CHAPTER 1. INTAKE

A. DO I WANT THE CASE AND CAN I ACCEPT IT?

§ 1:1	Do I have the expertise?
§ 1:2	Do I have the time?
§ 1:3	Is it worth the cost of handling?
§ 1:4	Conflicts of interest—In general
§ 1:5	—Current clients and self interest
§ 1:6	—Former clients
§ 1:7	—Multiple representation in the same litigation
§ 1:8	—Liability insurers
§ 1:9	—Public servants
§ 1:10	—Philosophical conflicts
§ 1:11	When the prospective client has a "hidden agenda"
§ 1:12	When the client's goal is to delay resolution of the dispute
§ 1:13	When the client wants to determine litigation tactics
§ 1:14	What if you do not believe the prospective client?
§ 1:15	Is the claim meritorious and substantial?
§ 1:16	Accepting a case with a deadline approaching
§ 1:17	Collectibility of a judgment
§ 1:18	When a prospective client is already represented
§§ 1:19	to 1:20 [Reserved]

B. DOES THE CLIENT WANT TO HIRE ME?

\$ 1:21 In general
\$ 1:22 "Specialization"
\$ 1:23 Statistical information
\$\$ 1:24 to 1:30 [Reserved]

C. CONTINGENT FEE ARRANGEMENTS

§ 1:31	Defined
§ 1:32	Pros and cons
§ 1:33	What is a "reasonable" contingent fee?
§ 1:34	Contingent fee contracts must be in writing
§ 1:35	When the attorney is discharged before resolution
§ 1:36	Expenses in contingent fee cases
§ 1:37	Renegotiating fee agreements
§ 1:38	Construction of contingent fee agreement when attorney fees
	are awarded by court

- § 1:39 Referral fees and fee splitting
- § 1:40 [Reserved]

D. HANDLING ISSUES

- § 1:41 Delegation of work within the attorney's firm
- § 1:42 Settlement authority
- § 1:43 Billing frequency and detail
- § 1:44 Reporting procedure
- § 1:45 Non-legal personnel or service billing
- § 1:46 Litigation timeframes
- § 1:47 Anticipated expenses
- § 1:48 Effect of subrogation liens on the intake decision
- § 1:49 Settlement in multiple-plaintiff cases
- § 1:50 Defense of the counterclaim
- § 1:51 Responsibility and billing for ancillary matters
- §§ 1:52 to 1:60 [Reserved]

E. DECLINING EMPLOYMENT

- § 1:61 The necessity of clarity
- § 1:62 Duty to give reasons for declining employment
- § 1:63 Duty to warn of approaching statutes of limitation or other time limits
- § 1:64 Referring a prospective client to another lawyer
- § 1:65 Effect of declining employment on accepting related employment
- §§ 1:66 to 1:70 [Reserved]

F. TERMINATION OF EMPLOYMENT

- § 1:71 Client's obligation for fees, costs, and attorney's obligation to account for retainer
- § 1:72 File materials
- § 1:73 Limitations upon the attorney's right to withdraw

CHAPTER 2. PRE-SUIT ISSUES

- § 2:1 What are the deadlines?
- § 2:2 Who are the defendants?
- § 2:3 Who are the other potential claimants?
- § 2:4 What insurance coverage exists
- § 2:5 What claims should be made of those available?
- § 2:6 Where to file

CHAPTER 3. ELEMENTS OF CLAIMS AND DEFENSES

§ 3:1 Negligence

§ 3:2	—Duty
§ 3:3	—Standard of care
§ 3:4	—Altered standards of care for minors, incompetents, intoxicated persons, or experts
§ 3:5	—Res ipsa loquitur
§ 3:6	—Proximate causation
§ 3:7	—Defenses—Contributory negligence
§ 3:8	——Rule of avoidable consequences
§ 3:9	——Last clear chance
§ 3:10	——Incurred or assumed risk
§ 3:11	——Exculpatory clause
§ 3:12	Comparative Fault Act
§ 3:13	Product Liability Act
§ 3:14	Premises liability—Standards of care
§ 3:15	—Attractive nuisance doctrine
§ 3:16	—Off premises liability
§ 3:17	—Landlord-tenant premises liability
§ 3:18	Assault and battery
§ 3:19	Intentional infliction of emotional distress
§ 3:20	Defamation—Defamation defined
§ 3:21	—Elements of a cause of action
§ 3:22	—Defenses and mitigating factors
§ 3:23	Fraud—Actual fraud
§ 3:24	—Constructive fraud
§ 3:25	—Pleading requirements for fraud
§ 3:26	False arrest and false imprisonment
§ 3:27	Malicious prosecution
§ 3:28	Abuse of process
§ 3:29	Trespass
§ 3:30	Conversion
§ 3:31	Wrongful death—Elements of claim
§ 3:32	—Standing
§ 3:33	—Beneficiaries
§ 3:34	—Abatement of action by death of the beneficiaries
§ 3:35	—Time to sue
	—Time to sue —Defenses—In general
§ 3:36 § 3:37	
8 9:91	——Settlement or recovery by the decedent during his lifetime
§ 3:38	——Contributory fault of the decedent
§ 3:39	——Comparative fault of a beneficiary
§ 3:40	——Time limitations
§ 3:41	Wrongful Death—Damages—In general
§ 3:42	Wrongful death—Damages—Lost earnings of the decedent
§ 3:43	——Intangible elements of damage
8 3:44	— — Hedonic damages

Personal Injury Law and Practice

§ 3:45	——Punitive damages
§ 3:46	——Cost of administering the estate of the decedent and
	attorney fees for prosecuting the wrongful death action
§ 3:47	Wrongful death or injury to a minor—In general
§ 3:48	—"Child" defined
§ 3:49	—Standing
§ 3:50	—Time to sue
§ 3:51	—Damages—In general
§ 3:52	——Loss of "services"
§ 3:53	——Loss of love and companionship
§ 3:54	——Estate administration and attorney fees
§ 3:55	—Division of death benefits
§ 3:56	—Abandoned children
§ 3:57	—Parents' damages for non-fatal injuries to a child
§ 3:58	Imputed negligence and vicarious liability
§ 3:59	Suits against unincorporated associations by members
§ 3:60	Dram shop liability
§ 3:61	Tortious interference with contract
§ 3:62	Misappropriation of trade secrets
§ 3:63	Unfair competition—"Passing off"
§ 3:64	Breach of non-compete agreements
§ 3:65	Guest statute—In general
§ 3:66	—Hitchhiker
§ 3:67	—What is a "motor vehicle"?
§ 3:68	—What is being transported "without payment"?
§ 3:69	—What is "wanton or willful misconduct"?
§ 3:70	Immunities—Governmental immunity
§ 3:71	—Fireman's rule
§ 3:72	—Parental immunity
§ 3:73	—Good Samaritan rule
§ 3:74	—Immunity for mental health services providers
§ 3:75	Damages issues—Loss of enjoyment of life
§ 3:76	—The impact rule and emotional distress
§ 3:77	—The economic loss rule
§ 3:78	—Allocation of damages for injuries with different causes
§ 3:79	—Punitive damages
§ 3:80	Survival of claims where the plaintiff dies of unrelated causes—Indiana's Survival Statute: IC 34-9-3-1 et seq.
§ 3:81	Statutes of limitations when a party dies
§ 3:82	Spoliation of evidence

CHAPTER 4. AFTER THE COMPLAINT IS FILED

A. PROCESS

§ 4:1 Service of process

B. DEFENDANT'S DECISIONS BEFORE ANSWERING

§ 4:2	Is venue in the proper county?
§ 4:3	Change of judge or change of venue
§ 4:4	Removal to federal court
§ 4:5	Is there personal jurisdiction?—Avoiding waiver
§ 4:6	What is the insurance coverage?
§ 4:7	Is the claim covered?—Duty to defend and conflict between carrier and insured
§ 4:8	Are there potential counterclaims?
§ 4:9	Other indemnity rights or crossclaims
§ 4:10	Who are the potential non-parties and should they be named?
§ 4:11	When to admit liability or allegations upon which liability is in part based
§ 4:12	Jury demand
§ 4:13	Affirmative defenses

CHAPTER 5. DISCOVERY

A. SAMPLE INTERROGATORY QUESTIONS AND DOCUMENT REQUESTS

§ 5:1	Wrongful death
$\S 5:2$	Wrongful death of minor
§ 5:3	Loss of consortium
$\S 5:4$	Premises liability—Plaintiff
§ 5:5	—Individual defendant
§ 5:6	—Corporate defendant
§ 5:7	Products liability—Plaintiff
§ 5:8	—Defendant
§ 5:9	General—Plaintiff
§ 5:10	—Individual defendant
§ 5:11	—Corporate defendant
5:12	Auto action—Plaintiff
§ 5:13	—Individual defendant
5:14	—Corporate defendant
§§ 5:15	to 5:20 [Reserved]

B. DEPOSITION CHECKLISTS

- § 5:21 Plaintiff
- § 5:22 —Insert for products liability
- § 5:23 —Insert for auto accident
- § 5:24 Defendant
- § 5:25 —Insert for products liability
- § 5:26 —Insert for auto accident
- § 5:27 Eyewitness
- § 5:28 Investigating officer
- § 5:29 Treating physician
- § 5:30 Chiropractor
- § 5:31 IME physician
- § 5:32 Economist
- § 5:33 Vocational rehabilitation expert
- § 5:34 Technical expert

CHAPTER 6. ADMISSIBILITY OF EVIDENCE AND FOUNDATIONS REQUIRED

- § 6:1 Opinions in police reports
- § 6:2 Medical reports and records
- § 6:3 Blood alcohol tests
- § 6:4 Related criminal or traffic conviction or plea
- § 6:5 Small claims award
- § 6:6 Judgment in a related action
- § 6:7 Judgment in a related action with different parties— Foundation necessary for admissibility of a prior judgment as "res judicata," "collateral estoppel," or "issue preclusion" in a subsequent proceeding
- § 6:8 —Defensive collateral estoppel
- § 6:9 —Offensive collateral estoppel
- § 6:10 —What is a "related litigation" involving a different party?
- § 6:11 —Judicial estoppel or election of remedies
- § 6:12 —Proof of prior judgments
- § 6:13 Expert testimony—In general
- § 6:14 —Foundation
- § 6:15 —Expert testimony based on controversial science
- § 6:16 —Hedonic damages
- § 6:17 —The factual basis for the expert's opinions
- § 6:18 —Expert opinions on the "ultimate issue"
- § 6:19 —Degree of "certainty"
- § 6:20 —Conclusiveness of expert's opinion
- § 6:21 Cause of first impact in "enhanced injuries" cases
- § 6:22 Evidence of defendant's liability insurance
- § 6:23 Collateral source rule and statute

§ 6:24 —Admissibility of partial settlements § 6:25 Marital privilege § 6:26 Remarriage in wrongful death claim; divorce in loss of consortium claim Financial conditions of plaintiff or defendant § 6:27 § 6:28 Dead Man's Act § 6:29 Seatbelt and motorcycle helmet use § 6:30 History of claims by plaintiff § 6:31 Post-accident alterations § 6:32 Plaintiff's medical history

CHAPTER 7. PRE-TRIAL PREPARATION

- § 7:1 Pre-trial summary of evidence and issues
- § 7:2 Amending complaint or answers to focus issues for trial
- § 7:3 Request for admissions or stipulations on authenticity and admissibility of documents
- § 7:4 Supplemental interrogatories and production on witnesses and exhibits
- § 7:5 Stipulation on deposition admissibility in lieu of live testimony
- § 7:6 Scheduling medical testing or other experts
- § 7:7 Exchange of "summary" or "excerpt" exhibits, demonstrative exhibits

CHAPTER 8. EMPLOYING AND EVALUATING EXPERTS

- § 8:1 Finding an expert
- § 8:2 Types of experts

CHAPTER 9. DISPOSITIVE MOTIONS AND APPEALS

- § 9:1 Preserving error—Admission or exclusion of evidence
- § 9:2 —Sufficiency of the evidence
- § 9:3 —Instructions
- § 9:4 —Conduct of counsel or the court
- § 9:5 Standards for trial court ruling and appellate court standard of review—Motion to dismiss
- § 9:6 —Judgment on the pleadings
- § 9:7 —Motion for summary judgment
- § 9:8 —Judgment on the evidence
- § 9:9 —Motion for new trial, or for relief from judgment
- § 9:10 —Tendered instructions
- § 9:11 —Relevant evidence
- § 9:12 —Exclusion of evidence as cumulative
- § 9:13 —Discovery motions

Appellate court standard of review—Harmless error § 9:14 § 9:15 Standards for trial court ruling and appellate court standard of review—General verdict versus finding of fact § 9:16 —Court trial versus jury § 9:17 Effect of the trial court's failure to rule on pending motions § 9:18 Timetable of appellate deadlines—Appeals from final judgments § 9:19 —Appeals from interlocutory orders § 9:20 Deadlines for seeking relief from judgments

CHAPTER 10. SETTLEMENT AND COLLECTION

- § 10:1 Settlement mechanics
- § 10:2 "Bad-faith" failure to defend or settle
- § 10:3 Recovery of prejudgment interest and post-judgment interest
- § 10:4 Pre and Post Judgment Interest
- § 10:5 Stay of proceeding to enforce a judgment pending appeal
- § 10:6 The effect of bankruptcy discharge
- § 10:7 Subrogation liens

CHAPTER 11. MEDICAL MALPRACTICE

A. THE INDIANA MEDICAL MALPRACTICE ACT

- § 11:1 Purpose and Structure of the Medical Malpractice Act
- § 11:2 Persons or entities entitled to coverage under the Act
- § 11:3 The scope of the act
- §§ 11:4 to 11:10 [Reserved]

B. PROCEDURES FOR BRINGING A MEDICAL MALPRACTICE ACTION

- § 11:11 Commencement of a medical malpractice action
- § 11:12 Statute of limitations under the Act
- § 11:13 The medical review panel—Formation of the panel
- § 11:14 —The panel process
- § 11:15 —Invoking the jurisdiction of a court during panel proceedings
- § 11:16 —Court proceedings following receipt of the panel opinion
- §§ 11:17 to 11:20 [Reserved]

C. SUBSTANTIVE ISSUES IN A MEDICAL MALPRACTICE ACTION

§ 11:21 Elements of a medical malpractice action—The standard of care

§ 11:22	—Res ipsa loquitur
§ 11:23	Hospital Liability
§ 11:24	Informed consent
§ 11:25	Loss of chance doctrine
§ 11:26	Product liability actions
§ 11:27	Preconception, wrongful life, and wrongful conception torts
§ 11:28	Contributory negligence and comparative fault
§ 11:29	Good Samaritan statute

CHAPTER 12. ADVOCATE BRIEFS ON CURRENT ISSUES

- § 12:1 Purpose and Procedure
- § 12:2 Admissibility of "records review" medical testimony
- $\S~12:3~$ Admissibility of collision vehicle photographs to show low-force impact
- $\S~12:4~$ Admissibility of medical expenses paid by collateral sources or discounted

Table of Laws and Rules

Table of Cases

Index