

Chapter 1

THE INITIAL INTERVIEW

§ 1.01 Client Education-Part 1.

§ 1.02 Case Acceptance.

§ 1.03 Information To Be Obtained/Forms To Be Signed.

§ 1.04 Client Education-Part 2.

§ 1.01 Client Education-Part 1.

The initial interview may be the most important time an attorney spends with a prospective client. The interview allows the attorney to obtain the facts of the case, educate the client on the law and evaluate whether the client will make a good witness and follow instructions. The attorney should allow plenty of time for this interview.

Because most injured workers do not understand what they are entitled to receive under the law, the attorney should carefully explain the limited benefits available. Educating the client early will make it easier to settle the claim when the time comes. Most injured workers think they are entitled to general damages as in tort claims. Each client should be informed that there is no recovery for pain and suffering. The possibility that the client may be wrongfully discharged should also be discussed. The attorney should consider sending the client a post interview letter outlining the potential benefits available.

§ 1.02 Case Acceptance.

Whether to accept a case is often a difficult decision. Attorneys should be wary of cases in which (1) the claimant tries to evaluate the case; (2) the claimant suddenly gets fired and then wants to file a workers' compensation claim with little or no injury; (3) the claimant's spouse tries to control the case rather than the claimant; (4) a labor dispute totally overshadows the workers' compensation claim; (5) the claimant thinks he knows more about the law than the attorney, and; (6) notice of the injury was not given promptly.

Histories of surgery and/or prolonged medical treatment are often positive signs for acceptance. In cases of lesser injuries such as minor scars, lost digits and lost teeth, the best thing the attorney can do is tell the claimant how to file the claim on his own.

Always remember that workers' compensation cases are like marriages, unless you get a divorce, the claimant may be your client for life. Beware of the proverbial tar baby!

§ 1.03 Information To Be Obtained/Forms To Be Signed.

Few people can remember every question to ask in every interview. It is therefore advisable to use a prepared form or checklist to make sure you obtain as much information as possible. See Appendix 1. The attorney should also be alert to the possibility of third party claims. See Chapter 10.

A comprehensive written contract is also essential. See Appendix 1. The attorney should go over the contract in detail with the client so that there are no questions about fees and expenses. The contract should cover lump sum settlements as well as structured settlements, costs, monies due if the client discharges the attorney, and one important factor that clients rarely understand, that the law does not allow attorneys to lend money on cases.

The attorney should also have the client sign a number of medical authorizations. See Appendix 1.

§ 1.04 Client Education-Part 2.

As indicated above, educating the client about the law is an important part of the initial interview. However, the instructions the attorney gives the client at the end of the interview are just as important. The client should be advised to keep in touch with the attorney's office regarding medical treatment and return to work dates. He should be told to follow the doctor's instructions, to keep all appointments, and to be nice to the doctor even if it hurts.

Warn the client that private investigators are used by the carriers to videotape outside activities and that these videos may be misinterpreted by the commission. Make sure the client knows that the rehabilitation nurse/case manager is not necessarily his friend.

Clients should be advised to keep a mileage record if the doctor's office is more than five (5) miles one way. See Regulation 67-1601. Give the client a medical mileage reimbursement request form. See Appendix 1. Tell the client to keep records of all temporary total checks received. Tell him to keep all check stubs, envelopes, and copies of the checks (if possible). Give him a form to use in tracking receipt of temporary total checks. See Appendix 1.

In potential total disability cases, advise the client to file for Social Security Disability. Mental Health, South Carolina Vocational Rehabilitation, group insurance claims, long term and short term disability claims, and unemployment compensation should all be discussed.

Although these instructions should be discussed with the claimant, you may find it helpful to give him a brochure outlining them as well. See Appendix 1.

It may also be helpful to give your client a folder in which to keep his letters and other case related documents.