

# *Why a Personal Injury Practice Is Different*

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I WROTE IN THE FIRST two editions of this book that starting a personal injury practice is not for the faint-hearted. Sadly, that fact is even truer today than it was in 1997 when the first edition was published or in 2006 when the second edition came out. Starting a personal injury (PI) practice is different from starting most other types of law practice because in a business or real estate practice, or even in a family law or bankruptcy practice, the lawyer: (1) takes in a case, often receiving a retainer to cover future fees; (2) does the client's work; (3) sends a bill for the time spent; and (4) then gets paid. In a personal injury practice, the lawyer takes in a case, spends his or her time and money preparing the case for settlement or trial, and then gets paid in a year or two, if everything goes well. Of course, lawyers who bill hourly also have money problems, such as accounts receivable, but their problems with money do not compare with those faced by personal injury lawyers. Personal injury lawyers, who work on contingency, do not necessarily get paid for

all the time that they spend on a case, but if they do not spend enough time, they may not get paid at all.

In a personal injury practice, all cases require a lot of work, and big cases require the most work. Everyone dreams about getting “the big case,” only to be shocked to find out how much time and money it requires. Many big cases turn out badly because the plaintiff’s lawyer does not spend enough money to hire the doctors, engineers, accident reconstruction experts, and other professionals needed to analyze critical issues and testify in court. Often that is simply because the lawyer does not have the money to invest in the case. Many big cases also turn out badly because the plaintiff’s lawyer does not spend enough time to work the case up properly. Often that happens because the lawyer is busy handling other cases, perhaps cases that will generate fees immediately to pay the rent and keep the doors open.

One dilemma in a personal injury practice is that the more cases you have, the more people you will need to help you work on them. Those people will need to be paid every month, whether you have settled any cases or not. You must come up with the money to pay them. If it takes two years for the average case to be resolved, you must meet two years’ worth of payroll expenses without settling a case. Are you prepared to do that? How will you come up with that much money? Are you prepared to borrow money? To invest your own money? To sell your house? You must ask yourself whether you are that committed.

If you plan to build a personal injury practice, you will have to face these financial realities. The good news is that once you survive the first couple of years and have generated some cash flow, it becomes much easier. Unfortunately, many aspiring plaintiffs’ lawyers have not generated enough capital to make it through those first couple of years and are now doing something else for a living. (See Chapter 3 for a discussion of financing your practice.)

## Self-Analysis

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Given the enormous financial and personal risks involved, you should analyze your personality and your tolerance for risk before undertaking this venture. Not everyone is cut out for it.

That is not to say that PI lawyers all come from the same mold. On the contrary, they come in all personality types. They have different interests and aptitudes, different strengths and weaknesses. Some thrive on courtroom activity while others prefer to stay out of the courtroom and would rather settle cases. Which do you prefer? Some PI lawyers thrive on high-stakes litigation and are willing to mortgage their homes to finance a good case. Others do not have as high a tolerance for risk. How much would you be willing to risk on a case? High-stakes cases mean long hours at the office, including nights and weekends, for months at a time. Many lawyers are not willing or able to put in that amount of time or to work under that much pressure.

It is, however, quite possible to be a successful PI lawyer without handling high-risk, expensive cases. Many lawyers have satisfying careers handling more routine cases and only go to court once or twice a year. Plus, with the increasing popularity of alternative dispute resolution (ADR), including mediation and arbitration, lawyers are trying fewer personal injury cases than in the past. You will be much happier and more successful by starting a practice that suits your own strengths and weaknesses.

In addition, there are alternatives to starting your own practice. If you want to become a malpractice lawyer or handle other high-stakes cases, but cannot afford to take the financial risk, you should consider taking a job with a lawyer or firm that handles those cases. The experienced lawyers can teach you how to handle those cases, give you opportunities to work on some cases, and perhaps even try cases. Many lawyers have taken that route before going out on their own.

There are other factors to consider as well. Starting a personal injury practice has been made even harder by the insurance and business lobbies' unrelenting assault against injury victims and trial lawyers. Many states, along with the federal government, are implementing "tort reform" legislation that places caps, or upper limits, on the amount that an injured person can recover for punitive damages, as well as for pain and suffering. Some states are limiting the doctrine of joint and several liability in ways that limit an injury victim's right to recover damages from multiple tortfeasors. These reforms have raised the crossbar for plaintiffs, making it harder to obtain a favorable verdict at trial. As a result of their

success in the courtroom, insurance companies and corporate defendants are often less motivated to settle before trial, and their pretrial offers are lower than before the reforms took effect.

This reluctance on the part of insurance companies to make serious settlement offers results in an increase in the percentage of cases in which you will have to file a lawsuit and go through the discovery process. The case that may have been settled quickly in the past will now drag on for months or years until its turn comes for trial or arbitration. The case likely will settle before trial (most cases still do), but the long delay will mean that you will incur the added expenses of filing fees, depositions, expert witnesses, and other court costs. For your client, it means a long wait before knowing what the outcome will be. Unfortunately, many clients cannot wait the extra time or are simply unwilling to go through a trial, so they end up settling for a fraction of what the case is really worth.

Another phenomenon that does not bode well for the new PI practitioner is the public's attitude toward PI cases in general. Recent television programs have featured segments on insurance fraud, scams, and conspiracies involving PI lawyers, doctors, and their clients. Insurance companies regularly advertise how they are working to reduce fraud to keep premiums low. Large jury awards are trumpeted in headlines across the country. Talk show hosts deride plaintiffs' claims resulting from spilled coffee, errant golf shots, stuck elevators, and the like. Insurance companies routinely deny claims for injuries resulting from low-speed auto accidents, and juries are upholding those denials, perhaps suspecting over-treatment or exaggeration. This new public attitude may have weeded out a few dubious claims, but it has emboldened insurance companies and made it harder for deserving clients to get fair compensation.

So why start a personal injury practice? If it is because you think that it offers the greatest opportunity to get rich, you will be disappointed. You may ultimately get rich, but you would be more likely to achieve the same or greater wealth by investing your time and money in real estate or any number of other ventures not connected to the practice of law. Even though the ranks of plaintiffs' lawyers include a number of high-profile, high-income lawyers,

thousands more lawyers across the county toil in obscurity and make unremarkable incomes.

On the bright side, however, is the fact that nowhere in the practice of law is there a greater opportunity to help those who are truly in need—those who have been wronged through no fault of their own and who are not going to get any relief without a lawyer who is willing to fight for their rights. Nowhere in the practice of law is there more of a David versus Goliath scenario than a working man or woman or retired person or child doing battle with a gigantic insurance company or corporation.

Any lawyer who has taken a deserving client's case through the legal system all the way to trial and has ridden out the waves of delay, obfuscation, and occasional deception knows that there is no better feeling in the world than having his or her cause validated by a jury. When that happens to you, your client is convinced that you are the best lawyer on the planet, the opposing lawyers have to concede that you might possibly know what you are doing; and you gain a measure of confidence and self-assurance that will keep you in the game for a while longer. You will only be able to enjoy those moments occasionally, and then only if you have managed your practice wisely.

Lawyers who fail to build a successful personal injury practice often point to poor case selection, mismanagement of personnel, and poor use of time and money. No lawyer starts a practice intending to fail, but many start a practice doomed to failure because the practice has not been built on a sound foundation. There are four cornerstones of that sound foundation:

1. A commitment to work hard to make your practice succeed
2. The ability to manage your time, money, and people
3. Adequate capital
4. The desire to do the right thing for your clients

If these cornerstones are in place, success will follow. This maxim is equally true whether you are new to the private practice of law, are an experienced PI lawyer, or are thinking of adding PI cases to your established practice.