

Personal Injury Litigation Notes
Class 1
January ____, 2012

I. Solo Practice versus Firm Practice

A. Solo Practice

1. Be your own boss
2. Overhead/Business expenses
3. Mentoring/Training – Who do you get advice from?
4. Scheduling – conflicts with court appearances – Who can help you cover court, depositions, client meetings?
5. Not just a lawyer, but you are your own business manager, H.R./benefits manager, etc.

B. Firm Practice

1. Mentoring, training, advice, comraderie
2. Overhead – none as an associate, shared if partner/owner.
3. More resources and staffing for court calls, depositions, and office work.

II. Case Selection (Plaintiff's perspective)

A. What makes for a good case?

1. What happened?
 - i. What are the facts?
 - ii. Are the favorable to the potential client?
2. How good is the theory of liability?
3. How severe are the injuries to the plaintiff?
 - i. Brain-dead, paralyzed, death vs. bad injury but is now fine and back to work?
4. What are the damages in this case?
 - i. Both economic and non-economic damages
 - ii. goes to the severity of the injury
 - iii. Paraplegic
 - iv. Malpractice, Defense wins 2/3 of the time
 - a. bias and prejudices for or against medical personnel/profession
 - b. these Ds always have answers
5. Time, cost, and resources necessary to prosecute
 - i. How the P was injured, recovery time, etc. will impact potential damages (as well as laws setting caps, etc). Is this amount worth the time and resources?
 - ii. Attorney's ability to try the case at the time of the client meeting will often impact if it is worthwhile to take the case.
 - a. Possibly pass to lawyer in firm or younger associate if there is less potential recovery

6. D's ability to pay or insurance coverage
 - i. State law plays an important role in determining under which circumstances you can recover and how much you can recover (think thresholds, circumstances where law precludes recovery)
 - ii. Caps on recovery, even where P will clearly win, often discourages attorney from taking a case
 - iii. In the malpractice arena, where you have hospitals, doctors, and insurance companies, the ability to pay is a sure thing. However, it is much more difficult to get them to pay.
 - a. Downside is time and resources that must be put into trying the case, even though you know Ds can pay.
 7. Case specifics:
 - i. The Ps
 - a. More appealing/ sympathetic/ likeable/ believable/ compelling, the better
 1. Deal-breaker if P is less than savory?
 2. Quality of P plays role not only in taking the case, but also in deciding whether to settle the case or to take it to trial (think jury reaction to a mean or untrustworthy client).
 - ii. The Ds
 - a. The more unlikable, the better
 - iii. Witnesses
 - iv. Facts
 - v. Venue- where would we file the case?
 - a. Malpractice case, brain damaged trial, good liability filed in Cook Ct., IL yield very different result than same case filed in Indiana.
 - 1.) Different potential recovery
 - vi. Complexity
 8. You cannot be afraid to reject a case!
- B. Signing a case
1. Fed Ex Truck, runs red light, brain death, paralysis, and death. News of accident spreads like wildfire.
 - i. Legal and Lay Community
 2. Competitive business and your need to be retained ASAP
 - i. Want client to know/feel as if they are getting the very best representation that they can get when they choose you.
 - a. Hard work, preparation, dedication to that client. You feel this wont be the same with other attorneys, or that you can offer this client more than the ambulance chasers.
 - ii. Other lawyers feel the same way about you as you do about them.

- iii. TV ads, internet, friends, family members, solicitations
 - a. Client doesn't know who to trust, who to rely on, what factors to weigh when choosing a lawyer
 - b. On P side, when you have the opportunity to get a great winning case, you have to get them signed ASAP
- iv. Former student, gets asked by a potential client for a meeting for their horribly disfigured family member/friend. When you do not meet right away, you will get a call saying they have found other representation. Within bounds of ethical rules, you must sign that case up immediately.
 - a. Ability to do this depends on:
 - 1.) How close is the caller to the person of authority with this case?
 - 2.) How much can we rely on the fact that they control the decision-maker in this case
 - 3.) How certain are we that if there is any delay in signing up the case, it may be lost to another lawyer?
 - 4.) *If any doubts about these factors (above), Lawyer needs to ask to meet with the family right away.* Reason? Give the case the highest priority. Tell them the D's attorneys are already working on the case. "I know that the family is grieving and I don't mean to be insensitive about this, but its too important to let this wait until later in the week."
- 3. You *can* contact individuals when you know they have a specific legal problem (this used to be prohibited).
 - i. Any delay will result in you losing the case
 - a. Do whatever is necessary that night or that day
 - ii. Ethics
 - a. You must be ethical: personal judgment calls to make concerning when to push, timing of the meeting in relation to funerals, etc.,
 - b. Be sensitive; explain obligations you have as a lawyer; communicate genuinely and with compassion.
 - 1.) Important not to be phony. Balance you have with concern about getting the case and respecting the clients circumstance (which is a horrific circumstance)
- C. **Assignment**- Illinois' rules in regard to contact and solicitation with clients
 - 1. What can you do and not do
 - 2. What is and is not ethical
 - i. can you call them up? Send somebody in? A priest friend? Is this ethical?

- ii. What if you don't know the victim, but you know the uncle. Can you call him?
 - iii. You have a brochure on why you are the best for this sort of accident—can you send this to them?
- D. What do you want to convey? Depends on read of potential client/ sophistication of potential client
1. Look for-
 - i. What perception does you client want of you?
 - ii. What do they want their attorney to convey through trial? Badass lawyer? Highly competent, ethical, empathetic, honest?
 - iii. Truck hits client, brain-dead, paralysis, and death. Client is uneducated, unsophisticated. Interested in lawyer who will get them the most money, already talked to lawyer, and lawyer already told them how much they are going to get. Now they ask you.
 - a. honest answer? "I don't know." BUT client will likely not be impressed with this.
 - b. If you don't commit to a dollar figure, you are not going to get the case.
 - c. Do you not give a number? Use ballpark figures, explain situation and why you cannot give a figure, speak about past cases won?
 - d. No right answer, but these are the issues that would likely confront you. You must become very skilled at reading the client quickly and do so in a truthful and appropriate way.
 - 1.) Do not say, "I don't know".
 - 2.) HOWEVER, without committing to a precise higher number, suggest that you need to know more but you would likely be able to get a higher settlement.
 - iv. With a sophisticated client, you want them to be able to trust you
 - a. Beware that many sophisticated people see PI lawyers as unscrupulous.
 - b. Tell them why you cannot give an exact number, use past victories to show capabilities and lawyer sophistication.
 - v. What can you do to sign case? How do you want your clients to feel?
 - a. Distinguish yourself from other lawyers
 - b. In a modest way, present yourself in a way so they are privileged to have you handling their case
 - c. Make the client feel they have the absolute best lawyer for the circumstances
 - d. Let them know their case will be your highest priority

- 1.) Must follow through on this. Important to get the case, just as important to KEEP the case.
 - 2.) Contingency fee- you only get paid if you win.
 - 3.) 4 mos into case, they fire you. Well, the client owes you nothing here, quantum meruit
 - I.) You can be fired with or without cause, and all they owe you is basically an hourly rate.
- e. You will handle the case personally
- f. You and your firm have the resources to take on big corporations, large insurance companies, big names ie fed ex.
- g. Should you lower your contingency fee?
- 1.) Sometimes yes, sometimes no. Make business judgment: Is this case worth taking at 25%? Is this client going to go with the lower fee or the highest quality?
 - 2.) Lower the fee only when you know it is the only way you are getting the case.