A Litigation Paralegal's Guide to Case Management

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Deer Creek – 7000 W. 133rd Street, Overland Park, KS 66209

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I. INITIAL CASE MANAGEMENT

9:00 a.m. – 10:00 a.m.

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C. Understanding the Strategic Plan for the Case

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3. Requests for Production of Documents
4. Interrogatories and Answers
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D. Motions and Notices

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I. INITIAL CASE MANAGEMENT

9:00 – 10:00 a.m.

A. Initial Client Interview – Crucial Information to Capture

1. Client Impression / Appearance

Litigation is, to a great extent, and for good and for bad, a contest ultimately involving a **decision** for or against a client by other people. That decision may be made by the lawyers for the client at an initial stage, or by the lawyers or insurance company or decision-makers for the other side, or by a judge, or ultimately if necessary, by a jury.

To the extent litigation is a contest involving a decision by someone, the client's **impression or appearance** is also, for good and for bad, important information to consider. While there are twists and turns along the way in litigation which may change and potentially influence the outcome, it can be helpful at the outset to mentally "fast forward" to a **jury** trial. Everyone, including jurors, draws first impressions about another person, sometimes within minutes, and those first impressions can then shape how a juror will view your client. Often, those first impressions can resemble a popularity contest. Will a juror like your client, respect them, listen to them, relate to them, empathize with them, and vote for them? Alternatively, might a juror dislike your client, doubt them, reject them, and vote against them? Your first impressions of the client's appearance can often be useful in assessing the answers to these questions. Importantly, an effort must be made to view the client not as you would like to see them, but as your jury would see them.

Once you have some assessment about your client's impression or appearance, you can work backwards from the jury trial. In this decision which in some part resembles a popularity contest, will the **judge**, who is a human being like the rest of us, like your client, give them the benefit of the doubt, try to help them when just? Or will the judge be skeptical?

Continuing to work backwards, if you believe for good reason that the jury and judge will like your client and your client's cause, there is a reasonable chance that the lawyers or insurance company or decision-makers for **the other side** will also form of these same beliefs, and that will influence their decision in this contest. Conversely, if you sense that neither a jury or judge would ultimately vote for your client, it is possible or even likely that the other side will arrive at that same conclusion.

After you form your initial impressions about how the jury, the judge, and the other side might view your client, it can be useful to **list** or at least mentally catalog your client's "strong suits" and weaknesses. As the litigation moves forward, those strengths can then be emphasized where the opportunity arises, and the weaknesses can be managed and perhaps deflected.

2. Litigation Goals and Expectations

Once you form an initial impression of your client, how the jury and judge will view them, and how the other side will view them, such that you can be in a position to emphasize their strengths and perhaps begin to manage any weaknesses, other initial information to capture includes the litigation goals and expectations – both on behalf of the client and the law firm.

(a) Client Goals and Expectations

The client's goals and expectations might include the ultimate outcome, the process along the way, and the preferred method(s) of communication.

(1) The Ultimate Outcome

If a client is familiar with litigation, the client may have already formed an opinion of what **the ultimate outcome** might be, and it is important to learn that opinion.

For a client who has been sued or may be sued, the ultimate outcome may be some sort of disposition in the client's favor, or possibly a payment in some amount to resolve the matter short of a disposition. It is important to learn whether the client's opinions about the ultimate outcome are realistic.

For a client who has a claim or a lawsuit, the focus on the ultimate outcome is usually "can I win?" "how much?", and "when?" For clients who are not familiar with litigation, these are unanswered questions, but sometimes, a client will have some initial opinions about the ultimate outcome, and it can be important to **learn** these initial opinions at the outset.

Some cases may be "open and shut" at the outset, either in reality or at least in the client's mind, and others are not. Depending on the nature of the case, it can sometimes be unproductive at the outset or even counter-productive to develop a high level of detail about the ultimate outcome, or make promises about achieving it, or dissuade the client from envisioning it. Again, depending on the nature of the case, this can be a time to listen more than to speak.

(2) The Process Along The Way

Along with a discussion and perhaps some understanding about where you and the client may ultimately be headed, another discussion includes the **process** along the way. These include basic questions such as "when? (resolution)", "where?" (which Court), "how much?" (fees), "what do you need from me?" (participation). As above, the nature of the case and the client determines the level of detail required here, and often times, only a general overview can be obtained, which may be all that is initially necessary.

(3) The Preferred Method(s) of Communication

Finally, it can be helpful to understand how the client prefers to **communicate** with the firm, and how often. Some people prefer extensive in-person discussions; others can hardly find time to text back. Some clients need information constantly; others are happy to be on a need-to-know basis. If possible, the initial client interview can be an opportunity to form at least a preliminary plan on how the client expects to communicate with the firm, and how often.

(b) The Law Firm's Abilities

Depending on the client's opinion about the ultimate outcome, the initial interview could be an opportunity to determine or at least **assess** whether the law firm can meet the client's goals and expectations. This may be a time to discuss, "I have heard what you want, now let me tell you what we can do for you." The discussion can be more extensive if the client's view of the ultimate outcome is not realistic.

3. Information From The Client

At the outset, a client will often have documents or other evidence. A client may or may not have the capacity to organize or understand the information. If necessary, obtaining this information from the client can be as simple as asking the client to put it all in a "pile" and bring it to the firm for safekeeping and/or duplication by scanning, copying, and/or organizing.

As information is obtained from the client, it may be important to separately itemize and catalog that information in a **separate** file folder or computer file. This can be useful as litigation progresses, and also at the conclusion of the litigation when particular client documents might need to be returned.

4. Information To Be Obtained

Along with the information the client has, the initial interview can be a time to develop a list of information to be obtained, both from the client and by the law firm. The initial interview can be a time to sign any necessary **authorization** for the firm to gather information about the client or on behalf of the client. These authorizations could include: medical, insurance, employment, or educational.

Aside from documentary information and evidence, the client may also have knowledge of others from whom information can be obtained, and who may ultimately be **witnesses** at trial. The initial client interview can useful in developing a list of potential witnesses in the litigation, what the witnesses might say, and how and when those witnesses will be contacted. The interview can be useful in determining which witnesses might be unwilling, or damaging to the case, or necessary and "missing," either just temporarily or perhaps permanently.

5. Client Questions

The initial client interview can be a time to answer initial client questions, or equally importantly, to outline or even list those which cannot be answered initially, but which may need to be answered, how answer them, and when they will be answered, for purposes of additional work to be done in the case.

6. Next Steps

Almost every client interaction, and in particular the initial client interview, should at some point include and can appropriately conclude with a discussion of the next steps in the litigation, both **short-term** and **long-term**. This includes what the client will do next and when, what the law firm will do next and when.

B. Initial Research

1. Online case dockets. For litigation matters, in Missouri, almost all cases are online through the internet site "Casenet." In cases, many cases are available on through the internet site "Eflex." It can be helpful to initially learn any litigation history of your client or the potential other side through these online resources.

2. Public Records. At the outset, some public records can be helpful. To the extent the litigation involves any interaction with the government, public records can be available online, through an open records request, or by a request from the client. For car accident cases, for example, the police report is often online (Missouri Highway Patrol, Lawrence Police Department, etc.) or available to be picked up in person for a small fee. The potential sources obviously depend on the case, but consider whether the government has been involved in any way and whether a records request would be productive.

3. Important witnesses and their documents. If the event is relatively recent, or if there is a chance that crucial witnesses may be lost to the passage of time, consider trying to identify those possible witnesses and arrange an initial discussion with them.

4. Site visit / evidence review. If the litigation involves a particular location, or a piece of evidence, which may be changed over time, consider an initial visit to the site or a review of that evidence. For instance, photograph the intersection of a car accident before street work is done, while the skid marks and debris are still present, or photograph the car before it is sold for scrap. Every case varies, but ask "what do we have now that may not be the same a year from now when the case is tried?", and make a list of those items to cover initially.

C. Understanding the Strategic Plan for the Case

Understanding the strategic plan for the case is a form of a "conclusion" for the initial client interview. This could be better-suited for an internal discussion within the law firm, as opposed to a client discussion at the outset.

Having gained an understanding of the client overall impression, the ultimate goal in the case and whether the law firm can achieve it, the steps along the way, the information available and information to be obtained, and the potential witnesses who will be helpful, unhelpful, or unknown, the strategic plan for the case involves an overall discussion summarizing all of these things. Important questions for the strategic plan can include:

(1) What are we going to try to do for the client?
(2) When?
(3) What do we have?
(4) What are we missing?
(5) What are the immediate next steps?
(6) What are the steps that will take time to complete, what do we need to do to complete them, and when?

II. POWERFUL DISCOVERY TECHNIQUES

10:00 a.m. – 11:00 a.m.

A. Discovery Rules the Paralegal Needs to Know

1. Court Rules

While the entire Rules of Civil Procedure might normally be viewed in the domain of the practice of law and the court system, those rules as they relate to discovery are discrete and generally understandable, especially with practice and repetition. Often times, the reasons behind every word and sentence in every discovery rule are not immediately clear until put into practice in a case, but it may be useful to have a handy copy of the discovery rules, read them periodically, and especially re-read them as discovery is underway. For instance, if interrogatories are to be served, read the particular rule on interrogatories and determine whether there has been compliance with the rule prior to serving the interrogatories. Over time and through this process, most of the discovery rules will be nearly memorized, and where the occasional re-review reveals a new detail about the rule, that detail is added to the list of things to know. Once there is familiarity with the rules and how they work in practice, it can be useful to distill the rule into "**checklists**" of items to consider for each discovery request, whether the request involves service of discovery upon the other side, or responding to the other side's discovery requests to your client. See attached sample checklist.

(a) Missouri

(1) Rules of Civil Procedure

In Missouri, the rules of civil procedure governing discovery are Rules 56.01 through 61.01.

(2) Local Rules

In Missouri, in addition to the rules of civil procedure, each court is within a "circuit," and each circuit has its own rules which may supplement or even alter the rules of civil procedure in some way, called the "local rules." (This is from the old days when one judge would ride his horse from county to nearby county to make decisions – the judge would ride "the circuit.") Jackson County, Missouri is the only county in the Sixteenth Circuit; other circuits are composed of multiple counties.

In each litigation matter, in addition to having a handy copy of the rules of civil procedure, it is also useful to have a handy copy of the local rules and be familiar with them. Simillarly, for each discovery item, it may be worth a re-review of the local rules to ensure compliance, and perhaps a checklist can be developed over time for each particular county / circuit.

(3) Judge's Rules

To further complicate matters, in addition to the rules of civil procedure and the circuit's local rules, a judge within a county may propound their own set of additional rules regarding discovery. Those rules may be published on a court's website, or included in a "standard" pretrial order, or included in a particular discovery order or other order in the case. A judge who propounds these additional rules will certainly recognize and appreciate compliance with them, and will no doubt notice non-compliance as well, so it is useful to include a review of the judge's rules as a final source before discovery leaves the office.

(b) Kansas

(1) Rules of Civil Procedure

In Kansas, the rules of civil procedure governing discovery are rules K.S.A. 60-226 through 60-237.

(2) Supreme Court Rules

In Kansas, and unlike Missouri, there are also "Supreme Court Rules for District Courts" which provide additional rules for discovery and other court procedures.

(3) Local Rules

Similar to Missouri, each court in Kansas is in a judicial "district." For instance, Johnson County is in the Tenth Judicial District. Also similar to Missouri, the judicial districts in Kansas publish their own local rules, some of which may pertain to discovery.

(4) Judge's Rules

Also similar to Missouri, Kansas judges may propound their own additional discovery rules. Experience has shown that in some Kansas counties, for some Kansas judges, the judge's rules may be quite extensive, and for that reason, it is helpful to also remain aware of the judge's rules.

Supplementation. Perhaps the most evasive discovery rule in Missouri, Kansas, and elsewhere is the rule imposing a duty to supplement. Discovery responses have been proofread; the rules of civil procedure, the local rules, and the judge's rules have been meticulously complied with; and discovery responses leave the office in a final package. A month later, circumstances change and the discovery responses are no longer complete or accurate, but someone forgets to "seasonably supplement" that information to the other side. Unfortunately, changing circumstances are not on a pretrial order to be put on the calendar for deadlines – they may arise only as the case moves along, and can change unpredictably. By the time the other side realizes that the circumstances have changed and the responses are no longer accurate, the other side may complain that it is too late to change the responses. Accordingly, it is useful to periodically review the responses to determine whether there is a need to supplement.

B. Establishing Goals and Timelines for Discovery

1. Scheduling Order

In most cases in Missouri and Kansas, the initial scheduling order will be the starting point for timelines for discovery. The usual discovery deadlines in an initial scheduling order include the date for close of discovery, and the date(s) for identification and/or deposition(s) of plaintiff's expert(s) and defendant's expert(s). In many Kansas courts, the scheduling order may be more extensive than in Missouri, including additional deadlines for when final discovery must be **served** (as opposed to when discovery closes), as well as deadlines to raise any discovery disputes.

(a) Docket

All deadlines in the initial scheduling order should be entered into the firm's calendar.

(b) Plan for Meeting deadlines

Once the court deadlines have been entered into the firm calendar, a plan for meeting those deadlines should include a "tickler" system and a confirmation that the deadline has been met.

i. Tickler

Most discovery deadlines cannot be completed by starting the work on the day the discovery is due. Accordingly, it is useful to develop a tickler system for the firm, tailored to the particular discovery task, to ensure that the deadline will be met.

ii. Confirmation deadline has been met

Once the deadline "appears" to be met, it is useful to confirm within the firm that the deadline has indeed been met, and may be removed from the calendar of to-do items.

2. Internal Deadlines

Aside from the court deadlines and the responses to discovery served upon your client by the other side, for discovery to be served upon the other side, it may be important to develop internal deadlines as to when that particular discovery will be served.

C. Formal Discovery Procedures

1. Initial Disclosures

2. Requests for Admission

3. Requests for Production of Documents

See attached sample checklist.

4. Interrogatories and Answers

See attached sample checklist.

5. Document Production Issues

For document production, an important task is to specifically **catalogue** those documents which have been provided to the other side and when, as well as those documents which have been provided to the other side and when. At some point in a case, it may be important to establish whether certain documents have or have not been provided to or from the other side, and without a definitive catalogue, the issue may not be resolved. Some firms prefer to conduct "**bates**" stamping for added clarity and protection.

D. Motions and Notices

1. Court Rules

(a) Missouri
- (1) Rules of Civil Procedure
- (2) Local Rules
- (3) Judge's Rules

(b) Kansas
- (1) Rules of Civil Procedure
- (2) Supreme Court Rules
- (3) Local Rules
- (4) Judge's Rules

Just as the above rules govern how discovery should be conducted (see Section IIA above), these rules often have particular requirements about how motions should be filed. Similarly, before a motion or response is filed or served, it can be useful to double-check all of these rules to ensure compliance. For instance, in Douglas County, Kansas, the local rules require a "Chambers Copy" of all motions to be separately provided to the Court and specially marked.

2. "Golden Rule" issues in motions.

In most courts, for most motions pertaining to discovery disputes, the Court will require some sort of "golden rule" effort – a genuine effort to resolve the dispute with the other side before filing any discovery dispute motion, and the local rules often differ in how that effort should take place. For instance, in Jackson County, Missouri, the local rules set forth a very specific procedure and format to be followed prior to filing any discovery motion.

3. Hearings and decisions.

(a) Docket response times

For any motion filed on behalf of your client, or filed by the other side, it is important to docket the response times, as well as perhaps a tickler to make sure the deadline will be met. Similar to the above rules regarding discovery, the rules of civil procedure, the local rules, and the Judge's rules may impose specific deadlines regarding responses to motions.

(b) Familiarize yourself with how the Court will make a ruling

Once a motion is filed, the next step is determining how the Court will rule upon it. Each court differs, usually determined by local rules or the Judge's rules. For instance, in Jackson County, a hearing and oral argument on a motion may be requested, but the Court may exercise the option to refuse a hearing. In other courts, a motion will not be ruled upon unless it is called up for hearing. It is useful to develop some familiarity with how each particular court prefers to rule upon motions.

E. Using Informal Discovery and Public Sources of Information

1. Facebook

Facebook may reveal important information about a person. In addition, for your individual client, consider a discussion about what has been posted to Facebook already, and whether future posts should be reconsidered in light of the litigation. A more difficult question is whether prior Facebook posts may be removed. Some suggest that removing a prior post is a form of destroying evidence, which is prohibited.

2. LinkedIn

3. Google

Never underestimate the power of a simple Google search to reveal a wealth of important information.

4. Electronic Court Records

Rule 57.01

- ☐ Interrogatories shall be consecutively numbered paragraphs.
- ☐ The title shall identify the party to whom they are directed and state the number of the set of interrogatories directed to that party.
- ☐ Copies of the interrogatories shall be served on all parties not in default.
- ☐ The party issuing the interrogatories shall also provide each answering party an electronic copy, in a commonly used medium such as a diskette, CD-ROM or as an email attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows, or WordPerfect 5.x or higher.
- ☐ The name of each party who is to respond to the interrogatories must be in the certificate of service.
- ☐ The number of the set of interrogatories must be in the certificate of service
- ☐ The format of the electronic copy to the responding party must be in the certificate of service
- ☐ At the time of service, a certificate of service, but not the interrogatories, shall be filed with the court as provided in Rule 57.01 (d)
- ☐ Interrogatories and answers under this Rule 57.01 shall not be filed with the court except upon court order or contemporaneously with a motion placing the interrogatories in issue.
- ☐ Both when the interrogatories and answers are served, the party serving them shall file with the court a certificate of service.
- ☐ The certificate shall show the caption of the case, the name of the party served, the date and manner of the service, the designation of the document, e.g., first interrogatories or answers to second interrogatories, and the signature of the serving party or attorney.
- ☐ The answers bearing the original signature of the party answering the interrogatories shall be served on the party submitting the interrogatories, who shall be the custodian thereof until the entire case is finally disposed.
- ☐ Copies of interrogatory answers may be used in all court proceedings to the same extent the original answers may be used.

I. DISCOVERY DOCUMENTS SERVED UPON US BY OTHER PARTY

- When discovery is received, print out checklist and check off each item as necessary
- Find out date and method of service (fax, mail, fedex, etc.)
- Talk with an attorney to confirm deadline
- Docket deadline on calendar and let attorney know deadline for calendar; make sure attorney has deadline on calendar
- Docket tickler on calendar for two weeks before deadline to determine status of tasks for completion
- Docket date to get final draft to attorney one week before deadline
- Talk with other(s) on case to determine who will handle the tasks for completion
- Communicate with client regarding plan and deadline (choices include letter, telephone, meeting, or combination)
- Re-type and/or convert document to Word format, full justify, one inch margins, Times New Roman 12, paginate
- Change title to "Plaintiff's Answers to . . ." or "Plaintiff's Responses to . . .", etc.
- Change introductory language
- Change signature block
- Add certificate of service at end of document
- Type in "Answer" or "Response" after each discovery request
- When clients' answers/responses are received, type in the answer/response to each discovery request
- Add any additional information as necessary from our file / our work
- Have meeting / discussion with client for any of our additions / changes
- Obtain signature page signed by client
- Turn in final draft(s) to attorney one week before deadline
- After any attorney questions / changes, confirm changes are acceptable to client
- Sign document on bond paper
    - signature block; and
    - certificate of service on document
- Copy signed document for our file
- Put physical copy in appropriate discovery file
- Serve original document to the persons and in the manner in the Certificate of Service
- Give completed discovery responses to client