

Personal Injury

How to make discovery process more effective in an injury case

By **Warren WhiteKnight**

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(March 22, 2023, 2:53 PM EDT) -- The discovery process is crucial in determining the outcome of a case, yet it is still an area many lawyers need to use more effectively. As every injury lawyer knows, the discovery process is meant to help build the case by identifying potential witnesses, information and evidence. However, if used ineffectively, the process can feel slow, burdensome and ultimately, not bear the information you need to assist with the case.

Many injury lawyers, especially those relatively new to the field, struggle to properly prioritize and define the discovery process. This article will help you better understand the areas slowing you and your clients down and suggest strategies for increasing your success and efficiency throughout the discovery process.

Current issues with process

The discovery process in injury law is one wrought with processes and procedures that often have the potential to be improved.

Remote discovery calls

One of the most prominent slow-downs that many lawyers are currently dealing with is related to remote (primarily via Zoom) discovery. Since 2020, virtual examinations have become much more common, but they lend themselves to some difficulties for lawyers participating in discovery. Besides tech and Internet disruption challenges, remote discoveries cut down on non-verbal communication cues. It can be challenging to gauge witness credibility and detect inconsistencies without being able to see body language cues.

Co-operation between parties

Injury litigation is often adversarial, with each party trying to protect their interests. This adversarial relationship can make it difficult for parties to co-operate during the discovery process, as each party may be reluctant to provide information that could be used against them. This can cause delays and may require court intervention to resolve.

Scheduling challenges

Alongside issues with co-operation between parties come scheduling challenges. Unfortunately, many lawyers find themselves in a situation where they are fully prepared and ready for a discovery call. Yet, the opposing counsel won't agree to a specific schedule or will give a preliminary date as far as two years into the future. For strategic reasons, personal injury lawyers don't typically want to wait too long, so this is a challenge that needs to be addressed.

Getting essential information

Every injury lawyer knows the struggle of gathering information needed during discovery. Whether the client doesn't have it all on hand, the lawyer only has a limited amount of time to get information, the witness is evasive, or any other related issue, getting the necessary information to build a case is rarely easy. Thankfully, there are some strategies lawyers can use to help make the discovery process more effective and get the information they need.

Tips for making process more effective

Personal injury is an extensive and often time-consuming area of law, so any process improvements incorporated into the discovery process should be encouraged.

Know the case

The most important thing for injury lawyers to remember is to not be learning the case at discovery. The term "discovery" does imply that it is the first opportunity to question the witness from the other side and obtain pertinent documents. However, it is essential to have a clear picture of the case before the discovery stage. Take time ahead of discovery to research and know the case inside and out.

A great practice to get into is deriving and writing down a theory about the case beforehand and then using the discovery process to either confirm, adjust or disavow that theory. Knowing the case inside and out before the discovery begins will ensure the essential information is defined and given more effectively.

Keep it relevant

The most effective discoveries are often the shortest ones. Sometimes people think that an effective cross-examination or discovery is one where the lawyer hammers away at someone for hours. Another point of equal importance is that injury lawyers can't expect to go to discovery to continually question and badger the defendant, expecting them to give up information during discovery. It is much more effective to prepare appropriately, know the case exceptionally well, and keep all questions and conversations relevant to get the information needed.

Prepare client

Before the discovery, it's essential to properly prepare the client and the witnesses for what is about to unfold. This includes reviewing the details of the injury at hand and providing a complete list of required documentation, providing the client with a copy of all affidavits of documents, with all tabs, and ensuring they are reviewed.

This practical prep is important, but preparing clients for the emotions they may experience during the discovery is just as important. Preparing clients to face difficult or rude counsel is vital because otherwise, this unexpected challenge can derail a client.

Remember the story

One of our most important roles as injury lawyers is to be a great storyteller. The law itself is not that interesting; what's interesting is when the lawyer marries someone's story to the law. For example, a broken leg will be comparatively more meaningful to someone whose hobby is cross-country skiing, while a sprained wrist will be more meaningful to someone who drives their kids to school daily. Aligning the individual's personal journey with the law will help build a unique and exciting story for the case. Use the discovery process to humanize clients and get that personal side; remember, it's not just about numbers and spreadsheets.

Ultimately, the discovery process doesn't have to be dull or miserable. If the client, witnesses, opposing side, and most importantly, the lawyer, are well-prepared, it can run efficiently and be a good experience for all parties involved. As an injury lawyer, it is crucial to prepare correctly, think about the story, and keep questions relevant to the case.

If these steps are taken, the discovery process's challenges can more easily be addressed and mitigated. Increasing the effectiveness of discovery will make things easier for all parties involved

and increase the chances of a successful outcome in the future.

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