

Personal Injury Primer: How to Handle The Basic Auto Accident Case

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WHAT TO EXPECT FROM THIS PRESENTATION

MONEY

Basic Auto Accident Topics

- * \$1000-\$100,000.00
- * What are the minimal requirements to get an offer;
- * Suggestions to Add Value to Case;
- * Practice Management Tips;
- * Client Management Tips;

Money

Red Flags – Do Not Take These Cases

- * Photographs with No Property Damage
- * Medicaid/Medicare and Soft Tissue Injury
- * Clients with unrealistic expectations:
 - * Been through this process before;
 - * Already represented;
 - * Credibility Issues;

O.R.P.C. 1.18 – Duties to a Prospective Client

HOW TO REJECT A CASE

- * Always advise them of the SOL
- * Cost/Benefit Analysis
- * Does not fit the criteria of the cases you handle
- * Recommend they seek other counsel.
- * Ethical Considerations:
 - * Relies on your opinion;
 - * Belief of the existence of a relationship

CLIENT RED FLAGS

- * Unrealistic Expectations:
 - * Money problems;
 - * Will have money problems;
 - * Job History
- * Truthful or Not:
 - * Hiding information/ Bad Historian/Describe the Accident with a slant/
- * Temper Issues

HOW TO TALK TO A PROSPECTIVE CLIENT

CLIENT MANAGEMENT TIP #1

- * Client Perspective: ask these questions
 - * Have they had friends of family through this process?
 - * What do they expect?
 - * What money they want out of this?

BASICS

- * Objective of the case:
- * Address money issue immediately:
- * Explain how the case is evaluated by Insurance
- * Explain the Insurance Company Role
- * How we evaluate the case
- * “Fish” for what their expectations

PRACTICE MANAGEMENT TIP #1

O.R.C. 4705.15: CONTINGENT FEE AGREEMENT

Must Be In Writing #1

Provide a copy to client #2

Closing Statement #3

O.R.C.P. 1.15 et. seq.

PRACTICE MANAGEMENT #2

- * Send documents to client:
 - * contract
 - * letter transmitting contract
 - * memorandum of what you talked about
 - * highlight all the topics discussed
 - * lock in money expectations
 - * request any additional information from the client

Why?

CLIENTS WILL BECOME THE
ENEMY

Client Management Tip #3

- * Warn the client of all the pitfalls:
 - * Gaps in treatment
 - * Statements against their interest
 - * Missing work beyond the “off work” slip time
 - * Place everything through health insurance
 - * Surveillance
 - * Continuing to treat with a chiropractor
 - * Failing to communicate

TALKING TO CLIENTS

WHAT YOU NEED TO KNOW

Client Communication O.R.P.C.

1.4

(A) A lawyer shall do the following:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required under these rule

Typical Consent Issues

- * Letters of Protection;
- * Advances
- * Demand
- * Rejection and Counters
- * Accepting Offer
- * Filing Lawsuit
- * Trial

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished

(3) Keep the client reasonably informed about the status of the case

(4) Comply as soon as practicable
with reasonable requests for
information from the client

(5) Consult with the client about any relevant limitations on the lawyers conduct when the lawyer knows that the client expects assistance not permitted by the ORPC

KEY

(B) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions concerning the representation

What is reasonable
communication?

30-45 days

Client Management Tip #4

Structure of conversations

- * Objective:
 - * Anything negative impacting the objective
 - * Explain the “Long Game”
- * Return to the Road Map
- * Overview of what did in the last 30 days
- * Overview of what will happen in the next 30 days
- * Answer any questions

Practice Management Tip #3

When to follow up with a letter to the client?

- * Client is upset with my opinion or analysis
- * Evidence or Issue which impacts the value of the case
- * Character evidence or credibility issues
- * Anything where the client can use against you at a later date

What adds value to the case?

Hot Topics and Evidence

- * Head Trauma
- * Injuries which affect the job or unique hobby
- * Witnesses
- * Good Client

Practice Management Tip #5

PICK UP THE PHONE AND CALL THE INSURANCE
COMPANY

SETTING THE RESERVE

- * AFTER THE LETTER OF REPRESENTATION:
- * WITH THE ADJUSTER:
 - * REVIEW THE INJURIES
 - * JOB DUTIES AND HOURLY RATE
 - * TYPE OF TREATMENT
 - * POLICE REPORT CITATION
 - * HEALTH INSURANCE
 - * EXCHANGE EMAILS

PRACTICE MANAGEMENT TIP #6

- * How to win the adjuster over:
 - * Give them what they need to do their job
 - * Do not make their life difficult
 - * Organization
 - * Justify your demand with evidence
 - * Outline your arguments

Dealing with an Adjuster: ask
this question.....

Who is your audience?

- * Too many files
- * Not enough time
- * No respect
- * Deal with mean lawyers and people
- * No one is ever happy in their world

Practice Management Tip #7

REPUTATION

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TALKING ABOUT SETTLEMENT VALUE WITH THE CLIENT

STEP ONE

- * TALK ABOUT STRENGTHS OF CASE AND THEN REVIEW WITH CLIENT PROBLEMS WITH CASE:
 - * NOT LIMITED TO EVIDENCE:
 - * ECONOMICS, SOCIAL ISSUES, MORAL ISSUES, ETC.
 - * ANYTHING THE JURY CAN HANG THEIR HAT ON TO DENY MONEY

STEP TWO

- * It is not their perspective, but the perspective of the juror.
 - * Who are they and where they come from
 - * Stress what problems they will face
 - * Stress how they will react to the evidence
 - * Always stress the “gamble”

STEP TWO

- * Medical Treatment
 - * Sliding scale argument
 - * Compare and contrast their treatment and injuries
 - * What their treatment is not?
 - * Problems with medical
 - * Robinson Decision- review till they completely understand
 - * Reimbursing liens

STEP THREE

- * **Hard Numbers:**
 - * Robinson Number
 - * Lost wages
 - * Medicaid and Medicare liens
 - * BWC
 - * LOPS
 - * Assignments

THREE DIFFERENT WAYS TO WRAP UP THE VALUE DISCUSSION

FLOOR/CEILING APPROACH

DISCOUNT APPROACH

Starting Demand

What topics need to touch on.

- * Best Day at Trial
- * Insurance will never pay this
- * Case will never settle for this amount
- * Starting point
- * Settlement is never half of this number
- * Negotiations is about messages

Client Management Tip #5

Topics which all clients get upset over

- * Value opinion: not enough money
- * Time: too long- that should add to their money
- * Fee is too much
- * Disagreement with negotiation strategy
- * General BS

Client Management Tip #6

How to handle the difficult client

- * Face to Face Meeting:
- * Organization: **BE PREPARED!!!!**
 - * Narrow the issues they are upset about and be prepared for the meeting
 - * Persuade the client into agreeing with you
 - * Deal breaker- how fix it?
 - * Follow up with them: **LETTER!!!!**

DEMAND LETTERS

PRACTICE MANAGEMENT TIP #7

- * INTRODUCTION

- * Documents sending with letter
- * Identify the demand number

- * BODY

- * Liability: how you are going to win this case
- * Damages: reasons the jury will award money
 - * Fix a problem
 - * Losses the client incurred
 - * Money for their struggle

- * CONCLUSION

Key points to stress in letter

- * “ick” factors
- * Story line different than other pi cases
- * Facts supporting client is a credible witness
- * Evidence which appeals to jury – even if inadmissible
- * Focus on your audience.

PRACTICE MANAGEMENT

TIP #8

HOW TO ADD VALUE TO THE CASE

STRATEGY ONE

- * IDENTIFY THOSE ARGUMENTS THE DEFENSE HAS NO COUNTER TO:
 - * LIMITS ISSUES
 - * BROKEN BONES
 - * SURGERY IMMEDIATELY AFTER ACCIDENT
 - * HOSPITALIZATION
 - * No prior health history
 - * Expert Reports
 - * Witness Statements

STRATEGY TWO

- * Low value case- need to settle fast.
 - * Obtain authority with client
 - * Negotiate within a range where the case should settle
 - * No demand needed, solicit an initial offer

STRATEGY THREE

- * Focus on the Defendant
 - * Defendant is a bad client;
 - * Their client is a threat to the insurance company
 - * Review why and...
 - * Need to settle the case

SUIT MUST BE FILED

WHAT NEEDS FINISHED BEFORE YOU FILE

- * All the records in?
- * All the priors?
- * Balances and RVB sheet done?
- * Witnesses lined up?
- * Experts in line?
- * What else needs done...

Narrow the Issues for Litigation

What are they?

- * Liability?
- * Nature of Injuries-
 - * Causation
 - * Permanency
 - * Future care
 - * Functional limitations

EXPEDITING SETTLEMENT IN COURT

STEP ONE

- * Defense counsel:
 - * Send copy of demand letters and where left off with settlement negotiations
 - * Identify the issues disagreed on
 - * Send them the medical documentation and all priors, plus expert report (if have)
 - * Ask to try to settle the case

BE CAREFUL

Do Not...

- * Drop to the bottom line
- * Concede any points to just get to the bottom line
- * Get “Bullied” into a settlement

IF YOU DO NOT SETTLE – THIS
IS HOW YOU HANDLE WITH
THE COURT

INITIAL PRE-TRIAL

- * Pre-trial statement:
 - * Identify all the work done to date
 - * Supply the demand letters as attachments
 - * Get the court's opinion on the case
 - * Outline the issues for the court and how discovery will either flush out settlement
- * Set the court up so they know where you are heading

PREPARING FOR MEDIATION

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KEYS- PRACTICE MANAGEMENT

TIP #8

- * Adjuster will not increase their offer unless there is new:
 - * Evidence
 - * Or a new issue which affects value of the case

How do I find a new issue in the
case?

Where to look?

- * What will impact the value of the case?
 - * Who?
 - * What did they do/ What happened?
 - * Why?
 - * How it happened?
- * What caused the case to be undervalued?
 - * Attack all of those areas
 - * Attack all of the other sides strengths

Client Management Tip # 7

Preparing them for Mediation

- * Review the same stuff prior to discussing settlement pre-suit
- * Ask them to write out any questions they want to ask the mediator
- * Ask them to write out any value questions they wish to discuss with the mediator
- * Review with them their behavior at mediator

NEGOTIATIONS

RULES FOR NEGOTIATIONS

- * Know where you want the case to settle
- * Make decisions which will get you to this end
- * Flexible