

ROADMAP OF A CIVIL LITIGATION MATTER FROM THE PLAINTIFF'S PERSPECTIVE

Initiation: Getting the Case Off the Ground

Take Your Time- Investigate BEFORE You Take the Case

1. Meet with the prospective client and go through the initial interview and prepare a memo and put notes in your file and/or system.
 - a. Send the prospective client a letter explaining the next steps and the importance of these steps.
 - b. At the initial interview, you are looking for the answer to two big questions before you decide whether you will take a case (HINT: you want to be able to answer yes to both questions).
 - i. QUESTION ONE- Do you have a good client? Is your client likable? Believable? Trustworthy? Do they seem to exaggerate? Are they honest?
 - ii. QUESTION TWO- Do you have good facts (or a good case)? To have a good case in tort, you need all four:
 1. Liability: Did anyone do anything wrong? Was it intentional or negligent? Who did something wrong? Anyone else also at fault? Respondeat superior? Parental liability?
 2. Causation: Did the bad acts CAUSE the damage claimed? Often seen in personal injury matters, did the MVA cause the need for surgery?
 3. Damages: What are the damages? How will you prove the damages? What type of damages are claimed? Medical bills, lost profits etc.
 4. Collectability: If you win, is there money available to collect?
2. It is often a good idea to perform an initial fact investigation BEFORE you agree to take the case.
 - a. Obtain medical records via releases.
 - b. Obtain other records, such as:
 - i. Police reports;
 - ii. Social media;
 - iii. Text messages;
 - iv. Phone records;
 - v. Personnel file; and
 - vi. Photos, etc.
 - c. Talk to key witnesses and create memos.
 - d. Does the Defendant or Plaintiff have insurance? Get a copy of all policies and review if possible (e.g., Liability, UM/UIM, PIP, CDL, Commercial, Employment).
 - e. Get a copy of the denial letter, if applicable and review.
 - f. Is this case going to need an expert? Discuss this with the client.
 - g. Discuss costs and budget with the client and get confirmation of early willingness to pay costs.
3. Conduct legal research BEFORE taking the case.
 - a. Determine the statute of limitations. Are you close to the deadline? Maybe you don't want to take the case? Better to say so now.
 - b. Is a tort claim notice required? Did anyone give it? Look for signs of "actual notice," etc.
 - c. Determine all defendants (e.g., minor driver and negligent supervision of parents etc.).
 - d. Determine venue.
 - e. Confirm personal jurisdiction.

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4. If you decide you want to take the case, prepare an engagement letter and get a retainer for costs and put all information in the file and perform an intake process. If you do not take the case, send a non-engagement letter.
 - a. Make a file for your system.
 - b. Send a preservation of evidence letter to the defendant.
 - c. ALWAYS track your time even during the investigatory process.
 - d. Fill out more complete information for your client (e.g., SSN, DOB, address, emails, phone numbers etc.).
 - e. If causation or expert needed, find experts and engage if possible (have them run conflicts).
5. Provide client with preservation of evidence instructions in writing.
 - a. Preserve phone, texts, emails, lock down social media, don't discuss anywhere.
 - b. Suggest they prepare and create a log of how they are feeling on any given day.
6. Prepare a demand letter (if going that route).
7. Draft a complaint and eFile.
 - a. Does the client have capacity? Is the plaintiff actually an estate?
 - b. Do you need to open an estate file and have a PR appointed?
8. Evaluate whether to prepare or waive Initial Disclosures if in federal court.
9. Draft Request for Production, Request for Admissions, Notice to Inspect and Interrogatories (federal).
10. Issue a Notice of Subpoena.
11. Draft and issue a Subpoena (Subpoena Duces Tecum).
12. Draft a Notice of Deposition.
13. Serve by process server a summons, complaint, initial discovery with notices of deposition for KEY defense witnesses.
14. Introduce yourself to all counsel. Be sure all counsel are placed in your document management system and certificate of service is updated.
15. Meet with counsel and discuss case scheduling and discovery with counsel on the other side.

Discovery: Piecing the Facts Together

16. Answer Requests for Production. Review Requests with Client. Pull additional documents and use bates numbers on all produced documents.
17. Prepare a production log to track what has been produced.
18. As records come in, prepare a medical bill summary.
19. If complicated, prepare a medical record summary. Include citations to the bates number so you can find the document easily when required.
20. If seeking lost wages, prepare a wage loss summary. Include citations to the bates number so you can find the document easily when required.
21. Find and consult with experts.
22. Review reports from experts.
23. Find and interview all possible witnesses.
24. Depose other side's witnesses.
 - a. Draft deposition outlines.
 - b. Always ask if you need a PMK Deposition (Person Most Knowledgeable).
25. Prepare your witnesses and defend their depositions.
 - a. Should you send the witness a deposition prep letter? If the client is not sophisticated or seems to learn better when items are in writing, it is not a bad idea.
26. Handle eDiscovery

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- a. This is a complicated topic. Consider working with a vendor to assist with the collection and production. It is most important to work with the other side often when there is a lot of discovery and do not let the client delete any emails or documents.
27. Review discovery and provide a case assessment to the client. Consider using a Focus Group. Update your case management system with all relevant information including insurance settlement offers and responses.
28. Determine if amendments to key pleadings are necessary. Amend to add claims or damages. Determine if you want to move to amend to add punitive damages.
29. Resolve discovery disputes.
 - a. Once you confer, always follow up with a confirming letter or email.
 - b. Do you need to file a Motion to Compel?
 - c. Did they destroy a key piece of evidence, should you file a Motion for Sanctions for spoliation?
30. Check in with the client, give time to answer questions, provide a case assessment and confirm if they are still interested in continuing, and then send a follow up email.

Settlement: Coming to An Agreement

31. Talk to the client about alternative dispute resolution (ADR) and explain the process. Revisit discussions about litigation costs and provide an updated budget.
32. Participate in ADR.
33. Negotiate with the other side.
34. Prepare a mediation statement with exhibits.
 - a. This is a great time to really refine and narrow the theme and story of the case and to determine what else you need in the way of discovery.
 - b. In complex cases consider exchanging proposed settlement terms to review prior to the mediation or settlement conference.
35. Attend a mediation or settlement conference with the other side.
36. Notify any entity owed money by the client or with liens of the mediation.
 - a. Medical providers with liens or with outstanding bills should know about mediation so they are ready to discuss taking a discount to settle the case.
 - b. Immediately confirm any negotiated deduction in writing.
37. Draft a settlement agreement.
 - a. Is this a case you wish to discuss structured settlement with the client?
 - b. If a minor, should you obtain authorization from the court?
38. If a settlement, draft and file a stipulated general judgment of dismissal.
 - a. Best to ask that funds are wired into a client trust account rather than checking.
 - b. Prepare a final accounting for the client and have them sign it.
 - c. Make sure your costs are paid and then attorney fees.
 - d. When you receive the signed final accounting from client, send the client the money.
 - e. Sometimes, if you settle just before trial, you may want to hold back a disclosed sum of \$2k-\$5k to take care of invoices for litigation costs that come in after settlement. Disclose this on the final accounting and then after a few months return whatever was not used.
39. If you do not settle, check in with the client, give them time to answer questions, provide case assessment, and confirm whether they are still interested in continuing. Then send a follow up email and ask for feedback.

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Pretrial: Preparing for Battle

40. Continue to perform research and refine the theme and story of the case. Often there are more items to research after mediation.
41. Review discovery and determine what else is needed. Prepare motions for summary judgment, other motions, declarations, and mark exhibits.
42. Respond to the other side's motions.
43. Prepare and argue at hearings. Think about making a notebook with the briefing, declarations, exhibits, and cases.
44. Start thinking about preparing Motions in Limine. Which evidence should stay out of the case?
45. Check in with the client, give them time to answer questions, provide a case assessment, and confirm they are still interested in continuing. Then send a follow up email and ask for feedback.
46. Look into practicing your case and story on others. For example, give your opening statement to your family.

Trial: The Fight is On

47. Perform more legal research. Create "pocket memos" on key issues.
48. Prepare exhibits for trial.
49. Prepare a trial memo.
50. Prepare jury instructions.
51. Prepare a verdict form.
52. Prepare a computer or other type of system for showing documents to the jury.
 - a. Trialpad and Trial Director are two systems often used for exhibits.
53. Prepare experts and witnesses for testimony. Do you need to perpetuate anyone? If so, give a Notice to Perpetuate.
54. Consult with members of the trial team- your paralegal and client- check in, tell the client what you need from them during trial.
55. Prepare opening and closing statements and presentation aids.
56. Prepare for direct exam and cross examination.
57. Before you rest your case, go back and confirm you have put on evidence of each element of every claim. Then prepare yourself for a Directed Verdict Motion. This is when those pocket memos can come in handy!
58. Keep the jury and the Court informed of the trial. Is someone running late? Does someone need to leave early? Let them know.
59. Check in with the client, give them time to answer questions, provide a case assessment and confirm they are still interested in continuing. Then send a follow up email and ask for feedback.

Post-Disposition: After the Verdict Collection or Do Over?

60. Prepare a Judgment. General Judgment of dismissal; OR Money Judgments.
61. Post-Trial Motion Practice (if needed).
 - a. JNOV i.e. motion for judgment notwithstanding the verdict.
 - b. Motion for New Trial.
 - c. Deal with remittitur.
62. Conduct post-verdict settlement negotiations.
63. Draft motions for rehearing, attorney fees, etc.

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64. If verdict in our favor, take steps to collect judgment.
 - a. Judgment debtor exam.
 - b. Demand for payment.
 - c. Garnishments.
65. Place collected funds in a client trust account.
 - a. Prepare a final accounting for the client and have them sign it.
 - b. Do you want to hold anything back for late invoices?
66. Check in with the client, give them time to answer questions, send a final email and ask for feedback.
67. Add them to your marketing plan and check in with them once a year. If you did it right, your client will become your best referral source!

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