



Initial intake: A checklist of factors to consider

CHOOSING THE RIGHT CASES CAN BE THE MOST IMPORTANT DECISIONS YOU MAKE

A personal-injury attorney has no greater power or control over the case than at the time of initial intake. Arguably, the single most important decision in a case may be whether or not to add it to the inventory. Thereafter, many factors outside out of counsel's control may affect the trajectory of the case. Once the decision has been made to take the case, the responsibilities for that case attach. These include the commitment of time, money, liability and reputation. It is, therefore, crucial at the time of intake, to scrutinize the key factors of the case to make an "eyes-wide-open" decision on whether or not to commit to representing the potential client.

The business of representing personal-injury victims has many challenges. One of the most significant challenges is building and sustaining an inventory of cases that will pay the bills now and two years from now. Most cases

take two to five years, or more, to resolve. Counsel is always concerned about building and maintaining inventory. The pressure to attract and "sign up" as many cases as possible is ever present. This pressure may result in taking on cases without full vetting.

At the time of initial intake, counsel should consider using a checklist to evaluate various factors in choosing the right case. Here are some of the issues to consider.

Case value

There is no such thing as a "perfect case" and all cases have some "warts" that affect valuation. All of the factors for case consideration listed below are relevant to, and must be evaluated, to shed light on the ultimate question of the value of the case. The valuation determination initially is guided by the nature and

extent of the injury. On intake, counsel must gather as much information as possible to make this determination. If the case is selected for representation, the valuation number should be reviewed and revised as additional information regarding liability, injuries and treatment progress. Doing one's best to determine an estimate of the case value will help assess the other factors in deciding whether to take the case.

Potential client

During the initial interview with the potential client, counsel must answer the question: "What will it be like working with this person?" Although we are not clairvoyant, the goal in the initial intake interview is to assess some main characteristics of the potential client. How well does the potential client listen? Is the potential client a good or bad historian?

Does the potential client stay on point? Does the potential client come off as credible/likeable? What is the potential client's education and employment background? Does the potential client have a stable life or other physical, emotional and mental history that may affect prosecuting the case? Does the potential client have a criminal history? Prior medical history? Prior claims history? Will the potential client cooperate with treatment? Also, ask yourself, "What would the jury think of this potential client?"

Liability

When choosing the right case, a quick liability determination must be made. Hopefully, the potential client will be able to offer a clear and concise statement to confirm defendant's negligence. Some determinations are easy, such as a rear-end vehicle collision. Premises liability cases can be much more challenging and will require counsel to assess the potential client's comparative fault. Even with comparative fault, the case can still have significant value, depending on the damages. One must also consider the ease or difficulty in proving liability and the costs associated with costs of proof.

The defendant

To the extent possible at intake, an assessment must be made of the potential defendant(s) that will affect the case selection process. One significant factor is insurance coverage. In a vehicle-collision case, the policy limits could be limited to \$15,000, which affects the value of the case and, therefore, the time and expense one can invest in the case. This is less of a problem in a premises liability case where policy limits are usually much higher than the auto case.

Also, depending on the cause of the harm, is there coverage at all? This can be an issue with many dog bite cases, where the homeowner's policy may exclude coverage. Usually, pursuing uninsured persons or entities is very risky and collection efforts difficult. Is the defendant a governmental entity? These

cases rarely, if ever, settle without litigation.

Injury/damages

The nature and extent of the injury and needed medical treatment are the primary drivers to determine case valuation. Valuation will dictate the amount of time, effort and litigation costs counsel can reasonably invest in the case. Obviously, a case involving catastrophic injury is highly desirable, but counsel should expect that it will require considerable time and expense to prosecute.

Policy limits

One of the first questions to answer on intake is, "What are the policy limits for this potential case?" If an auto case, the potential client's UIM coverage must be determined immediately. If the case involves significant impact and injury, the potential client's UIM coverage will always come into play and will often dictate the outside limits on the case value. This can be determined upon intake. The defendant's insurance policy limits should be requested in the initial letter of representation. Services are also available to determine policy limits should the defendant fail to provide the carrier authorization to disclose limits.

Litigation costs

When determining whether to choose the case, consideration should be given to the likelihood the case will be litigated and the cost of proof. More difficult liability cases may require significant written discovery and require multiple depositions. Expert witnesses are required in every case. Sometimes it is as simple as utilizing a treating physician. Others require significant expenditures for liability and damages witnesses. The higher the case value, the more counsel will expect to spend on litigation costs. A rule of thumb is to expect to spend 10 percent of the case value on litigation costs. To the extent possible, counsel should consider this issue when signing up the case. In a cost-intensive case, counsel may consider partnering with

another firm to help spread the cost burden.

Claims history

It is crucial at the initial intake to drill down into any and all claims previously made by the potential client to include automobile cases, which are very common, as well as work-injury claims. Counsel needs to know the good, the bad and the ugly, especially with claims involving injury to the same areas of the body claimed to be injured in the most recent incident. The defense will always identify every claim ever made by the potential client. If undiscovered by plaintiff's counsel, these prior claims can be devastating to the case as they will likely come to light at a critical time during litigation. Prior injuries can be beneficial to the case if it can be argued that the potential client's prior medical condition was exacerbated due to the most recent injury.

Pre-existing medical conditions

Pre-existing injuries and medical conditions are not always a bad thing. In fact, a pre-existing medical condition can explain why the potential client is suffering from a relatively minor-impact vehicle collision or other "minor impact" incident. This is only true if counsel discovers the pre-existing medical condition at the time of intake in order to manage the narrative and medical treatment. The treating physician must also be made aware of the medical history in order to link the new trauma to the past medical condition.

Litigation intensive

On intake, most counsel will have a good understanding of cases that will have to be litigated to get full value versus cases likely to settle pre-litigation. The point is to perform this analysis as soon as possible to decide whether the case is worth counsel's time and treasure.

Intake checklist

The first contact with the potential client requires a thorough review of the above factors. A personal face-to-face

meeting is preferable, although not always possible. Checklists and questionnaires are extremely helpful and useful for both counsel and the client. Always ask the Who, What, When, Where, How, and Why questions. Obtain the identity of all witnesses, photographs and possible videos of the incident scene. Drill down on prior claims and pre-existing conditions and all medical treatment for the past five years. Get a full and complete detailed explanation of how the incident occurred and write it down on paper. There is no better time given the proximity to the incident. Also, remember to instruct the new client to forgo social media postings throughout the pendency of the case.

Once counsel has decided to accept responsibility for the new case, the initial intake meeting is also the time to obtain all necessary written documentation to establish legal representation and obtain what counsel will need to prosecute the case. The documents include the

following, which counsel should have ready and available for the new client's signature for every new case:

1. New Client Questionnaire;
2. Client Letter of Representation;
3. Retainer Agreement;
4. Letter of Designation;
5. Authorization Form;
6. HIPPA Authorization Form;
7. Specific Medical Authorization Forms, i.e. Kaiser/UCLA/Cedars
8. List of Medical Providers Form;
9. CMS MediCare Forms: Proof of Representation and Consent to Release;
10. Verification Forms for Discovery Responses.

Conclusion

Personal-injury attorneys are in a unique position to improve the lives of people who suffer a range of life-changing injuries due to the negligence and carelessness of others. After committing to a case, personal-injury attorneys invest

countless hours and thousands of dollars of their own money to help others. The work can be very satisfying on a personal level when a good result is achieved. This is the passion not shared by defense counsel. However, this passion must be tempered by the fact that this is a business, and bills must be paid. When deciding what case to choose, counsel must carefully consider all factors that lead to successful representation for both client and counsel. Some cases are more challenging and riskier than others. Counsel must analyze these challenges and risks and make an informed decision when choosing the right case.

Daniel Pierson established his sole practice in Century City and for more than 33 years has devoted his practice to the litigation and trial of victims of serious personal injury. Daniel is an active Board Member of the Consumer Attorneys Association of Los Angeles and served as its Membership Chair in 2019 and 2020.