

# LAWYER ALERT

## Stopping Medical Injustice

### The Most Important Thing YOU SHOULD DO for Your Law Firm

Documenting the core processes of your law firm is the most important thing you can do. You know how a lawsuit works, but does your team? If you don't describe the processes of a lawsuit, your team will try to figure things out for themselves. And you might not like the results.

Explain your core processes in simple language, as if someone with no legal experience could understand them. And then, educate your team about each step of the lawsuit process and invest in their growth. Let your team member know that you care about their success and if they fail, you fail.

**DO NOT ASSUME ANYTHING.** Some of your new paralegals won't know what a deposition is. Take the time to explain every step of a lawsuit in the most basic terms and explain why each step is done. If one step is missed, there will be delays in the lawsuit.

### How a Lawsuit Works – The Overview

The person bringing a lawsuit is the plaintiff and the persons/companies defending a lawsuit are the defendants. The plaintiff files the lawsuit to seek a monetary recovery for physical and/or psychological injuries sustained by reason of a negligent act committed by the defendants.

**Plaintiff & Defendants:** Our law firm only represents the plaintiff, namely, the injured person or the Estate of a person who was killed due to the negligence of another person.

In a wrongful death lawsuit, we represent the Estate of the deceased person, e.g., "Mary Smith, Individually and as the Executrix of the Estate of Joseph Smith". When a person dies without a will, the representative of their Estate is either the Administrator (if the Estate representative is male) or Administratrix (if the Estate representative is female). If the person dies with a will, the estate representative is either the Executrix (a female Estate representative) or Executor (a male Estate representative).

The defendants are the persons/company against whom a lawsuit has been filed. In most of our

lawsuits, the defendants are physicians, their medical practice or a hospital.

### First Step of a Lawsuit: Filing of the Summons and Complaint

**Summons & Complaint:** A lawsuit begins by the filing of a summons and complaint with the county clerk of the county where the lawsuit is filed. Once the summons and complaint have been filed, the summons and complaint are forwarded to a process server who personally hand-delivers the summons and complaint to each one of the defendants.

**Answer:** Upon receipt of the summons and complaint, each defendant has 30 days to serve by mail an answer. The answer is a legal document that denies the allegations of the complaint.

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The complaint, answer and the defendants' discovery demands will be scanned into our case management software (SmartAdvocate) on the same day that these documents are received in the mail.

## Second Step of a Lawsuit: Serving Discovery Responses upon Defendants' Counsel

Together with the answer, the defendants will serve a set of combined discovery demands seeking information about the plaintiff's allegations of negligence and the injuries sustained by the plaintiff.

The defendants' discovery demands will typically consist of the following:

- #1: Defendants' Combined Discovery Demands
- #2: Defendants' Demand for a Verified Bill of Particulars
- #3: Defendants' Notice of Deposition



Your job is to prepare written responses to the defendants' discovery demands within 30 days. Under New York law, we have 30 days to serve written responses to the defendants' discovery demands. If some of the defendants' discovery demands seek information or documents that are objectionable, such as income tax returns, you must object in writing with a letter to defendants' attorneys within 30 days.

You should draft written responses to the defendants' discovery responses. The plaintiffs' written discovery responses will typically consist of the following documents:

- #1: Plaintiff's Response to Combined Discovery Demands
- #2: Plaintiff's Verified Bill of Particulars
- #3: Plaintiff's Notice of Videotape Deposition
- #4: Plaintiff's Combined Discovery Demands
- #5: Notice of Commencement of Medical Malpractice Action

The plaintiff's discovery responses provide information about the allegations



in the lawsuit and the injuries sustained by the plaintiff (our client). For example, the allegations in the lawsuit might consist of a failure to timely diagnose and treat breast cancer and the damages/injuries might consist of death or a diminished likelihood of survival.

**#1: Plaintiff's Response to Combined Discovery Demands:** This discovery demand seeks general information about the plaintiff's claims, such as the identities of witnesses, photos/video of the incident, income tax returns and employment records, social media information (e.g., Facebook and Instagram posts by our client) and the identities and addresses of the plaintiff's healthcare providers.

Your job is to prepare responses to every question in the defendants' Combined Discovery Demands. You should try to get information that you need to prepare answers to the defendants' Demand for Combined Discovery Responses. After you introduce yourself to your client, you might ask them:

- Have you ever been a Medicare or Medicaid recipient?
- Who were your employers over the last 5 years?
- Who were your healthcare providers over the last 10 years? (ask for the names and address of our client's healthcare providers, including doctors, hospitals, pharmacies and therapists)
- Have you ever had a workers' compensation claim?
- Do you have any photos or video that show your injuries?
- Were there any witnesses to your medical treatment?
- Were there any witnesses to your injuries and disability?
- Did you keep a diary or journal of your medical treatment?
- Have you ever filed a bankruptcy petition? If so, when?

Go through each question set forth in the defendants' Combined Discovery Demands and answer the questions based upon the information provided by your client.

**#2: Plaintiff's Verified Bill of Particulars:** The Plaintiff's Verified Bill of Particulars is a legal document that sets forth the allegations of negligence (e.g., failing to timely diagnose cancer) as well as the injuries and damages sustained by the plaintiff (e.g. death and conscious pain and suffering).

You should provide answers to each question posed by the defendants' Demand for a Bill of Particulars. Our lawyer will answer the questions that inquire about the allegations of negligence and the injuries sustained and you should prepare written responses to every other question. If you are not sure of the answer to a question in the Demand for a Bill of Particulars, you should call your client, introduce yourself and ask them for the information that you need.

**#3: Plaintiff's Notice of Videotape Deposition:** The Plaintiff's Notice of Videotape Deposition is a legal document that notifies the defendants that we intend to depose the defendants. The names of the persons that we want to depose are set forth in the plaintiff's Notice of Videotape Deposition.

The plaintiff's Notice of Videotape Deposition is a standard form that you should serve with the plaintiff's discovery responses. The Notice calls for the depositions of the defendants and can be printed from a template in our case management system (SmartAdvocate).

**#4: Plaintiff's Combined Discovery Demands:** The Plaintiff's Combined Discovery Demands request the defendants' medical records, employment agreements, written statements made by the plaintiff and photographs and video of the plaintiff.

The plaintiff's Combined Discovery Demands is a standard form that should also be served with the plaintiff's discovery responses. This is a template that you can obtain from our firm's case management system (there is no need to re-type this document). The plaintiff's Combined Discovery Demands should be served with the plaintiff's Response to Combined Demands and Verified Bill of Particulars.

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### #5: Notice of Commencement of Medical Malpractice Action:

The Notice of Commencement of Medical Malpractice is a document that notifies the Court that a medical malpractice lawsuit has been filed and requests a preliminary court conference.

In medical malpractice lawsuits, the plaintiff must file with the Court a document known as the “Notice of Commencement of Medical Malpractice” within 35 days of the date that we receive the defendants’ answer. Once the Notice of Commencement of Medical Malpractice has been filed with the Supreme Court clerk, the Court assigns a Judge to the lawsuit and a preliminary court conference is scheduled.

### Third Step of a Lawsuit: Scheduling Depositions

Scheduling depositions with defendants’ attorneys is vital to moving our cases through the discovery process. A deposition consists of questions of witnesses and parties that are asked under oath. By asking questions of the defendants under oath, we can ascertain their position relative to the issues in the lawsuit and their excuses for their negligence.

There are two types of depositions: #1: depositions of the parties (the parties are the plaintiff and defendant); and #2: depositions of non-party witnesses (non-party witnesses are any persons who are not the plaintiff or defendants). In almost all cases, the plaintiff will be deposed first by the defendants’ attorneys and our lawyer will depose the defendants following the plaintiff’s deposition.

You can schedule the depositions of the parties by calling and/or emailing defendants’ attorneys. You should provide defendants’ attorneys with 2 or 3 dates that we are available for the depositions based upon our schedule.

Almost always, the defendants’ law firm will have a deposition scheduler/coordinator whose job is to schedule depositions. When you call the defendants’ law firm, you should ask whether they have a deposition coordinator/scheduler for the purpose of scheduling depositions. You will then speak with the deposition coordinator to schedule dates for the depositions of the parties (plaintiff and defendants).

## The 9-Step Litigation Checklist

The 9-Step Litigation Checklist is the step-by-step process that we follow for lawsuits. Follow one step at a time and our cases will move forward to the desired outcome: TRIAL. Our goal is to get our lawsuits to trial within 18 months.

### Step #1: Prepare the Prelitigation Checklist



The Prelitigation Checklist sets forth the list of documents and materials that we will need for the lawsuit. You should ask the questions set forth in the Prelitigation Checklist, including the names and address of their healthcare providers (hospitals, doctors and pharmacies) and employers over the last 10 years as well as witnesses to medical treatment and injuries/damages. You should also ask whether your client has photos or video showing their injuries or disability and whether there are any witnesses to their medical treatment and/or injuries/disability.

Once you’ve completed the Prelitigation Checklist, you should forward it to our Litigation Team (paralegal and lawyer), to ensure that the appropriate documents and materials are set forth in the plaintiff’s Response to Combined Demands.

**Why We Do This:** Our lawsuits will not progress through litigation without a complete set of medical and employment records. The primary complaint of defendants’ attorneys is that they are not willing to schedule depositions until they possess a complete set of medical records. Your job is to request the medical and employment records as soon as possible so there are not delays in the lawsuit.

### Step #2:

#### Confirm that Each Defendant has Served an Answer

Each defendant formally appears in a lawsuit by serving via mail their “Answer”. The “Answer” is a legal document that responds to the allegations in the plaintiff’s Complaint. With rare exception, the “Answer” denies the allegations that are set forth in the Complaint.

You should check the Pleadings tab of our case management software to confirm that each defendant has served an “Answer”. If a defendant has not served an Answer, you should notify our lawyer and paralegal, e.g., “defendant, Joseph Smith, M.D., has not served an Answer”.

**Why We Do This:** After the filing of the summons and complaint, we have 120 days to serve the summons and complaint upon the defendants. If a defendant is not served within 120 days after the filing of the summons and complaint, the lawsuit is automatically dismissed.

### Step #3: Request a Complete Set of Medical Records



You should request a complete set of our client’s medical records for all dates of treatment from our records retrieval company. To request the records, you should upload a HIPAA-compliant release authorization signed by our client to our records retrieval company and specify the records that we need. The request for medical records should include our client’s treating physicians, hospitals, pharmacies and therapists.

Once you request the medical records, the records retrieval company will request the medical records and upon receipt of the records, they will upload the medical



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records into your case management software (SmartAdvocate).

Once we possess our client's medical records, you should serve them upon defendants' attorneys, together with release authorizations that will allow them to request the records.

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***The most common cause of delays in a lawsuit is that the defendants' attorneys do not possess a complete set of their client's medical records.***

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**Why We Do This:** The most common cause of delays in a lawsuit is that the defendants' attorneys do not possess a complete set of our client's medical records. To avoid this, you should serve a complete set of medical records and release authorizations upon defendants' attorneys as soon as you receive the defendants' answer.

**Step #4:**  
***Serve Release Authorizations Upon Defendants' Attorneys***

There are 2 types of release authorizations that you will provide to the defendants' attorneys:

**#1: Authorizations for Medical Records:** Release authorizations that allow the defendants' attorneys to request our client's medical records; and

**#2: "Arons" Authorizations (a/k/a "speaking authorizations"):** Release authorizations that allow the defendants' attorneys to speak with our client's treating doctors (known as an "Arons" authorization).

Once we receive the defendants' answer, you should prepare release authorizations that allow the defendants' attorneys to request our client's medical records. If the defendants' attorneys request "Arons" authorizations, you should prepare them and serve them.

**Why We Do This:** The goal is to avoid delays in the lawsuit. If the defendants'

attorneys do not possess a complete set of release authorizations for your client's medical records, they will not schedule depositions of the parties.

**Step #5:**  
***Serve the Plaintiff's Verified Bills of Particulars Upon Defendants' Attorneys***

The plaintiff's verified bill of particulars is a legal document that sets for the allegations in the lawsuit and the injuries and damages sustained by the plaintiff. An allegation in the lawsuit could be the failure to timely diagnose cancer, and the injuries/damages could be death or diminished likelihood of survival.

The defendants' Demand for a Bill of Particulars will contain a series of questions about allegations and damages in the lawsuit and your job is to answer each question. The plaintiff's verified bill of particulars should be prepared in a Question and Answer format, i.e., each numbered question should be followed by the answer to the question.

Some of the questions in the defendants' Demand for a Bill of Particulars are improper and objectionable. For example, it is improper for the defendants' Demand for a Bill of Particulars to request the following:

- Statement of accepted medical practices violated by the defendants



- The manner in which the defendants deviated from the standard of care
- The signs and complaints ignored by the defendants
- What advice, diagnosis or treatment should have been made or given

In the plaintiff's Verified Bill of Particulars, you should object to such questions by stating: "Plaintiff objects to this inquiry as it seeks information that calls for expert opinion testimony and is purely evidentiary. Patterson v. Jewish Hospital & Medical Center, 94 Misc.2d 680, 405 N.Y.S.2d 194, affirmed 65 A.D.2d 553 (2nd Dep't 1978); McKenzie v. St. Elizabeth Hospital, 81 A.D.2d 1003 (1981)."

**Why We Do This:** The plaintiff's verified bill of particulars is the most important legal document in the lawsuit. If the plaintiff does not allege the proper theories of liability, those claims will not be admissible in evidence at the trial. For this reason, it is critically important to allege the correct allegations of negligence and injuries/damages.

**Step #6:**  
***Serve the Plaintiff's Discovery Demands Upon Defendants' Attorneys***

The plaintiff's Combined Discovery Demands is a legal document that requests medical records, documents and information about the defendants' defenses in the lawsuit, including the following:

- Demand for Statements
- Demand for Witnesses
- Demand for Photographs and Video
- Demand for Medical Records
- Demand for Audit Trail of the Electronic Medical Records
- Demand for Expert Witnesses
- Demand for Insurance Information
- Demand for a Verified Bill of Particulars

The plaintiff's Combined Discovery Demands should be served upon the defendants' attorneys, together with the plaintiff's Response to Combined Discovery Demands.

**Why We Do This:** If we do not request medical records, statements, employment contracts and surveillance video from the

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defendants' attorneys, we will not have the evidence that we need to prove our clients' case.

### Step #7: Serve the Plaintiff's Combined Discovery Responses Upon Defendants' Attorneys

Defendants' attorneys will serve a set of discovery demands (known as the Defendants' Combined Discovery Demands), which require a written response from the plaintiff. The defendants' Combined Discovery Demands request information from our client, including:

- Demand for Statements
- Demand for Medical Reports
- Demand for Medical and Speaking Authorizations (a/k/a "Arons" authorizations)
- Demand for Tax Records
- Demand for Witnesses
- Demand for Photographs
- Demand for Accident/Incident Reports
- Demand for Diaries/Logs
- Demand for Experts
- Demand for Collateral Source Information

You should prepare a response to each inquiry. Most of the information that you will need should be contained in our case management software, such as in the Prelitigation Checklist. If you do not know the answer to an inquiry in the Defendants' Combined Discovery Demands, you should call our client to request the information.

**Objecting to the Defendants' Combined Discovery Demands:** Within 30 days of our receipt of the defendants' Combined Discovery Demands, we must object to the portions of the demand that are improper, pursuant to CPLR section 3122(a). CPLR section 3122(a) states that the party objecting to a discovery demand "shall serve a response which shall state with reasonable particularity the reason for each objection" within 30 days of receipt of the discovery demand.

Our most common objections relate to discovery demands for the following:

- Income tax returns
- Psychological and psychiatric records
- Drug and alcohol addiction counseling records
- Overly broad demands for social media information

With rare exception, such records are not discoverable in a personal injury lawsuit. Our template for a letter objecting to the defendants' Combined Discovery Demands is set forth in [www.Fisherpedia.com](http://www.Fisherpedia.com).

**Why We Do This:** Our cases will not progress toward a trial date unless we serve the plaintiff's Combined Response to Discovery Demands on a timely basis (within 30 days of our receipt of the defendants' Combined Discovery Demands).

### Step #8: Schedule the Depositions with Defendants' Attorneys

Following the completion of the service of the plaintiff's discovery responses and verified bill of particulars, you should begin scheduling the depositions of the plaintiff and defendants. A video tutorial for scheduling depositions is available in [www.Fisherpedia.com](http://www.Fisherpedia.com)

**Plaintiff's Deposition:** Begin by contacting defendants' law firm to schedule a date for the plaintiff's deposition. Most defense law firms will have a deposition coordinator (an employee whose sole function is to schedule depositions for the law firm).

You should confirm a date and time for the plaintiff's deposition with a letter to the defendants' attorneys. The defendants' attorneys will be responsible for hiring a stenographer to transcribe the plaintiff's deposition. Most depositions will be held virtually via Zoom, so there is no need to confirm a location for the depositions.

**Defendants' Depositions:** Next, you should call all of the defendants' attorneys to schedule dates for the depositions of the individual defendants (the defendants named in the caption of the lawsuit). Every date should be confirmed with a letter to the defendants' attorneys, e.g., "This will confirm that the deposition of Joseph Smith, M.D., will be held via Zoom on Thursday, September 22nd at 10 a.m. Our

office will hire the stenographer for this deposition."

**Non-Party Depositions:** Non-party depositions can be conducted at any time after the lawsuit has been filed. To schedule a non-party deposition, a Subpoena is personally served upon the non-party witness that requires the witness's attendance at a deposition on a specific date, time and location.

At the beginning of the lawsuit, you should ask our lawyer whether there will be non-party depositions and if so, the names of the non-party witnesses. You can then prepare a Subpoena that will be sent to a process server, who will then serve the Subpoena upon the non-party witness.

**Why We Do This:** Your cases will not move to trial unless you are diligent about scheduling depositions. This is the most important thing you do.

### Step #9: File the Note of Issue to Request a Trial Date

The final step of the discovery phase of a lawsuit is the filing of a Note of Issue. A Note of Issue is a legal document that is filed with the court that affirms that discovery proceedings are complete and the plaintiff requests a trial date. The Note of Issue is filed with the court with a filing fee and served via mail upon the defendants' attorneys.

After you file the Note of Issue with the court, you should write a letter to the Judge asking for the first available trial date. You should always "cc" (carbon copy) the defendants' attorneys on all letters and electronic mail to the Judge and court.

**Why We Do This:** Getting a confirmed trial date from the court is our ultimate goal. There will be no resolution of our cases until the trial, so completing the discovery process and requesting a trial date is essential to our success.

### Our Goal: Getting the Lawsuit to Trial in 18 Months

The primary goal is to get every case to trial within 18 months from the filing of the lawsuit until the first day of trial. This

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(above) Who doesn't love *THE LAW MAN*, Bill Umansky, Esq.!  
Leading the way at the DC Mastermind.



(above) Always great catching up with good friend, Matt Nolfo, Esq.

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is not always realistic in some venues/counties in downstate New York, but in most counties in upstate New York, this is possible if we meet our discovery deadlines set forth in the 9-step Litigation Checklist.

None of this will happen automatically. You, as the case manager, must make sure each step is completed on time.

**Why We Do This:** The 9-step litigation checklist is designed to give you clear instructions on each step in the discovery phase of a lawsuit. You can't do your job unless you know how it should be done.

## How We Keep Cases on Track: Our Monthly Progress Meeting

Every month our team members have a Monthly Progress Meeting to assess the progress of every active lawsuit in our law firm. At this meeting, you will discuss what has been done on every active lawsuit over the past month and what needs to be done next.

**Why We Do This:** We want to make sure progress is being made in all of our active lawsuits. Our monthly progress meeting is our way of making sure that none of our cases are being neglected.



(top to bottom) Grateful for the love and support of our tribe at the DC Mastermind!  
The master of perfect planning and execution, John Nachazel,  
at the DC Mastermind.

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