# A Young Lawyer's Guide to Opening a File

*By Matthew G. Laver and Meredith A. Kirschner*

Most of what attorneys deal with on a daily basis goes beyond the scope of textbooks and academics and involves local procedure that can only be learned through practice and experience. When faced with this work, it is expected that you, as a junior attorney, will seek guidance from the more veteran attorneys in your workplace. Notwithstanding that you have relatively less experience than those attorneys who supervise you, you can impress them by demonstrating your ability to open a new case and build the library of information needed to effectively represent your clients. By obtaining the necessary materials and facts at an early stage of litigation, you can hand the file off to a supervisor at a later time and be confident that the supervisor will be well-prepared for litigation or settlement discussion. The method outlined below comes from a defense perspective but offers pointers that are valuable in all practice areas from varying client perspectives.

When a new file is opened, the first thing to do is to identify all the parties and attorneys involved in the case. We recommend creating a single-page document that shows who all of the parties are, who is their respective counsel and their contact information. Whether you keep a paper file or an electronic file, this information should be readily available, allowing you to answer a phone call from counsel or any other interested party and quickly learn from your index with whom you are speaking and what her position is in the litigation.

Surprising to some, one of the best methods to gather preliminary information about your case is to call the opposition and ask him what the case is about. In many cases, this can be achieved by simply stating the following: "I was just assigned this case, and I don't know much about it. Please tell me what this case is about." You will find that most people like to be asked for help. If you couch your request properly, the opposing attorney will be eager to impress you with his knowledge of the case. You may be startled by just how much the opposition is willing to share. This can be a great method for learning many of the operative facts and your opposition's intended method of proving his case or defense.

Once you have spoken to opposing counsel, it is time to sit down and speak to your client(s) in depth. Find out exactly how each of your clients is involved in the litigation and take copious notes. If your client takes a strong position as to the facts or the litigation strategy, write it down and quote him. This will protect you from later misunderstandings between yourself and the client. At this meeting, take time to review the available pleadings and/or pertinent documents, and strive to learn everything there is to know about your client.

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Having conducted your initial fact-finding interviews, you should now have enough information to serve discovery on your opponent. Since you should now have a deeper understanding of the facts, you should draft specific interrogatories tailored to your case and the other side's theory of liability. Be as specific as possible with your questions, since that will best assist you in having a greater understanding of your opponent's theory of the case.

The next step in opening your case is the preparation of an initial report to your client. In this report, you will set forth all the legal issues, a detailed summary of your factual investigation, your assessment of liability and damages and your plan moving forward. This document will serve as a reference at every stage of your case and thus is invaluable.

The first element of your initial report should be a summary of the pleadings and available documents. Incorporate any information you have about opposing counsel, such as whether you have litigated against him in the past and how he presented himself in a courtroom. This portion of your report should include a discussion of venue and any procedural issues that need immediate attention. Describe the court and venue where your case is located, i.e. state or federal, liberal or conservative, etc. If you are able, also include any information you have about the judge to whom your case has been assigned.

Second, your report should incorporate a detailed summary of the factual investigation you have conducted. By this time, you will have interviewed your client in addition to any other relevant witnesses not represented by counsel. You will also have reviewed relevant documents you have obtained. If you have spoken with opposing counsel, include a summary of that conversation. We also suggest that you conduct a thorough Internet search of the opposing party, including any social networking sites, criminal background searches and civil docket searches. Include your findings in this section as well, and note if there are any prior offenses that can be used for impeachment purposes.

You should now analyze the relevant law and potential damages to which your client may be exposed. It is your duty to explain to the client how the legal issues apply to the facts of the case. In addition to citing the

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relevant law, discuss your assessment of liability and the potential defenses available to your client. Immediately thereafter, set forth your projected damages exposure and the potential settlement value of your case. You may need to rely on the expertise of more senior attorneys in your department for this analysis, since it will be based at least in part on past settlement values of cases similar to yours (or verdict amounts, if tried). However, there will certainly be some elements that you can figure out from your investigation, such as potential lost wages, earning potential, the age of the adverse party and other factors that you suspect could affect the value of the case. Be sure to include any demands or offers to date as well.

Your report should conclude with a summary and analysis of everything you have discussed in the previous sections. Include the most important facts that led you to your assessment, your assessment itself and your proposed plan moving forward. Your client will appreciate having a simplified, abbreviated summary of your findings and recommendations at the end of the report for his reference.

By the time you have completed all of the above steps, you will hopefully have received responses to your discovery requests. Make certain to review these responses with your client and help them understand the supporting evidence for your opponent's claims. Be sure to schedule depositions as soon as possible following your receipt of discovery responses.

Discussions regarding settlement will occur at different times depending on the case and may occur prior or subsequent to dispositive motions. No matter when these discussions take place, be certain your client approves the parameters of a potential settlement and has given you authority to move forward accordingly. When conducting negotiations, the following are basic and essential elements of a strong release and/or settlement agreement:

1. Confidentiality: Make sure opposing counsel understands that a settlement agreement and any amounts therein will be confidential and that he must relay this information to his client.
2. Counsel fees/costs: Make sure your opponent understands that the amount of settlement will include costs and counsel fees.
3. Amount: State in explicit terms the amount of settlement.
4. General release: Make sure your opponent understands that any settlement agreement entered into will include a general release from all liability associated with this matter for your client(s).
5. Liens/other claims: Find out if there are any liens or outstanding claims from outside parties related to this case or any care or treatment that was rendered to any of the parties. Make sure to discuss these liens with your opponent and whether the settlement amount is subject to any of these liens.
6. Unequivocal agreement to settle: If you feel that an agreement has been reached, make sure to conclude your conversation with something unequivocal, along the lines of "we're settled." This may seem obvious, but you would be surprised how many agreements have been broken in the absence of such an assertion.

If a case has settled, send a letter to opposing counsel confirming that the matter has been settled in full and that the parties have agreed to sign a general release mirroring the agreed-upon terms of your conversation. At this time, you should also send a concluding letter to your client(s) detailing the settlement amount and essential terms of the release. If you have settled for less than the original demand, you may want to remind your client what the initial demand was, highlighting that you have been able to resolve the case for less.

In the event that the matter does not settle, if you have completed all of the above steps, your supervisor will take control of an organized file and a knowledgeable client, and he will possess the necessary information to successfully litigate the case. Although you may lack the experience of some of your colleagues and supervisors, you will undoubtedly impress them and your clients with your thoroughness and attention to detail if you follow the above roadmap. The key is to be well-informed and to make sure your client is well-informed, so you can accurately assess your client's liability and exposure and collaboratively litigate the case to the best of your ability. ■

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