Litigation Paralegal A Systems Approach 6th edition McCord Solutions Manual

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CHAPTER 2: THE INITIAL INTERVIEW

CHAPTER OBJECTIVES

- Understand the importance of the initial client interview
- Develop a plan for preparing, conducting and summarizing the interview
- Determine the types of questions to ask in an interview for the most effective results
- Recognize how to handle challenging clients in a professional manner
- Define the term statute of limitations and identify its significance in the litigation process

This chapter is intended to help students understand the purpose of an initial client interview and to develop a systematic way of preparing for, conducting, and summarizing an interview.

PREPARING FOR CLASS: INSTRUCTIONAL SUPPLEMENTS

1. Preview the chapter questions and assignments.

2. If your students have not studied torts and contracts in previous courses or need a review of those topics, you may choose to assign Appendix B.

3. You may choose to supplement the chapter material with comments on interview preparation and interview techniques that have been particularly helpful to you.

4. The chapter lends itself to some expansion on the substantive law of negligence. You will need to tell the class whether their jurisdiction is a contributory or a comparative negligence jurisdiction, and how this aspect of negligence law works in the jurisdiction. For example, if the state is a comparative negligence state, does it have the 51 percent rule barring a plaintiff's recovery?

5. You may choose to use different cases in Chapter 1, such as the contract case, or cases from your own research or experience for examples or practice exercises. If so, it will be necessary to give the class some background on the substantive law of your state pertinent to the examples used.

6. You may choose to provide samples of interview forms from a variety of contexts. They could be added to the interview section of the systems folder.

7. A prepared list of the state's statutes of limitations for common types of lawsuits would be a useful handout.

8. Any additional forms, preferred forms, and checklists that you prefer may be useful supplements to this chapter.

9. Make a list of pertinent Web sites.

SUGGESTED CLASS ACTIVITIES

1. Probably the most significant activity that could be used for this chapter is to have the students prepare for and conduct an interview. A number of class hours could be set aside for this activity. Using the Ameche case (Case II) from Chapter 1, conduct an interview of Mr. Ameche (Case II). Do this in class in a role-playing setting . Divide the interview into various segments (introduction, personal information, events leading up to accident, the accident, injuries, etc.). Different students should take the responsibility of interviewee and interviewer for each segment. The class should critique each segment of the interview according to the following criteria:

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1. Friendly and effective introduction
2. Clarity of questions
3. Application of specific interview techniques
4. Willingness to probe
5. Attitude toward client
6. Effective conclusion of interview
7. Overall preparation
8. Sincerity of interviewer

Distribute the following Data Sheet for the Ameche case.

If students are assigned the role of Mr. Ameche, they should:

1. Study the data sheet so that they can respond to questions without having to refer repeatedly to the data sheet. Have them pay particular attention to the description of the accident.
2. It would be normal to have to refer to documents to get the names of doctors, hospitals, bills, insurance companies, etc.
3. Students should provide their own answers when asked a question for which the data sheet has not provided information. (MU = Make up information.)

Data Sheet for Mr. Ameche, Case II

Has not contacted other attorney
Referred to firm by neighbor
Carl Evan Ameche, Soc. Sec. No. 000-00-0000
2222 2nd St., Thorp, Ohio 10000, Meade County, Phone: MU
Date of Birth: MU Age: 35 Nationality, Race, Religion: MU
Accountant with Miller & Miller 3000 Third St., Thorp $38,000
Married to Zoe Elaine (Jeffers), part-time day care aid and homemaker,
Soc. Sec. No. 000-10-0000 Phone: MU Married Oct. 1, 8 years ago
Child: Zachary Nathan (6)
Employment History: 8 years with Miller & Miller, MU other employment
Education: B.S. degree in accounting, Ohio University, 13 years ago
No prior lawsuits
Incident date: Aug. 21, three months ago

Beginning two-week vacation. Stopped first day at Maple Meadows Campground, site 36. As setting up camper, saw black electrical cord near where Zach was playing. Moved cord away from campsite. Cord was worn and rubber casing was broken in several spots. Plugged camper into extension cord that was taped to regular outlet. Noticed camper light and radio increasingly flickering off and on. Static on radio became quite loud. Heard son yell and emerged from camper to see son trapped by grass and brush fire. I grabbed old brown army blanket from camper and threw it around me. I ran through some flames to get to my son. I wrapped him in the blanket and carried him on my shoulder through the flames. I wore a short-sleeved shirt and khaki shorts, jogging shoes, no socks. Son was OK but my clothes were burning in several places. Zoe and I used another blanket to extinguish the flames burning my clothes and hair. I was obviously burned on my legs and arms. A maintenance worker at the camp took me to the hospital. Zoe and Zach followed in our car. Don't know worker's name.

Defendants: Camp owners Leroy and Margie Congden, Highway 60, Star Route 2, Legalville, Columbia. Their insurance carrier is Citizens Insurance Company of Hartford, Connecticut. They have not paid me anything, nor have I signed anything or made any statements to them.

Weather Conditions: dry and windy

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Description of Campsite: MU

Statements: I told Dr. and nurses what happened. I have also told friends that I thought fire was caused by extension cord.

Witnesses: Mr. Robert Warren (in campsite 34) who is from Legalville and goes to campground occasionally on weekends. I do not have his address. I had spoken to him in afternoon after arrival. Told him of having electrical problems.

Medical: I suffered first-degree burns on my legs, hands, and left side of my face as well as numerous second- and third-degree burns. About 12 percent of my body was burned. Inhaled smoke but no serious damage to lungs. Felt nauseous and the burns were very painful. Hospitalized for two months. Had several skin graft operations. Doctors say I have significant permanent scars on face, hands, and legs.

Restrictions: Restricted movement of right (writing) hand. Some difficulty holding pencil. Overall movement still restricted. Doctors unsure whether restriction permanent or not. Hair beginning to grow back in most places. The pain is less now, but it was severe for the first month.

I still find the burn damage repulsive.

Hospital: Capitol County General Hospital, 400 Ridge Boulevard, Legalville

Treatment: Emergency treatment for burns Aug. 21, hospitalized 8/21-10/1

Surgery: Skin grafts to left cheek and left ankle by Albert Find, M.D., plastic surgeon, 313 Broad Street, Legalville

Prior Medical History: Healthy, broken ankle playing softball six years ago, normal childhood diseases

Damages: Employment, out of work since accident. May begin in approximately one month, but burn scars will make it hard to face clients.

Pain and Suffering (past-present-future) Estimate:

First month—terrible	$300/day
Second month	$200/day
Third month	$150/day

Rest of life because of scarring (embarrassment), some limitation in movement and use of hand—$40/day

Loss of Consortium (love and affection): 3 months at $50/day Loss of Earnings: Out of work for 3 months

Scarring could cost 10% of client's Medical:

Hospital Emergency Room	$3,000
61 days **x** 400/day	$24,000
Dr., surgery	$10,000
Prescriptions	$700
Other Property: Camper and equipment	$2,000
Other: Loss of vacation	$1,000

[[end of data sheet]]

Answer: This assignment is probably the highlight of the chapter for most students. It works best if every student has the opportunity to do an interview, but time may not permit this. You might do an example interview for the entire class. Groups of three students might then alternate the roles of interviewer, client, and evaluator. This could be done in or out of class. If this is still too time-consuming, the interviewer may have to prepare for and conduct one specific phase of the interview. You will need to provide copies of the data sheet for Mr. Ameche. Be sure that students take notes of the interview for use in the Application Assignment.

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2. Have students enter into a computer the notes from your interview with Mr. Ameche. Using a duplicate of these notes, delete extraneous material and organize the remaining important information into a summary according to the format in Exhibit 2.7.
Answer: Based on student assignment in the Ameche case interview. Have students complete the Interview Summary Sheet.

Interview Summary Sheet

File No. Date opened: Interviewer:
Client: Spouse: Children, ages:
Phone:
Date of injury: Statute of limitations:
Summary of facts of action:
Type of action:
Facts related to elements of action:
Facts related to possible defenses:
Witnesses:
Summary of injury and treatment to date:
Total medical bills to date: Summary of business or wage loss:
Evaluation of client as witness: Other comments:
Things to do:

Suggested response (based on Exhibit 2.7):

File No. Date opened: Interviewer:
Client: C. Ameche Spouse: Z. Ameche Children, ages: Zachary, 6
Phone:
Date of injury: Aug. 21, ____ Statute of limitations:
Type of action: personal injury
Summary of facts of action:
Set up camp, site 36, Maple Meadows Campground
Moved damaged electrical cord from where son was playing
Noticed electrical problems with light and radio
Son's yell alerted him to fire
Ameche suffered burns
Facts related to elements of action: Damaged cord, injuries
Facts related to possible defenses: Moving the cord
Witnesses: Robert Warren of Legalville
Summary of injury and treatment to date:
1st-degree burns on legs, hands, left side of face
Numerous 2nd- and 3rd-degree burns
Two months hospitalization and several skin grafts
Permanent scars
Restricted movement, particularly in use of hand
Total medical bills to date: $37,700
Summary of business or wage loss: Make up
Evaluation of client as witness: Good—scars will elicit sympathy
Other comments:
Things to do:

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SUGGESTED ADDITIONAL EXERCISES BASED ON THE AMECHE CASE

1. Using the information following the sample interview form in the text, list the procedural stages for creating your own interview form and place it in your systems folder.
   Answer:
   - Review file.
   - Have attorney identify likely cause of action.
   - Research cause of action to identify needed elements and defenses.
   - Draft interview questions that will elicit information to help prove or disprove cause or defenses to the cause (brainstorm ideas and write out questions).
   - Add name and standard background questions.
   - Have attorney review proposed form, make corrections and additions.

2. Review the Ameche case (Case II). Prepare at least five interview questions that will elicit specific details of this non-automobile accident.
   Answer: Responses will vary, but may include the following areas:
   - Were you told about the electrical problem before you moved into campsite 36?
   - Describe the condition of the extension cord supplying electricity to your campsite.
   - Describe the area where the cord was lying (anything flammable?) and the area where you threw the cord.
   - How hard did you throw the cord? Could the throw have damaged the cord further or loosened connections?
   - Did your son have access to matches or anything else that may have caused a fire?
   - When you first saw your son trapped by the flames, how far was he from where you threw the cord?
   - Can you think of any way you could have rescued your son without injury to this extent?

3. Review the checklist of information to be given at the initial interview. Which three items do you think are most important? Explain.
   Answer: This answer is subjective. Good class discussion question.

4. Some class time could be devoted to a brainstorming session by students with your assistance to develop possible areas of inquiry or questions for the interview related to one or more of the needed elements. This activity could be done in small groups, with a general session for groups to report their ideas.

5. You might conduct an example "how-to" interview for students to follow. If this interview is well planned, it could be videotaped and used for each new class of students or put in the video library for review as an out-of-class assignment.

6. Have a psychologist from the college or community come to class to discuss the following:
   a. interview techniques
   b. interview settings and arrangements
   c. lie detection techniques
   d. problematic situations
   e. body language
   f. effective self-desensitization techniques that would allow an interviewer to deal comfortably with people having repulsive injuries or disabilities

7. Have a business communications teacher discuss effective phone and letter-writing techniques.

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SUGGESTED ANSWERS TO THE TEXT QUESTIONS AND ASSIGNMENTS

QUESTIONS FOR STUDY AND REVIEW

1. For what reasons is the initial interview with the client important? What should be considered when screening a potential client?
   Answer: The client interview sets the tone for the entire relationship between the prospective client and the law firm. It also sets the tone for the critical relationship between the client and the paralegal that may last months or even years. The interview commences the investigation, a fact-gathering process requiring other interviews and techniques. The initial client interview and subsequent interviews determine the basis of the lawsuit (or its defense), the firm's acceptance of the case, and the fee. Additionally, the potential client's character, honesty in business dealings, caliber as a witness, and ability to work easily and cooperatively with others are important considerations. Also consider a conflict-of-interest check on the potential or recently accepted client, or the paralegal should verify that one has been completed.

2. What are the eleven steps in the interview plan? Explain how each step is accomplished.
   Answer:
   Step 1 *Review all available information on the case.*
   Step 2 *Locate or develop an appropriate interview form.*
   Step 3 *Select a location for the interview.*
   Step 4 *Determine what information the client should bring.*
   Step 5 *Schedule the interview (tentatively); check with attorney.*
   Step 6 *Anticipate and arrange for any special needs.*
   Step 7 *Review pertinent ethical and tactical considerations.*
   Step 8 *Review recommended interview techniques.*
   Step 9 *Prepare orientation and instruction materials for the client.*
   Step 10 *Prepare any forms for the client's signature.*
   Step 11 *Prepare the interview site.*

   Step 1: Check the Internet and news services, especially locally, for any information on the client's case.
   Step 2: Find examples in the firm's files, in form books, or on the Internet.
   Step 3: Usually the office is selected unless the potential client has special needs that require accommodation.
   Step 4: Depending on the type of case, this information will vary.
   Step 5: Check with all concerned as to schedules before finalizing an interview with a potential client.
   Step 6: Ask general questions to the client, so the firm will be prepared for any special needs, such as a translator.
   Step 7: Know the rules of ethics when working with a potentially new client. Consider conflicts of interest.
   Step 8: Understand the best way to elicit information and make the client feel comfortable. See the list located in the main text Chapter 2 for step 8.
   Step 9: Attempt to anticipate the needs of the client based upon the case. Having standardized information for personal injury cases, for example, will assist the client in having confidence with Firm. See also the suggestions for step 9 in Chapter 2.
   Step 10: Pre-prepare any forms that are normally used for the type of case that the client is discussing, such as fee agreements. These documents will vary.
   Step 11: Be sure the interview site is prepared prior to the client arriving. Cords and paper should be cleared, if an office is used.

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3. Identify and define the four legal elements that must be proved by the plaintiff in a negligence case.
   Answer: The elements are duty of care, breach of that duty, proximate cause of the injury, and actual injury that caused damage.

4. How does one develop pertinent questions for an interview?
   Answer: Develop open-ended questions that will encourage the client to respond, creating a narrative. Anticipate responses as questions are prepared for the interview.

5. What are some of the considerations for selecting a location for the interview? Why is scheduling a flexible time for the interview important?
   Answer: Considerations include the client's needs; location of the client, especially if out of state; age of the client; and health of the client. Flexibility is important because emergencies always arise, although it is best to try to find a time that is mutually agreeable to all concerned.

6. What types of things should the client bring to the interview?
   Answer: The client should bring all documents in the client's possession relating to the case, such as journals, medical records, photographs, police reports, employment records, and any documents that may help in accessing and developing the case.

7. Identify the special needs one should anticipate in planning an interview.
   Answer: Depending on the situation, interpreters, special access if a disability exists, or even a convenient location other than the firm's office may be needed.

8. What special ethical and tactical concerns must a paralegal be aware of when interviewing a client?
   Answer: Be sure the client knows your status as paralegal and the ethical issues associated with that position. Avoid tape recordings or written statements in the initial interview. Run a conflict of interest check.

9. What is a fee agreement and why do so many client v. attorney fee disputes occur? What is good practice regarding law office Web sites and fee agreements?
   Answer: Fee arrangements set forth the payment obligations of the client to the firm. Disputes arise when these arrangements are not clearly set out by the firm. If the firm has a Web site, specifically setting forth whether an attorney-client relationship is created through Internet contact is important to convey.

10. What federal law governs a medical facility's release of a client's medical information to a paralegal?
    Answer: The Health Insurance Portability and Accountability Act.

11. What is a statute of limitations? When should it be checked? When does a statute of limitations begin tolling in various circumstances?
    Answer: The statute of limitations is the time period in which a lawsuit must commence. The statute of limitations should be checked as soon as the firm becomes aware of the date of the incident. The tolling begins when a lawsuit is filed.

12. How do you use "pace and lead" and other techniques to deal with a difficult client?
    Answer: The "pace and lead" technique is used to control the interview. This technique will afford control on the attorney's or paralegal's part, especially if the client tends to not be listening to the questions or information posed during the interview.

13. How should you summarize or evaluate an interview?
    Answer: The interview should be evaluated from an objective viewpoint.

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14. How can the paralegal play a key role in keeping the client informed of the status of the client's case?
Answer: With the attorney's permission, the paralegal can prepare letters and communicate with the client, both by telephone and electronically, in a timely manner.

15. What is a disengagement letter and why is it important?
Answer: This type of letter identifies those instances when representation of a client is declined. This may be due to a conflict or other general concerns about the representation.

SYSTEMS FOLDER ASSIGNMENTS

1. List the interview tasks and the purposes of the tasks at the beginning of the interview section in your systems folder. Place a copy of the Interview Plan Checklist in your systems folder. Add to this section any forms, techniques, examples, or other material that you or your instructor deem useful.
Answer:
    1. Sets the tone for the firm-client and paralegal-client relationship
    2. Builds client's confidence in the relationship
    3. Begins investigation
    4. Determines basis of or defense to lawsuit
    5. Establishes firm's acceptance of case
    6. Sets fee

2. Review the interview forms in Exhibit 2.1 and Exhibit 2.2 and compile a list of the names, addresses, phone numbers, medical records, insurance information, and so on that you would like Ms. Forrester to bring to the interview. Make a copy of the list and place it in the systems folder. This list will be useful when you call or write the client and will serve as a checklist for future cases.
Answer: This assignment can be applied to any case and interview form.
    - Social Security number (only if essential)
    - Family addresses and phone numbers
    - Employment of spouse
    - Information on any divorce
    - Addresses and phone numbers of other close relatives
    - Employment information
        - Employer, address, phone number, dates, salary, position
        - Self-employment
    - Education information
    - Income
        - Current gross income, tax forms for last three years
    - Time lost
    - Real estate owned
    - Personal property owned
        - Bank accounts
        - Stocks
        - Bonds
        - Autos
        - Furniture
        - Jewelry
    - Prior legal actions: dates, nature
    - General background information on other parties
    - Insurance coverage: deductible, amounts of coverage

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- Accident
  - Date, time, location, diagrams, photos, news clippings
  - Automobile information (if applicable): location, photos, owners
- Any statements to others about accident
- Witnesses: addresses, phone numbers, ages
- Parties' previous accidents
- Medical reports
  - Bills
  - Ambulance service
  - Treating and consulting physicians and addresses
  - Pharmacy
- Prior medical history: physicians, hospitals, etc.
- Damages
- Property damage

3. Make the letter in Exhibit 2:3 into a form letter for your systems folder. Redraft the letter to suit your style and needs, leaving blank those areas of the letter that will contain the variable information (names, addresses, date, and so on) for each new client. Once your form is set up, it can be placed in your systems folder, requiring the entry of only the variable information for each repeated use. Throughout this training period, follow this form-making procedure for letters and other documents that will be used repeatedly from one case to the next.
Note: Keep track of your time by filling out the time log.
Answer: See box with form Confirmation of Appointment letter.
[[START BOX]]

WHITE, WILSON & MCDUFF
Attorneys at Law
Federal Plaza Building Suite 700
Third and Market Streets
Legalville, Columbia 00000

Address: Date
Case File No.

This is to remind you of your appointment on _____, at _____ at our office. The purpose of the appointment will be to _____. The appointment is for an hour, or more if necessary.

Please bring the items checked in the following list, if they are available:

( ) Last four digits of Social Security number
( ) Insurance carrier, policy limits, address, and phone number
( ) Name(s) of the other party or parties and any information you have about them, including insurance carrier
( ) Photos of accident, injuries, or other damage
( ) Photos of accident scene
( ) Diagram of accident and location
( ) News clippings regarding accident
( ) Names, ages, birthdates of spouse and dependents
( ) Description of vehicle(s) in accident, license number, owner, damage
( ) Medical bills, treating physicians, medical insurance, medical history
( ) Occupation and salary information, time lost

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( ) Accident or injuries subsequent to this incident
( ) Any correspondence regarding accident
( ) Names, addresses, and phone numbers of other witnesses
( ) Be prepared to describe accident
( ) Other _____.

We appreciate your gathering as much of the information as you can. I look forward to meeting you. In the meantime, I can be reached at _____.
[[end box]]

4. Your supervising attorney has asked you to develop a draft of a brochure for clients with information the client should receive at the initial interview. Include any additions to the brochure suggested by your instructor. Place the brochure in your systems folder.
Answer: The brochure should contain items in step 9's list of information to be given to the client at the initial interview. Offer the students any helpful additions from your own experience.

5. Note in your systems folder what forms you should have ready for the client at the initial interview. Include samples of those forms or references to where they can be located quickly, such as the page number in the textbook, the form number in a form file, or a computer file.

APPLICATION ASSIGNMENTS

1. Test your research skills and learn about your state law by researching the terms *negligence*, *contributory negligence*, and *comparative negligence* in your state's jury instruction book, statutes, or digest. For additional understanding of these concepts, look in a legal encyclopedia, *Am Jur's Proof of Facts*, or other national reference sources. Note what must be proved. research may be conducted electronically or through books.
Answer: This assignment is designed to reinforce research skills and to give the students a chance to see what kind of research is necessary to isolate the key elements of an area of law that make up the legal foundation for a cause of action. Your state statutes will vary, but general definitions are as follows:

Negligence:
1. The defendant's action or omission caused harm to the plaintiff.
2. The action or omission would not be made by a reasonable person under similar circumstances.

Contributory negligence:
The plaintiff's own act or omission contributed to the harm to the plaintiff; a defense to a negligence claim.

Comparative negligence:
1. Concurrent negligence by both parties caused the injury.
2. Each party's negligence is measured by percentage of fault. The plaintiff recovers proportional damages, but:
   a. only if the plaintiff's fault is less than the defendant's, and
   b. if the plaintiff could not have avoided the harm after the defendant's negligence was apparent.

Comparative negligence replaces contributory negligence in most states.

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2. Adapting the methods you have learned to a variety of circumstances is an important process and an invaluable ability in the law office. Test your understanding of the methodology described in step 2 of planning the interview by creating an interview form for a breach of implied warranty case. Assume that you are representing one of the defendants in the Forrester case. The theory is that the brakes of the van were defective and that is why the accident occurred. Research the legal requirements for a breach of warranty case and prepare the interview form.
   Answer: The student should prepare at least one interview form. The class may be divided to locate or write interview forms in four or five areas to be shared and placed in systems folders. You may choose to provide interview forms from various areas of law. These forms may also be used to evaluate the student's forms.

3. Your firm is handling a wrongful death case for the plaintiff. Since the deceased is not available to testify, how can you introduce the human factor into the case? Who would you interview and what information would you want to gather? What information would you gather in other ways?
   Now assume you work for the defense. What information would you gather and how would you gather it?
   Answer: Students should suggest things that show the impact of deceased on family before death, what life is like in the family after loss of the deceased, and impact on friends.
   For the defense, friends, neighbors, and coworkers might have insights into the "real person," such as a history of abusing others and serious vices that impacted the family negatively.

4. Since the Forrester case involves patient medical information, review your state's (and federal) requirements for the release of medical records and other medical information and prepare the document for Mrs. Forrester's signature.
   Answer: This answer will vary based on the jurisdiction of the student. Students should review the requirements under the Health Insurance Portability and Accountability Act (HIPAA) and corresponding state statutes and case law.

5. Locate the common statutes of limitations through the index to your state's statutes. Compile a list of the statute numbers and time limits for cases involving personal injury, property damage, wrongful death, contracts (oral and written), and products liability.
   a. Personal injury _____ years
      statute number _____.
   b. Property damage _____ years
      statute number _____.
   c. Wrongful death _____ years
      statute number _____.
   d. Contracts
      oral _____ years
      statute number _____.
      written _____ years
      statute number _____.
   e. Products liability
      _____ _____ years
      statute number _____.
      _____ _____ years
      statute number _____.

   Answer: This answer will vary based on the jurisdiction of the student.

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CASE ASSIGNMENTS

1. Mrs. Forrester has decided to hire your law firm to represent her in the personal injury lawsuit she intends to filed against Richard Hart and Mercury Parcel Service, Inc. Your attorney has asked you to prepare the fee agreement between the firm and Mrs. Forrester. Draft the document in accordance with the legal requirements in your jurisdiction.
   Answer: This answer will vary based on the jurisdiction of the student. However, it is suggested that students check local and state bar Web sites for possible examples of fee agreements that comply with the jurisdictional requirements. Also, form books and the Internet should be consulted in preparing a fee agreement.

2. Prepare a letter to Mrs. Forrester summarizing both the firm's and her responsibilities in the course of her representation. Remember to consider including information, such as who to contact if questions arise, the need for cooperation in gathering information for the case, and confirmation of best methods of contacting the client, for example. Be creative and locate sample letters from the Internet, law firms, and formbooks.
   Answer: Suggested letter is as follows:

WHITE, WILSON & MCDUFF
Attorneys at Law
Federal Plaza Building Suite 700
Third and Market Streets
Legalville, Columbia 00000

Date

Mrs. Ann Forrester

Address:

Re: Forrester v. Richard Hart and Mercury Parcel Service, Inc.

Case File No.

Dear Mrs. Forrester:

This will confirm our meeting on _____, at _____ at our office. The purpose of the meeting was to discuss your personal injury case against Richard Hart and Mercury Parcel Service, Inc. At that meeting we discussed the Firm's responsibilities to you as well as your responsibilities to the Firm in its representation of you.

Our Firm is your legal advocate whose function is to assume responsibility for your case and represent you to the best of the attorney's ability. The paralegal will assist in handling your case. Always feel free to contact either of use when questions arise or information needs to be communicated.

You will need to provide us with *all* information you can gather and recall about the incident, your injuries and losses, and any statements you have made to others. This includes, but is not limited to, all documents, including police reports, hospital and doctor records, employment information, and photographs.

Sometimes it may be necessary to provide us with intimate personal information. Expect that the information you give will be held in the strictest of confidence consistent with the highest standards of professional loyalty. Honesty and candor will assist us in providing the most complete representation of your matter.

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Additionally, it is important that you refrain from making any statements to others about the incident or about your injuries or losses. Such statements may be used against you in court and could weaken your case. Refer any inquiries or requests to our office.

Begin a daily medical journal in which you will record the condition of your injuries and medical treatment. Daily references to pain, suffering, sleeplessness, limitations on normal activity, changes in condition, and trips to the hospital or physician should be noted. Keep a record of your expenses: mileage, prescriptions, drugs, crutches, wheelchair, private nurse, and other relevant information.

Record all employment losses: days missed; lost pay and benefits; and missed raises, promotions, merit pay, and bonuses. Also note the date of your return to work and any subsequent effects your injuries have on your ability to do your job. Make a record of all damages to property and estimates for repair. Do not discard, give away, or sell such property without consulting us.

List your expenses in hiring others to perform domestic work and maintenance or child care needed as a result of your injuries. Apprise our Firm of your medical, property, and disability insurance coverage in order that steps may be taken to inform the companies of the incident and claims may be made. You do not want to waive your right to a claim; such claims may provide necessary cash for living expenses. Money paid by your insurance company will be reimbursed to the insurance company if it is awarded to you in the lawsuit for the same damages previously paid for by the insurance.

And finally, the filing of a case is important because it keeps the case moving, provides access to the opponent's information, and encourages a more timely resolution of the matter. Once a case is filed, it may take from one year to several years before it comes to trial. Prior to trial you will be called to the office to review information and to prepare for trial. You may be asked to provide sworn testimony about the incident at a deposition. This is required by law. You will be given time to prepare for this deposition. You may also be asked to undergo an examination by a physician chosen by the opponent in order to verify your injuries. This is permitted by law.

Most importantly, *do not sign any documents releasing others from liability or accepting payments for injuries*; and do not file an accident report without first checking with us. You should be aware that most cases are settled before trial; your case may be settled through negotiation prior to trial. No settlement will be agreed upon without your full knowledge and acceptance. Your case may not end following a decision by the court. Frequently appeals are filed before a case is final. This can take a long time and is simply part of the process.

Please keep us informed of any new information that arises or that you recall. Inform us of any change in address, extended vacation plans, and so on. Refrain from asking others questions about your case. This frequently leads to confusion and incorrect information. If you have questions about your case, please ask us. We will be glad to help. If I am not available, always feel free to contact Terry Sayler, the paralegal working with me on your case.

I look forward to working with you.

Sincerely,

Attorney's Name

INTERNET EXERCISES

INTERNET EXERCISE

Go to http://www.atanet.org, click on *find a translator,* and locate the name of an ATA translation from (1) Spanish to English; (2) Haitian (patois) to English; and (3) Japanese to English.
Answer: This answer will vary.

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INTERNET EXERCISE

Determine the statute of limitations in your jurisdiction for a (1) negligence case, (2) medical malpractice case, and (3) breach of contract case.
Answer: This answer will vary based on the jurisdiction of the student.

APPLY YOUR KNOWLEDGE

APPLY YOUR KNOWLEDGE

Using one of the fact scenarios from Case II, III, IV or V in Chapter 1, create an interview form that can be the basis of an interview for the case you have chosen.
Answer: See suggested interview form in Suggested Class Activities section.

APPLY YOUR KNOWLEDGE

What additional questions would you ask Mrs. Forrester? Based upon the interview presented, what would be your next steps? Detail your plan of action for the Forrester case.
Answer: Ask additional questions on family background for damages; more details on potential witnesses and the surrounding area; details on what Mrs. Forrester termed as “fish tailing" and her understanding of the word; probe Mrs. Forrester's memory when she answered "I don't know” or “it's possible." And, finally, more detail should be extracted as to the extent of the injuries and their effect.

Next steps should be to gather as much documentary information as possible, including through visiting the scene and taking pictures.

CASE STUDY QUESTIONS FOR REVIEW

Siraco v. Astrue, 806 F. Supp. 2d 272 (D.Me. 2011)

QUESTIONS FOR REVIEW: **What was the basis of the Commissioner’s challenge to the award?** The problem arose because the paralegal did most of the work on the case, and therefore most of the fee earned was from the paralegal’s work and not the attorney’s. The paralegal worked 25.2 hours and the attorney worked 4.7 hours on the case. The Commissioner believed that the award was therefore unreasonable.

Why did the Court disregard the lodestar formula? The formula distorted the results and the proper analysis given the work performed. The Court did not want to diminish the contribution of the paralegal and the attorney's contribution to the matter. **Would the Court’s reasoning have changed if the amount of the award to Ms. Siraco would have been higher with a higher attorney’s fee? Why or why not?** Generally, the Court was focused on this case and not hypothetical cases. The Court did not overrule past precedents but also did not want to create one rule that would apply in all cases.

***PAPENTHIEN V. PAPENTHIEN*, 16 F.SUPP. 2D 1235 (S.D. CAL. 1998)**

QUESTIONS FOR REVIEW: **What other issues did the court consider in dismissing the case?** The Court considered then-existing law that applied when the case was filed and the effect of the first amended complaint to the filing of the original complaint; these issues were in addition to the statute of limitations and venue issues. **What is the doctrine of the "law-of-the-case" and why did it apply to this case?** When matters are decided by an appellate court, its rulings, unless reversed by it or a superior court, bind the lower court. It applied because the original Ninth Circuit case did not have evidence of when the attack occurred. This was significant new information. **Was the result in *Papenthien* a fair result? Defend your answer.** This will be a subjective response.

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SUGGESTED ANSWERS TO THE ADDITIONAL MINDTAP QUESTIONS AND ASSIGNMENTS

ADDITIONAL QUESTIONS FOR STUDY AND REVIEW

1. Why is planning an interview important?
   Answer: It is the significant step in creating the attorney-client relationship. It sets the stage for the future relationship.

2. Explain how to develop an interview form.
   Answer: Use past forms from the law firm and use the Internet to gain insight on forms related to the case the client has presented.

3. What is the difference between contributory negligence and comparative negligence? Which of these two doctrines is the rule of law in your state?
   Answer: Contributory negligence means that if the injured party contributed in any way to the occurrence, the injured party will not recover in damages; comparative negligence permits recovery even if the injured party contributes. The injured party's recovery will be reduced proportionally. Answer will vary as to what a particular state follows.

4. What is the doctrine of last clear chance? What is the assumption of risk? Give examples of each.
   Answer: Last cleopar chance is a doctrine that permits parties to recover damages who normally could not because of their contributory negligence. For example, assume that Mrs. Forrester carelessly ran across the ice on the road, slipped, and fell, leaving her directly in the path of Mr. Hart's van. Also assume that Mr. Hart had a last clear chance to avoid the accident. If he was inattentive and did not avoid the accident, Mrs. Forrester could still recover damages in spite of her own negligence.

   Assumption of risk states that plaintiffs may not recover for damages if they knowingly place themselves in danger. For example, if Mrs. Forrester had decided to stay in the middle of the road and thumb her nose at any oncoming vehicle, she would be assuming the risk of injury, and Mr. Hart would have a defense to Mrs. Forrester's action for negligence.

5. Create ten questions probing the existence and nature of injuries suffered in an occurrence.
   Answer: This answer will vary with each student and the instructions of the instructor.

6. What is the simple process for developing a form letter?
   Answer: Utilize past examples from the firm's files.

7. Restate as many of the interview techniques as you can.
   Answer: The following techniques have proven useful:
   1. Have the client meet with the attorney first, giving the attorney the opportunity to explain the role of the paralegal and what that means to the client in terms of reduced cost. The attorney can then introduce the paralegal. This sequence should help develop client confidence in the firm's professionalism and in the paralegal.
   2. Make the client comfortable. Offer refreshments and break the ice with light, pleasant conversation.
   3. Be friendly and respectful. Address the client as *Mr.*, *Mrs.*, *Ms.*, or *Dr.*, as appropriate.
   4. Create a private environment free of interruptions. Have your calls held. If necessary, place an "Interview in Progress" sign on the office door.
   5. Explain the purpose of the interview and let client know you need the client's help.

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6. Inform the client that you, the attorney, and any employees of the law office are required to protect the information provided by the client and that such information is held in the strictest confidence. Explain that honesty is essential and that it can be disastrous to hold back any information, no matter how personal or embarrassing it might be. On the other hand, explain that it is human to forget, and that it is not unusual that something forgotten now can be recalled later. Discuss, also, that it is normal for people to want to fill in gaps in their memories, but that they need to be careful about presenting information they do not remember clearly.
7. Express confidence about what you are doing. Thorough preparation and planning will help you be more confident. It is equally important to avoid trying to impress the interviewee with all of your legal knowledge and vocabulary.
8. Avoid being condescending. Try to put yourself in the client's position and think how you would like to be addressed.
9. Take accurate, detailed, and legible notes.
10. Be a good listener. Silences during the interview process are inevitable and can be productive periods of thought and recall. Avoid the temptation to end the silence quickly. Be patient, supportive, and accepting. Encourage the expression of feelings, and avoid making value judgments.
11. Be mindful of the client's body language or idiosyncratic mannerisms and note them for the attorney. Body language is important because of the jury's potential reaction to it. Be cautious, however, in interpreting body language; such interpretation is not a precise science.
12. Let clients tell their stories. It is important to them. Come back later to pick up significant details.
13. Use open narrative questions, such as "What happened?" and "What happened next?" This allows clients to proceed at their own pace and encourages a freer flow of information, which is more conducive to fact gathering.
14. Avoid questions that suggest an answer. For example, "Mrs. Forrester, you did look both ways before you stepped onto the highway, didn't you?" This is a leading question and encourages clients to respond as they perceive you want them to respond, and not necessarily with the truth. This type of question restricts the flow of information.
15. Avoid "why" questions, which are often viewed by the interviewee as a sign of disapproval. A less confrontational approach might be "Try to help me understand this," or "Would you please elaborate on your reasons for doing that?"
16. Probe the accuracy of judgments regarding items such as speed, distance, color, time, or size. Determine, if possible, the basis of the judgment or test its accuracy through example or comparison to some similar item or distance.
17. Be mentally prepared to deal with sensitive or personal matters in a forthright yet empathetic manner. Avoid skirting the issue or using euphemisms. Such shyness or hesitancy on the part of the interviewer can encourage dishonesty.
18. Deal tactfully but directly with suspected dishonesty. Do not be afraid to indicate that a response doesn't seem to stand up or to follow from the other evidence.
19. Restate the client's information when necessary to make sure you understand: "Now let me see if I have this right. You said you stepped out . . . ?"
20. Be thorough in asking about the accident or other alleged wrongs and any damages. Cover how the injury or loss affected the family's life or, in a business or contract case, how the action affected the business, its customers, and other factors. The more details you can obtain, the better.

8. In the "Information to Be Given to the Client" checklist, which suggestions, if not followed, may adversely affect the client's case?
   Answer:
   1. The attorney is your legal advocate whose function is to assume responsibility for your case and represent you to the best of the attorney's ability.
   2. The paralegal assists your attorney in handling your case, providing you with a more thorough preparation at a lower cost.

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3. You will need to provide your attorney with *all* the information you can gather and recall about the incident, your injuries and losses, and any statements you have made to others.
4. It may be necessary to provide your attorney with intimate personal information. Expect that the information you give will be held in the strictest of confidence consistent with the highest standards of professional loyalty.
5. Refrain from making any statements to others about the incident or about your injuries or losses. Such statements may be used against you in court and could weaken your case. Refer any inquiries or requests to your attorney.
6. Do not sign any documents releasing others from liability or accepting payments for injuries. Do not file an accident report without first checking with your attorney.
7. Begin a daily medical journal in which you will record the condition of your injuries and medical treatment. Daily references to pain, suffering, sleeplessness, limitations on normal activity, changes in condition, and trips to the hospital or physician should be noted. Keep a record of your expenses: mileage, prescriptions, drugs, crutches, wheelchair, private nurse, and so on.
8. Record all employment losses: days missed; lost pay and benefits; and missed raises, promotions, merit pay, and bonuses. Also note the date of your return to work and any subsequent effects your injuries have on your ability to do your job.
9. Make a record of all damages to property and estimates for repair. Do not discard, give away, or sell such property without consulting your attorney.
10. List your expenses in hiring others to perform domestic work and maintenance or child care needed as a result of your injuries.
11. Apprise your attorney or paralegal of your medical, property, and disability insurance coverage in order that steps may be taken to inform the companies of the incident and claims may be made. You do not want to waive your right to a claim; such claims may provide necessary cash for living expenses. Money paid by your insurance company will be reimbursed to the insurance company if it is awarded to you in the lawsuit for the same damages previously paid for by the insurance.
12. You should be aware that most cases are settled before trial; your case may be settled through negotiation prior to trial.
13. The filing of a case is important because it keeps the case moving, provides access to the opponent's information, and encourages a more timely resolution of the matter. Once a case is filed, it may take from one year to several years before it comes to trial. No settlement will be agreed upon without your full knowledge and acceptance.
14. Keep the paralegal informed of any new information that arises or that you recall. Inform us of any change in address, extended vacation plans, and so on. Refrain from asking others questions about your case. This frequently leads to confusion and incorrect information. If you have questions about your case, please ask us. We will be glad to help.
15. Prior to trial you will be called to the office to review information and to prepare for trial. You may be asked to provide sworn testimony about the incident at a deposition. This is required by law. You will be given time to prepare for this deposition. You may also be asked to undergo an examination by a physician chosen by the opponent in order to verify your injuries. This is permitted by law.
16. Your case may not end following a decision by the court. Frequently appeals are filed before a case is final. This can take a long time.

9. List those things to be considered in preparing the interview site.
Answer: Make sure the office is arranged in a way you feel will be most comfortable for the client (facing each other across a desk, side by side at a table, or seated in chairs set in a conversational arrangement) and is equipped with everything you and the client will need. You should have paper for taking notes and drawing diagrams, extra pens or sharpened pencils, tissues, and ice water, coffee, and tea. Paralegals also use portable electronic keypads with small display screens for note taking, such as tablets and iPads. Some software provides simultaneous audio recording while

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taking notes. Be sure to have your own diagram present if you intend to work from that, and any photographs or other items you will be using or referring to. All the forms you drafted should be at hand for the client's signature.

10. Review all the steps necessary to prepare for and conduct an entire interview.
Answer: See Chapter 2 outlines.

ADDITIONAL SYSTEMS FOLDER ASSIGNMENTS

1. Review the interview forms, noting the type of information requested. Place a copy of these interview forms or similar forms into this section of your systems folder.
Answer: No answer is required for this question.

2. List the pertinent ethical considerations for interviewing a client. Place them in your systems folder.
Answer:
Unauthorized practice of law
Confidentiality
Honesty
Conflict of interest

3. Prepare a list of the interview techniques in step 8 for your systems folder. Add any techniques suggested by your instructor.
Answer: Add to this list any suggestions from your own experience.
    1. Have the client meet with the attorney first.
    2. Make the client comfortable.
    3. Be friendly and respectful.
    4. Create a private environment free of interruptions.
    5. Explain the purpose of the interview.
    6. Explain the importance of confidentiality and honesty.
    7. Express confidence about what you are doing.
    8. Avoid being condescending.
    9. Take accurate, detailed, and legible notes.
    10. Be a good listener.
    11. Be mindful of how a jury might react to the client's body language or mannerisms.
    12. Let clients tell their stories; pick up details later.
    13. Use open narrative questions.
    14. Avoid questions that suggest an answer.
    15. Avoid "why" or confrontational questions.
    16. Probe the accuracy of judgments.
    17. Be prepared to deal with sensitive matters.
    18. Deal tactfully but directly with suspected dishonesty.
    19. Restate the client's information to ensure understanding.
    20. Get thorough details on accident and damages.
    21. Apply special interview techniques for interviewees with special needs (child, mentally challenged, other) or get qualified assistance.

4. Develop your own checklist of the items you will need at the interview site. Such a checklist will be a quick reference for preparing your office or a conference room for the interview. Include the necessary forms and directions. Place this material in the systems folder.
Answer: A checklist should include the following:
    1. A clear desk
    2. Writing materials

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3. Diagrams or photographs
4. Forms for signature
5. Refreshments
6. Comfortable setting
7. No interruptions/hold calls
8. Emergency preparations

5. Using the information following the sample interview form in the text, list the procedural stages for creating your own interview form and place it in your systems folder.
Answer:
- Review file.
- Have attorney identify likely cause of action.
- Research cause of action to identify needed elements and defenses.
- Draft interview questions that will elicit information to help prove or disprove cause or defenses to the cause (brainstorm ideas and write out questions).
- Add name and standard background questions.
- Have attorney review proposed form, and make any needed corrections and additions.

ADDITIONAL APPLICATION ASSIGNMENTS

1. Review the *Ameche* case (Case II). Prepare at least five interview questions that will elicit specific details of this non-automobile accident.
Answer: Responses will vary, but may include the following areas:
- Were you told about the electrical problem before you moved into campsite 36?
- Describe the condition of the extension cord supplying electricity to your campsite.
- Describe the area where the cord was lying (anything flammable?) and the area where you threw the cord.
- How hard did you throw the cord? Could the throw have damaged the cord further or loosened connections?
- Did your son have access to matches or anything else that may have caused a fire?
- When you first saw your son trapped by the flames, how far was he from where you threw the cord?
- Can you think of any way you could have rescued your son without injury to this extent?

2. Review the Checklist of Information to Be Given at the Initial Interview. Which three items do you think are most important? Explain.
Answer: This answer is subjective. Good class discussion question.

ADDITIONAL INTERNET EXERCISES

1. Go to your local or state bar association Web sites and locate examples of a fee agreement based upon an hourly rate and a contingent fee agreement. If none are found, locate examples from neighboring states.
Answer: The answer will vary among each jurisdiction and the jurisdiction's case law.

2. Find examples on the Internet of client background information sheets and checklists.
Answer: This answer will vary.

3. Search for examples of checklist for a products liability case dealing with a faulty brake system on a truck or van. (This should be placed in your systems folder for future use in the discovery process.)
Answer: This answer will vary.

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ADDITIONAL LEARNING EXERCISES

1. List the essential elements and defenses to a cause of action for breach of contract.
   Answer:
   Elements
   - Valid contract
     a. Competent parties bargaining at arm's length
     b. Mutual assent including offer and acceptance
     c. Reciprocal consideration
     d. Lawful and enforceable purpose
     e. In a form required by law
     f. Absence of fraud, duress, undue influence, mistake of fact
   - Breach—failure to comply with terms
   - Damages
   - Damages were caused by breach

   Defenses
   - Lack of capacity
   - Undue influence
   - Duress
   - Mistake known to other party
   - Mutual mistake
   - Misrepresentation
   - Fraud
   - Unconscionability
   - Statute of limitations
   - Death or impossibility

2. Read the fee agreements in Exhibit 2.4 and Exhibit 2.5. Briefly discuss the strengths and weaknesses of these agreements from the point of view of the firm, then from the point of view of the client.
   Answer:
   Exhibit 2.4

   Firm will be paid regardless of outcome of case.
   Might not be as much as a percentage if the case is won.
   Client has better idea of required payment, but must pay, win or lose.
   Adequate flexibility?

   Exhibit 2.5

   Firm has chance of large payment—or no payment at all.
   Except for costs, client pays only if case is won, but might lose a large chunk of award to firm.
   Client might overlook the need to pay costs.

3. One of the most common client complaints is, "My attorney never lets me know what is going on—and she (or he) is never available." Drawing from your text, in what specific ways can a paralegal assist the client in this regard?
   Answer:
   - Assume primary responsibility for communication with client.
   - Schedule regular client report letters.
   - Promptly respond to all client inquiries.
   - Acknowledge receipt of information and material sent to you from client.

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ANSWERS TO THE MINDTAP PRACTICE TESTS

1. Because each case is unique, interview form questions are not helpful.
   Answer: False

2. Individuals have a duty not to create an unreasonable risk of harm to others.
   Answer: True

3. Because toys are a distraction, do not keep them in the room when interviewing children.
   Answer: False

4. In the interview, encourage the client to give all information about the accident, even if it is not in the client's favor.
   Answer: True

5. Euphemisms are a good way to deal with sensitive issues in interviews.
   Answer: False

6. Pace and lead is a technique used to elicit information during the client interview.
   Answer: False

7. It is better to do a conflict-of-interest check after the client interview rather than before it.
   Answer: False

8. A good interview form does all of the following *except*
   a. includes questions on employment background.
   b. gives you all the questions you will need.
   c. saves preparation time.
   d. requires specific information on damages.
   Answer: b

9. Prominent signs declare a beach closed because of pollution. A swimmer who ignores the signs and later is hospitalized with an infection sues the owner of the beach. What defense does the owner have?
   a. Breach of duty
   b. Contributory negligence
   c. Assumption of risk
   d. Procedural law
   Answer: c

10. The best way to record a client interview is to
    a. take notes.
    b. tape record it.
    c. have the client sign a written statement.
    d. videotape it.
    Answer: a

11. The body language of a person may best be assessed to determine
    a. whether the person is lying.
    b. that the person is confident.
    c. how a jury will perceive the person.
    d. a and b.
    Answer: c

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12. Fee agreements
    a. are never discussed by paralegals.
    b. are set by paralegals.
    c. are always based on billable hours.
    d. require the client's signature.
    Answer: d

13. What forms authorize doctors or others holding confidential information to give that information to a lawyer or paralegal?
    a. Docket control forms
    b. Authorization forms
    c. Request forms
    d. Medical information forms
    Answer: b

14. Which is the best interview question?
    a. You stopped to look before you crossed the road, didn't you?
    b. Why didn't you pay more attention to traffic?
    c. Do you know what Statute CS §127 requires?
    d. How long did it take you to cross the road?
    Answer: d

15. Professional ethics require of the paralegal
    a. your best legal advice to the client.
    b. that you do not question the truth of what the client tells you.
    c. confidentiality of client information.
    d. no questions that would embarrass the client.
    Answer: c

16. In concluding the interview, be sure to
    a. have the client sign necessary documents.
    b. have the client sign a statement.
    c. avoid any conversation that is not pertinent to the case.
    d. encourage the client to promote his or her side of the case among friends.
    Answer: a

17. The interview summary is helpful for
    a. publicizing the case.
    b. quick review of facts.
    c. evidence at trial.
    d. keeping the client informed.
    Answer: b

18. A letter to a potential client making it absolutely clear that the firm is rejecting that person's representation is a _____ letter.
    a. deauthorization
    b. CAFA
    c. conflict
    d. disengagement
    Answer: d

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19. The initial client interview is significant for what three reasons?
Answer: Establishes client–firm relationship, establishes client–paralegal relationship, begins investigation

20. Define substantive law and procedural law.
Answer: Substantive law defines the duties owed by one person to another. Procedural law defines the steps that must be followed in a lawsuit

21. What are the elements of negligence?
Answer: Duty, breach of duty, injury, breach was cause of injury

22. How do you generate interview questions for specific cases?
Answer: Consider what is needed to prove elements of substantive law.

23. What are some considerations in choosing an interview site?
Answer: Convenience, privacy, access to evidence

24. Is the client going to be the one who is suing or being sued in a contingent fee agreement? Explain.
Answer: The one suing; must be likely to win damages to pay the attorney a percentage

25. In what two ways is the statute of limitations significant to any given lawsuit?
Answer: An action must be filed before the running of the statute or the right to sue is lost. It provides defense to an otherwise valid action.

26. What kinds of materials should the personal injury client bring to the interview?
Answer: Information on employment, insurance, medical treatment, bills, etc.

27. In order not to jeopardize their case, clients should not:
Answer: Clients should not sign documents releasing others from liability, accept payment for damages, make statements to others about the case, file an accident report without attorney approval.

28. How is the interview summary prepared?
Answer: From interview notes and interview form; would be easiest using computer editing

29. What are three ways you can help keep your client informed?
Answer: Schedule regular client report letters, promptly respond to all client inquiries, acknowledge receipt of information and material sent to you from client

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