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# **Personal Injury**

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**Nell has worked in the areas of personal injury, medical malpractice, workers compensation, estates and trust, and civil litigation for over 20 years**

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**In addition to her work in community non-profits, including her service as Board Chair at North Raleigh Ministries, Nell enjoys spending her time hiking and traveling when she is not playing with her young grandson or hanging out with her son and daughter and their families.**

## PERSONAL INJURY

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So, what is personal injury: a legal term for an injury to the body, mind or emotions, as opposed to an injury to property or possibly reputation. This term is used most commonly to refer to a type of tort lawsuit in which the person bringing the suit, "or plaintiff" has suffered harm to his or her body or mind.

Most personal injury cases come from automobile accidents, but may result from dog bites, bike and motorbike accidents, intentional acts such as assault and battery, defective products (product liability) and defamation which is considered to be part of personal injury law because of the damages caused to another.

PI cases are considered tort cases and tried in civil courts if they go that far. There are four components to any PIC claim:

- Duty to act reasonably in the circumstances;
- Someone breached that duty creating the potential for blame to be placed;
- The party's breach caused harm/injury and this equates to a monetary value or damages being realized;
- Causation between the breach of duty and the injury.

Personal injury cases are less statutory than precedent based. Relevant case law is somewhat the key when handling lawsuits and arguments.

The other basis for personal injury besides negligence is a) strict liability and b) intentional wrongs. Strict liability, a growing area of tort law, holds manufacturers and designers liable for injuries that result from defective productions. The key for the one injured is to show that the product was designed or manufactured making it unreasonably dangerous when used as intended. Intentional wrongs, much rarer, can be a basis of a personal injury claim, such as a practical joke that goes awry.

When investing in a personal injury case, attorneys and paralegals (and other staff members) must weigh all the factors in bringing a claim against the risk of loss and anticipated recovery. A positive and profitable settlement or recovery is what is desired. However, a risky case may receive a higher than anticipated award if correctly presented whereas a low anticipated recovery can justify not taking or filing a clear cut liability case. So, outside of a SOL issue, being a complete bar to a case being accepted, the more negative factors reducing the likelihood of a profitable result will make it harder to retain an attorney.

Several other reasons outside clear liability may cause a PI case not to be taken:

Comparative negligence vs. contributory negligence

Case complexity

Anticipated damages/recovery

Severity of injury

Unrealistic Expectations of Client

Low Property Damage

Liability that is not clear cut (as in a MVA) or a slip/fall where conditions of injury are questionable

Too many pre-existing conditions and

Poor witnesses

No single factor can be the decisive call as to whether a personal injury case is a winner or loser. The resources, case facts and issues, consideration, and visibility are all part of the life of what goes into a PI case so all must be considered before acceptance.

A paralegals' role is that specialty of litigation that focuses on a person's injury or accident caused by another party – the task and steps for a paralegal in this filed are similar to other areas of law. Some of the tasks that paralegals are involved in include interviewing client, witnesses, and others involved, requesting and reviewing medicals records and bills, (medical knowledge helpful), liens, gathering information, obtaining insurance information and keeping up with the steps of the matter. (See checklist) Also important is to know and review pertinent local rules, state and/or federal laws if needed. A checklist is good when speaking with clients and helping them understand what is needed to help streamline and move the case forward, important and necessary. Having more information sometimes proves to be more prudent than less. You may find you have critical pieces you may not need at first, but come in handy later.

When a PI case arrives a big factor for paralegals is reviewing all the material information, including the accident report(s), medical records and documents related to treatment, including the EMS report. In addition, preparing clients and witnesses, getting the necessary signed forms, related insurance or billing information and copies of related documents such as health care details. Evaluation of process/procedures after the case is settled can help to ensure the success of the next personal case.

An important key is to have a knowledge of the local rules that will apply to the case, the name of the all parties, insurance agents,

witnesses, etc., which may provide prudent to your case. Foremost, you must know and share the statute of limitation, necessary processes/procedures involved, costs that may spring up and how important the client's input is to their case. Putting a client's case together during each step will involve their input along the way. When gathering information from clients, get to know how they work, do they read your emails, do they need a quick reminder or is a phone call better. You may have to probe, ask questions more than once or in a different way to get what you need, while letting your client know what is happening in the life of the case, as well as what is expected and what comes next. Listening is so important as well as using clear, simple terms to explain the legal process which may include just what is involved in each step in a settlement or court case. They need to be aware of the important deadlines, processes, and how the case begins, moves forward, and ultimately ends. Holding their hand through this process is critical.

In North Carolina we follow the negligence laws doctrine in civil cases which bar any recovery for plaintiff even if only partially at fault. This, as we know, is referred to as contributory negligence on part of the plaintiff – a doctrine of common law that if a person was injured and it is determined that they were in part or in whole negligent, they would not be entitled to collect or receive any money from another party who supposedly caused the accident (tortfeasor). Other states follow the comparative negligence doctrine where any amount received for damages is reduced in proportion to the plaintiff's degree of fault.

Statute of limitations are important in personal injury cases and keeping track is critical to the life of the case. Most PI cases are usually settled w/n a short time, some up to two years, depending on the injuries, when client takes action, etc. The statute of limitation in N.C. for personal injury cases is three years, the date of the accident or injury starts the clock. [N.C.G.S. §1-52]

A dog bite personal injury matter makes the owner "strictly liable" meaning regardless of the animal's past behavior, the dog

owner is responsible for personal injury caused to another by their dog. [N.C.G.S. Article 1A Dangerous Dogs §67-4.4]

The statute of limitations for wrongful death resulting from a wreck is two years from the date of death to bring a lawsuit. [N.C.G.S. § 1-53]

N.C.G.S. §143-299 states that any injury against North Carolina government or its employee, the action is filed with the NCIC within three years.

N.C.G.S. §44-49 is the statute dealing with liens, a topic that may create issues about reimbursement related to the total recovery as well as with your case if there is not sufficient money to take care of reimbursement.

Another thought in PI matters: Good Samaritan laws are there to protect from liability of those that are simply trying to help (N.C.G.S. § 20-166). Our law states that those who provide first aid or emergency assistance at an accident cannot be liable unless there was intentional wrongdoing or carelessness or indifference to the safety of the injured. These laws overall usually help/care giving by medical providers with assumption of no payment as victim is in need of emergency help in order to avoid harm/death and providing this help is done in "good faith". Good Samaritan law is no defense to a charge of gross negligence or willful misconduct.

Damages in PI cases can be generally broken down to economic and non-economic compensation. Included in your damages or reimbursement from insurance carrier of the tortfeasor includes medical bills, lost wages and pain and suffering. If presented in serious PI cases, other damages might include prospective lost wages, permanent disability and disfigurement.

North Carolina minimum coverage law:

\$30,000	injury or death of single persona
\$60,000	for all damages for all persons in a single car accident
\$25,000	property damage

A short note here about Bill vs. Paid or 414 Rule. We define it as: amount(s) actually paid dollar to dollar to satisfy the bills that have been paid, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills incurred but not paid. This includes insurance, payment by client, or other party. This rule can result in the reduction of the total value of your PI case or amount of recovery going to the injured party. With this, the result appears to be that those with health insurance might not receive as much in a settlement as those who do have health insurance. This treats those with health insurance differently than those who do not. [H.B. 542]

The life of a personal injury case involves steps to obtain records and bills, facts, interviews and statements, photographs, videos, reports or other related information or documentation to put together a demand package. Here the clients are involved throughout and communication with them is imperative and helpful in moving toward the settlement, whether submitting a package or going to trial.

Demand packages: this package or brochure gives from the plaintiff or injured party gives the insurance company all the information needed to get negotiations started allowing them to see the flow of the case and injuries/damages to the victim. Most contain a copy of the accident report or report from investigating personnel; medical records; bills and billing summary; photographs; videos or recorded statements; accident reconstruction report/information; lost wage documentation; and other related case information.



Firms have their own way of producing a demand or settlement package usually done by the paralegal. Presenting in a complete, clear and concise is the best approach. Review by the client is helpful and will keep them in the loop while making sure that all is correct. Laying out the case out with all the information and not in parts, using a short cover letter, will allow for the insurance company to review and not continue to get pieces before they can make a decision.

Lawsuits and Trial: resulting from an inadequate settlement amount offered, SOL issues, or desire of client are lengthy and can prove to be costly. This PI topic will be discussed further at the presentation.

Paralegals who work in the personal injury arena spend many of their days multitasking to get it all done, but their skills, experience, expertise, patience, knowledge, and attitude are what help get it moved forward. The client benefits from such hard work and dedication of one who cares about their profession!

## Personal Injury Checklist:

Prepare the client for their first visit:

Phone call important to let client know what would be helpful and is needed for this visit – police report, insurance information and cards, rental car charges, photographs, medical record or bill information, list of medical providers, wage information, repair information, insurance dec page and witness information as a starter

Meet with Client, Complete a questionnaire/intake obtaining all their important information. If possible, give client a folder (or whatever) with pertinent information about processes, firm procedures, and what to expect regarding PI cases, lien information, etc.

Send client a follow up engagement or welcome letter – include retainer agreement

Letters of representation to client's insurer and any other third party insurance

Request all records, bills, insurance and lien information such as Medicare, Medicaid, TriCare, etc., keep a log of what requested and when received

Contact health insurance carrier to establish any liens

Contact witnesses

Create a chart for each client showing liens, providers, bills, insurance, med-pay, etc.

Gather documents to review and act upon so that you are able to put together a demand brochure to send with cover letter

Communicate

Communicate

Communicate