



Pre-litigation through litigation: A timeline

PI practice is a matter of deadlines. Here are the most important

By Ted Ravan

This article is meant to serve as a short guide to the many important deadlines that apply to the litigation of personal-injury cases. Rather than go over every deadline, this article will tackle the most important deadlines that a lesser-experienced trial attorney should keep in mind.

Pre-litigation

Preparing for civil trials does not begin the day the jury is selected or even at the Final Status Conference. Preparation should start before the complaint is even drafted. A trial is the culmination of the years of work that go into a case.

All lawsuits begin with the event. For this article, I will be using an auto collision as an example.

There is a reason that so many attorneys suggest that the plaintiff take pictures at the scene of the incident. That evidence is invaluable when preparing for trial. If the plaintiff hasn't exchanged information with all vehicles involved, then it may be impossible to find all at-fault parties later and could prevent a full recovery for the plaintiff. Any evidence could be valuable later on, whether it be pictures of license plates of all vehicles involved or even the weather at the scene. However, by the time the potential client reaches out to an attorney, it could be days, weeks, months, or a year from the incident, so photographs may have been lost or deleted. This is where intake can be crucial. Always ask the client to provide all evidence. A thorough intake is necessary to determine if the client may have snags in their case, such as preexisting injuries or a suspended driver's license.

As soon as the Plaintiff is a client, send out the Letter of Representation and Letter of Preservation of Evidence to all parties involved in the incident. The Letter of Representation is important to

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create the claim with any insurance companies, however, the Letter of Preservation of Evidence is crucial as it alerts all recipients to retain evidence relating to the claim.

Send out the Letter of Preservation of Evidence via certified mail and if you can, do so with a return receipt. This will confirm that the letter was received and prevent a dispute as to the receipt of the letter later. This is key to many aspects of evidence-gathering and litigation. Often, the defendant will claim a photo or video is no longer in their possession. If you are able to determine the methods and procedures for their video or photo retention (usually through the deposition of the Person Most Knowledgeable), then you may be able to determine that such evidence should have been preserved based on timing of when the Letter of Preservation of Evidence was received. Destruction of evidence is never a good look for the Defendant and will very helpful in litigation.

Cameras, cameras everywhere

Do not rely solely on evidence gathered from the plaintiff or defendant. In today's world, there are video cameras almost everywhere and a persistent attempt to gain access to security videos from nearby businesses can help in many different ways. Some businesses are willing to share that evidence, but many corporate businesses are not willing to do so without a subpoena. If that is the case, send a Letter of Preservation of Evidence to the business immediately, file the complaint, and send out the subpoenas. Code of Civil Procedure does not require you to serve the Defendant before sending subpoenas. (Code Civ. Proc., § 1985.3, subd. (d).)

Videos from drive-thru parking lots and ATMs have helped shed light on auto-collision cases with disputed liability, changing the outcome of the case in favor of my client for the better. Be creative in your search for evidence. Going to the scene and talking to a business owner or employee can change the outcome of a case. They may be able to provide evidence as to a dangerous condition on a premises that was reported to the Defendant or similar crucial details.

Time to file

The next step in the pre-litigation timeline may differ on your case but personally, once evidence is gathered and ready, I believe that the case should be filed. I do not recommend filing the lawsuit within six months of the statute of limitations.

The statute of limitations for a personal injury lawsuit is *typically* two years. However, this is not the case for government claims as they require a different timeframe and statute of limitations. (Gov. Code, § 915.)

Once the lawsuit is filed, service on defendants should be attempted as soon as possible as the plaintiff only has 60 days from the filing of the complaint to serve all named defendants. (Cal. Rules of Court, rule 3.110(b).) Judges do not like hearing that the defendants have not been served and will only listen to that a few times before setting an Order to Show Cause Re Proof of Service with Sanctions against plaintiff's counsel.

Once a defendant is served, a proof of service should be filed immediately. The defendant has 30 days to file an answer. If they do not file an answer within those 30 days, a Request for Entry of Default should be entered within 10 days. Once a Request for Entry of Default is entered, the plaintiff must obtain a default judgment within 45 days. (Cal. Rules of Court, rule 3.110(g) and (h).)

Discovery

Assuming the defendant filed an answer, the discovery process begins. Discovery guidelines may seem simple, but with the numerous motion deadlines and requirements, it is important to have these memorized and keep track of when to file necessary motions. To put it in simple terms at first, when discovery is propounded, the responding party has 30 days (plus more days depending on how the discovery was served) to respond to the written discovery. Extensions are often granted and may be used as a means of creating professionalism and decorum among the opposing parties. I try to avoid requesting extensions but always grant them, unless there is a deposition or hearing pending and responses are required before that event.

Service of the responses to written discovery only occurs when verifications to the discovery responses are provided. It is important to give those verifications with the responses. A delay in providing verifications only gives the other party more time to review them and meet and confer.

Once responses to written discovery are received, the party that propounded the written discovery only has 45 days to bring a motion to compel, or they forfeit their right to do so. However, an attempt to meet and confer is required prior to bringing this motion. (Code Civ. Proc., § 2016.040.) Sending out a timely meet and confer letter is important as it shows a good-faith attempt to resolve the matter. Only providing the opposing party a few days will not appear to be in good faith.

I always like to provide at least one week, but usually 10 days to provide further responses. That way I have at least one week to bring a motion to compel, if it is still necessary. If the opposing counsel provides further responses, then the 45-day clock restarts as to those further responses, but not the other, previous responses.

Some counties, like Los Angeles County, require an Informal Discovery Conference (IDC) to occur before bringing a motion to compel. Once the IDC form is filed, the 45-day clock stops and will give you more time to bring the motion if it is necessary after the IDC.

Medical records

Another important deadline to keep in mind is with deposition subpoenas. In personal-injury lawsuits, defendants will subpoena medical records and bills from all of plaintiff's provided medical

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facilities. That is why it is important that you request those records before the defendant does, and make sure that you know what is in those records.

Always attempt to limit the deposition subpoenas as to time and body. I try to limit the time to five years before the subject incident and only to the same pain or body parts put at issue. Send a meet and confer letter to defendant stating as much and be sure to provide yourself adequate time to bring a motion to quash the subpoena or motion for a protective order.

These motions can prevent unnecessary information, such as unrelated embarrassing or confusing medical records, from being provided to the defendant. Large medical facilities such as hospitals or insurance networks tend to accidently provide more than the records subpoenaed, but a protective order may help prevent the defendant from using that information at trial and can provide you with a means to shield your client from any attempt to confuse the jury or embarrass your client.

Depositions

Once the initial set of written discovery is propounded, I like to request depositions of the defendants. Depositions can make or break a case and I have had the outcome of many cases change due to the testimony provided at depositions. A defendant's deposition testimony can help shift a jury's perspective and is almost always priceless. Deposition testimony can be videotaped, but understanding the value of a particular case and the necessity to videotape it can vary, so it is up to you to decide if that is necessary. I tend to video-record them, but again do so with discretion.

Keep in mind that the last day to propound discovery (and still be allowed to bring a motion) is 90 to 100 days prior to the trial date. That is because discovery closes 30 days before trial, but you will need time to receive, review, and meet and confer on those responses.

Expert discovery

Expert demand and disclosures are the next deadlines to calendar and keep a hawkish eye on. Failing to demand an exchange of experts could waive your ability to call experts at trial and cause doom for the case.

A demand for a mutual exchange of experts must be done at least 70 days prior to trial date, or within 10 days of setting the trial date, whichever is closer to the trial. (Code Civ. Proc., § 2034.220.) Disclosure of experts must be at least 50 days prior to trial or 20 days after service of the demand, whichever is closer to the trial date. (Code Civ. Proc., § 2034.230.)

Supplemental expert disclosure must be disclosed within 20 days of the expert exchange. (Code Civ. Proc., § 2034.280.) This will afford you the opportunity to make any last-minute changes to your expert list and better counter defendant's experts.

Expert discovery cutoff is 15 days prior to the originally set trial date, however, if the trial is continued and the dates are continued with it, then it would be the new trial date. Try to set expert depositions as soon as possible as it will afford you the opportunity to push opposing counsel to either withdraw the expert and force the defense experts to provide their records without any reports from your own experts to taint their opinion. Experts must produce all materials requested in their deposition notice three business days prior to their deposition. (Code Civ. Proc., § 2034.415.) Because of this, I would advise you avoid Thursday or Friday expert depositions as the expert's material would be provided on a Monday or Tuesday, instead of the previous week. Getting them the previous week would give you extra days to review the materials in preparation for the expert's deposition.

Final Status Conference

One of the last pre-trial dates to keep in mind is the Final Status Conference (FSC) as trial documents must be prepared and ready at the time of the FSC. The FSC is to be set no more than 10 days prior to the trial, so it is the last stop before trial begins. Check with the court and see how they want those documents prepared as different judges have different rules and preferences and judges have wider discretion with the rules on trial documents. Most courts have their specific preferences online now; just do not wait until the last moment to check as some courts have document requirements that could take longer than you anticipate.

Stay on top of it

There are numerous deadlines to keep track of and keep an eye on before and during litigation. This article is just a summary of some of the most important deadlines. We may depend on legal staff or software to record these deadlines, but it is the job of the attorney to make sure that these deadlines are properly calendared and met. There are many more deadlines to remember, including responses to motions, ex parte motions, and motions for summary judgment. These deadlines can feel intimidating, but by staying on top of your calendar and auditing your own cases, you won't miss one and will be an effective advocate for your client.


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