

by :Diana Santa Maria, Esq. and Robin Trepanier, Esq*.

THE LAW OFFICES OF DIANA SANTA MARIA, P.A.
UNIVERSITY PLACE
5220 S. UNIVERSITY DRIVE
SUITE 205 C
FT. LAUDERDALE, FL. 33328
(954) 434-1077

Website: www.santamarialaw.net
e-mail address:diana@santamarialaw.net

DIANA SANTA MARIA is the founding and managing partner of the Law Offices of Diana Santa Maria, P.A. in Ft. Lauderdale, Florida and is a graduate of the University of Miami (B.A. with honors, 1981) and the University of Miami School of Law (J.D. 1984).

Since being admitted to The Florida Bar in 1985, she has devoted her practice to the representation of persons injured as a result of the negligence of others. From 1985 until 1991 she practiced with the law firm of Sheldon J. Schlesinger, P.A. in Fort Lauderdale, Florida, in the areas of Plaintiff's Personal Injury, Medical Malpractice and Wrongful Death, both on the trial and appellate levels. In 1991 Ms. Santa Maria formed her own practice specializing in Plaintiff's Personal Injury and Wrongful Death. She is a member of the American Board of Trial Advocates and serves currently on the Executive Board of its local Ft. Lauderdale chapter, she is , a *Sustaining Member* of the Association of Trial Lawyers of America and , is "AV" rated by the Martindale-Hubbell Law Directory. In addition, Diana was recently selected for inclusion in *Best Lawyers in America*.

An Eagle patron, Diana has served as a Director on the Academy of Florida Trial Lawyers Board of Directors from 1996-2006. She served on the Academy's Long Range Planning Committee from 1999 - 2000. She also served as Chair of the Continuing Legal Education Committee from 1999 - 2001 and as Chair of the Allies Committee from 2001-2002. She has been the recipient of various awards given by the Academy including the "Most Valuable Player" Staff Appreciation Award in 1997 and again in 2000, the Legislative Leadership "Shoe Leather" Award (October 1997), the "Above and Beyond the Call of Duty" Award (June 1999), the "Wings of Justice" Award (June 2000) and the "Bronze Eagle" Award (June 2001). She also served as an officer and director for the Coalition for Family Safety, and as a Flag Trustee.

Diana has been listed in *Who's Who in American Law, the International Who's Who of Professionals, Outstanding Young Women of America, Florida Super Lawyers (2005-2008)* as well as in *Best Lawyers in America*. She has lectured and written on numerous legal areas within her specialty, to include Seven Steps to Effective Mediation published in the June, 1997 TRIAL magazine. She has served on a number of the Florida Bar Commissions and committees to include her service as an attorney member of the Florida Bar's Citizens Forum and as a member of the Florida Bar's Grievance Committee for the 17th Judicial Circuit. Diana currently serves on the Florida Bar's Supreme Court Commission on Professionalism. She is listed in the Martindale-Hubbell Bar Register of Preeminent Lawyers and is a member of the Million Dollar Advocate's Forum.

*Robin Trepanier is a 2008 JD associate with the Law offices of Diana Santa Maria, P.A. who was instrumental in the preparation of this outline.

I. Introduction

While negotiating, mediating, settling and trying personal injury cases usually occurs during the latter or close to final stages of handling of a Personal Injury Case,, the ability of an attorney to successfully bring a case to closure, whether by mediation or trial, is frequently dependent upon their legal assistant or paralegal's abilities to have the file properly documented from day one.

Having an organized file which is thorough, accurate and complete is key at this stage of the litigation and if the file has not been properly documented and organized from day one, it makes this stage of the litigation much more burdensome on the attorney as well his assistant. Preparation should begin when the case file first opens. Every case which involves an injury or loss has certain basic elements:

- Liability;
- Causation;
- Economic Damages;
- Non-economic damages

as well as its own uniquely poignant characteristics; i.e., who was the injured or deceased person prior to their injury or loss and how have they been affected.

A good legal assistant or paralegal will have all of these elements and categories covered with complete and thorough records and organized files. By this stage of the litigation, the file should be complete with updated and complete medical records, bills and liens. In a complex Personal Injury case the most important depositions should be outlined with the key points highlighted (see example provided). Medical records in the complex case will be timelined to make them easier to review quickly and digest (see example provided). Moreover, every videotape, deposition transcript, demonstrative exhibit or item of evidence should be catalogued and indexed. By this stage of the litigation any enlargements or demonstrative exhibits should have been created.

All file folders should be labeled and easily accessible as well as indexed and organized. There will be a lot of activity in the file during this stage of the litigation and it is important that all documents get back to the file where they belong.

Finally, by this stage all necessary client demand and settlement authorizations need to have been obtained and documented in the file.

II. Creating comprehensive and effective settlement brochures (for Mediations)

By this stage of the litigation, the legal assistant or paralegal should have the file well organized and documented such that the creation of the settlement brochure is seamless. The idea is to enable the attorney to present the case in a simplified manner that outlines the essence of the claim including all of the major issues.

A settlement brochure should contain an overview of the entire case (see sample provided). It should include the basic information (client's name, date of the incident, current age and age at the time of the incident, along with employment information and earnings on the date of injury and presently). It should cover all of the major issues in the case:

- Liability;
- Causation;
- Economic Damages (past and future);
- Non-economic damages

If there are liability issues, this should be addressed within the facts of the case making sure that the respective liability positions for each side are addressed. If the case involves a motor vehicle accident, you may wish to show photos of the respective vehicles or of the intersection (if involving an intersectional collision) or photos of the defective product if a product liability case.

Any causation issues should be identified along with a brief summary of any expected expert testimony on these issues. In addition, there should be a summary for the client's Economic and Non-Economic Damages, including all medical bills past and future, all past wage loss and future earnings capacity losses. A detailed description of the client's future prospects should be included with specific information about the client's future economic losses, including medical needs and earnings capacity losses or life care plan if one is prepared by an economist or vocational rehabilitation consultant.

All physical injuries should be described and outlined together with the respective treating physician's assessment of disability, prognosis and need for future care. The non economic damages need to be developed here also. If there is scarring or physical disfigurement you should have a photo gallery of the Plaintiff before and after the loss. Any day in the life videos can be presented in this type of forum as well. . Photographs can be appended or blown up to maximize the presentation of the strengths in your case

Other considerations would be to include a summary of the available insurance limits or resources available from the other party and any coverage or Bad Faith issues that may apply. In addition, research on comparable jury verdicts should be done and may be

included in the settlement brochure or left for actual negotiation discussions.

III. Preparing for and assisting with the negotiation process

The best way to prepare for and assist with the negotiation process is to ensure that the client's file is up to date with all of the client's specials, that is, their damages, both past and future including their medical bills, medical records and any and all hospital or health care liens.

The costs incurred in a personal injury case are frequently advanced by the Plaintiff's attorney until the conclusion of the case. Costs can be matters such as copying, postage, depositions and deposition transcripts, expert witness fees, case filing fees, etc... These too, must be kept current and updated routinely such that at any given point in time the attorney handling the file may have these figures readily available for discussion with the client and to assist in formulating demands and offers.

Keeping these important aspects of the case current, enables the attorney to provide the opposing counsel with current information regarding injuries, damages and current medical status. The legal assistant or paralegal should routinely request updated medical records, bills and lien amounts and keep regular contact with the client to be aware of ongoing treatment or updates. Additionally, the paralegal should make sure that this is all contained in a format that is easily accessible to the attorney. Case management software such as Client Profiles (among others) have sections which log the special damages in a case including what payments have been made and what balance remains for each medical provider. The best assistance that a paralegal can give to an attorney for all stages of the negotiation process is to keep the file up to date, current and easily accessible.

It should also be noted that from time to time a lawyer representing a client in a personal injury case may receive a *Proposal for Settlement or Offer of Judgment* from the opposing side. Because the foregoing are strategic procedural tools for resolving a case which pose a limited time for acceptance (usually 30 days) and carry potential adverse risks to the client, these must be immediately communicated and explained to the client and a written authorization to accept or decline obtained in writing.

IV. Preparing for and assisting with mediation

A. Preparing

In its most basic form, mediation is a process in which a neutral third party called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a non-adversarial process designed to help the disputing parties reach a mutually acceptable agreement.

In mediation, decision-making authority rests with the parties. The role of the mediator is to assist the parties in identifying issues, fostering joint problem solving, and exploring settlement options. Since each party wants to mold any settlements to its own benefit, the actual process can combine elements of show-and tell and poker. The experience may prove invaluable because the information that is gleaned during negotiations may compel the parties to take a new approach to the case.

1.) The first step in preparing for a mediation is choosing a mediator.

Some attorneys believe that the choice of a mediator has little or no bearing on the outcome, so they give little thought to this part of the process. These attorneys may allow opposing counsel to choose the mediator or use a court ordered mediator.

However, it is our belief that that choosing the appropriate mediator for a case is almost as important and deserves as much of a lawyer's attention as selecting jurors for trial. Lawyers who have a working knowledge of the mediators in the local circuit and who carefully consider mediators' personality styles, backgrounds, and suitability for a given case are paving the way for a successful mediation.

The paralegal should have sufficient knowledge about the case and of what mediators their attorney(s) choose for certain cases, such that they may assist in obtaining the right mediator for the case. The paralegal should also be responsible for coordinating agreement amongst the parties for a mediator and scheduling a mutually convenient date for the mediation.

2.) Preparing for mediation.

Preparation for the mediation conference should be similar to trial preparation in the sense that all aspects of the case must be considered. However, unlike trial which is evidentiary neither the client nor witnesses need to be prepared to testify so the preparation should be focused on the lawyer's presentation of what the evidence will show.. The legal assistant's or paralegal's role should be to ensure that the Mediation outline or overview is prepared well in advance of the mediation, such that the attorney may review the work product, tweak it as necessary and send it off to the Mediator well in

advance of the Mediation date.

Before the mediation, the legal assistant or paralegal should make sure their attorney is prepared with all the documentation and exhibits that they will need; they should also assist in preparing the client for this process. Clients who are well informed about the process are more relaxed and make a better impression. Some of the goals of client preparation will be to ensure that the client knows the purpose of mediation, the gamesmanship involved, and the likely goals and strategies of all parties involved.

Whether or not the attorney or legal assistant/paralegal prepare the client before mediation, the client should understand that the possibility always exists that the mediation will reach an impasse. The client must be prepared to discontinue the process if it appears futile. To properly prepare for the mediation, an attorney and his legal assistant/paralegal should know the client's bottom line, confirm it beforehand, and be clear about this. . Clients need to know that they are an integral part of an effective presentation and that they should display an appropriate attitude during the mediation process despite any negative feelings they have toward the other side. Also, the legal assistant/paralegal should explain to the client what the appropriate attire is for mediation. Clients should be brought to the office before the mediation for the discussion and preparation of all these matters.

3.) Schedule the mediation at a time and place that is advantageous.

Avoid scheduling mediation for too early or too late in the day or in too close proximity to another unrelated, important event, such as an important hearing on the same day. The attorney may need to adjust their schedule to stay longer than planned for the client if the mediation is flowing and purposeful. The mediation should take place on neutral, comfortable ground that is convenient to counsel, client, and mediator.

4.) Information provided at mediation should be strategic.

By the time a case reaches mediation, quite a bit of information has already been disclosed by each side, particularly if the case has been litigated for a while. Before putting the matter into suit, your attorney may have presented the other party with a demand package that disclosed their theory of liability and outlined the client's damages. At the mediation, you should build the initial presentation on this previously disclosed information, emphasizing the elements that support a favorable settlement. This should be the theme when creating your settlement brochure and exhibits.

If the case has any weaknesses these should be identified and addressed early on while at the same time being able to show how any such weaknesses are overcome and

why the strengths of the case outweigh any such weaknesses. However, it should be noted that not all cases can be resolved at mediation. Some cases need to be tried. Therefore, in preparation for mediation the attorney's involvement and input on what trial strategies can or should be revealed at mediation is key and these decisions should be made by the attorney.

Videos or Power point demonstrations may be created that highlight the strengths of the case. The video or Power Point may include excerpts of depositions of key witnesses, scenes of the client before and after the injury, newspaper articles noting the client's achievements, and accolades awarded to the client before the injury. These may take on any form desired, as there are no evidentiary rules at mediation.

5.) Prepare the mediator.

Before the mediation, use your settlement brochure as a mediation overview of the case—for the mediator's eyes only—that gives a quick, accurate reference to all pertinent information, and hand deliver it to the mediator at least several days before the mediation. Stamp it confidential, because this is your work product, which reflects the attorney's mental impressions of the case. All communications held in Mediation are confidential, but if you do not want your overview to be shared with the other side it is a good idea to mark it confidential and ensure that the Mediator understands this.

B. Assisting

A legal assistant/ paralegal may be of great assistance during the mediation, whether they attend in person or help out from the office. Assistance in setting up and operating technical equipment, scrolling through Power point presentations and assisting with the depiction of Demonstrative exhibits and other key pieces of evidence are some of the ways the paralegal may assist at Mediation. They may also assist with document retrieval and/or take notes during the mediation. It may also be necessary to make phone calls during the Mediation process to obtain reductions of medical bills and liens. Hence it is important to go to the Mediation armed with this information or else stay at the office where the information is readily accessible.

By the time Mediation occurs a good legal assistant/paralegal will have calculated the total of all outstanding medical bills, liens and costs so that the attorney and the client will know just how much it will take to obtain the client the net amount they need to settle the case.

V. Assembling a trial notebook

A trial notebook organizes the case for trial and many lawyers will have their own idea of what they would like their Trial Notebook to include. Generally speaking, however, an effective Trial Notebook should be organized in the same order as all of the phases of a trial. Ideally a trial notebook will s organize important materials and legal research necessary for the attorney at every stage of the trial in a readily accessible fashion.

In most jury trials, all pre-Trial deadlines governing discovery and disclosure of exhibits, witnesses and experts, will be governed by the particular Judge's Trial Order. In most circuits this Trial Order will be sent by the Judge documenting all deadlines for the trial well in advance of the trial date. Although some may be similar, frequently a Judge's Trial Order is different from other Judges in their circuit and will address the particular Judge's preferences and requirements for the important deadlines listed above.

The Trial Order must become the road map for each case once the Trial Date is set. Strict compliance with the particular Judge's Trial Order is essential. Hence when the Trial Order arrives in the mail it is extremely important for the legal assistant to diary all deadlines and create upcoming reminders for their attorney.

In most jurisdictions, the Trial Order will provide deadlines for discovery, Pre-Trial Stipulations, Exhibits Lists, Witness and Expert Witness lists, Jury instructions, Verdict forms and Pending motions. It is VERY important that the legal assistant/ paralegal document and abide by these guidelines. Many of the items provided to the Court pursuant to its Trial Order will be included in the trial notebook. The trial notebook should contain the **PreTrial Stipulation and Pre trial Catalog** which in most cases will include the following:

□ PRE-TRIAL STIPULATION & CATALOG

➤ CONCISE STATEMENT OF THE FACTS

This should include the date of the incident and a brief description of what happened. In formulating this brief summary of the case, it should be prepared in a neutral manner such that all parties are agreeable to it being read by the Court to the potential jury prior to the beginning of the trial.

➤ STIPULATED FACTS

Stipulated facts are facts not in dispute and agreed to by all parties

➤ **ISSUES TO BE TRIED**

Issues to be tried will be the issues which will usually comprise the questions on the Verdict Form at the conclusion of all the evidence at trial. In most personal injury cases these will be the issues of:

- Negligence;
- Comparative Negligence;
- Causation;
- Damages.

➤ **PEREMPTORY CHALLENGES**

Peremptory challenges represent the number of challenges that each side has to potential jurors. Parties can challenge jurors with cause or without cause-called preemptory challenges. Peremptory Challenges are governed by Rule 1.431 (d) of the Florida Rules of Civil Procedure which states, “each party is entitled to 3 peremptory challenges of jurors, but when the number of parties on opposite sides is unequal, the opposing parties are entitled to the same aggregate number of peremptory challenges to be determined on the basis of 3 peremptory challenges to each party on the side with the greater number of parties.” This means that if there is one plaintiff and three defendants who are represented by three different defense firms, each defendant would be allowed 3 peremptory challenges and the plaintiff would be allowed 9.

➤ **PRETRIAL CATALOG**

The parties’ Pretrial Catalogs will list their witness and exhibits. All Pretrial Catalogs for all parties should be placed in one of the initial portions of the Trial Notebook tabbed accordingly.

PRE-TRIAL MOTIONS & MOTIONS IN LIMINE

Any matters that need to be determined by the court prior to the inception of the trial should be placed in this portion of the Trial Notebook along with all supporting case law. Examples would be Memorandums of Law on Jury Challenges to educate the court prior to Jury Selection.

Any Motions in Limine directed to the admission of any evidence that needs to be ruled on prior to the beginning of the trial should be raised in a Motion in Limine.

Frequently Motions in Limine address matters that an attorney wants to keep out such as certain evidence or testimony; fault of third parties not previously pled as an affirmative defense; mention of collateral source payments; or issues that would cause unfair prejudice or confuse the jurors.

The attorneys will usually present their motions in limine before the trial begins and the Court will make its rulings on each matter. This section should contain the Motions to be heard and all case law supporting the legal arguments to be made.

□ VOIR DIRE/JURY SELECTION/

Voir dire is the process of selecting a jury. The lawyers spend time questioning the jurors to ensure a fair and impartial jury. Included in this section of the trial notebook should be case law governing the scope of questioning allowed, permissible questioning, amount of time allowed for the voir dire process, bias, prejudice, and other matters that pertain to your individual case.

Also included in this portion of the notebook should be your own attorney's notes and case specific questions designed to select a jury in your particular case.

Challenges for cause are challenges which the court should exercise on behalf of a party when a potential juror is not capable of impartiality in a case. There is an entire body of case law on this and some attorneys have a Memorandum of Law on Challenges for Cause already prepared so they have case law readily available to support their challenge (this should be included in this section of the notebook).

□ OPENING

The Trial Notebook should have a section devoted to the Opening Statement.

The opening section should include the notes and items that the attorney would like to bring up in their opening statements and any case law dealing with this part of the trial.

Because no evidence has as yet been adduced in this portion of the trial, the lawyer can present only what he/she believes the evidence in the case will show. In many cases whether or not certain issues are raised in the Opening Statement will be determined by rulings made by the Judge during the Motions in Limine part of the trial.

□ WITNESSES

Your trial notebook should have a heading for Witnesses and a section within that for each witness which your attorney intends to call at trial and for each witness that it anticipates the other side(s) will call at trial. For each witness you need to have their contact phone #s and proof of service of subpoenas.

If possible, witnesses should be listed numerically in the order in which they will be called. There are two categories of witnesses, expert and non-expert witnesses. Lay witnesses are non-retained witnesses who may be the actual parties to the action, witnesses to the event, employees of a party, before and after witnesses (who can testify to the differences in the plaintiff before and after their injuries), records custodians of medical providers, any persons deposed in the action, and/or impeachment and/or rebuttal witnesses. Next to each witness should be an arrow that points to evidence or exhibits that need to be introduced into evidence while this person is on the stand. For example:

Plaintiff Jane Doe → Photographs of scene, photos of injuries and medical bills.

Expert witnesses are those who have “scientific, technical, or other specialized knowledge that will assist the trier of fact in understanding the evidence or in determining a fact in issue” (see Florida Evidence Code § 90.702). A witness can be qualified as an expert by “knowledge, skill, experience, training, or education,” (see id). Expert witnesses can be the plaintiff’s treating physicians who can testify to injuries, treatment and future treatment needs, vocational rehabilitation specialists who would testify regarding a claimant’s lost wages and lost earning capacity, architects and building code consultants who would testify on liability issues such as code violations and unsafe conditions at the scene, accident reconstruction experts, chemists, scientists, or accountants.

The legal assistant/paralegal is usually responsible for subpoenaing any witnesses prior to trial to ensure their appearance and making arrangements for their appearance at trial.

The paralegal should have a file ready for each witness that will be testifying at the trial, whether they are your own witness or that of an adverse party. The file should include any prior deposition testimony and any evidence or exhibits that will be brought in through the witness’s testimony as well as any potential impeachment materials.

□ EXHIBITS

The Exhibits section of the trial notebook should include a list of each exhibit that the attorney intends to introduce at trial and should also indicate the witness who will lay a

foundation for its admission into evidence. Any case law that may be necessary in order to satisfy the court on the admissibility of any exhibits should also be included.

Exhibits may include items such as medical bills, records, x-rays, MRI films, photographs of the vehicles in an accident, photos of injuries, videos of the plaintiff before and after the accident, tax returns and policy manuals. Unless admission is stipulated between the parties, an attorney must lay a foundation for the relevance and admissibility of an exhibit as evidence. Hence these issues must be thought out prior to trial and the order of witnesses must be carefully considered in light of the physical evidence or exhibits that need to be introduced into evidence during the trial.

Under most Trial Orders, all exhibits should usually be made available for inspection by the opposing party(s) prior to trial. Often this is done at a scheduled exhibit exchange where the parties meet in an agreed upon location to copy and/or review all exhibits that will be used at trial.

Grounds for the inadmissibility of an exhibit would be if it represents a surprise to one of the parties. Hence it is very important for the legal assistant/paralegal to be thorough in the preparation of an Exhibit list prior to trial and ensure that the opposing side has an opportunity to review all Exhibits prior to trial.

CLOSING ARGUMENTS

In this section of the Trial Notebook your attorney may wish to have case law on legal issues that involve Closing Argument readily available.

Also throughout the trial, notes taken during the trial will form the basis of Closing Argument. Hence you should assist your attorney in maintaining important notes and other matters developed during the trial that will become important to refer to in their preparation and delivery of Closing Argument..

JURY INSTRUCTIONS

Every Jury Trial requires Jury Instructions which must be prepared by the attorneys trying the case for submission to the court prior to Closing Arguments. The Florida Bar in conjunction with the Supreme Court Committee on Standard Jury Instructions published Florida's Standard Jury Instructions in Civil Cases which was ordered by the Supreme Court of Florida. Jury instructions are given to the jurors as a check list so they can decide each issue. The instructions are separated by topics such as General Instructions, Issues, Negligence, Causation and Damages. An example of a jury instruction in a Personal Injury case would be the definition of Negligence, which under the Supreme Court

Standard Jury Instructions reads as follows:

Negligence:

Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may constitute either in doing something that a reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.

In most cases the Trial Order will provide when Jury Instructions should be submitted to the court and frequently it will be prior to the beginning of trial. Hence, as the legal assistant/paralegal on the file you will want to prepare these well in advance of your trial date and have a set on a CD disk so that any changes may be readily made if necessary in the Courtroom.

□ VERDICT FORM

A trial culminates with the jury's rendering of a verdict. The Verdict Form will be completed by jurors during their deliberations and will form the basis of the outcome of the trial.

Like Jury Instructions, the Verdict Form to be used at the conclusion of the case is usually something which needs to be prepared and submitted to the court by the parties prior to trial. Like the Jury Instructions this is something that a legal assistant/paralegal should prepare in conjunction with the attorney well in advance of the trial date. This too should be brought to the courtroom on a CD or disk such that it may be readily edited during the trial if necessary. (see Sample Verdict Form in the materials to follow)

VI. Assisting at trial

An organized and dedicated legal assistant/paralegal is critical to the success of every jury trial. Ensuring that the behind the scenes work is done to make the attorney's job easier is very important to the successful outcome of every trial.

In a perfect world during a trial the attorney is focused strictly on the presentation of the case, through witnesses and exhibits as well as cross-examining the opponents' witnesses and dealing with legal arguments that may be raised during trial. The well prepared, organized and dedicated legal assistant/paralegal will handle the rest, from having all witnesses lined up for trial, to ensuring their appearance at trial, ensuring that all exhibits are prepared, organized and marked to handing the lawyer what they need at critical

moments in the trial.

During a trial the legal assistant/paralegal must be at the top of their game and the file must be organized to the nines to ensure that all documents and information are organized and easily accessible. Trial documents should be filed and marked accordingly in the trial notebook. Depositions and deposition summaries should be appropriately labeled, outlined and easily accessible.

Extra copies of important case law should be ready and available so that copies can be presented to the judge and opposing counsel. Additionally, the paralegal should make sure that the attorney has all necessary supplies such as legal pads, pens, pencils, easels, videos, lap tops, projectors or markers.

Often times, it may be necessary for the paralegal to stay in the office fielding requests from the attorney at trial regarding last-minute documents or preparing witnesses and finalizing exhibits for trial.

Trials can be stressful. Whether in court or back at the office, the good legal assistant/paralegal will remain dependable, flexible and available to assist the trial attorney in any way that they can.

Drafting, executing and implementing judgments, agreements and awards

“A final judgment is the sentence of law pronounced by the court on the matter appearing from the pleadings in the action that puts an end to the action.”¹ After the jury decides its verdict and the trial is over, the prevailing party will usually have to draft a final judgment. The final judgment will usually reflect the actual verdict awarded by the jury and the prevailing party will often times be reimbursed a reasonable portion of their costs.

Costs that can be reimbursed are very specific and can be found in Appendix II of Florida Rules of Civil Procedure called *Statewide Uniform Guidelines for Taxation of Costs in Civil Actions* and includes costs for expenses such as court reporter fees for transcribing proceedings and depositions, certain expert witness fees, documents filed with the court, copies obtained in discovery, mediation fees and expenses as well as other costs determined by case law.

Attorney fees can also be recovered if there was a Proposal for Settlement made under Florida Rules of Civil Procedure Rule. 1.442 or Florida Statute §768.79. If a plaintiff files a demand for judgment which is not accepted by the defendant and the plaintiff recovers a

¹ (see Trawick, Henry Jr., *Trawick's Florida Practice and Procedure*, (2005) at 370 citing State ex rel. Heavelow v. Frederick, 121 Fla. 494, 163 So. 885 (1935).

judgment at least 25% greater than the offer, the plaintiff's attorney may be entitled to recover reasonable costs and attorney's fees incurred from the date of serving the demand. This also works the same way for the defendant which means the plaintiff could end up paying reasonable costs and attorney fees to the defendant if the offer of judgment is made by the defendant and the verdict does not sufficiently exceed the defendant's offer.

Form 1.990 included in the Forms for Use with the Florida Rules of Civil Procedure is called, **Final Judgment for Plaintiff** and may be found in the Appendix of Forms attached.

The judge has to sign the final judgment for it to become valid. Often this requires a hearing which the paralegal will notice. At the hearing the various issues to be addressed in the Final Judgment will be argued unless stipulated to by all the parties.

There are statutes that govern the prompt payment for judgments and settlements when such are made with an insurance company. This statute is Florida Statute §627.4265 and it provides that payments on a judgment or settlement must be made within twenty days or else be subject to interest at a rate of 12% per year, however, if the tender of payment is conditioned upon the execution of a release, the interest shall not begin to accrue until the executed release is tendered to the insurer.

The enforcement of a judgment for the plaintiff in a personal injury case in most cases should not pose any significant difficulty if the payment is coming from an insurance company who understands their obligations and have money set aside from an insurance policy to cover this. However, this is not always the case.

If your client is not successful in trial, you as the legal assistant/ paralegal must be mindful of the deadline for filing a ***Motion for New Trial***; Florida Rules of Civil Procedure Rule 1.530 governs new trial motions and gives the parties a ten day deadline after the return of the verdict to file the motion.

If a case is settled prior to a jury verdict, then Final Judgments of Dismissal are usually filed once the parties have exchanged Settlement Drafts and Releases. A settlement usually provides for dismissal of the action with prejudice to all parties upon payment of the stipulated amount. The legal assistant/paralegal must always remember to notify the court of any settlements affecting the court's trial docket.

VIII. Conclusion

An organized and dedicated legal assistant/paralegal is critical to the success of every Personal Injury case. Whether it involves gathering information early on, comforting the client during difficult times or lining up witnesses for trial, the paralegal's role in the process is extremely important at every stage of the claim. Strong organizational skills, a keen attention to detail and a supportive attitude are key ingredients for success

APPENDIX—FORMS

- A.) Deposition Summary
- B.) Medical Timeline
- C.) Settlement Brochure/Mediation Overview
- D.) Sample Verdict Form
- E.) Sample Judgment Form

A. Sample Deposition Summary

DEPOSITION SUMMARY

WITNESS: John Doe
DATE/DEPO: May 5, 2008
CASE: Jane Victim v. Corporation

PG# TESTIMONY

3	John Doe. Work as Assistant General Manager for Corporation.
4	Big corporation but my responsibility is in Fort Lauderdale. Worked there for 9yrs; first 6yrs as Director of Security then promoted on 3/19/02. Mr. X replaced me as Director of Security.
5	I am not sure but I believe Mr. X was Director of Security on 3/28/08. (Off the record discussion). On that date the position was filled by either him or no one.
6	If the position was open after my promotion the Assistant Director of Security, Mr. Y, would have fulfilled the duties during the interim.
7	Before Corporation I worked as Protection Manager for Bank in Las Vegas for about 3yrs. 8-9yrs before that I was Director of Security for Hotel.
8	...Before that I managed restaurants and worked as a police officer in Nevada. I have never been in the military; graduated high school in '78; attended University for a semester then Second University for a couple of years on and off.
9	I have a junior level of college education. I attended the police academy.
10	I have never been terminated from employment or convicted of a crime. (Description of Security Director responsibilities)
12	Outside of the Director of Security there is no other department or entity that is responsible for the safety of people on premises. The Director of Security reports to the General Manager of the prop. The Corporate Director of Security has an overview responsibility.
14	Security spending by the Corporation is discretionary up to the point that the corporate offices allow it. I am here as the person who knows most about the incident on May 27, 2008 involving Jane Victim and security at the premises on that date.
15	I'm the person who makes trial appearances for Corporation. Around 9pm Ms. Victim walked out of the entrance and while in the parking lot when someone tried to take her purse. She resisted and the person jumped in a car and left.
16	I got this information mostly from the internal report and the police incident report. I didn't talk to anyone else about it much..
18	Since Mr. Z. took the incident report it appears he was the one who responded to the scene. He stopped working for the mall about 1.5yrs ago. His title then was Security Supervisor.
19	I believe he was also Security Supervisor on the date of the incident. He left to work for the Town P.D. I may have read the second page of the incident report at some point.
20	In preparation for this depo I have looked at some notes, answer to interrogatories, and a statement made by your client but I'm not sure to whom. (Off the record discussion)

B. Sample Medical Timeline:

MEDICAL RECORDS TIMELINE

Patient: Jane Victim
D/Incident: 0/00/00
Prepared by: NRT

9/16/00 Dr. A, MD
Internal Medicine Associates
of Broward, PA

Here following **ceiling tile falling on patient's neck Friday at Place.** Tile fell directly on head causing bump on head and pt. did ice area later in day after going home. Developed h/a thereafter and neck pain. Also had abrasions to fingers with bleeding.
Assessment: h/a and cervical strain.

9/26/00 Dr. B, MD
Comprehensive Medical
Imaging

Prognosis: MRI to brain and c-spine.
MRI – Cervical Spine: Central posterior herniation at C6-7 disc. Bulges at C4-5 and C5-6 with minimal bulge at C3-4.

10/10/00 Dr. C, M.D.

MRI – Brain: Normal.
Ortho consult. Referred by Dr. A with c/o neck pain. Sitting at Place on 9/13/02 when ceiling tile fell and struck her. Began having neck pain following incident. Not having any problems with neck prior.
Hx of neck condition in 1996 for which an MRI imaging study was reportedly performed. This resolved w/o any sequelae following PT. Had numbness in right arm for a couple of months at that time, but no hx of sx's prior to September 1999 re: cervical spine. Now has c/o weakness in right UE w/tingling in whole left arm including fingertips and can feel it going down. **Pt. stated she does relate that she has had neck problems in the past which she has attributed to chiro tx as a teenager.** MRI scan of cervical spine performed at Comprehensive Medical Imaging on 9/26/02, read by **Dr. B,** revealing central posterior herniation at C6-7 w/bulging discs at C4-5 and C5-6 and minimal bulge at C3-4.
PMH: Negative.
ROS: Positive for numbness/tingling, ringing in ears, h/a, dizziness.
Radiographs: MR imaging films reviewed as well as spine films. There is Disc space narrowing with assoc. and plate osteophytes formation diffusely, but esp. at C5-6. At C6-7, by MRI, there is a disc herniation which impinges upon the spinal cord.

10/28/00 Dr. D,M.D.

Impression: C6-7 disc herniation and degenerative disc cervical spine.

Recommendations: Spine surgery consult in addition to neuro consult. PT px'd.

Saw Dr. C on 10/10/00. Sitting at Place on 9/13/00 when ceiling tile fell and struck her. Began having neck pain. Had no sig. neck or arm complaints prior to this event. Dr. C looked at MRI and was concerned about C6-7 disc herniation. Sent to this doc. for eval. c/o neck pain with burning sensation across posterior portion of neck into suprascapular area. c/o numbness and tingling in both hands. Burning sensation in posterior neck. Tingling in both arms w/o specific pattern. Reports dropping things.

PMH: Negative

Past Surgical Hx: Two c-sections. Negative for neck/spine.

ROS: Positive or h/a, dizziness, ringing in ears, numbness and tingling.

Impression: Large C6-7 central disc herniation.

Plan: Herniation responsible for balance symptoms as well as numbness and tingling in hands. At risk for bad neurologic event if she doesn't undergo sx. Has sig. decreased space available for spinal cord and small trauma might have disastrous consequences. Recommends C6-7 discectomy and fusion.

Consideration made re: host bone v. donor bone.

C. Sample Settlement Brochure & Mediation Overview:

SETTLEMENT BROCHURE & MEDIATION OVERVIEW

Background and Biographical Information

Plaintiff's Name:

Age on date of accident:

Present Age:

Date of Accident:

Plaintiff's Employment and Earnings on D\A:

LIABILITY

How and where did the Crash\Incident occur:

The Defendant(s) are liable because:

The Defendant(s) Defenses are:

Why the Defendant(s) Defenses Fail:

DAMAGES

PLAINTIFF'S INJURIES AND DISABILITIES

(List each injury, complaint & disability)

INJURIES:



As a result of these injuries, THE PLAINTIFF suffers from the following:

ACCOMPANYING DISABILITIES:

-
-

DOCTORS' ASSESSMENTS OF PLAINTIFF

List each doctor who has examined or treated the Plaintiff (categorize them by specialty & include all Defense Examining doctors). In 2-3 sentences summarize the Doctor's assessment of the injury, together with any disability rating and prognosis for future care.

NEUROLOGISTS AND NEUROSURGEONS

NEUROPHYSIOLOGISTS

ENT

ORTHOPEDISTS

GYNECOLOGY AND OBSTETRICS

FAMILY PHYSICIAN

PAST MEDICAL BILLS, OUT OF POCKET & EARNINGS LOSSES

MEDICAL BILLS

(List each and every medical bill)

<u>DOCTORS\HOSPITAL</u>	<u>TOTAL BILL</u>	<u>OUTSTANDING AMOUNT</u>
-------------------------	-------------------	---------------------------

-
-
-

TOTAL BILLS = \$ _____

TOTAL OUTSTANDING = \$ _____

OUT OF POCKET EXPENSES

(List all out-of-pocket expenses, e.g. housekeeper, travel, etc.)

-
-

TOTAL OUT OF POCKET EXPENSES = \$ _____

PAST WAGE LOSS

(Compare pre-morbid earnings to earnings since d\la to arrive at)

PAST WAGE LOSS = \$ _____

TOTAL ECONOMIC LOSSES (PAST) (Combine total past medical and out of pocket expenses with lost wages to arrive at a total amount of past economic damages over their expected lifetime- refer to Mortality Tables for life expectancy)

=
\$ _____

Total Economic Damages (in the past)

FUTURE ECONOMIC LOSSES

FUTURE MEDICAL COSTS & CARE

Refer here to treating physicians' projections for future medical care , and/or Life Care Plan which incorporates treating doctors' opinions re: future medical needs.

FUTURE MEDICAL COSTS = \$ _____

LOST EARNINGS AND EARNING CAPACITY LOSSES:

Refer here to any reduction in earnings capacity such as having to retire early or the inability to work as a result of the injuries multiply it by the # of years the Plaintiff expected to work.

FUTURE LOST EARNINGS CAPACITY = \$ _____

Total Economic Damages (Future) = \$ _____
(combine future medicals and earnings losses)

GRAND TOTAL OF ECONOMIC DAMAGES (PAST & FUTURE) = \$

PLAINTIFF'S PRE-TRIAL DEMAND = \$
Defendant/s Ins. Coverage Limits = \$ _____.

D. Sample verdict form:

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

JANE VICTIM,

Plaintiff,

v.

CASE NO.:

CORPORATION
Defendant.

_____ /

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of Corporation, that was a legal cause of damage to the Plaintiff, Jane Victim?

YES _____

NO _____

If your answer to both question 1 is NO, your verdict is for defendant, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of Jane Victim that was a legal cause of damage to the Plaintiff, Jane Victim?

YES _____

NO _____

Please answer question 3.

3. State the percentage of any negligence that you charge to:

Corporation _____%

Jane Victim _____%

Total must be 100%

(Note: For any response of "NO" to question 1, 2, or 3, place a zero as to that person in answering Question 3.)

By answering the following questions you will determine the damages if any that Jane

Victim sustained as a result of the incident in question [In determining the amount of damages, do not make any reduction because of the negligence, if any, of Jane Victim. If you find that Jane Victim was to any extent negligent, the court in entering judgment will make an appropriate reduction in the damages awarded.]

4. What is the amount of any damages sustained by Jane Victim for medical expenses and lost earnings or earning ability in the past?

a. Medical Expenses? \$ _____

b. Lost earnings or earning ability? \$ _____

Please answer question 5.

5. What is the amount of any future damages for medical expenses and loss of ability to earn money in the future to be sustained by Jane Victim in future years?

a. Total Medical Expenses over future years? \$ _____

b. Total Loss of ability to earn money in the future? \$ _____

Please answer question 6.

6. What is the amount of any damages to Jane Victim for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect, or loss of capacity for the enjoyment of life,

a. in the past? \$ _____.

b. in the future? \$ _____.

7. TOTAL DAMAGES OF Jane Victim
(add lines 4a, 4b, 5a, 5b, 6a and 6b)

\$ _____.

SO SAY WE ALL, this _____ day of _____, 2008.

Foreman/Forewoman

E. Sample Final Judgment:

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

JANE VICTIM,

Plaintiff,

v.

CASE NO.:

CORPORATION

Defendant.

_____ /

FINAL JUDGMENT

Pursuant to the verdict rendered in this action

IT IS ADJUDGED that plaintiff (name and address) recover from defendant (name and address) the sum of \$ _____ with costs in the sum of \$ _____ making a total of \$ _____, that shall bear interest at the rate of _____% a year, for which let execution issue.

ORDERED at _____, Florida, on (date) _____ (2009).

Circuit Judge