic injury of the brain.

[CLIENT's medical expenses to date total well in excess of \$500,000.] [CLIENT has also suffered extensive emotional distress, mental anguish, suffering, humiliation, and the prolonged strain his condition has put upon his family.] [Due to the extensive damages to CLIENT, should this matter proceed to trial, the likelihood of a verdict well in excess of your insured's policy limits, and easily in excess of seven figures, is reasonably certain.]

B. Economic Damages

1. Medical Specials
2. Loss of Earnings

C. Non-Economic Damages

III. CONCLUSION

As a general rule, the duty of good faith and fair dealing requires a third party liability insurer to settle a lawsuit against its insured when there is a clear and unequivocal offer to settle within policy limits and liability is reasonably clear.

In *Comunale v. Traders & General Ins. Co.*, 50 Cal.2d 654, 328 P.2d 198, the Supreme Court held that, "the implied obligation of good faith and fair dealing requires the insurer to settle in an appropriate case although the express terms of the policy do not impose such a duty." *Id.* at 659. In deciding whether a claim against an insured should be settled, the insurer "must take into account the interest of the insured and give it at least as much consideration as it does to its own interest." *Id.* Typically, the cases where a dispute arises between an insured and his carrier, is where the potential liability of the insured exceeds policy limits and the carrier rejects an offer to settle within those limits. In such a case, the insurer is liable for the entire amount of the ultimate judgment against the insured, irrespective of policy limits, if coverage is shown. *Id.* at 661.

The facts as presently known by the carrier are such that a prudent insurer would take this opportunity to settle the case for the policy limits. The "prudent insurer" test was stated by the California Supreme Court as follows:

"In determining whether an insurer has given consideration to the interests of the insured, the test is whether a prudent insurer without policy limits would have accepted the settlement offer." *Crisci v. Security Insurance Co. of New Haven, Connecticut* (1967) 66 Cal.2d 425, 429.

In making the determination as to whether or not to accept a policy limits demand, the test is whether or not the ultimate judgment is likely to exceed the amount of the policy limits offer. The California Supreme

Court provided guidance on this issue in *Johansen v. California State Auto. Asso. Inter-Insurance Bureau* (1975) 15 Cal.3d 9:

“[I]n deciding whether or not to compromise the claim, the insurer must conduct itself as though it alone were liable for the entire amount of the judgment. . . . [T]he only permissible consideration in evaluating the reasonableness of the settlement offer becomes whether, in light of the victim’s injuries and the probable liability of the insured, the ultimate judgment is likely to exceed the amount of the settlement offer.”
Id. at 16 (emphasis added).

Additionally, you have previously indicated that Mendota is contemplating coverage issues regarding whether or not to timely accept this offer, be mindful of the fact that it is improper to do so.

“[A]n insurer’s ‘good faith,’ though erroneous, belief in noncoverage affords no defense to liability flowing from the insurer’s refusal to accept a reasonable settlement offer.” (*Johansen, supra*, 15 Cal.3d at p. 16, internal citation omitted.)

We wish to make it very clear that if the carrier refuses to timely accept the offer to settle, the carrier will be held liable for the entire judgment.

“The covenant of good faith and fair dealing implied in every insurance policy obligates the insurer, among other things, to accept a reasonable offer to settle a lawsuit by a third party against the insured within policy limits whenever there is a substantial likelihood of a recovery in excess of those limits. The insurer must evaluate the reasonableness of an offer to settle a lawsuit against the insured by considering the probable liability of the insured and the amount of that liability, without regard to any coverage defenses. An insurer that fails to accept a reasonable settlement offer within policy limits will be held liable in tort for the entire judgment against the insured, even if that amount exceeds the policy limits. An insurer’s duty to accept a reasonable settlement offer in these circumstances is implied in law to protect the insured from exposure to liability in excess of coverage as a result of the insurer’s gamble— on which only the insured might lose.” (*Rappaport-Scott v. Interinsurance Exch. of the Auto. Club* (2007) 146 Cal.App.4th 831, 836 [53 Cal.Rptr.3d 245], internal citations omitted.)

Finally, in applying the *Comunale* rule, the case authorities demonstrate that it makes no difference whether a carrier had assumed the defense of the insured in the underlying action or not. Where an insurer wrongfully refuses an offer to settle within policy limits, the same rule applies. The Supreme Court has held insurers liable for an entire judgment, without regard to policy limits, in either context. (See, *Johansen v. California St. Auto. Assn. Inter-Ins. Bur.*, 15 Cal.3d 9, 123 Cal.Rptr. 288, (where the insurer had assumed the defense but nonetheless refused to settle within policy limits), and *Samson v. Transamerica Ins. Co.*, 30 Cal.3d 220, 170 Cal.Rptr. 343.(where the insurer refused to defend its insured)). In *Johansen*, the insurer argued that the *Comunale* rule requiring the payment of the full judgment, without regard for policy limits, only applied to insurers that both refused to settle and defend. In rejecting that argument, the Supreme Court stated:

“Defendant, however, seeks to avoid the *Comunale* rule by asserting that it only applies to an insurer who breaches its duty to defend in addition to failing to settle. Although in *Comunale* the insurer not only refused to settle but also failed to defend, its liability for the excess judgment did not turn on this latter factor. As this court unequivocally stated: ‘The decisive factor fixing the extent of [the insurer’s] liability is not the refusal to defend; it is the refusal to accept an offer to settlement within the policy limits.’ (*Johansen*, 15 Cal.3d at 17.)

Taking into account the strong evidence of liability against your insured, and the substantial damages suffered by CLIENT, it is likely the damages of CLIENT will greatly exceed the policy limits available for this loss if this case proceeds to trial. As stated above, this letter constitutes a clear and unequivocal opportunity to settle within policy limits at a time when liability is reasonably clear in exchange for a release of all claims against your insured(s).

This offer shall remain open until [DATE] at 5:00 p.m. Pacific Standard Time. As stated above, in order to timely accept this offer, each and every one of the following three conditions must be satisfied in writing before [DATE] at 5:00 p.m. Pacific Standard Time:

1. Confirm in writing your acceptance of this offer to settle within policy limits;
2. Confirm the policy limits of your insured(s) and provide a certified copy of all policies covering this incident;
3. Provide a signed declaration from your insured(s) under penalty of perjury confirming the following:
 - a. Your insured(s) was/were not within the course and scope of any employment at the time of the incident on [DATE]; and
 - b. Your insured(s) has/have no additional, excess, or umbrella insurance coverage which could provide coverage for the losses described herein.
4. Send an appropriate release for CLIENT's signature that releases only UNDERLYING DEFENDANT/INSURED(s). Do not include in the release any other person, firm, corporation, company or entity.

Sincerely,

[NAME]

ATTACHMENTS:

Medical Records
Traffic Collision Report
Other relevant documents

SAMPLE CLIENT INTAKE FORM

By Joy Auerbach

DOI:

TYPE:

Name:

Referred By:

Telephone Number:

Email Address:

Address:

Defendant's name:

1st Party Insurance information:

3rd Party Insurance Information:

Property damage estimate:

Pictures:

Police Report:

Injuries:

When Was First Treatment Received?

Doctors:

Health Insurance:

Brief Details:

PI SHEET

Accident Info:

Date: _____ Time: _____

Location: _____

Client's Position: _____ Passengers: _____

Police Agency: _____ Phone: _____

_____ Officer: _____

_____ D.R. No: _____

Facts: _____

Plaintiff: _____ DOB: _____

Address: _____ Cell: _____

_____ Work: _____

Email: _____ Home: _____

SSN: _____ CADL: _____

Felony Conviction: _____

Employer: _____

Job Title: _____ LOE Claim: _____

Salary: _____ Injured at work: _____

Health Insurance:

Phone: _____
Policy: _____
Group: _____

Injuries:

Ambulance: _____ Hospital: _____

Doctor: _____

Treatment: _____ Treatment: _____

Prior Claims: Date: _____ Type: _____

Defendant #1: _____ DOB: _____

_____ Phone: _____

_____ Cell: _____

Description: _____ CADL: _____

Insurance: _____ Policy: _____

_____ Phone: _____

_____ Insured: _____

Coverage: _____

Adjuster: _____

_____ Claim No: _____

_____ Phone: _____

CALENDARING

By Sheri L. Dempsey

I. MOST OF US HAVE A COMPUTERIZED RULES BASED CALENDARING SYSTEM.

A. Great to have system, but you still need to do the calendaring yourself and understand calendaring:

1. Calendaring people not trained to understand what the document is and what it means. They are looking for holes to put it in and it may not fit;

2. We are human and make errors. Need to have a back-up. Another reason for back-up is that most malpractice insurance carriers want at least two systems for calendaring. Calendaring department and a hard calendar. Maybe give example of mistake - asking calendaring for date - input the date correctly, but responded to e-mail with typo in date and it was not double-checked.

II. CANNOT STRESS ENOUGH HOW IMPORTANT IT IS TO READ AND BECOME FAMILIAR WITH THE CODES, LOCAL RULES AND RULES OF COURT.

A. Calendar days vs. Court days. Important to note that not all jurisdictions have the same holidays. State and Federal are different. Also check C.C.P. 12 and subsections that deal with last days to perform an act, etc.

California Code of Civil Procedure Section 12 - *Computation of Time - Holidays Not Reckoned*

“The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.”

California Code of Civil Procedure Section 12a - *Determination of Time*

“(a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday. For purposes of this section, “holiday” means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days that by terms of Section 12b are required to be considered as holidays.

(b) This section applies to Sections 659, 659a, and 921, and to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.”

III. BEGINNING OF CASE

A. Calendaring statute of limitations.

Code sections dealing with statutes of limitation begin with C.C.P. Section 335

Code of Civil Procedure Section 335.1 - *Two Years - Personal Injury and Wrongful Death*

“Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another.”

B. 6-month government claim.

Government Code Section 911.2:

“(a) A claim relating to a cause of action for death or for injury to person or to personal property ... shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action.”

IV. FILING OF COMPLAINT

A. 170.6 challenge. 15 days after notice. If notice mailed, get additional 5 calendar days per 1013.

California Code of Civil Procedure Section 170.6 - *Peremptory Challenge*

“(a) (1) A judge, court commissioner, or referee of a superior court of the State of California shall not try a civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it is established as provided in this section that the judge or court commissioner is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding.

(2) A party to, or an attorney appearing in, an action or proceeding may establish this prejudice by an oral or written motion without prior notice supported by affidavit or declaration under penalty of perjury, or an oral statement under oath, that the judge, court commissioner, or referee before whom the action or proceeding is pending, or to whom it is assigned, is prejudiced against a party or attorney, or the interest of the party or attorney, so that the party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial or hearing before the judge, court commissioner, or referee. If the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to, or who is scheduled to try, the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least 5 days before that date. If directed to the trial of a cause with a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial... If directed to the trial of a civil cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 15 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 15 days after the appearance.”

B. For LASC cases, read Court’s 6th Amended General Order

C. 20 days after filing complaint, can notice depo of a party. C.C.P. Section 2025.210(b)

D. 10 days after service of complaint, can serve written discovery. C.C.P. Section 2030.020(b) Problem with that is if they don’t give to their insurance company - they’re going to end up with extension anyway.

V. DISCOVERY

A. When you get in a SDT to order medical records, make sure you calendar the time within which to file an objection. Sometimes the categories for requested documents are too broad. C.C.P. Section 1985.3(g). Motion to Quash – C.C.P. Section 1987.1.

B. When you get in a demand for IME, make sure and calendar the response time. You want to make sure that you can have someone there to observe, you want to make sure that you're going to get a copy of the doctor's report, limitations to testing, filling out paperwork, etc.

C.C.P. Section 2032.320 - *Response of Plaintiff to Demand*

“(a) The plaintiff to whom a demand for a physical examination under this article is directed shall respond to the demand by a written statement that the examinee will comply with the demand as stated, will comply with the demand as specifically modified by the plaintiff, or will refuse, for reasons specified in the response, to submit to the demanded physical examination.

(b) Within 20 days after service of the demand the plaintiff to whom the demand is directed shall serve the original of the response to it on the defendant making the demand, and a copy of the response on all other parties who have appeared in the action. On motion of the defendant making the demand, the court may shorten the time for response. On motion of the plaintiff to whom the demand is directed, the court may extend the time for response.

C. Motions to Compel

1. Meet & confer requirements. If getting an extension of time to file motion to compel, be aware that only covers items mentioned in M&C letter. Check with the attorney re anything else.

2. Need to schedule an IDC conference. DOES NOT EXTEND YOUR TIME TO FILE A MOTION TO COMPEL. Might want to schedule your motion to compel date at the time you schedule the IDC.

D. Discovery cutoffs. Not always continued if you continue trial date. If continuing trial, make sure you continued trial-related dates, or if you just want time to do expert depositions, only continue expert discovery cutoff.

VI. HOW DOCUMENT SERVED AND EXTRA TIME TO RESPOND

A. Sections 1005 (Motions) and 1013 - Service.

Code of Civil Procedure Section 1005 – *Motions Requiring Written Notice – Time for Service of Papers; Filing and Service of Opposition Papers.*

“(a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the following motions:

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by

facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 16-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.”

B. Serving by fax and e-mail requires WRITTEN AGREEMENT. Exception to this is Rule of Court Rule 2.251 – *Electronic Service*

“(b) Electronic service by consent of the parties

(1) Electronic service may be established by consent of the parties in an action. A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or

(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court under rule 2.256(a)(4). This subparagraph (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A).”

C. Per C.C.P. 12c, you are to count backward from the hearing date to determine what kind of service you need to do.

VII. MOTIONS

A. Be proactive. When you get a document in, don't assume the noticing party has done their job correctly. Double check to see that the document was timely noticed and that the hearing date is prior to any cutoffs. I.E., MSJ just be heard 30 days before trial. 75 days minimum notice.

B. Oppositions and replies must be served to ensure delivery by close of the next business day. C.C.P. Section 1005(c)

C. Read Rules of Court Rules 3.110-3.1116 for pleading requirements

D. Demurrers - Per C.C.P. 430.41, the parties are to meet & confer prior to its filing.

E. MSJs - Calendar the 14-day opposition date. Also ask the attorney if they need to schedule any depositions and if the MSJ needs to be sent to an expert for preparation of a declaration. Also do reminder e-mails re due dates. Ask filing party for electronic version of their Separate Statement. Per Rule of Court Rule 3.1350(i), they are obligated to provide.

VIII. TRIAL

A. When a trial date is assigned, there are a number of dates that are kicked off. Make sure and calendar each date.

1. Make sure and read the Court's Fourth Amended General Order

- a. Judge's deadlines vs. Local rules, etc.

2. I do reminders for motions in limine, oppositions and replies, trial documents and exhibit binders, 1987 notices.

B. When you are about 120 days out, sit down with your team and figure out what needs to be done; i.e., follow-up discovery, depositions, ordering updated medical records and bills; retaining experts and getting documents to them.

IX. POST-TRIAL

A. C.C.P. 659a deals with a lot of the post-trial work which needs to be done. PLEASE NOTE THAT THE ADDITIONAL TIME DEADLINES GIVEN BY C.C.P. 1013 DON'T ALWAYS APPLY TO POST-TRIAL TYPE MOTIONS.

A SNAPSHOT OF FEDERAL COURT, INCLUDING CALENDARING AND ELECTRONIC FILING

By Lupe Flores

I. A General Overview of Federal Court

A. The United States District Courts are Federal Trial Courts

1. Many states have several federal districts. For example, California is divided into four districts:
 - a. The Central District: Los Angeles (Western Division); Santa Ana (Southern Division); and, Riverside or San Bernardino (Eastern Division). (<https://www.cacd.uscourts.gov/>).
 - b. The Eastern District: Sacramento and Fresno. (<http://www.caed.uscourts.gov/caednew/>).
 - c. The Northern District: San Francisco, Oakland, San Jose and Eureka. (<https://www.cand.uscourts.gov/home>).
 - d. The Southern District: San Diego. (<https://www.casd.uscourts.gov/SitePages/Home.aspx>).

B. Federal Jurisdiction

1. "Federal Question" refers to a case involving claims wherein a federal law has been violated including, claims arising under the U.S. Constitution, federal statutes, administrative regulations or common law.
2. "Diversity of Citizenship" refers to a case where parties to the action are citizens of a different state. This includes corporations and individuals.
3. "Removal Jurisdiction" refers to a case that was originally filed in State court and has been removed to Federal court.

C. Familiarize Yourself with the Rules of Court

1. To determine calendaring and procedures, reference the sources below in the following order:
 - a. The Federal Rules of Civil Procedure ("FRCP These rules govern court procedure for civil proceedings in U.S. District Courts. Go to <http://www.uscourts.gov/sites/default/files/rules-of-civil-procedure.pdf> to download a PDF version of the Federal Rules of Civil Procedure.
 - b. Local Rules: Local Rules apply to all civil actions and proceedings in the specific district of U.S. District Court. There are Local Rules available for each district. These are usually found on the courts' websites under the either "Court Procedures" or "Rules" tab. Local Rules occupy a more limited role in disclosures and discovery, this is governed by the FRCP. Note that revisions to the Local Rules are generally made twice a year, on June 1 and December 1.
 - c. Judges Procedures/Standing Order or "Local local rules": These rules apply to how a Judge prefers certain documents to be filed and/or served when motions are heard, and orders regarding Civil Trials, among other things. However, it must be noted that these rules always likely refer to the Local Rules or Federal Rules of Civil Procedures. These are usually found through the courts' websites under the "Judges" tab on the homepage.

II. Calendaring

- A. Although we have many computerized programs to assist with calendaring in Federal Court that recognize deadlines imposed by the FRCP and the specific district's local

rules —DO NOT RELY ON THAT ONLY —always double check that all deadlines are correct and comply with all rules.

- B. General Calculation of Time (FRCP, Rule 6)
1. Exclude the day of the event that triggers the time period (*i.e. when a discovery request was received*).
 2. Count every day, including Saturdays and Sundays and legal holidays.
 3. Include the last day of the time period but, if the last day falls on a Saturday, Sunday or legal holiday, the time period runs until the end of the next business day.
- C. Responsive Pleading (FRCP, Rules 12)
1. A party must serve an answer to a Complaint, Counterclaim or Crossclaim within 21 days of being served.
- D. Amending a Complaint (FRCP, Rule 15)
1. A party may amend its Complaint once without leave of court within 21 days after service or, 21 days after service of the responsive pleading.
 2. Absent a court order, any required response to an amended Complaint must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.
- E. Duty to Disclose; General Provisions Governing Discovery (FRCP, Rule 26)
1. Whether you filed directly in federal court or were removed to federal court, you will receive notice from the court of a scheduling conference. Prior to this conference, the parties must meet and confer on the nature and basis of their claims/defenses and propose a discovery plan.
 - a. The parties must meet and confer no later than 21 days prior to the scheduling conference and a Joint Rule 26(f) Report must be prepared.
 - b. The parties Joint Rule 26(f) Report must be filed no later than 14 days prior to the Scheduling Conference.
 - c. A party must make their initial disclosures (FRCP, Rule 26(a)(1)(A)) 14 days after the parties' scheduling conference. Disclosures must include the following:
 - i. The names, address and telephone number of all witnesses that support the disclosing party's claims. (FRCP, Rule 26(a)(1)(A)(i)).
 - ii. Identify and provide all documents by description and location of documents that support the disclosing party's claims. (FRCP, Rule 26(a)(1)(A)(ii)).
 - iii. Identify the damages that the disclosing party is seeking. (FRCP, Rule 26 (a)(1)(A)(iii)).
 - iv. Identify any evidence of insurance. (FRCP, Rule 26(a)(1)(A)(iv)).
 - c. Parties may supplement their initial disclosures in a timely manner as new information is learned throughout the case.
- F. Scheduling Order
1. Following the scheduling conference, a Judge will issue a scheduling order as soon as practical, or within days after any defendant has been served with the complaint or 60 days after any defendant has appeared. (FRCP, Rule 16(b)).
 2. Dates Contained in the Order:
 - a. Discovery Cut-Off.
 - b. Expert Discovery Cut-Off.
 - c. Motion Filing Cut-Off.
 - d. Final Pretrial Conference.

- e. Jury Trial (*with trial estimate*).
- f. Notice to Counsel re Preparation of Trial which may include:
 - i. When Motions in Limine must be filed.
 - ii. How Exhibits must be presented and submitted.
- 3. It is important to note that although a scheduling order may be modified, it must be done with the court's consent via stipulation or motion.

G. Discovery

- 1. Discovery is closed and parties may not obtain discovery from any source before the parties have fully complied with FRCP, Rule 26.
- 2. Methods of Discovery:
 - a. Depositions by Oral Examination (FRCP, Rule 30): Unlike depositions in state court and the Code of Civil Procedure timing requirements, in federal court, a party must give "reasonable written notice" to every party that they want to depose a person. The notice must state the time and place of the person and the deponents name and address.
 - i. "Reasonable written notice" also applies to a subpoena of a third-party witness.
 - ii. A deposition pursuant to FRCP 30(b)(6) is the equivalent to a deposition of a person most qualified in state court.
 - iii. A party must seek leave of court if a deposition will result in more than 10 depositions being taken by the plaintiff, defendant or third-party defendants. (FRCP, Rule 31(1)(A)(1)).
 - b. Written Discovery: (FRCP, Rules 33, 34 and 36) This may include interrogatories, request for production of documents, and requests for admission. A responding party must serve its answers and any objections to written discovery within 30 days after being served with the discovery.
 - i. Unless otherwise stipulated and ordered by the court, a party may only propound a total of 25 interrogatories on another party. (FRCP, Rule 33(a)(1)).
 - ii. Documents are usually (and should be) produced at time of the initial disclosures; however, if you haven't received them by the time discovery begins, you can prepare a request for production of documents requesting the documents outlined in the opposing party's disclosures. There are no limitations to how many requests a party may propound.
 - iii. When responding to requests for admission, if a request is not admitted, then the answer must specifically denied or state in detail why a party cannot admit or deny a request directly within the response. There is not a corresponding interrogatory in federal court for an unqualified admission. (FRCP, Rule 36(a)(4))
 - iv. It is important to note that if a request for admission is admitted, it is deemed admitted and cannot be amended or withdrawn unless permitted by the court, by motion. (FRCP, Rule 36(b)).
 - c. Motions to Compel: If a party receives deficient discovery responses, there is not specified time period in which to meet and confer as, the 45 day deadline in state court. Again, a party must meet and confer within a "reasonable time." However, one must be extremely conscious of the discovery cut-off deadline set in the scheduling order. Should a motion to compel need to be filed, a party must allow sufficient time to meet and confer, receive supplemental responses, and serve and have a motion heard in advance of the discovery cut-off.

- i. Unless otherwise specified in the Local Rules or "local local rules" a written motion and notice of hearing must be served at least 14 days before the time specified for the hearing. (FRCP, Rule 6(c)).

H. Experts

1. A party must disclose to the other parties not only the identities of their expert but a written report that must provide a complete statement of the expert's opinions, the data used to consider and form those opinions, the expert's qualifications, a list of cases in which the expert has testified as an expert in trial and deposition for the previous four years, as well as the expert's compensation requirements.
2. The deadline for the expert disclosure may be contained within the scheduling order or the parties may stipulate to the date. However, expert disclosure must be made at least 90 days before the date set for trial or for the case to be ready for trial. (FRCP, Rule 26(a)(2)).
3. All expert discovery including depositions must be completed by the expert discovery cut-off set in the scheduling order.

I. Pre-Trial Disclosures (FRCP, Rule 26(a)(3))

1. In addition to a party's initial disclosures made early on in the case, a party must also prepare and serve pre-trial disclosures which include, the name, address and telephone number of each witness it may call at trial, the designation of witnesses a party expects to present, the identify of all documents a party intends to use as evidence in trial.
2. These disclosures must be made at least 30 days before trial.
3. A party may object to a party's pre-trial disclosures 14 days after they have been made.

J. Trial

1. The dates of your final pre-trial conference and trial date will be contained within your scheduling order. However, a party must meet and confer at least 40 days before the date set for the final pre-trial conference. (FRCP, Rule 16).
2. For trial preparation and deadlines, refer to the district's Local Rules and "local local rules." These rules will include how to accomplish the stipulation to facts, disclosure of exhibits, disclosure of witnesses, expert witnesses and evidentiary matters, lodging and the use of depositions, and memorandum of contentions of fact and law.

III. Electronic Filing

- A. In federal court, the filing and lodging of documents is done electronically through the the court's CM/ECF System. You must create a login and password before you begin using the CM/ECF System.
- B. You will find all requirements for electronic filing ("e-filing") not specified in the FRCP in the Local Rules. Just as the FRCP governs more of the discovery and disclosures in a federal case, the Local Rules establish the policies and procedures on how to file and lodge documents with the court.
- C. When a document is filed through the CM/ECF System, it is automatically served on all parties to the case that are registered with the system via email. Thus, unless otherwise specified a document that has been submitted to the CM/ECF System does not additionally need to be mailed.
 1. Documents must still contain a proof of service.
- D. Documents not filed electronically must be served in accordance with FRCP, Rule 5.

- E. Once a document has been filed, a "notice of electronic filing" will be generated for each document with a PDF file of the filed document to all registered recipients for immediate download.
- F. Unless otherwise specified, case-initiating documents such as a summons and complaint must be filed electronically in accordance with the FRCP and Local Rules.
 - 1. The summons must be presented electronically for issuance by the clerk. An approved summons may be found on the court's website www.cacd.uscourts.gov.
- G. Make sure to always check the Local Rules for documents that are excluded from e-filing.
- H. When submitting proposed order, judgments or other documents that require a Judge's signature, parties electronically file those documents as an attachment to the main electronically filed document (i.e. motion or stipulation) but must also submit a Microsoft Word version of the proposed document along with a PDF copy of the electronically filed main document via email directly to the Judge's chambers. This email address may be found in the "local-local rules" or Judge's Orders.
 - 1. The subject line of the email must contain the court's district office, year, case number, and document control number.
- I. Mandatory Chamber Copies: This is an exact copy of an electronically filed document; however, it is submitted directly to the assigned Judge in a paper format. A copy of every electronically filed document must be delivered to the assigned Judge no later than 12:00 noon on the following business day.
- J. Deadline for E-Filing: All electronic transmissions of documents must be completed before midnight on the due date in order to be considered filed on that day.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCOTTSDALE INSURANCE)	Case No. CV 15-00436 DDP (FFMx)
COMPANY,)	
)	SCHEDULING ORDER
Plaintiff,)	
)	
v.)	
)	
NATIONWIDE MEDICAL, INC.,)	
HOWARD SIEGEL, DAVID SIEGEL,)	
)	
Defendants.)	
_____)	
)	
)	

Pursuant to the Federal Rules of Civil Procedure 16(b), the Court issues the following Order:

Counsel must agree on the date for the disclosure of expert witness reports pursuant to the Federal Rules of Civil Procedure 26(a)2. The agreed-upon disclosure date must precede the discovery cut-off date such that all discovery, including expert depositions, must be completed prior to the discovery cut-off date. All discovery motions must be heard prior to the discovery cut-off date.

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1 FACT DISCOVERY CUT-OFF: 07-03-17
2 EXPERT DISCOVERY CUT-OFF: 09-11-17
3 LAST DAY TO FILE MOTIONS: 09-25-17
4 FINAL PRE TRIAL CONFERENCE: 01-22-18 at 11:00 a.m.
5 4 - 7 DAY JURY TRIAL: 01-30-18 at 9:00 a.m.

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Dated: January 24, 2017


DEAN D. PREGERSON
United States District Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Ad.Com Interactive Media, Inc., et
al.,

Plaintiff(s),

v.

Great American E and S Insurance,

Defendant(s).

CASE NO. CV 16-7150-MWF(GJSx)

ORDER RE JURY TRIAL

I. ORDER RE DEADLINES

II. ORDER RE TRIAL
PREPARATION

III. ORDER GOVERNING
CONDUCT OF ATTORNEYS
AND PARTIES

Trial: February 20, 2018
Time: 8:30 a.m.

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I.**DEADLINES**

Last Day to Add Parties/Amend Pleadings	April 24, 2017
Non-expert Discovery Cut-off	September 15, 2017
Expert Disclosure (Initial)	October 10, 2017
Expert Disclosure (Rebuttal)	October 25, 2017
Expert Discovery Cut-off	November 13, 2017
Last Day to Hear Motions	November 13, 2017
Last Day to Conduct ADR Proceeding	November 27, 2017
File Memorandum of Contentions of Fact and Law, Exhibit and Witness Lists, Status Report regarding settlement, and all Motions in Limine	January 9, 2018
Lodge Pretrial Conference Order, file agreed set of Jury Instructions and Verdict forms, file statement regarding Disputed Instructions and Verdict Forms, and file oppositions	January 16, 2018
Final Pretrial Conference and Hearing on Motions in Limine	January 29, 2018, at 11:00 a.m.
Trial Date (Est. __ Days)	February 20, 2018, at 8:30 a.m.

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1 A. PARTIES/PLEADINGS

2 The Court has established a cut-off date for adding parties or amending
3 pleadings. All motions to add parties or to amend the pleadings must be noticed
4 to be *heard* on or before the cut-off date. All unserved parties will be dismissed
5 at the time of the pretrial conference pursuant to Local Rule 16-8.1.

6 B. DISCOVERY AND DISCOVERY CUT-OFF

7 1. Discovery Cut-off: The Court has established a cut-off date for
8 discovery, including expert discovery, if applicable. This is not the date by which
9 discovery requests must be served; it is the date by which all discovery, *including*
10 *all hearings on any related motions*, is to be completed.

11 2. Discovery Disputes: Counsel are expected to comply with the
12 Federal Rules of Civil Procedure and all Local Rules concerning discovery.
13 Whenever possible, the Court expects counsel to resolve discovery problems
14 among themselves in a courteous, reasonable and professional manner. The
15 Court expects that counsel will adhere strictly to the Civility and Professionalism
16 Guidelines (which can be found on the Court’s website under Attorney
17 Information, Attorney Admissions).

18 3. Discovery Motions: Any motion challenging the adequacy of
19 discovery responses must be filed, served, and calendared sufficiently in advance
20 of the discovery cut-off date to permit the responses to be obtained before that
21 date if the motion is granted.

22 4. Depositions: All depositions shall commence sufficiently in advance
23 of the discovery cut-off date to permit their completion and to permit the
24 deposing party enough time to bring any discovery motions concerning the
25 deposition before the cut-off date. Given the requirements to “meet and confer”
26 and to give notice, in most cases a planned motion to compel must be discussed
27 with opposing counsel at least six weeks before the cut-off.

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1 5. Written Discovery: All interrogatories, requests for production of
2 documents and requests for admissions must be served sufficiently in advance of
3 the discovery cut-off date to permit the discovering party enough time to
4 challenge (via motion practice) responses deemed to be deficient.

5 6. Expert Discovery: All disclosures must be made in writing. The
6 parties should begin expert discovery shortly after the initial designation of
7 experts. The final pretrial conference and trial dates will not be continued merely
8 because expert discovery is not completed. Failure to comply with these or any
9 other orders concerning expert discovery may result in the expert being excluded
10 as a witness.

11 C. LAW AND MOTION

12 1. The Court has established a cut-off date for the *hearing* of motions.
13 All motions must be noticed so that the *hearing* takes place on or before the
14 motion cut-off date. Counsel are advised that the Court may close a hearing date
15 once the number of motions filed exceeds the maximum number of motions that
16 reasonably can be heard on that date. Counsel should anticipate that a preferred
17 hearing date may not be unavailable. Therefore, to avoid being unable to file a
18 motion to be heard by the cut-off date, counsel *should file motions sufficiently in*
19 *advance of the hearing cut-off date to ensure that a hearing date is available.*

20 2. Counsel must provide Chambers with conformed Chambers copies
21 of all documents. Chambers copies should not be put in envelopes. Counsel
22 should consult the Court's website at www.cacd.uscourts.gov, Judges' Procedures
23 and Schedules, Hon. Michael W. Fitzgerald, for further information regarding
24 Chambers copies and motion procedures.

25 D. SETTLEMENT PROCEDURES

26 Counsel must complete a settlement conference under the Court-Directed
27 ADR Program no later than the date set by the Court. If the parties desire to
28 participate in an ADR procedure other than that elected in the Rule 26(f)

1 Scheduling Report and Order, they shall file a stipulation with the Court. this
2 request will not necessarily be granted.

3 No case will proceed to trial unless all parties, including the principals of
4 all corporate parties, have appeared personally at a settlement conference.

5 E. FINAL PRETRIAL CONFERENCE

6 A final pretrial conference date has been set pursuant to Rule 16 of the
7 Federal Rules of Civil Procedure and Local Rule 16-8. Unless excused for good
8 cause, each party appearing in this action shall be represented at the final pretrial
9 conference by the lead trial counsel for that party. Counsel should be prepared to
10 discuss streamlining the trial, including presentation of testimony by deposition
11 excerpts or summaries, time limits, stipulations as to undisputed facts, and
12 qualification of experts by admitted resumes.

13 **II.**

14 **TRIAL PREPARATION**

15 A. PRETRIAL DOCUMENTS

16 1. All pretrial document copies shall be delivered to the Court “binder-
17 ready” (three-hole punched on the left side, without blue-backs, and stapled only
18 in the top left corner).

19 2. **STRICT COMPLIANCE WITH LOCAL RULE 16 IS REQUIRED.**
20 **THIS ORDER SETS FORTH SOME DIFFERENT AND SOME ADDITIONAL**
21 **REQUIREMENTS. THIS COURT DOES NOT EXEMPT *PRO PER* PARTIES**
22 **FROM THE REQUIREMENTS OF RULE 16.** Carefully prepared memoranda of
23 contentions of fact and law, witness lists, a joint exhibit list, and a proposed final
24 pretrial conference order shall be submitted in accordance with the Rules, and the
25 format of the proposed final pretrial conference order shall conform to the format
26 set forth in Appendix A to the Local Rules. Failure to comply with these
27 requirements may result in the final pretrial conference being taken off-calendar
28 or continued, or in other sanctions.

1 3. The filing schedule for pretrial documents is as follows.

2 a. At least 21 days before final pretrial conference:

- 3 • Memorandum of contentions of fact and law
- 4 • Witness lists
- 5 • Joint exhibit list
- 6 • Motions *in limine*

7 b. At least 14 days before final pretrial conference:

- 8 • Proposed final pretrial conference order
- 9 • Proposed jury instructions
- 10 • Proposed verdict forms
- 11 • Statement of the case
- 12 • Proposed additional voir dire questions, if desired
- 13 • Oppositions to motions *in limine*

14 c. At least 7 days before trial:

- 15 • Trial briefs, if desired

16 4. In addition to the requirements of Local Rule 16, the witness lists
17 must include a brief description (one or two paragraphs) of the testimony and a
18 time estimate for both direct and cross-examination (separately stated).

19 B. MOTIONS IN LIMINE

20 Each party is limited to five (5) motions *in limine*, unless the Court grants
21 leave to file additional motions. All motions and oppositions are limited to ten
22 (10) pages in length. All motions *in limine* must be filed at least three weeks
23 before the final pretrial conference; oppositions must be filed at least two weeks
24 before the final pretrial conference; reply briefs will not be accepted. Counsel are
25 to meet and confer with opposing counsel to determine whether opposing counsel
26 intend to introduce the disputed evidence and to attempt to reach an agreement
27 that would obviate the motion. The Court will rule on motions *in limine* at the
28 final pretrial conference. Motions *in limine* should address specific issues (e.g.,

1 not “to exclude all hearsay”). Motions *in limine* should not be disguised motions
2 for summary adjudication of issues.

3 C. JURY INSTRUCTIONS, STATEMENT OF THE CASE, AND
4 VOIR DIRE

5 1. Pursuant to Local Rule 16-2, lead trial counsel for each party are
6 required to meet and confer in person. The Court expects strict compliance with
7 Local Rule 16-2. Fourteen days before the Local Rule 16-2 meeting, the parties
8 shall exchange their respective proposed jury instructions and special verdict
9 forms. Ten days prior to the Local Rule 16-2 meeting, each shall serve objections
10 to the other’s instructions and verdict forms. Before or at the Rule 16-2 meeting,
11 counsel are ordered to meet and confer and attempt to come to agreement on the
12 proposed jury instructions and verdict forms.

13 2. *At the time of filing the proposed final pretrial conference order,*
14 counsel shall file with the Court a JOINT set of jury instructions on which there is
15 agreement. All blanks in standard forms should be filled in. The Court expects
16 counsel to agree on the substantial majority of jury instructions, particularly when
17 pattern or model instructions provide a statement of applicable law. If one party
18 fails to comply with the provisions of this section, the other party must file a
19 unilateral set of jury instructions.

20 3. *At the same time,* each party shall file its proposed jury instructions
21 that are objected to by any other party. Each disputed instruction must have
22 attached a short statement (one or two paragraphs), including points and
23 authorities, in support of the instruction and a brief statement, including points
24 and authorities, in support of any objections. If applicable, a proposed alternative
25 instruction must be provided.

26 4. When the *Manual of Model Jury Instructions for the Ninth Circuit*
27 provides an applicable jury instruction, the parties should submit the most recent
28 version, modified and supplemented to fit the circumstances of this case. Where

1 California law applies, counsel should use the current edition of the *Judicial*
2 *Council of California Civil Jury Instructions* (“CACI”). If neither is applicable,
3 counsel should consult the current edition of O’Malley, et al., *Federal Jury*
4 *Practice and Instructions*. Each requested instruction shall (a) cite the authority
5 or source of the instruction, (b) be set forth in full, (c) be on a separate page, (d)
6 be numbered, (e) cover only one subject or principle of law, and (f) not repeat
7 principles of law contained in any other requested instruction.

8 Counsel may submit alternatives to these instructions only if counsel has a
9 reasoned argument that they do not properly state the law or they are incomplete.

10 5. Counsel must provide the documents described in paragraphs 2 and 3
11 to the Chambers email box in Word or WordPerfect 9 (or above) format *at the*
12 *time they file their proposed jury instructions*.

13 6. The Court will send one or more copies of the instructions into the
14 jury room for the jury’s use during deliberations. Therefore, in addition to the
15 copies described above, the Chambers email version must contain a “clean” set of
16 jury instructions, containing only the text of the instruction (one per page) with
17 the caption “Instruction No. __” at the top (eliminating titles, supporting
18 authority, etc.).

19 7. Counsel must provide an index of all instructions submitted, which
20 must include the following:

- 21 a. the number of the instruction;
- 22 b. the title of the instruction;
- 23 c. the source of the instruction and any relevant case citations;
- 24 and
- 25 d. the page number of the instruction.

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1 For example:

2 <u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page Number</u>
3 1	Trademark-Defined 4 (15.U.S.C. § 1127)	9th Cir. 8.5.1	1

5
6 8. During the trial and before argument, the Court will meet with
7 counsel and settle the instructions, and counsel will have an opportunity to make
8 a further record concerning their objections.

9 9. *At the time of filing the proposed final pretrial conference order,*
10 counsel should file a jointly prepared one- or two-page statement of the case to be
11 read by the Court to the prospective panel of jurors before commencement of voir
12 dire.

13 10. The Court will conduct the voir dire. The Court provides a list of
14 basic questions, and may provide a list of additional questions to jurors before
15 voir dire. (This is not a questionnaire to be completed by jurors.) Counsel may,
16 but are not required to, file and submit (electronically to the Chambers email box
17 and in paper form) a list of proposed case-specific voir dire questions at the time
18 they file the proposed final pretrial conference order.

19 11. In most cases the Court will conduct its initial voir dire of 14
20 prospective jurors who will be seated in the jury box. Generally the Court will
21 select eight jurors.

22 12. Each side will have three peremptory challenges. If fourteen jurors
23 are seated in the box and all six peremptory challenges are exercised, the
24 remaining eight jurors will constitute the jury panel. If fewer than six peremptory
25 challenges are exercised, the eight jurors in the lowest numbered seats will be the
26 jury. The Court will not necessarily accept a stipulation to a challenge for cause.
27 If one or more challenges for cause are accepted, and all six peremptory
28 challenges are exercised, the Court may decide to proceed with six or seven

1 jurors.

2 D. TRIAL EXHIBITS

3 1. Exhibits must be placed in three-ring binders indexed by exhibit
4 number with tabs or dividers on the right side. Counsel shall submit to the Court
5 an original and one copy of the binders. The spine portion of the binder shall
6 indicate the volume number *and* contain an index of each exhibit included in the
7 volume.

8 2. The Court requires that the following be submitted to the Courtroom
9 Deputy Clerk (“CRD”) on the *first day of trial*:

10 a. The party’s witness list in the order in which the witnesses
11 may be called to testify.

12 b. The joint exhibit list in the form specified in Local Rule 16-5
13 (Civil), which shall be sent in Word or WordPerfect format to the Chambers
14 email box no later than noon on the Monday before trial.

15 c. All of the exhibits (except those to be used for impeachment
16 only), with official exhibit tags attached and bearing the same number shown on
17 the exhibit list. Exhibit tags may be obtained from the receptionist in the Public
18 Intake Section, located on the Main Street level of the courthouse at 312 North
19 Spring Street, Room G-19. Exhibits shall be numbered 1, 2, 3, etc., NOT 1.1, 1.2,
20 etc. The defense exhibit numbers shall not duplicate plaintiff’s numbers. If a
21 “blow-up” is an enlargement of an existing exhibit, it shall be designated with the
22 number of the original exhibit followed by an “A.” These items (and the items
23 listed in d and e below) shall be provided on the first day of trial.

24 d. The binder of *original exhibits* with the Court’s exhibit tags,
25 yellow tags for plaintiff and blue tags for defendant, stapled to the front of the
26 exhibit at the upper right-hand corner with the case number, case name, and
27 exhibit number placed on each tag.

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1 e. A three-ring binder containing a copy of all exhibits that can
2 be reproduced, and a copy of the witness list. Each exhibit shall be tabbed with
3 the exhibit number for easy referral.

4 f. A three-ring binder containing a copy of all exhibits for use by
5 witnesses.

6 3. A copy of the exhibit list with all *admitted exhibits* will be given to
7 the jury during deliberations. Counsel shall review and approve the exhibit list
8 with the CRD before the list is given to the jury.

9 4. Where a significant number of exhibits will be admitted, the Court
10 encourages counsel, preferably by agreement, to consider ways in which
11 testimony about exhibits may be made intelligible to the jury while it is being
12 presented. Counsel should consider such devices as overhead projectors, jury
13 notebooks for admitted exhibits or enlargements of important exhibits. [The Court
14 has an Elmo and other equipment available for use during trial.] Information
15 concerning training on the use of electronic equipment is available. Details are
16 posted on the Court's website. To make reservations for training, call 213-894-
17 3061. The Court does not permit exhibits to be "published" by passing them up
18 and down the jury box. Exhibits may be displayed briefly using the screens in the
19 courtroom, unless the process becomes too time-consuming.

20 5. All counsel are to meet not later than ten days before trial and to
21 stipulate, so far as is possible, to foundation, to waiver of the best evidence rule
22 and to those exhibits that may be received into evidence at the start of the trial.
23 The exhibits to be so received will be noted on the Court's copy of the exhibit list.

24 E. COURT REPORTER

25 Any party requesting special court reporter services for any hearing (*i.e.*,
26 real time transmission, daily transcripts) shall notify the reporter *at least 2 weeks*
27 *before the hearing date.*
28

1 F. JURY TRIAL

2 1. On the first day of trial, court will commence at 9:00 a.m. and
3 conclude at approximately 4:30 p.m. with a one-hour lunch break. On the first
4 day of trial, *counsel must appear at 8:30 a.m.* to discuss preliminary matters with
5 the Court. After the first day of trial, trial days are Tuesday through Friday from
6 8:30 a.m. to approximately 2:00 p.m. with two twenty-minute breaks.

7 2. On the first day of trial, the jury panel will be called when the Court
8 is satisfied that the matter is ready for trial. Jury selection usually takes only a
9 few hours. Counsel should be prepared to proceed with opening statements and
10 witness examination immediately after jury selection.

11 3. In most cases the Court will conduct its initial voir dire of 14
12 prospective jurors who will be seated in the jury box. Generally the Court will
13 select eight jurors.

14 4. Each side will have three peremptory challenges. If 14 jurors are
15 seated in the box and all six peremptories are exercised, the remaining eight jurors
16 will constitute the jury panel. If fewer than six peremptories are exercised, the
17 eight jurors in the lowest-numbered seats will be the jury. The Court will not
18 necessarily accept a stipulation to a challenge for cause. If one or more
19 challenges for cause are accepted and all six peremptories are exercised, the Court
20 may decide to proceed with six or seven jurors.

21 **III.**

22 **CONDUCT OF ATTORNEYS AND PARTIES**

23 A. **OPENING STATEMENTS, EXAMINING WITNESSES, AND**
24 **SUMMATION**

- 25 1. Counsel must use the lectern.
26 2. Counsel must not consume time by writing out words, drawing
27 charts or diagrams, etc. Counsel may prepare such materials in advance.

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1 B. OBJECTIONS TO QUESTIONS

2 1. Counsel must not use objections for the purpose of making a speech,
3 recapitulating testimony, or attempting to guide the witness.

4 2. When objecting, counsel must rise to state the objection and state
5 only that counsel objects and the legal ground of objection. If counsel wishes to
6 argue an objection further, counsel must ask for permission to do so.

7 C. GENERAL DECORUM

8 1. Counsel should not approach the CRD or the witness box without
9 specific permission and must return to the lectern when the purpose for
10 approaching has been accomplished.

11 2. Counsel should rise when addressing the Court, and when the Court
12 or the jury enters or leaves the courtroom, unless directed otherwise.

13 3. Counsel should address all remarks to the Court. Counsel are not to
14 address the CRD, the court reporter, persons in the audience, or opposing counsel.
15 If counsel wish to speak with opposing counsel, counsel must ask permission to
16 do so. Any request for the re-reading of questions or answers shall be addressed
17 to the Court. Requests may not be granted.

18 4. Counsel should not address or refer to witnesses or parties by first
19 names alone, with the exception of witnesses under 14 years old.

20 5. Counsel must not offer a stipulation unless counsel have conferred
21 with opposing counsel and have verified that the stipulation will be acceptable.

22 6. While Court is in session, counsel must not leave counsel table to
23 confer with any person in the back of the courtroom unless permission has been
24 granted in advance.

25 7. Counsel shall not make facial expressions, nod, or shake their heads,
26 comment, or otherwise exhibit in any way any agreement, disagreement, or other
27 opinion or belief concerning the testimony of a witness. Counsel shall admonish
28 their clients and witnesses not to engage in such conduct.

1 8. Counsel should not talk to jurors at all, and should not talk to co-
2 counsel, opposing counsel, witnesses, or clients where the conversation can be
3 overheard by jurors. Each counsel should admonish counsel's own clients and
4 witnesses to avoid such conduct.

5 9. Where a party has more than one lawyer, only one may conduct the
6 direct or cross-examination of a particular witness, or make objections as to that
7 witness.

8 D. PROMPTNESS OF COUNSEL AND WITNESSES

9 1. Promptness is expected from counsel and witnesses. Once counsel
10 are engaged in trial, this trial is counsel's first priority. The Court will not delay
11 the trial or inconvenience jurors.

12 2. If a witness was on the stand at a recess or adjournment, counsel who
13 called the witness shall ensure the witness is back on the stand and ready to
14 proceed when trial resumes.

15 3. Counsel must notify the CRD in advance if any witness should be
16 accommodated based on a disability or for other reasons.

17 4. No presenting party may be without witnesses. If a party's
18 remaining witnesses are not immediately available and there is more than a brief
19 delay, the Court may deem that party to have rested.

20 5. The Court attempts to cooperate with professional witnesses and
21 will, except in extraordinary circumstances, accommodate them by permitting
22 them to be called out of sequence. Counsel must anticipate any such possibility
23 and discuss it with opposing counsel. If there is an objection, counsel must
24 confer with the Court in advance.

25 E. EXHIBITS

26 1. Each counsel should keep counsel's own list of exhibits and should
27 note when each has been admitted into evidence.

28 ///

1 2. Each counsel is responsible for any exhibits that counsel secures
2 from the CRD and must return them before leaving the courtroom at the end of
3 the session.

4 3. An exhibit not previously marked should, at the time of its first
5 mention, be accompanied by a request that it be marked for identification.
6 Counsel must show a new exhibit to opposing counsel before the court session in
7 which it is mentioned.

8 4. Counsel are to advise the CRD of any agreements with respect to the
9 proposed exhibits and as to those exhibits that may be received without further
10 motion to admit.

11 5. When referring to an exhibit, counsel should refer to its exhibit
12 number. Witnesses should be asked to do the same.

13 6. Counsel must not ask witnesses to draw charts or diagrams nor ask
14 the Court's permission for a witness to do so. Any graphic aids must be fully
15 prepared before the court session starts.

16 F. DEPOSITIONS

17 1. All depositions to be used at trial, either as evidence or for
18 impeachment, must be lodged with the CRD *on the first day of trial or such*
19 *earlier date as the Court may order*. Counsel should verify with the CRD that the
20 relevant deposition is in the CRD's possession.

21 2. In using depositions of an adverse party for impeachment, either one
22 of the following procedures may be adopted:

23 a. If counsel wishes to read the questions and answers as alleged
24 impeachment and ask the witness no further questions on that subject, counsel
25 shall first state the page and line where the reading begins and the page and line
26 where the reading ends, and allow time for any objection. Counsel may then read
27 the portions of the deposition into the record.

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1 b. If counsel wishes to ask the witness further questions on the
2 subject matter, the deposition shall be placed in front of the witness and the
3 witness told to read the relevant pages and lines silently. Then counsel may either
4 ask the witness further questions on the matter and thereafter read the quotations,
5 or read the quotations and thereafter ask further questions. Counsel should have
6 an extra copy of the deposition for this purpose.

7 3. Where a witness is absent and the witness's testimony is offered by
8 deposition, counsel may (a) have a reader occupy the witness chair and read the
9 testimony of the witness while the examining lawyer asks the questions, or (b)
10 have counsel read both the questions and answers.

11 G. USING NUMEROUS ANSWERS TO INTERROGATORIES AND
12 REQUESTS FOR ADMISSIONS

13 Whenever counsel expects to offer a group of answers to interrogatories or
14 requests for admissions extracted from one or more lengthy documents, counsel
15 should prepare a new document listing each question and answer and identifying
16 the document from which it has been extracted. Copies of this new document
17 should be given to the Court and opposing counsel.

18 H. ADVANCE NOTICE OF UNUSUAL OR DIFFICULT ISSUES

19 If any counsel have reason to anticipate that a difficult question of law or
20 evidence will necessitate legal argument requiring research or briefing, counsel
21 must give the Court advance notice. Counsel are directed to notify the CRD at
22 the day's adjournment if an unexpected legal issue arises that could not have been
23 foreseen and addressed by a motion *in limine*. See Fed. R. Evid. 103. Counsel
24 must also advise the CRD at the end of each trial day of any issues that must be
25 addressed outside the presence of the jury, so that there is no interruption of the
26 trial. THE COURT WILL NOT KEEP JURORS WAITING.

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**N.B. "COUNSEL," AS USED IN THIS ORDER, INCLUDES
PARTIES APPEARING *IN PROPRIA PERSONA*.**

IT IS SO ORDERED.

Dated: February 6, 2017



MICHAEL W. FITZGERALD
United States District Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

		}	CASE NO. CV	-MWF(x)
	Plaintiff(s),	}	EXHIBIT LIST	
v.		}	<i>SAMPLE FORMAT</i>	
	Defendant(s).	}		

EX. No.	DESCRIPTION	IDENTIFIED	ADMITTED

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

	Plaintiff(s),	CASE NO. CV	-MWF(x)
v.	Defendant(s).	WITNESS LIST	
		<i>SAMPLE FORMAT</i>	

	DATES OF TESTIMONY
WITNESSES FOR PLAINTIFF	
	<i>(to be filled in during trial)</i>
WITNESSES FOR DEFENDANT	

**FILING A CIVIL CASE: COMPLAINTS, GUARDIAN AD LITEM AND OTHER FORMS,
COURT RULES & E-FILING****By Shann Martin****1. LA County – New Case Filing – Complaints**

Civil Case Cover Sheet (CM-100)
Civil Case Cover Sheet Addendum and Statement of Location (LACIV109)
Summons (SUM-100)
Complaint
Application and Order for Appointment of Guardian ad Litem (CIV-010)
Filing Fee \$435.00
Notice of Related Case (CM-015)

A. **Civil case cover and sheet** and **civil case cover sheet addendum** will identify the type of civil case and primary cause of action. If the case falls in LA County then it needs to be filed downtown at Stanley Mosk for all PI cases.

B. **Summons**: Tip for completing Summons, make sure each individual name and Does are listed identical to the complaint or it will be rejected.

C. **Application and order for GAL** is required where there is a minor, legally incompetent person or person for whom a conservator has been appointed. If the minor is 14 years of age or older, the minor is the applicant (item 1) and not the parent/guardian. Both the minor and guardian will then need to sign the form.

- Mark the “Ex parte” box on the first page and bottom of the second page where the Order is for the Judge’s signature and complete the order.
- Item No. 2 & 3 ask for the name of the GAL and the minor. If this is a Jane /John Doe or a case where plaintiff is listed by their initials i.e. S.K. you will need to, at a minimum list the Jane /John Doe with their initials and list the guardian by full name. The GAL will need to sign their **full name** even if they are listed in the complaint by their initials.
- Also, under item nos. 2 & 3 where it says to state the name and address, put the minor’s initials c/o (Law Firm) and law firm address. This form is public record so you never want to provide the minor’s true address.
- It will take about 4 weeks to have the Order signed on the GAL and at that time the original Summons will then be issued and you can move forward with serving your complaint.

D. **Notice of Related Case**
If there are any related cases to the one you are filing, the notice of related case should be filed at the same time of the S&C.

2. LA County – Case Assignment

- Once your documents are filed and conformed copies returned, you will receive a Notice of Case Assignment. If the case is designated for the PI Hub it will say Unlimited Civil Personal Injury Case and will be assigned to Department 91, 92, 93, 97 or 98. You will also receive a Sixth Amended General Order which will identify the rules of the PI

courts. At this time you will be provided with a FSC, Trial Date and OSC date. All of these documents will then be served on the defendants with the S&C.

- If the case is not assigned to the PI Courts, check with your attorney and see if you will be filing a Peremptory Challenge to Judicial Officer (CCP Section 170.6)
- If the case is assigned to PI Courts, it is best to wait until you are assigned a trial court Judge since the PI Courts are not trial courts.
- This is also a good time to post jury fees (Civil Deposit form – LA County) LACIV015. If the case is assigned to the PI hub you will need to post jury fees within 365 days from the filing of the complaint. If the case is not in the hub you must post jury fees before the first CMC.

3. **LA County – Motions**

A. Reservation of Hearing Date (CRS – www.lacourt.org)

In order to set a hearing date for any motion you will need to reserve online through the court's reservation site (CRS). Make sure once you have reserved the date and printed out the confirmation that it is attached as the last page of your pleading (following your proof of service). You also need to list the reservation number in the caption below the date and time of the hearing.

- Discovery Motions – some court's require that all parties participate in an IDC (Informal Discovery Conference) prior to the Discovery Motion. Check the department rules and that will determine if they require an IDC prior to the motion. If required, you can reserve an IDC date the same way through the CRS.
- IDC - You must file an Informal Discovery Conference Form LACIV239 at least 15 court days prior to the conference and attach the CRS reservation receipt on the last page. The opposing party may file and serve a responsive IDC form at least 10 court days prior to the IDC.
- Court Reporters - LA County no longer provides court reporters for ANY hearings. If you want a court reporter present, you will need to make your own arrangements.

4. **E-Filing and other tips for out of county courts**

A. **Los Angeles County**

- LA does not offer E-Filing but does have E-Delivery for the PI Hub only. Personally, I avoid using E-Delivery especially for new case filings because of the statute issues, but it is easy to use.

B. **Orange County**

- Orange County has mandatory e-filing. You must use an Electronic Service Provider. Our firm uses One Legal and we have had great luck WITH THEM.
- New Case Filings – S&C, civil case cover sheet, filing fee
- Motions – Reserve your Motion dates online, similar to LA County CRS.

- Court Reporters – [Effective May 2017] the OCSC no longer provides the services of an official court reporter in Depts. C10, C14, C15, C19, C20, C26, C31 and CX101.

C. **Santa Barbara County**

- Santa Barbara has mandatory E-Filing. You can file directly on the website or use a service provider
- New Case Filings – S&C, civil case cover sheet, filing fee
- Motions - Cannot be reserved online. You must call the clerk for your department to reserve law and motion dates.

You must email all courtesy copies of all law and motion documents as follows: SbCivCourtesy@sbcourts.org for Santa Barbara in a uniform format, for example: 1234567.Opposition to demurrer.010114.pdf

- Court Reporters – provided for law and motion.

D. **Riverside County**

- You can E-File with an outside vendor, file hard copies with the clerk or use Electronic fax Filing (e-fax) - through the court's website for a per page charge
- New Case Filings – S&C, civil case cover sheet, certificate of counsel, filing fee
- Motions – Are reserved online, similar to LA County.
- Court Reporters – provided for law and motion. You will be charged a \$30 fee in addition to the \$60 when the motion is filed.

E. **San Bernardino**

- E-Filing is available through the court's website. Hard copies can also be filed directly with the clerk.
- New Case Filings – S&C, civil case cover sheet, certificate of assignment, filing fee
- Motions – Call the clerk to reserve a date.
- Court Reporters – The court provides court reporters for law and motion

TIP: Filing Documents “Under Seal” and “Confidential” Documents. You can still file these documents via E-Filing. Just make sure you identify for the clerk in the comments section of the E-Filing form

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):		FOR COURT USE ONLY	
TELEPHONE NO.: _____ FAX NO.: _____			
ATTORNEY FOR (<i>Name</i>):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____			
STREET ADDRESS: _____			
MAILING ADDRESS: _____			
CITY AND ZIP CODE: _____			
BRANCH NAME: _____			
CASE NAME: _____			
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> Counter		<input type="checkbox"/> Joinder	
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: _____ JUDGE: _____ DEPT: _____	

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (<i>not specified above</i>) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (<i>not specified above</i>) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (*check all that apply*): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (*specify*): _____
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)
- Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

LA County only

SHORT TITLE:	CASE NUMBER
--------------	-------------

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|---|
| <ul style="list-style-type: none"> 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. 2. Permissive filing in central district. 3. Location where cause of action arose. 4. Mandatory personal injury filing in North District. 5. Location where performance required or defendant resides. 6. Location of property or permanently garaged vehicle. | <ul style="list-style-type: none"> 7. Location where petitioner resides. 8. Location wherein defendant/respondent functions wholly. 9. Location where one or more of the parties reside. 10. Location of Labor Commissioner Office. 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
|--|---|

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Other Personal Injury/ Property Damage/ Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	1, 11
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11	

SHORT TITLE:

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1, 2, 3
		<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3	
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1, 2, 3
		<input type="checkbox"/> A6109 Labor Commissioner Appeals	10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	2, 5
		<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2, 5
		<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1, 2, 5
		<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	5, 6, 11
		<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	5, 11
<input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)		5, 6, 11	
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8	
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1, 2, 3, 5	
	<input type="checkbox"/> A6031 Tortious Interference	1, 2, 3, 5	
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 8, 9	
Real Property	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2, 6
<input type="checkbox"/> A6032 Quiet Title		2, 6	
<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)		2, 6	
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE:	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
Enforcement of Judgment	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9		
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8		
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment	2, 3, 9
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2, 3, 9
		<input type="checkbox"/> A6190 Election Contest	2
		<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender	2, 7
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2, 3, 8
<input type="checkbox"/> A6100 Other Civil Petition	2, 9		

SHORT TITLE:	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.	ADDRESS:		
CITY:	STATE:	ZIP CODE:	

Step 5: Certification of Assignment: I certify that this case is properly filed in the _____ District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: _____

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPLICATION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM—CIVIL <input type="checkbox"/> EX PARTE	CASE NUMBER:
NOTE: This form is for use in civil proceedings in which a party is a minor, an incapacitated person, or a person for whom a conservator has been appointed. A party who seeks the appointment of a guardian ad litem in a family law or juvenile proceeding should use form FL-935. A party who seeks the appointment of a guardian ad litem in a probate proceeding should use form DE-350/GC-100. An individual cannot act as a guardian ad litem unless he or she is represented by an attorney or is an attorney.	

1. Applicant (name): _____ is
 - a. the parent of (name): _____
 - b. the guardian of (name): _____
 - c. the conservator of (name): _____
 - d. a party to the suit.
 - e. the minor to be represented (if the minor is 14 years of age or older).
 - f. another interested person (specify capacity): _____

2. This application seeks the appointment of the following person as guardian ad litem (state name, address, and telephone number):

3. The guardian ad litem is to represent the interests of the following person (state name, address, and telephone number):

4. The person to be represented is:
 - a. a minor (date of birth): _____
 - b. an incompetent person.
 - c. a person for whom a conservator has been appointed.
5. The court should appoint a guardian ad litem because:
 - a. the person named in item 3 has a cause or causes of action on which suit should be brought (describe):

Continued on Attachment 5a.

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

5. b. more than 10 days have elapsed since the summons in the above-entitled matter was served on the person named in item 3, and no application for the appointment of a guardian ad litem has been made by the person identified in item 3 or any other person.
- c. the person named in item 3 has no guardian or conservator of his or her estate.
- d. the appointment of a guardian ad litem is necessary for the following reasons (*specify*):

Continued on Attachment 5d.

6. The proposed guardian ad litem's relationship to the person he or she will be representing is:

- a. related (*state relationship*):
- b. not related (*specify capacity*):

7. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person he or she will represent and has no interests adverse to the interests of that person. (*If there are any issues of competency or qualification or any possible adverse interests, describe and explain why the proposed guardian should nevertheless be appointed*):

Continued on Attachment 7.

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF ATTORNEY)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF APPLICANT)
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CONSENT TO ACT AS GUARDIAN AD LITEM

I consent to the appointment as guardian ad litem under the above petition.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PROPOSED GUARDIAN AD LITEM)
----------------------	---	---

ORDER EX PARTE

THE COURT FINDS that it is reasonable and necessary to appoint a guardian ad litem for the person named in item 3 of the application, as requested.

THE COURT ORDERS that (*name*):
is hereby appointed as the guardian ad litem for (*name*):
for the reasons set forth in item 5 of the application.

Date:

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

FOCUSING ON TRICKS OF THE TRADE IN DISCOVERY

By Lauren Morrison and Becky Carcary

- **How can paralegals add value to the case and expand their roles?**
- **Pre-Litigation**
 - Importance of Explaining the Discovery Process to the Client in the beginning
 - Be a part of the case as a whole- not just your role- your biggest opportunity to do this is in the discovery process
 - Don't be afraid to be innovative
- **Discovery Starts Before the Case is even filed**
 - Attend the intake meeting.
 - Have the client sign all Authorizations.
 - Ask the client to start gathering documents
 - Encourage the Client to Set Up Drop Box for Document Intensive Cases
- **Spoliation**
 - What to tell your clients
 - Preservation of Evidence Letters
- **Social Media/Surveillance**
 - What to tell your clients;
 - Reviewing the client's social media
 - What if the client has already posted regarding accident?
 - Deactivate the account?
 - Privacy Settings
 - Preventing a Social Media Smearfest
 - Glassdoor
 - Surveillance of the client
- **Form Interrogatories/Specials**
 - Provide the client with a set of Form Interrogatories prior to filing the Complaint
 - Use word format
 - Explaining the Verification process
 - Responses should be complete and straight forward.
 - Only required to supplement your responses if you are specifically asked
 - Supplemental Interrogatory Requests Can Be Used Twice
- **Requests for the Production of Documents**
 - Propounding
 - ESI Search Terms
 - Format Documents Should Be Produced In
 - Responding to Requests
- **Protective Orders**
 - Protective Orders come up most frequently with Corporate Defendants
 - If one is likely to be requested, be proactive
 - Recommend using a slightly modified LASC draft protective order

- **Medical Examinations**
 - Explain the process to the clients
 - Preparing the client for the DME; what to say and not say
 - Have someone attend the DME with Plaintiff
 - Objections
 - Testing

- **Subpoenas**
 - New procedure for obtaining autopsy photos.
 - OSHA refusal to produce photographs- What do you do?
 - Out of State Subpoenas – Discovery Act. See attached materials
 - Subpoenas issued by defendants –Objecting to

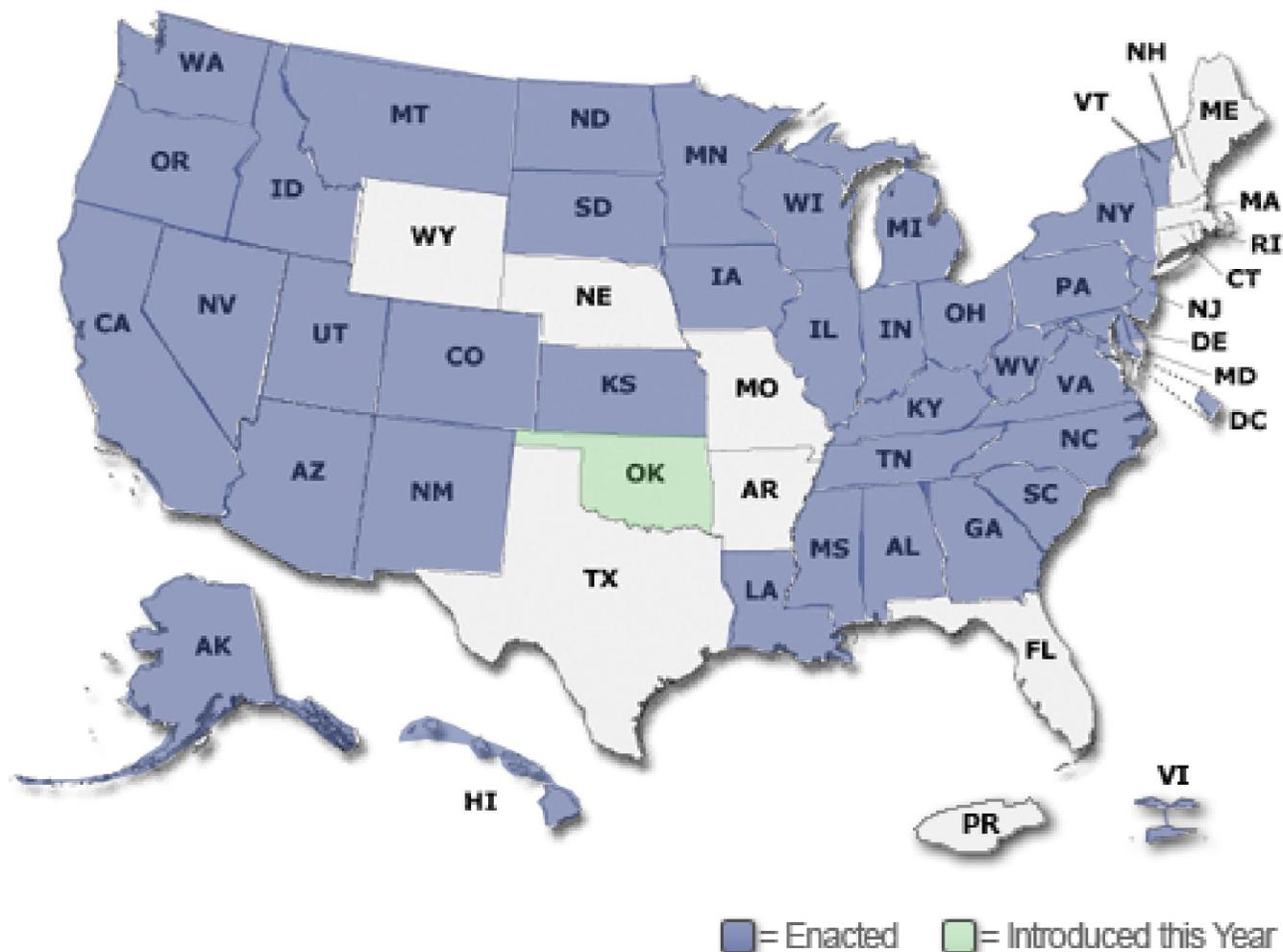
- **Motions to Quash**
 - Overly broad Subpoenas- meeting and conferring over limitations
 - Is an objection necessary?
 - Privacy objections
 - Redacting records for third party privacy concerns & irrelevant to the case

- **Inspections**
 - Before you Notice the Inspection, make sure you have your experts retained so they can attend the inspection.
 - Talk to your experts to see if they need to perform any testing at the scene.
 - A protocol for the testing and inspection should be set up.
 - Find out what safety equipment the experts will need to bring with them or what will be provided.



Contact Us: 312.450.6600

Legislative Enactment Status Interstate Depositions and Discovery Act



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100 DAYS BEFORE TRIAL: AN ATTORNEY'S PERSPECTIVE

By Natalie Weatherford

The 100 days before a trial is an action-packed and critical time in your case. There are several milestones during this time period that can either severely limit your case *or* can set your case up for a successful trial.

The 100 days before trial is also a crucial time for settlement of the case; the overwhelming majority of cases either settle (or come very close to settlement) in this time period. Below is a brief outline of what is on an attorney's mind during the 100 days before trial and the things a paralegal or litigation assistant can do to provide support during this hectic time period.

Preparing for the 100 Days before Trial

Trial dates creep up quickly. Before you know it you are thrown into trial preparation with what seems like little to no notice. If you are new to preparing for a trial (or new to preparing a specific attorney for a trial) a great way to prepare yourself is to ask the attorney if there is a similar, closed case that you can look at to see how the attorney prepared for *that* trial. Look through the prior case's trial documents and exhibit books to understand the types of documents that are required at trial and the way the attorney likes the documents organized.

Communication is the most important part of preparing yourself and the attorney you are working with for trial. All attorneys are different. And preparing one attorney in your office for trial can be completely different than preparing another attorney. It's important to set a meeting with the attorney early so that you can have a clear understanding of your tasks and role in the 100 days before trial.

Days 100 through 50 before Trial

This is the time to determine what discovery needs to be completed prior to the discovery cut-off. The discovery cut-off is 30 days before trial, you must serve your final written discovery 30 days (35 days if served by mail) *prior to* the discovery cut off.

There are a few key pieces of written discovery that should be served during this time period: (1) Form Interrogatories 13.1 and 13.2, which request all surveillance videos (*subrosa*) of your Plaintiff and a separate Request for Production of Documents requesting all raw and unedited *subrosa* footage of your Plaintiff; and (2) a supplemental interrogatory and request for production of documents requesting that the defendant update its prior responses to make them current.

This is also the time to update your prior discovery responses to include up to date medical information, bills and records.

At this point the attorney should be thinking about who will be the key damages witnesses at trial. Damages witnesses are those people who know the plaintiff personally and can testify about how the incident has impacted the plaintiff's life. Often times this is a close friend, spouse, family member, church pastor or anyone else who can speak to the changes they have seen in the plaintiff's life after the incident. Once you and your attorney determine who these damages witnesses will be you should update your discovery to include their names.

The Designation of Expert Witnesses is due 50 days prior to trial. You will need a current curriculum vitae, current fee schedule and report (if available) for each expert in order to prepare the expert designation.

Expert Depositions will quickly follow the service of the Expert Designation. There is a new rule in California that requires you to produce all materials requested in an expert deposition notice at least three business days prior to the expert's deposition. (CCP 2034.415). Your experts need to have their reports in final form, ready to produce at least three business days prior to their deposition. Many experts are not

aware of this new rule (especially experts from out of state) so a good practice is to inform the expert about these requirements at the time you retain them.

Additionally, most experts do not take trial dates seriously because trial dates are moved all the time. They will schedule vacations and other work that conflicts with your trial date. If you are sure that your trial is going forward on certain date, tell the expert that this is a firm date and get a list of any vacations or scheduling conflicts they have around the time of your trial.

Days 49 through 1 before Trial

Days 49 through 1 before a trial are all about tying up loose ends and organizing. First, make sure there is no outstanding discovery, all discovery is organized in an easily accessible format and that all discovery is verified. Discovery being verified is important for trial because an attorney cannot use it in the trial if it is unverified.

Do a final sweep request for all updated medical bills and records. Organize the medical bills in a chart or list format that clearly displays the total amounts of each bill, the dates of service for each provider and a quick description of the services the plaintiff received from each provider.

As trial approaches I am always worried about getting our trial witnesses under subpoena and serving any difficult or evasive witnesses with subpoenas. At about 30 days prior to trial you should start discussing witness subpoenas and scheduling with your attorney. If you know that a witness is going to be difficult to serve with a subpoena you should begin service early.

Trial witnesses should be served with: (1) a civil subpoena for personal appearance at trial (SUBP-001); and (2) an "on call" letter that the witness signs affirming that they agree to be placed "on call" for their trial testimony and will appear at trial with 24 hours' notice. The language of the on-call agreement should be something like: "I hereby acknowledge service of a civil subpoena requiring me to appear in Department X of the Los Angeles County Superior Court, Stanley Mosk Courthouse on September 1, 2017, at 8:30 a.m. as a witness in the civil matter entitled Jane Doe vs. Doe Unified School District. Instead of having to appear on September 1, 2017, I hereby agree to be placed "on call" and agree to appear at the request of the law firm of Taylor & Ring upon reasonable notice, which I understand to be at least 24 hours." The on-call letter should have a space for the witness to sign and provide a cell phone number so you can contact them.

Motions in limine, trial documents & exhibit binders need to be completed during this time. These documents take a ton of time and are often done on short notice with quickly approaching deadlines. A great way to save time (and money) is to get defense counsel to agree to exchange motions in limine, trial documents and exhibits electronically. This agreement should be in writing and should specify that all code and local rule deadlines apply, however the documents will be considered personally served on the date they are sent via electronic mail (email, Dropbox link, etc.). This agreement is great for two reasons: (1) it saves you the time of having to make copies of lengthy exhibits and serve them on one or sometimes multiple parties by mail, personal service or otherwise; and (2) it provides your attorney with additional time to complete the documents because you no longer have to account for the additional time of mail or personal service.

100 DAY COUNTDOWN TO TRIAL**By Ilona Geelen**

- **Important dates to remember:**
 - **Discovery**
 - Practical last day to serve discovery (and be able to make a motion on it): 90-100 days before the trial.
 - Discovery cut off: 30 days before trial.
 - Last day to hear discovery motions: 15 days before trial.
 - **Motions for Summary Judgment:**
 - The Motion must be heard 30 days before trial.
 - Must be filed and served at least 75 days before the hearing
 - Opposition to MSJ is 14 calendar days
 - **Expert Discovery**
 - Experts Demand: 70 day before trial.
 - Experts Designation: 50 days before trial.
 - Supplemental Experts Designation: Within 20 day of the date of the exchange of expert witnesses.
 - Expert Discovery Cut Off: 15 days before trial date.
 - Last day to hear Motions re: Experts: 10 days before trial.
 - **Trial**
 - 998 Offers to Compromise: Can be made up until 10 days prior to trial
 - Notice to Appear at Trial (to party) [No Documents]: 10 days before trial
 - Notice to Appear at Trial (to party) [With Documents]: 20 days before trial
- **Have all your medical records and bills**
 - Send the client a “Client Update Form” with a self-addressed-stamped envelope and follow-up if you haven’t received it back in 10 days.
 - Request all final bills and liens.
 - Supplement all prior discovery with updated bills, liens and records.
 - Make sure your experts have all updated records.
- **Experts Designation**
 - Missing the Experts Designation deadline can result in not being able to call your experts to testify during trial.
 - Once Experts Designation is exchanged between the parties, depositions of the expert will follow soon thereafter.
 - Make sure your expert is ready, prepared and has all the necessary case materials.
- **FSC Orders in the P.I. hub Stanley Mosk Courthouse**
 - Departments 91, 92, 93, 97 and 98
 - The P.I. courts only hear personal injury cases
 - Fourth Amended General Order; Trial documents required to file:
 - Trial Briefs (Optional)
 - Motions in Limine
 - Joint Statement of the Case
 - Joint Witness List
 - Joint List of Proposed Jury Instructions
 - Actual Jury Instructions
 - Joint Verdict Form(s)
 - Joint Exhibit List
 - Trial documents need to be in three-ring binder for the Judge.
 - Three sets of joint exhibit binders.

- **Attorney Trial Binders**
 - Essentially the entire case condensed into a binder.
 - Contact list with phone numbers and emails of witnesses, experts and their assistants
 - Trial schedule calendar
 - Pre-trial Motions (Motions in limine, Motion to Bifurcate)
 - Trial documents
 - Statement of the Case
 - Request for Mini-Opening
 - Exhibit List
 - Witness List
 - Jury Instructions
 - Special Verdict
 - Notice of Intent to Use Video-Taped Depositions
 - Subpoenas
 - Notice to Appear
 - Key Pleadings
 - Complaint
 - Answer to Complaint
 - Any briefs (MSC Briefs, Mediation Briefs)
 - 998 Offers
 - Expert Designations
 - Key Documents
 - Medical Chronology/Summary
 - Howell Chart
 - Traffic Collision Report/Incident Report
 - Expert Reports:
 - Traffic Collision Analysis (Accident Recon Report)
 - Biodynamic Analysis (Biomechanics Report)
 - Life Care Plan
 - Economist Report
 - Deposition Binders
 - Condensed deposition transcripts of all witnesses with a deposition summary in front of transcript and then any key documents behind, all separated by a colored sheet.

Civil Law Time Limits

A cheat sheet for California Lawyers

SERVICE OF PROCESS

- **Serve Defendant after Complaint Filed** – 60 days after filing. [Source: [CRC 3.110](#)]
- **Serve Defendant Added via Amended Complaint** – 30 days after adding. [Source: [CRC 3.110\(b\)](#)]
- **Proof of Service of Summons and Complaint** (proving to Court that you served Defendant) – 60 days after serving complaint. [Source: [CCP § 583.210](#)]
- **Defendant Time Limit to File Answer or Demurrer** – 30 days from date complaint was served. [Source: [CCP 412.20](#)]

DISCOVERY

- **Plaintiff may Serve Discovery Questions to Another Party** – 10 days after service of complaint. [[CCP § 2030.020](#) (interrogatories)], [[2031.020](#) (inspection demands)].
- **Defendant may Serve Discovery** – Anytime. [[CCP § 2030.020](#)]
- **Plaintiff May Serve Deposition Notice** – 20 days after service of Complaint. [[CCP 2025.210](#)]
- **Subpoena for Personal (medical) records** – Must be served on consumer at least 15 (in actuality 20) days before date of production. [[CCP § 1985.3\(d\)](#) incorporating [CCP 2020.220\(a\)](#)]. The subpoena may not be served on records custodian until at least five days after service on consumer. [[CCP § 1985.3\(b\)\(3\)](#)]
- **Subpoena for Employment Records** – Must be served on the employee 10 days before date for production (in actuality 20 days before, see below), 5 days before service on the custodian of records. [[CCP § 1985.6\(b\)\(2\)&\(3\)](#)]. Must be served on records custodian 15 days before date of production.
- **Motion to Quash Subpoena Duces Tecum** – must be served on defense counsel at least five days before date for production of documents [[CCP 1985.3\(g\)](#), [1985.6\(f\)\(2\)](#)] **Note:** Court may still grant a motion to quash after this time. [[Slage v. Sup. Ct. \(1989\) 211 Cal. App.3d 1309, 1313](#)]
- **Move to Compel Additional Answers** – 45 days. [[CCP § 2030.300](#)]
- **Respond to Written Discovery** – 30 days (+5 days if questions were mailed).
- **Discovery Closes Before Arbitration** – 15 days before arbitration. [[CRC 3.822](#)]
- **Discovery closes before trial:** 30 days before trial – or 15 days before arbitration. [[CCP 2024.020](#)]
- **Last Day to Hear Discovery Motions** – 15 days before trial. [[CCP 2024.020](#)]
- **Practical Last Day to Serve Discovery** (and be able to make a motion on it) – 90-100 days before trial.

- **Deposition Notice** – Defendant may serve any time. Plaintiff must wait 20 days after service of summon and complaint to serve. [[CCP 2025.210](#)]
- **Depositions** – Must be sat at least 10 days in the future (+5 days if the notice is mailed – [ccp 1013](#)) , at least 20 (+5 days if the notice is mailed – [ccp 1013](#)) if the deposition notice includes request for documents. [[CCP 2025.270](#)]

EXPERT DISCOVERY

- **Experts Must Be Demanded** - 70 days before trial (or within 10 days of setting trial date, whichever is closer to trial date) [[CCP 2034.220](#)]
- **Experts Must Be Disclosed** - 50 days before trial (or 20 days after service of demand, whichever is closer to trial date) [[CCP 2034.230](#)]
- **Supplemental Expert Disclosure** – Must be disclosed within 20 days of the Exchange of Expert Witnesses. May only disclose witness to cover a subject covered by opponent’s witnesses. [[CCP 2034.280](#)]
- **Expert Depositions** – May be set “On receipt of an expert witness list from a party.” [[CCP 2034.410](#)]
- **Expert Discovery Cut Off** – 15 days before original trial date. [[CCP 2024.030](#)].
- **Last Day for Motions Regarding Experts** – 10 days before original trial date. [[CCP 2024.030](#)].

ARBITRATION

- **Arbitrator Must Issue Award** – Within 10 days after conclusion of arbitration (or 20 on application from the Arbitrator for more time). [[CRC 3.825](#)]
- **Reject Arbitration Award** – Within 60 days of service of arbitration award. [[CRC 3.826](#)]
- **Discovery Closes Before Arbitration** – 15 days before arbitration. [[CRC 3.822](#)].

Trial

- **Discovery Closes** (with the exclusion of expert lists, and expert depositions) – 30 days before trial, or after non-binding arbitration. [[CCP 2034.210](#); [CCP § 1141.24](#)].
- **Experts Must Be Demanded** - 70 days before trial (or within 10 days of setting trial date, whichever is closer to trial date). [[CCP 2034.220](#)].
- **Experts Must Be Disclosed** - 50 days before trial (or 20 days after service of demand, whichever is closer to trial date). [[CCP 2034.230](#)].
- **998 Offers to Compromise** – Can be made up until 10 days prior to trial. [[CCP 998](#)].
- **Notice to Appear at Trial (to party) [No documents]** – 10 days before trial, send notice with time and place to attorney. [[CCP § 1987\(b\)](#)].

- **Notice to Appear at Trial (to party) [With documents]** – 20 days before trial, send notice with time and place to attorney. [\[CCP § 1987\(c\)\]](#).
- **Objection to Notice to Appear At Trial With Documents** – 5 days “or any other time period as the court may allow” [\[CCP § 1987\(c\)\]](#).

MOTIONS

- **Noticed motions** – must be served and filed 16 court days before the hearing date (+ 5 more if served by mail) (+ 2 more if served by fax, express mail, or overnight delivery). [\[CCP 1005\]](#)
Note: [CCP 1013](#) does not apply.
- **Opposition to noticed motion** – must be filed and served 9 court days before hearing. [\[CCP 1005\]](#).
- **Reply to noticed motion** - 5 court days before hearing. [\[CCP 1005\]](#).
- **Ex Parte Motion** – Opposing party must be notified by 10:00 A.M. the day before the hearing, absent “exceptional circumstances.” [\[CRC 3.1203\]](#). Note: This is a minimum. Check local rules for more strict notice periods.

Manner of service: “Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections [1010](#), [1011](#), [1012](#), and [1013](#), and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed.” [\[CCP 1005\(c\)\]](#).

CCP 1013: “...The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States.”

- **Motions for Summary Judgment** – Notice is 75 days before hearing (+10 if outside CA, +20 if outside US) [\[CCP 437c\(a\)\]](#). Opposition is 14 days before the hearing [\[CCP 437c\(b\)\(2\)\]](#). Reply is 5 days before hearing. [\[CCP 437c\(b\)\(3\)\]](#).

STATUTES OF LIMITATIONS

Personal Injury – 2 years

CLIENT UPDATE FORM

Name _____ Date _____

Please fill out this report as soon as possible and mail it back to our office.

State the name of each doctor, therapist and laboratory you have seen in the past 6 months because of your injuries caused by your accident. Please include the dates you went to each doctor, therapist or laboratory and a description of what they did for you.

MEDICAL PROVIDER	DATES OF SERVICE	DESCRIPTION OF TREATMENT

During the past 6 months did you receive any examination, tests or care in a hospital?

YES _____ NO _____

If yes, state the name of each hospital and describe what was done for you:

During the past 6 months, did you take any medicine for your pain or injuries as a result of the accident?

YES _____ NO _____

If yes, state what medications you took and how often:

During the past 6 months, did you use or wear any brace, appliance, bandage, traction, crutches, wheelchair, walker, special bed/mattress, medical collar or any other medical devices or aids because of your injuries?

YES _____ NO _____

If yes, describe each item and how often you used them:

During the past 6 months, did you take or do any home treatments such as hot pads, electric pads, hot water bottle, hot bath/shower, massage, or home exercises/stretching?

YES _____ NO _____

If yes, state what you did and how often:

During the past 6 months, was there any activity at home or at work that you could not do because of your injuries from the accident?

YES _____ NO _____

If yes, describe each activity you could not do:

During the past 6 months, was there any activity at home or at work that was more difficult for you because of your injuries from the accident?

YES _____ NO _____

If yes, describe each activity that was more difficult:

Have you suffered any new injuries since your accident that are not related to your accident?

YES _____

NO _____

If yes, describe any new injuries you have suffered and state the date each occurred:

Have you received any hospital, doctor or other medical treatment/care for any injury, pain, condition or illness other than your injuries from the accident?

YES _____

NO _____

If yes, describe the treatment you received and the doctor who provided it:

During the past 6 months, did you lose any time from work because of your injuries from the accident?

YES _____

NO _____

If yes, state the dates you missed and the wages you lost:

Pain Intensity

Mark the statement that best describes your pain. If you have pain in more than one area of your body, please write the body part next to the statement that best describes your pain in that body part.

- _____ I have no pain at the moment.
- _____ The pain is very mild at the moment.
- _____ The pain is moderate at the moment.
- _____ The pain is severe at the moment.
- _____ The pain is the worst imaginable at the moment.

Does anything lessen your pain or make it go away?

YES _____

NO _____

If yes, describe what lessens your pain or makes it go away:

Personal Care

- _____ I can look after myself without causing extra pain.
- _____ I can look after myself normally, but it causes extra pain.
- _____ It is painful to look after myself and I am slow and careful.
- _____ I need some help to manage most of my personal care.
- _____ I need help every day for most of my personal care.
- _____ I do not get dressed. I wash with difficulty and stay in bed.

Lifting / Carrying

The heaviest weight I can lift is _____ pounds.

- _____ I can lift heavy weights without extra pain.
- _____ I can lift heavy weights, but it causes extra pain.
- _____ Pain prevents me from lifting heavy weights off the floor, but I can lift heavy weights if they are convenient, like off a table.
- _____ I can only lift very light weights.
- _____ I cannot carry or lift anything at all.
- _____ I can carry my groceries to/from the car.
- _____ I cannot carry my groceries to/from the car.
- _____ I can use the vacuum in my home.
- _____ I cannot use the vacuum in my home.

Headaches

- _____ I have no headaches at all.
- _____ I have slight headaches, but they are infrequent.
- _____ I have moderate headaches, but they are infrequent.
- _____ I have moderate headaches, and they are frequent.
- _____ I have moderate-severe headaches, but they are infrequent.
- _____ I have headaches almost all the time.

Work

- _____ I can do as much work as I want.
- _____ I can only do my usual work, but no more.
- _____ I can do most of my usual work, but no more.
- _____ I cannot do my usual work.
- _____ I can hardly do any work at all.
- _____ I cannot do any work at all.

Driving

- _____ I can drive a car without pain.
- _____ I can drive my car as long as I want to, but I have slight pain.
- _____ I can drive my car as long as I want to, but I have moderate pain.
- _____ I cannot drive my car for as long as I would like because of moderate pain.
- _____ I can hardly drive at all because of severe pain.
- _____ I cannot drive my car at all.

Sleeping

- _____ I have no trouble sleeping.
- _____ My sleep is slightly disturbed (less than 1 hour sleepless).
- _____ My sleep is mildly disturbed (1-2 hours sleeplessness).
- _____ My sleep is moderately disturbed (2-3 hours sleeplessness).
- _____ My sleep is greatly disturbed (3-5 hours sleeplessness).

Recreation / Social

- _____ I am able to do all my recreation/social activities with no pain.
- _____ I am able to do all my recreation/social activities with some pain.
- _____ I am able to do most, but not all, of my recreational activities because of pain.
- _____ I am able to do a few of my usual recreation/social activities because of pain.
- _____ I cannot do any of my recreation/social activities at all because of pain.

State which of your usual recreation / social activities are limited due to your injuries and pain from the accident:

DOCUMENTS TO EXPERTS CHECKLIST

CASE NAME: _____

CASE NO.: _____

TRIAL DATE: _____

DESIGNATION DUE: _____

Accident Recon Name: _____	TCR	Witness Statements	PD Estimates	Relevant Pltf/Deft Discovery Responses	Depos of Witnesses, incl officer	Depos of Parties	Deft Liability Expert Depos w/ exhibits	Pltf/Deft Expert Designations	Property Damage Photos	Police/Scene Photos	Pltf Liability Expert Depos w/ exhibits	
Biomechanic Name: _____	TCR	Witness Statements	PD Estimates	Relevant Pltf/Deft Discovery Responses	Depos of Witnesses, incl officer	Depos of Parties	Liability Deft Expert Depos w/ exhibits	Pltf/Deft Expert Designations	Medical Reports of Experts	ER Records	EMS Report	Pltf Liability Expert Depos w/ exhibits
Med Expert#1 Name: _____ Expertise: _____	All Medical Reports and Recs	Depos of other Doctors	Medical Billing	Summaries of Treatment	Pltf Frog Responses	DME Reports	Depos of Parties	Deft Med Expert w/ exhibits	Pltf/Deft Expert Designations	Deft Med Expert Rec Review	Pltf Med Expert Depos w/ exhibits	Injury Photos
Med Expert #2 Name: _____ Expertise: _____	All Medical Reports and Recs	Depos of other Doctors	Medical Billing	Summaries of Treatment	Pltf Frog Responses	DME Reports	Depos of Parties	Depo of Deft Expert w/ exhibits	Pltf/Deft Expert Designations	Deft Med Expert Rec Review	Pltf Med Expert Depos w/ exhibits	Injury Photos
Med Expert #3 Name: _____ Expertise: _____	All Medical Reports and Recs	Depos of other Doctors	Medical Billing	Summaries of Treatment	Pltf Frog Responses	DME Reports	Depos of Parties	Depo of Deft Expert w/ exhibits	Pltf/Deft Expert Designations	Deft Med Expert Rec Review		
Med Expert #4 Name: _____ Expertise: _____	All Medical Reports and Recs	Depos of other Doctors	Medical Billing	Summaries of Treatment	Pltf Frog Responses	DME Reports	Depos of Parties	Depo of Deft Expert w/ exhibits	Pltf/Deft Expert Designations	Deft Med Expert Rec Review		
Life Care Planner Name: _____	All Medical Reports and Recs	Depos of other Doctors	Medical Billing	Depos of Parties	Pltf Frog Responses	Pltf/Deft Expert Designations	Depo of Deft Expert w/ exhibits	Depo of Pltf Expert w/ exhibits	Spouse/Family Depos	Depo of Deft LCP Expert w/ exhibits	Depo of Pltf Med Experts w/ exhibits	
Voc Rehab Name: _____	Any Docs Related to Employment	Any Docs Related to Wages	Any Docs Related to Job Benefits	School Transcripts	Pltf Frog Responses	Resumes	W-2's <i>(only with Attorney Approval)</i>	Pltf/Deft Expert Designations	Spouse/Family Depos	Job Description/List of Duties	Depo of Deft Voc Rehab Expert w/ exhibits	Depo of Pltf Med Experts w/ exhibits
Economist Name: _____	LCP Report	Voc Rehab Report	Pltf/Deft Expert Designations	<i>If No Voc =send ALL docs for Voc Rehab</i>								
Radiologist Name: _____	Relevant Image Study Reports	Relevant Image Study Images	Depos of other Treating Doctors	Summaries of Treatment	DME Reports	Plaintiff Depo	Depo of Deft Radiologist Expert w/ exhibits	Pltf/Deft Expert Designations	Deft Med Expert Rec Review			
Technical Expert #1 Name: _____ Expertise: _____	Police Report	Statements	PD Estimates	Pltf/Deft Discovery Responses	Depos of Witnesses, incl officer	Depos of Parties	Depo of Deft Expert w/ exhibits	Pltf/Deft Expert Designations	Medical Reports of Experts	ER Records	EMS Report	

FILED
LOS ANGELES SUPERIOR COURT

JUN 10 2016

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK

C. Casarez
BY C. CASAREZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

In re Personal Injury Cases Assigned)
To the Personal Injury Courts)
(Departments 91, 92, 93, 97 and 98))
FOURTH AMENDED GENERAL ORDER -
FINAL STATUS CONFERENCE,
PERSONAL INJURY ("PI") COURTS
(Effective as of June 10, 2016)
)
)
)

The dates for Trial and Final Status Conference ("FSC") having been set in this matter, the Court **HEREBY AMENDS AND SUPERSEDES ITS January 26, 2015, AMENDED GENERAL ORDER-FINAL STATUS CONFERENCE AND GENERALLY ORDERS AS FOLLOWS IN THIS AND ALL OTHER GENERAL JURISDICTION PERSONAL INJURY ACTIONS:**

1. PURPOSE OF THE FSC

The purpose of the FSC is to verify that the parties counsel are completely ready to proceed with trial continuously and efficiently, from day to day, until verdict. The PI Courts will verify at the FSC that all parties counsel have (1) prepared the Exhibit binders and Trial Document binders and (2) met and conferred in an effort to stipulate to ultimate facts, legal issues, motions *in limine*, and the authentication and admissibility of exhibits.

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2. TRIAL DOCUMENTS TO BE FILED

At least five calendar days prior to the Final Status Conference, the parties counsel shall serve and file (in Room 102 of the Stanley Mosk Courthouse) the following Trial Readiness Documents:

A. TRIAL BRIEFS (OPTIONAL)

Each party counsel may file, but is not required to file, a trial brief succinctly identifying:

- (1) the claims and defenses subject to litigation;
- (2) the major legal issues (with supporting points and authorities);
- (3) the relief claimed and calculation of damages sought; and
- (4) any other information that may assist the court at trial.

B. MOTIONS *IN LIMINE*

Before filing motions *in limine*, the parties counsel shall comply with the statutory notice provisions of Code of Civil Procedure ("C.C.P.") Section 1005 and the requirements of Los Angeles County Court Rule ("Local Rule") 3.57(a). The caption of each motion *in limine* shall concisely identify the evidence that the moving party seeks to preclude. Parties filing more than one motion *in limine* shall number them consecutively. Parties filing opposition and reply papers shall identify the corresponding motion number in the caption of their papers.

C. JOINT STATEMENT TO BE READ TO THE JURY

For jury trials, the parties/counsel shall work together to prepare and file a joint written statement of the case for the court to read to the jury. Local Rule 3.25(i)(4).

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D. JOINT WITNESS LIST

The parties counsel shall work together to prepare and file a joint list of all witnesses that each party intends to call (excluding impeachment and rebuttal witnesses). Local Rule 3.25(i)(5). The joint witness list shall identify each witness by name, specify which witnesses are experts, and estimate the length of the direct, cross examination re-direct examination (if any) of each witness. The parties/counsel shall identify and all potential witness scheduling issues and special requirements. Any party/counsel who seeks to elicit testimony from a witness not identified on the witness list must first make a showing of good cause.

**E. LIST OF PROPOSED JURY INSTRUCTIONS
(JOINT AND CONTESTED)**

The parties/counsel shall jointly prepare and file a list of proposed jury instructions, organized in numerical order, specifying the instructions upon which all sides agree and the contested instructions, if any. The Joint List of Jury Instructions must include a space by each instruction for the judge to indicate whether the instruction was given.

**F. JURY INSTRUCTIONS
(JOINT AND CONTESTED)**

The parties/counsel shall prepare a complete set of full-text proposed jury instructions, editing all proposed California Civil Jury Instructions for Judges and Attorneys ("CACI") instructions to insert party names and eliminate blanks and irrelevant material. The parties shall prepare special instructions in a format ready for submission to the jury with the instruction number, title and text only (i.e., there should be no boxes or other indication on the printed instruction itself as to the requesting party.)

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G. JOINT VERDICT FORM(S)

The parties counsel shall prepare and jointly file a proposed general verdict form or special verdict form (with interrogatories) acceptable to all sides. If the parties counsel cannot agree on a joint verdict form, each party must separately file a proposed verdict form Local Rule 3.25(i)(7) and (8).

H. JOINT EXHIBIT LIST

The parties counsel shall prepare and file a joint exhibit list organized with columns identifying each exhibit and specifying each party's evidentiary objections, if any, to admission of each exhibit. To comply with Local Rules 3.52(i)(5) and 3.53, the parties shall meet and confer in an effort to resolve objections to the admissibility of each exhibit.

3. EVIDENTIARY EXHIBITS

The parties counsel shall jointly prepare (and be ready to temporarily lodge for inspection at the FSC), three sets of tabbed, internally paginated and properly-marked exhibits, organized numerically in three-ring binders (a set for the Court, the Judicial Assistant and the witnesses).

The parties counsel shall mark all non-documentary exhibits and insert a simple written description of the exhibit behind the corresponding numerical tab in the exhibit binder. If the parties have a joint signed exhibit list and electronic copies of their respective exhibits, then the parties will not be required to produce exhibit binders at the Final Status Conference (FSC). However, the exhibit binders may be required by the assigned trial judge when the trial commences. In the absence of either a joint signed exhibit list or electronic copies, exhibit binders will be required by all parties at the Final Status Conference.

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4. TRIAL BINDERS REQUIRED IN THE PI COURTS

The parties/counsel shall jointly prepare (and be ready to temporarily lodge for inspection at the FSC) the Trial Documents, tabbed and organized into three-ring binders as follows:

Tab A: Trial Briefs

Tab B: Motions *in limine*

Tab C: Joint Statement to Be Read to the Jury

Tab D: Joint Witness List

Tab E: Joint List of Jury Instructions (identifying the agreed upon and contested instructions)

Tab F: Joint and Contested Jury Instructions

Tab G: Joint and/or Contested Verdict Forms

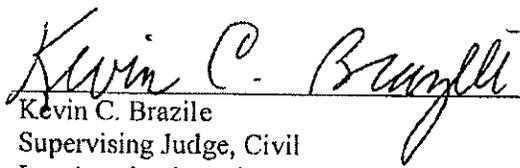
The parties shall organize motions *in limine* (tabbed in numerical order) behind tab B with the opposition papers and reply papers for each motion placed directly behind the moving papers. The parties shall organize proposed jury instructions behind tab F, with the agreed upon instructions first in order followed by the contested instructions (including special instructions) submitted by each side.

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5. FAILURE TO COMPLY WITH FSC OBLIGATIONS

The court has discretion to require any party counsel who fails or refuses to comply with this General Order to Show Cause why the court should not impose monetary, evidentiary and or issue sanctions (including the entry of a default or the striking of an answer).

Dated this 10th day of June, 2016



Kevin C. Brazile
Supervising Judge, Civil
Los Angeles Superior Court

**THE TRIAL: GAME ON
WHAT TO EXPECT YOUR LAWYER IS EXPECTING – FROM VOIR DIRE TO CLOSING**

By Lyssa A. Roberts

PRE-TRIAL – GETTING READY TO GET THE GAME ON

- Trial subpoenas
- Client preparation
- The schedule – nailing down your experts and doctors
- Trial binders, exhibits and organization

WHAT TO EXPECT ON THE TRIAL DATE

- The PI Courts in L.A. County
- Ventura County, Orange County, San Bernardino
- Local rules, courtroom rules and how to help your lawyer be prepared

MOTIONS IN LIMINE

- MILs defined
- These are motions so how can I help?
- Hot topics to keep in mind

VOIR DIRE

- Voir dire defined
- The six pack
- Peremptory challenges and challenges for cause

OPENING STATEMENT

- Opening defined
- The basics – what the lawyer can (and can't) do
- Use of demonstrative exhibits

EVIDENCE – DIRECT AND CROSS EXAMINATION OF WITNESSES

- Direct and cross examination defined
- Exhibits and technology
- Calling rebuttal witnesses

JURY INSTRUCTIONS

- How to approach selection of instructions
- Procedure related to instructions

CLOSING ARGUMENT

- Beginning of the end
- How to help your lawyer keep it together for closing

FEDERAL COURT COMPARED

- Rules and scheduling – the Unforgiven
- Key document samples to keep handy

HOW TO SUPPORT THE ATTORNEY ENGAGED IN TRIAL

By Rose Gutierrez

Finally, after months of preparation, panic attacks in the middle of the night, weekends and late nights in the office and countless brainstorming sessions with your attorney, the day of trial is at hand.

Just because the trial has begun does not mean that the legal assistant's/paralegal's job is done. You continue to be an essential part of your attorney's trial team and she will depend on you now more than ever to make sure that things run smoothly not only at the courthouse but in the office as well. Knowing ahead of time the many hats that you will have to wear and the many tasks which will be expected of you during this time can ensure that both of you are organized, confident and ready for that winning verdict.

Pretrial Meeting with Your Attorney and Staff

In the same way that the attorneys meet prior to the commencement of trial in order to hammer out the details of the trial, it is crucially important for you to have a pretrial conference with your attorney.

During the pretrial conference, you should hammer out the details of your involvement in the trial and discuss and agree to a game plan and a timeline and ways in which you can best support her while she is engaged. What tasks will you be responsible for and when will they be due? In her absence, who will you report to if a problem arises? Will you be expected to work late or on weekends? Will you be expected to go to court? And what sorts of things will you have authority to do in her absence?

Remember that your attorney has hundreds of things on her mind and that she may not be the same easy going attorney she is when she isn't engaged in trial. Know and discuss your attorney's moods and come up with a plan that will alleviate whatever anxiety, tension or irritability she may face.

You will also want to make sure that you meet with other members of your team including junior associates, records clerks, deposition clerks, copy clerks and outside vendors such as jury consultants, audio visual technicians and document production companies. It is crucial that you communicate clearly to them what the demands on their time and assignments will be and give them a clear timeline of when things will be due. Make sure to discuss expectations and keep open lines of communication at all times.

Report everything back to your attorney in a succinct fashion. This will help her to know that you are on top of things and that she can focus on other more important aspects of the trial. Remember that going to trial is a team effort and that every team needs a manager, that's you.

Know the Documents

Though you are likely the one who finalized all of the trial documents for the case, make sure that you go through them again the week before, even the day before, the trial. Make sure that you are aware of the contents and order of documents of every single binder that your attorney has with him. It is a good idea for you to have an exact duplicate copy of the binders he has so that in the event that he calls from court referencing something from his binder, you can immediately go to the document.

Make sure that you are aware of the most recent versions of all of the trial documents especially the exhibit and witness list. Know which motions in limine are being opposed, stipulated or withdrawn. Know which jury instructions are being jointly requested or objected to and by whom. You can create checklists or grids to keep you organized in this regard. Clearly mark and organize the exhibits. Make sure that you have followed the court rules for marking but also that you have organized them in a way that makes sense to you and your attorney so that documents can be easily accessed. This goes for all of the documents that he may need to look at, reference or admit into evidence. Organization is key.

Be Flexible and Available

More likely than not, when your attorney is in trial, you will be expected to work odd hours and weekends. Your attorney will be in court all day and therefore, may need to meet with you after hours or on the weekends in order to complete follow-up tasks on the case he's trying, or to complete work on other cases. Cut your attorney some slack. By the time he gets back to the office after a day in court, he may not be his usual chipper self; truth be told, after a long day in the office and having to stay late, you may not be your usual chipper self. Both of you may have shorter fuses, you may both be unusually tired and you both may need to take a step back and breathe.

Be extremely flexible at this point. You may need to make last minute changes to any one of the trial documents or jury instructions. You may be called upon to draft a brief that will need to be filed the following morning or to prepare special jury instructions or verdict forms. Perhaps, you will need to pull deposition testimony, organize it or work with the graphics vendors preparing last minute graphics, PowerPoints or posters.

Remember that things can change suddenly depending on the testimony of the day and that sometimes what your attorney had planned for the day went completely awry. Be prepared to request a court reporter's transcript of the day's proceedings on a rush basis and be prepared to be a sounding board for your attorney as he may need to change the direction of his examination.

It is important that at this juncture, you do not agree with him simply to agree. Offer him constructive and honest feedback. You have invested a lot of time and energy into the case and probably know it as well as he does, you can offer wonderful insight if you allow yourself to be completely honest with him and listen critically to his arguments. Does his theory and presentation make sense? Does it flow logically or are there pieces missing? Does it leave you (and likely the jury) wondering about things that are irrelevant? Is his explanation confusing? Is his tone one of condescension or is he connecting with you?

If you are honest with him, it can have a huge impact on the case. Remember that sometimes he can be so immersed in the case that he can lose perspective. Your opinions if offered to him in a truthful, thoughtful, diplomatic and respectful manner, will be greatly appreciated.

Know the Players

Courts encourage parties to work together and submit jointly prepared documents and exhibits. For this reason, it is crucial that you get to know opposing counsel and their assistants. Make sure that you have all of their email addresses and business and cell phone numbers and that they have yours. Do not be shy or reluctant to take the laboring oar in the binder and document preparation. Do not be afraid to reach out to the opposing senior trial attorney if there is something that you need from his office that is not being provided to you.

Remember that your counterparts are as equally stressed as you about the case and its work-up. By working together in an efficient and respectful manner, it will make things easier for everyone. You may even suggest that you have an in person meeting with your counterparts or sit in on the attorneys' pretrial meeting so that you are all aware of what is going on. Building a positive rapport with opposing counsel and their assistants makes the exchange of documents, exhibits and PowerPoints much easier and can also help in eliminating any last minute surprises.

As the trial date approaches, ask your attorney if you can accompany her to the courthouse or if you can go down on your own in order to introduce yourself to the department clerk, courtroom assistant, court reporter and bailiff. Remember that these individuals are crucial to ensuring that things get done in the

courtroom and that they run smoothly. Make sure that you obtain all of their contact information and that they have all of your contact information.

Ask questions. Ask these individuals if there is anything that you need to know about the department that may not have been included in the local rules (which you have already scoured) or in the department rules (which you have also already scoured). While you may not be able to meet the judge, you can get valuable information about her from her courtroom staff. What pet peeves or idiosyncrasies should you avoid (or comply with). Find out what the courtroom daily trial schedule will be. Will the court be in session 5 days a week or 4 days a week? How many hours of testimony will be heard during the morning and afternoon sessions? Will there be a break at some point during the morning and afternoon sessions? Can you have a water bottle at counsel table or in the gallery? What is the procedure for requesting a transcript of the day's proceedings? Can you store things in the courtroom? Will there be an easel, stand or podium for your attorney to use? Does your attorney need to carry blank checks with him to cover jury fees? When do jury fees need to be paid?

If at all possible, go to the department and watch the judge conduct hearings in other cases. Ask your colleagues at other firms if their attorneys have ever been in front of this particular judge and what their thoughts are about her. Ask your colleagues what their experiences have been with the courtroom staff and if there is anything that stands out to them of which you should be aware.

While some of these things may seem on the surface to be quite peripheral, they can make a huge impact on the way in which you and your attorney approach the courtroom. Building good will and rapport goes a long way toward ensuring that things run smoothly for all concerned and may provide you with a slight edge. Remember that while the judge may not be made aware of your efforts to "play nice," she will absolutely hear about any nasty or inappropriate behavior. Always deal and interact with the courtroom staff in a positive and respectful manner.

Know Your Team

A. Scheduling Experts

A tremendous source of frustration when commencing trial is that things are extremely fluid. Having a trial date of August 9th, does not necessarily mean that the trial will start on August 9th. It certainly does not mean that your expert, who you know is going to be up first to testify, will be needed on August 10th. This is especially true in the Personal Injury Hub of the Los Angeles Superior Court.

Once assigned out, the attorneys will have to argue motions in limine, take care of other housekeeping issues, and select a jury well before any testimony is actually elicited. This could take a day, it could take a week.

This uncertainty can be quite disconcerting for most experts, especially if they have never testified before. In order to ease their anxiety, it is imperative that you keep in close contact with your experts at all times. Make sure that you have all of their contact information including cell phone numbers and email addresses and that they have yours. Call them every couple of days (or every day) and give them an update on what is happening at trial and when they will be needed to testify. Make sure that you have obtained all of their vacation, family and work commitment schedules and that you have shared that with everyone on your team. Create a chart or grid for yourself and your attorney so that everyone is aware of their availability and so that this information is readily accessible. Remind your experts that as your attorney adjusts to the dynamics of trial, he may need to have last minute or unscheduled phone conferences with them in order to clarify points raised in testimony or to obtain additional insight or opinions that can be used the following day.

Once your attorney knows for certain the date(s) and time(s) of your expert's testimony, contact

your expert and find out if he needs you to schedule his flight or make transportation or lodging arrangements. If he chooses to do all of that on his own, ask that he send you all of that information immediately so that you can be aware of his arrival times. Your attorney will want to meet with him prior to the day he is to testify. Make sure that in making travel arrangements, this is taken into consideration and that he will have ample time to meet with the attorney the day before he testifies. Build in time cushions for traffic and flight delays; being late to court is not an option. Once your expert is done testifying, continue to keep him apprised of the happenings since by this point, he is just as invested in the case and its outcome as you, your attorney and most importantly, your client.

B. Scheduling Your Clients

The same types of considerations should be given when scheduling your clients' testimony. Make sure that your clients are aware of everything that is happening in the trial. If your clients are going to be present for the duration of the trial, make sure that they are aware of proper courtroom etiquette and attire. Schedule a meeting with your clients and your jury consultant (if you have one) to go over these issues. Remind your clients that the jury is constantly looking at them and forming opinions based on your clients dress and behavior in the courtroom. The opinions formed by the jurors, based solely on what they see, may influence how they receive, interpret and weigh your clients' testimony. Jurors are human, like the rest of us, and form opinions based on first impressions.

C. Jury Consultant

If your firm uses a jury consultant, you will likely be the main point of contact for her as well. Make sure that you keep her well-apprised of any last minute calendar changes and that you consider the same issues regarding travel, transportation and lodging that you have with your other experts and clients.

D. IT Person

Lastly, make sure that you keep in close contact with your audio visual technician or IT person. Make sure that you have met with him well in advance to discuss all of your attorney's trial needs. Will your attorney require a laptop to run his PowerPoint? Will someone be at the court to help your attorney set up his laptop or other devices (sometimes this job may fall on you, as well). Does the courtroom have the ability to interface with all of your attorney's devices and will he be able to scan, email and print documents, if necessary?

Going to Court

It is possible that in some instances your attorney will need you to accompany her to court. This is, of course, a luxury for the attorney and a wonderful learning opportunity for you so if the chance arises, seize it.

One way in which you can assist her is by taking notes while she conducts her voir dire examination. In doing so, you allow her the opportunity to focus solely on her questions and the jurors' responses and reactions to those questions. Unless the juror's response is patently obvious, she may not recall a more nuanced response by a particular juror that may have particular significance. In instances such as these, your notes will provide her with a wealth of information which when coupled with those of your jury consultant can assist your attorney in exercising her challenges effectively.

Likewise, your attorney may not be able to keep track of all of the things being said while cross examining a witness. It is extremely helpful for you to take notes so that she can freely focus on the flow of her examination. Additionally, you may see things that she does not because she is so engrossed in her examination. Perhaps you notice that a juror is sneering or nodding in agreement. Perhaps you see

someone chuckle or roll their eyes. Worse yet, you may see someone has fallen asleep or is not listening to your attorney's presentation. Perhaps you notice a juror crying or shifting uncomfortably in his seat in response to something your attorney said or presented. These are all important non-verbal cues from the jurors that your attorney will find helpful as she continues to craft her argument, presentation and examination of witnesses.

If you are going to accompany your attorney to court make sure that whoever you leave behind in the office is capable of handling your desk while you are out. While you may have a laptop with you so that you and your attorney can make changes to documents or draft briefs during breaks, you may need someone back in the office to actually process the documents. Make sure that whoever you leave in charge is up to date on everything that is pending. Your attendance at court should serve as a support to your attorney and should help relieve her stress. Your absence from the office should *not* create stress for anyone left behind.

Back in the Office

While the case being tried is the priority for you and your attorney, you must also remember that you have other cases which need to continue moving forward. Other clients should not suffer because your attorney is in trial fighting for someone else. It will be difficult for your attorney to keep up with all of his other cases given all of the demands on his time. Make sure that you have met with him prior to the commencement of trial to come up with a game plan for how to handle the other cases to which he is assigned. Determine the sorts of things you can do, with his authority and without him having to be there, in order to ensure that that all of his cases continue to move forward.

Your goal at this point should be to alleviate as many of his potential headaches as possible. Take as many things off his plate as you can and as he is willing to delegate to you. Talk with him and decide if you can grant and request discovery extensions and whether you can request extensions on other discovery deadlines. Will he trust you with his calendar such that you can move depositions and appointments? Can you sort through his mail and categorize it into urgent and non-urgent stacks so that he knows what to focus on during the precious few hours he will have in the office in the evenings or on weekends? Can you let opposing counsel know that he is engaged in trial and will likely be unable to respond to their requests for a few weeks? Can you enlist the help of other attorneys in your office to pick up the slack and if so, who and for what tasks in particular?

Miscellaneous

Other things to consider but which are not common place include having to set up a mobile command post somewhere near the courthouse. If your attorney practices in West Los Angeles and she has to try a case in San Jose, it is unlikely that she will be flying back and forth every day.

You will have to make arrangements for her lodging and mobile office. You may need to find a local dry cleaner or eatery that delivers. In a nutshell, you will need to improvise and think outside the box because your attorney will be far too busy thinking and focusing on the case. Being away from home and family adds another layer of stress. You should be prepared to help alleviate that stress in as many ways you can.

Your job as a paralegal/legal assistant does not end when your attorney starts a trial. It is the beginning of a whole new set of tasks and obstacles. Your attorney will be counting on you to keep him organized and on track. Be calm and stay positive, especially in the face of adversity. Exude confidence and do not be afraid to take a leadership role in interacting with the entire trial team including your attorney, support team, courtroom personnel and opposing counsel. Be constructive, be diplomatic, be respectful and prepare, prepare, prepare. Once you do all of these things, then and only then can you sit back and wait for the phone call from your attorney announcing your side's winning verdict.

PETITION TO APPROVE COMPROMISE**By Jill Kuba****Where to start**

- Contact all experts utilized in case to stop all work and send final billing-keep a list to ensure you receive all final bills
- Contact all governmental agencies and other lienholders to report the settlement and negotiate the liens-Carolyn Jefferies will be discussing this topic in detail
- Prepare draft of the petition for compromise
- Have client meeting to discuss fees, costs, liens and allocation of the settlement
- If applicable reserve a hearing date-Los Angeles, Department 90's require reserving hearing date-other venues require you either call clerk or file to get date-each venue is different so I always check online or call the clerk to find out

Discussions with client

- Allocation-is the petitioner a party to the action? Do they have their own claim? If they are not a plaintiff they are typically entitled to compensation for their waiver of prospective claim for wrongful death of the claimant. If they are a party to the action, what percentage of the settlement will be allocated to them? Will they pay a separate attorney fee and their share of costs? See attachment 1 of breakdown of how this decision can affect the attorney fees
- Explain costs to client
- Explain different options for the claimant's settlement. Explain the benefits of special needs trust (allows the claimant to keep their governmental benefits) vs. settlement trust (claimant does not keep governmental benefits) and the benefits of an annuity (typically tax free on medical malpractice cases)
- Explain to client how a trust works (regardless of whether it is a special needs trust or a settlement trust) and what it can do for the claimant such as purchase vehicles, pay salary to one of claimant's parents or spouse, even purchase property in the name of the trust

Once the decisions are made

- Prepare MC-350-petition to approve compromise and the MC 351-order approving compromise
- Attach doctor's report (attachment 9c) detailing claimant's injury and claimant's current condition
- Attach breakdown of settlement (attachment 11)-when doing combination of trust and annuity, attach terms of annuity, AM Best Rating and sample policy if possible-See attachment 2 for example of breakdown on the petition for compromise if you are allocating part of the settlement to the petitioner and/or father and/or spouse or other party. Each defendant should pay the appropriate portion to the claimant
- If payment is being allocated to others, describe to whom and why and explain to the court why the claim has not affected the proposed claim of claimant (attachment 12)
- Because of the difficulties of trying to get final liens from the various lienholders, it is acceptable and typically gets approved by the court- to ask the court's permission to allow the trustee of the trust pay the lien once received. We ask that the court retain jurisdiction over the matter (attachment 13). Note: if you ask the lien to be paid by the trustee you must check box 7b, page two of the order approving compromise, see attachment 3
- Attach a detailed declaration by your attorney to justify the attorney fee which includes the attorney's credentials, any other attorneys who worked on case and their credentials, a breakdown of the case and the work-up of the case in as much detail as possible (attachment 14a)
- Attach a detailed itemization of the costs (attachment 14b)-be prepared to justify any expense if questioned by your client or the court
- Attach a copy of the attorney client agreement (attachment 18a)-if the retainer is not in English, it is

suggested that an English version is attached as well

-Attach (if applicable) a summary of the trust and a copy of the trust (attachment 19b4)

-Attached your proof of service-if proposing a special needs trust make sure you have the three Department of Health Care Service agencies on your proof of service

Experiences with different venues

-Orange County-must file documents with probate department and they assign date. Be prepared to address (as a supplement) many probate notes in detail a few days prior to the hearing

-If filing in any department in any venue other than Riverside and Orange County, try calling that department and asking the clerk for the judge's procedures in that department

San Diego-Central-hearings and procedures handled in department 74 on Fridays unless case assigned to independent calendar judge who is currently on bench. If so the hearing will be schedule in that department-call first

-San Diego-North County-call clerk in the department assigned to find out the judge's procedures. At times, a hearing is not necessary and the settlement can be approved without court appearance

-Los Angeles-Norwalk-call clerk in the civil department for the judge's procedures.

-Riverside-File your petition to approve compromise (they will give you're a hearing date at the time of filing in the civil department) AND a separate petition to establish the trust (which you will get another hearing date and probate number

-Los Angeles Central-department 90's-reserve date-more often lately the tentative ruling is to continue the hearing six weeks later for the trust to be reviewed by the probate department.

-San Bernardino-must file petition to approve compromise and order in civil department and they will give you date-file separate petition to establish trust in probate and they will give you date later than the petition to approve compromise date. Suggestion-appear at the petition for compromise date and ask department judge to approve the compromise (sign order) and set OSC re: approval of trust for a date later than the petition to establish trust in probate department

Miscellaneous

-15 days' notice to the department of health services if the money is going to a special needs trust

Attachment 1---Different options for allocation of funds

Lisa and Joe Smith's daughter, Beth received a total settlement in the amount of \$3,500,000. They were both parties to the lawsuit. Lisa had her own medical negligence claim and a claim for the prospective wrongful death of her daughter. Joe had his own claim for loss of consortium and for the prospective claim for the wrongful death of his daughter. The following options are discussed with the clients: apportion \$500,000 (just over 14%) for their own claims and \$3,000,000 (approx. 86%) to their daughter. The breakdown discussed with the clients is as follows:

Beth Smith:

\$3,000,000 (approx 86%)
-\$41,790 (86% costs)
\$2,958,210 (sub-total)
-\$515,396 (MICRA fee)
\$2,442,814 Beth Smith

Lisa and Joe Smith:

\$500,000 (approx 14%)
-\$6,803 (14%)
\$493,197 (sub-total)
\$134,964 (MICRA fee)
\$358,233 Lisa and Joe Smith

Total MICRA fee received on both cases \$650,360

Lisa and Joe Smith contemplate having the majority of the settlement monies to go to their daughter, Beth. They want a nominal amount of \$150,000 for their own compensation of their claims. That breakdown discussed with the clients is as follows:

\$3,500,000 (total settlement)
-\$48,593 (100% costs)
\$3,351,407 (sub-total)
-\$589,376 (MICRA fee)
\$2,862,031 (sub-total)
-\$150,000 (Lisa and Joe)
\$2,712,031 (Beth Smith)

MICRA fee received \$589,376-difference of \$60,984

After discussing both options- Lisa and Joe Smith decide to petition the court for allocation of \$500,000. The firm decides to reduce their MICRA fee by \$60,984. That breakdown is as follows:

Beth Smith:

\$2,442,814 (same as above)

Lisa and Joe Smith:

\$500,000
-\$6,803 (14% costs)
\$493,197 (sub-total)
-\$73,980 (\$134,964 MICRA fee less \$60,984-difference above)
\$419,217 Lisa and Joe Smith

Attachment 2

MC-350

CASE NAME:	CASE NUMBER:
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9. **Extent of injuries and recovery** (An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's present condition, must be attached to this petition as Attachment 9. A new report is not necessary so long as a previous report accurately describes the claimant's current condition.)
- a. The claimant has recovered completely from the effects of the injuries described in item 7, and there are no permanent injuries.
- b. The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are temporary (describe the remaining injuries):

Continued on Attachment 9b.

- c. The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are permanent (describe the permanent injuries):

Continued on Attachment 9c.

10. **Petitioner has made a careful and diligent inquiry and investigation to ascertain the facts relating to the incident or accident in which the claimant was injured; the responsibility for the incident or accident; and the nature, extent, and seriousness of the claimant's injuries. Petitioner fully understands that if the compromise proposed in this petition is approved by the court and is consummated, the claimant will be forever barred from seeking any further recovery of compensation from the settling defendants named below even though the claimant's injuries may in the future appear to be more serious than they are now thought to be.**

11. **Amount and terms of settlement**

By way of settlement, the defendants named below have offered to pay the following sums to the claimant:

- a. The total amount offered by all defendants named below is (specify): \$
- b. The defendants and amounts offered by each are as follows (specify):

<u>Defendants (names)</u>	<u>Amounts</u>
Doe Hospital (paying \$3,000,000 of the total settlement)	\$ 2,580,000
Carroll Doe, M.D. (paying \$500,000 of the total settlement)	\$ 420,000
	\$
	\$
	\$

Defendants and amounts offered continued on Attachment 11.

- c. The terms of settlement are as follows (if the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included): See attachment 11

Continued on Attachment 11.

Attachment 2—laying out the terms clearly for the court

Attachment 11 -- Amount and Terms of Settlement

Defendant, Doe Hospital has offered consideration having a value of \$3,000,000 in exchange for a release and dismissal with prejudice by the Claimant, her mother and father. Defendant Carrol Doe, M.D. has offered consideration having a value of \$500,000.00 in exchange for a release and dismissal with prejudice by the Claimant, her mother and father.

The consideration is proposed to be allocated as follows:

- A. \$250,000.00 to Lisa Smith (Petitioner and Claimant's mother) for release of her own medical negligence claim and for the prospective claim for the wrongful death of her daughter.
- B. \$250,000.00 to Beth Smith(Claimant's father) for release of his own loss of consortium claim and for the prospective claim for the wrongful death of his daughter.

From the \$3,000,000 up-front cash allocable to the Claimant, the following amounts are proposed to be deducted:

- A. Attorneys fees to the Law Offices of Michels & Lew, in the amount of: \$515,396
- B. Costs to the Law Offices of Michels & Lew in the amount of: \$41,790
- D Total Deductions \$557,186

The net up-front cash in the amount of \$2,442,814 is proposed to be paid to Bank, trustee of the Beth Smith Settlement Trust. The operation of the Trust is summarized in Attachment 19b.7 hereto.

Attachment 3—Asking the court for permission to allow the trustee to pay a lien

Attachment 13

Petitioner's counsel has requested a final lien from the Department of Health Care Services (copy attached) but as of the date of the filing of this petition, has yet to receive the final lien. Because the Department of Health Care Services must request payment data from various sources, obtaining the final lien amount could take several months. Petitioner requests that the trustee of the Beth Smith Trust be authorized to pay the final lien once the lien amount is resolved. Petitioner requests that the court retain jurisdiction over this matter.

Attachment 3

CASE NAME: _____	CASE NUMBER: _____
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13. The claimant's medical expenses, including medical expenses paid by petitioner and insurers, to be reimbursed from proceeds of settlement or judgment

b. Medical expenses were paid and are to be reimbursed from proceeds as follows:

(3) Paid by Medicare in the amount of: \$ _____
less the statutory reduction in the amount of: \$ (_____)
for a total reimbursement to Medicare in the amount of: \$ _____
(Attach a copy of the final Medicare demand letter or letter agreement as Attachment 13b(3).)

(4) Paid by Medi-Cal in the amount of \$ _____
(a) Notice of this claim or action has been given to the State Director of Health Care Services under Welfare and Institutions Code section 14124.73. A copy of the notice and proof of its delivery is attached. _____ was filed in this matter on (date):

(b) Notice of this claim or action has not been given to the State Director of Health Care Services. (Explain why notice has not been given in Attachment 13b(4).)

(c) In full satisfaction of its lien rights, Medi-Cal has agreed to accept reimbursement in the amount of: \$ _____
(Attach a copy of the final Medi-Cal demand letter or letter agreement as Attachment 13b(4).)

* (d) Petitioner is entitled to a reduction of the Medi-Cal lien under Welfare and Institutions Code section 14124.76 and:

(i) Is filing a motion seeking a reduction of the lien concurrently with this petition.

* (ii) Requests that the court reserve jurisdiction over this issue.

The amount of the lien in dispute is: \$ _____

(5) (a) There are one or more statutory or contractual liens of medical service providers for payment of medical expenses. The total amount claimed under these liens is: \$ _____. In full satisfaction of their lien claims, the lienholders have agreed to accept the total sum of: \$ _____
(Provide requested information on each lienholder and certain other medical service providers below.)

(b) The name of each medical service provider that furnished care and treatment to claimant and (1) has a lien for all or any part of the charges or (2) was paid (or will be paid from the proceeds) by petitioner for which petitioner requests reimbursement; the amounts charged and paid; the amount of negotiated reduction of charges, if any; and the amount to be paid from the proceeds of the settlement or judgment to each provider are as follows:

(i) (A) Provider (name):

(B) Address:

(C) Amount charged: \$ _____
(D) Amount paid (whether or not by insurance): \$ (_____)
(E) Negotiated reduction, if any: \$ (_____)
(F) Amount to be paid from proceeds of settlement or judgment: \$ _____

(ii) (A) Provider (name):

(B) Address:

(C) Amount charged: \$ _____
(D) Amount paid (whether or not by insurance): \$ (_____)
(E) Negotiated reduction, if any: \$ (_____)
(F) Amount to be paid from proceeds of settlement or judgment: \$ _____

Continued on Attachment 13b(5). (Provide information about additional providers in the above format, including providers paid or to be paid by petitioner for which reimbursement is requested in item 13b(1) above. You may use form MC-350(A-13b(5)) for this purpose.)

Check Box

CASE NAME:	CASE NUMBER:
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6. THE COURT FINDS that all notices required by law have been given.

7. THE COURT ORDERS

a The petition is granted and the proposed compromise of claim or action or the proposed disposition of the proceeds of the judgment is approved. The gross amount or value of the settlement or judgment in favor of claimant is \$ []

*
Check
Box

b Until further order of the court, jurisdiction is reserved to determine a claim for a reduction of a Medi-Cal lien under Welfare and Institutions Code section 14124.76. The amount shown payable to the Department of Health Care Services in item 7c(1)(d) of this order is the full amount of the lien claimed by the department but is subject to reduction on further order of the court upon determination of the claim for reduction.

c The payer shall disburse the proceeds of the settlement or judgment approved by this order in the following manner:

(1) Payment of fees and expenses

Fees and expenses shall be paid by one or more checks or drafts, drawn payable to the order of the petitioner and the petitioner's attorney, if any, or directly to third parties entitled to receive payment identified in this order for the following items of expense or damage, which are hereby authorized to be paid out of the proceeds of the settlement or judgment:

(a) Attorney's fees in the total amount of: \$ [] payable to (specify):

(b) Reimbursement for medical and all other expenses paid by the petitioner or the petitioner's attorney in the total amount of: \$ []

(c) Medical, hospital, ambulance, nursing, and other like expenses payable directly to providers as follows, in the total amount of: \$ []

(i) Payee (name):

(A) Address:

(B) Amount: \$

(ii) Payee (name):

(A) Address:

(B) Amount: \$

Continued on Attachment 7c(1)(c). (Provide information about additional payees in the above format.)

(d) Other authorized disbursements payable directly to third parties in the total amount of: \$ (Describe and state the amount of each item and provide the name and address of each payee):

Continued on Attachment 7c(1)(d).

(e) Total allowance for fees and expenses from the settlement or judgment: \$ []

HEALTH INSURANCE LIENS

By Carolyn Jefferies

I. Medi-cal (Department of Healthcare Services)

A. Eligibility

1. Income guidelines (see chart)
2. If a person is:
 - a. 65 or older
 - b. Blind
 - c. Disabled
 - d. Under 21
 - e. Pregnant
 - f. In a skilled nursing or intermediate care home
 - g. On refugee status for a limited time
 - h. A parent or caretaker relative or a child under 21 if:
 1. The child's parent is deceased, doesn't live with the child is incapacitated or is under/unemployed.
 2. Is participating in a Breast or Cervical Cancer treatment program
3. If the person is enrolled in one of the following programs:
 - a. Cal Fresh (Food stamps)
 - b. SSI/SSP
 - c. Calworks (AFDC)
 - d. Refugee Assistance
 - e. Foster Care or Adoption Assistance Program

B. Challenges

1. Prolonged delay in receiving lien information from the DHCS
 - a. Possible solutions
 1. Order the lien early to cut down on the processing time.
 - i. As soon as the client is done treating with "medi-cal" providers.
 - ii. As soon as the case settles
 2. Get the verbal from Medi-cal prior to settling.
2. DHCS reporting or threatening to report attorneys to the state bar for ethics violations.
 - a. Possible solutions
 1. Update DHCS each month with case status
3. Reductions
 - a. Based on "Fifty percent rule" (W&I Code 14124.78)
 - b. Always provide an itemized cost sheet for consideration

II. Medi-care

A. Eligibility

1. a person is eligible if they are:
 - a. a U.S. Citizen
 - b. 65 or older
 - c. and have paid into the medi-care system either through their employer or their spouse.

B. Challenges

- a. Length of time to get a lien
 - 1. Possible solutions
 - i. Begin the medi-care process as soon as the case is signed
 - ii. Timeframes and the Portal
- b. Unrelated charges listed
 - 1. Possible solution
 - i. see above
- c. Reductions
 - 1. Possible solution
 - i. Compromise

III. ERISA (Employment Retirement Income Security Act of 1974)

- A. Definition
- B. Reducing an ERISA lien

IV. Other liens (Rawlings, Meridian, Tricare etc.)

- A. See insert for contact information
- B. Process times
- C. Motion Pictures Industry Health Insurance Lien (MPI)

V. Negotiating tips (General)

- A. Be prepared
- B. Be smart
- C. Be firm
- D. FIGHT FOR THE CLIENT!!!!

POST-TRIAL CALENDARING**By Sheri L. Dempsey**

Notice of Entry of Judgment CCP Section 664.5, triggers:

I. Motion for New Trial (CCP Section 659) and Motion for Judgment Notwithstanding Verdict (CCP Section 629 – refers to Section 659 for deadlines)

California Code of Civil Procedure Section 659 – *Notice of Motion – Filing and Service, Time – Contents – Extension of Time.*

(a) The party intending to move for a new trial shall file with the clerk and serve upon each adverse party a notice of his or her intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court, or both, either:

(1) After the decision is rendered and before the entry of judgment.

(2) Within 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him or her by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest; provided, that upon the filing of the first notice of intention to move for a new trial by a party, each other party shall have 15 days after the service of that notice upon him or her to file and serve a notice of intention to move for a new trial.

(b) That notice of intention to move for a new trial shall be deemed to be a motion for a new trial on all the grounds stated in the notice. The times specified in paragraphs (1) and (2) of subdivision (a) shall not be extended by order or stipulation or by those provisions of Section 1013 that extend the time for exercising a right or doing an act where service is by mail.

California Code of Civil Procedure Section 659a – *Affidavits – Counter-Affidavits – Filing and Service – Time Limit*

Within 10 days of filing the notice, the moving party shall serve upon all other parties and file any brief and accompanying documents, including affidavits in support of the motion. The other parties shall have 10 days after that service within which to serve upon the moving party and file any opposing briefs and accompanying documents, including counter-affidavits. The moving party shall have five days after that service to file any reply brief and accompanying documents. These deadlines may, for good cause shown by affidavit or by written stipulation of the parties, be extended by any judge for an additional period not to exceed 10 days.

II. a. Last day to file Memorandum of Costs – 15 days after Entry of Judgment (CRC 3.1700(a)(1).) There are conflicting opinions as to whether or not the additional five days per CCP Section 1013 applies to the timing of filing a Memo of Costs. Probably best to just file within the 15-day time limit.

See CCP Section 1033.5 for allowable costs.

b. Motion to Strike Costs must be served and filed 15 days after service of the cost Memorandum plus 5 days per CCP Section 1013 if served by mail.

III. Last day to file Notice of Appeal from Judgment – 60 days after Notice of Entry of Judgment (California Rule of Court Rule 8.104(a))

Caveat: If a timely motion for new trial/JNOV/motion to vacate is filed, then under CRC 8.108 the time to appeal is extended until 30 days after the date the motion is denied (or is deemed denied by operation of law). When in doubt file the notice of appeal. It is very easy to do and the failure to timely do so is jurisdictional.

a. 10 Days after filing the Notice of Appeal, Appellant must file and service Appellant's Notice Designating Record on Appeal in Superior Court (can be combined and filed with Notice of Appeal) – CRC, Rule 8.121;

b. Within 15 days after the Superior Court clerk sends the notification of the filing of the notice of appeal required by (e)(1), the appellant must serve and file in the reviewing court a completed Civil Case Information Statement (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered;

c. Court of Appeal Mandatory Docketing Statement due 20 days from Notice of Filing Notice of Appeal sent by Superior Court (the Court should attach it to their notice of filing).